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**Policy Making Process in Kenya: A Case Study of
the Preparation of Biosafety Act 2009**

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**A Project Paper in Partial Fulfillment of the
requirement of Masters of Arts Degree in Rural
Sociology and Community Development**

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Declaration

I declare that this research paper for the degree of Masters in Rural Sociology and Community Development at University of Nairobi, Faculty of Arts, department of Sociology hereby submitted, has not been submitted by me or anyone else for a degree at this or other university. That it is my own work and that materials consulted have been properly acknowledged.

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Dedication

Special dedication to almighty God who gave strength and time to undertake this study To my daughters Gloria and Perpetual Muasya for their patience during the times I was away to undertake the study To my very supportive house helps who stood in for me -Mwendia and Naomi To my husband for encouragement and having faith in me To my mum for her sustained value and support for quality education and to my friends for re energizing me I am proud of you all!

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List of Acronyms

ABN	African Biodiversity Network
ABSF	African Biotechnology Stakeholders Forum
ABSF	African Biotechnology Stakeholders Forum
AG	Attorney General
ANAW	Animal Network Association Welfare
APRM	African Peer Review Mechanism
ASARECA	Association for Strengthening Agricultural Research in Eastern and Central Africa
ASARECA	Association for Strengthening Agricultural Research in Eastern and Central Africa
BEACON	Building Eastern Africa Community Networks
BIO-EARN	The East African Regional Programme and Research Network for Biotechnology, Biosafety and Biotechnology Policy Development
CIN	Consumer Information Network
C-MAD	Community Mobilization against Desertification
CREPP	Community Rehabilitation and Environmental Protection Programme
CSOs	Civil Society Organizations
FGD	Focused Group Discussions
FWCW	Fourth World Conference on Women
GMOs	Genetically Modified Organisms
ISAAA	International Service for the Acquisition of Agri-biotechnology Applications
KBioC	The Kenya Biodiversity Coalition
KESSFF	Kenya Small Scale Farmers Forum
KII	Key Informant Interviews
KIPPRA	Kenya Institute of Public Policy Research and Analysis
KOAN	Kenya Organic Agricultural Network
MOA	Ministry of Agriculture
NBC	National Biosafety Committee
NCST	National Council for Science and Technology
NEPAD	New Partnership for Africa's Development
NGO	Nongovernmental organization
NGOMA	Ng'ombe na Mahindi
PDM	Teacher participation in the decision making
PELIJM Kenya	Participatory Ecological Land Use and Management
RODI-Kenya	Resources Oriented Development Initiatives Programme
YARD	Youth Action for Rural Development

Abstract

A policy is a declaration that defines the intention of a community organization or government's goals and priorities. Policies outline the role, rules and procedures (Mayer & Thompson, 1982). In Kenya there are many policies that are in place and others that are under development. Unfortunately policy development for people in most communities may seem to be a process that does not really concern them or something over which they have little control. There may be confusion about how policy is made and the average person may feel far removed from the policy development process (Steven et al, 2002). This study was undertaken to examine the step by step law making process in Kenya. Case of the Biosafety Bill 2008/Act 2009, types of stakeholders involved and their motivations and contributions. It also looked at some of the inputs they gave and those that were incorporated into the final Biosafety Bill 2008/Act 2009.

Some of the literatures reviewed included examination of a study titled 'Teacher Participation in the Decision-Making (PDM) process, reality and repercussions in Indian higher education', by (Deepa Mehta, et al 2010). The study focused on comparing teachers' actual and desired participation in different decision-making situations. Another study on African Peer Review Mechanism (APRM) Process in Kenya undertaken in March 2003 on Agricultural Policy-Making in Sub-Saharan Africa formed part of literature reviewed. Key focus was also drawn from a study titled Politics of Participatory Decision Making in Campus Andwo Obondoh (2003).

The study was descriptive or a fact finding enterprise. The study used non probability sampling techniques in particular, purposive sampling and snowballing sampling technique to get information in regard to whether or not they were stakeholders in Biosafety Bill/Act 2009 development, their role and the inputs given. A questionnaire was used to gather data from focused Group Discussions and Key Informants in addition to Secondary data collection.

The following were the six stakeholders identified as being key in influencing the Biosafety Act process. Institutions involved in agricultural biotechnology research, civil society organizations, Policy makers, Religious groups, and Multinational Biotechnology seed Companies and Consultants. They participated in various ways to influence the Biosafety Bill 2008/Act 2009. Of the stakeholders identified 83% said that they participated through organizing and holding of various meetings for planning and strategizing, giving feedback, lobbying for support, information sharing and exchange with media. In the study 33% of the stakeholders contracted consultants to support them in understanding the parliamentary process of approving

Bills into laws and identify the areas of weakness in the Bill for lobby. Other ways in which they participated in influencing the policy development process was using electronic and print media, formation of coalitions and alliances mainly ABSF and KBioC, organizing and holding of workshops, holding public debates and organizing and holding face to face discussions with members of parliament. Each of the involved stakeholders made certain proposals to the Bill. However the extent of incorporation of these inputs varied and majority of the identified stakeholders categories (80%) felt that their inputs were inadequately incorporated into the final Biosafety Act 2009.

It further emerged that there was low involvement of the general public and grassroots communities in the process of developing Biosafety Bill 2008 (Act 2009). Further from the study it was evident that there was a general inadequate knowledge on the law making procedure for various stakeholders which might be widespread among the general public and the grassroots communities.

Several recommendations were made among them the need to enhance knowledge and understanding on various issues to the general public and grassroots communities through ongoing civic education programs. Further there is need for different stakeholders to embark on capacity building for Kenyans on opportunities in policy making process at devolved governments with the new constitution in place.

CHAPTER 1: INTRODUCTION

1.1. Background Information

A policy is a declaration that defines the intention of a community, organization or government's goals and priorities. Policies outline the role, rules and procedures. They create a framework for performing assigned duties. Public policies are aimed at the whole population or at specific, targeted groups, and can be created by all levels of government (Mayer & Thompson, 1982). Policies can also be created by institutions such as school boards, hospitals or community organizations. Public policies are made through a process involving citizens, government officials and elected officials who, ideally, work together to set an agenda for the common good. In another definition, public policy is a combination of basic decisions, commitments and actions made by those who hold or affect government positions of authority (Gerston, 2002). Policies shape our daily lives by regulating such things as where and when citizens may use pesticides on their lawns, which medications and treatments a provincial drug plan will cover, or whether an employer has an obligation to hire women and visible minorities (Devon et al., 2000).

Policies reflect the ideology and values of an organization or institution. They are the principles that guide action and planning tools for goal setting and service delivery. They provide the terms of reference for setting program priorities and guiding program development as well as help set roles and delimit areas within the organization's role. They house the rules and regulations and provide guidance for routine, unique and controversial decisions. Policies provide the justification for and the sanctioning of resource allocations (e.g., budget, staff line). They provide a tool to assist in evaluating progress and in providing accountability to constituents, funding agencies (Lyons et al., 2001).

Policy may be developed and applied at many levels and may range from formal legislation and regulations to the informal rules by which organizations function. For example, government policy related to children, youth and health is developed at international, national/federal, provincial/territorial, and regional/district/local/community levels by individuals (elected officials and public servants) across a number of sectors, including health, education, social services, recreation, finance, justice, labor, transportation and environment (Devon et al., 2000).

On 29 January 2000, the Conference of the Parties to the Convention on Biological Diversity adopted a supplementary agreement to the Convention known as the Cartagena Protocol on Biosafety. The Protocol

seeks to protect biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology. It establishes an advance informed agreement (AIA) procedure for ensuring that countries are provided with the information necessary to make informed decisions before agreeing to the import of such organisms into their territory. The Protocol contains reference to precautionary and reaffirms the precaution language in Principle 15 of the Rio Declaration on Environment and Development. The Protocol also establishes a Biosafety Clearing-House to facilitate the exchange of information on living modified organisms and to assist countries in the implementation of the protocol.

Policy making is a continuous interactive process with a cyclical nature. This facilitates organized thinking about policy even if the actual process is less orderly (Gerston 2002). Once policies are made the members of parliament use these policies to draft bills which are discussed in parliament and after lengthy deliberations they are enacted by the president to become acts of parliament. In addition to the constitution, acts of parliament form part of laws in Kenya.

This study examines the process through which the Biosafety Bill (now 2009 Act) was developed in Kenya. It shall focus more on finding out the nature and extent of involvement of different citizens/communities and non government groups as well as determine their perceptions on how they got involved in making decisions and formulating policy process, -were their inputs considered, did they receive audience and what inputs were keyed into the document arising from any of the groups.

1.2. Problem statement

In Kenya there are many policies that are in place and others that are under development. A policy statement is a set of principles guiding decision-making. It provides a framework against which proposals or activities can be tested and progress measured (Spas off, RA 1999).

According to Steven Dukeshire & Jennifer Thulow in their Brief Guide to Understanding Policy Development (2002), effective public policy is facilitated by community involvement in the policymaking process. Unfortunately, policy development for people in most communities may seem to be a process that does not really concern them or something over which they have little control. They may feel that the policymaking process is something that takes place only among government and the more influential members of society. There may be confusion about how policy is made and the average person may feel

far removed from the policy development process (Steven et al 2002) For instance in Kenya there are many policies that have been developed yet most people are not clear of even the basic process of coming up with an Act of parliament

The lack of understanding around policy development combined with potential value conflicts between communities and public policy-makers has led to community members feeling alienated and frustrated from the policymaking process. Community members and organizations do not have to remain on the sidelines when it comes to policy development. They can choose to become active in the creation of policy or advocate for change in a policy that may have an effect on their community. However, before members of rural communities can effectively participate in public policy development, they must have an understanding of what policy is, why it is important, and how it is developed. Further, community members need to feel their participation in the creation of public policy will benefit the people of their communities, region or province.

Communities and citizens can express their views concerning public policy issues through different forums including, consultation and engagement of groups and citizens by the government, government initiated referenda, legislative hearings, elections, royal Commissions, town hall meetings, surveys and opinion polls, policy round tables, petitions, demonstrations, letter-writing campaigns or other advocacy strategies.

To accomplish this, public and community awareness of how people who are directly affected by policy can contribute to policy development or change is necessary (Hawthorn 1995). *"Development of good policy is carried out by and with people, not on or to people. It improves both the ability of individuals to take action and the capacity of groups, organizations or committees to influence change"* (World Health Organization 1997)

This study examines the process through which the Busia Levy Bill now an Act of parliament was developed in Kenya with a special focus of assessing the level of involvement of key stakeholders. Qualitative methods were used to establish the level at which Kenyan communities and citizens expressed their views during development of public policy issues. Based on the findings conclusions and recommendations were drawn for sharing with a wider platform particularly those in the policy development arms in government.

1.3. Research questions

The study addressed the following questions.

1. Who were the key stakeholders involved during the formulation of the Biosafety Act 2009?
2. What were their contributions into the process of developing the Biosafety Act and at what level were they involved?
3. What was the perception by the stakeholders about the extent of involvement in the development of the Biosafety Act 2009?

1.4. Study Objectives

1.4.1. Broad Study objectives

To examine the step by step law making process in Kenya types of stakeholders involved and their motivations, with special interest to find out the extent of involvement of the rural communities. The study further reviewed the role and inputs given into the process by the various stakeholders through assessment of the Biosafety Bill (now 2009 Act) development process.

1.4.2. Specific objectives

1. To identify the types of stakeholders that were involved during the Biosafety bill drafting
2. To establish the level of the stakeholders participation and inputs in development of Biosafety Bill (now 2009 act)
3. To establish the perceptions by the key stakeholders on the level and quality of involvement during Biosafety Act 2009 development
4. To outline the Biosafety Bill and the changes that took place before adoption as an Act

1.5. Study Justification

This study attracted interest for several reasons. Policy development processes have been ongoing for many years in Kenya. Many forums as well as lobby processes take place. Apparently most citizens and communities in Kenya only get to know the highlights of the progress probably through the media and have no opportunity to contribute. The study aimed to map a case study of how the Biosafety Act was developed from a bill through the parliamentary process showing the stakeholders involved and what contributions they made as well as the flexibility and willingness of the policy makers to adopt their inputs. It was aimed

at reviewing the dynamics involved in a process of developing laws in Kenya and how various stakeholders participate especially on the importance of group formations and their effectiveness

According to MacDunald, W (1997) in his economics journal Possible approaches to policy making: the selection of strategies and possible activities, majority of communities and citizens in a country have inadequate knowledge over their countries system of policy formulation and may even not understand the level at which they can influence. Some have poor lobbying techniques and due to this challenge fail to influence the policies formulation process. The study highlighted the process used to formulate the Biosafety Act 2009 as well as the lobbying techniques used to form a learning point for most people. In reference to the Biosafety Act 2009 the study sought to assess stakeholders' perception over their participation and gather their recommendations on ways of improving the feedback and communication process in policy formulation in Kenya

1.6 Scope and limitations

Many policies and policy guidelines have been developed in Kenya and several Acts of parliament drafted in the recent past. The study was limited to examining the process through which the Biosafety Bill (now 2009 Act) was developed. It aimed to review the extent and the quality of involvement/contribution of key stakeholders, the communities and citizen in policy development with a close reference to this Biosafety Act 2009

CHAPTER 2: LITERATURE REVIEW

2.1. Introduction

This study focused to document the stakeholders that were involved in the development process of the Biosafety Act 2008. It reviewed some of the ways in which they participated and inputs and decisions that they gave/made. The study established some of the activities that were undertaken in an effort to lobby government and policy makers to adopt stakeholders' positions and propositions. E.g. the forums of participation they held as well as evaluate their perceptions on level of involvement and the results they achieved in this process. A particular focus was to find out how the general public and grass root communities participated in this process.

2.2 Stakeholders In policy development process

Stakeholders refer to a person, group, or organization that has direct or indirect concern in a policy because it can affect or be affected by the policy's actions, objectives and legal bindings. There are many individuals and organizations involved in changing or creating a policy. Understanding who these players are and the role they play can help individuals and organizations throughout the policy-making process. The roles of both government and non-government organizations involved in the policy making process are quite critical in coming up with a focused policy. The government stakeholders could be the Legislature or House of Assembly, the Cabinet, the civil servants or the Privy Council Office. The Non-government stakeholders could be interest groups, mass media, community, board of directors, regional boards, lobbying groups or even individuals (the public managers) in his work. Lyons stated that in a policy formulation process one should not expect someone to change something if they have no influence in that area. Be sure to identify and reach out to those who do have the authority to make policy changes (Lyons et al 2002).

In recognition of the importance of effective partnership, non-governmental organizations are invited to foster coordination, cooperation and communication at the local, national, regional and international levels and with local and national governments, to reinforce their effectiveness as key participants in the implementation of population and development programs and policies. In the work of Pal LA: Public Policy Analysis (Pal LA, 1992), the involvement of NGOs should be seen as complementary to the responsibility of governments to provide full, safe and accessible reproductive health services, including family planning and sexual health services.

2.3 Stakeholders Participation

The development of policy is not in reaction to a crisis situation, in most cases but rather follows a process that allows for full application of research and input from interested organizations and individuals. For a policy development process to be truly effective, it should be based on accurate, up-to-date information about the issue or situation. Views from different stakeholders count a lot in making the document complete and enhancing its ownership (Steven Dukeshire et al). But what we see in most countries like Kenya is a hurried process that only involves a few intellectuals and policy makers but with little or no involvement of the citizen and civil organizations. Several studies have brought different findings on participation by different groups in policy development.

In a study titled "Teacher participation in the decision-making (PDM) process, reality and repercussions in Indian higher education (Deepa Mehta et al 2010) provided a comparison of findings with similar studies conducted in western settings regarding the relationship of participative decision making (PDM) with some selected organizational variables: teachers' job satisfaction, organizational goal commitment, role ambiguity, and role conflict.

The study report here focused on comparing teachers' actual and desired participation in different decision-making situations and examined how participation in decision making differs in Indian higher educational institutions. The study data was gathered through a survey of 281 faculty members of Banaras Hindu University, India. Results indicate that in the Indian context, teachers' actual and desired participation was highest in institutional decisions and lowest in technical decisions. It is recommended that administrators evolve a mechanism for inviting participation of teachers in different decisional domains, based on the findings of this study.

Another study on African Peer Review Mechanism (APRM) Process in Kenya was undertaken in March 2003 on Agricultural Policy-Making in Sub-Saharan Africa. This study used both primary and secondary sources of information. In order to understand the APRM process, existing documents were reviewed critically to understand the genesis and the process of APRM, stakeholder participation, their roles, characteristics, interests and networks, factors influencing the process and level of implementation. Reviewed documents included the Kenya self-assessments and country reports. In addition, interviews were carried out with the NEPAD secretariat in Kenya that was responsible for this process, the Lead

Technical Agents (LTA) who was charged with undertaking the process and important agricultural stakeholders in order to understand how much they were involved and how well agricultural issues were addressed in the process. An Analysis of interaction between stakeholders was done i.e. for Kenya Institute of Public Policy Research and Analysis (KIPPRA), the LTA involved in preparing the country self assessment report under the theme on Economic, Governance and Management that dealt with agriculture issues and other stakeholders was drawn. For this purpose, stakeholders in agriculture have been grouped into five categories: policy makers (Ministry of Agriculture - MOA), Government parastatals, academic and research institutions, producer organizations, farmers, and experts and independent consultants.

