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National Conflict Mapping and Analysis: Peace and Conflict Trends in Kenya



REPUBLIC OF KENYA

National Conflict Mapping and Analysis:

Peace and Conflict Trends in Kenya



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List of Abbreviations and Acronyms

ASAL	Arid and Semi-arid Lands
CAG	Conflict Analysis Group
CBO	Community-based organization
CEWERU	Conflict Early Warning and Early Response Unit
CIPEV	Commission of Inquiry into Post election Violence
CPMR	Conflict Prevention, Management and Resolution
CSO	Civil Society Organization
DC	District Commissioner
DFID	Department for International Development
DPC	District Peace Committee
DRM	Dispute Resolution Mechanism
EAC	East African Community
EACJ	East African Community Court of Justice
ECK	Electoral Commission of Kenya
ERS	Economic Recovery Strategy
FBO	Faith-Based Organisation
FEWS NET	Famine Early Warning Systems Network
FGD	Focus Group Discussion
Ford Kenya	Forum for the Restoration of Democracy Kenya
GEMA	Gikuyu Embu Meru Association
ICC	International Criminal Court
ICJ	International Court of Justice
IDI	In-depth interview
IDP	Internally Displaced Person
IEBC	Independent Electoral and Boundaries Commission
IIBRC	Interim Independent Boundaries Review Commission
IIEC	Interim Independent Electoral Commission
IGAD	Inter-Governmental Authority on Development

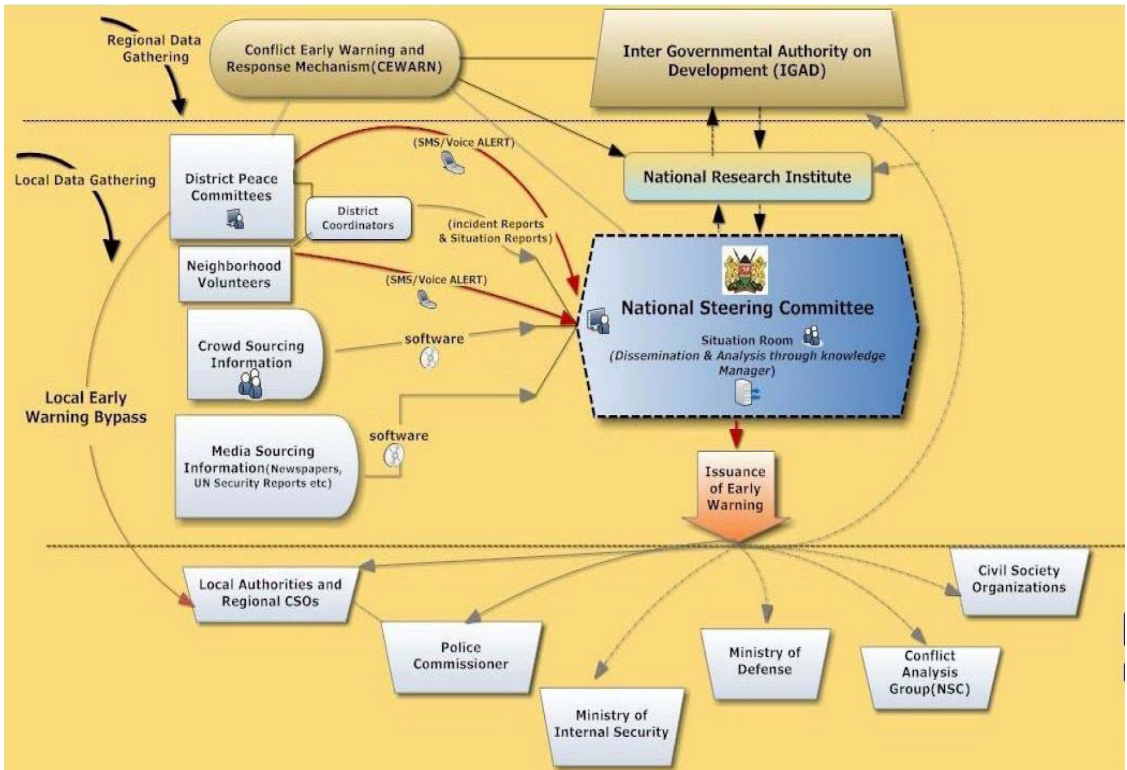


IGADD	Inter-Governmental Authority on Drought and Development
IPPG	Inter-Parties Parliamentary Group
ITDG-EA	Intermediate Technology Development Group – East Africa
KACC	Kenya Anti-Corruption Commission
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
KHREC	Kenya National Human Rights and Equality Commission
KII	Key Informant Interview
KNCHR	Kenya National Commission on Human Rights
KNFP	Kenya National Focal Point on Small Arms and Light Weapons
KPR	Kenya Police Reserve
KPU	Kenya People’s Union
KWS	Kenya Wildlife Service
LEA	Law Enforcement Agencies
MoU	Memorandum of Understanding
NARC	National Rainbow Coalition
NICE-P	National Intergrated Civic Education Programme
NCIC	National Cohesion and Integration Commission
NEMA	National Environmental Management Authority
NEP	North Eastern Province
NESC	National Economic and Social Council
NFD	Northern Frontier District
NGO	Non-Governmental Organisation
NRT	Northern Rangeland Trust
NSC	National Steering Committee on Peacebuilding and Conflict Management
NSIS	National Security Intelligence Service
ODM	Orange Democratic Movement
PEV	Post-Election Violence
PPF	Provincial Peace Fora
PRC	Peace and Reconciliation Commission



RC	Regional Commissioner
RECSA	Regional Centre on Small Arms
REGABU	Rendille Gabra Buriiji Alliance
SALW	Small Arms and Light Weapons
SAPs	Structural Adjustment Programmes
SLDF	Sabaot Land Defence Force
TJRC	Truth, Justice and Reconciliation Commission
TUMEONA	Tubcha, Uyam/Uruwen, Matarbah, Elegeza, Odhola, and Nahgan clan Alliance
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

The National Conflict Early Warning and Response System for Kenya



Source: www.nscpeace.go.ke



Foreword




The Post-Election Violence (PEV) of 2008 was unprecedented both in scale and intensity. Apart from the resource based conflicts in Arid and Semi-Arid Lands (ASALs) in Kenya and the bouts of “tribal” clashes marking the 1992 and 1997 General Elections, Kenya was considered an island of peace in a region of turmoil. The PEV shattered that image, much to the chagrin of all and sundry.

The signing of the National Accord and Reconciliation Agreement (NARA) in February 2008 brought the PEV to an overt end, thrusting the Country onto an extensive reform path. Addressing the root causes of the PEV was one such path of reform agenda as the country sought to open a new chapter and rebuild its social, economic, cultural and political fabric. Institutions such as the National Cohesion and Integration Commission (NCIC) and Truth Justice and Reconciliation Commission (TJRC) were established and mandated to unearth the genesis of the violence and ensure that the country will never witness again the repeat of such post-election mayhem.

In order to contribute to the national peacebuilding agenda, the Ministry of State for Provincial Administration and Internal Security, Office of the President, through the National Steering Committee on Peace Building and Conflict Management (NSC), commissioned a study in 2010 to map and analyze conflicts in the country and anticipate possible peace and conflict scenarios as the country moves closer to the next General Elections scheduled for 2012 or 2013. The study also sought to make recommendations on how to prevent and or manage conflicts in order to deliver a peaceful and successful elections and political transition thereafter.

As you will find out, this study examines core factors contributing to conflict from a multidimensional perspective, with a view to provoking systemic action that would promote peace. The conflict analysis was comprehensively undertaken within the six thematic foci of political, security, economic, legal, socio-cultural and environmental.

One of the astonishing findings that peace stakeholders need to be wary of is the realization that religious difference are a significant potential conflict factor in Kenya as was illustrated during the 2010 referendum. This is a conflict factor that had not been given due attention but the referendum process was an eye opener. We must all do whatever we can to ensure that religious differences do not become a major factor of conflict in our society.



One of the most important aspects of this study is the formulation and anticipation of possible peace and conflict scenarios especially as the country approaches the next general elections. According to the study, the best case scenario that all Kenyans yearn for is that we will have successful and peaceful elections. This scenario builds on the 2010 referendum that was largely peaceful and UWIANO initiative that ensured that conflict indicators were reported on time and response mobilized rapidly.

On the other hand, the implementation of the Constitution will in the long run tackle some of the root causes of the conflicts such as historical injustices, uneven distribution (access) of resources and opportunities and above all address integrity and leadership issues in a bid to make our political process issue based.

In the same breadth, the study anticipates a worst case scenario if conflict prevention measures are not put in place in a timely and efficient manner. The worst case scenario is that the ghost of election years (electoral violence as the case has been since 1992) might raise its ugly head again. It is feared that the unresolved issues that led to PEV as well as the IDPs question might stalk peace again if they are not conclusively addressed. There has also been an upsurge of political parties and shaky alliances founded on ethnic calculations. Hence, ethnicity has become a quick political mobilization tool, and this partly explains why electoral processes have been triggers of violence, and it is feared that the next electoral process might take a similar trend.

These contemplated scenarios are helpful in putting in place contingency measures in anticipation of any flare-ups as well as maximizing opportunities for best case scenario, i.e. successful elections and political transitions. In this aspect, the NSC through the Ministry of State for Provincial Administration and Internal Security, in partnership with other actors is keen to mobilize efforts and resources in order to contribute to a successful election.

This National Conflict Mapping and Analysis Report, is not entirely about electoral related violence but also for general posterity. It highlights key conflict issues and factors that need to be addressed in order to make Kenya a peaceful and stable country, as well as ingredients necessary for the realization of Kenya's Vision 2030.

Enactment and implementation of the peace related policies will also go a long way in institutionalizing peace building structures and approaches in the country with cumulative result being a secure and stable country. I hope this Report will form not only an interesting piece and reference material but will inform interventions by various actors with regard



to peacebuilding and conflict management in Kenya in line with the CPMR Framework herein.

F.T. KIMEMIA, CBS.,
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CHAPTER ONE: INTRODUCTION

1.1 Context of conflict mapping and analysis


The search to find new and more effective ways of resolving internal conflicts is a major preoccupation in today's world, Kenya included. Conflict resolution and transformation have enjoyed increasing attention in research and policy discourse dealing with the dynamics of contemporary conflict. The nexus between political, security, economic, social, legal, and environmental factors in conflict played a defining role in the country's conflict transformation process during the 1990s and early 2000s. An understanding of the dynamics of conflict in Kenya is necessary if we are to determine the most appropriate means of mobilizing early responses to violent conflicts in the country. This requires knowledge of conflict issues and their causes, durations of conflict (short-lived, sporadic or protracted) and attentiveness to the identities, interests and concerns of actors, among other factors. Most broadly, violent conflicts in Kenya can be said to be directly linked to factors that contribute to the escalation of conflict, which can be categorized as structural factors, accelerators and triggers. Theories on how and why violent conflicts occur distinguish between structural factors on the one hand, and accelerating or triggering factors on the other. Conflict analysis is the systematic study of the profile, causes, actors and dynamics of conflict. It helps development, humanitarian and peacebuilding organizations to gain a better understanding of the context in which they work and their role in that context.

1.2 Structural factors of conflict

Structural factors, which must be viewed on a long-term horizon, are those that create a potential climate for violent conflict without, however, making its eruption inevitable. They include such interrelated political, social and economic factors as population density, the level and distribution of wealth and opportunity, the state of the resource base, the structure and ethnic make-up of society, and the history of intergroup relations. Certain patterns of socioeconomic organization can result in a high degree of vulnerability to conflict. For instance, a politically dominant group that controls the state and access to wealth, education and status, often suffers from a high-degree of vulnerability to conflict.

1.3 Accelerating or triggering factors

Accelerating or triggering factors are the events, actions and decisions that result in the



escalation of disputes into violent conflict. Since triggering factors depend heavily on the specific context, it is not possible to list them systematically. Examples include economic decline; changes in the degree of internal state cohesion; shifts in internal control of the central authority, including the military; change in the internal distribution of power, including access to government power and privilege; shipments of (small) arms; interventions of neighbouring states, regional powers and organizations, and large movements of people and capital.

1.4 The phases and dynamics of conflict

Conflict is not a static, unchanging state of affairs, but rather a dynamic process. While distinct phases can be distinguished, they do not necessarily follow a sequential pattern. A combination of factors will generally determine whether a conflict escalates or recedes. Hence, the passage from one phase to another is not necessarily the result of a single event or factor at the exact moment of transition. Notwithstanding the diversity of the causes and escalators of conflict, almost all crises can usefully be subdivided into four main, difficult-to-separate-phases, as follows:

- * Situations of submerged tensions;
- * Situations of rising tensions;
- * Eruption phases of open confrontation and violent conflict, and
- * Fragile transitional and post-conflict situations.

Most analyses on conflicts in Kenya have been inadvertently area-specific – focusing predominantly on hotspots of violent conflicts (especially pastoralist-inhabited areas and zones plagued by electoral violence)¹. Some areas have been depicted as perpetually violence prone, while others are seen as constant havens of peace. The widespread nature of the 2008 PEV emphasized the need for a nationwide analysis of conflict.

A holistic espousal of conflict as arising when two or more groups have incompatible goals and interests should hopefully help in expanding the scope of analysis to include all factors against which such intergroup aims are formed and competed for. It is in this regard that this study undertakes to nationally examine conflicts in Kenya on the basis of the six relevant variables: political, security, legal, economic, socio-cultural and environmental.

1. For instance, in British Council, Ministry of Justice and PeaceNet-Kenya, Conflict mapping: An insider's perspective (action research), *Report on National Conflict Mapping for Active Citizens Programme*, Nairobi: PeaceNet Kenya, 2011, the report, although attempting a national mapping of conflict, zeroes in on seven districts, most of which are violence prone.

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1.5 Goal and objectives of the study

The overall goal of conducting conflict analysis is to improve the effectiveness of development policy and programmes in contributing to conflict prevention and reduction in Kenya. The specific objectives include:

- To identify lessons to generate evidence-based data and guidance for policymakers and practitioners to improve the conflict-sensitivity and peacebuilding impacts in the country;
- To promote uptake of such good practice, and
- To put the links between development and peacebuilding on the agenda of relevant national and international actors through advocacy, outreach and networking.

1.6 Research questions

The research study was guided by the following framework for conflict analysis:

- What are the context and issues of the conflict?? What is the history of the conflict? Which areas are specifically affected?
- Who are the main actors in the conflict? Who are the main actors in the political, security, economic, soci-cultural, legal and environmental spheres? What are their goals and interests? How do they relate to one another? How can they support peace or further the conflict?
- What are the major causes of the conflict? What underlying factors in the society create the preconditions for violence? What other factors contribute to violence?
- What are the dynamics of the conflict? What have been the stages and patterns, and what are the current and past trends? How are these evolving over time? Are there windows of opportunity for peace? What scenarios can be developed to determine the possible future of the conflict?

1.7 Significance of the study

Violent conflicts and situations of insecurity can greatly worsen development. A strategic conflict analysis provides a deeper understanding of the conflict context and is an important source of information for use in long-term planning regarding how to design, implement and evaluate policies, strategies and development programmes in areas affected by violent conflict and in security.



1.8 Study design and methodology

The aim of conflict analysis was to better understand the historical and structural antecedents of violent conflict and what converts latent conflict into open conflict or intensifies existing open conflict. The methodology in conflict analysis has focused on analysis of conflict structures, triggers, actors and dynamics.

This research relied on both secondary and primary data. Secondary literature was useful for both identification of gaps in previous conflict analyses and enrichment of this study. The literature reviewed was of conceptual and practical relevance to each of the thematic areas of study. Such literature included reports of commissions of inquiry, government reports, academic and practitioners' publications and/or outputs, and information from media sources.

The survey was carried out between July and September 2010, and primary data collection relied mainly on focus group discussions, questionnaires and key informant interviews. The regions covered included North Rift, Central Rift, South Rift, Central (province), Nyanza, Western, Nairobi, Upper Eastern, Lower Eastern (consisting of both Central and Lower Eastern), North Eastern and Coast. Qualitative data was collected using focus group discussions (FGDs) and key informant interviews (in some cases with the help of research assistants). There were a total of 38 FGDs with an average of eight participants each. These were enriched with key informant interviews with more than 100 respondents. Quantitative data was gathered with the help of questionnaires administered in all the regions. Some 1725 questionnaires were filled and returned. Based on this, the margin of error was 2.36 per cent. The questionnaires targeted civil society organization representatives, members of district peace committees (DPCs) and the general public. The target group for key informant interviews was determined by each researcher's thematic focus, but essentially critical peace and conflict stakeholders were covered.



CHAPTER TWO: LITERATURE REVIEW


2.1 Conceptual basis of conflict mapping and analysis

There are a number of different theoretical frameworks for analyzing contemporary conflicts. This guide is based on a multidisciplinary approach that uses a number of different analytical ‘lenses’ to examine and develop responses to violent conflict. Important recent advances in the understanding of conflict come from the ‘political economy’ approach. This focuses on the political and economic interests of those engaged in conflict and draws attention to those who exploit conflict for their own ends. If the political economy of conflict brings opportunities, there will be strong interests in perpetuating and managing conflict for personal gain. Interventions that ignore these interests risk fuelling the conflict.

The above approach has been developed into an analysis of the causes of conflict in terms of ‘greed’ (opportunities for predatory accumulation) and ‘grievance’ (the negative reactions of those who are disadvantaged). While the greed and grievance framework usefully highlights economic agendas in conflict, it is only one of a number of ways of looking at conflict and should be complemented by other analytical lens, in particular social, anthropological and gender analysis. Comprehensive conflict analysis should combine an analysis of structures and actors and how the two interact with one another. Structural analysis focuses on the institutions (political, economic, social and security) that may engender violent conflict. Actor-oriented analysis involves a fine-grained analysis of individual incentives and motivations. Conflicts are about perceptions and the meanings that people attribute to events, institutions, policies and appeals for public support.

Contemporary conflicts are complex and multileveled; conflicts interact at local level and are often part of wider regionalized conflict systems. Analysis, therefore, needs to encompass the international/regional, national and local dimensions of conflict. Finally, the notion that the ‘beginning’ and ‘end’ of a conflict can be identified is inappropriate in contemporary conflicts. Conflict is a dynamic social process in which the original structural tensions are themselves profoundly reshaped by the massive disruptions of conflict. Therefore ‘root causes’ may become decreasingly relevant in protracted conflicts that have led to the transformation of the state and society.

The supposition that there are multiple explanatory concepts for Kenya’s complex conflict



systems underpins the conflict assessment methodology herein; the challenge is to blend these different conceptual elements. The methodology used in this study attempted to do this by systematically analyzing the structures, actors and dynamics of conflict using a multidisciplinary approach.

2.2 Political dimensions of conflict

An analysis of political aspects of conflicts in Kenya necessitates a trend analysis of Kenya's political development. This trajectory is largely seen to be divided into five phases². This analytical approach more or less examines Kenya's politics in each decade since independence. The major political disputes in Kenya's first post-independence decade (1960 – 1970) were feuds between President Jomo Kenyatta and Vice-President Jaramogi Oginga Odinga (he later resigned in 1966). There was rising autocracy in Kenyatta's regime, and later, the assassination of Tom Mboya, a leading politician³. Secondly, between 1970 and 1980, the independence euphoria had died down and the country was more aware of ills in Kenyatta's regime. Political elite competitions culminated in assassinations, such as that of Josiah Mwangi Kariuki in 1975. There was also a change in the constitution movement that aimed to block Vice President Daniel arap Moi's ascension to presidency in the event of Kenyatta's demise⁴. Thirdly, from 1980 to 1990, President Moi entrenched personal rule. The legislature and the judiciary became virtual rubberstamps of presidential whims and Kenya became a *de jure* one-party state⁵.

The fourth phase was between 1990 and 2002. In this period, Kenya returned to multiparty politics and with this the eruption of ethnic land and electoral clashes. The phase ended with the election of the Mwai Kibaki-led National Rainbow Coalition (NARC) government in 2002. The final phase was the post-Moi era. There were conflicts characterized by disagreements between members of the cabinet in 2003 following President Kibaki's failure to honour a pre-election memorandum of understanding (MoU) between him and alliance colleagues. This schism widened in the 2005 constitutional referendum, in which the pro-Kibaki and anti-Kibaki members of the cabinet took opposing stands. This fallout reached its apex in the 2007 general elections, when bungled elections became the centre of the country's worst electoral violence. Where power was racially determined during the colonial era, political power subsequently has been associated with ethnicity. This has heightened ethnic consciousness, fomenting identity-based grievances and distrust, which has informed

2. While Macharia Munene identified four phases in his chapter titled Conflict and conflict management in Kenya in Jan Kamenju and Godfrey Okoth (eds) *Power play and politics in Kenya: An interdisciplinary discourse*, Nairobi: Oakland Media Services, 2006, 171-213. A fifth phase is introduced here to cover the conflicts under the Kibaki regime, which culminated in the 2008 post-election violence. But one can argue that with the 27 August 2010 promulgation of the new constitution. There may be a sixth phase.

3. Macharia Munene, Conflict and conflict management in Kenya from 1963 to 2002 in Jan Kamenju and Godfrey Okoth (eds), *Power play and policy in Kenya: An interdisciplinary discourse*. Nairobi: Oakland Media, 2006, 171.

4. Ibid, 179-181.

5. Ibid, 181-186.



violence. This reality has been built on several pillars:

- Corrupted and corruptible governments that are partly a function of colonial legacy⁶;
- Organized gangs that can be traced back to the Mau Mau struggle⁷;
- Tyrannical systems and divisive boundaries that were left behind by the British colonial administration⁸;
- Crisis of citizenship, as most of northern Kenya is apathetic. North-Eastern province's experience with secessionist war (the 1960s' Shifita War) haunts it, as the region has suffered marginalization and resultant apathy⁹.

Kenya's conflicts have been driven by, among other factors, what has been described as "politics of ethnicity"¹⁰ coupled with the low level of political institutionalization, which is a process of acquisition and entrenchment by a state of effective political organizations and procedures that promote harmony among social groups and regulate their behavior as they engage in competition for the ever-scarce societal resources. Consequently, personal rule has remained a characteristic feature of political leadership¹¹. Since Kenya won independence, public life has been dominated by the politicization of ethnicity. Consequently, elections are often perceived to be a contest between different ethnic groups, the outcome of which will decide which community gets access to resources. Therefore, politicization of ethnicity has become the strongest single determinant in the domain of governance in Kenya¹². Organized violence has a deeply rooted lineage in Kenyan politics, going back to the organization of the KANU Youth Wing in the 1960s, which was even then used to harass

6. Caroline Elkins, What's tearing Kenya apart? History, for one thing in *Washington Post*, Sunday, 6 January 2008.

7. Caroline Elkins, *Britain's gulag: The brutal end of empire in Kenya*. London: Pimlico, 2005, 22 and Peter Mwangi Kagwanja, Facing Mount Kenya or Mecca: The Mungiki, ethnic violence and the politics of Moi succession, 1987–2002 in *African Affairs* (2003), 102, 25–49.


8. Jeffrey Herbst, *States and power in Africa: Comparative lessons in authority and control*, Princeton: Princeton University Press, 2000, 25.

9. See Hannah Whittaker, *Pursuing pastoralists: The stigma of Shifita during Shifita War in Kenya 1963–1968*, Available at <http://www.arts.monash.edu.au/publications/eras> (accessed on 1 October 2010) and USAID, *Kenya-Somalia border conflict analysis*, Nairobi: Development Alternative Inc., 2005.

10. Ahmed Nassir M Abdullahi, *Intrastate conflicts in Africa providing a constitutional mediation for ethnic rivalries and conflicts in Africa*, A paper presented at the East African Law Society conference, 23-24 April 1999.

11. Wanjala Nasong'o, Resources allocation and the crisis of political conflicts in Africa: Beyond the inter-ethnic hatred thesis in Godfrey Okoth and Bethuel A Ogot (Eds), *Conflict in Contemporary Africa*, Nairobi: Jomo Kenyatta Foundation, 2000, 46.

12. See Walter Oyugi, Ethnicity in the electoral process: The 1992 general elections in Kenya in *Africa Journal of Political Science* (1997), Vol 2 No 1, 41-69,67; Josiah Osamba, Violence and the dynamics of transition: State, ethnicity and governance in Kenya in *Africa Development*, Vol XXVI, No's 1 and 2, 2001,7; Walter O. Oyugi, Conflict in Kenya: A periodic phenomenon, Available at <http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan008267.pdf> (accessed on 5 July 2010, 13; Stephen Brown, Quiet diplomacy and recurring ethnic clashes in Kenya in Donald Rothchild, Chandra Sriram and Karin Wermester (eds), *From promise to practice: Strengthening UN capacities for the prevention of violent conflict*, Boulder: Lynne Rienner, 2002, 5; Edward O Mogire, The state and internal political conflicts in Africa: The case of Kenya in Godfrey Okoth and Bethuel A Ogot (eds), *Conflict in Contemporary Africa*, Nairobi: Jomo Kenyatta Foundation, 2000, 137; Mara J Roberts, Conflict analysis of the 2007 post-election violence in Kenya. September, 2009. 2.



and intimidate political opponents of Jomo Kenyatta's government¹³. Another view holds that the proliferation of non-state violence was inherited largely from the Moi regime¹⁴. During the 1980s, outside of the more traditional forms of repression using formal state security agencies, several politicians had informal bodyguards and gangs of supporters that were used to intimidate individuals in the opposition. Fragmented elites from across the political spectrum began to resort to violence in the face of such intimidation and repression during elections¹⁵. As violence became part of political competition, all actors resorted to it, reacting to and learning from the regime's tactics, making violence a normalized feature of politics. Indeed, 'all political candidates employ thugs to "represent" them, if only to protect themselves from the thugs "representing" their rivals'¹⁶. Further it has been observed that 'most prominent Kenyan politicians maintain private armies of "Youth Wingers", often enlarging their membership as elections approach'¹⁷. The Kenyan case is illustrative of the entrenchment of ethnicity in politics and how it has created political conflict¹⁸.

2.3 Security dimensions of conflict

Conflicts in Kenya are pervasive in pastoralist and agricultural areas, rural and urban settings. However, pastoral areas are some of the most underdeveloped in the region and these areas suffer from a myriad of insecurities that adversely affect the livelihood of the pastoral communities, leading to a cycle of violence, revenge and perpetual insecurity.

Armed pastoralist groups engage in cattle rustling to, among others, replenish herds after droughts, diseases, raids and social practices such as bride price and heroism. Further, there has been increasing commercialization of cattle raiding where livestock is raided to meet the urban demand for the animal products. The commerce is facilitated by middlemen who provide transport and markets for sale. Additionally, these animals are also sold locally to acquire more weapons.

The question of small arms among the pastoralists in Kenya must be situated within the broadest context of the conflict situation in the Horn of Africa. Since the 1950s, Sudan, Ethiopia, Uganda and Somalia have experienced devastating intermittent conflict, causing illicit arms to permeate the region. Others arms were brought in ostensibly to serve the

13. Anderson, David, Vigilantes, violence and the politics of public order in Kenya in *African Affairs* Vol101, Oxford: OUP, 2002, 531-555,551.

14. Mueller, Susan, The political economy of Kenya's crisis in *Journal of Eastern African Studies* Vol2 No2,185-210, London: Routledge Publishers, 2008,189.

15. Branch, Daniel and Cheeseman, Nic, Democratisation, sequencing, and state failure in Africa: Lessons from Kenya' in *African Affairs* Vol108, Oxford: OUP, 2008, 1-26.

16. Anderson, David and Lochery, Emma, Violence and exodus in the Rift Valley, 2008: Predictable and preventable?' in *Journal of Eastern African Studies* Vol2 No2,328-343, London: Routledge Publishers, 2008, 338.

17. Anderson (2002), Op city, 552.

18. Edward O Mogire, Op cit, 50.




ideological opposed factions during the Cold War. The former case is true particularly of Somalia and Ethiopia, which received large quantities of arms from former Eastern Bloc countries during the Cold War.

For many years, public resources were concentrated in what were called ‘high potential areas’, marginalizing pastoral communities from all spheres of development. Sessional Paper No 10 of 1965 advocated the allocation of resources to high potential areas, with the idea that the development of these areas would ‘trickle down’ as high potential areas realized their maximum potentials. The disparity of resource allocation and distribution became a major bone of contention in Kenya. The high potential areas made use of the granted resources to produce professionals such as teachers, doctors and administrators, some of whom were posted to the less developed areas, where they were seen as people out to control local natural resources for personal gain. It was these disparities that encouraged the Northern Frontlines District (NFD) to demand secession to Somalia in a first Kenyan referendum in 1967, which asked people of the NFD whether they wished to remain in Kenya or secede to Somalia. The Kenyan authority interpreted the results to mean the people living in NFD could move to Somalia, but leave their grazing lands to Kenya, and this led to the Shifta Wars. The people of the NFD were beaten into submission, but their grievances were only submerged. As a result of the war and accompanying alienation, the acquisition of illegal guns in the northern part of Kenya through the porous borders became ubiquitous. Pastoral communities face insecurity caused by different factors, but the illicit proliferation and use of small arms have exacerbated the problem, which has led to decline in living standards over the years.

The conflicts in the North Rift and North East regions are mostly of the form described above as community, ethnic or infra-state conflicts and commonly manifest in cattle raids, banditry, ethnic clashes, rangeland clashes and criminal activities. Pastoral communities suffer both physical and psychological insecurity. Physical security manifests in death, injury and cattle rustling, or when raiders burn and destroy property, during which families are displaced or family members lose their lives. The remaining members, having witnessed the atrocities, suffer psychological stress, are traumatized and are unable to lead normal life. The most vulnerable groups during these conflicts are women, children and the elderly, who cannot defend themselves. The proliferation of small arms affects women and men differently, yet women’s experience is often overlooked. Studies have shown that small arms are used as a tool for rape, torture and even murder. Pastoral communities had the capacity to deal with isolated emergencies prior to the proliferation of illicit small arms, but these coping mechanisms are frequently challenged by the increasing population of pastoral communities and dwindling size of the land available for grazing due to artificial boundaries and seizure of land by the government for commercial purposes.

With time, the gun culture in the north found its way to agricultural communities and to



the major Kenyan urban centers, and into the hands of organized militia groups as well as individual criminals. These arms are used for highway banditry, carjacking, kidnapping and even during land clashes in most areas that are not occupied by pastoral communities. The arms have created havoc in the country, making Kenya very insecure. They have created much suffering, making it necessary to undertake this research to seek possible solutions, establish a culture of equitable resources allocation and ensure that peace is embraced by all citizens of this country. During the elections conflict in Kenya, in 2007-2008, about 650 000 Kenyan were internally displaced and for the first time the Kenyan Government recognized that there were internally displaced persons (IDPs) in the country, although prolonged conflicts in the north displaced various families.

2.4 Economic dimensions of conflict

The economic dimension of conflict has enjoyed increasing attention in research and policy discourse on the dynamics of contemporary conflict. The nexus between natural resources, economics and conflict has played a defining role in a number of Africa's most intractable conflicts during the 1990s and early 2000s¹⁹, but little research had been devoted to the interface between the economic dimensions of armed conflict and conflict resolution initiatives in Kenya. Understanding the economic dimension of conflict can shed light on why peace initiatives and policies fail. The main research questions that this study shall try to address include those on the relationship between class formation and conflict; poverty and conflict; inequality and conflict; natural resources and conflict; corruption and conflict; economic policies and conflict; unemployment and conflict, and trade and conflict.

The frustration-aggression theory suggests that individuals become aggressive when there are obstacles (perceived and real) to their success in life (van de Goor et al, 1996). Dollard et al (1939), quoted by Rasheed Draman (2003), in what became known as the frustration-aggression hypothesis, argued that 'the occurrence of aggressive behavior always presupposes the existence of frustration and, contrariwise, that the existence of frustration always leads to some form of aggression'. Closely associated with the frustration-aggression theory is the relative deprivation theory, which stresses that people perceiving themselves to be deprived relative to others can create intergroup hostility. Karl Marx (1818-1883) propounded the class theory, which pits the capitalist against the working class. The Marxist conflict approach emphasizes a materialist interpretation of history, a dialectical method of analysis. Marx maintained that everything of value in society results from human labor. The totality of the relations of production constitutes the economic foundation of society, on which arises a legal and political superstructure. The capitalist system is said to breed internal contradictions: the proletariat come to realize that the wealth and good life of the bourgeoisie are realized at the

19. Cone Cornelia (2007), An analysis of the economic dimensions of the conflict in the Democratic Republic of Congo with recommendations for track one diplomacy, Paper submitted in fulfillment of the requirements for the degree of International Relations: Department of International Relations, Faculty of Humanities: University of Pretoria.



expense of their welfare.

Regarding the specific relationship between poverty and conflict, one school of thought thinks that poverty causes conflict while the other school of thought argues that the reverse is true. Those who dismiss the link between poverty and conflict generally argue that poverty may lead to conflict when other factors are present – it is not a sufficient condition, they argue. According to Nelson (1998), ‘the precise links between economic grievances and ethnic conflict are elusive, variable and strongly conditioned by a wide range of non-economic factors’. However, a number of theoretical and empirical studies have established links between poverty and conflict. These studies show that poverty, inequity, scarcity of resources and external economic forces all combine to have a destabilizing impact on political stability. Poverty rose in Kenya during the 1990s. It is estimated that the proportion of the Kenyan population living in poverty rose from about 48.8 per cent in 1990 to 55.4 per cent in 2001 and to 56 per cent in 2003. It declined in the recent past, so that by 2007, the proportion of the population living in poverty was 45.9 per cent²⁰. Regionally, there are pockets of very high poverty that exceed the national average, calling for deliberate intervention. About one fifth of Kenyans could not, in 2006, meet their minimum food requirements. Over this period, hard-core poverty increased in urban areas from 7.6 per cent in 1997 to 8.3 per cent in 2005–2006. The repeated internal messages are: we are poor, there is nothing we can do about it and we are unlikely to change. In this state of mind, what would stop the ‘people’ from taking up arms and fighting each other; after all, what have they got to lose?

Since the late ‘90s, there has been a growing body of research analyzing the nexus between armed conflict and underdevelopment often referred to as the ‘conflict-development’ or ‘security-development’ nexus. A recent strand of literature suggests that economic conditions are important determinants of the outbreak and recurrence of conflict. In particular, wars often start following growth collapses²¹. Sharp economic slowdowns and low levels of income per capita appear to increase the likelihood of conflicts. Violent conflict is one of the most extreme forms of suppressing choices and advancing rights, and is therefore a major threat to human development²². Since 1990, more than 3 million people have died in armed conflicts in developing countries²³. As far as drivers of conflict are concerned, one of the most robust findings in the literature is that economic conditions of low income, slow growth and, especially, severe economic downturns are correlated with the outbreak of conflict; with some evidence strongly suggesting that the causal direction runs from economic conditions to conflict²⁴.


20. Republic of Kenya., 2008. *Economic Survey 2008* Nairobi, Government Printer

21. Collier, Paul, Anke Hoeffler and Dominic Rohner. 2009, beyond greed and grievance: Feasibility and civil war, *Oxford Economic Papers*, 61(1), 1-27.

22. UNDP 2005, Human Development Report: International cooperation at a crossroads: Aids, trade and security in an unequal world, New York.

23. Marshall, Monty G, 2005, Major episodes of political violence 1946-2004 Centre for Systemic Peace, Severn, MD.

24. Collier, Paul and Anke Hoeffler 2004, Greed and grievance in civil war. *Oxford Economic Papers*, 56(4), 563-95.



Given that poverty and low per capita income are also correlated with worse health and education outcomes, and also that these outcomes suffer as a result of conflict, the conflict trap can be conceptualized in the framework of a low human development conflict trap²⁵. Conflict destroys accumulated physical and human capital, forces replacement of labor and deteriorates institutional capacity. A country experiencing conflict cannot secure long-term returns for investments in both physical and human capital, resulting in low investment in health and education. All of these factors lead to low levels of human development.

The most notable change in the management of the Kenyan economy after independence was the implementation of structural adjustment programmes (SAPs) that began to be introduced during the 1980/81 fiscal year. SAPs did not become an important part of economic management until after the publication of Sessional Paper No 1 of 1986. The implementation of SAPs involved the liberalization of prices and marketing systems; financial sector policy reforms; international trade regulation reforms; government budget rationalization; and divestiture and privatization of parastatals and civil service reforms (Central Bureau of Statistics 1997b). The manner in which these elements were implemented thus led to drastic distortions in the core fundamentals of the economic structure of the Kenyan economy and provided the foundations for the violent conflicts witnessed in the early 1990s. The key ingredients of structural adjustment programmes were based on an economic model of private ownership, competitive markets and an outward-oriented development strategy. In the aftermath, SAP policies generated weakening of social safety nets in the country, which led to conflict in the country.

Youth unemployment is a significant problem in Kenya. In Kenya, 60 per cent of the population is under the age of 35, the unemployment rate is approximately 40 per cent, and an estimated 64 per cent of unemployed Kenyans are youth. Kenya's economy is currently dependent on agriculture, but youth are moving to urban areas in large numbers, where most new entrants to the labor force must choose between working in small-scale enterprises and being self-employed. This forms the social base of organized crime, including militant groups. Communities in Kenya with high levels of unemployment among young men, and where male education levels are low, face a far higher risk of conflict. Throughout history, factional conflict has drawn on a pool of marginalized or socially excluded young men.

In Kenya, corruption is rampant and once it becomes entrenched, its negative effects multiply. It induces cynicism, because people begin to regard it as the norm. It undermines social values because people find it easier and more lucrative to engage in corruption than to seek legitimate employment. A number of studies focusing on the impact of corruption on

25. Justino, Patricia and Philip Verwimp 2006, Poverty dynamics, violent conflict and convergence in Rwanda, Households in Conflict Network Working Paper 16.



poverty and inequality find a strongly positive relationship between corruption and income inequality²⁶. Foellmi and Oechslin show that more corruption is significantly related to an increase of the income share of the richest 20 per cent²⁷.

In 2005, the government accepted a recommendation by the National Economic and Social Council (NESEC) to prepare a long-term vision to guide Kenya's development process to the year 2030. This was done in recognition of the fact that the goal of economic recovery, as outlined in the Economic Recovery Strategy (ERS), had been largely accomplished. This long-term national planning strategy is anchored on three main pillars, namely economic, social and political, under which flagship projects and other priority programmes are to be implemented over the next 23 years. The vision is to be implemented through five-year medium-term rolling plans, starting with the first covering 2008-2012. Vision 2030 also aims to create a cohesive, equitable and just society based on democratic principles and issue-based politics grounded on the country's rich and diverse cultures and traditions. Therefore, the extent of the implementation, the achievement and the equitable distribution of the developmental outcomes of Vision 2030 shall determine the extent to which the country develops and sustains the structural factors that would address long-term sustainable peace.

With the new devolved system of government contained in the new constitution, power will no longer be centralized, but will instead shift towards a county government system. Devolution not only recognizes separation of powers, but also will provide much needed checks and balances for the executive. Democratic gains will be enhanced by greater representation, with power more evenly distributed through increased numbers of county governments. Issues related to corruption and governance have been at the heart of conflicts in Kenya, with numerous corruptions scandals threatening the integrity of leadership as well as a lack of accountability in resource acquisition, allocation, distribution and utilization. The new constitutional dispensation is dedicated to eradicating corruption, especially in the political sphere, and provides accountability measures to the highest office. Efforts to tackle corruption, coupled with accountability provisions within the new frameworks, will facilitate political and economic justice. An elaborate Bill of Rights encompassing economic, social and cultural rights informs Kenya's new constitution and makes provisions for equity even for special interest groups. Eradicating marginalization and discrimination, and promoting wellbeing are integral to nation building, with particular recognition of the rights of special groups such as women, youth and children.

26. Gupta, Sanjeev; Davoodi, Hamid R and Alonso-Terme, Rosa (2002), Does corruption affect income inequality and poverty? In: George T Abed and Sanjeev Gupta (eds) *Governance, corruption, and economic performance*, International Monetary Fund Publication Services, Washington DC, 458-486.

27. Foellmi, Reto and Oechslin, Manuel (2003), who gains from non-collusive corruption? Institute for Empirical Research in Economics, University of Zürich, Working Paper Series No 142, Zürich.



2.5 Socio-cultural dimensions of conflict

It is evident that, since time immemorial, Kenya has experienced socially and culturally based conflict and tensions. Culture describes the many ways in which human beings express themselves for the purposes of uniting with others, forming a group, defining an identity and even for distinguishing themselves as unique. In many ways culture is seen in the context of community; 'culture informs society and society is not without culture'.²⁸ It is also practiced as a mechanism for survival. When it comes to conflicts and conflict resolution, culture remains an issue of paramount importance. The abstractness of cultures arises because cultures keep on changing, but it is through culture that we bring meaning to life and identify ourselves as who we think we are, and it greatly influence people's identities.

Bates and Plog define culture as the system of shared beliefs, values, customs, behaviors and artifacts that members of society use to cope with their world and with one another, and that are transmitted from generation to generation through social learning²⁹. Culture, in this sense, is not limited to language, dressing and food customs, but extends to race, ethnicity, socioeconomic class, sexual orientation, political and religious affiliation, gender and many others. It refers to the cumulative deposit of knowledge, experience, beliefs, values, attitudes, meanings, hierarchies, religion, notions of time, roles, spatial relations, concepts of the universe, and material objects and possessions acquired by a group of people over generations through individual and group striving.

