



Rosa Luxemburg Foundation – East African Regional Office

The Management of Conflicts in Kenya

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ACRONYMS AND ABBREVIATIONS

| | |
|---------|-------------------------------------------------------|
| ACT | Act Change Transform |
| ACTED | Adventist Development and Relief Agency International |
| ADR | Alternative Dispute Resolution |
| AIAI | Al-Ittihad al Islamiyya |
| APS | Administration Police Service |
| ASAL | Arid and Semi-Arid Lands |
| ATPU | Anti-Terror Police Unit |
| BVR | Biometric Voter Registration |
| CBP | Customs Border Control |
| CEWARN | Conflict Early Warning and Response Mechanism |
| CEWERU | Conflict Early Warning and Response Units |
| CIPEV | Commission of Inquiry into Post-Election Violence |
| CIPK | Council of Imams and Preachers of Kenya |
| CORD | Coalition of Reforms and Democracy |
| CORDAID | Catholic Organization for Relief and Development Aid |
| CSCR | Centre for Sustainable Conflict Resolution |
| CSOs | Civil Society Organizations |
| CVE | Countering Violent Extremism |
| ECK | Electoral Commission of Kenya |
| EIA | Environmental Impact Assessment |
| ELOG | Elections Observation Group (ELOG) |
| EMCA | Environmental Management Coordination Act |
| FAO | Food Agriculture Organization |
| FES | Friedrich Ebert Foundation |
| FGD | Focused Group Discussion |
| FGM | Female Genital Mutilation |

| | |
|---------|----------------------------------------------------------|
| FIDA | Federal of Women Lawyers |
| GBDV | Gender Based Domestic Violence |
| GBV | Gender Based Violence |
| GDP | Gross Domestic Product |
| GOK | Government of Kenya |
| GSU | General Service Unit |
| ICCA | Institute for Climate Change and Adaptation |
| ICPALD | IGAD Centre for Pastoral Areas and Livestock Development |
| ICTJ | The International Center for Transitional Justice |
| IDPs | Internally Displaced Persons |
| IEBC | Independent Electoral and Boundaries Commission |
| IGAD | Intergovernmental Authority on Development |
| IPOA | Independent Police Oversight Authority |
| ISIS | Islamic State of Iraq and Syria |
| KDF | Kenya Defense Forces |
| KFS | Kenya Forest Service |
| KNDR | Kenya National Dialogue Report |
| KNDS | Kenya National Demographic Survey |
| KNHRC | Kenya National Human Rights Commission |
| KPR | Kenya Police Reserve |
| KWS | Kenya Wildlife Service |
| LAPSSET | The Lamu Port Southern Sudan-Ethiopia Transport |
| LEWA | Lewa Wildlife Conservancy |
| MAG | Movement Activated Guard |
| MDF | Moorland Defense Force |
| MFA | Ministry of Forest Affairs |
| MSSIS | Maritime Security and Safety Information System |
| NASA | National Super Alliance |

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| NCIC | National Cohesion and Integration Commission |
| NCTC | National Counter-Terrorism Centre |
| NDMA | National Drought Management Authority |
| NEMA | National Environment Management Authority |
| NEP | National Energy Policy |
| NGO | Non-Governmental Organization |
| NLC | National Land Commission |
| NLP | National Land Policy |
| NPS | National Police Service |
| NPSC | National Police Service Commission |
| NSC | National Steering Committee on Peace-building and Conflict Management |
| OLF | Oromo Liberation Front |
| PADV | Protection Against Domestic Violence |
| PEV | Post-Election Violence |
| PPC | Peace Pen Communication |
| PPS | Presidential Press Services |
| PTA | Prevention of Terrorism Act |
| RECSA | Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States |
| RLS | Rosa Luxemburg Foundation |
| RPLRP | Regional Pastoral Livelihood Resilience Project |
| SALW | Small Arms and Light Weapons |
| SCPC | Sub-County Peace Committee |
| SEI | Stockholm Environment Institute (SEI) |
| SLDF | Sabaot Land Defense Force |
| SUPKEM | Supreme Council of Kenyan Muslims |
| TFG | Transitional Federal Government |
| TJRC | Truth Justice and Reconciliation Commission |

| | |
|-------|----------------------------------------------------|
| UL | University of London |
| UN | United Nations |
| UNHCR | United Nations High Commissioner for Refugees |
| UoN | University of Nairobi |
| USAID | United States Agency for International Development |
| USAID | United States Agency for International Development |
| WCO | World Customs Organization |
| WHO | World Health Organization |

1. EXECUTIVE SUMMARY

1.1 BRIEF SUMMARY OF CONFLICTS IN KENYA

As a comprehensive response to the political and ethnic violence following the 2007 elections, Kenya has embarked on a profound reform process. That violence left more than a thousand people dead and over 350,000 displaced. Various institutions and commissions were formed to investigate the conflicts, undertaking painstaking and thorough analyses of those events. Various features were brought forth, including:

- a deep-rooted symbiosis between electioneering and identity politics;
- an endemic institutional culture of corruption, particularly within the security agencies; and
- unresolved but cemented historical injustices around land reform.

By undergoing comprehensive constitutional and institutional reforms, the country has striven to steer socio-political changes and break the vicious circles of violence. Beyond all the political and self-serving infighting, the new constitution allows for participatory governance and leadership. However, censorship and neglect of recommendations made, lopsided judicial interpretations of its provisions, lack of institutional capacities, weak implementation processes as well as long term systemic injustices have led to the occurrence and continuation of similar conflict patterns over time.

The major objective of this research study, therefore, is to analyze the role that the government has been playing in conflict prevention, resolution and management in general and how her actions, or inactions form part of the underlying factors and dynamics of conflicts. The study:

- uses research literature and government documents, including the constitution, policies, laws and related strategies on conflicts management in the country;
- reviews selected public policy reforms and their long-term impact on conflict prevention and risk preparedness;
- field research; and
- consultations with responsible government agencies, academia and the civil society, relating to the root causes and the mechanisms that lead to conflict, violence and displacement.

The analytical foundation allows for the deduction of policy implications and provides principles and insights that should guide policy priorities. . On the basis of the above processes, eight areas of conflict have been recognized for analytical purposes. These are:

- ethno-political related violence;

- cross-borders conflicts;
- radical Islamist activities;
- pastoralist related conflict;
- militia groups violence;
- land and development-related conflicts;
- gender based violence; and
- resource-related conflicts.

In spite of the study's analytical separation, there is substantial overlapping and mutual dependence between the various kinds of conflict. This is particularly shown by the contributing factors to the fuelling of cross-border conflicts - identity politics, radical Islamic activities, clashes over land but also gender dynamics in violence including rape and sexual abuse that are systematically used as weapon of ethnic violence and terrorising social groups and communities in Kenya.

Furthermore, this study has aimed at revealing root causes and drivers for displacement and migration. In assessing previous conflicts and identifying new drivers and their impact on conflict patterns and conflict management capacities, the study sheds light on the determinants of actual and potential migration. It clearly shows that politics and ethnicity represent high-risk factors in transforming tensions into violence, particularly in areas where government and civil society are disorganized, weak, absent or distrusted. Besides, their repercussions are literally present in all types of conflicts analyzed in this study. Cross-border conflict and the myriad of challenges that come with it – from porous borders, weak state of security, illicit trade in stolen cattle and arms, to politicizing land ownership, competition over new and growing urban settlements and a declining and more and more threatened resource base – all pose high possibilities of forced displacement and expropriation. Northern and North-Eastern regions of Kenya are the most notorious for poor security due to the large influx of Somali refugees. Failures in negotiating relations between dominant ethnic groups and an increasing trend towards clan based rivalries lead to a hardening of what were previously more fluid and nuanced constructions of identities amongst pastoralist communities. Similar developments in neighboring countries also fuel long-standing differences. Although spillover effects of wars in the region have transformed low-intensity tensions into full-scale clashes, these go largely unreported.

It is important to note that land and natural resources are linked with all other genres of conflicts, including organized militia groups. Land is central in the varied and complex social relations of production and reproduction within which conflict between individuals and groups breeds. In Kenya, land bears cultural and psychological significance and contributes to history and belonging. It represents power, not only in owning wealth but

also in having access. The inherent tension between customary and modern interpretations and implementation of land rights relates closely to both legitimacy and power. Land may evoke historical injustices, many largely still unaddressed. Perceptions of unfairness in land distribution or the need to protect one's land has led to the formation of armed community militia which sometimes cause violence and displacement. Moreover, fundamental structural factors, including rapid population growth, environmental degradation and slow rates of economic development, contribute to escalating land conflicts. Competition between land uses is a common conflict factor as new conservation areas are demarcated or corporate access to minerals, oil, timber and other natural resources are given preference by governments over local farming or ranching interests. This is particularly salient in areas where competing claims to land and natural resources persist and access to land is inequitable and inadequate, especially for the poor. It also surfaces in times of food scarcity and the discovery of extractive resources. Land and resource disputes, often characterized by asymmetries of capacity, power and influence, run the danger of generating more and deeper divisions, undermining the foundations of society and reducing its ability to deal with larger-scale political and social conflicts in a peaceful manner.

1.2 SUMMARY OF GOVERNMENT POLICY RESPONSES TO CONFLICTS

Most past conflicts in Kenya share one common feature: politicians, local elites and the media have contributed to the escalation of tensions through inciting remarks and organizing acts of violence. Until today, politics in Kenya remains divided along ethnic lines. The Kenyan Government, with the support of the international community, has implemented important political, judicial and electoral reforms and enacted legislation to manage ethno-political violence. Many of these reforms reflect recommendations from the various commissions established following the Kenya National Dialogue Report. The provisions of the Kenyan Constitution have secured the rights of traditionally marginalized constituencies, including women and youth, and have significantly expanded the space for the realization of human rights and promotion of democratic governance. It is incumbent of the new government to implement and advance much-needed reforms within the security sector, tackle outstanding issues around land reform, address the lack of domestic accountability for past crimes and break the symbiosis between electioneering and ethnic rivalry.

Credible elections are important in averting ethno-political violence. The actions required include:

- managing change within Kenya's electoral commission and security agencies,
- limiting the risks of communal violence, particularly in contentious areas, and

- strengthening civil society networks in conflict-prone areas in order to counter youth mobilization and instrumentalization¹ to foment electoral related violence.

In addition, giving the civil society and the opposition greater access to all aspects of election preparations would boost trust in the electoral processes. The ruling and opposition parties should be on a level playing field regarding the handling of state resources, constructive monitoring, and supporting electoral processes as well as using legal channels to air grievances. This also requires an independent judiciary free from influence of the executive arm of Government

The new Constitution and communication legislation provides mechanisms for defining and banning hate crimes, ethnic cleansing and inflammatory speech. Despite the formation of the National Cohesion and Integration Committee (NCIC), which has played a critical role in preventing hate speech by creating awareness, monitoring social media, investigating and initiating court cases, the reluctance to overcome obstacles to change can clearly be seen in the absence of successful prosecutions, particularly of those who are politically well-connected. This eventually contributes to social acceptance of expressions of hate and might have harmful effects on national identity-building. Support from politicians and ethnic communities are key to the existence and operation of many organized criminal gangs. The main policy implication the analysis has produced is the thorough prosecution of individuals involved in supporting or using their services, including the kingpins of those gangs. The law needs to clearly criminalize all forms of support and engagement by politicians with organized criminals. This has been one of the key factors behind the continued existence and operations of criminal groups, especially around election periods. Monitoring of illegal financial transactions and tackling money laundering remains a challenge for the Kenyan government.

Security, and in particular *cross-border conflict*, remains a big challenge for the Kenyan Government due to the porosity of international borders and the homogeneity of border communities on the Somali and Karamoja clusters and those in the coastal areas. The Government has deployed several policy-interface programs including IGAD-CEWARN mechanisms to anticipate effective prevention of conflicts in the sub-region with varying degrees of success. The Intergovernmental Authority on Development (IGAD) member countries are also strengthening border security management. However, the single most important factor in the reversal of insecurity along the borders can be attributed to local Peace Committees. This is due to several key features – a good functional relationship with government officials, strong local ownership, knowledge of local conflicts, commitment, flexible membership combining traditional and civic leadership approaches, and international support. These efforts need to be supported with resources. Remarkably, spillover effects across regions and across borders allow for information exchange and nascent institutional learning processes. Thus, supporting local communities to strengthen

¹ Use of idle youths in violence for political gains by perpetrators of violence.

their security approaches and improve social services delivery systems in a way that enables the participation of marginalized communities is urgent. On the other hand, Kenya, in partnership with development partners and the international community needs to enhance the ability of IGAD to address and manage cross border issues among member countries.

Kenya's geography, ethnic composition, political instability, unstable neighbours, poverty, low levels of literacy, Islamic fundamentalism and lax law enforcement contribute to making the country an attractive terror target. Terror in Kenya has resulted not only in the loss of lives, personal suffering and pain, but also in growing instability and a heightened sense of insecurity with detrimental effects on the country's economy. The Kenyan Government addresses the threat of terrorist attacks through implementing its National-Counter-Terrorism Strategy through the National Counter Terrorism Centre (NCTC). Importantly, the Government has started a military offensive against the Al-Shabaab dubbed "*Operation Linda Nchi*", codename for a coordinated military operation between the Kenyan and the Somali military. Unfortunately, it has led to heightened tensions between the two countries and also between Kenyans and Somalis. Al-Shabaab has enhanced its radicalization efforts in Somalia and Kenya by increasing its penetration of communities for recruitment. Particularly worrying is the trend of indoctrination of mostly Muslim youth in violent extremism. Various initiatives, such as the countering violent extremism summit and inter-faith and intra-faith dialogues have been initiated, but these need to be stepped up and given more cooperation. They also need better coordination as well as concerted action. Our analysis clearly shows that there is need to overhaul the national security approach, which currently puts most of its focus on the security-side of minority religious radicalization, while disregarding other equally important aspects such as political, ideological or criminal rationales and the sense of nationhood.² A well-administered Countering Violent Extremism approach that works to maintain human rights while addressing factors that lead to violent extremism would add value to the security climate. Delivery of quality socio-economic services, especially education, health and jobs within vulnerable communities, should be a big part, as the lack of these puts many youth at the forefront of extremist recruiters.

Conflicts among pastoral communities are regarded as the major cause of forced displacement in the country. The pastoralist communities of *Turkana*, *Pokot*, *Samburu* and *North Eastern ethnic groups*, are mainly nomadic. Cattle raiding among them is common, stretching back centuries. It is often armed, leading to bloody encounters and livestock theft. Unfavorable climate conditions play a critical role and often precipitate the need to migrate. In recent years, pastoralist communities have provided the largest market for small arms. These are used for survival, defending animals, cattle raiding but

² The Coastal region of Kenya is home to a separatist organization called Mombasa Republican Council (MRC), which among other things, calls for secession of the region from Kenya due to historical reasons.

also as currency. Conflict has become deadly with up to five hundred persons killed annually. Exacerbating factors include lack of infrastructure and public services as well as immunity of pastoralist raiders, since the government lacks the capacity and infrastructure needed for prosecution. Competition for water and pasture in the context of decreasing access to land, increasing political and economic marginalization, lack of responses to the further deteriorating security situation as well as the proliferation of weapons are all new drivers in escalating conflict. To reverse this trend, the Government has put in place several mechanisms. One that has been particularly successful is the Sub-county Peace Committees, a multi-agency peace architecture that coordinates peace-building and conflict management in the pastoral zones; and incorporates traditional justice resolution mechanisms into the formal legal-judicial system. . Communities' governance systems are very strong and highly regarded by members. The analysis shows that up-scaling of resilience and poverty reduction strategies among the communities, improving security for pastoralists as a way of containing the proliferation of small arms, as well as addressing the land tenure question for communal land are critical steps in mitigating conflict in this area. There is need to strongly implement the National Police Reserve Policy Framework (NPRPF) in order to regulate operations, prevent misuse of power and strengthen better coordination amongst institutions charged with vetting, recruitment, training, supervision and discipline of the Kenya Police Reserve.

Land is crucial to Kenya's socio-economic development. The majority of the population depend on land and land-based resources for their livelihoods. However, in the recent past, the country has experienced incessant land conflict in many areas. To address these land challenges, the Government passed the National Land Policy (NLP) that provides an general framework for new legislation and defines key measures required to address critical issues such as land administration, access to land, land use, and restitution related to historical injustices and an outdated legal framework. Causes, drivers and solutions to land conflicts are well understood in Kenya, but the implementation of land reforms has sometimes been impeded by lack of political will. Implementing comprehensive land reforms will need to be centered at community level, be participatory and transparent while redressing historical injustices. Furthermore, Kenya has set up progressive provisions by institutionalizing customary land rights. However, these structures and policies are still in their infancy and need close monitoring and safeguarding.

It is worth noting that the government has stepped up its efforts at resolving uncontrolled squatting at the Coast as well as through slum-upgrading projects over the entire country. Unplanned subdivision of land has seen an escalation of national disasters, such as landslides and mushrooming of informal settlements which further threaten food security. Land administration and disputes management are expected to improve with the establishment of the National Spatial Data Infrastructure that will not only conduct a suitability analysis of all land in Kenya but is also expected to provide the toolbox for

planning. It is designed to combine land data with other vital records, such as ownership, water and electricity connections.

Kenya's Constitution details the State's obligation to respect the environment and it provides for public participation and the utilization of natural resources for the benefit of all Kenyans. It empowers the Environmental and Land Court to hear and determine applications for redress of denial, violation or infringement, or threat to rights and fundamental freedom relating to a clean and healthy environment. Accordingly, the Government of Kenya is working to develop a Natural Resources Benefits Sharing framework, which seeks to establish a system of benefit sharing in resource exploitation between resource exploiters, the national government, the county governments and local communities. The Environmental Management and Co-ordination Act provides the framework for robust impact assessment and environmental restoration. However, disputes over ownership, use and extraction of natural resources – whether land, renewable resources such as timber and water, or non-renewable resources such as hydrocarbons and minerals – often play a disruptive role in peace and security. Even where there is no open, violent conflict, resource disputes can perpetuate potentially detrimental factors undermining stability in communities. Up to now, the Kenyan mining sector is small and underdeveloped. In the recent past, various mineral deposits have been discovered. However, the involvement and consultation of local communities has often been contested, with communities feeling marginalized and having little or no say with respect to the benefits derived from these resources.

The Constitution lays a strong foundation for steering socio-political changes and breaking the vicious circle of violence. One common challenge is that the provisions of one law often make reference to provisions of other laws. If there is no coordination, this can create a problem. Without guidance, institutional conflicts are bound to occur. Building institutional capacities and coordination is one fundamental prerequisite; strong and independent court rulings being the other. Yet, the important legal, juridical, electoral and institutional reforms must not disguise the fact that they have been predominantly realized as top down approaches. This report therefore underlines the importance of strengthening, organizing and supporting transparent and participatory bottom up approaches in order to counter the most dominant threat to security in Kenya, which is the hardening of identity construction along ethnic lines and its linkages to the vicious circle of winner-takes-all politics.

2. BACKGROUND AND TERMS OF REFERENCES

2.1 BACKGROUND OF THE STUDY

Globally, there is an unprecedented increase in the number of people migrating from their traditional residence to other places, both within their national borders and beyond. The total number of refugees at the end of 2015 had reached 65.3 million, or one out of every 113 people on Earth, according to the United Nations High Commission for Refugees (UNHCR). The number represents a 5.8 million increase on the year before. The reasons for these alarming individual and mass movements of people differ from one place to another. They include wars and other forms of conflicts, famine caused mainly by excessive effects of climate change, natural disasters and failure of governance. The majority of refugees flee armed conflicts in their home countries or areas. Due to this increase in people fleeing their traditional residences to try and find means of survival in other parts of the world, and all the challenges that come with it, there has been a greater need for more knowledge about the key causes of conflicts. This knowledge would then inform the strategic steps that need to be taken to deter further conflicts and the ensuing forced movement of people. Through its Special Initiative on Forced Migration, Rosa Luxemburg Stiftung (RLS), East Africa Regional Office, commissioned a study to examine the impact of climate change in fueling conflicts and forced migration in Kenya. Kenya is the country most affected by climate change and engulfed by internal conflicts in the in East Africa Region.

The study, undertaken by the University of Nairobi's Institute for Climate Change Adaptation (ICCA), found that climate change was just one – and not the main – factor fueling conflicts in the country. It highlighted the presence of deep-rooted factors, which acted as triggers for climate change to become a major contributor to conflicts and the subsequent forced migration.

Also, the study identified several other causes:

- population increase, that put more pressure on natural resources like water and land that most rural communities rely on for their livelihood;
- economic pressures (especially from urban centers) on the communal resources like cattle and land, leading to their commercialization when traditionally they were used for sustaining life in the communities;
- politicization of tribes and tribal life;
- militarization of traditional conflicts; and

- change in governance structures and approaches to conflicts.

It is against this backdrop that RLS decided to conduct another study, to focus specifically on the role of the government in managing these internal conflicts, how those roles have evolved over time, what have been the successes and shortfalls, how the government works with other stakeholders in addressing conflicts and what can be done to better the government's impact in managing and ending conflicts.

Since the country is going into general elections, RLS feels that this is a good window of opportunity to study the impact of politics and the politicization of public life on conflicts. The findings of this study will be used locally to inform debates on how the government can better position itself in handling and ending conflicts. They may also inform debates in different countries and regions in Africa in general and the global north on what is happening in the global south and subsequently help in informing or influencing policy decisions there.

2.2 RATIONALE FOR THE STUDY

As indicated above, despite the many efforts by different stakeholders and communities in preventing and ending conflicts in Kenya, they continue to occur more frequently and with worse effects. This project therefore intends first and foremost to analyze the role the government has been playing in conflict prevention, resolution and management in general, and how those government actions or inactions have contributed to ending or sustaining tribal and resource-based conflicts.

The objectives of the study are to:

- i. generate information and knowledge on how the government involves itself in preventing and managing conflicts in the country and how this involvement affects the conflicts;³
- ii. analyze the link between public policies, provision of public goods on the one hand and conflict prevention and preparedness on the other;
- iii. shed light on how the Government interacts with other key stakeholders in the country in addressing conflicts and how those relations influence the situation on the ground;
- iv. analyze the support the government gives to local actors and the support she receives from other actors like donors in preventing and addressing conflicts in the country;
- v. provide an analysis of how internal conflicts in Kenya are leading to migration from the country,

³ Government, in the context of this study, is meant to cover government institutions, officials and processes.

- vi. offer recommendations on how better the government can get involved in addressing and ending the conflicts; and
- vii. provide an analysis of how conflicts in the country are affecting the nation economically, socially and politically at local and national level.

2.3 SCOPE OF THE STUDY

To achieve the main purpose of this research project and its specific objectives, the research work will have to cover, among others, the following key aspects:

- i. An analysis of current conflicts in Kenya;
- ii. A thorough analysis of government structure including key documents (constitution, policies, laws, strategies etc.) on conflicts management in the country;
- iii. An analysis of selected public policy reforms and their long term impact on conflict prevention and risk preparedness;
- iv. An analysis of government (both central and county) actions and approaches in managing conflicts;
- v. A thorough analysis of the interplay between government and other stakeholders in addressing and managing conflicts

In the long run, the findings and recommendations from this research will be used to inform policy and practices of the government and other stakeholders on how to better address conflict in Kenya and inform local, regional and international debates and forums on how governments can get better involved in managing conflicts.

2.4 EXPECTED RESULTS OF THE STUDY

The project's expected outputs include:

- Thorough analysis of current conflicts in Kenya and corresponding Government policies;
- Government policies and development partner planning processes adapted to respond to research findings;
- Greater understanding and involvement in peace programming by development actors particularly as regards natural resources extraction and exploitation; and
- Greater understanding and involvement in peace activism on the part of the National Steering Committee (NSC) on peace-building

The Kenyan Government and other peace and security partners in the region have been conducting conflict prevention and peace-building work for several decades. Some of the achievements of such initiatives include consistent monitoring and reporting on peace

and security dynamics and trends, as well as providing timely information to government and civil society structures in the region for response to impending conflicts. The initiatives have largely focused on leveraging community-based peace initiatives and strengthening local institutions and have greatly contributed to a significant reduction in violent conflicts in the country. However, most of these interventions are isolated, general in nature and largely uncoordinated. Consequently positive outcomes are minimal.

This study will make a range of proposals that could be implemented by stakeholders working in national and county Governments in Kenya, including:

- a. proposals for capacity enhancement among peace stakeholders to advocate for conflict-sensitive approaches to peace-building;
- b. proposals for violence reduction specifically related to natural resources in Kenya;
- c. increased engagement of the local private sector in peace-building;
- d. increased national and community-level stakeholder confidence in government and county peace initiatives and policies; and
- e. greater uptake of conflict-sensitive business practice by investors.

The study also aims at exploring avenues for establishing strong coordination mechanisms linking interventions to peace and security of communities not only in Kenya, but in the larger East Africa and IGAD region.

2.5 KEY ISSUES CONSIDERED DURING THE STUDY

The study dealt with the following key issues:

- a. identified and mapped the different types of conflicts occurring in Kenya;
- b. identified and analyzed key government documents (i.e. policies, strategies, guidelines and other instruments) used to address conflicts in the country;
- c. analyzed how the Constitution (and its implementation) is impacting on conflicts and their management;
- d. analyzed the policy and legal framework and institutional setup relating to violent conflicts in Kenya;
- e. identified and analyzed government approaches and practices in addressing conflicts and how they influence/affect conflict situations;
- f. analyzed the horizontal and vertical interplay within the government (i.e. horizontally - how different Ministries, Departments and Agencies in the central government relate to each other in process and practice; and vertically - how the central government relates to county governments) and how they compete with or complement each other;
- g. drew general conclusions from the key findings in the study, focusing on:

- i. key drivers for government involvement in conflicts (positive and negative);
- ii. key success factors for government engagement in conflicts;
- iii. other key factors impacting on the government’s ability to sustainably end conflicts in the country;
- iv. how conflicts in Kenya are currently affecting cross border migration and what are the possible future trends;
- h. provided recommendations based on the findings of the study. The recommendations cover the following areas:
 - i. A list of practical approaches that can be successfully applied by the government (both central and counties) to sustainably end studied conflicts;
 - ii. Ideal institutions and non-state actors that the government can and should partner with in addressing conflicts; and
 - iii. How the government can better partner and collaborate with other local stakeholders in managing and ending conflicts.

2.6 APPROACH AND METHODOLOGY

2.6.1 General Approach

The assessment methodology was retrospective and prospective, looking backward to examine previous conflicts, peace initiatives and what has been achieved so far, as well as noting lessons for future programming. In doing so, the consultant reconstructed a “before” and “after” picture by making reference to documents given to him, field visits, talking to stakeholders and beneficiaries and referring to the log frame of various peace initiatives undertaken in the country. The study was participatory and consultative with the local stakeholders taking part in FGDs. The intention was to provide an opportunity for greater learning and ownership. Attention was paid to independence to ensure that the findings, conclusions, and recommendations were objective and based on evidence. The consultant also used well-developed data collection and analytical methods to address the above key questions.

2.6.2 Pre-Planning Meeting with Rosa Luxemburg and ACT

The consultant held pre-planning sessions with Rosa Luxemburg Stiftung staff Mussa Billegeya, Pro. Issa Shivji and Act Change Transform (ACT) staff Dominic Pkalya and Bonventure Chengeck to provide deeper insights into the rationale and objectives of the peace-building study and to explain expectations from the assignment. The briefing centered on the key issues for the assessment including the approaches to be employed by the consultant, field visits and stakeholders’ discussion of the draft report.

2.6.3 Consultation with National Institutions

The consultant held several consultations with national institutions such as the National Steering Committee on Peace-building and Conflict Management (NSC), the National Police Service (NPS), the Kenya National Human Rights Commission (KNHRC), the National Cohesion and Integration Commission (NCIC), the National Land Commission (NLC), the Interior Ministry, the National Counter Terrorism Centre (NCTC), the National Environment Management Authority (NEMA), the Kenya Wildlife Services (KWS), and the Independent Electoral and Boundaries Commission (IEBC). The consultant met with these stakeholders with a view to developing an initial understanding of the conflict dynamics and related risks in the cluster and ongoing peace-building efforts and actors. The outcomes of these consultations assisted the consultant to develop research tools used during field visits.

2.6.4 Review of Previous Conflict Reports and Studies

The consultant reviewed relevant publications, reports and other literature related to various conflicts in the country, in order to form a broad picture of the nature and genre of conflicts and related issues in Kenya. Specifically, the consultant:

- reviewed previous conflict and peace studies;
- followed the implementation history of the peace programs, challenges and achievements;
- established the validity, relevance and effectiveness of previous peace initiatives;
- classified the various existing conflicts;
- evaluated the effectiveness of government policies, laws and institutions in responding to existing conflict challenges;

2.6.5 Field Visits

For the conflict review, qualitative and quantitative methods were applied. With the literature review findings in mind, semi-structured interviews and Focus Group Discussions (FGDs) were conducted with the identified interlocutors in the field (Turkana, Baringo, West Pokot, Garissa, Mombasa, Tana River, Lamu, Kilifi, Kakamega, Nyeri, Kericho, Samburu, Nairobi, Meru, and Laikipia). In addition, phone or Skype interviews were conducted where meetings could not be arranged.

Participant observation: While conducting interviews and FGDs, the consultant took notes on the conversation, the group dynamics and the activities. When travelling to the interview locations, and wrote down notes for reflections later on. In addition, while traveling to the interview locations, observations were made of the environment and the people. The notes provided important insights into the conflict and were shared with team members.

The consultant undertook informal conversations at various locations - the markets, in shops, hotels, bus stands, etc. with random people at different sites – this was an important source for learning about what was on people’s minds about various genres of conflict and Government responses.

The consultant also participated in *barazas* (community gatherings) or other local mechanisms for dispute settlement to learn about conflict issues and how people coped with them every day.

Surveys: In order to support the qualitative answers from the interviews and FGDs, a small quantitative survey of a particular conflict in an area was conducted. Because of time, the survey was conducted with members of different ethnic communities, local leaders from different ethnic communities, local journalists, and local people from various sides of the political divide, ethnic groups, villages and age groups. The consultant made sure that the FGDs, interviews, participatory observation, and also the surveys were conducted in a “safe” environment, where people felt comfortable to speak.

To gain a gender-balanced picture of the conflict situation, the consultant put questions to women and men about their opinions, experiences and ideas;

The consultant facilitated dialogue rather than interrogation, and enabled people to bring in their views, ideas, and recommendations on the current legislation and policies that support peace.

Table 1: Field Visits

| S/No | County | Genres of Conflict Assessed |
|-------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Mombasa | <i>Radical Islamic activities</i> <i>Land conflicts</i> <i>Al-Shabaab bases</i> |
| 2. | Nairobi | <i>National ethno-political conflict</i> <i>Election related conflicts</i> <i>National Government Institutions – NSC, NPS, NLC, KNHRC, NGC, NCIC, IEBC</i> |
| 3. | Baringo | <i>Pastoralist conflict</i> <i>Pokot – Turkana conflict</i> <i>National Police Service Response</i> |

| | | <i>County</i> |
|-----|---------------------|------------------------------------------------------------------------------------------------------------------------------------|
| 4. | Garissa | <i>Islamic radical activities in Kenya Kenya Security Response Inter-Clan conflict over land and resources</i> |
| 5. | West Pokot | <i>Cross-Border conflict (Karamojong Cluster) Pokot-Turkana conflict</i> |
| 6. | Tana River | <i>Pastoralist-agro-pastoralist conflict Ethno-political conflict Land conflict</i> |
| 7. | Lamu | <i>Land disputes Radical Islamic activity Ethno-political violence Cross-border conflict</i> |
| 8. | Wajir | <i>Clan and boundary based conflicts Cross-border conflicts Radical Islamic activity Somali ethnic conflict</i> |
| 9. | Nairobi Slum | <i>Informal settlement and political violence Organized criminal groups Rental conflicts Landlord-tenant conflicts</i> |
| 10 | Kakamega | <i>Organized criminal groups Election-related violence</i> |
| 11 | Nyeri | <i>Historical land claims and disputes Gender based violence</i> |
| 12. | Kericho | <i>Land conflict and Mau restoration activities Ethno-political violence</i> |

| | | |
|-----|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| 13. | Meru | <i>Human-wildlife conflicts</i> <i>Land disputes</i> <i>Gender based violence</i> |
| 14 | Laikipia | <i>Land and human-wildlife conflict</i> <i>Land disputes and historical land injustices</i> |
| 15 | Turkana | <i>Cross-border conflict Ethiopia (Turkana-Nyangatom and Dassenech)</i> <i>Cross-border (Turkana-Toposa)</i> <i>Oil and gas extraction</i> |
| 16 | Migori | <i>Land disputes</i> <i>Ethno-political violence</i> <i>Cattle rustling</i> |

2.7 DATA ANALYSIS

2.7.1 Comparison and Pattern Analysis

The consultant documented conflict trends since 2001, tracking various Government interventions in addressing particular emerging conflicts in different parts of the country, assessing the existing gaps and the recurrence of conflict. The consultant also went further to analyze the effectiveness of the GoK interventions in responding to the conflict issues. “Before and after” comparisons were made to assess how various Government interventions made a difference in addressing conflict issues over the years.