The findings indicated that out of these categories, only three participated in the APRM process. These are the Planning Section at the MOA, farmers through the national household survey, and an agricultural expert, Prof. Willis Oluoch-Kosura in the report review stage. Participation by stakeholders in agriculture was inadequate (Simon Kimenju, et al 2009). At the policy making level, key departments in the MOA, including the policy department, were not involved in the stakeholders' forums, meaning that governance issues in such departments were left out.

In another study titled *Politics of Participatory Decision Making in Campus* Andriwo Obondoh (2003), it was noted that Government citizen relations require broad spectrum of interactions at each stage of the policy making cycle, from policy design, through implementation to evaluation.

The study was on academic governance or democratic management of campus affairs. It focused on managerial decision making, causes of varsity crises, organizational life, higher leadership and stakeholder participation in management of higher education in Kenya. The study of politics of participatory decision making in campus administration was done with support from the Association of African Universities. It covered three public universities in Kenya: the University of Nairobi, Egerton and Konyatta Universities. Using both qualitative and quantitative techniques, the study concentrated on six main thematic areas: managerial decision making - procedures and processes, causes of varsity problems, organizational life, stakeholder participation in policy formation, leadership in higher education and finally higher education management in the ongoing democratic transition.

The major focus however was the nature and extent of student and staff involvement in making decisions and formulating policies, which govern higher education in Kenya. Other core areas included information processing, communication and exchange as well as motivations behind managerial and academic problems. Part of the findings of this study was that facilitation of greater involvement of stakeholders in college affairs came out as a serious administrative and leadership problem. The general absence of culture of regular dialogue and joint forums in our universities is manifested in rising cases of unrest. University problems have been on the increase as mutual communication fails between the administration and students. The recurrent student unrest and staff disenchantment, are often reflections of demands for their involvement in campus governance.

Government/citizen relations require broad spectrum of interactions at each stage of the policy making cycle, from policy design through implementation to evaluation. There should be information flow, consultations and active participation. Governments need to be active in giving out information and establishing a two way relation in which citizens provide feedback to government. The policy makers should cultivate a partnership in which all stakeholders actively engage in proposing policy options and shaping dialogue even though the responsibility for the final decision rests on government.

2.4. Lobbying

A lobby is a group of people trying to persuade an organization/government that something should be done. In policy formulation lobbying is used to influence the extent and level of involvement of stakeholders to influence the key decisions in formulation of a policy. There are different ways of lobbying ranging from the writing of letters to key target audiences: letters, press releases, press conferences, fact sheets, briefing packs, posters, flyers, expressing, public service announcements, petitions, public forums, public rallies and face to face meetings. The basis for successful lobbying is in forming credible partnerships and effective communication. An example of effective lobbying was done by the women's coalitions at the 1994 Cairo ICPD and the 1995 Beijing Fourth World Conference on Women (FWCW) to ensure that women's reproductive rights (particularly the right to safe abortion services and protection from violence and) and women's empowerment issues were priorities in the programmes of actions.

2.4.1. Lobbying as a communication process

In His book "Lobbying as a communication process" Lester W. Milbrath (spring 1960) established that Lobbyists play a great role in the government decision process. In an effort to analyze the role of lobbyists in influencing decision process he thinks that there is need to reference the overall government decision process. His paper provides new insights and also leads a community model for analyzing the lobby aspects of the process. This perspective was gained from a sample survey of Washington Lobbyists. The study focused primarily on lobbyists as individuals who comprise a political skill rather than on the nature and power groups which they represent as most other studies of lobbying have done. The universe from which the sample was selected included all the individuals with Washington addresses who registered as lobbyists with the clerk of the house and secretary of Senate during the first two quarters of 1956.

He observed that it is unhappily an extra ordinary research problem to ascertain the bases for judgment made by these decision makers. Upon a general knowledge of decision making he constructed a frame work showing how lobbying fits into or plays a role in the overall government decision process. Milbrath in his Decision Making Theory an almost universally accepted concept is that decision maker must have access to ideas, arguments, information and so forth before these factors can figure in his decision.

Another concept of decision making process suggests, however, that mere accessibility is not enough. Every person has a set of predispositions that are derived from various sources such as conditioned learning experience. Predispositions for our analysis provide a perceptual screen for each individual. Thus anyone wishing to influence the decision of a government official, then, must be concerned not only with getting the information to him but also with the problem of presenting it so that the decision maker will be receptive. The only effective communication is that which goes beyond the perceptual screen. In fact, there is no other way to influence the government decisions short of remarking the personalities of decision-makers or replacing them with other persons. Through the study Milbrath established that lobbying process then is essentially a communication process and the task of a lobbyist is to figure out how he can handle communications most effectively in order to get through to decision makers.

Key findings of the study were that most of the lobbyists did not use the term communication but it was clear that most conceived their job as one of communication. The lobbyists seemed to fall into three categories based on their arguments: facts, arguments and power. As merchants of information, lobbyists

have a factual base for their message, especially they offer facts about how a contemporary group will get affected. Because of the constraints of the relationship between lobbyists and decision makers, most lobbyists take particular pains never to present anything but accurate facts. The facts are accompanied by a set of arguments about the rightness, wisdom or justice of the proposed action. Much more difficult and subtle is the task of communicating power. This involves using enticing gifts such as money. A forthright offer of campaign money to a decision maker might be used to smear the other opponent. Power can be used in a supportive or positive way.

Many of the interviewed lobbyists believed that personal communication is more effective than written communication in gaining access and is more likely to reach the decision makers when he is in a receptive frame of mind. Lobbyists also tend to believe that their most effective tactic is the personal presentation of their case to the officeholder provided they can get in to see him or get his phone number. Some lobbyists made little efforts to bolster their arguments with research either because they felt that their problem was not amenable to research or because they felt that research would not be respected.

Milbrath also points that most lobbyists of the sample did not prefer to share their information through testifying at hearings as the congress men are likely to have made up their minds on what to take and what not to take seriously. He also found out that although lobbying connotes personal representation before government, a far reaching effort to influence policy making must include communication with decision makers through intermediaries such as written or oral messages.

Milbrath noted that it was just as important to the lobbyists to keep his channels of communication to decision makers open as it was to transmit the communications themselves. Most of the lobbyists depend on the entertainments and parties to keep open the channels of communication to decision makers. Contrary to another popular conception, lobbyists have no faith whatsoever in bribery as a device for keeping the channels open as well as in contributing money towards political money and campaign work.

2.5 A general overview of the policy making process in Kenya

The Kenya government has three arms namely the Judiciary, the executive and the legislature. The Politics of Kenya takes place in a framework of a presidential representative of a democratic republic. The President of Kenya is both head of state and head of government, and of a multi-party system. The 2008

constitutional amendments and signing of an accord between the Kenyan min parties namely enabled sharing of executive powers between the President and a Prime Minister. Executive power is exercised by the government, with powers shared between the President and a Prime Minister, who coordinates and supervises the cabinet. Legislative power is vested in both the government and the National Assembly. The judiciary is independent of the executive and the legislature. The judiciary is headed by a High Court consisting of a chief justice and High Court judges and judges of Kenya's Court of Appeal (no associate judges), all appointed by the president. The legislature branch constitutes of the unicameral National Assembly or Bunge which has 224 members: 210 members elected for a five year term in single-seat constituencies; 12 members nominated by political parties in proportion to their share of seats won in the single-member constituencies and 2 ex officio members: the attorney general and the speaker.

In Kenya parliament has the supreme power to make laws - This is provided under Section 30 of the Constitution. Section 30 the Legislative power vests in the Parliament of Kenya which shall consist of the National Assembly and the President. However, the power to legislate is exercised through Section 46;

Sec 46 (1) Subject to this Constitution, the legislative power of Parliament shall be exercisable by Bills passed by the National Assembly (Kenya constitution)

Laws are made from policy documents and statutes proposals by the government, individual members of parliament, local government, business and civil society. The laws made by Parliament are referred to as statutes. There is a formal process for making laws through parliament. The parliamentary process of making laws is undertaken through passage of Bills. A Bill¹ is a proposal for a new legislation or an amendment of an existing law. It is draft legislation for consideration by the National Assembly. The first process in the law making process is the drafting of the Bill or proposed legislation.

Bills can originate from various sources but most Bills are brought to parliament by the government through relevant ministers depending on the issue. For example, a Bill on health will be brought to parliament by the Minister for Health or the Assistant Minister in that ministry. The bills can either originate from private individuals, lobby and advocacy groups, and individual members of Parliament and Government departments.

¹ <http://www.documatica.com/us/bill-of-sale-more-info.php>

In Kenya all the Government Bills are drafted by the Attorney General's Office. Bills are classified as either Public or Private Bills. The law allows any member of parliament to bring a Bill to Parliament. However, the difference in procedure is that a private member who intends to bring a Bill to Parliament must first move a motion seeking the leave of Parliament to bring the motion. It is only when the motion has been approved that the private member can bring his/her Bill to Parliament for debate.

• Public Bills

This is a bill on a matter affecting the public or a section of the public as a whole or generally. The publication and introduction is done by a minister or a private member. The private member must also obtain leave of the house to bring the bill to parliament for debate. This bill is paid for from public coffers. Some examples of famous Public Bills brought by private member recently in Kenya are The Hire Purchase Bill, the Constitution of Kenya Amendment Bill (1999), the Constituency Development Bill (2003), the Central Bank Amendment Bill (The Donde Bill-2000), the Sugar Amendment Bill (2004), and the sexual Offences Bill (2005).

• Private Bills

This is a Bill other than a public Bill. It relates to matters not affecting the public generally and can be promoted by any person with the leave of the house. It's paid for by private persons.

Whether public or private all Bills must pass through

1. Drafting stage
2. Publication stage
3. First reading
4. Second reading
5. Committee of the whole House
6. Third reading
7. President's assent

An organization can lobby for Bills in parliament. The lobbying process begins with the process of drafting Bills. This is especially so with private members Bills. Civil Society Organizations (CSO) can research into and prepare drafts of motions and Bills that are eventually either taken up by government or brought to parliament as private member's Bill. Once a Bill is presented, whether it is a Government Bill or a private member's Bill, the stages Bill must pass in Parliament are the same. As a rule, every Bill must be published in the official gazette of the Kenyan Government, call the Kenya Gazette, before being taken to Parliament.

Steps to Influencing Policy: Although the policy process is not cut and dry, there are steps that communities can follow which will put them on the road to affecting, understanding and influencing policy. The framework for policy development/ change presented here is based on that developed by Lyons et al (in press). Sometimes the path [to policy] is barely visible, obscured by the struggle of contending interests and ideas, by the inconsistencies or contradictions of government action and inaction or by fuzziness in how an issue is defined (Doern and Phidd, 1988).

a. Identify the problem or issue

The process of policy change begins with identifying one or two key issues that the community wants to take action on. This requires isolating the problem and its causes. Understanding the problem and its causes often requires gathering information about the issue. It is also important at this point to identify individuals and groups who may be sympathetic to your issue and may be potential supporters.

b. Identify preferred solutions and develop an action plan

The next step after identifying the one or two key policy issues is to generate a solution(s) to them. This can be done by looking at how similar situations were dealt with, deciding on what information you need to deal with your particular key policy issues, figuring out who can help, soliciting ideas from the community, and thinking about the short and long term consequences of various solutions. Once a solution has been identified, decide on the best strategy to influence the decision making related to the identified problem or issue. Selecting the best strategy and developing an action plan to carry out the strategy may be difficult. With help from other community organizations as well as universities, research centers, government agencies, other communities, and special interest groups you will be able to develop an action plan that outlines your objectives and the activities needed to implement your solution. Action plans let everyone know what is to be done, how it is to be done, and who is going to do it (Hanrahan, 1995, page 8).

c. Implement the Action Plan

Once you have decided upon an action plan, you need to outline the steps that must be taken to carry out the strategies you have chosen. Some examples of potential actions include educating the public about your issue through the media, sending letters to appropriate authorities explaining the issue and requesting action, submitting a policy brief, presenting the issue at a public forum, and contacting your municipal, provincial, and federal government representatives. The timing of these actions may be critical and must be considered carefully to maximize their impact. Usually keeping actions positive, constructive, and tactful will make it more likely that you can gain the support of the public as well as those who can change the policy (MacDonald, 1997).

d. Monitor and Evaluate Your Progress

Policy change can be a long process. You should monitor and evaluate the progress you are making with the goal of identifying positive changes as well as areas that still need improvement. It is important to consider both the process itself as well as impacts and outcomes. When considering the process, you should ask yourself what have you done, what worked, what did not work, and why? In terms of impacts and outcomes, you should assess whether there has been an increase in public and government awareness and support toward your issue, whether Policy development in a country is supposed to be a participatory process involving all stakeholders and considering the good will of its citizens. The involvement level usually varies with different stakeholders giving different inputs and opinions.

2.6 Theoretical frame work

2.6.1. Pluralism-Elitism

Pluralist-elitist approaches focus on the distribution of power within the policy process and how this shapes policy formation. Pluralist models of policy-making, set out by Dahl and Lindblom (1953) and Lindblom (1959) were based on the assumption of an open liberal democratic political system in which different policy actors operated on a level playing field. Schattschneider (1960) criticized this model, insisting that the elite systematically shaped the political system in its favor. He argued that all forms of political organization had a bias in favor of the exploitation of some forms of conflict and the suppression of others, because organization was the mobilization of bias. In other words, some issues were organized into politics while others were organized out, the elite managed this process to ensure the inclusion or exclusion of certain issues from the policy process. However, Bachrach and Baratz (1962, 1963, and 1970) argued that power was not just the control of observable behavior and decisions, but also included the non-observable

realm of non-decisions. Non decision-making meant that policy-makers with power could effectively keep certain issues off the policy agenda. Crenson (1971) further developed these arguments with his claim that the dominant ideological system transcended and shaped the policy process.

Cobb and Elder (1972) focused on issue-formation, that is how an issue becomes an agenda item in the policy process, and posited a number of triggering devices which prompt the emergence of an issue. To be transformed into an agenda item, however, the issue must be of concern to decision makers and the body politic, and must overcome the numerous elite strategies of containment. There is no single, unified 'power elite', but rather there are many competing power elites with differing backgrounds, values and bases of support in the broader society.

2.6.2. Sub-Systems

Sub system approaches analyze the policy process with reference to concepts such as policy networks, policy communities and sub-systems. The metaphor of a policy network or community is used to denote the pattern of formal and informal contacts and relationships that shape the policy agenda and decision-making. The concept of the policy network was first used by Hecl (1978) in his study of the US executive whilst Richardson and Jordan (1979) and Smith (1993) applied the concept more widely in Britain and the US. Rhodes (1981) and Benson (1982) analyzed policy networks in terms of different structures of resource dependencies. Kingdon (1984) analyzed the policy process in terms of distinct sub-systems or streams, specifically problems, policies and politics, the confluence of which determined whether or not a particular policy was implemented. Sabatier (1986, 1988, 1991), on the other hand, devised a wider conceptualization of the policy sub system. It included a wider range of actors attending to particular policies and problems not just the formal decision makers. However, the roles of elite opinion, and the factors which help to change opinion over time, were key to understanding and explaining policy outcomes.

2.6.3. Systems Analysis Theory

The systems theory is derived from the hard science and applied to behavioral and social science. The argument of the theory is that the intricate relationship of parts cannot be treated out of the context as a whole. The focus of the theory is on relationships or processes at various level with social systems (Ritzer, 1988). A system consists of various components or subsystems which function together for systems to work. If a subsystem fails the whole system is put to jeopardy.

Systems model of policy process was very important in the development of more sophisticated models of policy making. His book, inspired by the considerable amount of thinking about natural and social systems that occurred in early 1960s, corresponds with the then new and growing field of systems analysis. Easton and the systems modelers argue that we can think of public policy process as the product of a system influenced by and influencing the environment in which it operates. The system receives inputs and responds with outputs. The inputs are the various forms of issues, pressures, information and the like to which the actors in the system react. The outputs are in simplest terms, public policy decisions to do or not to do something. (Birkland 2005.)

The environment of policy making The policy environment contains the features of structural, social, political and economic system in which public policy making process takes place. The political process can be thought of as being influenced by and influencing its environment. One must however be careful with this analogy since the boundary between the political system and its environment is blurry as systems and the environment overlap to some extent. In policy development process what goes in is called the inputs that are either Public opinion or Decisions made in relation to the development process. The outputs are the laws, oversights and evaluations that come out of the process.

2.6.4. Contextual Interaction Theory

Description: The Contextual Interaction Theory (CIT) posits that policy actors' motivation, information needs, and level of power/collaboration are key variables influencing policy and programme implementation. Developed by Hans Bressers and colleagues at the University of Twente in The Netherlands, retrospective studies have demonstrated that the theory predicted a high percentage of policy implementation outcomes in European and US settings. Finding a model for policy implementation does not mean that implementers then can employ a simple process, using quick fixes to create rapid change in an implementation network—long term behavior change rarely happens that way. Instead, a simplified model provides a framework for systematically identifying and addressing factors that implementers have some chance of influencing.

