



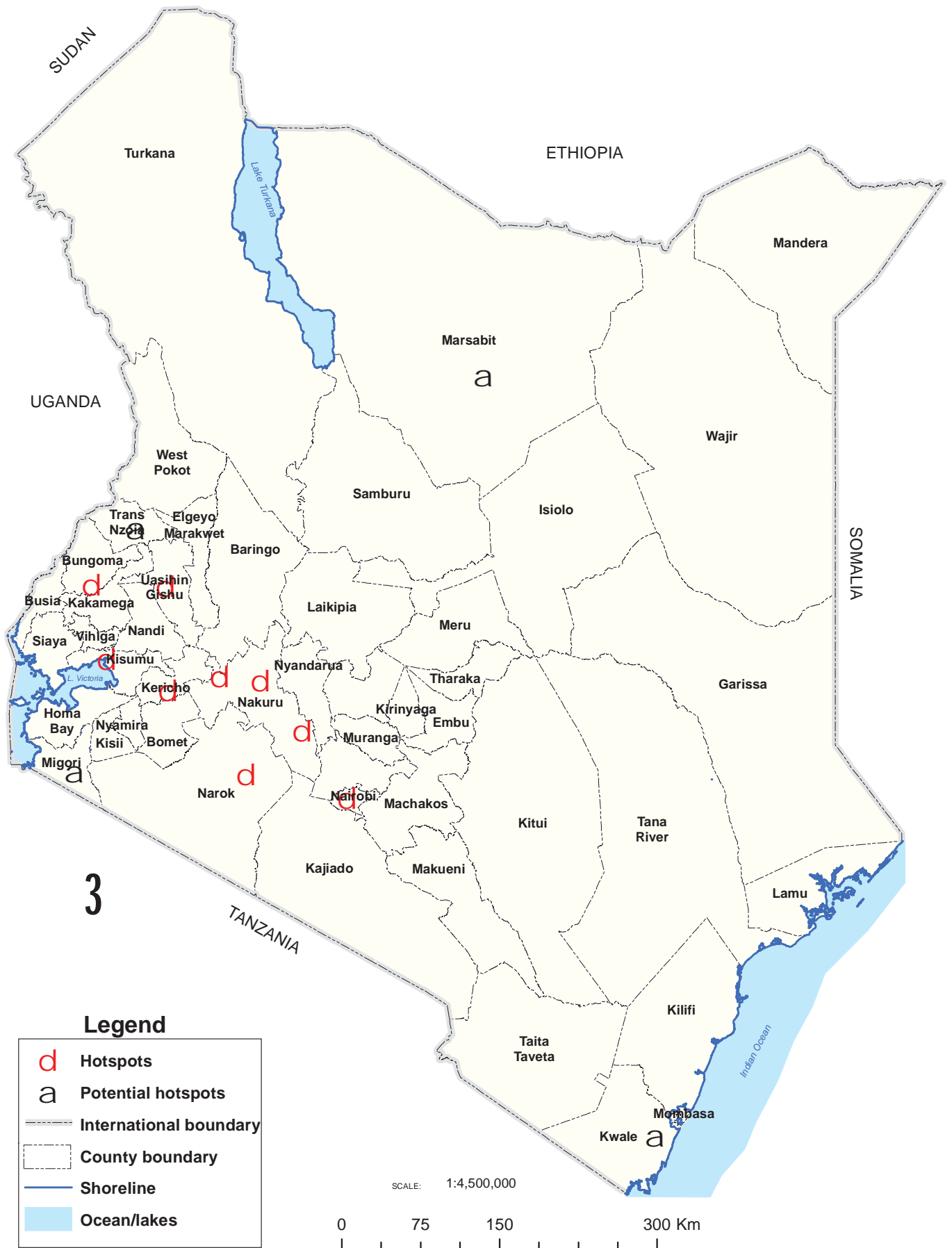
# Transition and reform

**People's Peacemaking Perspectives on Kenya's post-2008 political crisis and lessons for the future**



**James Ndung'u and Manasseh Wepundi**

**March 2012**





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SAFERWORLD

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## Acronyms

<b>CIC</b>	Commission for the Implementation of the Constitution
<b>EU</b>	European Union
<b>ICC</b>	International Criminal Court
<b>IDPs</b>	internally displaced persons
<b>IEA</b>	Institute for Economic Affairs
<b>IEBC</b>	Independent Electoral and Boundaries Commission
<b>IIBRC</b>	Interim Independent Boundary Review Commission
<b>KAS</b>	Konrad Adeneur Stiftung
<b>KHRC</b>	Kenya Human Rights Commission
<b>KNCHR</b>	Kenya National Commission on Human Rights
<b>NCIC</b>	National Cohesion and Integration Commission
<b>NSC</b>	National Steering Committee on Peace Building and Conflict Management
<b>PPP</b>	People's Peacemaking Perspectives
<b>SID</b>	Society for International Development

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# Executive summary

**FOLLOWING REVELATIONS OF VOTING IRREGULARITIES** during presidential elections in December 2007, Kenya experienced waves of inter-ethnic violence that left 1,300 dead and half a million people displaced. In retrospect the 2007/8 post-election violence was a result of social tensions that had built up over many years. A key factor was the skewed allocation of state positions and resources by successive political leaders.

In the aftermath of the violence the country has attempted enacting wide-ranging legal and institutional reform. So far progress has been fair, but delays and disagreements have arisen in crucial areas. Key challenges remaining include passing over 50 new pieces of primary legislation within a two-year time limit, establishing 47 new county governments, carrying out fundamental police and judicial reform, addressing the grievances of the victims of electoral violence, redrawing constituency boundaries and holding elections in 2012. How these matters are handled will shape the course of Kenyan politics, including the forthcoming presidential elections which could be a potential trigger for violence.

Saferworld conducted a participatory conflict analysis in Kenya from February to September 2011 to better understand the factors driving political conflict related to elections in the country. Research methods included interviews, a desk review, and focus groups in past and potential conflict hotspots. This report summarises the research findings, presents four future scenarios and weighs their implications and any risk mitigation strategies available. A conclusion and actionable recommendations are then offered to the European Union which funded the research study.

## Key findings and scenarios

Recurrent concerns for focus group participants which the report explores in more detail are as follows:

- The divisive nature of national politics
- The government's political handling of reforms, including anti-corruption measures
- Economic stewardship, unemployment and the trickle-down effects of government stimulus programmes
- Land management, distribution and planned land reforms
- The implementation of the new constitution and the mechanics of devolution
- The handling of militias and gangs at work in the country
- Border security issues.

Four scenarios for the country's future are then developed:

- i. **Code White:** The best scenario is one of immense political goodwill and support for complete alignment of legal, political and economic systems with the new Constitution.
- ii. **Code Yellow:** A *status quo* scenario needing caution whereby there is incomplete alignment of all systems to the new Constitution.
- iii. **Code Orange:** Another danger zone for the country, a context of multiple conflicts at the national and/or county levels despite progress with reforms.
- iv. **Code Red:** The worst case scenario, one of failed, unsatisfactory and/or miscarried reforms in the context of prevalent conflict.

## Recommendations to the European Union

### 1. Implementation of the Constitution and the National Peace and Reconciliation Accord

The EU has played an important role since 2008 in encouraging Kenya's political leadership to fully implement the Constitution and peace accord in order to restore public confidence in the rule of law. The institution should maintain a robust dialogue with the Government of Kenya and prioritise its focus on the following areas:

- **Land reform:** Kenya's new land policy has far-reaching implications. While the policy is designed to guarantee a righting of historical wrongs, politicians are among major landowners and cannot be trusted to oversee its implementation. Continuous scrutiny and a measure of external pressure are likely required. In addition the sensitivities around recognising community land should be addressed, not least because this issue has potential for ethnic mobilisation if not handled well. Women's rights to own land should also be protected.
- **Police reform:** Given the slow pace of police reforms to date, concerns should be raised at delays in publishing long-awaited policing laws passed by parliament and at the failure to bring in new police leadership. The EU should also stress that police reform should be about much more than just unifying the command of the Kenya Police and Administration Police. For example:
  - Reliable internal and external police accountability mechanisms should be put in place quickly and provided with the appropriate technical assistance. Given the police's responsibility for public order management of the coming 2012 General Election, emphasis should be placed on this question in dialogue with the Government of Kenya – proper planning, co-ordination with other agencies and revised human rights compliant public order training for officers are all required.
  - Together with other actors the EU should push for an 'open' police reform process that brings in actors from across the justice sector, civil society, potential donors and technical specialists in a transparent and co-ordinated manner.
  - Following this, adequate resourcing of the police service should be ensured through an appropriate combination of governmental and donor support.
  - Finally, police deployment to areas where the police have been traditionally absent or few in number, especially in northern Kenya, should be part of the reforms.
- **Electoral reform:** Beyond the ongoing transparent process of selecting commissioners, the Independent Electoral and Boundaries Commission (IEBC) should be capacitated to handle what will be the biggest election (in terms of number of contested seats) in Kenya's history. Old voter concerns about the need for more transparent voting (e.g. electronic voting) and vote tallying should be addressed.
- **National cohesion:** The National Cohesion and Integration Commission (NCIC) has been unable to rein in the political class who use irresponsible ethnically slanted campaign messages. A working co-operative framework is needed between the NCIC, Directorate of Public Prosecution and Judiciary, to ensure speedy prosecution of



hate-speech related cases. It will be helpful for the EU and other partners to sustain their strategic support to NCIC's ongoing efforts to ensure national cohesion.

