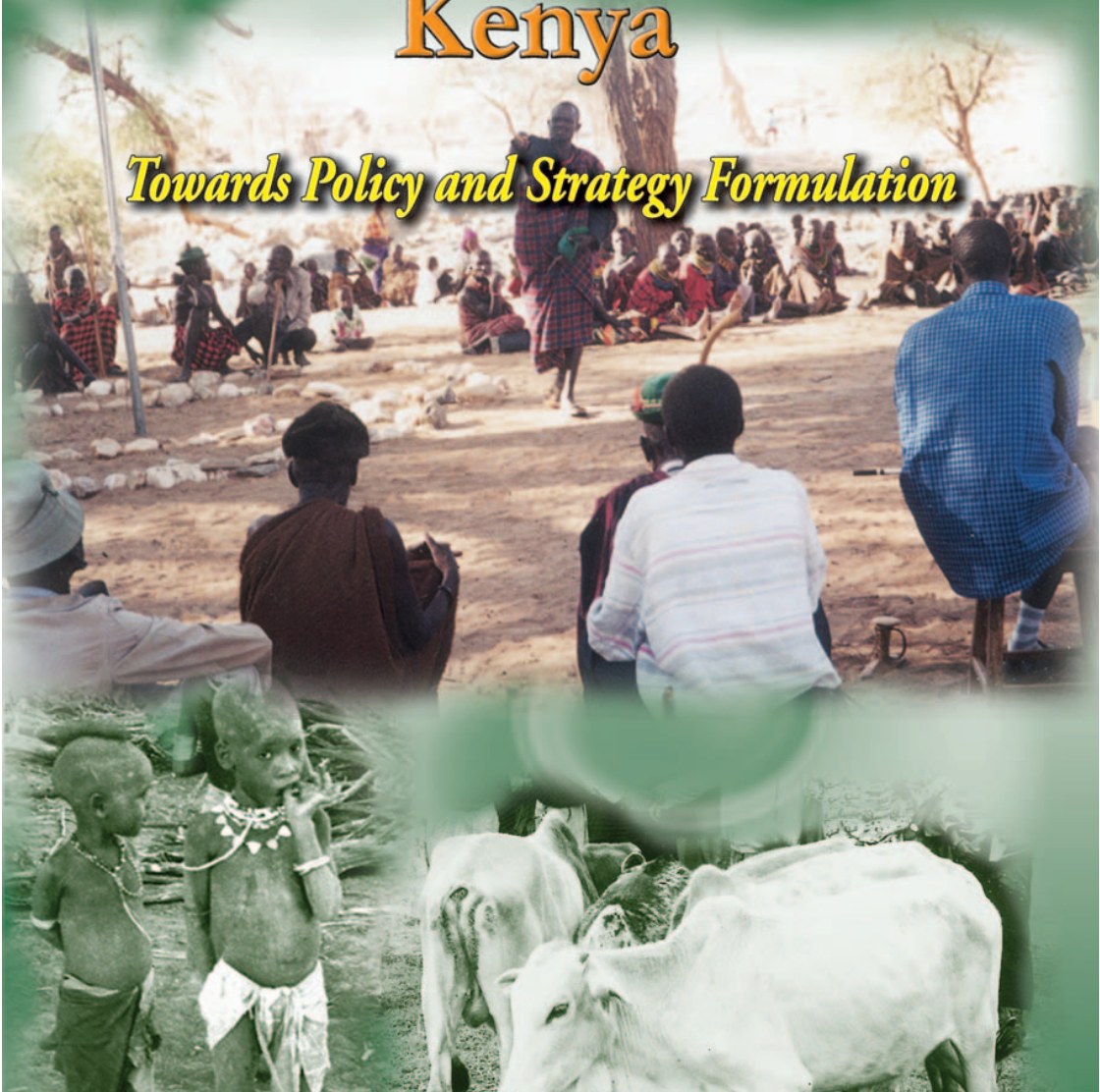


# Conflict Management in Kenya

*Towards Policy and Strategy Formulation*



Mohamud Adan

Ruto Pkalya

Edited by Elizabeth Muli (JSD)



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Practical Action would also like to acknowledge the efforts of National Steering Committee on Peacebuilding and Conflict Management for facilitating the formulation of a draft national policy on peacebuilding and conflict management that greatly fleshed out this report.

# Acronyms

ASALs	Arid and Semi Arid Lands
NFD	Northern Frontier District
OAU	Organization Of African Union
IGAD	Inter-Governmental Authority On Development
GEMA	Gikuyu, Embu, Eeru, Association
KAMATUSA	Kalenjin, Maasai, Turkana and Samburu
ADR	Alternative Dispute Resolution
AU	African Union
EAC	East African Community
AU-IBAR	African Union/Interafrican Bureau for Animal Resources
NGO	Non Governmental Organization
NARC	National Rainbow Coalition
NPPBCM	Draft National Policy on Peacebuilding and Conflict Management
NSC	National Steering Committee on Peace Building and Conflict Management
MSEs	Micro and Small Enterprises
EU	European Union
UN	United Nations
NEPAD	New Partnership for African Development
ITDG-EA	Intermediate Development Technology Group-Eastern Africa
KANU	Kenya African National Union
DSC	District Security Committee
PSC	Provincial Security Committee

SPLA	Sudan Peoples Liberation Army
UNHCR	United Nations High Commissioner for Refugees
EMCA	Environmental Management and Coordination Act (1999)
GOK	Government of Kenya
PRSP	Poverty Reduction Strategy Paper
PSIP	Public Sector Integrity Programme
CEWARN	Conflict Early Warning and Response Mechanism
SALW	Small Arms and Light Weapons
CEWERU	Conflict Early Warning and Early Response Unit
KACA	Kenya Anti-Corruption Authority
ECK	Electoral Commission of Kenya
USAID	United States Agency of International Development
UNDP	United Nations Development Agency
DFID	Department for International Development
COPA	Coalition for Peace in Africa
NCCCK	National Council of Churches of Kenya
SUPKEM	Supreme Council of Kenya Muslims

# FOREWORD

The reoccurrence of conflicts and their impact on human development has led to the realization of the need to prioritize the management of conflict and to promote a culture of peace. Kenya has experienced both internal conflict, cross border conflict and experienced the effects of conflict occurring in neighboring states. As a result, a number of interventions exist to address conflict at community, national, regional and international levels. These measures range from district peace committees, traditional peace processes and participation in regional peace and security initiatives such as CEWARN, SALW, NEPAD and the EAC.

More recently, the National Steering Committee on Peace Building and Conflict Management has not only developed a draft framework for a policy on conflict management but also formulated a draft national policy on peace building and conflict management. These policy initiatives are milestones in the road to achieving sustainable peace and it is hoped that final policy document will be approved in the not too distant future.

Public policy is concerned primarily with two issues; the problem and its solution. Policy analysis involves examining these issues in a deliberate way to establish what the key issues are, the existing interventions and how they can be strengthened. It sensitizes the policy context to the conflict situations. The outcome of this analytical report is the identification of the priority issues that the national policy needs to take into account, an examination of existing policies and the draft national policy to identify shortcomings that require adjustment and informing an advocacy strategy that will contribute to the policy formulation and implementation process.

Strategic coordination amongst key actors has been lacking in conflict management and peace building. The impact has been the wastage of resources, leaving key issues unaddressed or addressed through short term and ad hoc responses distracting from long term policy goals. The advocacy strategy that this report recommends is a timely intervention that will hopefully cause actors to pause, reflect and situate themselves in the policy formulation and implementation process. By providing an insight into the stages of policy formulation and the linkage between advocacy and policy making, it strengthens the information base for key actor's particularly civil society enabling them to influence policy change.

I hope that this policy analysis report and its recommendations with specific reference to the advocacy strategy is a step forward in realizing a national policy on conflict management in Kenya. It is critical that key actors particularly civil society, women organizations, pastoralists, the NSC together with the media launch an advocacy campaign at this time so that they can make timely interventions targeting relevant audiences to ensure that the final policy document is not shelved as so many similar documents have been. The advocacy strategy needs to

incorporate not just policy formulation but also policy implementation. The emphasis must always be on the full participation of all actors in policy formulation and this is only possible through a strong information base that the policy analysis and advocacy strategy form part of.

**Christopher Davies**

Regional Director

Practical Action.

# Executive Summary

Although Kenya is considered to be peaceful unlike her neighbours, a closer scrutiny reveals an unprecedented wave of internal and cross-border conflicts. These conflicts, mainly manifesting itself as political, economic, environmental conflicts, conflicts over natural resources, land and tribal clashes and lately terrorism are sending signals that all is not rosy as the outside world has been erroneously been made to believe. Pastoralists in northern Kenya have borne much of the brunt of internal conflicts and considerable efforts have been directed at addressing their specific conflict environment by a number of stakeholders that include GOK, CSOs, religious organizations and CBOs. The resource-based conflicts prevalent in ASALs have completely distorted development programmes and eroded civil administration of this vast and rugged countryside.

The dawn of multi-party politics in Kenya brought in its wake new dimensions of conflict. Communities were divided along political and ideological lines, which gave rise to protracted and institutionalized waves of tribal and land clashes. Recent developments associated with terrorist groups like the August 7, 1998 bomb blast in Nairobi and Dar-Es-Salaam and the September 11, 2002 terrorist attack on the Twin Towers of World Trade Centre in New York have behooved mankind to think more beyond inter and intra state conflicts and civil strife. Terrorism not only in Kenya but also in the whole world has brought in a new fundamental dimension in the realm of conflict management and community safety.

Against this background, the political climate in Kenya has not been responsive as far as policy formulation and legislation are concerned. Today, there is no national policy on conflict resolution and peace building in Kenya. Apart from the draft terrorism bill, disaster management (floods and drought) and famine relief issues, there are no existing functional frameworks for conflict management. What exists is fragmented and uncoordinated policy statements embedded in various thematic policy issues like the ASAL draft policy, EMCA, PRSP, NEPAD, and Police Act among other documents. Nevertheless, the National Steering Committee on conflict management and peace building initiatives have come up with a draft national policy on peace building and conflict management.