The activity team identified such a model in the Contextual Interaction Theory (CIT). CIT uses a deductive social process approach that employs explicit consideration of several variables, including the policy tools (or instruments) and the strategic interactions between implementers and target groups over extended

periods of time (O'Toole, 2004). The basic assumption of the Contextual Interaction Theory is thus that the course and outcome of the policy process depend not only on inputs (in this case the characteristics of the policy instruments), but more crucially on the characteristics of the actors involved, particularly their motivation, information and power. All other factors that influence the process do so because, and in so far as, they influence the characteristics of the actors involved. The theory does not deny the value of a multiplicity of possible factors, but claims that theoretically their influence can best be understood by assessing their impact on the motivation, information and power of the actors involved (Bressers, 2004).

This discussion of actors includes the role of the public in policy implementation. Communities and individuals are the ultimate "target groups" of policies and programmes and therefore are the ultimate "street-level" implementers, able to demand or reject specific programmes. For example, in Vietnam a policy to reintegrate children living in orphanages (including children affected by HIV) back into the community has failed to get off the ground because few community members will accept these children due to unfounded fears of casual transmission of HIV to their children.

2.7. Conceptual frame work

A concept is an image or symbolic representation of an abstract idea. Chinn and Kramer (1999) define a concept as a "complex mental formulation of experience". While the theoretical framework is the theory on which the study is based, the conceptual framework is the operationalization of the theory. It is the researcher's own position on the problem and gives direction to the study. It may be an adaptation of a model used in a previous study, with modifications to suit the inquiry. Aside from showing the direction of the study through the conceptual framework, the researcher can be able to show the relationships of the different constructs that he wants to investigate.

The study main objective is to identify the types of stakeholders involved in the Biosafety Act development. Key in this study is to also understand the inputs and outputs during the feedback processes between the parties involved through influence and lobbying processes. The findings will also constitute a view of the stakeholder's perceptions on the fairness towards absorption of their inputs into the Biosafety Bill/Act 2009. It will also help to show how the political good will and influences contributed to shaping up the final draft of Biosafety Act 2009.



2.8. Study variables and operational definitions

2.8.1 Independent variable

In this study the participation of the various stakeholders in the development of Biosafety Bill 2008/Act 2009 was the independent variable

2.8.2. Dependent variable

Results of the participation by stakeholders in the development of Biosafety Act 2009 will be the dependent variable. These results will be in form of the interventions and incorporations of proposed changes into the bill during the Biosafety Act development process

2.8.3 Operational definitions

- **Policy framework**

A policy is a declaration that defines the intention of a community, organization or government's goals and priorities. Policies outline the role, rules and procedures. They create a framework within which the administration and staff can perform their assigned duties' (Mayer & Thompson, 1982)

- **Types of Stakeholders**

Person, group, or organization that had direct or indirect stake in a policy because it can affect or be affected by the policy's actions, objectives, and legal findings.² The types of stakeholders during the development of the Biosafety Bill/Act 2009 included the media, farmers, civil society organizations, Seeds companies, multinational companies. These will be identified for documentation in the study

²<http://www.businessdictionary.com/definition/stakeholder.html>

• Stakeholders perception

In philosophy, psychology, and cognitive science, perception is the process of attaining awareness or understanding of sensory information. The word "perception" comes from the Latin words *perception*, *perception*, and means "receiving, collecting, and action of taking possession, apprehension with the mind or senses. What one perceives is a result of interplays between past experiences, including one's culture, and the interpretation of the perceived. If the percept does not have support in any of these perceptual bases it is unlikely to rise above perceptual threshold.

• Participation

A mechanism by which stakeholders are heard and have an opportunity to influence the decision from the beginning to the end of the decision-making process. A process leading to a joint effort by stakeholders: technical specialists, the authorities and the proponent who work together to produce better decisions than if they had acted independently. Participation also leads to increased legitimacy. If participants feel the process was fair and their inputs were used, it will ultimately enhance their compliance. In fact, it has been demonstrated that the perception of legitimacy is linked to the participants' views of the fairness of the process (Sutinen and Kuperan 1999). Furthermore, participants who view the process as legitimate generally feel a strong obligation to comply with the results, even if the mandates contradict their self-interests (Sutinen and Kuperan 1999).

In the study this was measured through review of existing documents and questioning to identify activities such as;

- 1 Meetings attended
- 2 Consultancies in drafting and review of the Biosafety Bill
3. Lobbying through meeting decision makers
4. Holding media press conferences
5. Airing articles and information through media
6. Engaging media/video persons to cover events
7. Writing of letters to relevant authorities
8. Attending amendments meetings
9. Review of the law
10. Giving incentives

CHAPTER 3: METHODOLOGY

3.1. Introductions

This chapter consists of the research design, population sample, sampling methods, unit of analysis, unit of observations, types of data, sources of data, data collection procedures and data analysis procedures used in conducting this research. Research design refers to the planning of procedures for data collection and analysis that are undertaken to evaluate a particular theoretical perspective. In this study, descriptive research was used. According to Singleton et al. (1988: 90) a descriptive study is basically a fact-finding enterprise, which focuses on relatively few dimensions of well-designed entity and measure these dimensions systematically and precisely usually with detailed numerical descriptions.

3.2. Study design

This study was exploratory and shall serve as a baseline for other future studies on the role of the stakeholders in policy formulation in Kenya. Qualitative research methodology was used in carrying out the research. Qualitative research is broadly defined as any kind of research that produces findings not arrived at by means of statistical procedure or means of quantification (Strauss & Corbin, 1988: 17) whereas quantitative research seeks instead illumination, understanding and extrapolation of similar situations. Qualitative methods are suitable for better understanding a phenomenon where not so much is known about. In Kenya, the Biosafety Act 2009 is in place but a lot is not known on who participated in the formulation, what contributions they made and how their contributions were incorporated as well as the stakeholders' perception on their role in the development of this policy. The study focused to find out on the key stakeholders who participated in the formulation, what activities did they undertake, what inputs did they give and the discussions they were involved in.

In addition, qualitative approaches were preferred as an effective methodology for helping to gain in-depth information that may be difficult to ascertain and generate quantitatively. Qualitative methods are appropriate in circumstances where one needs to first identify variables that might later be tested quantitatively or where the researcher has determined that quantitative measures cannot adequately interpret a situation. Research problems tend to be framed as open-ended questions that will support discovery of new information (Strauss and Corbin, 1990).

3.3. Unit of observation:

This refers to the objects, entity or subjects from which data required for the study shall be obtained. In this study unit of observation was individuals who gave information on and also entailed a review of relevant documents.

3.4 Sampling

Sampling is that part of statistical practice concerned with the selection of an unbiased or random subset of individual observations within a population of individuals intended to yield some knowledge about the population of concern especially for the purposes of making predictions based on statistical inference. Sampling is an important aspect of data collection. In this study the interest was to get a sample that can give information in regard to whether or not they were stakeholders in Biosafety Bill/Act development, the role they played and the type of inputs they contributed as well as their perceptions on how much of their contribution was incorporated into the Biosafety Bill/2009 Act document.

The study focused on use of non probability techniques partly because there is no sample frame in existence of the whole population. Non probability sampling is used in qualitative research and for quantitative study of preliminary and exploratory nature or where random sampling is too costly or where it is the only feasible alternative. In this study sampling was done using non probability sampling techniques in particular, purposive sampling and snowballing sampling technique.

3.4.1. Purposive sampling.

In this technique respondents were chosen by criteria that they were thought to be the most relevant to the subject under study. Four (4) Civil Society Organizations were identified, one multinational seed company, one lawyer and a consultant. Time and place to meet for interviews was agreed upon. The selected participants helped in recommending other key institutions and strategic individuals thought to have crucial information about the Biosafety Bill 2008/Act 2009. This was crucial in helping to identify institutions from where respondents were drawn from as well as for identifying the respondents.

3.4.2. Snow ball sampling;

This method was used in addition, to ensure enriched information where once the respondents purposively identified were interviewed, they were asked to recommend others who meet the criteria of the research and were willing to take part.

3.4.3. Unit of Analysis

According to Singleton, et al (1988:19), unit of analysis refers to entities objects or events under study. The unit of analysis includes individual people, social and political roles, positions and relationships, social groupings like families and organizations and facts such as books and documents. The specific unit of analysis was the types of stakeholders that participated in the development of the Biosafety Bill/Act 2009. The study observed keenly the role each played and the kind of decisions they made to influence formulation of the Biosafety Bill/Act 2009. The study analyzed the perceptions of the stakeholders on level of contribution to the Biosafety Bill/Act formulation.

3.5 Methods and tools of data collection

This study used qualitative data collection approaches. The main qualitative methods used to gather information were the Focused Group Discussions (FGD), Key Informant Interviews (KII) and secondary data review. These methods were more dynamic, interactive and generated more detailed explanations and data that contribute to in-depth understanding of the process of developing the Biosafety Bill/Act 2009. Interview schedules were used with key informants' interviews.

3.5.1. Focus Group Discussions

The focus group discussion (FGD) is a rapid assessment, semi-structured data gathering method in which a purposively selected set of participants gather to discuss issues and concerns based on a list of key themes drawn up by the researcher/facilitator (Kumar 1987). This qualitative research technique was originally developed to give marketing researchers a better understanding of the data from quantitative consumer surveys. As an indispensable tool for marketing researchers (Kruuger 1988), the focus group discussion has become extremely popular because it provides a fast way to learn from the target audience (Debus 1988, US Department of Health and Human Services 1980). During the study, 10 Focused Group Discussions were undertaken. There were 6 of them focusing on the Civil Society Organizations and 2 each focusing on Religious groups and seed multinational companies. In total there were more men (55) in number who participated as compared to women (30). Each FGD session lasted for one and half hours and basically this was spread over a month to ease completion and ensure convenience for the various stakeholders. A questionnaire was used to guide the discussions and elicit contributions from the various individuals. The information shared was recorded including notable quotes very key and relevant to the discussion. The FGDs information from the various groups was classified according to the areas of interest as per the questionnaire used.

Table 1: Information on the number of people interviewed through FGD

Types of Stakeholders	No of Participants			No of FGDS held
	Male	Female	Total	
Civil Society Organizations	40	22	62	6
Policy Makers		.	-	
Religious Groups	7	4	11	2
Lawyer	.	.	-	
Seed Multinational Corporations	8	4	12	2
Consultants	.	.	-	
Total	55	30	85	10

3.6 Key Informants Interviews

Key informant interviews are essentially qualitative interviews. They were conducted using questionnaires that listed the topics and issues to be covered. This study was mainly qualitative and there was need to generate a lot of views and data from the various key stakeholders to enable cross checking and validation. In this case twenty two (22) Key Informants were interviewed. They were each given the questionnaire used in the FGD discussions to fill in the data according to their knowledge. To start with six (6) informants were selected and interviewed because they were considered to have participated in the process of developing the Biosafety Bill 2008/Act 2009. At the end of each session the key informant was kindly requested to propose another person thought to have crucial information in relation to the study investigation. This helped in making decision on the number of key informants to be interviewed.

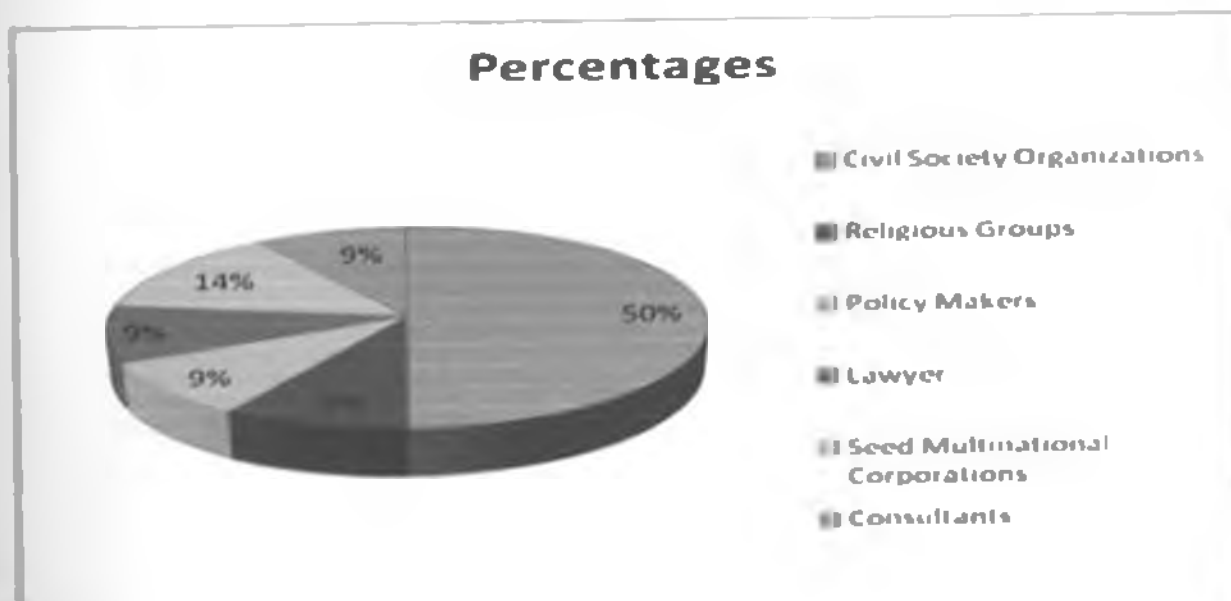
Table 2: Number of Key Informants Interviewed

Types of stakeholders interviewed	No of KIs	Percentages	KI labels
Civil Society Organizations	11	50%	KI ₁ , KI ₂ , KI ₃ , KI ₄ , KI ₅ , KI ₆ , KI ₇ , KI ₈ , KI ₉ , KI ₁₀ and KI ₁₁
Religious Groups	2	9%	KI ₁₂ and KI ₁₃
Policy Makers	2	9%	KI ₁₄ and KI ₁₅
Lawyer	2	9%	KI ₁₆ and KI ₁₇
Seed Multinational Corporations	3	14%	KI ₁₈ , KI ₁₉ and KI ₂₀
Consultants	2	9%	KI ₂₁ and KI ₂₂
Total	22	100%	

N/B:

For purposes of discussion and consistency in this Chapter the Key informants will be referred to as per from KI₁ to KI₂₂

Chart 1: The percentage representation of data generated through Key Informants Interviews from different groups



3.7. Secondary data

3.7. Secondary data

In understanding the study the following sources of evidence was used, workshop reports, press release and newspaper cuttings, action plans e.t.c. Extensive reference was also made to documentations such as pamphlets, annual reports, newspaper reports and articles, activity profile, strategic plans, newsletter and activity reports, archived records in depth interviews and limited direct observations

In conclusion, Since this study was qualitative and descriptive, in-depth interviews were held. Respondents were selected from among civil society organizations, policy makers, religious groups, lawyer, multinational biotechnology corporations and legal consultants. Many things which were planned in the research methodology, were fulfilled. In some other parts the research did not go according to plan. For example on the part of the sampling technique, although it was difficult to get people who fully participated in the process of drafting the Biosafety Bill/Act for several times, but at the end the researcher was able to find the right sample. The researcher wanted to use the tape recorder to collect the data, but because the tape recorder was not easily accessible, she decided to take notes instead. In the process of taking the notes and asking the respondents questions, there was a research assistant available in the room, to observe how the researcher interviewed respondents. After each and every interview, the researcher and the research assistant then cross checked the notes to see whether the interviews had been conducted correctly. Irrelevant information, which was recorded, was then taken out, and relevant information left.

A total of 22 Key Informants were interviewed and ten (10) Focused Group Discussions conducted. The interviews were structured to get as many views as possible from both men and women with the key factor to get the flow of events from participants' key- in the drafting of Biosafety Bill 2008/Act 2009. There were more men (85) than women (30) who participated in the study. This study was a case to review a model of what policy making process is like in Kenya. The whole process was analyzed which involved a key review of when it started, who were the stakeholders and what was done by who, i.e. what was the level of participation.

CHAPTER 4: DATA PRESENTATION AND INTERPRETATIONS

4.1. Introduction

This chapter focuses on the presentation and analysis of data obtained from research interviews. A description of the respondents who took part in the study will be given. The researcher will present the data from the respondents' interview schedule and from the Key Informant interview schedule. Data analysis will also be discussed. According to De Vos (1998:334), data analysis in qualitative research is a challenging and highly creative process. It starts with data collection. The researcher is intimately involved with the respondents and the data that are generated. The findings are based on each of the following proposed study objectives:

- a. To identify the types of stakeholders that were involved during the Biosafety bill drafting
- b. To establish the level of the stakeholders participation and inputs in development of Biosafety Bill (now 2009 act)
- c. To establish the perceptions by the key stakeholders on the level and quality of involvement during Biosafety Act 2009 development.
- d. To outline the Biosafety Bill and the changes that took place before adoption as an Act

4.2. The Biosafety Bill

The first study objective: "To outline the Biosafety Bill and the changes that took place before adoption as an Act"

The origin of Biosafety frameworks and the need to enact Biosafety Laws can be traced back to the provisions of the Convention on Biological Diversity (CBD). The CBD is an international agreement developed under the leadership of the United Nations Environment Programme (UNEP). It was adopted at the Earth Summit in Rio de Janeiro, Brazil in June 1992 and entered into force in December 1993 to achieve three main goals: the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from modern biotechnology have the potential to contribute to sustainable development as long as it is developed and used in a safe and responsible manner.

