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Building Informal Justice in Northern Kenya

Tanja Chopra



JUSTICE
for the POOR



Legal Resources Foundation Trust

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Community Elders in Oldonyiro

Contents

Abbreviations	iv
Acknowledgements	v
Executive Summary	1
Introduction	5
Conflicts and Responses of the Justice Sector	8
From Peace Initiatives to Declarations	14
Interface with the Official Law	23
Implementing Peace	29
Between Tradition and Inclusiveness	36
The Impact of Power and Politics	42
Finding the Right Balance	45
Operational Considerations	48
Bibliography	57

Abbreviations

ADR	Alternative Dispute Resolution
ALRMP	Arid Lands Resource Management Project
BNPP	Bank-Netherlands Partnership Program
CDD	Community Driven Development
CSO	Civil Society Organisation
DO	Division Officer
GAP	Gender Action Plan
ITDG	Intermediate Technology Development Group
J4P	Justice for the Poor
JPIP	Judicial Performance Improvement Project
LRF	Legal Resources Foundation Trust
MoU	Memorandum of Understanding
MP	Member of Parliament
NGO	Non-Governmental Organisation
NSC	National Steering Committee for Peacebuilding and Conflict Management
OCS	Head of Division Police Station
Sub-DSC	Division Security Committee
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
WPDC	Wajir Peace and Development Committee

Acknowledgments

This report is based on qualitative research data that was collected during field visits between July and November 2007 in three districts in Northern Kenya, namely Isiolo, Baringo/East Pokot and Garissa. Research areas were selected to gain insight into conflict and legal dynamics among a variety of ethnic groups and in differing ecological and political environments. Research tools mainly consisted of semi-structured interviews, focus group discussions and participant observation. New research tools, such as legal aid days, were piloted during the study. About 80 interviews were conducted with a broad range of individuals, ranging from formal authorities to peace committee members, NGOs, CSOs, informal authorities, women groups, youth groups and others. The research team worked in district capitals and remote locations in order to observe peace meetings and communal life in general.

This research effort further served as a capacity-building exercise for the Research and Advocacy Unit of the Legal Resources Foundation Trust in: a) the design of research methodology; b) the development of key research questions; and c) the practical and logistical implementation of field research. The research was supported by The World Bank and implemented by Justice for the Poor / Kenya (J4P) and Legal Resources Foundation Trust (LRF).

The arid lands areas were selected for the first engagement of J4P in Kenya. The rationale was that the region lacked access to general government services and had long existed on the periphery of development assistance. The World Bank has further been implementing the 'Arid Lands Resource Management Project (ALRMP)' since the mid-1990s.

The arid lands have received significant support from donors and government in conflict management and peacebuilding activities, and a variety of data and literature exists on this topic. However, it was obvious at the time of J4P's first engagement that there was not much data available on conflict management in the arid lands produced through a legal/judicial lens. The study was therefore designed to serve a more exploratory purpose by aiming to understand local conflict management processes in relation to socio-cultural systems, the official justice system and peace initiatives. The main theme that emerged from the first set of research data concerned the tensions between 'justice and peace' that seemed to dominate the relation between local level dynamics and the work of judicial institutions. Following the post-electoral violence in January 2008, this theme has become the topic of national debates. While the results of this study do not respond to the post-electoral violence directly, they are intended to inform this debate by demonstrating how the question of 'justice versus peace' can play out at the local level.

Research results are presented in three separate papers for greater clarity and to better target specific audiences. This paper is therefore a companion paper to 'Reconciling Society and Judiciary in Northern Kenya', which focuses on the role of the judiciary in the arid lands; and 'The Illusion of Inclusion: Women's Access to Rights in Northern Kenya', which focuses on the dynamics of intra-communal conflict, with particular focus on women and the role of the victim. Given that this research was exploratory and aimed at gaining insights in local level dynamics, the research team expects that the presentation of the qualitative research results will help shape quantitative questions and encourage future survey work.

The research team received generous help from staff of the Arid Lands Resource Management Project (ALRMP), and was funded by the Bank-Netherlands Partnership Program (BNPP) and the Gender

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The findings and conclusions expressed in this paper are entirely those of the author. They do not necessarily represent the views of The World Bank.



A group of elders in a meeting

Executive Summary

In light of recent post-electoral violence in Kenya, the demand for peacebuilding measures has been considerable. This report, although solely focusing on the conflict resolution mechanisms among pastoralist societies in northern Kenya who have a long history of conflict but were by and large not involved in recent hostilities, shows some beneficial practices and challenges peace initiatives in this region face. The researchers and author hope that peace work in other areas of Kenya can be informed by the findings presented in this paper.

Given lack of development, historical marginalization, and scarcity of natural resources, pastoralist societies in Kenya's arid lands frequently experience severe conflicts over access to water and pasture. Armed cattle rustling and highway banditry are common and are often caught up in politically motivated violence.

The state apparatus in the region is weak and largely unable to prevent, respond to or resolve these conflicts. In particular, judicial institutions lack the capacity to try perpetrators and the presence of courts has little deterrent effect. The most prevalent problem which undermines their work is the failure of official laws and legal processes to reflect an understanding of the local population in defining crimes and resolving conflicts. Additionally, it is not as simple as permitting local justice mechanisms to take their course, as conflicts occur between different ethnic groups that adhere to differing concepts regarding conflict resolution.

As a result, local actors and NGOs have resorted to an innovative form of peace initiative. These are based on local concepts and involve local stakeholders tackling prevalent conflicts. They have established 'peace committees' at different administrative levels,

which consist of elders and other influential community leaders and which have the capacity to meet across district or ethnic boundaries to negotiate solutions to conflict. In cases in which conflicting parties are from different ethnic groups and adhere to different local systems, careful negotiations identify a common basis parties can agree upon. In some of the most conflict-prone areas, the affected groups have met and carefully negotiated general ground rules for conflict management. Some of these initiatives have resulted in the drafting of 'Declarations' and 'Agreements'.

Following their inception, the arid lands peace initiatives have been supported by international NGOs and donors. They have also been adopted by the Office of the President, leading to the establishment of the National Steering Committee for Peacebuilding and Conflict Resolution (NSC) as an umbrella for all peace initiatives. Furthermore, experiences in the arid lands currently inform the drafting of a national policy framework for peacebuilding and conflict resolution, which strives to integrate local concepts and stakeholders into conflict resolution.

The declarations resemble a law with a penal code, which the parties in conflict have drafted themselves, and which was officially accepted by the executive arm of the national government. What is emerging then is a parallel legal regime: one is the official law, which is legislated and enforced based on a separation of powers; and the other are the declarations, which are supported by the national executive. Both make sense in their own sphere. One is the basis for law and order in the whole country, while the other one guarantees peace in a specific region. The moment they have to coexist, however, the logic of the system becomes flawed. Implementing the declarations may create peace, but may contradict the official laws at the same time. Implementing only the law may mean that conflict prevails. Furthermore, some features of the declarations contradict the official

laws of Kenya. For example, the implementation of the declarations may lead to double punishment for a perpetrator, and its practical implementation challenges the unified application of national law.

Given these discrepancies, it is crucial to allow for a general process through which society and the judiciary can approach each other. There are a series of activities which can make the judiciary more responsive to the needs of local societies without jeopardizing the national unity of the law. On the other hand, there are a variety of measures that can be undertaken to bring the paradigm of official law closer to the people and encourage them to embrace it.

Peace committees and declarations derive their strength from their deep roots in various local socio-cultural systems of arid lands societies. Drawing on local power structures is an important ingredient for success, but this comes with trade-offs: local power dynamics may not be based on inclusive processes. Local peacemakers draw their strength and legitimacy from the fact that they are perceived as being senior and superior to others by their communities. External attempts to enforce women and youth participation in the peace committees have therefore proven difficult undertakings; in some cases, they have jeopardized the effectiveness of the committees.

The same counts for external attempts to democratize committee formation processes by requesting members to be selected through election. This has led to the selection of gatekeepers rather than peacekeepers in some cases. The aim to introduce inclusiveness and democratic processes in an initiative that draws its success from a different conceptual basis may therefore require reconsideration.

Peace initiatives are further vulnerable to hijack by politicians and other powerful individuals. The more the processes are dominated by higher powers, the less legitimacy and impact they appear to have on

grassroots communities in conflict. While it is crucial that politicians and other leaders support peace work, it has to be ensured that it remains anchored at the grassroots level to be efficient.

Introduction

The pastoralist societies in Kenya's arid lands frequently experience severe conflicts over access to water and pasture, they are subject to cattle rustling and highway banditry and are frequently caught up in politically motivated violence. The state apparatus is weak and largely unable to prevent, respond to or pacify these conflicts. In particular, judicial institutions regularly lack the capacity to try perpetrators and their presence has little deterrent effect. Law enforcement agencies have difficulties physically operating in the arid lands' vast and harsh terrain and they receive little support from the local communities. The most prevalent problem, undermining the work of both judicial institutions and enforcement agencies, is that official laws and legal processes do not reflect the ideas and value systems of the local populations¹ which define crime and prescribe how conflicts should be solved.

This discrepancy between the official system and local concepts and practices has not only had a serious impact on the stability of the area but it has also triggered the development of innovative responses. As conflicts pose a serious threat to peoples' livelihoods, out of necessity local actors and NGOs have had to develop informal peace initiatives. These initiatives aim to overcome some of the challenges resulting from discrepancies between the official and local systems. Peace activities support bottom-up community processes, which specifically apply local concepts and involve local leaders. In cases in which conflicting parties originate from different ethnic groups

1. A society shares a common system, which prescribes fundamental beliefs as well as socio-political structures. Such system constitutes the paradigm of a society. It is commonly called 'traditional' or 'customary' system, however, those terms set a strong contrast between 'old' and 'new'. To simply speak about a society's system of ideas and values neither makes a judgment whether features are old or new, it merely presents a snapshot in time and describes the current system of a society. Systems are fluid and can adapt and change in response to historical events or other influences, they also present an array of differing perspectives held by various groups within one society.

and adhere to different local systems, careful negotiations identify a common basis that parties can agree upon.