From all this analysis, it was possible to broadly categorize current Kenyan conflicts on the basis of major current conflict issues.

2.7.2 Mixed-Methods Integration/Findings Synthesis

Using a mixed-methods approach, data from the field and previous reports was integrated to arrive at findings on Government responses to various conflict categories in the country. Where different methods produced conflicting evidence, data from the various methods was double checked and weighted to discover the source of the conflict and its strength in validity and reliability.

2.7.3 Methodological Strengths and Limitations

This report relies significantly on available documentary evidence as well as perceptions and experiences of actors and stakeholders involved in conflict and peace-building. The reliance on qualitative data and people’s perceptions will present some limitations if

individuals talk from their ethnic or political leanings regarding a particular conflict. Efforts were made to ensure that this is an independent evaluation which has tried to make an independent assessment of the feedback provided.

2.8 STAKEHOLDER CONSULTATIONS⁴

In accordance with the good practice for similar national studies, formal stakeholder consultations under Chatham House Rules were held with GoK and non-state actors to consider and review the findings of the study. The consultations were held on February 15th 2017 at Sarova Panafric Hotel, Nairobi, with participants as appear in Annex I. They included key constitutional bodies' representatives, county government officials, national government officials, land authorities and non-state actors. The workshop included a wide range of formal and informal discussions, FDGs and targeted discussions on the effectiveness of Government interventions in addressing the conflict challenges identified. The objective was to validate the research findings and gather further information on the current conflicts, Government policies and the implementing institutions. The deliberations resulting from the discussion have been worked into this report.

⁴ Stakeholder Consultation was a critical step towards completion of this study.

3. FIELD FINDINGS ON EXISTING CONFLICTS AND GOVERNMENT RESPONSES

3.1 INTRODUCTION

The Republic of Kenya is a country in Eastern Africa, with a population of approximately 42 million people. It lies on the equator and is bordered by Ethiopia (North), Somalia (East), Tanzania (South), Uganda (West), and Sudan (Northwest), with the Indian Ocean forming the southeastern border. It is a multi-ethnic country, with over 44 different ethnic groups; this ethnic diversity has produced a vibrant culture but is also a source of recurring conflicts. Kenya's political context has been heavily shaped by historical domestic tensions and contestations associated with the centralization and abuse of power, high levels of corruption, more than twenty years of constitutional review and post-election violence. The approval of the new Constitution in 2010 and relatively peaceful elections in March 2013 are milestones in Kenya's transition from political crisis.

Kenya is still rife with violence in different genres of conflicts which have been classified into nine major block.

- Ethno-political related violence
- Cross-borders conflicts
- Violent Islamist activities
- Pastoralist related conflicts
- Militia group violence
- Land and development related conflicts
- Gender based violence
- Resources related conflicts
- Human-wildlife conflicts

The incidence, gravity and intensity of the various kinds of violence depend on the location and period. For example, as the country moves towards the 2017 general elections, there will be heightened political tensions. Islamic terror activities are more likely to occur in the north eastern and coastal regions of Kenya than in central and western parts of Kenya. The occurrence of violence depends on a range of trigger factors including: i) ethnic intolerance and incitements ii) porous borders; iii) ethnic political party zoning; iv) corruption and competition over land and other resources; v)

proliferation of small arms; vi) weak security; and vii) poverty, underdevelopment, and marginalization.

In the report, outcomes of the field visits are used to discuss the above outlined conflict challenges and assess the sufficiency of existing Government and stakeholder responses.

3.2 THE CHALLENGE OF ETHNO-POLITICAL VIOLENCE

Fifty years after its independence, ethnic mobilization still plays a key role in Kenyan politics. Today, it is not possible to understand the formation process of the Kenyan nation-state – and particularly the democratic transformation of the past two decades – without dealing with the question of ethnicity. Considering that the reward for electoral victory is control over key resources, it is not surprising that politicians use the full range of available means to win the contest. All the elections in Kenya, except for 2013, have been very volatile. In 2008, political and ethnic violence left more than a thousand people dead and over 350,000 people were forced to flee their homes as violent and machete-wielding gangs roamed the streets.⁵ Elections in Kenya have tended to significantly increase the propensity to violence, displacement and ethnic profiling. They are usually caused by unfair nominations processes, and mistrust of the electoral commission, the judiciary and other institutions that can sustain democracy. Perception of electoral irregularities also provokes. Given these high stakes, politicians resort to a variety of means including vote buying, intimidation, electoral violence and police brutality. They also use other kinds of manipulation such as the old trick of stuffing ballot boxes, tampering with vote tallies and ballot stealing.⁶

The 2009 National Census presents the following ethnic composition of Kenya: Kikuyu 17%, Luhya 14%, Kalenjin 13%, Luo 10%, Kamba 10%, Kisii 6%, Mijikenda 5%, Meru 4%, Turkana 2.5%, Maasai 2.5% and the remaining smaller indigenous groups- 14%. During elections, most political incitement occurs during political rallies and tends to be concentrated in specific towns such as Nakuru, Nairobi, Kisumu and Mombasa, which are both multi-ethnic, but also have large numbers of the major ethnic communities. Political representatives of ethnic parties openly advocate violent behavior against their opponents' communities in other parties. They also frequently use gangs loyal to them. Experience from the 2005 Constitutional Referendum, the 2007 and 2017 general elections seems to indicate that politicians have an almost instinctive predilection for inciting the public.

While perceived electoral injustice and unfairness was the immediate trigger for the violence in 2008 and 2017, it is important to get a deeper understanding of the causes of ethno-political violence for every electoral period. Systematic flare-ups of violence

⁵ Amnesty International 2008.

⁶ Throup and Hornsby 1992.

between different ethnic groups, particularly at a local level, have occurred in nearly every poll since the reintroduction of multiparty elections in 1992 due to negative ethnicity, hate speech and land conflicts. Nonetheless, the magnitude of the violence following the 2007 elections in Kenya shocked many observers around the world. A dominant explanation for that violence was the role of ethnicity and patronage that has prevailed in Kenyan politics, giving incentive to incumbent politicians to appeal to unaddressed historical ethnic injustices dating from colonial times “to mobilize voters in exchange for promised access to land or public services.”⁷ As power was centralized in the Presidency “politics was viewed primarily as a winner takes all zero-sum ethnic game. The national economic cake was the prize. Various ethnic groups argue openly that it is their turn to ‘eat’.”⁸

Another explanation has been what scholar Kagwanja calls ‘an entrenched legacy of informal violence’ from the Moi era and that this, combined with the ethnic divisions cultivated by politicians, explains why ethnic tensions so easily erupted into conflict.⁹ International experience has shown that ethnic conflicts are often caused by the decline of mediating institutions such as political parties as a forum of democratic negotiations and the lack of pre-existing credible commitments across groups. Political-institutional failures have been especially common in Africa (with extreme examples in Burundi, Liberia, Rwanda, Somalia and Zimbabwe) as ethnically-based parties in electoral systems where the winner takes all, tend to bend to “extreme ethnic demands”.¹⁰ These ethnic demands reduce the potentially stabilizing factor of inclusion that democracy aims to achieve. If allegiance is based on ethnic identity, the normal beneficial consequences of elections may not hold; elections may fail to discipline governments into improved economic performance based on campaign promises. Conversely, they may leave a dysfunctional legacy of violence and uncertainty.¹¹ International evidence suggests that elections in developing countries only improve policies if they are well-conducted in free, fair and transparent conditions that reflect the wishes of citizens. Hence, for Kenya, the contested results and the aftermath of the 2007 election constitute a setback to what had until then appeared to be a beneficial process of democratization.

During the 2007 elections, hate speech also played a crucial role in inciting deadly violence. According to the Waki report,¹² the political violence that engulfed various parts of the country in 2007 and early 2008 was largely a result of the “use of irresponsible and inflammatory language in drumming ethnic hate in the run up to and

⁷ Dercon and Gutierrez-Romero, 2012.

⁸ Mueller, 2008: 191.

⁹ Kagwanja, 2008: 384.

¹⁰ Bardhan, 1997: 1390.

¹¹ Collier et al.

¹² The Waki Commission, officially The Commission of Inquiry on Post-Election Violence (CIPEV), was an international commission of inquiry established by the Government of Kenya in February 2008 to investigate the clashes in Kenya following the disputed Kenyan presidential election of 2007.

immediate aftermath of the elections.” Those memories still linger, particularly as the country moves towards the elections in 2017. The Jubilee Government has been serious in dealing with hate speech; nonetheless there has not been a successful prosecution and conviction of a hate speech case.¹³

Many reports and studies in the aftermath of Kenya’s 2007 and 2017 electoral violence documented that the police were heavy-handed using excessive force that claimed hundreds of Kenyan lives, often in circumstances where it was unjustified.¹⁴ Little has been done for victims and survivors and that violence casts a shadow over Kenyan politics to this day.

Over the years, the Kenya police have served as the state’s main organ of oppression and the principal violators of human rights, operating in a culture of low accountability.¹⁵ They have often been accused of corruption and misuse of force. Since Kenya’s independence in 1963, the police has been linked with the protection of a small political and economic elite at the expense of the protection of all citizens. This has contributed to the public’s image of the police as a hostile, brutal, abusive, corrupt and ineffective force. In addition, the police lack the necessary equipment to carry out their duties, and they have to deal with poor infrastructure and a lack of coordination between two separate police forces – the Administration Police and the Regular Police.

The 2007 post-election violence brought greater pressure for police reform in the country. There was a need to transform the police into a more modern service, in line with international standards of policing. The Commission of Inquiry into the Post-Election Violence (CIPEV) implicated the police in acts of violence and killings.¹⁶ The CIPEV and the UN special rapporteur report on extra-judicial killings both recommended extensive reforms of the police service.

3.2.1 Government Response – Policies and Institutions

Since 2008, the Kenyan government, with the support of the international community, has implemented important political, judicial and electoral reforms and enacted legislation to manage ethno-political violence. Many of these reforms reflect recommendations from the various commissions established following the Kenya National Dialogue Report (KNDR, 2008)¹⁷ that were subsequently mandated in the 2010

¹³ Ibid.

¹⁴ Kenya Red Cross, 2008; Kimenyi and Romero, 2008; Human Rights Watch, 2008.

¹⁵ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, 2006.

¹⁶ CIPEV, 2017.

¹⁷ Kenya National Dialogue and Reconciliation (KNDR) Monitoring Report. On 28 February 2008, the Government/Party of National Unity (PNU) and the Orange Democratic Movement (ODM), under the mediation of Kenya National Dialogue and Reconciliation (KNDR), signed an agreement to end the political violence that followed the disputed December 2007 elections. Through mediation by the African Union’s (AU) Panel of Eminent African Personalities under the chairmanship of Mr Kofi Annan, the parties agreed to form a coalition government and thereafter undertake far-reaching reforms to secure

Constitution. Here are some Government policies and institutions established to manage ethno-political violence since 2007 and their status as we move towards 2017 elections.

3.2.1.1 Constitution 2010

Constitutional reforms in Kenya had been on the agenda even before the 2007-2008 PEV. The violence in 2007-8 made constitutional reforms the center of the National Peace Accord (NPA) following an attempt to break the cycle of winner-takes all politics, a major driving factor in election violence in Kenya. The Constitution was promulgated on August 27, 2010, following a successful referendum. It established several features including a “devolved system of government, an independent elections management body and requirements for affirmative action measures meant to guarantee the representation of marginalized and community groups within the country.”¹⁸ The Kenyan Constitution has been lauded as one of the most progressive pieces of legislation in the world. Its provisions secure the rights of traditionally marginalized groups including women and youth, and significantly expand the space for realization of human rights and promotion of democratic governance. However, there are still real and ever present challenges that bedevil its implementation - the self-serving political class, lopsided judicial interpretations of its provisions and *ultra vires* acts by the executive. All these have caused implementation to stall.

Kenya’s reform on paper moves beyond the typical approach of devolving new functions and resources; it recognizes the broader political and developmental role of county governments. The approach to devolution is explicitly integrated, incorporating strong administrative, fiscal and political elements in the reform process. The Constitution seeks to reverse the centralized non-participatory governance paradigm by institutionalizing participatory governance and leadership systems based on integrity, primarily by establishing an enabling normative framework. It provides for relevant governance institutions, checks and balances on the exercise of executive power, facilitative legislation, enhanced public participation in governance as a bulwark against abuse of power, a rigorous process of recruitment and retention of critical public officers.

Kenya’s devolution is multi-dimensional, in the sense that it organizes, distributes and constrains governance and manages state power along multiple lines, by combining both vertical and horizontal dimensions. Devolution ensures that all citizens equally enjoy the national cake. It can actually be described as the statutory granting of powers from the central government of a state to government at a sub-national level, at county level. One of the objects and principles of a devolved government in accordance with the Constitution, Article 174, is to recognize the right of communities to manage their own

sustainable peace, stability, and justice in Kenya through the rule of law and respect for human rights. South Consulting has been monitoring the implementation of the KNDR agreements from 2008 and producing reports.

¹⁸ Constitution of Kenya, 2010.

affairs and further their development. Devolution gives people a sense of identity and self-empowerment in such a way that every community is able to manage its own economic affairs and development in its unique way of choice.¹⁹

In addition, the Constitution introduced vetting of public servants under Chapter 6 on “leadership and integrity”, setting out a framework for the behavior of civil servants and a new Bill of Rights under Chapter 4, as well as a framework to ensure they are respected. These major reforms represent a necessary step in restoring the general population’s faith in the political process. The Constitution is also anchored on the fundamental human rights principles which are reinforced in nearly all the chapters. All implementers are expected to integrate human rights - civil, political, economic and social - in their legal and policy frameworks.

3.2.1.2 Electoral Reform

Another major institutional reform to emerge out of the new Constitution was an overhaul of the electoral system. Following the National Peace Accord, a commission that came to be known as the Kriegler Commission²⁰ sought to determine the failures of the electoral process that triggered the PEV in 2007-2008. Identification of serious shortcomings of the Electoral Commission of Kenya (ECK) led to its disbanding and to the creation of the Independent Electoral and Boundaries Commission (IEBC) instead, in 2011. The ECK had been the national body in charge of administering the 2007 elections. Its disbanding was therefore an indispensable step to moving forward, as many Kenyans held it responsible for the vote-rigging and voter intimidation which had occurred. A KNDR Report²¹ found that “new laws and institutional arrangements that demand transparent recruitment and procurement processes, and the creation of new oversight mechanisms”²² boosted and restored Kenyans’ confidence in the electoral process. This is evidenced by the fact that the IEBC enjoyed a confidence rating of over 90% of respondents to a survey in February 2013.²³ It was only after the elections that public confidence in the IEBC began dropping significantly with Opposition CORD demanding the disbandment of the Commission. Attempts to make electoral processes more transparent through the introduction of biometric voter registration (BVR) in 2013 failed due to controversial technical glitches.

¹⁹ EU-KAS Report, 2009: 20.

²⁰ The Kriegler Commission, officially The Independent Review Commission (IREC), was an international commission of inquiry established by the Government of Kenya (PNU and ODM) in February 2008 to inquire into all aspects of the 2007 general elections with particular emphasis on the presidential elections. The IREC published findings and made recommendations to improve the electoral process. On the other hand, CIPEV was intended to investigate the facts and surrounding circumstances related to the violence that followed the elections and make recommendations to prevent any recurrence in future.

²¹ KNDR Report, 2013:14.

²² Ibid: 15.

²³ Ibid: 16.

The opposition have insisted that IEBC Commissioners must leave office. In response, IEBC proponents from the ruling Jubilee Coalition fiercely maintained that the body will remain in place unless the legal process for their removal is followed. This hardened political posturing created an impasse, where the escalating drumbeats of political tension threatened to make the 2017 elections even more violent than those of 2007. Luckily there was a negotiated agreement between Jubilee and CORD to send the commissioners home and bring new commissioners on board. The time for early and sustained efforts to prevent clashes in the 2017 elections is now. Structures primarily responsible for the August 2017 elections still remain in disarray at the time of writing this report. Recent months have been particularly tense, with violent protests in several major cities and growing demands to disband the IEBC. Concerns are rising about the excessive use of force when security forces face large protests. The police reforms guided by the national police service have not been fully realized.

3.2.1.3 Judicial Reform

The influence the President held over the judiciary through constitutional amendments, and the corruption of many standing judges at the time of the 2007-2008 PEV meant few Kenyans had confidence in the judiciary. This rendered judicial review of executive orders ineffective, thus promoting non-judicial means of achieving justice.²⁴ The 2010 Constitution removed several executive controls of the judiciary, thereby opening the possibility for reform. The Appointment of Willy Mutunga who was a reform activist as Chief Justice of the Supreme Court was expected to prioritize the implementation of the rule of law and human rights over the political will of the elite. In response, the Judiciary Transformation Framework (JTF) 2012-2016 was launched in 2012.²⁵ The JTF sets out changes to the leadership, management and culture of the judiciary including the vetting of all judicial staff. The vetting process required by the 2010 Constitution, in which each judicial officer faced a board review to determine if he or she was fit to remain on the bench, also helped head off opposition. The judicial officers most likely to resist reforms - those with histories of corruption, bias, or unreasonable delays — were also the ones most concerned about removal by the vetting board. The vetting process was a great opportunity to carry out reforms since the Judiciary was able to remove the bad apples.

The list of tasks the reformers had to undertake was immense. The transformation framework called for streamlined court procedures and clearer processes for litigants trying to navigate the system. Court registrars took the lead in standardizing and communicating administrative processes that had previously varied from court to court.

²⁴ Judiciary Transformation Framework 2012: 2.

²⁵ The Kenyan Judiciary developed a Judiciary Transformation Framework that placed it on the path of institutional transformation. Popularly known as JTF, the 2012-2016 plan is the Judiciary's strategic reform blueprint launched in May, 2012. It is anchored on five pillars, namely, *people-focused delivery of justice; transformative leadership; organizational culture and professional staff; adequate financial resources and physical infrastructure; and harnessing technology as an enabler for justice.*

Each court station was required to produce a service charter in the form of a billboard, listing requirements, fees, and timelines for each court process, and each level of the court system worked to produce a registry manual that clearly spelled out procedures for both staff and users. Basic physical organization of the case files was a priority - they were often difficult to locate, and that made it easy for unscrupulous staff members to remove important documents and hide or lose whole files. The High Court registry reorganized and color-coded its files, and the registrars implemented a tracking system that required anyone who retrieved a file to leave a “tracer card” in its place so others could easily see who was working on it. Introducing better monitoring and information sharing practices was essential. Initially, the reform team had wanted to roll out an electronic case management system to monitor delays, digitally store and share documents, and assign cases to judges randomly to limit corruption opportunities. Beginning in 2010, the magistrates’ court in Eldoret, a major city in western Kenya, piloted a court-level case management system with funding from the U.S. Agency for International Development (USAID) and technical support from a law reporting agency, Kenya Law. The Eldoret system allowed judicial officers to easily track the status of a case in a court-level database; it also enabled litigants to check their cases’ statuses and receive updates such as hearing dates or reminders to pay outstanding fees via text messages. Similar systems were introduced piecemeal in other courts, but scaling up to the entire country proved more challenging. Many courts had no internet connections, reliable electricity, or even computers. And because courts varied in their processes, it was impossible to develop a single nationwide system without first standardizing procedures. In January 2013, the judiciary’s performance management committee began to develop a tracking tool to gather the information necessary to evaluate job performance. This collected much the same data as an electronic case management system would have. After almost three years of testing, the new tool - a simple Excel spreadsheet with drop-down menus customized for each court’s procedures, known as the Daily Court Returns Template — was rolled out in October 2015. At the end of each day, an administrative officer at each station would update the spreadsheet and send a copy to the central directorate that monitors performance, sometimes from an internet cafe if the court lacked a reliable internet connection. The template allowed the directorate to track case assignments and processing times and facilitated distribution of caseloads. However, the tool did not allow document sharing, and it was difficult to verify the data that court stations submitted. The Chief Justice also integrated existing mechanisms into his reform program. Court Users Committees, which brought together judges, the police, civil society organizations (CSOs) and community leaders to share information and solve problems, had existed at many courts since 2006. The new transformation framework made these committees an official part of the justice system, and employed them to collect information about local issues and performance. In addition, committee members were better able to inform their communities about new policies, such as new procedures

for traffic arrests and other small infractions. These reforms have restored confidence in the judiciary, reduced resort to violent protests and bolstered trust in the judiciary in relation to electoral disputes. By strengthening the independence and impartiality of the highest courts in Kenya, the country established a viable peaceful dispute resolution mechanism. This became evident in the Supreme Court rulings delivered in 2013 and September and October 2017.

3.2.1.4 Transitional Justice

Intertwined with this institutional reform were a number of efforts to lay the foundation for future peace through pursuing transitional justice. Transitional justice was identified as a key process in the prevention of a recurrence of violence arising from the sore in the psyche of many Kenyans due to, in the words of one intellectual, “historical and ongoing injustice.”²⁶ It was anticipated that transitional justice would play a “healing” role and ultimately lead to conflict prevention, from the idea that “there cannot be peace without justice.”²⁷ There remains considerable debate about how best to achieve these ends, in particular about whether to pursue “retributive” or “restorative” justice, the impact and interactions of such initiatives with political developments and the appropriate timing for each measure. While retributive justice was seen as strengthening the rule of law by ending long-term impunity, it has also been identified as a potential source of tension which could prompt a repeat of violence.²⁸ In order to achieve lasting peace, end the culture of impunity and foster democratic governance²⁹ there was broad support for strategic partnership, between the public, civil society, the media, the political class, and other stakeholders geared towards the successful execution of all the transitional justice initiatives.

The most significant included the establishment of the Truth, Justice and Reconciliation Commission (TJRC), the creation of CIPEV and the referral of crimes against humanity to the International Criminal Court.

3.2.1.5 Truth, Justice and Reconciliation Commission

The creation of the TJRC in October 2008 is until now regarded as a major positive step towards transitional justice. Agitation for the TJRC began in the early 1990s with the introduction of multiparty democracy but gained momentum in 2002 following the election of the National Rainbow Coalition (NARC). Mounting pressure finally translated into action as part of the National Dialogue resulting from the 2007-2008 election violence. While the implementation of the TJRC is worthy of support, a number of limitations were identified, including:

²⁶ Roht and Javier 2006: 2.

²⁷ Kenyan Human Rights Commission, 2001: 14.

²⁸ Ibid: 17.

²⁹ Agreement between Raila and Kibaki in 2008

- failure to consider non-state actors as perpetrators;
- a mandate that is far too large;
- a structure which is likely to overlook regional areas;
- a compensation mechanism which may exclude marginalized communities;
- inadequate witness protection; and
- lack of provisions on the enhancement of national reconciliation.³⁰

The TJRC's final report was released in May 2013 and has been commended for its robustness; yet implementation has already met controversy and is lagging behind because the political class cannot agree on how to proceed.³¹ There have been claims that the ruling party (Jubilee Coalition) altered some of the TJRC's findings to cover up persistent issues of land tenure relating to the founding president, Jomo Kenyatta. On 3rd October, the International Center for Transitional Justice (ICTJ) filed a petition in a high court in relation to these actions. According to them, "these actions clearly threaten to undermine the legitimacy of the TJRC." The non-implementation of the TJRC report remains a threat to peace in the country and to dealing with historical injustices.

3.2.1.6 Police Reform

Aside from restoring the impetus for transitional justice mechanisms, a major development arising from the Waki Commission report has been a massive and ambitious effort to reform the police system from 2009. This was in response to the Waki Commission's identification and documentation of "widespread allegations of attacks, including killings and rapes, committed by the police, and allegations of deliberate negligence where the police failed to respond to situations of violence."³² A National Task Force for Police Reform was created in 2009 and subsequent laws passed in 2011. These contain a comprehensive framework for police reforms. The National Task Force on Police Reforms or Ransley report recommendations provided a blueprint for police reforms and was adopted in the formulation of the constitution. The promulgation of the 2010 constitution introduced significant changes in the policy, legislation and

³⁰ Ibid: 23.

³¹ The TJRC was created after Kenya's contested 2007 presidential elections sparked mass violence, resulting in the deaths of at least 1,133 people, sexual and gender-based crimes, and thousands forcibly displaced. The Commission's mandate to investigate human rights violations extended beyond that period to include ethnic violence, economic crimes, community marginalization, and other human rights violations committed in the country since 1963. Over 40,000 people testified before the TJRC. The Commission presented its report to the President in May 2013. Under Kenya's Truth, Justice, and Reconciliation Act, implementation of the recommendations was to commence immediately after consideration of the report by the National Assembly, but the Assembly has yet to take that step. The National Assembly's inaction has had huge repercussions on the lives of hundreds of victims who bear the scars of serious human rights abuses of the past.

³² CIPEV Report, 2009.

institutional structures relating to police reform and significantly enhanced police accountability. Some of the key changes included:

- the establishment of the National Police Service (NPS) that merged the Kenya Police and the Administration Police under one command in the office of the Inspector General;
- The National Police Service Commission (NPSC) was tasked with developing training policies, advising on salaries and remuneration of the members of the Service, overseeing recruitment and disciplinary matters and the vetting of its members;
- The establishment of the Police Oversight Board (POB), a specific body mandated to deal with complaints against the NPS. The POB –has the powers to investigate and take corrective action on complaints of police misconduct and human rights abuses.

Priority has been placed on modernization, which will include purchasing modern equipment, improving conditions of service and retraining. The vetting of police officers by the NPSC, a process that is central in the reform agenda, has been very slow and a cause for concern for many CSOs, the government, as well as the police.

The endemic culture of corruption still remains a deep-seated issue in the service despite the ongoing reforms. The police service has been described as a “bribe factory,”³³ and research conducted by Transparency International in 2014 found that the police service remains the most corrupt-prone public institution in the country, with an 81% corruption score. As a result, many Kenyans still view the police as corrupt, ineffective and unable to protect them. The view that the government was unable to ensure the safety and security of ordinary Kenyans, particularly those residing outside of large urban centers, had previously contributed to a rise in individuals arming themselves during electoral periods.

If fully implemented, the Ransley recommendations would overhaul the structure of the police force by addressing the shortcomings which permit and perpetuate abuse and impunity.³⁴ The reforms need to be robustly sustained by GoK to ensure that the police move towards a path of service to citizens and not self-aggrandizement through corrupt means.

3.2.1.7 Curbing Small Arms and Light Weapons Proliferation

Small arms availability and misuse have been a problem in Kenya for many years, but the post-2007 election violence increased the urgency of small arms reduction efforts. While

³³ Kenya Police continues to be regarded as the most corrupt agency in Government. Over the years, perception surveys by Transparency International have ranked the police as the most corrupt. More damningly, 67% of police officers surveyed thought the police colluded with criminals.

³⁴ Amnesty International Report, 2013: 7.

significant progress has been made, law enforcement efforts to control the proliferation of small arms still face considerable challenges. A study to assess small arms proliferation in Kenya, conducted jointly by GoK and the Geneva-based Small Arms Survey, contrasts the capacity of those involved in small arms control and peace-building efforts. The report's field findings reveal:

- civilians may be holding between 530,000 and 680,000 firearms;
- most Kenyans felt that the number of firearms in circulation has decreased;
- gun possession in certain areas, such as Mt Elgon and Rift Valley, has increased, despite disarmament programs;
- the violence around the December 2007 elections has left its mark on the population;
- most household respondents said they felt the most insecure during election periods;
- approximately 20 percent of household respondents were victims of a crime or an act of violence; and
- more than one-third of those who were victims of crime were confronted with a firearm.³⁵

Consequently, since 2010 Kenya has played an important role as chair of the Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States (RECSA), in preventing the proliferation of small arms and light weapons for some time. In 2011, RECSA identified “the possibility of cancerous civil strife”³⁶ given an escalation in the circulation of small arms and light weapons (SALWs) in the countryside as a direct result of the 2007-2008 post-election violence and “the increasing allure of the gun to communities in electoral violence-hit zones.”³⁷ This finding prompted GoK to focus its efforts on disarmament operations, especially in pastoralist areas, as well as developing a Draft National Policy on Small Arms and Light Weapons. This draft, expected to be adopted, would enhance a currently weak legal framework surrounding the management and control of SALWs proliferation, but it has been criticized for its lack of concrete measures towards a systematic and country-wide disarmament campaign.

³⁵ Wepundi, 2012.

³⁶ Ministerial Review Conference of 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. Nairobi, 21 April. <http://www.recsasec.org/pdf/Min%20Dec3.pdf> Nairobi Protocol. 2011.

³⁷ RECSA 2011: 2.

3.2.1.8 National Cohesion and Integration Commission

The formation of the NCIC has played a critical role in ensuring that hate speech would have no role in inciting electoral or ethnic violence. NCIC has developed guidelines for journalists and media outlets on responsible journalism and on conducting awareness training regarding hate speech. It warns perpetrators that they would be held accountable should they violate the Act, investigates and hears complaints regarding hate speech, and initiates prosecutions. These, coupled with other programs of the NCIC, have prohibited public intolerance of ethnic protagonists. In addition, the 2010 Constitution stipulates that freedom of expression does not allow for hate speech and strengthens the prohibition on ethnic incitement. For example, Section 79 of the Kenyan Constitution provides thus:

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.³⁸

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision- a) that is reasonably required in the interests of defense, public safety, public order, public morality or public health; b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or c) that imposes restrictions upon public officers or upon persons in the service of a local government authority, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.³⁹

49. (1) Every person has the right to freedom of expression, which includes... (2) The right referred to in clause (1) does not extend to - propaganda for war; (b) incitement to violence; or (c) advocacy of

³⁸ Constitution of Kenya, 2010, Article 79.

³⁹ Ibid. Article 79.

hatred that – (i) constitutes vilification of others or incitement to cause harm, or (ii) is based on any prohibited ground of discrimination...⁴⁰

Guidelines were established to minimize the risk that political actors, particularly senior government officials, would use incendiary language during the election period. For example, the Political Parties Act includes a code of conduct that forbids ethnic incitement, vilification or incitement to cause harm. The act requires political party leadership to conduct themselves in line with Chapter Six of the Constitution of Kenya. Members of the governing bodies in political parties are therefore expected to exemplify good leadership skills and be persons of high integrity.

As illustrated above, the Constitution and the law are clear on what constitutes hate speech; yet justice, more often than not, falls short of public expectations. The dominant public perception is that there is a brand of justice for the well to do and politically connected, and another for those not similarly endowed.⁴¹ Freedom of expression is the cornerstone of any democratic society. However, it does not take precedence over other rights and responsibilities enshrined in the Constitution. Kenya's history proves that hate speech propagated by politicians has led to distrust and disunity and consequently ethnic warfare. The extreme levels of impunity where political leaders always get away with their hateful crimes worsen the situation. The government is perceived to have double standards in dealing with hate crimes – it is lenient when leaders commit such acts, but acts with a great of sense of urgency when an ordinary citizen commits the same crime. Most politicians accused of propagating hate speech either end up having their court cases drag through the judicial process for years, getting light punishment or simply having their cases dropped all together. Failure to regulate hate speech ultimately implies that such expression is acceptable.

Most past conflicts in Kenya have one similar feature: politicians, local elites as well as the media have contributed to the escalation of tensions through producing utterances which incite violence. Such statements range from malicious cell-phone text messages to the denigration of individual political actors. NCIC has not had successful prosecutions to realize lasting peace, sustainable development and harmonious coexistence among Kenyans. The challenge ahead is for the government to sustain these efforts. Today, politics remains divided along ethnic lines and many of the underlying factors that contributed to both electoral and inter-communal violence in 2008 still persist. It is incumbent upon the new government and international partners to work together to advance much-needed reforms in the security sector, tackle outstanding issues around land reform, address the lack of domestic accountability for past crimes and break the symbiosis between electioneering and ethnic rivalry.

⁴⁰ Ibid Article 49.

⁴¹ Nothing illustrates this more than the speedy prosecution and conviction of blogger Allan Wadi for misusing social media. Politicians like Moses Kuria and Ferdinand Waititu get the soft treatment while others like Allan Wadi end up experiencing the full might of the law.