Human relationships are the cornerstones of culture, as they are of conflicts. Therefore, cultures are intrinsically attached to conflicts, and the two may complicate each other, or provide tools and insights for the betterment of human relations. Kenya is a conglomerate of more than 42 distinct ethnic groups with diverse cultures and beliefs. Conflict is reported across different communities, with stories dating back to pre-colonial, colonial and post-colonial eras. Conflict in some communities was perceived as part of normal cultural practice. Among the highland Bantus, Kikuyus, Embu and Meru, youth raiding a neighbouring community to capture girls to marry and wrestle young men from the other community was never treated as conflict. In fact, in some cases, neighbouring communities would even organize traditional wrestling matches for the youth and elders to interact. This was common between Masai and Kikuyus.

However, with increased civilization, increased population and decreased resources, competition became fierce. The advent of guns transformed medieval conflict to deadly engagement. That is not to imply that even with the crude weapons there were no aggressions or response to such acts. There were still peacemakers when such escalations occurred. That

28. Giddens et al, 2006.

29. Bates and Plog, 1990, 7.



explains community institutions such as elders, prophets, negotiators and mediators. Some are still in existence – for instance, the Njuri Ncheke of the Ameru, which is engaged in conflict resolutions. In most Kenyan communities, elders have existed principally for conflict settlement.

A good case at hand is the recent post-election violence (PEV) of 2007-2008. This is one experience that Kenya may want to forget, when communities rose against each other in a way unprecedented. Premeditation and a choreographed approach to the violence were clear, although it was blamed on a ‘stolen election’. An independent commission³⁰ to investigate the violence was established by the President as part of the Agenda Four commissions that were recommended during the negotiated coalition government process. Various analysts have pointed to culture as a major cause of PEV, highlighting the need to find ways through which ethnic grievances can be settled and power shared across ethnic groups within a democratic context. Romero’s view is resounding: “The ethno-politics prevalent in Kenya might induce a vicious circle, where both voters and political parties are unable to escape without suffering long-term consequences. Of particular interest is the finding that voting behavior depends on how Kenyans identify themselves first and foremost in terms of their ethnicity, occupation or nationality.”³¹

It is evident that cultural concerns like communal identity, ethnicity and occupation influence voting trends. The Waki report identified impunity as a cause of PEV. The same report identified hate speech as one manifestation of culture that had slowly eroded Kenyans’ concern for the unity of the communities and that was used strongly by politicians and media to perpetuate ethnic conflict. Wachira gives a vivid and detailed historical description of the mediation and peacebuilding work that was coordinated by Concerned Citizens for Peace, a lobby group that emerged to mobilize networks and individuals to restore peace and save Kenya, which was vast deteriorating into a failed state during the PEV.³²

Wachira’s view is shared by the majority of Kenyans, who know and have lived in Kenya with the appreciation that elections were not the root cause of violence, but historical injustices, economic and socio-cultural factors, security and tensions that were given power by political opportunity. He also found out that Kenyans identify themselves first and foremost as Kenyans, with their ethnic identity as a salient factor that strongly influences and influenced voting patterns. This contrasts with the Weberian and Gellnerian theories that national identity displaces sub-national identities. Not surprisingly among those who identify first and foremost in terms of their ethnicity, voting is influenced by their ethnic identity. Therefore, culture affects not only the political (voting), but also the economic in

30. The Waki Commission investigated the causes and circumstances leading to PEV.

31. Romero, 2008.

32. Wachira, 2008.



access to public services, including public goods and distribution of resources.

It is through identifying the role culture plays in any given conflict that we can come closer to bridging the gaps within and between individuals, societies and communities, as this can help people make more intentional choices to bring out positive outcomes in any given situation. This involves a more conscious understanding of communication, ways of framing the conflict, approaches to meaning making, and identities and roles. Conflicts, therefore, often involve a process in which two or more parties attempt to frustrate the other's goal attainment. The factors underlying such conflicts are threefold, namely interdependence, differences in goals and differences in perceptions. There is a perceived divergence in interests or belief that the parties' current aspirations cannot be achieved simultaneously. In other words, this would generally occur from the interaction of interdependent people who perceive incompatible goals and interfere with each other's attempts to achieve those goals. Social conflicts, therefore, involve the confrontation of social powers.

Conflict is always concerned with the distribution of power.³³ Indeed, an exertion of power is a prerequisite for the retention of a share in the determination of future relations – as well as for acquiring or retaining other benefits perceived as the 'reasons' for conflict. This power confrontation can take many forms within these institutions. Power can be assertive, altruistic and manipulative, coercive and physical³⁴. Some are intentionally directed, as are assertive and bargaining powers; one is directed wholly towards a person's body, as is force; and others are directed through another self, as are inductive and intellectual powers. All these powers may conflict; all can manifest conflict.

All social conflicts involve interests and identity. Interests are related to the occupational, social, political and economic aspirations of the individual³⁵. Understanding the interests of any warring parties is a strong starting point for prescribing the best tools to resolve a conflict successfully. Identity can be described as the norms, beliefs, practices and traditions with which one engages one's environment. Self-perception underlies the notion of identity, a pivotal component of social-psychological analysis. Identity and perceptions of the self provide the lens through which one views others. Identity is not an immutable concept; rather, it forms and changes depending on the particular historical moment. The mutability or adaptability of identity gives it vast potential as a tool for conflict management. Increasing awareness of the self and supporting a more equitable perception of others can be facilitated through cross-cultural exchanges, or high-level and highly visible dialogues. Sharing of each group's unique history, traditions and culture are all positive initiatives that mutually reinforce one's own and the other's identity. It is through understanding all these and other

33. North, Koch, and Zinnes, 1960.

34. R J Rummel, 1976.

35. Burton, 1991.




social aspects of conflicts in any resolution process that an approach to sustainable conflict resolution can be achieved.

2.6 Legal dimensions of conflict

Regarding literature, there is little engagement with law and its relationship with conflict in Kenya. There are descriptive accounts of various aspects of legality in Kenya and commentary and analysis on the use of various avenues to prosecute perpetrators of conflict in the country, but few analyses of law's relationship with conflict in Kenya. Conflict poses a major challenge and throws into relief the capacity and effectiveness of both formal and informal juridical systems and their normative role in conflict mediation and resolution. According to Adan et al, '...an overview of existing conflict management practices in Kenya highlights the fact that existing policies, strategies and the institutions that implement them are inadequate to prevent, mitigate and manage conflict and build sustainable peace'.

Despite being central to dispute resolution in the modern state, Kenya's formal juridical structures have failed to engage purposefully and effectively with the challenge posed by conflicts in Kenya. There are two ways of considering legality in relation to conflict: its contribution to conflict itself and its failure to deal with conflict. What we will realize is that it is often difficult to differentiate between legality as cause of conflict and legality in its failure to deal with conflict. In the Kenyan context, the law and the application of the law both engender conflict by commission and omission. There is a thin line between these differentiations, as often it is not so much the failure of the particular provisions of the law to deal with injustice and violations, but rather a lack of application of its provisions; impunity and corruption. However, this may also be attributable to loose legal provisions; laws that are constructed in a manner that provides those in power with the tools to exploit both the legal provisions and the loopholes therein.

Informal legal mechanisms involving a diverse range of actors engaged in escalating conflict have not received sustained and purposeful analysis despite their proximate role. The term legality is adopted to take into proper account the law's changing character and conditions of existence, the changing historical character of legal regulation and assessments of the social significance and sources of these changes. The focus is not limited to judicial or legislative forms, but includes juridical or regulative forms. Evidence of mediation and resolution of conflict points to a variety of actors and, significantly in Kenya, non-governmental and community based organizations. Indeed, in many areas, there is an apparent and distinct retreat of the mechanisms of administrative and constitutional law mandated to form the appropriate fora to deal with conflict. The approach recommended seeks to critique the responses to conflict as well as the capacity to respond within these juridical and regulatory mechanisms. This would go towards developing a concept of legality responsive within contextual dynamics



across Kenya. Conflicts in Kenya throw into relief the effects of both contemporary global and regional developments and interactions, and could form an interesting base upon which to re-imagine the law and its interactions in conflict-ridden societies.

There are important points of contradiction between the formal and informal legal regimes, for example, the lack of formal recognition of the community-level peace agreements and declarations on grazing and compensation agreements. Whilst the NSC, for example, might recognize and actively advocate the Modogashe-Garissa Declarations, such declarations and agreements are unenforceable in law and further, they might not be recognized by departments within the same ministry that houses the NSC, such as the police. Indeed, what exists is a 'conflict of laws' which is a disconnect and contradiction between the statutory and constitutional provisions of the law, and the actual experience of conflict mediation and resolution.

One of the major obstacles, however, for a well-functioning rule of law can be paradigmatic contradictions between formal laws, judicial processes and local understandings of justice. Support for the comprehensive incorporation of traditional justice systems for conflict resolution is widespread, citing the continuing need to improve effectiveness and impact of on-going peacebuilding programmes, particularly the traditional justice systems. In a study of traditional conflict resolution systems in the North Rift, ITDG EA stated that 'the overriding legitimacy of indigenous conflict resolution structures amongst these communities is striking'. Pkalya et al explain that pastoralist communities have evolved over time and institutionalized an elaborate system and mechanisms of resolving conflicts, whether intra-community or intercommunity, with the elders forming the dominant component of the customary mechanisms of conflict management, the authority they command making them effective in maintaining peaceful relationships and a community way of life. They explain that the high regard in which elders are held in pastoralist communities is perhaps the basis of the legitimacy of traditional conflict resolution mechanisms among the pastoralists.

Others explain that traditional and informal justice mechanisms continue to be useful because they overcome the principal obstacles that deny access to formal justice systems to many. Traditional justice systems are quick, are proximate to the populace, are carried out in the local language, with procedures that are understood by all, are enforced by people who are socially important to litigants, avoid the prohibitive costs of formal state systems, are relied upon and, further, as their goal is the restoration of peace and social harmony by reconciling the parties and communities to the disputes, they emphasize restorative rather than retributive justice. The importance of traditional strategies additionally lies in their day-to-day role in the resolution of conflicts. The '...resolution of day to day conflicts helps to ensure the stability needed for the prevention or resolution of more serious ones'. Further, traditional conflict resolution mechanisms are not static; they are adaptive, representing a




synthesis of time-honored practices and new techniques, as communities adapt their customs to cope with fundamentally new types of conflict arising from the constantly evolving social, cultural, political and economic circumstances in which they operate. Traditional mediation also helps the community keep control over the outcome of the dispute. Indeed, local conflict mediators typically possess moral status, seniority, neutrality and the respect of the community.

It ought not to be thought that traditional and community-based justice models and their outcomes such as peace pacts and grazing agreements are necessarily 'local' or inclusive, or that they indeed are completely effective in resolving conflicts. Many of these mechanisms might be as distant from the populace as formal justice mechanisms. Indeed, often when stakeholders are discussing peace, members of those very same communities are concurrently involved in acts of conflict. Further, as Pkalya et al explain, these arrangements are often '... flouted as soon as conditions that necessitated the pact cease to hold, as they are governed by opportunistic tendencies. In total...communities have consistent and more elaborate methods of intervening in internal (intra-ethnic) conflicts than the inter-ethnic conflicts'. Other challenges that face informal mechanisms include assessing and building legitimacy and accountability '...the less formal and visible a forum is, the more difficult it will be to assess the level of accountability to the people it serves'. This is evinced in the frequently encountered complaints that a certain community-based organization (CBO), non-governmental organization (NGO) or peace committee or peace platform favors a certain community, or is allied to certain interests, political, ethnic or economic.

There are weak linkages to the judiciary and other relevant formal institutions, and there is a lack of inclusiveness, particularly on the basis of gender. The criteria for the selection of members of these mechanisms remain a vague area. Further, there is often little participation of women in these mechanisms despite the fact that women are acknowledged as principal actors in exacerbating conflicts and in their central role in any effective conflict management process. This is particularly stark in traditional justice systems, where cultural norms may be gender biased. They have been criticized for remaining localized and located in ethnic communities; hence the adoption of this strategy could be seen as the continuation of ethnic hegemony, therefore exacerbating the conflict. Indeed, differences in traditional strategy between communities might hamper the viability and effectiveness of these structures. Further, the extent to which elders in various communities still hold significant sway over the community, particularly in respect to conflict, which is carried out predominantly by young men, is highly questionable. Indeed, in many parts of the North Rift, an often-heard lamentation is the erosion of traditional values and practices, and hence the erosion of the power of traditional structures such as the council of elders.

It is important not to equate informal, non-state approaches to 'the best approach'. That



informal approaches tend to operate at community level and emphasize the involvement of stakeholders at grassroots level is indeed a positive aspect. However, evidence suggests that people will access whatever mechanisms are most readily available or will most likely result in the best outcome. Therefore, it is difficult to assess whether formal judicial mechanisms are unsuitable at communal level because of the nature and substance of their operations, or whether they have proved unsuitable purely because they cannot be accessed due to logistical constraints.

2.7 Environmental dimensions of conflict

The working definition of environmental conflict for this study is when conflict is caused by environmental resource scarcity due to environmental degradation. Key environmental proponents attribute causes to scarcity exacerbated by the effects of environmental degradation. By recognizing that the environment is seldom a singular cause of conflict, this working definition then challenges the main contention of opponents³⁶ of the environmental conflict theory, whose major argument has been that the environment cannot be perceived as a singular driver of conflict. This definition, therefore, acknowledges the role of other factors in exacerbating conflict. In Kenya, there exists an inarguable link between environmental, political, economic, socio-cultural and legal causes of conflict due to the interconnectedness of politics and natural resource distribution. Strengthening the case for a contextual analysis, Boyce suggests that, notwithstanding the development of market economies, there is still a heavy reliance on environmental resources for development, and the allocation of these resources is both economic and political.³⁷ To arrive at this working definition, ideas from key authors on environmental conflict were considered as follows.

Schwartz and Singh define environmental conflict as caused by scarcity of either non-renewable or renewable environmental resources resulting in direct or indirect conflict relationships.³⁸ Non-renewable resources would include oil and minerals, while renewable resources would incorporate forests, air and water. They distinguish direct conflict as involving overt conflict for control or access to environmental resources, and indirect conflict occurring when the element of environmental resource scarcity interacts with other variables, such as social or economic factors, to exacerbate conflict. In this scarcity-based definition of environmental conflict, the authors link the lack of availability of required environmental resources to conflict, with or without the influence of other factors. This is a more popular definition of environmental conflict, but faces challenges in extricating environmental causes from economic or social. Defining environmental conflict as based purely on scarcity fails

36. For literature on opponents of environmental conflict see: Tobias Hagman, *Confronting the concept of environmentally induced conflict*, *Peace, conflict and development* 6, 2005, 5; Peter M Haas, *Constructing environmental conflicts from resource scarcity*, *Global Environmental Politics* 2002, 7; Christopher T Timura, *Environmental conflict and the social life of environmental security discourse*, *Anthropological Quarterly*, 111.

37. James K Boyce, *The political economy of the environment*, 2002. 1

38. Daniel Schwartz and Ashbindu Singh, *Environmental conditions, resources and conflicts*, UNEP 1999, 7.



to make the distinction that resources, like land, are perceived not solely as environmental, but as political or economic resources. The community may fight over land not because it is scarce as an environmental resource, but perhaps because it is their ancestral land and therefore of symbolic significance.

Expanding this definition of scarcity-based environmental conflict, Libiszewski clarifies that a resource scarcity conflict over renewable resources such as a land can be seen through the lens of environmental conflict only if the scarcity is as a result of environmental degrading activities such as soil erosion or climate changes.³⁹ A summative definition of environmental degradation is depletion or deterioration in the quality of environmental resources caused by human activities or natural phenomena. This perspective is especially helpful in differentiating environmental conflicts from other resource conflicts that may be instigated by political or economic sources. Conflict over land is a good example, as environmental, economic, political and social variables create varied scenarios. For example, an environmental conflict over land would arise when land degradation has induced scarcity, thereby creating land pressure and potential social conflicts. At slight variance, economic conflict over land would originate when, due to population expansion, there is a higher demand than the available supply for land ownership or access.


To support this view, Homer-Dixon proposes that it is, in fact, the social effects of environmental change or degradation that exacerbate conflict.⁴⁰ This would mean environmental degradation is a factor of consideration only if that actual element of the environment is in demand. Using the example of land again, land degradation is a factor in conflict only if the population requiring arable land far outweighs land availability. The author mentions four principal social effects of degradation as decreased agricultural production, economic decline, population displacement and disruption of legitimized and authoritative institutions, and social relations. Taking one of these social effects, economic decline, to illustrate his point, he argues that degradation of land reduces its economic potential, presenting challenges to those dependent upon it for sustenance. The links between environmental degradation, economic decline and poverty will intensify the probability of conflict. From these definitions, we can distil the major elements of environmental conflict as resource scarcity due to environmental degradation, keeping in mind the potential for this to generate social conflict.

The state of the environment

A brief look at the state of the environment in Kenya by Kamweti, Osiro and Mwiturubani reveals a land surface area of which about 83 per cent is classified as arid and semi-arid, and

39. Stephan Libiszewski, What is an environmental conflict? ENCOP occasional paper, (revised version) 1992, 7.

40. Thomas F Homer-Dixon, On the threshold: Environmental changes as causes of acute conflict, University of Toronto International Security 16, 21991, 9.



17 per cent as medium and high potential.⁴¹ They give the approximate area of forests as less than 3 per cent of the land surface, which is now under siege from deforestation, reducing the forest capacity to sustain agriculture and tourism. The authors depict Kenya as a water-scarce country and list some of the other causes of this scarcity as insufficient rain, excessive use and climate change. The arid and semi-arid lands (ASALs) of Kenya constitute 80 per cent of the country, with an estimated population of about 10 million people, 70 per cent of Kenya's livestock and 90 per cent of wild game.⁴² The state of the environment is particularly significant in Kenya because the country seems to have a natural set of environmental factors that may predispose environmental resource conflicts. These include desertification, water scarcity and adverse climatic conditions in some parts.

Land use and access

Land as an environmental cause of conflict can be seen in a literal sense when access or allocation of land purely as an environmental resource, e.g. for farming, creates conflict due to perceived scarcity. Scarcity of land is occasioned by land degradation in tandem with other demographic, economic and political factors such as population pressure and inequitable distribution of land. The National Land Policy of Kenya notes that population growth and demand for land have resulted in some holding economically untenable land fragments while others own large tracts of land that are not well utilized.⁴³ With over 80 per cent of land being arid and semi-arid, the effects of climate change have caused extreme drought conditions, forcing migration of affected populations into new areas where their presence creates competition for resources that leads to conflicts with host communities.⁴⁴ Schwartz and Singh describe the social effects of desertification as perpetuating economic decline and migrations, which in turn, fuel conflict.⁴⁵

Brown, Hammill and Mcleman emphasize that despite a causal relationship between hostile environmental conditions, migration and social conflict; this is usually not independent of other variables such as population adaptability and conflict susceptibility.⁴⁶ In Northern Kenya, which is mostly arid and subject to the effects of climate change, population adaptability is threatened by the region's marked economic underdevelopment and inadequate infrastructure to address the complex situation of recurring drought and desertification. Due to the lack of arable land in the region, pastoral communities, whose livelihood depends on livestock rearing, inhabit these arid lands. This livelihood choice impacts community life in two ways.

41. David Kamweti, Deborah Osiro and Donald Mwiturubani, *Nature and extent of environmental crime in Kenya*, ISS Monograph 166, 2009, 3-9.

42. Government of Kenya, *National policy for the sustainable development of arid and semi-arid lands of Kenya*, 2004, vi.

43. Government of Kenya 2009, *Sessional Paper No 3 of 2009 on National Land Policy*, 31.

44. IRIN Africa, *East Africa: Freedom of movement to help pastoralist lifestyles*, available at <http://www.irinnews.org/Report.aspx?ReportId=89683> (accessed 18 August 2010).

45. Daniel Schwartz and Ashbindu Singh, *Environmental conditions, resources and conflicts*, UNEP1999, 25

46. Oli Brown, Anne Hammill and Robbert Mcleman, *Climate changes as the 'new' security threat: Implications for Africa*, *International Affairs* 83:6, 2007, 1148.



Firstly, overgrazing of livestock leaves the land vulnerable to soil erosion, exacerbating land degradation. Communities are then forced to migrate in search of greener pastures, literally. Second is the cultural practice of livestock raiding, which has been a historic way of relating to other pastoral communities and exerting dominance. These factors interact with historic conflict practices such as cattle raiding to increase conflict susceptibility in the region.⁴⁷

With drought and famine, rain is another environmental factor influencing the incidence of conflict in these communities. Pastoralists are most likely to restock their herds during the rainy season, as this is when they are assured of pasture. With this knowledge, livestock raiding tends to increase during this season, as cattle are healthier and communities seek to boost their livestock numbers. The rainy season is also the chosen time for cultural practices such as rites of passage for which livestock are required for various activities, hence a new demand for cattle. This aspect of rain as a trigger of conflict in pastoral communities somewhat challenges the notion of climate change-induced drought leading to forced migration of pastoralist communities and, therefore, conflict due to increased competition for resources. If livestock raiding is more lucrative in the rainy season, then drought would result in the pastoralist communities getting rid of livestock they can't sustain instead of acquiring more. However, the conflict may be as a result of migrating communities competing with their hosts for pasture and water resources for their livestock.

Land degradation in the country has been intensified by human activities such as unsustainable cultivation and mining,⁴⁸ overgrazing and deforestation.⁴⁹ Forests and water catchment areas⁵⁰ have been subject to progressive degradation that has, in turn, affected availability of water resources, wildlife habitats and soil quality due to erosion. To redress the situation of declining water catchment areas, the government declared forest reserves and instituted a timber-harvesting moratorium, which is still in place.⁵¹ A crucial function of forests is preserving water catchment areas, which are adversely impacted by deforestation through the soil erosion and silting. Silting occurs when soil is eroded into water bodies and the accumulation of these deposits compromises both the quality and quantity of water.

47. For links between conflict and aridity see: D Hendrickson, J Armon and R Mearns, *The changing nature of conflict and famine vulnerability: The case of livestock raiding in Turkana district, Kenya, 2000*, 186; IRIN Kenya: *What drives conflict in Northern Kenya*, available at <http://www.irinnews.org/Report.aspx?ReportId=87450> (accessed 6 August 2010).

48. For case studies on this issue see: Mining Watch Canada, *Canadian resource company creating conflict in Eastern Kenya*, available at <http://www.miningwatch.ca/en/canadian-resources-company-creating-conflict-eastern-kenya> (accessed 13 July 2010); Robert Otani, *Tiomin resources: A controversial mining in Kenya, 2005*, 2; and Lielze Hill, *Kenyan titanium to Brazilian diamonds: Tiomin reinvents itself*, *Mining Weekly Online*, 2010.

49. Christoph I Lang, *Environmental degradation in Kenya as a cause of political conflict, social stress and ethnic tensions*, *CSS Environment and Conflicts Project 12:1*, 1995, 5.

50. For case studies on these issues see: *Mau Forest - Africa Policy Institute Report, Fighting for the Mau forests*, Africa Policy Institute, 2010; Government of Kenya, *Rehabilitation of the Mau forest ecosystem, 2009*; ICE Case Studies, *Ethnic cleansing and the environment in Kenya, Case 46*, available at <http://www1.american.edu/ed/ice/kikuyu.htm> (accessed 8 July 2010); Daniel Schwartz and Ashbindu Singh, *Environmental conditions, resources and conflicts*, UNEP, 1999; JK Kairu, *Wetland use and impact on Lake Victoria, Kenya region*, Department of Wildlife Management, Moi University, Kenya, 2000 121.

51. David Kamweti, Deborah Osiro and Donald Mwiturubani, *Nature and extent of environmental crime in Kenya*, ISS Monograph 166, 2009, 4.



Water use and access

Conflicts instigated by access or control to water resources range from rainfall shortages and the consequent effects to conflicts over economic and livelihood uses of water resources. Environmental factors that have affected the quality and quantity of available water resources are overfishing, water pollution and climate change. In the State of Environment Report 2006/7,⁵² the National Environment Management Authority-Kenya indicates that despite the presence of substantial drainage basins, they are not evenly distributed, giving rise to indicators of water resource stress. The report emphasizes that, with climate change projections of reduced precipitation, the quantity and quality of water levels remain under threat. Conflicts related to reduced quality and quantity of water resources are experienced particularly by fishermen, whose lifestyle depends on availability of fish stocks, and the resident population, which requires this water for economic and livelihood uses. In a country that has been referred to by some authors⁵³ as water-scarce, the deterioration in the quality and quantity of the available water resources is a definite threat to environmental and economic development and also creates a new component of scarcity that can breed future conflicts.

Conservationists and community conflicts

Human-wildlife conflict, though typically a challenge in the arena of conservation, has evolved as a strain on the relationships of the community and those in charge of wildlife conservation. Akama puts forward that one of the reasons for these conflicts is that the trend in wildlife conservation policy has sought to separate the resource-user rights from the rural communities that have traditionally coexisted with the wildlife in these areas.⁵⁴ The local communities bear the brunt of the damage done by the wildlife, yet they feel they are not adequately compensated or considered within the conservation agenda, which appears tailored to cater to external interests. Communities close to wildlife face damage and destruction to crops, attacks on livestock, competition for water and pasture, and direct threats to their lives⁵⁵.

Degradation from climate change

The State of Environment Report 2006/7 focused on the effects of climate change and coping mechanisms in Kenya. What seemed like a distant threat to human survival is now evident, as indicated in reports of reduced glacial cover on Mount Kenya, landslides, and flooding

52. State of Environment Report 2006/7, the National Environment Management Authority-Kenya, 2007, 127

53. David Kamweti, Deborah Osiro and Donald Mwiturubani, Nature and extent of environmental crime in Kenya, ISS Monograph 166, 2009, 3-9.

54. John S Akama, The evolution of wildlife conservation policies in Kenya, *Journal of Third World Studies*, Vol XV, No 2, 1998, 103-113.

55. Philip Muruthi, Human wildlife conflict: Lessons learned from AWF's African heartlands, 2005, 2.



and rain variability, especially affecting the ASALs. These environmental phenomena link to conflict when their effects, such as reduced precipitation, induce scarcity of pasture and water, thus bringing communities into direct competition for diminishing resources. Causes of climate change are both natural and human-induced, with the latter including activities such as increased use of fuels, leading to excessive emission of greenhouse gases and global warming.⁵⁶ Brown, Hammill and Mcleman⁵⁷ highlight four climate change threats to development in Kenya, namely exacerbated scarcity of food, water and energy; more migration; more natural disasters and the spread of infectious diseases.

In conclusion, the recognition of environmental drivers and triggers of conflict in Kenya is a critical framework of analysis that will greatly contribute to conflict prevention. Analyzing root causes of conflict is essential in informing policy and planning to ensure that conflict is transformed in a sustainable way. Although the literature demonstrates that environmental factors are seldom the singular cause of conflict, the environment remains a vital resource on which human survival thrives, therefore a potential ground for conflict. Environmental conflicts are particularly significant in the Kenyan context, where communities depend on the environment for their survival. Environmental conditions such as drought and climate change perpetuate a state of increasing scarcity of arable land and water resources. Land scarcity is further exacerbated by human-caused environmental degradation through deforestation, over cultivation, overgrazing or pollution. There is, therefore, an urgent need to address all genres of environmental conflicts, namely land, water, human, wildlife and climate change, to ensure sustainable development.

56. State of Environment Report 2006/7, the National Environment Management Authority-Kenya, 2007, 127

57. Oli Brown, Anne Hammill and Robbert Mcleman, Climate changes as the 'new' security threat: Implications for Africa, *International Affairs* 83:6, 2007, 1147.



CHAPTER THREE:

POLITICAL CAUSES OF CONFLICT

3.1 Introduction

The springboard of this analysis is to test the extent to which Kenya's political history influences its present dynamics. By conducting a current situational analysis against a review of literature on the country's history, it is possible to determine the extent of political evolution and/or development. This should serve either to give hope for the future, or strengthen the impetus for change. Kenya's political past demonstrates a number of realities and dynamics.

The country has grappled with poor governance and leadership, systemic corruption, marginalization of some regions caused by inequitable development and inequalities, and a weak and shaky political system worsened by lack of issue-based politics. There has also been a proliferation of parties, most of which are ethnic and shaky alliances founded on ethnic calculations. Hence, ethnicity has become a quick political mobilization tool, and this partly explains why electoral processes have been triggers of violence. Politically euphoric moments have preceded new regimes, which in turn have failed to live up to citizens' inflated expectations. This has been true at every change of administration in post-colonial times. Unfulfilled expectations have been feeders of discontent with the national government.

Personalization of political power and tendencies towards authoritarianism has occasioned repressive practices by successive regimes, including constriction of political and democratic space and political assassinations. In each of Kenya's post-colonial regimes, there have been suspicious killings of leading national figures. These aspects have informed increased identity-based tensions and conflicts. Political succession battles have often led to ethnic alliances motivated by political elites' power plays and manipulation of group identities. This aspect of the country's politics is a structural cause of ethnic power struggles.

The nature of government and its management has affected peace and stability in the country. The extent to which a regime have worked towards forming inclusive governments, such as governments of national unity and/or power sharing arrangements, has either helped or negated peace. Wrangles over miscarried power-sharing arrangements and/or disagreements



over the management of such coalitions have been major catalysts of conflict even at lower levels.⁵⁸ Organized political violence informed the anti-colonial struggle, but has also been a government and/or grassroots communal instrument of maintaining and/or seeking political power. As such, the country's political history is dotted with political gangs, from the Mau Mau to the KANU Youth Wingers and the modern militias, some of whom draw their inspiration from this past. Whereas the Mau Mau were freedom fighters whose cause resonated with the masses, recent Organized gangs have increased the lethality of ethnic-based, electorally motivated violence and contributed to insecurity in different parts of the country.⁵⁹

Creation of administrative and electoral units along ethnically defined boundaries has structurally sustained inter-ethnic competition, as groups fight for exclusive territory whose affairs they will determine. This is a colonial invention that lingers. National and local conceptualization of citizenship has not only informed marginalization of perceived minority groups, but has influenced ethnic conflicts as groups contest for ownership of land they consider either historically or legally theirs. This has occasioned in-group versus out-group strife, with the in-group citing historical rights to land and the perceived out-group citing legality of their ownership to land. This is the politics of indigeneity⁶⁰ and migration. In Turkana's Todonyang area, Kenya's Turkana and Ethiopia's Merille communities conflict over grazing lands, to which the latter group feels it has historical rights. However, with colonial boundaries, nationalities changed. In Molo, electoral and land clashes between groups have their roots in perceptions about which group has indigenous rights to land in the area.

This analysis elucidates the current local level dynamics of politically driven conflicts in relation to this history. The objective is to map relevant political aspects and to assess the level of vulnerability towards conflict.⁶¹

3.2 Causes of political conflicts

This study examines political causal factors of conflicts in Kenya. Structural, proximate and trigger factors are analyzed per issue of discussion.

58. In 2003, the Raila Odinga wing of the National Rainbow Coalition (NARC) government criticized President Kibaki for failing to honour their pre-election memorandum of understanding on power sharing. Under the 2008 National Accord, disagreements have been fuelled largely by different interpretations on the application of the Accord – specifically relating to the powers of the President and the Prime Minister.

59. For more discussion on Organised crime and armed violence refer to the chapter on security issues.

60. In Mamdani M, when victims become killers: Colonialism, nativism and the genocide in Rwanda, the author uses the term 'indigeneity' to refer to the historical rights groups claim for being the original inhabitants.

61. For more information, refer to the chapter on literature review, section on political aspects of conflict.



Ethnicity and political conflicts

Politicization of ethnic and clan identity is a constant factor explaining conflicts in virtually all parts of the country. This is essentially through manipulation of inter- and intra-ethnic group dynamics by political elites. There are three broad ways in which ethnicity has determined conflict dynamics in the country.

Patronage and ethnicisation of politics

An examination of the root causes of negative ethnicity yields one common response – the central role of political elites in sowing divisions. Underlying this claim is the reality of patron-client relationships that political leaders maintain with their electoral blocs to attain and/or maintain power. These networks of patronage take the form of political leaders' efforts to secure national and/or local positions for their supporters, and of securing other valued resources for their constituents. Hence, the struggle over resource allocation and distribution often takes parochial forms of overemphasizing the rights of one's community to the exclusion of others.

As such, skewed government resettlement efforts in post-independent Kenya are viewed to have squandered a momentous nation-building opportunity.⁶² The post-colonial settlement of communities originally from Central province in Rift Valley is locally interpreted in the province as an attempt by Gikuyu Embu Meru Association (GEMA) patrons to secure the rights of only a section of Kenyans (ethnically defined), rather than assuring land to all Kenyans regardless of ethnicity or class.

In Coast province, the seed of regional semi-autonomy seems to have been fed by the ethnic land distribution that resulted in historical dispossession of indigenous coastal communities, which explains the squatter problems in the province to date. Capitalizing on this, coastal political elites have rallied local communities to band together on issues as a political survival strategy. It is from this perspective that a leading politician in Coast made statements viewed as inflammatory during a July 2010 constituency parliamentary by-election. The politician sought to rally public support by exploiting identity consciousness among coastal communities.⁶³

Intra-ethnic dynamics exist too. In upper Eastern's Marsabit for example, whereas cross-ethnic political competitions manifest commonly, a hidden dynamic is intra-ethnic manipulation of clan identities to maximize votes a politician can garner. Thus, whereas

62. There were multiple settlement schemes, but the most contested are those in central Rift Valley.

63. The National Cohesion and Integration Commission (NCIC) later investigated the minister and forwarded its report to the Attorney General and police, recommending his arrest and prosecution. See Mwakere targeted in hate speech probe, Daily Nation, 20 July 2010.



inter-ethnic alliances (e.g. REGABU – Rendille, Gabra, Burji alliance) are forged in vying for positions, there exist clan-based alliances such as TUMEONA (Tubcha, Uyam/Uruwen, Matarbah, Elegeza, Odhola, and Nahgan clans) among the Rendille. TUMEONA is an alliance of minority clans seeking to counterbalance the influence of the bigger Rendille clans. There is a similar clan-based mobilization of voters among the Borana, Burji and Gabra, with particular clans among these groups tagged as ‘politically active’.

In Nyanza’s Kisii and Kuria regions, similar inter-clan dynamics have dictated electoral dynamics and political conflicts. In Kuria for instance, inter-clan political rivalries have driven some groups to claim that a leading politician in the area relies on bolstered support from members of their clan resident in Tanzania. Further, most of North-Eastern province is characterized by clan-based mobilization of voters to capture political power (in terms of civic and parliamentary seats). In Coast province’s Bura, respondents talked of politicians holding night meetings with opinion leaders with a view to forging identity-based alliances.

Ethnicity is, therefore, at the centre of politics. It is the political elite’s chosen alternative to ideological and issue-based politics, since it is the quickest mobilization tool. Yet at the root of this is the colonial divide-and-rule policy, in which groups were Balkanized (e.g. through formation of ethnically motivated administrative units). But modern politicians stay fixated on this approach, rather than transforming the country’s politics.

Boundaries and administrative/electoral units

The political disputes about unclear boundary demarcation of electoral and administrative units, and even the debate about the location of the headquarters of these units in a number of areas around the country, are a continuing concern. For example, the location of county headquarters is believed to have attendant resource gains. And this has been a basis for marginalized groups to insist on a more central location (or one that favors them) as a means of opening up areas. In actual fact though, political leverage, ethnic considerations and the quest for autonomy ultimately determine the way this issue is handled, and in effect this influences conflict or peace.

In Nyanza’s Kisii region there has been a dispute over the location of Kisii town, which is claimed by politicians from Kitutu Chache and Nyaribari Chache. Still in the province, the sub-division of Kuria into Kuria East and Kuria West districts in 2007 sparked inter-clan clashes over the location of the Kuria East district headquarters. This conflict recurred in 2009, leading to displacement of thousands. As political parties have proliferated since the reintroduction of multiparty democracy, so have districts increased. The number of administrative and electoral units has multiplied in the name of bringing administration and services closer to the people. But in fact, it has been to reward supporters or bait them for



political ends. This has had a negative effect on ethnic consciousness.

The creation of Western's Bungoma County with the passing of the new constitution has triggered an identity-based contention over the location of county headquarters. Whereas the minority groups (Sabaot and Tachoni groups) are for Webuye or Kimilili as county seat, the Bukusu have no problem with Bungoma remaining the local capital. It is also difficult for the Sabaot to accept being re-joined with Bungoma after Mt Elgon was carved out of the former in 1993. The residents of Mt Elgon blame their area's underdevelopment on inequitable distribution of resources when they were under Bungoma. In Meru, long-running intra-group disputes over land and boundaries exploded into open conflicts, with the creation of new districts in 2007-2008. Tigania and Tharaka clans have had serious clashes over boundaries.

Boundaries and conflicts have been used in containerization⁶⁴ of ethnic groups by the political elite's intention to maintain fiefdoms. The debate about the contentious new electoral units (constituencies and wards) created by the then Interim Independent Boundaries Review Commission (IIBRC) should be viewed in this light. The accusation that the IIBRC has been partisan for creating 'safe' constituencies for some political leaders is based on this historical practice (of containerisation). The ethnic claim on historical rights to land and voting zones is also influencing conflicts around the naming of some areas. During PEV, the names of some settlement schemes were considered contentious because of their ethnic origin, e.g. in Trans Nzoia the name Kamwaura was considered foreign, as was the name Kiambaa or Burnt Forest.

Political intolerance

That the scars of the 2007-2008 PEV still persist is irrefutable. More than half a million people were displaced, and more than 1000 killed. Thousands still live in transitional camps, while others were displaced away from their areas of employment to ancestral homes. Thus, the problems of unsettled displaced persons still persist, while justice for perpetrators hasn't been realized. This analysis emphasizes political motivations of violence and areas of new concern.

It should be remembered that Rift Valley's political elites' reaction to the reintroduction of multiparty democracy in 1991 was to call for majimboism (a form of federal government). Some analyses locate the trigger of 1990s' pre- and PEV in the Rift Valley to these elites' call

64. Containerisation refers to the creation of electoral and administrative units to enhance political, economic and social dominance of certain groups such as ethnic communities.



for majimbo in Kapsabet and Kericho⁶⁵. In this sense, (ethnically targeted) political violence became an elites' tool for maintaining or attaining political power. But this has evolved. Respondents gave narratives about how, given perceived indigenous communities' hosting of perceived 'migrant' communities, the migrants were expected to at least be 'politically assimilated' – meaning that they were needed to vote in similar patterns as the 'hosts'⁶⁶. Hence, part of the public discourse that sought to explain the displacement of perceived migrant groups from sections of Central and North Rift was that the 'migrants' failed to 'reciprocate' their hospitality by voting for the choice of the 'host' community. This is at the core of political motivations of electoral violence – to scare off or absorb a substantial chunk of a rival community's votes.

But there are new trends. First, violence has been made attractive as a strategy for defending one's democratic right to vote. Respondents from Marsabit talked of how hostilities formed from political fallouts (after elections) persist for 'years, even up to the next general elections'.⁶⁷ It is, therefore, not an isolated problem, but common in a number of places, such as in Marsabit and parts of central Rift Valley. This attractiveness of violence poses more complex security challenges, as demand for more sophisticated weapons rises in parts of Central and North Rift. This threatens to militarize politics (refer to the analysis on security aspects for small arms dimensions).

Secondly, communities now find it necessary to 'containerize' themselves in respective administrative and electoral politics on ethnic grounds.⁶⁸ This intensifies political intolerance, risking further marginalization of minorities as a factor to inform future conflicts.

Lastly, there are new sites of contestations for political dominance. This is occasioned partly by the creation of counties, and therefore the creation of new minorities and introduction of new arenas for political competition. For instance, the creation of counties such as Bungoma has unearthed rivalries between minority groups (the Sabaot and Tachoni) and the predominant Bukusu. The creation of Marsabit County – which combines Moyale, Marsabit, North Horr and Laisamis – is likely to intensify the alliance-seeking behavior of communities (e.g. the Rendille, Borana and Gabra), and as such, heighten rivalries. In Trans Mara, there is a persistent concern that the battle for political dominance between the Masai and Kipsigis groups might fester into worse conflict. This was evidenced by the destruction of ballot boxes by one group that sensed defeat in the 2007 parliamentary elections.⁶⁹

65. See Nyukuri, KB, *The impact of past and potential ethnic conflicts on Kenya's stability and development*, a paper prepared for the USAID Conference on Conflict Resolution in the Great Horn of Africa, June 1997, 12

66. More of the politics of indigeneity shall be discussed shortly, but also check with analysis of sociocultural aspects.

67. In-depth interview in Nanyuki, October 2010

68. Key informant interview in Nakuru, September 2010

69. Interview with NCCCK Central Rift coordinator on 17 September 2010,

Politics of citizenship

Kenya's poor legacy with defining integrative citizenship⁷⁰ has fed apathy and ultimately informed negative ethnicity to some extent. Communities in northern Kenya have for decades felt forgotten in political and development terms. Historical injustices of human rights violations (during the Shifita War⁷¹ in North Eastern province and later on security operations in the province and the North Rift) have entrenched feelings of exclusion. Yet over time, as the political playing field has become more competitive and coalition politics attractive, the political value of northern communities has appreciated. Further, with a new constitution that has entrenched the Khadhi's courts and devolution, the northern communities will have a lot more say on their own and national governance.