Following their inception, the arid lands peace initiatives have been supported by international NGOs and donors. They have also been adopted by the Office of the President, leading to the establishment of the National Steering Committee for Peacebuilding and Conflict Resolution (NSC) as an umbrella for all peace initiatives. Furthermore, peacebuilding experiences in the arid lands currently inform the drafting of a national policy framework for peacebuilding and conflict resolution, which strives for the integration of local concepts into conflict resolution.

It is common for NGOs, governmental agencies and academics operating in the legal sector to be disconnected from peacebuilding practitioners. Furthermore, many working in justice reform have been calling for the integration of ‘customary law’ into the formal system. What has been lacking, however, are detailed proposals outlining a practical approach to a ‘three-way’ integration of peacebuilding with ‘customary’ law and formal law. The arid lands peace initiatives serve as practical examples and reveal best practices (as well as obstacles) in integrating local concepts into the formal system to promote peace. The peace initiatives show how the integration of local structures can counter violent conflict. However, the implementation of the peace initiatives also exposes questions about upholding and supporting the ‘rule of law’, as some features of the initiatives are in contradiction with the official laws of Kenya. A closer look reveals further obstacles. Working with local systems, for example, requires operating on the basis of local power structures which can have the unwanted side effect of reinforcing local power asymmetries. This outcome contradicts the aim of many donor agencies and the Government of creating greater ‘inclusiveness’.



This research paper is based on qualitative field research in three arid lands districts. It is by no means a comprehensive study of the entire arid lands region. However, in-depth research in selected areas has revealed some of the mechanisms contributing to the success of the initiatives and identified some challenges, particularly at the community level. It seeks to present a unique form of peacebuilding to other practitioners, particularly those working in the legal sector. It also aims to support the peace activities and inform the government's national draft policy on peacebuilding and conflict management by presenting key trends at the local level.



Conflicts and Responses of the Justice Sector

The arid lands of Kenya have been subject to neglect in both governance and development assistance.² The harsh environment, the vast distances and the lack of infrastructure render a large part of the area virtually inaccessible and make its development a difficult undertaking. Frequent droughts are the most significant contributor to poverty in the area, with disastrous consequences for the livelihoods of the pastoralist populations. One drought can quickly extinguish the livestock of an entire community. It is therefore not surprising that the region is one of the poorest in Kenya.³

The number of conflicts between communities in the arid lands increases drastically during times of drought. Scarcity of natural resources causes tension between populations which co-exist on the same lands. Violent clashes easily erupt over access to a borehole



Herder with cattle in Longopito, Isiolo District

2. See, for example, Human Development Report, 'Kenya and Uganda Pastoral Conflict Case Study,' Human Development Report Office, Occasional Paper, 2005.
3. See, for example, OXFAM, 'Delivering the Agenda. Addressing chronic under-development in Kenya's Arid Lands,' Oxfam Briefing Papers, 88, 2006.

or the use of grazing land. Furthermore, loss of livestock during droughts can lead to extensive cattle rustling activities, as families seek to return lost assets to better guarantee their survival. Other significant factors for conflict are the region's marginalization and lack of development as well as the fact that conflict and violence have always been part of the landscape of the arid lands communities.

Conflicts in the arid lands have been accelerated by easy access to firearms⁴, which are traded across adjacent borders of neighbouring war-torn countries. Access to arms coupled with poverty increases the scale of cattle rustling,⁵ the rate of fatalities in conflicts over pasture and water, and fosters highway banditry. However, there is a dilemma: while the increase in firearms has had many negative consequences, the general lack of security has forced herders to obtain arms to protect their livestock.

The exact causes of conflict differ from area to area, depending on the conditions of the soil and the amount of water and rainfall. Furthermore, the arid lands are inhabited by various ethnic groups that adhere to different values and socio-political systems. Consequently, their patterns in natural resource usage may be at odds with one another. For example, conflicts frequently erupt in the area between Isiolo and Garissa District. The terrain on the Garissa side, inhabited by Somali communities, is subject to less rainfall and has therefore less pasture than across the boundary in Isiolo District. In times of drought, Somalis are forced to migrate across the district boundaries to seek water and pasture for their herds on territory that is mostly inhabited by Borana communities. In contrast to the Somalis, the Borana apply an elaborate order that defines how and when to access grazing lands and water sources. While the Borana perceive certain

4. See, for example, UNDP, 'Between a rock and a hard place. Armed Violence in African Pastoralist Communities,' Geneva, 2007.

5. See, for example, Office of the President, Provincial Administration and Internal Security, 'Kenya National Action Plan. For Arms Control and Management,' Government of Kenya, 2006, p. 30-31.

areas of land as their customary pasture reserves, no individual land titles exist and the land is held in trust, administered by the county council. According to the official law, nothing prevents the Somalis from ignoring customary claims and moving to the grazing areas unless the county council prevents them. In addition, their lack of awareness regarding Borana usage systems has sparked many rivalries.

Garissa District itself experiences a significant number of internal conflicts over pasture and water. The problems are less related to differing usage patterns, as most of the population is from the same ethnic group, namely Somali. Instead, the different Somali clans or sub-clans compete over the good grazing lands that are available. In addition, Garissa faces an influx of refugees from Somalia. Some enter Kenya illegally along the porous Kenya-Somali border in the east of the district and then settle in nearby refugee camps. For their livelihood, refugees start using the land adjacent to the camps, or they leave them altogether, causing conflicts with the local population in Garissa.

The north-western arid lands are inhabited by a cluster of different ethnic groups: the Samburu, Turkana, Pokot and Marakwet. In this area, cattle rustling has deep cultural roots.⁶ Apart from ensuring one's livelihood in times of drought, cattle rustling in the northwest is an inherent part of the socio-political structures of society. Local concepts prescribe cattle rustling as a core activity to ensure the continuation of local socio-political orders. Cattle rustling, for example, is an important means for a boy to prove his manhood and to increase his social status, which will eventually allow him to find a wife. Needless to say, neighbouring communities suffer from the frequent loss of cattle.⁷

6. For a good description on this cluster, see I. Masinde, M. Adan, and R. Pkalya, 'Indigenous Democracy. Traditional Conflict Resolution Mechanisms,' Intermediate Technical Development Group – East Africa, 2004.

7. For example, in Baringo/East Pokot the local Tugen communities complain about the frequent raids of the Pokot.

According to the Constitution and other laws of Kenya, it is the role of the judiciary to solve conflicts between individuals, amongst communities and between citizens and the state. However, in the arid lands the judicial institutions play only a marginalized role in addressing local conflicts. Although at times cattle rustling activities, quarrels over pasture and water, and sometimes killings, are reported to the police, they hardly ever reach the courts.⁸

One of the reasons for the limited impact of the judiciary are the great distances which prevent many people from physically accessing the courts. Most magistrate courts, which constitute the lowest level of the judiciary, are located in district capitals. To reach them from a more remote area usually requires a long and arduous journey. There are no incentives for witnesses to take on the burden of such travel just to attend a trial. In addition to the costs of travelling, the costs of filing a case at court are high in comparison to the income levels of the population, making it nearly impossible for many to seek redress before a court for their grievances. Another obstacle is posed by the long duration of trials, in which the parties may be called back to the court for hearings. If an incident is not concluded immediately – or at least a temporary accommodation reached between the two opposing parties – acts of revenge are likely to be undertaken. For that reason, not many parties to a conflict find themselves in a position where they can go to the court and wait for the outcome of a case.

However, the most prevalent reason for the minimal impact of the judiciary on the pacification of arid lands conflicts is that local populations do not perceive that the judiciary dispenses justice. Some respondents expressed the view that in courts the ‘victim may be tried and not the perpetrator’.⁹ Local concepts that define what is just

As they adhere to different practices, they would not retaliate.

8. See T. Chopra, ‘Reconciling Society and the Judiciary in Northern Kenya,’ Justice for the Poor / Legal Resources Foundation Trust, Research Report, Nairobi, 2008.
9. Interview with community member, arid lands, September 2007.

and fair, how a conflict should be ended, how a perpetrator should be punished, and who are the authorities to solve a conflict, differ paradigmatically from the official law. One of the underlying local paradigms is that the entire kin group is responsible for a crime and not only the individual perpetrator. Accordingly, a conflict resulting from a crime is solved through the payment of compensation, in which the 'lost' values of the victim's group are reinstalled. Only then is peace restored between the conflicting parties.¹⁰ As such, official laws and judgments are often not considered 'logical' or 'fair' in the eyes of the victim and the perpetrator, and consequentially prove incapable of pacifying communities.¹¹

It is therefore not surprising that many intra-communal conflicts are managed by community elders or the chiefs. The chiefs and assistant chiefs are employees of the Provincial Administration, and one of their mandates is to maintain law and order in their community.¹² While they are civil servants, they usually originate from the communities they serve. This provides them with background knowledge of the conflicts.¹³ In conjunction with the elders, they often receive reports of property disputes, stock theft, or domestic disputes. The chiefs then decide whether to submit disputes to the official system or deal with them according to local ways of conflict resolution.¹⁴ Within the same community, concepts of how to solve a conflict are almost always shared and solutions can be readily found.

10. For example, the victim party is satisfied if their cattle is returned, or if cattle has been paid in compensation for the killing of one of their members. Such payment of compensation, in most cases, will lead to genuine peace. One often occurring criticism against such informal solutions is that payment of compensation to the entire kin group does not satisfy the individual victim. However, given the nature of the conflicts discussed here, cattle rustling, murder or conflicts over natural resources, this question is less relevant. For a discussion of conflicts in which informal solutions leave the victim unsatisfied, see B. Ayuko and T. Chopra, 'The Illusion of Inclusion. Women's Access to Rights in Northern Kenya,' The World Bank, Justice for the Poor / Legal Resources Foundation Trust, forthcoming 2008.

11. See Chopra, 2008.

12. Laws of Kenya, Cap 128, Chiefs' Authority, Sec. 6.

13. M. Adan and R. Pkalya, 'Conflict management in Kenya: Towards policy and strategy formulation,' Practical Action, 2006, p. 11-12.