In addition to the fact that there exists no formal policy framework for intervening in inter-community conflicts, this report established that in the past, policies have been implemented with no regard for community local knowledge, their indigenous systems of governance and natural resource management. More often than not, policy makers are operating under conditions of market failure caused by factors such as droughts, flooding and civil strife. An understanding of how demand and supply forces interact during such times is critical to the formulation of policies for conflict resolution that provide for processes and programs that enhance and facilitate economic growth, expanded trade, strategic food stocks, commercial

imports and poverty alleviation. There is need to look beyond the immediate triggers of conflicts by formulating policies and economic blue prints that seek to improve household incomes, access to education and social services especially in marginalized pastoralist and rural Kenya.

The search for appropriate or correct models and policies for socioeconomic development is gaining momentum all over the world as conventional knowledge fails to meet the challenge of satisfying the needs of people living under different political and social systems and levels of organization. Independent organizations such as policy research institutions and advocacy groups will increasingly play a leading role in shaping the final product of policy formulation and its relevance in the grassroots context. These institutions may not be directly involved in grassroots mobilization, but their association with resource persons within different ministries working on thematic issues of national importance, builds a working relationship between community groups, and in turn impacts the course of national development. The importance of appropriate and effective developmental policies, strategies and programmes cannot be gainsaid. These institutions ensure and encourage appropriate action at the national, regional and interregional levels.

Conflict management and peace building in Kenya continues to face major challenges in the current national and regional environment. Instability in neighboring states has resulted in increased cross border conflicts, proliferation of small arms and humanitarian crisis resulting in the loss of life and property. Institutional challenges such as the capacity of security forces and other government agencies to prevent, mitigate and manage conflict remain despite the growing recognition by the government of the need to proactively address conflict as a development issue in collaboration with other partners such as civil society, private sector and development partners. There remain operational challenges manifested in the continuing need to improve effectiveness and impact of ongoing peace building programs particularly the traditional justice systems. The government needs to realign its priorities and resources to ensure that adequate resources are generated for conflict management and peace building. The structural problems that fuel conflicts must be addressed through the realignment of priorities that recognizes the importance of peace and security in national development.

This report aims to increase understanding on current policy development initiatives and strengthen institutional capacity to participate in strategy formulation and policy implementation. The goal is to prioritize the problems and policy interventions needed to address them. It proposes a policy advocacy strategy that seeks to motivate all actors to participate in ongoing policy formulation process and policy implementation thereafter. It is hoped that the paper will generate debate and form the basis for the development of a concrete strategy that will support the development of a final national policy on peace building and conflict management that is politically viable, sustainable and will see the light of day rather than the back of a dusty shelf.

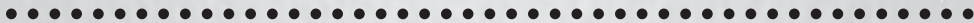
*Chapter 1* provides an overview of current existing policies, institutions and other measures that impact on conflict management in Kenya. It also highlights the principles that act as the 'lens' through which the policy analysis is conducted to identify the policy interventions and lessons learnt that should be integrated into a holistic and cohesive peace building and conflict management policy.

*Chapter 2* examines current policy formulation initiatives in Kenya, which provides the basis for the identification of key issues that may potentially impact on the successful formulation and implementation of a national policy on peace building and conflict management. It is necessary to identify these issues in order to establish viable options for policy intervention as well as recommend to policy makers a coherent policy approach to conflict and its management.

*Chapter 3* sets out the critical issues and key challenges that should be addressed by the policy. The issues that are highlighted are those that the policy must effectively address to promote conflict prevention, mitigation, management and peace building. They can also act as motivating factors to the actors whose interests they reflect and accommodate encouraging them to actively participate in implementing the policy advocacy strategy.

*Chapter 4* highlights the key recommendations of the paper that can inform policy formulation and the advocacy strategy making it relevant to the conflict situations in Kenya. Of greater concern is the development of an effective advocacy strategy that will inform the policy formulation and implementation process. These issues if addressed will enhance the potential for the policy to create an environment where peace may prevail.

# Chapter 1



## Introduction

# 1. Background to Existing Intervention Measures on Conflict Management in Kenya

Understanding what a state can do to address intra and interstate conflict is critical given the high costs and consequences of conflict. Conflict in Kenya has caused tremendous harm to civilians particularly women and children and increased the numbers of internally displaced persons in the country. In areas where the conflicts prevail, development programmes have been disrupted or obstructed and resources re-directed to less productive uses. There has been deterioration in the quality of life, the weakening of political and economic institutions and the discouragement of investment. Not only have the prevailing conflicts occurred within Kenya's borders but some have spilled over borders lowering regional stability and the growth and prosperity of the region generally.

In view of emerging trends globally on the need to make concerted and coordinated efforts to address peace and security issues such as terrorism for example, Kenya has established initiatives that seek to address conflict both domestically and regionally. In the past, the approach to conflict management and resolution was reactive and crisis driven. These included for example, the deployment of state security forces to 'contain' conflict situations and the channeling of conflicts through the formal state sponsored justice system. More recently, proactive measures are being undertaken such as the establishment of CEWERU, the NSC on Conflict



*Conflict management in Kenya has mainly been reactive and crisis driven.*

Management and Peace Building and the development of a national policy on conflict transformation and peace building.

An overview of existing processes, institutions and programmes that seek to manage and resolve conflict provides a useful platform from which to inform an effective and efficient policy formulation and implementation process that is currently taking place in Kenya today. Conflict is a highly complex concept. It is also dynamic and yet highly contextualized. Interventions to address conflict necessarily reflect similar complexities and dynamics. The overview of existing conflict management practices in Kenya sheds light on the nation's ability or inability to manage instability generally and highlights the fact that existing policies, strategies and the institutions that implement them are inadequate to prevent, mitigate and manage conflict and build sustainable peace. Some existing interventions include;

## 1.1 The Formal Justice System

The most predominant methods of conflict management recognized under law in Kenya currently are adjudication and arbitration. Countries like Kenya, which was ruled by the British, had the English common law imposed on them. It is widely acknowledged that only half-hearted measures were made to retain certain African customs and, even then, under very stringent conditions. To ensure that the law performs its role of conflict resolution, the western legal system laid great emphasis on courts. Courts were seen as the arbiters of disputes either between the citizen and the state and/or between citizens themselves. Courts are deciders of disputes authorized to involve socially – endorsed force to carry out officially recognized conflict resolution. Courts are very central to dispute resolution in the modern state. A glance at Kenya and the dispute resolution mechanisms that exist will clearly reveal that the primary state sponsored institution for dispute resolution is courts. Courts by their very nature are highly formal.

Conflict resolution through the judicial system is made difficult by a population poorly informed of its legal rights and responsibilities, high costs and complex procedures, inadequate staffing of the judiciary, sometimes strong links between the executive and judiciary, manipulation and selective application of the law in certain instances. Perhaps even more important, the judicial structure—inherited from the British, does not accurately and adequately reflect Kenya's demographic dynamics, social values, and socio-political organization. These circumstances add to the burden of legal complications in the ever-increasing land and resource conflicts.

The common citizen's perception of the court is a highly technical and sophisticated place that one should avoid as much as possible. Indeed, most citizens would rather let their disputes go unresolved than resort to courts. It is partly due to this and also due to the disadvantages associated with courts, ranging from expense,

technicalities, to delays, that there is now a discernible shift to alternative methods of dispute resolution. Such alternative methods include arbitration, negotiation and mediation. A court usually listens to both sides in the disputes and resolves the issue by delivering a judgment, which is then to be enforced. It usually declares a winner and a loser in the dispute before it. Disobeying a court's judgment leads to punishment. The rigid procedural structure of adjudication and its adversarial nature are viewed as unsatisfactory for the resolution of certain disputes. In traditional communities, there was not much benefit in the declaration of winners and losers. On the contrary, what was preferred was the amicable settlement of the dispute.

In instances of conflicts involving communities, the formal justice system may have some deterrent impact through the criminal justice system but they are not always successful for a number of reasons relating to the nature of the conflict and the relationships between the parties involved. While civil courts offer some flexibility on solutions, its remedies such as compensation have yet to be tailored to particular conflict situations and the social and cultural environments that they are embedded in.

The formal justice institutions have proved to be inadequate in responding not only to the outbreak of violence but in addressing the underlying causes and facilitating peace building and reconciliation of communities. The result has been in the growth of mistrust by communities of these structures and their rejection of their application, which further escalates instability in conflict situations.

## **1.2 Legislative Framework**

Kenya is obligated under the international law regime to ensure the security of its citizens and protect and promote their human rights that ensure they achieve their full potential for human development. Regionally the African Union, NEPAD, IGAD and the EAC have established Peace and Security Initiatives whose mandates are to enhance the capacity of member states to address the scourge of conflicts by promoting collective security, durable peace and stability on the continent. The key characteristic of the initiatives has been an emphasis on early warning and coordinated response such as the in-state Conflict Early Warning Response Units (CEWERUs) and the National Focal Points on Small Arms and Light Weapons. Kenya has established two such institutions and hosts the secretariat of Regional Centre for Small Arms (RECSA). The challenge lies in ensuring coordination of the activities of the different agencies, the harmonization of national legislation with those of neighbouring states to give effect to the collaborative and cooperative nature of the international agreements and the enactment of laws and development of related policies that implement these international treaties and agreements.