3.2.1.9 National Steering Committee on Peace-building and Conflict Management (NSC)

The government with the support of development partners and CSOs set up a National Steering Committee for Conflict Management and Peace-building (NSC) with a mandate to coordinate peace building and conflict management interventions in Kenya.⁴² Following the post-election violence in 2007/2008, there is a growing recognition and institutionalization of traditional and community based peace structures such as the District Peace Committees (DPCs). The National Draft Policy for Peace-building and conflict management also seeks to strengthen the emerging national peace architecture.

3.2.1.10 District Peace Committees

The DPCs are based on the Ghana model, in which a vibrant system of “local peace committees” and traditional mediation helped the country contain the fall-out from violent chieftaincy-related conflicts, and sustain development in many communities. The DPCs played a central role in managing ethno-political violence at the local level. The philosophy behind the establishment of peace committees was derived from the need to institutionalize and legitimize traditional conflict resolution mechanisms as well as widen the constituency of traditional institutions that were perceived to be insensitive to gender and age relations in a modern conflict management system.

3.3 THE CHALLENGE OF CROSS-BORDER CONFLICTS

Cross-border conflict remains a big challenge for the Kenyan Government due to the porosity of international borders and the homogeneity of border communities in the Somali cluster, the Karamoja cluster and the coastal areas. The Northern and North-Eastern regions of Kenya are the most notorious for poor security and porous borders. The majority of the population in North-East Province is pastoral. Not long ago it was almost entirely rural, but has experienced a significant urbanization trend, with several previously small settlements now housing 40,000 or more inhabitants. Examples are Mandera, Wajir and Garissa, the last being the largest city in the border area and now a major commercial hub. However, the single largest collection of settled households in the entire border area is not in a town, but rather at the Dadaab camp, of where about 100,000 refugees (mainly from Somalia) have resided for over a decade. Identity politics are central to Kenya-Somalia border conflicts, and are also extremely complex and nuanced.

The Kenya-Somali border area is dominated by the Somali ethnic group. But there are several other ethnic groups who live in these areas, especially in the northern Kenya border zones of Garre, Gabra, and Rendille. These possess highly ambiguous and fluid ethnic identities, making it difficult to categorize them as “Somali,” “Oromo” or other.

⁴² Available at www.nsc.go.ke

The Garre, for instance, are considered a Somali clan but speak a dialect of Oromiyya. The flexible, fluid nature of ethnic identity among the Garre, Gabra, and Rendille has historically been a useful tool for negotiating relations between the dominant groups. What follows is only a brief characterisation of cross-border conflicts from the Kenya-Somali border and the Karamoja cluster.

- Along the *Kenya- Ethiopia border*, Marsabit County shares a long porous border with Ethiopia (both Oromia and Somali regions) inhabited by Borana, Gabra, and *Dassanetch* communities. These communities straddle the two countries and spill over to the other side of the border depending on climatic conditions⁴³. The end of an active Oromo rebellion against Addis Ababa in early 2000s has improved the cross-border security situation in the country⁴⁴. Sololo, an area that had borne the brunt of Oromo Liberation Front (OLF) is now relatively peaceful. Whereas the Ethiopian government has been acting tough in the event of any inter-communal conflict, as was evident in Oct-Nov 2012, the communities wish the Kenyan Government could do more.⁴⁵
- The long-standing rebellion in the Oromia area of Ethiopia has ostensibly been due to claims of marginalization of the Oromo community by the Ethiopian state. The Oromo are ethnically related to the Kenyan Borana and this has prompted accusations by Ethiopian authorities that Marsabit and Isiolo counties harbor rebel Oromo bases. The Ethiopian military has made various incursions into Marsabit County in pursuit of Oromo rebels or in operations against the rebels.
- The Oromo rebellion has led to a proliferation of small arms in the county, predisposing it to deadly conflict. In the current Gabra-Borana tension, there are allegations that the Borana elicited the help of their armed Oromo cousins against the Gabra. However, it is important to note that the Borana have also been quick to blame the Gabra of mobilizing their militia from Ethiopia to come and back them in the conflict that has led to so many deaths and displacements. This has also been worsened by the limited presence of state organs.
- According to various observers, the Turbi massacre is the single worst incident of communal violence in the history of post-colonial Kenya.⁴⁶ It produced an

⁴³ The Dynamics of Inter-Communal Conflict in the Moyale Borderland Region (15th July 2018) Horn of Africa Bulletin. Retrieved from <http://life-peace.org/hab/moyale-borderland/>

⁴⁴ Moyale Conflict Joint Assessment Report – Assessment period: 14-12-2013 to 16-12-2013. Retrieved from <http://reliefweb.int/report/kenya/moyale-conflict-joint-assessment-report>.

⁴⁵ Ethnic clashes were reported between pastoral communities from Ethiopia and those at the Kenya border.

⁴⁶ Kenya's Turbi massacre was the death of about sixty people by feuding clans in the Marsabit District of northern Kenya in the early morning of 12 July 2005. Hundreds of armed Borana raiders attacked the Gabra people living in the Turbi area, North West of Marsabit. 22 of the 60 confirmed dead were children, and over 6,000 people fled their homes, most of them to Marsabit town. The fighting was due to competition over scarce water and pasture resources in the arid region along the Somali border, as well as a recent politically motivated ethnic division.

outburst of soul searching in the Kenyan media and the Parliament over “Kenya’s killing fields” in its border regions and the cost incurred by the failure of the Government to extend its authority into what many Kenyans still refer to as the country’s frontier. Any waning of the conflict and violence in Marsabit County, for example, partly depends on the resolution of Oromia conflict in Ethiopia.

- Wajir, which is located along the Kenya-Somalia border, is also regarded as volatile. However, in the recent past the security situation has improved compared to other border areas. This is mainly attributed to cooperation between security agencies and the county residents. There have been fewer incidents of targeted killings across the border⁴⁷.
- In Mandera, greater availability of modern weapons⁴⁸ has led to a gradual erosion of customary conflict mitigation institutions, and frequent violence among the clans. Other factors contributing to violence in the Somali cluster are the lack of adequate state protection, frequent droughts and the general vulnerability of pastoralist communities.⁴⁹
- Coastal areas of Lamu County feature numerous small islands and remote inlets where dhows and fishing vessels can freely come and go undetected. The dense bush and lack of roads in much of the Lower Jubba region and coastal zone also provide safe havens to terrorists. The radical Somali Islamist group *Al-Ittihad al Islamiyya* (AIAI) has periodically exploited the Lower Jubba region as a safe haven and transit point, while al Qaeda operatives are known to operate out of Kenya’s northern coastal zone and cross into Somalia from there. To the north, the remote settlements of El Wak and Luuq (Somalia) have in the past been sites controlled by AIAI.
- The levels of poverty, unemployment, and underdevelopment in the Kenya-Somalia border area are among the highest in the country and are major contributors to crime, insecurity, and alienation.
- Environmental degradation of rangelands contributes to increased communal competition and pastoral conflicts over water and pastures. A long on-going western expansionism by Somali pastoralists at the expense of other groups contributes to periodic clashes over land.
- Competition over new and growing urban settlements is a more recent driver of conflict in the Kenya-Somalia border area. Towns and villages are important sites

⁴⁷ Wajir-Mandera Border Conflict Emergency Response Situation Report 5. Retrieved from <https://reliefweb.int/report/kenya/wajir-mandera-border-conflict-emergency-response-situation-report-5>

⁴⁸ Clans, conflicts and devolution in Mandera, Kenya 2014. Retrieved from <https://reliefweb.int/report/kenya/clans-conflicts-and-devolution-mandera-kenya> on November 2017.

⁴⁹ Powell, 2010; Stark et al., 2011; Huho, 2012.

- of trade and aid. On the Kenyan side of the border “locations” serve as constituencies or parliamentary seats and usually turn dangerously competitive.
- The dramatic expansion of cross-border commerce from Somalia into Kenya has had a variable effect on conflict, at times serving as a force for cross-clan collaboration and basic security, at other times producing conflict over control of key trade routes.
 - Recent attempts to revive the state-building project in Somalia have contributed to armed violence on the Somali side of the border, especially in El Wak, where the Marehan and Garre clans are jostling fiercely to expand or maintain their control over land in order to maximize the number of parliamentary and cabinet seats they can claim.
 - The trend towards clan or tribe-based locations in Kenya, ethno-states in Ethiopia, and proportional clan-based representation in Somalia’s nascent federal government has led to a “hardening” of ethnic identities in northern Kenya (where identity was previously more flexible and nuanced) and some ethnic groups now face an increasingly exclusionist political environment.
 - Further north in the border areas, ethnic settlement becomes more complex. In Gedo region, the Marehan are the single largest group, probably constituting half or more of the total population. Other Somali clans in Gedo region include the Rahanweyn, Bantu, and Ajuran along the river and east of the Jubba, a small group of Dir near the Ethiopian border, and the Garre in El Wak district. On the Kenyan side of the border in Wajir district, Somali and proto-Somali clans include Ajuran, Degodia, and Garre. Degodia and Ajuran have long-standing differences over colonial and contemporary boundaries in Wajir West and Wajir North. The Ajuran believe that the Degodia have encroached on their ancestral land, currently a major bone of contention.
 - In Mandera district, Murule and Garre are the main proto-Somali clans⁵⁰. Although the two had a conflict for over 12 months in 2008, in which the Government had to intervene, there is now relative peace save for tensions on pastureland and settlement at Alungo-Somotwo Oro areas.
 - The Garre-Marihan conflict has a cross-border dimension which mainly spills over from Somalia into Kenya. The two clans have political contestation over the administration of the Somalia town of Burhache. Clashes occur occasionally.
 - To the east, in Marsabit Province, the Borana, Rendille, Gabra, (all related to the Oromo) and Oromo themselves predominate.

⁵⁰ Kenya: Conflict over resources in border areas. Retrieved from <https://reliefweb.int/report/kenya/kenya-conflict-over-resources-border-areas> in October 2017.

- In addition to clan-based identities, these border communities also possess salient identities based on citizenship, geography, and caste. One important identity marker is citizenship of Kenya, Somalia, or Ethiopia.
- Spillover from the protracted state collapse in Somalia has been a major driver of conflict along the Kenyan-Somalia border, producing destabilizing flows of refugees, gun-smuggling, banditry, warfare, and clan tensions. But Somalia's collapsed state is not the sole or even most important source of insecurity in northern Kenya.
- On both sides of the border, the arrival of newcomers, or *galti*, clansmen has been a major source of destabilization. The outsiders are members of local clans but hail from other regions, are typically much better armed, and are not stakeholders in local peace processes. Much of the internal conflicts plaguing the Marehan clan in Gedo region are animated by tensions between indigenous (*guri*) and *galti* Marehan⁵¹. The current conflict in El Wak has drawn heavily on *galti* Marehan.
- The Gare-Degodia conflict⁵² which has been focused along the border with Ethiopia has steadily intensified since 2011. Driven by conflicting claims of land along the Daua river in Ethiopia and settlements along the Kenya-Ethiopia border, the conflict has also grown into a political contest for Mandera North constituency.
- The clans frequently fight over control and ownership of water points, especially water pans in Banisa and Mandera West, pasture fields, saltlicks and farmlands along River Daua. The Garre⁵³ argue that the Degodia clan monopolizes the use of communally-owned grazing areas. The Degodia in turn accuse the Garre of restricting the use of communal water pans in the west.
- Acts of crime, mainly stolen vehicles, rape, and murder - are typically the sparks which produce widespread communal violence. Even clans with historically close ties have had difficulty preventing reprisal attacks which then provoke larger cycles of violence. Use of the border by criminals to escape apprehension aggravates the problem.

⁵¹ The Marehan are a Somali clan. They are one of the major Darod sub-clans, forming a part of the Sade confederation of clans. The majority of the Marehan live in the Gedo region (*gobolka*) in southwestern Somalia, as well as the Galguduud and Mudug regions in central Somalia, the Ogaden region of Ethiopia, and the North Eastern Province of Kenya

⁵² Clans, conflicts and devolution in Mandera, Kenya 14 October 2014. Retrieved from <https://www.peaceinsight.org/blog/2014/10/clans-conflicts-devolution-mandera-finding-durable-solution-conflict-degodia-garre/>

⁵³ The Garre are a Somali pastoralist clan genealogically belonging to the Samaale, with the Quranyow section of the Garre originally belonging to the Dir clan family. They live in Somalia, Kenya and Ethiopia. In Southern Somalia, North Eastern Kenya and Southern Ethiopia. Garre are camel keeping nomads and not farmers they do not claim descend from them

3.3.1 Karamajong Cross Border Cluster Conflict

- The Turkana, Nyangatong and Dassanech communities have been involved in perennial conflicts characterized by a history of violent raids and livestock thefts. Cattle are central to the lives of the three communities. In addition to meat, milk, leather for clothing, houses and mattresses, they provide status in the tribe and the bride-wealth that allows a man to marry. The rites of passage of the Dassanech of Ethiopia demand the killing of a human being, and an easy target is the Turkana community in Kenya who are proximate to them across the border. This retrogressive cultural practice exacerbates the cross-border conflict between the Turkana in Kenya and Dassanech in Ethiopia. The conflict also ropes in Kibish-Todonyang zone which has huge water and pasture deposits.
- More to the northwest is Turkana-Toposa conflict, which pits the Toposa of South Sudan and the Turkana in the areas of Moru Anayeche, Oropoi and towards Kidepo game reserve in Uganda/South Sudan. The Turkana-Toposa conflict is long-running and is also along the Kibish corridor. There have been frequent violent clashes at river Nakuwa water points resulting in loss of life and livestock. It is believed that the conflict has also heightened alliance building between Nyangatom and Toposa against the Turkana, thereby escalating the tension. The rivalry between Turkana – Toposa is further complicated by a number of factors including: Turkana warriors from Letea location in Oropoi division who have always aided their kinsmen in attacking the Toposa and entry into the fray by warlords from as far as Kareng’ak, Kapoeta town in solidarity with their Toposa kinsmen who have always mounted attacks against the Turkana in Lokichogio.
- Proliferation of illicit SALWs from South Sudan poses a threat to the peace and security of the Turkana. The Lodwar-Lokichogio-Nadapal road is an important transport corridor for communities in the north, but it has brought with it insecurity and fear of terror attacks due to movement of aliens and illicit arms from South Sudan into the county.
- The Elemi triangle conflict pits Murule, Toposa, Karamajong against Turkana from Uganda, Ethiopia, South Sudan and Kenya and needs closer monitoring.
- The Matheniko-Turkana conflict around Lokiriama has been abating due to sustained peace efforts but there is still sporadic livestock theft in the areas of Marakalo.
- The Turkana community has always been reluctant to engage their counterparts from the Dassanech-Merille community due to unsettled issues of cattle raids and unclear international boundaries. The location of the Merrile villages

- is still contentious.
- Along the Kenyan-Ugandan border, livestock raiding and competition for water and pastures has led to cycles of reciprocal violence between pastoralist groups. More frequent and severe droughts as well as the proliferation of weapons from war-torn neighboring countries aggravate the situation.
- The porosity of the Kenyan-Ugandan border also provides additional opportunities for livestock raiding, as raiders are able to escape across the border and evade prosecution by both countries. On several occasions, groups such as the Pokot have also moved across the border to avoid disarmament by the Kenyan Army. Moreover, the permeability of the border facilitates the illicit movement of weapons.⁵⁴
- As a way of coping with erratic rainfall along the Kenyan-Ugandan border and generally harsh environmental conditions, these groups have frequently engaged in violent conflicts over livestock, water and grazing resources.
- Due to the porosity of international boundaries in the Karamoja cluster, these conflicts often involve groups from different countries, such as the Pokot and Turkana from Kenya and the Dodoth, Jie, Sabiny and several Karimojong groups from Uganda. Between 1998 and 2008, cross-border attacks between these groups accounted for more than 800 deaths, with about 450 fatalities reported for the year 2000 alone.⁵⁵
- Both the governments of Kenya and Uganda, as well as numerous NGOs, church-based organizations and grassroots initiatives have undertaken various strategies to curb violence across the Kenyan-Ugandan border. Yet, the effectiveness of these measures is doubtful, and fear of attacks from groups across the border remains among local communities. In particular, the projected increase in drought frequency in the coming years could lead to a renewed flare up of cross-border violence.

3.3.2 Government Response

To respond to cross-border conflicts, the Government and regional authorities have put in place various mechanisms related to cross-border conflict management strategies. They include the following:

3.3.2.1 IGAD-CEWARN Mechanism

The Conflict Early Warning and Response Mechanism (CEWARN) was established in 2002 as a program under IGAD, to spearhead effective anticipation and prevention of

⁵⁴ Leff, 2009; Matthysen et al., 2010.

⁵⁵ UCDP, 2014.

conflicts in the sub-region. The mandate of CEWARN is to “receive and share information concerning potentially violent conflicts, as well as their outbreak and escalation in the IGAD region”.⁵⁶ CEWARN is currently monitoring and tracking cross-border pastoral conflicts in the pilot areas of the Karamoja, Dikhil and Somali clusters. The membership of IGAD-CEWARN includes Djibouti, Ethiopia, Kenya, Somalia, Uganda, Sudan and Eritrea. The basic underlying mission of CEWARN is to assess situations that could potentially lead to violence or conflicts and prevent escalation.⁵⁷ CEWARN has in the past nine years primarily focused on avoiding conflicts related to cross-border pastoralist and other associated issues. The organization’s tagline of “empowering stakeholders to prevent violent conflicts”, in a gist explains their main objective. By establishing national collaboration between several government and non-governmental stakeholders such as the Conflict Early Warning and Response Units (CEWERUs), National Research Institutes (NRIs), and Field Monitors (FMs), the CEWARN target of early warning and response has been undertaken in three main geographical clusters, the Karamoja cluster (including the cross-border regions of Ethiopia, Sudan, Kenya, and Uganda), the Somali cluster (encompassing the cross-border regions of Ethiopia, Kenya and Somalia), and the Dikhil cluster (cross-border regions of Djibouti and Ethiopia). The objective is carried out by collecting and discussing information regarding the probable outbreak and elevation of violent conflicts in the IGAD countries, analyzing and processing this data, and producing alternative routes of response. The ultimate goal of CEWARN is to establish itself as a self-sufficient, functional and long-standing conflict warning and response system in the IGAD region, promoting an environment of positive co-operation among the stakeholders, in response to possible and real violent conflict between these countries, and set the ground for peacefully settling disputes in the area.

On the Karamoja cluster side of Kenya, Uganda, Ethiopia and South Sudan, CEWARN has established a unique database which provides timely, constant and accurate information on cross-border pastoral related conflicts through field monitors. Several achievements and successes have been recorded under the CEWARN mechanism. These include: relaying of alerts aimed at preventing raids/attacks and acts of violence within a country and neighbouring countries; establishing district peace committees; generating early warning information; carrying out reconciliation between communities; provision of relief services; production of situational briefs on critical issues like famine, drought, disarmament; and increased awareness among government, civil society actors and other stakeholders regarding the nature, intensity and magnitude of cross-border pastoralist conflicts. However, the link between warning and response remains weak among CEWARN initiatives. Response is often lacking despite clear warning signals. But do decision makers receive the required information? Early warnings often seem alarmist

⁵⁶ CEWARN, available at <http://www.igadregion.org/cewarn/>

⁵⁷ Ibid.

and sometimes offensive to governments. Also, cognitive biases on the part of analysts and decision-makers may hinder an appropriate reaction.

3.3.2.2 Border Management on Kenyan Borders

Kenya is increasingly facing the daunting task of managing her borders in ways that:

- secure her territorial sovereignty/integrity;
- ensure that they are bridges rather than barriers for cross-border cooperation and regional integration;
- prevent illegal entries, terror, violence and exiting of people and goods while allowing easy movement of legal goods and people;
- allow relatives to visit their kin while keeping away criminals (such as drug and human traffickers, terrorists, etc); and
- facilitate tourists to easily cross, while keeping out terrorists.

The challenges facing Kenya in managing her borders are compounded by terror that is tearing down traditional borders. GoK recognizes that border management is a collaborative effort between a country and its neighbours - it cannot be done unilaterally, and it is most effective and efficient when done regionally. Kenya's border management framework has a number of stakeholders: Kenya Revenue Authority (KRA), Kenya's Immigration Department, Kenya Police Service (NPS), Kenya Defense Forces (KDF), Ministry of Agriculture for quarantine purposes; airlines; shipping companies; local border authorities; international business companies and individuals; and residents along the borders or travelers across boundaries e.g. traders, relatives, tourists or terrorists. The perceptions that GoK has external threats/risks particularly from Al-Shabaab has led it to increase surveillance and vigilance on its border security. In other words, how a country manages its borders reflects its fears and comfort. It is an expression of a state's sovereignty, and a state's failure to manage its borders can undermine its domestic and international legitimacies.

Kenya's border security management entails the following:

- Geophysical control of the border through patrol by the Kenya Defense Forces or special border protection force from the National Police Service;
- An Immigration Department which internally controls the transnational movement of people through verification of their documents and enforcement of the immigration and migration laws by screening people using the border;
- enhancing inspections through police searches along the highways to ensure that harmful products or individuals do not enter the country; and
- road blocks to detect and prevent criminals and illegal persons, goods, drugs, and weapons, as well as other prohibited items, from entering a country.

These measures have in the last 18 months significantly improved security within Kenya's borders.

3.3.2.3 IGAD's Cross-Border Climate Drought Management Programs (IDDRSI, ICPAC, ICPALD)

Through IGAD's IDDRSI,⁵⁸ CEWARN, ICPAC,⁵⁹ ICPALD⁶⁰ and Adventist Development and Relief Agency International (ACTED), GoK and IGAD members are addressing cross-border issues for drought management in dry lands since the major livelihood at the borders is pastoralism. This spans national borders and often cuts across landscapes, watersheds and ethnic groups. Mobility is a crucial drought coping strategy for pastoralist communities along the borders of the six countries as well as being essential for economic and environmental development. Land use planning, livestock health, natural resource management, peace-building and marketing interventions are all critical and have obvious cross-border dimensions in dry land areas. Working across various administrative frameworks with different currencies, IGAD's drought resilience initiatives support services and legal/regulatory systems to promote drought resilience.

IGAD with programs such as *IDDRSI*, *CEWARN*, *ICPAC*, and *ICPALD* has the ability to engage with member states and mediate where necessary. IDDRSI focuses on climate knowledge management and provides an opportunity to promote the evidence base for cross-border interventions with the support of the African Development Bank, working with IGAD Member States and the IGAD Secretariat. IGAD provides a coordination mechanism. Other programs include ICPAC, which provides timely climatic early warning information and supports specific sector applications for the mitigation of the impacts of climate change for poverty alleviation, management of the environment and sustainable development. ICPAC improves the technical capacity of producers and users of climatic information in order to enhance the use of climate monitoring and forecasting products in climate risk management. This facilitates informed decision-making on climate risk related issues and maintains quality controlled databases and information systems required for risk/vulnerability assessment, mapping, and general support to the national/regional climate risk reduction strategies.

ICPALD promotes livestock and complementary livelihood resources development in arid and semi-arid areas of the IGAD region, facilitating elaboration and harmonization of regional livestock and dry-lands policies and development initiatives. The policy also supports the domestication, adoption and transfer of appropriate research and technology in dry-lands and livestock development. Besides, this program acts as an interface between the extension, research, policymaking on the one hand and execution and coordination of implementation on the other.

⁵⁸ IGAD Drought Disaster Resilience and Sustainability Initiative.

⁵⁹ IGAD's Climate Prediction and Applications Centre.

⁶⁰ IGAD's Centre for Pastoral Areas and Livestock Development.

ACTED and Catholic Organization for Relief and Development Aid (CORDAID) also support cross-border animal health programs along the Uganda and Kenya borders. Following several years of livelihoods-based engagement with the Pian (Uganda) and Pokot (Kenya) communities, ACTED began to support resource-sharing dialogue through Community Managed Disaster Risk Reduction (CMDRR) interventions by facilitating inter-community learning visits between the Pian and Pokot to enhance trust between the groups and help debunk misconceptions. After a series of meetings dedicated to identifying shared interests, resources and concerns, the rival communities agreed to share valuable grazing areas located between them, areas that had previously not been used due to insecurity and fear of raids. Elders representing the two communities signed an agreement to share several strategic grazing areas in April 2012.

3.3.2.4 USAID - PEACE II Program

One other key cross-border peace program was supported by USAID PEACE II. Peace II Program activities were active in multiple peace corridors along the Kenya-Somalia border and in one corridor on the Kenya-Uganda border.⁶¹ Peace corridors were considered discrete geographic zones with notable historical cross-border activity, as well as evidence of cross-border or inter-clan conflict. PEACE II program activities focused on the institutionalization of multi-layered networks of intergovernmental, governmental, non-governmental and community-based organizations, and other representatives of civil society to manage and respond to cross-border conflict. The program goal was to create an ongoing local peace presence. The program also provided support to subnational government bodies which play an under-appreciated role in border conflict issues, and to routinized coordination between these actors - intergovernmental, governmental, non-governmental and civil societies

Based on the evidence, PEACE II projects and activities were largely successful as mechanisms for facilitating peace-building, trauma healing, social reconciliation, peace networking and cross-border interaction and collaboration between communities. They successfully complemented existing community peace mechanisms such as the Peace Committees, elders, women and youth groups, traditional and culture-specific trauma healing and training mechanisms, and response networks to build additional and enhanced capacities for change in the corridors

The theory of change of the Peace II project can be summarized as follows:

- a. *peace dividend theory of change*: through co-managing and sharing tangible development projects, cross-border communities develop strategic relationships and long-lasting peace networks. These relationships then provide the basis for a joint response when faced with violent conflict in the future.

⁶¹ International Business & Technical Consultants Inc., 2013.

- b. *trauma healing and social reconciliation theory of change*: increased stakeholder understanding of broken relationships and trauma caused by cross-border conflict.
- c. *local collaborative peace system and sector response theory of change*: through increased capacity of local organizations (e.g. peace committees, sector response units) to respond to conflict, a critical mass of peace actors is formed to proactively deal with conflict when it emerges.

Final assessment by IBTCI established that the outcomes of the program in the target communities had been achieved.

3.3.2.5 Local Government and Local Peace Committee Initiatives

In the aftermath of cross-border communal violence, peace accords have often been brokered by community leaders. However, they often lasted only days or weeks before a new incident occurred. Very high levels of distrust and low levels of confidence in community commitment to peace are cited as major constraints. The most active agents for conflict management in the area have been local administration authorities from Kenya, Ethiopia and Uganda - they do that every day. These officials routinely meet at the border to discuss conflicts and maintain communication, and coordinate with state security forces in the areas. The administrators work with local Peace Committees (PCs), umbrella groups of local community based organizations (CBOs), including traditional clan elders and a government representative. The performance of the PCs has been variable, but overall they have been the single most important factor in the dramatic reversal of anarchy and insecurity along the borders. The PCs' success is due to several key features:

- a good functional relationship with Kenyan government officials, which has generally given them adequate space and autonomy to operate;
- strong local ownership;
- commitment and knowledge of local conflicts;
- open, flexible membership combining traditional and civic leadership;
- international financial support;
- a strong spill-over effect, in which one successful PC is emulated by others in other regions and across the border; and
- a nascent institutional learning capacity, in which lessons are shared by PCs from one region to the next.

Reliance on customary clan law and traditional elders to enforce peace initiatives and agreements has at times played an important role in managing conflict and reducing or deterring crime. Religious leadership has also played a significant role in pressuring local

parties to reach agreement. For example, in Mandera, the recent Murule-Garre accord was reached largely due to mediation by the Supreme Council of Kenyan Muslims (SUPKEM).

3.4 THE CHALLENGE OF RADICAL ISLAMIC ACTIVITIES

Radical Islamic activities was the third challenge that the study identified. These extreme activities led to terrorism. Terrorism is defined as “premeditated, politically motivated violence perpetrated against non-combatant targets by subnational groups or clandestine agents, usually intended to influence an audience.”⁶² Others define terrorism as “the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”⁶³ Both definitions of terrorism share a common theme: the use of force intended to influence or instigate a course of action that furthers a political or social goal. The Kenyan government defines terrorism as “anti-state violent activities undertaken by non-state entities which are motivated by religious goals.”⁶⁴ This definition neglects terrorism based on political, ideological, and criminal rationales and thus places an unfair target on the minority religion in Kenya.

Terrorism in Kenya displays a pattern of repeated attacks and is inextricably linked with regional political problems, particularly in Somalia. Most recently, a September 2013 insurgent attack on the Westgate Shopping Mall in Nairobi made international headlines and claimed the lives of 67 individuals from nearly a dozen countries.⁶⁵ This underlined Kenya’s reputation as a hub for terrorism, violent extremism, and factionalism. As al-Qaeda affiliates continue to target Kenya for its role in the Global War on Terror and 2011 military invasion of Somalia, there have been frequent small-scale attacks, confirming that the surrounding threats to regional security can only act as an even more serious prediction of future problems. It has become clear that the insecurity stemming from terrorism in Kenya does not remain confined inside its borders. The threats of further instability, therefore, affect global security and create a critical need for successful anti-terrorism policies. Terrorism in Kenya takes the following characteristics:

- The geography of Kenya is crucial to understanding terrorism. The country is situated on the eastern coast of Africa and has direct access to the Arabian Sea and the Gulf of Aden. Additionally, Kenya is surrounded by five countries: *Somalia, Uganda, South Sudan, Ethiopia, and Tanzania* with each state offering

⁶² Title 22 of the U.S. Code, Section 2656f(d).

⁶³ Definition of the Federal Bureau of Investigation (FBI).

⁶⁴ Mogire and Mkutu Agade, 2011.

⁶⁵ The extremist Islamic group Al-Shabaab claimed responsibility for the incident, which it claimed was retribution for the Kenyan military's deployment in the group's home country of Somalia. Many media outlets also suspected Al-Shabaab's involvement based on earlier reprisal warnings it had issued in the wake of Operation Linda Nchi from 2011 to 2012.

its own threats to Kenya's security. The location of Kenya makes it a part of both East Africa and the Horn of Africa.

- Kenya's proximity to Somalia and the Middle East has created a haven for transnational terrorist groups.
- Since the civil war in Somalia officially began in 1991, Kenya has seen its state of security deteriorate. This has largely been contributed by the influx of refugees fleeing from war-torn Somalia and the porosity of Kenya's borders.
- William Rosenau argues that terrorist recruitment requires at least three elements: "First a lack of state capacity, particularly in the areas of police, intelligence, and law enforcement; second, a 'mobilizing belief,' such as Salafist/jihadist extremism; and third, 'appropriate agitators' who can propagate these ideas and create an effective terrorist force."⁶⁶ All of the major terrorist incidents in the country have been perpetrated by foreign nationals who use Kenya because of its "geography, ethnic composition, political instability, unstable neighbors, poverty, Islamic fundamentalism, and lax law enforcement."⁶⁷
- The Northern and North-Eastern regions of Kenya are most notorious for poor security due to the high number of Somali refugee settlers, some of whom have gained citizenship status and are therefore being referred to as Kenyan Somalis.
- Equally importantly, Kenya's national politics has normalized and vulgarized violence. For instance, lack of state capacity to manage borders and provide security has allowed unrestricted movement of people and goods into and out of Kenya along the Kenyan-Somali border. While many of these people are refugees seeking a better life in Kenya, some terrorists have also crossed over. With a porous border and a confirmed presence of Islamic fundamentalists, Somalia poses a threat to Kenya and consequently to neighboring countries and possibly the rest of the world. Without a proper government that can take control of the country, Somalia continues to play a direct role in the security deficiencies of Kenya. For one, Somalia's geographic location gives it the longest coastline in Africa and makes it the closest African country to the Middle East. This allows Somalia to act as a transit hub in bringing illicit goods into Kenya. Most notably, the perpetrators of the 2002 Mombasa attacks transited from Somalia and smuggled weapons into Kenya through their shared border.⁶⁸
- The attack of Al-Shabab in Somalia by the Kenya Defense Forces (KDF) exacerbated an already tenuous relationship between Muslims in Somalia and the Kenyan government. This offensive into southern Somalia, known as *Operation*

⁶⁶ Rosenau, 2005.

⁶⁷ Aronson, 2013.

⁶⁸ Mogire and Mkutu Agade, 2011.

Linda Nchi (Swahili for “Protect the Country”), has been used as the justification for nearly all of the transnational extremist violence directed at Kenya since the offensive began in October 2011. In fact, Al-Shabaab and their sympathizers have conducted more than 50 separate grenade attacks in Kenya, believed to be in retaliation for *Operation Linda Nchi* and more widely, the foreign policy of Kenya. Kenya, however, vows not to withdraw its troops from the troubled country, thus heightening tensions between the two countries and also between the Kenyan citizens and the Kenyan Somalis.