14. For further information on such local systems, see for example: Masinde, Adan and Pkalya, 2004.



Identifying an acceptable solution for a conflict is more challenging when different communities or even different ethnic groups are involved. In such a scenario the conflicting parties do not necessarily share the same set of values. Local chiefs and community elders may not have the power to mediate between different local systems. Elders from both parties can meet, but it may not be easy for them to identify common grounds on which to negotiate. Chiefs often have no choice but to pass such conflicts up the chain-of-command within the Provincial Administration.

Inter-communal conflicts pose a problem for the stability among pastoralist societies, and it was these specifically that fostered the development of innovative solutions in order to pacify the communities of the arid lands.



From Peace Initiatives to Declarations

In order to bring an end to ongoing conflicts in the 1990s between arid lands communities or ethnic groups, local actors started ad hoc peace initiatives. Perhaps the most well-known is the Wajir Peace and Development Committee (WPDC). During years of intense conflict in Wajir District, a small group of educated Somali women began to meet with local market women to discuss conflict prevention. These women formed Wajir Women for Peace, which later joined with a group of other educated Somalis to form the Wajir Peace Group.¹⁵ This group first approached elders in warring communities, gradually expanding their peacebuilding and mediation efforts to youths, sheiks, business leaders, civil servants, and the District Commissioner.¹⁶ The Wajir Peace Group was formalized in 1995 when the WPDC became integrated as a subcommittee of the District Development Committee.¹⁷ The pioneers of these initiatives were educated individuals, who had twofold capacities. On the one hand they had knowledge of the concepts of their own society as well as its power structures, on the other hand they were able to operate on a higher level and exercise pressure beyond the level of their own community.

Following the first successful interventions, other organizations have followed their example.¹⁸ The initiatives soon began to receive support from local and international NGOs as well as donor agencies.¹⁹ Eventually, ‘Peace and Development Committees’

15. S. Krätli and J. Swift, ‘Understanding and managing pastoral conflict in Kenya: A literature review,’ IDS, University of Sussex, UK, 1999; D. Ibrahim and J. Jenner, ‘Wajir community based conflict management,’ presented at USAID Conference on Conflict Resolution in the Greater Horn of Africa, June 1996.

16. Krätli and Swift 1999, Ibrahim and Jenner 2006

17. The District Development Committee is a governmental body constituted through various governmental and other development stakeholders at the district level.

18. M. Buchanan-Smith and J. Lind, ‘Armed violence and poverty in Northern Kenya: A case study for the Armed Violence and Poverty Initiative,’ Centre for International Cooperation and Security. University of Bradford, UK, 2005.

19. For example, Oxfam’s on-going support of various local peace initiatives, work with pastoralist conflict being done by FARM-Africa, the Pastoralist Community Harmonization Initiative and the DfID-funded Arid Lands

(hereafter called ‘peace committees’) were established across the arid lands. They were created through bottom-up selection processes at the location, division and district levels.²⁰ They consist of a broad range of members from different walks of life who invariably share a common vision of creating peace. In some areas these initiatives were motivated by local communities, while in others – following successful examples – they were rather driven by external donors and NGOs.

What makes the committees promising in restoring peaceful relations is that they: a) integrate a broad range of local stakeholders who are locally perceived as relevant for conflict resolution; and b) apply features of the local systems. The initiatives prove to both formal and informal actors in the region that the integration of the population and the incorporation of local structures, or ‘old age time tested’ alternative systems is a crucial ingredient for peacebuilding efforts.²¹

In particular, they are able to tackle cases in which the conflicting parties originate from different ethnic groups, adhere to different values, and come from different socio-political environments. They facilitate meetings, in which the conflicting parties can carefully negotiate common ground rules that comply with each of their own paradigms. A good example of one of the outcomes is the so called ‘Modogashe-

Conflict Reduction Project, PeaceNet’s CBO networks and capacity building trainings, the National Council of Churches Kenya’s efforts in reconciliation and advocacy, Amani People’s Theatre’s use of drama to disseminate conflict resolution messages, and CAPE’s Women’s Peace Crusades. See J. Jenner and D.I. Abdi, ‘Voices of local peace initiatives – Kenya Peace and Development Network, National Council of Churches Kenya, and Amani People’s Theatre, Collaborative for Development Action, Reflecting on Peace Practice Project. Cambridge, MA, 2000; Oxfam GB, ‘Oxfam GB-funded peacebuilding initiatives in the arid districts of Kenya: Lessons and Challenges,’ 2003; L. Minear, ‘Pastoralist community harmonization in the Karamoja Cluster: Taking it to the next level,’ Feinstein International Famine Center, Friedman School of Nutrition Science and Policy, Tufts University, Medford, MA, USA, 2002; G. Haro, G. Doyo, and J. McPeak, Linkages between community, environmental, and conflict management: Experiences from Northern Kenya, In: World Development. Vol 33, No 2, 2005, 285-299.

20. These are administrative boundaries within a district.

21. See Office of the President/National Steering Committee on Peace Building and Conflict Management, ‘The Modogashe-Garissa Declarations,’ Nairobi, 2005, p.iii.

Garissa Declarations'²². In April 2001, the government's security committees and community elders of the districts of Isiolo, Marsabit, Moyale, Wajir and Garissa met with stakeholders of the districts and provinces²³, such as the respective Provincial Commissioners, District Commissioners, Police, Members of Parliament, county councils, and chiefs with the purpose of negotiating solutions for the frequent conflicts in the area.²⁴ Jointly they discussed and outlined the modes of a peace agreement, which resulted in a document called the 'Modogashe Declaration'.²⁵

The Declaration sets out the overall issues that threaten to erupt in conflict, such as cattle rustling, disputed use of pasture and water sources, and trafficking of illegal firearms. Its provisions further spell out ground rules to solve each specific problem. For example, one provision regarding disputed use of pasture and water establishes that all unauthorized grazers shall return to their home area; that they have to seek prior consent from the respective elders and chiefs if they wish to migrate to that area; that they are not allowed to enter strange grazing areas carrying firearms; and that they must return to their home district at the end of a drought.

This provision was intended to stop the conflicts over pasture and water at the Garissa-Isiolo district boundaries. Interestingly, it re-introduces a customary usage system, under which people need to seek permission to migrate to an area that is claimed by a different group. It contradicts official law, which allows anyone to move

22. While the 'Modogashe-Garissa Declarations' are the most famous, other declarations were negotiated and signed in other areas of the arid lands, such as the Laikipia Declarations in 1999, Wamba Declarations in 2002, Kolowa Declarations in 2002, and the Peace Accords in Naivasha in 2006. Office of the President/National Steering Committee on Peace Building and Conflict Management, 2005, p. iii

23. The district boundaries between Wajir/Garissa and Isiolo also constitute Provincial boundaries between the North Eastern Province (Isiolo) and the Eastern Province (Gariss and Wajir).

24. Office of the President/National Steering Committee on Peace Building and Conflict Management, 2005, p. 17-20.

25. Office of the President/National Steering Committee on Peace Building and Conflict Management, 2005.

freely within the country and which would not acknowledge such customary land claims.

In order to stop the practice of cattle rustling, another provision requires that peace committees and community elders should cooperate with the authorities in the recovery of stolen cattle; that complainants have to give correct information about the number of cattle stolen – or they should be prosecuted by the law; that the complainants should not track the animals themselves, but should let elders and security personnel pursue them; that the elders and security personnel should hand over the animals to the authorities of the neighbouring district if the cattle has crossed the district boundaries; and most importantly, that each head of livestock not recovered should be compensated by five, and the death of a man should be compensated by 100 cows/camels, and that of a woman by 50 cows/camels.²⁶

In regards to highway banditry, the declaration emphasizes the need for increased cooperation between communities and security services. It asserts that government security escorts are too costly, calls upon communities to assist in the identification of the perpetrators, and asks the peace committees to cooperate with the security personnel in order to apprehend them. The declaration further advises how to stop the spread of livestock diseases; how to encourage socio-economic development; it acknowledges the important contributions of the peace committees in uniting communities; and it proposes the strengthening of the peace committees through training in peace issues.²⁷

In May 2005, a review of the ‘Modogashe Declaration’ was coordinated by the Office of the President, with financial assistance from donors, such as Oxfam, UNDP, and the Intermediate Technology

26. Office of the President/National Steering Committee on Peace Building and Conflict Management, 2005.

27. Office of the President/National Steering Committee on Peace Building and Conflict Management, 2005 p.12-16.

Development Group (ITDG). The aim of the review was to address some of the challenges that had occurred under the implementation of the 'Modogashe Declaration'. The revalidation process included communities of other districts and resulted in the new 'Garissa Declaration,' which was signed by formal and informal authorities from the districts of Isiolo, Garissa, Marsabit, Moyale, Samburu, Meru North, Tana River, Mandera, Wajir and Ijara.²⁸

In the revision process some provisions were specified more clearly. For example, more details are now given of the procedure visiting grazers have to follow: they are now requested to obtain a written agreement seeking permission to graze on land claimed by a different group; and 'traditional' water and grazing rules of the local groups should be followed by the visitors.²⁹

Other provisions are more inclusive of official laws. For instance, it is now stated that possession of illegal firearms is against the laws of Kenya, and as such no grazer is supposed to carry arms. Chiefs are held responsible for checking on illegally possessed arms in their communities, and to take appropriate legal action in cases of violations. It is also stated that the communities expect the government to improve implementation of international agreements on disarmament which the Government of Kenya has signed.³⁰ Furthermore, the new provisions formalize the role of peace committees in pursuing stolen cattle. The penalty for stolen livestock is set at two instead of five per stolen animal and in case of the killing of a person the perpetrator should now be arrested and tried in addition to the payment of compensation.³¹

28. Office of the President/National Steering Committee on Peace Building and Conflict Management, 2005.

29. Office of the President/National Steering Committee on Peace Building and Conflict Management, 2005.

30. The Government of Kenya signed, among other declarations the 'Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa' in March 2000, and the 'Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa' in May 2006.

