



Institutional Analysis of Non State Actors in Kenya

September 2002

This report is produced by a team of ECDPM staff (Jean Bossuyt and Charlotte Carlsson) and local experts including Karuti Kanyinga, Betty Maina and Raphael G. Mwai

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Chapter I: Introducing The Study

PURPOSE AND OBJECTIVES OF THE STUDY

1. The need to involve non-state actors (NSAs)¹ in the formulation and implementation of public policies has become a major feature of political life, both in Europe and in the developing world. This reflects the emergence of new forms of **'participatory democracy'**, based on a more consensual way of making policies through a dialogue with all relevant stakeholders
2. Over the last decade, processes of economic and political liberalisation have taken place in most developing countries, which have altered the role of the state and created space for non-state actors to participate in development. These 'new actors', including poor people generally lacking voice and political influence, increasingly **demand** to be informed and consulted in key decision-making processes at local, national, regional and global levels.
3. The international donor community has embraced the concepts of participatory development and institutional pluralism. It has sought to promote non-state actor participation through a variety of means, with varying success. The recent donor re-orientation towards the central objective of poverty reduction further emphasises the need to help promote a **new political culture** in developing countries, which provides genuine opportunities for poor people to articulate and defend their interests. The Poverty Reduction Strategy Papers (PRSPs) and the Cotonou Partnership Agreement (CPA) between the EU and the ACP reflect this new cooperation paradigm and related choice for a multi-actor approach to policy formulation and implementation.
4. Particularly in Africa, the move towards 'opening-up' policy processes has often met with much political and bureaucratic **resistance**. In several countries, the old habits of centralised, top-down management of development processes still persist, leaving few channels open for NSAs to influence national policy.
5. In Kenya, the Government is slowly responding to the demand for increased participation by gradually involving non-state actors in policy debates such as the ongoing Constitutional Review process and the PRSP. Yet much remains to be done to effectively mainstream NSA participation in policy formulation and implementation. For donor agencies willing to support NSAs (including pro-poor advocacy work), major knowledge and implementation challenges arise: what is the profile of NSAs in Kenya? How much 'space' is there in the prevailing political environment for effective (pro-poor) NSA engagement? To what extent are NSAs bound in the patronage system? Which are the most promising processes and mechanisms for participation? What role can donors play in helping to expand the scope for participation and improve NSA advocacy capacity?

¹ In this report, the definition of the Cotonou Partnership Agreement is used as far as non-state actors is concerned. According to article 6, these include private sector, economic and social partners (such as trade unions, employers associations, etc) and civil society "in all its forms according to national characteristics".

The NSAs themselves are struggling with the same strategic and operational questions, as they try to adapt to the new environment and opportunities.

6. Against this background, Dfid EA (K) and the EC Delegation in Kenya have requested the European Centre for Development Policy Management (ECDPM), an independent foundation based in Maastricht (the Netherlands) to execute a study providing an ‘Institutional Analysis of Non-State Actors’ in Kenya.
7. The **purpose of the study** is to deepen the “understanding of non-state actors and their interactions with and influence on the formal and informal systems of governance”. For both donor agencies involved, this is seen as the first step in designing a long-term strategy for engagement with non-state actors, aimed at promoting the development of “more inclusive, accountable and representative (formal and informal) systems of governance”.
8. In this logic, **three objectives** have been assigned to the study:
 - To execute a basic survey of key social, political and economic non-state actors/power holders within civil society at large (possibly including organisations of the poor with identifiable, real social roots) at both national and local (government) level;
 - To make a general analysis of their relationships and linkages with the political establishment, development partners and the constituencies they represent;
 - To identify opportunities and entry points for engagement with non-state actors with a view to influence policy-making and implementation of pro-poor government policy
9. In order to illustrate in a more concrete manner how NSAs can engage in policy-making, it was decided to focus the study on **three particular policy areas**: primary education; private sector development and the Gok budget process.

METHODOLOGY, LIMITATIONS AND DIFFICULTIES

10. Starting point was the recognition that the study covers a vast and potentially sensitive topic. Hence, the need for realism as to what can be achieved in a relatively short period of time. It was therefore agreed that the study would aim at providing an overall picture of the political economy of Kenya (instead of a detailed analysis) and a basic survey of NSAs (rather than a detailed ‘mapping’). The sensitivity of the topic led the team to adopt a low key approach
11. Traditional methodological tools were used to execute the study, including desk review; production of Issues Papers and related questionnaires (for each of the three case studies); preparatory seminar with Dfid/EC officials at the start of the fieldwork; semi-structured interviews with a wide range of actors (including focus groups discussions and informal brainstorming sessions) and a debriefing seminar at the end of the mission.
12. A key methodological choice was the involvement of relevant local expertise. This was seen as a precondition for effective outcomes, considering the nature of the study and

- related need for inside knowledge of Kenyan political realities, processes and actors. Three local experts³ effectively participated in the study, each taking the responsibility for particular topics, reflecting their respective area of competence. In practice, the study was executed as a genuine team, with local experts and ECDPM sharing experiences and ideas, acting as sounding board for each others contributions, jointly deciding on the structure and main messages of the report, etc. Also this report can be seen as a 'joint production'.
13. Different categories of actors were selected for an interview, reflecting the need to cover both the general strategic dimensions of the study (e.g. the nature of policy-making in Kenya) as well as the three case studies. Other selection criteria included relevant involvement in advocacy work, particular concern with pro-poor policy change and the need to also collect local-level views (a short visit to Kwale district was organised, involving local government actors, private sector and civil society organisations).
 14. On the whole, the study team was able to interview a wide range of actors and stakeholders at different locations (Nairobi, district), representing different institutional perspectives (public sector officials, NSAs in all their diversity, donor agencies, foundations, international NGOs, etc.) and interests (e.g. both 'big players' and small-scale private sector organisations were targeted). A full list of people interviewed can be found in the Annex of this report. In our view, and considering the time available for the fieldwork, a **fairly representative** sample of actors was involved in the study.
 15. The **main limitations** were the **complexity** of the topic and the **time available** for the fieldwork. Both the analysis of the (evolving) political environment for NSA participation and the survey of the hugely diverse world of NSAs in Kenya, brought along major conceptual and methodological difficulties. For instance, there were major limits to collecting, in a systematic and scientific way, data on the nature of policy processes. Inevitably, interviews with stakeholders from different backgrounds, yielded a wide range of subjective views and insights. Though they provide rich material, it proved quite a challenging task to put this material together in a reasonably objective framework (as requested by the TORs). The limited time available for the research has implications for the scope and depth of the study outcomes. For instance, only one visit to the field could be organised, thus reducing inputs from the local level and from informally organised (poor) people. In a similar vein, it was not possible to make a detailed analysis of linkages between groups of NSAs, specific funding arrangements or organic relations with constituencies. This kind of in-depth analysis would require follow-up work over a longer period of time, and using different methodology.
 16. **Three major difficulties** were encountered. First, the problem of terminology and use of **language**. For instance, many Kenyan actors interviewed found it difficult to relate their experience with advocacy work to the concept of 'pro-poor change' (perceived to be a rather abstract donor idea). Another example relates to the words 'civil society' or 'non-state actors', meaning different things to different people (with the resulting difficulty to produce a mapping based on agreed categories of actors). Second, while the team generally obtained fairly easily appointments with interviewees, it proved impossible to **access** some key local actors in the short period of the fieldwork. Third, relatively little relevant research and **empirical data** could be tracked down with regard to the issues at

³ A fourth local expert was invited to participate in the case study on education. However, his involvement was very limited, as a result of competing demands on his time.

stake in this study. Also the actors or donor agencies involved in advocacy work have so far not really systematized their experiences and lessons learnt. This difficulty made it hard to check insights collected during the fieldwork.

SOME INITIAL OBSERVATIONS

17. During the fieldwork, a fascinating array of general observations were made by actors involved in the consultations, in relation to a wide range of issues, including i) the changing political environment in Kenya; ii) the emergence of new space for social and institutional innovation; iii) the rapid evolutions in the world of Kenyan NSAs; and iv) the mixed feelings towards donor roles and intervention methods. These general observations are summarised below in order to contextualize the study and its relevance for NSAs in Kenya.

An important and timely study

18. This is a first general point coming out of the interviews. The study topic is not only relevant for donor agencies willing to support political reform processes and participatory development. The issues raised are also key to Kenyan NSAs at this “interesting moment in Kenyan history”, when the country seems involved in a fundamental transition process, which many people consulted saw as “irreversible”.
19. This transition process can be characterised by four main features
 - *Dwindling state power.* The political liberalisation process that started in the early 1990s, have slowly but steadily led to an erosion of the monopolistic state, constructed on personal rule and patronage. While the ‘old system’ shows much resilience and still manages to control many things, it was generally felt that ‘space had been regained’. Government is loosing influence at different levels. The resources available to ensure effective implementation of policies have been drastically reduced, forcing the government to reach out to NSAs and to comply with the “process conditionalities” of donor agencies aimed at widening participation in policy processes (such as the PRSP) to NSAs. As the state loosens its grip on the public service, new opportunities arise for meaningful partnerships with the civil service
 - *Shifting NSA priorities.* Under the closed, personalised political system that prevailed till the return to multi-party politics in the early 1990s, there were little incentives or opportunities for most NSAs to engage in policy processes. NSAs were primarily concerned with servicing their members/constituencies and generally did not see the importance of policy advocacy, nor a role for them in this area. The changing environment of the 1990s helped to unleash the potential of NSAs to demand political and economic reforms. While this is still a fairly young and fragile process, NSAs are pushing to “entrench” the new space and to improve their overall advocacy capacity.
 - *Changing basis for legitimacy.* As the state finds itself shortfunded, it becomes increasingly difficult to ‘buy legitimacy’ through patronage. Several interviewees argued that ‘effective delivery’ (e. g. of social services, jobs) was increasingly seen as the new basis for political legitimacy. This also applies to many NSAs, particularly

private sector organisations based on membership (e.g. the Kenyan National Chambers of Commerce, the Kenyan National Farmers Union)

- *Pressures.* Internal factors in the authoritarian, centralised models of governance are under growing scrutiny and pressure to reform as a result of both internal (e.g. societal demand for change) and external factors (e.g. donor conditionalities, the challenges of globalisation). The resolution of thorny policy issues (e.g. who will deliver safety? What is role of government in water provision) will provide a further laboratory for “changing the state and its modus operandi” in a wide range of policy areas.

Scope for innovative ideas and experiments

20. The transition process also manifests itself in the form of ongoing experiments of political and institutional change at different levels, in which NSAs are involved.
21. Several examples of such change processes were provided during our consultations, including:
 - *Local development coalitions spearheaded by the district.* The pressure to address poverty and improve service delivery is fuelling the search for new modes of local governance, based on a multi-actor partnership between local authorities, civil society organisations and the private sector. As a leading NGO respondent argued: “NGOs are increasingly in favour of turning local government into the focal point for promoting local development, provided NSAs can effectively participate in planning and implementation, down to the village level”.
 - *Reform of regulatory systems.* In many key economic sectors (coffee, tea, sugar, tourism, roads), processes are underway to change the rules of the game for regulatory boards. In an attempt to break with the political control over the economy and related patronage systems, the reforms aim at re-allocating roles and responsibilities in line with the logic of the market and the new enabling role of governments (“let farmer institutions be run by farmers, while the government set the standards”).
 - *Joint action in defense of vital trade interests.* After a series of less successful experiences with defending key national trade interests only through public sector intervention, openings have been created to associate (parts of) the private sector (e.g. in light of the Doha meeting of the WTO). Also for the NEPAD agenda, a ‘Joint Secretariat’ was set up.
 - *The rise of knowledge institutions.* The importance of knowledge creation and management is now recognised by both state and non-state actors. In recent years, this has led to the creation/strengthening of national knowledge institutions (e.g. KIPPRA, IPAR, IEA, CDG, CLARION) , whose products and services are enjoying increased demand and use in policy processes.
22. Further in this report, other change processes will be analysed, reflecting a creative use of the development space and new modes of NSA engagement. While all these experiments

are generally at an infant stage and ridden with difficulties, they also provide evidence of the political, institutional and social transformation process that Kenya is undergoing.

Conceptual and operational confusion

23. While the existence of new opportunities for NSA engagement was widely recognised, it also clearly appeared that much conceptual and operational confusion surrounds the search for a pluralist society and a more inclusive, accountable and representative system of governance in Kenya.
24. The **conceptual confusion** relates primarily the models of action to be used by the different actors. For instance, **what model of civil society** underpins the government's apparent willingness to associate NSAs in policy processes? To what extent is it still the old, bureaucratic model of the 'developmental state'? To what extent is it an aid model, whereby partnerships with NSAs are reluctantly accepted as part of the new conditionalities and with a view to regaining control over aid funds?
25. A similar confusion is noticeable on the side of **donor agencies** willing to increase their support to (advocacy) NSAs. Beyond the formal provisions of the Cotonou Partnership Agreement, what is the rationale behind the EU's search for a new partnership with NSAs? Or that of other donor agencies like Dfid (with its overriding emphasis on fighting poverty), USAID (with its overtly political, pro-civil society approach) or the Nordics (with their complex heritage of past cooperation)? Are donor agencies looking forward to improve dialogue with NSAs in order to contribute to fundamental change processes, including the formation of accountable states as well as open and pluralist societies (in a long-term time perspective)? According to the model of action chosen, donor support strategies towards NSAs may differ widely from a **purely instrumental approach to a political-institutional approach**.
26. NSAs in all their diversity, also struggle with thorny conceptual questions. As one respondent argued : "new space for participation was suddenly created, but what should NSAs do with it?". Confusion exists, for instance, on the specific roles that civil society organisations should play in policy processes, on the agendas they should be pushing or on the advocacy models they should follow. Private sector organisations generally find it difficult to articulate their role in poverty reduction (beyond the creation of wealth and job opportunities) or in society as a whole.
27. Different forms of **operational confusion** were raised during consultations, including practical questions such as:
 - Where exactly is the 'new space' for NSA engagement? To what extent is the 'old system' (based on patronage and blurred lines between state and non-state actors) still in place? What has really changed?
 - What are the incentives to engage in policy processes?
 - How can the new space be effectively used, considering the huge number of NSAs concerned and the inadequacies of the current institutional set-up for participation? How can the 'smaller' players get access to the policy process?
 - What channels, institutional mechanisms and tools (e.g. collective action) should be used in advocacy work?

- To what extent should priority be given to advocacy aimed at ensuring effective implementation?
 - How can linkages and synergies be improved among and between different categories of NSAs?
 - What should be the relation between investing in advocacy work and strengthening state capacity? It makes little sense to increase NSA capacity to express voice and articulate interests in the absence of a credible and capable interlocutor on the other side.
 - How can impact be achieved with advocacy work?
 - What is the added-value of different donor agencies (including international NGOs and foundations) in supporting these politically complex change processes?
28. In addition to this, several interviewees warned against “**simplistic assumptions**” regarding NSA engagement in policy processes. There is no guarantee that increased NSA advocacy will improve policy processes, nor that NSAs by definition will act as (pro-poor) change agents. In a similar vein, advocacy entails more than activism. The majority of Kenyan NSAs may be poorly prepared/equipped to enter the political arena and to articulate their voice in an organised, efficient and knowledgeable way. Even those who are firmly committed to serious advocacy work, may be subject to a loss of enthusiasm if results remain elusive. The risk of “apathy” for NSA engagement in policy processes was often mentioned. In the words of a respondent : “The space for dialogue is there, we talk about issues with government officials, prepare papers and inputs, but implementation is zero...”

Worries about ownership and hands-on donor approaches

29. Another key concern that came up several times during our consultations relates to the ownership of advocacy and change processes and the danger of donor-driven approaches.
30. Experience across the developing world suggests that ownership is key in reform processes. For many NSAs interviewed, the debate about opening-up policy processes to NSAs is not simply about improving the quality of policies or fostering participation. It amounts primarily to building a pluralist society with governance systems adapted to the development challenges of Kenya in the radically changed international environment. For the change process to be effective, it has to be locally-driven and based on home-grown knowledge.
31. This has major implications both for the content and the delivery modalities of donor assistance. The way forward has been aptly captured in the 1997 Development Assistance Committee (DAC) Report, which states that development should be seen as “social learning”. This, in turn, sets a twofold priority agenda for donor agencies : to foster “the emergence of competent societies through capacity building approaches to development cooperation” and to convert to “cultures and modalities that facilitate social learning by local actors rather than deliver donor-designed solutions”⁴
32. In practice, however, the effective implementation of this key recommendation lags behind. During interviews, a fairly strong **disenchantment** could be heard **towards**

⁴ OECD. Efforts and Policies of the Members of the Development Assistance Committee. Development Cooperation. 1997 Report.

current donor approaches in general, and in relation to supporting NSAs in particular. Major flaws were seen to be a tendency to give priority to donor agendas; an imposition of reforms (e.g. SAP) without ensuring an effective societal debate on the policy choices involved; a preference for short-term, ad hoc approaches; a bias towards NSAs with a recognised status that speak the donor language and are able to comply with donor procedures; a tendency for hands-on approaches [does this mean a “come in and do it” approach by expats rather than facilitating processes that are homegrown?], particularly in field of expatriate technical assistance. In the absence of major changes in the donor mindset, strategies and intervention methods, little sustainable impact is to be expected from future aid to NSA advocacy work.

STRUCTURE OF THE REPORT

33. The study is presented in two parts. The general findings are summarised in a Main Report (Part I). The three case studies, requested by the TORs, can be found in Part II. They provide more detail on the issues raised in the Main Report. Efforts have been made to avoid overlappings between both parts by clustering generic issues in the main report (in order to provide an analytical framework) and by getting into the specifics (including on mapping of NSAs and entry points) in the case studies. In this sense, both parts are complementary.
34. The Main Report is structured as follows:
 - After this introduction, Chapter II analysis the nature of policy-making in Kenya and its evolution over time, including the ‘opening-up’ of new space for NSAs and the opportunities arising from it.
 - Chapter III provides a basic survey of NSAs in Kenya as well as an operational tool (for donors agencies) to identify NSAs with whom to work in advocacy support strategies. It also reviews past and current NSA engagement strategies.
 - Chapter IV looks at the question of NSA impact in policy-making, reviewing the main challenges, constraints and opportunities.
 - The concluding Chapter V reviews lessons learnt with donor support to advocacy NSAs; identifies a set of guiding principles for future support as well as key priority actions to consider.

Chapter II : The Nature of Policy-Making in Kenya

SETTING THE SCENE

35. In Kenya, until recently, the **state** has been the **principal actor** in the policy-making arena. The executive has traditionally dominated both the processes and the institutional framework for policy making. The executive has been central in issuing policy statements, which are then debated in parliament to become government policies.
36. The origin of regulative policies has been the Attorney General's office or the relevant government ministry. In this regard, the AG or the Ministry would write Cabinet Paper for discussion at the Cabinet level and, if passed by the Cabinet, the AG would draft a Bill for debate in Parliament. On the other hand, development policies have been associated with the Ministry of Planning and National Development (MPND) and/or Presidential Commissions. Government ministries/departments usually constitute sectoral groups to discuss policy issues relevant to their respective sectors/ministries. The results are submitted to the MPND for study and compilation of National Development Plans and/or District Development Plans.
37. Policies have also evolved from **presidential directives**. The President sometimes gives directives, which are then translated into policies. These are then communicated to the public by the relevant government ministries or the Office of the President.
38. NSAs such as the civil society organisations and private sector groups have had very **limited space** for participating in formal policy-making, although they have been critical in policy implementation. Access to policy-making was restricted to those with organic links with the state, primarily through informal channels. Domination of the executive in policymaking process and neglect of NSAs in policy formulation has in some cases resulted in the policies lacking wider public support.
39. Recent years, however, have witnessed a **gradual opening up** of the policy-making arena to a wide range of NSAs, which could exercise influence on both the formulation and implementation of important policies in different ways. They have occasioned modification of policies and in other cases contributed to delays in implementation or even led to shelving of implementation altogether as the government studies the implications of implementation of a particular policy.
40. This section further discusses the historical context of policymaking in Kenya; the nature and character of this new space for NSA participation; and its implications for improved role of NSAs in influencing policy formulation.

HISTORICAL OVERVIEW

41. Four dimensions are analysed in this short historical overview: (i) the role played by different actors in the policy process (state institutions, civil society, political parties); (ii) the ‘politics’ of policy-making under the Kenyatta and Moi régimes; (iii) the evolving links between patronage and policy-making; and (iv) the political liberalisation (1992-2002) and related opening up of new space for NSAs

The role played by different actors

42. A first category of actors are the **state institutions**. At independence in 1963, Kenya inherited from the colonial situation a highly centralised bureaucracy. The executive continued to dominate other state institutions and non-state actors in the policy-making arena. Through the use of institutions that had been established by the colonial regime, the state consolidated its rule in the development space and, consequently, became the dominant actor in the institutional framework for policymaking. This resulted in the state monopolising the right to organise not only economic but also social and political activities. Relatedly, the state became the engine of development and by that the most important institution in the development space and the society in general.
43. The Independence constitution gave the country a constitutional arrangement, which provided for **separation of powers** between the Executive, the Judiciary and the Legislature. In this arrangement, the Executive was answerable to Parliament which meant that the Parliament was the supreme organ. In other words, ‘the legislature kept a close supervision of the activities of the executive... the constitution recognised the legislature as the supreme organ of the state in policy matters’⁵. This implied that the executive could initiate policies but parliament had to approve them before implementation. The Judiciary also assumed the responsibility of checking the excesses of the two institutions by ensuring that they operated in line with the constitution.
44. Between 1963 and 1969, however, a series of **constitutional amendments** led to concentration of powers in the Presidency. These amendments placed the executive at the centre of policy matters; eroded the basis of parliamentary supremacy. This had several consequences for policy making. Parliament was no longer supreme in matters relating to policy formulation and implementation. The President assumed powers and responsibilities that resulted in him becoming the single most important and politically powerful individual. Significantly, the President assumed an important patronage position. The President had the power to appoint and/or fire Members of Parliament into and/or from the Cabinet. This meant that social-political careers of Members of Parliament depended on MPs’ relationship with the President and, above all, the MP’s position in the patron-client network. In this network, the President was the centre around which everything revolved. Parliament eventually became subordinated to the executive and, consequently, its influence in policy formulation began to wane.

⁵ C. Odhiambo-Mbai (1999), ‘The Nature of Public Policy-Making in Kenya, 1963-69, in Ng’ethe, N. and Owino, W., *From Sessional Paper No 10 to Structural Adjustment : Towards Indigenising the Policy Debate*. Nairobi : Institute of Policy Analysis and Research (IPAR). For a comprehensive discussion on the relations between the Executive and the Parliament during the early 1960s, see Gertzel, c. (1970). *The Politics of Independent Kenya, 1963-68*. Nairobi. Heinemann

45. Within the executive, the Ministry of Planning and National Development emerged to play an important role in policy formulation and implementation. The government created several other structures at the Provincial and District levels to support the Ministry in both formulating policies and coordinating policy management and implementation. Provincial Development Advisory Committees and the District Development Advisory Committees became important in this respect.
46. In 1983, the government further sought to **decentralise development planning** and policy implementation. The government inaugurated the District Focus for Rural Development with a view to decentralising development planning and policy management. Local level institutions again were to play a key role in the new framework under the guidance of the Ministry of Planning and National Development. District Development Committees (DDCs) evolved as the most important institutions in this context. They became important organs for formulating and implementing policies at the local level.
47. The success of DFRD as a decentralisation strategy was predicated on donor funding. Donors' withdrawal of Rural Development Funds- the bulk of which supported the operation of DFRD - resulted in the DDCs lacking resources for distribution to development projects. The influence of DDCs in formulating and implementing policies considerably declined. This situation has obtained to-date.
48. **A second category of actors are the civil society and the political parties.** It should be stressed that the country also inherited a well developed and a vibrant civil society (see Chapter three for details on the different types of civil society organisations and private sector groups in Kenya).⁶ Some of the civil society organisations had been formed during the colonial situation to articulate the interests of their respective constituencies. Trade Unions, Farmer Associations, Business Associations, ethno-regional associations, and self-help groups, among others, were very active in articulating concerns of their members. They also played the role of linking their membership to the relevant government departments; they were an important bridge between their membership and the government.
49. Some of these groups had an organic relationship with the state and therefore influenced policy formulation and implementation with ease. For instance, colonial settler farmers formed Farmer Associations during the colonial period. These associations were very influential in policy making at the time because they were critical to economic stability. As a result of this, the government listened to them and formulated policies in line with their interests. After independence, settlers' farmers got on board the new political elite who took over settler farms. These new elites became members of these associations and subsequently continued to inform government policies in line with their interests.
50. The country ascended to independence with a multi-party political arrangement but gave way to a single party in 1969. Two main political parties contested the political space at

⁶ In this study, civil society is used in a more inclusive manner to mean the realm of voluntary and autonomous associations that are independent of the state. Some of these groups aim at promoting collective interests. Others are pre-occupied with service delivery and mobilisation of important constituencies in order to impact on policies. Civil society in Kenya thus comprises development NGOs, CBOs, professional and business associations, labour unions, cooperatives and credit unions; farmers associations; women's and youth groups, human rights advocacy groups, as well as social-cultural groups.

the time: the Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU). There were of course other smaller parties formed to articulate ethno-regional concerns.

51. Policy matters informed both the formation and the operation of these political parties. KANU preferred a unitary form of government governed especially by liberal economic policies. The party preferred little or no alterations on the colonial economic structures in order to maintain economic stability. On the other hand, KADU preferred a federal or *Majimbo* form of government in which regional governments took control of economic and political matters in their respective regions.
52. KADU lost the 1961 election but its influence on *majimbo* spread into the constitution making process and therefore *Majimbo* was adopted as a compromise between KADU (and the colonial settlers) and KANU. The new constitution thus provided for a federal government. However, KADU wound up in 1964 to 'enhance national unity'. Further constitutional amendments seeking to provide for a unitary form of government followed in earnest and the *majimbo* form of government was done away with around 1965.
53. From this point onward, KANU assumed control of an uncontested political space. This enabled the executive – and the President in particular - to acquire substantial political powers which resulted in the subjugation of other state institutions and attendant personalisation of the entire political system. In other words, the Presidency became very powerful –Presidential powers were rarely checked and balanced by other institutions. This resulted in the executive monopolising public policy making process and the public realm in general.

The politics of policy-making

54. A first point to make with regard to the **Kenyatta Regime (1963-1978)** is that in spite of the personalised nature of state institutions during the first two decades of independence, President Kenyatta was rarely impulsive in policy making. The Chief Secretary (and not Kenyatta himself) often made official communications. Policymaking thus involved the chief technocrats in the Office of the President and the Ministry of Planning and National Development. Government technocrats were rarely reshuffled from their official duties.
55. Policymaking also involved an inner circle of ethnic elites - economically and politically powerful individuals from the President's home district - Kiambu. The ethno-political elites were directly loyal to Kenyatta. They also used to liaise with the technocrats in formulating the policies. Because of their dominant role in the governance structures, they used to act as the gatekeepers to the Presidency and therefore to the policymaking space. They regulated the entry to both the political space as well as the social-economic space. In this position, they were very critical to the government's acceptance of policies formulated by the technocrats.
56. Kenyatta's inner cabal of powerful individuals influenced formulation of policies in both formal and informal ways. As already mentioned, they would liaise with the technocrats and formulate policies in line with the interests of the government. The Chief Secretary who was the head of the civil service and secretary to the cabinet would then communicate these policies to the public.

57. Policies were also made using informal ways. Sometimes this involved individuals and/or groups of individuals making official or informal visit to the President. In other cases, those interested in a policy would access influential politicians and request them to ensure that the government formulated and implemented a policy that favoured their interests. Depending on the advise of the powerful individuals or the technocrats or his own judgement, the President would turn down the requests or give a favourable reply. At other times, he would promise to attend to the request in the future after consulting with the government technocrats.
58. A positive reply to any of these requests would become a policy; the technocrats in attendance would immediately synthesis the Presidents reply into a policy. This would be communicated to the group on the spot or later through their respective District Commissioners or even the Head of the Civil Service. The President's Court was one of the most important arenas for public policy making at the time.
59. The above notwithstanding, the Kenyatta regime was devoid of active party politics and therefore lacked alternative view points on policies. Party functions such as political mobilisation, political communication and policy articulation increasingly became associated with the provincial administration and the civil service in general. This remained in force until the ascendancy of Moi to Presidency in 1978.
60. The **Moi régime** started off at a time when economic growth rate was fair, having been serviced by the coffee boom of 1977/78 period. Containing the powerful group of ethnic elites who influenced policymaking and political events during the Kenyatta period and managing the deteriorating economy became his main challenge. However, as a new President, he lacked an independent and supportive political clientele to do so.⁷ The immediate option was to rely upon members of the Kenyatta powerful group to manage politics and to chart a course to legitimise his leadership.
61. In order to consolidate a power base and win support in the countryside, the new President resulted in issuing **populist policy statements** and then directing civil servants to implement them. Public meetings and *Harambee* (literally pulling/pooling together of resources) provided a main forum for this. The *Harambee* meetings became fora for populist pronouncements, which were then translated into official government policy by the technocrats. In most cases, the government technocrats were in attendance in these meetings to identify policy comments from the Presidents statements.
62. Populist pronouncements raised huge public expectations concerning the role of the government in development. Over time, it became increasingly difficult for the state to meet these obligations. This failure eventually had serious implications. **Disillusionment and disenchantment** began to take hold everywhere. With a declining economic growth rate, which began to deepen in the early 1980s, the government clearly lacked the capacity to attend to some of the policies.
63. Later in 1983, the President initiated a development decentralisation policy that evolved local institutions for local level participation in policy formulation and implementation. The new policy, the District Focus for Rural Development (DFRD) became the single

⁷ For details see Throup, D. (1987). 'The construction and Destruction of the Kenyatta Sate' in M. Schatzberg (ed), *The Political Economy of Kenya*. New York: Praeger ; Barkan, J. (1992). 'The Rise and Fall of a Governance Realm in Kenya.' in Hyden, Goran and Michael Bratton (ed). *Governance and Politics in Africa*. Boulder: Lynne Rienner Publishers.

most important institution for negotiating for development resources outside of the Parliament. The intent of this development strategy was to promote a more equitable distribution of resources. This received popular support from many ethno-regional groups at the beginning and served as a base for disaffection due to the nature of the patronage that took hold in its various structures.

