

POLICY BRIEF: Every life has equal value: renewing the institutional, policy and legal framework for peacebuilding and social cohesion in Kenya

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Introduction

This policy brief draws on a study of the institutional, policy and legal framework for peacebuilding and social cohesion in the Frontier Counties Development Council (FCDC) region¹ and other secondary sources. The study covered 12 counties: the ten members of the FCDC economic bloc,² plus neighbouring Baringo and Laikipia. It was commissioned by the FCDC, in collaboration with the Drylands Learning and Capacity Building Initiative (DLCI), out of a concern that the institutional arrangements for peacebuilding and social cohesion are ill-equipped to deal with current challenges. The region has a long history of ethnic conflict, violence and marginalisation, exacerbated by instability in the wider Horn and East Africa region. Inter-communal violence persists and new conflict risks are emerging.

The National Cohesion and Integration Commission (NCIC) notes that social cohesion enables a society to resolve its differences without violence.³ Social cohesion is both an attribute of society and a potential outcome of peacebuilding interventions. In order to achieve sustainable peace and development, social cohesion must exist on multiple levels: horizontally, in the bonds between social groups, and vertically, in the trust between social groups and the state.⁴ Neither of these is a dominant feature of FCDC counties. In Mandera, for example, the first two of the four impediments to peace prioritised by stakeholders in 2017 were ineffective social reconciliation processes and a lack of trust between citizens and the security agencies.⁵ The reasons for this are both historical and contemporary.

The nature of contemporary conflict in FCDC counties

Conflict in FCDC counties is multi-layered, complex, and constantly evolving. These are some of the main factors now shaping it.

- **Devolution.**⁶ This has intensified competition over access to political and economic resources and increased the significance attached to borders. Politicians bear responsibility for violence by using ethnicity as a tool to mobilise their followers, particularly the young, or making careless use of social media. Once in power, some county leaders do not ensure the equitable distribution of county resources, exacerbating grievances and undermining public trust in devolution.

¹ FCDC & DLCI (2019): 'Analysis of the institutional, legal and policy framework for peace building and social cohesion in the Frontier Counties Development Council (FCDC) region'. The study was jointly funded by DFID and SDC.

² Garissa, Isiolo, Lamu, Mandera, Marsabit, Samburu, Tana River, Turkana, Wajir and West Pokot.

³ NCIC (2018): 'Footprints of peace: Consolidating national cohesion in a devolved Kenya, 2014-2018', p. 11.

⁴ Cox, F. D. & Sisk, T. D. (2016): "Social cohesion" in deeply divided societies: Five findings for peacebuilding'.

<https://politicalviolenceataglance.org/2016/08/30/social-cohesion-in-deeply-divided-societies-five-findings-for-peacebuilding/> The study covered seven countries, including Kenya.

⁵ NCIC & Interpeace (2017): 'Voices of the people: Challenges to peace in Mandera County'.

⁶ Bennett, W. (2018): 'Delivering on the promise of peace? Devolution, inclusion and local conflicts in Kenya', Saferworld. Lind, J. (2018): 'Devolution, shifting centre-periphery relationships and conflict in northern Kenya'. *Political Geography*, 63 (135-147), p. 144. CHRIPS (2017): 'Conflict assessment report: Danida Peace, Security and Stability (PSSP Programme-Kenya 2016-2020)'. Sharamo, R. (2014): 'The politics of pastoral violence: A case study of Isiolo County, Northern Kenya', IDS Future Agricultures Working Paper 095. NCIC & Interpeace (2017).



- **Investment.**⁷ Land has long been a driver of inter-communal conflict in FCDC counties, but to this is now added the impact of large-scale investments on land use and land values. Projects associated with Kenya Vision 2030 have driven land speculation, inward migration, and the acquisition of title deeds, sometimes corruptly, over land previously held in trust. Energy projects have generated grievances over local employment and revenue-sharing.⁸ Other examples of how money shapes conflict are the commercialisation of livestock raiding well beyond its cultural roots and the markets that supply small arms and ammunition across the region.
- **Violent extremism.**⁹ North-eastern counties and Lamu bear the brunt of direct terrorist attacks although radicalisation extends into other parts of the FCDC region, feeding off unresolved grievances and a lack of economic opportunity. The government’s response fails to acknowledge or address the structural issues that underpin violent extremism and the extent to which external and internal factors intersect; state security responses are likened to ‘killing a mosquito with a hammer’.¹⁰

The structures for peacebuilding and social cohesion need to respond to this complexity and adapt to these changing dynamics. The next section explains why they are presently ill-equipped to do so.