The regulatory regime at a national level for conflict management comprises of laws that establish formal adjudicatory processes that seek to administer justice in all civil and criminal matters, empower security forces and other administrative agencies to respond to crisis caused by conflicts. The relevant laws are contained in the Constitution through the Bill of rights and provisions relating to the administration of justice. Related provisions that impact on conflict situations and their impact are to be found in the Penal Code, Civil and Criminal Procedure codes, the Evidence Act, the Commission of Inquiry Act, the Magistrate Court Act and the Kadhi's Court Act. Sectoral laws such as the Agriculture Act, Forests Act, Water Act, Environmental Management and Coordination Act, the Wildlife (Conservation and Management) Act, laws relating to land, labor laws, the Local Authorities Act, the Chiefs Act, the Preservation of Public Security Act among others contain provisions that address conflict to the extent that conflict affects those sectors. Dispute resolution processes have been established under sectoral laws for their sectors independent of other existing mechanisms constituted under other laws or with no regard to the existence of mechanisms at local community levels. Certain institutions such as the Kenya National Commission on Human Rights, KACA, ECK, and National Environmental Management Agency are established by statute and handle issues that relate to conflict situations.

These institutions and dispute resolution processes by and large reflect an adversarial tradition where the goal is not to resolve the dispute amicably with reference to the social context of the problem. Rather, they adjudicate and impose final decisions on parties, which are enforceable under the law. These processes tend to rely heavily on the formal legal system. Kenya does not have a comprehensive and holistic legislation that focuses on conflict management. The impact of this gap is that some conflict management initiatives such as the traditional justice mechanisms have no legal framework. Those that have legal recognition are diverse and operate independent of each other in an uncoordinated manner that can cause confusion and lead to the ineffective administration of justice.

### **1.3 Traditional Justice Mechanisms**

In Kenya, there is increasing reliance on informal conflict management mechanisms due, in part, to lack of faith in the judiciary and the sheer expense of court procedures – not to mention the general inability to pay advocates' fees due to poverty. An example of the infusion of traditional mechanisms in modern conflict management is the system of elders under the Land Disputes Tribunals Act, 1990. Under this Act, there is a requirement that all disputes relating to land be referred to appointed elders at the local level, whose decisions, on matters of fact is final. Though the system has its own imperfections, stemming from weaknesses in the statute in question, it has served to ease the pressure on courts of law and to provide disputants with a cheap point of redress.

Kenyan communities have varied traditional methods for conflict handling. The methods have complemented the government efforts in dealing with protracted violence in some parts of the country. In some situations, institutional structures built on these processes have had their declarations and resolutions enforced by the government for example the Modogashe Declaration in North Eastern Province. The methods vary from one conflict environment to the other. Some examples include the following:

### 1.3.1 Council of elders

The primary indigenous conflict resolution institution is the council of elders. Mburugu & Hussein (2002) conducted a study amongst the Turkana, Borana and Somali communities and established that the institution of the elders is very much in use even today but somewhat weakened as the elders are unable to enforce the punishment meted out. Ruto, Mohamud and Masinde (2004) in their study of indigenous conflict resolution mechanisms amongst the pastoralists Pokot, Turkana, Marakwet and Samburu, obtained the same information. Most traditional societies had a council of elders, which was the premier institution charged with the responsibility of managing and resolving conflicts. The institution of elders was greatly respected. Elders were seen as trustworthy and knowledgeable people in the community affairs thus enabling them to make informed and rational decisions.



*In Pastoralist and rural Kenya, elders have played key roles in dispute resolution.*

Their age gave them accumulated experience and practical wisdom useful for making decisions which were not only for the parties to the conflict but also for the better good of the whole community. The council of elders used to sit and adjudicate disputes. The primary consideration was the need to maintain family harmony and peaceful co-existence in the society. As much as possible, the process encouraged reconciliation of the parties.

### 1.3.2 Inter-ethnic marriages

Another common mechanism employed in traditional African societies was inter-ethnic political marriages. The creation of bonds between two communities through marriage helped to eliminate fighting between members of these communities, for it was an abomination to fight with one's in-laws. One of the ways by which the conflict between two principal clans was diffused was between inter-clan marriages. Some pastoralists continue to use the mechanism in conflict resolution.

### 1.3.3 Resource management agreements

Pastoralists and other communities with scarce natural resources frequently discussed and reached an agreement on how to best utilize such resources. Isiolo district is characterized by constant movements of livestock along a corridor between Garba Tulla, Kinna and Sericho Divisions, with people moving in/from the neighbouring Wajir and Garissa districts. Before the movements begin, Boran and Somali elders negotiate such movements and a general agreement is reached on access to water and pasture. These negotiations are intense during periods of drought. The visiting herders use pasture and water and move back to their original homes when the situation improves.

### 1.3.4 Ethnic Groups Alliances

Different ethnic groups sometimes agreed to enter into alliances to protect each other from aggression by other groups. For this purpose, such ethnic groups would view themselves as members of one group and jointly repulse attacks from any group(s) that were not part of the alliance. This mechanism was, by design, deterrent since the result of such alliances was to send a clear message to potential aggressors that the tribe they intended to attack did not exist in isolation: it had allies who could come to its aid in time of need. The other effect was to reduce the possibility of conflict between the tribes in question.

Conflicts were managed through a progressive process influenced by the social context of the society. Emphasis throughout the process was placed on understanding the motives of the parties. As the talking proceeded, openness to feedback or influence from the social surrounding was maintained. This led to the modification of perceptions and positions. The involvement of the whole

community in the process of arriving at decisions was advantageous as it led to a more profound and shared understanding of the conflict. It also promoted a sense of belonging, which in turn, contributed to the restoration, maintenance, and building of relationships.

## **1.4 The Role of African Customary Law**

Law performs the function of ensuring orderly conduct of affairs in society. It does this by requiring people to carry out certain tasks while restraining them from undertaking others. According to Dr. Bondi Ogolla, the law performs three basic functions: The first is to regulate social behaviour through explicit rules of conduct and the use of sanctions. The second is to provide society with an avenue for settling disputes and resolving conflicts in an orderly manner. The third function is to direct planned and coordinated changes in society.

Aywa and Oloo (2001), in discussing the role of traditional societies in conflict management include the prominent place of traditions, customs and norms. They note that African societies had customs and beliefs that had to be adhered to by all members. Disregard of some of these beliefs and norms was believed to attract the wrath of the gods in addition to ridicule and reprimand from members of the society. This helped to ensure that persons shunned conflict-causing conduct.

Customary law has been a “de facto” recognition in Kenya and has been applied both in formal courts and traditional justice processes and in relation to interpersonal and community based conflicts. Under the Constitution, its application is however, restricted to matters of personal law and therefore its application in other matters relating to conflict does not have any legal recognition and enforcement.

## **1.5. Government Led Initiatives**

The local administration through the offices of Chiefs, District Officers and Commissioners frequently intervene in disputes as third party neutrals. They have played a pivotal role in addressing disputes that involve land, family matters and in some cases communities. Their advantage lies in the fact that they are situated at community level unlike formal justice institutions and in some instances is the only available state assistance available at the community level. The processes are low cost, can be constituted within a short time and the dispute addressed expeditiously.

The local administration has also set up security communities at both district and provincial levels. These committees bring together government agents such as police and intelligence to address security issues in the area including conflict and crime. The role of local administration is pivotal at community level as they provide state

security, administer humanitarian aid and relief and facilitate the operation of government programmes.

Despite their contribution to conflict management, the local administration faces challenges to its successful delivery of services. In conflicts where the government is key actors either as an instigator of violence or as a partisan bystander, local communities view the local administration with fear, suspicion and hostility. Further because of government policy that requires administrators to be transferred frequently, there is no consistency in application of strategies that address conflict. Local communities have raised complaints regarding the policy that requires that administrators should not be residents or members of the said communities. The argument offered is that the administrators are unlikely to be sensitive to the needs of the communities. In the case where an administrator from a predominantly agricultural background is posted to an ASAL for example, she/he may be unable to appreciate the unique cultural and social economic context of the community leading to the implementation of projects that are inappropriate to the livelihood needs of the community.

### 1.5.2 Security Forces

The government has responded to outbreaks of violence by deploying various arms of state security forces. These include the administration police, the general service unit, anti-stock personnel unit and in more severe cases, the armed forces. This approach while useful is highly reactive to a crisis situation. Currently there is inadequate presence of state security forces in conflict prone areas. This is most apparent along Kenya's porous borders. A consequence of the lack of effective presence has been the occurrence of cross border conflicts and the proliferation of small arms and light weapons in the country further increasing the potential for instability and insecurity.

### 1.5.3 Policies, Strategies and Development Plans

There is no existing comprehensive national policy on conflict management and peace building in Kenya. Rather, what is available are fragmented and uncoordinated policy efforts embedded in various policy documents. Most of these policy measures single out conflict as an inherent factor in whatever the policy document addresses. For instance, the national policy draft on Arid and Semi Arid lands in Kenya points out conflicts as a factor that constrains the development of the ASALs. It does not confront conflict as a priority policy factor in itself. A glance at some of the sector specific policies and national strategies the government has formulated reveals that there still gaps that need to be addressed in relation to conflict management. The following is an overview of some key national policies and strategy plans.

### 1.5.3.1 The National Poverty Eradication Plan (NPEP) and Poverty Reduction Framework Paper (PRSP)

The National Poverty Eradication Plan (NPEP) is a 15-year plan in which Kenya promised to reduce by one half the poverty levels in the country. As part of a wider policy framework under which this plan is based, the Poverty Reduction Strategy Paper (PRSP) was completed in June 2001 in which GoK outlined pro-poor and pro-growth strategies and Medium Term Expenditure Framework (MTEF).

The PRSP process demonstrated that GoK is capable of and committed to evolving a participatory approach thus ensuring inclusiveness and broad-based participation of public, private and civil society institutions. It suffices to say that CBNRM and conflict resolution are possible if the government is committed to participatory processes.