- A major factor that has triggered the poor state of Kenya’s security is the lack of preparedness of its security organs in countering, terrorist attacks, which the terrorist group Al-Shabaab has largely maximized on.
- At the behest of Al-Shabaab, an increasing number of terrorist attacks in Kenya have been carried out by local Kenyans, many of whom are recent converts to Islam⁶⁹. The converts are typically young, overzealous and poor, making them easier targets for Al-Shabaab’s recruitment drives. The converts also blend easily with the general population of Kenya, making it harder to track them.
- Muslim areas of Mombasa, Kwale and Lamu are particularly susceptible to recruitment.
- Allegations of corruption and brutal counter-terrorism practices by Kenyan law enforcement and military officials in the days immediately following the Westgate attack underscore the critical need for review of counter-terrorism measures.
- The impact of terrorism has been far reaching. It has resulted in not only the loss of lives, personal suffering and pain, but also in growing instability and a heightened sense of insecurity. The latter has harmed the country’s economy, particularly the tourism sector. For instance, the Mpeketoni attack had serious ramifications on the tourism economy of *Lamu, Mombasa, Kwale and Kilifi* counties.
- During the Mpeketoni attack in Lamu County, the attackers shouted slogans which suggested that they were linked to the Somali-based Al-Shabaab movement. According to some accounts, they systematically selected non-Muslim men for murder. When a claim of responsibility was finally made by Al-Shabaab some hours later, it justified the attack both as retaliation for the involvement of Kenyan forces in Somalia, and as revenge for the murders of Muslim preachers in Mombasa (which were widely assumed to be the work of the Kenyan security forces).The announcement also described Mpeketoni as a town of “Christian settlers” who had displaced the original “Muslim inhabitants of the area” – a

⁶⁹ Brendon J. Canon, 2017

reference to the predominance in and around the town of Kenyans from the Kikuyu ethnic group, who were settled by GoK in a settlement scheme from the 1970s.

- In recent years, websites run in the name of ‘cyber-sheikhs’ have also provided an interactive element in extremists’ virtual preaching. Questioners can seek opinions through these websites, some of which readily authorize violence as legitimate *jihad*. The website universalizes the Muslim condition as one of oppression, and locates the remedy for that oppression in a global revolution which will overturn the international system. In this rhetoric, capitalism, democracy and secularism are equally evil. There is, however, no consensus on what should replace this; as in Somalia, radical Muslim voices are by no means united in their goal, though they have a common oppositionist rhetoric.⁷⁰
- Kenyan law enforcement agencies have a poor record in investigating and securing convictions with respect to all forms of crime, violent extremism in particular. They are frequently involved in fatal shootings of “violent extremism suspects.”⁷¹ The profound weakness of Kenya’s security services has been repeatedly identified as a factor which enables terrorism to thrive. When arrests are made, cases often drag on, partly because of failures in procedure and evidence-gathering.
- For example from 2012, there was a bitter and intermittent war of killing and counter-killing at the coast, punctuated by terrorist attacks. Suspected radicals were murdered, as was one alleged financier of radical preachers. So too were police informers and undercover agents, and one prominent Muslim leader, an official of the Council of Imams and Preachers of Kenya (CIPK). A former radical preacher was physically attacked, apparently by youth who denounced him for having become less strident in his language. Others, including at least one prominent Salafist who was a well-known supporter of the Kenyan government, went into hiding. By mid-2014, this cycle of murders and counter-murders, demonstrations and harsh policing, had generated a climate of widespread suspicion, killings and tensions at the coast.
- The Somali Islamist militant group al-Shabaab, while seeking some goals specific to Somalia, operates to some extent in Kenya with an increasing amount of support from al-Hijra, a Kenyan Islamist fundamentalist group previously known as the Muslim Youth Center in Mombasa.⁷² The Muslim Youth Center was not

⁷⁰ Marchal, 2011.

⁷¹ Independent Medico-Legal Unit, 2014.

⁷² Members of an Al-Hijra (formerly Muslim Youth Centre - MYC) cell from Majengo in Nairobi County evolved into a theologically conservative Muslim group, but were overshadowed by radical Kenyans with a desire to mobilize a deep aversion to the political system and the West.

originally a violent or militant organization but it has evolved into al-Hijra, theologically conservative Muslims with a desire to instil a deep hatred for the Western political system.

- In the coastal region of Kenya, there is a rift within the Muslim community between Swahili and Arabic Muslims. Swahili Muslims are perceived as second class Muslims in the Islamic world, given their limited ability to use Arabic and overwhelming poverty⁷³. The *us* versus *them* mentality creates hostility towards many of the foreign Muslim elements that enter coastal Kenya for purposes of spreading new forms of radicalized beliefs. The predominantly Sunni coastal population takes issues with Shi'a and Wahabi foreigners who, according to many on the coast, lure the “lesser educated and financial needy Africans away from the true faith.”⁷⁴ This has led to limited cooperation in dealing with violent extremism.
- It is important to recognize that terror activities in Kenya, particularly in the Northern parts of Kenya, have led to internal displacement of non-locals living in the area. Several terror attacks in buses, schools and churches have targeted the non-locals inhabiting the Northern parts of Kenya, forcing them to flee for their safety.

3.4.1 Government Response

3.4.1.1 Formation of Kenya Anti-Terror Police Unit (ATPU)

The 1998 terror bomb attacks alongside others prompted GoK to form an Anti-Terror Police Unit to fight terror as well as collect intelligence as a counter-terrorism measure. The unit is predominantly drawn from the Ranger Strike Force and has been behind a number of security operations on the Kenya-Somalia border to prevent terrorist infiltration by the al Qaeda terror group as well as Al-Shabaab militias from war-torn Somalia.

3.4.1.2 National Counter-Terrorism Strategy

The NCTC has developed a National Counter Radicalization Strategy (NCRS) and is in the process of implementing it.⁷⁵ The Government through the NCTC is currently working with various partners in implementing parts of the strategy. In particular, the government has collaborated with the European Union and the Government of Denmark in programs to train law enforcement officers and Prisons and Probation Services Officers to identify radicalization cases, and also equip them with the proper intervention

⁷³ Kresse, K. 2009

⁷⁴ Kresse, 2009: 85.

⁷⁵ This strategy aims at building communities' capacity to reject, prevent and counter radicalization and promote community as well as national security. It further promotes dialogue forums and capacity building as a strategy of challenging extremism.

tools and techniques. While the government CVE programs continue to be effective, Al-Shabaab has enhanced its radicalization efforts in Somalia and Kenya by increasing its penetration of communities for recruitment to join its radical movement.

The NCRS has seven key pillars: media strategy; psycho-social strategy; faith-based strategy; capacity building strategy; political strategy; education strategy and security strategy. The implementation of these various components of the Strategy have been coordinated by the NCTC, with the aim of providing support to the fight against terrorism and countering violent extremism. The strategy is implemented by the Interior Ministry. It rallies all sections of Government, communities, civil society, the private sector and international partners in the war on terror. It puts in place systems to rehabilitate terrorist fighters. At the national level, the NCTC coordinates radicalized returnees.⁷⁶ At the local level, County Security and Intelligence Committees consult with the NCTC and coordinate action with local and religious leaders, NGOs, economic development organizations, the private sector, researchers and engaged citizens to implement a de-radicalization strategy. The strategy was developed through an extensive consultative process involving national government agencies and county governments, religious leaders, civil society, the private sector, the research community and regional and international partners.

3.4.1.3 Operation Linda Nchi

The attacks by Al-Shabaab over the years have led the Kenyan Government to order “Operation Linda Nchi”. This is the codename for a joint military operation between the Kenyan military and the Somali military that began on 16 October 2011, when troops from Kenya crossed the border into the conflict zones of Somalia. The Kenyan intervention plan was discussed and decided in 2010, then finalized with inputs from Western partners, including the US, and to a lesser extent France. An alliance of East African countries planned a broader joint military campaign to crush Al-Shabaab. An IGAD meeting urged all member nations, including Ethiopia, to contribute troops to the operation. As time progressed, the African Union took over the operation and has organized a number of nations to send troops. The operation has not been received positively by everyone. There are those who claim that rather than reduce attacks on the homeland, the invasion appears to have opened a flood of attacks on Kenya by Al-Shabaab. They argue that in the four years following *Operation Linda Nchi*, terrorist attacks went up nine-fold, compared to the four years preceding it, “They increased, not just in number, but in ferocity as well⁷⁷”. Three of the four worst attacks, in terms of lives lost, happened after the Somalia invasion. And, consistently, the invasion itself was cited as justification for the atrocities by Al-Shabaab. Most people feel that the legacy of the operation has been felt much more within Kenya than across the border, as the Al-

⁷⁶ Ibid.

⁷⁷ Patrick Gachara, 2016

Shabaab have mercilessly exploited Kenya's vulnerabilities and exposed security and intelligence failures.

3.4.1.4 Security Law Amendments

In 2014, President Uhuru Kenyatta signed into law the controversial *Security Laws (Amendment) Bill 2014*. In a statement, the President defended the law as a measure that would improve Kenya's capacity to "detect, deter, and disrupt any threats to national security". The bill was proposed in the wake of successive terrorist attacks on civilian targets and mounting public pressure to curb those attacks. The law amends 21 different laws, including the Penal Code, Criminal Procedure Code, Evidence Act, Prevention of Terrorism Act, and the National Police Service Act. On the foreign fighters, the 2012 Prevention of Terrorism Act (PTA) includes a provision that criminalizes "acts carried out for the commission of a terrorist act in foreign states." A person who, among other activities, promotes or facilitates the commission of a terrorist act or receives military training for the "purpose of carrying out or facilitating the commission of a terrorist act in a foreign state, commits a crime, punishable on conviction by a maximum sentence of 30 years in prison."⁷⁸ A person who conspires to commit a terrorist act abroad while in Kenya or with a person in Kenya commits an offense and is, on conviction, subject to a maximum of 20 years imprisonment.⁷⁹

The amendment tightens these existing provisions. It makes training or instruction for the purpose of terrorism in or outside Kenya an offense punishable by at least ten years in prison.⁸⁰ With regard to this offense, it is immaterial whether "the person in fact receives the training" or whether "the instruction is provided for particular acts of terrorism."⁸¹ If you harbor evil intention of carrying out terror activities, the law provides that you are culpable. In addition, it provides that any alien who enters into or travels through Kenya for the purpose of engaging in terrorist activities in Kenya or elsewhere commits a crime, which, on conviction, is punishable by up to 30 years in prison. Significantly, it reverses the burden of proof by establishing a legal presumption that a person who travels to a country deemed a terrorist training country "without passing through designated immigration entry or exit points" would be considered to have done so for the purpose of being trained as a terrorist. On the Surveillance Program, the law also amends the PTA by adding a section that accords the country's national security organs broad, unchecked surveillance powers. It states, "National Security Organs may intercept communication for the purposes of detecting, deterring and disrupting terrorism in accordance with procedures to be prescribed by the Cabinet Secretary."⁸² The powers envisaged in this section are quite broad. The law does not provide any instruction as to what these powers

⁷⁸ Prevention of Terrorism Act No. 30 of 2012, §§ 2 & 21, Laws of Kenya.

⁷⁹ Prevention of Terrorism Act No. 30 of 2012, §§ 2 & 21, Laws of Kenya.

⁸⁰ Security Laws (Amendment) Act, 2014, § 64 (Dec. 19, 2014), the Presidency website.

⁸¹ Ibid.

⁸² Ibid. Article 69.

specifically entail or how they may be implemented, leaving such decisions exclusively to the executive body without any oversight.

On radicalization, the law further amends the PTA by inserting a new provision on radicalization, which criminalizes the adoption or promotion of “an extreme belief system for the purpose of facilitating ideologically based violence to advance political, religious or social change.”⁸³ A person convicted under this charge is subject to a maximum imprisonment of 30 years. Rights groups have argued that the language in this provision is so broad and unclear that it could conceivably be used to prosecute rights activists and political opponents.

3.4.1.5 Nyumba Kumi Initiative

The Government initiated the Nyumba Kumi (ten houses) initiative to help engage communities in security matters. Nyumba Kumi is a problem and solution-based homeland security system intended to create national security awareness amongst citizens from grassroots level. The vision of this initiative is to seek citizen participation in enhancing security.⁸⁴ Nyumba Kumi groups households into clusters. Every cluster is unique in terms of number of households, area size and membership composition based on population density, period, culture, demography, locality etc. The variation is challenge-based, making the cluster as flexible as possible. Specific challenges define the objectives and management of the cluster, each of which is driven by the need(s) of its households and the common solutions that the households aspire to achieve, beyond strict security issues. The initiative also aims at building sustainable peace, now more than ever. It also ensures people’s security, improves access to justice, and increases participation in decision-making and in bringing about fairer, more responsive and accountable governance.

3.4.1.6 Countering Violent Extremism Summit - 2015

Kenya fulfilled its pledge to host a regional Countering Violent Extremism Summit in June 2015. In the conference, participants discussed the importance of partnering with communities and the civil society and emphasized that protecting human rights and building trust with security forces is essential in preventing radicalization. A study was presented on why the youth join extremist movements in Kenya. 65% of respondents specifically referred to the government’s counterterrorism strategy that targets Muslims as a main driver, showing the shadow side of a conservative counterterrorism policy that doesn’t simultaneously support integration and a counter narrative (against radical Islamism). As time progresses, the Government now understands that the violation of

⁸³ Ibid. Article 62.

⁸⁴ The key message of Nyumba Kumi as stated by Ministry of Interior, 2015 is “As a Kenya citizen you are expected to play your part in enhancing your own security. Your Personal Security and National Security is the responsibility of all of us as Citizens and also our Government. Each one of us has a responsibility and part to play to safeguard our Personal and National Security.”

rights and generalizations of ethnic populations only fuels radicalization. The conclusion of the conference was that a well-administrated CVE strategy that works to maintain human rights while addressing factors that lead to violent extremism, adds value to the security context. As Kenya's economic outlook remains promising, a focus on a well-rounded CT strategy will contribute to mid to long-term security and growth. Recommendations from the conference have been adopted by GoK in addressing violent extremism.

3.4.1.7 Inter-Faith and Intra-Faith Dialogues

In the recent past, UNDP and NCTC have extended modest support to CSOs to initiate debate on arresting the rising religious tensions and the worrying trend of indoctrination of mostly Muslim youths in violent extremism. This work needs to be stepped up and aggressively bring on board inter-faith groups. Christian and Muslim leadership in the country has already been engaging in inter-faith dialogue towards stemming the rising religious intolerance and tension. However, the dialogues have not had sufficient support to trigger conversations on cohesion and integration at the grassroots level. In March 2014, with the support of UNDP and other development partners, religious CSOs under the leadership of SUPKEM held a three day National Conference on Security and Countering Violent Extremism in Kenya to create a platform for knowledge exchange towards preventing extremism and building moderation. A key deliverable of the conference was the development of a CVE advocacy and accountability charter for effective cooperation and coordination in countering violent extremism. Additionally, in April 2014, UNDP supported a local CSO network called "Partnership for Peace and Security" that hosted an interactive community security and resilience workshop which examined homeland security challenges and developed practical action plans.

3.4.1.8 US Counterterrorism Partnership Fund

The US Government, working with Congress, established a Counter-Terrorism Partnership Fund (CTPF), which intends to provide approximately \$465 million to Africa, Kenya included, in new training, equipment, capacity building, and enabling assistance to partners. This funding will support counter-terrorism, security and CVE initiatives throughout Africa. In 2015, the US Government provided at least \$40 million assistance related to CVE in East Africa. These funds facilitate a wide range of activities - engaging in programming that promotes dialogue, trust, and enhanced partnerships between security forces, law enforcement actors, other civilian government officials, community leaders and civil society; strengthening the capacity and networks of civil society to be more inclusive, particularly youth, religious leaders, women, victims of terrorism, and disengaged fighters; and enhancing the efficacy of communities and community leaders to positively intervene and disrupt the cycle of radicalization to violence. The US Government is also supporting The Security Governance Initiative (SGI), which represents a comprehensive approach to improving security sector

governance in Ghana, Kenya, Mali, Niger, Nigeria, and Tunisia. The SGI approach is based on partnership and joint analysis of the opportunities and challenges governments face and entails holistic government strategies to achieve catalytic and systemic reforms specifically related to the functioning of civilian and military institutions.

3.4.1.9 Kenya Tuna Uwezo Program

Kenya Tuna Uwezo, supported by USAID (Kiswahili for “We have the power!”) uses a “people to people approach” to initiate dialogue on shared concerns. It does this with at-risk groups to build relationships, increase trust and create lines of communication vital to promoting and sustaining peace. Partners to this program include SUPKEM, Peace-Net Kenya, The Youth Banner, Youth Arts Entrepreneurship Network, and Kituo Cha Sheria. The program works in eight informal settlements of Nairobi - Kiambiu, Kibera, Korogocho/Babadogo, Mathare, Dandora, Kangemi, Majengo, and Mukuru and Eastleigh. It helps communities counter violent extremism by addressing the risk factors that drive people toward radicalization, and creating clear, mutually-beneficial action plans for resolution. It partners with faith-based groups such as SUPKEM, and other Muslim leaders, scholars, and institutions in enhancing community understanding of violent extremism and addressing misconceptions about Islam. All activities are community-based and engage youth, women, and community leaders in how to counter context-specific drivers of violent extremism. Similarly, the program also works to expand knowledge of the 2010 Constitution to empower marginalized communities to engage their leaders in making informed decisions, including increasing citizens’ understanding of devolution and on-going reforms. Tuna Uwezo supports community and civil society social networks and promotes collaboration on community issues toward the resolution of grievances. The program develops the technical and organizational capacity, and social networks of CBOs and their officials to ensure sustainability of the program’s CVE activities. It also enhances the ability of local institutions to lead and implement people-to-people peace building independently. Tuna Uwezo program has reached 150,000 people directly through training and community events and 400,000 people indirectly through messaging and public awareness campaigns on civic education. The program strengthens social networks of community members and civil society groups to collaborate productively on community issues and address grievances.

3.4.1.10 USAID Peace III - Regional Cross-Border Activity

The regional cross-border conflict mitigation activity, Peace III, facilitates youth-to-youth dialogue across the border and youth-led outreach campaigns that expose the cost of engaging in violence. The program establishes mentorship activities to encourage liaisons between terror vulnerable youth and respected youth, adult peace leaders, and traditional and formal government authorities. In specific target areas, such as the Garissa-Lower Juba regions, community service and socio-economic activities include strategies such as preventing enlistment to violent extremist groups such as al-Shabaab.

3.4.1.11 Maritime Security

In recent years, piracy and terrorism off the coast of Somalia have considerably raised the cost of transporting goods through the Gulf of Aden. They are perceived as a potential threat to world trade, given the importance of the Gulf of Aden route for oil and general cargo shipments to Europe. Of even greater concern is their potential impact on international security and regional stability. It was initially feared that Somali piracy and terror would supply weapons to or become a source of finance for (regional or international) terrorist organizations such as Al-Shabaab and Al Qaeda and fund Islamist insurgencies across Africa. As a worst-case scenario, sea-borne terrorists could use boats with volatile cargo to devastating effect in crowded shipping lanes and harbors or create major hazards by sinking large ships in narrow shipping lanes.⁸⁵ The Kenyan Government with the assistance of the United States military has initiated other anti-terrorism initiatives such as the installation of Maritime Security and Safety Information System (MSSIS) in key positions on the Kenyan coast.. There is an unprecedented degree of cooperation of the world's naval forces with the aim of protecting ships transiting the Gulf of Aden. The US, NATO and the EU are leading coordinated counter-piracy programs centered on the time-honored naval tactic of concentrating ships in a narrow and therefore relatively well protected transit corridor. In addition, the American Department of Homeland Security's Customs and Border Patrol (CBP) office is also assisting the Kenya Revenue Authority's Customs Department in meeting the World Customs Organization (WCO) Framework of Standards to Secure Global Trade and addressing export border control issues. The United States Department of Homeland Security's Customs and Border Control has also been providing multi-agency training to Kenyan security personnel through workshops, seminars, and courses covering the airport, seaport, land border, and export control issues and supplying inspection equipment to customs and other agencies in Kenya engaged in port and border security issues.

3.5 PASTORALIST CONFLICT CHALLENGE

According to FAO, pastoralism contributes approximately 12% to Kenya's gross domestic product,⁸⁶ with the livestock sector providing an estimated 90% of all employment and more than 95% of household income in ASALs.⁸⁷ However, this mode of livelihood is a source of immense insecurity. Pastoralism is practiced by the majority of Turkana, Pokot, Samburu and North Eastern ethnic groups who are mainly nomadic. It is characterized by risk-spreading and flexible mechanisms, such as mobility, communal

⁸⁵ Murphy, 2007; Menkhaus, 2009; Alexander and Richardson, 2009; Stephenson, 2010.

⁸⁶ FAO, 2005.

⁸⁷ Kaimba et al, 2011.

land ownership, large and diverse herd sizes, and herd separation and splitting.⁸⁸ Cattle raiding among pastoralists is a phenomenon that stretches back centuries. Traditionally, cattle rustling, often involving some violence, was redistributive, and only involved the theft of cattle to replenish herds after death from drought or to pay out as bride price. When tribe members were killed, cattle were offered as compensation and the culprits were subjected to intense cleansing rituals. Prior to the system of hierarchical government, councils of elders, traditional courts, and peer groups were at the center of authority among tribes.

Some characteristics of pastoral conflicts in Kenya include:

- In North-Western Kenya, pastoral communities have a long history of conflicts. As pastoralism revolves around livestock, the conflicts are predominantly about livestock and its related productive assets - water, land and pasture. These resources closely tie conflicts to the violent theft of livestock, referred to as raiding, which is both a contributing factor and an articulation of conflict. It leads to distrust between communities which is a prerequisite of conflict.
- The counties most affected by pastoralist conflicts are Turkana, West Pokot, Baringo, Samburu, Tana River, Marsabit, Wajir, Garissa and Mandera. Pastoralist conflict is dominant in the border regions of Kenya, Sudan, Ethiopia and Uganda.
- In North Rift, some of the communities involved in cattle rustling include the Sabaot, Samburu, Marakwet, Pokot, Turkana, Sabiny and Karamojong. Raids are normally planned, guided and moderated by community elders, popularly known as “Laibon”. After a raid, retaliatory attacks are organized by rival community elders.
- The border lands connecting Kenya, Sudan and Uganda form a large portion of the East Africa dry lands. The pastoral ethnic groups living in this part of the continent - Northern Uganda, North-Western Kenya, South-Eastern Sudan, and South-western Ethiopia - share a common language, culture, and geographical location. The majority of those living in this arid and semi-arid area are pastoralists, whose social and economic life is structured around the maintenance and well-being of their livestock. For pastoralists, livestock serves as the primary asset and source of sustenance.
- The Turkana and Pokot pastoralist communities have used raiding and violence to restock herds, expand grazing lands, gain access to water and pasture and enhance their social status for more than 9,000 years.⁸⁹
- Pastoralists’ way of life has been dictated by severe weather patterns characterized by a climate where temperatures often exceed 40 degrees centigrade

⁸⁸ Mureithi and Opiyo, 2010.

⁸⁹ Eaton, 2008.

with little annual rainfall. During the dry season or times of drought, pastoralists are forced to relocate their cattle to access water and pasturelands.

- The majority of those living in the border region of Kenya, Sudan, and Uganda are pastoralists, whose livelihoods are dictated by the upkeep and size of their herds. Nomadic pastoralism is the main source of livelihood for the Turkana, Samburu and Pokot communities. However, some small-scale irrigation farming is practiced along the rivers Turkwel and Kerio.
- Inter-tribal clashes frequently erupt among the Turkana and Pokot (Kenya), Turkana-Toposa (Sudan), and Pokot-Karamojong (Uganda). At one time locally managed through customary mechanisms, these conflicts are now becoming increasingly violent. The consequences are far-reaching, ranging from widespread fatalities (including women and children), to protracted displacement of families and severe depletion of livestock.
- There is inadequate or no security in some places. Pastoralist communities now provide the largest market for small arms from local circulation and from areas in the region undergoing civil war. The relative ease of acquisition and low cost of these illegal arms enable the pastoral communities to guarantee a sustained market, and make ordinary clashes increasingly fatal.
- The arms are used to defend animals, as convertible currency, and for raiding and protection.
- A 2008 ammunition study in Kenya discovered that the majority of illicit civilian-held ammunition was Kenyan-manufactured, revealing that it had either been stolen from weakly guarded stockpiles or sold by corrupt officials.⁹⁰ There is a common practice of local governments and security forces arming paramilitary groups for political advantage against opponents. This, among other things, sustains the circulation and widespread availability of small arms.
- Disarmament programs in the region have failed completely. For instance, the 2007 disarmament campaign claimed only 1710 firearms and 5700 rounds of ammunition.
- A near absence of state-led security providers in most pastoral communities usually undermines sustainable security.
- Governments in the region have responded with heavy-handed coercive disarmament operations. These have led to distrust and subsequent violent clashes between communities and security providers.

⁹⁰ Bevan 2008.

- Capitalizing on the breakdown of traditional lines of authority, local business and political elites use cattle rustling as a means to commercial profit. This is a fairly new phenomenon that has changed the scope of the conflict by creating economic incentives that did not previously exist. This has exacerbated the brutality associated with raiding and has created links between the illicit trade in stolen cattle and small arms. In many instances, warriors conducting large commercial raids outnumber security forces. There is also evidence that many local security providers are in collusion with the profiteers of the raids.⁹¹
- The Government has not invested a great deal in infrastructure and public services in the pastoralist areas, thus exacerbating the conflict in the region. Without sufficient roads, accessible lines of communication, and a large qualified security presence, pastoralists have had no choice but to take up arms in order to protect their families and livestock. There is also the pastoralist raiders' immunity from prosecution mentioned above.
- In recent years, pastoralists have also faced a myriad new problems:
 - ❖ competition for water and pasture in the context of decreased access to land;
 - ❖ more explicit political and economic marginalization;
 - ❖ lack of appropriate responses to the deteriorating security situation; and
 - ❖ the proliferation of weapons across the region.
- Experience in Laikipia and Turkana and similar counties has shown that there is a high risk of conflict over scarce water and pasture unless special arrangements are made to ensure emergency access.
- In Laikipia, thousands of pastoralists have invaded farms and conservancies due to the on-going drought that is ravaging the area and most of Kenya, threatening the survival of their livestock. However, political leaders are politicizing the issue of the ranches ownership to win support from invading pastoralists looking for water and pasture. A series of armed attacks and killings has been experienced on private ranches.
- The spillover effects of wars in the region, including the proliferation of high-powered assault rifles, have transformed otherwise low-intensity tensions into full-scale conflicts.⁹² These clashes are largely under-reported.
- Pastoralist communities are also vulnerable to land grabbing especially in the conservancies.

⁹¹ Mkutu, 2003.

⁹² Mburu, 1999.

- The majority of those interviewed suggest that there has been a shift from mass raids to smaller but more frequent raids, explained by improved communication infrastructure and commercialization of raids. Both make large raids unattractive. Smaller raids require a shorter organization period and hence attract less attention from the security forces.
- In some pastoral communities, raiding is more a question of survival than anything else – ‘no food so I look for food from livestock raids’⁹³. In some other communities, it is more a question of fun and accumulation of wealth.
- In Pokot, the connection between the accumulation of wealth and commercialized raiding was mentioned more by government officials and experts. The raiders themselves denied any such connection.

3.5.1 Government Response

Over the years, various initiatives have been undertaken to tame the violent conflicts among the belligerent pastoral communities in North Western and North Eastern Kenya. These initiatives included security interventions, peace dialogues and resilience-building, in Turkana, West Pokot, Marakwet, Laikipia, Samburu, Garissa Marsabit, and Isiolo and along the border. This section reviews some of those initiatives.

3.5.1.1 National Steering Committee and Sub-County Peace Committees

The National Steering Committee (NSC) is a multi-agency peace architecture that coordinates peace-building and conflict management in the country. It incorporates traditional justice resolution mechanisms into the formal legal-judicial system of conflict mitigation, and partners with CSOs in order to engender conflict sensitivity in development, governance and security management. NSC has deployed softer approaches of community level peace dialogues among the pastoralists and supporting Sub-County Peace Committees (SCPC) with the support of national partners such as the NCIC, National Drought Management Authority (NDMA) and civil society actors. All these interventions have registered different levels of success. The SCPCs have had some success but have not been able to ultimately address the increased incidences of cattle rustling in the region. With the support of the NSC, community pacts among pastoral groups have also been initiated but they have been short-lived affairs.

3.5.1.2 USAID Support of Resilience Programs in Pastoral Region

USAID is supporting GoK in building resilience among the pastoral communities in North Western and North Eastern Kenya. In partnership with GoK, regional institutions and other humanitarian and development partners, USAID has been helping pastoral

⁹³ Peter Leting, Samburu pastoralist in Samburu North, July 2017

communities with a number of pastoralist focused programs, shifted from being reactive in the wake of drought to making evidence-based investments that enable pastoral communities and households minimize exposure to, adapt to, and recover quickly from inevitable shocks. More frequent and intense droughts and floods and increasing competition for resources, such as water and pasture, usually provoke conflict among pastoral communities. USAID also works with local, national, and regional conflict-management actors to improve their responsiveness to cross-border conflict. To achieve these goals, USAID has worked to develop innovative “resilience” programs among the pastoral communities in Kenya and at the regional level with IGAD-CEWARN.

One such USAID program is the Partnership for Resilience and Economic Growth in Kenya (PREG),⁹⁴ which brings together humanitarian and development partners to build resilience among vulnerable pastoralist communities in northern Kenya. USAID PREG works with the NDMA and county governments to coordinate resilience and economic growth activities. PREG targets nine arid and semi-arid counties, building on community-identified strengths and priorities, tapping into the remarkable survival abilities of local pastoralist populations. Priorities include increasing adaptability, reducing risk, and improving social and economic conditions to target the causes of vulnerability. USAID is integrating humanitarian and development assistance to improve livelihoods. It is also strengthening the livestock value chain, enabling access to water, sanitation and hygiene services, increasing conservation, improving governance, promoting conflict mitigation, and supporting inclusiveness and gender responsiveness.

It is worth noting that more than 70% of the total landmass in Kenya is arid and semi-arid, where more than six million Kenyan pastoralists rely on livestock for income to feed their families. The livestock sector contributes 12% of the national GDP and 43% of agricultural GDP. Many households find it difficult to recover from the loss of livestock after a major shock, such as a drought or flood. A GoK assessment calculated the economic loss from drought at Kshs 1 trillion (\$12.1 billion) from 2014 - 2015⁹⁵; more than 66 percent was in the country’s livestock sector. Through a public-private partnership with Sidai Africa, Ltd., USAID is developing a viable commercial livestock sector by establishing state-of-the-art livestock service centers across the remote arid regions. Three of the five targeted arid counties now have livestock service centers that improve and expand access to safe, reasonably priced veterinary drugs and training in animal health husbandry practices. Sidai aims to support 15 to 20 franchisees, supplying roughly 50 franchise agents in northern Kenya. More than 28,000 pastoralist households

⁹⁴ USAID, PREG program available at <https://www.usaid.gov/documents/1860/partnership-resilience-and-economic-growth-preg> accessed Sept, 15 2017.

⁹⁵ International Livestock Research Institute (ILRI) research (in the 2014-2015 corporate report), which estimates that of the Sh1.2 trillion loss, 27% of it, or USD 3.3 billion (Ksh 337 billion), occurred in the livestock sector. This is slightly over 20% of the country’s gross domestic product (GDP), or the total value of goods produced by the country.

are expected to benefit from the USAID support for a new model of livestock markets and businesses. The model includes grants, to spark entrepreneurship and business development that aims to increase employment opportunities, quality animal services and mitigate environmental impact.

