

The background of the slide is a photograph of a sunset. The sun is a bright, glowing orb positioned slightly to the left of the center, just above the horizon. The sky is filled with soft, orange and yellow light, with some wispy clouds. The foreground and middle ground are in silhouette, showing a dark, flat landscape with some sparse, dry vegetation and a line of trees or shrubs. The overall mood is serene and contemplative.

# **Analysis of the Institutional, Legal and Policy Framework for Peace Building and Social Cohesion in the Frontier Counties Development Council (FCDC) Region**







# Analysis of the Institutional, Legal and Policy Framework for Peace Building and Social Cohesion in the Frontier Counties Development Council (FCDC) Region



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# Acronyms

<b>ADR</b>	Alternative Dispute Resolution
<b>ATI</b>	Amaya Triangle Initiative
<b>CAJ</b>	Commission on Administrative Justice
<b>CEWERU</b>	Conflict Early Warning and Early Response Unit
<b>CPA</b>	County Policing Authority
<b>CVE</b>	Countering Violent Extremism
<b>DAI</b>	Development Alternatives Incorporated
<b>DLCI</b>	Drylands Learning and Capacity Building Initiative
<b>FCDC</b>	Frontier Counties Development Council
<b>FGD</b>	Focus Group Discussion
<b>IPOA</b>	Independent Policing Oversight Authority
<b>KNCHR</b>	Kenya National Commission on Human Rights
<b>KNFP</b>	Kenya National Focal Point on Small Arms and Light Weapons
<b>LAPSET</b>	Lamu Port South Sudan Ethiopia Transport corridor
<b>NACADA</b>	National Authority for the Campaign against Alcohol and Drug Abuse
<b>NCIC</b>	National Cohesion and Integration Commission
<b>NCTC</b>	National Counter-Terrorism Centre
<b>NGEC</b>	National Gender and Equality Commission
<b>NIWETU</b>	Ni Wajibu Wetu
<b>NPS</b>	National Police Service
<b>SALW</b>	Small Arms and Light Weapons
<b>SDC</b>	Swiss Agency for Development and Cooperation



# Acknowledgements

Published in 2020 by the Frontier Counties Development Council (FCDC) and Drylands Learning and Capacity Building Initiative (DLCI).

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## Citation

FCDC & DLCI (2020). Analysis of the Institutional, Legal and Policy Framework for Peacebuilding and Social Cohesion in the Frontier Counties Development Council (FCDC) Region.

## Design

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The views in this publication do not necessarily reflect those of the Swiss Agency for Development and Cooperation (SDC) or the UK Department for International Development (DFID).

The Frontier Counties Development Council (FCDC) and the Drylands Learning and Capacity Building Initiative (DLCI) would like to acknowledge the contributions of various individuals and organizations to this study.

We acknowledge the immense support and contributions of the County Governments of Baringo, Garissa, Isiolo, Laikipia, Lamu, Mandera, Marsabit, Samburu, Tana River, Turkana, Wajir and West Pokot. Special appreciation is extended to the officials in charge of coordinating peace and security directorates and programmes within these counties. These individuals have since formed the FCDC Peace and Cohesion Sector Forum and our heartfelt gratitude goes to all its members, led by its Chair, Hon. Sheikh Ahmed, and its Vice-Chairperson Hon. Amina Chala. We are also deeply appreciative of Izzy Birch, Abdi Kunow, Dorina Prech and Bilach Jimale for their dedication in the editing and production of this book.

We are equally indebted to those who contributed to the interviews and focus group discussions and thank them for their time: representatives from government institutions, civil society organizations, the private sector, and communities across the FCDC counties.

We appreciate the individuals from the following institutions who spared their time to provide input into this research: the National Counter-Terrorism Centre, the National Cohesion and Integration Commission, the Peacebuilding and Conflict Management Directorate within the Ministry of Interior and Coordination of National Government, the National Focal Point on Small Arms, the National Police Service, and the numerous civil society groups that were instrumental in providing their input into this analysis.

Finally, this research was made possible with the financial support of UK Aid through the Department for International Development (DfID) DAI-managed Deepening Democracy Programme, through Saferworld, and the Swiss Agency for Development and Cooperation (SDC) through the FCDC-implemented Strengthening Livestock Sector in ASAL Counties of Kenya.

**MAY 2020**





Executive  
Summary



# EXECUTIVE SUMMARY

## Introduction

The Frontier Counties Development Council (FCDC), in collaboration with the Drylands Learning and Capacity Building Initiative (DLCI), commissioned this study to analyse the institutional, legal and policy framework for peace building and social cohesion in the FCDC region and in the Amaya Triangle Initiative (ATI) counties of Baringo and Laikipia.

Insecurity and conflict are among the main impediments to the region's development. Despite numerous initiatives, the institutions with a mandate to bring about sustained peace and social cohesion have not succeeded in doing so. Inter-communal conflicts persist and new challenges are emerging, raising questions about the efficacy of the current institutional, legal and policy arrangements.

The geographical scope of the study covered the ten member counties of the FCDC (Garissa, Isiolo, Lamu, Mandera, Marsabit, Samburu, Tana River, Turkana, Wajir and West Pokot), as well as Baringo and Laikipia, which enabled critical transboundary conflict dynamics to be addressed.

The research process involved a review of secondary literature, the gathering of primary data in May-June 2019 from key informants and focus group discussions, a workshop with county stakeholders, and a final validation workshop in August 2019.

There are four parts to the terms of reference: (i) context analysis; (ii) analysis of the institutional framework; (iii) analysis of the legal framework; and (iv) analysis of the policy framework. The report concludes with a series of recommendations.

## Context analysis

The FCDC region has a long history of ethnic conflict, violence and marginalisation, exacerbated by instability in the wider Horn and East Africa region. Recent political and economic developments in FCDC counties are not only changing the nature of long-standing conflicts but also generating new types of conflict associated with factors such as devolution, land and investment, extractives, terrorism, and drugs.

According to data gathered by the Peace Building and Conflict Management Directorate between 2011 and 2015, livestock theft, inter-ethnic/inter-clan conflict and terrorism account for over 70 percent of registered incidents. The highest incidence of reported conflict was in Turkana and Mandera. Terrorism is the main threat facing north-eastern counties and Lamu. Livestock theft is the main threat in north-western counties, but negligible in the north-east. The worst-affected areas are often close to county or international borders.

Although women and girls are not centrally involved in peace and cohesion processes in the FCDC region, despite bearing the brunt of conflict, the field survey for this research found that they are active participants, as both perpetrators and (more commonly) peace-makers. Women-led organisations in counties such as Baringo, Garissa, Samburu, Turkana, Wajir and West Pokot are playing a leading role in conflict resolution and transformation.



Informants to this study identified a number of factors which they associated with the evolution, outbreak and persistence of conflict: politics (particularly associated with devolution), borders, land and natural resources, drought and climate change, drugs, small arms, unresolved historical injustices, and social media. The performance of institutions tasked with managing security can also be a factor in triggering or escalating conflict.

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*The primary recommendation of the study is to implement fully the National Policy on Peacebuilding and Conflict Management. This will require passing the draft legislation that anchors the policy into law, and then establishing and adequately resourcing the various mechanisms envisaged in the policy.*

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## Analysis of the institutional framework

The study maps the range of institutions involved in peace and social cohesion at national, county and community levels and outlines the various mechanisms for reporting, preventing and responding to conflict.

The most common challenge cited by informants when reviewing the effectiveness of institutions was coordination, at all levels: inter-governmentally, between the national and county governments; within the counties, where the mechanisms to coordinate peace stakeholders are unclear or inconsistent; and at the sub-county and community level.

The Peace Building and Conflict Management Directorate in the Ministry of Interior and Coordination of National Government was established as a multi-agency body (the National Steering Committee) in 2001 to coordinate peace building and conflict management efforts across the country. However, it lacks sufficient capacity to fulfill its coordination function effectively.

A second institution with the potential to improve inter-governmental coordination and public accountability is the County Policing Authority, which is not currently operational due to differing views among the two levels of government. Some national

officials argue that security is an exclusive function of the national government, while the Governors argue that it is critical to involve the county leadership in security matters.

The informants to this study gave numerous examples of the link between poor governance, corruption and conflict: for example, if the county leadership is not inclusive and not interested in promoting dialogue; if members of the security forces use excessive or indiscriminate force against citizens; and if grievances remain unaddressed. Other concerns were that government resources are insufficiently flexible and that they are used primarily to maintain law and order rather than address the root causes of conflicts.

The study informants were near-unanimous that no new institutions should be created, but rather the effectiveness of the existing ones should be strengthened: by **(i) improving coordination and synergy, (ii) clarifying their terms of engagement, (iii) ensuring adequate funding, and (iv) introducing new mindsets and work ethics, including integrity and openness.** Funding was mentioned by numerous informants when discussing institutional effectiveness: not just the amount of money, but the need for it to be available on a sustained basis and free from political interference.



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*According to data gathered by the Peace Building and Conflict Management Directorate between 2011 and 2015, livestock theft, inter-ethnic/inter-clan conflict and terrorism account for over 70 percent of registered incidents. The highest incidence of reported conflict was in Turkana and Mandera. Terrorism is the main threat facing north-eastern counties and Lamu. Livestock theft is the main threat in north-western counties, but negligible in the north-east. The worst-affected areas are often close to county or international borders.*

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## Analysis of the legal and policy framework

The study outlines the various policies and pieces of legislation relevant to peace and social cohesion, including those developed by the county governments. It concludes that, for the most part, these policies and laws are mutually supportive and complementary, but that the challenge lies in their implementation. Several are still in draft or pending, a key one being the National Peace Policy Bill, whose passage would significantly strengthen the whole infrastructure for peace and social cohesion.

This research also illustrates important knowledge gaps: on the one hand, how few county officials, let alone community members, have any awareness of these frameworks, but on the other, how the approaches of the national government may fail to demonstrate adequate understanding of the reality of conflict in FCDC counties.

The role of the judicial system in the FCDC counties is discussed. Traditional systems of justice by elders are often favoured above the courts due to concerns about the cost, complexity, accessibility and formality of the judicial system, particularly if the grievance concerns a government entity.

## Summary of recommendations

The primary recommendation of the study is to implement fully the National Policy on Peacebuilding and Conflict Management. This will require passing the draft legislation that anchors the policy into law, and then establishing and adequately resourcing the various mechanisms envisaged in the policy. Full implementation of the policy will significantly upgrade the current level of institutional capacity by strengthening the platforms for dialogue, coordination and action at all levels. Passage of the legislation will also put the whole institutional framework for peacebuilding and conflict management on a more secure financial footing.

Other important recommendations concern the role of the county governments in peacebuilding and security, including the operationalisation and resourcing of the County Policing Authorities, and the strengthening of FCDC institutions to reinforce county capacity and address critical inter-county concerns. The study also recommends a number of measures that will promote the use of conflict-sensitive approaches across government and beyond.





## CHAPTER 1



# INTRODUCTION

## 1.1 Background

The Frontier Counties Development Council (FCDC) is a regional economic bloc composed of the County Governments of Garissa, Isiolo, Lamu, Mandera, Marsabit, Samburu, Tana River, Turkana, Wajir and West Pokot. It promotes cooperation, coordination and information-sharing between counties in order to enhance socio-economic development and promote peaceful co-existence.

The FCDC counties account for 61 percent of Kenya's landmass and have a population of 5,536,267<sup>1</sup>, for whom pastoral livestock production is the dominant livelihood<sup>2</sup>. The region shares borders with Somalia, Ethiopia, Uganda and South Sudan, across which there is a robust transboundary movement of animals and trade. Insecurity and conflict are among the main impediments to the region's economic development, and intertwine with other developmental challenges such as poverty, food insecurity, climate change, and the legacy of historical marginalisation.

Despite numerous initiatives, the institutions with a mandate to bring about sustained peace and social cohesion have not succeeded in doing so. Inter-communal conflicts persist while new challenges are emerging. This has raised questions about the efficacy of the current institutional, legal and policy arrangements.

The FCDC therefore commissioned this study, in partnership with the Drylands Learning and Capacity Building Initiative (DLCI), to analyse the institutional, legal and policy framework for peace building and social cohesion in the FCDC region. It is the first step in a process towards developing and operationalising an improved framework that can deal with contemporary security challenges in a more effective and sustained way, and thus contribute to national security, national cohesion, and national prosperity. Annex 1 contains the terms of reference.

The geographical scope of the study covered twelve counties (Figure 1). Baringo and Laikipia were added to the ten FCDC member counties so that critical transboundary conflict dynamics could be addressed.

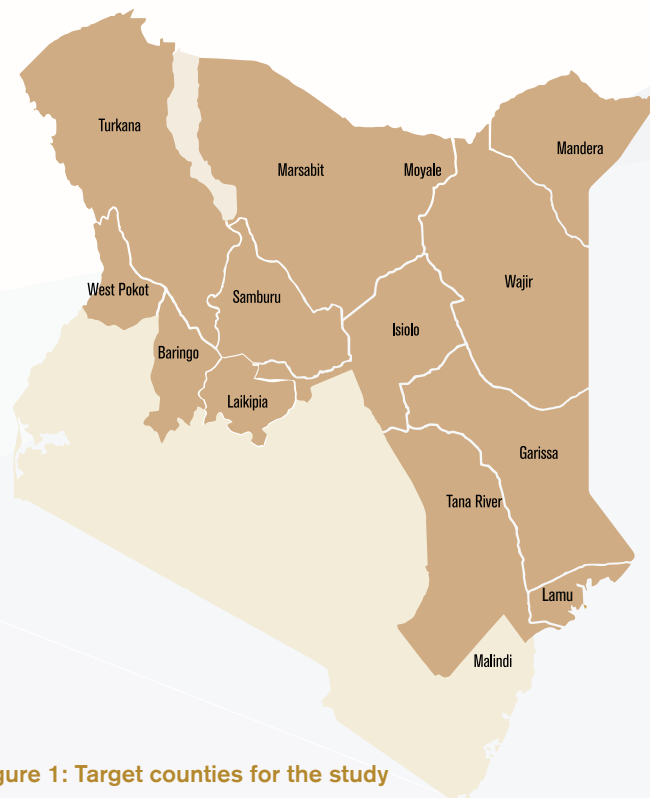


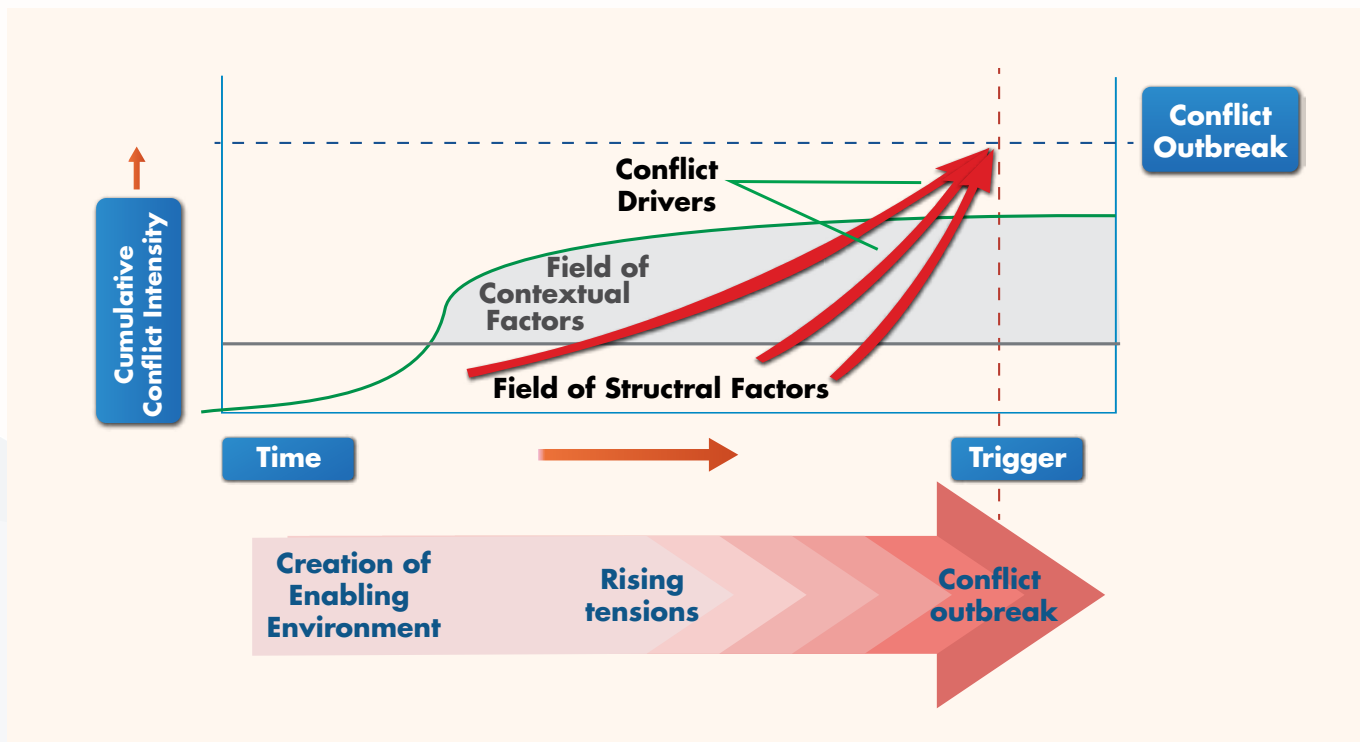
Figure 1: Target counties for the study



## 1.2 Methodology

The research team sought to look beyond the surface manifestations of conflict to uncover its root causes and pathways, on the grounds that a systematic understanding of conflict is essential to developing more effective plans to prevent and manage it. Figure 2 illustrates the conflict continuum, and shows how conflict usually starts at a covert level before developing into destructive armed violence.

Figure 2: Illustration of the conflict continuum<sup>3</sup>



The study applied a political economy approach which explores how the political and economic interests of those engaged in conflict interact. If the political economy of conflict brings opportunities, then there are strong interests in perpetuating and managing that conflict for personal gain. Interventions that ignore these interests risk fuelling conflicts.

The study also combined structural analysis and actor-oriented analysis: the former focuses on the institutions that may engender violent conflict and the latter on individual incentives and motivations. Further, since contemporary conflicts are complex and multi-layered, conflict analysis must encompass their regional, national and local dimensions.



The study gathered both primary and secondary data and applied a purposive sampling approach. The main sources of primary data were focus group discussions and key informant interviews with categories of individuals and groups affected by conflict or from institutions involved in peace building and social cohesion at local, county and national levels. There were 72 key informant interviews, mostly with men, given that senior positions in the county, and in the security sector in particular, tend to be held by men; some civil society informants were women.

There were 48 focus group discussions, four in each county. These involved 593 individuals: 146 men, 129 women, 120 youth of mixed gender, and a further 198 people in mixed gender groups.