31. Office of the President/National Steering Committee on Peace Building and Conflict Management, 2005.

In regards to the peace committees, the new declaration calls for the introduction of more transparent and democratic processes in the selection of its members. Representatives must be elected by the grassroots, without political or top level interference; they should refrain from instigating or further accelerating conflicts; and they ought to work in partnership with the police.³²

The declarations are an interesting example of bottom-up lawmaking. In comparison to the formal laws and legal processes, the declarations have two advantages: a) they acknowledge and work with local concepts and local socio-political structures; and b) they define common ground rules between different local systems. Respondents interviewed during the field research were well aware of these important features of the declarations. One explained how the declarations were based on the idea of ‘reverting’ to the ‘old’³³ systems:

‘Every community in Kenya had their own laws. The Brits came and imposed their laws on us. We then took them over. It would have been better to adopt every different law into the official law. There are so many conflicts now because of that. So we had to go back and revert back to the old laws. Those are the Modogashe Declarations. We had to look back into our history, when we had no government. But we had traditional rules, which we had to follow. We had to ask ourselves, what were these?’³⁴

The agreement between local stakeholders on common ground rules that respond to the different local systems required careful negotiations. At the outset, local societies already shared some basic

32. Office of the President/National Steering Committee on Peace Building and Conflict Management, 2005. p. 2-8.

33. This is an interesting expression, as in many societies the credibility and power of informal structures derives from the fact that they are considered ‘old’. This means that the ancestors have already used them, and therefore they are difficult to change. The claim of a feature being ‘old’ can assume the role of an enforcement mechanism in a society that is not based on modern state structures. However, features may not necessarily be old, local informal features are constantly subject to change – in line with ongoing social changes.

34. Interview with chair of peace committee, arid lands, November 2007.

principles, such as the payment to a victim's group of 'blood money' after a killing or compensation for stolen livestock. However, those who were engaged in the drafting of the declarations recount that the identification of, and agreement on a joint set of rules was not easy because very different ethnic groups were involved. Members of one district peace committee, for example, recalled that during the negotiations the Samburu representative could not agree to the payment of compensation for the killing of a woman. In the system of the Samburu, the killing of a woman is not compensated. The explanation is simple: 'we don't kill women'.³⁵ The Samburu delegate had to return to his community in order to discuss with the other elders whether it is possible for them to agree to this provision.

On the other hand, some educated women in the towns complained about the difference in the amount of compensation that is paid for killing a man versus a woman. While 100 camels or cows are to be paid for a man, only 50 camels or cows need be paid for a woman.³⁶ Women felt this indicated that they were 'worth' less than men. However, the women were overruled by their male counterparts, pointing out the importance of 'traditions': 'we always have followed our laws. So women should follow too. You have to follow community laws otherwise you cannot live in the community.'³⁷

The inclusion of an array of stakeholders in the drafting and signing of the declarations appears to be a very important ingredient in some cases. Community leaders, for example, need to be included if the agreement is to have legitimacy in the eyes of the community. The research team visited some areas in which the declarations seemed of utmost importance, whereas in other areas, grassroots communities had hardly heard about the existing declarations or peace accords. Interestingly, one individual explained that the Modogashe-Garissa

35. Interview with peace committee members, arid lands, July 2007.

36. Interview with peace committee members, arid lands, July 2007.

37. Interview with peace committee members, arid lands, July 2007.

declarations have been drafted through a bottom-up process and saw them as a positive step. The research confirmed that in this particular area the declarations were very popular. Other respondents pointed at other peace agreements in which the process was driven by higher level stakeholders, such as the Naivasha Agreement aiming at solving conflicts in the Pokot area. Research data confirmed that in those areas community level respondents often ‘have not heard of such agreement’. Similarly, in areas where peace initiatives were introduced by donor agencies or NGOs, and local communities had not been part of their establishment, respondents rejected them.

In the view of local respondents, the implementation of peace committees and declarations proved generally successful: they claim that the numbers of violent conflicts are reduced and single conflicts are less likely to spiral out of control.³⁸ Consequentially, the Office of the President adopted them and formed an umbrella group, the National Steering Committee for Peacebuilding and Conflict Management (NSC), in order to coordinate and harmonize the activities. The NSC built on experience and in 2006 began drafting a ‘National Policy Framework on Peacebuilding and Conflict Management for Kenya.’³⁹ The policy framework aims to establish a country-wide policy on peacebuilding and conflict resolution.⁴⁰ One of the principles of the framework is that conflict management and peacebuilding must be sensitive to ‘cultural values’ and build on existing ‘traditional conflict handling’.⁴¹ Conflict resolution activities, for example, can involve individual elders whom the communities perceive as legitimate peace brokers. The framework recognizes the weakness of the official laws and processes: ‘the legal framework treats all acts of violence as crimes against the state and by doing so gives minimal attention to the needs and conceptions of justice that

38. Rigorous evaluations of the peace committees are still outstanding.

39. See Office of the President, ‘National Policy on Peacebuilding and Conflict Management. First Draft,’ Nairobi, unpublished document. GoK, Nairobi, 2006.

40. For an excellent discussion of this policy initiative, see: Adan and Pkalya, 2006.

41. Ditto, p.28.

the victim or victims may have.⁴² The draft framework has since been revised in order to respond to the recent post-election crisis in Kenya.⁴³

The role of the government in these initiatives is remarkable, as some respondents actually see the declarations as a means of reducing ‘oppression’ by official authorities. These statements stem from the mistrust that some communities have against their chiefs. Although the chiefs originate from the community they serve, they are civil servants and are appointed by the government. Respondents claim that in the past the chiefs were not loyal to their communities, and would sell them out if they had the opportunity. For example, one respondent told the research team how the chief in his community used to allow strangers to graze in their area while he would receive something in exchange. A number of communities wished to circumvent their chiefs in such matters. They therefore see the declarations as a tool to decrease the chiefs’ powers and to stop them from capitalizing on their positions. The declarations put the power back in the hands of the community elders, and therefore the communities. However, the same respondents acknowledge that things have changed, partly as a result of chiefs being trained now so as to alter the face of the administration.⁴⁴

42. Office of the President, unpublished draft document, 2006, p.11.

43. The latest draft of the ‘National Policy on Peacebuilding and Conflict Management’ is from August 2008.

44. Interview with staff of NGO, arid lands, September 2007.

Interface with the Official Law

The declarations resemble a law with a penal code, which the parties in conflict have drafted themselves, and which was officially legitimated by the executive arm of the national government. Two analogies can be drawn. The declarations are like a miniature peace treaty between different communities. It is as if the two communities are countries and the overarching Kenyan law is like international law, which they may or may not use depending on their interests. Second, the meeting of different groups and the negotiation over the definition of basic legal principles is similar to early statehood, where different actors come together to define basic legal principles - only that here it takes place inside an existing state.

What is emerging then is a parallelism of legal regimes: one is the official law, which is legislated and enforced based on a separation of powers; and the other are the declarations, which have been supported by the national executive. Both make sense in their own sphere. One is the basis for law and order in the whole country, while the other one guarantees peace in a specific region. The moment they have to coexist, however, the logic of the system becomes flawed. Implementing the declarations may create peace, but may contradict the official laws at the same time. Implementing only the law may mean that conflict prevails.

Practitioners seemed to have been aware of this problem when the Modogashe Declaration was revised in 2005. The new version aims to better integrate features of the official law. For example, the rule that killing of a person needs to be compensated with 100/50 cows or camels was qualified with the perpetrator having to be detained and pursued by the official law for each citizen. However, if both are pursued – informal negotiations and the criminal trial of the perpetrator – a legal problem may occur. If the perpetrator is detained

and tried, while this informal trial is taking place, then the processes pose the risk of double punishment for the alleged perpetrator.

Furthermore, while this new addition seems to somewhat reconcile the formal law, in reality, however, the same problem that was at the outset of all peace initiatives persists: communities may have no interest in the detention and trial of the perpetrator as it contradicts local value systems. As soon as the declarations depart from the interest of the communities, there is a lack of willingness at the local level to implement them. Peace committees did not hesitate to explain to the research team that if a case had gone to court, they would do everything in their power to withdraw the case and have the perpetrator released. They saw circumventing the official law as the only way to implement peace. A peace committee member remarked: 'if the case was left in court, revenge actions would continue.'⁴⁵

In fact, having the perpetrator in detention may pose a disadvantage for the victim's party during the negotiations over compensation. The opponent will offer less payment, as the individual is already punished by the official system. Victims' families therefore have an interest in preventing the interference of the official law. In other examples, the option of detaining the accused person is used to enforce informal agreements. If the perpetrator's family does not honour a peace agreement and refuses to pay the 'blood money', the victim's family will threaten that it will ask the police to arrest the perpetrator.

Other contradictions occur between the declarations and the formal law, such as in the case of stock theft. According to the declarations, theft of livestock is to be compensated with twice the amount stolen. However, official laws prescribe imprisonment not exceeding 14 years for stock theft, and any theft is to be punished with three years

45. Interview with peace committee, arid lands, July 2007.

in prison.⁴⁶ Even simple robbery is punished by imprisonment of 14 years, and robbery with violence by the death sentence.⁴⁷

Furthermore, the declarations are based on local concepts of communal responsibility for crimes rather than individual responsibility. Under the official law, that means individuals within a group are held liable for crimes that they did not commit. While this communal responsibility is an important factor of internal social control, implementing it under the declarations is at odds with the norms of the official laws.

In the case of herders' migration to new pasture, the declarations set restrictions where the formal law does not set any boundaries. The declarations regulate the migration of herds and people across district boundaries in times of drought by providing that herders require written approval from elders of the other side. According to the official law, grazers can move freely, and only the county councils, who hold the land in trust, can technically stop them.

The declarations could therefore be challenged by requesting a constitutional interpretation, in which a judge could rule that the declarations are unconstitutional. Government officials or other individuals implementing the declarations in contradiction of official laws run the risk of being sued. One such case occurred in a northern district, where a District Commissioner was taken to court for having implemented the declaration. Communities from the neighbouring district had moved into his district in search of better pasture. They had not requested permission from the elders, as agreed in the declarations. The District Commissioner followed the declarations and helped to evict the herders. Subsequently, the communities took him to court for having denied them their official rights.⁴⁸ The outcome of the case is still open.