- **Truth and reconciliation:** The Truth Justice and Reconciliation Commission has had a troubled history since its creation but has scored a few successes within a short time-frame. It should not be ignored or abandoned considering the political impact its future reports may have or indeed its remaining potential to foster reconciliation. Options for future support, whether technical, political or financial should be considered.
- **Judicial reform:** Although this is one area where important reform milestones have been met, there is need to maintain support in areas such as vetting of judges and court officials and to re-evaluate how state and non-state justice actors can co-operate so as to restore public confidence in the judiciary.

## **2. Planning ahead to prevent and swiftly address any future election violence**

The EU should also consistently highlight the following election-related issues in its ongoing dialogue with the Government of Kenya:

- The need to undertake thorough planning for the coming 2012 presidential elections including election security and public order management. This should include assessing capacity needs of the police, establishing co-ordination mechanisms at different levels among all relevant governmental and non-governmental actors.
- The importance of different elements of the emerging national peace architecture (e.g. peace committees, *Uwiano*, elders' councils, local CSOs, the NSC and NCIC) being adequately capacitated, working together on pre-election planning, and maintaining ongoing information exchanges with other actors.
- The need to step-up and sustain community-level peace dialogues in past and potential conflict hotspots.
- Recognise the urgency of the internally displaced persons (IDP) issue and take steps to bring an end to displacement prior to the 2012 election in a conflict-sensitive manner (e.g. including thorough consultation and communication with prospective returnees and host communities). There should be a strong presumption that IDPs will return to their place of origin albeit with adequate support, reconciliation measures and protection.
- Take steps to ensure responsible and objective media coverage of political campaigns and elections including holding high-level dialogue with media house owners, including briefings on possible sanctions by the NCIC and judicial actors; support NCIC and others in their efforts to train journalists, regularly brief editors and monitor media outputs of all kinds.
- Respect the independence of the IEBC and give it the support it needs to prepare for the coming elections and administer them effectively.

## **3. Supporting citizens' search for justice**

Greater focus is required on the plight of past victims of conflict and electoral violence in Kenya. The EU should:

- Maintain pressure on the government to set up a local tribunal to prosecute top, middle and low-level perpetrators who do not fall under the International Criminal Court (ICC)'s remit.
- Continue to support programmes it initiated in 2008 that are designed to raise public awareness of the ICC process in order to prevent widespread ignorance being manipulated to fuel ethnic tensions. The EU Instrument for Democracy and Human Rights is an appropriate framework to tackle this crucial issue and the EU should consider increasing its allocation of resources for this purpose specifically.

- Support national and local civil society efforts that will help prevent and respond to any local level reprisals over the course of the ICC cases.

#### **4. Maximising the EU's potential to prevent conflict**

Finally, the EU should consider ways in which its own internal structures and funding mechanisms can best support conflict prevention:

- Use the Instrument for Stability to address some of Kenya's more pressing security issues, e.g. those related to public order, small arms proliferation, border security and wider security sector reform.
- Continue to use EU Instrument for Democracy and Human Rights and Non-State Actors and Local Authorities funding streams to support civil society initiatives which contribute to conflict prevention, reconciliation and dialogue; and good governance with a focus on devolution, fostering the demand for transparency and accountability, and the supply for capacity development at county level through local civil society support; give priority consideration to programmes supporting youth participation or that deal innovatively with poverty and unemployment.
- Apply a conflict-sensitive approach to the European Development Fund programming process to ensure it takes into account and addresses conflict dynamics at all levels.
- Ensure the next Country Strategy Paper for Kenya and accompanying programming framework is informed by a comprehensive analysis of conflict causes and dynamics, and that programming priorities and modalities reflect this analysis.
- Step-up co-ordination with other donors, including through regular attendance at the Kenya Conflict Donor Group meetings, and contribute to strengthen joint and proactive engagement with the Government of Kenya on issues of political conflict and conflict prevention.

# 1

## Introduction

**IN DECEMBER 2007** Kenya held Presidential elections for the fourth time since multi-party democracy was reintroduced in 1992. The election was hotly contested between two coalition parties, the Party for National Unity headed by the incumbent president Mwai Kibaki, and the Orange Democratic Movement led by Raila Odinga. Voting irregularities and reports of manipulation of votes in the days following the election triggered inter-tribal clashes and lawlessness. Further fuelled by inflammatory media reports and exploited by key political figures in the weeks that followed, the violence was to cost approximately 1,200 lives and displace half a million people.

In retrospect the 2007/8 post-election violence was a result of societal tensions that had built up over many years. Prior to the crisis Kenya had enjoyed relative peace, all the more remarkable in a region otherwise engulfed by conflict. The underlying causes of the violence were many, but a key factor was the skewed allocation of state positions and resources by successive political leaders over many years. Under these circumstances Presidential elections had become a decisive moment in determining which groups would gain unchallenged access to public office and finances.<sup>1</sup>

Since independence in 1963, the institution of the presidency had been at the centre of Kenyan politics. Arguably the immediate post-independence Kenyatta regime's key concern was securing the interests of the emerging political class through accumulation of capital. The subsequent Moi regime may have adopted a path of an increasingly personalised one party authoritarian rule under the doctrine Nyayoism, but the Presidency remained central to this project.<sup>2</sup> Kenya experienced many years of relative peace under the single party system, but President Moi sought to discredit multi-party democracy by warning that its re-introduction would bring turmoil. In order to fulfil this prophecy, the state began to sponsor ethnic conflicts in opposition areas, particularly the Rift Valley.<sup>3</sup> Thereafter, state-sponsored ethnic conflict became a characteristic of subsequent elections as witnessed in the 1992 and 1997 general elections. Crucially, the perpetrators and organisers of electoral violence were never brought to justice, thereby entrenching a culture of impunity.

Moi's eventual defeat in 2002<sup>4</sup> in largely free and fair elections saw the arrival of a broad-based coalition government with reformist credentials. A new constitution and an anti-corruption drive were promised. The promise of reform did not however materialise and the political campaigning around the promised 2005 constitutional

<sup>1</sup> Wanjala N, 'Resources Allocation and the Crisis of Political Conflicts in Africa: Beyond the Inter-ethnic Hatred Thesis' in *Conflict in Contemporary Africa*, eds Okoth G and Agot A. (Nairobi: Jomo Kenyatta Foundation, 2000) p 51.

<sup>2</sup> Meaning 'following the footsteps of Kenyatta's political, social and economic philosophy'.

<sup>3</sup> Oucho J, *Undercurrents of Ethnic Conflict in Kenya*, (Brill, Leiden 2002)

<sup>4</sup> Under the constitution of the time, President Moi could not stand for election again in 2002. The fact that the defeat of Moi's preferred candidate was overwhelming and accomplished by a united opposition probably accounts for the subsequent smooth hand-over of power and the relative calm of the first two years of opposition leadership.

referendum proved bitterly divisive. The emergence of the two personality-driven, ethnically polarised political factions that fought in 2007/8 can be traced back to this point. What triggered the 2007/8 violence however was public realisation that election results had been manipulated. Public anger developed quickly leading to several waves of inter-ethnic violence in the following weeks as rival politicians used rhetoric of injustice to mobilise their respective ethnic power-bases.

In the aftermath of the violence, the attention of Kenyans, their partners in Africa and the wider international community turned to instituting a programme of structural reforms to deliver sustainable peace and stability. On 28 February 2008, the main parties signed the 'Agreement on the Principles of Partnership of the Coalition Government'. They committed to take steps to address the agreed causes of social tension and state fragility that underlay the violence. The agreed measures included major legal and institutional reforms, steps to increase state transparency and accountability, to reduce poverty and inequality, promote national cohesion and introduce long-awaited land reform. The central plank of the peace accord however was agreement on a new constitution that would devolve power from the centre and introduce new checks on the presidency. In August 2010 the country voted by a significant margin in favour of the new Constitution in a referendum that was widely felt to be a milestone for reformers.

At the time of writing, Kenya has progressed some way in implementing the peace accord, but a number of delays and disagreements have arisen in crucial areas.

Among the challenges is that of passing over 50 new pieces of primary legislation required to implement the Constitution. Amidst political wrangling and delays, the quality of some new legislation has suffered.<sup>5</sup> Others include the planned introduction of new county government structures and public financial management mechanisms, the redrawing of constituency boundaries for parliamentary elections, police and judicial reform and the unaddressed question of how the state will deal with those implicated in organising or perpetrating the 2008 violence. The handling of these matters will shape the course of Kenyan politics, including forthcoming presidential elections which could be a potential trigger for violence.