3.5.1.3 Pastoralist Livelihood Activities Supported under Regional Pastoral Livelihood Resilience Program

The Government of Kenya and the World Bank have initiated Kenya's component of the US\$197m Regional Pastoral Livelihoods Resilience Project (RPLRP).⁹⁶ A total of 100,000 pastoral households are expected to benefit in 14 participating counties, which are Turkana, Garissa, Isiolo, Mandera, Marsabit, Samburu, Wajir, West Pokot, Tana River, Baringo, Narok, Kajiado, Laikipia and Lamu. The RPLRP is designed to help the beneficiaries manage climate risks and develop coping mechanisms against drought and animal diseases that are frequently the bane of Kenyan pastoralists. The main focus of RPLRP is on livestock, which is the single most important asset and the key source of food and income for pastoralists. The project aims to reduce the death rate of cattle by 30% by 2020; increase the value of livestock traded in selected project markets by 10%; reduce the number of livestock traded in drought years by about 8%; increase the number of livestock traded in normal years by about 6%, and to also halve the time lapse between early warning information and the response.⁹⁷ Last year, because of the project, a vaccination campaign saw over 15,000 head of cattle and 10,000 sheep and goats vaccinated during the launch which took place at Muwarak/Posta in Laikipia County. Reaching the pastoral population and improving their livelihood resilience is key to reducing pastoral conflicts, eliminating extreme poverty and boosting shared prosperity.⁹⁸ The funds from the project cater for a range of activities including water provision, re-seeding of rangelands, animal vaccination and storing fodder to ensure increased yields for about 100,000 pastoralist households. Among the project components of the resilience program is the design and rehabilitation of 178 water facilities at a cost of Sh1.86 billion in the next three years. These include water pans, earth dams, boreholes, shallow wells and rock catchments. Staff will also be trained to maintain these water sources. The project also involves rehabilitation of 6,400 acres of rangelands. The focus on livestock corridors like that in Laikipia is based on the reality that seasonal and cross-border movements are a crucial feature of pastoralist livelihoods and coping mechanisms against droughts and conflicts. The program recognizes that the ecosystems from which pastoralists derive their livelihoods often go beyond national borders and counties, as do

⁹⁶ AFCC2/RI-Regional Pastoral Livelihoods Resilience available at <http://projects.worldbank.org/P150006?lang=en> accessed October 2017.

⁹⁷ <http://kenya.droughtresilience.info/project/regional-pastoral-livelihoods-resilience-project-p129408> in October 2017.

⁹⁸ Ibid.

the market networks. The project also includes disseminating market-related information to pastoralists and building market infrastructure such as holding/auction grounds.

3.5.1.4 Kenya Police Reserve and National Police Reserve Policy

Kenya Police Reserves (KPRs) are local security men available to counter attacks from external aggressors in pastoral areas. They usually support resource-constrained police departments. It is recognized that in the past few decades since independence, KPRs have become an important security agency in the rural areas, and gradually more as private security. Consequently, policy makers and practitioners have observed that politicians and business people are increasingly requesting KPRs for security, particularly in the pastoral areas. Currently, there over 9000 KPRs in Rift Valley and North Eastern. Their familiarity with the area makes them aware of any pending insecurity and the problems locals face. In the government's view, they are a cost effective security measure. They serve as "first aid principle in rural security and safety". However, KPRs also contribute to insecurity, misusing arms in their possession for raiding cattle or banditry, or hiring out. In Turkana, it is reported that KPRs are using government arms for profit as private security guards, and in Laikipia, large numbers of scouts are armed by the state to provide security for a few. This has led to a shift of balance in power from the official security to private security. The National Police Service Act in sections 112 and 113, has a reference on KPR tenure of service and their deployment. But there are no implementing regulations, a fact that underlines the imprecision in the policy framework for KPRs.⁹⁹ Recently however, the government came up with the National Police Reserve Policy Framework (NPRPF), to ensure effective and efficient management of the KPR under the supervision of the National Police Service. It is expected that the policy will lead to a reduction in pastoral conflicts and ensure better coordination amongst institutions charged with the vetting, recruitment, enlistment, training, deployment, supervision and discipline of the Reserve. Though the KPRs will serve voluntarily they will be entitled to pay and allowance as advised by the Salaries and Remuneration Commission. The policy recognizes that KPRs may, when necessary, be armed with the same type of arms and ammunition as are issued to and used by the Kenya Police Service or Administration Police Service, from any police premises. Regulating KPRs may provide necessary information to the security agencies in tackling pastoral conflicts in the North Rift.

3.5.1.5 Equalization Fund and Peace Dividend Project in Pastoral Areas

The 2010 Constitution, under Article 204, provides for an "Equalization Fund" particularly targeting the pastoralist areas, and worth about KShs six billion a year. Article 204 was included in the Constitution to facilitate affirmative action development

⁹⁹ GoK, National Police Reserve Policy Framework, Draft Version 1.0 July 2013.

programs for those areas that had remained marginalized (pastoral conflict areas) for many years to bring them to the level of other parts of the country. The fund was established to be utilized for investments in health, water, electricity and roads in pastoral areas. It is managed by the national government through its own direct undertakings or through conditional grants to county governments. The idea behind the Fund was not just to allocate more revenue to marginalized counties; this already occurs through the division of revenue process; but to enable more large and medium scale interventions that would open up areas previously closed up through marginalization. Areas that benefit from the Equalization Fund are mainly those affected by pastoral conflicts such as Isiolo, Mandera, Wajir, Garissa, Marsabit, Turkana, West Pokot, Baringo, Laikipia, Samburu, Tana River, Lamu, Kajiado and Narok counties. With proper co-ordination and administration, the Equalization Fund is expected to reduce pastoral conflicts and spark a wave of public investment that will hasten development in the pastoralist counties and ensure equity in national development.

3.5.1.6 Drought Preparedness and Response in Pastoral Areas

The United Nations World Food Program, with support from the USAID Office of Food for Peace, works with the Kenyan government to provide emergency food, cash, and training to vulnerable pastoral communities. In return, communities identify and develop productive assets such as water pans, irrigation systems, and drought-resistant or high-value traditional crops. In addition, programming introduced vulnerable groups, particularly women and youth, to livestock keeping and other income-generating activities, so they are less vulnerable to the effects of drought.

3.5.1.7 CSOs Peace Initiatives in Pastoral Areas

Grass-roots peace-building initiatives have previously been undertaken by members of the civil society like World Vision, Kenya Red Cross and religious organizations such as Catholic Justice and Peace Commission using councils of elders. Elders from the conflicting communities seal treaties on peace keeping. This strategy usually involves the slaughter of a goat and the use of its blood for cleansing. The sharing of a meal among the warring communities' elders is a sign of peaceful coexistence. However, this strategy largely deals with the situation at hand. Experience has shown that even after peace brokering through the council of elders, sometimes the resolved conflicts flare up depending on the intensity of the socio-economic hardship the communities were facing. Another grassroots peace-building initiative conducted by civil society organizations in North Rift Kenya is the Tegla Lorupe Peace Race Foundation, launched in 2003 by the renowned world athlete Tegla Lorupe, a member of the Pokot community. This peace initiative has engaged the rival communities in sporting activities, and educated people on the importance of peaceful coexistence. The communities organize annual cultural fashion shows and peace races which bring together the Pokot, Turkana, Samburu, Sabaot, Sabinu and Karamajong. The Foundation holds peace races annually in West

Pokot, Kapenguria, Tana River and Moroto in Uganda. Some of the major recent events include the Kapenguria peace race (14th Nov, 2009), the Great Turkwel peace and beauty, which combined a cultural beauty show and a 10 kilometer race (25th Sept, 2010) and the Moroto peace race in Uganda (27th-28th May, 2011). These peace races were open to all members of the rival communities.

3.5.1.8 Government Peace-Keeping Initiatives

Formal peace-keeping initiatives by Government involve enhancing security through sending soldiers to areas affected by conflict and establishing more police posts in the remote areas of Turkana, Samburu and Pokot. The forces deployed are usually the GSU, regular Kenya Police and Administrative Police to contain the situation. In addition, the Kenya government attempted to disarm the Turkana, Pokot and Marakwet through an operation dubbed Operation Dumisha Amani. Nonetheless the analysis of the program confirmed that it was a big failure.

3.6 THE CHALLENGE OF LAND RESOURCES CONFLICT

Land is crucial to Kenya's social and economic development, as the majority of the population depend on land and land-based resources for their livelihoods. Similarly, sound and secure land rights are intrinsically linked to the realization of inclusive development, as well as natural resource governance. At the same time, land is also "a unique, valuable, and immovable resource of limited quantity and is a central element in the varied and complex social relations of production and reproduction within which conflict between individuals and groups are bred¹⁰⁰." Land is about history and belonging: it connects families and generations and it cements belonging. Land in Kenya also represents power; not only power in the sense of wealth, but also power to grant access to land, which is generally vested in, and exercised by, traditional and tribal chiefs under customary law. Land thus also relates to ethnic identity. The paradigm of authority, and the inherent tension between customary and modern interpretations and implementation of land rights, relate closely to both legitimacy and power, and need to be understood and recognized by those working on land issues. Characteristics of land conflicts include:

- Land lies at the heart of social, economic and political life in most of Kenya, and is tied to a complex network of issues ranging from power relationships to economics and symbolic attachments. Land issues are a fundamental aspect of structural conflicts in Kenya but they have also often degenerated into physical violence.

¹⁰⁰ Joost Van Der Zwan, 2010.

- Central to land conflicts in Kenya are issues of ownership, access and use, since land is the crux of economic, cultural and socio-economic change in Kenya.
- Following years of an inappropriate land tenure system, a large segment of the population continues to have difficulties not only in adapting to the modern agrarian economy but also in coping with the increasingly fragile and marginal environment, land degradation and low agricultural output. All these intensify conflicts over access to and control of land.
- Grievances over land distribution have been a key source of conflict in Kenya. Most of the ethnic groups lost their rights to traditional lands during colonization when the British privatized land holdings.
- The situation was further aggravated when Kenya's first post-colonial president, Jomo Kenyatta, pushed for the redistribution of land, with his ethnic group ostensibly benefiting disproportionately. Even more recently, the violence that ensued after the 2007 election was partly a result of continued discontent and frustration with decades of government land policy that favored certain ethnic groups. For example in Nyeri, the children of former Mau Mau independence fighters feel aggrieved that their parents fought against the colonialists only for the post-independence political leaders to come and allocate themselves big portions of land. This partly explains the formation of the Mungiki sect or gang.¹⁰¹
- Even the lands that were availed for redistribution to landless Kenyans were places in the market under the policy of "willing buyer, willing seller." This arrangement only aggravated land-related conflicts because those communities who lost their land under the then communal/customary tenure further witnessed their customary land at independence being individualized to those who could afford it at the market place. This marked a further entrenchment of land-related conflicts which fifty years after independence were still evident in the land clashes of the 1990s and the current simmering historical land claims throughout the country.
- Resettling the landless through settlement schemes has further generated land-related conflicts because since the 1970s, the government reverted to a system of Settlement Fund Trustees, which due to corruption and mismanagement has generated further conflicts. The squatter problem has been used to settle politically favored individuals, leaving squatters fighting over the very lands that were meant for their settlement.

¹⁰¹ One of the main reasons for forming the Mungiki sect was the grievances of poor squatter families in Central Kenya, who were disinherited during colonialism.

- Since the settlement schemes were not sufficiently addressing the problem of the landless, the government encouraged land purchase through real estate companies and farming cooperatives by the landless pooling their resources. The companies and cooperatives have increasingly contributed to land-related conflicts because they have been abused by politicians to swindle land-hungry peasants. This process was supposed to facilitate the subdivision of the purchased land among the members in accordance with their respective shares. But more often than not the contributors towards the intended purchase have been cheated out of their money, with consequent massive land-related conflicts.
- The financial institutions have also been drawn into land conflicts in Kenya, where individualization of land was meant to enable the registered proprietor to offer his title to a financial institution in return for credit. Thus, lenders - from banks, finance houses to building societies - have been sucked into land conflicts with defaulters in their efforts to recoup their loans. Consequently, the rural people are engaged in protracted land-related conflicts with financial institutions. They are resisting disinheritance, arguing that the policy of the mortgage institutions was ill-conceived from the very outset in that the peasants whose land was offered as security did not have any entrepreneurial skills or experience in credit management to guarantee the possibility of the mortgage institution realizing their security upon default. So serious are the land-related conflicts from mortgages that the state has been forced to intervene to stem the obvious effects on social order. However, the problem remains unresolved.
- Close to 70% of the Kenyan population do not have land ownership documents. Thus, as expected, inheritance upon the death of a relative or parent usually turns violent.
- In Bungoma County, Mount Elgon, driven by the need to protect their land, the Soy community formed the Sabaot Land Defence Force (SLDF), an armed community militia to protect their land. According to Kenya National Commission on Human Rights (KNCHR), 600 lives were lost and more than 66,000 people were displaced in Mount Elgon land violence. On the other side in the same area of Mount Elgon, the Mosop also organized their own guerrilla called the Moorland Defense Force (MDF). Despite the presence of security forces in Chepyuk, Kipsikrok and Kaimugul, these two (SLDF and MDF) groups terrorized citizens in the area. The violence was basically driven by perceptions of unfairness in land distribution.
- In Mombasa, squatters have been illegally occupying pieces of land with absentee owners. This is a big problem which has often turned violent. In Murang'a, areas like Kihiumwiri, Kakuzi and Ithanga, there have been deaths because of contestations related to land ownership.

- In Nandi, large tracts of land left behind by colonialists were not returned to former owners but were grabbed by influential political elites, leaving previous owners landless. Most of these lands were sold to big multinational tea estates.
- In Narok County, land conflicts have been witnessed in Angata-Barikoi, Emurua Dikirr, Olasakwana, Mau Narok, Shartuka, Sakutiek, Ol Posimoru, Kibisu among other areas. The problem is aggravated by corrupt government officials providing double registration to different owners. A similar problem exists in Kajiado County, in the area of Maili Tisa. In Nyamira, boundary conflicts between Borabu and Bomet has seen violence flare up between the Kipsigis and Kisii communities. Adjudication of the scheme has been hampered by recurring violent conflicts.
- In Marakwet, outstanding land disputes are primarily experienced in areas of Karel, Kamoi, Biyaa, Kakisoo, Katemuge and Kakisekei. All these areas are in Kipkener location of Marakwet East sub-county.
- There are numerous land-related factors that increase the risk of violent conflict in Kenya when linked to the wider processes of political exclusion, social discrimination, economic marginalization, and a perception that peaceful action is no longer a viable strategy for change.
- The NARC government commissioned an inquiry into illegal allocation of land, undertaken by the “Ndung’u Commission”,¹⁰² which recommended that the ultimate responsibility for land distribution should rest with a National Land Commission, rather than the President, and that a review of land titles should be initiated, due to the huge number of irregular or illegal deeds in existence.¹⁰³ The findings of the Commission were largely welcomed. However, most of the report’s recommendations were ignored.
- Meanwhile, corruption and ethnic politics have supported patronage networks and favoured certain communities, particularly the Kikuyu, who settled in the fertile areas of the Rift Valley, at the expense of others, such as the Luo, the Maasai and the Kalenjin. This has often led to tensions among communities.

¹⁰² The Commission of Inquiry into the Illegal/Irregular Allocation of Public Land, which came to be known as the "Ndungu Commission" after the name of its Chair, Paul Ndungu, was a Kenya Government Commission established in 2003. The Commission was formed to inquire into the extra-legal allocation of public lands to private individuals and corporate entities, and to provide recommendations to the Government for the restoration of those lands to their original purpose or other appropriate solutions.

¹⁰³ The mandate of the National Land Commission (NLC) is drawn from the National Land Policy of 2009, the Constitution of Kenya 2010, the National Land Commission Act, 2012, the Land Act 2012 and the Land Registration Act of 2012.

- Fundamental structural factors leading to land conflicts include “rapid population growth, environmental degradation, and slow rates of economic development¹⁰⁴”, all of which have put more pressure on rural and peri-urban farmers and livestock-keepers to produce more food on a declining resource-base. In addition, competition between land uses is usually a key conflict factor as new conservation areas are demarcated or corporate access to minerals, oil, timber, and other natural resources is given preference by government over local farming or ranching interests.
- Competing claims to land and natural resources and inequitable or inadequate access to land for the poor has been, and still remains, a source of conflict and the situation is often aggravated during times of food scarcity or when extractive resources are discovered. This can be witnessed in Turkana, Elgeyo Marakwet, Baringo, Taita Taveta among other counties.
- Historical injustices are another key area of land conflict. These injustices were started during the colonization of the Coast by Arabs and were perpetuated by the British. For instance, communities at the Coast, especially the Mijikenda, Taita and Pokomo, have suffered the longest and some of the most severe injustices related to land. Their land was taken hundreds of years back leading to displacement, and disempowerment.
- All post-independence governments failed to honestly and adequately address these injustices, causing individuals and communities to turn to violence. Some have taken advantage of existing land-related injustices when addressing other social problems, such as political differences.
- Occasional political violence has been witnessed in protected areas, particularly gazetted forests or natural reserves such as Mau Forest Complex. These are often exacerbated by climatic variability and political interference.
- In areas under customary tenure systems, problems include, “insecurity of tenure, land subdivision, and informal land markets; land alienation and concentration, combined with externally determined land use changes; and undemocratic systems of local government to adjudicate and administer land disputes¹⁰⁵.”
- Kenya adopted an ambitious wildlife management and conservation arrangement through gazetted large tracts of community lands as national parks, national game reserves and conservancy sanctuaries. This forced communities out of such lands, which are managed as public trust lands under the Kenya Wildlife Service

¹⁰⁴ Gilbert, A. (1991) Urban Problems in the Third World, Ch.7. In S. Philip (ed.) Environment, Population and Development. Hodder and Stoughton in Association with the Open University.

¹⁰⁵ These challenges were cited in Group discussions during Stakeholders Workshop on draft report of this study.

(KWS). But given that most of these parks and reserves have eaten into grazing rangelands and agricultural lands, conflicts are inevitable, between communities' adjacent to wildlife areas and the KWS, on the one hand, and between human beings and wildlife, on the other. The conservation of ecologically sensitive areas such as forests and riparian reserves is emerging as another major cause of land-related conflicts between conservationists and beneficiaries of illegal or irregular allocation of such lands through political patronage.

- Pastoralist conflicts and rustling/banditry, particularly in Northern Kenya, are often affected by land-use conflicts especially over key grazing and water resources (which might be alienated from community lands for the purposes of tourism or private ranching, for example), cross-border issues, and external markets for livestock in Nairobi and abroad.
- After the 2008 post-election violence, forced displacement and appropriation were witnessed in many spots in Nakuru, Uasin Gishu, Trans Nzoia, Nandi and Kisumu counties.

3.6.1 Government Response

Over the years, land dispute resolution in Kenya has been considered challenging, because tenure insecurity was high, the legal and institutional framework was often ambiguous, the land administration system was relatively fragile, and dispute resolution was conducted by a wide range of state and non-state actors. In response, the 2010 Constitution established the National Land Commission that would deal with disputes related to tenure, access, management and historical injustice. One of the fundamental building blocks of peace relating to land conflict is the institutional capacity to manage and resolve conflicts without their becoming violent. Given the importance of land to the economy and to people's sense of security and identity throughout Kenya, the equitable and effective governance of land is a critical element of peace-building. Issues related to land rights and land access, as well as injustices tied to land, have often been structural causes of violent land conflict, and when these are not adequately addressed it is difficult for peace-building and development to be sustainable. Second, if people cannot trust the state to enforce their property rights or resolve conflicts over land, they will take measures to do so themselves, often in ways that are outside the law, drawing resources from more productive activities, and perpetuating the vicious circle of violence. Recently the Kenya Government has taken some critical steps in addressing this.

3.6.1.1 National Land Policy

The National Land Policy ("NLP" or "Policy") was adopted in August 2009 with the aim of providing an overall framework for new legislation and defining key measures required to address critical issues such as land administration, access to land, land use,

and restitution arising from historical injustices and an outdated legal framework.¹⁰⁶ The NLP states that land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles:

- equitable access;
- security of land rights;
- sustainable and productive management of land resources;
- transparent and cost effective administration;
- sound conservation and protection of ecologically sensitive areas;
- elimination of gender discrimination in law, customs and practices related to land and property in land; and
- encouragement of communities to settle land disputes through recognized local community initiatives consistent with the Constitution.

The policy further calls for extensive overhauls to current policies and institutions in an attempt to address chronic land tenure insecurity and inequity. The NLP designates all land in Kenya as public, private (freehold or leasehold tenure), or community/trust land, which is to be held, managed and used by a specific community. This land policy has thus been formulated to address the critical issues of land administration, access to land, land use planning and restitution for historical injustices. It also addresses environmental degradation, conflicts, unplanned proliferation of informal urban settlements, outdated legal and institutional frameworks, information management and the exercise of the power of land management by the state through the National Land Commission.¹⁰⁷ Also covered are the state's power to confer pre-emptive rights on the original owners or their successor in title where the public purpose or interest justifying the compulsory acquisition fails or ceases.¹⁰⁸

3.6.1.2 The Constitution of Kenya 2010 on Land

The 2010 Constitution,¹⁰⁹ protects the sanctity of private property rights and states that no property can be compulsorily acquired by the Government except in accordance with the law.¹¹⁰ Article 40(3) states:

¹⁰⁶ *Sessional Paper No. 3 of 2009 on National Land Policy* (referred to as the “National Land Policy” in this report) was adopted in August 2009 by the Ministry of Lands.

¹⁰⁷ *Ibid.*, at Chapter 3.2.1.1, p. 47(d).

¹⁰⁸ *Ibid.*, at Chapter 3.2.1.1, §47(e).

¹⁰⁹ The Constitution of Kenya, 2010, was adopted by the Government of Kenya on 27 August 2010. The full text is available at http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution/Constitution_of_Kenya2010.pdf,

Accessed May 25, 2011.

¹¹⁰ Constitution of Kenya, Art. 40.

The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation” – a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that (i) requires prompt payment in full, of just compensation to the person; and (ii) allows any person who has an interest in or right over, that property a right of access to a court of law.¹¹¹

The Constitution empowers the state to exercise the authority of land administration. The Land Act 2012 designates the NLC as the institution empowered to manage public land.¹¹² In relation to Article 40 (3)(b) of the Constitution, neither the Constitution nor any law provides an exhaustive list of permissible public purposes or interests.

3.6.1.3 Defining the Land Tenure System in Kenya

The Kenyan Constitution classifies land tenure as public, community or private.¹¹³ Public land consists of government forests (other than those “lawfully held, managed or used by specific communities as community forest, grazing areas or shrines”),¹¹⁴ government game reserves, water catchment areas, national parks, government animal sanctuaries and specially protected areas.¹¹⁵ Public land will be managed by the NLC.¹¹⁶ Community land includes land that is “lawfully held, managed or used by specific communities as community forest, grazing areas or shrines,” and “ancestral lands and lands traditionally occupied by hunter-gatherer communities.”¹¹⁷ Rights for these are held through traditional African systems, and also the English system introduced and maintained through laws enacted by colonial and then the national parliament. These two, known as customary tenure and statutory tenure, cover the following kinds of tenure.

- *Customary Land Tenure:* This refers to unwritten land ownership practices by certain communities under customary law. Being a diverse country in terms of its ethnic composition, Kenya has multiple customary tenure systems, which vary mainly due to different agricultural practices, climatic conditions and cultural practices. However most customary tenure systems exhibit a number of characteristics: First, individuals or groups, by virtue of their membership in some

¹¹¹ Ibid.

¹¹² The Government of Kenya. The Land Act, 2012, Section 8.

¹¹³ Ibid. at art. 61.

¹¹⁴ Ibid. at art. 63 (d) (i).

¹¹⁵ Ibid. at art. 62 (g).

¹¹⁶ Ibid. at arts. 62 (3); 67(2)s (a).

¹¹⁷ Ibid. at art. 63(d) (i) and (ii).

social unit of production or political community, have guaranteed rights of access to land and other natural resources; two, the title of ownership to the land is normally shared; three, land is located mostly in sparsely populated areas. Individuals or families thus claim property rights by virtue of their affiliation to the group.

- *Freehold Tenure*: This tenure confers the greatest interest in land, called absolute right of ownership or possession of land, for an indefinite period of time, or in perpetuity. Freehold land is governed by the Land Registration Act 2012, which provides that the registration of a person as the proprietor of the land vests in that person the absolute ownership of that land together with all rights and privileges relating thereto. A freehold title generally has no restriction as to use and occupation but in practice there are conditional freeholds, which restrict use to, for example, agricultural or ranching purposes only. Land individualization was demanded by the colonial settlers who required legal guarantee for private ownership of land without which they were reluctant to invest.
- *Leasehold Tenure*: Leasehold is an interest in land for a definite number of years and may be granted by a freeholder, usually subject to the payment of a fee or rent and also to certain conditions which must be observed, e.g. relating to development and usage. Leases are granted by the government for government land, local authorities for trust land and by individuals or organizations owning freehold land. The maximum term of government leases in Kenya is 99 years for agricultural land and urban plots. There are a few cases of 33 year leases granted by government in respect of urban trust lands. The local authorities have granted leases for 50 or 30 years.
- *Public Tenure*: This applies to land owned by the Government for its own purposes and which includes unutilized or un-alienated government land reserved for various future uses by the Government itself or the general public. The lands are administered under the Land Act 2012. They were vested in the President, who has normally exercised this power through the Commissioner of Lands, to allocate or make grants of any estates, interests or rights in or over un-alienated government land. Categories of government land include forest and other reserves, alienated and un-alienated government land, national parks, townships and other urban centers and open water bodies. The Government Lands Act does not contain any notion of trusteeship by government of the land for her people. Notwithstanding the foregoing, it is a common law doctrine that common property resources such as rivers, forests and parks are held by the state in trust for the general public. Consequently, the state cannot alienate these resources or use them in a way detrimental to public interest. It is the case that the statutory framework for land ownership in Kenya is heavily influenced by common law

jurisprudence on land ownership - the owner's rights include the rights of use and abuse. In Kenya, however, the development of physical planning legislation has vested in the state the cumulative rights of other land owners.

3.6.1.4 NLP Framework for Solving the Squatter Problem

The National Land Policy outlines mechanisms for resolving the squatter problem at the coast, and proposes to take an inventory of all government land within the 10-mile coastal strip. This covers 1,128 parcels measuring 80,000 hectares in Kwale, Kilifi, Mombasa, Malindi, Lamu and Tana River districts. To date, the Government has already settled 70,790 families in settlement schemes covering 35,300.5 hectares in Kwale, Kilifi, Malindi and Lamu, from a region where 128,900 squatter families have been identified and registered. The Ministry of Lands has also audited absentee landlords in the coastal region and found they own an estimated 77,753.02 hectares, although comprehensive data is still being sought to establish the actual acreage controlled by this category. This notwithstanding, the government has started untangling the land problem at the Coast by empowering locals, as evidenced by the adjudication of land in Kwale County. It is worth noting that in some areas such as Msambweni, land has been adjudicated and registered, but 14,000 titles have not been collected. At the same time, following the 2007 nullification of allocations done in Mbughuni in the 1990s, fresh surveys and demarcations have been initiated. Besides surveys, demarcations and settling squatters and the landless, the Ministry of Lands has also been resolving disputes as seen in the Tumbe Settlement Schemes in Kwale, where the allocation process had to be carried out afresh after local residents complained. The scheme's survey maps have already been completed and a list of genuine owners approved.

3.6.1.5 Land in Slums and Informal Settlements in Kenya

The Kenya Government has put in place plans for informal settlements and slums. Already, slum-upgrading projects in Nairobi and other towns in Kenya are changing the lives of residents. They have access to clean water, electricity and a clean environment. They also have more space. In Kibera, Nairobi, the first phase of the slum upgrading project is complete and hundreds of families have since moved to their new homes. This has paved the way for the start of other phases that will benefit more slum residents. To comprehensively deal with the issue, Government policy proposes an inventory of genuine squatters and slum residents. It also calls for the movement of those squatting on unsuitable land to more appropriate areas. Sale and transfer of land meant for squatters will be prohibited in the policy to safeguard the rights of the landless. Besides, the Government has power to compulsorily acquire land to effect plans for public projects and benefit. The title for the land will also be vested in the people of Kenya collectively as a nation, communities and individuals.

3.6.1.6 New Land Administration Framework through National Spatial Data Infrastructure in Kenya

The country has also suffered from lack of adequate expertise in solving conflicts by land disputes tribunals and the courts of law, leading to numerous unresolved disputes. Land administration and disputes management is expected to improve with the establishment of the National Spatial Data Infrastructure (NSDI) as it will combine surveyors' data with other vital records, such as the owner's land reference number, water and electricity connections, and rates payments. The unplanned subdivision of land has seen an escalation of national disasters such as land-slides. The spatial plan goes beyond land use and addresses suitability analyses of all land in Kenya, encompassing zoning of the country to ensure sustainable development. This is at a time when there is a craze for subdividing land, leading to a proliferation of informal settlements, which further threatens food security.

3.6.1.7 The Land Act 2012

The Land Act 2012 is an act of Parliament that gives effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land based resources, and for connected purposes.¹¹⁸ The Act recognizes the rights of the landowner and the necessity for fair and just compensation in case of compulsory acquisition.¹¹⁹

3.6.1.8 Land Registration Act 2012

This Act revises, consolidates and rationalizes the registration of titles to land, to give effect to the principles and objects of devolved government in land registration and for connected purposes. Part V deals with the form and effect of charges by financial or mortgage institutions. Of interest is Section 59, which deals with the lender's consent to transfer. The section reads:

If a charge contains a condition, express or implied by the borrower that the borrower will not, without the consent of the lender, transfer, assign or lease the land or in the case of a lease, sublease, no transfer, assignment, lease or sublease shall be registered until the written consent of the lender has been produced to the Registrar.

In practice, there are numerous instances of borrowers secretly disposing of the charged property and causing conflicts. For instance, the borrower may have put up a block of apartments, and without consulting the bank, proceed to enter into sale agreements and deposit the sale proceeds with another bank. Section 59 now makes it mandatory that the

¹¹⁸ Land Act, 2012.

¹¹⁹ The 2010 Constitution recognizes just, fair and full compensation when compulsory acquisition of land is made.

written consent of the lender must be produced before any registration of a lease or sublease can be effected. On the basis of the same act, the Kenya Government has taken steps to digitize all land related records and to increase ownership documentation among previous communities that did not have tenure security.

3.6.1.9 National Land Commission

The mandate of the NLC is drawn from the National Land Policy of 2009, the Constitution of Kenya 2010, the National Land Commission Act 2012, the Land Act 2012 and the Land Registration Act 2012. The NLC is an independent government commission, with an independently recruited chairman and six other commissioners, whose establishment was provided for by the Constitution of Kenya to, amongst other things, manage public land on behalf of the national and county governments, initiate investigations into present or historical land injustices and recommend appropriate redress, and monitor and have oversight responsibilities over land use planning throughout the country.¹²⁰ It was officially established under The National Land Commission Act, 2012. Pursuant to Article 67(2) of the Constitution, the functions of the Commission are:

- to manage public land on behalf of the national and county governments;
- to recommend a national land policy to the national government;
- to advise the national government on a comprehensive program for the registration of titles in land throughout Kenya;
- to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
- to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
- to encourage the application of traditional dispute resolution mechanisms in land conflicts;
- to assess tax on land and premiums on immovable property in any area designated by law; and
- to monitor and have oversight responsibilities over land use planning throughout the country.

Under the National Land Commission Act 2012, the Commission shall, on behalf of, and with the consent of the national and county governments:

- alienate public land;
- monitor the registration of all rights and interests in land;

¹²⁰ Constitution of Kenya 2010, art. 67.

- ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations;
- develop and maintain an effective land information management system at national and county levels;
- manage and administer all unregistered trust land and unregistered community land on behalf of the county government; and
- develop and encourage alternative dispute resolution mechanisms in land dispute handling and management.

The Commission shall ensure that all unregistered land is registered within ten years from the commencement of the Act. Parliament may, after taking into consideration the progress of registration, extend the period set by the Commission¹²¹ Under the Land Act 2012, the Commission shall:

- implement Settlement programs on behalf of national and county governments as outlined in section 134 of the Land Act;
- administer the Land Settlement Fund in accordance with section 135 of the Land Act;
- manage the Land Compensation Fund;
- reserve public land for the establishment of approved settlement programs; and
- where public land is not available, purchase private land subject to the Public Procurement and Disposal Act, 2005 or any other law as provided for in section 134 (5) of the Land Act.¹²²

Addressing historical land problems by the NLC will still remain a very big challenge because of time and resources required to ensure that all the stakeholders are consulted and included in the process.

3.6.1.10 Community Land Act 2016

The Community Land Act, No. 27 of 2016 (CLA) came into force on 21 September 2016. CLA aims at giving effect to Article 63 of the 2010 Constitution which provides for a classification of land known as community land. To this end, the Constitution provides that community land shall vest in and be held by communities. It therefore provides for:

- for the first time, the recognition, protection and registration of community land rights;

¹²¹ National Land Commission, 2012.

¹²² Land Act, 2012.

- the management and administration of community land; and
- the role of county governments in relation to unregistered community land and related matters.¹²³

CLA repeals the Land (Group Representatives) Act (Chapter 287 of the Laws of Kenya) and the Trust Lands Act (Chapter 288 of the Laws of Kenya). Under the Community Land Act, 2016, community land in Kenya shall vest in the community. In this respect, the term “Community” has been defined to mean a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes: common ancestry, similar culture or unique mode of livelihood; socioeconomic or other similar common interest; geographical space; ecological space; or ethnicity. The Constitution of a community is therefore not limited to ethnicity as is the case currently. The Act requires a community claiming an interest in or right over community land to be registered.