The evolving links between patronage and policy making

64. The new political regime under President Moi resuscitated the political party, KANU, which remained inactive and moribund during the 1970s. Party branches at the district were revived to take a centre stage in mobilising citizens to support the new leadership. Party organs indeed became important avenues for promoting the DFRD as a populist development strategy. The Provincial Administration, together with the revived party structures, began also to play an important role in facilitating consolidation of government's authority. With centralised powers in the Presidency, the revived party and the Provincial Administration became the basis for authoritarianism, which spread from the political space into the development space.
65. The executive and the President in particular continued to dominate the policy making process. Influential politicians at the districts also continued to subjugate the government Ministries/departments and NSAs in policy making. Politics took primacy over everything else in the development space. Only the politically influential NSAs could inform policy.
66. The central role that the President occupied in policymaking had the consequence of **undermining the capacity of state institutions** in making policies. Even within the executive, it became increasingly difficult to independently make policies because everything had to be made in reference to the President or be sanctioned by the President. Civil servants, who either delayed in implementing the different directives or questioned the directives, faced disciplinary measures.
67. The personalised mode of rule did not undermine the capacity of bureaucracy alone but also that of other institutions. Similar amount of decay was also evident at the level of parliament where MPs were always worried about what to support or criticise during parliamentary debates. Some would take cue from the Leader of Government Business and therefore support the government's line of argument for or against a certain policy. Others chose to be silent in debates. The only political party at the time - KANU - also constituted a Disciplinary Committee with the mandate to discipline Members of Parliament who had views different from those of the government. In spite of parliamentary immunity that MPs enjoy while debating on different motions in Parliament, those had different views from those of the government, were often arraigned in the KANU Disciplinary Committee and charged with opposing the government. Some lost their party positions as a result of this.
68. As argued below, **political liberalisation** in recent years has undermined the potential of political patronage. New parties and civil society organisations have emerged and have increasingly challenged the dominant role of the state in the policy making process. Political liberalisation has also occasioned a major revival of public institutions. Parliamentary Committees are very active and independent of the executive. Opposition political parties are continuously monitoring the government (and the ruling party) and its

control of the policy making arena. Generally there is a **change from institutional decay towards institutional revival** - the public sector is 'catching up' . There are also indications that its capacity for policymaking is slowly improving in some areas. This may present an important opportunity for pro-poor advocacy work by NSAs.

Political liberalisation and new space for NSAs (1992- 2002)

69. In 1991, Kenya re-introduced multi-party politics. This was the result of continued domestic and external pressure (from the late 1980s) for political liberalisation. Political liberalisation occasioned expansion of political space and an **increase in the number of political actors**. It resulted in registration of opposition political parties and general pluralisation of the society. However, political liberalisation did **not immediately create room for NSAs** to influence policy making; the government remained the dominant actor throughout the early period of political liberalisation. Suspicion and mistrust indeed continued to characterise relations between the government and NSAs – and NGOs in particular.
70. The specific case of NGOs (active in different sectors) is presented below to illustrate how NSAs tried to appropriate the new openings brought about by political liberalisation and to influence policymaking.
71. From the early 1990, NGOs (and advocacy groups in particular) have effectively engaged the government in search of a space to articulate their interests and to inform policymaking. The Non-Governmental Organisations Coordination Act of 1990 provided the NGOs with the first opportunity to demand to be involved in making policies that affected them. The legislation was brought into Parliament in the form of a Bill in the late 1990 without consultation with NGOs.
72. In its initial form, the legislation sought to control and police the operations of NGOs. In order to do so, it placed the responsibility for registration of NGOs in the office of the President, Department of Internal Security. NGOs interpreted this to mean a hostile reception by the government and therefore continuation of suspicion and mistrust between themselves and the government. In their view, their role at the forefront for political liberalisation had occasioned the appetite for control of NGOs. They nonetheless continued to press for amendment of the legislation and, subsequently, between 1991 and 1993, the government allowed several amendments, which NGOs had drafted after consulting widely within the NGO community.
73. The NGOs also continued to press for placement of registration and co-ordination responsibilities in relevant government Ministry. In 1999 the government placed them in the department of Culture and Social Services, which had been the traditional department for registration and co-ordination of voluntary organisations including NGOs. More NSAs began to engage the government in search of a space to articulate their concerns and/or inform government decisions on what concerned them. Notable in this regard were the advocacy groups (human rights and good governance NGOs) whose numbers rapidly grew from less than 10 in the early 1990s to over 50 by mid 1990s and to about 100 by end of the 1990s. After the 1992 elections, these groups continued to press for comprehensive constitutional reforms. Some of them teamed up with opposition political parties to press for meaningful changes. The government eventually allowed for a review

of the Constitution; the Constitution of Kenya Review Commission was established. Some Commissioners are drawn from the Civil Society.

GROWING INFLUENCE OF NSAs IN POLICY-MAKING

74. The influence of NSAs in formulating policies has been on increase in the social-economic spheres where cases of collaboration between the government and the NSAs in sectoral policy making have been on increase. At the same time, NSAs have been able to demand entrance to the policy-making arena. Some have combined research and good analysis to influence policymaking. Others have been persistent in persuading the government to recognise them as credible actors in the policymaking arena. Persuasion, persistence, and advocacy based on good research and analysis thus have been a marked feature of all successful cases of involvement of NSAs in policymaking.
75. The entrance of NSAs in policy making has also been through willingness to work in close consultation with the government. For instance, in 1996 the Kenya Alliance for Advancement of Children (KAACR) demanded re-drafting of the Children's Bill arguing that a 1995 Bill that had been drafted by the AG did not meet the expectations of group promoting 'rights of the child'. The group commissioned research on the subject and used the findings to make recommendations to the AG. The AG appreciated these efforts and began to consult the group in drafting a new Bill. The new Bill incorporated all the recommendations by the group and was enacted later into law.
76. In another example, NGOs working in the area of HIV/AIDS were able to influence formulation of a policy on control and management of HIV/AIDS. The Kenya AIDS NGO consortium brought together the different actors (including the government) to discuss formulation of this policy. The government finally formulated the policy in consultation with the consortium and with wide spectrum of actors in the sector. The result was a sessional paper No. 4 of 1997 on Control and Management of HIV/AIDS in Kenya.
77. Advocacy NSAs have influenced formulation of policies in many ways. For example, from around 1997, the Centre for Governance and Development (an advocacy NGO) commissioned research on the status of the country's economy. The Centre organised workshops to discuss the results. In response to these efforts the government prepared a sessional paper on the Tea Industry. CGD rallied together the stakeholders and prepared a counter proposal with several recommendations. The government incorporated their recommendation in the sessional paper. In yet another example, the government enacted the Retirement Benefits Authority Act of 1997 without adequate involvement of NSAs. The Institute of Economic Affairs (IEA) organised a series of public discussions on the Act. The Institute made several recommendations some of which were incorporated into the Bill.

GOK's WILLINGNESS TO ENGAGE

78. The above suggests that the government is gradually opening up the policy making space to NSAs. The establishment of the Constitution of Kenya Review Commission and contributions of NSAs to the PRSP process, in addition to the different policymaking initiatives cited above, are a pointer to an increasing willingness on the part of the

government to work with NSAs in the policy arena. Although much of this can be attributed to continued pressure, demand and persuasion by NSAs to be allowed into the space for policymaking, their pressure alone could not have yielded these results. The government on its part has been showing willingness to work with NSAs for different reasons.

79. One important **incentive for the government's 'open-up' attitude** is the realisation that that NSAs are critical to successful implementation of policies and therefore the need to collaborate with them in policy formulation. Importantly, government has had limited capacity and resources to implement policies. Opening up to NSAs is an important means to an end - implementation of policies. The assumption here is that that the results of implementation will enhance government's legitimacy.
80. The government has also carried out extensive civil service reforms including retrenching of civil servants. This has certainly resulted into a thin capacity for policy implementation and by that aroused the need to collaborate with NSAs in policy formulation and implementation.
81. In recent years, the government has been 'recruiting' private sector technocrats to assist in the management of strategic ministries or departments.⁸ The government started some of these initiatives at the urging of the donors and therefore the initiative died after a short while. Although this may be attributed to absence of 'political will', one may argue that the fact that they took place in the first place is more significant than if they had not happened at all. Secondly, the fact that they take place demonstrates that the government is slowly loosening its tight grip on the policy space. It also indicates that the government will open up completely in the near future especially as opposition political parties and NSAs consolidate their grip of the new space.
82. Another important observation is that patronage resources, which supported the domination of the space by the President and the executive in general, are declining or are completely exhausted. The source of patronage resources included the parastatals but some of these make little or no returns to depend on. On account of this, use of patronage in the policy arena is on decline. This implies that the government has to give in to pressure to work with NSAs; the government has limited or no capacity to implement the policies alone and therefore cannot lock out the NSAs from the policy arena.

FEATURES OF THE NEW POLICY-MAKING SPACE

83. A wide range of reactions were gathered from interviewees with regard to the question : what has really changed in the nature of policy-making in Kenya since the political liberalisation? Some felt the changes are rather limited, as power holders have shifted to more subtle ways to contain and/or control the space for effective NSA engagement. Others, by contrast, were quite enthused on the openings created in a rather short period of time.

⁸ The best example here is the Dream Team that was constituted in early 1999 to assist in economic recovery. The team comprised experienced Kenyan technocrats from the World Bank and the Private Sector. Most of them worked as Permanent Secretaries in strategic ministries.

84. From these different opinions, it is possible to define some key features characterising the new policy-making space:

- *Fluid and dynamic nature.* A first feature is the fluid and dynamic nature of the new space; it is continually changing depending on the willingness of the state and the NSAs to engage each other. There are times when collaboration appears easy and other times when it is difficult. Although the government has shown willingness to involve NSAs on particular policies, there are times when the government shows distrust and suspects NSAs involvement. Similarly, NSAs are approaching the new space with caution; some tend to suspect and mistrust the government. In their view, they should not ‘trust a government that has always viewed them with suspicion and mistrust and now suddenly wants to do business with them’. It is ironical that willingness to work together is now an obstacle towards working together.
- *Multiple arenas.* In this new space, there are multiple arenas for engagement of NSAs. The executive is no longer the site for engagement. There are several other sites and multiple actors involved in policymaking. Notable, parliament is growing in importance as a valuable site for NSAs involvement in policy making; there is a tendency towards accessing Parliamentary Committees and lobbying individual MPs to facilitate formulation of favourable policies. In this regard, there are now more NSAs that are approaching and lobbying MPs to assist in formulating favourable policies. The examples cited above - the Children’s Bill, the Retirement Authorities Act, and the Tea Bills – were the result of positive engagement of MPs by the NSAs. Increased use of Parliament therefore has the potential of eroding suspicion and mistrust that has characterised the relations between the NSAs and the government (executive) in policy making.
- *Demand for effective dialogue.* Major frustrations were expressed by several respondents (particularly among certain categories of private sector actors) about the “unpredictability” of access to key policy-makers as well as the “poor quality” of existing dialogue opportunities. On the whole, it was possible to observe a very strong demand for structured forms of dialogue which deliver concrete results.
- *Limited policy analysis capacity.* The above mentioned decline of institutional state capacity also led to an erosion of the policy analysis capacity of governments --a most critical component of policy processes. This, in turn, was seen to strongly reduce the effectiveness of NSA advocacy (beyond the defense of narrow interests).
- *Capacity to mobilise.* The above suggests that ability to mobilise important constituencies such as the parliament is an important feature which NSAs interested in gaining entry to the new space must have. That is, although the space has opened up, those that gain entry include NSAs that are able to utilise the following - advocacy using research and analysis; persistence in persuading; and ability to access Parliament as site for policy making.
- *Limited access poor groups.* These features are in themselves important constraints; they inhibit pro-poor group from gaining entrance into the space. Pro-poor groups apparently lack these qualities and therefore tend to have difficulties in getting into the space. They have little or no capacity to generate knowledge through research and analysis, which is critical for formulating favourable policies. They also lack capability to mobilise parliamentary sectoral committees.

NEW OPPORTUNITIES FOR NSAs

85. There are several **internal and external opportunities** that have evolved with time and which NSAs can appropriate to impact on policymaking.
86. **Internally**, as argued above, the government 'has let go' its grip on policymaking arena. The government is willing to allow other actors and is no longer seeking/capable to exercise full control over the policymaking arena. The reasons for this include the declining capacity of the government to implement policies and the arising need to involve other actors in the implementation of these policies. Relatedly, in the past, lack of popular support in policy implementation resulted especially from failure to involve the wider society in policy formulation. In order to avoid backlash during implementation and in order to develop a sense of collective ownership, the government has moved towards involving more actors in policy formulation. However, the pressure to get implementation on track has facilitated this trend more than the need for collective ownership.
87. Significantly, patronage networks (and personalised policy management) on which policy formulation and implementation centred around in the past, have been disintegrating. Opposition political parties and civil society groups continue to play an important role in checking on use of power by the executive. Their check against personalised rule and informal mechanisms of making policies has significantly undermined the centrality of patronage in making policies. The President is not necessarily the fulcrum around which everything revolve; opposition and civil society are in constant check on the executive.
88. NSAs have also been putting more pressure for involvement in policy making. Persistence and increased demand for inclusion into the policymaking arena, coupled with use of credible research and analysis, has been an important characteristic of the NSAs struggle to gain entry into the arena. NSAs have not relented on this pressure. The government has grown more accommodative to these pressure and demands and, consequently, makes an attempt to include them in making policies that are critical to their operations.
89. New drive towards self-reliance is also evolving as an important opportunity. the government has began to make policies that do not anticipate donor funding. The 2002/2003 national budget is one important initiate in this respect.
90. **External opportunities** include the collapse of traditional approaches to policy making. Donor organisations are putting more pressure - through conditionalities - on governments everywhere to involve more and more NSAs in both policy making and implementation. Policymaking is not seen as a preserve of government agencies along. Donors now seem to stress that success in implementation of policies now requires joint participation of NSAs and government. Globalisation has also reproduced demands for joint initiatives between NSAs and governments - partnerships between the governments and NSAs are increasingly being underlined as important for sustainable development especially in Africa where NSAs have been excluded in policy making. NEPAD, WTO, Cotonou and AGOA represent the few important initiatives that provide enormous opportunities for NSAs engagement in policy making and for joint planning and/or formulation of policies.

91. Summarising, a few messages clearly come out of the above analysis. The space for NSAs to influence and/or participate in policymaking has been widening in recent years. Reasons for this include political liberalisation and attendant pluralisation of the development space. There are now more actors in the development as well as social-economic sphere. Secondly, the capacity of the government to implement policies has been on decline in tandem with a decline in economic performance. One consequence of this is increasing willingness on the part of the government to work with NSAs in policy formulation and implementation; the government no longer systematically views NSAs with suspicion and mistrust. This in turn has led to proliferation of NSAs in the policy-making arena. There are relatively more NSAs that have influenced and/or are involved in policy formulation than in the past (before political liberalisation).

92. In the meantime, it is clear also that **new institutional mechanisms** that are amenable to **NSAs participation** in policy making have emerged. Parliamentary sectoral committees, whose membership draws both the opposition political parties and the ruling party, have become the most effective and inclusive mechanisms for supporting NSAs involvement in policy making. The second types of mechanism include those that are constituted at the urging of donors; PRSP is a good example in this regard. Although these are donor-induced, they provide an important forum for joint planning of policies by the government and the NSAs. Some of the good lessons learned here promote more joint formulation and implementation of policies by NSAs and the government. At the local level, important mechanisms include networks of NSAs and rights-based Community Based groups. Those that have the potential to influence policy formulation include those that work in consultation with the government departments at the local level or even with the Provincial Administration.

Chapter III : NSA's in Kenya and Engagement In Public Policy

93. This chapter starts with providing a basic survey of key social, political and economic non-state actors/powerholders within civil society at large, at both national and local level. The three case studies in annex provide further details on 'who's is who' in the hugely diversified and dynamic world of Kenyan NSAs. Recognising the difficulties of 'mapping' NSAs, this chapter further proposes an operational tool for donor agencies to identify entry points for engagement with NSAs. It goes on to present a historical overview of NSA engagement strategies, including an analysis of the overall NSA strengths and weaknesses for effective advocacy in the new political and economic environment.

BASIC SURVEY OF NSAs IN KENYA : WHO ARE THEY?

94. The term 'NSAs' relates to the range of collective action between the state and the family that pursues either public good or the strength of collective action for private interests. By nature, the 'NSA sector' includes a **wide array of organisations**, which range from small welfare enhancing collectives to associations of professionals and trade unions as well as specialised knowledge generation and analysis organisations that support other actors.
95. In addition to this, NSA's are **quite dynamic**. Their character evolves from time to time as they change to adapt to altered conditions. Some NSAs that might have been of a local nature or pre-occupied with service delivery, may find it useful for themselves to change this and broaden presence geographically as well as in relations to spheres of work. Any analysis of NSA's needs to first of all engage in a **contextual analysis** and explore the range of actors and their focus. The dynamic nature of NSA's also makes the process and challenges of mapping them more difficult.
96. During the interviews, it became clear that there is **no agreement yet on classification** of NSAs. Different approaches and criteria can be used, leading to different outcomes in terms of categorisation. Questions and disagreements also arise from among the NSA's themselves in understanding the diversity of the sector and the various roles that different organisations play. Furthermore, concerns were expressed with regard to using theoretical models for mapping Kenyan NSAs in an instrumental (donor-driven) way. The resulting mapping may end up being contested by NSAs themselves and of little practical use. Furthermore, it is probably not entirely important or necessary to reach consensus on the descriptions of these groups as it is to identify the various dimensions of their work, as well as breadth and depth in the country.

97. Some examples may illustrate the **diversity of possible approaches to categorising NSAs** can be illustrated as follows:

- At a basic level, the Cotonou Partnership Agreement identifies NSA's as private sector, economic and social partners (trade unions and employers associations) and civil society in all its forms according to national characteristics. This categorisation has been agreed upon by the EU and the Gok. Several NSAs interviewed were familiar with this definition and saw it as a useful starting point;
- In a recent study, focusing on government-NGO relations (including a Kenyan case study), Fox et al.⁹ apply a typology of NSA's that is based on scope and territorial coverage of operations. This leads to three general categories : (i) – *local 'primary' groups* (i.e. community-based organisations, local cooperatives, credit unions, women's groups, focused on local concerns, welfare or territorially specific); (ii) *intermediate groups* (i.e. primarily donor-linked NGOs, religious groups or professional associations, focused on a larger area and on intermediation to local level actors) and (iii) *national level groups* (i.e. networks, associations, private foundations, etc., operating at national level with a focus on institutions at the center). These groups are inter-related --the authors use the image of a pyramidal construction. Specialised NSA organisations, that support the entire sector in providing policy analysis, training, capacity development, sectoral and other services, are to be found at the apex. Actors that operate at national level are a fairly recent phenomenon in Kenya, closely linked to the consolidation of the struggle for democratisation. Some of them straddle the intermediate and national space --as they're still looking for a niche for themselves.
- For executing the private sector part of the present study, the team initially used a classification based on size, leading to a distinction between three categories of private sector actors : large scale enterprises; medium enterprises; and micro-and small enterprises. However, as consultations took place, a different typology was seen to offer a more practical tool to relate to the (changing) world of private sector NSAs. In this scenario, four categories were identified: (i) *formal traditional associations*; (ii) *reforming traditional associations*; (iii) *'emerging associations'* (mainly in the small and micro enterprise sector) and (iv) *co-operatives*
- The primary education case study (see Part II) presents four possible criteria (that often need to be combined) to 'map' NSAs involved : (i) *level of activity* (micro, meso, macro?); (ii) *function* (service delivery or advocacy NSAs?); (iii) *approach* (critical vs. non-critical?); and (iv) *influence* ('policy movers or policy drivers?')
- Furthermore, there is a growing number of typologies that have been developed by the broader research community to help analyse NSA formations and operations. An example is the categorisation elaborated by Crook¹⁰, It offers a potentially useful mapping tool, with, three broad groups of NSAs: (i) *elite groups* (nearly always an NGO with a policy orientation); (ii) *locally organised grassroots*; (iii) *socially embedded forms of collective actions* (such as ethnic and business associations, trade unions, churches, farmer's unions, etc., often with close links to political parties).

⁹ Fox, L., K. Kanyinga and C. Long (2000). *Government-NGO relations in the Greater Horn of Africa : Kenya Country Study*, The Institute for Development Research, Boston, Massachusetts.

¹⁰ Crook, R. (2001). *Strengthening democratic governance in conflict torn societies: civic organisations, democratic effectiveness and political conflict*. IDS Working Paper 129.

98. For the purpose of producing the **basic survey**, requested by the TORs of the present study, it is proposed to build on the above mentioned typology used by Fox et al. (based on the scope and coverage of NSA work)
99. Using these criteria, **eleventypes of NSAs** can be distinguished. Below, an institutional analysis of these different categories is proposed. This provides a broad inventory of NSA categories. For more operational details, see the respective case studies in Part II.

(i) *Development NGOs*

100. Among all the formalised civil society organisations, NGOs have had the longest presence in the Kenyan space. They have engaged in both development and advocacy work on various issues. There are a wide range of NGO's in Kenya. In the last two decades, they have witnessed an unprecedented growth (in number and activities). From about 120 in 1978, the number of NGOs registered by government increased to 288 in 1988 and 400 in 1992. By early 2002, there were more than 2000 NGOs registered under the National Coordinating Act. The NGO Council is currently finalising a database, which indicates a further growth. In addition to this, there are many NGOs who are not yet registered or have been denied registration because they were engaged in work that the government still considered threatening or 'political'. It is possible to identify NGOs that engage principally in development work, largely consisting of service delivery among poor people in both urban and rural areas. These could be further divided into local outfits of international NGOs such as Action Aid, Oxfam, World Vision, CARE, Save the Children Fund, ADRA, ACCORD, ITDG etc. The senior staff of such organisations are usually expatriates. They raise resources from outside the country. There are also locally incorporated service delivery NGOs e.g Maendeleo ya Wanawake, Maji na Ufanisi, and Undugu Society. The local NGOs are founded locally and employ local staff. They also raise donor funds for operation. The service delivery NGOs are mostly concentrated in rural areas in arid and semi arid parts of the country or in informal settlements in urban areas. These are usually the areas of highest concentration of poverty. Their work complements and in some instances replaces failed or weak public delivery systems of health and education services and agricultural support - credit, marketing and extension. In times of vulnerability e.g drought and famine, such NGOs are the main conduits for food relief. In the 1990s, some development NGOs began to use a 'rights-based' approach to development and by that started to support programmes aimed at democratising development at local level. These NSAs tend to be entirely dependent on donor funding.

(ii) *Political NGOs focusing on human rights, democracy, good governance*

101. Other NGOs engage largely in advocacy work around human rights both in general or of specific groups e.g the Kenya Human Rights Commission, the International Commission of Jurists (Kenya Chapter), Federation of Women Lawyers (FIDA), Kituo Cha Sheria, Center for Minority Rights and Development. Other NGOs are engaged in promotion of the engagement of various peoples in mainstreaming development (e.g. those that work around Children's Rights, or Disabled people and youth e.g Youth Agenda or the Aged e.g Help Age Kenya). They include groups working on Human rights, Women's Rights, promotion of women's political participation (e.g. ECWD, League of Women Voters) or Young people's political participation The Advocacy and Rights based NGOs tend to work in the capital city. There are others now situated in other major towns e.g Eldoret, Kisumu, Nakuru and Mombasa. These NGOs have a shorter history. Most of them have

come into prominence in the late 80s and early 90s. Most of them use the 'rights-based' discourse' in engagement in public affairs. As this approach starts permeating the development discourse, a critical challenge for the future will be to increase synergies between developmental and political NGOs. The political NGOs are also extremely dependent on donor funding.

(iii) *Community Based Organisations, Movements and Mutual Aid Groups*

102. This is probably numerically the largest segment of NSA's in Kenya. CBOs are situated in both rural and urban areas. They are formations of groups of people usually resident in close proximity to each other. In many instance there formations is inspired by the need for collective action towards a shared problem e.g. Water, Sanitation, income generation, savings and credit mobilisation. Many local women self-help groups, or youth self help groups fall into this category. They are usually registered under the department of Social Services. Some e.g neighbourhood associations are not registered at all. Some CBOs engage in advocacy work as well. These are a feature among pastoralist groups (e.g OSILIGI, the MAA council etc)- who advocate for greater respect for their way of life which is in conflict with some national institutions (e.g land tenure, education etc). Many CBOs lack formal structures. Yet sometimes they appear in 'process form', when communities organise a movement to address their problem.

(iv) *Religious or faith-based groups*

103. There are a wide variety of faith-based organisations (Christian, Muslim, Hindu) also active and engaged in pro-poor work. Most of the mainline Christian churches have a development division. The traditional churches - Anglican, Catholic and Presbyterian also engage in policy advocacy work and most have been associated with pressures for good governance. This set them on a coalition course with government in the past with questions being raised about separation of church and politics. The Aga Khan Development Network brings together various interests in Education, Health and Community Development.

(v) *Professional associations*

104. Professional Associations aim at advancing and promoting the interests of members. Almost all professions (e.g Nurses, doctors, engineers, architects, accountants, surveyors, public secretaries, lawyers, contractors etc) in Kenya have an association. Beyond a focus on themselves, these associations are also getting engaged in public policy issues. The Institute of Certified Public Accountants of Kenya (ICPAK) regularly makes input into the budget process and 8 years ago started an annual economic policy symposium that makes policy proposals. The Law Society Kenya (LSK) has been at the forefront of championing human rights and governance reforms.

(vi) *Co-operatives and farmers associations*

105. Cooperatives are voluntary organisations whose origins lie in agricultural marketing. These have diversified to include savings and credit organisations. Many are concerned with economic and livelihood concerns - producers of goods and services who need to bulk effort in getting produce to the market at minimum individual cost. The cooperative movement in Kenya picked up in the 60s and has been the main feature of agrarian communities. It is only starting to take root in pastoral communities in recent times.

Another part of the 'agrarian civil society' are the farmers associations. At national level, the Kenya National Farmers Union constitutes the umbrella organisation for all agricultural interests. Within agriculture there are specific commodity associations e.g. the Kenya Coffee Growers Association or Kenya Tea Growers Association, the Kenya Sugar Growers Association, In recent years, and in response to economic liberalisation, they have been in the frontline of pressing for withdrawal of the state from the marketing of their produce. They have been able to press for several policy changes in this regard.

(vii) *Business associations*

106. These are usually formations of business groups intended to pursue the development of a conducive environment for business growth. These groups utilise collective action to pursue/create environment for greater corporate gain. Kenya has many business associations. Some promote the interests of industrialists (e.g the Kenya Association of Manufacturers, representing mostly Kenyans of Asian Origin and multinationals). Other promote cordial industrial relations (Federation of Kenya Employers); the interest of traders and those in commerce (e.g the Kenya National Chamber of Commerce, which by default or design, is also the organisation with a large majority Kenyans of African origin); or the interest of only foreign investors (e.g the East Africa Associations, German Business Association and American Business Association).
107. A largely marginalised, yet potentially important group of associations (from a poverty reduction perspective) represent the interests of small-scale enterprises. These include the National Federation of Jua Kali Associations, or the Kenya Small Traders and Entrepreneurs Society (KESTES). These groups have recently been joined by new civil society formations in the private sector e.g. the Private Sector Foundation, the Private Sector Forum, the Kenya Business Council. All these are in various stages of formation. They seek to respond to some of the shortcomings of traditional private sector organisations. These groups come together to promote both a better policy environment for their businesses as well as interests and concerns of members.

(ix) *Trade Unions*

108. Trade unions are also a feature of the NSA environment in Kenya. There are many Trade Unions brought together under the Central Organisation of Trade Unions. Its history is chequered and currently it is not a robust organisation at all. It was infiltrated and coopted by the ruling party during the one-party days. It has yet to recover as an independent workers body. In addition with the liberalisation of the economy, it has lost membership and has not yet gained additional clout and membership from the new industries.

(x) *Research, knowledge generation and sharing organisations.*

109. A recent feature of the NSA environment in Kenya are the applied research and policy advocacy organisations. This is a feature of the 90. These institutions specialise in producing and utilising knowledge and research for advocacy. Some focus on government (KIPPRRA) while others focus on improving policy understanding of groups in private sector (e.g IPAR and IEA). Other functions include knowledge brokerage and utilisation by other institutions of government principally the legislature (IEA and CGD). These institutions principally support other actors with processed applied knowledge useful for policy reflection. The groups supported are principally the Executive

(KIPPRA, Tegemeo), the legislature (IEA, CGD, Tegemeo), the private sector (KIPPRA, IEA, IPAR, Tegemeo) and other civil society organisation (IEA, CGD).

(xi) *Media*

110. To a large extent, the press is free and very active, but with a stranglehold of the government particularly of the broadcast media. Several interviewees pointed to the important role and influence of ‘independent opinion-makers’ in policy processes through the media.

