

## 5.2 Kenya: Towards the national policy on peace building and conflict management

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**Kenya is beset by a multitude of local conflicts that can escalate at any moment, as a result of a resource crisis or because of political machinations. High time, therefore, to draft an integrated national policy on conflict management – with civil society input. Here is how it was done.**

Violent conflicts in Kenya predate colonialism through to the struggle for independence. The conflicts have focused on the resistance to colonization, resistance to the building of the Kenya – Uganda railway and later the liberation movements. Although the struggle for independence united the Kenyan communities against one common enemy (the colonial administration), it cannot go without mentioning the fact that there existed other levels of group conflicts amongst Kenyans themselves. Post-independent Kenya has continued to experience intermittent conflicts of different nature, magnitude and intensity depending on special circumstances underpinning the conflicts and the environment in which they evolve. The nature, dynamics and root causes of these conflicts seem to be determined by the varying geographical features and inherent social, economic, cultural patterns obtaining in different parts of Kenya, and governance systems, which manifest certain conflict environments and trends of violence.

### 5.2.1 Factors contributing to violent conflicts today

Aggravated by poor infrastructure, weak institutions and political isolation of some segments of the country's population, they include the following:

#### *Natural resource use conflicts*

It is evident that scarce natural resources, worsening environmental conditions and increased populations have resulted in stiffer competition for land, pasture and water. Pastoral communities have continued to experience devastating hardships, resulting in competitions for scarce water and pasture resources, which often degenerate into violent clashes among the communities, within the country and across national borders in the western, northeastern and northern part of the country.

#### *Politically instigated ethnic clashes*

First experienced in the advent of multiparty democratic elections in 1991, politically instigated ethnic violence remains the most infamous source of violent conflicts in Kenya. Attributed to political incitement, the politicians have used militia youth groups to carry out violent attacks on communities perceived to be opposing certain political agenda.

#### *Cattle rustling/raids*

Traditionally, pastoral communities raided each other for livestock to replenish herds depleted by severe droughts, disease or other calamities. In the past, elders often sanctioned such raids, blessing the raiders before they set off. However, in recent times, inter-communal rustling has become more frequent and severe, degenerating into a militarized activity with no precedence in the history of the cattle rustling. Today's incidents of cattle rustling are driven by hatred, political instigations, unscrupulous commercial activities, general crime, and availability of firearms. These raids have overwhelmed the security operations, eroded traditional conflict management mechanisms and adversely impacted pastoral mobility and environmental resources.

#### *Land conflicts*

Inadequacies in provisions on ownership, control and usage of land within the constitution and other Acts of Parliament have precipitated conflicts. In addition, lack of grassroots understanding and acceptance of rights of citizens to own and settle permanently in their ancestral places of origin have heightened tensions that have resulted in personal and community insecurity in Kenya.

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Following from these reasons, land ownership has been an emotive issue in the country and has been a sensitive issue of politics during general elections.

### ***Human/wildlife conflicts***

Most of the communities severely hit by insecurity due to human/wildlife conflicts surround national parks and game reserves. Over the years since colonial government, population growth has caused immense pressure on the land available for affected communities. For example 62% of the Taita Taveta district's 1,965,600 hectares was shoved off for the national parks, from which the people claim they derive no benefits. In the meantime, agricultural production in the district has continued to shrink over the last 10 years mainly due to destruction of crops by wildlife, literally killing all forms of agriculture in much of the district. Often the displaced and affected people are inadequately compensated for losses caused by wildlife destruction.

### ***Industrial and institutional disputes***

Since the pre-independence era, Kenyan labour relations have been prone to conflict. During colonialism, trade unions engaged in industrial action to improve workers rights and call for the release of detainees who championed the struggle for political freedom. Today, strike actions still take place and have often escalated to outbreaks of violence between law enforcement agencies and the striking workers. These have resulted in the destruction of property and in severe cases the loss of life and the rape of female strikers.

### ***Urban crime***

Urban communities in Kenya should be able to function in an environment free of public security threats. This hinges on personal security. Sustained crime and violence systematically creates fear and reduces trust between community members. Fear increases urban fragmentation resulting in fortification of neighbourhoods where the poor and the marginalized are excluded. The causes of violent conflicts in the slums are linked to these exclusions and the institutional weaknesses in the public and private sectors such as the police and courts.