Community land may be held under any of the following land tenure systems: customary,¹²⁴ freehold, leasehold, and such other tenure system as recognized under the Act or other written law. Further, community land may be held as communal land, family or clan land, reserve land, or in any other category of land recognized under the Act or any other written law. CLA requires community land rights to be registered in accordance with its provisions and the provisions of the Land Registration Act, 2012. In this respect, a Certificate of Title issued by the Community Land Registrar shall be evidence of ownership of the land. This certificate of title shall not be subject to challenge, except on grounds of fraud or misrepresentation to which the person is proved to be a party or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. The registration of a community as the proprietor of land shall vest in that community the absolute ownership of that land, while the registration of a community as the proprietor of a lease shall vest in that community the leasehold interest described in the lease, together with and subject to all implied and express rights and privileges. CLA also requires the maintenance of a community land register for each registration unit, in accordance with section 8 of the Land Registration Act, 2012. CLA recognizes customary land rights, including the customary right of occupancy, and provides for their adjudication and documentation.¹²⁵ CLA also gives customary land rights an equal footing in law as freehold and leasehold tenure. It, however, prohibits compulsory acquisition by the State of any interest in, or right over community land except where the compulsory acquisition is, first, in accordance with the law; secondly, for a public purpose; and third, upon prompt payment of just compensation to the person or persons, in full or by negotiated settlement.

¹²³ Community Land Act, 2016.

¹²⁴ “Customary land rights” are rights conferred by or derived from African customary law, customs or practices, provided that such rights are not inconsistent with the Constitution or any written law.

¹²⁵ Ibid.

The main role of the County Government under the CLA is to hold in trust, on behalf of a community, unregistered community land and any monies payable as compensation for compulsory acquisition of any such unregistered community land. Any such monies shall be deposited in a special interest-earning account by the County Government and shall be released to the community upon registration of the community land. A County Government is prohibited from selling, disposing, transferring, and converting for private purposes or in any other way disposing of any unregistered community land that it is holding in trust on behalf of a community.

3.6.1.11 Community Land Management Committee

The CLA establishes a Community Land Management Committee which shall be elected by a community assembly consisting of all adult members of the community. The functions of the Committee shall be to:

- have responsibility over the running of the day to day functions of the community;
- manage and administer registered community land on behalf of the respective community;
- coordinate the development of community land use plans in collaboration with the relevant authorities;
- promote co-operation and participation among community members in dealing with matters pertaining to the respective registered community land; and
- prescribe rules and regulations to be ratified by the community assembly, for governing the operations of the community.

Community land can be converted to either public land or private land and vice versa. CLA provides that at least two-thirds of the community members must approve any conversion of community land. This, however, does not limit the application of the Land Act, 2012 and any other law in respect of compulsory acquisition of land. CLA stipulates that “a community may, with the approval of its members, allocate land to a member or a group of members for exclusive use and occupation for such a time as the community will determine.”¹²⁶ However, an individual entitlement shall not be superior to the community title and a separate title shall not be issued. Further, a pastoral community may grant grazing rights to a non-member. On benefit sharing, an agreement relating to investment in community land should be free, open and a result of a consultative process with the community and other stakeholders. The agreement should provide for the payment of compensation and royalties, capacity building of the community and transfer of technology to the community. In case of dispute or disagreement, a registered community may use alternative dispute resolution mechanisms including traditional

¹²⁶ Community Land Act, article 30.

dispute resolution mechanisms to settle disputes. However, where all efforts of resolving a dispute fail, a party may institute judicial proceedings.

3.7 HUMAN WILDLIFE CONFLICT

In Kenya large numbers of big mammals, including several hundred thousand¹²⁷ wild elephants and more than 20,000¹²⁸ lions, still roam freely, particularly in rangeland areas. The pastoralists, the agro-pastoralists and other settled small and large scale farmers and their families who live in these regions and their peripheries, all have to cope with the consequences - damage and destruction of crops, livestock predation, competition for grazing and water, increased risk of some livestock diseases, and various other inconveniences, such as loss of sleep due to protecting crops at night. There is even direct threat to human life. As the population rapidly increases, conflict between people and wildlife undoubtedly ranks amongst the main threats to conservation in Kenya - alongside habitat destruction. Human-wildlife conflicts have the following characteristics:

- They are particularly common in reserve borders, where species that rely on extensive territory come into contact with human settlements. In effect, border zones of protected areas may be considered population sinks - critical zones in which conflict occurs due to a wide range of species coexisting with dense human populations.
- Areas where human-wildlife conflicts are prevalent in Kenya include Tana River county in Hola area, where crocodile attacks and poaching incidents are very frequent; Narok county, around Maasai Mara national reserve in Lolgorian and Kirindon – conflict between humans and existing wildlife are common; around Mt. Kenya national reserve, where attacks from elephants on residents occur frequently in Kirinyaga, upper sides of Embu and Solio ranch in Nyeri; Mberere South and extremes of Mbeere North that border Masinga dam, where hippos stray into farms and destroy large amounts of crops; Laikipia, where poaching has become a common occurrence which threatens the wildlife population; Samburu Game reserve, where cases of poaching and illicit arms are many; Nyandarua area of Kasuku, Olbosat, Ndaragua and Ng'arua, where marauding elephants and hippos constantly damage human settlements and farms; Machakos Konza area witnesses a lot of crop destruction by eland, zebra, impala, wildebeest and hippo. Livestock attacks by leopards, lions, cheetah and crocodiles have also been

¹²⁷ 607,233 in 2011-2013. The numbers are based on a study carried out by Dr. Joseph O Ogutu and Prof. Hans-Peter Piepho of the University of Hohenheim, Dr. Mohammed Y. Said and Mr. Shem Kifugo formerly at ILRI and Dr. Patrick Wargute, Mr. Gordon Ojwang and Mrs. Lucy Njino of Directorate of Resource Surveys and Remote Sensing. The study received funding from the International Livestock Research Institute, German Research Foundation and the European Union through the African Bioservices Project. The USAID funded PREPARED project also supported the study.

¹²⁸ Ibid

frequently reported there; Donyo Sabuk has buffalos which destroy crops of neighboring residents.¹²⁹

- In Narok County, the human-wildlife conflict has been aggravated by a rapid change in the lifestyle of local communities from pastoralism to crop farming and other incompatible land-use practices. About 200 elephants in Narok County have been cut off from the greater Mara ecosystem and are currently considered a sub-population of the Mara.¹³⁰ According to the Kenya Wildlife Service, such conflict in areas surrounding the Maasai Mara Game Reserve is mainly attributed to loss of wildlife habitats due to uncontrolled human activities, especially crop farming, charcoal burning and human settlements.
- The vast Mara belts are dwindling fast. The Maasai group ranches are also shrinking. The Western agricultural communities like the Kisii, Kipsigis and Luo are buying into the vast plains of Transmara. From the East, large-scale wheat farmers are reducing the grasslands, and in the South, the animal corridor into the Serengeti is attracting land speculators. These expansions and encroachments are speedily reducing the animal corridors and leading to clashes with the animals using the corridors.
- In Taita Taveta, the construction of the standard gauge railway between Bachuma and Maungu has played some part in the human-wildlife conflict in the county. The elephants were used to roaming the open spaces, but now the railway line cuts through the migratory routes causing the animals to wander into farms. Eighty percent of Taita Taveta locals in Sagalla, Kasigau, Marungu, Mbololo, Mwatate, Bura, Wumingu, Kishushe and Mata are facing starvation after their crops were destroyed by elephants in the last two years.
- Human-wildlife conflicts also have economic and social costs, by undermining human welfare, health and safety. Nuisance encounters with small animals, exposure to zoonotic diseases, physical injury or even death caused by large predator attacks have high financial costs for individuals and the society in the form of medical treatments to cure and prevent infections transmitted from animals.
- Most locals affected by human-wildlife conflicts are economically affected through destruction and damage to property and infrastructure (e.g. agricultural crops, orchards, grain stores, water installations, fencing and pipes), livestock depredation and transmission of domestic animal diseases, such as foot and mouth. Negative social impacts include missed school and work, additional labor costs, loss of sleep, fear, restriction of travel or loss of pets.

¹²⁹ Focus Group Discussions in Narok, Machakos, Taita Taveta, Meru, Embu and Trans Mara.

¹³⁰ *Daily Nation* newspaper, 13th Nov 2015.

- Demographic and social changes in some places around conservancies such as Mt. Kenya, Maasai Mara and Samburu game reserves place more people in direct contact with wildlife; as human populations grow, settlements expand into and around protected areas as well as into urban and sub-urban areas. Human population growth has led to encroachment into wildlife habitats, constricting species into marginal habitat patches and direct competition with local communities.
- Changes in demographics also lead Government to transform forests, savannah and other ecosystems into agrarian areas or urban agglomerates as a consequence of the increasing demand for land, food, energy and raw materials. Many areas with abundant wildlife, such as Samburu, Mt. Kenya, Laikipia, Trans-Mara, Taita and Kwale, have conflict intensified by land use fragmentation and the development of small-scale farming. In fact, state and trust ranches have been subdivided and sold as smallholdings and cultivated with commercial horticultural crops.
- Growing densities in livestock populations also create an overlap of diet and forage competition with wild herbivores, resulting in overgrazing and decline or local extinction of wild herbivore populations.
- Seasonal changes in rainfall are directly correlated with predation intensity in some of the conservancies. In Tsavo National Park, for instance, there are increased attacks on livestock by lions during rainfall seasons.

3.7.1 Government Response

Considering human population growth, increasing demand for natural resources and the growing pressure for access to land, it is clear that the human-wildlife conflict will not be eradicated in the near future and incidences are expected to increase. A wide range of different management tools has been developed in Kenya by Kenya Wildlife Service (KWS) to address human-wildlife conflict, but most of these are strongly site and species/genera specific and are not widely or easily accessible by local communities. Some other extreme measures that have been deployed to prevent or minimize the risk of human-wildlife conflicts include completely removing either the people or the animals, physically separating the two by the use of barriers, managing by various means the numbers of animals, and employing a variety of scare and repellent tactics. Below are a number of Government-led initiatives to address human wildlife-conflict.

3.7.1.1 Fencing the National Reserve

In Endarasha and Ol Moran villages located in Nyeri and Laikipia Districts, KWS has installed an electric fence which is successfully being used to separate wildlife from

human settlements and agricultural areas. This strategy has largely worked in reducing the human-elephant conflict. Although installation and maintenance costs are very high, it has been demonstrated that electric fencing is still cost-effective for the community; it reduced elephant attacks on humans, thereby resulting in crop increases and higher income for farmers.

3.7.1.2 Watchtowers

In some of the small conservancies and farms, the Government has advised the use of watchtowers. Watchtowers, built around fields of crops, provide good vantage points. They increase farmers' awareness levels to the presence of potentially harmful wildlife before damage occurs. Simple alarm systems, using string and cowbells or tins, have been effective. Dogs have also been used in protecting homesteads and livestock from attack by predators

3.7.1.3 Fear-provoking stimuli

Fear-provoking stimuli such as scarecrows, auditory (such as bangers and distress calls) or olfactory stimuli (such as odor repellents) have all been applied in managing human-wildlife conflict particularly in the Maasai Mara national reserve.

3.7.1.4 Movement activated guard (MAG)

Movement activated guard (MAG) devices and electronic training collars (EC) installed on animals are deterrent systems based on aversive stimuli. However, they come with cutting edge technology and are therefore costly. . KWS has often deployed them. MAG devices rely on disrupting a predator's attack through stimuli that disturb its normal behavior. They can be gustatory (chemical), visual (light), olfactory¹³¹ or auditory (siren) and are activated by the animal approaching protected resources.

3.7.1.5 Removing Locals from their Lands or Killing Animals that Stray from the National Parks

In the past local people were removed from their land adjacent to the national parks and other protected areas. In addition, eradication of animals such as lions, leopards, elephants, buffalo, rhino and the larger species of antelope has been undertaken in the past over large area conservancies, such as the former white farming areas in the Kenyan highlands. Today, wildlife managers, landowners and traditional land-users still sometimes deliberately cull species that they consider threatening – ranging from elephants to quelea.

¹³¹ Relating to the sense of smell- Chemical signals can act as repellents or attractants and may therefore have applications for wildlife management.

3.7.1.6 Wildlife Conservation and Management Act, 2013

The WCMA provides for the protection, conservation and management of wildlife and related matters. It applies to all wildlife resources on public, community and private land, as well as Kenya territorial waters. The Act came into force on 10th January 2014, having received Presidential assent on 24th December 2013. It is aimed at improving the protection, conservation, sustainable use and management of the country's wildlife resources. Consequently, the law was drafted with a view to addressing the loss of wildlife, which had exacerbated despite high profile conservation efforts by various institutions. This loss in wildlife resources was attributed in varying proportions to a combination of policy, institutional and market failures. The new law provides for a restructured governance of wildlife resources by separating the regulation and management functions from those of research. Furthermore, new structures have been established at the county level in accordance with the Constitution of Kenya 2010. The Act also sets out important principles that include:

- effective public participation in the management of wildlife resources, thereby setting a basis for the strengthening of community-based natural resources management;
- the use of the ecosystem approach in the management of wildlife;
- equitable sharing by Kenyans of benefits accruing from wildlife resources;
- sustainable utilization of resources; and
- recognition and encouragement of wildlife conservation and management as a form of land use on public, community and private land.

WCMA further gives every person the right to practice wildlife conservation as a land use and states that benefits of wildlife conservation shall accrue to the land users in order to offset costs and to ensure the value and management of wildlife do not decline.

3.7.1.7 Beneficial Management Practices

Beneficial Management Practices have been adopted by GoK to mitigate human-wildlife conflict and assist with the recovery of the affected families and species at risk. Based on the WCMA, a compensation approach for communities adversely affected by wild animals was adopted and improved in the law so that in the event of loss of life, KWS on behalf of the Government would provide improved compensation to the family of the bereaved. For the loss of livestock killed by elephants or predators, KWS would also provide compensation to affected owners. The scheme is funded by the Government treasury and is designed to prevent the affected communities from taking direct revenge action against the animals, which would usually involve hunting down and killing the individual elephant, lion or any other species involved.

3.7.1.8 Stiffer Penalties for Poachers

WCMA also takes account of the perennial challenge of poaching and wildlife habitat destruction. It provides for stiffer fines and punishment for offenders, a step that is expected to discourage would-be offenders. Moreover, it offers a significant increase in the awards for injury and death resulting from wild animals.

3.7.1.9 KWS Stewardship Program

The, KWS Stewardship program has worked closely with community representatives to foster environmental appreciation and participation in resource management. Numerous workshops have been held to better understand the factors that contribute to human-wildlife conflicts and to promote mitigating actions.

3.8 THE CHALLENGE ORGANIZED GANG VIOLENCE

Organized crime is defined as crime committed by structured groups typically involving the provision of illegal goods and services to others. It is a syndicated criminal activity by an enduring structure or organization developed and devoted primarily to the pursuit of profit.¹³² Several studies have shown the existence of several militant gangs and so-called vigilante movements in Kenya, particularly in Nairobi's large slum areas and in other urban environments. . They operate in poor, crime-infested neighborhoods where the police have little authority, influence and, basically, little interest.¹³³ Organized crime poses a serious problem for peace and security in Kenya. The scale of the crime and the proliferation of gangs have created an even greater challenge to the law enforcement authorities in particular. The public in both rural and urban areas are well aware of the activities of organized crime, and their view appears to be that there is little commitment on the government's part to confront the menace with the vigor and dedication it deserves. Some of the characteristics of organized crime in Kenya are:

- It is a social system in which professional criminals, politicians, law enforcers, and various entrepreneurs, perform reciprocal services for each other.¹³⁴
- In Kenya, organized crime most typically flourishes in places where government and civil society are disorganized, weak, absent or untrusted. This may occur in a society facing periods of political, economic or social turmoil or transition, such as a change of regime or a period of rapid economic development, particularly if it lacks strong and established institutions and the rule of law.

¹³² The UN Convention against Transnational Organized Crime. Available at <https://www.unodc.org/unodc/ar/organized-crime/index.html>

¹³³ Landinfo report, 2010. Report Kenya: Mungiki – Abusers or abused? (2010) accessed from https://landinfo.no/asset/1123/1/1123_1.pdf

¹³⁴ National Crime Research Centre, 2012.

- In Kenya, there are several known organized criminal groups. In October 2010, following the enactment of the Prevention of Organized Crimes Act in August, 2010, the Minister of State for Provincial Administration and Internal Security issued a Gazette Notice banning 33 organized criminal groups. These were Al-Shabaab, Amachuma, Angola Msumbiji, Banyamulenge, Baghdad Boys, Charo Shutu, Chinkororo, Coast Housing Land Network, Congo by Force, Dallas Muslim Youth, Forty Brothers, Forty-two Brothers, Jeshi la Embakasi and Jeshi la Mzee. Others were Jeshi la King'ole, Japo Group, Kamjesh, Kamukunji Youth Group, Kaya Bombo Youth, Kenya Youth Alliance, Kosovo Boys, Kuzacha, Makande Army, Mombasa Republican Council, Mungiki Movement, Mungiki Organization, Mungiki Sect, Republican Revolutionary Council, Sabout Land Defence Force (SLDF), Sakina Youth, Siafu, Sungu Sungu and Taliban.¹³⁵
- A study in the same year, commissioned by the Panel of Eminent Persons and conducted in Nairobi, Central and Nyanza provinces, identified 32 illegal groups, of which 27 were not among the 33 banned groups. The study further found that the illegal groups were taking a low public profile – the group leaders possibly wanted to shed their negative image and present themselves as candidates for public office.
- Organized criminal gangs in Kenya draw their funds from diverse sources, prominent among which are extortion from the public, theft and donations from some politicians.¹³⁶ Other sources of funds include illicit drug trafficking, counterfeiting, kidnapping for ransom and smuggling of firearms.
- For its success, organized crime relies on public demand for illegal services. Organized criminal groups have developed new forms of organization and use of violence. They are mobile, disciplined, efficient and dangerous, and equipped with the latest deadly weapons.
- They have centralized authority which lies in the hands of a few individuals. They have instituted a division of labor, delegation of duties and responsibilities and specialization of functions. Some groups specialize in one type or a few types of crime, but others, especially the more powerful ones, are multipurpose in character, engaging in any activity in which quick money can be made.
- Organized crime is not the preserve of particular ethnic communities in Kenya. Criminal gangs have been reported in all major communities. .

The characteristics of organized crime, common to all societies, are as follows:¹³⁷

¹³⁵ Gazette Notice No.12585; 6 of 2010 dated 18th October 2010: 3819.

¹³⁶ The Standard, March 15 2017.

¹³⁷ An Introduction to Organized Crime. Available at http://samples.jbpub.com/9781449648046/22572_CH01_V1.pdf.

- The gangs do not hesitate to use violence to eliminate competition, silence informers, persuade potential victims, or enforce their edicts. Often the large gangs import gunmen from other areas to do this work for them and to make detection of their crimes more difficult.
 - They adopt measures to protect the group and to guard against the interruption of its activities. These include arrangements with doctors, lawyers, politicians, judges, policemen and other influential persons and the use of bribery and other forms of corruption to secure political favors and to avoid arrest and punishment.
 - They are usually very well-organized, efficient, obedient, loyal and mutually confident. Policies of administration, rules of conduct and methods of operation are strictly enforced and severe penalties are imposed upon violators.
 - Their criminal activities are carefully planned to minimize risks and to ensure the greatest possible success.
 - Within these gangs, there is a clear gendered division of labor. While men perform the actual crimes, women provide support services such as identification of clients or victims, preparing meals, spying and storing stolen property. These services often also include sex. Children play an active spying role, while the elderly specialize in the oath rituals, recruitment, resolution of disputes and spying.¹³⁸
- For a variety of reasons, there is more crime in urban areas, followed by suburban areas, then by rural areas. The urban areas are more prone to crime because of the presence of slum or ghetto areas, which house the poor and unemployed.
 - Corruption among the police and the judiciary, political influence, lack of police cooperation and fear of reporting were identified as factors that energize organized criminal gangs.
 - Organized criminal gangs have infiltrated legitimate formal and informal business especially public transport, car wash centers, motorcycle transport, rental houses, exhibition shops and scrap metal.
 - Affected communities live in great fear and reported arming themselves for their protection.
 - Mungiki has been one of the most violent and most notorious organized criminal gangs in Kenya.¹³⁹ The members of Mungiki claim it is a “homegrown” religious

¹³⁸ Ibid.

¹³⁹ Mungiki is a politico-religious group that was outlawed by the government of Kenya following atrocities committed against its victims.

organization committed to upholding the traditional “African way of worship, culture and lifestyle.”

- Mungiki is known to have been engaging in other anti-social activities such as stripping women wearing miniskirts or trousers in public, forcibly imposing female circumcision and raiding police stations to free their members who were under police custody. Lately, the sect has assumed a new face, using AK-47 assault rifles instead of clubs, machetes and swords.
- Although the Government banned these groups in 2002, they still operate illicitly and secretly in various part of the country with impunity. In fact, various gangs have also been at war with each other over control of businesses, services and people in disputed areas, amongst them the Taliban, the Kosovo boys, the Baghdad boys, Chinkororo, the Kalenjin Warriors and Mungiki.
- Others like Bumps Ahead, Karanja Youth and Kaberege Yes We Can, 14 Gendarmerie, 12 Flamingos, 12 Disciples, Bunkers, Kosovo, Tuff Gong, Dego Youths, 40 Ndugus, ODM Youths, Darajani, Jipange and Super 14 prey on the transport sector. Besides these, in Nairobi Thaaai and Wailer groups have been identified. The Hague, Kenda Kenda, Bantu and Ngoroko gangs were identified in Central. In Nyanza, there are Nyalenda Base, Chief Squad, Nyamasira Massive and Baghdad for Peace who also target the transport sector.
- These groups, wherever they exist, often cause locals to move from the areas where they do business.
- Organized gangs in Kenya have also extended their “services” to domestic issues. In Kisii for instance, Bamba 40 was singled out as active in this regard where they administer 40 lashes on men accused by their wives of irresponsibility or misbehavior. In urban areas such as Dandora, Kayole and Mathare, where Mungiki are dominant, it is reported that they settle domestic disputes, even imposing fines and corporal punishment as disciplinary measures.
- Mungiki guide politicians and even the agenda that politicians set during campaigns. In some areas of Central Kenya, you ignore Mungiki at your own peril during the election period.
- Organized criminal gangs in Kenya focus more on crimes that do not require technological applications, because the most highly educated among them are secondary school dropouts. So they deal in illicit drug trafficking, cultivation of drugs, among which marihuana is the most common, armed robbery, motor vehicle theft, kidnapping for ransom, extortion and livestock theft. All these do not involve high level technology.

- All the organized criminal gangs share a common approach to recruitment – they target unemployed school dropouts offering them instant cash rewards and promises of more cash.

3.8.1 Government Response

The impact of organized crime can be felt at both individual and collective levels. The negative impact on business and peoples' freedom in particular is considerable, leading to internal displacement and loss of property and lives. Most informal settlements in major towns of Kenya are enveloped in fear, especially in the late hours of the night. Addressing the problem of organized criminal gangs requires a multidimensional strategy that safeguards citizens, breaks the financial strength of criminal networks, disrupts illicit trafficking networks, defeats transnational criminal organizations, fights government corruption, strengthens the rule of law, bolsters judicial systems, and improves transparency. The Government has responded by enacting the Prevention of Organized Crime Act 2010.

3.8.1.1 Prevention of Organized Crimes, 2010

The new law on the Prevention of Organized Crimes 2010 aims at enhancing the prevention, investigation, and punishment of organized crimes in the country. The law spells out tough measures to deal with criminal gangs by imposing jail terms ranging from 14 years to life imprisonment for those found guilty. It provides harsh penalties for anyone who fundraises, organizes or directs members of a criminal gang to commit a serious crime and/or for those taking or administering oaths. All are liable upon conviction to life imprisonment.

Up to now, law enforcement agencies in Kenya, particularly the police, have been making relentless efforts towards combating and eradicating organized criminal groups including the Mungiki. There has been some major success in most parts of Central Kenya in dealing with the group, particularly in areas like Kiambu, Murang'a, Nyeri, and Kirinyaga. In December 2010, the Kenyan Police arrested some members of the Mungiki sect who were en route to an organized meeting which was also to be attended by their self-confessed former sect leader Maina Njenga. The suspects appeared in court and were charged under the new law. The police extended the crackdown to more suspects of criminal groups and in one week alone, 600 suspects were arrested.¹⁴⁰ However, The group still exists in most informal settlements in Nairobi and Kiambu. Whenever the police crackdown on the sect, it appears to go underground where they buy time before resurfacing. These tactics of the sect continue to present law enforcement agencies with

¹⁴⁰ Daily Nation, 28 May 2013.

challenges as sometimes the police attack unsuspecting citizens, particularly under the cover of darkness, leaving a trail of death and destruction.

3.8.1.2 Witness Protection Act

The Government also enacted other related legislation such as the Counter-Terrorism Act, put in place other Crime Prevention policies and strengthened existing programs (such as the Witness Protection Program, since prosecutors maintained that witness intimidation was a key hindrance that must be addressed in many gang cases). Government has also enhanced intelligence gathering and information sharing among the relevant players. Since members of organized criminal gangs are revengeful, there is need for the Police, Judiciary and Correctional Services to hide the identities of those who provide intelligence information. The Government has increased surveillance in major towns for improved security and economy development. It installed surveillance CCTV cameras in major cities of Nairobi and Mombasa, which has helped reduce crime rates significantly.

3.9 GENDER BASED VIOLENCE (GBV)

An act of gender-based violence is one that results, or is likely to result, in physical, sexual or psychological harm to women, (although men may also be victims, it disproportionately affects women and girls),¹⁴¹ including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.¹⁴² Violence against women, derived from unequal power relationships between men and women, is a major conflict problem that negatively affects many women and girls in Kenya. Each year as many as one million women experience some form of violence, many of them girls.

The post-election violence that shattered Kenya's peace in late 2007 and early 2008 was characterized by widespread physical and sexual GBV perpetrated by security and state personnel. According to the Waki Commission,¹⁴³ tasked with investigating the violence and actions of state agencies at the time, there was a massive conspiracy by the police across the country and across the hierarchy, to cover-up sex crimes committed by the police at the height of the post-election violence. Sex crimes were used as a means of intimidation by the police. The Waki Commission could only recommend immediate and

¹⁴¹ Article 1, United Nations Declaration on the Elimination of Violence Against Women, proclaimed by the UN General Assembly, resolution 48/104 of 20, December 1993. The 1995 Beijing Platform for Action expanded on this definition, specifying that it includes: violations of the rights of women in situations of armed conflict, including systematic rape, sexual slavery and forced pregnancy; forced sterilization, forced abortion, coerced or forced use of contraceptives; prenatal sex selection and female infanticide. It further recognized the particular vulnerabilities of women belonging to minorities: the elderly and the displaced; indigenous, refugee and migrant communities; and women living in impoverished rural or remote areas, or in detention.

¹⁴² Inter-Agency Gender Working Group (IGWG)/USAID, 2008.

¹⁴³ CIPEV Report: 245.

wholesale institutional, personnel and procedural police reforms. The police, indicating their distaste of, and indifference towards the Waki investigations, demonstrated an insular, introspective and uncooperative stance towards the Commission.¹⁴⁴

GBV is a problem with a complex web of causes; societal, cultural, legal, economic and historical. A recent study conducted by Federation of Women Lawyers (FIDA) involving both male and female respondents in four provinces in Kenya found that 74.5% had suffered gender-based domestic violence (GBDV) within the homestead. Furthermore, 78% of respondents indicated that they knew of others who suffered GBDV either frequently or very frequently.¹⁴⁵

Any attempt to comprehensively address GBV, therefore, requires multiple platforms of action. Universally, GBV is not random, accidental or a private matter; it is structural. It is both a manifestation of the power imbalance between men and women and a social mechanism which forces women into continuing subordination. The nature and extent of specific types of GBV in Kenya vary across cultures and counties. Some of the more common forms involve domestic violence, female genital mutilation/cutting, and early marriage. Some characteristics of domestic violence includes:

- **Domestic Violence:** One of the most common forms of violence in Kenya is domestic violence. Marital violence refers to violence perpetrated by partners in a marital union. According KNDS, the proportion of married women, divorced or separated women who have experienced emotional, physical, or sexual violence from their current or last husband or partner is at 30%.¹⁴⁶
- Twenty-six percent of married women report having experienced emotional violence from husbands, 40 percent report physical violence, and 16 percent report sexual violence.¹⁴⁷
- Over half of all women in their thirties have experienced violence since age 15. Among those who have experienced spousal violence, the younger ones are likely to experience violence somewhat more frequently than older women; 30 percent of women aged 15-19 report experiencing spousal violence three or more times in the 12 months.
- Women in Western Province are most likely to have experienced violence since age 15 (73 percent), followed by women in Nyanza Province (60 percent). Women in Coast Province are least likely to have experienced violence (30 percent). That picture is reflected in the statistics for the 12 months preceding the

¹⁴⁴ Ibid: 267.

¹⁴⁵ FIDA, National Adolescent and Sexual and Reproductive Health Policy.

¹⁴⁶ Kenya National Demographic Survey (KNDS), 2003.

¹⁴⁷ Ibid.

survey - violence was highest in Nyanza and Western provinces (both 36 percent) and lowest in Coast Province (14 percent).

- The social and economic background of a woman has a bearing on her chances of experiencing domestic violence. Although experience of violence does not vary consistently with education level, but women who have at least secondary education are less likely to have experienced domestic violence in the preceding 12 months than less educated women.
- Women who are not employed (43 percent) are less likely to have experienced violence than those who are employed (52 to 53 percent). There is a slight negative relationship between domestic violence and the women's affluence. This is because the unemployed women have no money or resources that spur urges of control in men, leading to domestic violence.
- The main perpetrators of domestic violence are husbands, but teachers, mothers, fathers and brothers are also culprits.
- Experience of all forms of spousal violence rises with age.
- Divorced or separated women are most likely to have been abused emotionally, physically, and sexually, implying that the violence might have been a factor in the termination of their marriages, though older age could also be a factor.
- On the other hand, women who are married and those who have no living children report less emotional, physical, and sexual violence, perhaps because they are more likely to be newly married and still within the honeymoon period.
- The most common form of spousal violence is slapping or arm twisting, which has been experienced by one-third of women. Almost one-quarter (23 percent) of married women have been pushed, shaken, or thrown by their husbands at least once; 17 percent have been punched; 15 percent have been forced to have intercourse; and 11 percent have been kicked or dragged. The least commonly reported forms of marital violence against women are attacking with a weapon (three percent), forced sexual acts other than intercourse (four percent), strangling or burning (four percent), and threatening with a weapon (6 percent). Marital rape appears to be common, with 15 percent of married women and separated or divorced women reporting having experienced forced sexual intercourse.
- Women who have been married more than once are most likely (35 percent) to have experienced violence three or more times in the 12 months, while those divorced or separated are less likely (15 percent) than other women to have reported frequent violence in the recent past.

- Women who are in their second or later marriage and women who are currently divorced or separated are more likely to have experienced violence early in their marriages than women who are in a long first marriage.
- Among all married, divorced, or separated women, 23 percent reported ever having had bruises or aches and 19 percent reported having bruises or aches in the past year because of something their husband did to them. Injuries and broken bones are far less common consequences of spousal violence, reported by four percent of women as having ever occurred and by two percent as occurring in the 12 months preceding the survey.
- Spousal violence is not always caused by men; women may sometimes be the perpetrators of violence. In most cultures, however, this tends to be minuscule.
- Female Genital Mutilation (FGM) – In Kenya, FGM is customarily practiced on girls between the ages of four and 12, albeit in some cultures it can be performed as early as a few days after birth or as late as just prior to marriage, during pregnancy, or after the first birth.¹⁴⁸
- FGM has been classified by the World Health Organisation (WHO) into four different categories, ranging in severity from excision of the prepuce with or without removal of the clitoris (Type I) to excision of all the external genitalia and stitching and narrowing of the vaginal opening (infibulation) (Type III). Type II involves excision of the clitoris with partial or total removal of the labia minora while Type VI is unclassified Type IV – Unclassified but involves pricking, piercing or incising of the clitoris and/or labia; stretching of the clitoris and/or labia; cauterization by burning of the clitoris and surrounding tissue; scraping of tissue surrounding the vaginal orifice or cutting of the vagina; introduction of corrosive substances or herbs into the vagina to cause bleeding or for the purposes of tightening or narrowing it¹⁴⁹.
- Immediate health consequences of FGM at any age can include severe pain, shock, hemorrhage, tetanus or sepsis, urine retention, open sores in the genital region, and injury to nearby genital tissue. A 2006 WHO study found an association between FGM and increased complications in childbirth and even maternal deaths¹⁵⁰.
- Specific side effects of childbirth include severe pain, hemorrhage, tetanus, infection, infertility, cysts and abscesses, urinary incontinence, and psychological and sexual problems.¹⁵¹

¹⁴⁸ World Health Organization (WHO), 2005.