In order to provide grounded analysis of the effect political events are having on conflict dynamics in the country, Saferworld conducted a participatory conflict analysis from February to September 2011, the main findings of which are summarised here. The research drew on other analyses<sup>6</sup> but focused particularly on politically-driven conflict and looked forward to 2012, the year during which Kenya will undertake local, parliamentary and presidential elections under its new Constitution. Based on an analysis of political conflict drivers and risks, the report presents several scenarios for the country, their implications and any risk mitigation strategies available. A conclusion and actionable recommendations are then offered to the European Union in Brussels and in Kenya.

## Methodology

The focus and methodology for this study were agreed jointly by Saferworld and members of the EU Delegation in Kenya. The focus on political conflict reflects concerns with past and upcoming elections as an obvious trigger for violence. It also takes account of the substantial governance changes associated with the February 2008 National Peace Accord and the August 2010 Constitution as discussed above.

<sup>5</sup> The Kenyan Parliament itself has complained about the frequency with which errors in bills that have been passed are being noticed and by their own admission, the inadequacy of such laws compared to those that preceded them.

<sup>6</sup> These analyses include UK's Department For International Development, *Strategic Conflict Assessment*, (2008), KAS, *The Invisible Violence in Kenya: A Case Study of Rift Valley and Western Regions* (KAS, 2011), Office of the President's National Steering Committee on Peace building and Conflict Management *National Conflict Mapping* (2011), The Kenya Conflict Sensitivity Consortium *Embracing the Practice of Conflict Sensitive Approaches: An Analysis of Kenyan Context*, Institute of Economic Affairs and Society for International Development, *Kenya at the Cross-roads: Scenarios for Our Future* (IEA and SID, 2000) among others.

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The research methods used include a desk review, a series of key informant interviews and focus group discussions with individuals from government departments, civil society and the donor community. These interviews helped determine the selection of locations for field research in specific conflict hotspots.<sup>7</sup> Focus group discussions were then convened in each location to solicit views from the grassroots. This report is informed by discourse and content analyses of focus group discussions and interview transcripts. Accordingly the themes highlighted here reflect respondents' current concerns and their perspectives on peace and conflict in Kenya.

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<sup>7</sup> Field research was carried out in the following locations: Rift Valley (Eldoret, Burnt Forest, Nakuru, and Mogotio), Coast (Kilifi and Kwale), Eastern (Isiolo and neighbouring districts), Western (Mt. Elgon and Bungoma), Nairobi and Nyanza (Kisumu). The focus group discussions targeted Youth, Women and Elders separately in every location where they were conducted between July and August 2011.

# 2

## Post-2008 conflict trends

**KENYA'S POLITICAL, LEGAL AND INSTITUTIONAL ENVIRONMENT** has been highly fluid in the past three years. One reason is that the March 2008 Peace Accord and 2010 Constitution required wide-ranging reforms including the overhaul of most state bodies, the development of at least 50 new laws and the appointment and vetting of state office-bearers. These reforms are underway at a time when a number of senior political figures are subject to action by the International Criminal Court (ICC). This coupled with normal politicking and pre-election campaigning means that many Kenyans are justifiably fearful of the executive branch of government manipulating key pieces of legislation required to implement the new Constitution. Meanwhile there are wrangles among members of the political elite who are bent on forging old-style ethnic alliances and oppose any robust anti-corruption effort. Our analysis shows that such elite conflicts and machinations feed tensions at the local level. They do so by playing into unresolved grievances, public ignorance and breeding suspicion between ethnic groups.

This is the context in which this study was carried out. Recurrent issues identified in focus groups were:

- The divisive nature of national politics
- The government's political handling of reforms, including anti-corruption measures
- Economic stewardship, unemployment and the trickle-down effects of government stimulus programmes
- Land management, distribution and planned land reforms
- The implementation of the new Constitution and the mechanics of devolution
- The handling of militias and gangs at work in the country
- Border security issues.

The dominant public views on each of these issues are discussed in brief below.

### Constitutional and institutional reforms

As already explained, Kenya's 2010 Constitution ushered in significant changes. These include a new and expanded Bill of Rights with a guarantee on citizens' socio-economic rights, strong limitations on presidential powers, provisions for more equitable distribution of national resources, establishment of ten constitutional commissions to speed and oversee reforms, a bi-cameral legislature and devolution of many

government functions to 47 new county governments. The implications for a political elite unused to checks on its historical powers are serious. The checks on presidential powers and provisions for devolution are a radical departure in Kenyan governance arrangements but other notable changes include new leadership and integrity requirements for those holding public office (Chapter six) and a new right for the electorate to recall members of parliament (Chapter eight).

Focus group participants displayed strong views regarding the Constitution. They were overwhelmingly supportive and keen to see swift passage of enabling legislation true to the letter and spirit of the document. Many voiced serious concerns on what they see as moves by political leaders to weaken or undermine the Constitution. Recent Bills on Ethics and Anti-Corruption and the Political Parties Act were cited as cases where the Commission for the Implementation of the Constitution (CIC) proved incapable of ensuring full compliance in the face of narrow elite interests.<sup>8</sup> The CIC's predicament is seen to be causing public confusion over its legislative role. Further muddying the picture are different interpretations of new laws, which has underscored the need for the constitutional court's guidance on their meaning.<sup>9</sup>

*“Even though the Constitution is a good document, the relevant laws related to its implementation are being weakened by both the executive and the parliament e.g. the Political Parties and Ethics and Anti-Corruption Laws.”<sup>10</sup>*

It was also felt that without vigilance, newly attained legal gains on the representation of women in public life would not be easy in practice. According to some focus group participants, in order to secure the minimum constitutional requirement of no more than a third of either gender dominating public offices, some cultural barriers such as the confinement of women to traditional roles among some communities need to change.<sup>11</sup>

Participants were also concerned about apparent lack of interest from the senior leadership of the police and the executive to reform in time for the 2012 elections. This is understandable as despite new policing laws having been passed by the parliament, the top leadership in the country's two police institutions remains unchanged and there has been no observable change in police behaviour. Participants also showed interest in the process of the formation of the Independent Electoral and Boundaries Commission (IEBC). As the institution mandated to manage the general elections, the IEBC will be critical in ensuring free and fair elections. During the focus groups however the law to establish the IEBC was still in draft form and questions over the institution's autonomy,<sup>12</sup> resourcing and indeed the date of the 2012 elections<sup>13</sup> were still urgently awaiting an answer.

The past link between electoral outcomes and violence created well-founded concerns that political interference in the appointment of IEBC commissioners would compromise the institution's integrity and pave the way for more post-election violence. Many also fear that unless the IEBC presides over a carefully planned, objective and just boundary delineation process, it is bound to cause disputes that play into historical grievances and identity politics.<sup>14</sup>

<sup>8</sup> In both cases the Bills are widely reported to have been 'watered down' as compared with initial drafts or the Constitution's intentions.

<sup>9</sup> Focus group discussions held in Central Eastern Region in Isiolo from 11–13 July 2011.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> The Chairman of the CIC, Mr Charles Nyachae for example, publicly raised the red flag over the IEBC, saying that the secretive manner in which the Attorney General's office handled the issue could lead to flawed legislation. See, 'Nyachae raises the red flag over elections Bill', *The Sunday Nation*, 3 July 2011.

<sup>13</sup> However on 13 January 2012 the High Court ruled that the first general election under the new constitution will be held within 60 days of the expiry of the term of the current parliament (on 14 January 2013), unless the 'Grand Coalition' government is dissolved in advance of that date. Elections can only be held earlier if the coalition government is formally disbanded by the President and Prime Minister (the principals to the coalition agreement), paving way for the IEBC to fix an election date within 60 days. Although the court ruling gave the two principals some power to determine when elections will be, it provided no more certainty on the election date.

<sup>14</sup> The controversy generated by the proposals of the 2010 Andrew Ligale-led Interim Independent Boundary Review Commission (IIBRC) set a clear precedent here. For instance the IIBRC is said to have carved out three wards from Alego to Ugenya constituency. This prompted a court case by the Alego electorate challenging this proposal. Focus group discussions with youth groups held in July 2011 in Kisumu County.



## Divisive national politics

Kenya's post-2008 political context has been characterised by shifting political alliances, politicisation and ethnicisation of international accountability efforts by the ICC and public disagreements by top leaders on the management of the coalition government. Participants were particularly concerned about statements by politicians which they felt stirred up ethnic animosity as a way to garner support from potential voters.

*“Statements made at national level by politicians from our area have a big impact on relations among the communities on the ground.”<sup>15</sup>*

Shifting alliances and conflicts among the political elite have a trickle-down effect in Kenya, tending to define ethnic interactions at lower levels. For instance, in the Rift Valley, focus group participants were afraid that parties formed along ethnic lines would institutionalise ethnic divisions in the area, in time leading to renewed inter-communal violence.