### ***Public security deterioration***

The resultant low morale in the police force, low professionalism, inadequate allocation of required resources, and endemic corruption has resulted in public security deterioration. The PRSP<sup>36</sup> report indicates that Kenya's public security system has deteriorated in the last two decades to the point where the government was unable to guarantee its citizens personal security, and that of their property. The failure of the sector to deal effectively with the pervasive governance issues, the existence of unacceptably high level of crime and personal insecurity as well as delays in determination of cases in court have all served to increase mistrust and accounts for the violence meted by people taking law into their hands.

### **5.2.2 Policy options for peacebuilding**

There is no comprehensive legislation in Kenya that addresses conflict management despite the fact that conflict is a social justice and human development issue. The option for developing a National Policy on Peacebuilding and Conflict Management is a step in the direction will helping Kenyans reflect on the values enshrined in their Constitution and provide a single comprehensive policy on the management of conflict in Kenya. The policy when finally done will call for the review of existing legislation and enactment of new law to strengthen existing conflict resolution mechanisms. It will facilitate the harmonization of national legislation on issues of conflict Management and peacebuilding. The Office of the President through NSC embarked on the process towards the development of a national policy on peacebuilding and conflict management in 2004, when an initial framework was developed. The NSC desires to formulate a policy framework on Peace building and Conflict Management for Kenya.

### ***The rationale for the National Policy on Peacebuilding and Conflict Management***

Kenya has to improve on its current capacity to undertake in-depth analyses of conflicts that could provide it with a basis for informed decisions on intervention. One of the critical gaps in the work of the

<sup>36</sup> Poverty Reduction Strategic Paper for Kenya 2003.

government in this regard is the lack of proactive conflict analysis and response. There are also budgetary constraints to conflict management. For instance, the administrative districts security budget is not available for conflict prevention. Funds available for security work in the districts are designated only for conflict suppression. There are additional requirements in terms of the ability and capacity of the state to foster reconciliation in post ethnic violent conflict situations to prevent the possibility of relapse into conflict. These gaps have however, received wide attention from the civil society and non governmental organizations whose interventions have also not been smooth due to limited resources and more so in area of proactive peacebuilding.

Overcoming these gaps and challenges in peacebuilding would require commitment from both the government and civil society. The government should continue to make better use of the wealth of resources, in terms of expertise, talent/experience and data that some CSOs and NGOs working in the grassroots level possess. In turn, CSOs have to make a conscious effort to take advantage of the opportunities and challenges of the framework of engagement offered by the government at the NSC<sup>37</sup>. They must do so with a sense of duty and commitment that goes beyond self-interest and opportunism.

### ***The national policy formulation***

National Policy Formulation is one of the most critical state interventions, which need clearly articulated policy prescriptions supported by appropriate institutional framework, legal instruments and enforcement mechanisms to address the evolving challenges arising from changing socio-political, technological, economic, environmental and globalization aspects. Public policy formulation and implementation in Kenya is the sovereign right and responsibility of the state. It is carried out on the basis of specific national needs and objectives in tandem with aspirations and expectations of the society with broad based participatory framework.

### **5.2.4 The draft NPPCM development process**

The National Steering Committee on Peacebuilding and

Conflict Management provided a paper profiling conflict in the country including the problem statements and what the country needed to address in terms of values, beliefs and behaviour. The paper provided the basis for a concept note by the CSOs consultant who engaged in literature review, country wide stake holders analysis, consultations with government departments, private sector, CSOs, peace committees, the police, the judiciary, cross border security committees and cross border regional NGOs etc. The formulation and development of a draft national policy on peacebuilding and conflict management was multi sectoral and multidisciplinary driven through broad based participatory and bottom up process with the government providing the lead and involving a cross section of interest groups. In this regard, the government established the national steering committee on peacebuilding and conflict management with a secretariat from where the coordination of the policy process is done.

### **5.2.5 The added value of civil society organizations**

Kenyan civil society organizations are active in two broad areas of conflict resolution, namely conflict analysis and peace building activities.

### ***Conflict analysis***

A number of Kenyan CSOs are active in the areas of conflict analysis and designing community based response mechanisms, with a huge potential to contribute in the conceptualization and designing of a national conflict transformation and peacebuilding framework for the country. Their analyses of conflicts and attendant intervention strategies deriving from indigenous conflict response mechanisms have been

37 The National Steering Committee (NSC) for Peace building and Conflict Management initiatives was established in 2001. It was the result of an attempt by the government and CSOs to strengthen, coordinate, and integrate various conflict management initiatives in the country. NSC became fully operational in 2003 when authority to establish the Secretariat was given by the Government. It brings together government officials and representatives from civil society organizations. Its Secretariat also services the Kenya National Focal Point on Small Arms and Light Weapons (KNFP); and, the Conflict Early Warning and Response Unit (CEWERU) which are also the result of CSOs - government collaboration.