Article 19 of the CBD addresses the handling of biotechnology and distribution of its benefits. Paragraph three of the article states that "Parties shall consider the need for and modalities of a protocol setting out appropriate procedures, including, in particular, advance informed agreement, in the field of the safe

transfer, handling particular, advance informed agreement, in the field of the safe transfer handling may have adverse effect on the conservation and sustainable use of biological diversity'. The Article provided the basis for the development of the Biosafety protocol. The year 2001 marked the start of the actual drafting process, a highly interactive affair that involved a wide range of stakeholders. It took seven good years to refine the initial draft into the 2008 Bill that was debated in Parliament and finally the Biosafety, Act 2009, was approved by his Excellency the President of the Republic of Kenya in February 2009.

The Act lays down legal and institutional frameworks for governing modern biotechnology in the country. It was cautiously developed to ensure that Kenya maximizes the benefits of modern biotechnology while safeguarding against any potential risks.

a) Scope of the Act

The Biosafety Bill is consistent with the provisions and requirements of the Convention on Biological Diversity and the Cartagena Protocol on Biosafety. The objectives of the Bill are to ensure an adequate level of protection in the field of safe transfer handling and use of genetically modified organisms that may have an adverse effect on human health and environment and to establish a transparent science-based and predictable process to review and make decisions on genetically modified organisms and related activities.

In terms of scope, the Bill covers contained use, deliberate release, placing on the market, import and export of GMOs and products containing GMOs. The legal requirements and procedures required for obtaining approval before introducing GMOs for research or commercial purposes are specified. The Bill elaborates on the information required from the applicants, the risk assessment process and the role of different regulatory agencies in ensuring compliance.

The Bill makes provision for establishment of a competent authority to be known as the National Biosafety Authority (NBA). The Authority shall be under the Ministry of Science and Technology and will be managed by a board comprising eminent scientists, experts, permanent secretaries from key ministries, the secretary NCST, directors of Biosafety regulatory agencies and civil society representatives. Key functions of the authority embrace overall supervision and control of the development, transfer, handling and use of genetically modified organisms for research or commercial purposes. The proposed Authority is also

charged with the responsibility of promoting public awareness and education to enhance understanding of Biosafety. The Bill outlines mechanisms for obtaining and incorporating public input into the decision making process. Notices will be published in the Kenya Gazette to invite comments and inputs from the public on decisions to approve introduction of GMOs for research or commercial purposes.

The NBA will operate as a full-fledged body with financial autonomy and institutional permanency. Financial provisions in the Bill define sources of funds for the Authority which includes appropriations by Parliament. The Authority is also mandated to solicit for additional funds from other sources to strengthen financial stability. The provisions will enhance capacity building in relevant areas of scientific expertise, ensure compliance and strengthen monitoring and enforcement of biosafety matters in Kenya. To ensure safe and responsible use, the Bill makes provision for assessment and management of risks that may be caused by genetically modified organisms. The Bill imposes heavy penalties to persons dealing in GMOs without approval of the authority or fail to furnish correct information to the authority. Cessation orders stipulate immediate directives for terminating activities that pose imminent danger to the conservation and sustainable use of biological diversity, taking into account risks to human health. Environmental restoration orders set forth legal sanctions to be enforced to remedy or rehabilitate damage to the environment as a result of negligence or deviation from risk management measures.

In conclusion, the need and importance of Biosafety legislation in Kenya was justified by a number of fundamental reasons. A comprehensive Biosafety legal framework aimed to strike a balance amongst ensuring the development of biotechnology, protection of the environment and safeguarding the interests of consumers. Potential risks associated with application of modern biotechnology are minimized while facilitating the beneficial application of the technology in areas of agriculture, health, environment and industry.

The law was vital to deal with Transboundary movement of GMOs. For instance, delays caused by judicial and political decisions resulted to an increase in illegal planting of GM soya bean seeds in southern Brazil smuggled across the border from Argentina. Appropriate legislation and a strong regulatory framework were considered important in developing public confidence in biotechnology as a technological option. National laws and regulations were required in order to fulfill and comply with the objectives of the Cartagena Protocol on Biosafety.

4.3 Types of Stakeholders

The second objective was: "To identify the types of stakeholders that were involved during the Biosafety bill drafting."

Stakeholders are defined as "individuals or organizations who stand to gain or lose from the success or failure of a system" (Nuseibeh and Easterbrook, 2000). For a software system, this can include managers, designers, and users of the system. Stakeholders can have positive or negative views regarding a given project, and often do not agree with one another, making it a challenge to reconcile their varied viewpoints. Since, by definition, stakeholders are those who are impacted by (or have an impact on) the project, their perspectives need to be taken into account in order for a project to be successful. The following were the stakeholders identified as having been key in influencing the Biosafety Act process.

4.3.1. Institutions involved in agricultural biotechnology research

These institutions were either research or education types shown below. They were instrumental in making Kenya a country of concentrated lobbying in favor of GM. Kenya is the home of the East Africa Regional Network on Biotechnology, Biosafety and Biotechnology Policy (BIO-EARN). One of the experts in this organization has been quoted as saying "the biotechnology revolution could pull the African continent out of decades of economic and social despair." Kenya is linked to USAID-funded Association to Strengthen Agricultural Research in East and Central Africa (ASARECA). Kenya is also a partner of USAID's Agricultural Biotechnology Support Project (ABSP) whose goal is to support research, product development and policy development for the commercialization of GM crops.

Table 3: Institutions involved in Agriculture Biotechnology Research

Research organizations	Education Institutions
<ul style="list-style-type: none"> Kenya Agricultural Research Institute (KARI). 	<ul style="list-style-type: none"> Jomo Kenyatta University of Agriculture and Technology
<ul style="list-style-type: none"> National Potato Research Centre (NPRC) 	<ul style="list-style-type: none"> Department of Biochemistry at the University of Nairobi
<ul style="list-style-type: none"> The Sustainable Agricultural Centre for Research Extension 	<ul style="list-style-type: none"> Faculty of Agriculture at Moi University
<ul style="list-style-type: none"> Development Africa (Sacred) by the Rockefeller Foundation 	<ul style="list-style-type: none"> Faculty of Agriculture at Kenyatta University (KU)
<ul style="list-style-type: none"> The International Livestock Research Institute (ILRI) 	
<ul style="list-style-type: none"> African Agricultural Technology Foundation (AATF) 	
<ul style="list-style-type: none"> African BioTech Stakeholders Forum (ABSF) and the 	
<ul style="list-style-type: none"> African Biotechnology Trust (ABT) 	
<ul style="list-style-type: none"> International Service for the Acquisition of Agri-biotech Applications (ISAAA) 	
<ul style="list-style-type: none"> African Harvest Biotechnology Foundation International (AHI BI) 	

4.3.1. Civil society organizations

Majority of the officials were civil society organizations were opposed to the development of the Bill, arguing that this would pave way for introduction of GMOs into the country. Their main intention was to create awareness to Small holder farmers, consumers, policy makers, legislators and the general public on issues around GE/ GMOs and their implications to Kenya's Agriculture. They wanted a total rejection of the biotechnology and hence as such there would be no need for a law. The identified civil society organizations that took part in the process of shaping the Biosafety Act 2009 were (International Service for the Acquisition of Agri-biotech Applications- ISAAA 2010)

- Participatory Ecological Land Use and Management (PELUM-Kenya)
- Kenya Organic Agricultural Network (KOAN Kenya)
- Resources Oriented Development Initiatives Programme (RODI Kenya)
- Animal Network Association Welfare (ANAW)
- African Biodiversity Network (ABN)
- Community Rehabilitation and Environmental Protection Programme (CREPP)
- Community Mobilization against Desertification (C-MAD)
- The Kenya Biodiversity Coalition (KBioC)

- Youth Action for Rural Development (YARD)
- Kenya Small Scale Farmers Forum (KESSFF)
- Ng'ombe na Mahindi (NGOMA)

4.3.2. Policy makers

Laws in Kenya are made under a parliamentary process that involves critiquing draft laws and giving inputs and views during the parliamentary draft process that culminates into acceding of the law by the President. Majority of the parliamentarians by the time of drafting were pro-biotechnology stakeholders who felt that Kenya had an obligation under international law to enact a Biosafety Law to guide sale and responsible application of Biotechnology. Policy makers were major stakeholders in the process of developing the Biosafety Act 2009.

4.3.3. Religious groups

These were identified as stakeholders who played a key role during the Biosafety Act 2009 drafting process through creating awareness on the contents of the Bill to their affiliates. Religious organizations that were involved in the study work with different churches and religious leaders in the different parts of the country. Two such organizations were identified (International Service for the Acquisition of Agri-biotech Applications- ISAAA 2010).

- Jesuit Hakimari (Catholic Justice arm of Kenya)
- Building Eastern Africa Community Networks (BEACON)

4.3.4 Multinational Biotechnology seed Companies

Large multinational biotech companies developed genetically modified seeds that are resistant to pests and diseases and that produce more yield than unmodified seeds. These GMOs are derived from organisms that create a specific set of traits such as size, color, vibrancy and long shelf life. One of the down sides is that these GMOs are patented by manufacturers, which means that seeds cannot be grown without paying royalties to the firms. The Biosafety Act 2009 aimed at facilitating commercialization of GMOs within Kenya. Biosafety describes a set of measures used for assessing, monitoring, and managing risks associated with GMOs and their mitigations.

From the study it emerged that for effective participation in the Biosafety Bill/Act drafting process, the multinational biotechnology companies did a joint venture with various Agricultural Biotechnology Institutes

in Kenya as per what was said by an FGD participant 'Biotechnology is a science that needs research backing. It is therefore not possible to separate biotechnology research from marketing of the products of Biotechnology research'. The Agricultural biotechnology institutions and Multinational Biotechnology companies played a key role in developing the Biosafety draft Bill and lobbying for its enactment into law. Examples include Monsanto, DuPont, Pioneer Hi-Bred International, Seed Company and Pannar Seed Company.

4.3.5. Consultants

In this study context, a consultant is defined as an individual who possesses special knowledge or skills and provides that expertise to a client for a fee. Consultants help all sorts of businesses find and implement solutions to a wide variety of problems, including those related to business, marketing, manufacturing, strategy, organization structure, environmental compliance, health/safety, technology and communications.

This study identified consultants as having been instrumental in the entire process by contributing skills during the process of developing the Biosafety Bill/Act. These included drafters, policy formulation and analysis experts as well as sociologists. The consultants highly participated in the activities that led to the development of the Biosafety Bill. One of the consultants participated in the first capacity building initiative (ABSF 2003; Thitai 2000). Several other forums were held in an aim to enhance knowledge on how to develop a Biosafety Bill.

In conclusion according to the findings of this study there were many stakeholders who participated in the development of the Biosafety Bill/Act. For the purposes of this study they were grouped as consultants, policy makers (members of parliament), religious groups, civil society organizations and Multinational Biotechnology Companies.

Each of the groups was representing interests of various stakeholders and had their own views about what should be contained in Biosafety Bill/Act. A major characteristic of each one of the groups was that they all considered themselves as working for the interests of the wider Kenyan communities. However as the study will show the communities were involved only on a few occasions and did not directly give inputs to the contents of the Biosafety Bill/Act.

4.4 Stakeholders Participation

The third study objective was: "To establish the level of the stakeholders' participation and inputs in development of Biosafety Bill (now 2009 act)."

In order to get this information a structured questionnaire was administered to various respondents either as Key informants or in Focused group Discussions set up. The responses given, were compiled to bring out the level in which the various stakeholders in the Biosafety Bill/Act participated. (See the checklist at the back for reference)

4.4.1 Level of participation by Multinational Biotechnology Seed Companies

The Multinational Biotechnology Seed Companies were the first to be interviewed and according to a participant this process began way back in 1997 when the National Council for Science and Technology (NCST) led the review and consolidation of all existing legislation related to biotechnology into a report in 1997. The report was then subjected to a thorough review by national and international experts. The edited version, dubbed "The Regulations and Guidelines for Biosafety and Biotechnology in Kenya" was finally unveiled by the Council in 1998. This paved the way for establishment of the National Biosafety Committee (NBC) and provided guidelines for creation of Institutional Biosafety Committees (IBC) in institutions that were conducting biotechnology research and development.

According to KI18, the year 2001 marked the start of the actual drafting process for the Biosafety Bill and he said that it was a highly interactive affair that involved a wide range of stakeholders. It started with an initial workshops that was well attended by representatives from the government, the Kenya National Assembly, universities, civil society organizations, media industry, religious groups, farmer associations, development partners, UN agencies, research institutes, regulatory authorities and regional bodies such as ASARECA (Association for Strengthening Agricultural Research in Eastern and Central Africa), BioEARN (East African Regional Programme and Research Network for Biotechnology, Bio safety/ Biotechnology and Policy Development) and the East African Community. This was followed by a series of other activities all aimed towards influencing the contents of the Bill before enactment into Biosafety Act 2009.

All along there were many representatives from multinational biotechnology seed companies since 1999, they were key in the development of Biosafety Bill/Act. They worked hand in hand with the Kenyan Agricultural Biotechnology Institutions. "These were in actual sense the drivers of the course even though the exercise was tedious and with many huddles since early development stages of the Bill." Said KI18.

The informant further said that the drafting process was tedious, rigorous and nerve wrecking as key interest groups got involved. He attributed this to the fact that the topic of discussion was very technical calling for need to bridge the gap between scientists and non-scientists to overcome the barriers and ensure consensus among stakeholders.

In order to strengthen forces and increase awareness on matters of Genetic Modification and Biosafety law in Kenya KI₂₀ said that the Multinational Biotechnology Seed Companies and Kenyan Agricultural Biotechnology Institutions formed African biotechnology stakeholders Forum (ABSf) in the year 2000. This was to spear head creation of public awareness on modern Biotechnology and Biosafety issues. He further explained that the ABSf, which was hosted by KARI, became the hub of biotechnology awareness creation and knowledge sharing centre in the Country. This forum (ABSf) was for all research institutions and education institutions training on Biotechnology and the Biotechnology seed companies and was aimed at playing a key role in advocating for biotechnology adoption in Kenya.

Public universities played a key role in reaching out to and building capacities of various audiences on biotechnology. Apart from providing a pool of experts that were instrumental in demystifying modern biotechnology for policy makers, the public and the media, they also organized public debates that were very instrumental in building confidence on local capacities for modern biotechnology. The universities also started courses in biotechnology and Biosafety that greatly helped in building a critical mass of experts in the country. A public debate organized by University of Nairobi's School of Agriculture on November 21 and 22 in 2008 was particularly instrumental in shaping the debate in Parliament. It was also influential in convincing the public of the safety and benefits of biotech products.

According to KI₁₉, a series of consultative and awareness creation workshops were held to draft biotechnology policy, the Biosafety Bill, National Biotechnology Strategy and to develop the procedures for handling GMOs in the country.

The respondents said that some of the ways in which ABSf strengthened participation in the drafting process was by calling upon the members to review, plan and strategize on what activities to undertake to ensure a faster process of the Biosafety Law development. They organized retreats to debate and discuss on the issues in question. One such retreat was organized at Mombasa 31st October 2003 to 1st November 2003, for different senior representatives of various statutory regulatory authorities to agree on

the contentious issue over which government department should be made responsible for regulating biotechnology (ABSF, 2003)

Other lobby activities that they participated in according to the findings included

Cultivating allies from the various ministries, the Cabinet, the media and the State Law Office also known as the Attorney General's (AG) Chambers. Due to this they were given a timely explanation of law making process by the Attorneys from the AG's Chamber which helped them as stakeholders to acquire better understanding of the process

According to KI₁₉: "In Kenya it is a requirement that before a Bill is tabled in Parliament, a memorandum is prepared and presented to the cabinet for discussion and approval. The process of having the Biosafety Bill approval would have possibly taken much longer had the stakeholders under the umbrella of the ABSF not devised innovative strategies to reach out to the Cabinet."

He also said that they used lobby tactics such as winning allies and establishing strong support of MPs in the parliament. This aimed to make sure that in an event of voting in parliament, it will be in favor of Biosafety Bill. They used a lot of resources and time organizing for workshops and trainings as well as holding strategic meetings. For instance KI₁₉ said that "At one point I remember there was a one month campaign in the year 2008 aimed at imploring legislatures to overlook groups tramping across the country crusading against modern biotechnology and the Biosafety Bill but instead make their decisions based on science and evidence, rather than propaganda."

When asked about some of the challenges they faced, KI₁₄ had this to say "This process was not without challenges. For example at one point there emerged a controversy over the country's level of preparedness and capacity to handle modern Biotechnology. This almost crippled the entire process. It also emerged that most MPs had very little knowledge on technology to enable informed debates even if Cabinet approved the Bill for Parliament's scrutiny."