There is a perception that Kenyans from northern areas have to walk with their identification cards close to their hearts everywhere they go.⁷² This challenge has been governed by a communities' political value in the ability of their political elites to negotiate for key political appointments in government. This is changing. While apathy persists, cemented by the continued socioeconomic marginalization, Northern Kenya is significantly gaining political footing to influence national policy, with key appointments to national positions of individuals from this region. But government approaches to disarmament – which have been mostly forceful – in northern Kenya (consisting of North Rift, upper eastern and north eastern regions) continue to be reasons for disenchantment.

Politicizing indigeneity

Two provinces are the main hotbeds of the identity-based contestations for exclusive rights to territory – Rift Valley and Coast provinces.⁷³ This 'indigenous versus migrant groups' politics is partly rooted in the nature of immediate post-independent land distribution and/or re-distribution. The Coast province wapwani-wabara dichotomy (coastal indigenous groups versus 'hinterland' migrants) has been politically utilized to rally indigenous groups (the wapwani) to vote for perceived defenders of their rights. This is a strong unifying factor given the fact that significant numbers of coastal people are landless (when most of their land is owned either by a few elites and industries or by migrants from the hinterland). Politicization of identity in the Coast province goes further to distinguish between coastal

70. Integrative citizenship necessitates inclusivity, where diverse groups own a common national identity.

71. The Shifita War was a secessionist struggle among ethnic Somalis in the immediate post-independent period (1963–1967). It was informed by wider Somali irredentism that sought the creation of a pan-Somali state incorporating Somali groups in parts of Kenya, Ethiopia and the entire Somalia and Djibouti. See Hannah Whittaker *Pursuing pastoralists: The stigma of Shifita during Shifita War in Kenya 1963–1968*, Op cit.

72. Paraphrased from Halakhe Waqo, the NCIC Commissioner's speech during the Uwiano consultative forum for Nairobi at the Norfolk Hotel, July 2010

73. With the new constitution's creation of counties as the new administrative units, such identity-based politics for exclusivity will probably be played out at county level.



indigenous groups with the longest history there and coastal Kenyan Arab groups that are the descendants of pre-colonial and colonial Arab traders left in Mombasa. Whereas the Arabs are coastal people, they are not viewed as original dwellers of the area. Politicians, therefore, exploit this divide to emphasize indigeneity as a prerequisite for political leadership in some areas.

In Rift Valley, the early 1990s' conscientisation of indigenous groups not only to assert their right to land, but to seek to maintain political power mutated into a lethal violent culture of targeting perceived migrants for eviction from their land. This triggered some level of heated debate on the history of settlements in the province. 'If anyone has a right to Rift Valley, then it is the Masai,' noted one respondent. Yet another sought to demonstrate the history of ancient Kisii-Kipsigis conflicts in the province as a demonstration of the Kisii's stake in the province. It is this study's submission that this consciousness was deeply ingrained in communities by the political elite in the early periods of reintroduced multiparty politics. It was a selfish political maneuver that was used not only in Rift Valley but in other parts of the country.

For instance, in Bungoma County, the Sabaot narratives on rights to land ownership underscore their claim to most of the land in the county, when in the current state they are limited mainly to settlement on the slopes of Mt Elgon. In northern Kenya, claims to ownership and control of grazing land and water points are laid on the basis of identity-based assertions of movement and settlement patterns. While in Central Eastern, the influx of (Kikuyu) migrants from Rift Valley who are seeking friendlier environments to settle is triggering intra-GEMA competitions that haven't been as pronounced before. In urban centers, the indigenous claims to land ownership in areas such as Nairobi's Kibera informal settlement, have brought to the fore the divide between groups citing historical land rights and those seeking housing rights.

Ethnicisation of the state

The history of ethnically motivated control of the state – through personalization of political power (reads presidency), parochial 'kitchen cabinets' consisting of the presidents' inner circle, and the pattern of skewed government appointments in favor of the ruling president's community – has made the state (or its nature) a structural cause of political division. The ethnic state apparatus triggered the imperative to politicize identity as a political survival strategy at lower levels. The allure of the benefits of controlling government resources once in power only entrenched zero sum electoral politics. Ultimately this has led to waves of bloody political violence. Restructuring the state and its apparatus through enhancing measures for inclusivity at all levels would help forge a national rather than ethnic identity. Political parties, either in their clamor for more democratic space or in the management of their affairs, are major determinants of political dynamics with an impact on conflict. Various



aspects of political parties came under scrutiny.

Nature of parties and internal party democracy and discipline

The short-term nature of many political parties is a major point of criticism. That the political elite form and/or join political parties, which they later dump for others, is evidence of the temporariness of ideology and permanence of political self-interest in Kenya's politics. This is viewed as having institutionalized party indiscipline, where party members don't feel bound to party ideals and have contributed to lack of issue-based politics. This form of rule-breaking behavior is bound to trickle down to the grassroots.

A second viewpoint is that parties are political machines for maintaining networks of loyal supporters. To secure this support, parties depend on personalities with a big ethnic following. In essence, a good number of parties are visible only in particular ethnic zones. In this way parties become institutions for divisions rather than national unity. Thirdly, because of the immense power of the party leaders, in the event of their demise (e.g. the late Jaramogi Oginga Odinga and the late Michael Wamalwa Kijana), party members are trapped in a nostalgic longing for the leadership qualities of the departed. It was seen to be indicative of degeneration – that a party that is over dependent on its key leaders loses its ability to generate new equally or more capable leaders.

'The ushering of the new constitution has created the imperative for political parties, and the manner in which they are run, to reform.'⁷⁴ This is because parties have historically procrastinated on conducting regular party elections to fill internal positions. But with the new constitutional order, there is a felt need for increasing democratic space within parties, and for having a 'political parties' code of conduct' that is enforceable by the Registrar of Political Parties. This way, parties would (be made to) adhere to the new constitution's provisions on leadership and integrity.⁷⁵ Further, wrangles among party leaders are cited as a leading contributor to local level intercommunity tensions. For instance, the political fallout between the Raila Odinga, leader of the Orange Democratic Party (ODM) and one of his two deputies, William Ruto, has been noted as a major cause of intergroup tensions among their supporters along the Rift Valley-Nyanza border. Some cases of cattle theft from Nyanza have also been reported.

Conversely, where political party leaders seek alliances with parties (and/or leaders) with strong political bases in other regions, this has also influenced camaraderie among supporters of the new allies. In this sense, the running of political parties, and their approach to national politics, has an influence on peace and conflict.

74. Informal interview with Ford Kenya National Youth Coordinator in Nairobi, November 2010

75. Chapter Six of the constitution of Kenya



Political instrumentation of gangs

The political instrumentation of gangs is a major concern in the country. These gangs are mostly armed with crude weapons, but have been major instruments of spreading violence during party nominations, campaign rallies or general elections. They comprise:

Party youth wingers: These were especially lethal in the 1990s fractious multiparty politics. Specifically, the KANU Youth Wingers were known to violently disrupt opposition party meetings. These were sustained by the political party's machinery, and given the thin line between state and party then, the youth wingers had some extent of state machinery at their disposal.

Political goons/gangs: Political parties adapted to the challenge of a repressive regime (under President Moi), by hiring youths for protection during public rallies or any major party event. This culture legitimized the goons, who grew in power and became better established, like the Baghdad Boys of Kisumu. Whereas these gangs are reliant on periodical financial support from the political elite, their growth in influence has meant that in some places, they can levy charges for their services.

Organised gangs: In some places, such as Western's Mt Elgon (with the Sabaot Land Defense Force, SLDF), Coast (with the secessionist leaning Republican Council), and Central, Nairobi and parts of Rift Valley (with the Mungiki), militias have existed and at varying points grown in power so much as to attract coercive government intervention. In Mt Elgon, there was Operation Okoa Maisha (Operation Save Lives), alleged extrajudicial killings of suspected Mungiki members in Nairobi and Central, and in Coast's Mulungunipa the police have once flushed out suspected members of the secessionist group MRC. These militias run 'parallel governments', such as the Mungiki's taxation of residents in parts of Nairobi (e.g. Mathare North) for security and other services.

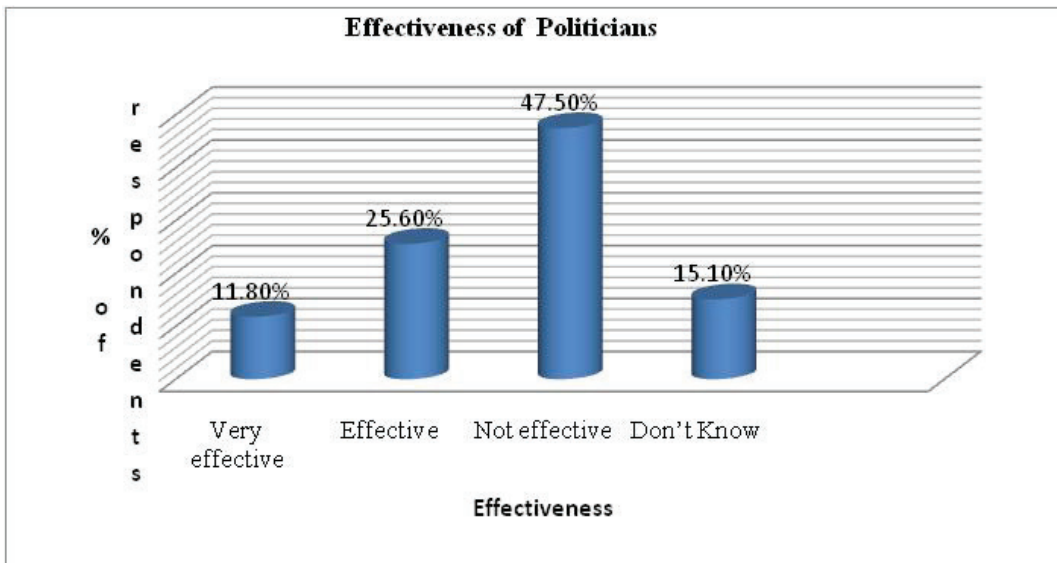
Warriors/Morans: In most of northern Kenya (and parts of South Rift), pastoralist communities have armed warriors who are equally susceptible to political manipulation and misuse.

3.3 Actors in politically driven conflict

This section restricts itself to discussing primary actors in political conflicts. These are the main parties that directly determine conflict dynamics.

Politicians

Respondents demonstrated the critical significance of politicians in defining intergroup relations in their respective areas. The irony is that, whereas politicians are acknowledged as holding sway in defining (discordant) intergroup relations, they are also viewed as critical actors in conflict resolution by a significant proportion of respondents. Although the predominant opinion was that the politicians are not effective (47.5 per cent), 11.8 per cent felt that they are very effective, while 25.6 per cent thought they are effective. Some 15.1 per cent didn't know what to say.



This confirms that political leaders are central to determining the status of conflict or peace in an area. In several parts of Rift Valley, electoral violence in the 1990s was triggered by the role of political leaders in mobilizing communities for *majimbo*. The role of politicians in catalyzing the 2008 PEV has been the focus of multiple analyses and investigations.⁷⁶

Political parties

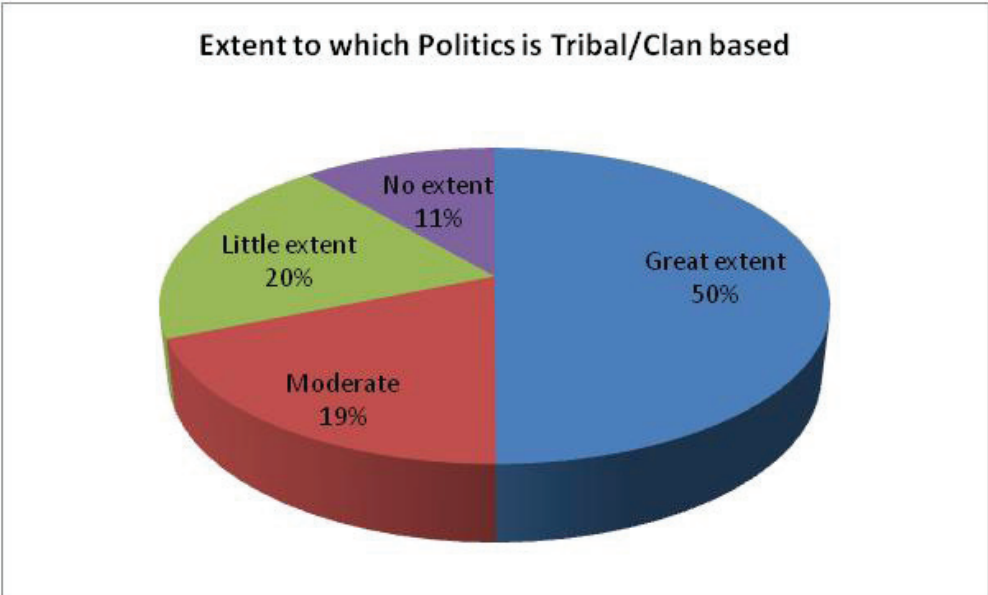
The history of Kenya's political systems is one of extremes. At independence, the country started off as a multiparty state (with two dominant political parties – KANU and Kenya African Democratic Union, (KADU). The merger of KANU and KADU ushered in a *de facto* one party state. Jaramogi's Oginga Odinga's Kenya People's Union (KPU) did not fare

76. See the Commission of Inquiry into Post-Election Violence (CIPEV), *Report of the Commission of Inquiry into Post Election Violence*, (Nairobi: Government Printers, 2008) and Kenya National Commission on Human Rights (KNCHR), *On the brink of the precipice: A human rights account of Kenya's post-2007 election violence*, (Nairobi: KNCHR, 2008). The on-going International Criminal Court Chief Prosecutor's investigations are also believed to be focusing on the role of some high-ranking politicians.




well after its formation in 1966. It was banned a few years later in 1969. In June 1982, Kenya became a *de jure* one party state following a resolution of parliament. This created unrest, and there was an attempted coup. This in turn led to an increasingly suppressive Moi regime. Hence, for most of post-independent Kenya until the reintroduction of multiparty politics in 1991, the predominant party in Kenya's political landscape and only ruling regime was KANU.

From a suppressive pre-1991 state, Kenya embraced pluralist politics wholesomely as political parties proliferated and politicians became pragmatic about membership in and leadership of the parties. Parties became known more for their utility as vehicles for capturing power than for their role in fronting an elaborate ideology and/or governance system. In seeking political power, the shortest route to bagging the most votes became the exploitation of ethnicity rather than the more laborious exposition of one's ideas and making these appealing to Kenyans. Hence, Kenyan political parties tend to have ethno-regional strongholds. So much so that the study found that 50 per cent of respondents felt politics is to a great extent influenced by ethnicity and clan (see chart below).



Tracking the number of political parties in the country has been difficult. But estimations of the number of parties prior to the enforcement of the 2008 Political Parties Act put the figure at between 150 and 300.⁷⁷ It is visible that there was an astronomical increase in the number of parties, given that at 31 December 2005; the defunct Electoral Commission of

77. See Konrad Adeneur Stiftung, *Weighing options for electoral victory: A situational analysis of political parties in Kenya four months to the elections*, available at http://www.kas.de/wf/doc/kas_11720-1522-2-30.pdf?070827145148 (accessed 20 March 2011), 1 and Electoral Institute for the Sustainability of Democracy in Africa (EISA), *Kenya: Registered political parties 2010*, available at <http://www.eisa.org.za/WEP/ken2010parties.htm> (accessed 20 March 2011).



Kenya (ECK) indicated that there were 54 political parties in Kenya.⁷⁸ A number of these were briefcase parties, opportunistically created to cash in on politicians seeking a party ticket for their ambitions. This *laissez faire* scenario changed with the implementation of the 2007 Political Parties Act. Importantly, the enforcement of this legal instrument reduced the number of registered political parties to 47 by March 2010.⁷⁹

The Act requires parties to have a national outlook. It also makes provisions for government funding of political parties – an important step towards freeing parties from either cash flow challenges or control by the wealthy. Internal party democracy in most parties is viewed as wanting. Contestation for party positions at national, branch and sub-branch levels has been viewed as a function of patron-client relationships. Hence patrons of major parties are known to sponsor proxies for given party positions. And this process is known to breed animosity among political elites as well as raising grassroots antagonism with the elite (and with rival grassroots groups).

In the new constitutional dispensation, there are explicit requirements about leadership and integrity, and measures barring political leaders (the executive) from holding party positions. All these are going to help enhance party discipline and professionalism. But there is also need for the Registrar of Political Parties to be given more teeth in terms of taking action against parties flouting legal provisions.

Youth and youth groups

The youth are the most susceptible to political manipulation. They are the pool from which most politicians draw their support. They are also the bulk of party youth wingers and organized gangs, whose utility in political violence comes in handy whenever required. A comprehensive youth empowerment Programme is essential in breaking the youth's exploitation in spreading politically motivated mayhem.

Other actors

The National Security and Intelligence Service (NSIS) have proven an important player in managing political risks. In the 2007 pre-election period, the NSIS is believed to have warned security agencies about the potential of violence after the elections. With hindsight, the NSIS situation and hotspot analysis from June 2007 to 2008, was largely accurate in its predictions, but the security forces (the police and military) failed to act on its recommendations.⁸⁰ More

78. See The Standard, Report: *Kenya has 54 political parties*, 1 May 2006, available at <http://allafrica.com/stories/200605010595.html> (accessed 20 March 2011).

79. EISA, Op cit.

80. See the Commission of Inquiry into Post-Election Violence, *The Report of the Commission of Inquiry in to the Post Election Violence*, Nairobi: Government of Kenya, 58.



detailed analysis on the country's security apparatus in relation to peace and conflict can be found in the security and legal chapters.

Lastly, the former ECK was disbanded in the light of the bungled 2007 elections, whose results precipitated the PEV. ECK was not entirely independent of the executive – the president had powers to almost choose commissioners, while the ECK lacked the powers to effectively reign in political contestants who breached electoral regulations. Other analyses have pointed to the incompetence of officials and agents of ECK, which contributed to the electoral anomalies that became the basis of numerous election petitions.⁸¹ With the disbandment of ECK, the Interim Independent Electoral Commission (IIEC) and the Interim Independent Boundaries Review Commission (IIBRC) were formed in May 2009 to manage electoral processes and review electoral boundaries respectively. The IIEC discharged its mandate professionally, and embraced transparent use of information and communication technology in tallying election results during by-elections. But the IIBRC, in its boundaries review mandate, failed ultimately to deliver acceptable report detailing boundary reviews of constituencies – due essentially to sensitivities over representation and formation of new electoral units.

Although the IIEC and IIBRC are to be replaced by one body – the Independent Electoral and Boundaries Commission (IEBC) – the bill establishing the IEBC is yet to be debated in parliament. But the main concern has been to ensure the IEBC's complete independence from political machinations, and guarantee its efficient discharge of its core mandate by professionally overseeing elections without delays and holding electoral officers accountable for their actions.

3.4 Political indicators

Political statements

When political leaders publicly speak figuratively or otherwise, sometimes their statements are indicative of a potential or actual conflict, especially when these border on hate speech. Often, public statements in the form of parables, metaphors and/or stories are made with a view to shaping public opinion. In most cases the public is ethnically divided in opinion, and this can feed conflicts.

81. See Masha Baraza, Expert opinion on the jurisprudence emerging from the 2007 election petitions in Baraza, M (ed), *Compendium of 2007 Election Petition Cases: Emerging Jurisprudence, Vol2*, Nairobi: Kenya Section of the International Commission of Jurists, 2010, 224.



Secretive political meetings

This is closely related to the first point. When political leaders hold secretive meetings that exclusively target given ethnically defined voting blocs, the implicit message is one of division rather than unity, and as such voters define their allies in ethnic rather than patriotic terms. Worse still, most secretive political meetings have aspects of incitement and this contributes towards accelerating conflict situations.

Citizens' Kamukunji (meetings), discussions and public opinion

The informal gatherings of members of the public discussing mostly politics and issues of national concern are often a good basis for measuring public opinion, contentment and/or discontentment. Such informal but small gatherings, mostly in urban areas, were considered a factor in mobilization of groups during the PEVPEV. Similar can be deduced from public opinion on topical issues on politics and/or national affairs in media and other opinion polling.

Political party and government wrangles

Party and government leaders' wrangling over decision-making and policy issues in parties and the government are a trigger in political conflicts. Considering that political leaders resort to mobilization of supporters to support their cause, party and government disagreement can be a basis for concern about the potential impact on intergroup cohesion, especially where the leaders involved have substantial following.

Militia activity/inactivity

The activation of organized gangs for political ends is a critical indicator of the potentiality of a violent conflict. Considering the fact that political gangs, by virtue of their organization, have the capacity to spread violence swiftly and lethally, recruitment of members into such gangs, or their overt involvement in and/or support for specific political parties and/or leaders signals conflict (or its likelihood) at a higher level. Gang activities, such as issuing eviction notices and/or threats to perceived out-group communities, are also predictors of violent conflict.

Inter-ethnic coexistence

The nature of relations among communities can accurately predetermine their peacefulness or hostility. Ahead of any electoral processes, for instance, reports of lower level inter-community squabbles, disagreements over political standpoints, eviction threats and relocation of community members to areas considered safer, among others, indicate political conflict.



Constricting democratic space

Government clampdowns on the media and/or muzzling of freedom of expression (if such expression is critical of the regime), failure of political parties to practice internal democracy, and secretiveness of government and/or legislative processes of public interest, among others, indicate a slide to repressiveness and should therefore be guarded against.

3.5 Political interventions

Political settlements


In Kenya's political history, there have been several forms of post-colonial political settlements:

Presidential appointments and/or patronage: The political appointment of elites perceived to represent particular ethnic interests has been a major approach to calming disagreements in the name of national unity. For instance, President Kenyatta is believed to have appointed Daniel Toroitich arap Moi his vice-president in 1967 to quiet Kalenjin clamor for ancestral land in central Rift Valley. Similar approaches to settling political disgruntlements have been practiced over the years.

Inter-Parties Parliamentary Group (IPPG) reforms 1997: This political deal between the then KANU government and opposition parties set the ground for minimal constitutional reforms prior to the 1997 general election. It has been critically viewed as a raw political deal that derailed the civil society-fronted call for a new constitution.

MoU: Prior to the 2002 elections, it is believed a number of opposition political leaders (Mwai Kibaki, Kijana Wamalwa, Raila Odinga, and Charity Ngilu among others) signed a gentlemanly pre-election pact (under an alliance dubbed NARC) as a strategy to beat Moi's preferred successor – Uhuru Kenyatta. The failure to implement that MoU (upon NARC's victory) became the source of government wrangles (mainly pitting President Kibaki's wing against Raila Odinga's group). These wrangles fed local-level disenchantment with the government (in parts of the country). By the 2007 general election, the conflict potential was high.

National Accord: Negotiated by Chief Mediator Kofi Annan, the 2008 National Accord represented the first legally enforceable political settlement in Kenya's recent history. It made provisions for a power-sharing government and set the ball rolling for a series of reforms.



Power sharing: Ruling regimes have resorted to formation of governments of national unity (GNU) or some form of coalition government in the interest of national unity. During President Kibaki's first term (2002–2007), a GNU was formed in his effort to maintain some level of national cohesion after the Kibaki-Raila fallout. Simeon Nyachae was among key politicians included in the president's new cabinet.

Civic education

Civil society actors have implemented various civic education programmes to raise awareness among members of the public of their rights and responsibilities as voters. This has had some impact in getting voters to make wise choices. For instance, the Kenya National Civic Education Programme (NCEP) of 2001 to 2002, which was implemented by a consortium of civil society organizations (CSOs) and funded by the United States Agency for International Development (USAID), reached an estimated 16-17 per cent of the Kenyan population. NCEP activities were found to have promoted individual awareness about the Kenyan constitution and the constitutional review process. The intervention also altered the individual's sense of civic competence and overall political knowledge, and individual democratic orientations.⁸² The second phase of NCEP, dubbed Uraia (Swahili for citizenship), was implemented between April 2006 and September 2007. It was found to have similar impacts as in the first phase. For instance, participants' civic competence and involvement were deepened, while a sense of patriotism as opposed to ethno-nationalism was enhanced.⁸³

Grassroots political dialogue

Reconciliation efforts in the aftermath of the PEV have been useful in peacebuilding. This role has been played by both civil society and government. An example of government grassroots reconciliation efforts is the *Operation Ujirani Mwema* (Operation good neighborliness). This initiative targeted hotspots of the 2007-2008 electoral violence, and aimed at rebuilding intergroup relations between conflicting groups in parts of Rift Valley. Prior to this initiative, there was *Operation Rudi Nyumbani* (Operation return home), which aimed to return IDPs from IDP camps to their homes. The police were deployed to guard them for some time as they settled in transitional camps (around their farms). But the process was not conflict sensitive nor was it effective, as people would return to camps once the police withdrew. Further, police protection of former IDPs only made the latter appear favored and hence reconciliation with neighbouring communities became complicated. The operation integrated the work of DPCs, which were formed round the country to institutionalize peacebuilding at local level. The effort was later followed up with *Operation Tujenge Pamoja* (Operation build together), which aimed at rebuilding destroyed shelters in hotspots.

82. Paul, Mbatia and David Leuthold, The impact of the Kenya National Civic Education Programme on democratic attitudes, knowledge, values and behavior, Washington DC: MSI, 2003, IV.

83. Steven, E Finkel, Jeremy, Horowitz and Paul, Mbatia, The impact of the Second National Kenya Civic Education Programme (NCEP II-URAlA) on democratic attitudes, values, and behavior, Draft Report, Washington DC: MSI, 2009, IV.



Unfortunately, these government-fronted initiatives were poorly conceived, organized and timed. They also used the overstretched provincial administration to manage them. Even with training from civil society actors, the administration police's Peace Corps Programme could not properly support the exceptionally challenging resettlement and peacebuilding tasks while simultaneously dealing with broader security concerns.⁸⁴

There are currently county-level discussions to build peace. This initiative is facilitated by the National Steering Committee on Peacebuilding and Conflict Management (NSC) and the National Cohesion and Integration Commission (NCIC), among other actors, under the Uwiano Initiative (coexistence initiative). These dialogue forums, which have so far covered areas such as Uasin Gishu, Upper Eastern and Mt. Elgon, have focused on facilitating community discussions on means of nurturing peace beyond the elections. The initiative involves a wide spectrum of stakeholders.

3.6 Conclusion

The fact that politics is viewed as the predominant cause of conflicts by respondents (see chart in analytical framework), underscores the necessity of systemic political reforms in Kenya. In essence, such transformation involves legal and institutional changes. The raft of changes the country has embarked on has been phenomenal – institution of the Truth, Justice and Reconciliation Commission (TJRC), the NCIC and the Constitution Implementation Commission as well as the enforcement of the Political Parties Act, which seeks to streamline party politics and creates an arbitration mechanism for intraparty disputes.

These reforms touch on the hopes of Kenyans. Some 36.7 per cent of respondents echoed the need for interventions that strengthen the culture of tolerance. A series of reforms (in the land, judicial and security sectors) were proposed as approaches to sustainable peacebuilding. This indicates the importance of an analysis of legal aspects of conflict, and the necessity for legal and policy frameworks that would sustain political reforms. This discourse (on legal issues) is better addressed in the next chapters.

84. Jacqueline M Klopp, Patrick Githinji and Keffa Karuoya, *Internal displacement and local peacebuilding in Kenya: Challenges and innovations*, Washington DC: USIP, 2010, 7.



CHAPTER FOUR:

SECURITY ASPECTS OF CONFLICT IN KENYA

4.1 Introduction

Nations in the East African region have faced challenges of war, conflict, governance and poverty. Kenya has emerged one of the more peaceful nations in the region, with a strong economy. It is one of the most stable areas in an unstable area.⁸⁵

The emerging paradigm of security is based on the concept of human security. This concept challenges the traditional notion of security by putting a human being in place of the state as the proper referent for security. This notion contends that people-centre security necessitates national, regional and global stability, hence linking the traditionally opposing principles of sovereignty and human rights. From its conception, human security had two components: freedom from fear and freedom from want; in other words, absence of violence and war and absence of hunger and illness.⁸⁶ As the concept has developed, the former component has been favored over the latter. For Kenya, with its location in the Horn of Africa, both components of human security need to be treated equally since they indicate the vulnerabilities that characterized the region.⁸⁷ According to the UNDP Report on Human Security of 1994,⁸⁸ within this new understanding of security, threats to human security can be 'economic, food, health, environment, personal, community and political', which are categorized broadly as economic, environmental, political and societal security.

4.2 Security analysis and historical trends

Security is a basic human right. As a country, security is regarded as a matter of national priority, and one of the most significant factors contributing to the quality of life among communities worldwide. It provides an enabling environment for citizens to live and work in, and it stimulates social, economic and political development. This study was undertaken to investigate the levels of insecurity of Kenya to understand the security dynamics and

85. Mwangi on human security in Northern Kenya in 2010.

86. Wario, 2006, 14.

87. Kabelo, 2008, 19.

88. UNDP report on human security of 1994.



factors that cause conflict in the country.

Information gathered from focus group discussions demonstrated notable security triggers of conflict, notably cattle rustling, murder cases, political incitements, land grabbing and arson. The study also found the following indicators of conflict as the salient triggers for violent conflict – burning of houses, dog poisoning, migrations, political incitements, animal theft, murders, mutilation of stray animals, and scramble for and marking of assets from other communities. Whenever conflicts are about to begin, one or more of these indicators are witnessed in the neighborhood.


Conflict triggers and conflict resolution mechanisms have transformed over time, given the nature of conflict and its manifestation over time. The traditional conflict resolution mechanism by and large worked in the traditional set up. Traditionally, councils of elders were involved in negotiation for grazing areas, which ensured that no community was denied access to key resources. The system had its own disciplinary measures for culprits, for example among the Borana community culprits were treated as outcasts and were not allowed to interact socially with other community members or even share sources of water with the community.⁸⁹ The system had rather high success rates, as the community worked in unison for fear of the wrath of other community members and because of the personal fear of culprits and their families, of the evils that would befall them for failure to abide by community norms and practices.⁹⁰

Lately, legal, structural and generational challenges have rendered the system largely ineffective. Government administrative structures, boundaries and policies have made some overlook the need for traditional negotiations, seeing themselves as Kenyans who can live and graze anywhere in the region. The changing lifestyles of community members and the effects of modernization have also resulted in negative perceptions of the elders' decisions, especially by the youth who see such decisions as barbaric and out-dated. These perceptions were found to be cross-cutting in that both pastoralists and agriculturalists regarded the importance of elders' decisions as diminishing. Consequently youth no longer listen to the elders.

Other factors that have contributed to this include DPCs, who seem to have taken over the roles of traditional elders. For this reason, the study strongly proposes a legalized DPCs structure that will inform various dynamics in this sector. It also notes that the delay by the government in taking prompt action in pursuit of stolen animals or dealing with minor incidents, which, if not checked early, can build up and eventually lead to major violent

89. Mwangi on human security in Northern Kenya in 2010.

90. Wario, 2006.



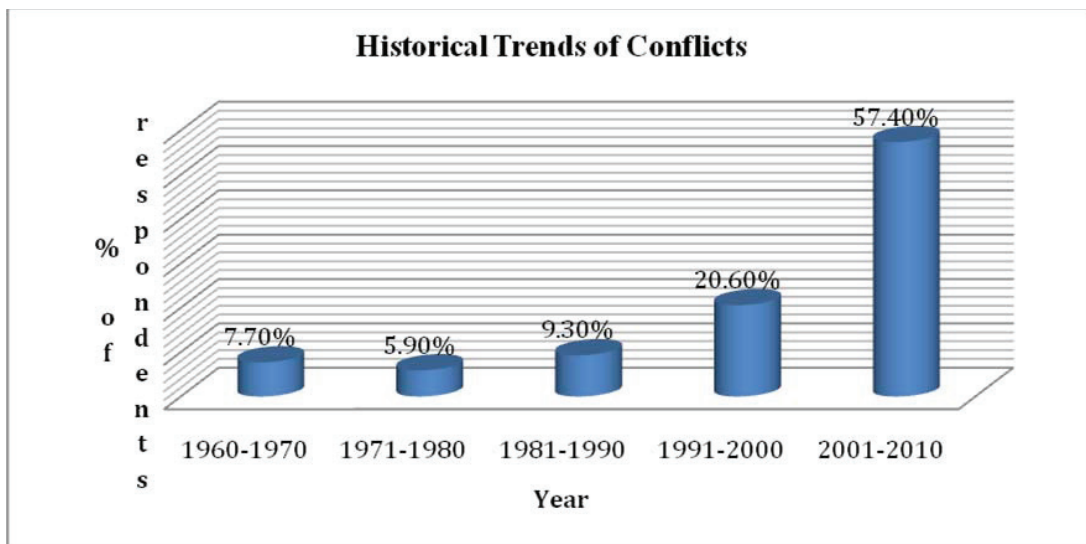
conflict. This is worsened by lack of coordination and harmonization of the traditional conflict resolution mechanism with other existing peace initiatives; and lack of any financial facilitation to enable the elders to attend to cases in far-flung areas. The elders do not receive any financial support or facilitation of any kind that can enable them to reach areas of conflict and deal promptly with situations. In Laikipia and Marsabit, this study found that politicians have taken over the role of elders and use ethnic and clanist forces to rise in their political careers. Those with duty-bearing roles of quashing conflicts tend to fear the wrath of the politicians, thereby creating impunity and sustenance of lawlessness.

The interplay between economic, social and political factors has contributed to crime and the state of insecurity in Kenya. Kenyans have been manipulated to consider voting for leaders not on their ability but on their ethnic origins. Political leaders think the only way they can advance their careers is by appealing to the instincts of the masses, inciting them against rival communities. Ethnic clashes are, therefore, a beast that can be awakened by political leaders, particularly during general elections. This is evident in the periodic occurrence of violence every five years before and after general elections. Reference is made to the years 1991-1992, 1997, 2002 and 2007-2008, during which politicians incited their communities against other groups that did not support them during the elections.

In 2008, the Peace and Reconciliation Committee (PRC) in Marsabit estimated that at least 70 per cent of the families it worked with, owned firearms, which were bought and owned mainly by the family. The absence of effective government security presence, fear of guerrilla attacks from neighbouring states such as Ethiopia, South Sudan and Somalia, cattle rustling, highway banditry, criminal activities and the need to provide own security for the family and its livestock are some of the reasons given for gun ownership. Illegal arms from these countries are increasingly used to fuel tensions and cause serious clashes among communities.

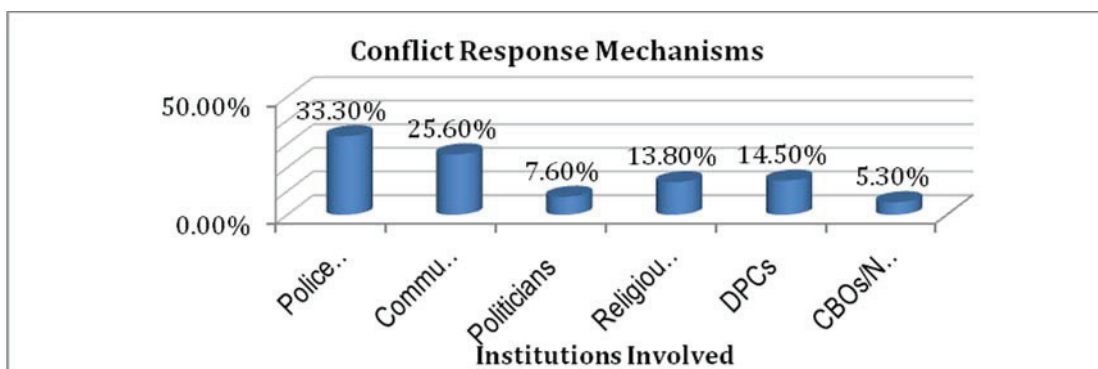
Before the rise of the state and state-based security, communities policed themselves and entrusted elders with various tools and instruments to prevent and mitigate conflicts. These traditional conflict management mechanisms have since broken down or been watered down by the government. Traditionally, the warriors were responsible for ensuring the safety of the community through the guidance and leadership of the elders.⁹¹ Illicit arms have also found their way to urban centers, creating fear among poor and rich.

91. Kabelo, 2008.



Kenya experienced relative peace with no major conflict that threatened national security and unity prior to the PEV of 2007-2008. However, in the last two decades, there have been high incidences of conflict. According to this study, about 57.4 per cent of incidents occurred between 2001 and 2010, with per cent 1990 to 2000 having the second highest figure, up to 20.6 per cent. Respondents in the FGDs cited mainly Samburu, Turkana, Pokot Marsabit, Mandera, Isiolo, Molo-Kuresoi, Mt Elgon, Narok and Naivasha as areas with prolonged conflict.

4.3 Conflict intervention mechanisms

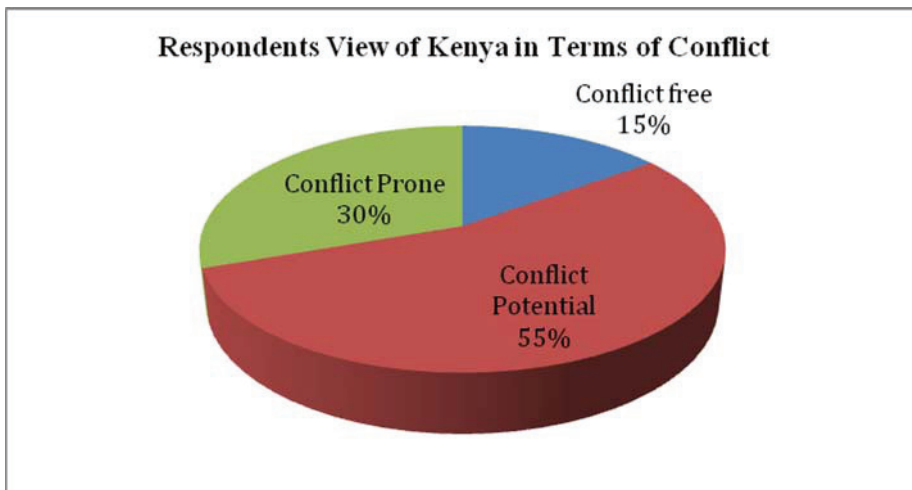


Respondents mentioned a number of responses to past conflicts. Police and community response appeared to be the most common responses according to respondents in Mombasa, Kitale, Tana River, Nyeri, Kiambu, Machakos, Kisumu, Narok, Naivasha, Eldoret and Mt Elgon. Police response was mentioned by 33 per cent of the respondents and community response by 25 per cent. The police and the community constituted 58 per cent of conflict

response mechanisms. Religious leaders and DPCs were mentioned by 13.8 per cent and 14.5 per cent respectively. NGOs and political leaders contributed to 5.3 per cent and 7.6 per cent of total response mechanisms. On the basis of these responses the study recommends that community policing initiatives should be enhanced to address the conflict response mechanism more appropriately and with more collective responsibility.

Security and conflict in Kenya

The majority of Kenyans interviewed – 55 per cent – considered Kenya a conflict-potential country. Thirty per cent felt that the country was conflict prone; while 15 per cent believed it was conflict free. Respondents from counties in Northern Kenya regarded the country more prone to conflict than respondents from agricultural communities in central Kenya. The following figure summarizes these findings.



This data were supported by FGDs held in various areas, where respondents observed that the country was likely to enter conflict during periods such as the elections.⁹² In upper Eastern, however, respondents experienced frequent conflicts, mainly resource-based and believed the country to be conflict prone.⁹³

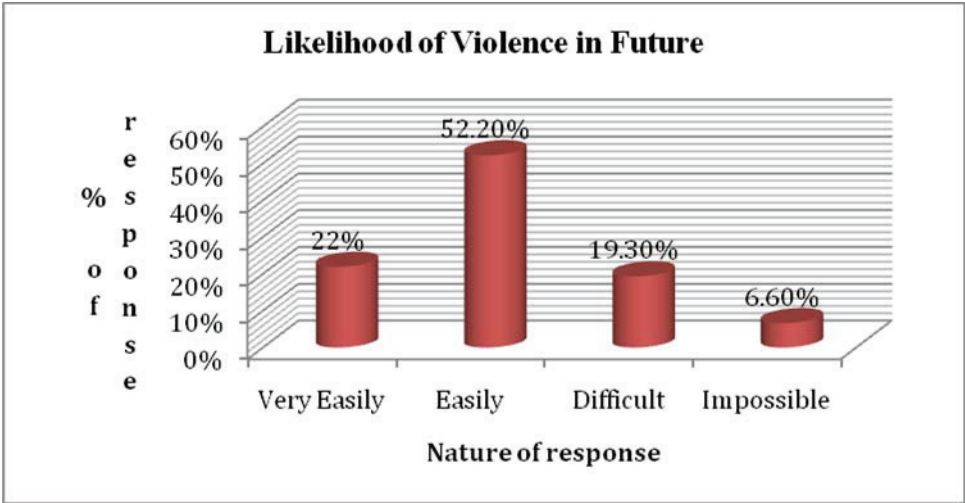
Likelihood of violence in future

A number of factors, including the possibility of conflict recurrence, are usually considered in the performance of post-conflict reconstruction. With this in mind, the research sought to assess whether violence is likely to erupt again. Faced with response choices of very easily, easily, difficult and impossible, 53 per cent of respondents were of the view that violence can erupt easily, with 21 per cent choosing 'very easily'. Some 19.3 per cent and 6.6 per cent of

92. FGDs with respondents in Molo, Kuresoi, Borabu, Kiambu and Sotik.

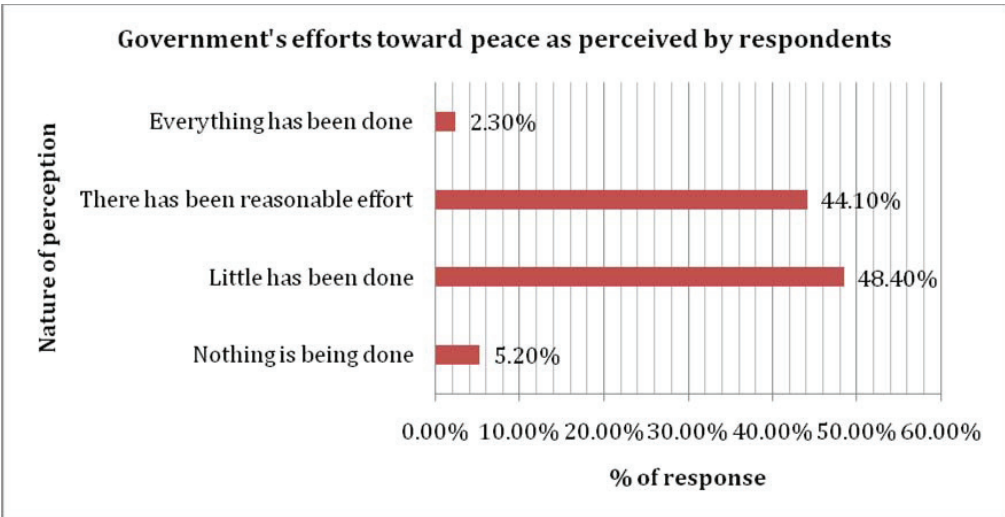
93. FGDs with respondents in Moyale, Laisamis, Isiolo, Samburu and Maikona.

respondents respectively argued for difficult and impossible.