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valuable tools for in-depth stakeholders' analysis of various conflicts in different regions in the country and the development of appropriate national response mechanisms. They have continuously alerted the community level government administrative and security personnel of incipient conflicts, the factors that encourage their escalation and the trigger mechanisms that provoke the deterioration into violence.

Active collaboration with such CSOs has assisted in the process of profiling and database. Several CSOs, NGOs and CBOs have built considerable capacity in the area of community-based peacebuilding. These groups were mobilized and involved in conflict analysis and stakeholders' analysis and on behalf of communities that have been experiencing violent conflicts and those in potential conflict spots in the country. Importantly also, they have helped to complement the work of the government among key constituencies through their community development work and other awareness creation activities.

### ***Peace building***

A number of Kenyan civil society organizations, particularly those working at the grassroots, continue to play important roles in community development and peace building. Among the warring pastoral communities in northern Kenya, civil society groups have spearheaded some of the most significant advances towards peace, in particular at the local level. In other parts of the country where politically instigated land clashes ravage the lives of the poor, CSOs have also played an important role in the peace process including peace education, training manuals development, early warning and early response, delivery of relief, and disarmament activities among the armed pastoralists' communities.

### **5.2.6 Methodology applied**

The consultants applied a combination of the Human Rights Based Approach (HRBA) and Conflict Transformation Strategy as the background from which the tools used during Stakeholders Analysis were crafted. The emphasis on Human Rights was mainly because HRs not only defines the subject but also translates people's

needs into rights, and identifies the duties and obligations of those against whom a claim can be brought to ensure that needs are met. HRBA also has a causality analysis in which identification of levels of action and specific results are to be achieved is discussed, i.e. individual, community, policy, institutional, national and international. Conflict Transformation as a strategy has underlying values and principles that relate to. These are that; one cannot resolve conflict and thus make peace unless the root cause of the conflicts are identified and dealt with; one cannot resolve conflict and thus make peace unless attention is given to justice and fairness of the process as well as the outcome of the settlement. HRBA provides the precedent to facilitate the search for justice; People's deeper needs are not totally incompatible. Interdependence is inevitable for peaceful coexistence and that Conflict resolution involves restructuring of relationships

### ***Drafting process sequence***

During the draft policy development process the three consultants hired by the government, identified and assessed the role of CSOs and the private sector among other stakeholders and suggested possible CSO/GoK/private sector partnerships in peace building. The project officially began on June 13th, 2005 with the signing of contracts with the team of consultants. Literature review took between June 13<sup>th</sup> and August 27<sup>th</sup> 2005. Selected conflict spots in all the eight provinces were visited in 35 administrative districts. Activities that followed included further literature review on reports and information gathered in the field, Conflict Analysis and Stakeholders Analysis, interviews with Government Ministries, Members of Parliament (Amani Forum) and other Stake holders in Nairobi, national consultation workshop with CSOs. Aug 29<sup>th</sup> to October 15<sup>th</sup>, 2005 saw the period for the identification of possible Strategies and options for conflict management and peace building. This was followed by drafting using field experiences, reports and documentations, existing relevant policies and legislations. Peer review on the first draft took place in January and March 2006 and by provincial national consultations begun immediately after.

### 5.2.7 Findings: policy draft highlights

During the stakeholders analysis we found that nearly all the existing conflict management and peacebuilding approaches in Kenya were initiated as a result of prolonged massive violence that affected large ethnic populations. As a result, many of such interventions exist primarily in those parts of the country that are referred to as conflict prone areas.

#### *State responses*

The reaction of the government in the face of conflict has been that of violence suppression using armed police intervention to stop clashes during ethnic skirmishes or demonstrations and prosecuting perpetrators of violence in the criminal courts. Such interventions however, have not been popular with Kenyan communities where parties involved in conflict prefer to avoid the courts and instead resort to informal traditional peace processes that are flexible enough to their needs including their cultural values and the need for fast and cost effective justice. Lately, the state interventions on violence have, however, moved a step further to initiate mechanisms for conflict management and peacebuilding. The initiatives have seen the formation of public commissions/enquiries to investigate causes of violent conflict in the country, establishment of structures and institutions to promote security and prevention of violence.