*“In order to continue being in power, they antagonise one community against another, sometimes falsely justifying why certain communities are not fit to lead... Since many people are either illiterate and or lack awareness on their civic rights, they always take these divisive statements for truth.”<sup>16</sup>*

At the same time, the lack of issue-based politics in Kenya, which has historically been governed through identity politics and the creation of personal power-bases, is a destabilising factor. Most focus group participants see moves by political leaders to create political alliances in advance of 2012 as informed by ethnicity and personal rivalries. For example, the current ‘G7’ alliance targeted at the Kalenjin, Kikuyu and Kamba communities, is composed of leaders bound by mutual interest to prevent Prime Minister Raila Odinga (a Luo) from clinching the presidency.

These political dynamics are further complicated by the ongoing ICC cases that involve two of the key presidential hopefuls, Uhuru Kenyatta and William Ruto who hail from two main ethnic groups, Kikuyu and Kalenjin respectively. The ICC cases are viewed by some as politically motivated because they may effectively block some presidential aspirants from contesting. The ICC judges’ 23 January 2012 decision to confirm cases against four out of the six suspects has had an impact on national politics and local security dynamics. Uhuru Kenyatta and William Ruto have organised mass rallies around the country. Although referred to as prayer meetings the rallies are used to appeal for resistance against western influence (i.e. the ICC) over the selection of presidential aspirants in an attempt to bolster the two candidates’ presidential campaigns.

*“What happened to other people mentioned by the Commission of Inquiry into the Post-Election Violence? Impunity should be addressed at all levels to deter people from committing such offences in future.”<sup>17</sup>*

For now the ICC proceedings stand in place of any serious national effort to punish middle- and lower-level perpetrators of the election violence. Focus group participants in Nairobi were especially fearful that the failure to set up a local tribunal to bring more post-election violence suspects to account creates a situation in which future retaliation for the events of 2008 is a real possibility.

Meanwhile the influence political leaders appear to have on the public makes leadership wrangles a concern. Political disagreements over management of the coalition government, for example, or over the extent of consultations needed between the President and Prime Minister prior to executive appointments, have attracted public debate. The failure of leaders to demonstrate co-operation and commitment to problem-solving implicitly reinforces inter-group mistrust at the local level where politics plays out along the same factionalised lines.

<sup>15</sup> Focus group discussions in Bungoma County with representatives from Bungoma, Mt Elgon and Kimilili, held in July and August 2011.

<sup>16</sup> Focus group discussions in Burnt Forest, Eldoret East district, Uasin Gishu County in August 2011.

<sup>17</sup> Response by a participant during a focus group discussion with elders in Kisumu County in August 2011.



With divisive politics, the threat of ethnic polarisation is inescapable. This mind-set – one of negative ethnicity – dates to the pre-independence period and feeds the secessionist tendencies of groups such as the Mombasa Republican Council.<sup>18</sup> Yet some kinship ties are trans-national, meaning that some conflicts can be regionalised across Kenya's borders as a result. This spill-over can take the form of demand for arms from across the border or even the involvement of communities from neighbouring countries in local conflicts.<sup>19</sup>

## The unemployment trap

Past analyses have shown that persisting poverty and inequality are among the structural causes of conflict in Kenya, with the youth more harshly affected in many cases. Unfortunately government attempts to address youth poverty through economic stimulus programmes such as the *Kazi kwa Vijana*<sup>20</sup> (Opportunities for Youth) initiative, have apparently failed to solve unemployment problems. Instead, focus group respondents dubbed the initiative as *kazi kwa vijana, pesa kwa wazee* (jobs to the youth, money to the elders); implying that corruption or mismanagement has reinforced old economic patterns. Most seemed to feel that the small payments for manual labour under the stimulus program were inadequate to secure livelihoods. This reinforces the feeling that the youth are peripheral to government policy.

*“Kazi kwa Vijana (Opportunities for Youth) has not had significant impact in improving the lives of jobless youth.”<sup>21</sup>*

*“There is no goodwill by the government to secure livelihoods and employment for the youth. For example, the budget allocation made for youth advancement is very low.”<sup>22</sup>*

High unemployment and poverty rates among the youth also make them vulnerable to exploitation and manipulation. Focus group respondents warned that the growing youth demographic is increasingly frustrated. Together with rising living costs this was said to be a potential source of social unrest and a spur for young people to turn to crime and violence. According to many, young people's economic vulnerability makes them susceptible to recruitment into gangs that are often used in political and electoral disputes as discussed in the section on gangs and militia.

More broadly, the population at large has endured harsh economic conditions. Rising living costs in recent years are but the latest example. Decades of skewed government development policies are seen to have institutionalised glaring inequalities between northern and southern Kenya. Arid regions remain peripheral, and the livestock industry – the mainstay of pastoralists in arid and semi-arid areas – remains under-developed.

## Devolution and its challenges

Devolution of power and resources from the national government to county governments under the new constitution is a measure designed to remedy many ills. Yet the responses from focus groups show that devolution may have positive and negative effects on conflict depending on its implementation.

<sup>18</sup> The MRC is a group based in Kenya's Coast Province whose main agenda is to have an independent coastal region. It challenges the historical agreements leading to the coast's integration into modern Kenya. In 2008 the group was banned by the state, though the Kenyan courts have dismissed charges that the MRC is an armed gang. For more information, see *MRC Conflict Assessment Report, November 2011*, published under the USAID, PACT and ACT under Kenya Civil Society Strengthening Programme.

<sup>19</sup> A recent warning by the Mt. Elgon District Commissioner that *Al Shabaab* are recruiting ex-SLDF members suggests that ideology or routine criminality could be another source of cross-border insecurity for Kenya in future. See [www.standardmedia.co.ke/InsidePage.php?id=2000047025&cid=159&story=DC%20warns%20Al%20Shabaab%20recruiting%20ex-SLDF%20members](http://www.standardmedia.co.ke/InsidePage.php?id=2000047025&cid=159&story=DC%20warns%20Al%20Shabaab%20recruiting%20ex-SLDF%20members) (Accessed 29 November 2011).

<sup>20</sup> Launched in March 2009, The *Kazi kwa Vijana* programme is a nation-wide initiative designed to create employment for 200,000–300,000 Kenyans, mainly young people at risk of hunger and starvation. The budget for the first phase was over 1 Billion Kenya Shillings but has been the subject of an investigation and independent audit due to corruption claims.

<sup>21</sup> Focus group discussions with youth groups held in August 2011 in Nairobi County.

<sup>22</sup> Focus group discussions with youth groups held in July 2011 in Kisumu County.

Although the new county structure is a work in progress, several important aspects of devolution are controversial. First, the relationship between central government and counties has provoked debate, not least the implications for the Provincial Administration structure.<sup>23</sup> There is already a stand-off between the executive and legislature over the County Government Bill. The president rejected the Bill on grounds that it would put provincial administrators under county governors.<sup>24</sup>

Second, disputes over the constitution and administration of counties are causing tension in several locations. In some areas, groups are locked in debates over the best location for the county headquarters. The underlying reason is fear of marginalisation (if the centre is far from one's community). For example these sentiments were expressed during focus group discussions in Bungoma County, where the Sabaot in Mt Elgon district prefer to have the headquarters close to their homeland (e.g. in Webuye or Kimilili) in contrast to the planned location in Bungoma town. Similar wrangles over the location of county headquarters would revive the wrangles between Marigat district and Kabarnet district residents in Rift Valley. Participants here also expressed concern about how the Governor will relate with the Provincial Administration if at all the latter is retained in whatever form. This concern is enhanced by the scarce and sometimes contradictory information about how the county government will be managed.<sup>25</sup> By the same token, the Nyakach (Luo Nyanza) and Nandi communities (Rift Valley) are in conflict over this issue. In this last case the close economic ties of the two groups who trade fish and maize would be disrupted if the dispute were to worsen.

*"We get maize from Nandi while Nandi receives fish and rice from Kisumu. We rely on each other. There is no way we can survive alone."*<sup>26</sup>

Within counties, there is also the fear that resources – natural, economic and human – will be Balkanised, meaning that past unequal resource distribution patterns (e.g. between Mt Elgon and the rest of Bungoma county), will re-emerge. If this were to happen, it would accentuate ethnic polarisation.<sup>27</sup>

A third issue is the conflict over the delineation of political and administrative boundaries. There are fears that some constituencies will be carved out to advantage particular political leaders and/or parties and ethnic groups. County and constituency boundaries need to be drawn with care in Kenya. Alongside technical issues such as population size, underlying conflict issues e.g. identity and land disputes must not be ignored. Counties run the risk of perpetuating identity-based divisions as local politicians seek ethnic alliances to propel them to county seats. There is also fear among minority groups within counties that they will be marginalised and dominated by larger communities. As focus groups revealed even the names of counties can have ethnic undertones. Great care needs to be taken as boundaries are re-drawn and units named so as to avoid inciting local opinion in divided areas.<sup>28</sup>

Fears about political dominance of counties by some groups over others were reflected in focus group discussions in Nairobi and Mt Elgon. There, residents cited the role of hate speech in fanning inter-group conflict during political campaigns in which the majority might use threats of violence to secure key positions in a county government.