When asked how they dealt with the challenge above, KI₁₄ said this "In order to enhance lobbying capacity of the Members of Parliament, the ABSF through Kenya Biotechnology Information Centre and KARI

learned and incorporated another strategy aimed at reaching out to various key target audiences with low level of awareness on Biotechnology."

For instance he said that in May, 2004, for example, a two day study tour was organized for three parliamentary committees on: Health, Agriculture, Education, science and Technology. About 20 MPs participated in an exposure visit to various agricultural laboratories. This was followed by a series of other outreach activities and one on one interaction between experts and the legislators. The MPs were also taken on exposure trip to other countries where GMOs adoption had already taken place such as the Makhathini BT Cotton fields in South Africa.

This can be seen from two photos shown below. The first photo was taken during a workshop held at the biotechnology KARI centre in Nairobi in 2008 to expose the MPs on the technology to sharpen their information for proper lobbying during parliament sessions. The second photo is for some selected Members of Parliament in 2007 while in South Africa for an exposure trip to a BI Cotton project. According to the KI19: *"Seeing believes and by the Mps witnessing the successes of the mega GMO cotton project, they will be able to convince others to adopt biotechnology and hence fast track the Biosafety Bill process."*

Figure 1: A photo of Members of Parliament during a training held at KARI biotechnology Centre in October 2008.



Source: African Biotechnology Stakeholders Forum report

Figure 2: MPs with other stakeholders on a study tour to biotech crops fields, South Africa



Source: African Biotechnology Stakeholders Forum report

KI₁₉ also shared that in order to increase awareness on the Bill drafting process a lot of information materials were produced and widely disseminated through mass media, scientific exhibitions, farmer field schools, conferences, workshops and electronically. He said that "In order to counter lot information which was flowing from the lobby groups not for adoption of Biotechnology it was necessary to share information with the public to clarify that GMOs were safe and beneficial." See below newspaper cutting for counteraction.

Figure 3: A full page with information about safety of Modern Biotechnology shared by the ABSF as a way to increase awareness and lobby for support on the Biosafety Bill passing

FACTS ABOUT SAFETY OF MODERN BIOTECHNOLOGY

Genetically Modified Organisms (GMOs)

Genetically Modified Organisms (GMOs) are organisms whose genetic material has been altered using genetic engineering techniques. This process allows scientists to introduce specific genes from one organism into another, creating new traits and characteristics.

GMOs are used in various fields, including agriculture, medicine, and industry. In agriculture, they are used to create crops that are resistant to pests, diseases, and environmental stresses, leading to increased yields and reduced need for pesticides.

While there is ongoing debate about the safety of GMOs, many scientific organizations, including the World Health Organization (WHO) and the American Medical Association (AMA), have concluded that GMOs are safe to eat and that they offer significant benefits to society.

Food Safety and Inspection Service (FSIS)

The Food Safety and Inspection Service (FSIS) is a federal agency responsible for ensuring the safety, inspection, and quality of meat, poultry, and egg products. FSIS has approved several genetically modified (GM) crops for use in food products, including corn, soybeans, and cottonseed.

FSIS has found that GM crops are safe to eat and that they do not pose any unique risks to human health. In fact, FSIS has approved GM crops because they offer significant benefits, such as increased yields and reduced need for pesticides.

FSIS also monitors the safety of GM crops and has established a rigorous regulatory process to ensure that all GM crops are safe for consumption. This process includes extensive testing and evaluation of the safety of GM crops before they are approved for use in food products.

Environmental Safety

Environmental safety is a key concern for many people when it comes to modern biotechnology. However, extensive testing and evaluation have shown that GM crops are safe for the environment and do not pose any unique risks.

In fact, GM crops offer several environmental benefits, including reduced need for pesticides, increased yields, and improved soil health. These benefits can help to reduce the environmental impact of agriculture and promote sustainable farming practices.

Environmental organizations, including the World Wildlife Fund (WWF) and the Sierra Club, have concluded that GM crops are safe for the environment and that they offer significant benefits to society.




WHAT IT TAKES TO DEVELOP A NEW BIOTECH CROP



The process of developing a new biotech crop involves several key stages:

- Gene discovery:** Identifying the specific gene or trait that is desired for the crop.
- Field testing:** Conducting extensive field trials to evaluate the safety and effectiveness of the GM crop.
- Safety assessment:** Conducting rigorous safety assessments to ensure that the GM crop is safe for human consumption and the environment.
- Regulatory approval:** Obtaining approval from regulatory agencies, such as the FDA and EPA, before the GM crop can be marketed.

Biotech crops approved worldwide

Approval of biotech crops for food and feed is increasing globally, reflecting the benefits of modern biotechnology. The number of countries growing biotech crops globally increased from 4 in 1996 to 23 in 2007. Countries that have commercialized production of GM crops include Spain, France, Czech Republic, Portugal, Germany, Slovakia, Romania, and Poland. A total of 62 countries have granted regulatory approvals for biotech crops for food, animal feed, and for release into the environment since 1996. The EU is the only major food importing country that does not grow biotech crops.

Source: Daily Newspaper, Wednesday October 10, 2007

In conclusion the seed company KI18 noted that the Biosafety Bill drafting and parliamentary process was full of challenges particularly with the change in office bearers among the policy makers. For instance after the National elections in 2002 majority of the MPs previously trained on Biotechnology lost elections. This called for fresh approach to ensure capacity enhancement of the newly elected Members of Parliament. The ministry linked most to the issues on Biotechnology i.e. Ministry of Science and Technology was headed thrice by different heads due to changes in Cabinet structure and formations between 2000 and 2008. When the Biosafety Act was assented at least they could look back proudly to the many efforts they put and be happy about the tedious journey.

These were key stakeholders in the process of the Biosafety Bill/Act starting from its inception to enactment into Biosafety Act 2009. They contributed resources to support awareness creation meetings, legal charges for the actual drafting process, lobby activities to garner support of the policy makers and other key stakeholders. They influenced a lot of decisions made towards development of the Biosafety Act 2009. Currently they are still active in creating public awareness to demystify the biotechnology concepts. This at one point is seen as a weakness for failing to bring in the community and grassroots citizens from the beginning of the process.

4.4.2. Level of participation by Civil Society Organizations

From the FGDs undertaken it emerged that all the interviewed organizations participated in the process of developing the Biosafety Bill. They were united under one voice after observing growing pressures for African governments to permit the import of GMOs and transfer of GM-technology. They had several reservations on why GMOs should not be introduced into Kenya.

- According to the KI18 *“there remain many unanswered questions concerning the risks to human and animal health from GE food”*. He further said that scientists around the world have consistently been demonstrating the shortcoming of the current food safety testing and assessment being done by the GE industry. *“For example what are the possibilities of antibiotic resistant genes from GE food being built up in the consumer’s body, and thereby leading to resistance in antibiotics. What of transfer of allergens through the foods”*
- Environmental impact: The introduction of GE into the environment will inevitably lead to contamination of Non – GE plants through cross pollination and other organisms in the ecosystem through gene transfer. Who will pay for such damage? When GMOs damage the environment, it

will not be the offending GE Company to suffer the adverse consequences, but the people who live in these environments.

- Potential ethical and social implications
- The potential for the GM technology to disenfranchise farmers through patenting of naturally-occurring genes. It could lead to licensing and therefore controlling seeds that would normally be freely retained and sown the following year. This 'patenting of life' could lead to an unacceptable control and commercialization of natural resources.

According to K1, "Based on the above issues of concerns, the CSOs were determined to wreck the process of developing the Biosafety Law. He said that for CSOs to strengthen voices, a coalition called Kenya GMOs concern coalition (KEGCO) was formed in November 2003. This later changed its name into The Kenya Biodiversity Coalition (KBioC) on 21 July 2007. This coalition was formed after a meeting that had brought together members from the civil society and farmers groups. This was a loose coalition of over 60 farmer organizations, Animal welfare networks, Consumer networks, FBOs, CBOs and Non Government Organizations. It was loose in the sense that it was not registered hence could not be sued as a legal entity (KBioC 2010). While KEGCO mainly focused on creating awareness on issues of concern on GMOs, KBioC intended to have a wider focus by addressing cross cutting issues of biodiversity, environment and agriculture.

Another participant said that "Both KEGCO and KBioC had a common aim. To undertake an advocacy campaign against introduction of GMOs in Kenya. The advocacy comprised a set of targeted processes aimed to influence holders of power to reject the Biosafety law in the interest of sustainable agriculture in Kenya. The coalition worked towards changing attitudes/perceptions and political will, in decision making and in people's awareness about the Biosafety Bill. This advocacy was undertaken at the national level and at the community's level."

Some interviewees indicated that through the former coalitions, the CSOs undertook several campaign events across the country. They sensitized communities, legislators, general public and consumers on issues of GMOs, Biosafety legislation and popularizing alternative sustainable farming methods.

"This was done from the year of KEGCO formation (2003 up to the year 200). This is the year the Biosafety Bill was making very fast progress towards becoming an act and at this stage the coalition

changed tact" said KI₅. KI₂ said that the coalition was from then onwards forced to change tact from opposing the introduction of GMOs into the country and concentrated on giving inputs towards the Biosafety Bill debates

The first step towards enabling them participate in influencing the contents of the Biosafety Bill 2008 was to understand the contents and legal implications of the law. To this one participant said that "to better understand the Act, legal expertise on the issue was sought. Members were carefully taken through the Act and at the end they were able to point out the deficiencies of the Bill, the implications thereof and what needed to be done." This was done by organizing and holding four workshops to build the capacity of KEGCO members on the identified weaknesses in the Biosafety Bill. As it were, the Biosafety Bill had several contentious issues to the Kenyan farmers and public in general

In addition the FGD participants said that close to 20 workshops were organized and held in different parts of the country to increase awareness. During the workshops the grass root communities were updated on the progress of drafting the Bill and out of it decided on the plan of action and the contents to share

According to KI₁₀ members of the coalition contributed crucial resources for the campaigns and the diversification of strategies

One of the FGD participant said that "it is noteworthy that despite the hurdles foreseen, the coalition was determined to soldier on and win the fight against GMOs. The coalition went ahead also to identify some recommendations for the identified weak areas. At least 12 amendments were proposed on various parts and sections of the Bill." (See section 4.4 of this document for the proposed amendments by the coalition)

Another respondent said, "The coalition, with the help of legal experts prepared an alternative bill and presented it to the Minister for Higher Education Science and Technology, Member of Parliament, Silas Ruteere, who was an ardent opponent of the Bill. Introduced the proposed Bill in parliament. This proposed bill had incorporated all the recommendations proposed for the other Bill."

According to one participant after the proposal for an alternative Bill, the hard work was to try and convince various MPs to read the proposed version and support its passing in parliament. This was through holding evening and breakfast meetings with members of parliament, journalists and lawyers involved in the

drafting and reviews. There were several meetings organized for the parliamentary select committee on Agriculture.

Talking of the frequency of the breakfast meetings that were held, a discussant of an FGD had this to say *"during this process we held over 8 breakfast meetings with different stakeholders, journalists and members of the parliament being the main target. Each time we always came out feeling short changed as there was a low turn up or we had a totally different group of unexpected people"*

The CSOs also trained journalists on at least 4 occasions to make them vocal on issues of contention on GMOs and the Biosafety Bill. They sent them information briefs regularly for updates (KBioC 2010). A pool of Journalists was identified and tasked with the responsibility of mounting pressure to the public on why Kenya was not ready to accommodate GMOs yet. KI₁ of the CSOs had this to say when asked how he found the parliamentary process for developing the laws in Kenya

Media campaigns were also undertaken where by KEGCO and Kenya biodiversity Coalition placed education newspaper supplements. They also held TV live shows to share with the public on the weak areas concerning introduction of the GMOs into Kenya. Such debates were also held to enlighten the public on the progress for the Biosafety Bill and enhancing them to participate in forums where they could propose their inputs.

According to KI₉; *"Despite the CSOs raging debate on GMOs and widespread speculation that the Biosafety Bill 2008 would attract heated debate and formidable opposition in Parliament that was not to be. After very strong campaigns by the Biotechnology companies which included gifts in kind to the MPs, much to the disappointment of the CSOs, most MPs accused those opposed to the Bill of spreading falsehoods on the safety of biotechnology and genetic engineering out of ignorance and unfounded fears."*

They further said that such groups were engaged in futile opposition to modern science based on foreign influence and that Kenya could not afford to lag behind the rest of the world with regard to adoption of modern biotechnology (Hansard, 2008)

When asked the challenges they experienced a group of FGDs discussants said that the CSOs did their best in influencing this policy, however they were not satisfied that the grassroots communities were left out in deliberating on a very pertinent policy, directly linked to farmer's livelihoods. These constituted the majority of the population in Kenya, there was little involvement of the farmers and general citizenry. This was clearly expressed by K1₃ quoted below. "This was a battle of the elites within the capital city boundaries and yet the real impacts of Biotechnology will be directly felt in the rural areas."

Another participant cited another challenge as being the inadequate political will to listen and adopt the proposed amendments from the CSOs. He said "The process of influencing laws development in Kenya is not interesting especially since it is more subtle than many may realize. While the constitution provides for a legislature that makes laws, an executive that enforces them and a judiciary that interprets laws, the policy has evolved into confusing web of state and government institutions, agencies and committees that make up an institutional policy bureaucracy. In addition, the vast network of organized CSOs, as well as the rise of electronic media and policy consultants further complicates the process but the role each actor plays determines the policy outcomes." According to K1₅, "the CSOs made a mistake by introducing the Bill they drafted to the parliament as an alternative Draft Bill. The Government is the only organ mandated with development of laws for the land and hence the filing name would have been the alternative proposed Bill."

Generally the CSOs played a key role in the biosafety Bill/Act development process through active lobbying for inclusion of issues that affect the small scale agricultural system such as the need to protect seed saving culture. They also contributed resources to support holding workshops and trainings to increase awareness at grassroots level. They gave several inputs to the Biosafety Bill which were incorporated in the final Biosafety Act 2009 as shall be seen in the next objective. They also brought in public participation through holding forums that enabled small scale farmers to share their concerns about Biotechnology.

4.4.3. Level of participation by Consultants:

The consultants interviewed were drawn purposively from the fact that they participated in the debates on Biotechnology. All the consultants were active during the drafting process. K1₇ gave his inputs at the initial stages of the development of the Biosafety Bill starting in 1999. He said that the drafting of the Biosafety Bill was quite participatory as a team of experts comprising lawyers, regulators and scientists were put together to work with State Law Office and the NCST to produce a draft of the Biosafety Bill for discussion.

According to the KI₂₁, A lawyer was identified to serve as the main drafter. At this stage most people in the country were very green on the Biotechnology concept and many exposure trainings had to be organized. He said that together with a team of various drafting lawyers, we were taken through a series of trainings and exposure sessions on biotechnology and Biosafety to grasp the real issues.

KI₇₇ said *"One of the training sessions I attended was a crash course on Biosafety, including risk assessment and decision making procedure. I benefited immensely from this training and considering my background, it felt like groping in the dark as it was all very scientific."*

According to him, the workshop was a melting pot in that it drew participants from the diverse disciplines including scientists, researchers, policy makers, farmers, environmental groups and members of faith based institutions. However since the exercise was highly technical no individual farmers and farmer institutions were invited to participate. A quote from KI₂₁ brought this out clearly when he said *"In fact some of the meetings were very technical even for those thought to be technical. There was a big gap between the scientists and non scientists"*

He said that he participated in formal and informal meetings such as the one held in July 2002. This meeting involved experts from many fields such as lawyers, biotechnology companies, regulatory bodies and opinion leaders in the ministry of Agriculture to conduct a review of the draft bill which was then widely circulated to stakeholders for comments and inputs. In March 2003, he participated in a detailed review of the draft to produce a fine tuned version of the Bill. In April 2003, a weeklong stakeholders meeting was convened to discuss this refined draft. By August 2003 the draft was ready to be presented to parliament upon approval by cabinet.