#### *Civil society responses*

Civil society interventions have focused on reconciliation and building new relationships amongst the warring communities. Such activities include dialogue, negotiations, and problem solving workshops, information, education and communication. These have set precedence to the coexistence in places where violence was the norm. Several initiatives including conflict early warning have played a central role in facilitating a negotiated end to violent conflict. In all the cases, the civil society has involved as many conflict actors as presented by each context and included the government, elders, professional elites, women, religious leaders and the youth. Through constant advocacy by the civil society, the government security machinery and the provincial administration in

particular, now recognizes the involvement of community institutions in security matters previously considered the sole preserve of the state. As a result, *ad hoc* government and community committees, civil society networks and like-minded stakeholders' forums have emerged in the conflict prone areas in the country where peace work has been active.

#### *Private sector response*

The private sector has played a vital role in enabling conflict management interventions to take off. Business communities in violent conflict-prone Districts fund some of the activities of District security operations. Local businessmen responding to requests from volunteer community elites and women, contributed money to transport elders to mediate on conflicts and also to hold inter-clan meetings. The private sector is however, largely missing in the many existing *ad hoc* conflict management institutions including peace committees at all levels. This is so in spite the fact that they are elaborate stakeholders in peacebuilding.

#### *CSOs and government collaborative responses*

The National Steering Committee on Peacebuilding and Conflict Management

The NSC has been instrumental in addressing issues related to peace work in Kenya. The Committee comprises government departments, CSOs, NGOs and development partners. It was established after a realization that effective management of conflict can only be realized through joint efforts. In particular, the peace committee model has been strengthened and the problem of proliferation of illicit small arms and light weapons is being addressed through this inter-agency structure.

#### *District Peace Committee Model*

DPCs bring together stakeholders who have interest and work on peace and security issues in given administrative districts. Their roles included facilitating resolution of intra-district conflicts, responding to insecurity incidents, deploying rapid response teams, addressing inter-district conflicts, responding to conflicts over natural resources use, promoting peaceful



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elections, weapons collection and addressing broader peace building issues.

### Community-based policing

Meant to promote mutual trust and cooperation between people and police it has not born positive results although it was meant to empower neighbourhoods in danger of being overwhelmed by crime, drugs as well as the poisonous mix of apathy and despair, which undermine peaceful coexistence.

### The CEWARN Mechanism

The IGAD<sup>38</sup> States have undertaken, among other things, to establish national conflict early warning and response units (CEWERUs) to be guided by national conflict steering committees that include representatives of government. Governments are responsible for establishing a “focal point” for coordination of the CEWERU, and for coordinating input from representatives of civil society, including religious and academic /research institutions in the Great Horn of Africa.

### 5.2.8 Gaps for peace policy interventions

Based on lessons learned and best practices in peace building and conflict management, the National Policy of Peace building and Conflict Management must articulate innovative strategies and methodologies to overcome gaps in current approaches, and guide peace building and conflict management initiatives in coming years so as to achieve durable human security in Kenya. The following gaps in current approaches need to be addressed; Limited Education for Peace; Inadequate mainstreaming of conflict sensitivity in development planning; Inadequate mechanisms for responding to conflict; Limited Networking for Peace; Inadequate capacity building for peace; Ineffective government response mechanisms; Lack of legal framework for traditional conflict handling mechanisms; Inadequate Inter- Faith dialogue; Inadequate Gender

mainstreaming; limited research and analysis of conflict; Weak reconciliation and healing initiatives; Absence of a code of conduct; Inadequate resource mobilization; Proliferation of small arms and light weapons and ineffective mechanisms to address cross border conflicts.

The above are in addition to the current challenges and constraints of institutions working on peace building and conflict management in Kenya that include uncoordinated operations and reactive framework; narrow scope of operation – found only in violent prone districts; lack of harmonized approach; weak structures and capacity; lack of institutionalized strategies; weak linkages at the regional level; no direct role of government ministries and sector operations.

### 5.2.9 Main policy elements in the draft

National Peacebuilding and Conflict Management policy focuses on the general principles and approaches which will govern the activities undertaken by different actors; government, civil society organizations, private sector, families and individuals, in undertaking any activity which may affect the human security and sustainable human development. It is particularly important to recognize that although the National Policy on Peacebuilding and Conflict Management is presented as a distinct national policy, its aspects will be integrated into other national development frameworks because virtually all the national development plans require peaceful environment to be realized. The policy underscores the need for providing a foundation for conflict sensitive planning and programming in the all levels of national development and strategic undertakings. It has also incorporated the objectives of the sub-regional, regional and global agreements and protocols that Kenya is party to. The policy objectives and principles are to be realized by concrete actions in different areas relating to key challenges to conflict management and peacebuilding. These include an institutional framework, preparedness, prevention, response, recovery and stabilization.