The research process involved the following steps:

- i. Review of secondary literature, April-June 2019
- ii. Orientation workshop for county peace focal points, May 2019
- iii. Primary data gathering, May-June 2019
- iv. County stakeholders' workshop, June 2019
- v. Validation workshop, August 2019

## 1.3 Study limitations

The research team faced some difficulties accessing information. It was not possible to visit actual sites of conflict. Some informants failed to honour their scheduled appointments, while others felt fatigued by being asked questions similar to those in previous studies. It was also difficult to obtain sufficient information from some of the security organisations.

A further constraint was that a majority of key informants, especially in the counties, had insufficient knowledge of the policy and legal frameworks for peace and cohesion to comment on them. This is an important finding in itself.

## 1.4 Structure of the report

The terms of reference for the research are structured in four parts: (i) context analysis; (ii) analysis of the institutional framework; (iii) analysis of the legal framework; and (iv) analysis of the policy framework. This report is organised in the same way.

Section 2 analyses the context for conflict in the FCDC counties: the conditions and differences between counties, how conflicts are triggered and escalate, how progress can be measured, and the gender dynamics involved. Section 3 discusses the institutional framework: the mechanisms for managing conflict, the performance of the various institutions, and how this could be strengthened. Section 4 explores the legal framework and the extent to which it is enforced, while Section 5 focuses on the policy framework. Section 6 provides a summary of the research findings and Section 7 contains the recommendations.

Thematic conflict analysis and institutional strengths, weaknesses, opportunities and threats are also included in the Annexes..





## CHAPTER 2



## 2. CONTEXT ANALYSIS

This chapter provides a brief analysis of the conflict context in the FCDC region. It opens with an overview of the nature and impact of conflict in the region: its characteristics and forms, and its hotspots and victims. Secondly, it looks at how conflicts evolve and escalate, and at how progress in peace and cohesion can be measured. Thirdly, it discusses gender dynamics in the conflict resolution process. Annex 2 contains further thematic analysis of common types of conflict in FCDC counties, specifically inter-ethnic/inter-clan conflict, drought and conflict, livestock theft, drug-related conflict, and terrorism.

### 2.1 Nature and impact of conflict in the FCDC region

The FCDC region has a long history of ethnic conflict, violence and marginalisation, exacerbated by instability in the wider Horn and East Africa region. Recent political and economic developments in FCDC counties are not only changing the nature of long-standing conflicts (such as natural resource-based conflict and livestock theft) but also generating new types of conflict associated with factors such as land, terrorism, and drugs. These evolving forms of conflict are challenging the existing institutional arrangements for peace building and social cohesion.<sup>4</sup>

Devolution, for example, has had significant consequences for peace and security. The respondents to this study explained how the politics surrounding devolution have exacerbated tensions between and among communities.

Ethnically based competition for control over political power and the distribution of county resources is commonplace, and illustrated by this example from Mandera:

The local population in Mandera enthusiastically welcomed devolution as an opportunity to alleviate the County's historical marginalisation and underdevelopment. But while devolution has brought national resources and services closer to the people, it has also intensified competition for elective seats, perceived as a guarantee for access to economic resources by the 'winning' clans to the disadvantage of the 'losing' clans.<sup>5</sup> (*Interpeace, 2017*)

Devolution has also exposed the delicate relationship between conflict and development, at a time when substantial financial resources are now being allocated to the counties through an inter-governmental revenue-sharing agreement, and when there is growing interest from external actors in the economic potential of the FCDC region – for example, the Kenya Vision 2030 project portfolio, particularly in Lamu and Isiolo, and investments in energy and natural resources. Any development process changes the dynamics of economic and political power and may thus generate new conflicts.



The Peace Building and Conflict Management Directorate in the Ministry of Interior and Coordination of National Government operates a conflict monitoring framework. Although the data is not up-to-date, this study was able to consolidate conflict information for most of the ten FCDC counties for the period 2011-15 (Figures 3 and 4). These show that:

- Livestock theft, inter-ethnic / inter-clan conflict and terrorism account for over 70 percent of registered incidents.
- The highest incidence of reported conflict is in Turkana and Mandera.
- Terrorism is the main threat facing north-eastern counties and Lamu.
- Livestock theft is the main threat in north-western counties, but negligible in the north-east.

**Figure 3: Types of conflict in the study region, 2011-15<sup>6</sup>**

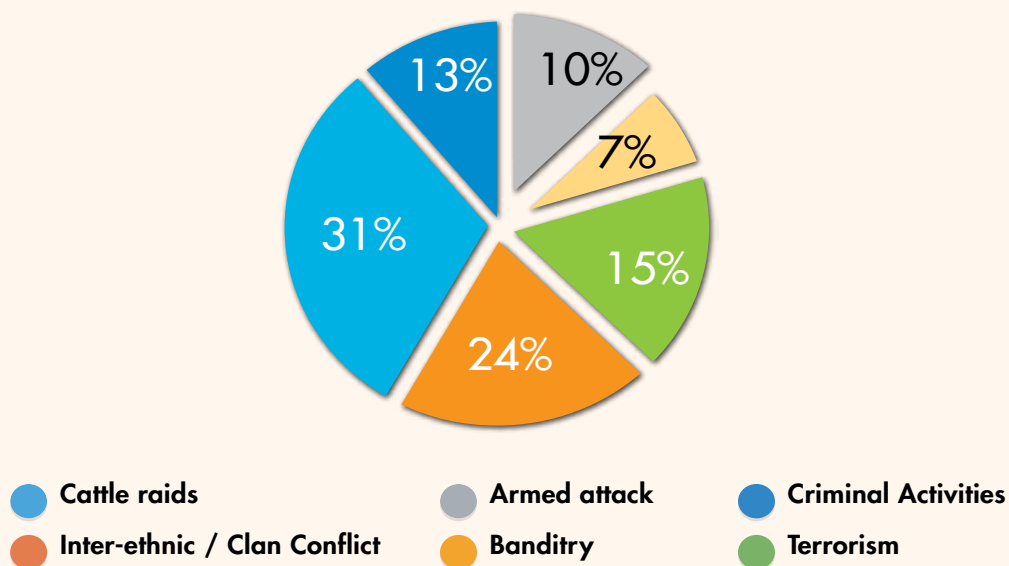
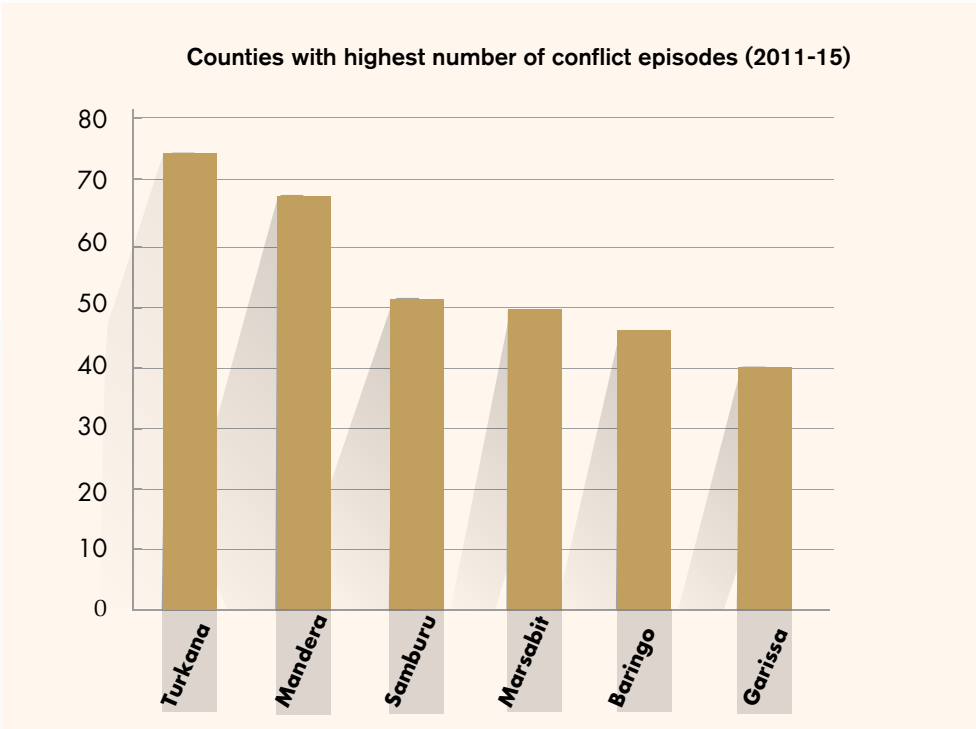
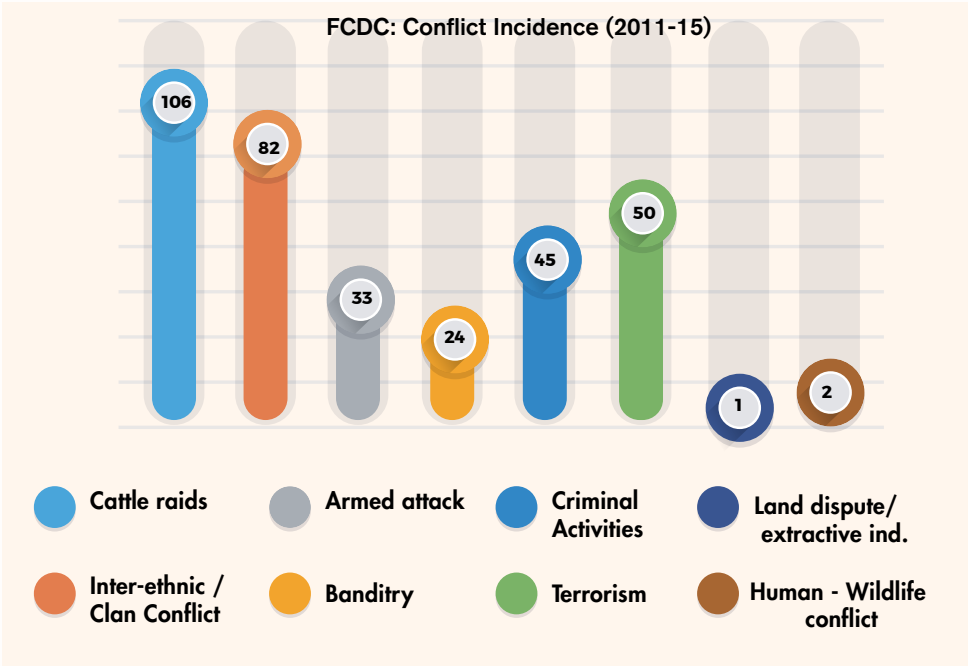


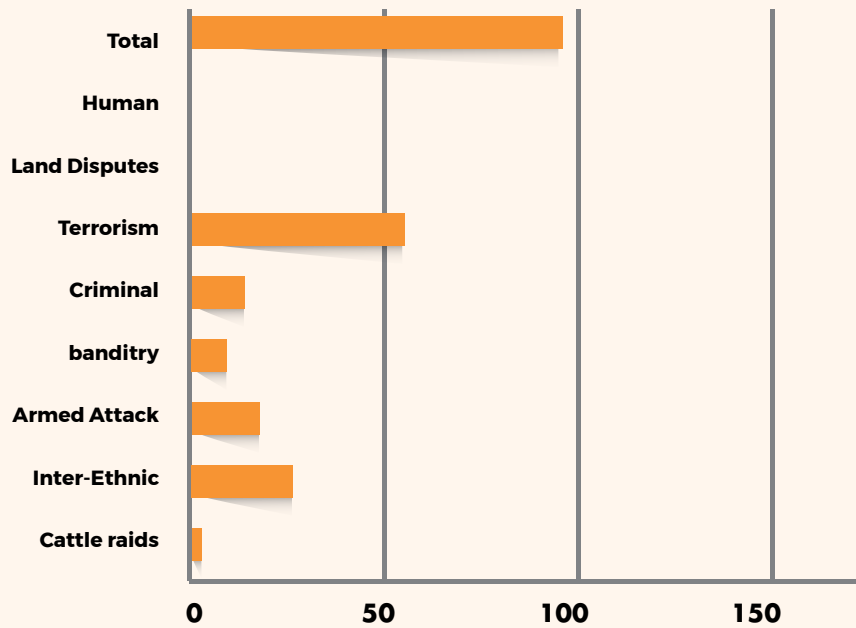


Figure 4: Data on conflict in the study region<sup>7</sup>

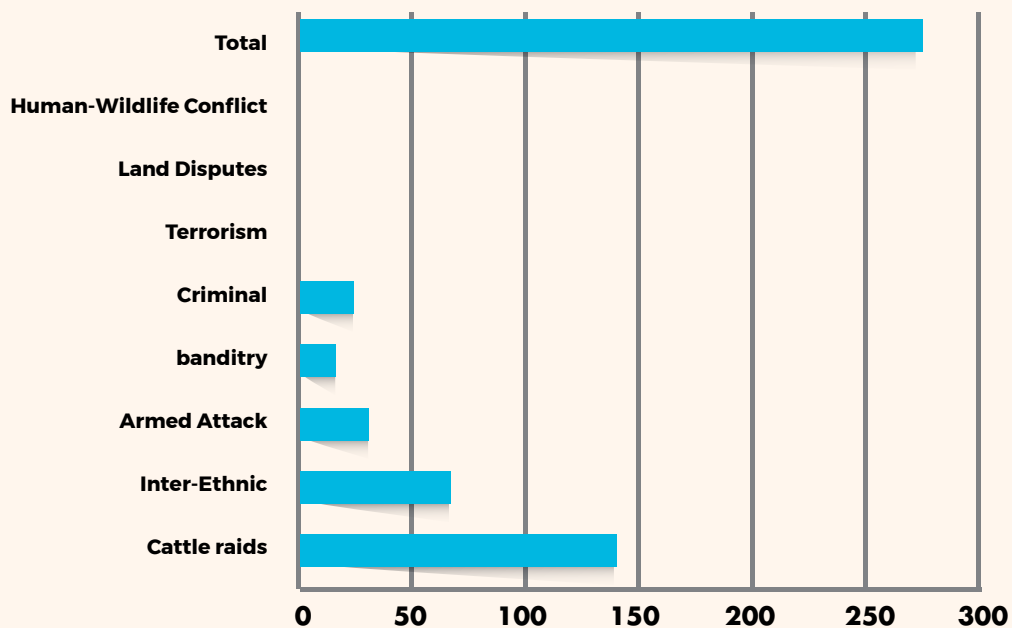




**Main types of conflict: Garissa, Lamu, Mandera, Wajir (2011-2015)**



**Main types of conflict: Baringo, Isiolo, Marsabit, Samburu, Turkana, West Pokot, 2011- 2015**





This data was broadly validated by the focus groups and key informants to this study. However, it does not capture the most recent trends, particularly conflicts associated with land and investment. Moreover, conflicts cannot always be neatly categorised. For example, livestock theft may be a manifestation of an underlying conflict over land, land-based natural resources or boundaries,<sup>8</sup> while other criminal acts may be inappropriately attributed to inter-ethnic rivalries:

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*“The conflict situation has made the whole county become an opportune place for non-tribally motivated crimes. Sometimes conflict incidents are linked to tribal disagreements when there could be no such connection”.*

***Key informant, Marsabit, June 2019***

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## Conflict Hotspots

Table 1 lists the main hotspots in the FCDC region, identified through the focus group discussions. Some of the most insecure areas are shown in Figure 5.

**Table 1: Conflict hotspots in research counties (source: focus group discussions)**

County	Hotspots
<b>Baringo</b>	<ul style="list-style-type: none"> <li>Kapindasum, Loruk, Kinyach</li> </ul>
<b>Garissa</b>	<ul style="list-style-type: none"> <li>Madogashe, Garbatulla, Balambala, Liboi, Hulugho, Bodhai Area, Mansabubu, Masalani</li> <li>County boundary points with Isiolo and Lamu, especially along River Tana</li> <li>Boundary with Somalia</li> </ul>
<b>Isiolo</b>	<ul style="list-style-type: none"> <li>Isiolo Central: Gambella, Kisima, Ngaremara, Daaba, Asharaff, Chari, Aree Dida, Bulesadima, Mwangaza/ Airport, Burat (Mlango)</li> <li>Merti sub-county: Kom, Sabarwawa, Nyachis, Barchuma, Cherab (Yamicha), Lolkutta, Idijallo</li> <li>Garbatulla sub-county: Uchan (Kambi Samaki), Eldera, Thandu, Madogashe, Qonne, Adhe Masajidha</li> </ul>
<b>Laikipia</b>	<ul style="list-style-type: none"> <li>Laikipia North: Kipsing, Chumvi, Sosian</li> <li>Laikipia East: Daiga, Mirera, Muramati, Waithare</li> <li>Laikipia West: Mutara, Rumuruti, Muchongoi, Kamwenje, Olmorani</li> </ul>
<b>Lamu</b>	<ul style="list-style-type: none"> <li>Mokowe, Kiunga, Kibaoni, Amu Island, Mpeketoni, Pangani, Maisha Masha, Sina Mbio, Isoye, Chundwa, Mbwajumwali, Kashmir, Witu, Hindu</li> <li>County and international border areas</li> </ul>
<b>Mandera</b>	<ul style="list-style-type: none"> <li>Rhamu trading centre, Malkamari, Guba, Wantei, Alungu, Yatho, Sitaora, Burmayo, Gunana/ Gulani, El-Rhamu, Sukela- Tiifa, Ashabito, Shirshir, Qorobo</li> </ul>
<b>Marsabit</b>	<ul style="list-style-type: none"> <li>North Horr: Sarima, Daradhe/Shine, Buluk, Sabra, Saru, Dukana, Garwale, El Hadi, Galas, Chari Ashe, Forole, Turbi, Idhidho, Bales Bura, Horonder, Mudhe, Shegel, Dhemu/Sotowes, Lalesa/Hawaye, Elle Dirutu, Elle Bor</li> <li>Laisamis: Gas, Yeel, Shuur, Dedertu, Lenailon, Sapalparwa, Koom, Koya, Segeel</li> <li>Moyale: Hellu, Odda, Arosa, Butiye, Turbi</li> </ul>
<b>Samburu</b>	<ul style="list-style-type: none"> <li>Samburu North: Parkati, Nachola, Uasorongai, Mbukoi, Marti, Loibashai, Charda, Bendera, Suiyan, Barsaloi, Morijo, Leilei, Lamirok, Logetei and Natiti</li> <li>Samburu Central: Loosuk, Malaso, Lorukoti border (Samburu and Pokot)</li> <li>Samburu East: Archers, Loosesia, Ndonyowasin, Loolkuniyani, Lodungokwe, Loruko border (Isiolo and Samburu)</li> </ul>
<b>Tana River</b>	<ul style="list-style-type: none"> <li>Handa Mpya, Bondeni, Duwayu, Kipini, Charindede, Hola Scheme, Galana-Kulalu, Bura, Mansabubu, Minjila</li> <li>County boundary points with Kitui, Garissa, Kilifi and Lamu.</li> </ul>
<b>Turkana</b>	<ul style="list-style-type: none"> <li>Lorogon, Todonyang, Turkwel, Kapedo, Lomelo, Lopei, Lorengippi, Kibish, Nakwamoru</li> </ul>
<b>Wajir</b>	<ul style="list-style-type: none"> <li>Batalu, Ajawa, Masalale, Lakole, Basir, Baqala, Arbajahan, Fadhiweyn, Aqal Aar, Dadajabula, Wajir Bor, Gerille, Konton, Diif, Uthole, Boji Garas, Garab Bisiq, Habaswein, Ademasajida, Kanjara, Kutulo, Kutulo Leheleyi, El- Rhamu, Burmayo, Gunana-Bulani</li> </ul>
<b>West Pokot</b>	<ul style="list-style-type: none"> <li>Turkwel, Kamelei, Kamolokon, Apuke, Chesegon, Kanyerus, Katikomo, Nauyapong, Kainuk, Nyang'aita, Masol</li> </ul>



**Figure 5: Conflict hotspots in the study area**



Figure 5 shows that most conflicts take place in remote areas, close to county or international borders, where the presence of the police and the rule of law may be weak; international borders are also crossing points for small arms, refugees, radicalisation messages, and armed groups, all of which add to the complexity of the conflict context in the FCDC region. However, certain conflicts may have a distinct geographical distribution: banditry is concentrated along the main transport routes, for example, while land conflicts are often associated with urban development where there may be disputes over titling as populations grow and settlements expand, or over large-scale investments.