Among the Consultants interviewed KI₂₁ said that he was active in helping the CSOs to understand the contents of the Biosafety Bill at some point. He participated in helping them to point out areas of the draft Bill that would require strengthening in comparison to the Cartagena protocol. He was involved in close to 10 meetings for review of the contents of the Biosafety Bill while in the parliamentary process. Below are some of the weak areas that he identified and proposed that a review be done

a) no provisions were made regarding the public's right to access information

- b. There were no provisions for public participation-only an opportunity was created for the public to make inputs with regard only to environmental releases
- c. No public input was made possible for other types of GM permits. Although provisions for labeling of GMOs are made, these can only take effect once regulations have been made to implement them

See below a program for a workshop that was held on Thursday, July 26, 2007 at the Jacaranda Hotel,

Nairobi

Stakeholders' Half-day workshop on the Biosafety Bill 2007 at Moi University

Duration	Activity	Resource person
8.00 - 8.30 am	Registration/introduction (Video show)	MOA/NCST
8.30 - 8.45 am	Welcome remarks	Dr Wilson Songa OGW Agriculture Secretary
8.45-9.00 am	Opening speech	Prof C Kiamba PS, MS&T
9.00-9.20 am	Introduction to the Cartagena Protocol	Mr H K Macharia NCST
9.20-9.50 am	Status of Biotechnology in Kenya	Dr Reuben Soi KARI
9.50-10.15 am	Open Discussions	Dr Eucharia Kenya KU
10.15 - 10.45	Coffee/Tea Break	
10.45 - 11.15 am	Regulatory mechanism for biotechnology and the Biotechnology Policy 2006	Prof George Siboe Chairman, NBC
11.30-12.30	Overview of Biosafety Bill and comments received from stakeholders	Rachel Shibalira AG Chambers/ Betty Kiplagat Legal Expert
12.30 - 1.00pm	Open discussions	Prof James Ochanda UON
1.00-1.15 pm	Closing remarks	Prof G K Kingorah Executive Secretary NCST

In conclusion the role of the consultants was key especially in reviewing other key documents such as the Cartagena protocol and the Kenyan constitution. They ensured that the Biosafety Bill drafted incorporated at least 80% of the recommendations of the Cartagena protocol. It emerged that they were also very helpful in interpreting the contents of the document to other groups. They gave proposals for adjustments of the

document hence influenced the content of the Biosafety Bill/Act. They were used as facilitators during key workshops to share more on Biotechnology and the need to have a strong Biosafety Law in place.

4.4.4. Level of participation by the Religious Groups

The religious groups interviewed in this study represent many churches and are apex bodies that unify the voices of their members in matters that touch on religion countrywide. They have been vocal in other policy debates such as in influencing the elections and campaigns, constitution processes and other matters.

According to KI₁₂ of the religious groups, "Life is sacred and no one has authority to alter what God has created. What the science of Biotechnology is offering is offensive to God's creation and could lead to total genetical mess. Mixing genetical material from one species with another may eventually lead to different creatures on earth."

According to KI₁₁, "Based on the above view, the religious groups felt that they had an obligation to influence the policy decision for Biosafety development. The initial intention was to stop the whole process of drafting a Biosafety Law for Kenya purporting that this would be a basis to introduce genetically Modified Organisms into the country."

They too (100%) did not participate in giving inputs at the inception of the document (drafting stages), until it was publicized as a draft Bill. However, the draft was moving very fast and it was while the bill had been approved by the cabinet that the religious organizations held meetings and decided to change tact. They studied the documents and commissioned experts to help in interpreting the contents and identifying areas that could lead to compromise.

According to KI₁₃, "In order to strengthen voices the church groups joined a forum for the civil society organization (Kenya GMOs Concern coalition-KEGCO) that was formed in November 2003 with an aim to propose a no GMO introduction campaign in the country. As the church we had access to a local radio station which we used to air radio programs on awareness on concerns of adopting biotechnology in Kenya and to lobby on strengthening of the Biosafety Bill/Act before acceding into a law for Kenya."

They also participated in media campaigns together with the CSO through print and electronic media, e.g. they co-featured some articles on the Kenyan prominent newspapers in addition to doing live radio

programs and airing prerecorded debates with different radio stations. Another example was doing letters of petition reflecting representation of the citizenry like the one dated October 7, 2008 dated

KI₁₃ said, the petition letter below was written and signed on behalf of all the Kenya Biodiversity Coalition Members urging the president not to accept the Biosafety Bill of 2008. See the letter below published on Daily Nation Newspaper

When all diplomacy avenues were exhausted the Religious groups together with CSOs organized demonstrations for communities from seven regions in Kenya. A major demonstration was held in Nairobi Central Business District (CBD) area in August 2007. This demonstration had participants drawn from Uganda, Rwanda, Zambia, Ethiopia and Madagascar. They urged the government to postpone the debate on the Bill until after the impending December 2007 General Election.

According to KI13 "This demonstration resulted to some positive impact as the Bill was not accented into a law by the President Hon Mwai Kibaki. The Bill was returned to the Ministry for Higher Learning, science and technology for further discussions "

Figure 5: A mass demonstration in the streets of Nairobi in protest against the decision to pass the Biosafety Bill into a law



DOWN WITH GMOs

A crowd demonstrates outside Parliament buildings yesterday against the Biosafety Bill. As the world celebrates World Food Day, biodiversity experts have urged President Kibaki not to assent to the Bill, which is still being debated by Parliament. They fear if the Bill is passed, it would make the country a dumping ground for foods and crops containing Genetically Modified Organisms.

Source: Daily Newspaper; Tuesday December 12, 2008

When responding to the question of highlight the challenges they faced while participating in the Biosafety law making process the KI₁₃ had this to say. *"It is a pity that majority of our citizens and particularly the religious followers completely ignore matters concerning policy and laws formulation debates. They totally avoided involvement or at times they are put out of the picture as they lacked knowledge on how to join."*

He also said that even though a law making process is vested on the law makers, at the same time there is need to increase citizenry participation to improve on quality and contents and ownership. He also noted that this particular bill had a lot of political interests with obvious rigging process.

In conclusion from the study, it emerged that the religious groups were key during this process through creating awareness among various stakeholders on matters of Biotechnology and GMOs. They participated in lobby meetings and gave resources to support other processes such as the review of the Biosafety Bill at various points to identify weak areas and give proposals to the drafters. They were also invited to represent the church at large in strategic meetings to make decisions about the Biosafety Bill amendments.

4.4.5 Level of participation by Policy Makers

The Cabinet, Prime Minister/Premier and Ministers are collectively called the Cabinet and are the principal decision makers (Marshall & Cashaback, 2001). When a Minister has a policy proposal, he or she will take it to the Cabinet for approval. From there, the proposal is referred to an appropriate Cabinet committee where it is examined and debated. Following this debate, the committee will make its recommendations to Cabinet for approval. The recommendation is almost always ratified by Cabinet (Marshall & Cashaback, 2001).

During the process of Biosafety Bill/Act it emerged that the policy makers played a crucial role of debating the voting for the piece of law. One of the Key Informants (KI₁₃) had this to say in reference to a quote made by the President in 2004: *"One of the reasons why this piece of law was of interest to you is because agriculture is crucial to Kenya's Economy and social transformation. The sector's growth and development is therefore paramount as it directly and indirectly contributes nearly 50% of Gross Development Product."*

~About 80% of the country's population depends on Agriculture (Republic of Kenya, 2004). Consequently, agricultural biotechnology activities had to be given a high degree of political support in Kenya. *"We must embrace and apply modern science and technology in farming. Indeed there is evidence that countries*

which have embraced modern agricultural technologies have improved economic performance, reduced poverty and ensured greater food security for their people.”

According to this key informant, such a policy directive gave impetus to the adoption of the National Biotechnology Development Policy in 2006 and subsequently to the enactment of the Biosafety Act 2009. In his views, the above statement had a lot of influence in the decisions made thereafter by the policy makers as each one of them was trying to realign themselves with the president's proposal. As such KI₁₄ said, *“In policy making we have what is called undocumented policies. These are political statements from top policy makers, hence it is prudent that one should always be keen to read the directive since at times they become laws in themselves. This is what is called the politics of public policy process.”*

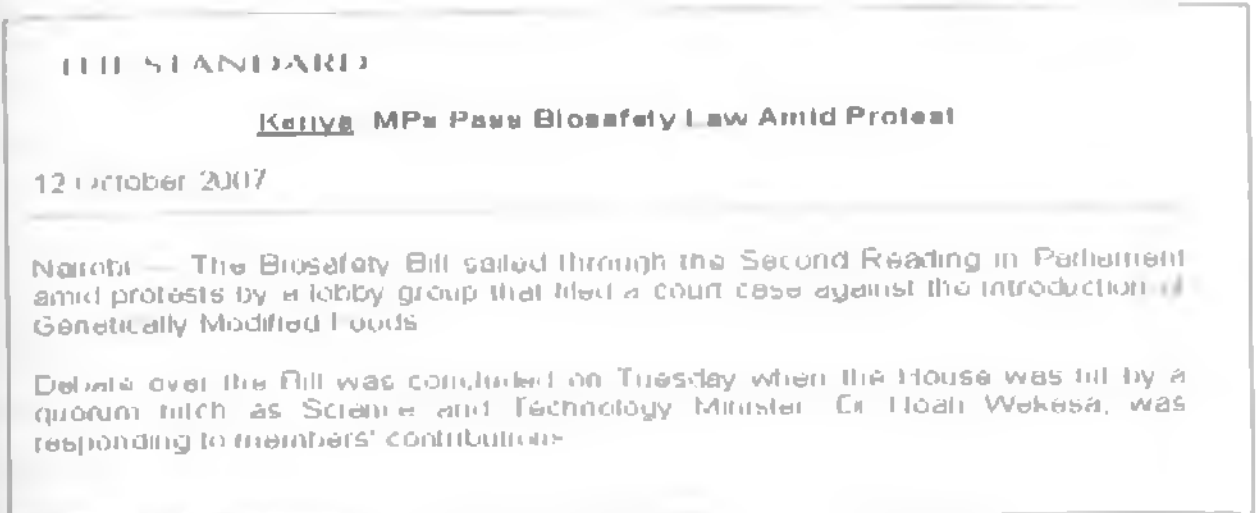
Both key informants of the policy makers said that they participated in meetings, retreats and one of them in the Live TV shows to discuss on issues of concern in relation to the Biosafety Bill. Both of them participated in key debates in parliament to discuss more on the draft Biosafety Bill and on adoption of proposed amendments from various stakeholders. One of the key informants noted that it was however very difficult to find time for the ongoing Biotechnology trainings and meetings since policy makers' actions are determined by the topical issues.

When asked what challenges they faced, one of the policy makers had this to say, *“The year 2004 was marked by the clamor for a new constitution. Hardly anything else could get listed in the Parliamentary calendar than the impending referendum issues and the new constitution. Getting MPs together for sensitization activities became very challenging as the change the constitution pressure took center stage.”* He was however quick to note that the Biotechnology promoters were more determined and were well equipped to create awareness on the technology among the parliamentarians. He particularly said that he participated in an exposure visit to the ongoing research work on biotechnology as evidence of the potential of the technology. This led to massive support of the Biosafety Bill by the Members of Parliament.

In conclusion, the policy makers (Legislature or the House of Assembly), participated by being crucial forums to discuss highlights of the Bill including some of the social concerns that had been proposed by various stakeholders. According to the study findings, they debated in parliament on the Bill and various inputs that were incorporated. It also emerged that they were targeted by other stakeholders such as the

Agricultural Biotechnology Institutions, civil society organizations and religious groups for trainings and lobbying the parliamentary process of making law in parliament

Figure 6: A publication on newspaper showing the Members of Parliament role in discussing the Biosafety Bill and approving its movement from one stage to the next



Source: The Standard Newspaper; October 12, 2007

4.4.6. Level of participation by Lawyer

According to the findings both Key informant of the Lawyers participated in the Biosafety drafting process through various ways. Both were key in drafting the initial with contents of the Bill through guidance of various legal documents such as the Cartagena protocol and the Kenyan constitution. They also attended the awareness creation forums organized by ABSF at the initial stages to increase knowledge on biotechnology issues and get familiar with the expected outputs. After drafting the initial document, was taken through the parliamentary process for passing law. The respondents said that after drafting they gave inputs in various ways since after drafting they had no access to the document for incorporating inputs.

From the study findings one of the lawyers later became a legal adviser to the civil society organizations on matters on the Biosafety Bill. According to this lawyer in a Key Informant interview (KI11) -one of the reasons why I felt compelled to critique the Biosafety Bill was the fact that the Contents of the Bill were borrowed from the Biosafety Laws of United States of America. Australia and South Africa lacked practical application in the Kenya Agriculture system.

From the findings this lawyer participated in designing the campaigns for Kenya Biodiversity coalition especially by Building their capacity on the Biosafety Bill and legal process of drafting Bills. He also helped them to identify the gaps and recommendations for the various parts of the Bill. Majority of the inputs from the review sessions with this lawyer is what was used in the lobby debates of the civil society organizations and the policy makers opposed to the Biotechnology in Kenya.

The FGD participants in civil society groups said that he also supported them by writing official letters to the Ministers, parliamentary committee and petitions to the president and advised Hon Silas Munuki on engagement of to lobby against the weak Biosafety within parliament.

According to one of the FGD participants from CSOs, the lawyer supported their campaign actively most through filing a report of the identified gaps which was widely publicized in the media by the group (KEGCO 2004). Later the group aired a series of documentaries e.g. What You Ever Wanted to Know about GMOs-by Citizen TV on 15th October, 2008, and many articles were placed in the print media, Daily Nation and the Standard local newspapers.

From the study finding through the support from this lawyer, KEGCO filed a court case to seek for strengthening of the Biosafety Bill through one of their members, Africa Nature Stream, on the grounds that GMOs would cause unacceptable risks to human health and the environment. When asked how the case went on KI, he had this to say *“legal intervention too came to a cropper when the court dismissed the suit as “lacking in scientific merit and therefore superfluous. The judge also said that the courts could not stop Parliament from deliberating on Bills already presented in the House.”*

Figure 7: A publication of a court case filed by KII, to stop passing of the Biosafety Bill into a law citing that there was not enough evidence to back up safety of GMOs for consumption

DAILY NATION

Court rejects bid to stop GMO debate

Story by JILLO KADUNA

Publication Date: 10/12/2007

Parliament can go ahead and debate a Bill that aims to introduce genetically modified foods in Kenya, after all

This comes after the High Court on Thursday directed that a case challenging the introduction of genetically Modified Organisms (GMOs) be found wanting and that granting orders stopping the enactment of the Biosafety Bill 2007

Mr Justice Joseph Nyamu said it was difficult to stop Parliament from thinking and formulating law.

The ruling arose out of an application filed by a group of 13 people seeking to block the passing of the Bill which if enacted would make GMOs available for sale in Kenya.

They said the public had not been involved in the formulation of GMOs and that the publication of the Biosafety Bill 2007 was premature.

It further denies the public a real understanding in the making of a law that would have far reaching effects on them and future generations, they argued.

The group, through lawyer Kiba Mungai, said GMOs were a health hazard to Kenyans.

And in view of risk posed by GMOs, Mr Mungai said, the legislation of their production, consumption and trade threatened fundamental rights to life and good health as protected by Section 27 and 28 of the Constitution.

The group told the court that the right to choose the foods one eats was a personal and private matter of conscience, which is necessarily interfered with by the production of food through biotechnology.

It would be a serious encroachment of Kenya's sovereignty, said the group, for the bill to be enacted on the basis of simplistic and totally demagogic arguments that hungry people – which unfortunately every African is assumed to be – have no business breaking bones over the content of the food they eat.

The group said the GMO controversy was a legitimate matter for President Kibaki to appoint a commission of inquiry to seek consensus.

Mr Mungai further said the standing orders, which allow Parliament to pass Bills with a majority of only 30 MPs or less out of the 222 was both undemocratic and unconstitutional.

The judge said that the 13 could still go to court after the enactment of the bill if they believe it contravenes the Constitution and have it nullified. The case is scheduled for hearing on December 15.

Source: Daily Nation 10th December 2007.

To show the magnitude of the effect that the coalition had on this campaign, KII:

'Whereas there were pockets of resistance by various groups concerning weaknesses in the Biosafety Bill, it was not until early 2004 that civil society organizations under the auspices of a new outfit, the Kenya GMO Concern Group (KEGCO) launched a spirited campaign against the Bill that was still at the very initial drafting stage. With backing from European based organizations they lots of pages and volumes of air time on print and electronic media to discredit not only the Bill and the technology but also the scientists who were carrying out research into various biotechnology activities in the country. They went further to cast aspersions on capacity of Kenya's regulatory agencies to effectively regulate the technology.'

In conclusion the role of the lawyers in the development of Biosafety Bill/Act was critical. First they participated in drafting of the initial Bill in 1999 and continued to conduct various reviews and propose amendments to strengthen it. They supported in giving legal expertise to various groups especially the civil society organization that did not have a lot of information on law drafting processes. They offered legal services in drafting documents, petition letters and publications on proposed amendments.

4.5. Stakeholders Perceptions about their contribution to the process

The fourth study objective was: "To establish the perceptions by the key stakeholders on the level and quality of involvement during Biosafety Act development."

In the final end, the Biosafety Bill was assented on 12 February 2009 and commencement placed on July 1, 2009 making it part of the Kenya's Laws. The Bill was henceforth referred to as the Biosafety Act 2009. There were varied reactions among the interviewed groups concerning how well or bad the contributions they made were incorporated in the Biosafety 2009 Act. In order to get a reflection of stakeholders' views about their participation and how their proposals were received the following questions were posed at the end of the interview. What are some of the contributions you think were taken up or incorporated into the Biosafety Law 2009?

- a) How would you rate the incorporations of the proposals you made towards the Biosafety Act Bill/Act 2009 development?
- b) What were the main challenges/ limitations during this process of influencing the development of the Biosafety Bill/Act 2009?
- c) On basis of the lessons you learnt, what can you say about the policy making process in Kenya particularly on level of community participation?