Government addressing causes of conflict

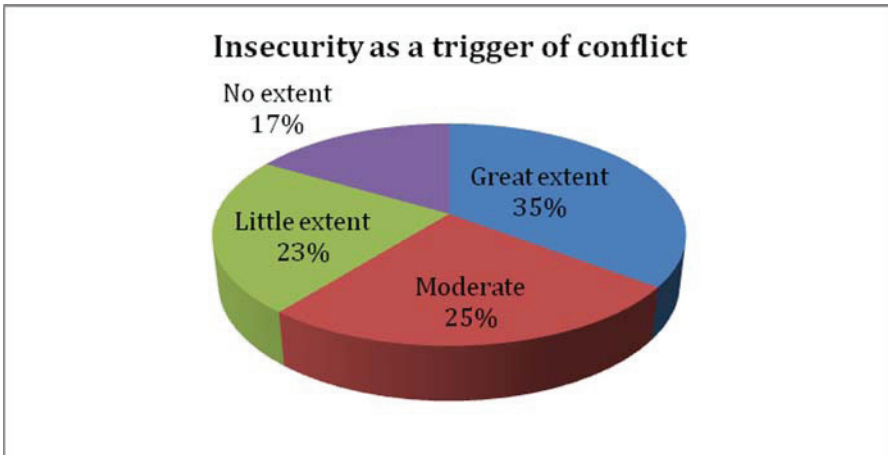
The PEV of 2007-2008 revealed deep-seated differences among various communities, with many observers arguing that sustainable peace is possible only after addressing historical causes of conflict. Indeed, the government responded to this by forming several commissions e.g. the Commission of Inquiry into PEV in Kenya, the Independent Review Commission on the General Elections, and the TJRC, to try and address some of the causes of conflict in the country. Although some progress was made, this study sought the views of Kenyans. Many – 48.4 per cent – maintained that little has been done, while 44.1 per cent felt that the government had made reasonable effort and 2.3 per cent felt that everything has been done. The trends from this study show that the government of Kenya is making some efforts in addressing most causes of conflict in the country.



Security issues in conflict

Politics and security-related issues were noted by respondents as the main causes of conflict in the country, at 30 per cent and 22 per cent respectively. Despite the fact that 30 per cent of the respondents cited politics as the main cause of conflict in the country, they did not explain why (refer to chapter on political aspects). It is also clear that Kenyans consider insecurity as the second cause of conflict in the country (22 per cent). This may stem from the fact that many criminals have taken advantage of security lapses in some parts of the country, a situation which has led to fear and a sense of helplessness among Kenyans.

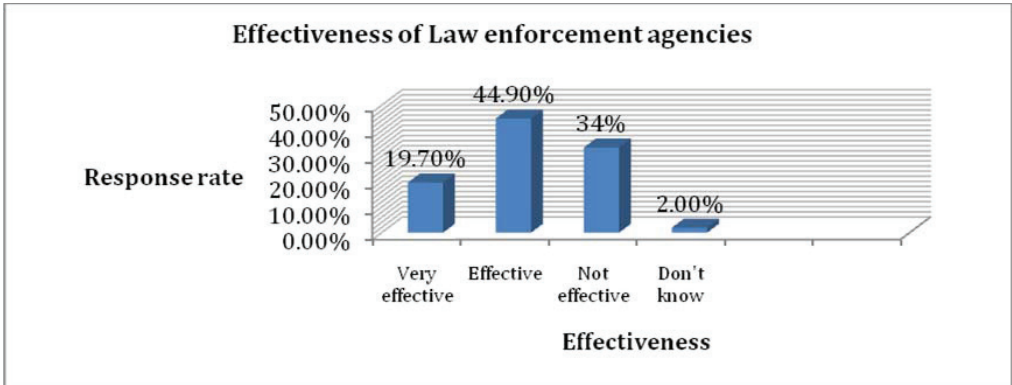
Insecurity



Thirty-five per cent of respondents felt that insecurity was a major contributor to conflict in the country. Many parts of the country have experienced insecurity, with organized gangs being a common phenomenon. During FGDs undertaken countrywide, it was pointed out that the problem of insecurity has been aggravated by either slow response by police to distress calls, an inadequately staffed police force and poorly equipped police posts.⁹⁴ The assertion by respondents that insecurity was the greatest cause of conflict may have been informed by the above issues.

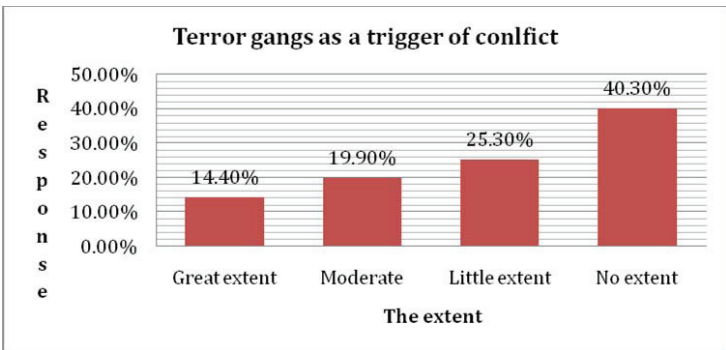
94. FGDs in Turkana East, Baringo East and North Horr, Tana River and Kuria.

Security agencies



The police and other law enforcement agencies are very instrumental in conflict prevention and post-conflict reconstruction. Thus, this study focused on the effectiveness of these agencies. Some 19.7 per cent respondents rated the police as very effective, while 44.9 per cent rated them effective. These views were supported in the FGDs and key informant interviews, where respondents noted that the responses of police to the security needs have greatly improved. A case in point was the handling of the referendum of August 2010 and subsequent by-elections. They also noted that there was political will to undertake reforms through the establishment of the Police Reforms Implementation Committee. The FGDs also identified counties such as Mandera, Garissa, Isiolo and Uasin Gichu, where police had worked well with peace committee members.

Organized gangs



Although organized gangs have been cited as a major problem in some parts of the country, mainly Nairobi, Nakuru, Mombasa, Eldoret, Kisumu and Mt Elgon, about 60 per cent of those interviewed felt that it has contributed minimally to conflict in the country. Those who felt that it had no or little contribution to conflict were 40.3 per cent and 25.3 per cent respectively, with another 19.9 per cent and 14.4 per cent of respondents indicating that it had moderate or great contribution to conflict. It is estimated that the country has about 33

illegal organized gangs,⁹⁵ which continue to cause a real threat to the safety and security of Kenyans.⁹⁶

Table: Mapping of armed groups in Kenya

Illegally armed group	Associated ethnicity	Area of activity
Balargaret Land Defence Force	Kalenjin	Molo Mau area
Kalenjin Land Defenders	Kalenjin	Molo Mau area
Kalenjin Youths	Kalenjin	Molo
Mungiki	Kikuyu	Pockets countrywide
Baghdad Boys	Luo	Kibera, Kisumu
Siafu	Luo	Kibera
Bukhungu Boys	Luhya	Kibera
Labor Youth	Nubi	Kibera
People's Liberation Army	Kalenjin	Rift Valley
Sabaot Land Defence Force	Sabaot	Western (Mt Elgon)
Chinkororo	Kisii	Kisii
Republican Council	Digo, and some of other Mijikenda members	Kwale (Mulungunipa Forest)
Taliban	Luo	Mathare, Huruma, Baba Dogo, Kariobangi North and South
Kosovo	Luo and Luhya	Kibera
Kebago	Kisii	Kisii
Sungu Sungu	Kuria	Kuria

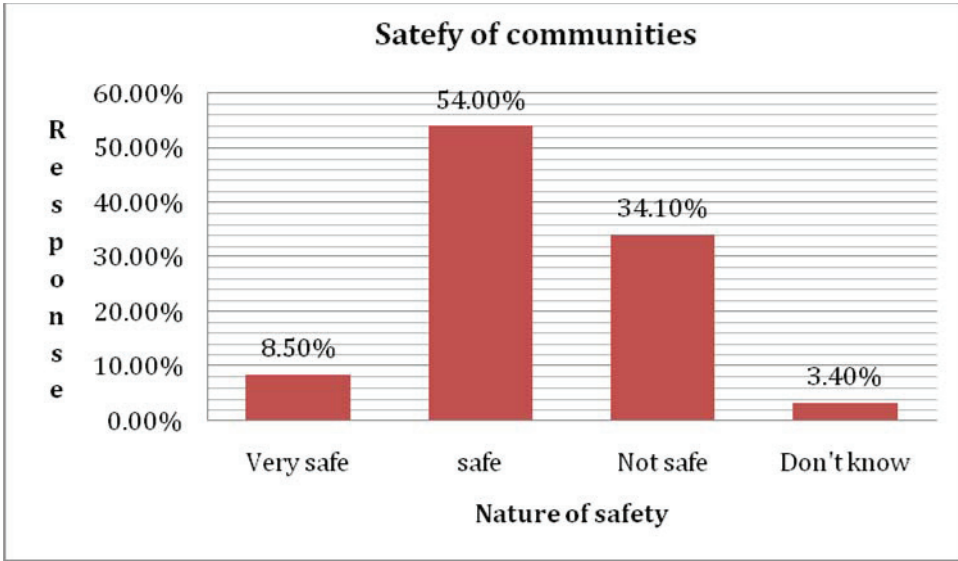
Source: Kenya National Dialogue and Reconciliation (KNDR) Monitoring Project.⁹⁷

95. Kenya National Dialogue Management Project and legal notice, May 2010.

96. For a detailed analysis of Organised crime and armed violence, see the report from monopoly to oligopoly of violence: Exploration of a four-point hypothesis regarding gangs, militia and state fragility in Kenya, unpublished report of 2011.

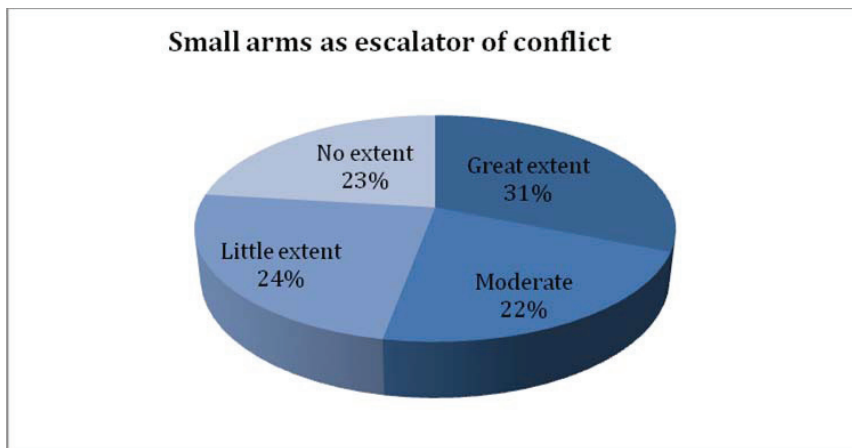
97. South Consulting, Agenda Item 1, Immediate action to stop violence and restore fundamental rights and liberties: Report on status of implementation, Nairobi: South Consulting, January 2009, 6.

Safety of communities



Community safety goes hand in hand with security. Communities living outside their ancestral lands have often faced the threat of violence when conflicts assume an ethnic angle. This was the case in PEV and in previous elections-related violence. Some 34.1 per cent of those interviewed felt that their communities were not safe. FGDs in Sotik-Borabu, Molo-Kuresoi, Njoro-Ndefo, Eldoret, Kitale, Taita Taveta and Mt Elgon revealed strained relationships and suspicions among communities that are thought to be 'outsiders'. Some respondents feared evictions due to strained relationships between them and the host communities. It was, however encouraging noting that 54 per cent of respondents indicated that their communities were safe. However, it is not only elections that lead to ethnic animosity, as discussed elsewhere in this report. Other incidents, such as cattle rustling and competition over land and related resources, have also been known to trigger ethnic conflict in the country.

Proliferation of illicit small arms

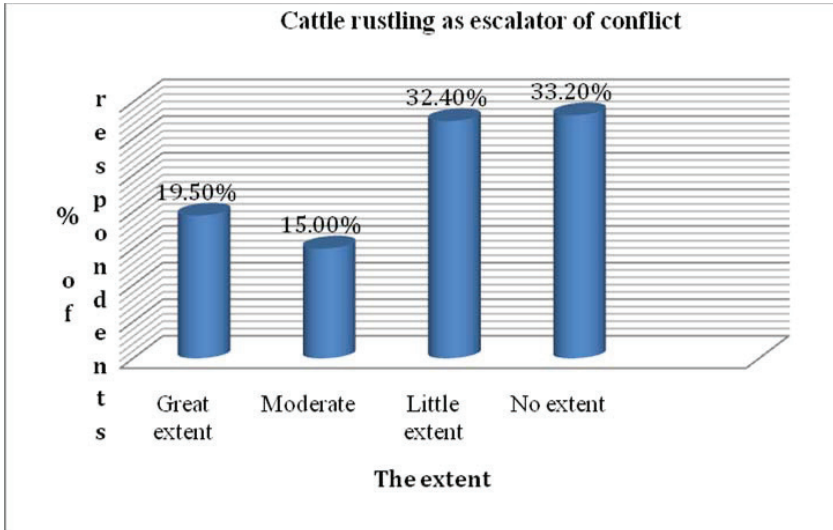


The availability of illicit small arms and light weapons has, for many years, been found to trigger violent conflict. In this study, 31 per cent of the respondents indicated that small arms have contributed greatly to conflict escalation, especially in Northern Kenya, including Turkana, Pokot, Elgeyo, Isiolo and Marsabit counties, where FGDs were conducted. These findings corroborate the BBC reports that alluded to the rearming of communities in preparation for 2012.⁹⁸ They further support the thesis that illicit small arms and light weapons can easily be concealed and transported from one place to another. This phenomenon has been witnessed lately in urban areas such as Narok, where caches of illicit small arms have been recovered.

Cattle rustling

When asked to respond about cattle rustling's contribution to conflict, 32.4 per cent and 33.2 per cent of the respondents indicated that it had little or no effect. A further 19.5 per cent and 14.4 per cent said that cattle rustling contributed greatly or moderately to conflict. Despite the fact that cattle's rustling is confined to pastoralists' communities and non-pastoralist communities such as those in Nyandarua, Kuria and Meru, it remains one of the greatest triggers of conflict in some parts of the country. Respondents in FGDs held in Isiolo, Marsabit, Samburu, Laikipia, Pokot East and Turkana identified cattle rustling as a major trigger. Due to the limited presence of police in these areas, this problem has been left to perpetuate itself, causing serious security challenges. Therefore, the fact that only about 35 per cent of respondents consider cattle rustling a conflict trigger does not imply that it is not a national problem – it is a major security issue especially in Northern Kenya.

98. BBC, 2009, Kenyans rearming for 2012 poll, BBC 7 October 2009 Issue, available at <http://news.bbc.co.uk/2/hi/8293745.stm>



4.4 Conclusion

This study established that Kenya faces numerous safety and security challenges. However, these challenges are unique, depending on context, whether geographical or administrative. They also affect men and women in different ways. Any security destabilization reverberates across the economic, political, environmental and socio-cultural front and vice versa. The five variables examined, namely effectiveness of security agencies, mushrooming of organized gangs, proliferation of illicit small arms, community safety and cattle rustling, all contribute to the complex nature of security needs of all Kenyans. Both state and non-state actors have continued to collaborate in addressing these challenges, specifically the on-going reforms in the security sector, which are expected to improve security services and strengthen governance across the board.

SECURITY IMPLEMENTATION MATRIX

Goal: To ensure security of all persons and property throughout the Republic of Kenya

Security conflict contributors	Location of conflict	Reasons for conflict	Conflict resolution	Frequency of conflict	Recommendations
Ethnic clashes	Molo, Naivasha, Kuresoi, Mt. Elgon, Likoni, Transmara	Land disputes Political incitements Livestock theft	Community dialogue barazas Intermarriages	1992,1997, 2002, 2007-2008	Generals elections for 2012 will be free, fair and peaceful
IDPs problem	Olkalau, Naivasha, Kuresoi, Eldoret, Turkana, Kitale, Solio ranch, Laikipia, Gilgil	Ethnic favouritism Land disputes No consultations Corruption Fake IDPs	Resettle all IDPs Consult widely Audit all IDPs Avoid favouritism Government to buy land	More common within disputed land	All IDPs must be resettled before 2012 Mau evictees and other genuine IDPs are a potential ground for conflict by 2012 Government to buy land for all genuine IDPs Before the purchase of land to resettle IDPs it is important to consult with the leaders and community opinion leaders of these areas
Organized gangs	Kisii, Kiambu, Laikipia, Naivasha, Nairobi, Eldoret, Thika, Likoni, Kisumu	Incitements Negative ethnicity Unemployment Revenge Drug abuse	Create employment Control drug use Sensitize youth	Every time there are general elections	Government to utilize youth power through Youth Development Fund Government to support and promote vocational training among the youth



Proliferation of small arms and light weapons	Mandera, Moyale, Turkana, Pokot, Marsabit, Garissa	Youth are armed Guns in towns Criminals armed Porous borders	Disarm the youth Check the borders Ban illegal guns	The flow of arms through the porous borders is continuous	Control the flow of arms from neighbouring countries Disarm all persons with illicit arms Destroy all illicit arms recovered
Cattle rustling	Samburu, Pokot, Turkana, Marsabit, Kuria, Transmara	Scarce resources Moran menace Restocking For dowry	Improve livestock breeds Disarm the pastoralist	Conflict is common during the dry periods when water dams and pastures deplete	Reduce the number of livestock Disarm the Morans Improve the livestock breeds Provide dams and boreholes for pastoralists' animals
Security agents	All hotspots in the country	Selective justice Corruption Non-cooperation Distress delays	Equip the police Train the police	Whenever the police become partisan	Police force reforms should be supported to reflect the current needs of the people of Kenya
Evictions and demolitions	Nairobi, Eldoret, Mombasa, Nakuru	Slums encroachment Poor planning Poor architecture Land grabbing	Control slums Upgrade slums Replan major towns Demolish poor structures	Demolitions are more frequent in areas where structures and plans are poorly done	Demolitions should be done humanely, with some professionalism put forward to explain the exercise
County boundary disputes	Bungoma, Meru, Marsabit, Baringo, Litu, Laikipia, Kuria	Ethnic orientation Dominance by big tribes Historical injustices District legacy Resource sharing	Dialogue Formation of IEBC Avoid politics on county boundaries	The county boundary debate continues in almost all the 47 counties, but is more visible among those listed	County boundaries should be handled with a lot of care to avoid growing the seeds of hatred Legalize the county devolved system for acceptance

Morans menace	Samburu, Isiolo, Marsabit, Turkana, Pokot	A need to marry A need to pay dowry Culture of raids Pastoralism Unemployment	Disarm all Morans Employ Moran leaders Employ the youth	Morans become a nuisance when the generation age-set is about to marry or after a severe drought	All youths should be employed and also enhance the Youth Development Fund
Highway banditry	Marsabit, Samburu, Isiolo, Nakuru	Poor infrastructure Lone driving Criminals with illegal arms Driving long distances	Improve the infrastructure Increase police surveillance on roads Use the locals to trace criminals	Common during holidays	Communities along highways should be accountable when such incidents occur at their locations
Cross-border conflict	Turkana, Marsabit, Pokot, Kuria	Porous borders Illegal guns Pastoral migrations Foreign attackers Need for cattle Revenge Border disputes	Check on borders Control migrations Water to pastoralist Resolve border disputes	The attacks are more frequent during the dry periods when the pastoralists migrate in search of grass and water	Common borders must have patrol post and military stationed along the borders
Terrorism	Mombasa, Mandera, Lamu, Garissa	Al-Shabaab presence Islamic fundamentalism Revenge for American actions Lack of government in Somalia	Support Somali government Punish the dissidents Control the routes for terrorist Be vigilant of terrorist groups	Can strike any time they have the opportunity	Terrorists must be crushed as they make the region very unsafe Support Terrorism Bill
Shifita War 1963	Mandera, Wajir, Garrisa, Isiolo, Marsabit	Somalia government influence North East Province was ignored Somali dissidents Colonial experience	Develop the North East Province Control the Somali border Serious scrutiny of the Somali people Disarm Somali dissidents	The problem has lessened compared to the years before 1997	Somalia has no government and Kenya must take measures to control the common border and the influx of refugees
Islamisation of North East Province	Mandera, Wajir, Moyale	Muslim influx from Somalia Increasing numbers of Somali people Encroachment of Somali people to other urban centre's	Al-Shabaab must be controlled Recheck Somali refugee infiltration to other towns in the country	Mushrooming mosques in every town is worrying More common to see Somalis buying land all over Kenya	Somalis aggressively acquiring assets in Kenya, which may be connected with ransoms paid to pirates



Community policing	The entire country but enhanced in the hotspots	It has failed to reach the most vulnerable groups It is capital intensive and few funds were allocated to this Programme Some Kenyans want to retain the status quo	All must be involved to ensure acceptability Funds should be found to facilitate the Programme	A noble idea that must be supported by all, whatever the cost	The Programme picked up around 2007, but is not vibrant as before. Police-community relationship must be enhanced for collective responsibility
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CHAPTER FIVE:

ECONOMIC PERSPECTIVES ON CONFLICT IN KENYA

5.1 Introduction

The economic dimension of conflict has enjoyed increasing attention in research and policy discourse dealing with the dynamics of contemporary conflict. The nexus between natural resources, economics and conflict played a defining role in a number of Africa's most intractable conflicts during the 1990s and early 2000s. This study shall try to address the relationship between class formation and conflict, poverty and conflict, inequality and conflict, natural resources and conflict, corruption and conflict, economic policies and conflict, unemployment and conflict, and trade and conflict? However, there is no single cause of a conflict. Nor is there often any single precondition for sustainable peace. Different factors vary in importance, and reinforce or neutralize each other. The analysis of the situation must, therefore, include the relative importance of the different indicators and their inter-relationship.

5.2 Economic factors leading to conflict

The respondents were asked to state their opinion on the extent to which they believe that conflict in Kenya is caused by a range of economic factors. The factors assessed included land ownership, competition for economic resources, business competition and rivalry, manner in which local resources are exploited, unequal opportunities, unemployment, and levels of poverty in the area.

Poverty, inequality and conflict

The linkage between poverty and conflict dominated the participants' thinking and perceptions. This statistical position was equally supported by the views of participants



in the FGD and key informant interviews. The view of participants was that a common feature of many such livelihood conflicts is that the rank and file of most serious conflicts in Kenya are filled by large cohorts of young men (youth), who have been subjected to a rapid devaluation of their expectations as a result of loss of family livelihoods, and have been forced to accept a much more lowly situation in society than their prevalent culture has led them to believe they were entitled as men. One key informant observed that, 'The conflict-producing conditions that may emanate from agricultural and rural issues, such as land tenure conflicts, are manifestations of the incapacity of social and political systems to handle such crises. Moreover, capricious politics are likely to create conditions of underdevelopment, such as low economic growth, and simultaneously cause the extreme grievances that drive individuals and groups to take up arms.'

In Nairobi and other major urban centers, it was found out that the rural-urban migration was a major conflict issue. This is because of the competition for scarce resources from new arrivals. Indeed, finding jobs for these immigrants is a formidable challenge, and requires exceptionally strong and rapid economic growth. For example, the economy of Kenya would have to grow at an annual rate of above 7 per cent for at least five years to absorb the new entrants to the market. Subsequent discussions with the focus groups observed that unemployed youth turn to criminality as a means of livelihood.

The survey also identified poverty as a factor contributing to conflict in both urban and rural areas, driven typically by scarcity of resources such as water and arable land that are fundamental for daily survival. It was noted that demand for resources in most parts of the country outweighs supply and, therefore, where distribution is perceived to be grossly unfair, public frustration could spark conflict. One key informant observed that, 'Tackling the poverty-conflict relationship demands sustained commitment to building long-term local capacity. Assistance is most effective not in the immediate aftermath of a conflict, when donor interest is typically greatest, but as a preventive measure before conflict erupts and in the middle of the first post-conflict period, when the country's absorptive capacity has improved. Unless policies and programmes shift from reactive to proactive and from responsive to preventive, breaking out of the poverty-conflict trap will remain elusive.'

It has been recommended that innovative private sector players and NGOs work to engage and empower youth in underprivileged areas and also focus on youth development in the country. The private sector has crucial roles to play in providing employment opportunities for young people, especially by ensuring that training and skill development are linked to market demands, and in supporting entrepreneurship. NGOs are pursuing grassroots efforts to economically empower the youth to actively participate in community development, including community safety and wellbeing. However, poor youth, especially those in conflict situations, often find themselves marginalized from political discussions and processes.



Leaders and activists working to provide opportunities for youth must think not only in economic terms, but in political terms.

Unemployment

The FGDs revealed that the majority of the youth are prone to conflict as a result of their joblessness. Unemployed young men in both urban and rural areas thus become easy targets for hate-propaganda by the political class, which promises or gives hand-outs. In rural areas, young women were reported to be the first to be forced out of school when the livelihood of families require that they help out at home, fetching water, collecting firewood and cultivating crops. In conflict, women find themselves taking care of the family, including the elderly, the children and the handicapped. Furthermore, they are sexually abused by the combatants.

Significant numbers of youth in local communities were reported to be dropping out of school and being excluded from active participation in the economy. As a result, they take to the streets, form gangs and become an alienated violent social group that presents a unique set of problems to society. In some cases, this violence and systematic exclusion of poor youth were reported to be threatening the stability of urban centers. In such situations, the sustainability of urban areas, and subsequently of the national economy, depends upon the ability of urban centers to foster inclusive local development and improve their ability to deal with the growing numbers of youth in their population. It was, therefore, recommended that preventing the isolation of youth is vital to efforts to foster local economic and democratic development of the country, since impoverished youth are vulnerable to joining street gangs and institutions of organized crime. Therefore, unemployed youth are a serious threat to peace and security in both rural and urban centers.

Land and conflict

The survey sought to establish the extent to which land as an economic resource influenced conflict within and without the counties. It was found that land was a major issue in Mombasa, Kwale, Kilifi, Tana River, Bungoma, Mandera, Samburu, Turkana, Trans Nzoia and Isiolo. In Nairobi City, Kiambu Muranga, Busia and Lamu, land issues were considered moderate.

Indeed, ownership and access to land were reported as the most prevalent causes of conflict across most counties in the coastal region of Kenya. It was reported that locals feel there are high levels of corruption and discrimination in the issuance of land titles, which determine land ownership, access and utilization. A significant number of people from the coastal region are still regarded as squatters. However, they argue that the majority of people from the so-called 'other parts of the country' have acquired title deeds. Apparently, the upcountry people who have bought land in the coastal region have quickly acquired registration, which



shows a proof of ownership.

However, most of the 'locals' are yet to be made aware of the value of acquiring land titles. Cases of double allocation of land are also a problem that has led to disputes and conflicts. The local administration (chiefs) was reported to be highly involved in cases of illegal and double allocation of land in the region. It was observed, 'One chief can easily sell land to more than one person even without the knowledge of the community elders. When the owners want to take their land, there is dispute. This is a common source of conflict in Gede area.'

Hence, the issue of land in Kenya is central in its history of conflict and is an example of structural violence. This is in part because of a long and complex history of land dealings among ethnic groups, with members of the ethnic group in power being reported to be unethically given or allowed to use land, frequently at the expense of other groups. This is also in part due to the complex legal structure surrounding land (there are at least 42 laws that apply to land, some of which contradict others) combined with a weak judiciary unable to carry out these laws effectively.

During the study, it was noted that land as an economic resource has not only use and exchange value, but also social-political value. Thus, what is important to pastoralists may not be important to urbanites or even farmers. Consequently, community-based legal frameworks that are sensitive to representation and use, and that can preclude the exchange value of land, are much more appropriate in addressing the resource needs of the urban poor or pastoral communities. In assessing the evolution of the land-tenure regime in Kenya, experts have noted that the colonial legacy is more or less still very much intact as the land tenure regime whose origin was in the colonial period, and which favored settlers. Furthermore, the question of trust lands, where land title was bestowed on county councils, needed to be revisited and the title for such land reside with more democratic and accountable community trustee structures. This is of particular importance when one considers that up to 80 per cent of Kenyan land is technically under community control.

Therefore, it can be concluded that conflicts over land are principally a function of the disparity between supply and demand on the one hand, and the inequitable distribution of land as a result of the inappropriate framework for land administration. Conflicts over land are a result of diverse competing needs by different land users, e.g. pastoralists versus farmers, residential versus industrial, squatters versus landowners in both rural and urban areas, private versus public land uses, investment versus subsistence, and commercial versus smallholder. Generally, historical injustices over land allocation continue to be a source of tension between different ethnic and socioeconomic groups in the country.



Competition and exploitation of resources and conflict

Competition for access to natural resources is inevitable in a situation such as Kenya's where there is a wide disparity between the availability and distribution of natural resources and the population that needs resources for its livelihoods. As a natural resource-based economy, the livelihoods of individuals and communities in Kenya depend directly on access to natural resources. As individuals and communities endeavor to secure their rights of access to resources, the ensuing competition borne out of the imbalance between supply and demand leads to conflict. Resource-based conflicts exist with respect to virtually all the key natural resources. The more critical the resource is, the more pervasive the conflicts have been. In this connection, a resource may be considered critical either because it is key to the livelihoods of a community, because it is scarce or both. Other resources such as wildlife are critical because of sharp differences over their place in society and competition over them by strong interest groups. The value of a resource in the global market has also been a basis for conflict, as it introduces divergent players and interests into the equation.

Resource-based conflicts have often been explained in terms of scarcity-based theories, which view the conflicts as borne out of the struggle for scarce resources, often induced by population pressure (Malthusian), which lead to a 'war of all against all' (Hobbesian) in the struggle for survival of the fittest.

During the discussions with key informants, it was reported that the underlying causes of resource conflict are mainly poverty, the policy choices that have been pursued over the years, and the failure of the institutional frameworks for conflict resolution or prevention. In this context, resource-based conflicts are therefore viewed and analyzed in a policy and governance context. However, the notion of marginalization among the participants in the FGDs in both political and material sense also dominated views and thus provided useful explanations on the motivation for and causes of conflicts in the country. As such, the study noted that the entire question of resource-based conflicts needs to be viewed through a policy and governance prism to understand how the national policy development and implementation process has tended to marginalize certain livelihood patterns through alienation of resources such as land, game and water.

Through FGDs and key informants, the study was able to establish that national policies on land use, access to forests, wildlife, and commitment to a sedentary way of life, have greatly disadvantaged, for instance, pastoralist communities and those bordering national and game parks. Land policies such as plantation or large-scale farming as well as the alienation of land for game reserves all have been put in place at the expense of the pastoralist and of agricultural development. It was pointed out that despite the land alienation for game reserves, most



game animals are still found outside the parks or reserves, and thus contribute to conflicts between animals and humans. Furthermore, laws governing game/human (pastoralist) relations placed a greater premium on animals than humans.


What also emerged is that not all resource conflicts are based on scarcities, but some are much more political in nature and have to do with the local dynamics and institutional framework within which conflicts take place. However, once conflicts erupt, they are interpreted on ethnic terms and are linked to other types of conflicts, thereby escalating the situation. It was found out that land, forests, wildlife and minerals are the four main types of natural resources causing pervasive conflicts in Kenya. Although they are not the only ones, they featured prominently as typifying the nature, causes and manifestations of resource-based conflicts.

Forests

During the study, it was revealed that conflicts over forests related to land use, especially residential and industrial developments, farming and livelihoods support for forest dwellers, and for environmental functions such as carbon sink and water catchments. One case is the well-known controversy over Karura forest in Nairobi that illustrates these aspects of conflicts over forests and forest resources. It demonstrates the influence that political power and access to political patronage plays in the incidence and manifestation of natural resource conflicts. In Mau Forest, the Ogiek forest dwellers were reported to have been evicted as a result of allocation of the forest to members of the political and economic elite, who intended to put up residential houses. Apart from adversely affecting the livelihoods of the indigenous people, the allocation of the forest for so-called development was reported through FGDs and key informants to have had serious ecological consequences for a catchment area that extends into Tanzania. During the FGDs, it was also observed that, in Mt Kenya, forest resources are equally under threat from loggers and cultivators, who have used the forest not only for food crops, but to grow drugs such as marijuana.

Wildlife

Conflicts over wildlife were reported as principally land-use conflicts. Although Kenya is renowned for its wildlife, the reality is that wildlife is widely reviled. Few landowners and community members see wild animals as anything but a threat to life and property. This is a function mainly of the approach to conservation in the country since colonial times, with more emphasis on non-consumptive use and wildlife being conserved for its aesthetic value. The conservation approach emphasizes protected areas, when in fact the bulk of the wildlife is found in private lands outside the protected areas. Although landowners own the land and bear the environmental and other costs of conservation, the wildlife belongs to the state and the landowners have no right to it nor do they receive any direct benefits from it.



This has created the foundations for on-going conflict over wildlife resources, which have been exacerbated by the rising demands for land by an increasing population, which sees the protected areas as potential settlement lands. Much of the wildlife/human conflicts occur in areas occupied by pastoralists, whose livestock suffers wildlife attacks, the spread of diseases and the denial of access to pastures within protected areas. However, it was reported that the Kenyan Government has since enacted relevant legal and policies frameworks (Forest Act 2005, Wildlife Policy 2006 etc.) to address this situation.

Minerals

Key informants reported that mineral resource conflicts have a close correlation with wildlife-human conflicts. They emanate from the fact that minerals are the property of the state, regardless of the ownership of the land on which they are found. The conflicts are compounded by the phenomenon of ‘the private investor’, usually a foreign corporation within the context of liberalization and globalization. The entry of the private investor brings into this conflict imperatives from the global arena that serve to complicate an already complicated situation. The titanium-mining project on the Kenyan Coast (Kwale County) demonstrated the complexity of these conflicts.

5.3 Historical context of the institutional dimensions of resource-based conflicts

FGD and key informant discussions revealed that traditional governance systems were closely linked to the natural resource base on which people depended for their livelihoods. Access to natural resources defined the lives of the people and the management of this access was the major preoccupation of institutions and systems of governance. Management of access to natural resources entailed the management and resolution of conflicts over the resources both within and between communities. The institutional framework and mechanisms for managing resource conflicts evolved in these communities over long periods as the communities adjusted to social, ecological and other pressures resulting from both internal and external dynamics. The mechanisms were informed by the ethics, norms and beliefs of the resource dependent communities.

With colonial rule, however, the close link between the natural resource base and governance systems was broken, and independence failed to repair the link. In place of this system, the colonial government established its own framework and system based on a new normative and value system. Central to this new framework was the idea of private property in land. The government progressively alienated land from the African population for white settlement. The land was then converted to a private property regime as a buffer against impending African rule. The security of private property was ultimately entrenched in the constitution at



independence by a provision in the Bill of Rights. The protection of private property in land would thus come to be the definitive principle informing policymaking in natural resource management, and the policy and legal framework put in place for the management of natural resource conflicts. It equally influenced the manner in which actual resource conflicts are managed and resolved.

Apart from the constitution, the policy for the management of natural resources could be gleaned from policy documents of the government. From Sessional Paper No 10 of 1965, privatization and individualization of land ownership became the overriding prescription for the management of land and land-based resources in independent Kenya. This translated into a land reform drive that deliberately set out to dismantle communal tenure regimes and in their place create a regime founded on individualization, titling and registration. Over the years, successive development plans stressed the need for a land use commission and promised to have one established. It was not until November 1999 that the Presidential Commission of Inquiry into the Land Law System of Kenya was established. The Commission received evidence and in its report recommended principles for settlement of disputes and proposed a framework for land administration that decentralizes conflict management and dispute resolution to local level. The Commission also recognized the need for customary norms to inform conflict management at these levels.

However, the recommendations of the Commission are yet to be acted upon and for the moment, privatization remains the paramount guiding principle in the management of land and natural resources. The policy framework is still informed by a top-down approach to development intervention in which the people's input is marginal. By the same token, the people's institutions and systems are marginalized from the policy formulation and implementation process.

5.4 Conflict actors, roles and responsibilities

Business community

The business community is inherently linked to national politics. The government awards contracts to supportive business elite. In turn businesses influence politics by funding political parties. Corruption between government officials and business elite ensures that applications are approved and awards granted. The business community is resourceful, well Organized and internationally connected. Internally, relationships are characterised by competition and building alliances for personal financial gain.



5.5 Conclusion

The economic structural factors/root causes of conflict in Kenya include economic inequities and increasing levels of poverty owing to patterns of resource allocation or competition over resource control. Conflict kills and injures people; destroys infrastructure, services, assets and livelihoods; displaces populations; breaks social cohesion, institutions and norms, and creates fear and distrust. These effects are likely to cause chronic poverty.

The chronically poor are likely to suffer disproportionately from violent conflict due to the inability to cope with the negative effects of violence by, for instance, changing livelihoods, gathering new assets or moving to different areas. Conflicts bring destruction, but may also benefit some groups, including the chronically poor. Chronic poverty may lead individuals to engage in conflict as paid fighters to cope with poverty itself, and to gain access to economic and social advantages. In this sense, conflict may provide alternative, steady employment. These benefits may counterbalance potentially negative impacts of violence on the chronically poor. On the other hand, persistent levels of poverty, particularly when associated with profound deprivation, perceived injustices and forms of social exclusion, are likely to create grounds for increased social discontent. This may create conditions for violent conflict that would require some form of organized collective action. Although the chronically poor are not typically organized for socio-political actions, chronic poverty may trigger the mobilization of masses around issues of poverty, youth unemployment, and social and economic inequality. Interventions aimed at addressing the structural causes of violence and in support of the mitigating factors should be addressed to include long-term action to reduce youth unemployment and social and economic inequality.

Regarding land, a better understanding has been provided of the relationship between land as an economic resource and conflict in Kenya, and the most appropriate approaches to address long-standing grievances and reform. There is close interaction between economic land use and conflict and, hence, the need for the application of a more political than ‘technical’ lens to this engagement.



CHAPTER SIX:

LEGAL ASPECTS OF CONFLICT IN KENYA


6.1 Introduction

Conflicts pose a major challenge to and call into question the capacity and suitability of both formal and informal legal/judicial systems in their normative role of conflict prevention, mediation and resolution. Currently, despite being central to dispute resolution within the framework of a modern state, Kenya's formal juridical structures have failed to engage purposefully and effectively with the challenge posed by Kenya's numerous conflicts. Informal legal mechanisms involving a diverse range of actors local, national and international, and engaged in ameliorating conflict, have been and are playing an increasingly proximate and banal role within/outside this alleged 'judicial function'. However, despite the variety of formal and informal legal avenues, an overview of existing conflict management practices in Kenya highlights the fact that existing policies and strategies, and the institutions that implement them have proved inadequate to prevent, mitigate and manage conflict and build sustainable peace.⁹⁹ The task herein is to analyse critically the connection between legality and conflict through analysis of relevant data obtained during the national survey. After developing a conceptual framework, law is discussed as a cause and trigger of conflict. Subsequently, the judicial and non-judicial structures involved in conflict mediation are working towards determining short- and long-term measures that can address the various challenges to the achievement of effective engagement between law and conflict.