## **Main victims of conflict**

Conflict undermines development and the fabric of society. The breakdown of law and order has a spiralling effect on virtually all aspects of life. According to study informants, those affected include:

- Women, the elderly and young people, who are disproportionately affected by the physical violence and exploitation.
- Security officers who lose their lives in the line of duty.
- Businesses whose operations and investments are affected.
- Pastoralists who lose livestock and family members.
- Children and students whose access to education is curtailed.
- Religious leaders and human rights activists targeted for their work.
- Poorer families who lack the resources to relocate.

Conversely, those who would lose if peace were established in the FCDC region are those whose political and economic interests are served by the conflict, including suppliers of firearms and ammunition, traders involved in the commercialisation of stolen livestock, corrupt law enforcement officers, political leaders who use ethnicity for political gain, criminals and cartels evading justice, and terrorist organisations which would lose support.



## 2.2 The evolution of conflict

A disagreement is declared a conflict if the outcome is perceived by the parties involved as a threat to their needs, interests, or concerns. They may then develop distrust, frustration and hostility. Unlike disagreements, conflicts are considered unhealthy and dysfunctional.

The interviews conducted for this research suggest that the difference between a latent disagreement and an open conflict lies in the level of tension between the belligerent parties and its outward impacts.

A disagreement is declared a conflict when violence is involved, when there is a tendency for revenge, and when there is no forgiveness **FGD, West Pokot, June 2019.**

Early signs of conflict in FCDC counties include the sudden withdrawal of children from schools, the circulation of bellicose leaflets, the closure of markets, mass migration from conflict hotspots, a spike in incidents of livestock raiding, and a reduction in, or abandonment of, economic activities.

### Main conflict triggers

The distinction between a cause of conflict, its immediate trigger, and the reasons why it escalates is not always clear-cut. However, the informants to this study identified a number of factors which they associated with the evolution, outbreak and persistence of conflict. Eight issues were raised by multiple counties: politics, borders, land and natural resources, drought and climate change, drugs, small arms, unresolved historical injustices, and social media. The performance of institutions tasked with managing security can also be a factor in triggering or exacerbating conflict, and this is discussed in the next chapter.





## Politics

In all but one of the counties covered by this review, interviewees identified political leaders as among the main perpetrators of conflict and gave several examples of this. First, supremacy battles for political control of the county are a significant driver of tension. Some leaders are alleged to organise groupings and fuel division along ethnic lines in order to consolidate their base and gain political advantage, including through the use of violent militia. Second, county resources may not be shared fairly between different groups, with some politicians perceived as favouring members of their own communities in the distribution of employment and development opportunities; minority groups in particular feel excluded. Conflicts may also develop over the award of tenders. Third, development decisions may be used for political gain rather than in the best interests of people's livelihoods. One example given by interviewees was the development of water points and unplanned settlements in Garissa and Wajir, a point validated by other studies:

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*“The establishment of water points is initiated by politicians seeking to gain influence and votes, and is then driven by contractors with links to government... New water points are being placed without consideration for livestock wet and dry season grazing areas or pastoral mobility patterns, leading to the over-use and degradation of pastures. This occurs despite over 70 percent of Wajir’s population”*

**BRACED, 2019**

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## Borders

Many respondents identified border disputes as a key trigger of conflict, noting that the situation has worsened since the advent of devolution. Border disputes may arise within a county or between counties. Inter-county disputes are particularly acute between West Pokot and Turkana, Isiolo and Meru, Tana River and Garissa, and Tana River and Kitui. Informants to this study also noted that the national government is not always neutral, tending to side with the more populous county in a dispute (such as Meru vs Isiolo).





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*“The administrative centres have become so many that even chiefs do not know their boundaries. To address this, the best alternative is for clans to revert back to the colonial boundaries where physical features like hills and main roads were used and easily identifiable.”*

**Key informant, Mandera,  
June 2019**

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A contextual factor complicating boundary disputes is that dry season water points tend to be located in border areas, and that without clear agreements for sharing these resources, disputes between neighbouring communities at times of drought stress can develop into violence.<sup>9</sup>

### **Land and natural resources**

Competition and conflict over natural resources such as pasture and water are expected to increase as climate change deepens and land fragmentation reduces the availability of pasture and the scope for mobility.<sup>10</sup>

The study respondents identified a number of other conflict triggers associated with land in the FCDC region, mostly the result of competing land use.

Examples included the alienation of rangeland, especially dry season grazing, for agricultural projects; the establishment of wildlife conservancies or military training camps; and the acquisition of land for large-scale infrastructure investments, such as those associated with Kenya Vision 2030.





Interviewees in Isiolo and Lamu in particular noted that the Vision 2030 projects have not been implemented in a conflict-sensitive way. They are reported to have driven land speculation, in-migration, the fencing of land, and the acquisition of title deeds (sometimes corruptly) over land previously held in trust, all of which exacerbates tensions within and between communities; much of this, including compensation for the loss of titled land, has benefited those from outside the counties in question. Again, an additional concern is the use of land as a political tool, as politicians make promises to ensure ownership of contested areas in a bid to secure support from their ethnic group.

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*“Every place now has a semi-permanent settlement and grazing lands are diminishing. If boundaries and resource-sharing are not properly addressed, politically motivated conflicts will never end.”*

**Key informant, Marsabit, June 2019**

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Over the last decade, natural resources such as oil and coal have been discovered in some FCDC counties. Their discovery and extraction have generated grievances over issues such as local employment and revenue-sharing.<sup>11</sup> Conflicts may arise if the residents of counties feel that resources are being removed with no benefit to themselves. An imaginative and cooperative approach is needed so that natural resource extraction avoids making already marginalised communities feel further disenfranchised and exploited.

### **Drought and climate change**

Drought and climate change can exacerbate competition between pastoralists, and between pastoralists and farmers, over natural resources such as pasture and water.

One source of conflict between farmers and pastoralists, for example along the River Tana, is the movement of livestock into farms: farmers blame pastoralists for destroying their crops, while pastoralists accuse farmers of denying them access to essential grazing and water.

### **Drugs**

Interviewees in Lamu cited drug trafficking as one of the main threats to peace and social cohesion, describing its impact on divorce, family disintegration, and widespread petty crime. Young people are dropping out of school and undermining their employment prospects, while their drug use is a factor behind their involvement in criminal activities, including membership of Al-Shabaab; drug abuse was cited by informants as one of the major obstacles to tackling radicalisation in Lamu and the wider coastal region. Drug wars between rival groups have caused serious security challenges. Residents blame the government for inaction, and even collusion with drug barons. While Lamu is particularly badly affected, interviewees in six other counties (Baringo, Garissa, Isiolo, Marsabit, Tana River and Wajir) expressed concern about the link between drugs and/or alcohol and conflict.

### **Small arms**

Insecurity in FCDC counties is compounded by the influx of small arms and light weapons from neighbouring countries such as Ethiopia, Somalia and South Sudan. At the same time, the presence of security forces is insufficient to protect citizens adequately and to manage the range of conflict threats.<sup>12</sup>





### Unresolved historical injustices

The FCDC counties are dealing with a legacy of historical injustices which have not been satisfactorily resolved. Specific grievances continue to resonate today, such as the loss of land belonging to the Maasai in Laikipia during the colonial period.<sup>13</sup>

The recommendations of the now-defunct Truth, Justice and Reconciliation Commission, which had the potential to strengthen national unity, have not been implemented.

### Social media

Focus group discussions in a number of counties highlighted the power of social media, and specifically its potential to trigger or escalate conflict. Informants in Tana River identified 'social media propaganda' as one of the factors contributing to conflict, while those in Baringo commented that 'social media ignites conflict'. Women in Wajir illustrated the importance attached to public statements by prominent individuals:

*“What is said on social media can be taken seriously by the local people which results in clan wars, especially if it is said by their high profile politicians and lawyers.”*

### *Women focus group discussion, Wajir, June 2019*

A key informant in Isiolo commented on the changing tactics of violent extremist organisations as radicalisation and recruitment move online.





## Measuring progress in peace and cohesion

Conflicts can be objectively measured using both quantitative and qualitative indicators, such as the reported incidence of conflicts, the violation (or otherwise) of alternative dispute resolution (ADR) mechanisms, and the effectiveness of conflict early warning and early response mechanisms.

Focus group discussions with those affected by conflict revealed a number of indicators that might be used to measure progress in building peace and social cohesion. These were similar across the counties and were associated with social interaction, economic development, and access to goods and services. Table 2 contains some examples.

**Table 2: Indicators to measure progress in peace and social cohesion**

Focus group	Indicators
<b>Garissa</b>	<ul style="list-style-type: none"><li>▪ Different communities are living in harmony</li><li>▪ Growth in business</li><li>▪ Good working relationships between government and community</li></ul>
<b>Isiolo</b>	<ul style="list-style-type: none"><li>▪ Inter-marriage</li><li>▪ Children going to school freely</li><li>▪ Free market days and progress in trade</li></ul>
<b>Laikipia</b>	<ul style="list-style-type: none"><li>▪ When pastoralists are able to negotiate for pasture with private ranches instead of using force or destroying property</li></ul>
<b>Tana River</b>	<ul style="list-style-type: none"><li>▪ Growth in business</li><li>▪ People help each other</li></ul>
<b>Turkana</b>	<ul style="list-style-type: none"><li>▪ Cross-border sharing of information on early warning</li><li>▪ Cordial networking between communities and actors</li><li>▪ Inter-marriage</li></ul>
<b>Wajir</b>	<ul style="list-style-type: none"><li>▪ Free movement of people</li><li>▪ Access to education</li><li>▪ Marriage between clans</li></ul>



## 2.3 Gender dynamics in conflict resolution

Kenya has ratified the United Nations Security Council Resolution 1325 of 2000 and subsequent protocols supporting women's participation in peace and security processes and developed its National Action Plan. However, the patriarchal nature of many communities in FCDC counties means that women and girls are not centrally involved in peace and cohesion processes, despite bearing the brunt of conflicts.<sup>14</sup> A further concern raised by informants in Laikipia was that male elders can be slow to resolve conflicts involving women, particularly gender-based violence.

Even so, the field survey for this research found that women are active as both perpetrators and peace-makers.

In counties such as Baringo, Marsabit, Turkana and West Pokot, gun-runners are reported to prefer hiring women and girls to ferry illicit firearms, ammunition and other forms of contraband because the authorities suspect them less than men. Women were also said to ridicule or refuse to marry men and boys who show signs of cowardice, while praising those who demonstrate courage:

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*“Women feed the warriors.  
They incite men and youth to  
go and raid and are secretive  
with information.”*  
*FGD, West Pokot, June 2019*

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More commonly, the informants to this study described women's role in reducing conflict, particularly in Baringo, Garissa, Samburu, Turkana, Wajir and West Pokot, where women-led organisations are playing a leading role in conflict resolution and transformation. They also indicated that gender roles are slowly changing.

Despite being the most vulnerable  
Despite being the most vulnerable and victims of violent conflicts, women are increasingly engaging in peacebuilding initiatives. They engage peaceful rallies, utilizing local FM radio stations to advocate for peace. They have devised ways for ensuring that men listen to their cries for peace, including denying them their matrimonial rights. This sentiment was shared by respondents in most of the counties.











## CHAPTER 3



# 3. Analysis of the Institutional Framework

This chapter analyses the institutional framework for peace and social cohesion in the FCDC region. It firstly provides an overview of the various institutions, both formal and informal, at national, county and community levels, explaining their mandate and roles and the links between them. Secondly, the channels for reporting conflict and the mechanisms for prevention and response are described. Finally, it assesses the effectiveness of these various institutions and points to ways in which their performance could be enhanced.

## 3.1 Institutions and networks involved in peace building and social cohesion

### National-level institutions

Table 3 lists the main national institutions concerned with peace building and social cohesion, their mandate, roles and responsibilities and services they currently provide.

Table 3: National institutions

Institution	Source of mandate	Functions
National Security Council	Constitution of Kenya, 2010, Article 240	Exercise supervisory control over national security organs
Peace Building and Conflict Management Directorate, Ministry of Interior and Coordination of National Government (formerly the National Steering Committee for PBCM)	Executive Order No. 2/2013 (for the overall national coordination function, one of its five responsibilities being peace building, conflict management and conflict resolution)	Coordinate peace building and conflict management  Inter alia:  Hosts the Conflict Early Warning and Early Response Unit (CEWERU) and the Kenya National Focal Point on Small Arms and Light Weapons (KNFP)
National Cohesion and Integration Commission (NCIC)	National Cohesion and Integration Act, 2008	Facilitate and promote equality of opportunity and peaceful coexistence between different ethnic and racial groups
Directorate of National Cohesion and Values, Executive Office of the President	Presidential Circular No. 1, 2008  Constitution of Kenya, 2010, Articles 4, 10 and 131	Coordinate implementation of Sessional Paper No. 8 of 2013 on National Values and Principles of Governance and Sessional Paper No. 9 of 2013 on National Cohesion and Integration
National Police Service (NPS)	National Police Service Act, 2011	Provide assistance to the public; maintain law and order; prevent and detect crime (inter alia)  The Directorate of Criminal Investigations oversees the Anti-Terrorism Police Unit.



Institution	Source of mandate	Functions
National Police Service Commission	Constitution of Kenya, 2010, Chapter 15	Oversee the human resource functions of the NPS
Independent Policing Oversight Authority (IPOA)	IPOA Act, 2011	Investigate complaints; monitor and investigate policing operations; review patterns of police misconduct and the functioning of the internal disciplinary process (inter alia)
National Counter-Terrorism Centre (NCTC)	Security Laws Amendment Act, 2014, which amended the Prevention of Terrorism Act, 2012	Public awareness on the prevention of terrorism, counter-terrorism and deradicalisation strategies, and capacity building for counter-terrorism stakeholders (inter alia). The membership and responsibilities of this inter-agency coordinating body were subsequently expanded.
National Intelligence Service	National Intelligence Security Act, 1998	Identify security threats, collect and analyse intelligence, and advise the government accordingly. It is a civilian agency with no police powers of search, arrest or prosecution.
Kenya National Commission on Human Rights (KNCHR)	Constitution of Kenya, 2010, Article 59; KNCHR Act, 2011	Act as a watch-dog over the government in the area of human rights; provide leadership in moving the country towards a human rights state
National Gender and Equality Commission (NGEC)	Constitution of Kenya, 2010, Article 59; NGEC Act, 2011	Promote gender equality and freedom from discrimination; monitor, facilitate and advise on integrating the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions (inter alia)
Commission on Administrative Justice (CAJ) (Office of the Ombudsman)	Constitution of Kenya, 2010, Article 59; CAJ Act, 2011	Investigate any conduct in state affairs or any act or omission in public administration in any sphere of government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct (inter alia)
National Authority for the Campaign against Alcohol and Drug Abuse (NACADA)	NACADA Act, 2012	Coordinate multi-sectoral efforts to prevent, control and mitigate the effects of alcohol and drug abuse in Kenya.



## County-level institutions

The powers, functions and responsibilities of the county governments are provided for under the County Governments Act, 2012. The counties exercise their functions through five-year County Integrated Development Plans. They play a supportive or complementary role to the national government on security matters and can be instrumental in promoting peace-building and reconciliation processes.

The office of the County Commissioner is established under the National Government Coordination Act, 2013, and represents the national government at the county level; above them are Regional Commissioners. The County Commissioner chairs the county security committee and is responsible, among other things, for maintaining law and order.

County governments are giving more emphasis to peace and cohesion by establishing specific departments or directorates. They include:

- **Garissa:** Department of Peace and Social Cohesion
- **Isiolo:** Department of Peace, Cohesion and Conflict Resolution
- **Lamu:** Department of Education, Gender, Youth Affairs and Social Cohesion
- **Mandera:** Department of Cohesion and Integration
- **Marsabit:** Directorate of Peace, Cohesion and Conflict Management
- **Samburu:** peace docket under Special Programmes
- **Tana River:** Directorate of Cohesion and Special Programmes
- **Turkana:** Directorate of Peace
- **Wajir:** Directorate of Peace and Conflict Mitigation
- **West Pokot:** Directorate of Peace Building.

There are also inter-county initiatives, such as the Amaya Triangle initiative between Baringo, Isiolo, Laikipia and Samburu.

The **County Policing Authority (CPA)** was established under Section 41 of the National Police Service Act, 2011, and tasked with, inter alia, developing proposals on priorities for police performance in the county, monitoring trends and patterns of crime, and ensuring accountability to the public and compliance with national policing standards. Its members include representatives of the national and county governments and the public. Despite the President's announcement in 2015 that he had activated the agency, it is not currently operational due to inter-governmental tensions: some national government officials argue that security is an exclusive function of the national government and that the CPA would interfere with this, while the Governors argue that it is critical to involve the county leadership in security matters. There is also a lack of clarity on whether the national or county governments should fund peace building and conflict management initiatives.

## Community-level institutions

**Peace committees** trace their origins to Wajir in the early 1990s when communities began employing traditional conflict management and peace building mechanisms to address inter-clan violence. The model spread to other parts of the former North-Eastern, Eastern, North Rift and Coast Provinces, particularly Mandera, Garissa, Marsabit, Moyale, Turkana, Pokot, and Tana River. After the post-election violence of 2007/2008, the model gained further prominence among non-pastoralist communities.<sup>15</sup> The discussions around Agenda Four (long-term issues) of the Kenya National Dialogue and Reconciliation Process recommended that peace committees be established in all the then districts of the country.