Challenges facing the structures for peacebuilding and social cohesion

Community level

The customary institutions traditionally responsible for resolving differences within and between social groups have been progressively weakened and politicised for some time now and this trend continues. Many of the drivers of conflict relate to political or economic factors over which they have limited influence.¹¹ While still respected, Councils of Elders are undermined by generational shifts in attitudes and values and offer limited space for women, despite evidence that a focus on gender and women’s leadership can have positive outcomes for peace.¹²

Resource-sharing and conflict management agreements negotiated by elders are not refreshed as time passes and the mechanisms to ensure compliance are weak. Some agreements lack universal support, particularly from minority groups.¹³ A more recent form of inter-group agreement is the so-called ‘negotiated democracy’ facilitated by elders in counties such as Mandera, Wajir and Marsabit prior to national and county elections. While the aim is that competing clans or ethnic groups reach consensus over the distribution of elected positions, one outcome is to emphasise the elders’ profile as political power-brokers and thus compromise their neutrality.¹⁴ Once elected, county leaders may reinforce this by relying for conflict mediation on groups with which they have a political connection.¹⁵ Negotiated democracy also deepens the sense of exclusion felt by women and young people:

“When it comes to making decisions, they [elders] are the ones who make them. Women and the youth do not have a say – they are left out. This is discriminatory against us – we need to be included.” (*Focus group discussion with women in Wajir county, June 2019, commenting on negotiated democracy.*)

⁷ Mkutu, K. (2019): ‘Pastoralists, politics and development projects: Understanding the layers of armed conflict in Isiolo County, Kenya’. Bonn International Center for Conversion (BICC) Working Paper 7/2019. Mkutu, K., Marani, M. & Ruteere, M. (2014): ‘Securing the counties: Options for security after devolution in Kenya’, Centre for Human Rights and Policy Studies (CHRIPS). NCIC & Interpeace (2017). Sharamo (2014). See also <https://seeingconflict.org>

⁸ See, for example, Lind, J. (2018): ‘Governing black gold: lessons from oil finds in Turkana, Kenya’. Research briefing, IDS & Saferworld.

⁹ Ernstorfer, A. (2018): ‘Peacebuilding networks and alliances in Kenya: A retrospective look at collective peacebuilding effectiveness’, CDA & Humanity United. Lind, J., Mutahi, P. & Oosterom, M. (2015): ‘Tangled ties: Al-Shabaab and political volatility in Kenya’. Institute of Development Studies Evidence Report No. 130.

¹⁰ Lind, J., Mutahi, P. & Oosterom, M. (2017): ‘Killing a mosquito with a hammer’: Al-Shabaab violence and state security responses in Kenya, *Peacebuilding*, DOI: 10.1080/21647259.2016.1277010

¹¹ Lind (2018), p. 146.

¹² Mercy Corps (2016): ‘Gender audit and strategy: Peace III programme.’

¹³ CHRIPS (2016): p. 35.

¹⁴ NCIC & Interpeace (2017), p. 28; CHRIPS (2016), p. 17.

¹⁵ Pact (2019): ‘Garissa county consultative meeting to initiate discussions on the development of a county safety policy’, 11 June 2019.



There is a patchwork of community-based structures involved in peacebuilding and conflict management. Peace committees struggle for predictable resources, particularly since devolution, but there are also concerns that the monetisation of peacebuilding can be corrosive;¹⁶ those initiated without external support by communities themselves may be more sustainable.¹⁷ Other models sit alongside the peace committees. For example, conservancies are spreading rapidly across the FDC counties. These effectively privatise security, generating concerns that this is replacing the proper role of the state.¹⁸ Finally, there is limited public awareness of the policy and legal frameworks that govern all these local-level structures.¹⁹

County level

The county governments' role in peace and security is contested. Security is not devolved. Mechanisms that would have strengthened inter-governmental cooperation, such as the County Policing Authorities (CPAs), are not operational, creating a vacuum where coordination and public accountability should be.²⁰ There is a lack of clarity over key inter-governmental relationships: for example, how the CPAs will carry out their responsibility for community policing under the National Police Service Act, 2011, while having little actual influence over the police.²¹