4.5.1 Multinational Biotechnology Seed Companies

According to the Multinational Biotechnology Seed Companies the overall process of developing and putting in place the Biosafety Act 2009 was a major score. A key informant (KI₁₉) from the Biotech seed companies had this to say: *'Well-known biotechnology processes such as fermentations have been applied for more than 5000 years. Nowadays biotechnology which covers the application of tissue culturing, gene transfer, immunological techniques, molecular genetics and recombinant DNA techniques, is indubitably the most rapidly developing branch of biological science. Properly applied, agricultural applications of modern biotechnology have a significant potential to contribute to sustainable gains in agricultural productivity and to reduce poverty and enhance food security in developing regions. Biotechnology is also recognized as a powerful tool that, if properly focused can offer new solutions for a number of old challenges in agriculture, the environment, and human and animal health.'*

The overall contributions by these companies was aimed to address a challenge where Nations of the South are increasingly faced with the prospect of the introduction into their countries of genetically modified organisms (GMOs) and products derived from GMOs. According to KI₂₀, 'GMOs will enter countries of the Third World in greater abundance as the movement by consumers, manufacturers and retailers in the North to reject these GMOs and their products gains momentum.

He said that it has been acknowledged that serious potential risks are presented by this technology. The magnitude and scope of the consequences to human and animal health and ecosystems may be very serious and the effects irreversible, even if the probability of risk occurrence may be low. This prompted the international community to commence negotiations for a biosafety protocol under the Convention on Biological Diversity. In this case therefore there was need to have regulations in place to deal especially with the movement across boundaries of these GMOs and their products. *'For this reason we had to ensure the process of developing the Biosafety Law was started by calling upon all stakeholders and taking the responsibility to our selves'* said KI₂₀.

The main contribution from the Biotechnology seed companies was to ensure drafting and maintaining a regulatory model with the following key provisions:

- The precautionary principle

- Risk assessment procedures
- Public participation and accountability
- Identification and labeling
- Confidential business information
- Protection for whistleblowers, and liability and redress

The model law also extended locus standi and allowed for compensation for loss and damage in criminal proceedings. Socio-economic factors, sustainable development and sustainable and safer alternatives must be considered when assessing risks. In general, the Multinational Biotechnology seed companies were more satisfied after the enactment of the law as it would make possible commercialization of GMOs into the country ensuring environmental protection. It had factored in the above key provisions.

When asked how they rated the incorporations, one of the Key Informants had this to say: *‘When news of the Presidential assent to the Bill broke out, a short email was sent to newsrooms and to the Biosafety consortium members and their supporters, who rejoiced in delight after holding their breath for close to three months. The journey that had begun almost 10 years past finally ended and the media was on hand at the ISAAA event to receive the news on behalf of their audiences. The enactment of the Biosafety Bill 2009 marked an important milestone in the quest for safe and responsible adoption of modern agricultural biotechnology in Eastern and Central Africa. With the stroke of a pen, the President united the hands of Kenyan scientists to apply biotechnology to help alleviate some of the intractable agricultural, environmental, industrial and medical challenges facing the country.’*

KI₄ said that even the top scientists openly welcomed the approval of the legislation, saying the Act would now allow agricultural research institutions to speed up the process of developing and deploying transgenic crops to cushion the country against perennial famine. Researchers at KARI Biotech Center were elated. According to an FGD participant: *‘there many lessons to learn from this process but the main one was that to be able to influence a policy formulation process it is important to Establish a coalition of interested individuals and organizations. Identify allies in the government, the community, the media, donors, private sector and farmers as well as potential opponents.’*

He said that in the Kenyan case, the Biosafety consortium started by calling for consultative meetings to map out organizations and individuals who were interested in the issues of biotechnology and biosafety and recruit them for a partnership. With contributions and commitment to support the process, funding from

themselves, the government of Kenya, UNEP GEF, USAID and several other development partners from both public and private sector, they formed a closely knit biosafety consortium that successfully coordinated of the development of the Biosafety Act 2009 through sharing of synergies. Working with alliances can be an important way of complementing effort and increasing the resource base. Partners are helpful in getting access to otherwise "unreachable" high ranking decision makers through their social networks. In Kenya the heads of the organizations that made up the Consortium were charged with the responsibility of reaching out to persons with power, influence and credibility such as the President, Prime Minister, Vice President, AG, The Speaker, The Clerk, Ministers, MPs, Permanent Secretaries and leaders of farmers associations.

Prior to this project, none of the groups had realized the extent of their mutual goals. Adopting a consultative process is considered indispensable. They also identified the need to build Internal Capacity to handle issue and the set objectives. One needs to be fully conversant with the subject at hand. The consortium was composed of experts in biotechnology, governance, socio-economics, biosafety, the legislation process, science communication and journalism. The team undertook to thoroughly acquaint themselves with the twin issues of biotechnology and biosafety. An analysis of the target groups' level of knowledge and understanding of biotechnology and biosafety enabled the consortium members to prepare and respond to what the audiences wanted to know against what they thought they needed to know. They were also able to revise ways of communicating the desired changes clearly, simply and effectively in accord with the desired outcome.

When asked what challenges they faced in the process they listed several which included the following:
Low Involvement of MPs in the Process at the beginning.

To this a participant said that "A country's law makers are perhaps the most important cog in the process of developing Biosafety Law. They should be made part and parcel of the bill's development right from the drafting stage and need to own the process in order to support it on the floor on the House and lobby for its approval."

It is vital, as the Kenyan experience proved, to establish a team of dependable Parliamentary champions among the legislators and officials from the office of the Clerk to work with. They should be drawn from relevant Parliamentary committees, key to the process.

4.5.2. Religious groups

The religious groups in particular wanted to have the following issues addressed in the bill

- i Damages to any person for any injury to him, his property, or any of his interests caused by the exercise of any power conferred on him. What is, however, ominously absent are provisions dealing with liability and redress that may arise as a result of any activity conducted with a GMO, where State liability does not arise on the part of the Authority
- ii No provisions were made regarding the public's right to access to information
- iii There were no provisions for public participation only an opportunity was created for the public to make inputs with regard only to environmental releases
- iv No public input was made possible for other types of GM permits. Although provisions for labeling of GMOs are made, these can only take effect once regulations have been made to implement them
- v According to the KI₁₁, these were not addressed and therefore they felt that the Biosafety Act 2009 is still weak and recommended a review to serve the intended purposes. In response to the question on the lessons learnt the religious group Key informant KI₁₂ said that *'Stakeholder mapping is a useful tool for identifying key actors and assessing their knowledge, interests, needs, and the positive or negative influence they hold towards an issue of high public interest. Such data is crucial in informing the development and implementation of stakeholder engagement strategies that would take advantage of the positive influence to achieve the desired outcome or mitigate the negative influence that can jeopardize the process. It is also advisable to conduct an analysis of the nature of influence different stakeholders have on the issue.'*

He noted the key challenge that the religious group and civil society organization had in their joint campaign venture was the failure to do stakeholders mapping before setting up activities towards contributing to the Biosafety Bill/Act developing process. As a result he found this to be part of the reasons why their concerns and efforts to strengthen some sections of the Bill were not acted upon.

4.5.3. Civil Society Organizations

As per the CSOs they felt that while the alternative draft Bill did not see the light of day, it is worth to note that some of its ideas were included in the Biosafety Act of 2009. The ideas included,

- i Increasing the penalty for breaching the provisions of the Act from the initial Kshs 2 to Kshs 20 Million
- ii The establishment of a Biological Clearing House (BCH) and

■ Making provisions for Biosafety, although the latter remains to be adequately defined in the Act

iv. Entrenchment of gender balance on guidelines of forming the National Biosafety Authority

During the year 2009, KBioC members held a workshop to reflect on the whole process. They had invited the lawyer who did the analysis of the Biosafety Bill in 2005 to participate in this process. From the workshop, the KBioC members were able to identify both their success in having made their voices heard and the current setbacks. On the same note they felt that the Biosafety Act 2009 had many weak areas in addition to the ones pointed out on objective 2 that included

- a. Extremely simplistic obligations have been placed on an applicant to obtain permits for GMO activities indicating that the rich biosafety discourse taking place globally, including in Kenya, have been excluded from the Bill. Reference is made to socio-economic impact studies but these provisions are meaningless without the establishment of clear criteria to guide cases where socio-economic assessments should be called for.
- b. No clear duty was created on the State to monitor the impacts of GMOs on the environment or human health. The monitoring functions that have been created are limited to ensuring compliance with the law and permit conditions.
- c. No reference was made to traceability-an essential element for the function of a labeling regime. Substantial regulations will have to be made in order to close the many gaping holes left by the Bill.

To the CSOs the worst was that this process had extensively and deliberately not involved the citizens particularly those who will be directly affected by the issues to be governed by this law. They said that it would have been a good move for the government to create forums to enhance understanding of the issues at hand as well as relating the contents of the Biosafety Law with the context under which Kenya operates. This would have added a lot of value to the process and increase ownership of the document.

The main challenges that faced the CSOs included lack of adequate knowledge on matters of law making process in Kenya. According to K1₀ he said that this problem of lack of awareness was cutting across the Kenyan citizenry and recommended that the government departments in charge of law making processes to scale up civic education on the same to the public.

Another challenge observed by various interviewees during the process was a general lack of political goodwill and support. This was especially when it came to what went into the Bill as inputs. K1₂ of the CSOs noted that after discussions and proposals were given during various forums, the inputs were never

Incorporated and in addition as CSOs supporters it was never clear on who was mandated with incorporating various views

They also observed that some law making stages such as holding public forums to collect views were bypassed due to the high pressure and interests from various stakeholders to have the document fast tracked. This in return frustrated the CSOs efforts to get avenues for sharing out their views and suggestions for assimilation into the final Biosafety Act 2009

4.5.4. Lawyers

The lawyers interviewed said that since their major role was to draft the Biosafety Bill/Act, the bill met the criteria and requirements of law in Kenya. It was well itemized and the law language was used. However notable was the failure to incorporate a lot of issues that were identified along the way by various stakeholders. This was especially noted by Key informant KI₁₁, who had this to say when asked whether the inputs he supported in identification were incorporated: *"in the policy and law development process it is advisable that one makes recommendations to identified weak areas, this enables easier assimilation of the suggestions into the main document as compared to floating identified weak areas. This is so because the policy makers in most cases normally are overwhelmed by the process and are seeking for positive criticism"*

He noted that policy making process in Kenya is usually very involving and the holder of the draft documents usually has control of what comes into and goes out of the document. The main challenge identified by Lawyer KI₁₆ while participating in this process was General lack of involvement for the media from the start. *"The mass media by their nature have the power to shape public opinion the biosafety law formation campaign depended a lot on this platform. Hence, it is imperative for the advocates or stakeholders to enlist media support right from the beginning"*. He noted that in Kenya, although the process of enacting biosafety legislation started in the 1990s, it was not until 2002 that serious engagement of journalists in the process as started.

4.5.5. Consultants

The consultants were key in giving inputs at the start of the drafting process however KI₂₁ said that he was active in helping the CSOs to understand the contents of the Biosafety Bill at some point. He participated in

helping them to point out to areas of the draft Bill that would require strengthening in comparison to the Cartagena protocol. Below are some of the weak areas that he identified and proposed that a review be done

- i. No provisions were made regarding the public's right to access to information
- ii. There were no provisions for public participation-only an opportunity was created for the public to make inputs with regard only to environmental releases
- iii. No public input was made possible for other types of GM permits. Although provisions for labeling of GMOs are made, those can only take effect once regulations have been made to implement them

As has been seen these were not incorporated making the enacted law be considered weak by the CSOs/religious lobby groups

When asked to identify the main challenge he faced during the process Ki22 had this to say: *Majority of the stakeholders in the Biosafety Act 2009 drafting processes failed to give their contributions in time and were busy raising alarm and complaints as the law was being developed just to come in the end to push for unworkable materials for incorporation into the draft Bill. This was not feasible as the process was far gone to be dragged backwards.*

He pointed out to the need to scale up civic education among Kenyans especially on law making process to enable them know the point at which to give their inputs for incorporation into any law making process. He however recommended the Multinational Biotechnology companies for the ability to harness all the institutions interested in Biotechnology promotion and adoption then into Kenya. According to Ki22, *"In a campaign process it is important to develop and articulate a Comprehensive Communication Strategy. For example, the Kenyan one combined capacity building workshops, media liaison, seeing-is-believing study tours, production and dissemination of IEC materials, expert speaker programs, internet communication and outreach to policy makers, exhibitions and awareness creation."*

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

5.1. Conclusions

This document is an attempt to document major milestones on the road to the enactment of the Kenya Biosafety Act 2009. It is by no means an exhaustive account of all the events and activities that contributed to that success but is believed to provide an overall picture and lessons on the law making process in Kenya. It covered the process of identification of the Key stakeholders to the process developing the Biosafety Act 2009. In conclusion of the study notable was

- a) The Biosafety Bill 2008 was developed in a participatory manner and from the study it was evident that there were diverse quorums of stakeholders with different motivation factors. Each of the involved stakeholders made certain proposals either at the initial drafting stages or in the parliamentary process. However the extent of incorporation of these inputs varied and majority of the identified stakeholders' categories (80%) felt that their inputs were inadequately incorporated into the final Biosafety Act 2009. It further emerged that there was very low involvement of the general public and grassroots communities in the process of developing Biosafety 2008/Act 2009.
- b) It also emerged that stakeholders preferred to form groups and coalitions to gain attention. The general public and communities in most cases operate as individuals. They have no capacities to form strong coalitions and this could be partly contributing to the overall low participation in law making processes by grassroots communities in Kenya.
- c) Further from the study it emerged that in this process of developing the Biosafety 2008/Act 2009, inadequate knowledge on the law making process for various stakeholders was a major challenge. For instance the CSOs, religious groups and Multinational Biotechnology Seed companies had to contract services of legal experts to take them through the Kenyan law making process.
- d) These groups constituted middle and high level educated Kenyans with a high level of exposure. Therefore if such groups had challenges understanding the Kenyan law making process it is expected that there might be extensive knowledge gap on Kenya Policy making process among the general public and the grassroots communities.
- e) Other areas of low capacity that stemmed as shown by this study were on Modern Biotechnology and Genetically Modified Organisms. The stakeholders involved said that in order to increase their efficient contribution to the Biosafety Bill 2008 they hired experts to train them on Biotechnology, Cartagena protocol and other related Laws. Thus the universal poor participation by the general public and

grassroots communities in the process of developing laws may be due to poor understanding of law topics in discussion

- f) From the study notable is that little resources are set aside during laws development to train the general public and the grassroots communities' on the issues at discussion as well as to get their views. Further it emerged that steering groups in specific law making processes spend time mapping and engaging the most effective stakeholders and in the process lock out public and grass root communities who are thought to be less influential
- g) In general it also emerged from this study that the nature of policy formulation is such that one cannot ignore the political arena and hence need to understand the nature of public policies and sources of influence. As such the interests and the good will of the political class must be extensively considered. If the policy at hand favors the interests of the policy makers there is a high possibility of such a policy maker participating actively and supporting those in favor of the draft Bill
- h) It also emerged that the mass media by their nature have the power to shape public opinion hence, it is imperative for the advocates or stakeholders to enlist media support right from the beginning in matters of information and awareness creation

5.2. Recommendations

From this study the following were recommendations drawn

- a) There is need to improve Knowledge and understanding of law making procedure in Kenya for the general public and grassroots communities. This is in addition to continuously designing programs that educate the public on various ongoing discussions regarding technical Bills and other Laws
- b) As a country it is essential to set aside more resources for Civic Education programs for general public and grassroots communities on public policy formulation procedure. Such programs should be designed to support communities to understand the level at which they can influence policies
- c) Further it would be of essence to help communities and the general public to realize their constitutional powers and rights in regard to Acts and law making. This is an area that both the government and the civil society organizations can embark on
- d) Mass media role in influencing policy decisions was critical hence this is an avenue that can be exploited for communication and reaching the general public with crucial information about Law making procedure and other civic education issues

- v) Another way to exploit the mass media avenue would be to train journalists on key ongoing agendas regarding laws in a Kenya which will make them be able to share informed information when reporting on print or electronic media

5.3. Suggestions for further research

Based on the findings, conclusions and recommendations a further study can be conducted targeting the general public and grassroots communities to find out their level of understanding on the law making processes in Kenya and the views they hold on these processes. This will inform decisions on how they can be incorporated through training and by use of media to share information. Education and Communication material

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ANNEXES

Annex 1: The Biosafety Bill 2008 overview

The Biosafety Bill 2008 was divided into eight parts together with additional four schedules as below

- 1 Part I—Preliminary
- 2 Part II—Establishment, powers and functions of the authority
- 3 Part III—Applications for approval and risk assessment
- 4 Part IV—Review and appeals
- 5 Part V—Regulatory agencies
- 6 Part VI—Restoration and cessation orders
- 7 Part VII—Inspection and monitoring
- 8 Part VIII—Financial provisions
- 9 Part IX—Miscellaneous
- 10 Schedules
 - a First Schedule — Regulatory agencies
 - b Second Schedule — Provisions as to the conduct of business and affairs of the board
 - c Third Schedule—Information required in applications for approval of contained use activity
 - d Fourth Schedule —Information required in applications for approval of release, importation or placing on the market of genetically modified organisms
 - e Fifth Schedule —Provisions on risk assessment
 - f Sixth Schedule—Provisions as to the conduct of business and affairs of the appeals board