County Peace Committees (formerly District Peace Committees) and monitors remain a part of the national peace infrastructure, but their impact has diminished or halted altogether in some areas, in large part due to a lack of funding from the national government since devolution, but also because they are less well equipped to deal with some of the newer manifestations of conflict, such as those associated with terrorism, inter-county conflict, or the politics of devolution.

**Councils of Elders** play a significant role in moderating and resolving intra- and inter-communal disputes and have been instrumental in negotiating a number of peace accords using an ADR arrangement<sup>16</sup>. They have been able to mitigate some conflicts from developing into full-blown armed violence. Significantly, ADR is now recognised by the Judiciary as a viable 'track two' approach for resolving conflicts which can be effectively mediated outside the ambit of the formal judicial system.

Another important function of the various Councils of Elders is the management of natural resources. In Isiolo, for example, the ***Jaarsa dedha*** ensures equal rights and access to dry season grazing and water by all members. The system preserves and restores the productive capacity of rangelands, allowing grass to regenerate for use during the dry season. Where other communities wish to have access, the system also provides for negotiation between respective elders prior to any movement of livestock into the grazing fields. However, many of the incoming communities are aware of these negotiated rules of access but act in disregard of them. Participants in focus group discussions in Isiolo also noted that some of the incoming communities often raid livestock from others as they leave the county to restock their herds.





## Civil society initiatives

There are numerous civil society initiatives supporting peace building and social cohesion but they lack a universally accepted convening and coordinating structure, while those operating on the ground tend to lack capacity and funding. There are varying degrees of trust between civil society organisations, and some competition for resources and influence. Inter-agency collaboration and engagement is strongest around election periods but is not sustained to address the deep-rooted grievances that drive conflict in FCDC counties. Further, joint programming between peace building actors tends to happen more at sub-national and county levels than at the national level. These joint efforts are mostly government-led, but are not matched by a comparable degree of coordination and common vision at the national level, despite efforts to do so.





### 3.2 Linkages between different peace and cohesion actors

The Peace Building and Conflict Management Directorate (formerly the National Steering Committee) was established in 2001 as a multi-agency body to coordinate the various peace building and conflict management efforts across the country and regionally, including partnership with civil society organisations and the integration of traditional justice resolution mechanisms. However, without adequate capacity, which the passage of the National Peace Policy Bill is intended to provide (discussed in Section 5.1), the Directorate is unable to fulfill its coordinating function effectively.

The NCIC was commonly mentioned by study informants as having overall responsibility for social cohesion in Kenya. However, without prosecutorial powers it must collaborate with the Director of Public Prosecution, the State Law Office, and the Directorate of Criminal Investigations to take effective action. At the time of writing this report the Commission was operating under strength, with no Commissioners in place. The NCIC Act was also in the process of being amended by the National Assembly so that the Commission could be more robust and responsive in the discharge of its constitutional mandate.

Most FGD respondents and key informants noted that inter-agency collaboration and engagement is strongest around election periods, but is not sustained to address the deep-rooted grievances that drive conflict in FDC counties.

### 3.3 Mechanisms for reporting, preventing and responding to conflict

#### Reporting

The channels for reporting conflict depend on the nature of the grievance. The main avenues are the Councils of Elders, religious leaders, chiefs and their assistants, and the police. Some grievances are also reported to peace committee's/peace monitors, the community policing initiative (*Nyumba Kumi*), grazing committees, faith-based organisations and civil society organisations that operate early warning networks. The former District Peace Committees were an important reporting channel in the past, but less so under devolution. The Peace Building and Conflict Management Directorate operates a reporting platform, either online or by SMS (Uwiano@108)<sup>17</sup>.

#### Prevention

The focus group discussions and key informant interviews identified a number of conflict prevention measures in place:

- **Peace-building activities that bring potentially warring communities together.** One example is the peace marathon in Isiolo in 2016 which brought together young morans from Samburu with other communities in Isiolo. After the race the groups took part in a dialogue on livestock raiding and other forms of conflict within the county. Another example is peace caravans in the Turkana/Pokot border area.
- **Peace dividend projects that promote collaboration and shared resources.** A cash for work project in Marsabit brought warring communities together to construct a communal water pan, the frequent engagement between the different groups helping to increase trust. In West Pokot, the county government has constructed two schools on the border with Uganda (in Katikomor and Akulo) and is in the process of constructing three more (Apoke, Nauyapong and Nasal).







- **Frequent meetings between the police and communities to build trust.** In Isiolo, for example, deliberate and regular engagement between the police and religious leaders, facilitated by DAI's NIWETU project and implemented by Isiolo Peace Link, improved communication and trust and led to better policing, particularly in countering violent extremism.
- **Police patrols** and the work of security intelligence groups; patrols were reported to have improved in recent years in West Pokot, for example.
- **Strategies and action plans to counter violent extremism.** Several counties have developed county action plans, including Garissa, Isiolo, Lamu, Mandera, Marsabit and Wajir.
- **Regional agreements:** these were mentioned by informants in counties such as Marsabit, Turkana and West Pokot as helping prevent and manage conflict with neighbouring countries.

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*“We collaborate with the neighbouring counties and internationally with Ethiopian security agencies. In fact, we had a meeting with Ethiopian communities and security agencies last week. The communities are slowly accepting that it is only criminal elements among them that are being targeted, and not any specific ethnic group.”*

**Key informant, Marsabit, June 2019.**

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## Response

In most FCDC counties, conflict resolution is a hybrid of formal and non-formal approaches. Some conflicts, especially the less complex ones, are resolved through a consultative forum that brings together elders from the relevant communities. This conflict resolution mechanism often concludes with some form of agreement, and compensation if injustice has been established. Interviewees cited the Modogashe agreement (in Garbatula) and the Nanyuki declaration on livestock raiding as useful tools in dealing with inter-ethnic conflict.

While peace committees depend on goodwill and lack consistent enforcement mechanisms, they were noted by key informants in Marsabit as effective in returning stolen stock. The informants recommended proper facilitation and support to the committees.

The government has recently taken some actions to improve the control of weapons and increase the presence of security forces in peripheral areas. For example:

- i) National Police Reservists have had their firearms confiscated and have been retrained and deployed to livestock raiding and conflict-prone areas, mostly in the FCDC region. Regularising their payments has also improved security by removing the need to resort to banditry for a livelihood.
- ii) Private security guards, in what the government calls ‘strategic and high-risk’ sectors, are due to be issued with firearms and will augment police work in the maintenance of law and order. The Cabinet Secretary for the Ministry of Interior has gazetted the regulations.
- iii) There is now a single command structure for the Administration Police and the Kenya Police.
- iv) The government has recalled all privately owned firearms prior to re-issuing them based on merit.



The disarming of National Police Reservists appears to have had differing results in the counties. In West Pokot it was mentioned as a recent driver of conflict, while in Marsabit it was welcomed:

*“Police reservists are mandated to provide security to the locals but it has turned out to be private, in some cases even guarding banks, private houses, and ferrying domestic animals to the market. They have made it a venture to earn livelihoods from. Therefore, the disarming of the NPR has led to a decrease in the incidence of violence.”*

***Key informant, Marsabit, June 2019***

The Anti-Stock Theft Unit, a division of the Kenya Police charged with preventing livestock theft, is now deployed in most FCDC counties and has helped reduce, but not eliminate, the incidence of raids.





### 3.4 Effectiveness of peace and cohesion institutions

Annex 3 reproduces analysis of the strengths, weaknesses, opportunities and threats of the existing institutions concerned with peace and social cohesion. It outlines the bottlenecks of the current institutional set-up. The main challenges concern coordination and the impact on conflict of poor institutional performance and weak governance.

**Coordination** was the challenge most commonly mentioned by informants, and at all levels: inter-governmentally, between the national and county governments; within the counties, where the mechanisms to coordinate peace stakeholders are unclear or inconsistent; and at the sub-county and community level. The impact of ineffective inter-governmental collaboration was illustrated by an interviewee in Marsabit:

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*“The national government is a bottleneck... we sometimes disagree with them. Their mandate is to provide security but they have failed to foster peace. During one incident at Horonder, they had intelligence information of the imminent attack but did little to avert it, and it eventually led to fatal violence.”*

**Key informant, Marsabit, June 2019**

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**Institutional performance** has a direct impact on conflict. Informants to this study explained how the actions of institutions with a mandate to ensure peace and security can in some circumstances trigger or exacerbate conflict. For example, when asked when a disagreement evolves into a conflict, those in West Pokot highlighted the issue of differential treatment:

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*“A disagreement evolves into a conflict when government security fails to protect two communities in equal measure, and when there is selective disarmament of suspected armed communities.”*

**FGD, West Pokot, June 2019**

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Other concerns were that government resources are insufficiently flexible (such as the police being based in fixed camps in predominantly nomadic areas), and that they are used primarily to maintain law and order rather than address the root causes of conflicts. However, informants to the study also recognised the impact of conflict on serving officers, who may suffer from mental health issues and experience an above-average rate of resignation and desertion.

**Governance:** study informants described several instances of the link between poor governance and conflict: for example, if the county leadership is not inclusive and not interested in promoting dialogue; if members of the security forces sell bullets to bandits, or use excessive or indiscriminate force against citizens; if transfers and promotions within the security services are due to patronage, nepotism or tribalism, thus lowering morale; and if grievances remain unaddressed, such as the difficulties faced by young people in Garissa in obtaining national identity cards. Failure to resolve conflict feeds a cycle of revenge.

With reference to the issue of inclusivity, an ethnic and diversity audit of the county public service by the NCIC in 2015 depicted an ethnic imbalance in the public service. It found that only 15 counties adhered to the requirement of the County Governments Act 2012, section 65, that ‘at least thirty percent of the vacant posts at entry level are filled by candidates who are not from the dominant ethnic community in the county’.<sup>18</sup>



Six of those 15 counties are covered by this review: Garissa, Isiolo, Laikipia, Lamu, Marsabit, Tana River. These imbalances suggest that political power in Kenya is used as a tool for rewarding those from one's ethnic group at the expense of others, in contravention of the principles of equity and fairness espoused in the Constitution and other statutes.

Study informants identified the main factors limiting the performance of the county directorates and departments as being:

- Inadequate funding.
- Low capacity in conflict analysis and peace programming.
- Weak and uncoordinated peace structures at the sub-county and community levels.
- Unclear mechanisms for structured coordination of peace stakeholders at the county level.
- Slow pace of county legislation on peace policy.

Informants to this study were invited to comment on the value-addition of institutions addressing peace and social cohesion and whether some should be removed or added.

In only one county (Tana River) was there any proposal to create more institutions, although informants here were equally split with others arguing to the contrary.

In all other counties the consensus was that the existing institutions were adding value to a greater or lesser degree, and that the priority should be to strengthen their effectiveness rather than add more, by (i) improving coordination and synergy, (ii) clarifying their terms of engagement, (iii) ensuring adequate funding, and (iv) introducing new mind-sets and work ethics, including integrity and openness.

### Funding

Funding was mentioned by numerous informants when discussing the effectiveness of institutions. However, the concern was not just the amount of money but its nature, for example:

- Over-reliance on funding from development partners.
- Insufficient independence in the allocation of funds: for example, reliance on approval by the National Assembly some of whose members may feel threatened by the work of some institutions.
- Lack of sustainable finance: for example, that interest in maintaining the conflict early warning system tends to wane after elections.

Specific activities that are directly affected by the lack of reliable funding include the management of the conflict monitoring framework by the Peace Building and Conflict

Management Directorate, early response capacity, and the operation of peace committees in the counties.

Insufficient funds were cited as one reason why key national institutions, such as the Peace Building and Conflict Management Directorate, are unable to finance their core activities and establish an effective presence in the counties. On the other hand, while noting the same budgetary constraints, some county informants mentioned improvements in some areas, such as better access to transport by the police in West Pokot leading to more patrols and an improved response to conflict and crime in general. Others drew a distinction between the resources available for security operations and for the maintenance of peace:

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*“For security operations, yes, we have enough personnel and presence up to the grassroots levels. For peace maintenance, we are not fully equipped.”*

***Key informant, Marsabit, June 2019.***

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## CHAPTER 4



# 4. Analysis of the Legal Framework

This chapter firstly provides an overview of relevant legislation on peace and social cohesion, and secondly discusses the enforcement of these laws and the legal mechanisms to deal with loss or injustice after conflict.

## 4.1 Legislation on peace and social cohesion

The main pieces of legislation are summarised in Table 4.

Table 4: National legislation relevant to peace and social cohesion

Legislation	Purpose
<b>Constitution of Kenya, 2010</b>	<p>Article 238 defines national security as “the protection against internal and external threats to Kenya’s territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests.” It goes on to say that national security shall be promoted and guaranteed in accordance with four principles:</p> <ul style="list-style-type: none"><li>i. “National security is subject to the authority of the Constitution and Parliament</li><li>ii. National security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms</li><li>iii. In performing their functions and exercising their powers, national security organs shall respect the diverse culture of the communities within Kenya</li><li>iv. Recruitment by the national security organs shall reflect the diversity of the Kenyan people in equitable proportions.”</li></ul>
<b>National Cohesion and Integration Act, No. 12, 2008</b>	<p>This is designed to encourage national cohesion and integration by outlawing discrimination on ethnic grounds; and to provide for the establishment, powers and functions of the National Cohesion and Integration Commission.</p>
<b>Kenya Defence Forces Act, 2012</b>	<p>This provides for the functions, organisation and administration of the Kenya Defence Forces and for disciplinary matters. Under Article 8, the Defence Forces:</p> <ul style="list-style-type: none"><li>i. shall be responsible for the defence and protection of the sovereignty and territorial integrity of the Republic</li><li>ii. shall assist and cooperate with other authorities in situations of emergency or disaster</li><li>iii. may be deployed to restore peace in any part of Kenya affected by unrest or instability only with the approval of the National Assembly.</li></ul> <p>A bill in 2015 proposed an amendment to integrate human rights and specifically prohibit the use of torture and other cruel methods. This has not yet been finalised.</p>



Legislation	Purpose
<b>Firearms Act, 2012</b>	This provides for the regulation, licensing and control of the manufacture, importation, exportation, transportation, sale, repair, storage, possession and use of firearms, ammunition, airguns and destructive devices and for connected purposes.
<b>Security Laws Amendment Act, 2014</b>	<p>An amendment to the Prevention of Terrorism Act, 2012, provides for the establishment of the National Counter-Terrorism Centre.</p> <p>The 2014 Amendment Act introduced other reforms, such as streamlining criminal proceedings and dealing with public officials who aid criminal activity. The Act was accused of being overly punitive to civil society and the media, and Kenya's Supreme Court later rejected eight of its clauses.</p>
<b>Narcotic Drugs and Psychotropic Substances Control Act, 1994</b>	<p>This regulates the control of drug possession and trafficking, although focuses more on punishment than prevention or rehabilitation.</p> <p>Subsequent legislation in 2012 established NACADA.</p> <p>Under the Fourth Schedule of the Constitution, the control of drugs is a county function.</p>
<b>Community Service Orders Act, 1998</b>	This provides for community service as an alternative to imprisonment.
<b>Environmental Management and Coordination Act, 1999, amended in 2015</b>	This provides overarching regulations and enforcements for the protection and conservation of the environment and creates specific institutions, including the National Environment Council, the National Environment Management Authority, and the National Environment Trust Fund.
<b>Community Land Act, 2016</b>	This provides for the recognition, protection and registration of community land – one of the three classifications of land under Chapter 5 of the Constitution – as well as its management and administration. However, it has not yet been implemented.
<b>National Police Service Act, 2011</b>	Among other things, this provides for community policing using a mechanism of Community Policing Committees and implemented through the Nyumba Kumi initiative <sup>19</sup> .

Some legislation is problematic. For example, the Narcotic Drugs and Psychotropic Substances Control Act, 1994 (revised in 2012), takes a punitive approach that favours criminalisation over treatment and is therefore not conducive to the provision of health and rehabilitation services to drug-users. Other legislation is still pending, such as the amendment to the Kenya Defence Forces



Several FCDC counties are developing their own legislation relevant to peace and security, some of this on an inter-county basis. Table 5 contains some examples.

**Table 5: County legislation relevant to peace and social cohesion**

County	Legislation	Status
Garissa and Tana River	Border / Boundary Conflict Ownership Bill	In discussion with County Assemblies
Laikipia	Public Participation Act	In place
	Disaster Management Act	In place
	Sand Harvesting Bill	In the County Assembly
	Water Bill	Rejected by the County Assembly
Samburu	Village Administration Bill	Passed (Samburu)
Turkana	Village Administration Bill	In progress (Turkana)
Mandera	Peace Building Policy and Bill	Under debate
Wajir	Peace Building and Conflict Management Bill	Draft

## 4.2 Enforcement of the law and institutional performance

### The role of peace declarations

An important informal mechanism to ensure law and order besides the police is the negotiated peace agreement concluded by the elders of groups in conflict. ADR mechanisms are anchored in the Constitution under Article 159 and are a critical avenue for settling local disputes before they escalate. Table 6 lists some examples of these in FCDC counties.

**Table 6: Peace declarations in FCDC counties<sup>20</sup>**

Peace agreement	Area of enforcement	Fines included in the agreement
Al-Fatah Declaration	Wajir	Death of a male: 100 camels or Kshs. 1 million Death of a female: 50 camels or Kshs. 500,000
Modogashe Declaration	Marsabit, Isiolo	Death of a male: 100 camels Death of a female: 50 camels Alternatively, Kshs. 600,000
Sheikh Umul Accord	Mandera	Death of a male: 100 camels or Kshs. 1 million Death of a female: 50 camels or Kshs. 500,000
Maikona Declaration	Marsabit	Death of a male: 100 camels Death of a female: 50 camels Alternatively, Kshs. 600,000



There is apparent confusion and overlap between law enforcement agencies. In particular, there is as yet no established information-sharing mechanism, resulting in poor and inefficient deployment of resources in the prevention and response to security threats. Further, the behaviour of the police can have a direct impact on conflict:

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*“Corruption, bias and omission on the part of the police creates an avenue for conflict and insecurity to thrive in this part of the county.”*

*Key informant, Isiolo, June 2019*

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The relationship between security forces and communities in FCDC counties is in many cases negative, especially in the north-east and Lamu, with many respondents accusing security forces of using excessive force against civilians, blanket punishment, extra-judicial killings, forced disappearances and arbitrary arrests. This makes the fight against terrorism more difficult by contributing to radicalisation. Those interviewed in Garissa were also concerned that many young people are not given national identity cards because of the presence of refugees in the county, thus further affecting their prospects by denying them access to state jobs and services.