As noted above, devolution is associated with inter-ethnic and inter-clan competition and a heightened sense of ethnic chauvinism.²² A lack of diversity and inclusion in county structures affects security because it legitimises similar behaviour in society and makes it harder to solve problems peacefully.²³ Patronage and corruption by officials of both the county and national governments undermine citizen confidence in devolution and in the security agencies.²⁴ Politicians are regarded as 'distributors of private goods rather than fair mediators of public goods'.²⁵ In cases where the county government is itself party to an ethno-political conflict, there is no neutral arbiter, and no institution with the capacity or legitimacy to deal with it.²⁶

There are continuing concerns about the lack of justice in FDC counties, where two types of legal mechanism operate: the formal courts, whose presence is thin, and traditional systems overseen by elders.²⁷ The latter are generally preferred, although there are cases where the two intersect: for example, women in Wajir described how those whom the traditional system (*Maslaha*) finds guilty of gender-based violence will be taken to the courts. Citizens express concerns about the cost, complexity and accessibility of the judicial system, particularly if the grievance concerns a government entity, but also about inaction and impunity regardless of the mechanism. Impunity and judicial weakness only serve to sustain the cycle of violence.²⁸

"Many people do not get justice. In some cases where even the perpetrators are known, no action is taken against them."
(Focus group discussion with men in Lamu County, June 2019.)

National level

The current approach to peacebuilding and social cohesion lacks coherence. Security and development are treated in isolation from one another,²⁹ while the task of countering violent extremism is dominated by the security sector with

¹⁶ NCIC & Interpeace (2017): p. 27.

¹⁷ CHRIPS (2016), p. 87, referring to experience in West Pokot.

¹⁸ Mkutu (2019). CDC, IISD & Saferworld (2009): 'Climate change and conflict: Lessons from community conservancies in northern Kenya'.

¹⁹ Pact (2019).

²⁰ Ogada, M. (2016). 'Deepening police reforms in Kenya post-National Accord: policy implications'. Saferworld and CHRIPS. Mkutu et al (2014).

²¹ Mkutu et al (2014), p. 31.

²² CHRIPS (2016).

²³ Bennett (2018), p. 26.

²⁴ Bennett (2018); NCIC & Interpeace (2017).

²⁵ Scott-Villiers, P., Ondicho, T., Lubaale, G., Ndung'u, D., Kabala, N. & Oosterom, M. (2014): 'Roots and routes of political violence in Kenya's civil and political society: A case study of Marsabit County'. Institute of Development Studies Evidence Report No. 71, p. 25.

²⁶ CHRIPS (2016), p. 43.

²⁷ Chopra, T. (2011). 'Building informal justice in Northern Kenya'. Legal Resources Foundation Trust.

²⁸ Scott-Villiers et al (2014), p. 2; Sharamo (2014), pp. 4 & 12.

²⁹ Bennett (2018); Gibbons, S. (2014): 'Towards peace and security in dryland Kenya: the demand for a new approach'. DLCI Discussions Brief.



insufficient inclusion of those with expertise in conflict-sensitive approaches.³⁰ As the report of the Building Bridges to Unity Advisory Presidential Taskforce notes, countering terrorism is about safeguarding the constitutional order and requires the application of multiple tools, not just security.³¹

This securitised approach fails to address the structural drivers of conflict and exacerbates political and economic grievances, such as the long history of state violence in FCDC counties and the continuing difficulties faced by Kenyan Somalis seeking national identity cards. The outcome of such an approach is both ineffective and counter-productive in that it further corrodes trust between citizens and the state.³² Moreover, despite this emphasis on security, Kenya has failed to take effective action on disarmament: in 2018 it ranked ninth in the list of countries in sub-Saharan Africa with the largest holdings of civilian firearms, an estimated 750,000.³³ Weaknesses in the performance of the security agencies are also contributing to conflict.

“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 interview, Isiolo, June 2019.*)

The primary national institutions with responsibilities for peace and cohesion are at a weak point in their lives. The NCIC is in transition: at the time of writing it has no commissioners in place and its legal powers are under review. The Directorate for Peacebuilding and Conflict Management (formerly the National Steering Committee) has an honourable history but needs refreshing: it lacks adequate funds and personnel and the leverage to exercise influence over other parts of government and other actors. The quality of inter-agency coordination fluctuates, tending to be more active during election periods but then not sustained. The energy of the various civil society peacebuilding networks and initiatives is not channelled in ways that would maximise their collective impact.³⁴

The policy and legal analysis carried out for the FCDC/DLCI study established that the principal weakness in both domains is the implementation of official commitments. Policies remain in draft or lack the necessary delivery mechanisms; legislation is inconsistently or selectively applied; human and financial resources are not provided on a sufficient, sustained or predictable basis for institutions to act effectively. It is noteworthy that most of the recommendations in the next section concern the implementation of measures which have already been agreed.