### 1.5.3.2 National Policy For The Sustainable Development Of The Arid and Semi Arid Lands Of Kenya September 2003

The government has always planned development objectives for the ASALs but something seemingly goes wrong between the plan and actual implementation of the policies. A study of past development initiatives in the ASALs reveals that these have generally been characterized by:

- *Inappropriate policies for the development of ASAL communities*
- *Barriers to national development of the ASALs*
- *Changes to the traditional way of life with growing poverty for many*
- *The pressures on the natural resource base*
- *The growing problems of insecurity and conflict*
- *The poor provision of services (both public and private)*
- *The constraints to economic growth and issue of livestock monoculture and*
- *The failure to meet the millennium development goals halving the proportion of people living in extreme poverty between (1990 and 2015) in the ASAL areas.*

In accordance with the national goal to create wealth, employment and to attain food security in order to achieve economic recovery, the objective of the current policy is to improve the standard of living of the ASAL population by appropriately integrating ASAL into the mainstream of the national economy and social development in an environmentally sustainable manner. The policy provides a framework for the development of the Arid and Semi Arid Lands of Kenya based on a vision that seeks to address conditions that have undermined the long-term development of these areas, including conflicts and banditry. It has been formulated

based on the need to have a coherent development plan for the ASALs that is informed by a new understanding of the different livelihood systems and the causes of poverty in these areas.

Notwithstanding the fact that this current ASAL draft policy paper has pointed out the need to mainstream conflict resolution and peace-building for the sake of sustainable development of this sector, a more elaborate and nationally focused policy framework that has a regional and international perspective of conflict needs to be put in place.

#### 1.5.3.4 Land Tenure Systems and Policies in Kenya

In Kenya, there exist a number of sectoral policies and laws, which regulate land-use and tenure arrangements. Both statutory (modern and public) and customary forms of tenure exist. These forms of tenure have a direct impact on land-use management and conservation of environmental resources.

In specific, there are three legal tenure regimes in Kenya. The first regime is characterized by absolute proprietorship of an individual or a legal entity over a given parcel of land. It is derived from English property law concepts of individual tenure and it is statutorily embodied in the Registered Lands Act Cap. 300 Laws of Kenya and supplemented by both the Indian Transfer of Property Act and Registration of Titles Act. This absolute control conferred on individuals and other legal entities are subject to superior rights vested in the state. The implication of this absolute control is that the proprietors alone have the power to use to which their land can be put, for example he alone can decide whether to take part in forestation and agro-forestry programmes, but only subject to state control. Such state control is stipulated under the Agriculture Act, the chiefs Authority Act and the Land Acquisition act (see Agriculture Policy and Law below)

Other sectoral policies that take care of management of shared ecosystems include: The 1996 Forest Policy (The Forestry Master Plan) and the Forest Bill, 2005, National Biodiversity Strategy and Action Plan (NBSAP) which seek to promote national interests in relation to international environmental and forest-related conventions and principles. The NBSAP defines priority actions and roles and responsibilities of various stakeholders involved in biodiversity conservation and the utilization of natural resources within the context of the socio-economic development of the country. These sectoral policies are relevant to the participation and involvement of Kenya in the management of shared ecosystems and the international environment.

### 1.5.3.5 Policy Governing Agricultural Practice and Food Security in Kenya

National Food Policy is contained in the Food Policy sessional Paper No. 2 of 1994. This was an extension of sessional Paper No. 4 of 1981 and No. 1 of 1993. The primary objectives of sessional Paper No. 2 of 1994 on food policy are food self-sufficiency and security at household level. Another key objective is the generation of raw materials for domestic industries and agricultural exports (GoK, 1994). However, the policy only refers to gazetted forests and those under the various County Councils. It is thus evident that in so far as the policy supports conservation of forests, it does not address the issue of access to forestland and its allied resources by the communities who depend on such resources for survival, and, in so far as subsistence cultivation is concerned. While the policy stipulates that forests should not be destroyed, there has been certain amount of conflict in that many excisions have taken place specifically for settlement and agricultural activities.

### 1.5.3.6 Other Sectoral Policies Relevant to Conflict Management

These include the draft disaster management policy, the draft national policy on small arms, draft policy on firearms, the draft national land policy and draft policy on community policing amongst others. These policies address issues that are fundamental to conflict management and peace building.

Policies provide government guidelines on the interventions that should be undertaken to address a particular social problem. There is need for the multiple strategies and interventions mandated by the above policies to be coordinated to ensure that there is no duplication of efforts and available resources are utilized efficiently.

At the regional level, Kenya in cooperation with the Partner States has made a commitment through the *Treaty Establishing the East African Community* to develop policies and programs aimed at widening and deepening cooperation among member states. The objective among other things is to attain sustainable growth and promote sustainable utilization of natural resources through: cooperation in the joint management and sustainable utilization of natural resources within the community; undertake to coordinate their policies and actions for the protection and conservation of natural resources and the environment against all forms of degradation and pollution arising from development activities; cooperate and adopt common policies for control of trans-boundary movement of toxic hazardous waste and any other undesirable materials; provide timely notification and relevant information to each other on natural resources and human activities that may or are likely to have significant trans-boundary environmental impacts and shall consult with each other at an early stage; and development and promotion of capacity building programs for sustainable management of natural resources.

# Chapter 2

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## Current Initiatives Related to Developing a National Policy on Peace Building and Conflict Management

This chapter presents an overview of the current policy formulation initiatives in Kenya on conflict management. It provides the basis for the identification of key issues that may potentially impact on the successful formulation and implementation of a national policy on conflict management and peace building including the development of an effective policy advocacy strategy. It is necessary to identify these issues in order to establish viable options for policy intervention as well as recommend to policy makers a coherent policy approach to conflict and its management.

## **2.1 The Draft National Policy on Peace Building and Conflict Management**

The National Steering Committee (NSC) in consultation with a number of conflict resolution and peace building stakeholders in Kenya among them Office of the President, Ministry of Foreign Affairs, USAID, UNDP, Safer World Kenya, DFID, Practical Action, Oxfam, AU IBAR, Africa Peace Forum, Peace net, COPA, NCCK, SUPKEM have come up with a draft national policy on peace building and conflict management (NPPBCM). The draft NPPBCM is the latest development in conflict management in Kenya. Recently submitted to the NSC, it seeks to develop a comprehensive national policy on conflict transformation and peace-building that will enhance the capacity of Kenya to manage conflict without violence by building human security, a concept that includes democratic governance, human rights, rule of law, sustainable development, equitable access to resources and environmental security.

### **2.1.1 Key Features of the Draft NPPBCM**

The draft policy sets out a comprehensive set of definitions that cover existing facets of conflict in Kenya. Among the noticeable departures from the framework document that set the foundation of the draft policy paper is the inclusion of terms such as conflict transformation and super-ordinate planning that captures the need for integrative measures that recognize conflict as a key element of development and vice versa. A situation analysis of conflicts prevalent in Kenya is set out to provide a backdrop for the proposed policy elements that are set out thereafter. The situation analysis highlights the nature of conflicts prevalent in Kenya. It includes an in-depth stakeholder analysis and an assessment of existing policies and interventions (including the legal framework) relating to conflict management.

The overall goal of the NPPBCM is to enhance the ability of the Republic of Kenya to prepare for and to manage domestic as well as cross-border conflicts by establishing a comprehensive national approach. To accomplish this goal, the NPCMPB integrates all conflict and peace building management activities across



*The Draft Policy Paper calls for among other things enactment and implementation of a Marshal Development plan for Marginalised Northern Kenya.*

the continuum from pre-conflict, open conflict to post conflict stages of the conflict life cycle.

The objectives of the draft policy include the assessment of the risks and vulnerabilities associated with conflicts, development of appropriate conflict prevention, management and peace-building strategies that provide for conflict sensitive planning, implementation, monitoring and evaluation, provision of clarity on the roles and responsibilities for all stakeholders concerned with conflict management and peace work so that conflicts are managed more effectively; developing and maintaining arrangements for accessing resources and funding to initiate, develop and sustain peace interventions; capacity building of communities and institutions that work with communities; ensure coordination amongst agencies related to conflict management at national, regional and international levels; establishment of an institutional framework for conflict management and peace building that fosters strong partnerships between the government, the market, the civil society, donors, grassroots communities and regional organizations; mainstreaming gender issues in conflict management with specific focus on the empowerment of women towards long term conflict mitigation and peace making and develop a systematic approach to conflict transformation and the development

of a culture of peace through the establishment of an accessible justice system that integrates both formal and informal dispute resolution processes.

The draft policy recognized that the achievement of the above objectives would require not only a legislative framework and but also a set of core principles that would guide different actors in relation to the policy. The principles included building a culture of peace in Kenya; traditional conflict handling methods enhancement; recognition of peace and security rights; conflict sensitive development planning; community involvement; preventative action; building on existing capacities and institutions; research, documentation and information dissemination and tolerance of cultural and gender diversity.

The draft NPPBCM takes cognizance of existing national policies in various sectors and notes that addressing conflict will facilitate the successful implementation of the policies. It identifies the gaps in the legislative framework that governs conflict management in Kenya.

### 2.1.2 Key Draft Policy Elements

The draft policy proceeds to highlight the key thematic policy elements, which include political structures, the economic environment and social and security factors. Though the root causes of conflict cannot be restricted to specific thematic



*The Policy Paper calls for the need to strengthen Community Policing initiatives.*

frames because they are interdependent, for purposes of analysis, it is helpful to categorize them within these frames. Conflict management policies must respond to the root causes of conflict therefore the draft emphasizes the need for an integrative approach that recognizes the interdependence of issues arising from conflict. The need for the inclusive participation of all actors in policy implementation including collaboration between regional and international actors is recognized. The fundamental feature of the draft policy is that it underscores the need for providing a foundation for conflict sensitive planning and programming in the all levels of national development and strategic undertakings to encourage peaceful coexistence, human security and sustainable development in Kenya. Some key elements of the draft include;

- **Economic Factors:** The draft policy will encourage the implementation of super-ordinate development planning, mainstreaming of conflict transformation in all sectors and by all actors and the economic empowerment of women in the context of conflict management and peace building.
- **Social and Cultural factors:** Under this theme, the draft policy emphasizes the need for strengthening traditional conflict resolution mechanisms, increasing efficiency in crisis management particularly the disbursement of humanitarian aid, peace education, related research and capacity building amongst all actors in conflict transformation and peace building. The plight of internally displaced persons is specifically highlighted given their increasing numbers and social and economic hardship they face as a result of conflict.
- **Political structures:** The necessity for institutional reform to strengthen capacity to prevent and manage conflict and preserve peace is recognized. Such reforms include the establishment of a single coordinating agency in the form of a National Peace Commission. Legal reforms that give recognition to traditional justice processes, harmonize legislation on conflict management issues and provide a legal framework for policy implementation is also included under this head.
- **Security Structures:** Interventions under this theme include the need to strengthen community-policing initiatives, the capacity of security forces to respond to the conflict situations and efforts to combat the proliferation of small arms and light weapons.