6.2 Background

The basis for building a theoretical framework on a legality/conflict thematic is recognition that despite the plethora of policy and institutional initiatives addressing conflicts in Kenya, these conflicts persist and, despite decades of peace work, the nation's conflicts are as prevalent and volatile today as they have been at any time in the modern past. The law, tasked with the resolution of disputes and the dispensation of justice, sits at the centre of

99. Adan, M and Pklaya, R Muli, E(Eds) 2006, 'Conflict management in Kenya: Towards policy and strategy formulation, available at http://practicalaction.org/docs/region_east_africa/practical_action_conflict_management.pdf(accessed 5 June 2009), 18.



this failure. In Kenya, the dynamics and trajectories of the multiple legal orders, particularly traditional/customary legal systems and global and regional influences, call into question the basic assumptions of contemporary jurisprudence, namely the congruence of territory, state and law.¹⁰⁰ Kenya is characterized by a dysfunctional relationship between the formal legal system and the multiple non-judicial structures involved in conflict mediation. Conflict mediation is an increasingly complex social field in which state and non-state, local and transnational actors interact, merge and confront each other in dynamic combinations, making the nature of the legal function ever more complex.¹⁰¹

An expanded notion of legality therefore encompasses the formal and informal structures as well as the explicit and implicit norms and relations that regulate and govern societal interactions. This notion advocates both legal synergy and the development of hybrid structures that recognize the interconnectedness of these structures. It is apparent, therefore, that legality goes beyond lawyer's law, judicial and legislative institutions and administrative policy or practice. There is a need to appreciate not just the official, national legal order and the multiplicity of local, intrastate legal orders that coexist in different forms alongside it, but also that '...supranational legal orders are emerging, which interfere in multiple ways with the former. The terms 'law' and 'legality' are necessarily ambivalent; epistemological concepts grounded in social experience rather than describing actual structures or mechanisms. Moments of failed conflict resolution across Kenya call for a new pre-emptive strategy that anticipates conflicts and seeks to solve the situation by placing emphasis on and reinforcing local capabilities and not to the exclusion of other 'external' mechanisms. New and dynamic juridical structures serve as an essential component in any effective strategy. This analysis views these perspectives as a starting point, with the relevant themes calling for a novel, creative and participatory conflict resolution to be built upon within each context of conflict in Kenya'.

More dynamic juridical responses to conflict are emerging that are not centre upon the security intervention or the judiciary. Since the late '90s, CSOs¹⁰² have begun to play an ever-increasing role in the resolution of conflicts in Kenya, with the government 'softening up to civil society overtures for an all-inclusive, multi-partner approach'.¹⁰³ '[T]he emergence

100. See Randeria, S, 2007, Legal pluralism, social movements and the post-colonial state in India: Fractured sovereignty and differential citizenship rights, in Santos, B S (Ed), *another knowledge is possible: Beyond northern epistemologies* (London: Verso), 41-75, 42.

101. Santos, B 2006, The heterogeneous state and legal pluralism in Mozambique, *Law & Society Review* 40(1), 39-76, 44.

102. For purposes herein, civil society is defined as 'an aggregate of institutions whose members are engaged primarily in a complex of non-state activities - economic and cultural production, voluntary associations, and household life - and who in this way preserve and transform their identity by exercising all sorts of pressures or controls upon state institutions, Makumbe, J M, 1998, Is there a civil society in Africa?, *International Affairs* Vol 74(2), 305-317, 305.

103. Famine Early Warning Systems Network (FEWS NET)/United States Agency for International Development, 2005, Conflict early warning and mitigation of resource-based conflicts in the Greater Horn of Africa: Conflict baseline study report conducted in the Karamajong Cluster of Kenya and Uganda, available at www.internal-disg/.../USAID+Karamoja+Conflict+Baseline+Study+Report.pdf (accessed 4 June placement.or2010). 40.



of network-based interventions means that government, which has the advantage of on the ground presence and acceptance, can mobilize the civil society towards an intervention.¹⁰⁴ This new type of collaboration has been a major incentive to peacebuilding.¹⁰⁵ The advancement of civil society as a tool for building peace is linked to the global dominance of neoliberal ideologies during the past decade, which envisaged a reduced role for the state and privatized forms of services delivery through combinations of governmental, non-governmental and private institutional actors.¹⁰⁶

6.3 Law as a cause and trigger of conflict

There are two ways of considering law in relation to conflict: its direct contribution to the conflict by the nature of statutory and regulatory provisions, and its indirect contribution through the failure to adjudicate, mediate and resolve conflict. It is difficult to differentiate between law as a cause of conflict and law as a trigger of conflict. As a cause, law and the application of the law engenders conflict by commission as well as by omission. There may exist deficient legal provisions that are manifestly unjust and perpetuate conflicts. Examples of these are the emergency provisions under the constitution¹⁰⁷ that curtail fundamental freedoms such as freedom of expression and association, and from detention. Provisions prone to abuse and that could exacerbate conflict are also contained in chapter 355, the Stock and Produce Theft Act.¹⁰⁸

More often, legal provisions indirectly contribute to conflict by omission through a failure to apply legal provisions, the limited scope of legal provisions, or their absence all together. The contribution of law to conflict via omission is present across the other themes considered in this report. This is generally because legality, contained in laws, norms and principles, governs all aspects of social interaction, political, socio-cultural, security, economic and environmental.

The pre-independence land tenure patterns in Kenya, for example, are largely attributed to the persistent recurrence of conflict. The role of the law in addressing these relations


104. Ibid at p, 40.

105. Ibid at p, 40.

106. Lewis, D, 2002, Civil society in African contexts: Reflections on the usefulness of a concept, 571.

107. The Constitution of Kenya 2010, Article 58.

108. Section 4 of Cap 355 allows the levy of a fine by distress and sale of any property of an offender to also be issued against any member of the offender's family, any inhabitant of the village or place in which any stolen stock or produce has been found, any member of the sub-tribe to which the offender belongs and any member of the tribe to which the offender belongs. Section 3 of the Indemnity Act Cap 44 indemnifies government officials and public officers against prosecution or trial for acts committed in between a particular period in the former northern frontier districts and parts of Coast and Eastern Province. It is unjust in that those who suffered loss and damage during that particular period in these areas have no recourse to legal redress.



through the various land acts, the subsequent exploitation by the political elite of the powers vested in these acts and the failure of the law to address the historical injustices surrounding land in Kenya, emphasize the central role the law has played in facilitating conflict through commission as well as omission. A history of impunity makes it difficult to differentiate between the failings of the legal system and the bureaucratic authoritarianism characterized by corruption and patrimonialism. For example, the government decided to establish a settlement scheme in the Nakuru/Engurone/Kiptagich extension forest area to resettle the Ogiek people who had previously been evicted from their customary landholding, which had been gazetted as forest (illustrating the use of the law to evict). However, in establishing the settlement scheme, the provisions of the Forest Act were not adhered to. Another example is that of Likia Forest, where the forest has been settled and titles issued, notwithstanding the fact that the matter is still pending in court and that the forest had, at the time, yet to be degazetted.¹⁰⁹

These examples illustrate the legal conflict that is created between socially detached laws and a corrupt executive operating with impunity. These instances breed conflict and are widespread across the country, from Mt Elgon to West Pokot, through the central rift to Nairobi and down to the coastal province. The adjudication and settlement of land disputes in terms of ownership, boundaries and usage are possibly the most complex aspect of law in the country. Following the country's colonial history, there are numerous 'types' of land and as many different legal mechanisms to deal with disputes relating to each type.¹¹⁰ In the light of these diverse and complex land dispute mechanisms, article 68 of the new constitution of Kenya requires parliament to revise, consolidate and rationalize existing land laws.

In the political sphere, adequate legal provisions concerning demarcation of electoral and administrative¹¹¹ boundaries and citizenship are vital to conflict management.¹¹² Appropriate legislation is also central to securing democratic space in terms of regulating political parties, the conduct of elections and provisions on citizenship.¹¹³ Socio-culturally, legislation can contribute to deterring ethnic conflicts by proscribing hate speech and incitement of

109. See the Ndungu Report 1997.

110. See that Land Consolidation Act.

111. In 2008, the then constitution was amended to create an Interim Independent Boundaries Review Commission (IIBRC) responsible for, inter alia, making recommendations to parliament on the delimitation of constituencies and local authority electoral units, the optimal number of constituencies, and on administrative boundaries. After countrywide consultations, the IIBRC produced a new list of constituencies in November 2010, which was approved by parliament. With its mandate expired, the task of boundaries falls on the Independent Electoral and Boundaries Commission established under Article 88 of the constitution.

112. Chapter Three of the constitution provides for the entitlements of all Kenyan citizens; Article 18 read with Article 261 and the Fifth Schedule of the constitution requires that by 27 st 2011, Parliament enact legislation on citizenship.

113. Continuing reform of electoral law is currently being undertaken. Chapter Seven of the constitution deals with the representation of the people. It provides for, inter alia, the general principles for the electoral system, qualification of voters, the compliance of candidates for election and political parties with the Interim Electoral and Boundaries Commission code of conduct, eligibility of independent candidates, the procedure of voting and settling of election disputes, and the basic requirements for political parties. It requires that parliament enact legislation governing elections under Article 82, operationalising the basic requirements for political parties and legislation on electoral disputes, August 2011.



ethnic animosity. Security can be enhanced through legislation reforming the police and making the role of security agents in conflict across the country just and accountable.¹¹⁴ The law plays an important role in the economic thematic area in facilitating commerce and investment through securing property rights and protecting the expectations of business through predictable consistent legislation and the enforcement of contracts. There is a link between poverty and conflict; hence beyond the role of the law in enhancing economic development through facilitating trade and commerce, legislation can ensure that there is increased involvement of low-income earners in national production, that standards of living are raised and that national fiscal policy focuses on poverty alleviation.¹¹⁵ Concerning socioeconomic factors, it is important to analyse the provisions in the constitution, which protect and enforce socioeconomic rights and the obligations placed on the state and county governments.


In the environmental thematic area, resource-based conflicts centre primarily on water resources, forests, minerals and pasture land. The failure of the relevant administrative bodies to monitor and apply the law, or the manner in which the law might seek to protect important environmental and socioeconomic resources such as forests and national parks and fail to provide for the communities and individuals who depend on these resources for their livelihood, is a central concern. Recent legislation suggests a more participatory approach to the management of natural resources. The Forest Act (Act No 7 of 2005) provides for the establishment, development and sustainable management, of forest resources for the socioeconomic development of the country. The regulation of forests has been rationalized under the Act, with the inclusion of non-state actors, particularly local communities, in the management of forests.¹¹⁶ The Environmental Management and Coordination Act (Act No 8 of 1999) is a comprehensive and extensive piece of legislation providing framework for the management of the environment in Kenya. It contains extensive substantial legal provision and requirements as well as sets up a robust institutional framework for environmental protection.¹¹⁷ These brief examples illustrate legality and its relation with conflict across the thematic spectrum.

114. Currently, the Police Act Cap 84 provides for the functions, organisation and discipline of the Kenya Police Force and the Kenya Police Reserve. There have, however, been on-going reforms in this sector. The National Task Force on Police Reforms led by Justice Philip Ransley presented a detailed report on police reform in 2009. In 2010, the Police Reform Implementation Committee was set up to operationalise the recommendations contained in the Ransley report. Extensive recommendations for reform have been tabled and, in conjunction with parliament, the drafting of new legislation on the police is at an advanced stage. Further, Chapter 14 of the constitution has introduced wholesale changes to the national security framework, including the police. See articles 238, 243 and 246. The Fifth Schedule to the constitution requires that all legislation on the new police service be enacted by August 2012.

115. See the Government of Kenya's Economic Recovery and Wealth and Employment Creation Strategy 2003 and the Kenya Vision 2030.

116. Section 46 allows for persons resident in and around forests to register a community forest association to participate in the conservation and management of a state forest or local authority forest.

117. Under Section 7 of the Act, the National Environment Management Authority (NEMA) is the principal instrument of government in the implementation of all policies relating to the environment, and provides general supervision and coordination over all matters relating to the environment. In the spirit of inclusive management of environment, Section 29 of the Act creates provincial and district environment committees under NEMA with diverse and inclusive membership responsible for the proper management of the environment within their respective jurisdictions. There is also established a Public Complaints Committee through which grievance environmental issues can be addressed.



More closely related to the political thematic area, but relevant across all areas, are the problems of corruption and impunity.¹¹⁸ There is a considerable volume of progressive and potentially effective laws that could address conflict factors in Kenya. However, impunity and corruption impede the lack of application of these laws. Outside internal mechanisms of self-regulation, the task of ensuring compliance rests on specialized bodies such as the Kenya National Commission on Human Rights and the Kenya Anti-Corruption Commission; but the primary duty lies with the judiciary. There is a dual compartment through which legal and quasi-legal structures interact with conflict. The structures contribute directly in terms of their role in conflict management, i.e. mediating, adjudicating and resolving conflict, and indirectly in the wider sense, through the enforcement of legal regimes across the thematic spectrum. This introduces the second component in the nexus between law and conflict and law as conflict management.

Another aspect of the law is in relation to the architecture of conflict management. As argued earlier, despite being normatively central to dispute resolution, formal judicial structures have failed to engage purposefully and effectively with the challenge posed by Kenya's numerous conflicts. The presence of a variety of actors within the dispute resolution sphere illustrates the need to take into proper account the law's changing character and conditions of existence, and the evolving historical character of legal regulation and assessments of the social significance and sources of these changes.

6.4 Actors and interventions

A variety of legal mechanisms are involved in conflict management and the relationships and interactions between the mechanisms themselves create multiple avenues of engagement. An individual or group in a particular conflict area may seek beneficial outcomes through accessing the range of mechanisms available. The range operates both independently and in partnership, in the process creating a complex conflict management scenario that makes it difficult to identify a particular response with a single peace actor.

6.4.1 Traditional responses

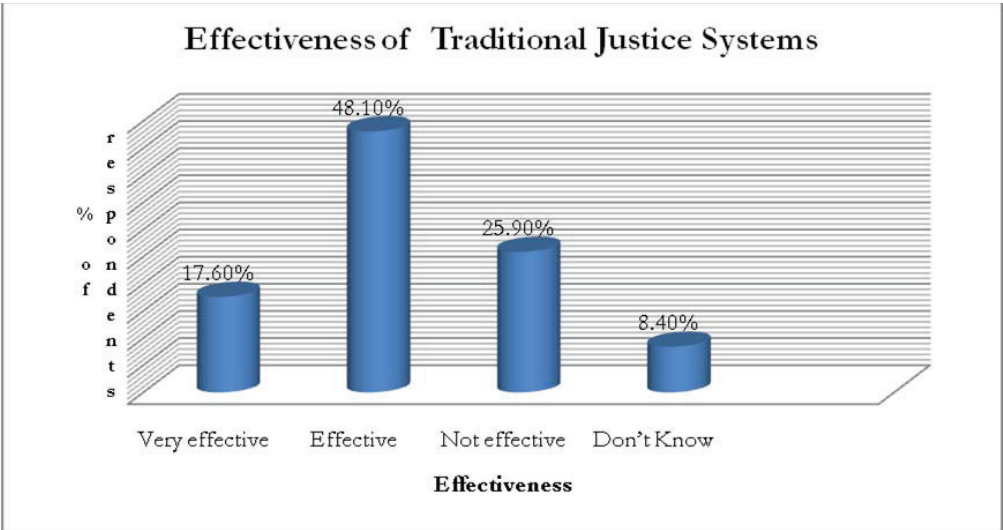
Wherever communities exist there are internal mechanisms, customs and procedures through which conflicts are discussed, mediated and resolved. The nature and strength

118. See the Political Parties Act (Act No. 10 of 2007) which significantly developed the law in regard to the registration, regulation, and funding of political parties. See also the Public Officer Ethics Act Cap 183 which provides a Code of Conduct and Ethics for public officers; Chapter 6 of the Constitution concerns the principles governing the integrity state officers. Article 79 establishes an independent ethics and anti-corruption commission to ensure compliance with, and the enforcement of Chapter 6.



of these mechanisms differs from region to region, and community to community, but in most cases, particularly in rural areas, the mandate and responsibility fall on a group of local leaders or elders. ‘Traditional responses’ refers to mechanisms that are based on customary practices, such as a council or “group” of elders exercising authority strictly within their community. Informal and formal structures are often intertwined, with ‘elders’ being members of parliament, local Councilors, administrative officials such as chiefs and sub-chiefs, members of DPCs, and members and staff of NGOs and CBOs. Traditional justice mechanisms play an important role in conflict management, but this role is not uniform. Through the resolution of day-to-day conflicts, these structures help ensure the stability needed for the prevention or resolution of more serious disputes.¹¹⁹

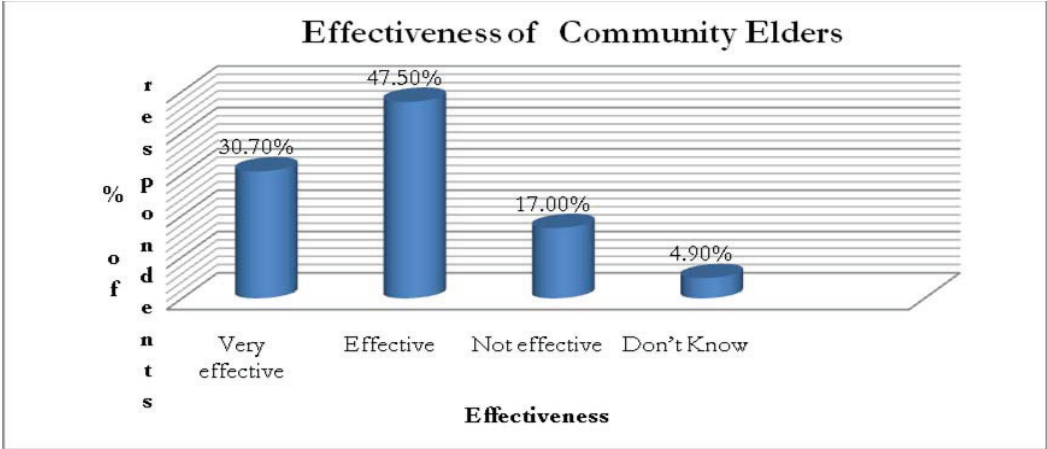
The survey found that approximately 60 per cent of respondents rated traditional justice structures very effective or effective in conflict resolution. The findings are tabulated below.



These structures highlight an interesting paradox: traditional justice structures as ethnically based and ethnicity as a major cause or trigger of conflict. In many cases, the socio-cultural norms engendered in these structures are seen as causes or triggers of conflict; this ranges from the maintenance of an ethnic identity to initiation and oathing ceremonies. At the same time, these very structures are turned to for the resolution of conflict among and between communities. Hence, insofar as strengthening traditional structures involves increased emphasis on divisive ethnic identity, this might be counter-productive to conflict management and peacebuilding strategies. Further, these mechanisms remain localized, located in ethnic communities and hence this strategy can exacerbate conflict through the continuation of ethnic hegemony challenging intercommunity cohesion. On the ground, however, especially outside urban and peri-urban areas, traditional structures play an

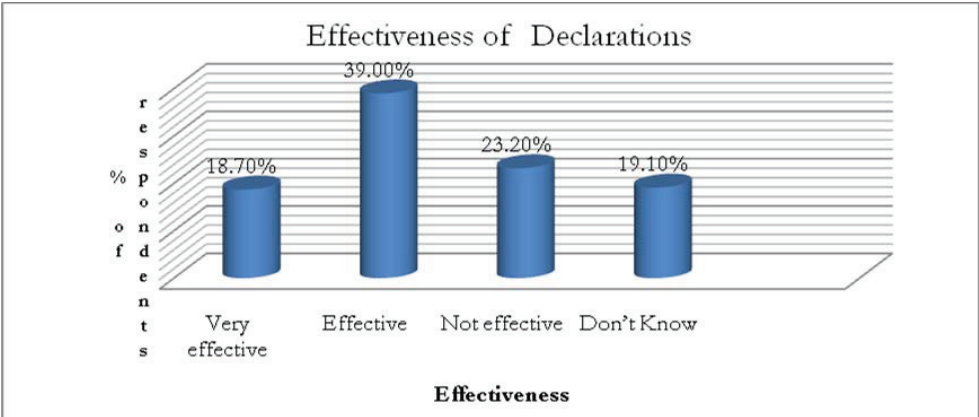
119. See Kimathi, LW, 2005, Non-state institutions as a basis of state reconstruction: The case of justice systems in Africa, available at www.codesria.org/IMG/pdf/kimathi.pdf(accessed 20 August 2010).

extensive role across community life. An overwhelming 76 per cent of respondents found the role of community elders effective or very effective in resolving conflict, against 19 per cent who said that they were not.



Members of these traditional justice structures, however, complain that their authority has been usurped by other bodies or that it has been eroded in regard to the youth, who are the main conflict actors across the country.

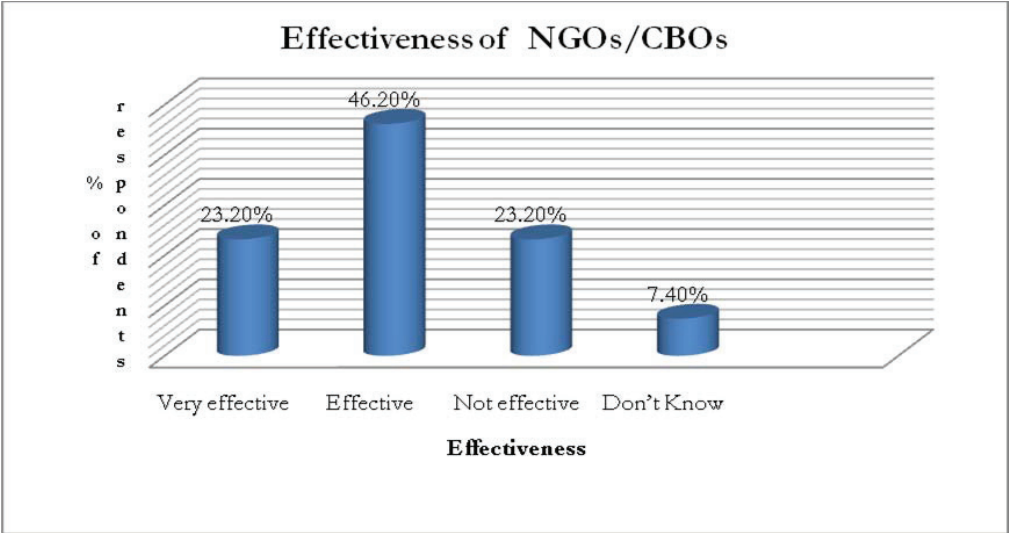
The peace agreements and declarations produced from deliberation among or between traditional structures were supported by 58 per cent of respondents, who stated that declarations were effective or very effective at resolving conflicts. Twenty-five per cent said that they were not. One of the recommendations made in the study was the need to mainstream declarations by creating a template that could be adopted across various conflict-affected communities. There is little evidence of declarations in rural and urban settings outside pastoralist areas. However, given their apparent success in these areas, there could be an argument for expanding the creation of declarations as a mechanism or device for peacebuilding in urban and rural areas.





6.4.2 Civil society responses

Civil society responses are conflict management interventions undertaken by local, national and international NGOs and CBOs. Since the early '90s, across the country and more particularly in marginalized rural and pastoralist areas, CSOs have played the central role in facilitating and implementing conflict management and peacebuilding strategies. This survey found that 65 per cent of respondent viewed them as effective or very effective in conflict resolution, with 27 per cent saying they were not.



Despite the positive feedback, respondents raised concerns about these interventions. There was widespread frustration among both peace actors and target communities. They felt that although CSOs have been engaged in conflict management activities for many years, there are few tangible or long-lasting results. This has created 'fatigue' and disillusionment among all those engaged in CSO-led activities. Related to this opinion, many of the peace meetings, seminars, workshops and dialogues are held in urban centres away from the target population and hence fail to engage with the actual conflict actors, leading to a perception of these initiatives as 'talk shops'.

The reliance of CSOs on donor funding raises the significant challenge of Programme independence. Despite the fact that CSOs might develop interventions based on contextual conflict dynamics and raise the necessary support from donors, often they construct proposals depending on what the donor organization is willing to fund at that time, rather than what the conflict dynamics require for effective intervention. There are also instances where CBOs dealing with peacebuilding are required to ignore more effective interventions because there is no funding available for them. Further, projects are not sustained and/or stable. For



example, if a CSO has an effective conflict management project for one period, it might not be renewed, whether the targets have been met or not.

In some areas, DPC members accused CSOs of ignoring the role of the DPC, dealing only with the formal provincial administration structures. Some were cited as engaging opportunistically, i.e. for visible, high profile conflicts such as PEV, but failing to sustain wider engagement in conflict. Several key informants felt that non-state actors were not genuinely interested in peacebuilding, but rather engaged in the process as a ‘cash cow’. This has skewed perceptions among peace actors and diluted objectives. Additionally, fierce competition among CSOs to secure funding or even to monopolies certain fields or regions, breeds conflict between these organizations and inhibits cooperative and effective engagement. There are also numerous instances of ‘aid corruption’ anchored in a lack of monitoring and accountability by both donors and the government.

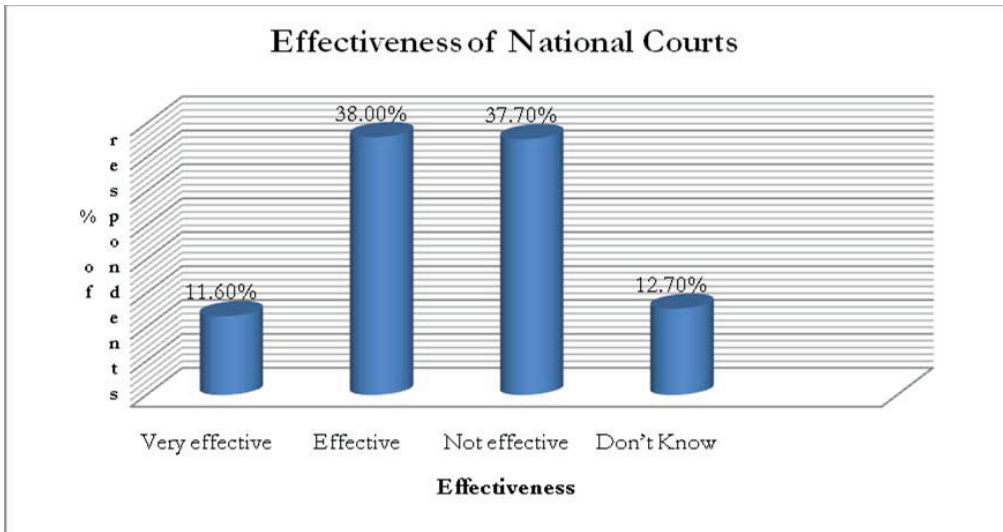
6.4.3 State responses

State responses to conflict can be judicial or administrative. Judicial responses relate to the resolution of disputes through legally sanctioned judicial and quasi-judicial for a, the latter including quasi-judicial bodies. Administrative responses, on the other hand, relate to national structures and initiatives within the government that respond to conflict. These include security agencies, provincial administration, the NSC, the Kenya National Focal Point on Small Arms and Light Weapons (KNFP), the Conflict Early Warning and Response Unit (CEWERU) and the Steering Committee on Community Policing.

The judicial system

The judiciary is the branch of government tasked with fairly and impartially adjudicating differences, resolving conflicts and enforcing the rule of law throughout the land. The constitution provides for the hierarchy and system of courts in Kenya.¹²⁰ There was little attention among respondents on the formal legal system in conflict resolution. Other forms of dispute resolution were preferred, particularly in rural areas. Despite this, the survey found that the formal court system, if available, could be an effective conflict management response. As the graphic below illustrates, 49.6 per cent of respondents rated the formal courts either effective or very effective. It was, however, not possible to ascertain whether the respondents had actually accessed formal court structures or whether they were commenting speculatively on perception.

120. Refer to Chapter 10 of the constitution. Under Chapter 10 of the Constitution and the Fifth Schedule thereto, parliament is required to enact legislation operationalising the system of courts and the provisions relating to removal from office by August 2011.




Even where access to the courts is available, people preferred other avenues, particularly for petty issues. This is not to say that alternative systems are successful, but respondents said the ineffectiveness of the court system means that people need to rely on more subjective and/or politicized systems. This can lead to dissatisfaction and latent conflict.

Respondents stated that the courts were unfair, with little justice being meted out. The perception is widespread of the judiciary as corrupt and, therefore, accessible only to those with the wherewithal. The lack of transparency, problems of corruption, political influence and patronage in the appointment of judges, and the general lack of independence of the judiciary have damaged public trust in the judicial system.

There are perennial calls for the administrative, technical and institutional reform of the judiciary. There is also a fear of engaging with the court process, as many feel that the jail terms are not severe enough or there is a high probability that the prosecution will fail to obtain a conviction. Should that happen, those against whom the witnesses testified could then return to threaten and/or injure those who had testified against them.

Other issues raised included the expediency, effectiveness, efficiency, accessibility and affordability of the judicial process. The average Kenyan is, therefore, apathetic to the justice system and does not consider it capable of protecting his interests or resolving his disputes. In urban areas, there has been a 'mafiasation' of justice, with organized gangs and vigilante groups emerging to control conflict resolution. The regional nature of conflict in parts of the country makes it difficult for a national judicial system to deal with conflict. Conflicts



are committed across international boundaries and suspects cannot be pursued beyond these boundaries, which further complicate the efficacy of the judicial system. The working of a court system is directly related to the working of the security apparatus: if there are no arrests, gathering of evidence and summoning of witnesses, there can be no successful prosecution of perpetrators of conflicts. The impunity generated by lack of law enforcement further engenders conflict. Individuals might be aware that certain activities are unlawful, but they attain normative status due to a lack of legal repercussion.

There is a sense in which the adversarial system of justice fails to promote reconciliation between opposing sides and instead further pits individuals and groups against one another on a ‘winner takes all’ basis. Further, the remedies available under both criminal and civil jurisdictions are inflexible and do not allow for creative problem-solving through the granting of other forms of redress such as apologies, traditional peacebuilding rituals, declarations and/or customary compensatory methods. Common and statutory law are adversarial and rights, obligations, liability and standing have to be strictly proven, debated and enforced, culpability identified and criminality or compensation allocated. There is little scope for negotiation within this sphere. Customary law has always been present and recognized in the formal legal system,¹²¹ but it remains dysfunctional in conflict. There is no scope for negotiation and arbitration of customary rights through the court system because of its limit to ‘civil disputes’ and the lack of development of court capacity in this area in general.¹²²

Specialized quasi-judicial mechanisms

In addition to the formal judicial system, there are a number of statutory quasi-judicial mechanisms. They include the Land Disputes Tribunal,¹²³ the Kenya National Commission on Human Rights (KNCHR),¹²⁴ the Kenya Anti-Corruption Commission,¹²⁵ the NCIC¹²⁶ and the TJRC.¹²⁷ Many of these quasi-judicial bodies are reconstituted under the new constitution.¹²⁸

121. See the Judicature Act Cap 8 s, 3(2).

122. Under Article 159 of the constitution, in exercising judicial authority, the courts and tribunals are required to promote the use of alternative forms of dispute resolution, including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. However, with the last-mentioned item, they must not contravene the Bill of Rights, be or result in outcomes that are repugnant to justice or morality or inconsistent with the constitution or any written law.

123. Land Disputes Tribunal Act 18 of 1990.

124. The Kenya National Commission on Human Rights Act (Act No 9 of 2002), Article 59 of the constitution establishes the Kenya National Human Rights and Equality Commission (KHREC). Under the Fifth Schedule, parliament must enact legislation to give full effect to the provision establishing the KHREC by August 2011. The functions of the KHREC are similar to those of the KNCHR under the KNCHR Act.

125. Established under the Anti-Corruption and Economic Crimes Act Cap 65, the KACC became operational in February 2005.

126. Established under the National Cohesion and Integration Act (Act 12 of 2008), which came into force in March 2009.

127. Established under the Truth, Justice and Reconciliation Bill 2008, which came into force on 9 March 2009.

128. For example, Article 59 establishes the Kenya National Human Rights and Equality Commission. Article 88 establishes the Independent Electoral and Boundaries Commission and Article 79 establish the Ethics and Anti-Corruption Commission replacing the KACC.



There, therefore, exists a range of specialist quasi-judicial bodies, each mandated to regulate and adjudicate in a specialized and particular conflict scenario. Commissions and tribunals with specialized knowledge and jurisdiction can comprehensively address complaints brought before them and better carry out supervisory and enforcement functions within their mandated areas of specialization. They also create challenges for conflict management procedurally in that there are various commissions investigating, regulating and mediating different aspects of the same conflict scenario. This perhaps highlights the role of the NSC or the proposed National Peace Commission in ensuring that these actions are synchronized and that the specialized actions of each commission build constructively in the wider framework of conflict management in the locale.

Uniquely, the Land Disputes Tribunal, through its devolved system of tribunals, incorporates respected community members in the resolution of land disputes, providing interesting lessons for the effective functioning of judicial activity in the mediation and resolution of disputes. Nonetheless, there is potential to abuse the process of constitution of these tribunals and a risk of partial verdicts due to communal decision making.

The administrative system

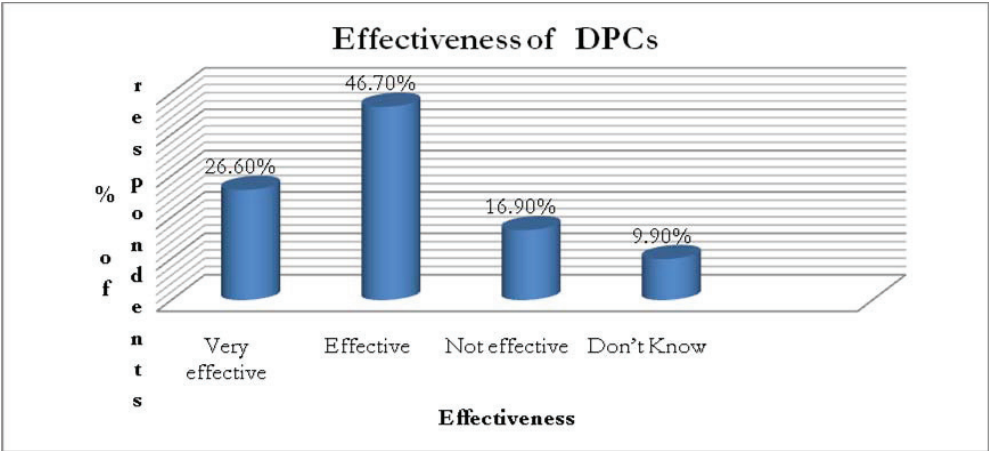
The administrative system in Kenya is within the mandate of the Office of the President under the Ministry of State for Provincial Administration and Internal Security. Its role is central in the executive management of the country as well as the management of conflict. It consists of the provincial administration¹²⁹ and remains the principal avenue for engagement between the state and the populace, particularly in the rural and marginalized areas of the country. The provincial peace forums and the district peace committees form the primary administrative avenue for conflict management in the country.

The NSC is the coordinating agency for peacebuilding and conflict management under the administrative system. It is an interagency committee tasked with establishing coordination, collaboration and networking among the government, civil society and development partners nationally. The NSC discharges its mandate through the provincial peace forums (PPF) and the DPC.

DPCs are ad hoc committees that seek to bring together traditional dispute resolution methods on the one hand, and formal mechanisms of conflict resolution on the other. Under the patronage of the district commissioner, DPC membership is drawn from the local

129. There exists no constitutional or statutory mandate for the provincial administration; only the chiefs have been explicitly provided for through the Chief's Authority Act Cap 128 of the laws of Kenya.

community with the express aim of being apolitical. It has become the primary medium for conflict management activities in many parts of the country, providing both a forum and resources for the activities of state and non-state actors. The roles of the DPCs include facilitating resolution of intra-district conflicts, responding to security incidents, deploying rapid response teams, addressing inter-district conflicts, responding to conflicts over natural resources use, promoting peaceful elections, weapons collection and addressing broader peacebuilding issues.¹³⁰



DPCs' efficiency in conflict prevention management and reconciliation (CPMR) was viewed as effective and operational in some areas and non-existent or ineffective in others. This is perhaps an expected outcome considering that these new structures are at differing stages of development. However, these structures face a number of challenges, from structural to operational, including in areas of harmonization, communication, coordination and monitoring. DPCs are not anchored on any legal instruments and therefore their operations are dependent on the goodwill of the local administration and the community. Further, the DPCs face challenges of overreliance on donor funds, inadequate and in some situations lack of support from the NSC and PPFs, politicization of the structures, and capacity constraints, among others. There were instances where the relationship between the DPCs and the District Commissioner (DC) was unclear, with the DC exercising varying levels of control over the resources and operations of the DPCs. Beyond the relationship between the DPC and the DC, DPCs have a necessarily close working relationship with local government agencies, the provincial administration and CSOs in their areas of operation. There are ongoing efforts from the NSC to increasingly capacitate PPF and DPCs.

The provincial administration is central to all government and non-government activities in a particular district, and conflict management and peacebuilding is no exception. Apart

130. See the Draft National Policy on Peacebuilding and Conflict Management at Section 2.2.3.3; See PeaceNet funding homepage http://www.peacenetkenya.org/index.php?Itemid=46&id=27&option=com_content&task=view.



from the DC serving as the patron of each DPC, officers in the provincial administration are involved in the everyday mediation and management of conflict particularly outside urban centres. The DC's office serves as the epicenter of all government activity in a district and most coordination of conflict management and peacebuilding activities by state and non-state actors are sanctioned and coordinated from this office. The chiefs and assistant chiefs play a vital role in the settlement of disputes in their respective areas of administration. In tandem with local elders, the chiefs and assistant chiefs are consulted to mediate domestic, matrimonial and other disputes, and across the country, especially in rural Kenya, they are the initial point of call for dispute resolution. Similarly to the problems facing the security apparatus, provincial administration officers, particularly chiefs and assistant chiefs, suffer from a lack of logistical and financial capacity to respond to conflicts. In urban areas, there were statements citing them as corrupt and politicized.

There was, however, widespread support from the majority of respondents for the provincial administration in its role in conflict management. However, the feeling among peace actors differed slightly. In certain areas, the provincial administration is seen as a tool of government control over all activities across the country, peace-related or otherwise. Due to the need to include the provincial administration or at least inform it of all activities undertaken in that area, including peacebuilding and conflict management activities, should a particular individual or organization not carry the favor of these officers, his activities can be significantly curtailed or frustrated.

KNFP¹³¹ is an interagency body charged with coordination of action on the proliferation of small arms and light weapons. It constitutes an institutional national response to conflict as it interprets these conflicts as fuelled by the proliferation of small arms and light weapons in the country. It also forms a national point for coordination with the Regional Centre on Small Arms (RECSA) and represents the government at regional and international forums on small arms and light weapons. Whilst progress has been made in research, stockpile management and information exchange, comparatively little has been achieved in the other implementation areas of the Kenya National Action Plan on Small Arms and Light Weapons (SALW).¹³²

131. The KNFP was set up in June 2002 (operational in March 2003) in relation to Kenya's obligations under the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and The Horn of Africa.

132. Ndungu, J and Wepundi, M, 2011, Controlling small arms and light weapons in Kenya and Uganda: Progress so far (Nairobi: Saferworld).



Security apparatus

The security apparatus is made up of the Kenya Police¹³³ and the Administration Police.¹³⁴ They discharge their diverse mandate through specialized units within their structures, such as the Kenya Police Reserve¹³⁵, the Anti-Stock Theft Unit¹³⁶ and the General Service Unit.¹³⁷ From a criminal justice as well as conflict resolution perspective, the police play a central and crucial role. They are often the first point of conflict mediation and mitigation contact with both victims and perpetrators, and they have valuable insight into conflicts and their actors. Through their role in investigation of conflict and the collection of evidence, they determine the judicial course of criminal matters before the court. The police are a crucial part of the criminal justice system. The detection and investigation of crime, the powers of search and arrest, and the collection of evidence are crucial aspects of the prosecution process.

The security apparatus has been widely criticized, and public opinion and confidence in the institution are largely negative. However, there have been on-going efforts at reform¹³⁸ and the National Police Service, National Police Service Commission, Independent Policing Oversight Authority, Private Security Regulation and National Coroners bills are to be tabled before parliament for debate. These bills are expected to significantly and positively change police operations.

6.4.4 Regional responses

These are interventions and structures created and/or operating on the continent and across its states.

East African Community

The East African Community (EAC) is made up of Kenya, Uganda, Tanzania, Burundi and Rwanda (the partner states).¹³⁹ Though it is apparent that the preliminary focus of East

133. Established under the provisions of the Police Act, Cap 84.

134. The administration police was established under the provisions of the Administration Police Act, Cap 85. The administration police further derives its powers from the Chiefs Authority Act Cap 128 the Penal Code, Cap 63) and the Criminal Procedure Code Cap 75.

135. Established under Section 53 of the Police Act, the KPR is a volunteer service of reserve police officers employed to assist the police. Disbanded in urban areas, it continues to exist in rural areas and plays a particularly central and crucial role in policing the pastoralist conflict-prone areas of Kenya.

136. Established under the Kenya Police Force Standing Orders.

137. The General Service Unit is utilized predominantly during periods of public protest, civil disorder and riots and as a reactionary force to brutally quash unrest. It is also utilized for 'special operations' according to Chapter 9 of the Standing Orders of the Kenya Police.

138. There have, however, been on-going reforms in this sector; the National Task Force on Police Reforms led by Justice Philip Ransley presented a detailed report on police reform in 2009. In 2010, the Police Reform Implementation Committee was set up to operationalise the recommendations contained in the Ransley report.

139. The community was revived in a different form through the enactment, in 1999, of the East African Community Treaty (the Treaty) by the initial East Africa, Tanzania and Uganda.