*"We fear dominant clans will take control of county politics, locking out people they consider outsiders."*<sup>29</sup>

<sup>23</sup> The Provincial Administration is under the Office of the President and has the mandate of implementing government policies at the local level. Under the current Constitution, its future is not clear.

<sup>24</sup> See *The Standard*, Why Kibaki Rejected Bill on DCs and DOs, 28 February 2012.

<sup>25</sup> As one woman remarked in focus groups, "We only hear rumours about it."

<sup>26</sup> Focus group discussions with youth groups held in July 2011 in Kisumu County.

<sup>27</sup> Focus group discussions in Burnt Forest, Eldoret East district, Uasin Gishu County, August 2011.

<sup>28</sup> These concerns were raised in all focus group discussions but they were more prominent in the Central Eastern region around Isiolo which is ethnically diverse and in Mt Elgon. In Mt Elgon this is due to a feeling of political marginalisation. The area only has one electoral constituency with very limited chances of getting a new one. Any hope that Mt Elgon would be declared a county unto itself was shattered when the area was placed under the larger Bungoma County in the Constitution endorsed by Kenyans in a referendum in August 2010.

<sup>29</sup> Focus group discussions with elders held in July 2011 in Kisumu County.

## The land question

As past conflict analyses show there are enduring and unresolved community grievances over land ownership and distribution in different parts of Kenya.<sup>30</sup> Politicised land distribution schemes by post-independence governments have been a lasting source of inter-group resentment. For example in the Rift Valley and Coast provinces there are hostilities between indigenous communities and migrant groups that have settled there. Hostilities are underpinned by the feeling of dispossession among indigenous groups justified by perceptions of historical injustices.

*“There are people from inland who have acquired land here. They own vast acres yet we live as squatters. This is our ancestral land and we have no claim to it.”<sup>31</sup>*

*“The Kalenjin used to say the Kikuyu have taken their land even though in many cases some Kalenjin land-owners had sold the land to the Kikuyu. The first skirmishes broke out over this problem in the 1960s.”<sup>32</sup>*

Arguably the role of political elites in creating and sustaining land problems has not been analysed sufficiently in Kenya. There are numerous claims made of land-grabbing and displacement. For example, that the land on which the Nyanza General Hospital was constructed was acquired after displacement of families who were never compensated.<sup>33</sup> According to focus group participants present-day elites and investors are a major force in the displacement of poor families – the squatter problem in coastal Kenya is testimony to this.<sup>34</sup> Others blamed the current land problem on the Provincial Administration who they described as ‘the main pillar supporting corruption’. For example the Kibera slum problem was attributed to misconduct by corrupt administrators having issued temporary occupation licences over the years.<sup>35</sup>

The land question has become an attractive political campaign issue in Kenya and its politicisation will only worsen divisions. Compounding the situation however is the continued challenge of internal displacement, with the government perceived as having failed to resettle all internally displaced persons, particularly those victims of the 2007/8 violence, but also long-term squatters.<sup>36</sup> Another problem is the fact that not all land-owners have title deeds for their land, a fact which makes land-grabbing far easier.<sup>37</sup>

In Nairobi, the recent demolitions in Syokimau, Kyang’ombe Mitumba and Maasai settlements have brought into sharp focus the deplorable state of Kenya’s land administration system and the lack of respect for eviction procedures by the government.<sup>38</sup> Focus group participants noted that Ministry of Lands needs serious reform as most land ownership documents that have been nullified have been endorsed by the Ministry itself. Constitutional and policy frameworks as spelt out in the Constitution and the *Sessional Paper No. 3 of 2009* on the National Land Policy have been violated on many occasions and for this reason, Kenya will need to fast-track institutional reforms by

<sup>30</sup> See for example: UK’s Department For International Development, *Strategic Conflict Assessment*, (2008), KAS, *The Invisible Violence in Kenya: A Case Study of Rift Valley and Western Regions*, (KAS, 2008), Office of the President’s National Steering Committee on Peace building and Conflict Management, *National Conflict Mapping* (NSC, 2011) and Kenya National Commission on Human Rights *On the Brink of the Precipice: A Human Rights Account of Kenya’s Post 2007 Election Violence*. (Nairobi: KNCHR 2008).

<sup>31</sup> Focus group discussions with elders held in August/September 2011 in Kwale, Coast Province.

<sup>32</sup> Focus group discussions in Burnt Forest, Eldoret East district, Uasin Gishu County in August 2011.

<sup>33</sup> Focus group discussions with youth groups held in July 2011 in Kisumu County.

<sup>34</sup> Feedback from participants during the validation workshop of PPP report in Isiolo and Nanyuki between 28 November and 2 December.

<sup>35</sup> Feedback from participants during the validation workshop of PPP report in Isiolo and Nanyuki between 28 November and 2 December.

<sup>36</sup> According to the Kenya Human Rights Commission, the two cycles of electoral violence between 1991 and 1997 displaced over 600,000 people. By 2004, the number of internally displaced persons (IDPs) was 360,000, but this later rose to 450,000 by 2006. At the end of 2007, there were still 380,000 IDPs from the 1990s’ electoral clashes. The post-2007 elections violence displaced over 600,000 people – a testament of the magnitude of the violence. See KHRC, *Justice Delayed: A Status Report on Historical Injustices in Kenya*, (KHRC, 2011), p 12–13 and KHRC & National Network for IDPs in Kenya, *Gains and Gaps: A Status Report on IDPs in Kenya 2008–2010*, (Nairobi: KHRC2011) p18.

<sup>37</sup> In Mt Elgon, where the government allotment of land to a batch of landless families was meant to solve conflict issues, there are claims that imposters were awarded land. If this issue is politicised, another cycle of discord will develop in this hot-spot area. Feedback from participants during the validation workshop of PPP report in Isiolo and Nanyuki between 28 November and 2 December.

<sup>38</sup> See ‘Untangling the web that is the Syokimau-Mlolongo land scam’, *Daily Nation*, 22 December 2011, [www.nation.co.ke/Features/DN2/Untangling+the+web+that+is+the+Syokimau+Mlolongo+land+scam/-/957860/1293324/-/32rp3qz/-/index.html](http://www.nation.co.ke/Features/DN2/Untangling+the+web+that+is+the+Syokimau+Mlolongo+land+scam/-/957860/1293324/-/32rp3qz/-/index.html).

operationalising the National Land Commission and starting work to review and restructure the institutional framework in the Ministry of Lands and other agencies involved in land governance.<sup>39</sup>

### Militias, gangs, secessionist groups and arms

The problem of militias and gangs came out prominently in all the focus group discussions. Kenya has struggled for many years with organised criminal gangs and militias. Many are localised, running protection rackets and drugs. Others have an ethnic basis or are linked in some way with political leaders. The failure to institute accountability measures against perpetrators of organised violence has left the main structures for the execution of violence intact. Groups such as the Mungiki in Central, Rift Valley and Coast provinces and the Mombasa Republican Council in Coast province still pose security threats. For example, focus group respondents in the coast province spoke nervously about a recently formed secessionist group known as the Mombasa Republican Council, which is apparently attracting a good number of young people. In western Kenya's Bungoma County there is fear about the possible remobilisation of the Sabaot Land Defence Force.<sup>40</sup>

Several key informants also registered concerns over gangs and militias pointing out that with perpetrators of past violence having enjoyed impunity so far there is obvious political mileage in communicating grievances and dissatisfaction through force. According to this logic there is a genuine prospect of increased use of gangs and militias by politicians seeking to secure positions and resources. With arms readily available to such groups, the risks associated with such behaviour are only too obvious.

*“The threat of militia and gangs is real. Apart from the bulging numbers of unemployed youth easily getting persuaded to join these groups, the inability of the government to provide security to citizens in some areas of the country, including in the towns is creating an alternative informal security led by militia. Sometimes we rely on these groups to provide security at a fee.”<sup>41</sup>*

### Border problems at the frontiers

Border security problems have long haunted Kenya, with challenges of ineffective border controls, cattle-raiding, massive refugee flows, and the trafficking of people, drugs and arms. Many commentators worry that foreign terrorist groups like *Al Shabaab* can infiltrate the country due to lax border controls. During a focus group with civil society organisations in February 2011 in Nairobi, participants expressed concerns over increased flow of arms especially into Kenya's northern border regions from neighbouring countries like Somalia. The view of the participants was that if the problem is not controlled, armed crime will grow in urban areas while rural areas will be subject to more intense inter-communal violence.<sup>42</sup> Indeed, in the period after the Kenya Defence Forces' incursion into southern Somalia, *Al Shabaab* retaliated with relative ease – planting explosive devices on roads, launching isolated grenade attacks, and even kidnapping some local government officials in North-Eastern province.<sup>43</sup> This demonstrated the country's vulnerability and weak border security. However the subsequent arrest of suspects of non-Somali origin underscores the potential for a broad-based recruitment drive by *Al-Shabaab* that could even target organised criminal gangs.<sup>44</sup>

<sup>39</sup> The Land Sector Non-State Actors group has provided a detailed analysis of land administration challenges and given recommendations to parliament on how to address these problems. See Sunday Nation, 4 December 2011 p 24.