OPERATIONAL TOOL FOR MAPPING AND SELECTING NSAs

111. The above survey of Kenyan NSAs is, inevitably, primarily descriptive. As such, it provides little operational guidance for donor staff in charge of a given sector or theme and willing to associate, in a strategic manner, relevant NSAs.
112. Hence, the idea arose to include in this report a users-friendly tool that could help donor agencies to better understand the NSAs involved in a certain policy area; to carry out a rudimentary ‘mapping’ of actors; and to identify entry points for collaboration and/or support.
113. This operational tool is constructed in the form of a matrix, that looks at two key features of NSAs : (i) **their primary role and function**; and (ii) **the sphere of activity**. This was amongst others arrived at by the realisation that different NSA's choose to engage in the policy process for different reasons. In the words of one respondent - "We cannot prescribe what the space shall be used for as different groups want to use it for different reasons"
114. From the discussion on type of NSA's and what their role, it is possible to identify several functions that NSA's may choose to play (and/or combine). These roles/functions are:
- Advocacy;
 - Mobilisation for engagement and claim making by citizen groups,
 - Monitoring and Watchdog over public policy formulation and implementation;
 - Knowledge Generation;
 - Knowledge Brokerage;
 - Service Delivery
115. The spheres where NSAs can decide to be operational are:
- local level (specific geographic territory),
 - intermediate (larger geographic territory and support to other actors at local level),
 - National level (federated and focus on the activities at the centre);
 - International.
116. Each NSA can probably be mapped within this function and sphere nexus (see Box 1). Some NSAs may play different roles at different levels. Depending on the strategic

interest of a particular donor, a decision could be arrived at regarding suitability for collaboration. In our view, this tool has a **number of advantages**:

- it allows for a basic ‘mapping’ of NSAs on two objective criteria, thus preventing a more prescriptive approach with subjective judgements (e.g. on the level of internal democracy or the legitimacy of NSAs);
- it makes it possible to have an overview on who is active where (including to identify ‘missing gaps’); and
- it facilitates the **identification of the ‘right mix’ of NSAs** to be involved in an integrated donor support strategy. The latter is an essential point. As will be argued later (chapter 5), for impact to be achieved on a given policy issue, there is generally a need to ensure the participation of a variety of NSAs, each of them having a specific role to play. Grassroots mobilisation is vital (particularly for pro-poor policy change). Yet in the absence of support from intermediate organisations or knowledge institutions, these forms of bottom-up forces may not be able to achieve results. This rudimentary tool can help donors to adopt a multi-dimensional view on advocacy needs and related support strategies.

Box 1 : Operational tool for mapping and selecting NSAs

| Role/sphere of activity | Local | Intermediate | National Level | International |
|--|--------------|---------------------|-----------------------|----------------------|
| Advocacy | | | | |
| Mobilisation of Actions by organised groups of citizens | | | | |
| Monitoring and Watchdog Role | | | | |
| Knowledge Generation | | | | |
| Knowledge Brokerage | | | | |
| Service Delivery | | | | |

HISTORICAL OVERVIEW OF NSAs STRATEGY AND ENGAGEMENT

117. As discussed in chapter 2, the Executive has dominated the institutional framework for policy making in Kenya. Most policies originate from civil servants and other bureaucrats. Following broad discussion in the government circles and cabinet, some may be implemented directly while some are presented to parliament in the form of Sessional papers and the participation of the Assembly invited.
118. Though there are new features to it, **engagement of NSA's in public policy in Kenya is not entirely new or novel**. The country has a history of collaboration and engagement with NSA especially those in the formal private sector both in industry and agriculture. The executive has consulted these groups over concerns in their sector and impact of various decisions by government. These groups also accessed government (mostly the executive branch) through personal networks as well as shared personnel e.g. directors or staff connected with individuals in government etc. It must also be noted that this close collaboration between enterprise and the executive was promoted by the provision that **civil servants could engage in business to improve personal welfare**. The resultant scenario was a blurred relationship between the public sector and enterprise - in many instance they were one and the same. In the case of NGOS and other civil society organisations, this symbiotic relationship with the State is also reflected. While some groups have been subjected to intense scrutiny and their work affected by the state machinery, others have been encouraged and in some cases co-opted by the government (e.g. Maendeleo ya Wanawake Organisation or the Trade Union movement). Organisations considered 'state friendly' or 'unthreatening' have therefore had preferential treatment in terms of operational space.
119. This engagement has been hampered by the absence of **institutionalised frameworks** for collaboration and engagement between NSA's and public institutions. This is the case especially during formulation. There is a longer history of engagement of NSA in **policy implementation and service delivery**. This results from the weakened state capacity with regard to implementation and the non-threatening nature of participation by NSA's in this regard. Many traditional NSA (i.e the service delivery NGOs) also saw their role as principally augmenting public institutions in service delivery.
120. However, this has changed with **more actors claiming** a right to be heard and participate. The period of increased participation coincides with the re-introduction of pluralism in Kenya, which facilitated the engagement of groups not associated with business in the policy process. These groups appropriated the term **civil society** for themselves. These were mostly groups advocating on a rights based agenda or service delivery NGOs (both local and international) mediating on behalf of poor communities that they work with.
121. Engagement has been predominantly through **protest and advocacy**. These gave way to constructive engagement and collaboration in the development of specific policies starting with the early 90s e.g with the development of the NEAP (and eventually NEMA), NPEP and the PRSP. There are examples of further cooperation in development of other policy instruments e.g the Sessional Paper on Aids and the Children's Act. The main feature of this engagement has been the instrumentalization of NSA's in development and implementation of public policy. This has been exhibited through the incorporation of NSA's in the production of policies and plans by the government. Whereas some have lauded this and believe it will lead to better policies, it also reduces the independence and interrogation role that NSA's allocate themselves. In many ways

- they cannot turn and criticise a document that has been produced through a collaborative process. This is exhibited in the case of the above-mentioned legislations and policies as well as the PRSP. The fact the many organisations of civil society actively sat and participated in the PRSP process meant that they reduced their independence to critique it comprehensively. Subsequently, though there are many criticisms of the PRSP it is noteworthy that there is no significant one from NGOs. Many NSA's have not questioned this instrumentalization but it could lead to less freedom and room for interrogation of public policy.
122. During this period access to non-traditional actors has been steeper than that of the formal traditional actors. While some traditional actors, sit in a variety of government committees and commissions (e.g FKE, KAM, ICPAK etc) new actors have had a battle to get included especially those from the NGO's and other CSOS. Some traditional actors have been instrumental in denying access to new actors.
 123. NSA's have usually focussed mostly on the **Executive branch** of government in terms of engagement. Few groups engage with the legislature and judiciary. Even fewer focus engagement with political society.
 124. NSA's are motivated by different reasons in engagement. Not all are altruistic. Some (e.g the private sector associations, farmers groups and cooperatives) are motivated by **self-interest** while others (e.g the local NGOs and Human Rights groups) represent the **interest of other** groups who presumably cannot articulate this themselves. The private sector engages in order to improve environment for business principally - a focus on itself. The traditional actors view business as the 'formal and organised business community'. NGOs and other CSO's engage in order to improve environment and results for 'the general public', poorer people, disenfranchised and others who cannot access or speak for themselves. Other NSA's b (e.g the research and advocacy organisations such as the IEA and CGD) and engage in order to provide a **bridge** and frameworks for sharing among various actors. The groups that engage to promote pro-poor economic and democratic change would be represented in those that pursue engagement from an altruistic motive. This has been expressed through the Human Rights NGOs as well as those pursuing specific special interests such as women and marginalized groups.
 125. The dynamism of the sector is also exhibited by the changes in motivation for engagement. While some international NGOs for instance e.g. Action Aid, have engaged with government in the past over better space for service delivery, in recent times many of these organisations have also established 'policy units' in order to engage in governance and macro-economic management issues.
 126. Experiences in utilisation of space by NSA's are **varied**. They are not always all positive. Some pitfalls might include the eventual emergence of populist legislation, inadequate interrogation of government planning frameworks, access denied to some 'unacceptable' actors (e.g. millers during the Sugar legislation formulation). The results have also varied depending on capacity of NSA's to **articulate concrete proposals beyond protest and rhetoric**. Private sector groups do better than the other CSO's in this regard e.g women's movement.
 127. In the perspective of pro-poor policy change, it is important to also fully integrate the local dimension of advocacy work. In Box 2 below, some insights of a field visit to Kwale district are summarised.

Box 2 : Advocacy at the local level: Kwale District

Entry-points for engagement:

- *District Commissioner:* Politically appointed. In Kwale, DC-NGO relations are tense, characterised by mistrust, mainly because of lack of coordination and harmonisation with district authorities around NGO advocacy initiatives and service delivery. The DC's office also feels NGOs are too 'powerful' with direct donor backing and unknown amounts of resources and intentions.
- *District Development Officer:* Action Aid has worked with the DDO on "how to put development on the policy agenda" and in Board meetings, and how to manage development interventions (with a focus on education). This collaboration seems to have been fruitful.
- *District Education Board:* Politically appointed members who sometimes invite NGOs, Kenya National Union of Teachers branch representatives and churches to be on the board, but there is no guarantee for a "pro-poor" agenda. The Chairmanship is held by the District Commissioner. Some pointed out the lack of educationists, and representation from parent-teacher associations or school management committees.
- *District Development Agencies Forum:* A new forum including NGOs, country council members and district authorities meet on a monthly basis. It has helped to overcome some of the sense that "everybody is suspicious about what the other is doing and with what resources".
- *Local authority – County Council of Kwale:* Local authorities are supposed to take on more of the development agenda since decentralisation. Kwale's very low revenue base has been somewhat boosted through the LATF (Local Authority Transfer Fund). Since FY 2001/2002, the Local Authority Service Delivery Action Plan (LASDAP) was made a requirement for LATF disbursement in order to link local level revenues to improved service provision and to introduce participatory priority setting at community level (see below).
- *Locally elected Councillors:* Locally elected, but with clear capacity needs. Many are illiterate and tied into the patronage system. At the same time they could be better explored as a channel to parliament and to feed local interests into Parliament.

Community participation in setting local priorities in the LASDAP:

Kwale County Council has 34 wards, distributed in five administrative divisions: Kinango, Kubo, Matuga, Samburu, Msambweni. Consultative meetings or 'barazaas' were held for the LASDAP in each of the five divisions. Each idea that was raised in these meetings was scored to find the top priorities for development interventions. The top priorities in all five divisions were construction of dams, boreholes and other tangible things such as the rehabilitation of roads, construction of health dispensaries or buying tractors (agricultural areas). Due to limited funding, activities will be limited to 5 dam constructions in FY 2003.

The LASDAP covers a three year time period. Money available for the LASDAP in 2002/2003 is 1,510,912 Ksh (USD 19,193). Total LATF fund released is 29,771,513 Ksh (USD 378,195).

Together with the Council revenue, the biggest expense is set aside for debt resolution (20,028,326 Ksh), followed by costs for salaries and wages (16,327,480 Ksh) and costs for Councillors allowances (5,942,370 Ksh). These figures were published in the invitation to participate in LADSAP consultations by stakeholders in order to make availability and use of funds very transparent and to avoid unrealistic community expectations. (*Source: County Council of Kwale: Annual Estimate Financial Year July 2002/June 2003*).

Some NGOs remarked that LASDAP priorities tend to be very 'construction oriented' (as opposed to quality of education, health prevention etc). This could partly be explained by the way communities were consulted -- through 'barazaas' -- rather than having a more broad-based participation ensuring the voice of women and marginalised groups is heard as well. Action Aid and Aga Khan Education Services both work with advocacy at the local level to sensitise families and village leaders on the importance of education, and to inform more widely on what they have the right to ask for from local authorities.

While the LASDAP was generally seen as a positive step towards opening up planning processes at the local level, and for increased accountability/transparency of funds, one informant commented that priorities still reflect important village chiefs or the local Councillor rather than the population at large. In a poor district like Kwale, very little resources are still allocated against the LASDAP, and as a result, it ends up achieving little (of all the priorities and ideas raised, the result is beginning five new dam constructions in the first year).

The County Council remarked that they would welcome a closer collaboration with NGOs for better use of resources, suggesting e.g. that international development NGOs train and work with the Council extension workers instead of bringing in their own staff from afar "who will disappear at the end of the programme". The Clerk of the Council also noted that a lot more could be done in the area of building knowledge and capacity among the Councillors for people who want to influence policy at local level as they could bring it to Parliament.

Example of private sector engagement:

The Kwale Branch of the National Chamber of Commerce recently took Kwale Council to court over their intention to raise single business permits as one of their important revenue sources, primarily to get more out of the luxury hotels in the coastal area. The Chamber claimed, however, that this would hit some of their small business members the hardest and would be a disincentive for local economic growth. The Council covers three very different zones for economic activity: the highland (agriculture), coastal area (luxury hotels) and the "hinterland" which is very dry and poor with severe water problems and low economic activity. The Court case was withdrawn, and instead the Council of Kwale and the local branch of the National Chamber of Commerce started a series of consultations, working out a grading system that is more proportional, and with the Chamber stepping in to sponsor and give loans to poorer micro-businesses while at the same time making sure the luxury hotels contribute a higher proportional share to Council revenue. It is estimated that this helped increase revenue from business permits with around 10%. It also resulted in closer collaboration and inclusion of the local branch of the National Chamber of Commerce at Council stakeholder meetings and consultations.

STRENGTHS AND WEAKNESSES OF NSA ENGAGEMENT IN THE NEW SPACE

129. 'To what extent are NSAs properly equipped to enter the new space? A basic SWOT-analysis may help to answer this question. Building on the preceding chapters, it would appear that NSAs display a number of strengths, including:
- **Diversity:** As mentioned above, some of them are involved in policy implementation while others in formulation and monitoring. This broad diversity means that NSAs are well suited to play various roles in the policy process. However this diversity could also be a weakness in that the government may confuse roles and assign inadequate roles to different NSAs.
 - **Alliance Building/Coalition Building and Willingness to work with public institutions:** Many NSAs are now willing to seek new alliances and coalitions as well as work with the public sector constructively. The suspicion and distrust of the past has given way to constructive engagement which should be encouraged.
 - **Mobilisation of other actors.** NSAs thrive on collective action and one of their strengths is the ability to mobilise other actors to join in the cause. The case of private sector associations is instructive in this sense.
 - **Common view on Agenda.** There are a growing number of policy issues which are a shared concern to NSAs. During the 1990s, common views on the need for democratisation provided a strong impetus for joint action. Governance and poverty reduction are other imperatives that increasingly bind NSAs together in collective action.
130. Weaknesses include:
- **Knowledge capacity:** the policy terrain is a terrain navigated by knowledge and political skills. The ability of an organisation to engage in policy will be a reflection of how it deftly applies knowledge and analysis and keen skills of persuasion to communicate. Many NSAs except the policy research organisation, do not have sufficiently strong analytical capability for the area/ issue they are working on /pushing enough to stand ground when challenged -- especially when challenged. Policy makers prefer to stick to the status quo than walk into unclear/unmapped territory without sufficient analysis. Some pro-poor policy work will be challenging the status quo and therefore needs to be backed by solid analysis and not mere clichés and platitudes (in the above mentioned study by Fox et al., the weakness of the knowledge base of many NSAs are documented)
 - **Shifting Strategy From Grievance and Protest to proposals - advocacy strategies rethought.** Many NSAs especially those dealing with advocacy have long utilised a strategy of protest for engagement. In many instances the government has now opened up and seeks more constructive and collaborative engagement. However not many NSAs have equipped themselves with other skills of constructive content based engagement. The fragmentation of NSAs and weak capacity to 'speak with one voice' further compounds the problem.
 - **Institution Building.** Many NSAs are quite young as organisations and have not yet built robust institutions. Governance and organisational development pose specific

challenges to many organisations. There are also concerns about the skill levels of different organisations. Not enough are adequately skilled in advocacy and persuasion.

RISKS FOR NSA ENGAGEMENT

131. **Instrumentalisation.** One of the fears expressed by the interviewees and that is quite valid is that NSA risk being instrumentalised by either governments donors. Particularly, the donors have in the past been quite instrumental in promoting the engagement of NSAs through financial and other support. There's a valid fear that NSA's could be used to realise a 'donor' agenda.
132. **Donor fears about stridency among NSA's or falling foul of government:** Many donor fear running foul of the government and are quite cautious about this. This could be jeopardised should NSA's engagement in policy process be either unwelcome or strident.
133. **Donor dependency.** Closely related to the issue of instrumentalisation is the very high levels of donor dependency of many NSAs (particularly in civil society).

Chapter IV :

NSA IMPACT IN POLICY-MAKING : CHALLENGES, CONSTRAINTS AND OPPORTUNITIES

134. The message coming out of the two previous chapter is clear. The development space has opened up since the return of multi-partyism. While this 'opening-up' is still precarious and pretty much a flux situation, there are clearly many new opportunities for NSAs to express voice, articulate interests, make inputs and exercise influence at different stages of the policy cycle (formulation, implementation, monitoring and evaluation). As a result, new practices of policy-making are slowly emerging (Chapter 2). Yet at the same time, the interviews suggest that the majority of NSAs are not ready nor properly equipped to take advantage of these new opportunities. Key impediments for effective policy engagement are the lack of strategic vision, poor incentives, inadequate advocacy strategies and a wide range of capacity constraints (Chapter 3). These limiting factors need to be addressed if the impact of NSA advocacy work is to be improved
135. This chapter therefore identifies five major issues that need to be attended to in order to improve NSA impact in policy processes. It presents some of the "homework" that awaits NSAs that want to become effective players in the new environment.

CLARIFYING THE ROLE OF NSAs IN POLICY ENGAGEMENT

136. This is clearly the first issue to address. Why NSA engagement in policy-making? Why should they be involved? Which type of NSAs for what type of engagement? Clearly, participatory development requires inclusion and a consensual way of making policies. Moreover, successful implementation of policies calls for prior joint planning (during formulation) with actors who will be involved in its implementation. Yet, as mentioned before, NSA motivations to enter the policy arena vary widely. There is no shortage of 'opportunistic' NSAs that continue to use patron-client relationships to get access or that enter the policy arena primarily driven by business considerations (e.g.the "aid entrepreneurs"). Furthermore, some categories of NSAs can contribute to restricting the new space, as they defend vested interests or prevent newcomers from entering. According to a respondent, "the 'boom' of NSAs has led to a situation in which there are too many NSAs with no clear role to play". In a similar vein, it was argued that it "serves little purpose to institutionalise consultation mechanisms if there is no clarity on the division of roles between state and non-state actors in policy processes".

137. Different NSAs interviewed claimed to have started a process aimed at clarifying their role in the new political and economic environment:
- Both the Kenya National Chambers of Commerce and Industry (KNCCI) and the Kenya National Farmers Union (KNFU) are examples of private sector organisations who went through a severe crisis and decline (as they were ‘cannibalised’ by the political system) but who recently started a process of re-engineering themselves at different levels (internal governance, quality of services offered to their members, role in policy processes). These ‘reforming associations’ (for more details see private sector case study) are addressing upfront the question of their role and added-value. As a staffmember of the KNCCI put it : “The globalisation process has radically changed the world in which we operate. If we want to be relevant to our members -- the basis of our legitimacy-- we need to adapt our strategies, the services we offer to our members and the ways in which we organise our advocacy work. As an organisation, we need to go through a process of strategic planning, governance reform and capacity building to be able to play our new roles in a changed world. If we fail to do so, we may become an irrelevant institution. Donor agencies could play a critical role in helping us through this transition”.
 - Another example relates to the work of the Private Sector Corporate Governance Trust. It tries to instill notions of ‘corporate citizenship’ and ‘social corporate governance’ into private sector institutions. The basic idea behind these efforts is that “private sector is part and parcel of society. Social corporate governance should go beyond mere philanthropy, but clarify the role of private sector in society and in the promotion of sustainable development”.
 - The NGO Council is pushing its numerous membership, through a variety of means, to start addressing major challenges related to the role of NGOs in an evolving environment. For instance, the Council attempts to promote a debate on a possible task division between local governments and NGOs in planning and implementing development programmes at local level. It is also insisting on the need for NGOs to invest much more in understanding how government works, its legitimate roles and responsibilities, its processes, etc. with a view to helping NGOs to better identify where they come in and bring real added-value.
138. The search for clarity on the respective roles and responsibilities of state and non-state actors is not an easy exercise, especially in conditions where state capacity has been systematically eroded over the last two decades. The danger of taking over roles that belong to government is real. For instance, the question was raised “whose job it is to bring the different strands of private sector together with a view to arriving at consolidated positions”. It was argued by some respondents that divisions are a natural phenomenon in private sector. Artificial attempts to ‘construct’ a unified stance would add little to the quality of the policy process. A better scenario would be for government to strengthen its capacity to properly analyse reform proposals (e.g. on taxation) with a core group of technocrats and then find efficient ways to consult with different key stakeholders of the private sector to assess the effects of the intended measures. Such an approach would help to restore the legitimate role of government while avoiding private sector organisations to get involved in roles that are not theirs. This example illustrates the complexity of redefining and re-allocating roles and responsibilities in a multi-actor policy environment.

139. What does it mean in practice to clarify NSA roles in policy formulation? In our view, it invites the different categories of stakeholders to make clear choices with regard to four inter-related questions:

- *Vision.* This boils down to answering basic questions about the mandate of NSAs : how do they want to position themselves in the new policy arena? Are they mainly concerned with short-term actions (including access to aid resources) or is their advocacy work underpinned by a broader aim to help building a functioning state and an open and pluralist society? Do they consider themselves to be change agents in a long-term process of political and social transformation? These may seem quite basic questions, yet a recent survey of NGO relations with government found that many NGOs, for instance, do not have a clear vision of their role in sustainable development or poverty eradication. It is often not clear whether an NGO sees itself as an end in itself or a means to reach communities and to strengthen community-based organizations. Sustainability issues are generally not addressed upfront. If an NGO is an intermediary, performing functions on behalf of government and donors for grassroots people, what future does it have? Will these intermediary NGOs still be around in ten years time? Similar dilemma's can be found among NSAs involved in service delivery at local level. Are they primarily concerned with filling the gaps left open by a failed state? Or are they in the business of helping to create viable local governance systems, enabling local governments to play a catalytic role in development while empowering citizens to participate and demand accountability? Another example relates to 'political NGOs', involved in advocacy work around constitutional reform, elections and institutional change. The point was made that it is often difficult to detect a global, long-term strategy behind their actions, providing clarity on the road they want to follow towards a democratic society.
- *Relationship with government.* This is a second strategic strand NSAs need to clarify. How do they perceive the role division between government and NSAs? What are the legitimate roles that government should perform (or be capacitated to perform)? What kind of partnerships should be envisaged with state actors with a view to promoting effective change? How does government view the different types of NSAs? As competitors, complementary actors or troublemakers? Clarity on these questions is critical for a number of reasons. First, no amount of advocacy is likely to have much impact in the absence of a functioning *state*, that can play its role in development. Second, it may help to avoid the danger of NSAs substituting for the state, thus accelerating the process of declining state legitimacy in the eyes of the population ("our government is NORAD or Action Aid"). Third, sorting out relations with government is a key component of effective advocacy strategies (which go beyond grievance).
- *Added-value.* This issue was aptly introduced by an NSA respondent: "In a first phase we had to fight to be heard. Now that space for engagement has been obtained, we will have to show what we have to offer". As mentioned before, space to participate will increasingly have to be earned. For NSAs, this means going beyond "bashing the government" by providing a clear added-value in policy processes. This added-value can take different forms (e.g. knowledge, service delivery to members, facilitation of collective action, articulating the voice of the local level), reflecting the

diversity of the NSA world. Yet carving a niche and showing added-value are likely to constitute key elements in the search for NSA legitimacy and effectiveness in advocacy work.

- *Internal change process.* If NSAs accept the fact that the overall political and economic policy environment in which they operate has changed (and continues to change), they should also accept that their own roles and modes of operation may need to be quite revised. Several NSA organisations interviewed (particularly in the private sector) are currently involved in internal change processes, aimed at fundamentally adapting their governance systems, operational strategies and capacities. Other NSAs seem to resist institutional change, a risky form of inertia taking into account the requirements of new policy environment.¹⁵

140. All of this has implications for donor agencies willing to support NSA advocacy work. The diversity and expanding number of NSAs should, in itself, not be seen as problem. Nor should, in itself, not be seen as a problem. Nor should the fact that many NSAs remain fragile constructs that are struggling with questions of identity, added-value and capacity be considered as obstacles, preventing donor engagement. Both features --diversity and fragility-- are the natural expression of a civil society in a developing country, involved in major political and economic transition processes. Yet in order to identify NSAs with the capacity to be change agents, it might be useful to look at the answers they provide to each of the four questions mentioned above (vision, relationship with government, added-value, and preparedness to reform).

DEFENDING THE SPACE

141. This is a second issue that clearly emerged during our consultations. The new space for NSA engagement should not be reversed, but defended and protected against possible risks of government control and containment.

142. How can NSAs (and donor agencies) contribute to defending the new space? Four main strategies could be envisaged:

- *Institutionalising the space for consultation*¹⁶. Several NSA interviewees from both the private sector and civil society insisted on the need for a much more 'structured' dialogue with government. This institutionalisation would make it possible to go beyond the current adhoc approaches to policy dialogue and to extend consultation across the whole policy cycle (including feedback on implementation). A case in point is the PRSP process. Despite important weaknesses (e.g. limited prioritisation, weak link to government policy processes), it provided unprecedented opportunities for NSAs to engage in key policy debates. In order to consolidate that space and to ensure the effective integration of the PRSP outcomes into government policies and

¹⁵ In this context, it is important to note that growing pressures are also exerted on external actors, including donor agencies and NGOs, to adapt their roles and intervention with a view to promoting local ownership of development processes.

¹⁶ Some caution was expressed in this regard, mentioning the dangers of insitutionalisation in a political system still very much influenced by informal systems of patronage. It may undermine creative approaches to dialogue, put a barrier to a dynamic evolution of the process, attract 'aid entrepreneurs' with limited legitimacy, etc.

budgets, it is essential to institutionalise dialogue on implementation progress at national and local level (Treasury is currently exploring ways to set up joint monitoring systems). Another option is to formally establish ‘joint committees’ on different policies through which NSAs could engage with government in a more structured manner.

- *Helping the state to play its legitimate role in a plural society.* State officials and bureaucrats that have for long been used to play a lead role in development tend to see the NSA incursion into policy processes as an attack on ‘their’ space’. The shift of aid resources to NSAs further compounds the problem. This frustration helps to explain state resistance to widening policy processes to NSAs. A possible response strategy, suggested by several respondents, is to defend the idea that space is not a ‘zero-sum game’ but ‘expanding’ as a result of pluralism taking root in society. In this new context, the key issue is the complementarity of roles between public and private actors. In this context, the question needs to be addressed : what does government gain (or lose) today by allowing NSAs in the policy space? In order to reduce government resistance, NSAs have to be clear on what they can offer. They may also have to dress up for public relations in order not to be seen threatening the government space. Another way to protect the space gained is to help government playing its redefined role as an ‘enabling agent’ in development processes. In a similar vein, NSA advocacy work should be underpinned by a strategy that makes it possible to strengthen rather than to undermine national and local governance.
- *Ensuring effective linkages with constituencies and between NSAs.* In the years to come, it will be critical for NSAs involved in policy processes (particularly membership organisations) to deepen the links with the constituencies they represent. This social base of support may help to increase impact (through collective action) but also to consolidate the new space. In the words of a respondent: “It is more difficult for government to adopt a deriding attitude towards representatives of well-organised movements than to urban-biased, donor supported elite NSAs”. In similar vein, consultations among different categories of NSAs will be important to overcome the current divides and to build synergies that can reinforce advocacy work.
- *Build knowledge capacity.* This is another key strategy to defend the new space. As mentioned before, participation should not only be claimed but also earned. Whether NSAs are taken seriously as policy partners will depend, to a large extent, on their capacity to have credible research findings and analysis, as well viable, knowledge-based policy alternatives (see next section).

REFINING OPERATIONAL STRATEGIES FOR NSA ADVOCACY

143. In addition to clarifying their roles in the policy arena (see par. 1-7 of this chapter), NSAs are also challenged to elaborate much more sophisticated and effective operational strategies for engagement. This is required because the nature of advocacy work is changing. Over the past years, the limits of mere activism or advocacy work “based on

belief rather than reason” have become evident, particularly in terms of limited implementation progress.

144. Similar limitations can be observed in the advocacy work of private sector actors. The use of a strong political base and related connections (e.g. by the cooperative movement) may help to advance members interests on certain issues, but also tends to negatively affect governance and leadership processes and systems. While formal private sector associations may continue to rely on the traditional sector-based policy dialogue, the need for an inclusive consultative approach to policy formulation is increasingly felt amongst others in order to prevent conflicting policy stance on key policy issues. The reforms in the sub-sector of coffee provide a practical example. The interests of the farmers, millers and marketers were not properly reconciled with the demands of a liberal environment. Government, supported by a strong lobby, has traditionally had a heavy control hand in the sector. The extent of this involvement was seen when government failed to involve industry players in STABEX negotiations with the EU. Even when the funds were available, it took 8-10 years to start releasing aid to beneficiaries.
145. NSAs willing to ensure a greater influence on policy processes in the new political and economic environment should have a critical look at their operational strategies for policy engagement and refine them where needed. The following elements seem particularly crucial in this respect:
- the diversity of policy/institutional arenas and related need for flexible engagement strategies ;
 - the search for common interests;
 - the strategy and methodology behind advocacy work;
 - the linkages between national and local level policy processes;
 - knowledge generation, political skills and capacity-building
146. The first operational challenge for NSAs is to fully recognise the diversity of policy and institutional arenas in which they have to operate and to translate this into the design and implementation of their advocacy activities. In practice, this means elaborating more **integrated and flexible advocacy strategies**. Research findings suggest that in order to understand the relationship between advocacy for poverty reduction and progressive policy outcomes, one needs to look at how the interests of poor people are represented in three different institutional arenas: civil society, political society and the state¹⁷. This calls for an integrated approach. Yet linkages with political society (political parties) are delicate for NSAs in Kenya . They can jeopardise NSA autonomy and lead to patronage and divisions along ethnic lines. An overt relationship with political parties is to be avoided. Flexibility is key to ensuring that advocacy strategies can be adapted according to the specific needs of each policy process. As one respondent observed: “engagement is different each time”. This flexibility is also required if the advocacy focus moves from policy formulation to implementation or to monitoring and evaluation (as different methodologies, tools and capacities are likely to be demanded from NSAs). Needless to say, this puts pressure on NSAs, particularly collectives rooted in popular struggles and representing voices of the poor, to drastically enhance their capacities to utilise the appropriate policy arenas and skills for engagement.