There are various reasons why the legislation in Table 4 has not been properly enforced in the FCDC counties. The following implementation challenges were identified by study informants:

- Inconsistent political will, which is critical in supporting the translation of laws into practical and measurable action.
- Selective enforcement due to political interference or manipulation by those in influential positions.
- Inadequate resources (human capital and funding) that compromise the ability of institutions to deliver on their mandates robustly.
- Poor remuneration and conditions of service that encourage security officers to take bribes and other inducements.
- Patronage and ineffective internal structures to deal with disciplinary cases in an objective and fair way.
- Operations by the Independent Police Oversight Authority remain limited or insufficiently independent.

Draft policies (discussed in Section 5.1) need completing and legislating. In addition, there is a need for closer working arrangements between officers in different institutions with similar or complementary roles.

A multi-sectoral team drawn from these agencies could develop and implement a framework to monitor how different legal instruments are being applied to achieve peace.

### **Legal mechanisms for dealing with injustice and loss**

There are two main types of legal mechanism in operation: the formal court system, supported by the police, and community-based institutions such as the Councils of Elders.

The judicial system in the FCDC counties faces a number of challenges. The population is poorly informed of its legal rights and responsibilities, while the cost of using the formal court system and its complex procedures are practical deterrents. The judiciary is inadequately staffed and has a thin presence in the region: Garissa, for example, has a High Court, but Lamu and Tana River have only magistrate's courts; Lamu relies on the High Court in Malindi. Garissa also depends on visits by the Land and Environment Court in Embu.

Focus group discussions across the FCDC counties revealed a preference for local and informal processes of justice rather than the formal route of the police and the courts. There were concerns that court processes are complex and their rulings not respected.





Some grievances involve government entities, such as the military or politicians, which leads claimants to doubt that they would succeed in the courts. Women in Wajir described how their choice of mechanism is influenced by the nature of the conflict, but also how formal and informal mechanisms of justice intersect:

Focus group discussions from Wajir indicated that they used the maslaha system if the conflict is link to clan issues, but issues like gender-based violence are taken to the courts. They argued that people have more confidence with maslaha than the police because the former is more about building relationships than the latter. The same groups noted that maslaha has its weaknesses. Women FGDs in Wajir stated that it does not bring justice to the true victims. The money, if won, will be shared by the community. In Wajir, they argued that victims of gender-based do not get justice with it, although if perpetrators are found guilty through the maslaha system they will be taken to court.

While traditional systems of justice are on the whole seen as more effective than formal ones, there are concerns about inaction and impunity regardless of the mechanism:

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*“People prefer to resolve conflicts at community level than formal processes because they fear that formal processes are prone to interference because of corruption and bias. Many people do not get justice. In some instances, even when the perpetrators are known, no action is taken against them.”*

***FGD, Lamu, June 2019***

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## CHAPTER 5



# 5. Analysis of the Policy Framework

This chapter firstly provides an overview of relevant policies and other documents and their implementation, and secondly discusses the extent to which these policies are known at county and community levels.

## 5.1 Policy overview

Peace and security is integral to Kenya Vision 2030, whose political pillar advocates the mainstreaming of peace building, conflict management and security enhancement. The current vision for the security sector is ‘a society free from danger and fear’. Table 7 summarises the main national policies relevant to this vision, along with an analysis of their relevance and effectiveness.

Table 7: National policies relevant to peace and social cohesion

Policy	Relevance and efficacy	Gaps
Sessional Paper on National Peace Policy and Conflict Management	The policy is robust and comprehensive, and key to the coordination of the peace and cohesion sector.	The NPP Bill has not yet been passed.
National Security Policy	The apex national security policy.	None obvious
National Strategy to Counter Violent Extremism	The policy is progressive and provides for the mitigation and prevention of a wide range of terrorist activities, including deradicalisation and reintegration of reformed radicalised youth.	There are numerous grey areas in the way the security apparatus approach countering violent extremism, chief of which is the tendency to profile youth along ethnic and religious lines.
National Crime Prevention Strategy	This promotes the advancement of technology for evidence-led intelligence.	There is a significant gap between the policy content and its enforcement.
Sessional Paper No. 8 of 2013 on National Values and Principles of Governance	Approved	



Policy	Relevance and efficacy	Gaps
Sessional Paper No. 9 on National Cohesion and Integration	This aims to promote a general understanding of national cohesion and integration, to enhance the capacity of the NCIC and other stakeholders to design and implement appropriate interventions, and to enhance stakeholders' compliance with legal and regulatory requirements regarding national cohesion and integration.	The policy has been only partially implemented. The perception of study informants is that the NCIC has narrowed its mandate to monitoring hate speech and inadvertently given less attention to other equally important aspects of its mandate. A review of the National Cohesion and Integration Act (2008) is required, which is part of the legal framework for the implementation of this policy.
National Small Arms and Light Weapons Control and Management Policy	This emanates from Kenya's signing and ratifying the Nairobi Protocol of 2000, which established national focal points to drive the disarmament agenda in all member states.	The perception of study informants is that the policy and its National Action Plan have not been given the necessary attention and that disarmament can be politicised.
Ethnic Relations and Race Policy Framework	This is at an advanced stage of approval.	
Policies governing access to and control over land and natural resources	Examples include the Land Policy, Forestry Master Plan, and National Biodiversity Strategy and Action Plan	



County governments are also formulating policies and plans relevant to peace and social cohesion (Table 8).

**Table 8: County policies or plans relevant to peace and social cohesion**

County	Policy	Status
Baringo, Marakwet, Turkana, West Pokot	Inter-county Climate Policy	Signed
Garissa	Policy on Peace and Cohesion	In final stages
Garissa, Isiolo, Laikipia, Lamu, Mandera, Marsabit, Wajir	County Action Plan to County Violent Extremism	Adopted
Isiolo	Grazing Management Policy	Adopted
Laikipia	Climate Change Policy	In progress
Mandera	Policy on Peace and Cohesion	In final stages
Turkana	Community Safety Policy	Not stated
Turkana	Peace Policy	Ongoing
Wajir	Peace Building and Conflict Management Policy	Draft
Wajir	Public Participation Policy	Under debate
Wajir	Rangeland Policy	Under debate
West Pokot	Policy on Peace and Cohesion	In final stages

Tables 7 and 8 show that the government has drafted several policies relevant to peace and cohesion, but most are in draft form. Others have not yet been implemented, or only partially. Further, there is no single institution coordinating the implementation of these policies in a harmonised manner.

There is a considerable backlog of enabling policies and bills that need to be fast-tracked by Parliament to anchor implementation of national security-related programmes and priorities. These policies need to be enacted to give them the requisite force of law, without which the institutions charged with the mandate to deliver them will be less effective. The first priority should be to pass the National Peace Policy Bill which would have a direct impact on the overall infrastructure for peace.



The National Peace Policy originated from the review of Sessional Paper No. 5 of 2014 on the National Policy for Peace Building and Conflict Management and was adopted by the National Assembly on 27 August 2015. It places strong emphasis on the prevention, mitigation, and management of conflict. A subsequent Peace Bill was developed in 2016 to anchor the policy into law. The bill has completed the public consultation process and is awaiting its presentation by the Cabinet to Parliament for approval, but remains stuck at the ministerial level. This is a comprehensive piece of legislation that will strengthen coordination and oversight of peace-building and conflict management measures at local, county, national and regional levels, encourage collaboration between the various actors involved, and provide a mechanism for resource mobilisation by establishing a peace fund.





In summary, the various policies have a sound rationale and justification, and are generally mutually supportive and complementary, but are not effectively implemented for a number of reasons identified by study informants:

- Failure of the relevant state ministries, departments and agencies scrupulously to enforce the policies as outlined under the statutes that established them.
- Lack of sufficient funds, resulting in underperformance against the projected peace building and social cohesion targets.
- An apparent state of malaise and disenchantment across the public service, reportedly due to low morale and lack of incentives to drive optimum productivity.
- A wastage of public resources through patronage, ethnicity, corruption and a mindset of 'what-is-in-it-for-me'.
- Failure to facilitate field-based stations and outposts to discharge their mandates, which can lead to a state of lethargy and resignation among officers.



## 5.2 Policy knowledge at county and community level

### Community knowledge on the existing policies

Knowledge of these national policies among both county officials and community members is low. The vast majority of public servants did not have a good grasp of the various policy frameworks and statutes under which they operate. For the most part, policy and legal matters are viewed as abstract and elitist and are left to policymakers and bureaucrats in the senior echelons of government to formulate and articulate. Interviews with community members suggested that citizens know almost nothing of the existence, let alone the detail, of these documents. A related observation is that the government abandoned the Kenya National Integrated Civic Education programme immediately after the promulgation of the Constitution of Kenya, 2010.

In no county were informants to this study able to give a comprehensive description of the relevant policy frameworks. In most counties, key informants and members of focus groups mentioned between one and three policies that were either generated by the county governments (such as county peace and cohesion policies, county CVE action plans, or inter-county agreements such as the Amaya initiative) or were the product of ADR mechanisms (such as the Modogashe declaration), or had direct relevance at their level (such as community policing guidelines).

However, knowledge gaps within the national government were also pointed out, for example when approaches to peace and social cohesion fail to recognise what respondents called the 'reality of conflict' at grassroots level. This was mentioned by three counties: Garissa, Mandera and West Pokot.





## CHAPTER 6



## 6. Conclusions

### Context analysis

The study found that the main types of conflict vary across the FCDC region, with livestock theft being dominant in the north and north-west and terrorism in the north-east and Lamu. In both areas, inter-ethnic or inter-clan conflict is still widespread. There are also newer forms of conflict, such as those associated with devolution, large-scale development projects, extractives, and drug trafficking.

There are numerous drivers of conflict, including ethno-political competition for power, poverty and marginalisation, youth unemployment, climate change and environmental degradation, and transnational crime. Insecurity and conflict are exacerbated by the proliferation of small arms and light weapons and by regional instability.

The study concludes that the root causes of conflict in the FCDC region must be addressed and sets out a number of recommendations to do so.

### Institutional analysis

Many institutions, both governmental and non-governmental, are directly involved in supporting peace and social cohesion at different levels and have been doing so for decades. However, their efforts are not well coordinated and often ad hoc or disjointed in nature. This is mainly due to the absence of a viable institutional and policy framework that would mobilise, coordinate and consolidate the various initiatives into a more cohesive and action-oriented mechanism to drive peace-building activities in the country. Full implementation of the National Policy on Peacebuilding and Conflict Management will provide this framework. In addition, implementation of the Kenya National Focal Point Action Plan is critical, since the widespread availability of small arms and light weapons is one of the key factors perpetuating violence and conflict in the FCDC region.

At the county level, the study noted that the lack of a consolidated peace structure and inadequate financial resources are undermining coordination between national and county institutions. Consequently, there is a need to formalise the peace infrastructure by approving the National Peace Policy Bill (as noted above) and operationalising the County Policing Authority to ensure the structural and formal participation of county authorities and citizens in peace and cohesion. This will require the promulgation of county policies and the establishment of county institutions that are aligned with the national structures and enhance the role of the county governments in peace and cohesion. Further, mainstreaming peace and security in the County Integrated Development Plan will facilitate the allocation of funds to these activities, as experience in Isiolo has shown.

The study concluded that, if sufficiently resourced in terms of financial and human capital, the county directorates have the potential and leverage to contribute to peace, cohesion and security within their counties and with their neighbours. However, this requires that the national government recognises and supports the strategic role of county governments and their citizens in peace building and reconciliation. It supports the creation of peace building and conflict management structures in all FCDC counties, the establishment of county offices for the Directorate of National Cohesion and Values, and the development of an inter-county peace strategy to be adopted by all FCDC county assemblies.



## Legal analysis

In terms of the legal frameworks, the study identified numerous challenges affecting law enforcement in the FCDC region, including inconsistent political will, inadequate resources and poor conditions of service for security personnel, and weak mechanisms for dealing with complaints and disciplinary matters.

The judicial system also faces multiple constraints, including poor awareness among citizens of their legal rights and responsibilities, high costs and complex procedures, and selective application of the law. However, informal mechanisms for conflict resolution and restitution play an important role in the FCDC counties.

The study noted the need for a multi-sectoral team and framework to monitor the implementation of different legal instruments in achieving peace. The study also supports formalising county peace structures through county legislation.

## Policy analysis

The study concluded that the various policies focused on peace and cohesion are based on a sound rationale and justification, and are generally mutually supportive and complementary. What is lacking is the finalisation of those still in draft and their effective implementation. Weak implementation is attributed to a number of factors including lack of accountability for delivery, insufficient funds, and poor management of financial and human resources.











## CHAPTER 7



## 7. Recommendations

The primary and overarching recommendation of the study is to implement fully the National Policy on Peacebuilding and Conflict Management. This will require passing the draft legislation that anchors the policy into law, and then establishing and adequately resourcing the various institutional mechanisms envisaged in the policy. Full implementation of the policy will significantly upgrade the current level of institutional capacity by creating complementary platforms for dialogue, coordination and action at all levels. Passage of the legislation will also put the whole institutional framework for peacebuilding and conflict management on a more secure financial footing.

Specific recommendations are as follows:

### 7.1 Recommendations concerning the institutional framework.

#### National Government

- a. Ensure that the conflict monitoring framework operated by the Peace Building and Conflict Management Directorate is regularly populated and cross-referencing done with other security agencies and county governments.
- b. Delimit contested administrative and political boundaries to address the issue of border disputes in the FCDC counties.
- c. Provide witness protection services for witnesses and whistle blowers of inter-ethnic conflicts, terrorism and crimes related to drugs.

#### County Governments/FCDC

- a. Lobby for the operationalisation and full resourcing of the County Policing Authorities as envisaged in the National Police Service Act.
- b. Advocate for the full implementation of the Kenya National Focal Point Action Plan within the stipulated terms, including issues of disarmament.
- c. Establish and strengthen peace building and conflict management structures in all FCDC counties, including supporting the peace committees and monitors.

- d. Strengthen FCDC structures to reinforce county capacity to implement peace and cohesion-related policies and practices. These include:
  - i. FCDC Peace and Cohesion Sector Forum to promote policy harmonisation across the FCDC counties, improve coordination, share learning, and enhance inter-county cooperation.
  - ii. FCDC FM radio to promote information and knowledge sharing.
  - iii. FCDC Publications, Information and Communication Centre
- e. Establish an Institute of Peace and Security Studies within a public university in the FCDC region.
- f. Advocate for the deployment of more security personnel to the FCDC counties to ensure security for the development of the region.
- g. Support the implementation of the Peace and Security Pillar of the Ending Drought Emergencies Framework.
- h. Create a platform for dialogue between the communities and the county leadership.
- i. Ensure equitable, transparent and fair distribution of county resources to the communities, including women, youth and persons with disabilities.
- j. Establish rehabilitation facilities in Level 3 and 4 hospitals in all the FCDC counties.



## 7.2 Recommendations concerning the legal and policy framework

### County Government/FCDC

- a. Strengthen alternative, traditional and other progressive forms of dispute resolution and ensure that they are kept as inviolable as possible.
- b. Finalise county legislation on disaster management and set up disaster contingency funds.
- c. Promote legislation governing the establishment and management of dry-season grazing reserves to ensure enhanced availability of fodder during dry and drought seasons.
- d. Allocate funds in support of Councils of Elders and traditional community leaders to negotiate grazing regulations and address disputes.
- e. Promote community policing and Nyumba Kumi programmes as effective local level peace and cohesion mechanisms.
- f. Develop a regional peace policy to be adopted by all FCDC County Assemblies.
- g. Advocate for the review and prompt implementation of the Anti-Terrorism Policy to further promote de-radicalisation programmes and address issues related to human rights.
- h. Advocate for the full implementation of the National Action Plan for the Implementation of United Nations Security Council Resolution 1325 and Related Resolutions concerning women, peace and security.
- i. Prioritise the implementation of drought risk management strategies and the provision of services that support the livelihoods of drought-affected populations.
- j. Promote the implementation of de-radicalisation programmes and scale up best practices from on-going initiatives.
- k. Support livelihood diversification projects targeting at-risk youth and reformed warriors.

### National Government/Parliament

- a. Enact the National Peace Policy into law through parliamentary approval of the Peace Bill, 2016.
- b. Enact the Identification and Registration of Persons Bill, 2012, to ensure that all FCDC citizens, especially the youth, are issued with National Identity Cards.
- c. Finalize the review of the Kenya Defense Forces Act (Amendment) Bill, 2015, to enhance the inclusion of humanitarian civic activities and to prohibit the use of torture and cruel treatment.
- d. Implement bilateral peace and security frameworks on joint border management, specifically those signed between Kenya and Ethiopia and Kenya and Uganda.
- e. Review the National Strategy to Counter Violent Extremism to enhance its effectiveness and ensure respect for human rights.
- f. Develop rapid county action plans in preventing and countering violent extremism (PCVE) to increase the role of county governments.
- g. Promote the National Small Arms and Light Weapons Control and Management Policy to spearhead the Nairobi Protocol and the National Action Plan.









ANNEXES



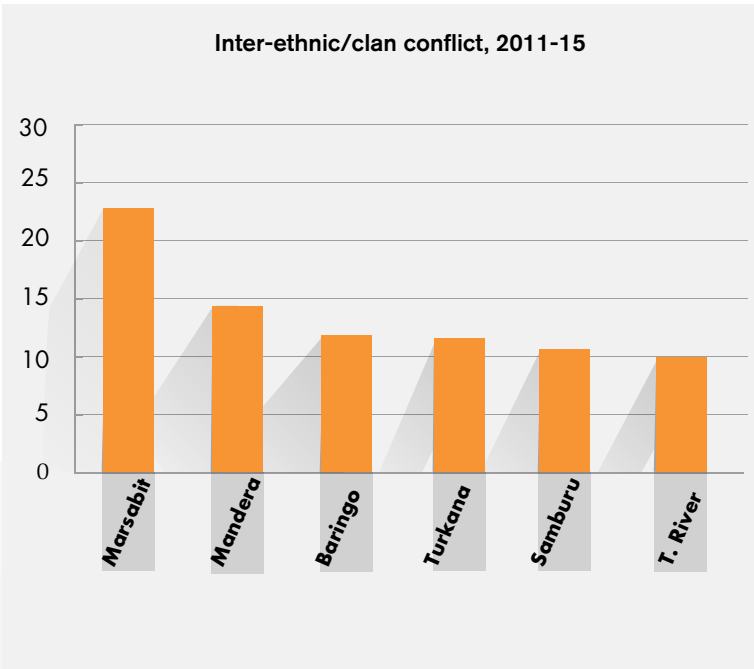
# Annex 1:

## Thematic Conflict Analysis and Recommendations

### 7Inter-ethnic / inter-clan conflict

Inter-ethnic or inter-clan conflict, together with livestock raiding, accounts for 55 percent of all reported conflict in FCDC counties.<sup>21</sup> Figure 6 shows the counties where it is most prevalent. It can result in significant loss of life. Clashes between the Pokomo and Orma in Tana River in 2012-13 led to the deaths of 52 people, while in Mandera, there have been protracted conflicts between the Garre and Degodia and significant levels of death and displacement.