The draft policy proceeds to set out the administrative framework that will implement the policy. The establishment of a National Peace Commission is proposed that will coordinate and supervise all matters relating to conflict transformation and peace building. The NPC will work with all other actors

including, other government agencies, civil society, local authorities, local communities, women peace initiatives, parliamentarians and donors to implement the policy. To give effect to this collaborative implementation process, the draft proceeds to not only set out the structures and functions of the NPC but also provides for the possible roles and functions of other stakeholders.

Three observations can be made about the draft policy. First, it recognizes the need for an integrative approach to conflict management and peace building. This on two fronts, that is, that the policy is multidisciplinary and multi-sectoral in development and implementation and also inclusive, envisioning the full participation of all actors including the most vulnerable such as the marginalized and women. Second, though it is premised on full participation of all actors, the role of the government as the lead agency is recognized. Third, it expands the notion of conflict management to include not just addressing the positive and negative aspects of conflict but also the consideration of the personal, structural, relational and cultural dimensions of conflict to formulate creative responses that encourage peaceful co-existence.

The draft NPPBCT is a significant milestone in national efforts to address conflict and its impact. Its formulation has been as a result of a vibrant and proactive lobby initiative by civil society and the collaboration of a number of actors including government, civil society and development partners. The draft is however a preliminary stage in the process of policymaking. There remains the preparation of a sessional paper for presentation to parliament and the consequent drafting of a bill to be tabled in parliament for enactment. The smooth and expeditious formulation of the policy will be highly dependent on the continued commitment of all actors and the existence of the political will in government to see the process through. This analysis is therefore of vital importance in increasing understanding of the current initiative as well as increasing the understanding amongst all actors in what is required to ensure not just the development of a policy but that it is relevant, responsive and sustainable in addressing conflict.

# Chapter 3

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**Critical Issues and Key Challenges  
Underlying NPPBCM Policy  
Formulation and Implementation**

Policies in Kenya must follow a designated format and process of formulation. An assessment of the draft NPPBCM must begin with an examination of whether it has met the criteria but also other criteria that arise specifically from the context of conflict and peace building that the draft is set against. This chapter has three sections. The first will primarily examine policy formulation process and the criteria that would be useful in assessing and analyzing the current policy efforts rather than the government requirements for a sound policy, as those are established and for the most part unavoidable. It is presumed that the draft in its current form follows this policy format. What remains then is an examination of the process followed so far in the formulation process and the extent to which that draft responds to the issues relating to conflict environments in Kenya. The second section focuses on the identification of key issues that the national policy must address and which can form the basis for the development of an effective policy advocacy strategy to ensure that the issues are indeed addressed. The third section highlights the challenges that may face the policy formulation and implementation process so key actors can strategize on how to overcome them and ensure the policy is formulated and implemented.

### 3.1 Process of Formulation of Draft NPPBCM



*Formulation of the draft National Policy on Conflict Management and Peace building calls for consultations with a wide range of stakeholders.*

Government guidelines on policy formulation require that the process is participatory and done in partnership with other stakeholders. Participatory in this sense means that a bottom up process with the government providing the lead is undertaken. Participation should be from all sectors and disciplines involving a cross section of interest groups. The goal is to ensure that such a process creates ownership amongst the citizenry to ensure the success of policy implementation. However, and as the case has been, public policy formulation processes in Kenya has been undertaken in secrecy, with limited, if any, public consultations and participation especially during KANU administration.

- The current draft formulation process was initiated through a collaborative process under the umbrella of the NSC on Conflict Management and Peace building which is chaired by government and has membership of civil society and development partners. During its formulation, consultations with government, civil society, CBOs, religious organizations, peace committees, women organizations, parliamentarians and development partners were made. This consultative process was nation wide covering the eight provinces with an emphasis on conflict prone areas such as the ASALs. It therefore met the criteria stipulated by the government. The question is whether the process was participatory enough to generate a comprehensive policy.

### 3.1.1 Conflict Related Criteria for Analysis

There cannot be any single and definite criteria to analyze policy particularly one that relates to conflict given its dynamics, fluidity and specificity to context. However certain questions provide a useful window for evaluating the draft NPPBCM.

- To what extent do proposed strategic interventions map onto the root causes of conflicts and the conflict environments identified by the policy?
- Were the interests, relations, capacities and peace agendas of stakeholders identified and incorporated in the formulation of the policy and the strategic framework?
- Are the strategic interventions particularly the institutional structures like the NPC realistic, financially viable and funding adequately provided for in the policy?
- Has monitoring and evaluation been adequately integrated into the policy formulation process?

- Are there adequate inter-linkages between strategies for interventions in all stages of conflict that is pre-conflict, open conflict and post conflict?

In view of the fact that the causes of conflict are interrelated and interdependent, the draft NPPBCM needed to create linkages between strategic interventions, the root causes of conflicts and the highlighted roles and functions of stakeholders. To a large extent the draft has met this criteria but further engagement with stakeholders in the remaining stages of the policy formulation will add more clarity and accuracy to the policy elements and the roles and responsibilities of actors under the policy.

While addressing the roles and responsibilities of actors, the draft NPPBCM took cognizance of the various stages of conflict and the fact that the interventions by stakeholders will occur concurrently in view of the fact that conflict is a cycle and the stages may not be clear cut at any one point in time. The challenge that remains is that not all actors grasp the need to strengthen their capacity to address conflict as a cycle rather than as an event. The government is one such actor and there is need to change its perspective urgently even as the policy is being formulated.

The draft NPPBCM has adequately incorporated monitoring and evaluation. Monitoring and evaluating of process and outcome is critical to establishing the extent to which the NPCMPB has achieved its goal and objectives. The extent to which monitoring and evaluation has been incorporated into the policy formulation process determines the policy's effectiveness in achieving its expected outputs. Monitoring and evaluation must be transparent and impartial since it aims to enhance accountability amongst actors. It can contribute to capacity building by providing feedback to stakeholders on best practices.

## **3.2 Key Issues to be addressed by NPPBCM**

The overview of the two policy related initiatives in the previous chapter highlights the following key issues that the final policy document needs to address in addition to meeting the above criteria;

### **3.2.1 Economic Issues**

- **Limited marketing systems/opportunities**

Poor road infrastructure and related transport costs inhibit small-scale farmers and livestock keepers from reaching the formal markets such as those in neighboring districts. The volumes of produce and stock are too low to bring the required returns. The resultant implication is that community interactions have been gravely



*Women in Pastoralist areas should own property (Livestock).*

constrained by these limited marketing opportunities that are regarded as not only vital in increasing household incomes, but also necessary in bringing communities together so as to nurture peaceful relations.

At a global level, macro-economic reforms particularly since the advent of trade liberalization and opening up of markets in the late 1980 which saw the withdrawal of price controls and removal of subsidies on agricultural inputs has resulted in further marginalization of pastoralists and rural farming communities in Kenya. Instead competitive responses allowing market forces of supply and demand to flourish prevailed. This eliminated those institutions, regulations, subsidies, and taxes that acted as a wedge between producers, consumers and market signals. The end results of this phenomenon has been the widening of the gap between the haves and have not, with the resultant structural imbalances midwifing conflicts between different communities and individuals, reminiscence of Karl Max's stratified society.

- **Gender inequalities in land ownership and access**

Gender factors influence resource ownership, stewardship, and access. This is complicated by socio-cultural factors, which raise gender concerns where disempowered groups such as women and youths are discriminated against in favour of men. This is true with regard to rights and access to land and land based resources. The consequence is the creation of inefficiencies in (i) land and other resources allocation and (ii) in promoting rights to livelihoods, production and social justice.

- **Community-Driven Development**

Policy direction for the new government is extracted from the understanding that failure to deliver development goals in the past resulted from the fact that central government planners did not respond to the demands and priorities of the communities for whom they were mandated to plan. In many cases, planners simply played political games with public funds, instead of investing in projects with the highest returns for the taxpayer.

In pursuing a community driven development approach the government would enhance communities' capacity for self-reliance. Initially, projects to be funded should be those directed towards poverty reduction, food security, conflict resolution and any other locally identified high priority needs. In all projects, part of the funds will be set aside for targeting the vulnerable and voiceless communities, particularly those in arid and semi-arid areas, the urban poor and the handicapped who, in the past, have been ignored and denied support because they lacked political muscle.

- **Poverty Alleviation**

The most daunting challenges for Kenya today are poverty alleviation and job-creation. Although economic growth is crucial, it does not always lead to sustainable development and poverty alleviation and in a society with gross inequality and tribal conflicts as in our case, growth alone is unlikely to benefit the marginalized section of our society. Over and again, poverty, especially in ASAL areas, has been linked with escalating conflicts and small arms proliferation. People have resorted to crime as a last livelihood option. Mainstreaming of conflict management into development programmes will contribute to alleviating poverty in a way that is relevant to specific conflict situations.