¹⁷ Goetz, A. and Lister S., ‘The Politics of Civil Society Engagement with the State’

147. A second priority issue for more effective NSA engagement is the search for common interests by adopting inclusive approaches to policy formulation. This makes it possible to detect, early in the policy process, tensions and conflicting agendas among different stakeholders and to negotiate an informed consensus. This approach may drastically improve both the quality of the policy and chances for its effective implementation. As explained in the private sector case study, the integration of Kenya in the regional and global economy has created a new ‘paradigm’ for policy dialogue. The liberalization agenda of the WTO and the regional integration process driven by COMESA and EAC, calls for extensive consultations across all private sector categories. This issue has received urgency due to the initial problems encountered in un-controlled liberalization. This arose from limited private sector consultations by the government before Kenya acceded to WTO terms and conditions. The result has been a weakened manufacturing sector. The need to restore balance in the sector, and to avoid repeat occurrence in the service sectors, has created a need for wide consultations on trade policies.
148. A third operational challenge consists in reviewing the strategies and methodologies used in NSA advocacy work. As indicated in Chapter 3, NSA advocacy approaches are changing, as experience is gained and lessons are learnt on what works and what doesn’t work.
149. During our consultations, several building blocks of a more sophisticated approach to implementing NSA advocacy were identified. They are summarised in the box below.

Box 3 : Key questions in choosing an effective advocacy strategy :

- *The purpose?* What is the purpose and desired outcome of the proposed advocacy? To realize certain action (e.g. in the field of service delivery) or to obtain policy reform? (e.g. improvement in local governance) What strategy for what level of government?
- *Entry point?* Where and how is it most strategic to engage to obtain this?
- *Target groups?* If the aim is to influence policy reform, there is a need to work on both the demand and supply side, i.e. to link those who make policies with those affected by it. This, in turn, requires to deal with all relevant stakeholders in a given policy arena.
- *Specific intervention area?* This invites each NSA involved to clearly choose whether they can be more useful in supporting those who create demand or those who supply it.
- *Methodologies used?* Often the weakest element in the chain, it amounts to identifying the most efficient methods to exercise influence. For instance, bombarding policy-makers with policy inputs is likely to achieve little in the absence of social pressure around a given issue and a responsive capacity at the level of the government. In many cases, alliances with other NSAs (e.g. knowledge institutions) will be vital. However, Kenyan NSAs across the board have generally been weak in building synergies based on their respective comparative advantage. A proper sequencing of advocacy interventions is also key to ensure the time perspective to achieve impact is duly recognised.
- *Available capacities?.* This is another recognised weakness among NSAs (see also the three case studies in annex) and an area in which major (donor) investments will be

needed (see further)

- *End products?* The quality of an advocacy strategy can also be assessed on the clarity it provides with regard to expected outcomes (how realistic and feasible are they?) and end products (particularly if the NSAs consider themselves as change agent)

150. During consultations, many interviewees pointed to the need to reinforce the linkage between national policy formulation and local-level policy processes. First, this is considered crucial to improve effective implementation. A policy 'handed down' to the local level, without adequate policy dialogue, usually generates limited ownership, with the resulting blockages at the implementation level. Second, the decentralisation process in Kenya, albeit still imperfect, is unleashing new potential for policy planning and implementation at local level. In the years to come, both spheres of governance will have to be more closely articulated (e.g. for improved service delivery in social sectors). This will have major implications for future advocacy work. Also for those pushing the poverty reduction agenda, it will be key to find new ways to capture the voice of the local level and to ensure an effective 'micro-meso-macro' articulation.

151. As mentioned above, capacity of NSAs to utilise the space is vital --the policy arena is a terrain navigated by knowledge and political skills. The ability of an organisation to engage in policy will be a reflection of how it deftly applies knowledge and keen skills of persuasion to communicate. Many NSAs except the policy research organisation, do not have sufficiently strong analytical capacity for the issues they are working on and to stand ground when challenged. Some pro-poor policy work will be challenging the status quo and therefore needs to be backed by solid analysis. Yet the capacity agenda is broader than knowledge generation, policy analysis and improved skills for engagement. As NSAs move into the policy arena, their internal governance and (downward) accountability systems will come under increased scrutiny. Most NSAs will have to invest heavily in organisational development, including result-oriented management.

152. Finally, a key challenge for NSAs will be to ensure staying power and vigilance. Policies do not change overnight and NSAs need to maintain vigilance over the policy cycle (including implementation) in the long haul by showing 'staying power'. This will be difficult, given the attention span of some NSAs as well as the traditional NSA resource basis (short term project funding).

ADAPTING THE INSTITUTIONAL MECHANISMS FOR NSA PARTICIPATION

153. Effective advocacy work also requires adequate institutional channels to express voice or participate in policy dialogue. Not surprisingly, two decades of authoritarian rule left Kenya saddled with a less than appropriate institutional framework for NSA engagement. During the 1990s, space was regained and some existing institutional channels for dialogue were re-activated. The Parliament is a good example (see Chapter 2). Also within the world of NSAs, dialogue was extremely difficult under the one-party rule. Little space nor incentives were provided. For instance, in the private sector, the functioning of key associations had been

paralysed by rampant political interference, thus causing an alienation with members and an erosion of dialogue. The formal private sector, representing the big players, has lacked a tradition of advocating along common interests, let alone to strive towards inclusive approaches (e.g. towards the informal and small enterprise sector).

154. Besides the formalisation of the space for engagement (e.g. in relation to the PRSP process), it will be of critical importance to adjust the institutional set-up for NSA engagement, both within the government and at the level of the NSAs.

155. Some examples of key challenges in this respect include:

- *Consolidating the institutional openings at the level of the Legislative and the Executive.* In practice this means extending and diversifying the modes of interaction between the institutions involved and the NSAs (e.g. through an increased use of public hearings, wider publicising of hearings earlier in advance, the publication of the minutes of local government meetings, etc.), focusing in particular on key processes, such as the budget. The point was also made that the Judiciary is a key institution which should be given much more attention in creating a conducive environment for NSA engagement.
- *Exploring the feasibility of multi-actor fora.* Most NSAs access policy arenas on their own, without being questioned by other NSAs. The results have not been satisfactory and reflect the relative power of those with access presently. To reduce or temper these, it will be important to explore alternative mechanisms of engagement that enable exposure to the views and proposals of other groups. These could be multi-actor fora for dialogue, and conflict resolution.
- *Reforming the Joint Industrial and Commercial Consultative Council (JICC).* This is the key consultative forum between public and private sector actors in Kenya, but as observed in the annexed case study on private sector, it lacks a legal mandate, mechanisms for structured dialogue (the JICC has not met for the last five months) and a result-oriented focus linked to implementation. Furthermore, it excludes key stakeholders to participate such as the Kenyan National Farmers Union (despite the central role of agriculture in the economy) and the micro and small enterprise sector (despite the key importance of the informal sector in GDP and employment creation). Considering the new economic environment, with its intertwined challenges of national, regional and global liberalisation, a rethinking of the role, composition and modus operandi of the JICC was seen as a priority by several actors interviewed.
- *New NSA structures to dialogue with development partners.* In response to the opportunities for NSA engagement provided by the Cotonou Partnership Agreement, new NSA structures can see the light. Thus, the traditionally marginalized groups --SMEs and farmers associations— have formed a 'Forum for Social & Economic Development Partners' (FOSEDEP) for the purpose of realising the goals of ACP-EU cooperation and fostering NSA participation. These new networks may provide an added-value if they can avoid duplication, if they are based on inclusive approaches and if they give priority to promoting linkages among NSAs to achieve concrete things (rather than to setting up parallel structures).

ADDRESSING CONSTRAINTS IN GOVERNMENT CAPACITY

156. This is a fifth major challenge in future advocacy approaches. As mentioned by several respondents : “it makes little sense to strengthen the muscles of NSAs in the absence of responsive capacity at the level of state institutions.”

157. As observed earlier (Chapter 2), the overall institutional capacity of the public sector has been declining over the last 15 years as a result of politicisation, clientelism and lack of meritocracy. The public sector is overwhelmed and will probably be unable to cope with increased activism and NSA engagement. At present this is also the case with key offices in the policy-making government departments, especially within Treasury, with negative effects on the quality of preparing and defending informed budget choices.

158. Several donor agencies and foundations interviewed agreed on the need to follow a dual-track : investing in capacity building of NSAs (to promote a pluralist society and improved governance) while at the same time supporting well-targeted programmes of institutional development within the public sector. The need to devise advocacy strategies that try to develop partnerships with public sector agencies and officials was also emphasised.

Chapter V : Implications For Donor Agencies

SOME LESSONS FROM EXPERIENCE

159. Donor support to NSAs involved in advocacy work has been a growing feature of the aid sector in the last decade. Civil society was initially embraced as a key tool of democracy promotion, with a marked preference to support political NGOs. In recent years, the increased donor focus on poverty reduction and participatory development has further fuelled the search for partnerships with a broader range of NSAs.

160. ACP-EU cooperation is a case in point. Successive Lomé Conventions (1975-2000) were state-centered cooperation agreements, largely confining NSA participation to the implementation of projects decided by governments. The Cotonou Partnership Agreement (signed in June 2000) marks a major break with this statist tradition. It sees participation as a 'fundamental principle' of ACP-EU cooperation and creates legal space for NSAs (private sector, trade unions, social and economic actors, civil society) to participate in political dialogue, programming, policy formulation, implementation and evaluation. Funds should in principle be available to NSAs for building their capacity, promoting dialogue, developing network or strengthening their representative structures, including for advocacy work.

161. There is a growing body of literature and evaluations on donor support to NSAs, particularly to NGOs. What clearly comes out of this research is that donor eagerness to engage with NSAs has not yet been matched with a commensurate increase in knowledge on wide range of key strategic and operational questions: how to understand the complex world of NSAs (taking into account country-specific situations and dynamics)? How to deal with the 'politics' of NSA participation? How best to strategically support NSAs, including in their institutional development? What specific approaches, instruments and procedures are required to engage effectively with NSAs? How can sustainable impact be achieved

162. Major lesson learnt for donor agencies is the need to do a proper risk analysis before getting into major NSA support programmes and funding. This means identifying the main pitfalls to be avoided while engaging with NSAs. Based on documented evidence (from different countries) as well as insights collected during our consultations in Kenya, donor agencies may need to properly consider five major risks in supporting NSAs (see Box 4).

163. These risks need to be properly understood and integrated into the design of donor support programmes. This, in turn, requires a donor capacity to deal with these issues, at the level of both headquarters and the field. The point was made that key issues related to the political economy of a country (including patronage, state formation, institutional change) tend to be increasingly recognised yet poorly integrated in donor assistance programmes. As one respondent put it: "we all know patronage is out there, largely determining state-civil society relations, yet there is a tendency to "assume it away" when programmes are designed or implemented, primarily because it is not clear how precisely to deal with these issues".

Box 4: ...Donor support to NSAs : what are the risks?

The following pitfalls in donor support to NSAs can be identified:

- *Unrealistic expectations.* This is the first risk to be avoided: over-optimistic expectations on the nature of NSAs (they are not by definition agents of pro-poor change), on the space available for effective NSA engagement (in poor institutional environments, characterised by patronage) or on the (short-term) impact donors can have with (limited) aid on complex political and societal transformation processes.
- *Apolitical approach.* This is seen as a major flaw of the first generation aid programmes to civil society. However, experience clearly demonstrates that investing in NSAs is a highly political job. The workings of civil society are characterised by unequal power relations. The lines between civil society and the state are often blurred or dominated by patronage. Promoting advocacy work requires a capacity to understand the environment, the actors, their relations, the most appropriate entry points, etc. Donor agencies will need to turn themselves in a ‘political animal’ if they want to be able “to identify the actors that really matter” and to provide effective support.
- *Using NSAs a vehicle for donor agendas.* This refers to the danger of ‘instrumentalising’ NSAs for achieving pre-determined donor policy objectives. In practice, it may lead to a narrow choice of civil society actors to be supported (with professional capacity, status, and experience with donor procedures), primarily through short-term project funding. In this scenario, the risk of creating donor-dependent local structures is high, while neglecting the broader task of supporting the emergence of a viable civil society, as an institution in its own, over a longer time period.
- *Institutional damage* This risk is closely linked to an instrumentalist approach to supporting NSAs. It may lead donor agencies to support parallel dialogue processes or mechanisms to channel aid funds, with the danger of inadvertently contributing to a further de-institutionalisation of political processes in-country. Also at local level, the generous donor support for NSAs (often primarily northern NGOs) involved in local development can cause institutional damage if not properly articulated with the roles and responsibilities of local governments and the need to promote local governance.

164. If these risks are properly taken into account, there are undoubtedly interesting opportunities for donor agencies to support NSA engagement in the current Kenyan context, as the preceding chapters have illustrated. Also the large majority of NSAs interviewed saw a key role for donor agencies in supporting NSA engagement in policy processes, if certain guiding principles could be respected. The consultation process also identified priority actions for donor agencies. The remainder of this chapter summarises the main findings in this respect.

GUIDING PRINCIPLES FOR DONOR SUPPORT

165. As mentioned before (Chapter 1), NSAs consulted during the study, had generally mixed feeling on the role of donor agencies over the last ten years. While they recognised the strategic importance of the donor community in pushing for reform (including the withholding of aid) and in terms of support provided (including to NSAs), they expressed concern, if not disenchantment, with the ways in which aid was provided (e.g. too strong focus on donor priorities, heavy-handed intervention style, over-reliance on expatriate technical assistance, etc.).

166. Against this background, it is relevant to try to define a set of guiding principles that could be used in the design of future donor strategies, programmes and projects. Based on our consultations, six closely inter-related guiding principles are proposed:

- *Adopt a long-term political perspective.* This first guiding principle is key, as it helps to determine the framework and mindset in which each donor decides to operate when supporting NSA policy engagement. In essence, it boils down to making a clear choice between two basic scenarios. Is the donor primarily interested in improving consultation with NSAs on cooperation policies and in channeling more aid to them? Or is it the purpose to contribute to an ongoing, long-term process of political transformation in the country of intervention? In this scenario, aid is a means to achieve broader political and institutional objectives; helping to build an open and pluralist society; promoting effective states and governance systems (at national and local level); nurturing existing social capital; supporting the consolidation of a home-grown, diversified and viable civil society (as an institution in its own right), etc. The ‘aid entrepreneurs’ among NSAs may prefer the first scenario (being channels for aid). Yet when listening to the expectations expressed by NSAs with regard to the required changes in Kenya, it would appear that the second scenario holds much greater potential for effective donor support and should be the way to follow. However, in this case, donor agencies will have to ensure that this strategic choice is consistently translated in their programmes, approaches, intervention methods, procedures, etc. Hence, the need to define additional guiding principles, include those found below.
- *Follow a ‘process approach’.* This is the corollary of the choice for a long-term political perspective in supporting NSAs. It means accepting the need for change processes to be locally driven, with home-grown agendas and knowledge (i.e. ownership). It implies tailoring aid interventions to suit the needs and dynamics of the societal change processes the donor wants to support. It calls donor agencies to largely ‘reverse’ the logic of the aid system. Instead of looking for ‘projects to be funded’ in a given time frame, they should start the process of engagement with getting a better understanding of the context; including how political institutions shape the conditions for NSA engagement. Other tools proper to a ‘process approach’ include multi-actor dialogue (to identify priority actions and design possible donor interventions); open-ended programming and budget systems (in order to allow for flexibility in the choice of the concrete activities); joint monitoring of progress achieved against realistic indicators; and a long-term perspective. Needless to say, the coherent application of process approaches goes against much of the rules and procedures upon which the current aid system is based (e.g. project approaches, ex ante defined budgets, risk-aversion, etc.)
- *Adopt a multidimensional view on advocacy needs.* It is acknowledged that in order to achieve impact with advocacy, a combination of different elements are generally

required: pressure (collective action); voice (interest articulation), dialogue (including brokerage); options (knowledge based policy alternatives); as well as monitoring capacity (through appropriate structures at national and local level). It is most unlikely to find a single set of NSAs (e.g. grassroots organisations or urban-based political NGOs) that is able to adequately perform all these functions and roles. It therefore is commendable for donor agencies to adopt a multidimensional view on advocacy needs. If they intervene in a given change process (e.g. the constitutional review process, local governance), they should spread their support to the ‘right mix’ of NSAs, each of them having a distinctive role to play and added-value to provide (e.g. grassroots voices linked to knowledge institutions). These connections may help to increase the chances of overall impact. They may also prevent donor biases in favour of particular categories of NSAs (e.g. socially rooted organisations, close to the grassroots) or to make allocate their support along possibly artificial dividing lines (e.g. between service delivery NGOs and advocacy NGOs).

- *Develop programme approaches and strategic partnerships.* Traditional project approaches are ill-suited to support long-term change processes, advocacy programmes or the institutional development of a viable civil society. The adoption of program-based approaches offers a much better tool, as it should facilitate ownership, strategic planning and flexible implementation. Closely related to this is the need for a donor to develop ‘strategic partnerships’ with the key NSAs it wants to support in the context of its global strategy. In practice, this means seeing the NSA involved as an institutional actor, with its own history, dynamics and need for long-term sustainability. In such a programme-based partnership, there should be room to work with core-funding and to move away from micro-management control that still typifies most NSA aid.
- *Define a coherent institutional development strategy for NSAs* As mentioned earlier, donor support to NSAs should ideally be a means to end, including to promote the consolidation of a viable civil society. This, in turn, requires the adoption of a coherent institutional development strategy underpinning the support provided. In practice, it obviously means focusing on capacity building (see further). Yet it also implies a number of other things. First, to ensure clarity on the institutional role of NSAs. Second; to ensure that the aid programmes respect the (evolving) division of roles between government (at different levels) and civil society (so as to avoid substitution of roles and institutional damage) Third, to show a concern for improving the (financial) viability of the sector. Fourth, to increase its own knowledge base on how to provide institutional development support to NSAs.
- *Take ownership seriously.* This is the linchpin of a strategic support to NSAs. While the concept has been widely embraced in donor discourse, it often fails to be properly operationalised. A wide range of donor practices may stand in the way of a correct application of this principle. According to several NSAs interviewed, a key test for ownership is the degree to which a given donor accepts to apply ‘light intervention models’ in designing and implementing its support programmes (including using local knowledge and giving a lead role to local institutions, expertise, process facilitators). Another challenge to build ownership will be a preparedness to follow , right from the outset, an inclusive, consultative approach.

CONCRETE ACTION PRIORITIES

167. In this final section, some priority actions are listed, largely based on proposals made by NSAs themselves. It is hoped that this provides a basic support framework for effective engagement (TORs, par. 4.1). A clear link with the above mentioned guiding principles can be observed in the proposed actions.

168. The following six priorities for engagement could be considered:

(i) *Support internal NSA governance reforms*

169. Effective engagement requires credible NSA interlocutors, with a legitimacy to talk. A first condition to be met in this regard is decent standards of leadership, governance and downward accountability within NSAs themselves. It might therefore not be surprising that several interviewees ranked support to internal governance reforms as a first priority action.

170. As we have seen in the preceding chapters, there is no shortage of NSA institutions that are trying to “clean up” the heritage of past political interference in their institutions (KNCCI, KNFU, COTU, ...). In order to get back into business, they first need to address a multi-faceted governance agenda across the organisation. It was admitted that addressing governance reform is a complicated job, requiring time. It amounts, to a large extent, to changing the internal culture of an organisation and to remove the firmly engrained attitudes of the past (poor leadership, top-down approaches, centralisation, patronage) at all levels

171. Donor agencies could support this recomposition of NSA institutions. This holds particularly true for NSA bodies that have been in existence for many decades (e.g. KNCCI and KNFU) and which have the potential to play an important role in policy processes. But it could also be a most useful support to small NSA structures of strategic importance in pro-poor policy change, including ‘new’ actors in the process of setting-up institutional arrangements for interest articulation. There is equally a need to support reforms focusing on improved governance among civil society organisations (where problems of poor leadership and corruption may also exist). These could include systems for self-evaluation and monitoring of the sector; support Boards; leadership programmes, etc. Obviously, the heterogeneity of NSAs prevents generalisation on the action points to be taken.

172. It should be clear that this would not involve huge amounts of money, but well-targeted forms of support (strategic planning, leadership training, new systems of accountability. In the words of a respondent, it would be possible to achieve “big impact with small money” in this area.

(ii) *Strengthen NSA advocacy skills*

173. This is a key component of any support framework, reflecting the huge capacity needs prevailing among the different categories of NSAs. Both the main report and the case studies provide plenty of examples of capacity shortages that need to be addressed if NSAs are to meaningfully participate in policy processes.

174. Some of the main priorities on this agenda include the capacity :

- to properly link up with their constituencies at local level (farmers, producers, small traders, poor people) so as to identify advocacy priorities;
- to express a demand towards government (national and local) or to large private sector actors (for instance in the case of small producers);
- to scale up advocacy demands rooted in local-level service delivery;
- to link up with other actors and to develop partnerships, based on comparative advantages;
- to understand how policy processes and political institutions work;
- to identify the right 'entry points' and lobbying approaches;
- to communicate and negotiate with public actors;
- to solve conflicts among NSAs and in multi-actor policy fora;
- to strategize an effective advocacy approach over time (e.g. capacity to adapt intervention methods as the policy process advances);
- to liaise effectively with sources and institutions of knowledge;

175. Needless to say, capacity investments are particularly important for a wide range of small, informal, unstructured NSAs from the rural areas, with a dormant potential to become actors that can contribute to poverty reduction. Yet despite their importance, they have been widely neglected by donors. More detailed mapping exercises, focusing on particular sector or areas, may be required to reach out to these actors. An alternative route is to use existing umbrella organisations to get access to these potential pro-poor agents of change.

(iii) *Invest in independent local knowledge institutions*

176. As reported above, knowledge is a key tool in the new economic environment as well as for effective advocacy. As space increases and policy dialogue moves away from mere politics, NSA impact will depend largely on their capacity to propose credible options. Obviously, the large majority of NSAs do not have the staff and resources to build up sophisticated internal systems of knowledge generation (nor do they see this as their role). Increasingly, they are looking for outside assistance to meet their needs for new knowledge to be used in their advocacy work.

177. Two other factors reinforce the need to invest in independent local knowledge institutions. First, the declining capacity of state institutions to provide meaningful policy analysis and inputs. Second, the realisation that 'new ideas' are required if Kenya is to properly face the major development challenges arising from globalisation, regional integration and political transformation. As one respondent argued : "the new environment cannot be properly analysed with the tools of the past, nor do the old approaches provide answers for the problems we're facing now".

178. As mentioned before, in recent years new (donor-supported) knowledge institutions have appeared on the Kenyan scene. It was widely recognised by NSAs interviewed that they are crucial actors in the search for more effective policy processes. Further support should be provided to existing and possibly new institutions performing this essential role of knowledge generation. However, donor agencies should also reconsider how they relate with these actors and evolve towards 'strategic partnerships'. If it is recognised that this type of work is of key value in the ongoing process of long-term political and societal transformation in Kenya, it should also be reflected in the modalities of support. In application of the guiding principles mentioned above,

these institutions should thus be enabled to work over a long-term perspective (e.g. research on poverty trends in Kenya over a longer period of time); to present a fairly open-ended programme (allowing institutions to be demand-driven) and to benefit from flexible and predictable (core) funding. Use of this type of knowledge can also be enhanced and improved by feeding it more widely into established NSA platforms for dialogue, rather than seeing it merely as “collecting intelligence for donors.”

(iv) *Support frameworks for collective action and multi-actor dialogue processes*

179. This is a different type of support donors could usefully provide. While the above recommendations relate directly to NSAs (as target group of advocacy assistance), this proposal invites donors to promote creative dialogue processes involving a wide range of actors (public and private), preferably around specific themes or issues where common interests can be built (e.g. how to stop the decline of the coffee sector?).

180. This type of support is consistent with the above mentioned guiding principles, including the need to adopt a ‘process approach’ to advocacy and to use a ‘light intervention model’. In essence, this approach means facilitating advocacy through “experiments of social and political change”, driven by NSAs. In practice, this means creating incentives for collective action; bringing in different stakeholders (existing institutions, new actors, marginalised groups, etc), injecting objective information into the dialogue process; exploring the scope for synergies among actors; ensuring proper linkages with the formal institutional and political processes; etc.

181. A few examples in the box below may illustrate the potential of this approach, which lends itself to application at different levels and in a variety of policy areas

Box 5 : ... Advocacy through dialogue : some possible scenario's

- *Linking micro-level advocacy to improving local governance.* The local level is a key arena for donors willing to combat poverty, promote political change and support effective advocacy work, solidly anchored in the realities of poor the local actors concerned (particularly poor people). In order to improve service delivery and local development, donors could support micro-level advocacy, by working on the demand side (through information provision, empowerment, capacity building). Yet they are equally advised to invest in the supply-side (including a responsive capacity of local governments; appropriate funding mechanisms; removal of upwards accountability constraints, etc.). Both sides of the equation are ideally brought together in a dialogue process which could help to generate concrete action plans; to pool local resources (human and financial) and to agree on a role division among the different actors. Through such processes, donor agencies may help to promote both better policies and improved local governance.
- *Helping NSAs to speak with one voice.* The cost of disjointed policy-making, based on privileged access to policy-makers and exclusion of key stakeholders in dialogue processes, has been illustrated in this report. Hence, the challenge for NSAs to unite on key issues of common interests, amongst other to improve advocacy efforts. However, in order to get there, investments are required in trust-building; linking disjointed actors; analysing the scope for common interests; bringing actors into

dialogue processes; jointly identifying the most suitable institutional arrangements for inclusive private sector representation.

- *Focus on practical issues in a long-term and integrated perspective.* This is another application of the same intervention logic. For instance, corruption is undoubtedly a cross-cutting concern and a priority for those promoting political change in Kenya. Yet how to organise relevant advocacy work around this vital issue? One possibility is to support a variety of self-standing projects (e.g. research on corruption, support to Transparency International). A more promising road is to adopt an integrated (long-term) approach to addressing the issue in advocacy terms. In this scenario, a *combination* of tools are used, including multi-actor dialogue; strategic partnerships (e.g. with knowledge institutions and the media); focal points at local level; etc.

(vii) *Strengthen capacity of relevant public institutions*

182. It has been widely acknowledged during the consultations that an effective advocacy strategy should also carefully look at the capacity needs of relevant public sector institutions (“it takes two to tango”).

183. However, it also became clear that few donor agencies or foundations have integrated this concern in a coherent way in their overall strategy. This can be partly explained by the reluctance of donors to engage with the current political system (still largely functioning on the patronage model). Yet changes in approach are visible. For instance, efforts are done to identify ‘change agents’ within the public sector and to involve them in donor supported programmes and processes. Starting from the recognition that “in order to reform, you have to engage”, several donors are also exploring new ways to deal with government. Dfid, for instance, has been rethinking the design process of sectoral support programmes (e.g. in the education sector). The purpose is to influence policy change, but also to address systemic governance bottlenecks (by promoting decentralisation/devolution of power; helping to help close off avenues for corruption) The involvement of NSAs is also a key feature of the design process, amongst other because some of these actors are perceived to part and parcel of the patronage system.

184. This search for new forms of engagement with government offers opportunities to put the issue of state capacity for policy-making again on the agenda and to seek for appropriate forms of providing institutional support to key public institutions.

Part II

Case-studies

Case-study I : Primary Education

Case-study II : Budget Processes

Case-study III : Private Sector Development

CASE-STUDY I :
PRIMARY EDUCATION

*Prepared as part of: Mapping Study of Non-State Actors (NSAs) in the
Policy Making Process in Kenya*

Prepared by:

Charlotte Carlsson
European Centre for Development Policy Management (ECDPM)
Maastricht, Netherlands
Email: cc@ecdpm.org

In association with:

Jean Bossuyt
European Centre for Development Policy Management (ECDPM)
Maastricht, Netherlands
Email: jb@ecdpm.org

Fred Barasa
Independent consultant
Egerton University, Kenya
Email: barasafs@hotmail.com

1. INTRODUCTION

The first three decades of Kenya's independence saw a sharp rise in school enrolment rates and expansion of physical facilities at all levels of education. However, these gains have been seriously eroded, largely by increased poverty in parallel with high levels of cost sharing.

The Government of Kenya has shown an outspoken commitment to education since independence, which has been restated in the more than ten reviews by state funded special commissions and working parties. The most recent one is the 1998 Master Plan on Education and Training (GoK, 1998). Kenya is also a signatory to the UN Human Rights Charter, The Convention on the Rights of the Child and the Declaration on Education for All (EFA). All recognize basic education as a human right. The recently enacted Children's Act also makes primary education free and compulsory, with the provision for the prosecution of parents who default on ensuring education of their children. Yet, these policies and commitments mean very little without sufficient enforcement and effective implementation which is the biggest obstacle in the Kenyan education sector. There is a perceived *lack of technical and management capacity, political will and institutional mechanisms* within the Ministry of Education for *effective implementation* of policies.

The PRSP has allowed NSAs to actively participate and emphasise the need to expand the provision of textbooks and learning materials, reduce extra charges and levies paid by parents and provision of educational opportunities for those unable to participate in the formal system (Nafula. 2001). However, direct links to poverty reduction are weak, as are details on fundamental reform issues, how to improve implementation and on regulatory frameworks. Many NSAs are now adopting a 'rights-based approach' to primary education, especially in view of the Children's Act. The current review of the Constitution of Kenya has also allowed for advocacy groups to call for an inclusion of education as a basic human right. This rights-based approach is also applied at local level in sensitization of communities and parents.

Both the active participation of NSAs in the PRSP thematic sector group on education and the joint pressure to have education stated as a human right in the Kenyan Constitution show two specific characteristics of NSA involvement in policy formulation on primary education: (i) the political space to participate exists, and (ii) the space is not internally contested between actors. Even so, very little progress has been made in the last few decades to tackle current implementation inefficiencies or a more fundamental overhaul of policies that have proven to be counteractive (like high levels of cost sharing and finance burden on parents).