46. Penal Code (Chapter 63 of the Laws of Kenya), General Punishment for Theft, section 275 and 278.

47. Penal Code (Chapter 63 of the Laws of Kenya), Definition of Robbery, section 296

48. Interview with conflict management specialist, Isiolo, July 2007.

As this case demonstrates, the legal and normative discrepancies between the official law and the declarations pose a danger zone for government officials. On the one hand, officials have a strong interest in applying the declarations in order to keep the peace in their respective districts, but on the other hand they may act against the official law. Some are aware of these contradictions. When asked about the legal situation, for example, some county council members claim that they ‘do their peace work not in their official capacity’. Not taking part in the peace initiatives, however, is not an option for them: ‘if we don’t do that, there will be more bloodshed. People know each other. Government and police are not there. I don’t see doing wrong in this.’⁴⁹

The magistrates have the ‘easiest’ role in this, as they rely on the police to file cases at court. ‘If they are not brought in, there is nothing we can do.’⁵⁰ They only have to deal with peace committee members appearing at court to withdraw cases so they can pursue informal negotiations. The magistrates still lack guidance on how to deal with such cases. One magistrate, for example, has deliberately not looked at the declarations, ‘because they are not real laws’.⁵¹ However, he is fully aware that the declarations are more effective than the official laws: ‘the compensation for them is more effective. With us, the victim gets nothing. The traditional system is more attractive.’⁵² In the case of murder, for example, under the official law the perpetrator is detained and may receive the death penalty, while the family of the victim is not compensated for their loss. In contrast, under the local system the compensation of the victim’s family (e.g. through the payment of camels or cows) is most important.

49. Interview with local authorities, arid lands, July 2007.

50. Interview with Magistrate, arid lands, November 2007.

51. Interview with Magistrate, arid lands, November 2007.

52. Interview with Magistrate, arid lands, November 2007.

The police are in a more difficult position, as they are caught in the middle. They have to respond to local expectations in order to pacify conflicts, but on the other hand they have to act as guardians of the law, and they are obliged to file criminal cases at court. Out of necessity, they are closely cooperating with the peace committees and the declarations, as otherwise they would not be able to control the security situation in their respective areas of jurisdiction.

The most prevalent challenge for the peace committees and all other actors taking part in the peace initiatives is the enforcement of the declarations. The declarations do not have binding powers and depend on the goodwill of the communities.⁵³ Some communities do not abide by the provisions of the declarations, especially the ones who feel



Residents being addressed by ALRMP staff during a legal aid day held in Oldonyiro, Isiolo District

53. Interview with peace committee members, arid lands, September 2007.

that they were not part of the process of their development. If a party decides not to adhere to the declarations and denies the payment of compensation, the other party cannot appeal to government security forces to enforce the agreement, as the declarations are not legislative acts. One county council, for example, reports on the implications of such constraints. If, after arduous negotiations, the perpetrator's family refuses to pay compensation, then there is no law to enforce the payment. This is one reason many councils would like to submit the declarations to parliament to have them enacted into official law and to enable their enforcement by official agencies.

Implementing Peace

The work of the peace committees is entirely relevant in some areas of the arid lands and has proven to be an important contributor to peace. For example, the research data indicates that in the Garissa-Isiolo area most respondents had heard of the peace committees and the declarations, and they generally rated them as important for stability. Respondents felt that the peace initiatives had a high impact and were generally successful in solving persisting conflicts. Perceptions were that the number of raids has decreased, more cattle have been returned and fewer killings have taken place. Unfortunately there is no data available yet to quantify such impressions.

Effective peace committees facilitate dialogue, raise conflict awareness, and coordinate peace initiatives at relatively low cost.⁵⁴ They are perceived as less bureaucratic than governmental institutions. In the areas where they are effective, they have basically delivered what the justice sector has not been able to: they have identified solutions for conflicts that pacify communities and that are acceptable for all parties involved.

Peace committees are said to have been useful in inter-ethnic or cross-district conflicts. They allow for peaceful interaction between representatives of different groups, even across district boundaries. In the case of cattle theft, for example, the peace committees send rapid response teams to pursue the footprints of the cattle.⁵⁵ They follow the tracks and report to the police, district officers and the chiefs.⁵⁶ If the cattle have been herded across district boundaries, they contact the peace committee of the neighbouring district and seek their cooperation. Once the location of the stolen cattle is identified, they request the return of the cattle from the committee in the other

54. Adan and Pkalya, 2006

55. Interview with ALRMP staff, arid lands, July 2007.

56. Interview with peace committee member, arid lands, August 2007.

district. In case the cattle are not returned, the peace committees from both sides mediate and negotiate the compensation for the victim's group.⁵⁷

The peace committees also intervene in intra-district conflicts. These may still be inter-ethnic, as different ethnic groups can inhabit a single district. However, peace committee members argue that such conflicts are easier to handle than cross-district ones, because the district peace committees already combine representatives of most of a district's ethnic groups. Being on the same committee, delegates usually have well-established working relationships and can mediate between their groups. In Isiolo, for example, peace committee representatives from the groups in conflict would return to their respective communities, broker a peace agreement and negotiate the amount of 'blood money' or compensation to be paid. They make use of their different systems, and try to establish what can be perceived by both parties as 'fair'. In this scenario the atmosphere is less tense and the brokers may not need to make use of the declarations.⁵⁸

In the case of intra-ethnic conflicts over issues such as property, stock theft, or domestic issues, solutions may still need to be negotiated between different families, but the fact that they share a common underlying value system makes this easier. Who handles such cases depends on the social order. Some pastoralist social structures are more hierarchical and provide for a high level of general leadership over the entire ethnic group. For example, at the top of the Borana social structure is a joint leader, a 'king' (bagada). Under him is a 'parliament' (gumigaiu), which has the foremost task of handling conflicts among the Borana. These institutions are located in southern Ethiopia, where the Borana have migrated from into northern Kenya. Most of the Kenyan Borana still adhere to their leaders. Somali

57. Peace committees emphasize how important the declarations are in such a case, as they provide a common rules basis. Interview with peace committee, arid lands, September 2007.

58. Interview with peace committee, arid lands, September 2007

social structure, by comparison, is segmentary; all clans are equal entities and there is no overall leadership. Clans or sub-clans may compete in order to increase their status and therefore their power. Fights between clans or sub-clans are thus not unusual. While the peace committees may play less of a role in intra-ethnic conflicts among the Borana, they are important in calming disputes between Somali social units.⁵⁹

In intra-communal conflicts the peace committees appear to play only a minor role. If members of one community are entangled in a dispute, local leaders, such as chiefs and elders, take charge. Research data shows that in a few areas peace committee members claimed to have authority to deal with intra-communal issues. They argued that they feel responsible for the welfare of their communities and receive reports on grievances and conflicts in order to notify the chief and the police. A Turkana peace committee member explained that he was granted government authority from the chief in the form of a letter: ‘if the police come, I show them the document and tell them that I have the authority.’⁶⁰ In another area peace committee members asserted that they are responsible for security issues at all levels: the family level, village level and community level.⁶¹

The success of the work of the peace committees and the implementation of the declarations significantly depends on the support granted by some of the official authorities. At this stage, the relationship between those government authorities and the peace initiatives is defined by practicality rather than official policies or guidelines. Most authorities, such as the police, the District Commissioners and the county councils have an interest in keeping the peace and providing security in their respective areas. Experience has taught them that involving communities and cooperating with the

59. Interview with NGO staff, arid lands, November 2007.

60. Interview with peace committee member, arid lands, August 2007.

61. Interview with peace committee members, arid lands, August 2007.

peace initiatives may guarantee more successful outcomes than the application of the official means available. It is for this reason that many official authorities at the district level and below expressed their wish for increased formal recognition of the peace initiatives in order to ‘legalize’ their involvement.

In practice, many formal institutions are involved in the activities, such as the offices of the Provincial Administration, the District Commissioners, Provincial Commissioners, the officers of the ‘Arid Lands Resource Management Project (ALRMP)’, security institutions, the local chiefs, and county councils.⁶² There are different types and degrees of involvement. The county council of Isiolo, for example, gives money for fuel to the peace committees to enable them dispatch search parties, to travel to sites of accidents, or to take care of injured people. Most involved are councillors and chiefs, as they originate from the local communities - they therefore represent their particular home locations and often travel to conflict sites or take part in negotiations.⁶³

An important role in the peace initiatives is also played by the division or district security committees. The security committees consist of representatives of the district security institutions, including members of the peace committee, and are usually chaired by the District Commissioner. This entity is often involved in meetings to negotiate solutions in cross-district conflicts. As peace committee members can be part of the District Security Committee, they provide an intersection between the peace initiatives and the formal security sector institutions. The district security committees assume a more reactive role, while one of the ideas of the peace committees is that they can also implement conflict prevention measures.

62. Interview with county council, arid lands, July 2007.

63. Interview with county council, arid lands, July 2007.

Peace committees, through the chiefs, also receive support from the Administration Police, who are usually located at the offices of the Provincial Administration (e.g. at the location, division or district level).⁶⁴ They may support the peace initiatives either by providing transport or sometimes even by enforcing peace agreements. Some examples of cooperation are said to have fostered better relationships between the community and the police.⁶⁵

Multiple layers of formal and informal institutions can get involved in solving a conflict. Such a process relies on a complex net of different actors, acknowledgement of informal and formal values, and a practical understanding of peace committees and declarations.

One such example is a murder case that took place in 2007, where a Borana boy was killed in one of the western divisions of Isiolo. The news of his death was brought to his home community by the driver of a passing truck. The elders of his community mobilized and together with other community leaders travelled to the police station at the division level. Upon arrival they noticed that no police officer had gone to the crime scene, because the police vehicle had left for Isiolo Town. The family of the victim borrowed the vehicle from the parish and their chief called officers of the Administration Police. According to the victim's family, they 'had to take matters into their own hands'.