African integration was on economic development and political union, references are made to equality, gender equality, freedom, democracy, fundamental freedoms, the rule of law, and maintenance of universally accepted standards on human rights that amply demonstrate that the partner states consider human development an important part of community integration and, more particularly, the prevention and resolution of conflict.¹⁴⁰ The EAC Treaty establishes the East African Court of Justice (EACJ)¹⁴¹ to provide a platform for redress beyond the national judicial system, particularly in terms of state compliance with ratified conventions and protocols. Currently, a Draft Protocol on Extending the Jurisdiction of the EACJ vesting in the regional court, inter alia, an appellate and human rights jurisdiction has been drafted and is being currently debated. Upon extension of the protocol, the EACJ could '[introduce] a new layer of supranational protection and promotion of human rights'; and reinforce municipal human rights protection systems through providing another venue for binding human rights decisions and judgments, which compel state response and reform. It could provide a more 'local' contact with supranational human rights forums, enhancing access and contextualizing in decision making.

The InterGovernmental Authority on Development

The InterGovernmental Authority on Development (IGAD), is another important regional body involved in peace and security matters in the region. IGAD was created in 1996 to supersede the Intergovernmental Authority on Drought and Development (IGADD), which was founded in 1986. It comprises the 'Horn of Africa' states Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan and Uganda. The mandate of IGAD is to promote peace and stability in the sub-region and create mechanisms for the prevention, management and resolution of inter- and intrastate conflicts through dialogue. The principal mechanism is Conflict Early Warning and Response Mechanism (CEWARN),¹⁴² whose principal function is to track and inform its stakeholders on violent incidents, and provide unique early warning information in addition to events that exacerbate or mitigate violence in its area of operations.

The CEWARN mechanism in Kenya covers the pastoralist communities in two clusters: the Somali cluster and the Karamajong cluster. CEWARN has placed field monitors in these clusters who report to the National Research Institute (Africa Peace Forum), which, in turn, relays the information to the response unit, the NSC. The information is further relayed to headquarters of CEWARN in Addis Ababa for processing and relaying back to the member state. In recognition of the dynamic nature of conflicts in Kenya, the NSC adapted and domesticated CEWARN to fit into the local context and expanded not only the area of coverage beyond the pastoralist areas, but the operational structure of the response system. Kenya, therefore, has a national conflict early warning and early response system that covers

140. Article 5(f) the promotion of peace, security and stability within, and good neighborliness among, the partner states.

141. Provisions concerning the EACJ are contained in Chapter 8 of the EAC Treaty.

142. The Protocol on the Establishment of Conflict Early Warning and Response Mechanism (CEWARN Protocol, signed at Khartoum in January 2002).



the entire country.

Regional Centre on Small Arms and Light Weapons

RECSA was established under the Nairobi Declaration¹⁴³ to tackle the small arms and light weapons that fuel conflicts in the region. It currently has 12 members: Burundi, the Democratic Republic of Congo, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Sudan, Tanzania, Uganda and Somalia. Established as a think tank to tackle the issue of SALW, the institution provides technical support to member states; supports and coordinates action to combat small arms proliferation through coordinating national interagency action; builds the capacity of law enforcement, developing partnerships among governments, civil society and donor agencies, and raises public awareness of the problem of small arms proliferation. RECSA developed and helps implement a guideline for practical disarmament in Kenya, established the KNFP, provided the Kenyan Government with electronic marking machines, trained CSOs on issues of SALW, and facilitated the collection and destruction of illicit firearms across the country.

6.4.5 International responses

International responses are conflict interventions that operate and are formed and/or based outside the African continent. In terms of conflict in Kenya, the actors are divided into judicial and non-judicial actors. Judicial structures are the International Court of Justice (ICJ) and the International Criminal Court (ICC). Principal non-judicial actors include foreign government agencies such as USAID, the Department for International Development (DFID) and international organizations such as the United Nations (UN) and the International Red Cross. Non-judicial actors play an important role, especially in donor and other facilitative support. They work closely with other peace actors across the local, regional and international spectrum. The dynamics at local and national levels mirror those of CSOs elaborated above.

The ICJ is established under Article 7 and Chapter 14 of the UN Charter and as a member of the UN, Kenya is a party to that court. As the court is open only to state parties, there are no mechanisms to compel the state to move the court from within or outside the state for international conflicts such as those experienced between Kenya and her neighbors Uganda, Sudan and Ethiopia. Further, should the court make a decision that places an obligation upon a state, compliance required under Article 94, can be secured only by referral to the Security Council, which may then decide on what course or sanction to take.

143. See the Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, 15 March 2000 and the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and The Horn of Africa, 5 May 2006.



Kenya is also a state party to the ICC, which is established under Article 1 of the Rome Statute and has jurisdiction over offences constituting genocide, crimes against humanity, war crimes and the crime of aggression. Kenya has domesticated the Rome Statute under Chapter 16 of the International Crimes Act of 2008.¹⁴⁴ After the violence that followed the 2007 general election, the prosecutor of the ICC identified six Kenyans responsible for crimes against humanity during that violence, and on review of the evidence, the Pre-Trial Chamber, on 8 March 2011, determined that there are reasonable grounds for the prosecutor's allegations and granted the application for the issue of court summonses against these individuals. Currently, the Pre-Trial Chamber is holding hearings to confirm the charges on which the prosecutor intends to seek trial.

This ICC process is of huge significance to conflict in Kenya in the provision of justice and in the lessons that can be learnt from this experience. Regarding the provision of justice, many Kenyans feel, for a variety of reasons, many of which are enumerated above under the section on the national courts, that the judiciary is unable to dispense justice, and, hence, recourse to the ICC is a viable avenue for justice provision and a deterrent, particularly to political impunity. The need for the ICC process should infer key lessons for national judicial processes, particularly in capacity to prevent and address politically sensitive conflicts.

6.5 Indicators

Law-society disengagement

This refers to the lack of a harmonious functional relationship among legal provision, procedure and principles, and the realities of individuals and communities in Kenya. The system of constitutional and administrative law is unable to address and may potentially exacerbate conflicts in society due to not being contextually grounded.


Judicial reform

This refers to the ability of the judiciary to address the physical and structural causes of conflict through the judicial process. This involves issues concerning the conduct of judicial officers and the content of judgments and other judicial pronouncements.

Statutory and constitutional reform

Statutory reform refers to the review and change of the laws of Kenya to mitigate or remove conflict enhancing provisions; introduce legally binding measures that secure, for example,

144. Kenya ratified the Rome Statute on 15 March 2005 recognizing the jurisdiction of the ICC of any relevant offences committed in Kenya since the Rome Statute entered into force.



non-legal institutions, and/or reform statutes, taking into account the actual circumstances of conflict and conflict response in Kenya.

Rationalization of non-legal structures

This refers to steps taken to improve, monitor and coordinate the activities of these conflict management actors and reconciling them with the formal judicial structures.

Regional and global considerations

This links with the above four themes, but focuses on cross-border, regional and global actors and institutions. It assesses issues such as ensuring and improving access to international judicial bodies and the relationships between domestic and international legal regimes towards enhancing conflict management strategies in Kenya.

6.5 Conclusion

The relationship between law and conflict is complex and multifaceted. The issue of concern within this legal thematic is, therefore, how to rationalize the actual practice of conflict management in Kenya, and the legislative and policy frameworks under the various arms of government. For the judiciary, what are the implications of conflict management in Kenya on the function and capacity of the Kenyan court system? For the executive, what lessons and challenges are raised by the actual practice of conflict management on the state institutional and policy frameworks (primarily contained under the Ministry for Provincial Administration and Internal Security and the various policy documents produced thereunder). For parliament, there are two considerations: does Kenya's legislative framework facilitate an effective conflict management regime and what is the role of members of parliament, as elected representatives, in the resolution and mediation of conflicts.

Lessons from the field suggest that, in terms of the architecture of conflict management, the task should not be the centralization or standardization of conflict management mechanisms, but rather the facilitation of better coordination and interaction across the mechanisms. Looking at the judicial system, for example, there ought to be introspection within that structure into how the judicial process becomes more relevant in the resolution and mediation of conflicts. Lessons can be learnt from the other 'forms of legality' identified above. Conversely, particularly under the new constitutional dispensation, other non-judicial actors can engage the formal legal system to ensure that the interests of those in conflict-affected communities are adequately addressed by the relevant authorities, particularly the responsible organs of government.

CHAPTER SEVEN:

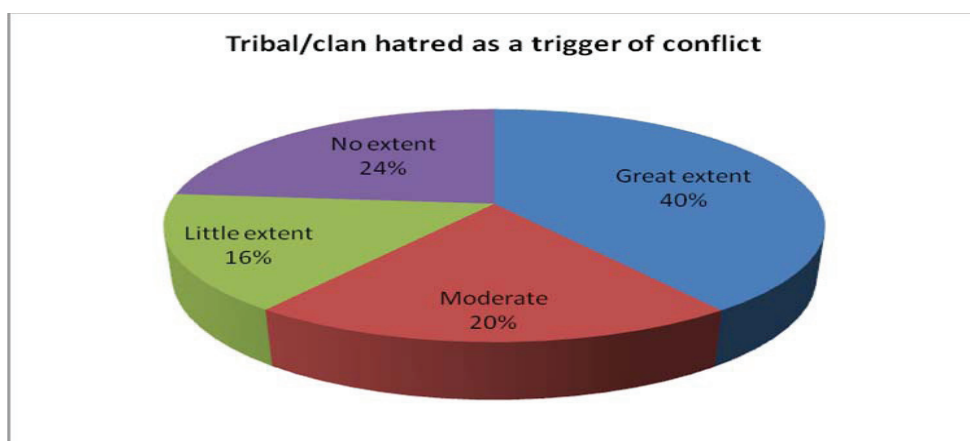
SOCIO-CULTURAL ASPECTS OF CONFLICT IN KENYA

The survey sought to identify quantitatively the various aspects of the presumed key causes of conflict. The analysis focused on a few cultural factors, principally ethnic groups/tribes, social identity, and values and norms thought to be causative to violence, including social sense of belonging and identity, community practices and beliefs.

7.1 Socio-cultural aspects of the conflict

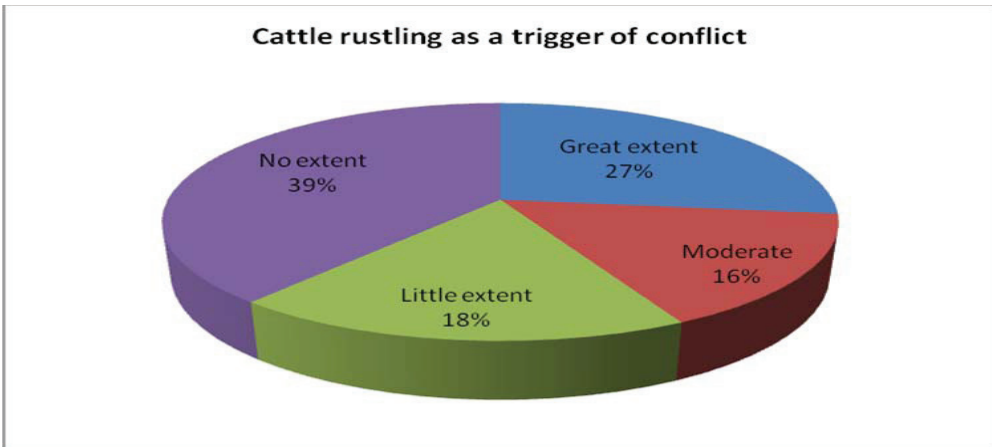
Tribal/clan rivalry

This factor is seen to contribute to a great extent in triggering conflict, with 40 per cent of respondents affirming. According to 20 per cent of respondents, tribal or clan factors contributed moderately, while 24 per cent felt that they did not contribute to conflict at all. In Kenya, whether thinking about politics or resource allocation, the ethnic card has always been played. Although most Kenyans may not trigger violence based on their tribal affiliations, when incited, the tribal identity is strongly used.



Cattle rustling

This is another practice that has been blamed for triggering and sustaining conflict and raising insecurity, principally in the arid and semi-arid regions and particularly among the pastoralists. Cattle rustling in the recent past have taken an economic perspective through 'commercialization of stock-theft'.¹⁴⁵ The problem has been compounded by the proliferation of illicit SALW, which have escalated conflict. The chapter on insecurity has adequately covered insecurity arising from use of arms in cattle rustling.

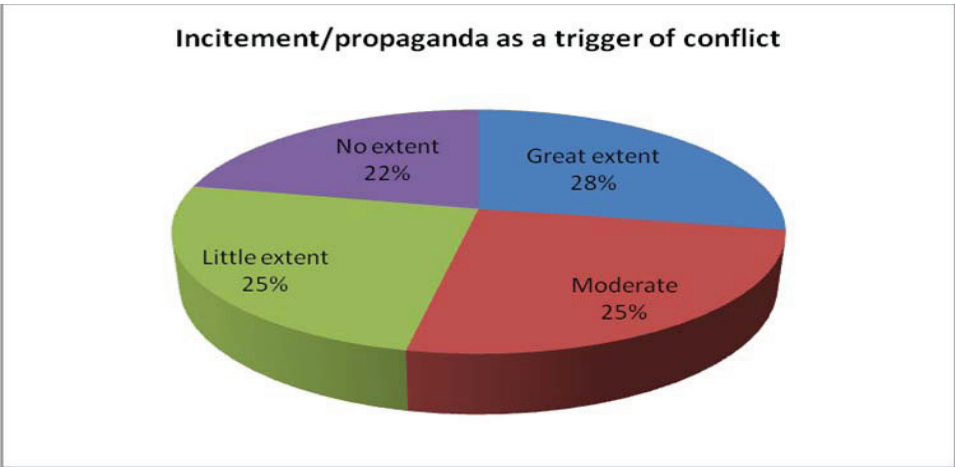


In the survey, 39 per cent of respondents indicated that cattle rustling do not contribute at all to conflict, with 18 per cent indicating that it contributes little. This is a clear indicator that cattle rustling are viewed by pastoralists as a cultural practice. On the other hand, non-pastoralists rarely view cattle rustling as a problem because it doesn't affect them except in isolated circumstances. Pastoralists, on the other hand, view it as a normal practice. Only the professionals and security officers view cattle rustling as a problem and likely to trigger conflict. This explains the score of 27 per cent (great extent).

Incitement to violence

Community incitement based on ethnic identity was assessed. This elicited mixed scores, with respondents scoring evenly in all the measures – 28 per cent indicating great extent, 25 per cent moderate extent, 25 per cent little extent and 22 per cent no extent. Incitement is viewed as information created to cause one community to attack another and often takes a political dimension. The incidents of violence in Kenya before or after general elections in 1992, 1997, 2002 and 2007 were caused by incitement by politicians of neighbouring communities. However, cases exist where rumors have caused deaths to communities and triggered conflict.

¹⁴⁵. Stock commercialization is the transformation of cattle rustling to an economic activity. Cattle are stolen and quickly taken to the market using elaborate mechanisms.



Religious intolerance

Although Kenya has not been severely affected by religious violence, as has happened in other parts of the world, this could happen. There are strong indicators that the Christians and Muslims don't relate well in Kenya. Incidents of strong religious overtones are widespread. During the survey, 24.9 per cent of respondents indicated that religious intolerance has a moderate conflict trigger effect and 13.4 per cent gave it a high possibility. Some 34.8 per cent indicated that religious differences may not trigger conflict in Kenya.

While this may have been the case in the past, religious differences, especially between fundamentalists, can easily trigger conflict if left unaddressed. Burning of churches by Muslims and conflict of preachers in crusades in regions perceived as dominantly Islamic are pointers to the possibility of religious conflict. Similar incidences have happened in Nairobi. A while ago, a Catholic church at South B was razed by Muslim youth in revenge for the demolition of a mosque.



Cultural practices

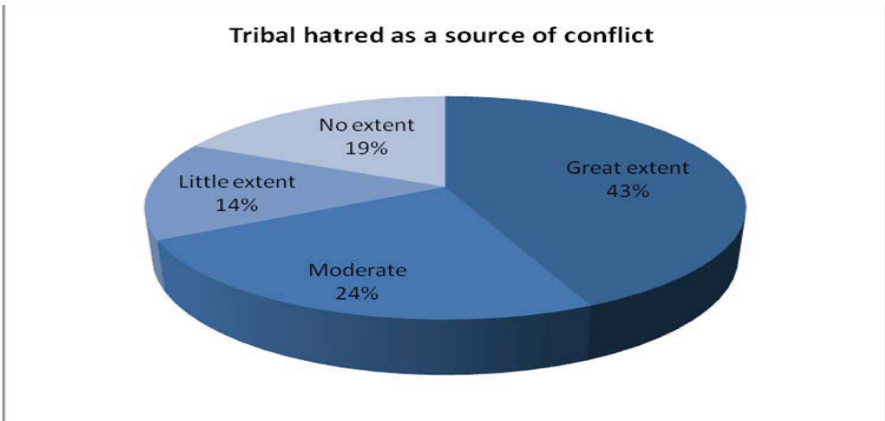
Some communities in Kenya are perceived as warlike and easily provoked to fight, which spurs conflict. Among the pastoralists, this has been amplified dependent on the voracity and extent of attacks.



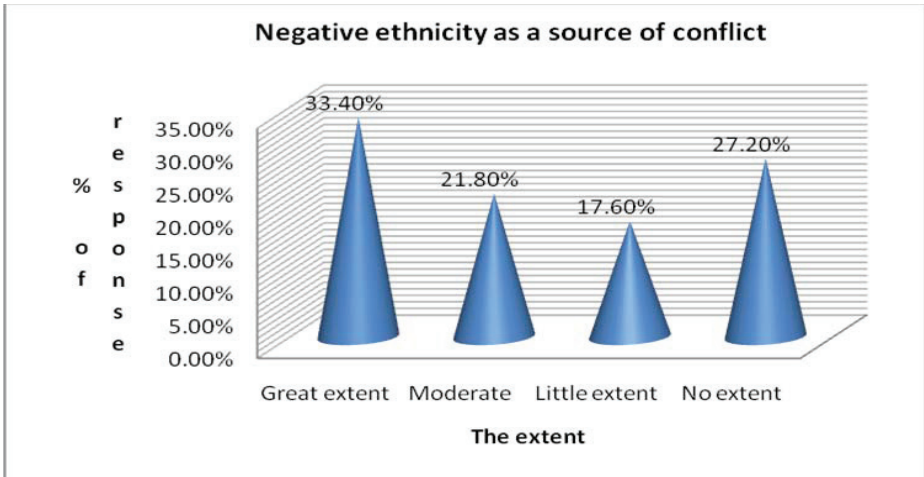
However, respondents indicated that culture had no trigger effect to conflict, with 48 per cent scoring no extent and 24.8 per cent little extent. On the other hand, 11.5 per cent indicated that cultural practices made a great contribution to conflict. Practices mentioned during FGDs included secrecy among some cultures, which heightens suspicion, oathing, which binds communities together on a particular course, and socialization, which embeds violence into the community.

Tribal hatred

Tribal hatred was given the highest score as a source of conflict, by 43 per cent of respondents. Another 24 per cent indicated moderate contribution. Respondents indicated that tribal hatred is perceptual; some communities appear to do better than others or try to dominate and control others, which spur resentment and hatred. In Rift Valley, for instance, the Kalenjins view the Kikuyus as benefiting from their resources, while the Kikuyus tend to believe the Kalenjins are as not hardworking as they are.

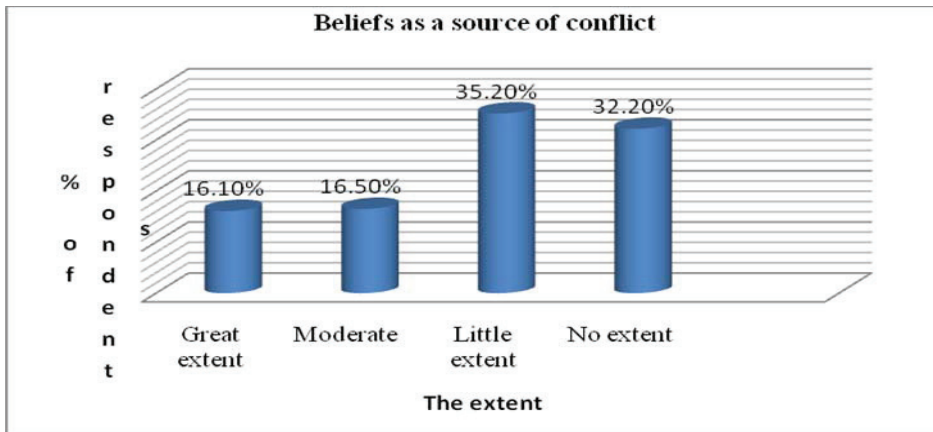


Other communities were accused of abuse or undermining others, which then develop hatred and would be willing to attack given an opportunity or at the slightest provocation. Tribal hatred is perpetuated through negative ethnicity, particularly by political and community leaders. Negative ethnicity's contribution to conflict was rated considerable by 33.4 per cent of respondents and moderate by 21.8 per cent. However, 27.2 per cent did not view ethnicity as contributing to conflict at all. FGDs revealed that the younger generation does not hold stereotypes characteristic of the older generation. Furthermore, intermarriages observed across communities have helped to stem and demystify some cultural assertions.

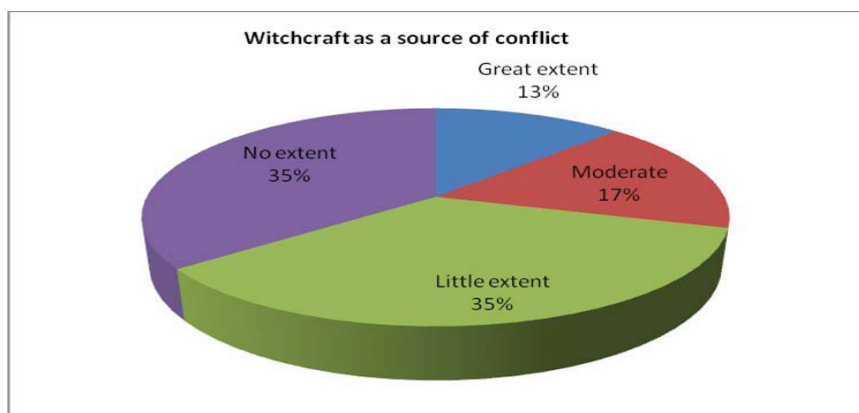


Beliefs

Culture is perpetuated through people's beliefs and practices. In assessing the influence of beliefs on conflict, the study found that 35.2 per cent and 32.2 per cent indicated little and no extent, while 16.1 per cent and 16.5 per cent indicated great and moderate extent respectively. Traditional beliefs in Kenya have long given way to religious beliefs, although a few communities and sects remain royal to some believes.

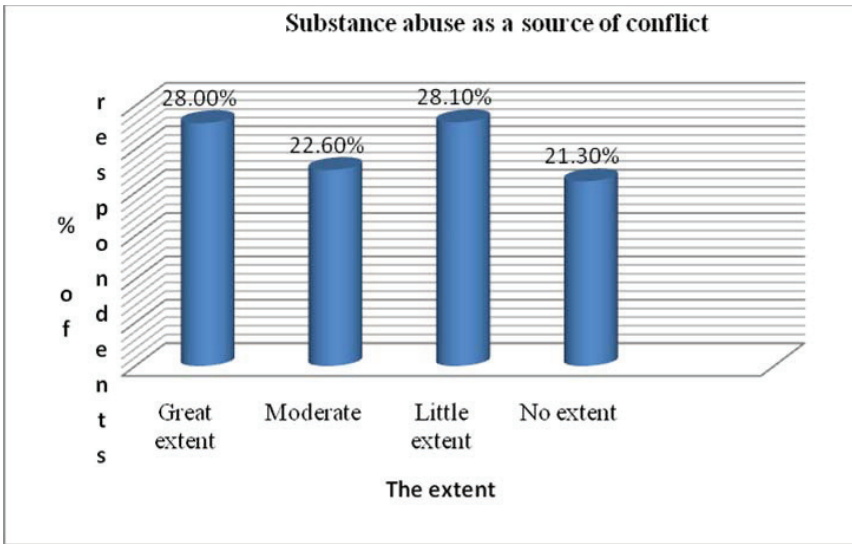


On witchcraft as a conflict trigger, 13 per cent of respondents indicated great extent, 17 per cent moderate, with majority indicating little or no extent – 35 per cent apiece.



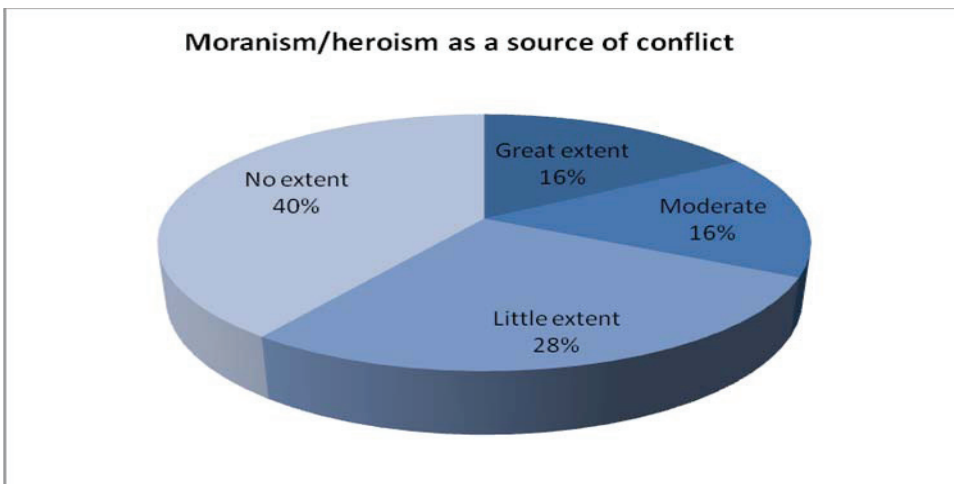
Substance abuse

The argument that the youth are given drugs and alcohol to impair their reasoning and incite them to fight other communities was supported by 28 per cent, who cited it as a significant contributor, but this, was balanced by a similar number who indicated little or no extent.



Moranism/heroism

This is a cultural practice among the pastoralists that encourages young men to become warriors and fight for the community, and carry out raids and cattle rustling activities. With commercialization of cattle rustling and the schooling systems, Moranism has dwindled. Forty per cent of respondents indicated it has no contribution to conflict, with 28 per cent indicating little extent. Sixteen per cent thought its influence great. Moranism is generally viewed as a cultural practice and not for aggression. However, girls in some communities are accused of spurring Moranism and encouraging conflict?



Illiteracy

Lack of education has been viewed as only denying culprits employment or economic prospects in the current world of information age. Lack of education has strong correlation

with violence.¹⁴⁶ There is strong evidence that those who are likely to trigger conflict or be used in conflict are those without adequate education or exposure to the world. They are either frustrated through lack of livelihood or do not have a positive disposition of a better future. Such people will easily provoke, engage in or be used to trigger or even perpetuate conflict. Some 35 per cent of respondents indicated that illiteracy is a great contributor, with 25 per cent scoring moderate, and 20 per cent each selecting little and no extent.



7.2 Mitigating socio-cultural causes of conflict

The survey sought to determine effectiveness of structures and institutions within the social and culture framework in resolving conflict. A few were singled out based on past experiences.

Community elders

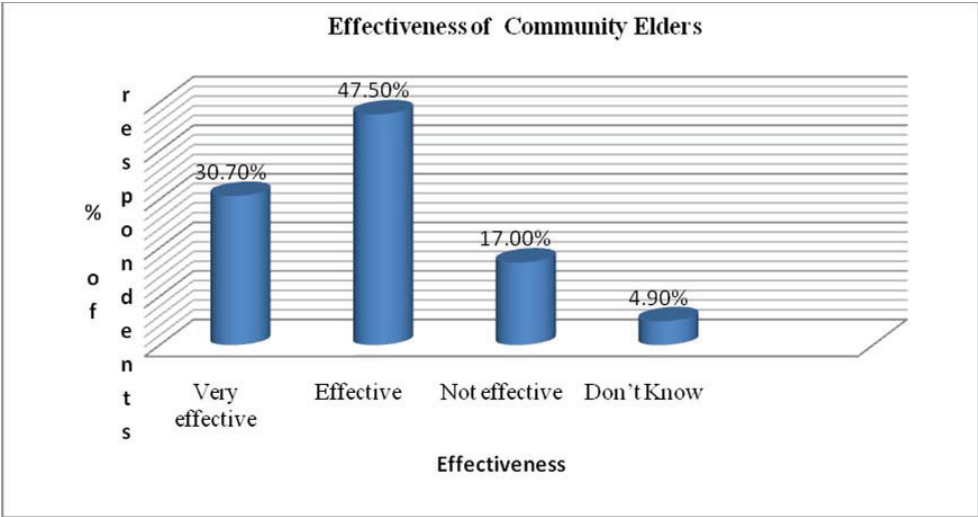
This is an old institution which, for a long time, has been ignored in favor of formal judicial systems. However, in the last couple of years, it has been found to be an effective tool for resolving community conflict. Communities are still strongly patriarchal and elders remain epitomes of authority and wisdom in many communities. Asked to assess community elders' effectiveness in conflict resolutions, 30.7 per cent of respondents judged them very effective, another 47.5 per cent effective and only 17 per cent not effective. What does this mean?

In conflict resolution efforts among Kenyan communities, the institution of elders should be elevated and used as much as possible, especially during peace negotiations or settlements. In most peace declarations reviewed in literature elders were involved on behalf of their communities and have been successful in maintenance of those agreements.

¹⁴⁶ Cattle rustling and raiders survey by Kimaiyo DM (unpublished) indicates that most of the raiders have little education, which cannot help them compete in the job market.



However, this is not a blanket observation for the same institution of elders has triggered conflict and in some cases become a hindrance in conflict resolution. Some elders are warmongers. They are known to determine who keeps SALW for raiding and some act as Laibons, blessing the attackers as they leave for their raids.



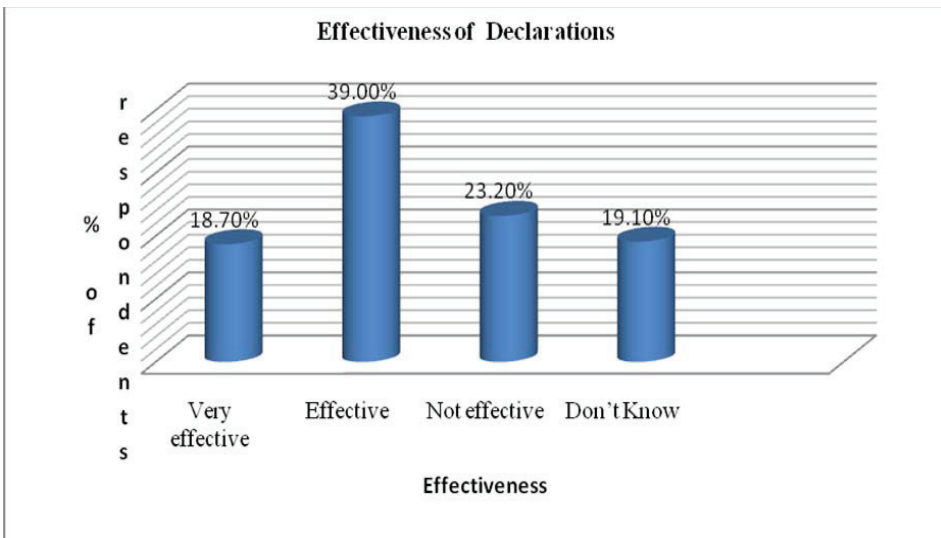
Declarations

A significant proportion of respondents were not familiar with various peace declarations of the past, but 18.7 per cent of respondents rated them very effective and 39 per cent effective. This indicates that such declarations should be negotiated and communities encouraged observing them. The Modogashe declaration¹⁴⁷ is reviewed every two years, which reminds the community of the importance of maintaining it.

However, communities that have enthusiastically signed the declarations and taken oaths are known to break them when their interests are at stake. Most of the agreements, for example, the Turkana, Pokot, Samburu and Naivasha declarations, have not held.

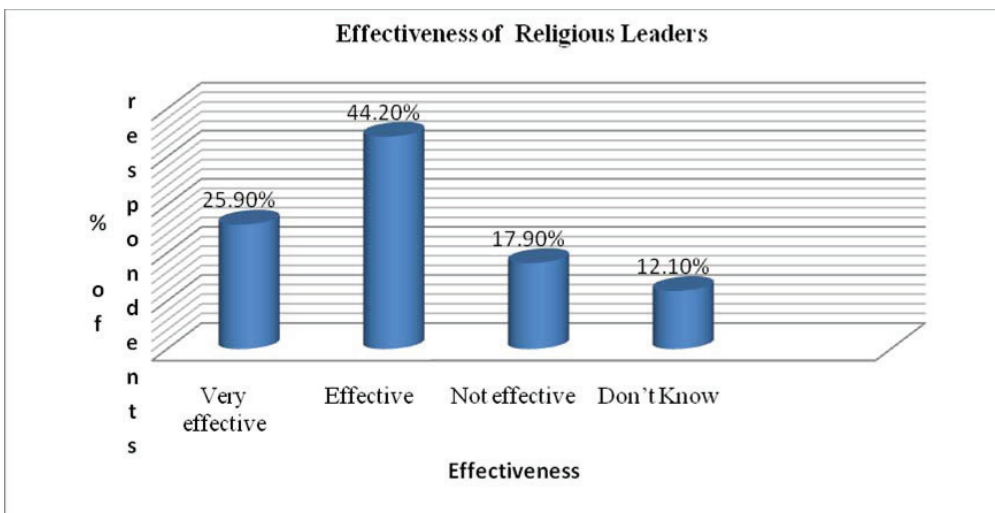
In other instances, the youth have increasingly been blamed for ignoring the peace agreements of their forefathers, terming them irrelevant or claiming to be ignorant of them. With the decreasing influence of elders over the youth, declarations pose a strong challenge.

147. Community leaders from Eastern Province (Moyale, Marsabit and Isiolo) and North Eastern Province (Wajir, Mandera and Garissa districts), together with respective security organs, met at Modogashe in Isiolo in 2001 and signed the peace accord.



Religious leaders

Religious leaders have been perceived as peacemakers, since no religion propagates conflict or violence. In most Kenyan communities, religious leaders have participated in brokering peace, which is why the formal institutions should work with religious institutions in peacebuilding efforts. Respondents rated religious leaders as important agents of resolving conflict – 24.9 per cent very effective and 44.2 per cent effective.

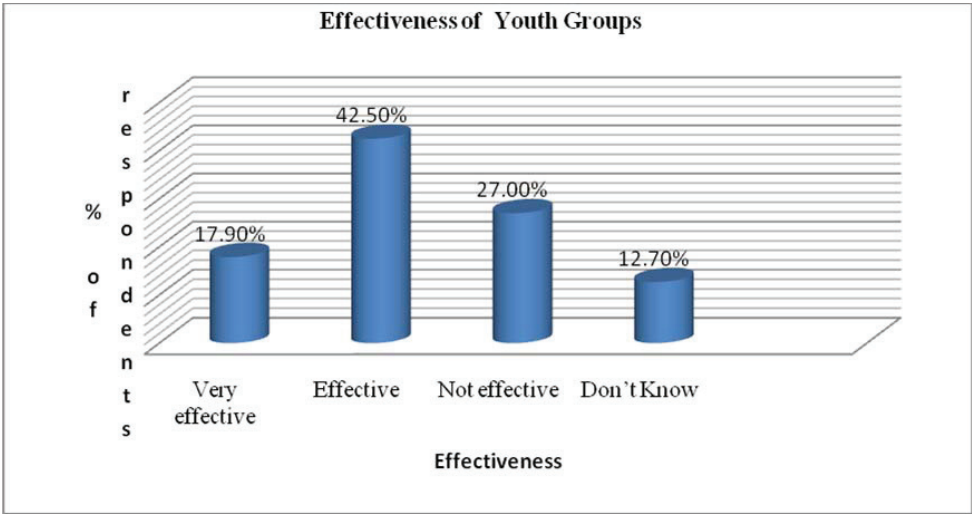


Youth groups

Youth groups were also seen as effective agents of brokering and maintaining peace. Some have been involved in community policing and peer counseling and others provide security



as KPRs.¹⁴⁸ Their role was rated very effective by 17.9 per cent, very effective and effective by 42.5 per cent, while 27 per cent did not view youth as effective in conflict resolution.



7.3 Response to conflict situations

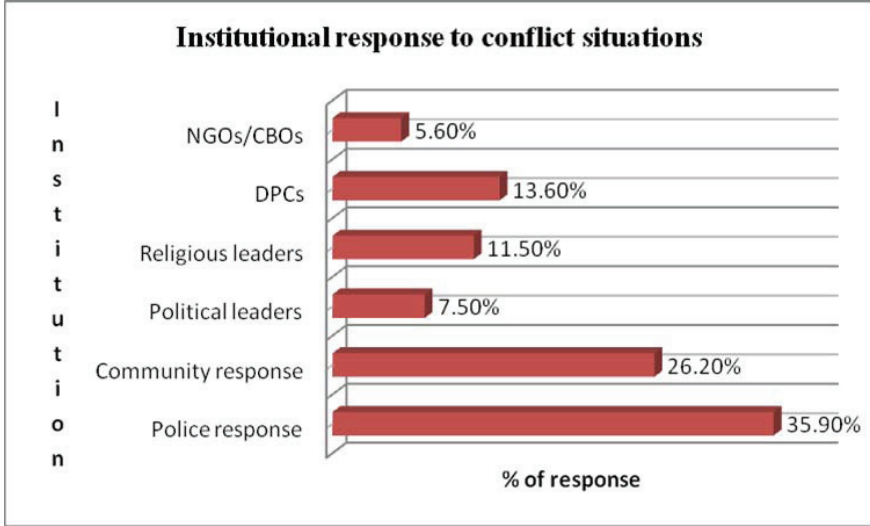
The survey also sought to identify responses to conflict situations at institutional and community levels, with the aim of generalizing the findings. Police or security forces were the first to respond to conflict, said 35.9 per cent of respondents. Kenya has managed to ensure security, patrol and government presence in all parts of the country. The community was rated second, at 26.2 per cent, although its actions can be positive or negative, as indicated below. Revenge or counter-attack escalates violence other than resolves it. It has been observed that ‘violence begets violence’ and one way of breaking this vicious cycle is through peaceful resolution mechanisms.

DPCs, working with district taskforces and community policing teams, also play a role, spearheading peaceful dialogue, negotiations and settlements, and giving early warnings on deteriorating conflict scenarios. They were rated at 13.6 per cent, with religious leaders at 11.5 per cent, political leaders at 7.5 per cent and CSOs at 5.6 per cent.

This is not to say that other institutions have not played their roles in conflict response mechanisms. The police, for example, have a mandate and mechanism for rapid response, while NGOs build peace structures and sometimes provide hope.

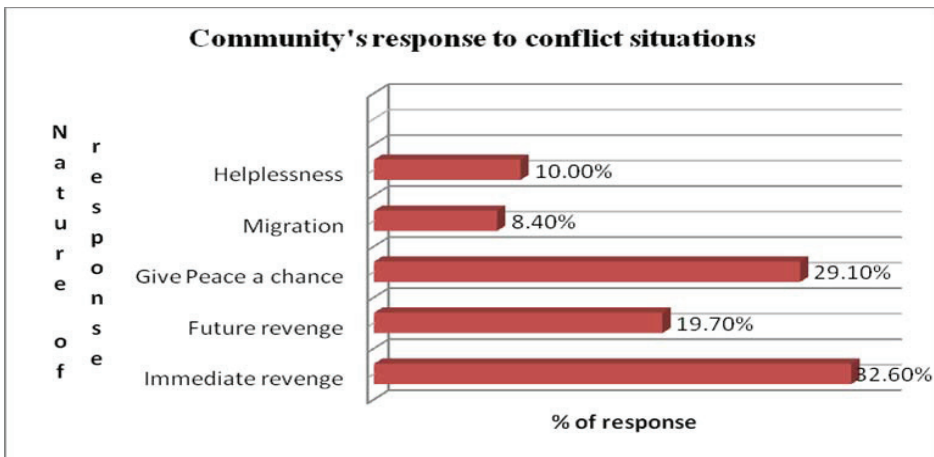
148. KPRs are armed by the government to supplement the government security forces at community level.

Institutional response



Community response

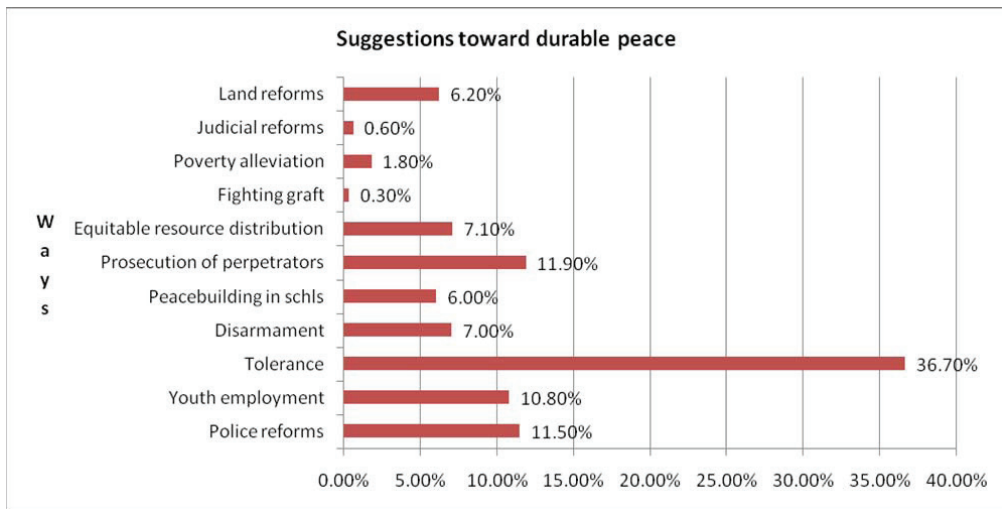
It was also necessary to find out how the various communities responded before, during and after conflict. Responses were interesting. The highest score was immediate revenge, at 32.6 per cent, which is a form of self-defense and a deterrent to more attacks. Although most communities in Kenya rarely attack each other, when they do, revenge is almost certain. The other common response is keeping quiet and giving peace a chance, or taking legal action. This is most common in urban areas and where peace awareness has been created. DPCs have used this as a mechanism for resolving conflicts and lowering tensions. Some communities don't seek immediate revenge, but plan and launch attacks at an opportune time.