This case study covers some broad contextual aspects of the basic advocacy issues in primary education and broad categories of actors and the nature of policy making, including opportunities and limitations for NSA engagement. This is followed by a closer look at existing institutional mechanisms and challenges as well as implications and recommendations for donor agencies.

It draws on interviews with a sample of non-state and state actors involved in primary education including the Ministry of Education, Science and Technology (MoEST), the PRSP Secretariat at the Treasury, NGOs and professional associations and church and faith-based organizations. A field visit to Kwale included interviews with the District Government and Local Authority (for full details, see list of people interviewed).

1.1 Key features of the primary education sector in Kenya

Some of the factors that contributed to the drastic turn-around in Kenya's early successes in terms of primary education include:

- *Cost sharing*. Shifting the burden of financing education to parents in 1988, they are currently expected to meet all costs other than the teacher's salary, which is paid by the state. Parental contribution is estimated to be about 65 per cent of total educational costs (Abagi, Owino, 2000). A survey done in 1997 indicates that households have to meet 95 per cent of primary school recurrent expenditure in the form of textbooks, stationery, furniture, school uniforms, examination fees, transport and meals (Abagi 1997).

“You do not only pay to send your child to school. As a parent you also have to sustain structures all the way upwards through the education system – from school management committees all the way up through any sub-national decision-making structures.” *Action Aid Kenya*

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-related drop outs and an overall economic downturn also impacted negatively on primary and secondary enrolment and completion rates (World Bank, 2002). The enrolment rate has been declining steadily over the last decade. Nationally, the Net Enrolment Rate is about 60% (GoK, 2000) and the completion rate at primary school is less than 50%. Less than half of the children who complete primary school proceed to secondary school. There are widening gender and regional disparities, particularly in the Arid and Semi-Arid Lands (Abagi, Owino et al, 2000).

- Despite continuously high levels of government spending on education as a sector, government expenditure on basic education has been declining in proportion to other levels of education.¹⁹ (Abagi, 1997).
- The lack of funding for school inputs along with *poor and unaccountable governance in the sector* have given rise to diverse levies and school expenditures that are poorly accounted for.
- The *low pupil-teacher ratio*, unique for Kenya compared to other countries in Africa, has not improved the learning achievement (Parajuli, 2001). Instead it is costly and uses up money that could be invested in teacher-training or education materials which have been shown to have stronger effects on learners' achievement²⁰ (Abagi, Odipo, 1997).
- The *quality and relevance* of education has been declining. Since mid-1990s, the mean scores in national examinations (KCPE and KCSE) in all subjects have stagnated below 50 per cent (Abagi, Owino, 2000).
- The enrolment and completion rate in basic education is still characterised by *gender disparities*. The Gender Unit at the MoEST initiated development of a gender policy within which girls education is referenced. The draft policy needs to be finalized, but due to financial constraints this has not been done (UNICEF, 2002).

¹⁹ In 1997, the GoK spent 3 and 42 times as much for secondary and university students respective to that of a primary pupil.

²⁰ In 1996, the Ministry of Education would have saved an estimated 11% of its recurrent expenditure if the pupil:teacher ratio was raised to 40:1 from 30:1. The World Bank is currently preparing a sector review of education that will include a systematic evaluation of cost and finance issues in the education and training sector.

2. MAPPING OF NSAs IN THE PRIMARY EDUCATION SECTOR

There are different ways possible to map out the broad categories of NSAs active in the primary education sector in Kenya. One way would be to look at the *micro, meso and macro levels*. However, apart from school-based associations (school management committees, parent-teacher associations etc.), most active policy players have realized the need to work both at local, district and national levels and to try to reinforce linkages to feed good implementation practice into policy debate at higher levels (NGOs like Action Aid and Aga Khan Foundation has adopted this approach).

Another approach would be to look at those who are mainly focusing on *service delivery* versus those who focus primarily on *advocacy* work. Also here, the general trend for those who have traditionally been involved primarily in service delivery is to move more of their resources towards advocacy (e.g. Christian churches and members of the National Council of Churches of Kenya, NCKK).

However, there are differences in how these actors engage in advocacy work. For example, it is possible to classify actors into those who have a *critical versus non-critical approach* to the education sector. The former category primarily perpetuating *status quo* (a role historically performed by churches engaged in keeping their sponsoring system in place), and the latter calling for more fundamental systemic reforms (e.g. IPAR's research and studies calls for a 'fundamental overhaul' and replacing the current 84-4 system). Whilst the NCKK sometimes takes a more critical role against the government than e.g. the Catholic Church, the categorization should be looked at from the extent to which they are willing to fill, meaningfully, their space in the education sector and their advocacy role *within that sector*.

This leads to a fourth possible categorization between '*policy-movers*' versus '*policy-drivers*'. Many of the historically strong actors, such as church organizations through e.g. the National Council of Churches of Kenya (NCKK) and the Kenyan National Union of Teachers (KNUT) who occupy important policy space in the education sector, both nationally and locally, can be seen as "policy movers" instead of "policy drivers". That means that they are very actively involved in moving policy agendas forward without necessarily being in the driving seat to challenge historic patterns of interest articulation and feed-back into the policy circles.

The advocacy role of NCKK and church-based organisations

The National Council of Churches of Kenya (former Christian Council of Churches in Kenya) has recently taken on more bilaterally funded advocacy projects in the areas of political governance, human rights, gender justice, HIV/AIDS, peace building and the environment. In 2002, this represents 87 per cent of their yearly budget.²¹ With strong donor backing together with their powerful reach, this has made them a very strong political force. However, their own driving motivation and primary objective is still, according to its current work plan, to "facilitating holistic evangelism, church growth and to promote the Gospel" (NCKK, 2002). Although they do not actively advocate on primary education reform, they have been involved in lobbying efforts to make religious education compulsory. Apart from that, they are primarily sponsoring schools by

²¹ The NCKK budget for 2002 is US\$ 2,055,304 of which US\$ 1,796,201 from bilateral donors goes to finance specific projects such as civic education, peace building, food security, disability rights trainings, participation in the national taskforce on HIV/AIDS, etc.

selecting and training head teachers and providing scholarships (to a total of around 300 local students). The State has often exhorted churches to stick to spiritual nourishment of their followers, and contribute to physical development in primary education, but steer clear of advocacy which is viewed as subversion.

However, given their groupings and the relative small number, the most obvious way of categorizing the main actors would still be to group and describe them according to the *function* they perform and the *interests* they defend (below).

2.1 Campaign networks

Elimu Yetu Coalition, an assembly of civil society organisations, professional groupings, and other practitioners in the education sector, led by Action Aid Kenya²². It is organised in chapters across the country. There is a strong presence of international NGOs on the steering committee including Action Aid, Oxfam, CARE and Save the Children, UK. In total there are 42 civil society organizations involved, including journalists associations and researchers, so as to form effective alliances among members. Their government counterpart is the national EFA Coordinator placed within the MoEST by UNESCO. However, the feeling is that the EFA Coordinator “has little impact on changing things within the Ministry” (Action Aid).

Other advocacy/campaign networks include:

- *Child Rights Caucus, Kenya Debt Relief Network* – on debt relief for education issues,
- *Basic Needs are Basic Rights Campaign* – to draft a charter for the right to education to be included as a basic fundamental right in the new constitution
- *Kenya Education Journalists Association.*

The Elimu Coalition has managed to provoke public pressure and to revitalize the public debate around Education for All in Kenya. In response to their pressure President Moi directed the Ministry of Education to carry out a proper audit of school funds and to ensure that illegal fees and “other unnecessary levies” were not charged. Formal and informal lobbying also led to an announcement for a government plan to make primary education free and compulsory. However, all these declarations have fallen short of policies to guide enforcement and policy implementation. Implementation has proven to be a major bottleneck to improve the efficiency of the primary education sector. “*Elimu campaign intensifies as President Moi slaps ban on school levies*”, *Elimu Secretariat, October 2001, www.elimu.org*

2.2

**Development
NGOs/
CBOs**

Action Aid, Oxfam, CARE and Plan International are among the leading international NGOs active in service delivery and advocacy on primary education issues in Kenya. They work in close collaboration with CBOs. Some CBOs also have access to funding via the LATF (Local Authority Transfer Funds). Having focused a lot of their advocacy work on national level

²² Action Aid will be leaving its role as coordinator of the Elimu Campaign as it considers its objective being met. Instead Action Aid is shifting its tactics towards advocacy at the local level. It is also shifting from about 60% advocacy work, 40% service delivery to an 80-20% division, putting advocacy more prominently on their agenda.

previously, Action Aid (who participated in the study) is now shifting a large part of its advocacy work to the local level to encourage people to press for their rights and to find innovative practices that can be fed into national level advocacy efforts. They are also cutting down on their service delivery in favour of more advocacy work.

2.3 Gender advocates

Of the specialised groups, advocating specifically on girl's education, the Forum for African Women Educationalists is active both with specific field activities and in national advocacy. UNICEF is also active advocates on girls' education, using the rights-based approach.

2.4 Churches and faith-based groups

Following the missionary tradition, the system of school sponsoring by churches still exists under the Education Act. Many church organisations, like the National Council of Churches in Kenya (NCCCK) lobbied heavily to keep this system during government consultations on the Education Act, resisting fundamental reform of the system. While NCCCK is more overtly critical against the government on many issues, the Catholic Church is more conservative. There are also Muslim churches (organised in a coalition called SUPKEM) and Hindu faith coalitions of churches, but with less historical anchoring and influence on policy-making. The Aga Khan Education Service, Kenya (Aga Khan Foundation) is a faith-based development organisation but operates as a non-religious development NGO and does not restrict itself to working with the Muslim community or Muslim-sponsored schools, and does not promote Islam as part of its mandate.

2.5 Media

The Black Board Magazine is published every Monday in the Nation by the Nation Media Group, covering a variety of educational issues and often voicing concerns or using research generated by NSAs.

2.6 Trade unions

The Kenya National Union of Teachers (KNUT), created in 1957, is the strongest trade union in the education sector and sits on all formal government bodies/institutions to do with education. In primary education, KNUT has repeatedly protested against the policy of cost sharing. They also work on the problem of child labour together with ILO. However, they differ from many other NSAs in their views on the role of the Teachers Service Commission and on the teacher:pupil ratio. Contrary to those who believe the teacher:pupil ratio should be increased to save money and to increase efficiency in the sector, KNUT has always advocated for lowering the ratio as a way to increase employment opportunities for teachers, and consequently the number of its members.

2.7 Research institutes and think tanks

IPAR, KIPPRA and CLARION are all examples of research networks and think tanks that have been involved in research on education issues (CLARION from a gender equality, governance and human rights perspective). There are also think tanks within Universities such as the Kenya

Association of Education Professionals at Moi University, the Association of Third World Studies (Kenya Chapter) at Egerton University along with the Institute for Development Studies at Nairobi University which NGOs, donor agencies and policy-makers draw heavily on for knowledge generation. Alliances between research organisations and NGOs seem to be an effective formula for bigger policy impact as more and more of the civil society groups take on an advocacy agenda while at the same time recognizing the need for an informed, rather than merely political, debate.

2.8 Private school sector associations

The Kenya Association of Private Schools (KAPS) started around 10 years ago by owners of private schools in Nairobi to have a stronger lobbying position in dealing with the government and local authorities. Branches also exist in Mombasa, Nakuru, Kisii and Eldoret. By 1998 there were 242 private primary schools in Kenya, amounting to two per cent of the total number of primary schools (Ogachi, 2002). Private primary schools do not get any subsidies from the government.

3. INSTITUTIONAL ENTRY POINTS FOR ENGAGEMENT

There is no lack of institutional structures for participation in education policy formulation and implementation. The question is how well these structures work, how representative they are, whether basic education (as opposed to higher education) is sufficiently represented and emphasized, and above all how they feed into implementation. Implementation is the biggest bottleneck for a more efficient education sector in Kenya.

Although most key informants agree that there is space to participate in policy formulation, they are frustrated by the lack of impact it seems to have on the sector, and the weak implementation of decisions taken. There is also lack of a cohesive, long-term sector strategy and debate on policy option.

3.1 General features of the institutional arena

Weak governance systems and capacity for implementation exist all the way down to the local level, and with practically no resources available for recurrent costs other than what is generated from local revenues, parent contributions and levies. This partly explains the existing and growing difference in quality and access to primary education between rich and poor districts – the latter still being dependent on international NGOs for service delivery.

Although the Elimu Yetu campaign, under the Education for All (EFA) framework, had some success in raising these issues in the public debate, there is a lack of government capacity to respond with practical solutions. A UNESCO-funded EFA secretariat was established in the MoEST, designated to respond and drive this agenda forward. Although a welcomed initiative by the Elimu Coalition, members expressed a concern that the national EFA coordinator “does not really succeed in moving things inside the Ministry”. This may be another example of how an imposed and donor-funded addition to the Ministry ends up having less influence than if existing, but inefficient, structures were reformed and made more efficient.

The Koech education review report, carried out by the Commission of Inquiry into the Education System of Kenya (Ministry of Education), coincided with the completion of the Master Plan on Education and Training 1997-2010, produced by the Ministry of Education. It included broad consultation with specialised groups and educationalists, civil society, religious organizations and political parties. It calls for *legal reforms*²³, e.g. reviewing the Education Act, political will, enhanced efficiency and effectiveness in administration and management, and building partnership and collaboration between the government and other stakeholders, using the concept of Totally Integrated Quality Education and Training (TIQET) (Abagi, Owino et al 2000). Implementation is lagging behind, however, and it is unclear how recommendations in this review have been translated into the PRSP framework, led by the Treasury.

The lack of debate on policy options for education is noticeable also at the local level. During LASDAP consultations in Kwale district, creating local economic opportunities were down-scaled as a priority by communities to number 5, while having water pumps installed was priority number 1, even though the latter may be a more short term solution. Primary education featured only as number 5-6 in community consultations, and was not selected as a priority in the short-listing of initiatives to be undertaken in the next three-year period.

Similarly, during district consultations on the I-PRSP, the emphasis on “good governance” was downscaled compared to other, more tangible, priorities, and was de-emphasized in the final PRSP. Yet, this could have been a question of language and having a long-term vision. These are both examples of participatory processes that, without being followed by a structured, *evidence-based debate on policy options*, can misguide policy and avoid addressing the core of the problem for more strategic investment.

3.2 Formal entry-points for NSA engagement

A number of formal government bodies and institutions exist in the education sector where some of the bigger NSAs (particularly KNUT and church-based organizations) have access and formalized participation:

- *District Education Boards (DEBs)*: Although members are politically appointed, they can “invite in” other influential education actors in the district. KNUT is present on DEBs through its branch offices, and international NGOs active in service delivery are sometimes asked to have representatives on the boards.
- *Kenya Institute of Education (KIE)*: In charge of curriculum reform. NSAs are present (or can lobby) subject and course panels as well as the Academic Board and the KIE Council. The church groups have actively used this route, e.g. to lobby for compulsory religious education (NCCK), or to prevent the introduction of sexual education and HIV/AIDS awareness in primary education (Catholic Church).
- *Jomo Kenyatta Foundation*: The government publishing organ which publishes school books. KNUT sits on the board.

²³ Among the more fundamental reforms suggested was to move away from the current 8-4-4 system, meaning eight years at primary, four at secondary and four in higher education and go back to the old system. The current system was criticized for being unmanageable in terms of content and too costly.

- *Kenya Education Staff Institute (KESI)*: Influences policies on educational management training. KNUT among others, are present on its Board.
- *Kenya Institute of Special Education (KISE)*: Develops policy on education for the disabled.

The government also invites NSAs to participate in a number of consultations through periodic *fora* and for special opportunities. Examples include:

- *Education Commissions and Committees* present an opportunity to come to hearings. However, they are usually publicized with very short notice, and are out of reach for any organizations and/or individuals outside Nairobi and other provincial towns. The most recent one was the Koech Commission in 1999 leading up to the current Master Plan for Education and Training.
- *Submissions to the Constitution of Kenya Review Commission*. E.g. The Elimu Yetu Coalition is asking for a reformulation of the Education Act to make education a basic right in Kenya.
- *PRSP thematic sector group on education* had regular meetings during the PRSP consultation and preparation phase. The challenge will be to find a way that this sector group can get involved also in joint monitoring of the implementation of the PRSP.

Another formal structure for engagement is the *school level*. Organizations are currently exploring how to influence practice, and build examples of best practice, that can be fed into policy via School Management Committees and Parent-Teacher Associations.

The Aga Khan Education Services (AKES), Kenya, has tried to make School Management Committees more accountable and influential by clustering them geographically. It enhances their voice in policy formulation and potentially makes them more accountable as they need to be transparent to other committees in the cluster (Ombech, AKES).

“When we started to work in Kwale, we found that School Management Committees existed on paper only – not in reality. Most of the people on the committees belonged to the rural elite working in Nairobi or Mombasa and had no real connection with the community. This was a big problem. We helped create rules on how/who could be elected to an SMC. For instance, the person should have clear ties to the school and be living in the community. We also helped cluster SMCs geographically so they’d have a bigger say in mainstreaming innovative approaches. Local ‘best practices’ are also fed into the national advocacy efforts of the Aga Khan Foundation who holds national workshops and have a Memorandum of Understanding with the Ministry of Education.”

Dr Abedha Ombech, KENSIP Project, Aga Khan Education Services, Kwale and Mombasa

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All NSAs who participated in this study also complemented formal entry-points for engagement with government authorities with informal routes. This includes:

- *Social mobilisation & collective action*: KNUT is perhaps best known for its active use of collective action through teacher’s strikes. The effect is further enhanced by their good informal relationships with the media (print and radio primarily). This is a very effective

tool in terms of having an effect on policy, and the low teacher:pupil ratio may be partly a consequence to this. However, it is less actively pursued to raise more fundamental issues around fundamental policies like cost-sharing, something they are also lobbying against. Instead it is primarily employed to favour the interests of their members. KNUT's actions are also of political importance as the head teacher of the schools (sponsored by the churches) often is the most influential person in rural communities, and the one that will most likely inform the Member of Parliament on issues to raise. Campaigning groups like the Elimu Coalition also uses social mobilisation and media effectively.

- *Informal lobbying:* Informal lobbying is still an important vehicle. Each organisation interviewed had its own contacts within the Ministry of Education. The Aga Khan Foundation (AKF) has managed to formalise this contact into a Memorandum of Understanding between the Ministry and the Foundation to define the terms of engagement.²⁴
- *Policy research:* Many NSAs recognize that advocacy is more effectively done if well grounded in and informed by policy research. KNUT recently established a Research Unit, involving external experts from universities and educational practitioners in their research. Aga Khan Foundation works with its own University network and also uses school-based surveys of student and teacher opinions to form a debate with teachers on what can be improved. IPAR, KIPPRA and University-based think tanks also contribute to coalitions and with commentary in the press.

3.4 New institutional opportunities

Some new institutional opportunities to engage on education issues were also frequently quoted:

- *The PRSP consultative process* is perceived to have helped to open up space for participation of stakeholders at district and national level and to *increase the demand* among NSAs to participate in policy-making and in joint monitoring of PRSP implementation on education issues. The PRSP consultations also helped to establish linkages between civil society at national and district level, which is a critical improvement in the civil society network country-wide (Hanmer et al, 2001). Even actors who were not part of the PRSP consultations, such as Kenya National Union of Teachers (KNUT) recognizes it could adopt and implement education priorities in the PRSP through its vast branch network (KNUT, 2002). Other NSAs (especially international NGOs) see the PRSP and EFA action plan as important points of leverage for following up on financing commitments at international level and among G8 governments (Action Aid, 2002).
- *Parliament:* In line with the findings of the overall study, Parliament was often quoted as one of the potentially promising areas for feeding best practice and analysis into the policy debate, especially on education budget issues. Suggestions have been made to establish a Parliament Budget Office which would provide MPs with budget information and support them in their participation in monitoring and evaluation of public

²⁴ AKF's approach to policy influence is to take the existing government policy or guidelines and to implement them at school level in the best possible way (Kenya School Improvement Project), then to feed lessons learned and innovative approaches back to district and national government officials through regular seminars.

expenditures (Hanmer et al, 2001). Action Aid and the Elimu Campaign have carried out research on how to track basic education resources and expenditure and have developed tools and training modules for stakeholders, including parliamentarians. (Action Aid, 2002).

- *Local government:* The Master Plan on Education and Training 1997-2010 addresses efficiency and effectiveness issues in education by placing a prime responsibility on Local Government Authorities and school management committees. It sets out the *decentralisation* of professional management, planning and financing of primary education (GoK, 1998). It therefore gives substantial power to local authorities to manage and finance primary education. There is scope for working with District Education Boards, District Education Officers and Local Authorities to prioritise education and to feed best practice from operational level into policy recommendations. At village level, there is scope to work with the chief and with sensitising communities so that issues around primary education get raised in “barazaas” (community/village meetings) and get into the LASDAP (Local Authority Service Delivery Action Plan).²⁵ It is also a way to inform the locally elected councilor about citizen priorities. However, some actors point out that gains at local level do not necessarily provoke a more profound “overhaul of the system”, as called for by IPAR (Abai, Odipo, 1997). Complimentarity between local and national level is therefore important. Composition and election to the *District Education Boards (DEBs)* also needs to be revised as the Chairmanship is held by the District Commissioner (DC) and is politically appointed. Thus, the DEB is dependent on the DC’s interests.

“The District Education Board tends to represent the elite who all have children in private schools and who feel less concerned about increasing quality of and access to public primary schools. The structure should be revised with elected members and an elected chairman of the board.”
Deputy Director, Primary Education, Ministry of Education

NGOs that are respected partners in education by government bodies, like Action Aid, *work on both the demand and supply side of primary education at district level*. On the one hand they push people to demand for their rights by empowering community level organizations and parents to question and put pressure on local structures. On the supply side, they work with the District Education Board members to train them on how to be more accountable and how they can stretch their resources as to avoid unofficial levies to support the Board. UNICEF is also working to build capacities of District Development Officers (DDOs) and District Education Officers (DEOs) in their focus districts.

- The *introduction of LASDAPs* (Local Authority Service Delivery Action Plans) was generally seen among key informants as a positive step for participatory planning and increased accountability at village level. The LASDAP is a requirement for the disbursement of LATF funds²⁶ (Local Authority Transfer Funds) to local authorities. Empowering local authorities is expected to improve the delivery of services by bringing government close to the people and to engage with them. This strategy, if well

²⁵ The LASDAP was made a requirement for the disbursement of LATF (Local Authority Transfer Fund) to local authorities in FY 2001/2002. The reason for this was to link local level revenues, including LATF allocations, to improved service provision, transparent management of resources and to introduce participatory priority setting at community level.

²⁶ LATF is part of the Kenya Local Government Reform Programme. It transfers five per cent of personal income tax to local authorities to enable them to improve service delivery, enhance financial management and revenue mobilization, and strengthen local community participation in governance.

implemented, will allow for more transparency in the governance of local authorities. Yet the way participatory consultations are carried out, through “barazaas” (public village meetings), could still favour the vocal few over the less privileged. The *participatory nature of priority setting needs to be scrutinized and refined*. The ranking of priorities was seen by the Aga Khan Foundation as unclear and “tend to reflect the views of the village chief and/or that of the District Development Officer or Councilor of the region.” Issues like getting girls into education and/or HIV/AIDS prevention may not be prioritised if the community is unaware of the extent or circumstances under which it affects them.

4. IMPACT AND POTENTIAL FOR NSA INFLUENCE ON THE SECTOR

Impact and potential for NSA influence on the primary education sector must be seen in the light of implementation constraints and new institutional opportunities as they are outlined in the above sections. On the one hand, the lack of government resources and capacity to deliver effective primary education services has allowed for civil society organizations and churches to make a substantial contribution, have a dominant say, and be politically influential actors. On the other hand, government capacities to respond to and translate recommendations into practice are limited both from its historically weak position, lack of political will, scarce resources and failure to deliver on its recommendations. It has also allowed for a lingering climate of suspicion between an under-resourced government and some very strong and financially viable NSAs.

4.1 Limitations and weaknesses

Government and local authority suspicion against NGOs is still noticeable when it comes to service delivery issues and NGOs’ potential replacement function of government at the local level. One of the concerns is that many NSAs still operate very much in ‘activist mode’ and readily employ extreme measures like strikes or protests (e.g. recently by KNUT on the issue of teacher’s salaries) while the government, at least claims, that they are looking for dialogue partners. What this means in practice is not clear. As one NSA interviewee pointed out, “it is easy for the government to go on talking for ever with stakeholders, just to delay action.” It can also be used as a mechanism for cooption.

“The Government is starting to change its attitude. Now advocacy groups need to change their attitude as well. Instead of just fighting in ‘protest mode’ we both need to ask what, respectively, we can do. There should be an attitude of cooperation, not blame. Being ‘critically engaged’ is difficult as you can’t be part of a participatory process and then criticise it from the outside.”

Treasury, Government of Kenya, PRSP Secretariat

“An [international] campaign is understood here as something that mobilises public pressure ... with specific goals, clear targets and clear enemies. It should be noisy, mobilising anger and outrage, using emotional appeals and high intensity media work, exposing injustice and making people feel uncomfortable.” *Action Aid, Concept Note for ‘Stop Cheating our Children!’ Campaign*

Most key informants contacted for this study tended to agree, however, that there is a need for a more *cohesive national debate with an overall vision*, which is currently lacking. Instead, random issues flare up in the press (e.g. around teacher’s salaries or other specific issues pushed by strong NSAs such as KNUT), but a realistic and implementable agenda for change is still not there and

widely discussed. As IPAR has pointed out, the education system “needs not merely restructuring but a complete overhaul ... from a holistic perspective”.

To overcome this sense of suspicion, Kwale district has introduced District Development Agencies Forum with representation from District Government, Local Authority, and NGOs active in the district. The forum meets on a monthly basis.

“I have rarely come across an NGO that has really pushed for long term change with a good solution on how to solve the problem and how to sustain it. For example, if there are no text books in the community they work, they just provide it and we do not even know about it. That way, some communities who were earmarked by the government for free books got two sets – one from the NGO, one from the government. Others got none. This is the sort of waste we cannot afford.”
Deputy Director, Primary Education, Ministry of Education

“The challenge for the NGO sector to be coherent is going to be greater. With government development budgets going now to the district levels, the pressure will be on NGOs to work more closely with the government and to share information freely on their activities and budgets.”
Deborah Ongewe, Chief Executive of the Kenya National Council of NGOs, interview in Adili, TI-Kenya, Issue 14, 2002

“The nature of policy making on primary education is still very top down. Locally you get instructions but nearly no financial or material support to carry them out.” *Kwale District*

Linked to the issue of government/NGO suspicion is feeling among government officials that some NSAs have become too powerful. This calls for a *broadened institutional support to a bigger diversity of homegrown, national institutions* to allow for a more diverse national debate on implementation issues according NSAs own membership-base and mandate.

Presently, influential advocates and well-funded campaign coalitions (such as the Elimu campaign who drafted the part of the I-PRSP on education), have very strong international ties with the global EFA campaign and belong to international networks. On the national scene, the most dominant institutions (like KNUT and religious/church groups) also have strong international ties and support. This does not necessarily help to spur a diverse, national debate on implementation issues for primary education in the Kenyan context. The NSA advocacy scene is therefore patchy with a few very dominant actors. A *bigger diversity of national players* expressing their views may be needed to overcome this historical pattern of dominance by a few politically strong actors, and deflect some of the inherent tensions. This would have to include the traditionally less vocal groups (parent-teacher associations, coalitions of development agencies at district level and local government officials etc.).

A broadened debate may also help to raise for wider debate some of the *issues of contention between NSAs*, including the role of the Teachers Service Commission (TSC) and the teacher:pupil ratio. IPAR argues that the monopoly of the parastatal needs to be dismantled and that independent employment boards should be established to deal with the recruitment, promotion and terms of service of teachers. This would reduce the GoK recurrent expenditure in education. “Teachers should be prepared to compete for jobs in a liberalised environment.” (Abagi, 1997). This is contested by KNUT, who, backed by the opposition party, believes the institution should be strengthened (KNUT 2000, The Nation, 2002). KNUT also differs from Transparency International (Parajuli, 2001) and other NSAs and research institutes on the issue of increasing the low teacher:pupil ratio which, by nature of defending the interests of member teachers, goes against its core mandate.

4.2 Opportunities and strengths

However, despite differences on specific issues (such as curricula revision and other education reform priorities such as the pupil:teacher ratio etc.), there is a strong convergence among a diverse group of non-state actors on the main advocacy objective in the field of primary education: that of free, compulsory and universal primary education of relevance and quality, accessible to each child independent of gender. This has allowed for broad coalition building between a wide group of civil society organizations, educationalists, media and researchers for advocacy purposes and national campaigns, e.g. the Action Aid run Elimu Yetu campaign (Action Aid, 2002). Compared to other sectors, this can be seen as a strength that should be further explored.

This convergence on the overall objective of universal primary education makes *the space for participation less contested* between actors. However, although coalitions such as Elimu achieved some notable successes in strengthening the voice of civil society on education policy issues, the implementation and operational impact on the sector is less clear with a feeling that “very little has changed in practice”(Action Aid). There seems to be an agreement among main players that there is a potential for advocacy to *focus more on implementation issues* in the future.

“The next phase of our work [after the Elimu Campaign] needs to move towards a genuine campaigning mode, mobilising people at every level and linking national and international work to local engagement.”