- **Inequitable Distribution of Resources**

Widening economic disparities based on regional or ethnic divisions have the effect of exacerbating tensions between communities thus creating potentially explosive situations which can result in the outbreak of violence. The creation of Constituency Development Fund (CDF) by the government was an initiative that was geared at promoting economic development at district level through community participation to ensure that key development issues were addressed. The decentralization of these funds was a welcome development that has seen previously neglected districts receiving funds to implement critical development programs. However the CDFs have not been without some controversy. Issues of governance have dogged the funds particularly the involvement of politicians in the fund management. One key feature of the funds is that they were not designed to be conflict sensitive. As a result, the funds though critical to development have inevitably resulted in the emergence of tensions that could result in conflict. Most CDFs do not provide for budgetary allocation for conflict management activities and the involvement of women in particular.

- **Increased Competition over Shared Resources**

Natural resource degradation and competition has resulted in deadly conflict particularly in Northern Kenya. Environmental scarcity leads to factors that fuel conflict such as population transfers, heightened sense of marginalization and ethnic tensions, deepening of poverty and the decline in agricultural production. Attendant to these factors is the lack of capacity of state institutions to respond to environmental scarcity, which results in focus being on survival rather than on innovative technologies that will respond to environmental crisis.

### 3.2.2 Social Factors

- **Socio-economic and Political Marginalization**

In the present government, there is need to ensure adequate representation of pastoralists and other marginalized groups in government arms like the civil service, cabinet and in the army. This will hopefully ensure that they are not sidelined in government, which is an important actor in policy making.

Using this tool, political leaders, well placed officials and other opinion leaders will now ensure that the interests of the marginalized people are vocalized and reach appropriate groups concerned with law making and implementation. A push to have more people from pastoralist regions in high-level positions should be made

and attained if meaningful changes are to be realized. Otherwise, the idiom, out of sight, out of mind will still prevail.

- **Provision of Education to All**

Provision of universal primary education has been recognized as an important milestone to economic and social development. In particular it has been established that by providing primary education to women, a society is able to hasten its development. Despite its formal commitment, Kenya has not achieved any of the education goals it committed itself to achieve. The gains made in the past are getting eroded through high school dropouts' rates, with less than a half of those entering standard one completing standard eight. Adult education has long collapsed and many Kenyans have reverted to illiteracy. In conflict prone areas, increased enrollment rates will translate to more youth in schools, and by extension reduced conflict situations since the main perpetrators will be at schools.

- **Legacy of Unresolved Conflicts**

Presently there continue to be calls by political leaders and CSOs for truth and reconciliation tribunals to address past wrongs such as politically instigated ethnic clashes. Some communities continue to interact with their neighbors with suspicion and hostility arising from past historical grievances relating to the demarcation of boundaries and land allocations. These unresolved conflict issues have continued to dodge development programmes and effective administration of certain regions resulting in intervention measures being perceived as irrelevant or biased towards certain communities. One such example is the boundary dispute between Trans Nzoia and Pokot.

- **Failure of Existing Dispute Resolution Mechanisms**

Existing mechanisms of dispute resolution such as the courts have failed to provide effective administration of justice with respect to certain conflicts such as those that occur in ASALs. The non-recognition of traditional justice processes under law has resulted in there being no clear and comprehensive system of justice to resolve conflicts. This has resulted in disputing parties relying on self-help mechanisms that lead to violence and degeneration of relations between parties and their communities.

- **Diminishing role of traditional institutions**

Closely related to the above issue is the fact that traditional institutions of resolving conflicts among many communities in Kenya and across the borders is fast fading as a result of marginalization by formal dispute resolution mechanisms and

civilization. As such, elders are increasingly finding it difficult to prevent and manage conflicts partly because their actions are not anchored in any legal framework and also because they lack a mechanism to enforce their resolutions. However, the institution of elders' posses a potential in preventing and managing conflicts especially among pastoral communities provided it's strengthened and backed by legal and policy foundations.

### 3.2.3 Security Issues



*Illicit firearms in Kenya should be mopped up and destroyed.*

## • Proliferation of Small Arms and Light Weapons

It is not a secret that there are so many unlicensed firearms in the hands of civilians in Kenya. The *Small Arms Survey 2003: Development Denied* report indicates that there are between 600,000 and 1,000,000 illicit arms in Kenya. A study by Security Research and Information Centre; *Terrorized Citizens: Profiling Small Arms and Insecurity in North Rift Kenya* found out that there are in excess of 200,000 illicit arms in this part of Kenya. It is also not a secret that the government policy on unlicensed firearms importation, transportation, selling, buying, possessing and using is a strict no nonsense prosecution and severe penalties on the part of transgressors policy.

The government has been taking a stand or has been acting in a manner to be seen to be taking action to stop or reduce the proliferation of small arms not only in Kenya and the neighboring countries. So far the persistent presence of these weapons spells out the insufficient efforts employed by the government. This insufficiency could either be due to inefficiency, inability or simply abdication of responsibilities. In as much as the government might be doing something to stop the proliferation of small arms, very little has been done and far much more is still expected to be done.

At the international level, the government of Kenya has registered its support by prominently declaring her commitment as a member of the United Nations to stem the proliferation of small arms by acknowledging its devastating effects to Kenyans. Kenya has taken an active role to promote initiatives to stem small arms proliferation at national, sub-regional, and regional levels. She has undertaken to support calls for international action and to request international assistance for small arms initiatives in poor countries. While not sufficient these steps do mark real progress in acknowledging the problem and suggest that the government is willing to take some steps to rein in the arms. Of fundamental importance is the establishment of National Focal Point on Small Arms and Light weapons, which seeks to set out a policy framework towards controlling proliferation of small arms not only in Kenya but also in the region as a whole. Kenya is also hosting and facilitating secretariat of Nairobi Declaration on Small Arms in the region. These gestures are perceived as monumental policy steps towards a sustained and coordinated approach to illicit arms in Kenya and Africa as a whole.

- **Cross Border Conflicts**

Kenya's porous borders have created an environment conducive to the outbreak of violence because of the ease of movement across borders. The lack of security personnel along the border has led to feelings of insecurity among local populations forcing them to take up arms to defend themselves against attacks. The available security personnel are ill equipped to deal with large-scale attacks and receive little back up support from military and other security personnel. The Kenya Police Reservists (KPRs) have little or no training yet is relied upon by government to provide state security. The situation has exacerbated the occurrence of cross border conflicts between neighboring communities. Competition over limited and dwindling natural resources is a further factor that triggers conflict across borders. Adequate security needs to be provided at the borders. Partnerships between Kenyan security forces as well as communities and those of neighboring states should be strengthened.

- **Unstable Regional Context**

Neighbouring States such as Somalia and Ethiopia and Uganda continue to experience conflicts that in turn affect security in Kenya. It is important that the government take a proactive role in engaging regional and international actors in finding long term and sustainable solution to conflicts through collaboration and coordination of efforts between affected states. Initiatives such as CEWARN should be supported and strengthened through national policy.

### 3.2.4 Political Issues

- **Weakly Developed Systems of Conflict Management**

Well-established democracies have the characteristic of being able to successfully manage instability and conflict. The institutions in well-established democracies are designed to engage the myriad factors that fuel conflict. In Kenya, the integration of conflict management in national planning is lacking and therefore institutions both in the public and private sectors are unable to articulate priorities and find solutions to seek to prevent and manage conflict. The government and other actors in the civil society have realized the need for a comprehensive national policy on conflict management and peace building and have initiated the development of such a policy. There is need to strengthen and promote the capacities of actors such as CSO's and promote collaboration and partnership amongst key actors.

- **Lack of Popular Participation and Gender Imbalance**

The minimal or insignificant effective inclusive participation of individuals and communities in political and governance processes has led to the marginalization of these groups and the development and implementation of policies and programmes that are insensitive to their needs and aspirations. These interventions have been gender blind because of the assumption that gender differences are largely irrelevant. However the capacities of both women and men must be taken into account in the development of conflict and peace policies. A more participatory framework of governance should be developed that ensures that alternative methods of conflict management and peace building are established that involve women led initiatives for peace building and are based on the needs of the most vulnerable groups such as pastoralists.

- **Political Exploitation of Ethnic Differences**

There is no official policy that addresses the problem of ethnicity in Kenya as a separate issue on its own rather than as causal factor to all manner of social wrongs such as corruption and conflict. Because of this glaring omission in state intervention, ethnic differences have been exploited by political leaders and other 'elites' to further their own political and economic interests. A largely unprepared population and uncoordinated civil and media society have provided a ripe environment for ethnic animosity to thrive unresolved or mitigated against. A holistic and comprehensive policy must of necessity address this political factor that underpins the very foundation of democracy and governance in Kenya.

### **3.3 Challenges facing Policy Formulation and Implementation Process itself**

Some challenges that are facing the policy formulation process and are likely to impact on the effective implementation of the policy include;

- **Inclusiveness of Participation:** the challenge that faced the preparation of the draft was ensuring the participation of all relevant actors. Due to time constraints, not every actor can be consulted but some are critical for the legitimacy of the process. The participation of such actors should not be restricted to the formulation of the draft but should occur all through the process till the actual policy is developed. Such actors include all relevant government ministries and regional partners. During the formulation of the draft, it was difficult to access all relevant government ministries and interaction with conflict actors from neighboring states was limited.

· **Political Will:** Closely related to the above challenge is that of sustained political will to formulate the policy and ensure implementation through the enactment of relevant legislation. For example, forums with parliamentarians were poorly attended particularly by those members of parliament whose areas are not directly affected by conflict (bearing in mind that the whole nation is impacted by conflict in any part of its territory), an indicator that conflict management is a low priority issue. During the constitutional review process and referendum, the draft policy went to the back burner even for CSOs who were actively involved in the policy making process as they undertook civic education for the 2005 national referendum (bananas and oranges) on the enactment of a new constitution instead. Political will remain a challenge to the realization of a national policy on conflict transformation and peace building unless strategic interventions are put in place to ensure its sustainability.

· **Capacity of Participants;** the level of participation is not dependent on numbers alone but also on the capacity of the participants to grasp the issues under consideration and their role and function in the formulation process. To a large extent participation was fairly inclusive particularly at grass root level. However it is doubtful that all actors were conversant with the policy formulation process and their role in it. Without a strong lobby action and proactive initiatives by civil society and other stakeholders, there is a real risk of the NPPBCM ending up on the shelf like numerous other policies in Kenya. Capacity building must be integrated throughout the policy formulation process to ensure successful implementation and sustainability.