<sup>40</sup> Various focus group discussions in Coast (Kwale) and Rift Valley in July, August and September 2011. An unhelpful contributing factor however is the absence or poor quality of state security provision in areas affected by gangs.

<sup>41</sup> Statement by a youth from Korogocho area during a focus group discussion with youth groups held in August 2011 in Nairobi County.

<sup>42</sup> A PPP workshop held in Nairobi 3–4 February 2011 brought together community representatives from Isiolo, Marsabit, Samburu, Laikipia, Pokot, Turkana, Greater Trans-Nzoia, Mt Elgon, Marakwet, Uasin Gishu (Eldoret), Nakuru, Naivasha, Mandera, Wajir and Garissa.

<sup>43</sup> For example, four people were injured in grenade attacks in Garissa in on 15 December 2011. See [www.standardmedia.co.ke/InsidePage.php?id=2000048427&cid=4](http://www.standardmedia.co.ke/InsidePage.php?id=2000048427&cid=4) (Accessed on 1 March 2012).

<sup>44</sup> One of the suspect, Elgiva Bwire, pleaded guilty to belonging *Al Shabaab* and involvement in planning attacks in Nairobi. See [www.bbc.co.uk/news/world-africa-15467507](http://www.bbc.co.uk/news/world-africa-15467507) (Accessed on 1 March 2012)

Many borderland communities also contend with hostile neighbours, a fact that creates localised security dilemmas, where pastoralists seek arms to deter and/or defend themselves from rivals' potential attacks. Successive governments' failure to provide adequate security and development to back-up repeated disarmament campaigns in Northern Kenya complicates the situation.<sup>45</sup>

#### Operation 'Linda Nchi'

At the time of writing the Kenyan Government had just launched a cross-border military operation 'Linda Nchi' (Protect the Country) into Somalia in an attempt to protect itself from cross-border attacks and kidnappings by criminal gangs and *Harakatu Al Shabaab al-Mujahidiin* militants. The war on *Al Shabaab* has introduced the domestic challenge of profiling and at times victimising the Somali community. But it has also revealed that the threat is wider, with arrests of non-Somali Kenyan citizens accused of membership in the militant group. So far the operation has solid public support. However if the operation becomes drawn-out and ambitions extend to a military defeat of *Al Shabaab*, costs will grow at a time when Kenya is struggling with rising cost of living and other pressing priorities. Meanwhile the threat of retaliation by the terrorist elements associated with *Al Shabaab* is also real and recent incidents of isolated cases of explosions in public spaces point to the presence of the group or their sympathisers in Kenya.<sup>46</sup>

Considering that these communities are marginalised, well-armed, and are proximate to countries associated with secessionist struggles (such as South Sudan, Ethiopia and Somalia), some also voiced concerns that the current devolved government structure may introduce similar isolationist hopes.<sup>47</sup>

In addition some of these frontiers are likely to experience development-induced conflicts. Specifically, under Kenya's development blueprint Vision 2030, Isiolo County (in the Upper Eastern region) will be transformed into a resort city. Besides escalating the value of land parcels, which are being acquired by outsiders, this plan has fed fears among the local pastoralist communities that they will lose their land to investors.

*"We are no longer involved in making decisions on the various government projects under the so-called Vision 2030. Besides disrupting the lifestyles of pastoralists in our area, many of us who have lived here for many years feel increasingly worried about our livelihoods as we don't know what will happen in future as the government implements the economic plan in the region."*<sup>48</sup>

Lastly, there is a link between arms prevalence in the frontier regions and their trafficking to urban areas. The spread of guns to urban areas increases their availability to gangs and makes the militarisation of elections much more likely.<sup>49</sup>

<sup>45</sup> See for example Wepundi M, Ndung'u J and Rynn S, *Lessons from the frontiers: Civilian disarmament in Kenya and Uganda*, (Saferworld, 2011)

<sup>46</sup> See *Sunday Nation* and *Sunday Standard*, 30 October 2011.

<sup>47</sup> PPP Researchers and Facilitators Feedback workshop held in Nairobi in September 2011. The workshop was attended by researchers and facilitators involved in all PPP focus group discussions between February and September as well as local experts on conflict issues to critique findings.

<sup>48</sup> Female participant during a focus group discussion bringing together women from Central Eastern Region held in Isiolo from 11–13 July 2011.

<sup>49</sup> Focus group participants from border regions were firmly in favour of arms collection programmes, both cross-border and in urban areas. Feedback from participants during the validation workshop on research findings held in Isiolo and Nanyuki between 28 November and 2 December 2010.

# 3

## Conflict risks and scenarios

**WHETHER CONFLICT-INDUCING FACTORS** identified above lead to a future outbreak of violence in Kenya depends on a number of related risk factors which we describe below. Having identified these factors during research we can also speculate on a number of possible scenarios for the country over the medium term. Our analysis and forward projection rests on three basic assumptions:

1. That the country's future peace and conflict dynamics will be influenced by the strides made in aligning the country's legal, political and economic systems to the new constitutional provisions. In other words the extent to which the country adheres to the new laws and the level of commitment to a just, fair, and democratic system of governance in all areas will largely determine how cohesive and progressive Kenyan society becomes.
2. Considering that all post-1990 elections have been marred by violence, peaking in 2007/2008, it is assumed here that any future build-up to conflict will be slow and discernible provided key indicators are monitored. For example persistent hate speech, clearly ethnicised politics, political elite conflicts and exclusionary leadership behaviour would all serve to gradually escalate conflict potentially made worse by the existence of armed gangs and the availability of arms.
3. We assume that increasing national stability will allow further de-escalation of political conflict from a 2007/8 peak. Stable legal, governance and economic systems would provide an enabling environment for measures to enhance social cohesion. Unless Kenya can move beyond mere conflict management towards genuine conflict transformation through inter-group reconciliation and building greater social cohesion, efforts to implement the new Constitution will be strained.

With these assumptions, we have developed four scenarios for the country's future:

- i. **Code White:** The best scenario is one of immense political goodwill and support for complete alignment of legal, political and economic systems with the new Constitution. Measurable progress is achieved in passing bills prioritised in the fifth schedule of the Constitution within the stipulated timeframe (ranging from one to five years). Sufficient political goodwill supports the formulation and enactment of new laws by overcoming the temptation to water them down. Kenya's governance system faces a major overhaul. There is a new bicameral parliament; land reforms, a judiciary with a Supreme Court; county governments; and multiple constitutional commissions. Effectively setting up these new elements of government, and their seamless inter-



relation will guarantee political stability. The economic system includes economic policies and mechanisms designed to fulfil socioeconomic rights as guaranteed in the Constitution, including among others independent commissions such as the Commission on Revenue Allocation, Salaries and Remuneration Commission, and the Ethics and Anti-Corruption Commission.

- ii. **Code Yellow:** A *status quo* scenario needing caution whereby there is incomplete alignment of all systems to the new Constitution. Continued vigilance would be necessary since prevailing peace in the country would only conceal the reality of failed reforms and unresolved structural conflict drivers.
- iii. **Code Orange:** Another danger zone for the country would be a context of multiple conflicts at the national and/or county levels despite progress with reforms. This scenario would involve continuous shocks to reformed institutions such that Kenyans would not enjoy the fruits of the new Constitution. This is imaginable, keeping in mind that the 2007/2008 violence reversed the gains of sustained economic growth from the 2002–2007 period.<sup>50</sup>
- iv. **Code Red:** The worst case scenario would be one of failed, unsatisfactory and/or miscarried reforms in the context of prevalent conflict. In this case, elite conflicts at the national level combined with inter-group conflicts at the county level would undermine reform efforts, and the economy would suffer badly in the context of failed institutional and legal development.

There are multiple issues that raise the conflict risks in the country. The risk factors and how they are managed will determine which of the four above scenarios occurs. See inside back cover for diagram.

### Political risks

- There are several political dangers resulting from the new constitutional order. Devolution is likely to create centre-periphery tensions, as county leaders seek to assert more political control over their units of governance. At the same time, if successful, the national administration's apparent insistence on recreating centralised governance mechanisms in parallel to devolved county government is likely to generate intense political friction between the two levels of government.<sup>51</sup>
- Recurrent conflict between different factions of the political elite could mutate whereby key national figures seek to control counties by proxy.
- Continued elite wrangling will likely fuel tensions among communities which then turns to violence during election periods, sapping momentum for reform.
- The creation of counties will also accentuate identity-based rivalries as ethnic group, clan and/or religious rivalries play out in contests for elected county positions. This would produce more conflict in the periphery even as the centre holds together.
- The ongoing proceedings at the ICC against the six Kenyan suspects are already creating a certain degree of national suspense. Whatever the outcome the cases are likely to shift the country's political landscape, and as such there are uncertainties about the future leadership of political parties. This fact is creating public anxiety about a possible leadership vacuum. However, the unintended consequence of the ICC process might be political regression, with leaders seeking political control by any means so as to insulate themselves from independent accountability proceedings.