¹⁴⁹ WHO, 1998

¹⁵⁰ Lancet, 2006

¹⁵¹ WHO. 2008a.

- In Kenya, female genital circumcision is widely practiced in many communities. The practice is highly condemned as harmful, because it poses a great risk to the health and well-being of women and girls and it violates internationally accepted human rights.
- The United Nations Convention on the Rights of the Child recognizes this as one of the cultural practices that violate the rights of the child.
- The Kenya Children Act of 2001 also describes girls who are likely to be forced into circumcision as children in need of special care and protection.¹⁵²
- In the 2003 Kenya Demographic and Health Survey (KDHS) report, women were asked whether they were circumcised. They were also asked whether their eldest daughters were circumcised and, for those who were not circumcised, whether they had plans of having them circumcised.¹⁵³

The results show that 32 percent of surveyed women are circumcised. This represents a decline from 38 percent recorded in the 1998 KDHS to 31 percent in 2003, excluding the northern districts so as to be comparable.

- The proportion of women circumcised in Northern districts of Kenya increases with age, from 20 percent of women aged 15-19 to 48 percent of those aged 45-49. This implies a steep decline by about half in the practice of female circumcision over the past two decades.
- North Eastern Province, which was included in the KDHS sample, has the largest proportion of women who are circumcised (99 percent), while Western Province, which is mainly occupied by the Luhya ethnic group, has the lowest proportion of women who have undergone genital cutting (four percent).
- 58 percent of women with no education report that they are circumcised, compared with only 21 percent of those with at least some secondary education. The survey results indicate that one-half of Muslim women (50 percent) are circumcised, compared with about one-third of non-Muslim women.
- Female genital cutting varies widely across ethnic groups. It is nearly universal among the Somali (97 percent), Kisii (96 percent) and Maasai (93 percent), and is also common among the Taita/Taveta (62 percent), Kalenjin (48 percent), Embu (44 percent), and Meru (42 percent). Levels are lower among the Kikuyu (34 percent) and Kamba (27 percent). Genital cutting is almost non-existent among Luhya and Luo women (each less than 1 percent).

¹⁵² Section 14 of the Children Act 2001 outlaws subjecting a child to female circumcision, early marriage or other cultural rites, customs or traditions that are likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development.

¹⁵³ KDHS.

- There has been a notable reduction since 1998 in the proportions of Kalenjin, Kikuyu, Kamba, and Mijikenda/Swahili women who reported being circumcised.
- A 2006 WHO study conducted in six African countries (including Kenya) and involving over 28,000 women reported, for example, that women who had undergone Type III ¹⁵⁴FGM suffered a 70% increase in the rate of postpartum hemorrhage.¹⁵⁵ Furthermore, the effects of FGM extend to children, in that the mortality rate among babies during and immediately after birth is much higher for those born to mothers with FGM - 15% higher in those with FGM Type I, 32% higher in those with FGM Type II, and 55% higher in those with FGM Type III.¹⁵⁶

3.9.1 Government Response

Kenya is working to protect its women from the ravages of gender-based violence but the job is far from complete. The diversity of women’s rights civil societies and other NGOs in Kenya is testament to the progress demanded by human rights observers, both nationally and internationally. There are various laws in Kenya specifically governing violence against women. Effective action involves addressing both the complex root causes of GBV, as well as its immediate and long-term effects on victims. Reducing GBV requires multi-sectoral policies, using many legal and policy instruments. Aside from the health sector, the education sector can play an important role in preventing and addressing GBV. Below are a number of policy initiatives addressing GBV.

3.9.1.1 Protection against Domestic Violence (PADV) Act 2015

Domestic Violence as defined in the Protection against Domestic Violence Act (PADV) 2015 “is any form of violence against a person, threat of violence or imminent danger to that person, by any other person with whom that person is, or has been, in a domestic relationship.” The PADV Act 2015 gives effect to Articles 29(c), 45 and 50 (9) as enshrined in the Bill of Rights of the Constitution. Article 29 (c) states that every person has the right to freedom and security, which includes the right not to be subjected to any form of violence from either public or private sources. For years in Kenya, domestic violence has been meted out on women, men and children and there was no specific legislation on such a crime. In May 2015, the PADV Act was assented to with a commencement date of June 2015. The law was perceived as challenging patriarchal power in Kenya and as such some male MPs were against it. Under the Act, the non-conventional offenses now prosecutable included economic violence, emotional abuse,

¹⁵⁴ FGM I: excision of the prepuce, with or without excision of part or all of the clitoris;
 FGM II: excision of the clitoris with partial or total removal of the labia minora;
 FGM III: excision of part or all of the external genitalia and stitching or narrowing of the vaginal opening (infibulation)

¹⁵⁵ WHO, 2008b.

¹⁵⁶ Ibid.

stalking, and interference from in-laws, as well as virginity testing and sexual violence in marriage. Additionally, a welcome clause in the legislation was that any person could report abuse on behalf of the victim; initially it was restricted to only the victim. There are measures in the act to ensure protection of the victim and dependents and at the same time the court can order for counselling services and compensation to the victims. The Act also seeks to protect those in a domestic relationship i.e. those married, previously married, engaged, living in the same household, relatives, children etc. Article 45 (1) stipulates that the family is the natural and fundamental unit of society and the necessary basis of social order and shall enjoy the recognition and protection of the state.

The PADV Act also provides protection for men and thus protects the natural and fundamental unit of society i.e. the family. Most importantly, public awareness on the legislation would be vital for its effects to be felt among citizens. Section 8 of the Act further calls for public education and awareness on issues relating to domestic violence, research and development of programs for eliminating domestic violence and the promotion of reconciliation and non-violent means of resolving disputes within the family. Article 50 (9) directs Parliament to enact legislation providing for the protection, rights and welfare of victims of offenses.

3.9.1.2 Sexual Offenses Act, 2006

The relevant motion was introduced in December 2004. The bill has expanded the definition of sexual offences to include rape and defilement in both sexes and introduced 14 new sexual offences. The bill provides stiffer penalties for sexual offences with more limited requirement of burden of proof for the victims. The bill also establishes penalties for sexual offenders at the high court, as follows:

- Child prostitution - imprisonment of not less than 10 years;
- Child pornography - imprisonment of not less than 6 years or a fine of Kshs. 500,000/=;
- Rape not less than 10 years and can be enhanced to life;
- Attempted Rape - imprisonment of not less than 5 years and can be enhanced to life;
- Sexual Assault - imprisonment of not less than 10 years and can be enhanced to life;
- Compelled or induced acts - prison term of 10 years;

The successful implementation of this law requires concerted multi-sectoral efforts of doctors, the police, judicial officers, and members of the public.

However, the Act fails to criminalize FGM perpetrated against adult women, despite the overwhelming evidence of the physical and psychological damage it causes. Furthermore,

there is real concern amongst observers that the Act has not been matched with adequate capacity-building in terms of training law enforcement officers on how to adequately handle GBV cases, nor adequate resources to ensure its effective implementation. The greater part-of the work of sensitizing local people, government departments and the judiciary to this Act has been undertaken by civil society organizations, despite this clearly being a government responsibility.

3.9.1.3 Children’s Act, 2001

The Government of Kenya enacted the Children Act in 2001 to, among other things; consolidate the laws on children in Kenya and to domesticate the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), which the State had ratified in 1989 and 2000 respectively. The Act is divided into 14 Parts with 200 Sections and 9 Schedules and these address the rights a child is entitled to and the role of the government, parents and other duty bearers in ensuring children enjoy the rights. The rights are interdependent and apply to all children without distinction or discrimination, and are categorized as life and survival, development, protection and participation rights. The implementation of these rights is guided by the key principles of the best interests of the child and non-discrimination. The Act addresses issues of FGM, sexual abuse, and child labor. Though this Act has been in force since March 2003, the National Child Protection Policy (NCPP) was only recently developed to enhance its enforcement. Initiatives by the National Government to ensure its effective rolling out to benefit the intended beneficiaries have not been matched with financial or technical resources. Hopefully, the NCPP will go a long way in assisting the country to fully implement the Children’s Act and to have a functional child protection system.

3.9.1.4 Family Protection Bill

The Family Protection Bill was promulgated by civil society organizations, including FIDA - which assisted in its drafting - and has been available to successive governments in draft form for the last nine years. The Bill seeks to establish a regime of substantive and interim protection orders, akin to the injunctions sought under the Family Law Act 1996. It defines domestic violence as “violence against [a] person, or threat of violence or of imminent danger to that person by any other person with whom that person is, or has been, in a domestic relationship” (section 3(1)). Furthermore, “violence” is not limited in its definition but extended to include abuse derived from cultural or customary practices including FGM (section 3(2) (i). Finally, there are calls for signing of the Marriage Bill 2007 and the Matrimonial Property Bill 2007. The Marriage Bill is a large and comprehensive bill that seeks to consolidate the various laws applicable to customary and state marriages in Kenya. One important element is the prohibition on the return of marriage dowry. Customary rules currently dictate that dowry must be returned if a marriage fails, which prohibits those women without economic means from leaving

abusive or controlling relationships. If adopted, this section will hopefully give women in violent relationships a route to escape cruelty without incurring oppressive and inhibiting financial liabilities.

3.10 NATURAL RESOURCES CONFLICTS

The Kenyan mining sector is small and under-developed. It represents about 1 percent of the GDP or less. In the recent past various mineral deposits have been discovered which can significantly contribute to Kenya's GDP. This includes titanium in Kwale, oil in Turkana, natural gas in Elgeyo Marakwet, soda ash in Magadi, coal in Mui Basin, diatomite, coal and gemstones in the Coast Province, gold in Migori and Kakamega. These resources are expected to contribute up to 15% to the GDP. However, the involvement and consultation of local communities has often been controversial, with communities feeling marginalized and having no say with respect to the benefits derived from these resources. The mining industry has a number of characteristics that draw it into economic and social development at the local, regional, and sometimes national levels:

- mining operations are often conducted in environments where government institutions may be absent, weak, or lacking in capacity. There may also be gaps in essential public services;
- the social and environmental footprints of mining operations often have negative effects on local communities that require compensation or mitigation programs;
- the remote location of many operations heightens expectations for employment and economic development in host communities. However, the enclave nature of the mining industry can limit the trickle down of benefits unless specific social investment programs are undertaken;
- the governance of natural resources is especially important in enabling confidence of citizens and if poorly handled it often becomes a chief motivator of ethnic or identity-based conflicts. Land and resource disputes run the danger of generating more and deeper divisions, undermining the foundations of society, and reducing its ability to deal with larger-scale political and social conflicts in a peaceful manner.

Disputes over the ownership, use and extraction of natural resources - whether land, renewable resources such as timber and water, or non-renewable resources such as hydrocarbons and minerals - often play a disruptive role in peace and security. Even where there is no open, violent conflict, resource disputes can perpetuate potentially dangerous conditions of instability in communities. The availability and value of resources are influenced by a range of complex and unpredictable natural and social

factors such as weather patterns and trade flows. Disputes over natural resources also occur on different scales in ways that interconnect at local, regional, national and international levels.

Resource disputes can involve a diverse range of actors and stakeholders: county governments, local communities, civil society organizations and private companies, among other players. These disputes are often characterized by asymmetries of capacity, power and influence among the parties- multinational companies against local communities, central government bureaucrats against indigenous groups, etc. The following section will discuss current situation of various valuable resources.

3.10.1 Oil

- In October 2013, there were community demonstrations in Turkana County and the storming of an oil site, resulting in looting and destruction of property. Tullow¹⁵⁷ had to suspend operations for several weeks because of the fragile security situation.¹⁵⁸
- The causes of the community anger towards Tullow was driven not so much by the externalities of oil exploitation but rather by the unmet expectations that the communities had for Tullow.
- There was a strong perception within the Turkana communities and among pastoral groups in Turkana in general that they had been “forgotten” by the central government, who they believe does not care if they live or die.¹⁵⁹ This perception and the high development needs in Turkana create a basis for high community expectations from oil companies operating in the area. The communities see Tullow coming in with heavy and expensive machinery, building roads and drilling water that the community is unable to access. But the most important issue for the community was employment. The community wants Tullow to give them jobs.
- Community members themselves acknowledge that the locals are not qualified. They have suggested that Tullow could offer apprenticeships to their youth.

¹⁵⁷ Tullow Oil plc is a multinational oil and gas exploration company founded in Tullow, Ireland with its headquarters in London, United Kingdom. It has interests in over 150 licenses across 25 countries with 67 producing fields and in 2012 produced on average 79,200 barrels of oil equivalent per day. In Kenya Tullow are exploring oil and gas in Turkana – Ngamia 1. The Ngamia-1 exploration well in Kenya marked the start of a significant programme of drilling activities across the acreage. In 2012, the Ngamia-1 well successfully encountered over 200 metres of net oil pay, the second East Africa onshore tertiary rift basin opened by Tullow. This has since been followed by further exploration success in the South Lokichar Basin at the Amosing, Twiga, Etuko, Ekales-1, Agete, Ewoi, Ekunyuk, Etom, Erut and Emekuya oil accumulations.

¹⁵⁸ J. Schilling1, R. Locham, T. Weinzierl, J. Vivekananda and J., May 2015.

¹⁵⁹ Schilling et al. 2012b; de Vries et al. 2006; Lesorogol, 2008; McCabe, 2004.

Several respondents felt that as a community, they are stereotyped as being illiterate and ignorant pastoralists. There are no Turkana in management positions, and the best job a young Turkana man can get is as a security guard (earning about Kshs 18,000 or USD 190 per month).

- In other areas such as Elgeyo Marakwet and Baringo, complaints also revolve around jobs as locals protests exclusion. In response to the protests, Tullow Oil, its partner Africa Oil and the government drew up a memorandum of understanding (MoU) agreeing to work together to resolve issues that caused the protests as quickly as possible in order to avoid a declaration of force majeure.
- However, a leaked document detailing Tullow Oil's pledges, which included providing the government with a breakdown of its employment and utilisation of goods and services; a formal grievance resolution procedure; commitment to doubling of social investment budget for 2014 to US\$2 million from US\$1 million in 2013; and ensuring that Tullow Oil refiners its local content program.¹⁶⁰ Tullow Oil has subsequently published a report (pamphlet) on its local content program detailing levels of employment by levels of skills and by locality of employees.
- The document shows that by the end of 2013, Tullow's total workforce stood at 2155, of which only 285 personnel, about 13%, were expatriates. The remaining 1,870 were Kenyan citizens, 60% of whom are Turkanas. In the same report, Tullow Oil disclosed that in addition to spending the Kshs 4.1 billion on local suppliers in 2013 (2012 - Kshs 2.4 billion), its contractors also spent Kshs 4.1 billion on Kenyan businesses in 2013, Kshs 259 million of which was on Turkana businesses. Verifying these figures to get the true position of Tullow's commitment to local content still remains a big challenge. A scramble for employment opportunities within Tullow is also proving to be a source of conflict between communities in Turkana. Communities in Turkana South do not want people from Turkana East to take "their" jobs and vice versa. This is because all drilling operations are in Turkana South and the locals in the South consider those from the East to be "foreigners," out to grab their jobs.
- Land also remains a big issue in Turkana and is the third most critical conflict driver. Traditionally Turkana land is communal land, which means there is no individual ownership. However, the government of Kenya has given Tullow and Africa Oil licenses to explore oil reserves in Turkana. There were no proper community consultations or compensation for the acquired land. The challenge of adequately protecting land rights is complicated by community members who do not understand the laws governing customary land.

¹⁶⁰ This was an MoU agreement between the Turkana community and Tullow.

- Kenya has proved progressive in recent years by committing to institutionalized customary land rights, but these structures and policies are in their infancy. The ability of customary land owners to negotiate their entitlements with oil developers and revenue-hungry authorities is yet to be tested and proved. Any payments are likely to further increase community expectations for more payments, especially because the compensation for the lost resources will always be seen as insufficient.
- The oil and gas sector also places a burden on the environment and intensifies the threat of disputes in communities. The environmental fallout of oil and gas development may impact certain segments of society differently. For example, women are traditionally the community members who collect firewood and water. Oil and gas development may force them to go farther to collect those resources,
- Water in the oil and gas sector in Turkana is also a matter of concern. Oil exploration (and later exploitation) needs significant amounts of groundwater which the communities depend on. Communities in Turkana actually expect Tullow to give them water. To a limited extent, Tullow is doing this: drilling boreholes, installing water tanks and filling them. In addition, water points with pumps are set up in communities. However, community members reported that Tullow only started to share the pumped water after protracted vocal complaints from the community.

3.10.2 Forests Conflicts

- Forest conflicts in Kenya are part of a broader set of natural resource management conflicts. They are often associated with land-use and livelihood conflicts centered on community-outsider relations, which are based on divergences between customary and statutory resource tenure system.¹⁶¹ The failure to integrate and adapt legal forms of land and resource tenure with the reality of local livelihood practices almost invariably leads to conflict. The legitimacy and role of local and community level representatives is at the heart of the matter.
- In other areas, foresters collude with timber companies to defraud the State. Further, in many cases, forest land has been allocated to ‘developers’ under very unclear circumstances, while in others, even water catchment areas have been placed under agriculture by local communities. All these have led to forest degradation and the demoralization of honest officers.
- Conflict also arises over infringement of indigenous rights. For instance, in Mau Forest Reserve, the Ogiek indigenous community claim the rights to manage the

¹⁶¹ Barney, 2007.

reserve. However, due to their small numbers, the Ogiek have been an easy target for those seeking land on which to farm or graze. Further, they have not been able to speak up and be heard for the same reason. Everyone has ignored the fact that the Ogiek too have a right to their lands.

- The Forest Department has been in serious conflict with the Ogiek regarding access to natural resources. The Forest Department considers the Ogiek to be squatters in a gazetted government forest, while the Ogiek consider the forest as their only ancestral home which they are entitled to access anytime.
- The result is that there are constant skirmishes with the communities - forests are often set on fire, and communities do not protect forests against illegal poachers.
- There is no transparency and accountability in the management of forests. Thus, in a number of areas, forest officers and forest guards hold their own 'courts', 'fine' offenders, and confiscate whatever has been illegally obtained. The fines and the confiscated materials end up in the pockets of the forest officer or forest guards.
- The Ogiek claim they no longer get enough honey for their needs. They claim their beehives are burnt and destroyed when trees are felled. They fear that because of their small numbers, they will lose land if the new settlers are allowed to stay permanently and they will become dominated by the settlers in every way. They are scared of being completely assimilated and therefore becoming extinct. Having been marginalized for so long and therefore being weak in all spheres of life, they cannot compete socially and economically with better equipped settlers.
- Corruption is also a major issue in the management of forests. Our field findings reveal that most community members have to pay a certain amount of cash to be able to access firewood from the forest, or use the forest as farms. In other cases, the "rich member" of the community pays to do lumbering. The poor members protest against this situation because it unjustifiably denies them the opportunity to access resources.
- Through legal reform in 2005, GoK introduced increased involvement of civil society in forest management. However, lack of adequate local institutions to constructively include citizens has led to new conflicts and power struggles among stakeholders.
- The establishment of Community Forest Association (CFAs) under the Forest Act 2005 under forest decentralization processes has not reduced conflicts. There is little evidence of how these reforms shape the livelihoods of people living in and around forests.

- It is also well-documented that conflicts over land between ethnic groups living around the forests have been orchestrated and escalated at the national level for political purposes, in particular in connection with elections. A complicated land-ownership history (e.g. excision of state forest and extensive illegal, irregular and ill-planned settlements) and increasingly strained relationships between ethnic groups has opened the gates for political manipulation of the beliefs, perceptions and attitudes of citizens in the Mau Forest Complex.

3.10.3 Government Response

3.10.3.1 Natural Resources Benefits Sharing, 2014

The Natural Resources (Benefit Sharing) Bill, 2014, seeks to establish a system of benefit sharing in resource exploitation between resource exploiters, the national government, county governments and local communities and to establish the Natural Resources Benefits Sharing Authority (BSA). Other connected purposes are also included. The law is to apply with respect to the exploitation of petroleum, natural gas, minerals, forest resources, water resources, wildlife resources and fishery resources. The functions of the BSA, will be, *inter alia* to:

- coordinate the preparation of benefit sharing agreements between local communities and affected organizations;
- review, and where appropriate, determine the royalties payable by an affected organization engaged in natural resource exploitation;
- identify counties that require to enter into a benefit-sharing agreement for the commercial exploitation of natural resources within the counties; and
- oversee the administration of funds set aside for community projects identified or determined under any benefit sharing agreement.

The Benefit Sharing law can go a long way in boosting the quest for environmental justice for Kenyans, as far as natural resource management is concerned. Arguably, the first step towards preventing or eliminating natural resource-related conflicts is to promote equitable sharing of accrued benefits in natural resources exploitation. People who feel that they are fairly and meaningfully involved in decision-making and benefit-sharing are more likely to coexist peacefully.

3.10.3.2 Constitution of Kenya with Respect to the Environment

The Constitution of Kenya provides that the obligations of the State in respect of the environment include, *inter alia*, to:

- ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources;

- ensure the equitable sharing of any accruing benefits;
- protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;
- encourage public participation in the management, protection and conservation of the environment;
- protect genetic resources and biological diversity; and
- utilize the environment and natural resources for the benefit of the Kenyan people.

These provisions are in line with the Nagoya Protocol, whose main objective is the fair and equitable sharing of benefits arising from the utilization of genetic resources, including appropriate access to genetic resources and appropriate transfer of relevant technologies, taking into account all rights over those resources and technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components. Notably, the Constitution creates various avenues for enhancing access to justice in Kenya. There are now several provisions specifically for access to justice, public participation, Alternative Dispute Resolution (ADR), traditional dispute resolution mechanisms and the overhaul of the judicial system.

3.10.3.3 The Kenyan Environment and Land Court

The Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability declares that an independent judiciary and judicial process are vital for the implementation, development and enforcement of environmental law, and members of the judiciary, as well as those contributing to the judicial process at the national, regional and global levels, are crucial partners for promoting compliance with, and the implementation and enforcement of, international and national environmental law. It affirms that judges, public prosecutors and auditors have the responsibility to emphasize the necessity of law to achieve sustainable development and help make institutions effective. The Constitution of Kenya empowers the Environment and Land Court to hear and determine applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution. Where applicable, the court is empowered to adopt and implement, on its own motion, with the agreement of or at the request of the parties, any other appropriate means of alternative dispute resolution including conciliation, mediation and traditional dispute resolution mechanisms in accordance with Article 159(2) (c) of the Constitution. Indeed, where an ADR mechanism is a condition precedent to any proceedings before the Court, the Court must stay proceedings until such condition is fulfilled. The first way is through supporting and enforcing the outcome of ADR mechanisms and the second by way of safeguarding the rights of persons where they are called upon to do so, for instance under Article 70 of the Constitution.

3.10.3.4 The Mining Act 2016

Under the Mining Act 2016, all unextracted minerals on any land are vested in the government,¹⁶² subject to any rights the government may have granted any person, and making it an offence for any person to deal with minerals without authorization. The bill vests the entire property in and control of minerals in, on or under any land in Kenya in the government in trust for the people, regardless of any subsisting rights over any land containing minerals. The government is then bound to deal with these minerals only in accordance with this law. The bill establishes a sovereign fund which is administered and managed by the Sovereign Fund Board (SFB).¹⁶³ The object of the Fund is to:

- support government making savings from mineral revenues to ensure sustainable and stable future income;
- provide stabilization support in times of economic stress;
- strengthen the Republic's long-term financial position: and
- finance expenditure on pensions.

The Fund shall be held in an account in the Central Bank of Kenya. The SFB, comprising Principal Secretaries responsible for Mining, Trade, Finance and Energy, shall be responsible for the administration and management of the Fund. The Bill provides that at least 25 percent of all mineral rights revenues, including royalties, and royalty sales proceeds, mineral revenue-sharing payments and bonuses received by the Republic shall be paid in full into the Fund. Other sources include contributions and other payments required by this Act or any other written law to be paid into the Fund; and any other money as may be appropriated to it by Parliament. The law proposes that communities get 20 percent of the mining royalties paid by companies commercially producing minerals across the country. This is a radical change from the past, where communities used to get nothing, and better than a recent proposal of five percent. The proposals are contained in the Natural Resources (County Royalties) Bill, 2013 allowing for: national government 60 percent, county government 20 percent and community 20 percent. The Bill is expected to quell fights between mining companies and local communities on sharing proceeds from minerals. This has been a factor that has held back the commercial production of minerals and rare earth elements, despite some areas having large deposits. It spells out the specific areas where the beneficiary communities can use the returns from their mineral wealth as education, health, water and roads.

¹⁶² Mining Act, 2016.

¹⁶³ Ibid.

3.10.3.5 Petroleum Act

The Petroleum Act states that all petroleum is vested in the government. This is consistent with the 2010 Constitution, which states that all minerals and mineral oils shall vest in the national government in trust for the people of Kenya. However, under the Constitution, the administration of minerals and mineral oils is to be vested in the NLC. The Act specifies the distribution of the government share of petroleum revenues: 75% to the central government, 20% to the county government and 5% to the local community where oil and gas have been discovered. Provisions for “local-local content” are stipulated, which means that communities near the discovery areas are given first preference to provide services to the operations in these areas. The law also proposes a Training Fund, which would be used to train Kenyan nationals in petroleum operations. Transparency in the oil industry requires, inter alia, a commitment to publish production volumes, petroleum revenues and other relevant data, on a project-by-project basis on the contractor’s website. These features are not exhaustive and the Government is expected to publish a detailed analysis of the Act as it undergoes review and final enactment. It does not make provision for an investment framework for managing petroleum revenues as well as clear rules for petroleum receipts and withdrawals or payments from the Sovereign Wealth Fund, which the government plans to create. The adoption of this concept of sovereign funds in line with best practices as it helps with managing community dissent and conflicts that arise from the disaffection among communities who feel their rights to their heritage and livelihoods have been infringed upon, and environmental sustainability threatened. Where the development needs of such communities are not addressed, it could lead to violent conflicts and disruptions in production, with grave consequences for revenue inflows to the National Treasury. Nigeria’s Niger Delta is a good example.

3.10.3.6 Local Content

Legislated local content provisions are becoming commonplace in oil and gas regulation across developing economies. Such provisions aim to add value by creating jobs, developing skills and fostering development of local business, thus ensuring that a country’s oil and gas industry contributes broadly to the national economy, rather than simply in terms of revenue. Local content has often been expressed in terms of national content, that is, the amount of national goods and services used by foreign oil and service companies. Some countries have developed specific laws and/or regulations to implement local content. Nigeria, for example, passed the Nigerian Content Act 2010. Ghana also passed its Petroleum (Local Content and Local Participation) Regulations (LI2204), detailing minimum requirements for local employment, as well as use of local expertise, goods and services and company ownership. Kenya’s Model PSC as contained in the Petroleum (Exploration and Production) Act of 1986 contains two clauses on local content. They stipulate that, “the contractor, where possible, shall employ Kenyan

citizens in petroleum operations, alongside training those citizens”,¹⁶⁴ and provides for, “a contribution on the part of the contractor for a negotiable sum to be contributed to the Ministry’s training fund.”¹⁶⁵ Kenya’s draft National Energy Policy (NEP), recognizes “the need to develop local talent and capacity in energy resource exploitation and infrastructure development. It is also important that the opportunity is availed for provision of services and goods by locals in the exploitation of natural resources and infrastructure development.”¹⁶⁶ Development of local content regulation is a work in progress, and the NEP envisages this evolving over the medium-term (to 2023) and long-term (to 2030). The Upstream Bill 2014 reflects this policy and contains local content provisions which call for (i) contractors to submit local content plans, (ii) the creation of a Local Content Development and Monitoring Unit, and (iii) the creation of a Training Fund to train Kenyan nationals in Petroleum Operations. The Upstream Bill also calls for first consideration to be given to services provided within the county. That said, the provisions are skeletal and leave out important components that would make local content a strategic tool for facilitating the integration of the oil sector with the non-oil sector of the economy. Kenya should draft a standalone local content law which fleshes out important provisions - the draft should be developed and passed soon so that Kenyans can benefit as the oil and gas sector develops, and not once the sector is already well developed.

3.10.3.7 Environmental Restoration Orders

Section 108 of EMCA provides for issuance of environmental restoration orders on any person by NEMA or by a court of law. In the latter case, issuance is only where proceedings have been instituted by an aggrieved person. When issued, such an order would, inter alia, require restoration of the environment to the condition it was in prior to the degrading action and award of compensation to any person harmed by the degrading action. In this case, the perpetrator of the degrading action is liable to meet the full cost. In mineral resource utilization, this provision, when enforced, effectively has the potential to mitigate the nightmare of non-rehabilitated disused mining sites. A case in point is the restoration work undertaken by La Farge Ecosystems, the Bamburi Cement manufacturer in Mombasa. The company restored their former limestone mine, converting it into the income generating nature trail and wildlife Haller Park. Under the current legal framework, EMCA presents a practical mechanism to stem these adverse effects through the Environmental Impact Assessment (EIA) process. Regulation 1825 requires an EIA report to identify environmental impacts of a project, and to propose mitigation measures. Interpreted liberally, this provision empowers NEMA to require a

¹⁶⁴ Petroleum (Exploration and Production) Act of 1986 (s.13.1)

¹⁶⁵ Ibid. (s.13.3)

¹⁶⁶ Draft National Energy Policy, Ministry of Energy accessed from <http://www.eisourcebook.org/cms/January%202016/Kenya%20Draft%20National%20Energy%20Policy%202014.pdf> in December 2017

mandatory resettlement plan, where involuntary displacement is identified as an environmental and socio-economic impact. The titanium mining project in Kwale District provides an example of the lack of a proper legal and policy framework to address involuntary displacement in Kenya. It also demonstrates the adverse socio-economic and environment impacts where the process is not handled properly.

3.10.3.8 Freedom of Information Bill

Article 35 of the Constitution establishes the right of every Kenyan to access information when required for the exercise of a fundamental freedom. However, Kenya's petroleum sector have non-disclosure agreements as provided for in the industry law on petroleum exploration and production (1986), which bars any party in a petroleum contract from disclosing any information, material or not. Whilst PSCs stipulate the scale of revenues which flow to the government, the non-disclosure agreement means that there cannot be any kind of non-governmental oversight of government receipt of oil revenues. Therefore, ensuring that oil revenue contributes to socio-economic development is extremely difficult.

4. GAPS AND RECOMMENDATIONS TOWARDS CONFLICT MANAGEMENT

This section establishes gaps and recommendations towards better management of identified conflicts.

4.1 MANAGING CREDIBLE ELECTIONS TO AVERT ETHNO-POLITICAL VIOLENCE

Kenyan politics has historically been a contest in which the leaders of the country's largest ethnic groups form ethnic coalitions among themselves and with the leaders of smaller groups to dominate their rivals. Ethnic fault lines run deep because the country is divided into five large groups that constitute 68 percent of the population—the Kikuyu and related groups (21 percent), the Luhya (14 percent), the Kalenjin (13 percent), the Kamba (10 percent), and the Luo (10 percent)¹⁶⁷. During the 2017 elections, we will have two tribal-based coalitions, Jubilee and NASA competing. It is of the utmost importance that elections are well managed so that disputes are limited. Unfortunately, IEBC preparations for 2017 are dangerously behind schedule amid political polarization and growing distrust among the competing coalitions. Given the country's troubled electoral history, it is essential that politicians and other key stakeholders discuss and agree on the measures necessary for credible polls and a way forward on the electoral timeline. During the 2007 and 2013 elections, it was concluded that the technical system for tallying, recording and transmitting results was defective and an overhaul was called for. Past elections were compromised by lack of transparency in tallying and transmitting. The installation of a transparent, efficient electoral management system would go a long way to assuaging public concerns.