· **Partisan Interests and Lack of a Shared Vision;** Different actors have a variety of interests that have motivated their support for a NPPBCM. Difference is not an obstacle per se in the policy formulation process. Indeed, the policy is aimed at coalescing all the interests of stakeholders and responding to them comprehensively. The problem arises where the presence of diverse interests frustrate the emergence of a shared vision that will guide policy formulation and implementation. In some cases these interests are disguised and may serve to cover a hidden agenda such as political expediency, securing further donor support and elite capture to name but a few. A shared vision is the basis of any policy document and it must be clear, simple and definitive. It remains a challenge to ensure that such a vision is identified and accepted by all stakeholders.

The key issues and challenges discussed in this chapter can be examined interchangeably because the issues are in effect challenges that the policy formulation process must seek to overcome and the challenges are critical issues that if the policy fails to address, may result in a lack of ownership of the policy which bodes ill for its sustainability. The above issues and challenges are not cast in stone and shall change from time to time depending on the social, economic and

political environment. Identifying them is a useful exercise that will hopefully alert key actors on what the current status is on the ongoing policy formulation process and what needs to be done to ensure that the policy sees the light of day.

# Chapter 4



## Way Forward

In light of the critical issues and challenges underlying the ongoing policy formulation process identified in the last chapter, the following recommendations on the way forward with respect to current policy formulation process are made;

## **4.1      Expeditious Completion of National Policy Formulation Process**

The process of drafting a national policy on peace building and conflict management began in earnest in June 2005 and was expected to be completed within a period of four month. Almost one year later, the process remains incomplete and has been plagued by delays and logistical obstacles. The draft policy has been submitted and it is expected to be presented to stakeholders in regional forums around the country culminating with a national forum where the final draft will be validated. Thereafter it is expected that the policy will be approved by cabinet and presented to Parliament as a sessional paper. If parliament accepts the sessional paper, a bill will be drafted to be tabled in Parliament for enactment. This process needs to be expedited if conflict and its impact in Kenya are to be managed.

## **4.2      Promotion of African Customary Governance Systems**



*Customary practices and rituals that deter conflicts should be promoted.*

The government should take an initiative to bring elders from all the conflicting communities together and encourage them to dialogue as a means to solving their problems instead of resorting to armed response. When peace talks will replace wars then small arms will lack market. A particular and relevant policy shift would be the recognition of the existence and role of traditional African systems of governance and conflict resolution. Elders' court and councils should be entrenched in the Constitution and relevant policy frameworks in Kenya. The government should encourage the establishment of peace committees in every location where conflicts are prevalent.

### **4.3 Enacting and Enforcement of Relevant Laws**

Law reform relating to conflict issues such as land, firearms and small arms, recognition of traditional peace processes, access and use of natural resources should be expedited. The policy advocacy could focus on targeting the relevant audiences that are involved in law making such as parliamentarians, the state law office and the Kenya Law Reform Commission. In addition to this, major legislation and policies governing the use of natural resources need to be disseminated in languages understood by all to the benefit of all stakeholders particularly the local communities. The role of traditional natural resource management should be supported and legalized. Regional laws and policies should recognize that indigenous livelihood systems rely on close interaction with common-pool natural resources across a wide landscape and cross-border mobility.

### **4.4 Institutionalizing and Strengthening Peace Committees**

District Peace Committees have been established in a number of districts in conflict prone regions particularly in the ASALs. The government has recognized the important role that they play in early warning and conflict prevention. Their operations are however hampered by the lack of adequate resources to fund their activities and logistical support from government agencies. There is need to strengthen these committees because they are participatory community based mechanisms that can form part of a holistic and effective national structure of conflict management. Their role and function needs to be institutionalized within the administrative structure and their existence recognized under law to provide them with the legitimacy and authority they require to perform conflict management activities.



*Peace Committees should be given powers to retrieve stolen livestock and hand it to their rightful owners.*

## **4.5 Engendering Peace Building**

Women and men had different access to power structures and material resources before during and after conflicts. They experienced conflict in different ways at various stages of the conflict process. The variety of the roles that women have taken up due to conflict has not been adequately documented leading to a misconception of women as victims of conflict. However, women act as peace breakers, peace makers and the carers of survivors at the various stages of conflict situations. There is need for the roles of women and men to be identified and recognized in the design of strategic interventions addressing conflict.

The government and other actors need to recognize that women come from different backgrounds such as communities, religion, class and these differences should be accommodated in the design of strategic interventions. Grass root women peace initiatives should be linked with national peace processes. Men should also be empowered as parents, carers and community members in order to aid in transforming harmful traditional conceptualizations of femininity and masculinity. They should be supported as peace activists so as to avoid the risk of peace work being perceived as 'men's work.'

## **4.6 Addressing Cross Border Conflicts**

Cross border conflicts continue to occur with increasing frequency and intensity. They have morphed from attacks to restock diminished herds to violent massacres and acts of criminality involving members of the same communities in neighboring states. The conflicts have fueled the demand and proliferation of small arms and firearms increasing instability and insecurity. There is need to increase state presence along the borders and promote peace building initiatives amongst warring communities in collaboration with state authorities of neighboring states. Development projects targeting the youth would be a disincentive to participation in raids and the community through peace committees should be involved in efforts to eradicate the use of small arms and light weapons.

## **4.7 Reforming and strengthening Police Force**

There is a critical need to reform the entire Police force so that systems and structures that take into account human rights issues are engrained within the Police force. The public should see the Police as a partaker in security issues including law and order but not as coercive instrument of the state as the situation is currently. The Police Act (Cap. 84 of the Laws of Kenya) should be reviewed as a matter of urgency so that the restrictive role of Police in formal policing procedures, in which citizens' role are minimal, open up to include aspects of community policing. Safer World Africa is piloting community policing in Kibera Slums (Nairobi) and Isiolo district, and the response has been very promising. The endemic conflicts in Kenya have proved that the government effort through the Police has failed to resolve conflicts in the country.

The Police Force should equally be equipped with necessary equipments and personnel to enable it respond effectively and in a timely manner to conflicts in Kenya. Priority should be given to conflict prone areas in terms of allocating resources to Police divisions and stations. All-terrain vehicles, communication gadgets and other essential security supplies should be allocated to conflict prone areas especially porous border areas that hitherto have not known any peace.

## **4.8 Improvement of Infrastructure**

A long-term solution to prevention and management of pastoralists as well as other conflicts lies squarely on deliberate construction and improvement of physical and social infrastructure in the affected areas. This calls for formulation and implementation of a Marshall Plan for Northern Kenya. To achieve this, the policy should highlight the need for the government to allocate at least 10% of the total government revenue each year for a period of 15 years towards infrastructural development of Northern Kenya. Roads should be constructed and communication



*Meaningful development of Northern Kenya lies squarely on improvement of Physical infrastructures like roads in the region.*

network restored in the region making it accessible. Improved physical infrastructure will also contribute towards increasing interaction between the different warring communities, link them to the outside world, improve their access to information; mainstream them into the national economy and policy making process. The end result will be informed citizenry that actively participate in national discourse. This will also enable the pastoralists diversify their livelihoods to include other economic activities like trade and tourism.

The government should also rehabilitate and revive social institutions like schools, which have been put to waste by inter-community conflicts. Of primary importance would be building more schools especially in boarder areas, employing teachers, assuring them security and motivating them to work in the region. Teachers who come from conflict prone areas should be given priority in recruitment for they can easily withstand the conflict situation unlike those who have not heard gunshots in their earlier lives. Peace education should be integrated into the national curriculum in an effort to build a culture of peace in the nation.

## 4.9 Policy Advocacy Strategy

A strong policy advocacy strategy is necessary to ensure that the NPPBCM is effective in meeting its objectives both in the short, medium and long term. With this in mind, an advocacy strategy is proposed below, growing out of the realization that there is a window of opportunity to shape the policy debate on conflict management and peace building and motivate action that will ensure that proposed policy strategic interventions are implemented. Policy reform initiatives are generally characterized by the lack of political will and support and lack of participation by all stakeholders who are directly affected by the policy. The lack of adequate resources both human and material as well as organizational structures to implement the policy frustrate even the most innovative and effective policies. For these reasons, it is necessary that these constraints are addressed through an advocacy strategy that supports sustained policy change.

The previous chapter highlighted the key issues and challenges that require to be addressed in the ongoing policy formulation process. Developing an effective advocacy strategy needs to involve the following;

- Understanding the linkages between Policy making process and advocacy
- Developing a shared vision for the policy
- Setting the advocacy objectives
- Resource mobilization
- Implementing Activities for the Advocacy Strategy
- Monitoring and Evaluation

### 4.9.1 Understanding the linkages between Policy Making Process and Advocacy

Policy formulation is a highly political process that has moved from being a government only initiative to one that embraces citizen participation and the notion of civil society. The effectiveness of the participation of non-government actors will depend on their understanding of the policy formulation process, the role of different government agencies such as parliament, ministries etc in the process and which of these actors to target at what point of the process for advocacy purposes. There is a glaring lack of knowledge on the policy formulation process within civil society, the private sectors, the media, peace committees and amongst community.

The advocacy strategy needs to identify the opportunities for influencing the policy process at different levels; national, regional, and community levels. Different actors can be trained on the formal rules and procedure of policy making to strengthen their capacity to proactively engage in the policy formulation process.