A group of Borana men was soon ready to cross the district boundary into Wajir, from where the alleged killers had originated, in order to retaliate. Borana elders had to intervene and calm the enraged crowd. The Division Security Committee (sub-DSC), including the head of the division police station (OCS), Division Officer (DO), the chiefs, some civil society organizations, and the division peace committee, called

64. Interview with peace committee, arid lands, September 2007.

65. Interview with peace committee, arid lands, September 2007.

the sub-DSC of the neighbouring division in Wajir. They held a joint meeting in which they agreed on a ceasefire in order to methodically establish the facts of the killing. The sub-DSC from Wajir returned to their communities for investigations. One of the Somali clans in Wajir confessed to the murder and gave the name of the perpetrators. The names were passed on to the victim's community. They then mobilized their sub-DSC to detain them. However, the perpetrators had already crossed the border back to Wajir. The team followed them for seven days, through the harsh terrain, but could only find abandoned homesteads along the roadside. When they found the father of the perpetrators, they confiscated his cows and camels and held them at the division police station in order to force him to surrender the perpetrators. The murder weapons were eventually handed over, but the perpetrators had escaped. The livestock was released, and the father of the perpetrators was detained instead.⁶⁶



Community members at a meeting in Ngare Mara, Isolo District

66. Interview with NGO staff, arid lands, September 2007.

In the next meeting, the Modogashe-Garissa declarations were applied. The family of the perpetrator accepted liability and agreed to pay a compensation of Ksh 800,000 (approximately US\$12,000). A Memorandum of Understanding was signed in the presence of government representatives, such as the DO, the OSC, and elders from both sides. The MOU set out strategies for the settlement of the conflict as well as the dates when payments were to be made.

The perpetrator's family delivered the first payment, but the second payment was never received. The victim's family was dissatisfied and accused the perpetrator's family of not honouring the MOU. Seeking to enforce the MOU, they wrote to the District Commissioner and the head of the police in Isiolo, as well as the District Commissioner in Wajir. They recounted their story and emphasized that they were still refraining from revenge actions. They asked the District Commissioner in Wajir to pressure his people to implement the agreement. Eventually, another meeting between the two parties took place, in which the perpetrator's community promised to pay another Ksh 260,000 (approximately US\$4,000).

At first sight, these negotiations over compensation may appear like a substitute for a civil law claim, which would not preclude criminal proceedings. However, for the affected parties, a criminal trial of the perpetrator would impact the informal agreement. Still waiting for the outstanding payment, the victim's family then started requesting the detention of the offenders. As it is not within the mandate of the police to enforce the payment of compensation, threatening detention of the perpetrator is one of the last options for the victim's family to enforce payment of compensation. In other cases, the detention of the perpetrator lowers the amount of compensation the victim's community can request during negotiations. Communities therefore may have little interest in the criminal pursuit of such cases.

Between Tradition and Inclusiveness

In order for the peace committees to be representative and inclusive, the revised ‘Garissa Declaration’ provides that members shall be democratically elected at the level of the sub-location, which is the lowest level in Kenya’s administrative structure, and sent as representatives to join the peace committee at the next highest level, the location.⁶⁷ However, in practice representatives have been selected in different ways. Many members interviewed claim to have been elected by their respective community, some even describe the elections as ‘very competitive’. Others were appointed by the chief, or the elders, or were selected with interference of political leaders.⁶⁸

It is not surprising that some communities have not conducted democratic elections in order to select their representative. Elections can contradict local ideas that prescribe how legitimate authorities are selected. Some respondents explained that candidates ought to be appointed by the consensus of community leaders. Particularly when it comes to brokering peace, they claimed that only if all leaders have agreed on a candidate would everyone in the community support the person and accept the results of his peace work.⁶⁹ By contrast, democratic principles inherently include the idea of an ‘opposition’ and a ‘loser’. It is questionable whether those who have voted for the ‘opposition’ and have ‘lost’ in the elections will be ready to accept a peace deal negotiated by the candidates they did not choose.

67. The committee members of the location committee select representatives to join the peace committee at the division. From the division representatives are selected to join the district committee. The district peace committee members elect a chairman, vice chairman, secretary, and treasury through secret ballots. In this way all areas are represented at the district level. If different ethnic groups exist in the district, they should be represented (however, ethnic minorities would stand little chance of being represented).

68. Interview with NGO staff, arid lands, August 2007.

69. Interview with the peace committee in Isiolo, 2007.

Most communities have well-known elders, who are widely accepted as mediators in conflicts, and who are called upon in time of need. In a dispute, families select the elder that they deem the correct individual to help solve a particular case. To become a recognized elder and to be considered suitable for conflict negotiations, an individual has to earn a reputation through successful interventions. The idea that such figures should be chosen through competitive elections is at odds with most local systems. Elections may best function when the peace committees are not engaged in negotiations directly, but act as brokers who know which elders to call on for a particular case. However, this was only observed in some locations, while in others the committee members were the main actors in the peace processes.

One respondent complained that elections in his town only produced ‘gatekeepers’ as peace committee members. People elected those who are literate or who have worked somewhere outside the community before. This may be the case because peace committees are perceived as an external endeavour by some communities and therefore ‘exposure to the outside’ is an important criterion for candidature, as the representative has to deal with ‘outside agents’. ‘But these are not the powerful people in the communities. They don’t live with the community and don’t know the problems’.⁷⁰

In some cases this has even led to competition between the committee and the community elders. Elders complained that they have been excluded from peace activities and consequently do not cooperate with the committees. One member of a council of elders said, ‘I do not take part in the proceedings of the peace committee. They are not transparent and we do not have good relations with them as they never give the council of elders their progress report.’⁷¹

70. Interview with community member, arid lands, August 2007.

71. Interview with sheik, arid lands, September 2007.

What becomes apparent is that in the practice of selecting peace committee members, two different concepts conflict: a) the general aspiration to work with local concepts and to rely on local socio-political structures, and b) the goal to allow the peace initiatives to be more ‘inclusive’ – and thus depart from local systems. If local leaders select peace brokers on the basis of consensus, the result is likely to be an acknowledged elder who has the legitimacy in the eyes of the community to negotiate peace agreements. On the other hand, if communities are required to identify their representative through democratic elections, the elected representatives may lack legitimacy.

Apart from democratic elections, other attempts were undertaken to create greater inclusiveness in the peace initiatives. The Government and donors particularly have called for greater inclusion of those who are usually ‘marginalized’ in decision-making processes, namely women. As one staff of a UN agency explains: ‘We tried to force them to bring in women, so women start waking up. We overhaul the peace committees.’⁷² As democratic elections often do not guarantee the inclusion of women, in some sub-locations women were simply appointed by their chiefs. Some explained to the research team that they were not elected, but one day they were just told that they now were part of the peace committee. ‘We were selected to the peace committee in our absence but we accepted to be members.’⁷³

In practice, a few women have complained that they had no impact on the drafting of the declaration, and that their presence is hardly recognized in the peace committees. Some state that they are not allowed to attend meetings – or their male counterparts hold meetings at times when women cannot possibly leave their households.⁷⁴ Some female committee members revealed that they are only called when

72. Interview with ALRMP staff, arid lands, November 2007.

73. Interview with peace committee, arid lands, September 2007.

74. Interview with peace committee member, arid lands, September 2007.

the committee needs to demonstrate that they integrate women, such as in interaction with donors. ‘Men deliberately exclude women from the process, but include them if they have to appear acting inclusive, for example when donors are present’. ‘When they have meetings at the divisional level, they don’t call us. Only if there is something at the district level, we have to come.’⁷⁵ However, for many women the legitimacy of the male community members in a peace process seems to remain unchallenged. There are also positive examples of the inclusion of women. Besides the fact that some outstanding peace initiatives have actually been implemented by women, as mentioned earlier,⁷⁶ a few female peace committee members say that their male counterparts support them and respect their opinion.⁷⁷

In general, however, the inclusion of women in the peace initiatives may contradict the overall aim of reliance upon the legitimacy of local value systems. Local systems mostly provide for women to assume a more passive role in any interaction the community has with the external world.⁷⁸ The making of peace and interaction with leaders from other communities are usually the responsibility of community elders. Those elders are perceived to have the right age, experience, integrity, and appropriate morals. Imposing women may jeopardize the legitimacy of the committees in the eyes of the local communities. The dilemma is that relying on existing local structures may imbue the peace initiatives with the most legitimacy, but doing so replicates existing asymmetric power structures within the community.

A similar problem persists with the aim to include the ‘youth’. In some communities young men are seen as the main troublemakers, and thus they are considered the ‘wrong’ personalities to assume the

75. Interview with women’s group, arid lands, August 2007.

76. See, for example, Jenner and Abdi 2000.

77. Interview with security committee members, arid lands, September 2007.

78. However, women can play a central role in conflicts and should therefore be part of the solution. For example, women often fight among each other in the market and can be the cause of conflicts. Or, conflicts between clans or communities are played out by women in the marketplace. Women can stop talking to each other or reject selling products to the woman from the opponent family or community.

role of a peace committee member. This is particularly the case in ethnic groups where the institution of the Moran (warriors) exists. Age sets are the backbone of some pastoralist social structures, such as Samburu and Pokot.⁷⁹ All male teenagers are initiated into one age set, of which they will be members their whole lives. The entire age set will ritually pass through the different stages of life. Every 8-15 years (depending on the ethnic group), each set graduates and assumes new responsibilities. Upon entering the initial stage, the newly graduated teenagers assume the responsibility of providing security for their community. They are considered the ‘warriors’ of society and they have to undertake cattle raids in order to prove their manhood and to be able to find a wife. The Moran of the same age set should practice a special relationship of trust and commitment to each other. An important feature of their relation to each other is that they share all information on security-related issues. Thus, they inform each other of planned cattle raids or warn their friends, for instance, of pending police arrests. In times of war or crisis, they may seek the guidance of the elders, but as security is in the hands of the Moran they may not always keep the elders informed about planned attacks. This is contrary to the peace committees’ mandate to prevent and fight cattle rustling and to cooperate with the security institutions. This illustrates the inherent contradiction in expecting youth, or warriors, to be part of peace committees, at least in some of the arid lands societies.