Action Aid Kenya, Concept Note for a possible Action Aid Campaign, 2002

4.3 Potential ways forward

In addition to exploring in-depth the new institutional opportunities (see 3.4) presented to NSAs, and strengthening the “recipient side” of advocacy, a couple of aspects of NSA support were stressed in order to allow for more meaningful engagement in policy formulation and implementation in the future:

- *Better use of knowledge and data:* Local level PRSP consultations have generated an enormous amount of community-level data. This data, if effectively processed and made accessible to NSAs and planners for further monitoring and advocacy work, could radically change the country’s planning in terms of priorities and new insights (Hanmer et al). NGOs active in the basic education sector, such as Action Aid and Aga Khan Foundation, also explore this *knowledge-based approach* by making more strategic alliances with knowledge generating institutions, universities and think tanks (e.g. CLARION, IPAR, KIPPRA, Aga Khan University and other university-based professional associations). More than just generating new data, however, there is a need to scrutinize how already existing data, gathered by donors and think tanks, could be made more transparent and publicly accessible for advocacy networks whose own capacity to fund policy research is limited.
- *Focus on basic education as a human right and as an engine for societal change:* More and more groups see the need to push for basic education as a human right and in that way, to single out *basic* education from the broader education agenda. There is a risk that well educated lobbyists otherwise focus on higher levels of education, which may be of bigger interest to the “educationalist elites”. A *wider meaning of pro-poor education policy* needs to incorporate broader, societal issues – such as the need for a literate

workforce for economic growth, the incorporation of HIV/AIDS prevention in the basic education system and the human rights aspect of basic education. It was also pointed out that “exploring cross-sector pro-poor aspects of education advocacy may also avoid being stuck in sector silos” (DFID).

5. IMPLICATIONS FOR DONOR SUPPORT TO NSA ENGAGEMENT IN THE PRIMARY EDUCATION SECTOR

“It is clear that DFID is in it for the long run in Kenya. We ought to be able to say, ‘Let’s look at the 20 year time -frame.’ As a bilateral agency with a long history of working in the country, we should be able to be more strategic than to just judge present performance and adopt punitive measures if it is not satisfactory.”

DFID EA (K) interviewee

The study shows that more strategic, long-term thinking in donor support to NSA engagement and influence on pro-poor policy implementation is needed in the education sector. As implementation is one of the major bottlenecks in the sector, support is needed to allow local actors to engage effectively to monitor and improve on-the-ground practice, and for local authorities to build up capacity to respond and feed lessons upwards in the system to complement the policy implementation feedback loop.

It also shows that the main NSAs who are historically dominating the sector may not always be concerned about educational reform and systemic changes. Some (like churches, trade unions) are filling ‘advocacy space’ without necessarily pushing the education reform agenda, and often being pulled off-track to advocate on other issues on a short term basis without linking it to systemic issues to do with basic education (e.g. church role in advocacy on civic education or HIV/AIDS without using its policy influence to get it mainstreamed into the general curriculum).

A new paradigm for rights-based advocacy around basic education is also taking root, opening up for broader participation and mobilization of actors interested in education as a means towards societal change. This goes hand in hand with a knowledge-based approach, which calls for the need of better capture, use and accessibility of local evidence and an opening up of homegrown debates.

One of the most obvious risks is that the basic education agenda gets swallowed up by advocates for higher education, as exemplified in the decline of budget allocation towards primary education as a proportion to higher levels of education. It is therefore important to strengthen linkages between the local and national level, feeding practical examples of best practice and bottlenecks to implementation into the national debate.

In summary, some implications for donor support to the sector include:

- *Knowledge generation and brokerage:* Independent local knowledge institutions can help to come up with policy options and guide implementation efforts by focusing on the “how” of primary education. In coalitions with other NSAs they have proven to be effective in driving informed advocacy and debate, which helps to steer away from decision-making based on political decrees rather than evidence. As most of them are urban-based and could have tendencies to be more “elitist” than other poverty focused

NSAs, they may be more effective if working in partnership with local and issue-specific groups (like gender, HIV/AIDS or service delivery groups). While they have actively highlighted many of the systemic problems in the education system in the past, they could also play an important role in providing evidence and practical insights on specific areas that have been less researched in a country-specific context so far, such as HIV/AIDS and its direct linkages to the education system, sexual harassment in schools etc.

- *Better use of local data gathered by donors for country analytic work:* A better use and communication of household and community data gathered in PRSP consultations and in other donor country analytic work could help to guide NSAs who have limited resources for knowledge generation themselves in their advocacy efforts. However, it needs to be tailored, communicated in a clear and accessible format. More transparency on analytic work by donors and government alike may encourage a climate of dialogue and reduce suspicion and antagonistic advocacy measures. For example, a shorter, public version in plain language of the Public Expenditure Review in the education sector, currently under preparation by the World Bank, could greatly help NSAs to identify entry-points for advocacy and education expenditure tracking.
- *Building local capacity and mechanisms to allow for the poor to “speak for themselves”* rather than the current tendency of an over-reliance on NGOs to “speak for the poor.” This could mean exploring new ways of capturing local knowledge through participatory monitoring and evaluations and participatory mechanisms beyond the traditional “barazaas” to feed into priority-setting for development initiatives. It could also mean strengthening the terms of engagement of the poor in relation to their local authorities, and the role of NGOs to help build that capacity rather than acting as their representative voice upstream in policy processes.
- *Policy communication:* Policy outcomes, such as sector priorities in the final PRSP and the budget allocated against them, needs to be more systematically communicated in order for NSAs to continue to engage and monitor progress. According to the Aga Khan Foundation, it is sometimes difficult to know what the education policy is in a certain area, given that levies vary and random initiatives are poorly communicated from the ministerial level. The PRSP Secretariat at the Treasury also stressed that – paradoxically – donors supported the consultation process very firmly, but that there is no support for communicating priorities and how they will be financed back to the districts and communities that participated.²⁷ Joint monitoring of PRSP priorities will also be an area where donors could step in to ensure a broad NSA involvement.
- *Coalition/platform building:* A multi-actor and cross-sector approach could help to link primary education issues with e.g. campaigns around child rights or HIV/AIDS. The possibility of involving the private sector in lobbying for an educated work force could be explored. Coalitions and broad platforms can help to ensure an autonomous space for dialogue on policy options.
- *Long-term strategic partnerships and programme approach:* The primary education sector is still dominated by churches and religious organisations along with a limited number of other influential actors. Due to their wide reach and historic anchoring in society, they have become “donor vehicles” for project-driven initiatives, such as civic

²⁷ Comment during interview with Monica Aoko, PRSP Secretariat, Treasury.

education, peace education etc. A shift towards supporting and making long-term strategic partnerships with broader variety of actors (e.g. associations of school management committees, parent-teacher associations, district level coalitions) may help to revitalise a more diverse and locally relevant debate on primary education sector reform.

- *Strengthen government capacity to respond to policy pressure to improve implementation:* Donors have a comparative advantage of engaging in public sector reform and to make sure that the capacity to respond to advocacy pressure is there on the government side, particularly in relation to implementation issues. With a decentralisation of the education system, this may mean working closely with district level planners (DDOs and DEOs), supporting them to increase their capacity to manage and prioritise primary education policies and support district level *fora* for dialogue with service providers, NGOs, parent-teacher committees etc. Detailed household data, available at district level, could complement the current system of “barazaas” in making sure local circumstances and long term causal relationships are taken into account in local priority setting for service delivery. LASDAP priorities and district budgets also need to be widely publicised to facilitate NSA engagement.
- *Establish an education information management system:* To strengthen institutional capacity of the government to respond to NSA pressure, an audit is needed of what info is available on implementation of primary education (between the Ministry of Local Government, Treasury and Ministry of Education, Science and Technology), how it is routinely collected and what systems are there to manage it. This could be complemented with district budgets of NGOs and external service providers to get a better overview of the revenue base and external financial contributions in each region. A more structured information management system will also be needed in a joint NSA-government PRSP monitoring.

5.1 Areas for further research and analysis

There are several issues and recommendations made in this brief study that would need further in-depth analysis and understanding. These include:

- *Assessment of knowledge & information systems.* In addition to an audit of government information systems on education, it would be important to, in further detail, map out formal and informal information flows among NSAs on advocacy issues. What is the role of net-working and how could this be supported? Who different actors mostly listen to in their priority setting (sources of information: donors, government, community members/research, other similar groups, international campaigns etc.). How could their information-base and dialogue options be broadened? Is there even a “willingness” to listen to others?²⁸
- *Advocacy skills and needs among district planners and local authorities:* Local planners will, more than before, need to advocate for their cause and find creative solutions to revenue-raising for education. Given the “patronage” system, what skills and pressure

²⁸ During interviews, some NSAs complained about “forced marriages” with other NSAs, imposed on them by donors. This friction was most noticeable between issues-based groups with a development focus on the one hand, and the more dogmatic faith-based or politically oriented groups on the other.

points can/do they use to raise issues emerging in their area? How do they acquire better advocacy skills? How can they most effectively use resources to build capacity among staff? For example, in Kwale, it was suggested that international NGOs should use county council extension workers to the extent possible, and train them, instead of bringing in their own staff.

List of people interviewed

Government and local authority

Aoko, Monica, PRSP Secretariat, Treasury
Kariba, S., Deputy Director, Primary Education, Ministry of Education, Science and Technology
Gabriel, Mr., Acting District Commissioner
Ruteri, Mr., District Development Officer
Bambaulo, M., Pre-schools Officer, Kwale Council
Kibamba, Bintiali, Pre-schools supervisor, Kwale Council
Mwakiungezi, Mwangouga M., District Social Development Assistant, Kwale District
Mwatsahu, Mishi, Clerk to the Council, Kwale Council

Labour unions

Kariavu, Alexander N., National Executive Officer, Kenya National Union of Teachers (KNUT)
Nyambala, Paul M., Head of Research Unit, Kenya National Union of Teachers (KNUT)

Donors

Townsend, Felicity, Senior Education Adviser, DFID, Kenya

Academics

Barasa, Fred Simiyu, Senior Lecturer/Chairman, Department of Educational Foundations, Egerton University

NGOs

Ibrahim, Amina H., Education Coordinator, Action Aid Kenya
Mang'are Ong'uti, Seth, Regional Programme Officer, Education, Aga Khan Foundation, East Africa
Odete, Eve, Policy Research Coordinator, Action Aid, Kenya
Ombech Abidha, N., Project Director, Kenya School Improvement Project, KENSIP, Aga Khan Education Services, Mbheni/Bodeni Compound, Tononoka, Mombasa

Church organisations

Hubutu, Sussie, Programme Officer, Advocacy, NCCK
Kabue, Samuel, Programmes Director, National Council of Churches in Kenya (NCCK)
Machira, Jane, Programme Officer, Development, NCCK
Makau, Nereah, Programme Officer, PME, NCCK
Muhoya, Sarah, Head of Department, Communications, NCCK
Muthungu, C.N., Programme Officer, Scholarships

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CASE-STUDY II :

Budget Processes

Issues And Observations On NSA Participation In
The Budget Process In Kenya,

Betty Maina

The Context: The budget process in Kenya

Budget formulation in Kenya is dominated by the Executive, conducted in secrecy, is little debated (within and outside the Executive) and is little understood by the public and parliament. Within parliament, the debate in the budget is not integrated, inconclusive and does not proceed chronologically. There is very little room for non-state participation except through privileged access.

The budget is formulated by the Executive, enacted by the legislature, implemented by the Executive. Following implementation, the auditor general reviews the procedures and implementation of the budget and prepares a report, which is reviewed by parliament through the parliamentary accounts committee (PAC).

Kenya's government is a mix of the presidential and parliamentary models. However, principally it follows the parliamentary mode of government often referred to as Westminster types of parliament. It has only one chamber to which all Members of Parliament (MP) belong. MPs are elected from constituencies. The constituencies are not the same in size (some have large populations, others have very few). The government, consisting of Ministers (cabinet) is selected by the President from among the MPs. The president is also a member of parliament and directly elected for the Presidency by the peoples.

The Ministers are the political heads of Government ministries and hold their portfolios at the pleasure of the president. There are periodic re-shuffles of cabinet- Ministers are circulated around different ministries or dropped and others picked. The Chief Executive in any ministry is the permanent secretary. They too are appointed by the president and re-shuffled from time to time. They are also the accounting officers responsible for policy and financial execution within the Ministries and report on the financial matters to the Ministry of Finance. Kenya's financial year runs from July 1 to June 30th.

Space for NSA engagement in budget work and approaches to utilisation:

The role of NSA is not anticipated in the budget process. There are therefore no clear guidelines or outlines of when this shall take place. There is no legal or administrative position on the participation on NSA's in the budget process or on whether government is duty bound to accept the proposals thus presented. This is not clearly spelt out in the legal framework and it leaves it to the goodwill of whoever is in charge in Treasury at any given time.

Admittedly space has significantly increased since the introduction of the PRSP. However, even after that, it is not clear how NSA can engage beyond the traditional forms of access. Though the Ministry of Finance has attempted to keep this going, it is clear from the experience in 2002 that it is still learning. There is therefore a need for formalised or agreed processes and opportunities for engagement. In the past this has been open to nimble organisations that exploit privileged access and old contacts.

Access is through contacts with the Minister for Finance or specific individuals in the Ministry. These are not formalised contacts and once access has been given there is a temptation not to do anything to jeopardise the access. This would explain why some groups have been unwilling to publicly criticise the government or Minister in other forums lest the 'favour' is withdrawn.

Points of Engagement in the budget process

Many groups that are engaged in the budget process tend to target the budget preparation/formulation phase. This is the phase that is controlled by the Treasury. FKE, KAM, KNCCI and ICPAK have long concentrated on this phase. The discussions and consultations at this stage are not public.

There are some groups that are now engaged with following the budget implementation stage. Several NGOs situate their work here e.g. Social Development Network (SODNET), Action Aid Kenya, and the Elimu Yetu Coalition. The engagement of these NSA's at this stage is intended to play both a public education role as well as cultivation of claim making by citizen groups.

There has been little engagement of NSAs during the budget approval stage (i.e. with the legislature). This might be explained by the relative weakness of the legislature until recent times. This is starting to change.

Over the last 2year we have observed an interest in the private sector to engage with the legislature. This engagement arises from the realisation from these actors that legislators can have some effect on budget matters. So far this is confined to discussions around the Finance Bill (which is also referred to committee unlike the Appropriation Bill).

Examples of NSA participation in the Budget process prior to PRSP.

This does not mean that there has been no engagement with NSA's. Prior to the PRSP process, there was no explicit space for widespread engagement. Key/traditional private sector associations e.g. the KAM, the FKE, KNCCI, have a longer relationship with treasury that permitted them to be engaged during formulation. These organisations would receive requests. At critical times in the budget process, the Treasury invites recommendations from these associations and provides opportunities for oral presentation.

Other organisations such as the Institute of Certified Public Accountants (ICPAK) have engaged with the budget process especially the revenue generation proposals for more than 15 years. This engagement was driven by the fact the ICPAK is the professional association of accountants, who usually deal with taxation matters in companies. Beyond engagement with proposals on revenue measures, the ICPAK has also been involved in reform of the revenue collection and the Kenya Revenue Authority.

In 2001, the KAM participated during discussion on the Finance Bill and subsequently some sections of the Bill were amended during committee stage. In 2002, it was observed that there was increased participation during the budget approval stage and consequently several proposals made in the Budget speech in June 2002, were revised in Legal Notices even before formal approval by the legislature.

The legislature also needs to identify spaces for NSA engagement. Nothing compels public hearings at present during the debates on budget in parliament. This might assist in further engagement. The structure of debate in the House could also contribute. The engagement with the Finance Bill is made possible by the fact that it is committed to a specialised departmental committee who have responsibilities to review the Bill and make proposals to the House on amendments. This provides opportunities to consider submissions from the interested groups and public. However the debates in the Committee of Supply i.e. the Appropriation proposals are not subjected to committee scrutiny, which means that there is also limited opportunities for the legislators themselves to fully debate the budget issue.

The Institute of Economic Affairs has been working with parliament to improve its capacity in budget analysis and research during critical times. The legislature would like to take this on as part of its in-house capacity e.g. through the establishment of a budget office. This has not yet been established. However once it is finally done, it will provide more space for engagement between the legislature and NSA's.

Sites of Engagement

The main discussions around the national budget are held in the capital. Most engagement between different departments of government and with the legislature happens at the capital. Groups that seek to influence these processes are by necessity also national level organisations with presence in the city. This may prevent other groups who are not urban based or not with national presence from influencing the budget.

There are therefore groups starting to work with influencing the local authority budgets e.g. SODNET. However there is limited space there as many Local Authorities do not have sufficient funds and rely on transfers from the centre through the Local Authority Transfer Fund (LATF).. There is however scope for both increased participation in LA budgeting and resource identification. At present the work of SODNET revolves around budget monitoring and increasing vigilance on priority setting. Beyond this, some groups have sought to actively engage and influence priority setting by the LA. In one instance the chair of the SODNET chapter is also the chairperson of the Finance Committee of the Local Authority.

The question of engagement at the local level invariably confronts the observation that decentralisation in Kenya is incomplete. While this is a site of great promise of engagement on priority setting for public expenditure, it must be admitted that Local authorities are quite weak presently. Many do not have a robust revenue base and decision-making is shared with the centre.

This might change with a new constitutional dispensation. There is scope for further NSA engagement, which may revolve around some of the following issues.

- Revenue Potential Studies and Explorations
- Identification of priorities for expenditure
- Monitoring the budget process and policy outcomes

- ☞ Articulation of issues between local and national levels e.g. resource-sharing questions (– Which revenue bases should be tackled at local level and which at national level?)

Support Framework for NSA engagement and participation

Budget Information – is there sufficient demand?

One of the often-repeated claims is that budget information in Kenya is not available as such. While it is true that during preparation, not much information on drafts is available, but once presented in parliament, there is actually quite a bit of information available i.e the proposed estimate of expenditure, the Finance Bill, estimates of revenue, related legislation etc. This is presented in the manner determined by the Executive, is rather bulky and hard to navigate without help. There has been no demand or stipulation on how this information should be presented for better ease of understanding and engagement by NSA's and even the legislature. Is it therefore a question of supply or demand?

The absence of “active demand” by NSA and other groups might have contributed to the continued habit of the Executive of presenting budget information in complex form, a focus on inputs and unrelated to outcomes, lack of awareness about budget documentation, lack of awareness of opportunities for access and domination by suppliers of analysis of the budget.

At the same time, as alluded to above while the private sector uses existing information to make claims on government and affect decisions, there is inadequate utilisation of the same by “civil society” groups.

Capacity: Not all non-state actors can engage at the same level

Different groups, who engage in budget work, have differing abilities in the process of engagement. The budget is still considered by many especially in civil society as distant and difficult to understand and hence difficult to engage with. Admittedly this is changing but it is fraught with difficulties.

The private sector groups are better-organised and more articulate in presentation of issues than the groups in civil society or those not traditionally well organised enough to prepare submissions. This partly results from a longer history of engagement by private sector groups as well as the specificity of requests of such groups e.g. a specific tax, which affects a specific product etc. The issues that some NGOs represent are not always that specific.

This also raises a more fundamental question about the role of NSA in the budget process. While many are desirous of strategic engagement and influencing decision-making, some in the public sector on the other hand seems to expect NSA to join in partnership during the development of the budget. This reveals a desire to instrumentalise NSA's and 'jointly' plan with them. While some NSA's might be keen on this, it is doubtful if more than a handful of groups will be able to engage at the operational level to the extent expected. Those that can will invariably be large international NGOs rather than local movements of poor people.

Budget Implementation: Inadequate in year reporting

As mentioned, there is a lot of budget information available but it is not always terribly useful or easy to navigate. In addition to this, it is not always timely. There is no legal basis for making budget information timely in a manner that can promote engagement by NSAs. For example there is very little useful in-year reporting that would be useful for engagement. Quarterly reports are released more than 2 quarters later and only focus on disbursements and not on actual outcomes. Information on debt is made known after the fact (though this can be anticipated from the deficit figures).

This is also confounded by the fact that the government does not make a report on outcomes of public expenditure. It is therefore difficult for groups who wish to make the links between expenditure and outcomes.

And the LAW? Space in the legal framework

This suggests that the legal framework in Kenya while explicit on procedures to be followed with regard to the budget should also make explicit engagement and consultations with NSA at budget preparation, approval, implementation and audit stages. This should change with more implementation of the MTEF but it may need to be harnessed in a new/ reformed public finance management law that outlines processes, formats of presentation to information, consultation at all stages, disclosure requirements (format, periodicity, stages etc), scrutiny among other issues.

Whose Responsibility is it to ensure Budget Transparency?

This is confounded by the fact that there's no single institution charged with ensuring budget transparency in Kenya and therefore promotion of NSA engagement as well. As mentioned above, there is a lot of budget information made available during the year. It is probably quite costly to access all of it – but it is not sufficiently useful for engagement as it contains details and routine information on government operations. There is insufficient summary. There is no requirement to summarise or present information of certain detail to the public.

Societal Depth of those participating in the Budget Process in Kenya.

While there has been a marked increase in 'civil society' participation especially since the PRSP process, it is observed that this is largely confined to participation by NGOs. It does not yet sufficiently constitute organisations rooted in society and popular struggles. This is contrasted with engagement by the private sector which pretty much represent the interests of an affected group e.g manufacturers, or the transport industry etc.

The limited involvement of real people's movements etc could undermine the process of further engagement. Government is quite suspicious of NGOs and it has to be said that sometimes, they pursue narrow interests and given their prominence could sway government decisions in a manner that may not be beneficial to the whole of society.

To deepen engagement there should be efforts to ensure that the organisations of the poor or those with social depth are facilitated to understand and engage with the process. NGOs and other actors currently engaged could be catalytic in promoting this engagement

Poverty and Pro-Poor Policy Influence - Some thoughts for Reflection

Poverty and exclusion experienced by the majority of people in the country. However these groups do not have sufficient influence on policy as their numbers might suggest. It is therefore important to understand how the interests of poor people are represented in the country. While there are various organisations and associations of poor people at all various levels, especially at the local level, the articulation of the interests of poor people has been mediated by NGO's (international and local). This role is usually self assigned and does not have a social basis. This is not the case for instance with farmers unions and trade unions - though they are quite weak.

The difficulties of organising poor people into effective voice and representing their interests should be a subject of further discussion and is probably central to making some progress on replacing NGOs and other voluntary groups not rooted in societal struggles with active social movements able to engage at the national level.

The poor have not yet sufficiently organised enough to exert power in Kenya in politically challenging ways e.g. land invasions or withholding of the vote. The natural constituencies that might have done this e.g. the trade unions have been weakened through government cooptation in the past. At any rate, a large part of the work force is not unionised and certainly not the engine of industrial drivers presently. COTU does not have a policy analysis and influencing unit that could even without the threat of political action, would be an avenue for articulation of pro-worker policies and tends to rely mostly on its SG to speak out etc.

Other groups that could have articulated concerns of poor people in an organised manner are Cooperatives or Farmers unions. The Kenya National Farmers Union has not been a strong voice following its cooptation by the ruling party and liberalisation, which raised diversity of interests between sections of the farming community.

Whatever the case, pro-poor policy advocacy will be determined by the nature and structure of representation of the interests of the poor people and the translation of this into political power

SOME NSA's Involved in Budget work in Kenya

The range of actors involved in budget work is a reflection of NSA's and their engagement with government. They range from associations drawn from the profit sector to those who are drawn from the non-profit sector. Some are typical NGOs who engage in budget work on behalf of other groups who cannot adequately represent themselves, while others are knowledge brokers who support a variety of actors in engagement in budget work.

Institute of Economic Affairs

The Institute of Economic Affairs (IEA) is a civic forum that seeks to promote pluralism of ideas through research and open, active and informed debate on public policy issues. The IEA is independent of political parties, pressure groups, lobbies and any other partisan interests. The IEA is Kenya's first public affairs dialogue forum.

One of the programmes of the Institute, the Budget Information Programme has the main aim of enhancing the participation of parliament, the interested public and professionals in the budget process. The main objectives of the IEA budget work are to; Create space for citizen

engagement in the budget process, Enhance the capacity of public institutions and organisations that have a focus on public finance and Provide quick and easy information on public finance.

The Budget Hearings:

The IEA conducts public hearings on the budget in the weeks and months leading up to its presentation. Members of organized groups who have opinions on how the budget should be structured and issues they wish to be highlighted make submissions to the hearings. The IEA then synthesizes these submissions and extracts elements that are common among them in order to form a memorandum on basic principles for the budget. The complete document is then presented to the Ministry of Finance and the Parliamentary Finance Committee.

The hearings have been motivated by the need to provide avenues through which groups who did not hitherto have access to Treasury can submit their proposals. The government has traditionally consulted but the process was narrow and not subjected to public scrutiny. The IEA forums provide an opportunity for proposals to be interrogated by diverse actors.

Supporting Parliament on the Budget

Throughout the year, the IEA provides analysis and backup to parliamentary committees in their oversight role. A typical role that IEA plays is that of providing analysis for committees and preparing them for their interrogation role. The services provided to Parliament by the IEA include; Regular Seminars and Sessions with MPs on the budget, Provision of objective and timely Information on Public Finance on request to parliamentary committees. Such assistance includes; Independent analyses of budget proposals and budget documents and consequent production of a Budget Guide to aid MP in debating the budget. Production of *Annual Budget Plan* (aimed at broadening parliament's debate on the national budget, by providing incisive analyses of the budgetary debt) The plan is intended as a background document intentionally prepared with an interrogative stance, as this is the role of parliament. It therefore provides an alternative framework from which the legislature reviews the budget.

The Center for Governance and Democracy

CGD is an independent NGO. As part of its programmes, it also seeks to support parliament with analysis of legislation and other issues on economic management by the legislature.

Since 1996, the CGD has produced periodic analysis of the Controller and Auditor Generals report. These reports document the extent of wastage and mis-use of public monies or under collection of revenues. These reports are shared with the Public Accounts Committee. THE CGD has also conducted Economic Management and Sensitisation workshops for MPs.

Elimu Yetu Coalition:

This is a coalition of NGOs working on the promotion of access to Education in Keeping with the Education for All commitments and campaigns. It brings together various NGOs who focus on Education.

The group has identified the budget as a site of engagement in the promotion of Education. In previous times, engagement on the budget with regard to Education was accompanied with calls for greater spending. The group appreciates that the current level of public expenditure on Education is quite high and has therefore chosen to focus on issues of efficiency of education expenditure management.

Its engagement is presently on budget tracking and monitoring. The group would like to establish how monies voted for education are disbursed and utilised in the districts and in the schools. The group has also developed 4 budget-tracking modules namely Planning and Budgeting, Allocation and Disbursement, Implementation and Impact Assessment. These modules are being tested presently.

Social Development Network

SODNET is an NGO that monitors the implementation of the outcomes of the Copenhagen Conference on Social Development. It has established local chapters to promote this as well as fight corruption.

SODNET established a budget literacy programme in 1998. This is intended to provide information and tools that would enable the ordinary Kenyan engage in the budget process. This has led to the establishment of local chapters of SODNET in various localities that seek to track the use of budget funds allocated to the District as well as Local Authority Funds. When the Local Authority Transfer Fund (LATF) was established, the Ministry of Finance made public periodic transfers to the LA. This provides a chance for SODNET chapters track the use of such funds and influence decisions on its expenditure.

The chapters are of various strengths. Some have been able to influence some of the Local Authorities into publishing the budget broadly. Others have penetrated to the Local Authority to the extent that one chapter chair is also the chair of the Finance Committee of the Local Authority.

ABANTU

ABANTU is a regional gender advocacy NGO. ABANTU has established a programme on Gender and Poverty. Within this the organisation has developed a training manual on engendering the Budget intended to assist women advocacy groups influence the budget process.

Collaborative Center for Gender and Development

The CCGD is a research and advocacy NGO that seeks to improve the understanding and integration of gender issues in national planning at the macro level.

The CCGD conducts lobbying and sensitisation on the importance of gender analysis and mainstreaming in macro-economic policies and the budget process. To this end the CCGD has prepared research and publications on these subjects and seek opportunities for incorporation of the same. The PRSP process provided this for where CCGD joined the gender thematic group as well as the Constitution of Kenya Review process where CCGD has presented memoranda on the above subjects.

Institute of Certified Public Accountants.

ICPAK is the umbrella professional body of Accountants in Kenya.

ICPAK organises an Economic Symposium on topical issues in February each year. The recommendations from the symposium are communicated to the relevant ministry and those touching on public finance communicated to the Ministry of Finance. ICPAK also engages with

the budget process principally by making proposals on taxation measures and revenue generation implications. ICPAK reviews the effect of the taxation measures in place at any time and recommends shifts in terms of actual tax levels and administration designed to promote investment, widen tax burden and decrease administrative and compliance burdens.

Kenya Association of Manufacturers

KAM is the umbrella Association of industrialists in Kenya. Its membership is made up of both local and foreign investors. This is a group with a long history of engagement on budget matters. At the beginning of each year, it is invited by the Treasury to present memoranda on issues touching on the budget. In addition it is provided with an opportunity to make oral submissions to treasury. In the past, these would be synthesised and presented from the whole association. In recent times, Treasury has invited specific sub-groups or companies to make submissions on their own. This does not benefit from synthesis by the Association and has led to proposals being adopted that are eventually withdrawn following reaction by other sub-sectors of the business community.

Federation of Kenya Employers

This is the association of employers, which focuses on industrial relations.

FKE engages with the policy process principally through the structures set up for negotiation with government and labour. In addition, FKE is one of the groups identified by Treasury who present memorandum on the budget at the beginning of the year. This is usually compiled and presented principally through the central association. The concerns of FKE are on promotion of investment and how public expenditure should be utilised to this end.

Implications for Donor Support to enhance Budget work

In previous sections (especially 2), we have identified some issues regarding how NSAs's engagement in the budget process. Some of the observations made therein, could represent opportunities and possibilities for donor support to further NSA participation in budget work. Some are highlighted here.

Improve access to and utilisation of budget information.

As mentioned earlier, many NSA do not gain timely access to budget information nor do they identify what information is required. In addition, budget information is not presented in a manner that leads to easy interrogation by NSAs. It is presented in much detail without a summary. It is not unusual for various bits to be scattered in various sections or documents e.g the budget speech, estimates of expenditure, budget annex and estimates of revenue. Some opportunities for donor engagement are:

- Supporting the process of information synthesis, collation and dissemination that is geared towards provoking action and engagement of NSAs.
- Supporting innovative instruments of information sharing and interrogation by NSA's e.g through production of annual government scorecards etc.
- Sharing information and best practice on presentation of budget information that enables NSA and citizen participation and engagement in interrogation.