<sup>50</sup> The growth rate peaked at 7.1% in 2007. See Government of Kenya, *Vision 2030: A Globally Competitive and Prosperous Kenya*, (Ministry of Finance and Planning, 2007).

<sup>51</sup> The *Interim Report of the Task Force on Devolved Government* recommended the transformation of the Provincial Administration into the National Administration. Under this new framework, it is believed that Provincial and District Commissioners would become County Administrators. But there is divided opinion on whether or not the Provincial Administration should be maintained in any form – many would prefer its dissolution. See Task Force on Devolved Government, *Interim Report of the Task Force on Devolved Government: A Report on the Implementation of Devolved Government in Kenya*, (Ministry of Local Government, 2011), p 112 and 'PCs and DCs to Become County Administrators' *The Star*, 27 April 2011 Online: <http://allafrica.com/stories/201105040375.html> (Accessed on 2 November 2011).

### Economic risks

- Growing tension between the centre and periphery over resource sharing and policy implementation is foreseeable. For example, current disagreements between the Ministry of Local Government and the Ministry of Finance over the formulation of the Public Finance Management Bill<sup>52</sup> could well be the first stage in longer-term fiscal conflict between national and county government.
- As focus group results showed the unwillingness of Kenya's current parliamentarians to pay taxes as required under the new Constitution and their vindictive adulteration of the Ethics and Anti-Corruption Act<sup>53</sup> is feeding frustration, especially among the youth.<sup>54</sup> Growing public mistrust of the political elite due to their unwillingness to pay taxes and their lack of support for the anti-corruption war is likely to widen the schism between the political class and the electorate. The political risk here is that such a divide might deny political leaders the popular support they need to drive the reform process forward.

### Legal risks

- Lastly, there are significant legal hurdles to be surmounted. Most notably the national parliament has recently begun to pass weak legislation, laws that even the Minister for Justice and Constitutional Affairs and the Commission for the Implementation of the Constitution (CIC) have described as flawed. This is feeding public disillusionment in the ability of the executive and legislature to enforce the new Constitution and sowing doubts that they are either unwilling or unable to do so. There are two broad implications: First, passing laws that water down constitutional provisions will invite more court cases seeking the Supreme Court's interpretation and action. Court decisions declaring these laws unconstitutional will be popular, but will invite friction between the judiciary and legislature. Secondly, increasing public disenchantment in the reform process coupled with scepticism towards the political class will tilt the country closer to the conditions of the 1990s when mass public protest became the norm.

In summary, based on people's own perspectives, the country's current conflict risks revolve around five key factors: divisive national politics, poor constitutional and institutional reforms, politicisation of land issues, contention on the form devolution should take, and the risk of increase in organised violence, gangs and crime. The diagram below explores the causal connections between these conflict drivers, in turn suggesting points of leverage that interrupt the conflict system:

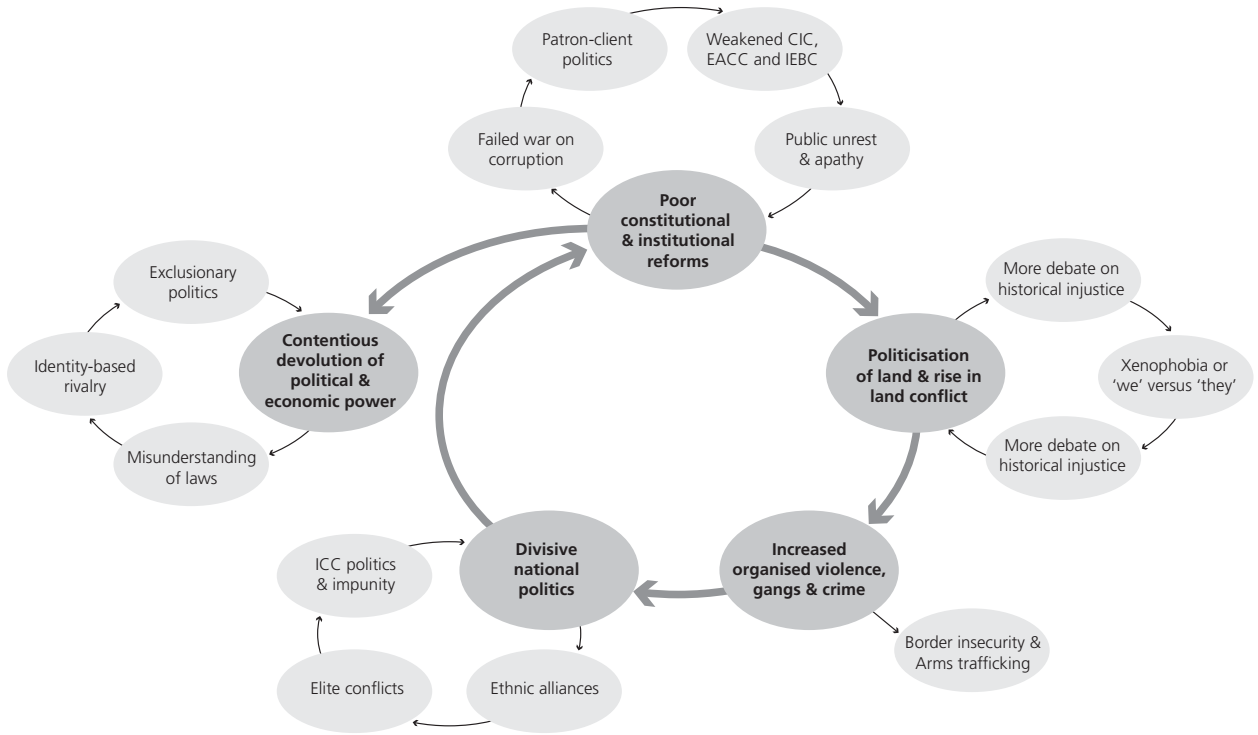
<sup>52</sup> See for example David Ochami, 'Uhuru's MOU with IMF Fuelling County Row,' *The Standard*, 16 August 2011, available at: [www.standardmedia.co.ke/InsidePage.php?id=2000041007&cid=4&ttl=Uhuru's%20MoU%20with%20IMF%20fuelling%20county%20funding%20row](http://www.standardmedia.co.ke/InsidePage.php?id=2000041007&cid=4&ttl=Uhuru's%20MoU%20with%20IMF%20fuelling%20county%20funding%20row) (Accessed 2 November 2011).

<sup>53</sup> MPs denied the Ethics and Anti-Corruption Commission prosecutorial powers making critics observe that 'in the end, Parliament legislated against the Directorate of KACC and not corruption.' See Onyiego M 'Kenya's Corruption Chief Faces Backlash' Online: [www.voanews.com/english/news/africa/Backlash-Against-Kenya-Corruption-Chief-Could-Set-Back-Fight-Against-Graft-128474538.html](http://www.voanews.com/english/news/africa/Backlash-Against-Kenya-Corruption-Chief-Could-Set-Back-Fight-Against-Graft-128474538.html) (Accessed 1 November 2011).

<sup>54</sup> Various focus group discussions in Nairobi, Rift Valley, Nyanza and Coast Provinces between July and September 2011.



Political conflict systems in Kenya



# 4

## Conclusion

### **MOST OBSERVERS NOW RECOGNISE THAT KENYA IS CONFLICT-PRONE.**

The period between 1992 and 2007 presents an important 15-year cycle during which structural underlying causes of conflict steadily grew to a violent climax. If the lessons of the past are not learned and these underlying causes of tension addressed through far-reaching structural and institutional reforms, the country could fall into a deeper crisis.<sup>55</sup>

As described above, the 2008 peace accord and August 2010 Constitution provide a framework through which deep-rooted structural causes of conflict can be progressively dealt with. The extent to which there is genuine commitment to implement the Constitution and see through institutional reforms will determine the country's fate. Terrible as it was, the 2008 post-election violence provided an opportunity to reignite the momentum for genuine reforms that carried Kenyan society forward during the 1990s and early 2000s. Ongoing reforms have the potential to build public trust and guarantee peace, security and justice in the short term. However, piecemeal and reluctant reforms would signal a return to political inertia, fuelling intra-societal and state-society tension.

*“From the experience of 2008, it is obvious Kenya is at the cross-roads. The road to peace is one characterised by genuine reforms on issues identified as the triggers of conflict in Kenya. This is the only way that we can prevent future potential conflict in Kenya.”<sup>56</sup>*

Yet as long as needs of the victims of the 2007/8 violence are not met, conditions for fresh conflict will certainly exist. It is imperative that the government resettles displaced victims before the next general election. In addition, whereas the ICC process provides an opportunity to deal with the perpetrators of the post-election violence, the search for justice cannot end there. A local mechanism should be established to address impunity at all levels. Current judicial reforms provide an opportunity here.