More generally, elders express confusion at the inclusion of youth in the committees, since it is their role in the socio-political cosmos to advise young people and not vice versa. A district official explains: ‘it is usually the young people who commit the crimes and the old

79. See, for example, ethnographic references: P.H. Gulliver, ‘The Turkana Age Organization,’ In: *American Anthropologist*, Vol. 60.5, October 1958, pp.900-922; N. Townsend ‘Age, Descent and Elders among the Pokomo,’ In: *Africa. Journal of the International African Institute*, Vol.47.4, 1977, pp.386-397; H. K. Muller-Dempf, ‘Generation Sets: Stability and Change, with Special Reference to Toposa and Turkana Societies,’ In: *Bulletin of the School of Oriental and African Studies*, Vol. 54.3, 1991, pp.554-567.



people who advise them.’⁸⁰ An assistant chief warns that from the perspective of elders, committees with many young people have no mandate to negotiate peace.⁸¹

The role of the Morans reminds one of a more general disparity between tradition and the notion of liberal peace. Conflict and violence have been part of life in the arid lands for a long time, and are closely intertwined with socio-political structures and values systems of societies. Applying methods of conflict management that originate in those very societies may therefore have its limits, as they can create peace as much as they can promote conflict.

80. Interview with ALRMP staff, arid lands, October 2007.

81. Interview with assistant chief, arid lands, August 2007.



The Impact of Power and Politics

The most significant flaws in the practice of the peace committees stem from the impact of power and politics. For example, the position of a peace committee member is voluntary. Members should be convinced of the aims of the committee and grant their services to the community for free. However, committee membership comes with certain incentives, such as travel, workshops, training or access to funding provided by donors through local NGOs. Furthermore, assuming a position on a committee may increase an individual's status in his community and beyond, and can grant access to power not only for the individual but for his family. The gates for abuse are open.

While the research team encountered many positive examples of committed peace workers, it also heard of allegations against individuals abusing their positions in order to enrich themselves. In one location, for example, the research team found committee members misused their power by creating small paid jobs for themselves, exploiting the fact that nobody could refuse their paid services because they are responsible for the security in town.⁸² There was further suspicion that NGOs or individuals only show interest in the peace work because it brings donor funding: 'committees were just conduits to get funding from the district.'⁸³

Other committee members may simply aim to increase their power through their peace work. External stakeholders often assume that local communities are coherent and can readily be represented by individual community members. What they often fail to see is that power politics in the village may be equally intense and complex as national level politics. Many different personal or family interests,

82. Interview with ALRMP staff, arid lands, October 2007.

83. Interview with NGO staff, arid lands, July 2007.

individual personalities, social ties, and cultural features play out at this level. Peace committee representatives are selected in this context. Peace committee membership is therefore subject to community power structures and members may not always be representative of the entire community.

Not only does the power structure of the community play out in the peace initiatives, but stakeholders at a higher level have become interested in the opportunities presented by committees. This is particularly the case when they can serve as a tool for expansion of political power. While there are many examples of politicians becoming successfully involved in peace activities with the genuine intent of pacifying their constituencies, there are other instances in which some have hijacked the process for their own interests. For example, district leaders and politicians can have an interest in promoting particular individuals as members of the peace committees so they can control the committee through them. 'The politicians only target the elders who are on their side. They want to use the peace committee for politics.'⁸⁴

This played out dramatically in one case where a number of communities were discontent with the district peace committee chairman. The District Commissioner facilitated new elections for the chairman to be held. These took place in a highly politically charged environment, in which some alleged that the constituency's Member of Parliament (MP) wanted the sitting chairman to remain in place.⁸⁵ The elections received considerable attention in town and to guarantee their fairness, different NGOs and other stakeholders acted as observers. Thereafter they complained that 'the powers in town selected the chairman, and were backed by the provincial

84. Interview with community member, arid lands, September 2007.

85. Interview with police officer, arid lands, July 2007.

administration.’⁸⁶ They complained that the elections had not been fair, and that the chairman was basically re-appointed since he is well-connected to the MP. ‘I observed the elections for the peace committee. It was not an election. There was just a question: ‘who objects to this man’.’⁸⁷

Peace committees can also be used to deepen existing rifts between communities. Instead of uniting, they can reinforce divisions and have the opposite effect to what was intended. In one example, it was said that committee members behave in a very partisan way and they do not have the ‘calling’ to be peacemakers. Rather than cooperating with other committees, this had the effect of strengthening the identity of each community against all others.

In another location, the peace committee called itself the ‘security committee’. Members were convinced that their main task was the provision of security for their own community. They perceived their neighbouring community, with a different ethnic identity, as the enemy and they were patrolling their area in order to provide security and protect their community. One member explained: ‘There is no police here. We do community policing.’⁸⁸ One respondent suggested that ‘the institution of the committees here helps to unite the community, but does not bridge the gap to their enemies’.⁸⁹

86. Interview with NGO staff, arid lands, July 2007.

87. Interview with Development Officer, arid lands, July 2007.

88. Interview with ALRMP staff, arid lands, October 2007.

89. Interview with priest, arid lands, August 2007.

Finding the Right Balance

The peace initiatives in the arid lands are an intriguing case of bottom-up law making. The declarations are a serious competitor to the official justice system, because they tackle the areas in which the official system is weak. They integrate local stakeholders and work with local concepts and socio-political structures. They aim to tackle one of the most prevalent challenges in contemporary state building: harmonizing official institutions and local systems.

It is therefore important to carefully tackle the challenges arising from the new venture, and to look critically at best practices. This research was only able to provide a small window into a very complex undertaking. By no means is it comprehensive or has it covered the area exhaustively. The findings only aim to call for continuation of the exercise because it has proven successful, while pointing out some trends and setbacks.

The government, NGOs and donors involved should be applauded for having supported the initiatives and for daring to further the idea by drafting a national policy on peace building and conflict management based on the experiences in the arid lands. With this they enter uncharted territory, and they are about to set a precedent that may provide important lessons for lawmakers, state-builders and development practitioners in other countries.

The research highlighted certain areas of tension in the implementation of the peace initiatives. One occurs in regard to the integration of higher level stakeholders in the peace activities. While higher level involvement is important in providing top level cover, if these stakeholders drive the process it can have negative consequences as the communities lose ownership of the activities. Initiatives will simply be less effective. Research data, for example, indicated that peace

agreements or declarations that included grassroots communities in the drafting process had more impact than those negotiated under the influence of higher level representatives.

A similar fine balance has to be maintained between the content of the locally negotiated declarations and higher level revisions that include increased features of the official law. The more declarations contain features that do not comply with local level concepts, the smaller the chances that the grassroots will adhere to them.

The same counts for the attempt to create greater inclusiveness in the process while at the same time trying to rely on the legitimacy of local systems. For peace initiatives to be successful, they need to remain as rooted as possible in local socio-political structures. External concepts, such as democratic elections or other tools to increase the inclusiveness of the processes need to be carefully weighed and considered. There is a delicate balance between the application of local structures for the sake of their legitimacy and the reinforcement of asymmetric social relationships – which may further marginalize the weak and poor.

In addition, the fact that the formal authorities at the sub-national level have proven to play a significant role in making the peace initiatives effective indicates a potential paradox. On the one hand, local legitimacy is the basis for success of the initiatives, on the other hand limited facilitation is also required from the formal authorities. A national framework will need to define the involvement and support available from different state actors and draw the limits to inclusion of state authorities.

At the national level, the development and institutionalization of the declarations needs to take place in dialogue with rule of law institutions, especially the justice sector. This is important, not least



in order to prevent government officials who help implement the declarations from being taken to court for violating the law; and to ensure that the declarations have official enforcement mechanisms within the framework of the law.

If these areas of tension are considered and addressed, and legal contradictions be ruled out, then the peace initiatives of the arid lands can turn into a most intriguing example of peacebuilding and bottom-up law making. They can be considered an essential pilot intervention for policy makers and practitioners beyond Kenya who have been aiming at tackling the question of integration of informal features into formal law.

Lastly, it needs to be acknowledged that peace initiatives, built on informal structures, may not be a sole substitute for the lack of security provision in the region, and they cannot make up for a lack of authority that governs the region. More recent violence, stemming from factors such as highway banditry, is beyond the scope of the peace committees. Informal authorities are localized entities, and they can be engaged in negotiations with each other, but they cannot substitute overall regional governance, security provision and development.



Operational Considerations

The current debate of how to apply informal justice mechanisms and concepts in support of the official justice systems faces new challenges in northern Kenya. Currently debated and practiced approaches allow certain minor offenses and cases related to family law to be handled at the informal level. This is permitted to increase the solution's legitimacy, to lower costs associated with resolution processes, and grant both faster and easier access to dispute resolution. However, in northern Kenya, some offenses which communities want to see solved exclusively through informal means are serious. One such example is murder. Exclusively allowing informal processes to take place may therefore seriously contradict formal law, human rights standards, and jeopardize national integrity of the law. However, if the law in such cases is unable to pacify communities, this equally jeopardizes social order – one of the main purposes of law.