Capacity building for NSA's who engage in budget work

As mentioned earlier, not all NSA's can engage at the same level. It was observed that the civil society groups are particularly weak when it comes to issue identification and lobbying and

communication on the same. There is opportunity here for donor engagement in capacity building for such groups. Such capacity required is around advocacy skills

Broadening participation

As mentioned above, there are not really that many NSA's engaged in budget work yet. Many of those engaged could not be said to be organisations of the poor or rooted in any social struggle. It may be possible for donors to support the engagement of pro-poor social movements in this regard. How this is done would vary from case to case. However donors could consider working with groups that already work at the centre, who can play a catalytic role in stimulating a broad range of other actors.

What about the recipient side - Improving state capacity to engage with NSAs

Empowered NSA's will increasingly make more demands on the government to respond to the issues they raise and concerns they have with the budget process. As mentioned in chapter 4, one of the observations made in this regard is the weak state capacity to respond to claim making by citizen groups. Improving the ability of the state to respond could conceivably be considered for donor support. Such support may take information sharing and exposure sessions as well as improved capacity of the civil service in dealing with the broad range of actors that shall be brought in.

This support should not focus on the Executive alone but also on the legislature. These arms of government could be supported to receive and process requests, petitions and analysis by NSA's who chose to engage with them. Parliament has become a more assertive institution and it would be a critical one to work with in opening up space for NSA engagement and improving own analysis and research with regard to the budget.

References and People Interviewed

1. Prof Edward Oyugi and Ayonga Oyoma - Social Development Network
2. Dickson Mbugua - Matatu Welfare Association
3. John Njiraini - Institute of Certified Public Accountants
4. Njeru Kirira - Consultant and former Director of Budgets, Ministry of Finance
5. Monica Aoko - Head, PRSP Secretariat, Ministry of Finance and Planning
6. Muthoni Wanyeki and Mary Wandia - African Women Communication and Development Network
7. Wanjiru Mwangi - Collaborative Center for Gender and Development
8. Elphas Ojiambo - Action Aid Kenya
9. E. Poloji – Kenya Association of Manufacturers
10. Duncan Okello & Kwame Owino- Institute of Economic Affairs
11. Kibuga Kariithi - Nairobi Stock Exchange
12. David Ndii - Kenya Leadership Institute
13. Dr. Kangethe Gitu - Former Permanent Secretary, Ministry of Labour and Human Resources
14. Hon. Musikari Kombo – Member of Parliament for Webuye

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CASE-STUDY III :
PRIVATE SECTOR DEVELOPMENT

Prepared as part of: Mapping Study of Non-State Actors (NSAs) in Policy Making Process in Kenya

Prepared by:



Raphael G. Mwai
Fama Resources Limited,
P. O. Box 39579,
Nairobi.

Email: fama@net2000ke.com
Fax: (02) 4447794

In association with:

Jean Bossuyt
European Centre for Development Policy Management (ECDPM),
Email: jb@ecdpm.org
Maastricht, The Netherlands.

In response to request by:

EC Delegation and Department for International Development, both in Kenya.

List of abbreviations

| | |
|-----------|---|
| GDP: | Gross Domestic Product |
| KAM: | Kenya Association of Manufacturers |
| FKE: | Federation of Kenya Employers |
| KESTES: | Kenya Small Scale Traders and Entrepreneurs Society |
| KNCCI: | Kenya National Chamber of Commerce and Industry |
| EAA: | East African Association |
| KBA: | Kenya Bankers Association |
| JICC: | Joint Industrial and Commercial Consultative Council |
| NSSF: | National Social Security Fund |
| COTU: | Central Organisation of Trade Unions |
| SACCOS: | Savings and Credit Societies |
| KNFU: | Kenya National Farmers Union |
| PRSP: | Poverty Reduction Strategy Paper |
| WTO: | World Trade Organization |
| AGOA: | The African Growth and Opportunities Act |
| COMESA: | The Common Market for East and Southern Africa |
| EAFU: | East African Farmers Union |
| ACP / EU: | African Caribbean Pacific / European Union |
| FOSEDEP: | Forum for Social and Economic Development Partners |
| SME: | Small and Medium Enterprises |
| BDS: | Business Development Services |
| EPC: | Export Promotion Council |
| IPC: | Investments Promotion Centre |
| EPZA: | Export Promotion Zones Authority |
| KIPPRA: | Kenya Institute for Public Policy Research and Analysis |
| KCC: | Kenya Co-operative Creameries |
| ILO: | International Labour Organization |
| EAC: | East African Community |
| NSAs: | Non-State Actors |
| MTEF: | Medium Term Expenditure Fund |
| MWA: | Matatu Welfare Association |
| EPPO: | Export Promotion Programme Office |
| STABEX: | European Union fund to compensate for falling value of primary products exports |

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Annex A: List of private sector associations and people interviewed

INSTITUTIONAL ANALYSIS OF NON-STATE ACTORS (NSAs) IN KENYA

Case Study on: Private Sector Development (Raphael G. Mwai)

Executive SUMMARY

1. The Private Sector In Kenya

This case study on private sector development aims to shed light on the structure of private sector dialogue with government in public policy formulation and implementation. It seeks to identify formal and informal channels of policy dialogue and the mechanism for this engagement. An important aspect of the study is to identify capacity limitations in private sector associations in relation to the public policy dialogue; and the possible role of donors in supporting the essential capacity building interventions.

The involvement of the private sector in public policy dialogue is through sectoral based associations. These associations tend to mirror the structure of the private sector. The formal traditional associations represent the interests of the large scale, and predominantly foreign, private sector. These are Kenya Association of Manufacturers (KAM), Federation of Kenya Employers (FKE), East African Association (EAA) and Kenya Bankers Association (KBA).

The micro and small scale sector enterprises have activities-based representation. Thus, the informal sector artisans are likely to be members of the Federation of Jua Kali Associations, while the micro traders could be members of Kenya Small Traders and Entrepreneurs Society (KESTES).

Traditional associations that went into decline in late 80's are reforming themselves. These reforming associations are: Kenya National Chamber of Commerce and Industry (KNCCI) and Kenya National Farmers Union (KNFU). These associations have a wide branch network and provide viable linkages in policy formulation at national level; and policy implementation at local level. To be effective "voices" in policy dialogue and change advocacy, however, they need to overcome the governance and leadership challenges that currently affect them. These challenges are being addressed.

The exclusion of the major part of private sector associations from structured dialogue with government, especially the membership of JICCC, has given rise to new associations. These are Kenya Private Sector Foundation and The Private Sector Forum. Associations, which are still in the formative stages, seek to create an inclusive mechanism for private sector involvement in public policy formulation.

The co-operative sector has strong representative organizations (Co-operative Unions, Primary Societies and Savings and Credit Societies). These organizations are constrained in their policy advocacy role by weak institutional capacity; and an outdated regulatory framework. They are an important voice for the rural and urban poor and, therefore, potentially viable agents of pro-poor change.

2. Private Sector Engagement In Policy Dialogue

The traditional formal private sector has engaged with government through JICCC and ad hoc presentations to specific ministries. Informal channels of communication involving influential members of the business community are also effective in advocating policy changes. The exclusion of a large part of the private sector from these semi-structured policy channels reduces ownership of policy. This leads to weak policy implementation and, hence, limited impact at local operational levels.

The traditional approach to policy dialogue has been challenged by the new business environment. Global, regional and local economic liberalization has created major challenges for the traditional modes of policy engagement. The traditional sectoral and interests approach to policy dialogue is unlikely to be effective in the new environment. The push towards public/private partnership in policy dialogue has found impetus in the activities of new global trade organizations and arrangements, especially WTO; Cotonou Partnership Agreement; and AGOA. In the present circumstances, therefore, the private sector is increasingly being encouraged to be an integral part of policy dialogue.

The private sector does not directly engage in pro-poor policy advocacy. Economic growth is considered adequate justification for private sector activities. Wealth creation by the private sector leads to employment generation and social contributions. Investment by the private sector in the social sectors should be seen as a wealth creation activity with a social development dimension.

3. Weakness And Risks In Un-Coordinated Public Policy Dialogue By The Private Sector

The private sector associations, especially those in the formal traditional sector, have a tradition of engaging in policy dialogue with government. This approach, however, excludes the majority of private sector associations, especially those in the micro and small scale enterprises; and in the agricultural sector. An exclusive approach to public policy dialogue could lead to sub-optimal and, even conflicting, policies which could hurt the totality of the private sector. The examples of the reform process in the sugar and coffee sub-sectors demonstrates this possibility.

Lack of objective and clearly researched policy options could lead to inappropriate policies. The private sector associations lack capacity for researched policy analysis. This inhibits their effectiveness in policy dialogue. It is now realized that the public sector also lack adequate capacity for effective response to policy advocacy by the private sector. This situation is not conducive to optimal policy formulation. The result is weak policy implementation with limited impact on the ground.

Most private sector associations, especially those in micro and small-scale sectors lack capacity at leadership and management levels. This limits their ability to effectively engage in policy debate. This creates the instability in policy formulation arena with the attendant risks that have already been identified.

4. Supporting The Private Sector In Policy Dialogue - The Role Of Donors

The entry point for donors in supporting the private sector in public policy dialogue is the space created by the liberalization movement and especially the provisions of Article 6 of Cotonou Partnership Agreement. The private sector is also challenged by economic and political liberalization to engage in policy debate.

Donor support could be effective if it targeted capacity building in policy formulation at national level; and skills development at technical implementation levels. The acute need is to support capacity building in the private sector associations. While different categories of associations would require different support, and this can be assessed, the primary capacity needs are related to: governance, leadership and management; technical and project management skills; research and policy analysis; policy advocacy skills; trade negotiation skills; and skills in policy monitoring and evaluation.

To trigger support in specific capacity areas, especially in technical and technology capabilities, a need was expressed for a "seed money" approach through stakeholder trust funds.

INSTITUTIONAL ANALYSIS OF NON-STATE ACTORS IN KENYA

Case study on: Private Sector Development (by: Raphael G. Mwai)

1. Introduction

It is now recognized that an effective partnership between the private and public sectors is necessary for economic growth and, hence, poverty reduction. This can only be achieved if the private sector is able to influence policy and its implementation. This case study aims to add insight into the role of non-state actors in policy formulation and implementation, with particular focus on private sector associations. The questions to be answered include, but are not limited to: what is the profile of the private sector? who are the private sector voices? and how does the sector engage government in policy dialogue? which are the processes and mechanism for this engagement; and how effective are they in influencing pro-private sector policy change. Finally, what are the entry points for donor support for an effective private sector strategy of engagement in public policy formulation and implementation?

It should be noted that the case on private sector development supplements other cases in primary education and government budget process. These three cases will provide insight into key social, political and economic non-state actors; make a general analysis of NSA linkages with the political establishment and related capacities to influence pro-poor policies; and identify relevant entry points for effective donor support.

2. Private Sector in Kenya

The private sector cuts across all economic sectors in Kenya. Agriculture is the mainstay of the economy, contributing up to 25 per cent of GDP. Large multinationals are involved in farming and ranching in diverse parts of the country. Brooke Bond (a subsidiary of Unilever PLC) operates large tea estates in the Kenyan highlands. Eastern Produce engaged in coffee farming, horticulture and livestock rearing in the warmer parts of the country. Indigenous small scale tea and coffee farmers make significant contribution to marketed agricultural exports. Horticulture is now a major export crop attracting major foreign and local firms.

The industry sector, including manufacturing, is predominantly foreign. Similarly, the services sector, especially financial services and the energy sector, are foreign dominated. Examples of major players in these sectors are: Barclays Bank; Standard Chartered Bank; Kenya Shell and Caltex Oil.

The trade sector has a major representation of local enterprises, but these are largely Asian owned. Involvement by indigenous Kenyans is mainly at retail and informal levels.

The micro and small enterprise sector comprises 1.3 million enterprises, employing in excess of 2.3 million workers (*National micro-and Small Enterprise Baseline Survey - 1999*). The sectoral spread is: trade - 64 per cent; manufacturing - 13.4 per cent; and services - 14.8 per cent. Current employment in this sector is estimated at 4.1 million (*Economic Survey, 2001*). It is estimated that this sector accounts for over 18 per cent of GDP.

Using the employment criteria; the private sector in Kenyan can therefore be classified as: Large scale enterprises (*over 150 employees*); *medium enterprises (50 - 149 employees)*; and *small and micro enterprise (1- 49 employees)*. These enterprises are represented in all sectors of the economy, as already stated. Private sector representation is through relevant associations. Private sector associations tend to mirror the structure of the private sector, as discussed above. This has implications for policy dialogue. This issue is discussed hereafter.

3. Private Sector Associations

Private sector associations are either sector specific or represent a particular category of enterprises. Kenya Association of Manufacturers (KAM) represents manufacturers, while Federation of Kenya Employers (FKE) represents employers across economic sectors. There are cases of common membership of associations by different enterprises. An enterprise could be a member of both KAM and FKE or, indeed, a member of KAM, FKE and East Africa Association. This common membership is based on perceived common interests of enterprises. It is more pronounced within the large scale enterprise category, probably due to the ability of this class to pay the requisite membership fees.

Representation in the micro and small scale sector is specific to the type of commercial activity relevant to the particular enterprise. The artisans in the informal sector are likely to be members of Jua Kali Associations represented, at national (Umbrella) level, by the Federation of Jua Kali Associations. Similarly, small scale traders are likely to be members of Kenya Small Traders and Entrepreneurs Society (KESTES). These associations have widespread outreach networks. KESTES, for example, has a network of 15 branches countrywide, and a membership in excess of 11,000. Traditionally, the Kenya National Chamber of Commerce and Industry (KNCCI) had a national and grassroots networks. It was therefore a major voice of the business community at national and district levels. This status was undermined by the leadership problems in that organisation. While at its peak in 1980's the Chamber boasted a membership of 12,000. This has reduced substantially, picking up and currently stands at 2,800 members. Governance and leadership challenges are being addressed.

Considering the profile of the private sector associations, as discussed above; and relating this to the needs of this study, it should be possible to classify these associations into four categories: formal traditional associations; reforming traditional associations; emerging associations, mainly in the small and micro enterprise sector; and co-operatives. These are now discussed.

3.1 Formal traditional private sector associations

Into this category fall the Kenya Association of Manufacturers (KAM) Federation of Kenya Employers; East African Association (EAA); and Kenya Bankers Association (KBA). These associations have historically advocated the interests of major, largely foreign, enterprises. They have benefited from the "mixed economy" model of economic development wherein public and private enterprise were active in the commercial sectors of the economy. This common interest provided these associations with easy access to policy makers, either through formal channels or informal contracts

Their approach to advocacy has been low key, non-confrontational dialogue, on issues of concern to them. These associations have expressed themselves strongly on critical issues of macro-economic imbalances and dilapidated infrastructure. The focus has, however, been on communicating these concerns to government in a formal, "measured" manner. Confrontation is avoided. The governance problem afflicting the country is addressed directly, but from an economic standpoint. Corruption is seen as a major cost to business - not a moral issue. Similarly, constitutional reform issues, when rarely addressed, are seen from economic perspective. The formal private sector associations have not championed freedom and justice as human rights issues; nor have they addressed poverty alleviation as a social issue. In creating wealth and therefore contributing to employment creation, the formal private sector is guided by the profit motive. Philanthropy, when rarely practiced, is seen as a business promotion strategy. The concept of genuine social corporate responsibility has still to evolve to a meaningful level.

To a large extent, the foreign nature of the formal private sector, favours immediate return on investment. This is characteristic of investors in third world countries. Political and economic risks demand a short-term investment focus. This is inconsistent with investment in social structures, especially political and social concerns. Judgments can be made on this investment stance. It should not be forgotten, however, that many foreign firms have invested for the longhaul, but the returns expected on this investment are still short term in character.

A brief on each of the major formal associations is now presented.

(a) Kenya Association of Manufacturers

The association has 350 members, currently. At its peak in 1986; it had a membership of 800. The loss of membership is attributed to the negative impact of economic decline on the manufacturing sector. The onset of unmanaged liberalization is a major cause of disruption in the sector. In 1986, the manufacturing sector accounted for 13 per cent in GDP. In January 2000, the sector's share of GDP had reduced to 9 per cent (*Economist Intelligence Unit*).

The character of KAM membership is predominantly either foreign or Asian. It is estimated that membership is 70 per cent Asian; 25 percent foreign (mainly subsidiaries of multinationals); and only 5 percent indigenous local. This membership profile is reflected in the board of that association. The foreign nature of KAM limits its ability to demand change in a highly political governance system. It also exposes members to political manipulation, especially through the pressure to contribute towards political fundraising. The tendency is for the association to adopt a low key advocacy profile in policy dialogue; and to use established and informal channels of policy dialogue.

KAM members are challenged by economic liberalization and the resulting competition from imports; the unfavourable business environment, especially in security and the inefficient physical infrastructure; and limited competence to manage enterprises in a competitive liberal environment.

Engagement with government on policy dialogue is through written memoranda, especially submissions on national budgets and through the membership of Joint Industrial and Commercial Consultative Council (JICCC). The latter body has not, however, met for the last five months. This lack of a structured mechanism for policy dialogue is a constraint to private sector ownership of policy. This is considered a major cause of weak policy implementation.

To be an active player in policy dialogue, KAM must build the essential capacity for this purpose. In particular, a need has been identified to develop its research and policy analysis capacity. Other capacity needs are skills in trade negotiations in relation to regional and global trade integration. A need was also identified to develop institutional linkages within member associations. This approach could create linkages between the large and small enterprises and enhance intra-sectoral contracting. This will enhance the quality of the industrial supply chain with a positive impact on the growth of the industrial sector in the country.

(b) Federation of Kenya Employers

The Federation (FKE) has a current membership of 2,600. It represents the interests of employers with a focus on industrial relations, employment policies and investment climate. Many associations are affiliated to the FKE. These include: The Association of Local Government Employers; the Kenya Coffee Growers and Employers Association; the Kenya Tea Growers Association; the Kenya Bankers (Employers) Association; and the Agricultural Employers Association.

Policy dialogue is structured into a tripartite system of negotiations involving government, workers representatives, and employers (through FKE). This structure is extended to the management of the National Social Security Fund (NSSF) in which government, FKE and COTU (Central Organisation of Trade Unions) are represented. The Federation is also represented in JICCC.

Current concerns of FKE are the stagnant economic growth, with the attendant "shut downs" or relocation of major enterprises out of the country (hence declining membership and income); and the ad hoc implementation of the Trade Disputes Act, Cap 233, especially parallel resolution of disputes through both the Industrial Court and the High Court.

(c) East Africa Association

Originally established to represent British interests in the country, the association has extended its mandate to include representation of major foreign enterprises. Current membership is estimated at 120. Invariably, members of EAA are also members of other major associations, especially KAM and FKE.

The association is represented in JICCC and has diplomatic support from many embassies and high commissions in its engagement channels with government. The challenges of EAA are those advocated by KAM and FKE. The security of investments and the political environment are particularly important issues for this association.

(d) Kenya Bankers Association (KBA)

Membership of KBA is drawn from the formal banking sector. With the exception of K-Rep Bank Ltd, which is a commercial microfinance institution, the microfinance sector is not represented in KBA. Neither is the sizeable Savings and Credit Societies Sector (SACCOS) represented in KBA. It is not surprising therefore that, despite the moderating influence of the major local banks (Kenya Commercial Bank and National Bank of Kenya), KBA is seen as representing foreign banking interests. This creates perception problems for the banking industry, especially in respect to the prevailing high interest rates regime. The stalled attempt to control the rate of interest through legislation is a reaction to what is seen as insensitivity by the formal banking sector to the financial needs of the ordinary Kenyan. This is still a challenge to KBA.

Other challenges are: the magnitude of non-performing loans in most local banks; the unstable macro-economic environment, especially the high public debt portfolio; and declining purchasing power among the populace, which reduces lending opportunities for the traditional banks. The inroads made by the SACCOS and microfinance institutions in the traditional markets of the commercial banks, especially in the rural areas, is a cause for concern.

KBA is represented in JICCC and has access to the leadership of Central Bank and Treasury. There is no structured mechanism for policy dialogue. Informal channels are usually employed in public policy dialogue.

3.2 Reforming traditional associations

This term is used here to describe two formal and traditional associations that went into decline and are now reforming themselves. These are Kenya National Chamber of Commerce and Industry (KNCCI) and Kenya National Farmers Union (KNFU).

(a) Kenya National Chamber of Commerce and Industry

Established in 1965, the chamber was a major voice for the emergent business class, mainly indigenous. It was actively involved in policy dialogue on “Africanisation” of commerce in late 60’s. It was a major player in the formulation of Sessional Paper No. 10 of 1965 (*African Socialism and its Application to Planning In Kenya*)

At its peak and during the leadership of the long serving Chairman Mr. Francis Macharia (26 years) the Chamber boasted a membership in excess of 12,000, and a network of 68 branches, countrywide. Membership cut across the trade, industry and services sector. The export promotion activities of the Chamber are well documented.

And then leadership and governance problems set in. The 90’s were characterized by leadership turmoil. This is generally attributed to “political interference”. As the political system became more oppressive, it

could not tolerate an independent institution with a network across the country, which could undermine political hegemony. It was necessary to “capture” the Chamber. The answer was to impose “politically correct” leadership on the institution. The result was the decline of KNCCI as a viable advocacy institution. Membership fell to 2,000, and the chamber became irrelevant in policy dialogue.

One year ago, a new membership oriented leadership “forced” itself in office. It is too early to judge the success or otherwise of the “new” Chamber. But optimism is real. Current membership stands at 2,800 members with recruitment drives regularly being undertaken. Its branch network has been revived and representation established at grassroots levels, especially through District Development Committees.

The KNCCI is represented in JICCC. It is also represented at the National Consultative Forum and National Steering Committee on Poverty Reduction Strategy Paper (PRSP). At local levels, the chamber is represented in District Development Committees and in District Joint Loans Board. The Chamber has spearheaded the formation of the East African Chamber of Commerce and Industry and, recently, hosted an E. African Trade Exhibition with the sponsorship of European Union.

Issues that concern the Chamber are: access to global markets, especially in the context of the opportunities presented by WTO, AGOA, Cotonou Agreement, and COMESA; and developing the capacity of members to be active players in these markets. Other challenges are governance and leadership structures at the Chamber. The Chamber accepts that these institutional challenges must be addressed. A need also exists to address the technical and professional resource base of the Chamber. Linkages in information management between the Chamber and other private sector associations should be strengthened. The Chamber should be a focal point for exchange of trade information and a service center to the totality of the business community. This challenge is more critical now as the country re-focuses itself to a liberalized regional and global marketplace.

(b) Kenya National Farmers Union (KNFU)

Started in 1946, KNFU was originally a voice for the large scale expatriate farmers. With independence, the organization changed into a more inclusive body. As is the case with KNCCI, KNFU went into leadership decline, mainly due to political interference. This problem seems to have been overcome and, since the year 2000, the organization has been an active player in the agricultural sector. Membership currently stands at 20,000, mainly small scale farmers, co-operatives and commodity groups. The outreach structures are countrywide. Representation is found in District Agricultural Committees, Provincial Agricultural Boards, and at the Central Agricultural Board.

KNFU has advocated the orderly reform of the agricultural sector, especially the need for a greater stakeholder representation in the new sectoral organizations. The reform of the Central Agricultural Board is still an outstanding agenda. The challenges of the members are many and varied. The liberalization of the economy has created intense competition in the traditional farming sector, especially sugar, cotton and dairy sectors. How do the members enhance their competitiveness in the face of global competition? Orderly liberalization requires adequate capacity to advocate on policy options. Related to this is the need to educate members on technology adoption and market information.

The Union itself needs to develop the essential capacity to address membership concerns. Of particular concern is the need to link members to the global trade in agriculture through effective marketing channels. This will require development of networks with regional and global organizations, especially the European Union, World Trade Organisation, and the Food and Agricultural Organization. The information and research needs of such an engagement are overwhelming. Hence,, the need to seek support in capacity building from donors.

KNFU has been an active player in the regional and global arena. In February 2002, the union co-hosted the Consultative Workshop for ACP/EU Non-State Actors in the context of the Cotonou Partnership Agreement. Subsequent to this workshop, an association of non-state actors: Forum for Social and

Economic Development Partners (FOSEDEP), has been formed and registered. KNFU is a major player in this Forum. The Union Chair is the Vice-Chair of the Forum. KNFU took the leading role in the formation of East African Farmers Union (EAFU) and provides leadership to the new organization.

It should be noted, that despite the central role of agriculture in the national economy, the KNFU is not represented at JICCC. Its advocacy channels are ad hoc contact with the Ministry of Agriculture and through informal channels by influential members of the farming community. This lack of voice is reflected in the uncoordinated approach to the reform of various sub-sectors in agriculture especially coffee, sugar and dairy sub-sectors.

3.3 *Emerging Associations*

The term "emerging associations" is used here to describe new or emerging associations that are formed in response to a "vacuum" in representation through the traditional associations. The obvious cases are the Federation of Jua Kali Associations, Kenya Small Traders and Entrepreneurs Society and Matatu Welfare Association. These have existed for less than 15 years. They were formed to represent their members, initially at local level, where members faced harassment by local authorities in by-laws enforcement. Subsequently, some, like the Federation of Jua Kali Associations, were able to advocate at national level. Others, like KESTES, have remained grassroots associations.

(a) *Challenges of emerging associations*

The primary challenge to the effectiveness of the emerging grassroots associations is limited capacity at both leadership and management levels. Leadership skills are limited and governance structures are weak. Leaders in these associations have not been exposed to governance and leadership training; neither have they been adequately exposed to leadership practices in the better run associations. Lack of linkages and networks within the private sector associations limit opportunities for shared learning in the sector.

It should be noted also that the basic education levels within the leadership of these SMEs based associations is relatively lower in comparison with those obtaining in the formal associations. This is an important factor to consider when addressing the ability of these associations to link up with policy dialogue at national level.

Inevitably, limited leadership and governance skills translate to limited management competence at operational levels. The need to recruit highly qualified and skilled managers is not always appreciated. The result is that these associations struggle at the margins of survival. Capacity depletion was seen at KESTES. The staff reduction from 11 - 3 in a period of 12 months was indicative of the serious capacity challenges in this vital grassroots association. Among the staff that had left the organisation was the General Manager who had been instrumental in building and sustaining the institution. It remains to be seen how this capacity challenge will be solved. It was understood, however, that the need for governance reform in the association has been understood and that a donor had been approached to support this initiative.

The limited financial base of the "emerging" associations limits their ability to recruit adequately skilled managers and technical staff. This compounds the "vicious circle". It also makes these associations vulnerable to political patronage which is detrimental to their growth. The search for political patronage by the Federation of Jua Kali Association has created conflict in that association with adverse effect on membership service. Although some gains have been achieved, allocation of Jua Kali sheds, for example, the development of these assets has been constrained by leadership strife and lack of technical and financial resources.

(b) *Addressing challenges*

To be effective players in policy dialogue, the SMES based associations will have to address their capacity limitation at leadership and management levels. They will also have to deal with the challenge of information gathering and dissemination. Their ability to engage in meaningful policy dialogue will

depend on their linkages with research and policy analysis institutions; and their ability to integrate researched options in their advocacy messages. This is a long term development challenge.

The Private Sector Foundation and the Private Sector Forum are new entrants into the representation market. They seek to provide an inclusive private sector voice in policy dialogue with government. They are a reaction to the perceived exclusion of many players in the agriculture and small scale sector (SME's) from structured policy dialogue bodies like JICCC. They tend to face hostilities (although subtle) from the formal traditional private sector associations. Indeed, the latter have floated a counterweight association, The Kenya Business Council, to link the traditional associations together in the face of this new development.

While these "new" associations have the leadership and intellectual capacity to engage government in public policy debate, they require the technical capacity to source and mobilize researched policy options in support of this debate. They also require financial resources to support a structured approach to policy dialogue.

It is unlikely that donor support can be relied upon to sustain these associations in the long term. While membership subscriptions could be mobilized to sustain basic operations, a need exists to explore innovative strategies of resources mobilization to sustain a long term engagement in policy advocacy.

3.4 Notes on emerging associations

Brief notes are presented on each of the above associations.

(a) Federation of Jua Kali Associations

An umbrella body for 600 autonomous Jua Kali Associations, spread all over the country. Membership varies constantly, but is currently estimated at 30,000. Focus is on training and advocacy. Internal leadership problems constrain the effectiveness of the Federation.

(b) Kenya Small Traders and Entrepreneurs Society (KESTES)

An association of micro enterprises focusing mainly on micro credit finance to members. Current membership is estimated at 11,000. Business Development Services (BDS) are offered in the form of training, but capacity constraints limit this approach to service delivery.

(c) Kenya Private Sector Foundation

An emerging private sector representative organisation that seeks to develop partnership with Government and development partners in addressing cross-cutting issues affecting the private sector. Current membership has been given as 30. Sectoral Boards are the proposed operational structures of the Foundation. The organisation models the activities of Uganda Private Sector Foundation. The Foundation aspires to a leadership role as the umbrella organization for the private sector associations. This ambition has been resented by the formal private sector and it remains to be seen how this issue will develop.

(d) Private Sector Forum

A network of representatives in all categories of the private sector who came together on December 7, 2000, to develop an inclusive mechanism for private sector consultations on the final Poverty Reduction Strategy Paper (PRSP). The Forum, through an elected Private Sector Task Force, discharged its mandate by mainstreaming private sector concerns into PRSP. The outstanding agenda is the effective implementation of the PRSP. Current thinking is that this network (Private Sector Forum) should extend its mandate to include monitoring and evaluating the implementation of PRSP policies and strategies; and to address cross cutting private sector advocacy issues.