In some cases, communities migrate to safer areas, which explain the high numbers of IDPs, even before PEV. Literature indicates that areas such as Rift Valley have had huge numbers of IDPs. Others simply integrate with neighbouring communities, with some losing their identity completely.

Suggestions on long-term and sustainable peacebuilding efforts



Ten per cent of respondents indicated that helplessness is also common. Many communities don't feel safe and don't know what to do. They live in constant fear. In FGDs, some admitted that they were willing to die where they are since they have nowhere else to go and no one to protect them. They hoped that the government would have the capacity to protect all citizens.

Asked to suggest ways and mechanisms for maintaining and ensuring peace in Kenya, respondents cited:

- Tolerance for each other (36.7 per cent), accommodation of various opinions and appreciation of differences.
- A lasting solution that seeks prosecution and justice is civil and addresses impunity. The cry is deafening among PEV IDPs still in camp three years after the peace accord.¹⁴⁹
- Police reforms to improve both prevention of and response to conflict. What happened

149. The resettlement of PEV IDPs is long overdue.



to intelligence? Why are criminals not arrested and charged? Why are cattle rustlers or illicit arms traffickers not arrested?

- Employment to occupy the youth and restore hope (emphasized in all FGDs and interviews).
- Land reforms and equitable distribution of resources that would include devolved funds and implementation of poverty reduction mechanisms such as Kazi kwa Vijana.

Total disarmament, as small arms escalates violence and there seems to have been an arms race since PEV.

A traditional culture model adopted from cross-cultural conflict mediations by Augsburger (NSC, 2009, 60) identified the following five clear steps that have been practiced and should be applied in future peace initiatives:

- Community involvement: trusted leadership, selection of participants, setting timeframes etc.
- Establish a triangular third party process to reduce threat, balance power differentials and reduce arguments.
- Set relational time frames; follow social rituals, personal agendas and communal concerns.
- Embrace dynamic changes, rationally directed towards resolving tension in network and community.
- Select credible mediators, accepted in the social context and embedded in the social networks, and remain in relationship during and after resolution.

7.4 Field survey: Conflict reality

Traditional and cultural practices were identified as determining the orientation of certain communities. There are communities that are socialized to be aggressive and defensive, especially those that are prone to frequent attacks by other communities. Some cultures are typically violent – any attack is followed with a counter. The communities have fabrics for fighting, arrows, pangas, spears and other crude weapons. A primary concern of pastoralist communities is defending livestock from human and non-human enemies. Children and women are socialized to fight. In Turkana for instance, a woman would not want to be married to a man who does not own cows and, therefore, a gun to defend both the livestock and his family.



Embedded beliefs and values inform a community's behavior. Some communities are perceived as 'civil', while others operate in an uncivil manner. Some community beliefs are conflict oriented; warrior-like. Maasais for a long time were viewed as warriors and 'owned all the livestock in the world'. A Maasai Moran is fierce and combative and could kill a lion. Maasai have the right to carry weapons wherever they go, which is part of their wear. The recurrent conflict among the Kisii and the Maasai in South Rift is a result of such beliefs. On the contrary, the Bantu communities are principally farmers and have few beliefs or practices that lead to violence or war.


Cattle's rustling is a rationalized belief embedded among pastoralist communities, with escalations during restocking period and ceremonies such as marriage where livestock is used for dowry payment (another cultural practice). Stock theft is commonly termed 'commercialization of livestock', which explains the transition from traditional, culturally based rustling practices to stealing in the guise of economic activity. No sooner is a raid conducted than the meat of the stolen livestock is in the market, having been shipped through an elaborate network of actors who will kill anyone in their way.

Emerging religious concerns have recently played a primary role in defining Kenyan communities. For a long time, there has been tension between the predominantly Christian and the Muslim communities, with religion being the fundamental determinant of beliefs and practices. Religious tolerance has been punctuated by only few isolated cases of religion-based conflict. However, the county spirit raised concerns of religious differences, with North Eastern and Coast intimating that religious orientation could be a cause of conflict in the predominantly Muslim counties due to 'fundamentalism'.

Central Province and Nairobi have recently experienced emergence of strong traditional beliefs among the youth leading to violent acts that border 'criminalism'. Quantitative analysis indicated that 12.5 per cent and 23.2 per cent of conflicts were caused by religious differences that are quite significant.

In North Eastern and Upper Eastern, inter-clan conflicts are the most prevalent. A similar situation is noticed in Western Kenya, although it doesn't escalate to violence. Tribal conflicts, on the other hand, are characteristic of North and Central Rift. In fact, the PEV was summarized as 'ethno-politico', where the political affiliations that fanned the violence were due to perceived tribal-politico affiliations with subterranean causes pegged on economic imbalance (the land issue). It was purely expression of deep-rooted 'tribal hatred'.¹⁵⁰

150. There is a nebula that encompasses political, economic and sociocultural factors.



In some communities the animosities are deeply entrenched, with attacks followed by counter attacks inflicting wounds that may never heal. Some of the attacks have been massacres. One of them is the well-documented Turbi massacre.¹⁵¹ Recent realities point out to areas such as the Coast being extremely polarized and potentially explosive due to the ‘watu wa bara’ thinking, which is economically driven but ethicized.

Admittedly, the tribal and inter-clan animosities are difficult to address even when peace agreements and other declarations are made due to deep-seated bitterness and memories. The tribal tug carries with it tribal hatred, negative ethnicity and incitement to violence. During FGDs, it was evident, especially among agrarian communities and of course pastoralists that lack of exposure and failure to achieve reasonable levels of education among the youth rendered most of them susceptible to crime and they would take advantage of any opportunity to express their internal feelings through acts of violence. Most youth complained about joblessness and lack of economic capacity to develop themselves, which drive them to violence and political manipulation.

Alcohol and substance abuse were also identified as social ills causing violence. Counties such as Nairobi, Mombasa, and Central and South Rift scored highly on this aspect. There has been growing concern that Kenya is slowly becoming a drinking nation. This resulted in the enactment of the Alcohol Control Act 2010,¹⁵² which seeks to regulate alcohol consumption.

To conclude, there are multiple causes of conflict that are culturally and socially based or triggered. It was shocking to find out that in South Rift, among the Kisii and Masai, the warring communities agree to fight for a number of days. They select who should go to fight. They fight to noon and postpone the combat to the following day. But with the use of arrows and guns, the dynamics have changed and it’s no longer fun, but lethal and destructive.

In Central Province, the tribal card is not visible, but religious tensions and affiliations have influenced identities, leading to conflicts. Lower Eastern on the other side has been viewed as dominated by witchcraft, eliciting deep-rooted family conflicts comparing closely to those of Kisii, where witchcraft-related deaths are reported regularly, escalating to intra-clan conflicts. Coast and Central as well as Western are also witchcraft prone.

151. Turbi is in Marsabit. The conflict culminated in a massacre of 76 Gabras and 9 Boranas, with loss of more than 8000 livestock in 2004.

152. The Alcohol Control Act 2010 is famously known as Mututho Act and aims at controlling consumption and packaging of alcohol.



7.5 Actors in socio-cultural conflict management

The importance of culture as a cause of conflict is better appreciated when viewed from the role of culture in mitigating conflict. It is evident that culture is the main lens that defines how all other causes are viewed. For instance, culture defines 'value of life'. During a livestock raid, which is culturally informed but taking an economic face, whether to kill or not is dependent on culture, on whether the raiders value life or not. Therefore, use of illicit arms is not due to insecurity, but is probably a reflection of how much people value life and for what purpose they want to use the gun.


Fundamentally, literature review indicates that socio-cultural concerns influence the primary level of conflict management. Others play a secondary role. If, for instance, a community was fully and fairly economically endowed and everyone enjoyed equal opportunity, would there still be conflict? If total security was provided and relevant structures for security established, would there still be conflict? What drives negative politics? Is it not the culture and social identities we have described above? What causes feelings of segregation and alienation in a society?

People are defined by the values they hold, which are inculcated at socialization level. A person is first a community before becoming a nation. Even the increasing individualism in postmodernism is in tension with the sense of communal belonging that concerns everyone. Sociologists have argued that: 'It is difficult to separate humanity with community.'

In most communities, elders were key players in conflict issues, with North Eastern, Upper and Central Eastern as well as North Rift leading in eldership roles. The Laibons among the Pokot or Turkana (of North Rift) have a role before cattle raids are conducted.

Youth were also identified as key players. They are the ones mostly used to carry out raids or attack other communities perceived as enemies. After all, culturally, they are the defenders of their communities. During the PEV, the youth were used to cause mayhem in all the conflict zones. In Kisii, for instance, the 'Chinkonkoros' are used, in Coast, the Funga File and, in Central Kenya, the Mungiki.

Political parties and politicians were identified also as key players in conflict. Most politicians would appeal to cultural and social concerns in their communities and across Kenyan ethnic communities to fuel tribal or clan animosities. Some would do so purely for votes and political mileage or selfish economic gains. Indeed in most cases, the politicians were blamed



for inciting and fuelling conflict through hate speech, marginalization, creating fear and forming tribal alliances. Most political parties have ‘an ethnic connotation’. They do not have a national outlook, making them structures for perpetuating cultural synchronism. On the other side, political goodwill is required and used during peace negotiations.

The traditional justice system and provincial administration were also identified as key institutions in the administration of justice and conflict resolution. Little intervention of formal courts systems is involved in conflicts. FGDs and in-depth interviews revealed that communities are afraid of taking cases to courts and instead choose to take law into their own hands, or work with the local provincial administrators (chiefs and DCs) to resolve disputes and conflicts. In Coast, for instance, most of the causes of conflict would be based on land business rivalry or community boundary, if not grazing areas. Usually when tensions are noticed (especially using the provincial administration early warning system), the administrators move fast to address them and even summon the culprits for resolution.

Other actors on the socio-culture platform on conflict include the CSOs which have been instrumental in supporting the government’s development agenda and negotiating peace deals. In most cases, they have funded the processes or helped in difficult times and others have run programmes aimed at empowering the communities or establishing alternative livelihoods or building peace negotiations structures. Some have undertaken research that has informed government decisions, while others have lobbied for and advocated rights leading to positive interventions and lowering conflict-causing agents. The church and faith-based organizations (FBOs), international NGOs and several development partners have been particularly strong in conflict resolution and peacebuilding. However, some have been partisan and have fuelled conflicts for their survival and relevance.

The government is the primary actor and has been fully involved in peace settlements, expending colossal resources to support peace efforts through institutions such as the police, military forces and provincial administration. The government has established schools, built health facilities, water and boreholes and, in extreme cases, has provided basic facilities to conflicting communities. During conflicts or escalation of tensions, the government has moved in, sometimes with excessive force, creating fear and despondency.

The NSC has established DPCs to identify negotiate and resolve conflicts and ensure peace. They are supposed to be culturally sensitive and inclusive, and work with other relevant organs in pursuit of peace. Great progress has been reported in many areas, although due to lack of resources and monitoring mechanism, some of them have become dormant.



7.6 Dynamics of conflict and peace efforts


From the analysis, especially the FGDs, interviews and quantitative indicators, and backed by the post-referendum voting, it is evident that Kenyans generally want to have peaceful coexistence and are not particularly polarized along tribal lines as politics (politicians) would have us believe. It is clear that politics plays into culture, social concerns, economic and environmental concerns to heighten tribal tensions.

However, emergence of community realities such as terror gangs is rather worrying. Mt Elgon, for instance, and the emergence of the Sabaot Land Defense Force (SLDF), the Mungiki in Nairobi, Central and spread across Central Rift valley, and other groupings are dangerous indicators of not only societal decay, but a ticking time bomb that could easily explode if triggered. Most of those interviewed indicated that creating productive engagements for youth is paramount.

The perpetual ethnic nationalism entrenched among some communities should be discouraged due to its venomous capacity to create and promote tensions. In particular, the fast-growing Somali community in Kenya is worrying, given their unwillingness to integrate with Kenyan communities in business, marriage or religion. While most ethnic groups have no barriers in marriage and business or working together, the Somalis do. Similar ethnic chauvinism is noticed among the Kikuyu, who tend to dominate other communities because of their numbers and business prowess. That has created envy, hatred and animosity across many communities.

The whole reality of ethnic nationalism must be addressed and deliberate effort made to ensure accommodation and prevention of domination of smaller communities by those larger. In Coast, for instance, the Tavetas are a smaller tribe compared to the Taitas and the Kambas. They do not want to be dominated by the latter two. That should be respected.

Another affront to peace and fuelling conflict is erosion of values at community level. While religious institutions are blamed for failure to articulate the values as previously done, and with the general breakdown of social systems that inculcated cultural values to children and youth, now effectively displaced by schools, television and the internet (the reality of postmodernism), it is important for the society and the government to create platforms for societal development for preservation of society and values. This is quite difficult. School system participation and deliberate effort by parents and the community should be necessary.



Peace efforts appear to hold, especially in Upper and Northern Kenya and North Coast. There are several attempts to achieve similar among the communities in the North Rift and South. While it is possible to have this happen at rural level, it is quite difficult at urban level where conflict is defined and triggered in very different ways. In other cases, force and government effort are needed to ensure prevalence of peace. Some border areas require increased and visible security to rid the community of insecurity reduce quantities of illicit small arms and elimination or reduce cattle rustling, which is a major cause of conflict in the country.

In the non-pastoralist communities, land has been one of the major causes of conflict. Proper land adjudication, civic education and involvement of the elders in resolving land disputes, historical or otherwise, are crucial. Land in particular is potentially explosive in Coast, fuelled by ethnicity, while in Central and South Rift, conflict is likely to repeat itself, being blamed on historical land injustices but in reality, politicized under ethnic identity.

Some currently peaceful areas are likely to explode. Lower and Central Eastern, Western, the whole of Coast and some pockets of South Rift are latent with conflict. Most of the causes are sociocultural, as alluded to earlier, but manifestations include economic marginalization, resource scarcity and competition, environmental degradation and climate changes. Mau Narok is a case in point.

Border conflicts are also widespread, riding on the crest of community identity and access to resources. Actually, border conflicts are not only a local problem, but a source of international conflict. Coast, South Rift, North Rift, Upper and Lower as well as Central Eastern are characterised by border disputes. The Kilgoris-Kisii border, Tharaka-Nyambene and Kamba-Oroma disputes and almost all other disputes are border based. Those simmering and threatening to blow like Taveta-Kamba are more economic.

An analysis of hotspots across the country revealed interesting trends, with each area having a particular dominant cause. Although each area has multiple causes of conflict, culture seems to be a feature common to all.

7.7 Challenges in socio-cultural conflict transformation

The social cultural dynamics that play out in peace processes are deep and require concentration and sensitivity. The basic tenets are elucidated in the Community Based Mediation Manual, Mpatanishi (PeaceNet, 2009, 2), namely strengthening institutions of elders, working closely



with concerned parties, working with community members to enhance the skills of as many individuals as possible, and being as impartial and objective as is practicable and playing team. Where community groups have participated in the process, women and youth alongside the elders, better results have been realized.

Four stages of mediation have been identified that call for vigilance and inclusiveness in the whole process. The pre-mediation stage is when all issues should be brought on board and inclusion ensured so that no players feel left out. Ground rules are also laid out. This is a very challenging phase and most often, the process dies at this point. At the conflict description stage, parties are allowed to tell their stories. Again, listening is essential, as is ensuring that honesty is the driving spirit. Goodwill is required, too.

It is evident that there is still a lot more information that needs to be investigated and documented on the social-cultural front, particularly from communities that erupted in 2007-2008 post-election violence. Although it was orchestrated, 'one against 41' and with such other overtones, there is merit in identifying the dynamism surrounding conflict in areas presumed peaceful, yet dangerously and potentially explosive.

Intercultural dialogue supports the preservation as well as the fusion of various cultures. The focus of intercultural dialogue is on the willingness to learn about other cultures without the adoption of stereotypes and biases, which are often used to negatively represent a culture. Intercultural dialogue works like a bridge between cultures. Every new thing that is learnt about another culture brings the learner one step closer to understanding that culture from a more diverse perspective. Bridging the cultural gap through intercultural dialogue makes it easier to cross from one culture to another.

Individual identity should be subjugated for national identity towards statehood and nationhood. This sphere would not only engage various classes of players but include gender representatives, particularly women, who are critical of the process of peacebuilding and conflict management. The statehood and nationhood have been identified as the foundation for peace, security and national unity. Community dialogue, respect for sanctity of human life and inculcation of the same from family, school, religions and public institutions are some of the strategies in the Vision 2030 medium-term plan 2008-2012 (Vision 2030, 2008, 49).



CHAPTER EIGHT:

ENVIRONMENTAL ASPECTS OF CONFLICT IN KENYA

8.1 Introduction

Environmental conflict is not a new phenomenon in Kenya, although its identification as a specific conflict typology is uncommon. Analysis of conflict from an environmental perspective is often neglected because by the time it moves from a latent conflict to an overt conflict,¹⁵³ there are often other contributors that appear more directly responsible for causing the conflict. Causes of conflict are usually multiple and often intersecting, with the more typical defined causes being easier to identify and attribute. For instance, a land conflict could derive from political, social, cultural, economic, legal or environmental causes, with seldom a single cause. However, the conflict trajectory, which may be rooted in environmental causes such as scarcity of land due to degradation, often progresses from a latent conflict to an overt conflict, when communities fight over access/control of that land perhaps for political and economic reasons. This fight is then defined as the conflict and is attributed in more recent cases to political differences or incompatible economic goals, with communities fighting to control/access land as an economic or political resource. A deeper analysis would reveal multiple root causes of this conflict, which would include scarcity of arable land as an environmental resource due to land degradation.

The working definition of environmental conflict in this study refers to conflicts over elements of the environment that are perceived to be scarce due to degradation, thereby limiting their usefulness or access. Kenya's Environmental Management and Coordination Act defines environment as comprising land, water, atmosphere, climate, sound, odor, taste, animals, plants and the social factor of aesthetics. It includes both the natural and the built environment.¹⁵⁴ While acknowledging that the environment is seldom an independent cause of conflict and is compounded by factors such as climate change and population expansion, it is still a crucial cause of conflict whose incidence is on the rise. With the current unsustainable usage of environmental resources, these resources are being depleted, creating increased scarcity of viable environmental resources.

153. Curle, a, *Making peace*, London: Tavistock Publications, 1971.

154. Government of Kenya 2009, *The Environmental Management and Coordination Act* (No 8 of 1999)



For a more comprehensive analysis of environmental conflict, the working definition will also encompass the role played by environmental crime. There exists a nexus between crime and conflict with the potential for environmental crime to trigger or exacerbate environmental conflict. Take the case of illegal dumping of hazardous waste, which is in direct violation of environmental laws, which classify it as an environmental crime. One consequence of this illegal dumping is the degradation of the targeted land or water resource, directly impacting the communities depending upon that environmental resource to survive. Once the land is degraded and the water is polluted, this may lead to conflict between the community and those dumping, or it may force the community to migrate in search of a healthier environment, which, in turn, could bring it into conflict with other communities as it increases competition for resources in its new habitat. Environmental crime then becomes part of an environmental conflict cycle that will result in reduced availability and quality of environmental resources further impacting competition for resources and increasing the possibility of conflict over the same. Though this study seeks to analyse environmental conflict in Kenya, it is by no means exhaustive. However, it hopes to capture the main typology of environmental conflict.

Environmental conflict is on the rise in Kenya with the recognition that about 80 per cent of Kenya's population depends directly on land and natural resources for their livelihoods.¹⁵⁵ Occupations that depend directly on the environment for a livelihood would include farming, fishing and pastoralism. The disproportionate direct dependence by the majority of Kenyans on the environment as a livelihood resource has increased the effects of environmental degradation, thereby intensifying competition for diminishing quality environmental resources. In some cases, this results in conflict on a community or individual level as the struggle continues to gain access to and control of these resources for a living. This dependence is in the light of the fact that 83 per cent of Kenya's land surface area is classified as arid and semi-arid and 17 per cent classified as medium and high potential.¹⁵⁶ In addition, the United Nations Environmental Programme has identified Kenya as a water-scarce country as its renewable freshwater supplies are lower than 1000 cubic meters per capita.¹⁵⁷ Within the context of aridity and water scarcity, the environment as a cause of conflict is indisputable.

8.2 Causes of environmental conflict

The methodology of this research comprised both quantitative data from questionnaires and

155. State of Environment Report 2006/7, the National Environment Management Authority-Kenya, 2007, Nairobi

156. David Kamweti, Deborah Osiro and Donald Mwiturubani, Nature and extent of environmental crime in Kenya, ISS Monograph 166, 2009, 3-9.

157. Country profiles: Kenya, available at [http://gridnairobi.unep.org/chm/roa/Country per cent20Profiles/Kenya.doc](http://gridnairobi.unep.org/chm/roa/Country%20Profiles/Kenya.doc).



qualitative data from fieldwork based on FGDs and key informant interviews.

According to information received from FGDs and interviews, most regions seemed not to reflect a significant incidence of environmental conflict. This may be due in part to the fact that the environment is seldom the single driving factor of conflict and thus tends to be overshadowed by other more typical causes, such as political, economic and socio-cultural. The following is a summary of the reported findings for environmental conflict from the regional fieldwork reports.

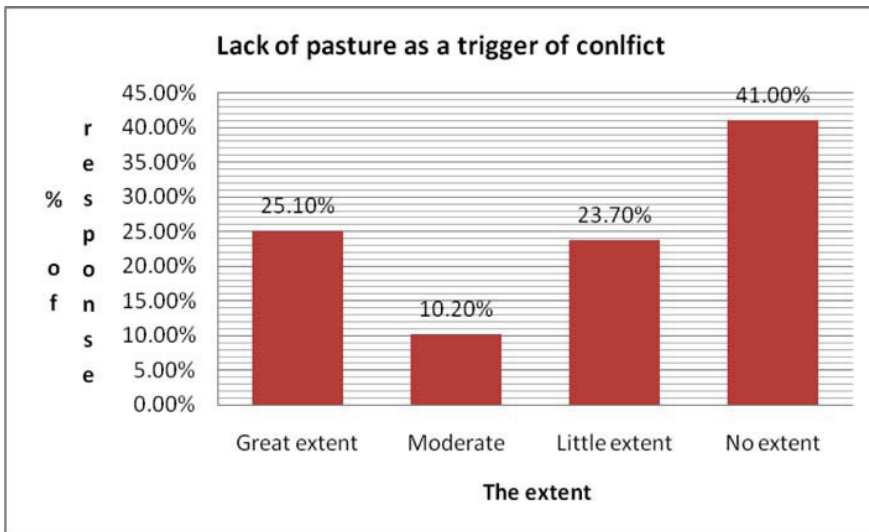


Region	Typology	Conflict dynamics
North Eastern	Land	Access to grazing land for livestock due to: <ul style="list-style-type: none"> • Degradation of rangeland resources due to drought and overgrazing • Land pressure from migration and displacement due to drought • Land alienation with private ranches taking up public land and threatening traditional pastoralist mobility
	Water	Access to water sources for livestock
Coast	Land	Access to land: <ul style="list-style-type: none"> • Conflict over land usage between pastoralist and farming communities • Conflict over access to beaches among hoteliers, locals and fishermen Scarcity of high-quality land due to: <ul style="list-style-type: none"> • Conflict over land degradation between charcoal dealers and conservationists due to destruction of mangrove swamps and forests from charcoal burning • Degradation from flooding, causing high salinity and PH of soils • Illegal dumping of harmful waste • Illegal harvesting of coral and shells • Land pollution due to poor sanitation in informal settlements
	Water	Access to water: <ul style="list-style-type: none"> • Rights of access by fishermen and pastoralists Uses of water: <ul style="list-style-type: none"> • Rights of use between the navy and fishermen • Territorial fishing rights between local and international fishermen • Rights of water use between upstream and downstream communities Scarcity of quality of water: <ul style="list-style-type: none"> • Degradation of Lake Jipe by silting due to flooding
	Human/wildlife	Conflict between communities living in areas bordering game parks and Kenya Wildlife Service (KWS) ¹⁵⁹ due to destruction of food crops
	Air	Degraded air quality by dust pollution from cement company
Lower Eastern	Land	Access to land: <ul style="list-style-type: none"> • Conflict between farming and pastoral communities during drought periods Scarcity of quality land: <ul style="list-style-type: none"> • Degradation of land from sand harvesting

Region	Typology	Conflict dynamics
		<ul style="list-style-type: none"> Degradation from deforestation and charcoal burning
	Water	Access to water sources: <ul style="list-style-type: none"> Conflict over use for livestock and the community Conflict over sharing water resources with migrant communities that refuse to leave even after onset of rains.
	Human/wildlife	Conflict between locals and KWS over wildlife damage to crops and inadequate compensation for injuries
Central Eastern	Water	Misuse of irrigation water schemes are a source of tension
	Human/wildlife	Conflict between locals and KWS over wildlife damage to crops and inadequate compensation for injuries
Nairobi	Land	<ul style="list-style-type: none"> Access to land as a livelihood resource Degradation from illegal dumping of harmful waste
	Water	Degradation of water resources through illegal dumping of harmful waste
Western	Land	Access to land <ul style="list-style-type: none"> Forced displacement of residents in/around forest reserves Conflict between access/use for grazing versus farming
	Human/wildlife	Conflicts between communities and wildlife conservationists in areas bordering game parks and forest reserves over use and access of land
North Rift	Land	Access to land: <ul style="list-style-type: none"> Conflict over rights to pasture between pastoralist communities Conflict between pastoralist communities and KWS over killing wildlife
	Water	Access to water resources between pastoralist communities
Central	Land	Conflict between conservationists of the Aberdare ranges versus charcoal burners and poachers
Nyanza	Land	Land use conflict over planting of water consuming blue gum trees uphill, affecting water supply downhill
	Water	<ul style="list-style-type: none"> Conflicts over quality of water with illegal dumping of waste threatening fish industry Degradation of land from invasion of hyacinth weed affecting the fish stock



Findings from the questionnaires also seemed to reflect that the environment is not a significant trigger of conflict. However, based on the literature review that documented cases of environmental conflict on a significant scale, the survey results might have been influenced by difficulties in the conceptualization of environmental conflict. As a fairly new construct in understanding conflict, environmental causes are often overlooked or indistinguishable from other more traditional causes of conflict. To illustrate this, a conflict of arable land by agricultural communities may be interpreted as a purely economic or political conflict despite scarce availability of arable land. One trigger of environmental conflict that came out quite clearly is lack of pasture.



Compared to the other aspects of environmental conflict and crime surveyed, including environmental management, water pollution, deforestation, illegal dumping of harmful waste and land infertility, 25 per cent felt lack of pasture was a definite cause of conflict on environmental grounds. These findings are in line with case studies examined through literature, which indicate higher incidence of conflict in areas where environmental resources are scarce due to overgrazing and climate change, leading to drought and famine. Coupled with this are traditional practices of population migration and cattle rustling that tending to introduce a propensity for conflict that can be directly linked to scarcity of pasture as an environmental resource for livestock sustenance. This as felt particularly in areas inhabited by pastoral communities, as evidenced by the following table.

Country of participants - Whether lack of pasture has triggered conflict in the area
Cross-tabulation

County	Responses on whether lack of pasture has triggered conflict in the area				Total
	Great Extent	Moderate	Little Extent	No Extent	
Mombasa	4	8	8	20	40
Kwale	6	0	20	18	44
Kilifi	19	20	31	28	96
Tana River	31	15	4	3	53
Meru	9	15	18	27	69
Lamu	15	7	4	25	51
Tharaka-Nithi	0	0	8	31	39
Garissa	67	7	29	23	126
Wajir	35	4	10	10	50
Mandera	48	0	12	20	80
Siaya	0	0	18	45	63
Isiolo	49	5	0	0	54
Marsabit	19	27	15	25	89
Taita Taveta	15	20	14	8	57
Samburu	22	0	0	0	22
Nyeri	3	5	21	39	68
Nairobi City	0	3	48	33	84
Muranga	0	0	0	48	48
Kiambu	3	4	17	32	56
Turkana	26	3	0	0	29
West Pokot	27	3	0	0	30
Trans Nzoia	16	4	7	18	45
Kericho	0	0	10	30	40
Bomet	0	0	7	44	51
Bungoma	4	0	19	20	43
Busia	0	0	13	55	68
Kisumu	4	3	31	6	44
Homa Bay	0	15	15	27	57
Migori	11	6	16	22	57
Kisii	0	0	11	51	62
Total	433	176	409	706	1724

Land use and access

Conflicts over land as an environmental resource have revolved around incompatible uses of land, access to and quality of land. With a population that is highly reliant on the environment for livelihood sustenance, land use is a crucial factor in environmental management in Kenya. As the population expands, land remains a limited resource that is vital for the fulfillment of



various livelihood options.


One key category of land use and access conflicts has involved communities and state institutions vis-à-vis land being declared by the state as a protected area with direct impact to the access of the community to what was formerly public land. To protect biodiversity and conserve the environment, the government has determined certain areas as protected, which means that these areas are excluded from public use.¹⁵⁹ As the state demarcates protected land there is less availability of public or common land that can be accessed by residents. A case in point is the protection of the Aberdare ranges in Central region – this is necessary to preserve a key water catchment area, but conservation attempts also limit availability of land for other livelihood uses. This had led to conflict between state authorities and residents who feel they have a right to access the land. While recognizing the need to protect land resources such as forests, there is a gap between this noble goal of conservation and educating the community while providing alternatives to meet their needs for land.

In addition, the displacement of communities in favor of environmental conservation through protected areas and forest reserves, also presents a source of conflict. Faced with limited availability of arable or grazing lands, the communities find themselves in stiff competition and/or conflict with the government regarding their need to use this land for livelihood sustenance. Another aspect of land use and access conflicts involves the privatization of huge tracts of land, some of which was formerly public land, by individuals who in some instances do not develop the land adequately. Communities end up in conflict with these private buyers who have now restricted their access to land for common use.

Another category of land use conflicts has arisen through competitive livelihood uses of the land, for example between pastoral communities that need grazing land for their livestock and agricultural communities that require land to grow crops. These conflicts occur on both an intra- and intercommunity level with competition within the communities for either grazing or farming lands and as well against each other for the use of the land for livelihood benefit.

For the pastoralist communities, climate change has played a role in the increased incidence of environmental conflict, with frequent droughts forcing the pastoralist communities to migrate to survive. With existing traditions of mobility and cattle rustling, pastoralists often find themselves in direct conflict with other communities as they compete for environmental resources. In regions of Kenya occupied by pastoralist communities, there have been increasing reports of conflict due to cattle rustling, access to water points and land grazing.

159. Biodiversity and protected areas, country profile: Kenya, World Resources Institute, available at <http://earthtrends.wri.org/text/biodiversity-protected/country-profile-96.html>.



Policy regarding the ASALs indicates the need to reduce reliance on livestock as a means of life and to diversify sources of income¹⁶⁰. It also highlights a need to improve productivity of pastoralism, while ensuring sustainable use and conservation of the environment. Likewise, farmers requiring arable land for productive farming have faced challenges from scarcity of land through degradation. Causes of these are soil erosion from deforestation and flooding, infrequent rains and drought. The lack of available fertile land for farming has forced communities to migrate in search of arable land, bringing them into direct conflict with resident communities.

Closely linked to use of land, access to land as an environmental resource has also caused conflict. In the coastal regions, there is conflict between hotel proprietors and locals over access to the beach, with hotel properties blocking the public from the right to use this land for fishing or recreation. Conflict has also occurred over the construction of illegal structures on the beach by informal traders, which threatens the preservation of the beach as an environmental resource through pollution and littering. The use of the coastal front for economic gain through the activities of tourism and local entrepreneurs negatively impacts the marine ecosystem, with the destruction of the delicate coral reef.

As the quality of land is compromised by degradation, conflict ensues in the struggle to earn a livelihood from the environment. Some activities that have caused land degradation include sand harvesting, charcoal burning, tree cutting and the planting of water-consuming blue gum trees. In areas where communities have been unable to sustain traditional livelihoods such as pastoralism, the adoption of practices such as charcoal burning have the unintended consequences of deforestation, land degradation and pollution. This has been the case in Lower Eastern region and when environmental conservationists discourage charcoal burning, it creates conflicts for those dependent on it for survival.

Urban development and industrialization have created land pressure due to congestion of population and industry, which is not adequately planned and managed. In most urban areas, there is a proliferation of informal settlements that, despite being heavily populated, have poor drainage and sanitation that negatively impacts the environment. Attempts to dissuade the development of informal settlements have been unsuccessful, due to the cycle of demand from low-income workers who need affordable housing close to their workplaces. Most of the informal settlements flank up-market residential areas where the lower income workers earn their living. The concentration of population and industry has also greatly heightened the prevalence of illegal dumping, by both residential and commercial entities. A tour of Nairobi city will reveal illegal dumping sites around lower income residential areas, markets and city outskirts. This is in clear violation of environmental laws, but apparent lack of capacity to implement the stipulations has led to a continual flouting of the laws. Away from

160. Government of Kenya, National policy for the sustainable development of arid and semi-arid lands of Kenya, 2004.



the cities, conflict over land as an environmental resource is also apparent in areas where visiting environmental migrant communities opt to stay in their adoptive environmentally rich areas even after the rains.


Water use and access

In the State of Environment Report 2006-2007,¹⁶¹ the National Environment Management Authority-Kenya indicates that despite the presence of numerous drainage basins, they are unevenly distributed, giving rise to indicators of water resource stress. Human over-usage and climate change projections of reduced precipitation compound these conflicts over access to water due to diminished quantities. The effects on water volume and quality have coalesced as a source of conflict for those whose livelihood is dependent on water for fishing, farming and livestock rearing. A good example is fishing conflicts in Lake Victoria and how the various factors threaten the viability of the industry. Over-usage of the Lake's water resources, climate change and invasive species such as hyacinth has inversely affected water volume and consequently availability of fish, thereby increasing competition for fish. This situation has bred conflict among fishermen as they compete for territorial fishing rights over limited fish. There has also been conflict between conservation groups that are discouraging fishing as they seek to restore the water quantity and quality and preserve the variety of fish species, and fishermen who are dependent on fishing as means of survival.

There have also been conflicts over availability of good-quality water resources, as existing resources are affected by pollution from illegal dumping and silting. Silting is the process by which there is an undue accumulation of solid deposits that diminish the quantity and quality of a water resource and this could be caused by erosion, flooding and dumping. This form of environmental crime is particularly rife in the cities, with industries getting rid of effluence in nearby rivers. The combined effects of deforestation and soil erosion have also contributed to silting of lakes, such as Jipe, and influenced water volume and quality.

Related water conflicts have also been experienced over seemingly incompatible uses of water for fishing, farming or livestock rearing. Attempts by the specific groups to dominate water points and resources have led to conflict, with each group vying for exclusive rights of access. In the Coastal region, there have been conflicts between the navy and fishermen as they each seek to use the waters for seemingly incompatible reasons. Similarly, conflicts on access to water take place among fishermen as they compete for diminishing fish resources. The local fishermen at the Coast have also been engaged in international conflict over territorial fishing rights, while regional conflict has been experienced over the same in the waters of Lake Victoria. Without alternative livelihood options, diminished water volumes, quality and availability of fish will continue to be a source of conflict from a local to international

161. State of Environment Report 2006/7, the National Environment Management Authority-Kenya, 2007, 127



level. Water management policies need to be consistently implemented to mitigate water scarcity especially in the drier regions and to protect water quality and quantity to support the relevant livelihoods.

Air pollution

With rapid industrialization, the quality of air presents a potential cause of conflict, with rising pollution levels occasioning public health concerns. In urban areas, dust and aerial emissions from industries are growing sources of tension, with area residents forced to live with poor air quality. Similarly, in breach of environmental agreements, aerial spraying by companies has affected productivity of crops and livestock in the area, creating tension between residents and the company. Air pollution is in contravention of environmental law, but failure to enforce the law is now turning this crime into a basis for conflict.

Conservationists and community conflicts

Kenya is home to a broad spectrum of wildlife, which boosts tourism as the country's second largest economic sector. With the seeming prominence attached to wildlife conservation to boost tourism in the context of population growth and land pressure, human-wildlife conflicts abide. Apart from the conflict generated by divergent land use options regarding wildlife conservation and livelihood sustenance, wildlife activities have also been a major source of concern as wildlife has caused destruction of crops and property and in some cases injuries and death. Communities have then retaliated by killing wildlife. Compensation to communities for losses incurred through damage by wildlife becomes a key issue that fuels further conflict. The fact that communities are often not involved in the wildlife management system already alienates them from the conservation efforts and fuels their frustration about the inadequate compensation offered. This lack of compensation has led to rising tension between resident communities and wildlife authorities, with their differing needs seeking to take precedence. Such tensions may negatively impact the community's sense of ownership of wildlife resources and ultimately its desire to nurture these resources that now prove a threat to their own survival.

Degradation from climate change

Of particular mention is the negative impact of climate change on the environment and how this has fuelled environmental conflict. With a large percentage of the population heavily dependent on the environment for survival, the cascading effects of climate change have been dire. This global crisis has seen the rise of the earth's temperature, reduction in moisture levels, erratic weather patterns, floods and drought, which have adversely affected the quality and availability of environmental resources in Kenya. Frequent droughts, unpredictable rainfall patterns and diminished water levels have increased land aridity, and reduced arability and water volumes, increasing threats to food security and sustainable livelihoods.



The established link between human industry and climate change requires that policies governing development remains cognizant of a need to regulate industry to slow down the rate of climate change. National policies on agriculture, water, forestry, wildlife, tourism, energy, wetlands, land, and sustainable development of ASALs, disaster management, fisheries and industrialization, all include an element of environmental conservation.¹⁶² However, implementation strategies need to be clearly defined and coordinated for these efforts to be effective.

Other variables

Having stated earlier that the environment is seldom a singular cause of conflict, it is still crucial to ensure an environmental analysis when looking at causes of conflict. The interplay of political, economic, legal and socioeconomic causes of conflict with environmental causes means that the severity of environmental conflict is exacerbated by the related variables. In addition, the impact of conflict on the environment has a degrading effect, which feeds into the cycle of environmental conflict due to scarcity caused by environmental degradation.

When political actors illegally apportion land for political mileage, this often has an untoward effect on forests and a water catchments area, which means environmental degradation that, may lead to environment conflict. Economically, the inequitable distribution of resources will result in reduced access of environmental resources against population pressure, setting the stage for environmental conflict. Environmental crimes that flout the existing legal frameworks to protect the environment have a similar effect. Social causes of conflict, such as migration and incompatible livelihood options, directly impact the use and access of environmental resources to create room for environment-related conflicts.

8.3 Actors in environmental conflict

State

Environmental causes of conflict have been exacerbated by a weakness in state institutions to protect environmental resources by mitigating the impact of resource distribution, population expansion and infrastructure development. Despite the presence of well-developed frameworks key to environmental conservation and protection, the implementation of these guidelines is wanting. The fact that other intersecting causes of conflict, such as political, social and economic, often eclipse environmental causes of conflict means that the environmental agenda is often side-lined. A failure to mainstream environmental concerns into various development interventions will ultimately prove detrimental, destroying non-renewable environmental resources. Gaps in response and intervention allow for a continued

162. State of Environment Report 2006/7, the National Environment Management Authority-Kenya, 2007, 129,



flouting of environmental conservation regulations with far-reaching consequences to the reduced availability of high-quality environmental resources.

Industries

Economic development has consequently led to increased human activities, which may be harmful to the natural environment. Whereas industry is an expected progression for developing societies, what is significant is the flouting of environmental regulations by industries as they seek to maximize profit over environmental conservation. This research found that there is incidence of illegal dumping of harmful wastes, air pollution and water pollution by industries in various parts of the country. In addition, extractive industries have been implicated in environmental conflicts due to the displacement of population without commensurate compensation and the eventual destruction of the land, making it non-viable for future agricultural or livestock activities. Environmental crime is often a precursor to environmental conflict and as such, due diligence should be paid in enforcing compliance with environmental regulations to prevent conflict.

Communities

Communities and their seemingly incompatible livelihood options have been grounds for environmental conflict, while groups compete for perceived diminishing environmental resources. The major livelihoods in conflict are the farming communities versus the pastoralist communities, with access to water points being key.

Whilst the farming communities tend to locate themselves close to the water sources, they inadvertently block access to the livestock-keeping communities who periodically migrate in search of water and pasture. The different perspectives of the use and access of land and water resources have put communities in perpetual conflict cycles due to what they perceive as incompatible needs. There need to be more effective interventions and sensitization for these communities to encourage a more collaborative use of land and water resources on a long-term basis.

8.4 Indicators

Natural calamities

The effect of natural calamities such as prolonged drought, floods and landslides all have degrading effects on the environment that can potentially trigger an environmental conflict. Prolonged drought creates scarcity of both land and water resources, which may then cause people to move in search of resources, thereby increasing competition and potentially,



causing conflict over the available diminishing resources. Floods and landslides cause soil erosion and silting, thus reducing land arability and water resource quality.