## 4.9.2 Development of a Shared Vision for the Policy Advocacy Strategy

The potential actors in conflict management and peace building are vast and diverse ranging from women organizations, peace committees, religious organizations, civil society, media, civil society, and private sector to security forces, government ministries, private sectors, development partners and others. Each of these actors experiences a different reality of conflict depending on their political, economic, social and cultural environment. In turn, the policy seeks to affect the social ordering of all these actors by providing a framework for action. Identification of relevant issues for advocacy efforts needs to reflect the interests, concerns and peace agendas of the actors. Once the issues are highlighted they can be matched to the potential opportunities for influencing policy. The process of identification and prioritization of issues will necessarily involve a participatory process that will ensure that there is a consensus on which issues the advocacy campaign will focus on. For example civil society, pastoralist groups, women organizations and development partners may agree that there is need to mainstream conflict management in development programs because it would alleviate certain conflicts that arise from competition over dwindling resources, poverty and lack of alternative livelihood opportunities. This is only an example of how consensus can be built on the key issues that the policy and the advocacy strategy should focus on. It will strengthen the policy formulation process by promoting the development of a shared vision that will in turn motivate the different actors to take ownership and implement the policy once it is approved.

## 4.9.3 Setting Advocacy Objectives

Assuming that there is agreement on the policy, it is critically important that the advocacy strategy objectives reflect the principles and values underpinning the policy. The purpose of an advocacy strategy is to change the opinion of the policymakers, institutions and other actors and to persuade them to support the policy. The objectives must therefore seek to mobilize and strengthen collaboration between supporters of the policy, minimize opposition to the policy through targeted efforts to persuade those opposing the policy to change their positions, and to proactively engage with those who are neutral to convince them of the need to take a favorable position to the campaign.

Setting the objectives will therefore involve identifying the targeted audience, the status that requires to be changed and the actual degree of change required. They must also be SMART. For example, there are members of parliament who ostensibly support the NPPBCM policy formulation process, but in reality and on the ground, they not only reject peace initiatives which they deem unfavorable to their communities but finance and support the proliferation of small arms in their

communities for political expediency. If such parliamentarians are identified as a target group, the advocacy strategy should seek to change their opinion to one that is honest and transparent in the short term and to the degree necessary to ensure that when the policy and enabling bill is tabled in parliament they will give it full support. Target audiences need to be identified at all levels; national, international, private and public sectors, civil society and community.

The activities needed to achieve the advocacy objectives must be prioritized for maximum effect and again this requires a participatory process. The identification of relevant advocacy objectives and related activities will be highly dependent on comprehensive research and study of actors and key issues underpinning the policy. This is because the process of persuasion and changing opinions will be based on the existence of convincing facts and evidence that support the advocacy campaigns position.

#### 4.9.4 Resource Mobilization

The process of developing the advocacy strategy will depend on the availability of resources, access to information e.g. statistics, facts and figures, case studies and narratives that can persuade or compel targeted audiences to support the policy initiative and collaboration and partnership between actors who support the policy. These factors are important and affect the earlier stages of the advocacy initiative because it may be necessary to vary the advocacy objectives to fit into the available resources.

There is need for a coordinating organizational structure that would ensure that the required resources are sourced, mobilized and utilized to maximum effect in the achievement of the advocacy strategic objectives. The NSC or other civil society organization can play this coordinating role. Actors that support the policy or allies can form committees that address the particular resource challenges e.g. committee on research, media committee, committee on building and strengthening collaboration amongst actors, committee on dialogue with targeted audiences e.g. parliamentarians, women, provincial administration, etc.

Financial resources are required to develop and implement the advocacy strategy. Implementing activities such as training workshops, preparation of advocacy materials, media campaigns etc need to be funded.

#### 4.9.5 Advocacy Activities

Activities identified to achieve the advocacy strategy objectives need to reflect the social, cultural, economic and political contexts of the targeted audiences. Thus issues such as religious background, gender, cultural background, level of education, economic activity should be considered. Further each activity needs to be assessed

for its strengths and weaknesses in furthering the goals of the advocacy campaign. The assessment could involve the collection of views from other actors on the suitability of the proposed action. Some possible activities that can implement that advocacy strategy include the following;

- **Building and Strengthening Coalitions and Networks**

There is need for building consensus and support for the ongoing policy formulation process. Coalitions and networks can help in enlarging the resource base, increasing the power of numbers supporting the policy, enhances credibility of the advocacy campaign and creates a forum for information sharing. Currently there is PEACENET, a national umbrella body and forum for NGOs, organizations and individuals committed to encouraging collaboration of CBOs, religious organizations, human rights facilitation and mobilization of local initiatives for peace building, promotion of justice and conflict resolution. Facilitating advocacy in the areas of peace and reconciliation, human rights and development in Kenya. Such a network working in collaboration with the NSC and other related organizations can ensure greater commitment to the advocacy campaign. Such activities may however require member organizations to compromise their own positions in order to promote consensus.

- **Public Education**

Creating awareness and educating the public and policy makers on the key issues relating to the policy is important in creating a constituency base for the advocacy



*Policy advocacy issues need to be communicated effectively to the targeted communities/ audience.*

campaign. It is likely that only a few actors are well-armed with the information necessary to ensure policy change. Yet change can only be effected if all the key actors understand the issues, the impact on lives as well as their role in influencing system change. A well-coordinated public education program will depend on a clear policy communication plan. The policy advocacy issues need to be communicated effectively to the target audiences. They should be framed in such a way that they meet the interests of the target audiences. For example communicating the policy issues as development issues may attract government support while framing them within the context of conflict and social justice may bring on board other civil society organizations and development partners.

The successful implementation of the public education and communication program will be highly dependent on the availability of the data and information on various issues underpinning the policy. It will also depend on the reliance on a simple, clear and non-technical message that captures what the policy advocacy campaign seeks to achieve, why and how it is to be achieved. Some examples of possible communication strategies include the use of slogans, technical materials, reports, public rallies, barazas, posters, pamphlets, brochures, policy forums, formal and informal meetings, newspaper advertisements and supplements, television and radio broadcasting and public debates.

- **Use of Mass Media**



*The Media can be useful in influencing decision makers and educating the public on the Policy Paper.*

The media has recently been featuring issues relating to conflict. However these features have dealt mainly on severe outbreaks of violence with latent or pre-conflict indicators receiving little or no mention. The media is an effective advocacy tool when the target audience is the public. In order for the media to contribute to the overall policy advocacy campaign, it is important to first understand how it covers conflict issues and what it considers newsworthy. This will help to ensure that media are engaged in a way that they are familiar to and which meets their professional ethics and practice. The media can be used to source for funds, to recruit new supporters and to influence decision-makers through the public.

## • **Lobbying**

Once advocates have understood the policy formulation process, they can target policy makers through lobbying. It is important to first establish who the policy makers are at each stage of the process and then strategize to lobby them. Lobbying needs to involve the following;

1. Educating the target audience on the policy
2. Informing the government on what the priority issues should be, the reasons for prioritization and provision of supporting data such as progress reports etc.
3. Develop relationships with the government through information sharing and technical assistance
4. Grassroot campaigns that enable communities to urge their leaders to take desired action
5. Employment of professional lobbyists to undertake consistent and sustained lobbying in a strategic manner

## **4.10 Monitoring and Evaluation**

Monitoring and evaluation is crucial both in the formulation of the advocacy strategy as well as in the course of implementation. At a basic level, it is the tool that will assist in determining whether or not desired policy change was achieved. It can help to motivate actors, provide transparency of the process and help in identifying best practices. More importantly at the end of the advocacy campaign, it will assist in illustrating the linkages between the advocacy activities, objectives and the outcome of the policy. Monitoring and evaluation will allow for any necessary adjustments to the advocacy strategy to be undertaken to reflect any change in the political environment. Determining what should be evaluated needs to be a participatory process involving all key actors

# Conclusion

Policymaking is a complex and highly political process. An effective policy advocacy strategy involves policy analysis that assesses the policy environment, the formulation process and the actors involved including a review of other ongoing policy initiatives and strategies. Based on the policy analysis and review, key issues that the policy must address can be identified, advocacy objectives set, target audiences for the advocacy campaign identified, advocacy activities implemented and evaluated.

This is a critical hour in the formulation of policy on conflict management and peace building. The political will is apparent if not certain, conflict issues are in the limelight and there has been remarkable progress in achieving the goal of a policy culminating in the draft NPPBCM. The NSC is a manifestation of the collaboration and partnership between the government and other actors to work towards achieving sustainable peace.

Without an effective policy advocacy strategy, the above gains will be lost and key issues impacting on the policy may be excluded. To guard against these risks, the full participation of all actors is necessary. The participation must however be part of a strategic advocacy intervention that will promote the successful formulation of a NPPBCM that is politically viable and sustainable.

This paper provides the framework for an advocacy strategy. It is intended to increase understanding amongst actors of the challenges that lie ahead and how to address them through advocacy. The emphasis is on participation of all actors, both state and non-state and on realistic assessment of available resources. It is hoped that it will generate debate at community, national and regional level and particularly amongst the civil society that will enrich the process of developing an effective advocacy strategy. Advocacy objectives and activities need to be identified and implemented as soon as possible through participatory processes if advocacy is to have any significant impact on the policy formulation process currently going on. Activities such as public education, media campaigns and training need to be underway. Ongoing civil society activities should be incorporated into the advocacy strategy.

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## CONFLICT MANAGEMENT ANALYSIS REPORT

Practical Action is the new name of Intermediate Technology Development Group (ITDG). Practical Action is an international development agency working with poor communities to help them choose and use technology to improve their lives for today and generations to come. Our work in Africa, Asia and Latin America is in partnership with poor people and their communities, building on their own knowledge and skills to come up with innovation, sustainable and practical solutions. Our work is people focused, locally relevant, environmentally sensitive and offers tangible ways out of poverty. Through our work we demonstrate alternatives, share knowledge and influence others.

Conflict management and peace building in Kenya continues to face major challenges in the current national and regional environment. Instability in neighboring states has resulted in increased cross border conflicts, proliferation of small arms and humanitarian crisis resulting in the loss of life and property.

This analysis aims to increase understanding of the current policy development initiatives and increase institutional capacity to participate in strategy formulation and policy implementation.



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