**Figure 6: Incidence of inter-ethnic / inter-clan conflict, 2011-15<sup>22</sup>**



Various situations can trigger this kind of conflict, such as:

- Increased competition over grazing and water resources
- The need to re-stock after massive losses from livestock deaths or raids
- Border disputes between ethnic groups
- Incitement for political or economic gain, which has increased under devolution
- Proliferation and misuse of illicit small arms and light weapons
- Historical marginalisation and underdevelopment
- Historical rivalry and a cycle of revenge attacks
- Weakened mediation structures
- Land grievances
- Insufficient security forces in affected areas.

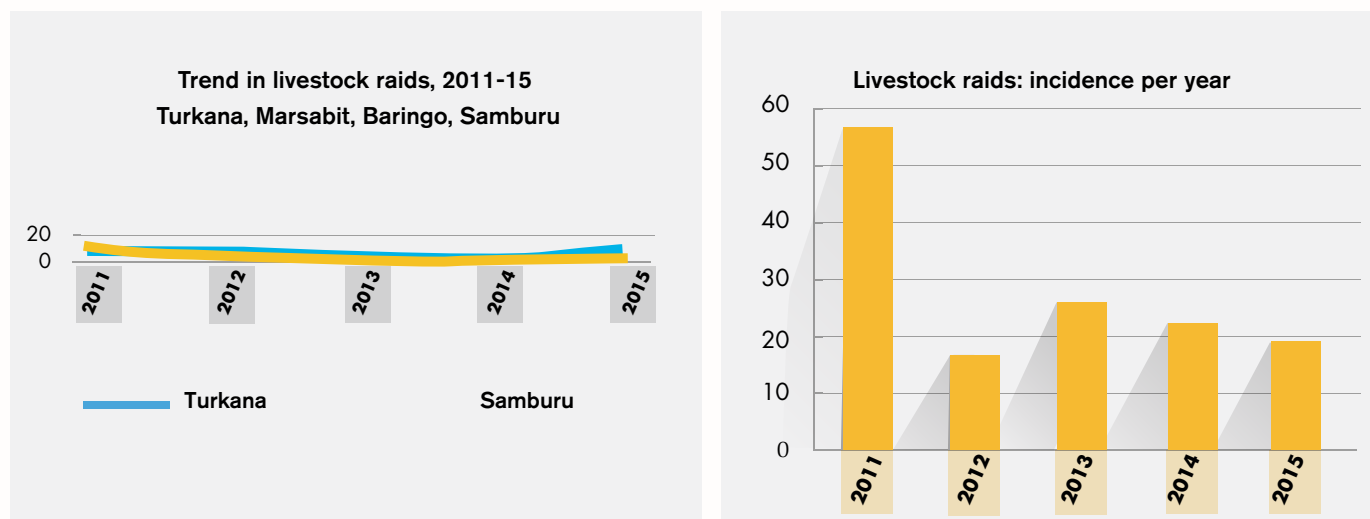
The proposed strategy to mitigate this type of conflict focuses on improving inter-ethnic dialogue, formalising and strengthening peace structures, addressing border disputes and agreeing cross-border regulations, and implementing projects that promote development in conflict hotspots and reward those who embrace peace.

#### Drought and conflict

While violent episodes may occur at any time, the incidence of conflict tends to be more frequent following droughts.<sup>23</sup> For example, during the period 2011-15, the incidence of livestock theft peaked in 2011 when a persistent and severe drought affected most of the arid counties, suggesting a correlation between drought and conflict (Figure 7).



Figure 7: Livestock raids, 2011-15<sup>24</sup>



Traditional rangeland management strategies are being undermined by the scale of conflict leading to a disruption of dry season grazing patterns and restriction on pastoralists' mobility. Competition and conflict over natural resources are expected to increase as climate change deepens and land fragmentation reduces the availability of pasture and the scope for mobility.

The detailed recommendations from this study focus on investments in drought resilience, drought mitigation services and early response measures, as follows.

#### Enhancing investment in drought resilience, including through peace dividend projects in conflict hotspots:

- **Improve the livestock value chain to reduce malnutrition among vulnerable groups and high levels of animal mortality.** This will require a gradual shift towards a more market-oriented livestock industry that can better adapt to trends such as climate change, demographic growth, rangeland degradation, insecurity, and land sub-division and alienation.
- **Recognise and enhance the capacity of pastoralism to adapt to non-equilibrium dynamics that are characteristic of rangelands in the FCDC region.** Integrate modern and traditional practices that provide the best mix for adaptation. Invest in viable livestock services tailored to the mobile nature of pastoralism alongside strategies for livelihood diversification and job creation that complement or function outside the livestock economy.
- **Ensure that all investments in resilience are conflict-sensitive and contribute as much as possible to peace building and reconciliation.** This will require associated action to address the root causes of inter-ethnic conflict, as well as increasing the presence of the police to challenge the perpetrators of violence, including cartels involved in commercial livestock theft.



**Scaling up effective drought mitigation services and early drought response to support livelihoods and thus cushion those affected from the worst impacts of drought:**

- **Encourage the use of drought contingency funds** to provide targeted subsidies that can be used strategically to promote accelerated livestock marketing and to finance the scalability of essential livestock services, such as water supply, animal feed, veterinary services, and market information. This helps pastoralists save their core breeding herds while minimising the worst impacts of drought on food security and nutrition.
- **Decentralise drought mitigation service provision** by establishing drought mitigation centres in conflict hotspots, close to satellite markets and slaughterhouses, and along migratory routes. Complementary investments in rural roads and communications infrastructure, as well as enhanced security surveillance close to international and county borders, will help open up areas previously inaccessible to herders due to insecurity.
- **Promote fodder and feed production in the FCDC region** by improving rangeland management (such as dry season grazing reserves and related rangeland governance), supporting the scale-up of fodder production, and, where feasible, the development of small- and medium-sized feed manufacturing. Access to fodder is one of the main reasons for conflict. Moreover, it may not be possible to meet fodder requirements during drought solely from the rangelands.<sup>25</sup> Therefore a long-term strategy should be to improve the feed value chain and infrastructure.
- Anchor the system of dry-season reserves in a legal framework that recognises these areas and provides for community-based rangeland management structures. This process should involve all potential users. Strengthen the role of the Council of Elders to facilitate inter-ethnic dialogue and improve coordination with County Peace Forums.

Regulate access to dry-season reserves, and where appropriate, charge a modest fee with the revenue used for ongoing maintenance. Tag livestock to ensure their traceability and facilitate access to markets. Control herd movement across county borders through inter-county agreements that help prepare host communities to receive the migrating herds. Whenever possible, these agreements should extend to private ranches and conservancies that can accommodate some livestock during the height of drought.<sup>26</sup>

- **Establish strategic livestock feed reserves in the short term to supplement animals during drought spells.** Better availability of animal feeds at the right time and place will reduce livestock mortality rates and reduce conflict over natural resources, including by reducing herders' need to access remote and insecure grazing areas. These strategic feed reserves would also create a higher demand for local feeds, thus helping enhance the feed value chain in the FCDC region. The management of the strategic feed reserves could be under the responsibility of a Livestock Feed Board, similar to the one already managing food reserves for human consumption.<sup>27</sup> One legal framework that could allow its creation is the Fertiliser and Animal Foodstuffs (Amendment) Act, 2015, that establishes the Fertilizer and Animal Foodstuffs Board of Kenya. The livestock feed policy, currently in draft, already envisages the creation of a feed strategy and action plan that recognise the importance of prepositioning animal feeds to avoid the worst impacts of drought on livestock.

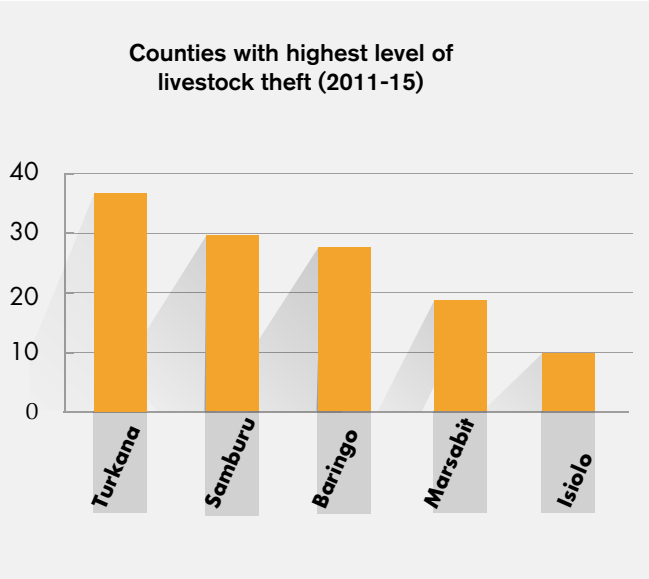


### Livestock theft

Livestock theft is common in many pastoral areas, except the north-eastern counties, especially close to international and inter-county borders. Turkana, Samburu, Baringo, Marsabit and Isiolo had the highest incidence of livestock raids between 2011 and 2015 (Figure 8).<sup>28</sup>

With the proliferation of small arms and light weapons, the practice has evolved into well-organised commercial theft, driven by both economic and political motives.<sup>29</sup> While livestock theft is euphemistically passed off as ‘rustling’, this term is non-existent in Kenya’s penal code and tends to disguise the seriousness of the activity. It is thus an impediment to its eradication.

**Figure 8: Counties most affected by livestock theft, 2011-15<sup>30</sup>**



Various factors contribute to the escalation of livestock theft:

- Porous borders and the limited presence of police personnel in these areas.
- Proliferation of small arms and light weapons.
- Weakened traditional institutions for cross-border mediation.
- Presence of criminal cartels organising and financing raids for commercial and political purposes.
- High youth unemployment rates.
- Increased livestock mortality, leading to further theft for restocking.
- Unclear legal framework for prosecuting the perpetrators of raids that often results in impunity.<sup>31</sup>

The problem needs to be urgently addressed through a comprehensive strategy that targets the root causes while also providing for a legal framework that ensures enforcement of the law. Livestock raiding should be subject to the penal code and punishment proportionate to the gravity of the crime. This requires a paradigm shift on how pastoralists regard livestock raiding: not an accepted cultural practice but rather a criminal act subject to punishment under Kenyan law.

In particular, the full force of the law should be applied to the organised criminal cartels, which include politicians and businessmen, who are often behind the organisation of livestock raids. At the same time, practices such as stealing for dowry and/or for restocking after drought should be approached from a livelihood point of view, through appropriately targeted livelihood diversification projects and awareness-raising programmes, and the provision of drought risk management services.



### Drug-related conflict

Drug abuse emerged during this study as a priority problem in Lamu, with concern growing also in Isiolo and Mandera. In the focus group discussions in Lamu, speaker after speaker narrated how drug abuse had wrecked the local fabric of the community. Many youths had dropped out of school due to drug and substance abuse which greatly affected the education sector in the region. Informants also suggested that drug abuse had led youth into crime, with some joining groups such as Al-Shabaab. Drug wars between rival groups were said to be a serious source of insecurity. A campaigner against drug abuse in Lamu was killed a week before the fieldwork for this study took place.

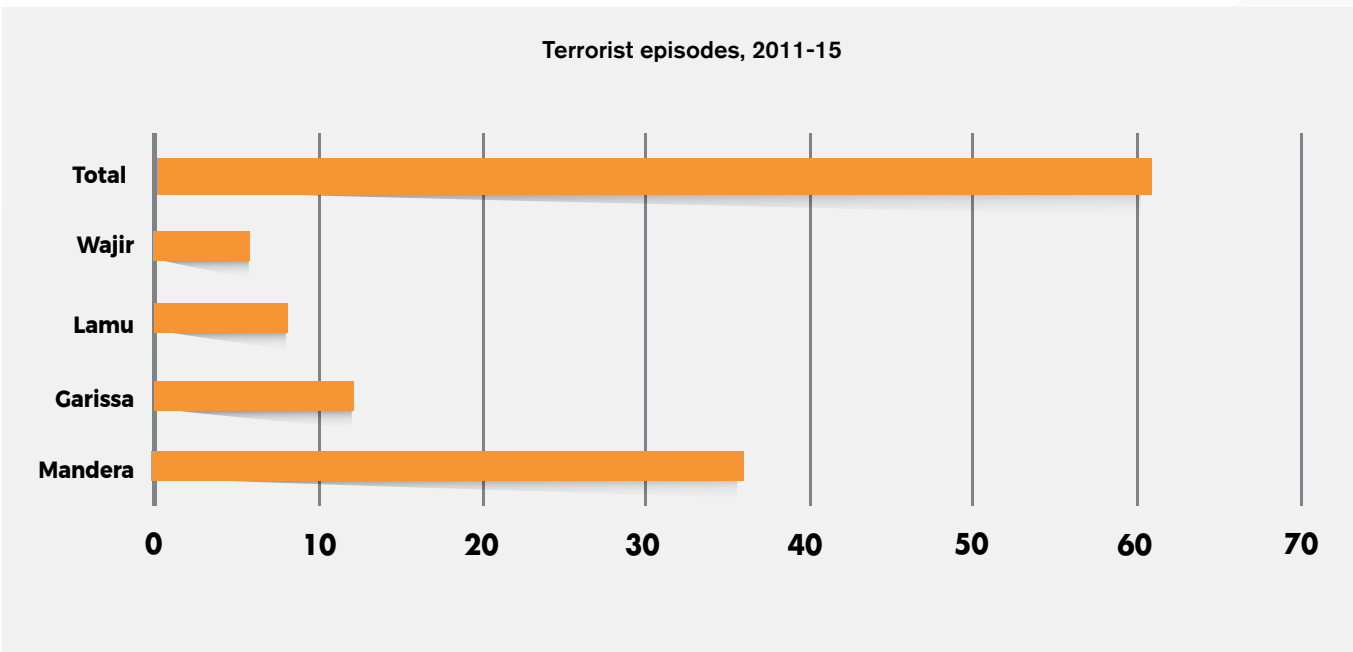
Respondents in Lamu linked drugs with a rise in divorce, family disintegration and widespread petty crime. They blamed the government for inaction and accused the police and other law enforcement agencies in particular of colluding with the drug barons. They said that no serious action is taken against those involved in the supply of drugs even though many of them are known to local people and law enforcement agencies.

The main recommendations from this review focus on enhancing the capacity of the judiciary to prosecute drug dealers and curb drug trafficking, and measures to prevent addiction and rehabilitate those affected.

### Terrorism

Within the FCDC region, terrorism particularly affects the north-eastern and coastal counties, with the highest incidence in Mandera (Figure 9). However, other counties, such as Isiolo, are also dealing with the challenge of radicalisation. The areas bordering Somalia bear the brunt of attacks, but radicalisation and the recruitment of young people affect many towns in the FCDC region, and even more rural areas).<sup>32</sup>

Figure 9: Terrorist episodes, 2011-15<sup>33</sup>





A number of internal and external factors predispose the north-east and coastal regions to terrorism and radicalisation, in particular:

- i) **Political grievances:** these concern the historical economic and political marginalisation by successive Kenyan governments; untargeted 'collective punishment' that contributes to a sense of alienation and marginalisation among Muslims; state-sponsored human rights abuses; police harassment and enforced disappearances of Muslim youth, suspected to have been taken by Kenyan security forces; and citizenship challenges, specifically difficulties in obtaining national identification cards.
- ii) **Regional dynamics:** a porous border between Kenya and Somalia which facilitates the influx of terrorists and their affiliates; inadequate local and regional cooperation.
- iii) **Economic factors:** poverty, and a lack of education and employment opportunities which predispose youth to join terror groups; vulnerability to environmental and socio-economic challenges associated with drought and insecurity, which in turn can lead to large numbers of youth dropping out of pastoralism, who may then be susceptible to radicalisation.
- iv) **Social factors:** unregulated cultural education which can offer the initial indoctrination and radicalisation.
- v) **Institutional challenges:** widespread corruption, which weakens security intelligence; weak or contested governance; lack of counselling programmes to provide psychosocial support to youth exposed to radicalisation.

Despite considerable investment and recent improvements in the security sector that have resulted in a reduction in the number of attacks of violent extremism, there have been arguments that some of the actions by Kenya's frontline security forces contribute to aggravating

sympathy for radical groups. Hence, it is paramount to address radicalisation. Radicalisation of young people is a national emergency and needs to be addressed holistically by recognising its root causes and devising strategies to address them.

De-radicalisation programmes are now being implemented and strongly supported by the international community. The national CVE strategy was launched in September 2016. Several counties in the FCD region (such as Garissa, Isiolo, Mandera and Wajir) have their own action plans. These initiatives should be encouraged and linked to the overall effort to reduce poverty, inequality and marginalisation in the region. CVE strategies should facilitate both prevention and reintegration by increasing youth participation in society and providing them with a range of opportunities related to training and skill development, employment, access to youth funds, counselling, and social welfare programmes to deal with temporary economic shocks. There is also a need to re-orient the approach adopted by security agencies, which often stigmatise and harass youth during security operations. This will require training on human rights for the security forces involved in anti-terror operations.

Other policy measures include the construction of a 440-mile wall on the border with Somalia and the government's amnesty scheme for disengaged youth. The amnesty provision has faced challenges, with returnees from Somalia preferring to surrender to religious leaders rather than to the government, for fear of being harassed or even executed by the security forces. The government has recently taken further measures to reinforce the fight against terrorism, including amending the Prevention of Terrorism Act, 2012, to confer PCVE measures in counties, committing to integrate PCVE in the school curriculum, and writing formally to the UN urging it to declare Al-Shabaab a terrorist organisation.



A major challenge in counter-terrorism efforts is the re-conversion of previously recruited terrorists who have in most cases been rejected by their social networks and at the same time are enlisted by security agencies as persons wanted by the law. These individuals also face threats to their lives from their former terrorist networks. Programmes need to provide support and protect them to facilitate their disengagement and re-integration. In this regard, possible initiatives include:<sup>34</sup>

- Programmes that guarantee an alternative to radicalisation.
- Psychosocial programmes for ex-terrorists and youth at high risk of radicalisation.
- Incentives for disengagement from radical groups through administrative actions and policies that guarantee an amnesty for ex-terrorists who show repentance and are ready to participate in rehabilitation programmes.
- A process for identification, communication and re-indoctrination to support the disengagement and reintegration of youth already radicalised or members of terrorists cells.
- Monitoring the activities of programme beneficiaries to ensure conformity with its objectives.

A further set of political, economic and security measures will be needed to combat terrorism effectively:

- Address inequalities and socio-economic marginalisation.
- Engage in conflict-sensitive development.
- Reform the security sector and tackle corruption.
- Improve the relationship between the state and Muslim communities.
- Refrain from hate speech and collective punishment.
- Ensure political representation and participation of the country's Muslim community to counter the message of extremists.
- Sensitize the press in regard to messages that can create hate against the Muslim community.
- Prosecute officers responsible for the use of excessive force during terror operations.
- Combat the regional smuggling of arms and money laundering through transnational collaboration and intelligence activity.
- Reinforce border surveillance and increase the presence of security forces.
- Participate in the peace process in Somalia under the UN framework.