Industrialization

The rate of industrialization brings with it new challenges in enlarging the scope and incidence of environmental crime with the dumping of illegal waste and aerial pollution. Illegal waste dumping has destroyed the quality of land and water resources and also poses a health hazard, with the dumping of toxic and hospital wastes.

Urbanization

As cities expand outwards, the growth of infrastructure begins to encroach on areas that have been a natural habitat for wildlife. Urbanization forces the wildlife to migrate. In addition, as the population increases in areas surrounding game parks and wildlife reserves, there is more likelihood of conflict between conservationists and neighbouring communities.

Population displacement and migration


Apart from migration of populations in response to urbanization, there is forced displacement of people due to natural calamities and violent conflict. This may create conflict in areas with already diminishing environmental resources and the migrants and host communities struggle to survive.

8.5 Environment interventions analysis

Environmental Management and Coordination Act

The protection and conservation of environmental resources in Kenya is Organized under the framework of the Environmental Management and Coordination Act (EMCA) 1999. This Act focuses on conservation and upholding environmental law on the premise in Section 3 that every person in Kenya is entitled to a clean and healthy environment and has the duty to safeguard and enhance the environment.¹⁶³ Institutions established to implement this Act are the National Environment Council, the National Environment Management Authority and Board, the National Environment Action Plan Committee, the Public Complaints Committee and the National Environment Tribunal. The Act sets out significant parameters in environmental conservation and protection of the environment, with detailed mention of environmental audit, monitoring and restoration procedures, which are crucial for tracking degradation. Correlation between the undertakings of this framework and other national

163. Government of Kenya 2009, the Environmental Management and Coordination Act (No 8 of 1999), 6.



frameworks for socioeconomic development should be enhanced to improve the links between environmental resource protection, economic and social development. This is to say, that, for example, if certain economic activity was found to be environmentally degrading yet was vital for the livelihood sustenance of a community, a joint intervention would be necessary to arrest degradation and provide alternative livelihood options. One of the key functions of the National Environment Management Authority is to produce annual state of the environment reports to guide interventions. The last published reports were for 2006–2007. Reports for 2008–2010 are yet to be published. These gaps illustrate a weakness in the institutions that should be highlighting key issues of impact related to the environment.

The Kenya Wildlife Service

The KWS manages the bulk of the wildlife industry. The tourism industry accounts for 21 per cent of total foreign exchange earnings and 12 per cent of gross domestic product. KWS accounts for 90 per cent of safari tourism and about 75 per cent of total tourist earnings. KWS manages about 8 per cent of the total landmass of the country. This land contains 22 national parks, 28 national reserves and 5 national sanctuaries. Also under KWS management are 4 marine national parks and 6 marine national reserves at the coast. In addition, KWS manages 125 field stations outside protected areas.¹⁶⁴ Part IV of the Wildlife Conservation and Management Act¹⁶⁵ speaks to the control of hunting and protection of property and allow communities to kill game animals that are causing material damage. Whereas the Act recognizes compensation for personal injury or death, there are no provisions for compensation for damage and destruction. This has led to resentment by communities towards conservations efforts that are deemed not beneficial to the livelihood sustainability of the communities.

The Constitution of Kenya

The new Constitution of Kenya, 2010 describes land as having been the ‘currency’ for political corruption. As an environmental resource, land has been at the forefront of conflict. To resolve the land questions, the new constitution establishes an independent National Land Commission in Article 67, which will be instrumental in resolving historical land injustices and land theft that have been the crux of recent violent conflicts. To discourage inequitable and illegal land distribution the constitution seeks to protect land access and acquisition, which has bearing on the availability of high-quality land as an environmental resource. Also in Chapter 5, conservation of the environment is outlined and this will directly impact on land availability and arability. Unsustainable land practices have caused environmental degradation, rendering tracts of land unproductive for agriculture and pasture, further increasing land pressure.

164. Kenya Wildlife Society, available at <http://www.kws.org/about/index.html>

165. Wildlife Conservation and Management Act, Kenya Law Reports http://www.kenyalaw.org/kenyalaw/klr_app/frames.php.




8.6 Conclusion

The results of this study reveal the main categories of environmental conflict in Kenya to be land, water, human/wildlife and, to a lesser extent, air. Land conflicts are linked primarily to land alienation. Most widespread is the incidence of conflict due to clashing livelihood uses of the land, mainly pastoralism, agriculture, commerce, ranching and conservation. Pastoralism as a way of life is under threat with reduced availability of land to support livestock mobility or seasonal migration. This has resulted in conflict with farming communities or protected areas with restricted access. The issue of conservation and protected lands, though necessary in preserving environmental biodiversity, has had the unintended consequence of alienating the population from large tracts of land that could be used for farming or livestock pasture. Ranching of livestock has been introduced as an alternative to pastoralism, but has not been wholly adopted as a preferred option to traditional mobility. Use of the land for commerce has also been a cause of land alienation conflicts by hindering public access to privatized land, such as hotels on the beach or private ranches.

Other forms of land conflict include resource extraction and poor land use. The extraction of resources such as sand or trees for industry has led to the degradation of land, rendering it unsuitable for agriculture or livestock pasturing. Cutting down of trees has been closely linked to the charcoal burning industry and this has been a cause of conflict between conservationist and the industry. Deforestation and sand mining will have effects on land degradation by exposing the land to erosion, thereby reducing its capacity for productive use. Closely linked to this is poor land use, which also results in land degradation. Of note was the planting of blue gum trees, which consume large amounts of water, and the now frequent illegal dumping of waste in urban areas, which is harmful to the land. Heavy reliance on the land for either agriculture or livestock, will also eventually lead to degradation from overgrazing and over farming.

Access to water is another major environmental conflict, with the reality of Kenya as a water-scarce environment. The different livelihood requirements for water have led to conflict with pastoralists, farmers and fishermen fighting for exclusive rights to water sources. Due to the effects of climate change and water over use, diminished water volumes have resulted in lowered fish stock, thereby intensifying competition for fishing rights with regional and international implication. Industrialization has also had negative impact on water quality with the incidence of illegal dumping of waste into water bodies, the pollution from which affects availability and fish quantities.



The third main environmental conflict is popularly referred to as human/wildlife. Similar to land conflict, one of the key causes of this kind of conflict is alienation of land through protected areas for conservation. As communities are not often involved in conservation management they feel this alienation is in direct competition with their needs for livelihood sustenance. Also of concern is the issue of compensation, which they feel is not adequate for the destruction of their crops and property by the wildlife.

Environmental conflict is growing as the population, heavily dependent on the environment for survival, continues to expand. Unless adequately addressed, land pressure will continue to bring state authorities, communities and conservation groups into direct confrontation. A key recommendation would be that environmental aspects should be streamlined into all conflict analysis and ensuing policy frameworks should factor in the need to preserve and regenerate natural resources to avoid environmental conflict related to scarcity from degradation.



CHAPTER NINE:

SCENARIO BUILDING FOR SUSTAINABLE PEACE

9.1 Introduction


The on-going reforms in Kenya have heightened collective optimism about the country's progress in general. But the extent of these changes calls for caution, since there are attendant challenges that all actors should be aware of with a view to surmounting them.

Reforms naturally destabilize the status quo, and hence beneficiaries of the old order are bound to oppose the new. Secondly, the new constitutional order has brought about a paradigm shift – systems and institutions need to be overhauled or transformed. The raft of institutional, policy and legal reforms necessitate the availability of qualified staff, provision of financial resources, political goodwill and a good internalization of constitutional requirements.

This study has demonstrated the centrality of ethnicity and its politicization in conflict – 50 per cent of respondents believe Kenyan politics is influenced by ethnicity. Similarly, politics was considered the greatest contributor to conflict. This study's position is that politics is the fulcrum around which all the other forms of conflicts are anchored, although there is a great interplay of politics, security, economic and environmental factors.

The security sector is bound to experience accelerated reforms, especially in the light of the new constitution that provides for a more unified police forces' command structure and human rights protection. But overseeing the security sector reform process requires the facilitative role of political support, with commitment to transparency in effecting the changes.

The economic prospects for the future are positive considering the presence of good policy intentions, such as Kenya's Vision 2030. Far from being a political manifesto, this blueprint shall guide development policy regardless of regime changes – and government policy shall be aligned to it. Further, there are new and/or existing institutional structures such as the National Economic and Social Council, the Commission on Revenue Allocation and the Kenya Anti-Corruption Commission, as well as guarantees on socioeconomic rights in the



current constitution's bill of rights. But sustenance of these strides and implementation of economic programmes are dependent on political stability and goodwill.

Legal developments in the country are equally promising, with the new constitution entrenching human rights protection and securing the independence of the judiciary. The constitution also allows for members of the public to litigate on structural causes of conflict – for instance, holding the state accountable for failure to provide services and/or protect human rights of a group. There are also positive steps being undertaken to institutionalize informal structures through the peace policy under formulation through NSC. However, there is a need to depersonalize the judicial reform process and institutionalize it. Similarly, the success of these legal developments is reliant on a nurturing political environment.

The socio-cultural environment shall equally gain from the increasing emphasis on legislative frameworks that protect minority rights, criminalize hate speech and provide resolution mechanisms for historical injustices. It is also promising that there is increasing consciousness about ethnicity and its discriminative influences on appointments, for example drawing from public service audits that are revealing under-representation of minority groups in the civil service. This is contributing to a growing national consciousness on patriotism, and the advantages of ethnic tolerance. However politics have proven to be the most powerful means through which mobilization of groups on ethnic terms has occurred, as well as the avenue for hate speech.

But the prospects on environmental degradation are grim. Environmental concerns are mostly neglected in the sense that they aren't considered an important cause of conflict. This is reflecting in the research findings, where less than 5 per cent considered the environment to be a contributor to conflict. Considering that climate change is accelerating environmental degradation already caused by man, there are more grounds for environmental conflicts as resources grow scarcer. While existent policy and legal frameworks, including the new constitution, are excellent, environmental concerns require extensive political and public goodwill to turn around the country's fortunes.

This section, therefore, seeks to build scenarios – best case, worst case and status quo – with a view to developing strategic options for risk management, conflict prevention and transformation of the political, security, socio-cultural, economic, legal and environmental landscape in the country. This would then be a basis for guaranteeing sustainable peace.



9.2 Scenarios

Scenario One: Status quo scenario

The status quo scenario infers that things and more specifically security situation will remain the same as it is currently due to the following reasons.

Ethnicity

There is currently a mix of heightened ethnic consciousness informed by alliance-seeking efforts of the political elites as well as sensitivity to the ills of ethnic discrimination thanks to the NCIC work. The political environment is highly fractious, as political leaders try to outsmart each other in forming winning alliances in an effort to succeed President Kibaki at the end of his term. Most of the efforts at forming political coalitions have been ethnic in nature.


There is also the creation of counties, which promise to create new centres of inter-ethnic political competition. As earlier noted, the predominant view is that ethnicity continues to influence politics. Alongside this, there is the new constitution's creation of a bicameral legislature, which has a senate and parliament. Some politicians are seen to be angling for the senator seats with a view to controlling broader electoral zones in their regions, which are ethnically defined.

Also, there are persistent concerns that the scars of the ethnically motivated electoral conflicts aren't healed, and this is evidenced by failed IDP resettlement efforts in some parts of the country. There is persisting inter-ethnic mistrust.

There is also the politicization of The Hague cases against six prominent leaders at the ICC. This has ethnic undertones and has influenced the nature of political alliances leaders are seeking.

Elections

Respondents appeared apprehensive about the next general elections, with 67.3 per cent indicating that the elections could be very violent, slightly violent or unpredictable. It was, however, positive to note that 30.3 per cent of respondents believed that the next general elections would be peaceful. Perceptions were that the new constitution has created hope in the electoral processes and among the law enforcement agencies as well as widened the democratic space for the participation of all, through legal protections as well as decentralizing



governance. Some 37.1 per cent of respondents were unable to predict whether the next general elections would be violent or peaceful. The inability by many Kenyans to predict the nature of general elections could be due to the fluid nature of Kenya's political environment.

Despite the divergent views on the nature of the next general elections, evidence from the by-elections held in Matuga, Juja, Starehe, Makadara, Bomachoge and Ikolomani illustrates that electoral and law enforcement agencies can work together to manage conflict during election periods. These institutions will, therefore, need to be supported to realize their mandate.

Access to justice

Access to justice considered what structures can be accessed to resolve disputes, what outcomes can be expected and to what extent these expectations are met. Although evidence from the national conflict survey illustrated that legal/justice related issues were not seen by respondents as central causes of conflict (fewer than 9 per cent of respondents felt that justice-related issues were a cause of conflict), the failure to address conflicts through formal and informal legal avenues was considered central to the failure of the whole conflict management process. The centrality is mirrored by the data, in that 78 per cent of respondents believed that lack of justice was a trigger for conflict in their area, with the same percentage stating that a lack of dispute resolution mechanisms in their area was also a conflict trigger.

The survey illustrated that respondents perceived that beyond the courts, a number of different structures were effective in conflict management.¹⁶⁶ Key informant interviews and FGDs across the country suggested that understanding and reforming these avenues for conflict resolution and redress were central to an effective and comprehensive conflict management process. Comparing the data gathered from the questionnaire against that gathered from the interviews and FGDs suggests that whilst respondents felt that certain structures were effective, this should be qualified against the fact that they fail on many occasions to achieve their objectives. That conflicts continue to occur in significant frequency across the country is testament to this status.

Environmental degradation

Availability and access to high-quality environmental resources have been compromised by environmental degradation due to unsustainable environmental usage and effects of climate change. The survey showed that degradation had reduced soil arability, compromised quality and quantity of water supply and caused air pollution. This scarcity has been the cause of

166. 49.6 per cent found national courts either effective or very effective, traditional structures 65.7 per cent, peace fora 75.3 per cent, DPCs 73.3 per cent, KNCHR 57.1 per cent, NCIC 41.7 per cent, TJRC 38.8 per cent, CSOs 69.4 per cent, Provincial Administration 73.7 per cent.



several conflicts over environmental resources characterized by access to scarce water, land, beaches and pasture and privatization of public land. Another source of conflict has been the incompatible uses of environmental resources in the absence of sufficient civic education on alternative sustainable livelihoods. Such conflicts include those between environmental conservationists and communities whose livelihood depends on the environment, such as sand harvesters, fishermen, charcoal dealers and illegal forest dwellers; and conflict between wildlife conservations and communities over compensation for wildlife damage to crops and property.

Scenario Two: Worst-case scenario

The worst case scenario has it that the country will probably witness another bout of electoral violence come the next electioneering period scheduled for late 2012 or early 2013. This school of thought highlights a number of factors to back up their prediction, including the assertion that every electioneering period has been associated with violence.

Ethnicity

If the political leaders persist in pursuing ethnically defined alliances, then the country risks widening politically determined ethnic schisms. And as revealed in this study's political analysis, some political fallout among some ethnic groups informs grievances that feed new conflicts. The ballot is more than a political contest. As a matter of fact, 40 per cent of respondents felt that negative ethnicity remains a great contributor to conflict.

A national level political schism is bound to be reflected at lower levels such as counties and constituencies. As groups compete to have one of their own clinching counties, senate and parliamentary positions, the points of political conflicts will increase and potentially exceed the security forces' capacity to simultaneously manage. In this case, the IDP problem will persist.

The relatively new IEBC would struggle to handle an election of such magnitude, with seats contested at County, Senate, Parliamentary and Presidential levels.

The ICC process, its politicization and continued lack of political goodwill to locally combat impunity would form harmful ingredients for wider conflict. This would be propelled by the political leaders' exploitation of ethnicity to blur the objectivity of the ICC process.



Economic situation

The implementation of the National Land Policy, and especially the demarcation of community land, is likely to be a contested and highly politicized process and possibly in itself a trigger for violent conflict.

At a policy level, poor land administration and inadequate land utilization policy coupled with political interference (for example, in resettlement of IDPs) continue to incite conflict. Attempts to address land-related issues in the constitution remain contentious owing to the controversial nature of the interpretation of some of the sections dealing with land matters. The land issue is causing increased political tension as its contents undermine too many vested interests in the status quo. Land tenure, therefore, remains a challenge.

Elections

The worst-case scenario is that electoral reforms as envisaged in the new constitution are not adequately implemented or supported. This would mean that the country goes into the 2012 general election without the required legal safeguards, which would open up the process to abuse, triggering widespread violence as was witnessed in the 2007 general election. Due to the new decentralized dispensation, this violence would occur at national and county levels. Situations of conflict would arise ranging from boundary disputes to uneven distribution of resources within the counties and clan-based animosities. Further, the prevalence of small arms and light weapons in Kenya and particularly in pastoral areas means that devolved conflict takes on an extremely violent and widespread dimension, with increased violence, including cattle rusting and other forms of gun violence. Failure by security agencies to complete and implement reforms would leave Kenyans unprotected during the chaos that follows the disputed election. Further, violent crackdown on post-election protest would result in extra-judicial killings and a pervasive atmosphere of fear and disorder. The socio-cultural issues that precipitated the PEV in 2007-2008 and violence in the previous electoral years of 1992 and 1997 have not been adequately resolved or addressed.

Access to justice

The current status quo is not very far removed from the worst case scenario in terms of access to justice. Physically, courts would remain largely inaccessible. Traditional structures would degrade, with the authority of elders completely eroded and with continued marginalization of customary structures from the formal legal regime. The judicial system, increasingly lacking expediency, efficiency and affordability, would be completely ineffective for and/or beyond the reach of the average Kenyan. In the absence of avenues for judicial or non-judicial recourse, there would be severe 'mafiasation' of justice by organized gangs and vigilante groups. Lack of political will by peace actors to adhere to regional and international instruments would leave Kenya unaccountable to its state counterparts for breaches of its



international obligations.

Environmental degradation

Unsustainable use of environmental resources would increase degradation of these resources leading to food insecurity. Lack of arable land or water resources to sustain farming would result in the inability of the country to meet the food requirements of the population. Unregulated deforestation and destruction of water catchment areas would lead to a more severe impact of climate change in prolonged drought, unreliable rains and increased earth temperature, resulting in loss of land cover, depleted water resources and death of wildlife. County conflict would result from over-usage.

Scenario Three: Best-case scenario

The best case scenario is that the 2013 electioneering process and the political transition thereafter will be largely successful and peaceful. Kenyans have learned a lesson from the PEV and the political playing field has been leveled. The following are some of the reasons as to why this study is of the view that Kenya will be peaceful beyond 2013.

Ethnicity

The new constitutional dispensation, coupled with the work of the NCIC and TJRC, will yield ethnic tolerance. The resolution of historical injustices through the TJRC, and the increasing national cohesiveness resulting from NCIC efforts to curb hate speech and ethnic discrimination, as well as the increasing national outlook of political parties thanks to the Political Parties Act, will provide firm grounds for a mature and patriotic electorate.

Strong issue-based politics assured in vibrant and disciplined political parties and leaders would promote nationalist politics that build the Kenyan nation. In similar light, the multiplier effects of peace processes such as the Uwiano Initiative, and the efforts of DPCs and civil society actors, would lead to peaceful communities keen on stability.

The IEBC would have learnt and internalized lessons from the successful referendum, and transparent post-2008 by-elections that made it possible to utilize electronic voter registration, voter education and electronic transmission of by-election results. In this way, the 2013 and subsequent elections will be information and communication technology intensive and transparent, and results announcement will be quick, eliminating past anxieties about electoral outcomes, which fed suspicion and violence.



Elections

Under this scenario, the 2013 elections proceed peacefully, further securing a democratic and inclusive dispensation in Kenya. The implementation of the constitution and legislation on elections means that structures are in place to conduct elections in a free, fair and impartial manner. Mechanisms to satisfactorily address election petitions are in place, securing the confidence of contestants and their supporters.

The security analysis indicates that the election in 2013 will generally be peaceful. One of the contributing factors to this could be the effectiveness of the security agencies in addressing security challenges. The study places effectiveness of security agencies at 62 per cent. The conduct and behavior of security agencies in the lead up to the successful national referendum process in 2010 and other by-elections are cases in point. Throughout these processes there was no serious security incidences reported. Further, the relationship between the police and the community will greatly improve. The capacity of security agencies to handle electoral processes has been strengthened. This effectiveness, coupled with improved community safety (53 per cent), will work towards delivering a peaceful election in 2013.

The impact of retrogressive cultural practices has dwindled through civic education, the strict application of legislation against hate speech, to secure equal representation in all sectors of life and the activities of the courts, and specialized quasi-judicial agencies such as the NCIC.

Economy

To lay the foundations for improved natural resource management, the National Land Policy has provisions which, if implemented, should help to manage conflicts arising from natural resource scarcity by changing, among other things, tenure laws and benefit-sharing schemes to the advantage of local communities in Kenya, especially northern Kenya. It also contains measures that would safeguard the legal status of conservancies.

Access to justice

Under this scenario, all Kenyan citizens can maximize their ability to access justice by being able to access the range of national, regional and international judicial structures as well as a reformed and coordinated non-judicial legal regime. Traditional structures would be strengthened across the country, having taken into account the diminishing authority of elders and the patriarchal nature of many traditional structures that engender exclusion of other stakeholders. Partnerships would exist between judicial and non-judicial structures enhancing the enforceability of the decisions of traditional structures. Concepts of peace and justice as well as contradictions between principles of customary law and those contained in the constitution or under various regional and international human rights instruments



would be resolved, allowing for a system that is owned by various communities and that fosters inter-community co-operation in conflict management.

The proposed National Peace Commission will be actively involved in exercising its mandate under the adopted National Peacebuilding and Conflict Management Policy, which exercises oversight over conflict management in the country and oversees a hierarchy of operational and robust peace committees. Regional and international judicial bodies will form an extra avenue through which Kenyans can hold their government to account in fulfilling its international obligations, especially those that address the structural causes of conflict in society such as human rights protections. Regionally, there will be increased cross-border cooperation from local to ministerial level towards enhancing joint peace structures and ensuring exchange of perpetrators.

Environmental conservation

There will be rigorous implementation of the existing frameworks on environmental conservation, which will reverse levels of degradation and increase the availability of high-quality and quantity environmental resources, eliminating the conflicts over diminishing resources. Engaging in sustainable environmental practices will regenerate renewable resources such as forests and water catchment areas, resulting in a healthier environment with sufficient resources and reduced chances of conflict. Lastly, there will be improved access and shared usage of environmental resources due to availability of these resources in both quality and quantity.

CHAPTER TEN: CONFLICT PREVENTION, MANAGEMENT AND RESOLUTION FRAMEWORK

Given the discussed scenarios, this study makes recommendations focusing on strategic areas of relevance. These target policies and actors are of significance in addressing identified causes of conflict across the thematic areas.

Key thematic recommendation/finding	Implementation Strategy	Main actors	Intended impact
Security			
Advocacy on the enactment and implementation of peace and security related policies such as the peace policy, small arms policy, IDP policy etc. The need to have a comprehensive document that analyses security-related matters is vital to respond to the multifaceted needs of the Kenyan people.	Government-community driven process	Office of the President Internal Security and Provincial Administration NSC Foreign government aid agencies PPF DPCs CSOs	Holistic approach to security through the development of community friendly mechanisms that enhance community ownership
Harmonise and sustain formal institutional arrangements for cooperation between civil society and government on issues of peace and security. The need to harmonise arrangements among key stakeholders gives synergies for cooperation and institutionalized frameworks that are acceptable across the board	Cooperation, transparency and coordination between security agencies and civil society	CSOs Security apparatus Provincial administration	Development of harmonized and coordinated initiatives to address conflict by enhancing linkages between security agencies and civil society



Key thematic recommendation/finding	Implementation Strategy	Main actors	Intended impact
Fast-track security sector reform to strengthen responsiveness and accountability of security forces. It is fundamental that reforms are carried out consistently and with comprehensive public participation	Periodic audit of the police reform process. Advocacy for adherence and reviews	Police Reforms Implementation Committee Police Service Commission Police Oversight Committee OP Ministry for Provincial Administration and Internal Security	To ensure that ongoing police reforms conform to universal security provisions. Creates a secure and enabling environment for all Kenyans
Legal			
Sensitize the formal judicial system to the particular challenges raised by conflict in Kenya vis-à-vis the judicial process. The disengagement between formal law and the society it ought to regulate must be addressed by enhancing the relationship between the judiciary and other non-legal peace actors	Training judicial officers focused on the nature of conflict in Kenya. Conversely, training of non-judicial peace actors on the access to and outcomes of judicial processes	Judiciary Judicial Service Commission Kenya Magistrates and Judges Association (KMJA) Law Society of Kenya (LSK) CSOs NSC	A judiciary that provides a relevant and effective avenue for the mediation and resolution of conflicts across the country and improved linkages between judicial and non-judicial conflict actors
Strengthen and engage with traditional structures with particular attention on their strengths, weaknesses and contradictions with the formal legal regime. Strengthen the currently institutionalized community frameworks by anchoring them in the law and hence, increasing the enforceability of their decisions	Debating, rationalizing and reconciling principles of customary law antithetical to principles of contained in the constitution and other legislation. Creating linkages and harmonization between the various customary mechanisms to foster intercommunity cooperation in conflict management	Traditional structures CSOs Livelihoods Resource Centre (LRC) KNCHR NCIC LSK Judiciary	Increased effectiveness of local/community/customary structures through recognizing their central role in conflict mediation and resolution. Legally entrenched and mandated local structures that enhance access to justice and dialectically complement the judicial system
Creation of a framework for the operation of CSOs engaged in conflict management to enhance monitoring, coordination and accountability at national and local levels. Some common ground needs to be created in the country to manage and coordinate the operations of CSOs	Creation of a national strategy and policy focused on the operations of CSOs in conflict management	CSOs NSC National NGO Council Judiciary	Activities of CSOs complementing and working in tandem with other judicial and non-judicial actors. Enhanced effectiveness and sustainability, as well as promoted use of peace agreements, declarations across the country

Key thematic recommendation/finding	Implementation Strategy	Main actors	Intended impact
Access to regional structures should be enhanced not only to hold the state accountable under its international obligations, but also in recognition of the fact that conflict is a regional phenomenon in many parts of Kenya and facilitating regional structures will enhance effective conflict resolution both within and across the border	Create regional forums to bring together non-legal conflict management structures from both jurisdictions to discuss collaboration. Enhance access to regional judicial structures by lobbying the government as well as informing the public on the access options for redress	Judiciary Provincial administration Ministry of Foreign Affairs EACJ AU judicial structures CSOs NSC	Accessible regional judicial and non-judicial structures that play a central role in addressing cross-border conflicts. A coordinated interstate response to shared conflict concerns. An additional avenue for redress particularly in regard to state failure to honour its international obligations
Socio-cultural			
Strengthen the role of the NCIC by enhancing partnerships with community-based actors to sustain the core shared national values of integration and cohesion. This study emphasizes the optimal utilization of this diversity as both our strength and the foundation for coexistence	Coordinating with and enhancing the capacity of the NCIC, highlighting the contribution of ethnicity to conflict	NCIC NSC CSOs	To enhance the capacity of the NCIC to facilitate and promote equality of opportunity, good relations, harmony and peaceful coexistence between persons of the different ethnic and racial communities and thereby to address a structural cause of conflict in Kenya
Encourage public dialogue fora, social exchange programmes and peace education as higher levels of social interactions in any society enhances the efficacy of grassroots conflict mediation and resolution	Locally situated workshops, dialogues, programmes and other community conversations on peace and conflict	Traditional structures CSOs DPCs	To prevent conflicts by enhancing local capacities to mediate and resolve conflict. The effectiveness of day-to-day disputes prevents escalation of these disputes into wider conflicts
Promote awareness on constitutional provisions for representation of youth and women at all decision-making levels, including conflict management structures	Wider stakeholder involvement in decision-making processes, fostering community ownership collective responsibility	CSOs LSK Federation of Women Lawyers (FIDA) Youth Enterprise Development Fund (YEDF)Ministry responsible for culture, social services and youth affairs NCIC Judiciary DPCs PPF	As women and youth are key conflict actors, increased youth and women involvement in decision making regarding conflict management interventions, enhances conflict resolution by incorporating a wider spectrum of perspectives



Key thematic recommendation/finding	Implementation Strategy	Main actors	Intended impact
Political			
Strengthen the performance and independence of the Registrar of Political Parties to implement the relevant laws to the letter. Political parties and the politicians heading them over time have mishandled the trust the people of Kenya had in them. The political parties have acted differently from what they promised to do in their manifestos. hence there is a need to institutionalize the order of operations by the political parties	Legislative process to align the Act to the new constitution Policy dialogue forums on strengthening democracy	The legislature Political parties Registrar of Political Parties IEBC NCIC	Having a strong registrar of political parties will empower the office and enable it rein in rogue parties. Stronger parties espousing nationalist ideals will be building blocks for nation building and truly nationally representative politics
Fast-track the establishment of an IEBC, which will independently and professionally discharge its mandate. The ECK bungled elections, and it wasn't truly independent, hence it contributed to a political crisis. The electoral malpractices and open anomalies destroyed the processes and eroded the people's faith and trust. To restore the confidence of people in this institution a people-driven process is vital	Lobbying for a truly independent IEBC Transparent legislative process Civic education on the new body and its roles and those of voters	Legislature Civil society Media	An independent and modern IEBC will guarantee the sanctity of the ballot through transparent, free and fair electoral processes
Design a collaborative mechanism for guaranteeing citizenship rights to all Kenyans to secure voting rights. In this light, educate the public on the Bill of Rights in the new constitution	Legislative process Awareness raising on Bill of Rights and citizenship rights	Legislature Civil society Media	The fundamental human rights enshrined as freedom of expression and association as well as citizenship rights will be realized nationally

Key thematic recommendation/finding	Implementation Strategy	Main actors	Intended impact
Environmental			
There is a strong need to highlight the contribution of environmental factors to conflict as these important and significant challenges have yet to receive sustained consideration in conflict management circles. There is an urgent need to ensure and improve effective implementation of environmental conservation policies and initiatives, placing particular emphasis on the relationship with conflict. This supported by Chapter 5 of the constitution	Prosecution of environmental crime Civic education and workshops involving the range of conflict actors to sensitize conflict management policy and practice	Judiciary National Environmental Management Authority (NEMA) NSC KWS National Environmental Tribunal and Council DPCs PPF CSO	Increased public awareness on the Environmental Management and Coordination Act and subsequent regulations, and the active litigation of cases of environmental crime accordingly. Growing recognition of environmental factors that contribute to conflict and cross-sectorial engagement on environmental issues
Economics			
Respondents felt that wide economic factors, especially poverty and unemployment, significantly trigger and cause conflict. The creation and implementation of sound fiscal policy, with particular focus on marginalized groups and areas, will address this finding. Further, holding the government to account under the constitution regarding measures taken to address the socioeconomic conditions of Kenyans is a strong tool for positive action	Comprehensive implementation of the Vision 2030 and medium-term plan (2008-2012). Litigation before the courts interrogating the government's performance	Vision 2030 Secretariat NEC Judiciary CSOs	That the structural causes of conflict that engender conflict such as poverty and unemployment are actively mitigated and addressed



Key thematic recommendation/finding	Implementation Strategy	Main actors	Intended impact
<p>Advocacy for the implementation of the devolved funding for county mechanisms, including the equalization fund and socioeconomic rights contained in the Bill of Rights in the new constitution</p> <p>Implementation of all natural resource-based management policies to bring harmonious ownership, productivity and utilization of natural resources in the country, e.g. land, water, minerals</p>	<p>Legislations</p> <p>Activation of relevant commissions and bodies, e.g. Commission on Revenue Allocation</p> <p>Lobbying and advocacy</p>	<p>Government</p> <p>National Economic and Social Council (NESC)</p> <p>County governments</p> <p>Commission on Revenue Allocation</p> <p>CSOs</p>	<p>Addressing regional inequalities in development and guaranteeing socioeconomic rights</p>

V



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ANNEX: CONFLICT MAPPING MATRIX

REGION	CONFLICT FACTORS	PEACE AND CONFLICT ACTORS
North Eastern	<p><i>Structural</i></p> <ul style="list-style-type: none"> • Marginalization • Clanism and clan-based violence • Land tenure systems • Border conflicts <p><i>Proximate</i></p> <ul style="list-style-type: none"> • Breakdown of grazing management systems • Proliferation and trafficking of SALW • Diminishing roles of traditional authority structures • Influx of refugees <p><i>Triggers</i></p> <ul style="list-style-type: none"> • Banditry • Boundary delineation • Illegal allocation of land, especially in urban areas 	<p><i>Primary actors</i></p> <ul style="list-style-type: none"> • Youth • Clans • Politicians <p><i>Secondary actors</i></p> <ul style="list-style-type: none"> • Women • Politicians • Media/vernacular stations • Clan opinion leaders <p><i>Tertiary actors</i></p> <ul style="list-style-type: none"> • FBOs, CSOs and CBOs • INGOs • Elders • Women • Provincial administration • Security forces • DPCs • Politicians • Local authorities
South Rift	<p><i>Structural</i></p> <ul style="list-style-type: none"> • Historical injustice in administration of land tenure • Caveat of title deeds in some parts of Mau Forest <p><i>Proximate</i></p> <ul style="list-style-type: none"> • Ethnic intolerance and mistrust • Low-scale disputes • Human encroachment into wildlife reserves <p><i>Triggers</i></p> <ul style="list-style-type: none"> • Electoral politics • Forced eviction from Mau Forest Complex 	<p><i>Primary actors</i></p> <ul style="list-style-type: none"> • Youth and Morans • Politicians • Organized gangs <p><i>Secondary actors</i></p> <ul style="list-style-type: none"> • Politicians • Media/vernacular stations • Community elders <p><i>Tertiary actors</i></p> <ul style="list-style-type: none"> • CSOs, CBOs and FBOs • INGOs • DPCs • Provincial administration • Politicians • Community elders • Local authorities

<p>Coast</p>	<p><i>Structural</i></p> <ul style="list-style-type: none"> • Land tenure systems • Religious intolerance • Weak formal justice systems • Divergent land use needs <p><i>Proximate</i></p> <ul style="list-style-type: none"> • Boundary disputes • Negative ethnicity • Exploitation of minerals • Business rivalry • Illegal immigrants • Livestock theft • Drugs and trafficking • Erosion of cultural values (tourism and prevalent child prostitution) • Radical criminal groups/armed gangs and armed communities • Issuance of IDs • Conflict between formal and informal legal systems (e.g. Sharia vs. formal laws) • Clash for water resources (farmers and pastoralists) • Clash over need for access roads to beaches • Destruction of mangrove swamps • Human-wildlife conflict <p><i>Triggers</i></p> <ul style="list-style-type: none"> • Political Incitement 	<p><i>Primary actors</i></p> <ul style="list-style-type: none"> • Youth • Political parties/politicians • Politicians • Organized gangs (MRC armed wing) <p><i>Secondary actors</i></p> <ul style="list-style-type: none"> • Local and foreign investors • Opinion leaders/elders • Media/vernacular stations • Politicians • CSOs • Witchdoctors <p><i>Tertiary actors</i></p> <ul style="list-style-type: none"> • DPCs • INGOs • Interfaith groups, • Foreign and local investors • The Kaya leaders • Spiritual leaders from mosques and churches
<p>Lower Eastern</p>	<p><i>Structural</i></p> <ul style="list-style-type: none"> • Weak formal justice systems • Minimal presence of security personnel <p><i>Proximate</i></p> <ul style="list-style-type: none"> • Political supremacy struggles • Competing ethnic claims for Mwea and Nguu Settlement Scheme • Ranch owners versus directors and land-selling companies • Business rivalry • Increasing pressure on land • Cattle theft • Banditry • Partiality of alternative dispute resolution mechanisms • Sand harvesting • Charcoal burning • Clashes over grazing areas and water points • Boundary disputes • Drought and famine <p><i>Triggers</i></p> <ul style="list-style-type: none"> • Political incitement • Migration in search of pasture and water during dry periods • Witchcraft 	<p><i>Primary actors</i></p> <ul style="list-style-type: none"> • Organised gangs • Politicians • Witchdoctors <p><i>Secondary actors</i></p> <ul style="list-style-type: none"> • Provincial administration • Local authorities • Councillors and politicians <p><i>Tertiary actors</i></p> <ul style="list-style-type: none"> • Politicians • Ranch owners • Businesspeople • Witchdoctors

	<ul style="list-style-type: none"> Human-wildlife conflict <p><i>Triggers</i></p> <ul style="list-style-type: none"> Elections Political incitement 	
Nairobi	<p><i>Structural</i></p> <ul style="list-style-type: none"> Weak judicial systems Bureaucracy within the security sector Uncoordinated chain of command within the security sector Negative ethnicity Ancestral claims over land <p><i>Proximate</i></p> <ul style="list-style-type: none"> Electoral violence Irregular allocation of public land Politicization of ethnicity Political use of OrganisedGangs Land and property misappropriation Landlord-tenant conflicts Organised crime Unfair business rivalry Unplanned city expansion Youth unemployment Illegal dumping of (hazardous) waste Pollution of water resources <p><i>Triggers</i></p> <ul style="list-style-type: none"> Incitement Elections Withholding legal rent and fees Illegal occupation of land and property Evictions Demolitions 	<p><i>Primary actors</i></p> <ul style="list-style-type: none"> Politicians Organised gangs - the Mungiki CSOs Faith-based groups Hawkers Construction workers Football hooligans <p><i>Secondary actors</i></p> <ul style="list-style-type: none"> Investors CBOs and FBOs Pastoralist herders INGOs <p><i>Tertiary actors</i></p> <ul style="list-style-type: none"> Provincial administration DPCs Security forces Faith-based Organizations and religious leaders
Western	<p><i>Structural</i></p> <ul style="list-style-type: none"> Marginalization Inequalities in land allocation Poor security infrastructure Weak legal protection for land Poor human rights enforcement Border exits and entries <p><i>Proximate</i></p> <ul style="list-style-type: none"> Perceived ethnic deployment of provincial administrators Reactive government interventions Political patronage Administrative and electoral boundary disputes Land disputes Persisting IDP problem Mismanagement of public resources and funds Negative ethnicity Diminishing influence of elders Alcohol and drug abuse Rural-urban migration 	<p><i>Primary actors</i></p> <ul style="list-style-type: none"> CSOs Dissidents - Sabaot Land Defense Force Politicians Organised gangs <p><i>Secondary actors</i></p> <ul style="list-style-type: none"> CBOs and FBOs INGOs <p><i>Tertiary actors</i></p> <ul style="list-style-type: none"> Provincial administration Internal security DPCs

	<ul style="list-style-type: none"> • Small arms prevalence • Livestock theft • Criminality (burglary, theft, rape) • Lack of confidence in police • Low confidence in formal legal systems <p><i>Triggers</i></p> <ul style="list-style-type: none"> • Incitement • Forced evictions 	
North Rift	<p><i>Structural</i></p> <ul style="list-style-type: none"> • Marginalization • Land tenure system • Boundary/border dispute <p><i>Proximate</i></p> <ul style="list-style-type: none"> • Politicization of identity • Cattle rustling • Small arms trafficking and proliferation • Competition for water and pasture • Negative ethnicity <p><i>Triggers</i></p> <ul style="list-style-type: none"> • Cultural practices • Incitement • Arms race • Banditry 	<p><i>Primary actors</i></p> <ul style="list-style-type: none"> • Morans • CSOs • Politicians • KPRs • Organised gangs <p><i>Secondary actors</i></p> <ul style="list-style-type: none"> • CBOs and FBOs • INGOs • Laibons <p><i>Tertiary actor</i></p> <ul style="list-style-type: none"> • Provincial administration • Internal security • DPCs • CDF committees
Central	<p><i>Structural</i></p> <ul style="list-style-type: none"> • Land tenure system • Class formation <p><i>Proximate</i></p> <ul style="list-style-type: none"> • Intra-ethnic competition • Succession politics • Organised gangs • Disputes over inheritance • Mismanagement of cooperative societies • Business rivalry • Diminishing returns from cash crops • Alcoholism <p><i>Triggers</i></p> <ul style="list-style-type: none"> • Extrajudicial killings • Vigilantism 	<p><i>Primary actors</i></p> <ul style="list-style-type: none"> • Labourers from large farms • CSOs • Politicians • Organised gangs - the Mungiki <p><i>Secondary actors</i></p> <ul style="list-style-type: none"> • INGOs, CBOs, and FBOs • Cooperative groups • Politicians • Political parties <p><i>Tertiary actors</i></p> <ul style="list-style-type: none"> • Provincial administration • Internal security • DPCs • Business investors • CSOs • CDF committees



Nyanza	<p><i>Structural</i></p> <ul style="list-style-type: none">• Marginalization• Historical injustices <p><i>Proximate</i></p> <ul style="list-style-type: none">• Politicization of ethnicity• Disputes over electoral and administrative boundaries• Landlord-tenant conflicts• Business rivalry• Class struggle• Perceived economic 'sabotage'• Foreign direct investment and land and social justice concerns• Land-use disputes• Poor waste disposal• Organised gangs <p><i>Triggers</i></p> <ul style="list-style-type: none">• Incitement• Livestock theft• Elections• Extrajudicial killings	<p><i>Primary actors</i></p> <ul style="list-style-type: none">• Football hooliganism• Politicians• Organised gangs <p><i>Secondary actors</i></p> <ul style="list-style-type: none">• CBOs and FBOs• INGOs• Youths <p><i>Tertiary actors</i></p> <ul style="list-style-type: none">• Provincial administration• CSOs• Security forces• DPCs• Business investors• CDF committees
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