Annex 2. Analysis of the Provisions in the Biosafety Bill 2008 and some of the contentious issues and proposals made for amendment

PART ON THE BIOSAFETY BILL 2008	KEY PROVISIONS OF THE ACT	ISSUES IDENTIFIED	RECOMMENDATIONS
<p>THE PREAMBLE</p>		<ul style="list-style-type: none"> • The Act in its preamble sets out its objective as being "to regulate activities in genetically modified organisms to establish the National Biosafety Authority and for connected purposes" • In the initial Biosafety Bill 2008, the preamble did not include the intents of the legislation (that is, the implementation of the Cartagena protocol). Now it has been included. However there still is an issue with the objectives of the Bill having been omitted in the Biosafety Act 2009 for instance the precautionary principle 	<ol style="list-style-type: none"> 1 The preamble should be recast so that it briefly restates the government's policy on biotechnology, mentions its related international commitment, i.e. the Cartagena Protocol (2000), and Rio Declaration (1992) 2 Other related legislations could also be mentioned here so as to ensure the establishment of a workable system which is without conflict and overlap i.e., Food, Drugs and Chemical Substances Act Cap 254 and the Rules there under, to wit Food Labeling Additives and Standards Regulations 3 Finally it would be important to mention the overriding principle of Biosafety regulation to wit, the Precautionary Approach as does the Cartagena protocol. This latter inclusion would help in providing consistency in the

PART OF THE BIOSAFETY BILL 2008	KEY PROVISIONS OF THE ACT	ISSUES IDENTIFIED	RECOMMENDATIONS
PART PRELIMINARY	<p>The contents of the preliminary included interpretation, defining the scope of the Act and the objective of the law. Based on the preliminary the main objectives of drafting the Bill were as follows:</p> <ul style="list-style-type: none"> a) To facilitate responsible research and minimize the risks that may be posed by genetically modified organisms. b) To ensure an adequate level of protection for the safe transfer, handling and use of genetically modified organisms that may have an adverse effect on the health of the people and the environment and c) To establish a transparent, science-based and 	<ul style="list-style-type: none"> • The term Biosafety has not been well defined in the Biosafety Act. It makes reference to the environment which is a more general term. It should have used a more clear and specific term as 'biological diversity' in the definition of Biosafety. • In this case, the definition moves the locus of the Act from the cardinal objective of preventing or reducing the risks to biological diversity as enshrined under Article 1 and 2 of the Cartagena Protocol. • The term 'Living Modified Organisms' or LMOs is not defined. This is a glaring omission considering that Section 7 (2) (g) establishes a BCH whose functions include inter alia facilitating the exchange of scientific information or living modified organisms. 	<p>interpretation of the various sections of the Act.</p> <ol style="list-style-type: none"> 1. The definition on Biosafety should reflect the fact that in reality it is human safety and biodiversity that are at a great risk of any unsafe transfer, handling or use of GMOs. The definition of biodiversity as contained in our Environmental Management and Coordination Act (EMCA) lends credence to the argument that Biosafety should be clearly defined to contemplate the protection of, inter alia, biodiversity. The EMCA defines biodiversity as "the variability among living organisms from all sources including terrestrial, aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, among species and of ecosystems". 2. A definition of LMOs in the Act is critical to the better understanding of the subject.

PART ON THE BIOSAFETY BILL 2008	KEY PROVISIONS OF THE ACT	ISSUES IDENTIFIED	RECOMMENDATIONS
	<p>predictable process for reviewing and making decisions on the transfer, handling and use of genetically modified organisms and related activities</p>		<p>matter of the Act</p>
<p>PART II— ESTABLISHMENT POWERS AND FUNCTIONS OF THE AUTHORITY</p>	<p>The part two of the act defined the establishment powers and functions of the biosafety authority. Establishment of the Authority. The Authority would be body corporate with perpetual succession and a common seal and shall in its corporate name be capable of—</p> <p>(a) Suing and being sued</p> <p>(b) taking purchasing or otherwise acquiring holding, charging or disposing of moveable and immovable property;</p> <p>(c) Entering into contracts; and</p>	<ul style="list-style-type: none"> • The Authority is expected to exercise general supervisor and control over the safe transfer handling and use of GMOs. Section 6 constitutes the NBA Board with a numerical strength of 17 Members! • Section 6(1) (k) introduces gender considerations in the appointment of NBA Board Members. • Sec 7(2) (g) makes it mandatory for the NBA to establish a BCH. • While the mandate of the NBA Board is clear, the huge size of the Board could clog the execution of the same. Large Boards tend to be unwieldy and indecisive. They are also a drain on the exchequer as they are to be paid remuneration fees, allowances and disbursements for expenses as per section 11 of the Act. • Of the 17 Board members, 9 are to be government officials and this can be said to compromise the independence of the Board and reduces it to just another government bureaucracy. • The introduction of gender considerations is to 	<p>1 Section 6 of the Act should be amended so as to reduce the number of Board members to not more than 11 which is the average number of most Boards indeed even the numerical strength of the NEMA Board established under the EMCA and which comparatively has a wider mandate is 14.</p> <p>2 7) If the current number of Board Members must be retained it would then be important to explore the possibility of creating a dual board structure consisting of a first level of functional directors topped with a layer constituting the policy board as is the practice in several</p>

PART ON THE BIOSAFETY BILL 2008	KEY PROVISIONS OF THE ACT	ISSUES IDENTIFIED	RECOMMENDATIONS
	<p>(d) Doing or performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate"</p> <p>The bill went further to define the qualifications and functions of the board members and how they will be conducting business and the authority affairs</p>	<p>be applauded but its failure to increase stakeholders' presence is a weakness to be amended</p>	<p>European countries</p> <p>2. B) The composition of the Board ought also to be changed so that less of government functionaries and more of professionals and other stakeholders, i.e. consumers, are appointed</p>
<p>PART III— APPLICATIONS FOR APPROVAL AND RISK ASSESSMENT</p>	<p>The section ensures that there will be no persons to conduct any activity involving genetically modified organisms without the written approval of the Authority : goes ahead to define the manner in which this approval will be obtained including giving a provision for 30 days waiting period upon which the public can appeal for the decisions</p>	<p>This part of the Act fails to summarise the Advance Informed Agreement (AIA) Procedure First laid down in the Cartagena Protocol the AIA procedure applies to first intentional transboundary movement of GMOs for intentional introduction into the environment of the Party of import. The purpose of this procedure is to ensure that importing country has both the opportunity and the capacity to assess risks that may be associated with the GMO before agreeing to its import. It was meant to support the principle of Prior Informed Consent expressed by the Basle Convention on the Control of Transboundary Movements of</p>	<p>The way forward with regard to Advance informed Agreement (AIA) Procedure is for Part III of the Act to be redrafted so as to incorporate sections that will entrench the AIA procedure by making it mandatory</p> <p>2. Since the AIA procedure only works well in conjunction with a Biosafety Clearing House (BCH) the Act should require that this part introduces an AIA procedure that requires</p>

PART ON THE BIOSAFETY BILL 2008	KEY PROVISIONS OF THE ACT	ISSUES IDENTIFIED	RECOMMENDATIONS
	<p>This PART III provides for environmental protection against contamination with GMOs. Upon applications for need to introduce GMOs into the environment, the Authority shall publish in the Gazette at least two newspapers with nationwide circulation and in an appropriate electronic media, notice concerning any application for release into the environment of a genetically modified organism for the general information of the public.</p>	<p>Hazardous Wastes and their Disposal</p> <ul style="list-style-type: none"> • Currently the Act only provides for a general Party of import permit system for the regulation of GMOs which does not ever discriminate between those meant for intentional introduction into the environment and those for contained use or ever for use food or feed. This creates a loophole that can be exploited by both importers and exporters of GMC to Kenya, where the scientific base is relatively low, to sneak in GMOs that might not be permissible in the country of origin. • Sections 21-26 of the Act keep referring readers to the schedules for details regarding the content of the application. However, the 3rd and 4th schedules which give details to be given by the applicant, invariably go against the Cartagena Protocol by omitting the requirement that the Name, Address and Contact details of the importer be provided. 	<p>the Biosafety Clearing House takes an active role in this process as the depository of information on GMOs which would then be available to the public and further facilitate exchange of the same with other countries.</p>
<p>PART IV—REVIEW AND APPEALS</p>	<p>The Authority may review a decision made under section 29 of this Act at any time upon obtaining significant new scientific information relating to biosafety of the genetically modified organism or contained use activity involved. Such a decision provides for</p>	<ul style="list-style-type: none"> • Section 33(1) provides that the Authority can review its own decision on its own motion. • Subsection 2 gives an applicant or a regulatory agency the right to request the Authority to review its own decision. • Part IV provides the appellate process for those not satisfied with decisions made under the Act. 	<p>A way forward to remedy the defects of Part IV would be to align the provisions of this Act with the provisions of section three of the EMCA which is the premier law relating to environmental governance in Kenya (Section 14E of the EMCA).</p>

PART ON THE BIOSAFETY BILL 2008	KEY PROVISIONS OF THE ACT	ISSUES IDENTIFIED	RECOMMENDATIONS
	salvaging an unwanted situation without having to go through a lot of bureaucracy. This is strong in ensuring that the issue is approached with precaution	<ul style="list-style-type: none"> Nevertheless section 33 (2) limits the right to request for a review of the Authority's decision regarding a given application to only a regulatory Agency or an applicant. This is a reactionary provision that goes against the current trend in environmental litigation whereby the right to challenge a given environmental decision/action is enhanced and opened to all 	<ol style="list-style-type: none"> The issue of locus standi should be clearly and explicitly spelt out so that individuals as well as organisations not strictly connected with a given GMO issue are able, nevertheless to institute proceedings for the common good of mankind
PART REGULATORY AGENCIES	<p>V— The Authority shall coordinate all activities involving genetically modified organisms and in carrying out its role of coordination the Authority may consult with the relevant regulatory agency</p> <p>Regulatory agencies shall, where appropriate monitor any activity for which approval has been granted by the Authority to ensure that such an activity complies with conditions imposed, if any on the grant of an approval</p> <p>Where a regulatory agency,</p>	<ul style="list-style-type: none"> The section does not define what is a regulatory agency but according to section 2 which is the interpretations section of the Act, regulatory agency means a "regulatory agency as set out in the First Schedule to the Act or such other agency as the Minister may by Order in the Gazette The First Schedule enumerates 8 agencies but does not define what they are. It would seem therefore that no definition is actually provided in the Act. The National Council for Science and Technology, which is the forerunner of the proposed national Biosafety Authority is omitted from the list of regulatory agencies. This is the case despite the fact that the body is not scrapped but is to continue being the premier authority for determining government priorities on 	<ol style="list-style-type: none"> It would be important to define what the regulatory agencies are and their functions clearly The National Council for Science and Technology should be listed as one of the regulatory agencies

PART ON THE BIOSAFETY BILL 2008	KEY PROVISIONS OF THE ACT	ISSUES IDENTIFIED	RECOMMENDATIONS
	<p>in carrying out its mandate becomes aware of any significant new scientific information indicating that approved activities with genetically modified organisms may pose potential biosafety risks not previously known the regulatory agency shall immediately inform the Authority of the new information and of the measures proposed to be put in place to ensure the continued</p>	<p>scientific and technological activities and coordinating research activities in research institutions in Kenya.</p>	
<p>PART VI— RESTORATION AND CESSATION ORDERS</p>	<p>The Authority may issue and serve on any person a restoration order in respect of any matter relating to release of a genetically modified organism into the environment</p> <p>An environmental restoration order issued under subsection shall be issued to—</p> <p>(a) require the person on whom it is served to restore</p>	<ul style="list-style-type: none"> • Section 40 gives the Authority power to issue and serve environment restoration order • Section 41 spells out the contents of restoration order while section 42 deals with cessation orders • In this part the Act takes a leaf from the EMCA which was the first substantive legislation to provide for such orders • One major worry in relation to GMOs as opposed to other environmental threats is that once unleashed GMO technology has the capacity for self-perpetuation in the environment and might be impossible to rein in or let alone return the environment to where it 	<p>1. This section should be polished further so as to tie it with the other sections by requiring that in every step of the approval process the both the precautionary and polluter pays principles are adopted as this the only sure way of maintaining a healthy environment</p>

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	<p>the environment as near as it may be to the state in which it was before the release of a genetically modified organism,</p> <p>(b) levy a charge on the person on whom it is served which, in the opinion of the Authority represents a reasonable estimate of the costs of any action taken by an authorized person or organization to restore the environment to the state in which it was before the release of a Genetically modified organism</p> <p>An environmental restoration order shall specify clearly and in a manner which may be easily understood—</p> <p>(a) the activity to which it relates</p>	<p>was before the introduction of the GMO</p> <ul style="list-style-type: none"> • This section can only work if the precautionary principle is adopted in the determining the outcome of an application • The section also adopts the polluter pays principle in requiring that a charge is levied on the person on whom the order is served 	
<p>PART VII— INSPECTION AND MONITORING</p>	<p>In this part the bill defined that the minister for science and technology will be in charge of appointing a</p>	<ul style="list-style-type: none"> • Part IX is entitled Miscellaneous and contains provisions to do with the power of the Minister to make regulations under the Act, offences and penalties (Sec 52), restrictions or 	<p>There is need to unbundle and rename this part so that each of its key contents is</p>

PART ON THE BIOSAFETY BILL 2008	KEY PROVISIONS OF THE ACT	ISSUES IDENTIFIED	RECOMMENDATIONS
	<p>biosafety Inspector who shall monitor the compliance with the Act and the regulations made therefor. The roles of the Inspector as per the Biosafety Bill shall be-</p> <p>(a) monitor compliance with this Act and regulations made there under;</p> <p>(b) undertake inspections and submit reports thereof to the Authority;</p> <p>(c) perform such other functions as the Authority may deem necessary.</p>	<p>prosecutions (Sec 53, public awareness and participation (Sec 54) and transitional provisions (55)</p> <ul style="list-style-type: none"> • This part is really loaded with important matters and risks weakening some important concepts. For example, handling, transport, packaging and labeling of GMOs require separate mention and deserve a Part on their own. • The importance of the separation cannot be gainsaid given that it is impossible to differentiate a GMO product from a natural one by just looking. • Public awareness and participation is another issue that should not be slighted. This is because one of the requirements of the Cartagena Protocol is that public awareness, participation and education are promoted and facilitated. • From the foregoing it wouldn't be wrong to suggest that injured Kenyans would have to pursue causes under the traditional common law remedies of tort or contract. This then begs the questions why the Act? And who does it protect/benefit? Verdict: the GMO companies. 	<p>given adequate prominence. Public awareness and participation should be emphasised and a section on liability and redress inserted so as to provide a mechanism for aggrieved/injured parties to seek remedies under the Act.</p> <p>The Act should also provide for a contributory insurance fund maintained through levying some premium charge on developers, importers and exporters of GMOs.</p>

For more information on the contents of the Biosafety Act of 2008 before being accented into Biosafety Act 2009 open the following link
www.kenya.gov.ke/downloads/Bills:2008/The_Biosafety_Bill_2008.pdf

Annex 3 Questionnaire for Study data gathering

THEMES	SPECIFIC ISSUES TO ADDRESS
<p>1 Types of Stakeholders involved</p>	<p>a Name of respondent/respondents </p> <p>b Where do you work and what is your position </p> <p>c Have you heard about the Kenyan Legal frame work on Genetic Modified Organisms or the Biosafety Bill/2009 Act? Tick YES or NO</p> <p>d If YES Do you think you participated in its formulation? Explain further </p>
<p>2 The level of the stakeholders participation and inputs in development of Biosafety Bill (now 2009 act)</p>	<p>a. Did you participate in any way towards the development of this law proposing drafting lobbying or in parliamentary process for the Biosafety Bill/Act? Tick YES or NO IF YES:</p> <p>b. What forums did you participate in? </p> <p>c. What activities did you undertake to ensure contribution to this process? What contributions did you give?</p>

d. Did you form alliances or lobby forums to enhance voices TICK
YES OR NO

e. If YES which ones?

What role did the alliances play?

f. How did they influence the process?

g. What were their inputs or contributions to the process?

h. Did you face any challenges and how did you address them?

<p>3. To establish the perceptions by the key stakeholders on the level and quality of involvement that they received from policy makers during Biosafety Act development.</p>	<p>a. What are some of the contributions you think were taken up or incorporated into the Biosafety Law 2009?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>b. How would you rate the incorporations of the proposals you made towards the Biosafety Act Bill/Act 2009 development?</p> <p>.....</p> <p>.....</p> <p>c. What were the main challenges/ limitations during this process of influencing the development of the Biosafety Bill/Act 2009?</p> <p>.....</p> <p>.....</p> <p>d. On basis of the lessons you learnt, what can you say about the policy making process in Kenya particularly on level of community participation?</p> <p>e.</p> <p>.....</p> <p>Other comments</p> <p>.....</p> <p>.....</p>
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