ANNEX 2



## Annex 2

# SWOT Analysis of National and County Institutions

### National-Level Institutions

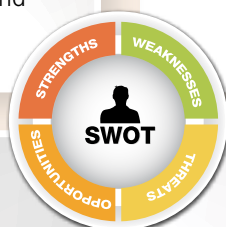
**Institution:** Peacebuilding & Conflict Management Directorate

#### STRENGTHS

- Domiciled in the Ministry of Interior and Coordination of National Government for effective coordination.
- Has the confidence of state and non-state member organisations
- The national hosting centre for CEWERU
- Has accumulated a rich collection of research on conflict mapping across the country
- The coordination centre for Peace and Security Pillar 1 of the Ending Drought Emergencies Common Programme Framework.
- The coordinating centre for UNWOMEN and UNDP-Kenya.

#### WEAKNESSES

- Lack of a vote / budget head to finance its core activities and programmes
- Does not have full-time staff in the counties
- Over-reliance on development partners to implement its projects and programmes
- Ineffective due to lack of independence



#### OPPORTUNITIES

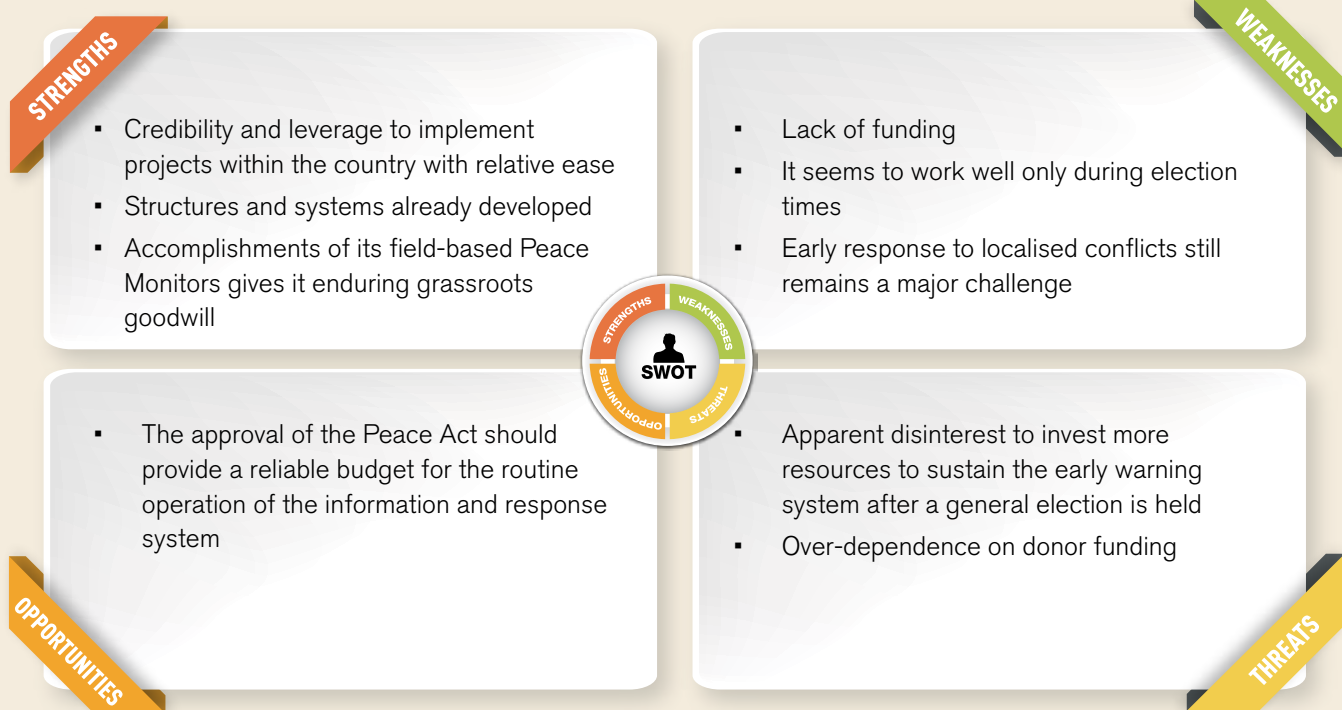
- Opportunity of being upgraded into a fully-fledged national authority or commission with a bigger mandate to coordinate and advise government on all peace and conflict matters with a formidable presence across the country
- Possesses the institutional profile and goodwill to reposition itself as the premier hub for matters related to peace and security in Kenya
- Establish a working relationship with the county leadership to build the latter's capacity on matters relating to peace building and conflict management, including support training and research

#### THREATS

- Fundraising challenges given Kenya's elevation to a middle-income country
- Inordinate delay in the approval and launch of the National Peace Policy which affects the legal status of the Directorate and its implementation capacity
- Departure of key technical staff and volunteers to more lucrative jobs in better-endowed civil society organisations, the UN system and consultancy firms



**Institution:** Conflict Early Warning and Early Response Unit



**Institution:** Kenya National Focal Point on Small Arms and Light Weapons, Nairobi Protocol





## Institution: National Cohesion and Integration Commission

### STRENGTHS

- An independent commission with well-developed operational systems and structures in place
- Well-developed institutional memory and lessons learned, including numerous publications and research papers
- Independent of government although it receives monies from the exchequer.

### WEAKNESSES

- Inadequate personnel
- Risk of political interference in the conduct of its operation, which undermines its guaranteed constitutional independence.
- Excessive delays in completing investigations of suspects, a situation that tends to confer impunity and compromise deterrence
- Recruitment of commissioners and staff is not insulated from political horse-trading, which could severely compromise its operational independence
- Insufficient presence outside Nairobi
- Inadequate finances



- Opportunity of being upgraded into a Drawing from its 10-year existence, the Commission is well poised to refashion itself to address ethnocentrism and mould a cohesive society
- It can draw from other jurisdictions with similar challenges and replicate their best practices, taking into account local contexts such as those in the FCDC region
- Forge closer cooperation with other entities within the criminal justice system such as the Office of the Director of Public Prosecutions, the Ethics and Anti-Corruption Commission, the Directorate of Criminal Investigation, the State Law Office and others to proffer water-tight cases against perpetrators of hate speech and related misdemeanours
- Invest in empirical and continuous research to pinpoint the structural, incidental and proximate causes of strained ethnic relations

### OPPORTUNITIES

- Since it is not anchored to the Constitution, there is a risk of disbandment or whittling down its mandate by 'aggrieved' politicians, as they have repeatedly threatened in the past
- Reduction of its budgetary allocation by the National Assembly as a way of 'getting even' with the high and mighty.