Recommendations

The FCDC/DLCI study made numerous recommendations on a wide range of issues, including natural resource management, cross-border dynamics, livestock theft, anti-terrorism, and the control of drugs and small arms. The recommendations in this policy brief are those that will transform the overarching framework within which all these issues, and others, can be dealt with. They concern changes to the overall approach to peacebuilding and social cohesion as well as to the institutional arrangements through which that approach can take effect.

1. Implement fully the National Policy on Peacebuilding and Conflict Management

Sessional Paper No. 5 of 2014 was adopted by the National Assembly on 27 August 2015, but legislation to anchor the policy into law is still pending. Full implementation of the policy will significantly upgrade the current level of institutional capacity by establishing platforms for dialogue and coordination at national and county levels, as well as local peace committees that harness the strengths of traditional and formal conflict resolution mechanisms. The policy proposes that a National Peace Council be established by a legal instrument under the State Corporations Act, and

³⁰ Enrstorfer (2018), pp. 11 and 22.

³¹ Building Bridges to Unity Advisory Presidential Taskforce (2019): ‘Building bridges to a united Kenya: from a nation of blood ties to a nation of ideals’, pp. 89-91.

³² Lind et al (2017).

³³ Mkutu (2019), p. 30.

³⁴ Enrstorfer (2018), p. 29.



that its functions include support for mediation and preventive diplomacy, both internally and cross-border. Passage of the legislation will put the whole institutional framework for peacebuilding and conflict management on a more secure financial footing. It will also give impetus to specific provisions, for example concerning the reduction of small arms and light weapons through mechanisms such as the action plan of the Kenya National Focal Point on Small Arms and Light Weapons (Nairobi Protocol).

2. Prioritise conflict-sensitive approaches across government and beyond

Conflict prevention and peacebuilding should be at the core of all development policies and plans, including County Integrated Development Plans. Peace and security need joining up, while peacebuilding and human security should be primary considerations in the decisions taken by all actors. The proposed National Security and Safety Strategy, that is comprehensive and owned by citizens, may provide a framework to advance these measures.³⁵ County governments should fulfil their constitutional responsibilities to ensure inclusive governance within their jurisdictions, including through policies and mechanisms that ensure the equitable allocation of resources and opportunities.

3. Operationalise and resource the County Policing Authorities

The CPAs provide a mechanism for the formal participation of both the county authorities and citizens in security management thus potentially deepening trust. The CPAs are also responsible for community policing which, if effectively applied, may increase citizens' confidence in the capacity of the state to protect them, reducing the need that some feel to protect themselves. However, despite a presidential announcement in 2015 that the CPAs had been activated, they are not currently operational due to inter-governmental tensions. A stronger coordination framework could ensure that the efforts currently being taken by county governments, such as appointing security advisers and developing security management plans, complement the actions of the national authorities.³⁶

4. Implement commitments concerning women, peace and security

Kenya has developed a National Action Plan to implement UN Security Council Resolution 1325 on women, peace and security.³⁷ One of its commitments is to establish mechanisms for coordinating delivery in the counties, building on the various committees and networks that are already addressing gender-based violence and peacebuilding.

5. Strengthen the judicial system

Timely prosecution of perpetrators through the police and court system will strengthen citizens' confidence in their ability to secure justice and help break the cycles of violence. County governments and community leaders should also explore ways to strengthen compliance with Alternative Dispute Resolution agreements, which can be effective in preventing the escalation of local disputes.

6. Promote inter-county collaboration and coordination through the FCDC peace and cohesion sector forum

Conflicts are rarely contained within administrative boundaries, and border disputes are a frequent trigger for violence. Many of the areas chronically prone to conflict lie along county or international boundaries. Dry season water points tend to be located in these areas and can be a focus for inter-communal violence if there are no clear resource-sharing agreements in place.³⁸ The peace and cohesion sector forum will facilitate inter-county dialogue, policy and legislative harmonisation, and shared learning. It will also strengthen collaboration with national institutions, such as those dealing with boundary conflicts. In so doing, it will advance the FCDC's goal of ensuring peaceful co-existence among its members.

³⁵ BBU (2019), p. 184.

³⁶ Ogada (2016).

³⁷ Republic of Kenya (2016). 'National Action Plan for the implementation of United Nations Security Council Resolution 1325 and Related Resolutions', 2016-2018.

³⁸ CHRIPS (2016), p. 84.



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