The research data indicates that when law is too different from society, people will enforce their own processes and solutions. Law needs to reflect society if it is to have impact on it. Since the Kenyan official justice sector and governance institutions have not developed in line with society, but were to a large extent planted 'on top' of it, it is important to enable a process through which official institutions, laws, and societies can approach one another. Only then can universal access to justice be guaranteed, institutions and laws be legitimized in the eyes of the population, and the national integrity of the law maintained. This, however, is a long term process. In the case of northern Kenya, this would mean to increase awareness of the official legal paradigm among societies while enabling judicial processes, sentencing and laws to align themselves more with societal expectations. The following are steps proposed for a variety of actors:

1. National Steering Committee for Conflict Management and Peacebuilding (NSC) and other Policy Makers:

- ▶ *Create forum for justice and peace practitioners.* Given that communication between those working in the justice sector and those working on peace initiatives is still very sporadic, the establishment of a national level 'Justice and Peace' group or forum could foster more strategic communication between the different sectors. While some of the contradictions between conflict management and official justice are not easily solvable, it is important to create a forum in which they can at least be debated. Ultimate policy solutions or legislation will require all sectors to agree. Such a 'Justice and Peace' group should consist of representatives of the NSC, the Ministry of Justice, the Judiciary, the Provincial Administration and other selected organizations. Any policy framework should also be debated and approved by such a group.
- ▶ *Check policy framework from legal perspective.* Incorporate legal advisers into the team drafting the policy framework on conflict management and peacebuilding in order to ensure that policy framework does not contradict the law.
- ▶ *Distinguish between petty and serious cases.* An approach could be adopted, in which minor offenses or conflicts are handled by the peace committees, and more serious offenses passed on to the judiciary. Disputes over pasture and water, for example, which are often based on differing informal usage systems, could be negotiated by the committees, while serious offenses, such as murder, should be tried by the official system (with modifications, see below). This could be done in two ways, the peace committees could remain informal, and their work supported by government authorities. Second, such an arrangement could be formalized and integrated into the judiciary. A distinction would need to be made between issues where conflicts are centred on a sense of

natural justice and those of most concern to the state, and human rights requirements.

- ▶ Encourage debate on the contradictions regarding more serious offenses. The peace initiatives become questionable when more serious offenses are to be negotiated between the involved parties, such as murder. While for manslaughter charges the law provides discretion for judges to take local punishments into account, capital punishment is prescribed for murder. As described in the paper, this seriously contradicts the local concepts of punishing murder, and re-establishing peace among communities involved. At present this scenario may either provide peace, if the peace initiatives are involved, or provide justice, if the perpetrator is passed to the judiciary. A more explicit debate should be launched among peace and justice practitioners. A number of considerations should be taken on in the debate:
 - ◆ A distinction can be made between murder cases which are an integral part of existing social tension between communities where the consideration of local mechanisms can play a supportive role in re-establishing peace, and between murders that occur in situations (such as committed as part of highway banditry) which should be tried without exception according to the law.
 - ◆ In the first scenario, it should be debated whether it would be helpful to legislate greater discretion for judges to allow them to consider social context. This may allow some local aspects of conflict resolution (e.g. restorative elements for the victim) to occur, reduce ‘double jeopardy’ for the perpetrator, and may increase the population’s trust in the formal law.

2. The Judiciary and the ‘Judicial Performance Improvement Project (JPIP)’

- ▶ Formalize ‘Indigenous ADR System’. If there is the wish to connect some peace committee activities to the judiciary, a model including negotiation or arbitration under the jurisdiction of the court, and able to be implemented by peace committee members, seems most appropriate. Peace committee members or appointed elders would arbitrate or negotiate in the frame of an ‘Indigenous ADR system’. Final results of negotiations could be signed off by the magistrate and made a legally binding court order. This would help make negotiation agreements enforceable by police and the courts. It is important to note that the essence of the peace committees’ work is to negotiate between different value systems and that is why other models, such as Small Claims Courts or Courts of Petty Sessions, where a judgment is taken instead, may not be as practical in these scenarios.
- ▶ Make judicial institutions more accessible for the population of the arid lands. This can be achieved through a variety of steps, such as increasing the number of mobile courts to overcome physical barriers, simplifying court procedures to make them more understandable for local populations, develop more targeted legal information to increase the population’s legal awareness, and develop a strategy for legal assistance in remote areas.⁹⁰
- ▶ Make the judicial institutions and processes more attractive for populations in the arid lands. Besides the integration on ‘indigenous ADR systems’, efforts need to be undertaken to turn the judiciary into a strong alternative to peace initiatives. This can be achieved through the provision of sentences and judicial processes which are understandable for people and which comply with local concepts of justice. Judges and magistrates,

90. For further detail see Operational Considerations in Chopra, 2008.

for example, can be trained in social context and provide judgments with increased equity. They can further be trained in the different laws and discretion under the laws, which can allow them to be more responsive to local values in their judgments. For example, discretion in some laws allows them to take local concepts into account. They can allow restorative elements in criminal cases, which would not leave the victim empty-handed. Such elements would be better aligned with local understandings of how crimes ought to be punished, and would make the courts more credible in the eyes of the people. Assessors or probation officers can deliver important background knowledge on social contexts or the dynamics in a specific community, and/or benchmarks could be published to elaborate on socio-cultural features of certain societies and regions and likewise be important aids in helping the magistrate or judge understand relevant features of local societies.

3. Peacebuilding Practitioners

- ▶ *Train women and youth in formal law as alternative to their integration into the peace committees.* Since peace initiatives draw much of their legitimacy from their roots in local socio-cultural value systems, attempts to engineer the system towards increased ‘inclusiveness’ may expose the system’s legitimacy and effectiveness. It may be more helpful to retain the peace initiatives with features that respond best to current social structure and value systems and foster increased inclusion in other areas so their legitimacy would not be jeopardized. For example, instead of enforcing the integration of women and youth in peace committees, against some odds, they could be trained in formal laws and modern legal processes. Knowledge in another field may empower them more generally. In the long run, this could mean they could legitimately receive a place in

the peace committees through social processes rather than donor and government dictates. Even should they not become part of the peace processes, their knowledge of formal law could help to alter the dynamics of competing value systems and result in a more equitable social structure.

- ▶ Allow local forms of selection of peace committee members and foster democratic processes using other opportunities. The same counts for democratic processes in the establishment of peace committees, which mostly stem from donor and NGO agendas, rather than local processes and values. It may be preferable to leave the selection of true peacemakers at the local level to informal consensus-based decision-making processes, as they may produce more legitimate and respected members. Democratic principles, on the other hand, can be fostered in relation to issues where the validity of local authority and decision-making structures is not as important. It should be acknowledged that if the aim is to work with local structures, integration and democracy – though excellent tools in many other situations – may not be the best tools for this task. It may be preferable to instead strengthen democracy in other areas so traditional processes can be influenced by a transformed and democratically empowered society.
- ▶ Enhance ‘local ownership’ of the peace committees and declarations. Equally important seems to be the question of ‘local ownership’ of the peace initiatives. As described in the report, peace committees and declarations or agreements are less efficient in areas where they were enacted by donors or NGOs, or where negotiated by higher level leadership without active participation of grassroots leaders. Two suggestions can be made in this regard: first, instead of creating a generalized structure and format, peace initiatives should be launched in response to specific local requests; second, in order to encourage more local ownership, initiatives should be made less dependant on external

donor funding, and peace committees should be encouraged to generate their own funding, such as through tourism.

- ▶ Mediate impacts of politics and power. While it is important to have sub-national leaders supporting the peace initiatives, it is key that the process remain in the hands of grassroots communities. It is not sufficient to hand pick representatives from local communities for higher level meetings, but grassroots communities must be allowed to implement their own meetings.

4. Security Sector

- ▶ Develop strategy for police on how to respond to socio-cultural challenges. Police work in the arid lands is challenged by local value systems more than the judiciary. Police frequently report of people approaching them to withdraw cases after being reported to the police – though police technically cannot allow withdrawal once a case has been filed with a court. In addition, witnesses or victims do not voluntarily appear at court as they do not understand the logic of court proceedings and/or do not want to jeopardize informal agreements reached between parties outside the court system. On the other hand, local communities expect the police to take their side, and to enforce any informal solutions they reach; and they are upset if the police do not react. Many of the constraints faced by the police stem from a lack of understanding of the police work and mandate by local communities. These challenges need to be better understood and addressed. This may include clear guidelines on how to respond to and support the peace initiatives.

5. Government, Development Agencies, and the Arid Lands Resource Management Project (ALRMP)

- ▶ Promote general development of the arid lands. General development of the region will have a positive impact on the number of conflicts in the arid lands. Improved access to education, health, and most importantly an improved road infrastructure will mediate a number of problems mentioned in this report. This includes an improved integration of the arid lands populations into the country, part of which has been initiated by locating ALRMP as a special program into the Office of the President and by the recent creation of a Ministry of Development of Northern Kenya and other Arid Lands. Many of these challenges have been taken on in the last decade, but government dedication to the region should be further encouraged.
- ▶ As the Arid Lands Program has a far-reaching infrastructure of offices and staff as well as development experience across the various arid lands districts, the program could be used as a vehicle for some of the above-made recommendations:
 - ◆ Conflict management training for peace committees could integrate training on basic law.
 - ◆ CDD infrastructure can be used for early warning on conflict and to organize grassroots conflict meetings.
 - ◆ A database on conflicts could be established to understand their nature and causes. Those related to natural resources can inform the natural resource management component on key issues to be dealt with.
 - ◆ Local development and CDD projects could be used to promote conflict resolution in specific cross-community conflicts.

6. Further Research Suggestions:

- ▶ Assessment of courts. A more specific assessment of the judiciary in Northern Kenya could focus on surveying courts, sentencing, and prisoners. This would help to understand how formal justice is applied in the arid lands, which laws are used and what kind of discretion is used by magistrates and judges. Such data can help to design programs for the judiciary to increase responsiveness to local societies.
- ▶ Development of statistics on court, police and peace committees. This could include the general improvement of court statistics, which would allow access to information on specific areas of the country. Similarly, statistics could be established in order to show what types of cases are reported to the police, where withdrawal is attempted by local parties and similar issues. Furthermore, creating statistics of the cases the peace committees deal with can help to gain an overview of their true relevance and success.
- ▶ Qualitative research on challenges of police. More in-depth knowledge is needed regarding the challenges police face in relation to the socio-cultural features of societies where they work. An assessment of those challenges could indicate how police work might be better supported and make it more efficient in remote areas like the arid lands. In fulfilling their mandate, the police face a number of challenges (e.g. witnesses or victims failing to appear at court or refusing to make police statements). Assessing these types of challenges can help to design a strategy that can not only help police to be more responsive to societies' needs, but also to establish general guidelines for police and their interactions with peace committees and declarations.

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