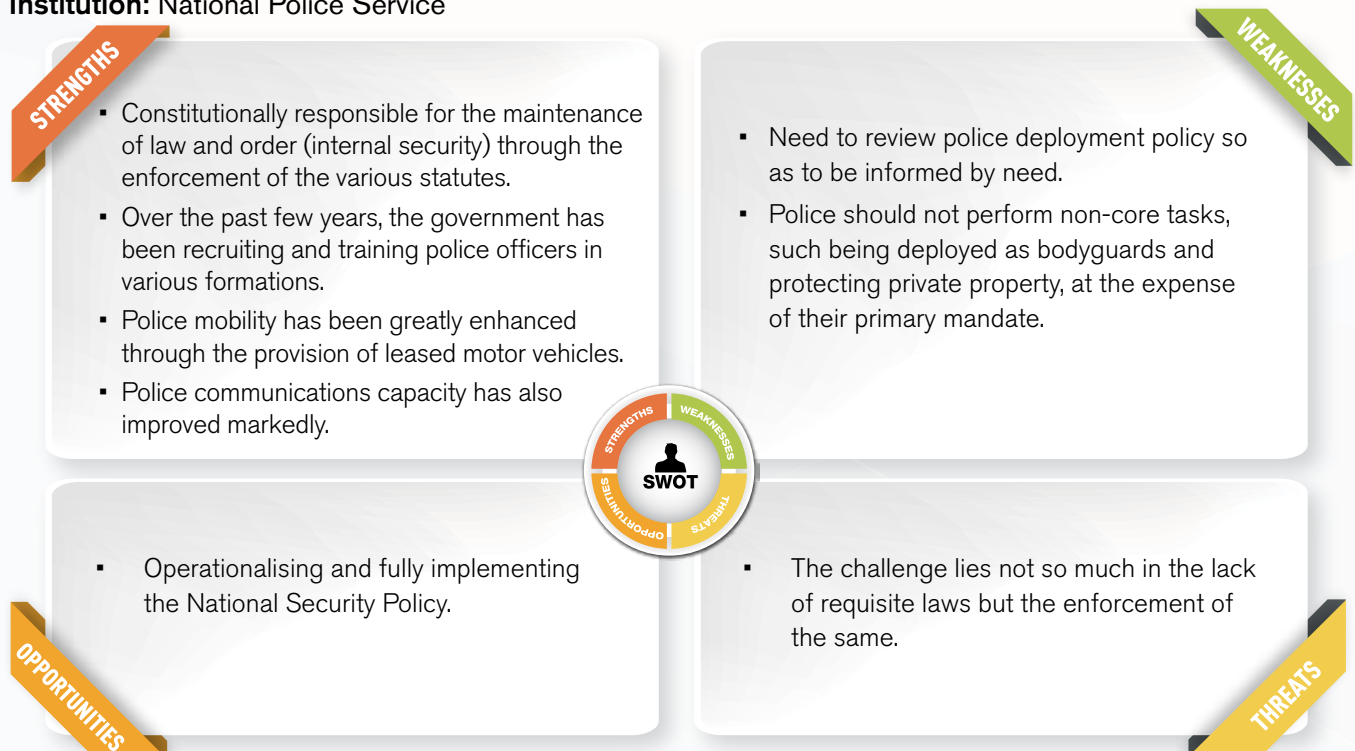
### THREATS



## Institution: National Counter-Terrorism Centre



## Institution: National Police Service

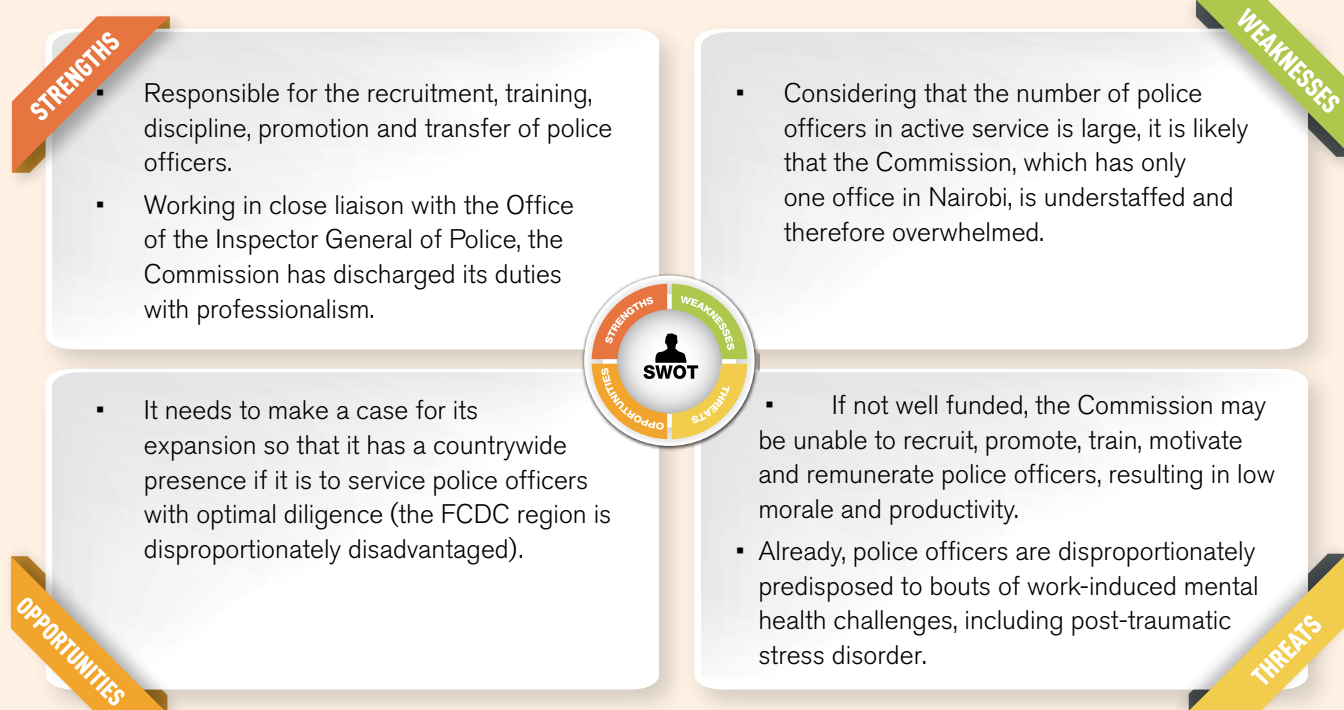








## Institution: National Police Service Commission



## Institution: Independent Police Oversight Authority

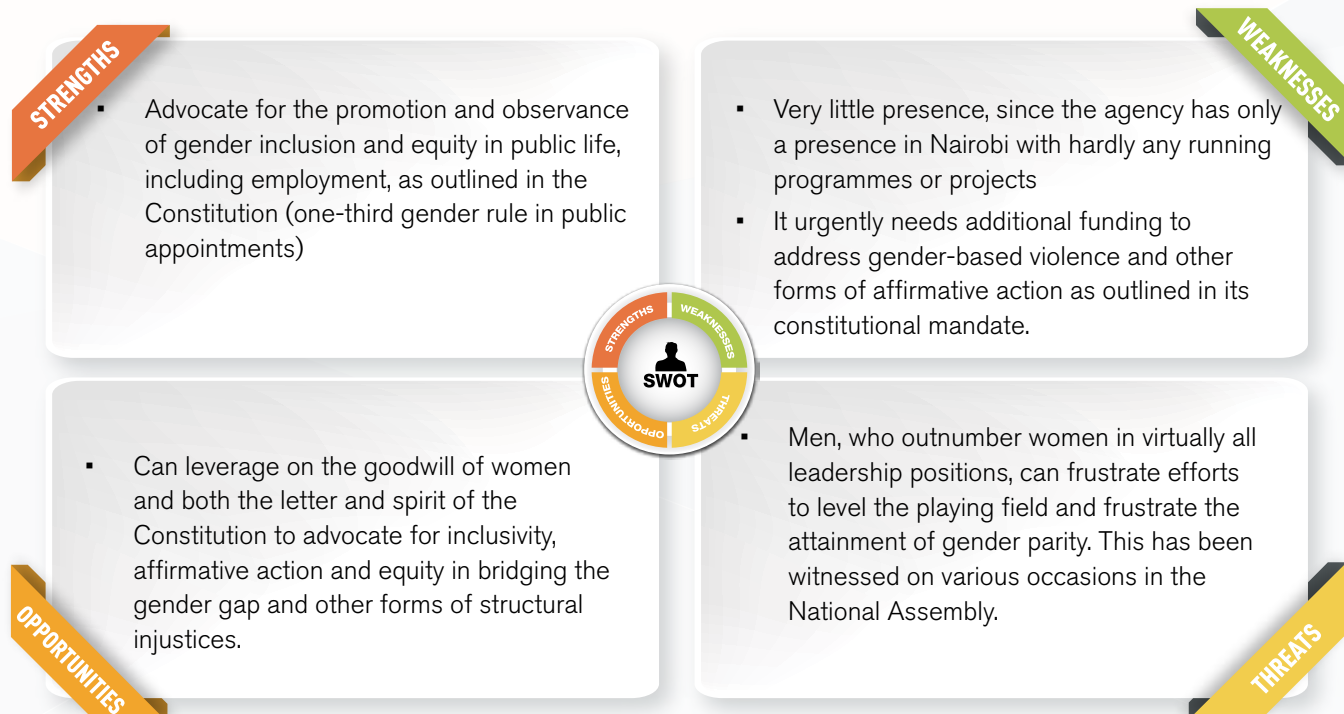




## Institution: Kenya National Commission on Human Rights



## Institution: National Gender and Equality Commission





**Institution: Commission for the Administration of Justice (The Ombudsman)**



**Institution: Media Council of Kenya**



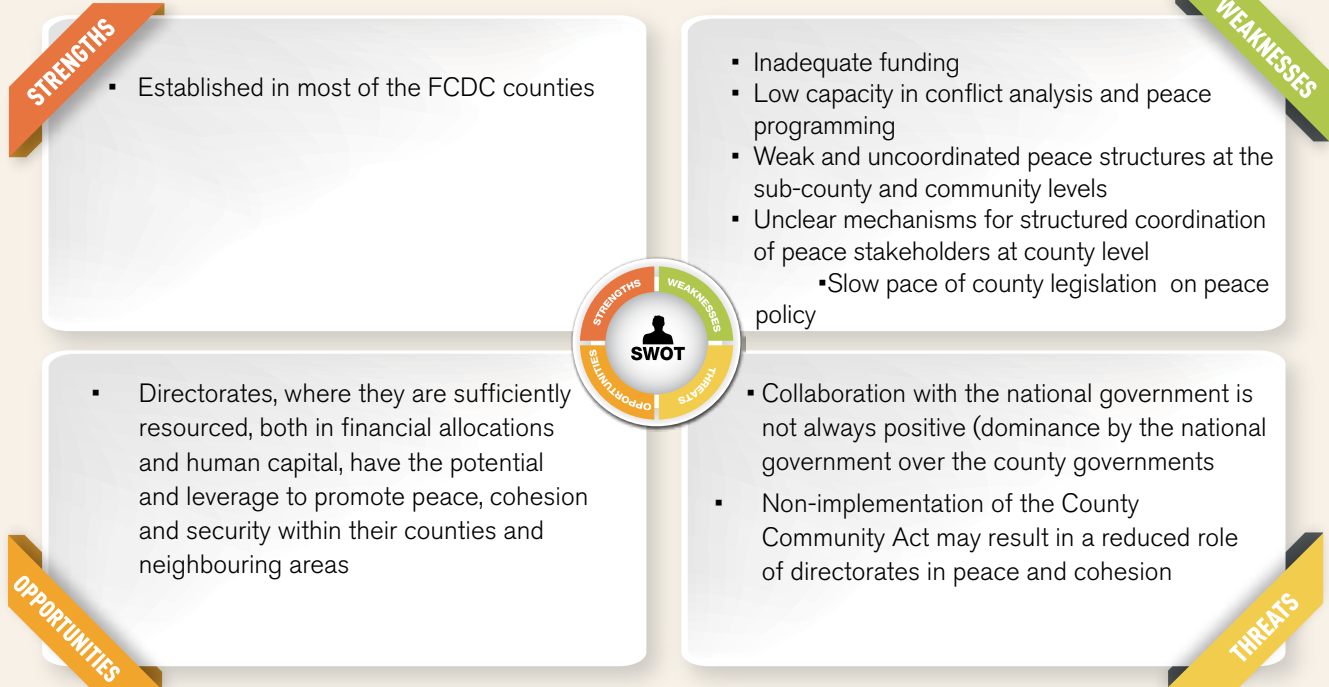




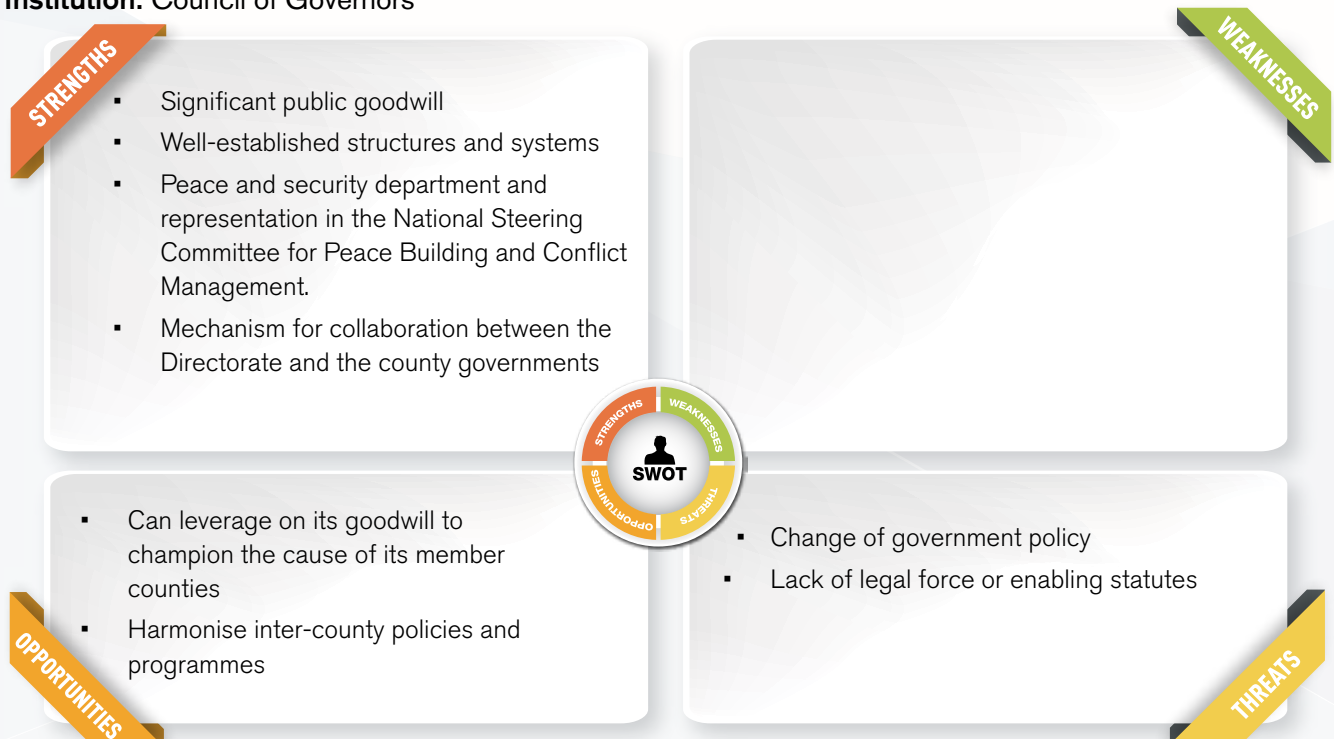


## County-level institutions

**Institution:** County Peace and Reconciliation Directorates / Departments

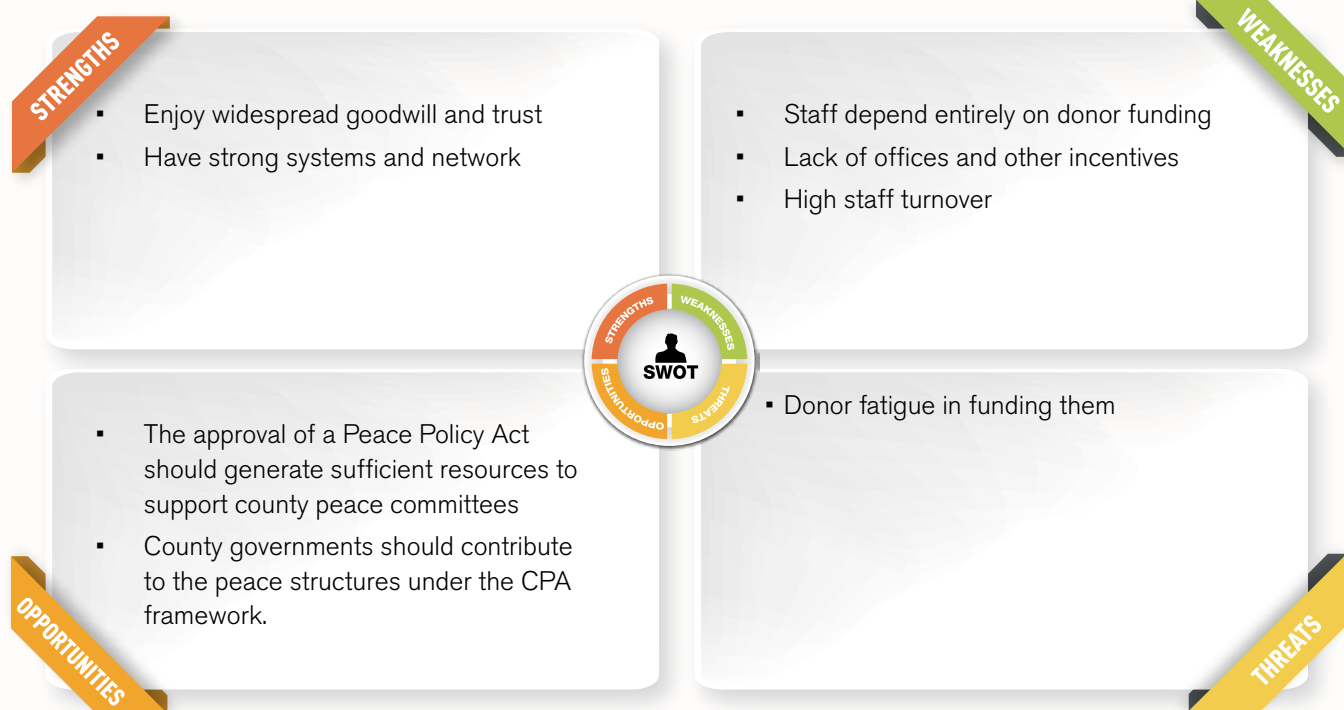


**Institution:** Council of Governors

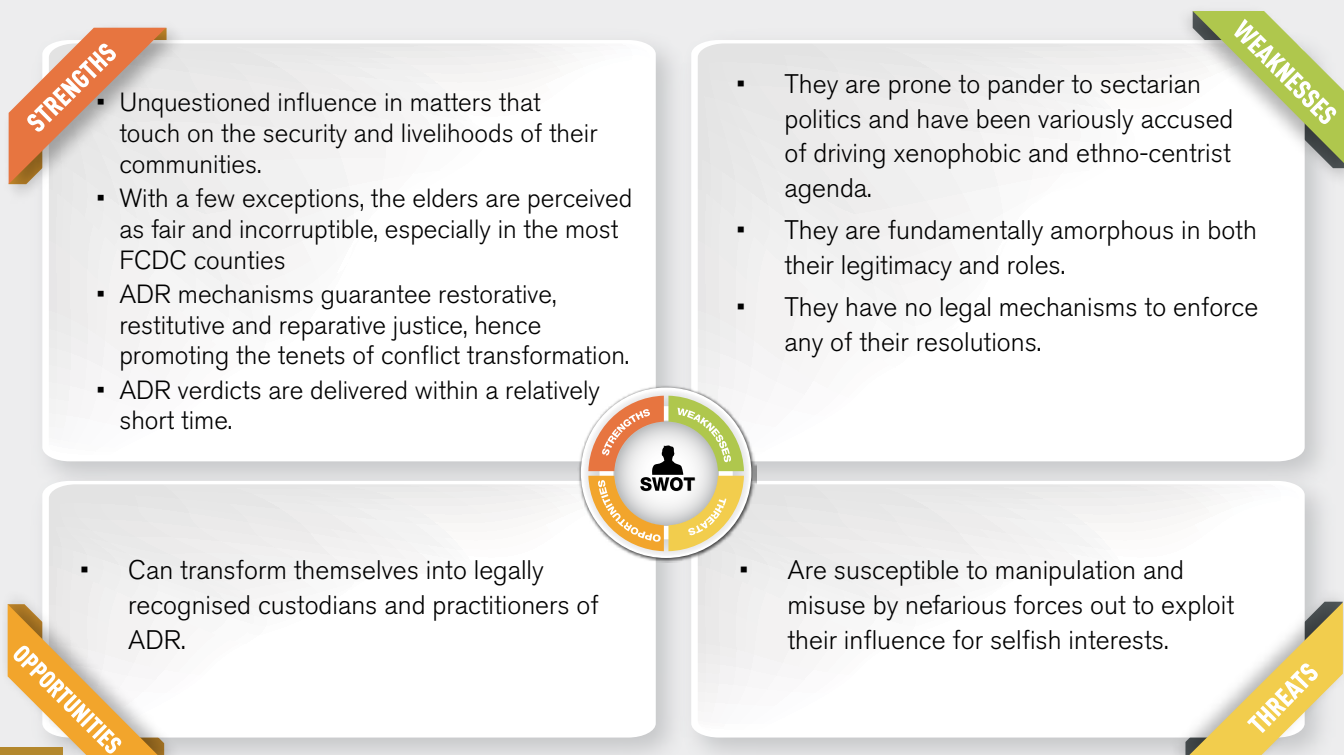




## Institution: County Peace Committees

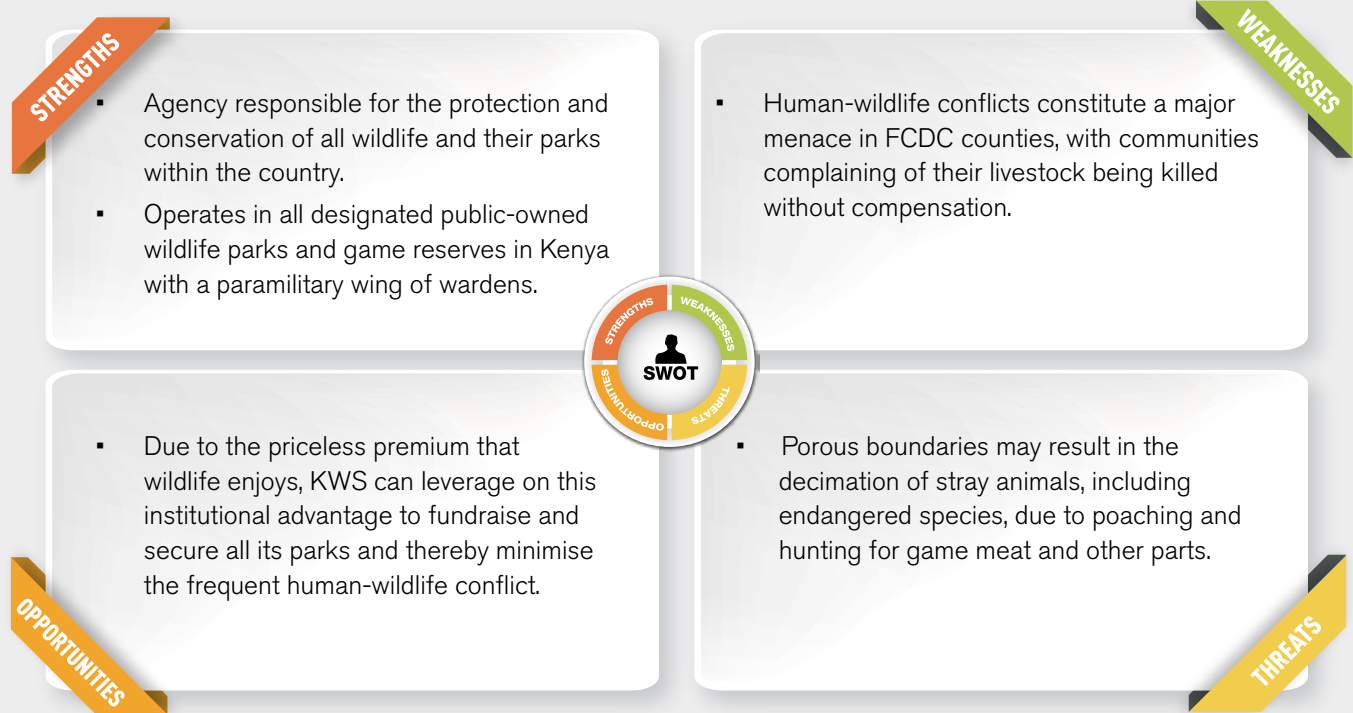


## Institution: Informal peace structures (Council of Elders) / Alternative Dispute Resolution mechanisms





**Institution: Kenya Wildlife Service**









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21. Source: Conflict monitoring framework, Peace Building and Conflict Management Directorate.
22. Source: Conflict monitoring framework, Peace Building and Conflict Management Directorate.
23. An exception to this in the field data was Samburu, where informants noted a rise in conflict during the wet season, which they attributed to groups seeking to restock after drought.
24. Source: Conflict monitoring framework, Peace Building and Conflict Management Directorate.
25. FAO identified a large feed deficit in arid and semi-arid counties during the 2017 drought and concluded that this could not be met from the rangelands alone.
26. This would require a clear framework on the conditions for access, such as the delimitation of corridors to ensure a regulated influx of animals and their traceability through tagging. The payment of reasonable grazing fees could provide an income to the ranches/conservancies.
27. Alternatively, county governments could decide to establish a County or FDCD Livestock Feed Board.
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33. Source: Conflict monitoring framework, Peace Building and Conflict Management Directorate.
34. The State Department for the Development of ASALs is currently designing a programme to reintegrate ex-terrorists and youth at risk of radicalisation into society.



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About the  
Partners



# About the Partners

The Frontier Counties Development Council (FCDC) is an inter-counties institution composed of the County Governments of Lamu, Tana River, Garissa, Wajir, Mandera, Marsabit, Isiolo, Turkana, Samburu and West Pokot in the aftermath of devolution. The Council promotes cooperation, coordination and information sharing between Counties in view of enhancing socio-economic development and promoting peaceful co-existence among its members.

FCDC wants to enhance the benefits of the devolution process in their member counties by serving as a catalyst and trigger for sustainable development and prosperity in the FCDC region. FCDC promotes cooperation, coordination and information flow between counties and with the national Government in view of:

- Creating a stable and peaceful environment conducive to socio-economic development;
- Enhancing socio-economic development of the member counties;
- Strengthening devolution and subsidiarity of counties, sub-counties and wards.

**Vision:** A secure, peaceful, just and prosperous FCDC region, where people achieve their full potential and enjoy a high quality of life.

**Mission:** To coordinate development initiatives, enhance peace and cohesion, and bring about accelerated socio-economic development of Frontier Counties of Kenya.

## Ways of working

- FCDC actively contributes to the development and enforcement of plans, policies and systems in its counties especially where needs are similar. Special expertise is brought in to develop and finalize bills that can be discussed and approved by County Assemblies, for in-stance to build foundations for peace in the region.
- FCDC also assists in developing systems that increase accountability and efficiency of county departments.

- FCDC brings key stakeholders together and partners, to enhance learning and knowledge transfer among member counties and communities and to accelerate socio-economic development in the FCDC region.
- FCDC fosters collaboration and partnerships among its members to create synergies between counties, promote cooperation and co-ordination, share information and to promote inter-county values. Collaboration and partnerships are also enhanced with external partners to spearhead development in the FCDC region.

FCDC has established Sector Forums as instruments to enhance cooperation, coordination and information flow between counties in a specific sector. The Sector Forums have a semi- autonomous status within FCDC and have their Secretariat within the FCDC Secretariat. The Sector Forum for Agriculture and Livestock (SFAL), Sector Forum for Peace and Cohesion (SFPC), Sector Forum for Lands and Physical Planning (LaSEF), Sector Forum for Education (SFE), and Sector Forum for Health (SFE). Sector Forum for Water and Sector Forum for Environment and Natural Resources are planned to be established in the future.

**Email:** [info@fcdc.or.ke](mailto:info@fcdc.or.ke)

**Website:** [www.fcdc.or.ke](http://www.fcdc.or.ke)





The Drylands Learning and Capacity Building Initiative (DLCI) is knowledge management and advocacy organization with the aim of improving the policy and practice in the Horn of Africa ([www.dlci-hoa.org](http://www.dlci-hoa.org)).

DLCI's main work is currently in Kenya, focusing on the capacity building of the community institutions, county governments and CSO actors to enhance collaborative learning and documentation of the drylands development policy initiatives. It disseminates the findings to other countries with substantial drylands areas in the Horn of Africa region.

DLCI is the co-chair of the government-led Ending Drought Emergency (EDE) Pillar six (Institutional Strengthening and Knowledge Management), a member of Pillar 1 (Peace and Security) and Pillar 4 (Sustainable Livelihoods). It was the National Chair of the ASAL Stakeholders Forum from 2015-2019. The Forum was established by the government (ASAL policy) to enhance coordination and networking of all actors in the ASAL region. DLCI is also the Secretariat of the Pastoralist Parliamentary Group (PPG) since 2016.

**Vision:** The communities in the drylands are empowered and at the center of all resilience and sustainable development interventions.

**Mission:** To ensure that all stakeholders are working in synergy to support policy and practice that are informed by community priorities and community-centred approaches, gender inclusive and conflict-sensitive.

### Core values:

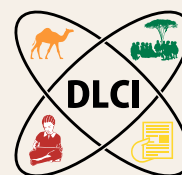
- Protection of the rights of all individuals in the drylands to full participation in their development.
- Transparency, accountability, collaboration, and synergy of all actors.
- Promotion of alternative dispute resolution, conflict and gender-sensitive approaches.

### DLCI's Focus Areas

- a. Protecting the community land rights and supporting communities to register their ancestral lands as per guideline set by the regulation of the Community Land Act 2016.
- b. Promoting peaceful and inclusive development by collaborating with partners to support cohesion and ending inter-community conflicts in the pastoralist areas.
- c. Supporting pro-pastoralist policy development and gender mainstreaming advocacy, mainly focusing on the empowerment of the pastoralist women and girls.

**Email:** [info@dlci-hoa.org](mailto:info@dlci-hoa.org)

**Website:** [www.dlci-hoa.org](http://www.dlci-hoa.org)



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