However, progress with reforms requires above all that effective measures for addressing impunity be put in place. Kenyans themselves need to put continued pressure on their political leadership to deliver reform. Urgent action is required on the passage of election-related laws, police reforms, anti-corruption laws and laws related to the new devolved structures of governance that will take effect after the general elections. At the same time, to avoid the mistakes of 2008, the National Police Service will need to be well prepared to deal with the most complex round of elections the country has ever faced.

<sup>55</sup> Institute of Economic Affairs and Society for International Development, *Kenya at the Cross-roads: Scenarios for Our Future*, (IEA and SID, 2000), p 10

<sup>56</sup> Young female participant during focus group discussions held in Central Eastern Region in Isiolo from 11–13 July 2011.

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Finally, for its part the international community can play an important role by ensuring that support to the government of Kenya is pegged on delivery of reform commitments.

With this in mind we offer the following recommendations to the EU which we believe will maximise its effectiveness in preventing political conflict and helping to maintain stability and social cohesion in the run-up to the 2012 elections and beyond.

# Recommendations to the European Union

## 1. Implementation of the Constitution and the National Peace and Reconciliation Accord

The EU has played an important role since 2008 in encouraging Kenya's political leadership to fully implement the Constitution and peace accord in order to restore public confidence in the rule of law. The institution should maintain a robust dialogue with the Government of Kenya and prioritise its focus on the following areas:

- Land reform: Kenya's new land policy has far-reaching implications. While the policy is designed to guarantee a righting of historical wrongs, politicians are among major landowners and cannot be trusted to oversee its implementation. Continuous scrutiny and a measure of external pressure are likely required. In addition the sensitivities around recognising community land should be addressed, not least because this issue has potential for ethnic mobilisation if not handled well. Women's rights to own land should also be protected.
- Police reform: Given the slow pace of police reforms to date, concerns should be raised at delays in publishing long-awaited policing laws passed by parliament and at the failure to bring in new police leadership. The EU should also stress that police reform should be about much more than just unifying the command of the Kenya Police and Administration Police. For example:
  - Reliable internal and external police accountability mechanisms should be put in place quickly and provided with the appropriate technical assistance. Given the police's responsibility for public order management of the coming 2012 General Election, emphasis should be placed on this question in dialogue with the Government of Kenya – proper planning, co-ordination with other agencies and revised human rights compliant public order training for officers are all required.
  - Together with other actors the EU should push for an 'open' police reform process that brings in actors from across the justice sector, civil society, potential donors and technical specialists in a transparent and co-ordinated manner.
  - Following this, adequate resourcing of the police service should be ensured through an appropriate combination of governmental and donor support.
  - Finally, police deployment to areas where the police have been traditionally absent or few in number, especially in northern Kenya, should be part of reforms.

- Electoral reform: Beyond the ongoing transparent process of selecting commissioners, the IEBC should be capacitated to handle what will be the biggest election (in terms of number of contested seats) in Kenya's history. Old voter concerns about the need for more transparent voting (e.g. electronic voting) and vote tallying should be addressed.
- National cohesion: The National Cohesion and Integration Commission (NCIC) has been unable to rein in the political class who use irresponsible ethnically slanted campaign messages. A working co-operative framework is needed between the NCIC, Directorate of Public Prosecution and Judiciary, to ensure speedy prosecution of hate-speech related cases. It will be helpful for the EU and other partners to sustain their strategic support to NCIC's ongoing efforts to ensure national cohesion.
- Truth and reconciliation: The Truth Justice and Reconciliation Commission has had a troubled history since its creation but has scored a few successes within a short time-frame. It should not be ignored or abandoned considering the political impact its future reports may have or indeed its remaining potential to foster reconciliation. Options for future support, whether technical, political or financial should be considered.
- Judicial reform: Although this is one area where important reform milestones have been met, there is need to maintain support in areas such as vetting of judges and court officials and to look again at how state and non-state justice actors can co-operate so as to restore public confidence in the judiciary.

## **2. Planning ahead to prevent and swiftly address any future election violence**

The EU should also consistently highlight the following election-related issues in its ongoing dialogue with the Government of Kenya:

- The need to undertake thorough planning for the coming 2012 presidential elections including election security and public order management. This should include assessing capacity needs of the police, establishing co-ordination mechanisms at different levels among all relevant governmental and non-governmental actors.
- The importance of different elements of the emerging national peace architecture (e.g. peace committees, *Uwiano*, elders' councils, local COSs, the NSC and NCIC) being adequately capacitated, working together on pre-election planning, and maintaining ongoing information exchanges with other actors.
- The need to step-up and sustain community-level peace dialogues in past and potential conflict hotspots.
- Recognise the urgency of the IDP (internally displaced persons) issue and take steps to bring an end to displacement prior to the 2012 election in a conflict-sensitive manner (e.g. including thorough consultation and communication with prospective returnees and host communities). There should be a strong presumption that IDPs will return to their place of origin albeit with adequate support, reconciliation measures and protection.
- Take steps to ensure responsible and objective media coverage of political campaigns and elections including holding high-level dialogue with media house owners, including briefings on possible sanctions by the NCIC and judicial actors; support NCIC and others in their efforts to train journalists, regularly brief editors and monitor media outputs of all kinds.
- Respect the independence of the IEBC and give it the support it needs to prepare for the coming elections and administer them effectively.

### 3. Supporting citizens' search for justice

Greater focus is required on the plight of past victims of conflict and electoral violence in Kenya. The EU should:

- Maintain pressure on the government to set up a local tribunal to prosecute top, middle and low-level perpetrators who do not fall under the ICC's remit.
- Continue to support programmes it initiated in 2008 that are designed to raise public awareness of the ICC process in order to prevent widespread ignorance being manipulated to fuel ethnic tensions. The EU Instrument for Democracy and Human Rights is an appropriate framework to tackle this crucial issue and the EU should consider increasing its allocation for this purpose specifically.
- Support national and local civil society efforts that will help prevent and respond to any local level reprisals over the course of the ICC cases.

### 4. Maximising the EU's potential to prevent conflict

Finally, the EU should consider ways in which its own internal structures and funding mechanisms can best support conflict prevention:

- Use the Instrument for Stability to address some of Kenya's more pressing security issues, e.g. those related to public order, small arms proliferation, border security and wider security sector reform.
- Continue to use EU Instrument for Democracy and Human Rights and Non-State Actors and Local Authorities funding streams to support civil society initiatives which contribute to conflict prevention, reconciliation and dialogue and good governance with a focus on devolution, fostering the demand for transparency and accountability, and the supply for capacity development at county level through local civil society support; give priority consideration to programmes supporting youth participation or that deal innovatively with poverty and unemployment.
- Apply a conflict-sensitive approach to the European Development Fund programming process to ensure it takes into account and addresses conflict dynamics at all levels.
- Ensure the next Country Strategy Paper for Kenya is informed by a comprehensive analysis of conflict causes and dynamics, and that programming priorities and modalities reflect this analysis.
- Step-up co-ordination with other donors, including through regular attendance at the Kenya Conflict Donor Group meetings, and contribute to strengthen joint and proactive engagement with the Government of Kenya on issues of political conflict and conflict prevention.

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**Systemic Reforms**

**Code Orange**

- Complete alignment of legal, political and economic systems with the new Constitution
- Increasing public discontent with country's governance
- Mixed fortunes with regard to law enforcement
- Erratic development efforts
- Ethnicity-based election processes
- Incidence of localised conflicts in counties, in the face of a seemingly stable central government

**Code White**

- Complete alignment of legal, political and economic systems with the new Constitution
- Good governance
- Rule of law
- Fair and equitable economic development
- Peaceful country founded on democracy, social cohesion and inter-group tolerance
- Strong central and devolved government structures working well together

**Conflict Prevalence**

**Code Red**

- Incomplete or miscarried reform process
- Aspects of bad governance e.g. politicisation of ethnicity, corruption, and rights violations
- Impunity
- Inequitable economic development
- Less democracy and more unrest
- Weak central and devolved government structures

**Code Yellow**

- Incomplete or miscarried reform process
- Aspects of good governance based on populism, not the law
- Impunity
- Populist economic policies unfounded in long-term vision & law
- Populist democracy (e.g. efforts at inclusive government) in the face of weak electoral institution
- Overbearing central government with unimpressive devolved structures
- General peace

**Conflict Transformation/Peace building**

**Partial/Failed Reforms**



**Saferworld works to prevent and reduce violent conflict and promote co-operative approaches to security. We work with governments, international organisations and civil society to encourage and support effective policies and practices through advocacy, research and policy development and through supporting the actions of others.**

**COVER PHOTO:** A participant gives his peacemaking perspective during a focus group discussion in Isiolo Town, Central Eastern Region of Kenya, August 2011.

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