The Private Sector Forum was supported by donors in its engagement in the PRSP consultations. This support has continued and is focused on building the institutional capacity to engage in policy advocacy through researched options. This support has created linkages between the Forum and Kenya Institute for Public Policy Analysis and Research (KIPPRA). KIPPRA will provide analysis on policy options that could inform policy advocacy by the Forum and other players in public policy debate.

While this donor support could give the initial impetus to the mission of Private Sector Forum, it is unlikely to address the sustainability of this institution. Not only should the forum devise strategies for financial sustainability, but it must also address its “niche” in the policy debate. It is unlikely that the Private Sector forum can become an umbrella organization, although this concept has been mooted. The likely outcome, in the medium term, will be to develop this institution as a link between the formal private sector association and the emerging SMEs based associations. The Forum could also be an intellectual resource base for the private sector, mobilizing and intermediating researched policy options to inform critical policy issues that affect the development of the total private sector. It is this inclusive mechanism that could add value to the totality of private sector engagement in public policy advocacy.

(e) The Kenya Business Council

An emerging umbrella organisation for the formal private sector associations, mainly; FKE; KAM and the Chamber. Government agencies included in the Council include: EPC; IPC and EPZA. The specific mandate of the Council has not clearly emerged.

(f) Other sector-based associations

During the field study on this case, two emerging associations were encountered. These are a reaction to sectoral problems. These associations are: Kenya Dairy Processors Association and Kenya Cotton Growers Association. These seek to advocate the interest of members in the respective sub-sectors. The common denominator is the distress currently affecting the sub-sectors, and the emerging opportunities in the same sub-sectors. The dairy processors aim to co-ordinate the processors (currently 7) to take advantage of liberalization in the dairy sub-sector. The traditional monopoly of Kenya Co-operative Creameries Ltd (KCC) has been broken by liberalization and mismanagement. This has created space for new processors in the industry. But these processors must co-ordinate their activities to avoid injurious competition leading to legal controls. Self-regulation appears to be the primary motive in the promotion of Kenya Dairy Processors Association.

The Kenya Cotton Growers Association, on the other hand, aims to mobilize farmers to take advantage of opportunities presented by emerging markets, especially in the USA, through AGOA. The Association (still in formation) seeks to advocate for input supply; equitable supply chain management; and a favourable regulatory environment for cotton growing. Research and extension services are seen as major challenges for the cotton farmers.

3.5 Capacity constraints in emerging associations

The overriding challenge of the emerging associations is lack of capacity to articulate their views. Even those who have been longer in scene (KESTES and Federation of Jua Kali) have serious technical and professional limitations. This limits information dissemination to their members. It further constraints their ability to advocate on issues of concern to members.

The new associations (Private Sector Foundation and Private Sector Forum) are structured and led on formal traditions. They, nevertheless, lack adequate capacity to organize advocacy on clearly researched policy options. The Private Sector Forum has benefited from linkages with the Umbrella Project funded by Department For International Development; and managed by KIPPRA.

3.4 *The Co-operative Societies*

The co-operative societies have traditionally been major players in the economy. They are still dominant in the coffee, pyrethrum, sugar and dairy sub-sectors. At their peak in 1986, co-operatives accounted for 44 per cent of the country's GDP.

The decline in major cash crops, especially small scale coffee, and the decline of the cotton and dairy sub-sectors, has contributed to the distress of the co-operative sector. Their income base has declined and membership service has suffered.

The Savings and Credit Societies (SACCOS) are an integral part of the co-operative movement. They draw membership from the primary co-operatives in coffee, tea and sugar sub-sectors; and from paid employees in public and private sectors. It is estimated that SACCOS mobilize in excess of Kshs. 75.0 million, compared to Kshs. 200 million and Ksh. 1.0 billion mobilized by commercial banks and microfinance sub-sector, respectively (*Central Bank of Kenya*).

The development of the co-operative movement is constrained by the decline in the viability of the traditional cash crops (coffee, sugar and cotton) and the decline in levels of paid employment due to ongoing downsizing in many public and private sector organizations. Other challenges arise from the traditional government involvement in the sector (largely political) and an outdated regulatory framework. Leadership and governance problems also constraint the growth of the movement.

The Nordic countries have traditionally been major supporters of the traditional co-operatives, mainly in crops produce and marketing. The SACCOS have not benefited from this support.

4. **Private Sector engagement in policy dialogue with government**

The private sector engagement in policy dialogue with government has been sector specific. As can be expected, this approach has, at times, produced conflict in policy advocacy. The manufacturers have traditionally championed protectionist policies. This is due to the historical import substitution structure of this sector. The trade sector, on the other hand, has championed liberalization. The outcome has been policy conflict. The liberalization in the sugar sub-sector, for example (favoured by traders), has destabilized the sugar millers with the attendant outcry by sugar millers and farmers. This has led to policy reversals in the sub sector in a bid to strike a balance between the competing policy stance in the sub-sector. In the absence of a conflict resolution mechanism within the private sector associations, the contradictory stance in policy advocacy has constrained the effectiveness of the private sector in policy dialogue.

The need for an inclusive private sector association was seen is providing a mechanism to advocate on cross-cutting issues of the private sector; and to resolve inter-sectoral conflicts in the higher interest of the country's economy. This was an important object in the formation of the Private Sector Forum. It is still too early to assess how the Forum will evolve along these lines. The initial challenge, as we have seen, is to set up the institution on a sustainable basis.

4.1 *The evolution of the private sector in Kenya*

The evolution of the private sector in Kenya is a factor in analyzing the structure of private sector policy advocacy. At independence, government adopted a *mixed economy model* of economic development. This approach was articulated in *Sessional Paper No. 10 of 1965 on (African Socialism And Its Implications For Planning In Kenya)*. The model called for public/private partnership in economic development activities. Public enterprises thrived and joined hands with the private sector (largely foreign) in developing vibrant industry and services sectors. The economy grew by 7 percent per annum in the 70's.

The mutual interests of the public and private sectors enabled easy access to policy makers by the private sector. In any case, public and private sectors had common policy interests. These interests were re-enforced by the import substitution nature of the industry. The latter entailed protectionist policies,

especially price controls; exchange controls; and import licensing. The import substitution strategy and the mixed economy model were challenged by the oil shocks of 1973 and 1979; and the collapse of the East African Community in 1977. the onset of Structural Adjustment Programmes, sponsored by the World Bank and International Monetary Fund as from the early 80's, ushered in an era of economic reform. The *Sessional Paper No. 1 of 1986 (Economic Management for Renewed Growth)* set the pace for economic reforms in the country. The policy paper on: *The Restructuring and Privatization of Public Enterprises (1992)*, re-inforced the gradual withdrawal of government from commercial activities. This policy paper also provided guidelines on the restructuring of strategic public enterprises. The role of the private sector was to be enhanced to become the real economic "engine of growth".

4.2 Sectoral approach to policy dialogue

Even in the changed economic environment, the private sector has continued its sectoral approach to policy dialogue. Manufacturers have continued their advocacy on the manufacturing sub-sector; and the employers have focused primarily on employment policies. Where interests coincide, various representative organisations have joined in common advocacy. Examples are the serious power outages that occurred during the drought of year 2000 when all the formal traditional associations joined together in safeguarding their sectoral interests. The formal traditional associations (KAM, FKE, EAA and KBA) are members of JICCC. This forum is purely consultative and has no legal mandate. In addition, FKE, COTU and Government, are members of the tripartite disputes resolutions mechanism in accordance with ILO Conventions. Informal channels of communication exist, but these involve influential members of the sector associations.

Despite its wide coverage, KNFU is not a member of JICCC. There appears to have been a deliberate attempt to marginalize associations that have a wide outreach. KNFU is represented countrywide. Similarly, KNCCI was undermined through political interference. Although the chamber is represented in JICCC, it is not considered a serious player in policy dialogue. This position, as discussed earlier, is changing. The associations in the micro and small enterprises sector have no structured voice in policy dialogue. In some cases, as in the Matatu Welfare Association, they have been denied legal legitimacy.

4.3 Private sector dialogue - the changed paradigm

To take advantage of the changing global environment for business, especially the dialogue space created by economic and political liberalization, the private sector associations must re-address their traditional approach to policy dialogue. This "open space" is receiving support by the multilateral trade system, especially the World Trade Organization and UNCTAD. It is also an important requirement in the evolution of social and economic relationship between ACP/EU countries in terms of the Cotonou Partnership Agreement.

The concept of public/private partnership in policy dialogue is not new. It has sustained the interests of the formal private sector and is derived from the "mixed economy model". But, as we have seen, this approach to dialogue excluded the informal and small scale sectors of the economy. This exclusive approach to policy dialogue is inconsistent with the inclusive model currently advocated in the Cotonou Agreement. It has also reached its limits in that economic liberalization does not allow an exclusive dialogue mechanism. The political space has opened to allow unrestricted debate on issues of public interests.

In the past, associations with a wide grassroots outreach were perceived as capable of promoting a political agenda. In the one party dictatorship that characterized the governance of the country from 1982 to 1991, independent political thought was not tolerated, Hence the deliberate action of either incorporating the grassroots outreach associations in party politics or, as an alternative, neutralizing their effectiveness. Maendeleo ya Wanawake, a women's movement organization and Central Organization of Trade Union (COTU) were therefore incorporated into KANU party politics; and KNCCI and KNFU were "infiltrated" and rendered ineffective.

The competitive political environment and global economic liberalization have created space for private and social sectors association to address their mandate. The SMEs based associations and the “reforming” associations require support to develop the essential capacity to engage in policy dialogue. This is the challenge at hand.

5. The private sector and pro-poor policy advocacy

The formal private sector does not see its role as pro-poor advocacy. During consultations on Poverty Reduction Strategy Paper (PRSP), the private sector articulated its mission as: **wealth creation through global competitiveness**. The sector would contribute to poverty reduction through income generation; employment creation; and social contributions, especially taxes and levies. The private sector would contribute to community projects as part of its corporate social responsibility. Philanthropy is, however, not a major orientation of the private sector.

It should be noted however, that the private sector is a major investor in social sectors, specifically in education and health. But this service delivery is an economic activity to be evaluated against returns on investment. Similarly, when employers provide housing and related benefits, they should be seen to be contributing to poverty reduction.

5.1 The private sector concerns in policy dialogue

To achieve its goals of global competitiveness, the private sector requires facilitation by government. The concerns of the private sector, and which are the responsibility of government, are high interest rates; limited access to financial services, especially credit; high taxation levels and regimes; unfavourable business environment; costly and poorly maintained infrastructure; insecurity; and unstable exchange rates. The policy dialogue with government should therefore be focused on addressing these concerns.

While the formal private sector can articulate its role as wealth creation, the informal and small scale private sector is clearly "a poverty reduction sector". Each enterprise in this sector employs from 1 - 9 people. The sector currently employs over 4.1 million people. Of the 415,400 jobs created in 2000, only 3,300 were created in the formal sector (*Economic Survey, 2001*). This sector will grow as the formal sector sheds employment due to downsizing and retrenchment.

5.2 Empowering the Co-operative movement

The important role of the co-operatives has been addressed. Considering their rural base (through production and marketing movements) and rural and urban outreach (through the SACCOS), the co-operatives are a major force for pro-poor development. They need, however, to resolve their governance systems and regulatory framework to be real agents of change.

In terms of sustaining livelihoods and reducing poverty, therefore, the co-operatives and micro and small enterprise are important sectors. The challenge is to develop a structured mechanism for effective policy dialogue capability in these sectors.

6. Opportunities and strengths in private sector public policy dialogue

The changing global environment; and the internal pressures for change to respond to the new scenario, has opened space for the private sector to influence public policy. This has also created challenges and opportunities for the private sector in policy dialogue. The roles of government and the private sector are being re-defined, hence, the need for public/private partnership. While the private sector will produce and market goods and services, the public sector will facilitate the role of the private sector. Government will provide a balanced macro-economic environment that is essential for business success. Government will also invest in security and essential infrastructure to enhance the competitiveness of the private sector. The private sector is expected to compete effectively on the local and global markets. This calls for efficiency in resources utilization; and improved quality of products and services.

6.1 *Opportunities for private / public policy dialogue*

The integration of Kenya in the regional and global economy has created a new "paradigm" for policy dialogue. While the traditional sector based policy dialogue has continued, the need for an inclusive consultative approach to policy formulation has been recognized. The liberalization agenda of the World Trade Organisation (WTO) and the regional integration agenda of COMESA and EAC calls for extensive consultations across all private sector categories. This issue has received urgency due to the initial problems encountered in un-controlled liberalization. This arose from limited private sector consultations by government before Kenya acceded to WTO terms and conditions. The result has been a weakened manufacturing sector. The need to restore balance in the sector, and to avoid a repeat occurrence in the services sectors, has created a need for wide consultations on trade policies.

(a) *New space for private / public policy dialogue*

Article 6 of the Cotonou Partnership Agreement calls for involvement of non-state actors (NSAs) in public policy dialogue. This has created space for the private sector in policy debate. The traditionally marginalized groups - SMEs and farmers associations, have taken early advantage of this initiative and have formed a forum for this purpose (FOSEDEP), as previously mentioned. The accession of Kenya into AGOA protocol with the United States of America creates conditions for consultations with non-state actors. Good governance and private participation in policy dialogue are elements of the AGOA agreement.

An important space for the involvement of the private sector, and the civil society, was provided by the donor induced consultations on Poverty Reduction Strategy Paper (PRSP). The private sector, through the relevant sectoral associations, was involved in PRSP consultations process. This involvement was through Sector Working Groups and National Consultative Fora. It is intended that a structured mechanism for private sector involvement in PRSP Monitoring and Evaluation can be agreed on. This should safeguard continuous private sector engagement in public policy dialogue.

(b) *Political competition and private sector engagement in policy dialogue*

The level of political awareness and expression among the local populace has increased. An emboldened citizenry demands effective and efficient governance structures and systems and is willing to assume responsibility for its development in the face of Government inability and lack of capacity to fulfill its former role of "providing development". The new role of Government is that of partner in, rather than provider of, development; with increased emphasis on public/private partnership in policy formulation and implementation to achieve this development.

Does the private sector have the strength and capacity to utilize the policy space that has been created in the public policy arena?

6.2 *Private Sector strengths in policy dialogue*

The formal traditional private sector associations have traditionally had a history of policy dialogue with government. Sectoral associations have represented members concerns to the relevant ministries. It is traditional for KAM, for example, to make written submission to the Treasury on national budgets. The linkage of the national budget to MTEF and PRSP policies should enhance the role of the private sector associations in public policy dialogue.

The formal traditional associations have technical infrastructure in terms of professional staff and support secretariats and can involve their members in policy dialogue. The formal private sector associations have influential members who can champion their interests with key policy makers. Considering that key policy makers are also business players, these informal channels of policy advocacy can be very effective.

(a) *Limited capacity for dialogue by SME associations*

The private sector associations in the micro and small enterprise sector have been at the periphery of policy dialogue. They have, however, used political connections to advance members interests. Examples are the provision of Jua Kali sheds through political patronage by the President. The co-operative movement has a strong political base. This, however, has also been its weakness, as it affects governance and leadership processes and systems. The ongoing review of the Co-operative Act should redress some of the challenges in the sector.

An important strength of the private sector associations is their realization that the world has changed and that "old" ways of doing business are outdated. Hence, the new urgency in building research and policy analysis capacity in the traditional associations, especially KAM and FKE. Knowledge generation on policy options is now considered essential to facilitate members integration in a competitive regional and global trade environment. Related to this is the need to understand trade policy formulation; and to be active players in this arena. Negotiation skills are seen as key to the success of private sector associations in trade policy dialogue.

(b) Governance and leadership as an essential capacity in policy dialogue

Governance and leadership development are now the key agenda in the "reforming" associations. KNCCI and KNFU are concerned that their institutions should have the leadership capacity for a new era. This realization, and the willingness to address this challenge should be considered a strength in the private sector. The good corporate governance movement being championed by the Private Sector Corporate Governance Trust has found fertile ground in the private sector corporate world. The proposed changes in the regulatory framework for the co-operatives should be seen in this light.

The private sector associations, especially those in the formal traditional sectors have achieved impact. Duties on raw materials and capital equipment have gradually been reduced to zero. Safeguard measures have been invoked to protect the sugar, maize and dairy sub-sectors from competing imports.

The dramatic reversal of government budgetary proposals to repeal the Export Promotion Programme Office Scheme (EPPO) facility is a significant case of lobbying success by the private sector. It is estimated that this reversal will deny government revenue to the extent of Kshs. 1.0 billion (*E.A. standard, 13th August, 2002*).

We summarize in a matrix form (**fig. 6.2**) the analysis of private sector competence in public policy dialogue in relation to the changed environment.

Fig. 6.4: competence needs of the private sector associations

| No | Current competence | Required competence |
|----|--|--|
| 1 | <i>Traditional and sectoral approach to policy dialogue</i> | <i>Inclusive, issues – based dialogue which cuts across all economic sectors</i> |
| 2 | <i>Extensive use of informal channels and contacts</i> | <i>Structured dialogue with follow-up mechanism</i> |
| 3 | <i>Basic technical capacity to articulate sectoral interests in the formal private sector category</i> | <i>Highly qualified professional staff to articulated policy on the basis of objective by research options</i> |
| 4 | <i>Political connections as an advocacy strategy</i> | <i>Reliance on issues – based, structured dialogue mechanism</i> |
| 5 | <i>Limited leadership and governance competence for a “new era”</i> | <i>Highly developed leadership and governance skills to sustain high quality dialogue with government, donors and international community.</i> |

6.3 Weaknesses in private sector approach to policy dialogue

We now discuss weaknesses in the current approach to policy dialogue by the private sector.

(a) Sectoral bias and limited linkages within sectors in policy dialogue

These associations, we have seen, are sectoral in approach. They have a weak tradition of advocating along common interests. These limited linkages within sectoral associations have been promoted by a tradition of privileged access to policy makers. Formal and informal policy dialogue channels are only open to "non-political" players. Hence, the accommodation of formal and traditional associations (politically neutral); and the exclusion of farmers and SME associations (largely indigenous and therefore politically active.) This disjointed approach to policy dialogue still exists. There can be no doubt that the new economic environment requires an inclusive private sector engagement in policy dialogue. This will, in particular, avoid conflicting policy stance on key concerns of the private sector.

(b) Possible political manipulation

The largely foreign nature of the formal traditional associations (KAM, FKE and EAA) exposes these organizations to political intrigue and manipulation. This is largely tied to political fundraising. The traditional private sector, especially Asian owned enterprises, have been a fertile hunting ground for political fundraising. Because these issues are not addressed in the open, and due to a history of political support by this sector to the political establishment, it is not possible for KAM and other associations to insulate this sector from political predators. This is a key agenda for the formal private sector.

The informal and small enterprise sector is not immune from political manipulation. The history of KNCCI, KNFU and MWA attests to this threat. These associations must build capacity for integrating good governance in their leadership systems.

(c) Governance challenges and inadequate technical capacity

The capacity of the formal traditional associations is adequate at technical levels. It is, however, inadequate in developing researched policy options for effective policy dialogue. This need was expressed by KAM, among other associations. The reforming associations require support to address their governance, leadership and management challenges. The micro and small enterprise representative associations; and the emerging associations (Private Sector Foundation and Private Sector Forum) suffer from basic capacity limitations. They have weak structures, where these exist, and have not developed governance, leadership or credible management systems.

7. Risks in un-co-ordinated private sector policy dialogue

There are risks in un-coordinated private sector engagement in policy dialogue. These risks are increased when sizeable categories of the private sector are excluded from policy dialogue. Examples abound of sub-optimal policies which were not preceded by broad and inclusive consultations. The reforms in the sugar sub-sector are an example. The interests of the farmers and that of millers were not recorded in developing the regulatory framework for the sub-sector. The original legal framework was opposed by the millers and had to be re-addressed. This created unnecessary tension in the sector.

Similarly, the reforms in the coffee sub-sector have not satisfied all the players in the industry. The interests of the farmers, millers and marketers have not been reconciled with the demands of a liberal environment. This is a classic case of self-interest overriding the common interests. Government, supported by a strong lobby, has traditionally had a heavy control hand in the coffee sector. The extent of this involvement was seen when government failed to involve industry players in STABEX negotiations with the European Union. Even when funds were available, it took 8 - 10 years to start releasing the same to the beneficiaries. This issue has yet to be resolved.

7.1 The need for policy research and analysis

The new Coffee Act is considered sub-optimal by the farming community in addressing the regulatory aspects of the industry. The millers wish to provide marketing services while the marketing agents are opposed to this. The reform agenda in the coffee sub-sector is still an outstanding change issue.

Policy dialogue should be preceded by adequate policy research and analysis. This capacity does not exist in private sector associations. Private sector associations have no tradition of resourcing research and policy analysis from research institutions. The risk of policy dialogue on the basis of sub-optimal research could compromise the quality of public policy dialogue. Poorly researched policy leads to weak policy implementation. Weak policy implementation has been a recurring problem in the last 20 years. The result is the current endemic poverty.

7.2 *Linking policy formulation to policy implementation*

An important risk to consider is the weak impact that could arise when linkages are not developed between national level policy formulation and local level policy implementation. Current policy implementation challenges can also be attributed to lack of policy ownership by a critical mass of policy partners. This low ownership level, which is due to inadequate policy dialogue by stakeholders, constrains implementation. While the PRSP consultations model could address this risk, the need for a structured monitoring and evaluation system, at national and local level, should enhance policy implementation. This approach can positively impact the conditions of the poor, at grassroots level.

8. Supporting the private sector in policy dialogue - the role of donors

The private sector associations have opportunities for effective engagement in policy dialogue. These are provided by the liberalizing agenda presented by the Cotonou Partnership Agreement (Art. 6), World Trade Organization, AGOA and the regional trading blocks (EAC and COMESA.) The private sector must, however, develop adequate capacity for this engagement.

8.1 *Capacity building in private sector associations*

Different associations require different levels of capacity support. The formal traditional associations (KAM, FKE) require policy analysis and research capacity. They also require capacity in trade negotiations. The reforming associations require capacity in governance, leadership and management systems. They also require policy analysis and trade negotiation capacity. The secretariats in these associations are weak in technical capacity. The micro and SME related associations lack both technical and leadership capacity. They also need to build advocacy capacity. They should also be able to "tap" into a network of researched policy options to support their advocacy agenda.

(a) Policy related support

Donor support should therefore target policy related interventions, especially at macro and sectoral levels. Policy dialogue should create an enabling environment for business operations. Advocacy issues at macro management levels and in key sectoral areas can create this environment. Donor support should target both the public and private sectors. It is necessary to elaborate on the approach to intervention at policy level. It is accepted that the challenge of this country is weak policy implementation. There are many reasons for this. They include: inadequate policy analysis and consultations on policy formulation; and inadequate technical capacity in policy analysis and policy implementation. Donors could support technical capacity building in policy analysis; and provide the necessary technical back-up for policy formulation. Policy related institutions, for example, Central Bureau of Statistics; policy units within line ministries and related agencies, could be targeted for this support.

(b) Developing mechanisms for sustaining policy dialogue

It should also be possible to support policy related dialogue by stakeholders. The private sector consultation on PRSP benefited from donor support. This linkage could be enhanced by supporting a stakeholder

mechanism for continuous engagement in policy dialogue. An inclusive stakeholder PRSP monitoring and evaluation system and structures could benefit from such support. Exposure programmes to successful models of private / public partnership could be viable donor interventions at this level. An outcome of these programmes could be regional networks on public policy dialogue directed at regional trading blocks (COMESA and EAC). Such an approach could institutionalize private / public partnership in policy engagement.

8.2 *The need for a strategy*

Donor support to private sector advocacy should be defined by a strategy of engagement. Such a strategy should focus on cross-cutting priorities of the private sector. Ideally, such a strategy should be an integral part of a wider private sector development strategy. Participation by an inclusive private sector in developing both the private sector development and private sector advocacy strategies will create ownership of strategies and, therefore, enhance their implementation.

A strategy of policy engagement should also be seen as a co-ordination mechanism for donor support. This co-ordination is necessary to avoid duplication of effort and to target more clearly priority concerns of the private sector.

Successful private sector advocacy can only succeed in creating change if it is reciprocated by an adequate public sector capacity. Capacity building in the public sector should also be seen as a challenge that can benefit from donor support.

Policy implementation at local level is best done using local capacity. This creates sustainability at this level. Donor support can assist in developing project management skills at the local level.

8.3 *A summary of capacity needs*

The type of donor support that could assist the private sector in policy dialogue can be summarized as follows:

- (a) Governance, leadership and management capacity building to the micro and SME associations; and in the reforming associations.
- (b) Technical capacity support, especially key expertise in information management, membership mobilization, and advocacy skills for the micro and SME associations; and those in the reforming category.
- (c) Research and policy analysis capacity (or ability to develop networks in policy research) targeted at formal traditional associations; reforming associations; and the elite emerging associations.
- (d) Policy advocacy skills and trade negotiation skills in formal, reforming and elite emerging associations.
- (e) Technical skills and project management skills in grassroots based associations. This capacity building approach should enhance policy implementation at local level.
- (f) Capacity building in the public sector in policy analysis and policy monitoring and evaluation. This capacity will enable the public sector to respond effectively to policy demands by the private sector.
- (g) A "seed money" approach to developing capacity in key policy areas of concern to both the public and private sectors along the lines of the Tourism Trust Fund (a stakeholder institution supported by the European Union.)

8.4 Guiding principles for donor support

Arising from the above discussions, we can derive a few "principles" that should guide donors in supporting the private sector. These are:

(a) Developing an engagement strategy

A strategy of engagement will create a framework for policy interventions, which address the real concerns of the private sector. This strategy should be developed through participation by an inclusive private sector. It will form the reference point for co-ordination of donor support in policy advocacy by the private sector. Ideally, this strategy should be an integral part of a private sector development strategy. The latter is also an important target for donor support.

(b) Focusing donor support on policy formulation and implementation

The impact of donor support is likely to be effective at policy level. Policy formulation affects the totality of economic development. Intervention at this level will therefore positively affect pro-poor policy change. For sustainability, donor support should extend to capacity development targeting, especially, the policy related public institutions.

(c) Linking donor support to private / public partnership

Donor support to the public sector should always be linked to the private sector concerns. It should promote private / public partnership in policy dialogue and policy implementation. An exclusively public sector support is unlikely to create the essential conditions for change. The private sector, as the consumer of policy, should be supported in demanding policy changes. This can only be achieved by linking the private and public sectors in policy dialogue.

(d) Focusing on building capacity of private sector associations

Capacity limitation is a barrier to effective policy engagement by the private sector. In the absence of optimal capacity, it is unlikely that other interventions will be viable. A case exists for carefully targeted interventions in capacity building, focusing on identified private sector associations. Such associations should have the potential to mobilize cross-cutting private sector associations in policy dialogue; and to demonstrate ability to grow in stature to engage in policy dialogue at national and global levels. These associations should not be elitist - confined to Nairobi. But they should have a nationwide outreach.

References

1. *Economic Survey, 2001 and 2002*
2. *National Micro and Small Enterprise Baseline Survey (1999): Central Bureau of Statistics, International Centre for Economic Growth and K-Rep Holdings Ltd*
3. *World Development Report (various issues): The World Bank*
4. *Development Plans (various issues): Republic of Kenya*
5. *Report: Conference on Donor Lending Conditions in Africa: Friedrich Ebert Stiftung (FES), in partnership with Nairobi Stock Exchange, October, 2001*
6. *Poverty Reduction Strategy Paper (PRSP): for period, 2001 - 2004: People and Government of Kenya (June 2001)*
7. *Interviews with private sector associations as per annex A*

Annex A
List of private sector associations and people interviewed

| No. | Association | People interviewed | Position | Date interviewed |
|------------|--|--|---|-------------------------|
| 1. | Private Sector Forum | Denis Awori; Sam Mwaura; Gem Kodhek | Chairman Vice – Chairman Chief Executive | 28/7/02 |
| 2. | Kenya Coffee Growers Association | Zack Gakunju | Chairman | 25/7/02 |
| 3. | Federation of Jua Kali Associations | James Bwatuti | Chairman | 26/7/02 |
| 4. | Private Sector Corporate Governance Trust | Karugoh Gatamah | Executive Director | 29/7/02 |
| 5. | Kirinyaga Traders Association | S.S. Sodi | Chairman | 30/7/02 |
| 6. | Kenya National Chamber of Commerce and Industry | Laban Onditi Ruhiu; Titus Rubin; James Njoroge; Peter Muiruri; John Matheka; Margaret W. Kiruri | Chairman, SMEs Sector Chief Executive Administration Secretary Information and Public Relations Officer Trade Officer Business Development Manager | 30/7/02 |
| 7. | Kenya Bankers Association | Albert Ruturi | Immediate Past Chairman | 30/7/02 |
| 8. | K-Rep Bank Ltd. | Moses Banda | Chief Manager, Credit and Microfinance Operations | 31/7/02 |
| 9. | East Action Club for Africa (EACA) | Amin Gwaderi | Chairman | 31/7/02 |
| 10. | Kenya Dairy Processors Association | Mahul Shah | Chairman | 1/8/02 |
| 11. | Kenya Association of Manufacturers (KAM) | Allan Ngugi; Walter Kamau; Fred Kariuki | Chief Executive Senior Executive Officer Textile Officer | 1/8/02 |
| 12. | Keya National Farmers Union | Philip Kiriro Mercy Karanja | Chairman Chief Executive | 2/8/02 |
| 13. | Kenya Cotton Growers Association | Dennis Ochwanda | Chairman | 2/8/02 |
| 14. | Kenya Small Traders and Entrepreneurs Society (KESTES) | Raini Barongo | General Manager | 2/8/02 |
| 15. | Kenya Union of Savings & Credit Co-operatives Ltd. (KUSCO LTD) | Edward Mudibo | Managing Director | 2/8/02 |
| 16. | Federation of Kenya Employers (FKE) | Tom Owuor | Executive Director | 2/8/02 |