4.1.1 Improve Voter Identification and Electronic Transmission of Results

Kenya's electoral commission, IEBC, like many in Africa, hopes to deploy a system with biometric voter identification and electronic results transmission so as to avoid the ballot-stuffing and dubious turnout figures that plagued past elections, particularly in 2007. The IEBC estimates that the vendor that wins the contract will need 60 days to deliver the custom-made integrated electoral management system. With little time left in which to build public confidence, the IEBC needs a communications strategy to update voters

¹⁶⁷ Current census and population distribution of Kenya accessed from <http://www.kenya-information-guide.com/kenya-population.html> December 2017

regularly. More importantly, it needs a mechanism to discuss progress with politicians and consult on key decisions it makes on preparations to assure them the vote will be credible, free and fair. The Commission should expand its Election Preparedness Task Force, currently composed of IEBC officials, representatives of the interior ministry, judiciary and director of public prosecutions. Giving civil society and the opposition greater access to all aspects of preparations would boost trust in the process. The ruling party should not use state resources to gain an unfair advantage and opposition leaders should play a constructive role in monitoring and supporting the electoral process and commit to using legal channels to air any grievances.

4.1.2 Have Presidential Contenders Sign Code of Conduct

The main presidential contenders could help by publicly signing a code of conduct ahead of the official start of the campaign, including a pledge to seek legal recourse in the event of disputes and a call to supporters to refrain from violence. Establishing peace committees comprising different community leaders especially in contentious areas would help to bring groups together and limit the risk of communal violence once results are announced. The National Cohesion and Integration Commission should also closely monitor hate speech by politicians on the campaign trail and prosecute offenders.

4.1.3 Strengthen Civil Society in Countering Youth Mobilization for Violence

Donor community should strengthen civil society organizations that focus on countering mobilization of youth for violent activities. Youth in conflict-prone areas, including Nairobi's slums, Eastleigh, the north-western Rift Valley, Kericho, and the Coast, are particularly vulnerable to being recruited by elites for the purpose of fomenting electoral violence. Strengthening civil society networks in these areas is arguably the most effective method to counter their mobilization for violence. Donors should also continue their support of the Elections Observation Group (ELOG), a network of civil society organizations intending to provide domestic electoral observers.

4.1.4 Support Police on Electoral Preparedness

Support should also be given to the National Police Service to strengthen Kenya's police to be better prepared for dealing with election-related violence as it unfolds. Put simply, Kenya needs to recruit, train, and deploy more cops. However, any assistance to build greater police capacity must be provided in a manner that does not perpetuate the poor record of the police with respect to human rights.

4.1.5 Support Electoral Monitoring

International partners should mount a concerted multilateral electoral observation mission consisting of two parts: long-term observation to monitor preparations for the elections at all levels across Kenya and continuing through the end of the elections; and a tracking of outbreaks of violence before, during and after the elections to ensure free and fair elections. The Carter Center and/or the National Democratic Institute have the capacity to mount such observer missions, and the UN Electoral Assistance Division could be engaged to maximize coordination.

4.1.6 Manage Hate Speech Particularly On-line during this Election

Hate speech was a significant driver of the 2007 post-election violence. Hate crimes, ethnic cleansing and inflammatory speech have often found fertile ground in Kenya's election campaign period. Political leaders on both sides have often used dehumanizing descriptions of opposing political groups and the ethnic communities that supported them. Politicians often seek to manipulate community grievances to whip up support in every contested election. The grievances revolve around land, employment and access to the material benefits of political office. The new Constitution and communications legislation now largely ban hate speech, and broadcasters are responsible for ensuring they work within this law. All radio stations also have 'delayed broadcast devices' so that hate speech can be blocked. Hate speech via text messages, however, is far more difficult to control, because it cannot be filtered out by network operators. To further avert incidences of hate speech, the Government formed the NCIC. However, 90% of dangerous and inflammatory hate speech in Kenya is propagated online, Facebook being the main channel.¹⁶⁸ The Communications Authority of Kenya, which regulates electronic communication, has announced plans to closely monitor social media activity and monitoring equipment has reportedly been secured. The regulator has also warned that it could pull the plug on social media if national security comes under threat.

The Communications Authority has regulatory powers under the licensing provisions for international voice or data services. In addition, the Preservation of Public Security Act has a provision that imposes criminal liability on journalists suspected of compromising public safety, public order, morality or defense. The Prevention of Terrorism Act also allows limitation of the freedom of expression. This can also be used by the government to regulate and monitor social media platforms during this election period.

Definitions of hate speech must strike a balance between, on the one hand, protecting freedom of expression and, on the other, restricting forms of speech that seek to incite discrimination, hostility or violence. Only provocation and incitement fit accepted academic and legal understandings of hate speech; defamation, antisocial behaviour and dissemination of false news do not. Police have been hesitant to suppress speech or text

¹⁶⁸ NCIC, 2017.

that incites hatred or violence toward other ethnic groups, viewing the behaviour as a component of the freedom of expression guaranteed under the 2010 Constitution and the Bill of Rights.

There is also an initiative called UMATI, whose overall goal is to detect, online, signals of any tensions that may be mounting among Kenyan citizens, in order to offer a picture of the major fault lines characterizing different phases of the electoral contest, and to sound the alarm before it is too late. Hate speech online is situated at the intersection of multiple tensions; it is the expression of conflicts between different groups within and across societies; it is a vivid example of how technologies with a transformative potential such as the internet bring with them both opportunities and challenges; and it implies complex balancing between fundamental rights and principles, including freedom of expression and the defense of human dignity.

The Internet's speed and reach make it difficult for governments to enforce national legislation in the virtual world. Issues around hate speech online bring into clear relief the emergence of private spaces for expression that serve a public function (e.g. Facebook, Twitter), and the challenges that these spaces pose for regulators. Despite initial resistance, and following public pressure, some of the companies owning these spaces have become more responsive towards tackling the problem of hate speech online.

Hate speech relies on tensions, which it seeks to re-produce and amplify. Such speech unites and divides at the same time. It creates "us" and "them". Although hate speech is an offensive and low expression of dissent, it can also be thought of as a window into deeply-rooted tensions and inequalities, which themselves need addressing beyond pure speech issues, and beyond the online dimension.

4.2 IMPROVING MANAGEMENT OF CROSS-BORDER CONFLICTS

Some cross-border conflicts within and between pastoralist communities, such as raiding and cattle-rustling, have a long history and have to some extent become an aspect of traditional pastoralist culture along Kenya's borders with her neighbours. However, such conflicts have become increasingly destructive and less manageable along the vast border areas. The following are some specific factors contributing to the risk of such conflicts between pastoralist communities:

- One, *cattle rustling*. Cattle rustling has moved beyond limited rustling among pastoralist communities along the border and has become embedded in wider criminal networks serving national and regional black markets. Responses by pastoralists to try to protect and defend their livestock have often tended to exacerbate the problems, as they contribute to local "arms races" and local overgrazing as herds are concentrated in defended areas.

- Secondly, *small arms*, including automatic and semiautomatic weapons have become widely available and are increasingly used along the borders. These weapons come from a variety of sources in the region, including conflict areas in Sudan, Northern Uganda, Somalia as well as from insecure official weapons stockpiles. This arms availability has made traditional raiding more deadly, which in turn has made conflict management and resolution more difficult. Insecurity from criminal activity has increased as a result of wider access and use of semi-automatic weapons, particularly in relation to livestock rustling by criminal gangs.
- Thirdly, *inadequate policing and state security policies*. National and district police and security services lack the capacity to provide security to pastoralist and other communities. This has increased insecurity and the tendency towards self-defence and retaliation. Inappropriate arming by state authorities of local militias in response to security problems also appears to have exacerbated problems. Inappropriate regional development policies pursued by regional governments have tended not only to neglect the needs of pastoralists but also often run against pastoralist interests. This has exacerbated problems and insecurities of border communities, particularly in relation to access to scarce water and pasture. To manage cross border conflicts, the following measures are being recommended:

4.2.1 Enhance Capacity of IGAD to engage with pastoralist regions

The Government and the international community should enhance the capacity and commitment of IGAD to manage regional policies towards semi-arid and arid regions of the Horn of Africa. The international community should provide all appropriate cooperation to efforts by IGAD to tackle small arms proliferation and to combat and prevent illicit arms trafficking.

4.2.2 Enhance IGAD's Capacity for Fast and Effective Conflict Response

Border areas in the Horn of Africa have long been zones of inter-communal conflict and unresolved cycles of revenge. Today, easy access to automatic weapons is raising the death toll. CEWARN, whose strategic focus expanded dramatically in 2012 from coordinating responses to pastoral conflict to elevating the use of early warning analysis to inform national government policy responses across multiple conflict issues, should broaden its approach to include capacity to mobilize appropriate and measured response by member Governments. CEWARN should be supported to fulfill its mandate.

4.2.3 Empowering Border Communities to Improve their Security

IGAD and the Government of Kenya should develop and implement community-led, owned, and managed security plans in ways that increase social cohesion among the border communities. The communities should have increased capacity to engage amongst

themselves and with the local officials and share information about their security and available humanitarian services.

4.2.4 Support Efforts to Address the Political Marginalization of Pastoralists along the Border

The Government should strengthen participation of pastoralist communities along the border in political institutions and decision-making processes, through awareness raising and training programs and developing mechanisms to enhance participation in consultation processes. The Kenyan Government should enhance opportunities for pastoralists to participate in county and national level policy processes, particularly as regards increasing opportunities for citizens to participate in public life through civil society organizations.

4.2.5 Support Conflict Prevention and Reduction Activities at the Sub-County Level along the Borders such as:

- support efforts to improve understanding of the dynamics and trends of conflicts;
- support efforts at the county level to experiment with alternative responses to conflicts involving pastoralists;
- establish legal precedents to support the appropriate use of customary procedures for dispute settlement and of customary approaches and traditional governance systems for addressing natural resource conflicts and managing and reducing violent conflict;
- support Sub-County Peace and Development Committees and preparation of district strategies for conflict prevention, conflict management and longer-term peace-building.
- support the role of women in local level peace-building;
- support attempts to resolve open conflicts;
- assist measures to address underlying causes of specific conflicts;
- train sub-county authorities and security committees and sensitize them to combating illicit arms trafficking;
- support appropriate reforms of regulations and land tenure rights relating to access to pastoral land and water for pastoralists and other stakeholders;
- support programs to ensure emergency access to water and pasture during droughts; and
- reduce economic vulnerability during crises such as droughts, for example, through programs to assist pastoralists with capital and restock their herds after the drought.

4.2.6 Support Somali State-Building

The Government of Kenya should continue supporting Somalia to build its state. Though a complex initiative, Somalia's best hope for state revival may lie in the explicit pursuit of a state in which a central government with very limited power relies on a diverse range of local authorities to execute core functions of government and "mediate" relations between local communities and the state. The nascent central state limits itself to a few essential competencies not already provided by local, private sector, or voluntary sector actors. The result would be quite complex and, from a state-building perspective, invariably "messy," with a wide range of parallel, overlapping, and in some cases contested political authorities. However, a mediated governance approach would enable external aid agencies to support state-building in Somalia even if the Transitional Federal Government (TFG) collapses, in that support to local governance bodies and systems would be understood not as support to a rival to state authority but as a local partner which can be "plugged in" to an emerging central government if and when it is revived.

4.2.7 Manage Ethnic/Clan Politics along the Border Particularly on the Kenyan Side

The single most powerful conflict driver on the Kenyan side of the border has been political, specifically the abuse of privileged positions by MPs as a form of political patronage and a means of engaging in incitement of communities. This in turn has contributed to deterioration cordial community relations. The consequence which is denial of access to grazing areas, environmental degradation, and deterioration of livelihoods among pastoral households that constitute a genuine crisis in the region. It has also created ideal conditions for hardened ethnic identities, communal clashes, and violent crime. Supporting responsible political utterances is critical towards achieving stability at the border.

4.3 COUNTERING VIOLENT EXTREMISM IN KENYA

In September 2016, Kenya launched its new strategy aimed at preventing violent extremism, against a background of increased threats from al-Shabaab, homegrown militants, and ISIS sympathizers. On September 7th, President Uhuru Kenyatta vowed that the National Strategy to Combat Violent Extremism would pool resources from government, civil society and the private sector in support of counterterrorism efforts. The plan would emphasize de-radicalization instead of military engagement. The effort would be headed by Kenya National Counter Terrorism Center director Martin Kimani.¹⁶⁹ The security aspects of the radicalization are over-emphasized, ignoring underlying issues and therefore making any response fragmented and ineffective.

¹⁶⁹ *Daily Nation* 15 September 2017 and Jamestown Foundation.

There is also too much emphasis on the role that religious ideology plays as a driving factor while ignoring the possibility of other variables related to identity, such as ethnicity or nationalism. It can be argued that individuals or groups derive their non-negotiable values from such contributing factors. Besides, there is a tendency for states to pursue counterproductive short-term approaches that suit the political expediency of the moment and ignore long-term strategies that might solve the problem; often such approaches focus on a security-centric paradigm.

On March 27th, 2017, Kenya announced that it had formed a committee which would spearhead efforts to prevent and counter violent extremism. The group is reported to include all Principal Secretaries and the Inspector General of Police. A government spokesman termed the effort a “cross-cutting, multi-agency national campaign” and said it would include “preventative, mitigation, and rehabilitative measures” to complement ongoing counterterrorism efforts. The committee would operate under the country’s new CVE strategy announced last September to rally and unify national efforts to reject violent extremist ideologies and curb extremist recruitment. In view of the current National Counter Terrorism Strategy, the study wishes to recommend the following:

- To achieve the CVE goal, which is fundamentally a prevention mission, there needs to be a transformation/overhaul of the traditional security approach towards a more integrated approach.
- Increasingly, religious institutions form a key part of any strategy for countering violent extremism. The resilience and governance capacity of mosques, madrassas and imams, especially, need to be strengthened to help create strong and unified approaches to countering radicalization.
- In order to counter the negative impacts of destructive narratives and violent attacks by extremist groups designed to fuel inter-communal tensions, inter-religious dialogue is imperative between Muslims and Christians particularly in the Coastal region of Kenya. Indeed, both intra- and inter-religious dialogue is necessary in those areas where multiple religious communities are present. By increasing the knowledge and awareness of radicalization processes amongst FBOs, local government and CBOs, a network of groups and individuals can be formed to help identify and quickly respond to such dynamics.
- Communities should be engaged in the process of protecting themselves through tailored and inclusive neighborhood watch groups and other community-based early warning mechanisms. Radio can also be used to support such engagements, helping raise awareness about community-based programs and how to become involved.
- The Government should upscale social media tracking. Engagement strategies in this space should include a mechanism to analyze how social media are being

used in order to track the emergence and use of propaganda, with a view to informing counter-narrative strategies. While there are wide-ranging views around the effectiveness of those strategies, engagements that seek to promote the stories of survivors, the impact of terrorism on communities, and “front-line” realities could prove beneficial if combined with targeted dissemination strategies. Documentaries, radio programs and other media engagements need to be promoted in state and non-state institutions, such as schools, universities and religious institutions.

- Individuals and groups increasingly use social media as a platform to spread extreme propaganda, recruit new followers and plan and co-ordinate actions and activities. Extremists pass on material in closed web forums, and the content often directly advocates political violence and terrorism. In recent years, the trend has been for propaganda to be spread on big social media platforms like YouTube and Facebook and it is important that Government remains keen in monitoring the same.
- The Kenyan Government should strengthen prisons/correctional facilities and transitional/rehabilitation centers. Correctional facilities are currently under-prepared to deal with violent extremists and, as such, can contribute to radicalization processes in Kenya rather than hinder them. Correctional facilities and transitional/rehabilitation centers alike must be equipped with effective de-radicalization curricula and qualified staff. Ideally, links should be made with both mentoring and livelihoods programs. These institutions should be nationally owned to help ensure stability and alignment with ongoing law, order and security measures.
- Individuals who are disengaging from violent extremist groups may be suffering from trauma, and may also experience significant problems reintegrating if they are not provided with adequate support. There is a need for more psychosocial support programs.
- Low levels of literacy and numeracy on the one hand, and the growth of radicalization on the other, have been characteristic of North Eastern Kenya. Extending both primary and secondary education, and improving the quality of such education, can help children/adolescents/youth to develop critical thinking to challenge radical/violent extremist ideology. Education programs need to be combined with outreach to ensure the most vulnerable groups are targeted and encouraged to attend and/or that mechanisms are in place to address the hurdles that prevent children and youth from attending school.
- The Government should tailor job creation and livelihoods programs to target vulnerable populations, especially nomadic tribes, minority clans or ethnic

groups, IDPs, refugees, youth, women and children, particularly in “ungoverned” spaces where the provision of basic social services is low or entirely absent.

- The Government should ensure that voices of those who are marginalized/excluded are heard.
- By enhancing levels of trust between communities and the police, terror affected communities can become an essential part of front-line strategies to prevent the growth of violent extremism. Community policing, neighborhood watching and other early warning mechanisms can prove particularly effective, especially when combined with joint programming on how to respond following an attack or attempted attack.

4.4 PASTORALIST CONFLICT MANAGEMENT

Pastoralist conflict has grown rapidly in Kenya in the last two decades, pastoral areas being the most vulnerable. This genre of conflict is now widespread in the arid and semi-arid zones, and often overlaps with extreme food insecurity. In view of these unending pastoral conflicts, the following is proposed.

4.4.1 Formulate a Legal Framework on Pastoral Land Tenure

The Government needs to strengthen the Community Land Act so that pastoral livelihoods are covered and protected in the counties of Laikipia, Marsabit, Mandera, Garissa, Turkana, Baringo, West Pokot, Wajir, Lamu and Tana River.

4.4.2 Integrate Customary Institutions with Existing Formal Institutions

Existing customary institutions in pastoral areas of Kenya are unpredictable and can no longer cope on their own with contemporary forms of conflicts. These institutions still have a specific role to play within wider conflict management strategies of states and other actors. Customary approaches to pastoral conflict management need to focus on the needs and desires of pastoralists rather than on results, and to stress values of respect, honesty, dignity and reciprocity. Beyond the context of single episodes of conflict are the broader relations of reciprocity and collaboration between different communities that can ensure that the conflict is minimized. It is the common perception of a condition of reciprocity that helps to maintain co-operative relationships. Dry lands herders are aware that no matter how good one’s situation might be at present, at any time in the future one may have to depend on the favor of those who now one can afford to have as enemies, and vice versa. In the recent past, the elders’ authority has been undermined by the introduction of a market economy and the increasing polarization of rich and poor that resulted in labour migration. The youth have found new sources of influence and wealth

including the flourishing armed militias of young men and the new income available through banditry. Traditional authority is being eroded by the progressive replacement of elders' councils and tribunals with government-appointed agencies and functionaries. Customary and formal institutions should not exist separately but must unavoidably merge and combine in hybrid forms.

4.4.3 Strengthening Local Institutional Capability

Experience in northern Kenya and elsewhere suggests that sub-county level conflict management activities can be successful with the following characteristics:

- The national/county government involving local initiatives, local religious leaders and NGOs;
- basing peace initiatives on customary rules of conflict management, which are endorsed by the authorities;
- involving all local stakeholders, elders, women, young people, urban people as well as pastoralists, the administration, members of parliament and the security forces in peace-building activities;
- engaging with sub-county civil administration, the army and the police force;
- seeking local financing from local traders and businessmen for peace dividend projects;
- supporting and documenting inter-county and cross-border meetings of all stakeholders, including customary and religious leaders, CSOs, the local administration, the police and army, and local political representatives through IGAD local representatives. International organizations should channel resources through local institutions;
- documenting best practices of using customary and non-customary conflict management institutions and practices on both sides of county and international borders in order to inform local administrations and other actors;
- supporting conflict management training for County and Sub-County officers and administrators, and political and customary leaders on both sides of the conflict;
- coordinating development interventions on either side of international borders; and
- facilitating traditional cross-border pilgrimages.

4.4.4 Deploy Drought Preparedness and Contingency Management

The Government needs to be well-prepared for the management of drought and this includes early warning systems for related conflicts as well. Conflict needs to be fully

incorporated into the drought early warning stages system, now adopted by all arid sub-counties to trigger rapid intervention.

4.4.5 Support IGAD to Manage Small Arms Problem

There is a need to start developing a framework to facilitate cooperation at regional level regarding small arms, whose control is essential for conflict management in pastoral areas. The small arms control program can perhaps start with small arms inventories in different stores at different places in pastoral areas. A consensus needs to be reached on how this is managed.

4.4.6 Improve Natural Resource Management and Upscale Poverty Reduction Strategies

- Reduction of conflicts over natural resources (including improved water provision, better and more transparent management of natural resources, development of existing models of borehole management committees with negotiated rules of access in contested areas);
- new models of natural resource tenure based on a better articulated relationship between formal and customary tenure, with transparent procedures for resolving disputes;
- improvement of food security, including extension of the present drought contingency planning model to all arid and semi-arid districts;
- facilitation of income-generating activities for demobilized ethnic militias;
- improvement of livestock marketing in the protected trekking corridors;
- provision of appropriate credit schemes for restocking poor herding households, especially where former fighters can be incorporated into the household herding unit; and
- support to participatory development planning to prepare conflict management components of wider development plans and policies, and to assess the likely impact of development activities on conflict.

4.5 LAND AND NATURAL RESOURCES CONFLICT RECOMMENDATION

Kenya is the scene of many disputes related to land and natural resources. This partly emanates from the increasing demand on land and resources because of population

growth, but also as a result of the continued depletion of these resources in both quantity and quality due to degradation, overuse and over-harvesting, governance deficits, and external factors such as climate change and commercial demands. Land is a primary asset for survival and development in the country, being the major source of income and livelihood for most rural people. Conflict associated with land has increased substantially following devolution, ethnic boundaries, population growth, and a rise in the value of land. The study wishes to make the following recommendations as regards management of land related conflicts:

4.5.1 Train Communities, Especially Pastoralists, to Understand their Rights and Obligations

When people understand their rights and obligations, land mediation is more efficient and chances of a sustainable settlement are greater. In land mediation, such training must focus on the community's rights related to what it wants to do with the land. Once that is clarified, it would be known what kinds of rights education would be appropriate. General and detailed rights education unrelated to the issues important to the community is often wasteful and contributes little to the resolution of land disputes. Communities will often lose interest if the education is too technical or detailed. Rights education should be provided by NLC in land conflict affected counties. For those more interested in technicalities, more detailed training can be provided. The power relations within a community should always be borne in mind. Steps must be taken to ensure that the rights education is spread so as to include the disempowered sections of the community.

4.5.2 Support Establishment of Community Land Management Committees

The Community Land Act proposes the establishment of Community Land Management Committees (CLMCs) which shall be elected by a community assembly consisting of all adult members of the community. The functions of the Community Land Management Committee shall be to:

- take responsibility over the running of the day to day functions of the community;
- manage and administer registered community land on behalf of the community;
- coordinate the development of community land use plans in collaboration with relevant authorities;
- promote cooperation and participation among community members in dealing with matters pertaining to the respective registered community land; and
- prescribe rules and regulations, to be ratified by the community assembly, to govern the operations of the community.

4.5.3 NLC Should Involve Community Representation Stakeholder Consultations

NLC needs to intensely involve all stakeholders in consultations, especially the relevant community, even though consultation processes are expensive. NLC can achieve this by facilitating the clustering or separation of issues, and ensuring that key relevant stakeholders are given opportunity to participate. Moreover, where there are no elected community representatives, it may be appropriate for NLC to facilitate the election of community representatives or a steering committee.

4.5.4 Benefit sharing

An agreement relating to investment in community land should be free, open and the result of a consultative process involving all stakeholders. The agreement should provide for the payment of compensation and royalties, capacity building of the community and transfer of technology to the community. In case of dispute or disagreement, a registered community may use alternative dispute resolution mechanisms including the traditional, to settle disputes. However, where all efforts of resolving a dispute fail, a party may institute judicial proceedings.

4.5.5 Address the Issue of Land Rights in Extractive Industry

The issue of land rights has to be addressed to prevent the communities from losing their land without proper compensation. Strong environmental regulations and especially their enforcement are needed to prevent oil pollution of water and soil without compensation. The county and local governments need to offer communication channels for local communities to enable them express their concerns and requests in a more effective and direct way. This must also be well captured in Environmental Impact Assessment (EIA) reports.

4.5.6 County Should Use Oil Revenue to Bring Development in Turkana

The county government needs to use the financial assets received through devolution and oil revenues to bring development in Turkana. This implies significant investments in education, health services, and water and transport infrastructure. In particular, development of the substantial aquifers found in Turkana needs to be prioritized and accelerated to improve water availability and access for the communities. The oil pipelines, roads and railways associated with the Lamu Port Southern Sudan-Ethiopia Transport (LAPSSET) Corridor project need to be planned and built with sensitivity to existing pastoral migration routes and grazing land.

4.5.7 Government of Kenya should Operationalize ADR Mechanism

Alternative dispute resolution mechanisms such as mediation, negotiation and conciliation allow maximum party autonomy. They are flexible, informal and allow room for parties to find their own lasting solutions to land and natural resource conflicts. These advantages make resolution potentially superior to settlement. Conflict resolution mechanisms include negotiation, mediation in the political process and problem solving facilitation. Also noteworthy is participatory decision-making among contesting parties. ADR mechanisms allow public participation in enhancing access to justice as they bring in an element of efficiency, effectiveness, flexibility, cost-effectiveness, autonomy, speed and voluntariness in conflict management. ADR mechanisms are part of the rule of law envisaged in the Constitution. Indeed, customary law is recognized as part of the law of Kenya. There is therefore need for a comprehensive policy and legal framework to operationalize ADR mechanisms in the context of natural resource management. It should be realized that most of disputes can be resolved without resort to the courts if members of the public are involved in decision-making and resolution of their own disputes using ADR and traditional conflict resolution mechanisms. This is especially so where natural resource-related conflicts are involved, unless the same are intractable and violent conflicts, where coercive mechanisms such as court system may be more appropriate.

4.6 ORGANIZED CRIMINAL GROUPS

There are 46 organized criminal gangs operating in the country, according to the National Crime Research Centre, who claim that the gangs are supported by politicians and their ethnic communities. According to the report¹⁷⁰, 33 gangs were banned by the government on October 2010 but 46 others have emerged since 2013. To further manage the criminal groups the study wishes to make the following recommendations.

4.6.1 Prosecuting Persons Involved in Organized Crime

Kenya has passed legislation prohibiting participation in the activities of a criminal entity or organization. Perhaps the best known of these laws is the Prevention of Organized Crime Act, 2013. The Government through the Director of Public Prosecution needs to use this law to prosecute individuals involved in organized criminal activities.

4.6.2 Prosecuting Organized Crime Kingpins

For decades, law enforcement strategies have focused on identifying and prosecuting the leaders of criminal enterprises. Members may be charged or arrested for relatively minor

¹⁷⁰ Organized Criminal Gangs in Kenya Report 2016, National Crime Research Centre accessed from <http://crimeresearch.go.ke/download/organized-criminal-gangs-in-kenya/>

infractions. Charges for even small infractions provide prosecutors with the leverage to conduct further investigations of the group. The goal is to get the smaller fish to “flip” and testify against the heads of their organizations. The ultimate aim is to disrupt the group. This “headhunting” strategy is predicated on the assumption that organized crime operations are too complex to be proven in court.

4.6.3 Monitoring Financial Transactions and Tackling Money Laundering

The Government needs to track financial transactions and money laundering of criminal groups. Money laundering has been described as, “the process of converting illegally earned assets, originating as cash, to one or more alternative forms to conceal such incriminating factors as illegal origin and true ownership.”¹⁷¹ The risks associated with the accumulation of and transactions in large sums of cash earned illicitly are substantial, so the Government should seize these assets and prosecute the owners.

4.7 IMPROVE POLICING IN KENYA

4.7.1 Institute Intelligence-led Policing in the National Police Service

Intelligence-led policing is a collaborative enterprise based on improved intelligence operations and community-oriented policing and problem-solving. To implement intelligence-led policing, the Kenya National Police Service needs to re-evaluate their current policies and protocols. Intelligence must be incorporated into the planning process to reflect community problems and issues. Information sharing must become a policy, not an informal practice. Most important, intelligence must be contingent on quality analysis of data. The development of analytical techniques, training, and technical assistance needs to be supported. It involves crime mapping, inquiry into the causes and implications of crime, and determining the effectiveness of certain policing approaches. The NPS still lacks a dedicated research department, and its crime statistics do not represent the actual extent of crime in the country, as they are limited to reported crimes.

4.7.2 Promote Police Operational Independence, Accountability and Civilian Oversight

To be effective, impartial and accountable, the Kenyan police must be operationally autonomous. The framers of the 2010 Constitution understood this point and sought to create an autonomous NPS. So far, there continues to be insufficient political will from the Government, particularly the Ministry of Interior and the National Assembly, to allow operational independence of the police. Since promulgation of the Constitution, NPS has continued to sustain a culture of impunity by protecting members accused of misconduct.

¹⁷¹ Karchmer and Ruch, 1992:1.

However, there are signs that the Independent Police Oversight Authority's (IPOA) vigorous investigative activities are bringing the message home to police officers that misconduct will not be tolerated.

4.7.3 Enhance Police-Civilian Relations

Good police-civilian relations create conditions for effective partnerships to evolve between the police and the public, enabling them to understand each other's roles and expectations. Good relations boost confidence in the police, strengthen accountability, and demonstrate that the police respect and care about people's rights and needs. People fear reporting crimes because they do not believe their information will be handled confidentially, or that they will be protected from reprisals from criminals. It is for this reason that community policing efforts have been largely ineffective.

4.8 GENDER VIOLENCE RECOMMENDATIONS

4.8.1 Enact Policies to Empower Women and Girls

To reduce gender imbalance at the root of GBV, key legal and policy actions should advocate for delayed marriage,¹⁷² promote equitable divorce and property laws that allow women the chance to leave abusive relationships, and establish constitutional frameworks guaranteeing substantive equality for women.

4.8.2 Demonstrate Clear Political Commitment to Ending GBV

High-level government officials should consistently and publicly denounce GBV and support necessary changes in community norms that influence GBV-related behavior of boys and young men.

4.8.3 Establish Operational Policies and Guidelines to Support Program Efforts

Public and private health facilities should institute policies and procedures to help providers recognize the signs of GBV and respond appropriately to meet the needs of GBV victims.

4.8.4 GBV and Reproductive Health

- Ensure that National Reproductive Health, HIV, Adolescent Health, and Maternal Health policies and legislation specifically address the negative reproductive health consequences of GBV. Such policies should give clear guidance to health workers on their obligations in reporting and treating GBV.

¹⁷² International Institute for Population Sciences (IIPS) and Population Council, 2008.

- Policies should also address the provision of emergency contraception and post-exposure antiretroviral prophylaxis to rape victims to protect against pregnancy and HIV infection.

ANNEXES

ANNEX I: LIST OF PARTICIPANTS AT STAKEHOLDERS' MEETING, SAROVA

| No. | Name | ORGANIZATION |
|-----|---------------------|----------------------------------------------------------------|
| 1. | Stephanie Mutindi | National Gender & Equality Commission |
| 2. | Clara Bwolo | National Gender & Equality Commission |
| 3. | Bishop Ndoge | Youth Care Organization |
| 4. | Bishop Longohag | DPC Turkana |
| 5. | Patricia Buore | Administration Police Superintendant (APS) |
| 6. | Shahidi Mubari | SUPKEM |
| 7. | Morris Kinyua | ATPU |
| 8. | Hawa Ali | Centre for Sustainable Conflict Resolution (CSCR) |
| 9. | Titus Kaloki | Friedrich-Ebert-Stiftung (FES) |
| 10. | Cherotich H. Serem | University of Nairobi/Ministry of Foreign Affairs (UoN/MFA) |
| 11. | Mariam Mohammed | National Steering Committee on Conflict Management (NSC) |
| 12. | Emma Wangari | National Steering Committee on Conflict Management (NSC) |
| 13. | Bernadette Van Berk | Friedrich-Ebert-Stiftung (FES) |
| 14. | Nguyo Karuri | Lewa Wildlife Conservancy (LEWA) |
| 15. | Julius Karimi | Consultant |
| 16. | Stephen Maina | Democratic Party (DP) |
| 17. | Francis Musumbu | Kenya Forest Service (KFS) |
| 18. | Ibrahim Mushangi | Office of the President |
| 19. | Dorothy Anangwe | Peace Pen Communication (PPC) |
| 20. | Mane Wambui | University of London (UL) |

| | | |
|-----|------------------|---------------------------------------|
| 21. | Hellen M. Apila | Peace Pen Communications (PPC) |
| 22. | Yves Hiyirithiwa | Friedrich-Ebert-Stiftung (FES) |
| 23. | Mildred Ngesa | Peace Pen Communication (PPC) |
| 24. | Mary Bondhace | Rapporteur |
| 25 | Nicholas Abuya | Christian Aid |
| 26. | Martin Brown M. | Stockholm Environment Institute (SEI) |

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