***Proposed institutional and administrative framework***  
The Policy seeks to establish the National Peace

<sup>38</sup> The Intergovernmental Authority on Development - IGAD<sup>38</sup> States - Kenya, Sudan, Ethiopia, Eritrea, Djibouti and Uganda - have formalized an understanding in a key document, the “Protocol on the Establishment of Conflict Early Warning (CEWARN) and Response Mechanism” (referred to as the “CEWARN Protocol”, signed at Khartoum in January 2002)

Commission through the enactment of statute that will provide for the functions, role and mandate of the Commission. The National Peace Commission will have a secretariat headed by the Executive secretary to oversee the day to day running of the Commission. A National Peace Forum will provide a regular platform for consultation, collaboration, cooperation and coordination of representatives of the Regional Clusters Forums, GoK agencies, United Nations agencies, private sector, Civil Society Organization's and Development partners through the National Peace Forum. The National Peace Forum will be an advisory body to the National Peace Commission and will have responsibility for resource mobilization, creating public awareness and promoting collaboration between actors at national and regional levels. The policy will establish District Peace Commissions (DPC) at each of the country's administrative districts. The critical work of peace building in the country will be vested within the operations of the DPCs and headed by District Peace Commission Coordinator (DPCC) designated by the National Peace Commission.

### ***Resource mobilization***

The policy proposes that the government of Kenya will commit financial resources through the Exchequer and budgetary resources to develop basic infrastructure and capabilities of NPC and its secretariat. GOK will seek to develop partnerships with development partners, NGOs and the private sector in mobilizing funds for the institutional reforms, capacity building and facilitation of the national Peace Commission activities.

### ***What remains to be done to finalize the policy***

In addition to the broad-based consultative processes at the policy formulation and development levels, active involvement of other stakeholders at the policy implementation and management levels is also critical towards attainment of the policy objectives. In particular, the multi sectoral nature and complexity of national activities calls for technical expertise and resources from various specialized institutions, organizations and individuals in the public and private sectors: including civil society and targeted communities for effective broad based consultations.

After the current national stakeholders' consultations on the draft policy, the following prescriptive procedural steps will be taken after preparation of the final national policy paper for approval by the government;

- Preparation of a sessional paper
- Cabinet endorsement of the sessional paper
- Parliamentary discussions of the sessional paper
- Draft bill prepared by the attorney general's office based on the sessional paper
- Formal approval by the cabinet of the draft bill
- Consideration by parliament, which may review and/or change the content of the bill or accept its enactment
- Presidential assent to the bill and thereafter drafted into the legal statute books to become part of the laws

### **5.2.10 Challenges in the process so far: from a consultant's point of view**

There have been many challenges in the policy development process. For example:

- It took so long to roll out the grassroots consultation in the stakeholders and situation analysis. This was because the decision making at the NSC was delayed by government bureaucracies at the Office of the President that had to give a nod for some activities involving civil servants
- Varying funding procedures by different donors supporting the process sometimes made the process to halt due to donor demands
- Existing political environment forced the provincial consultations on the first draft scheduled for November 2005 to be postponed as the country was charged with constitutional debate and campaigns for referendum
- Funding period by leading donor urgencies expired and accounted for consequent lull in activities in 2006
- Emerging overwhelming interests generated during provincial consultations forced the provincial and national consultation period to be extended to cover for unanticipated groups listed for the consultations
- Political realignment following the no vote on the national constitution referendum. At one time in January 2006, Kenya experienced two weeks without cabinet. The government was realigning itself and not much in a policy process could ensue in the

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environment. The immediate period after was followed by unpredictable political atmosphere, government also seemingly lost faith in existing legislated national commissions due to their human rights demands. CSOs slowed down the push for the final policy wondering whether much attention would be paid to the proposed national peace commission in the policy draft.

- Again political campaigns begin in earnest in 2007. Most of the parliamentary debates on policy proposals to do with HIV/AIDS, gender violence, the Children's Rights bill etc became politicized due to constitutional reforms related political polarization. It

naturally followed that no much advocacy with the cabinet or MPs would be spared the polarization. CSOs apparently suffered cold feet in pushing the peace policy process through with the current government.

- The fact that NSC peace policy process depended entirely on external funding also came with some dynamics with interesting episodes. NSC is comprised of Donor agencies and national NGOs. These donor agencies also fund the NGOs they sit with at the NSC. This relationship portends power imbalances at the NSC that continually affect independent decisions.