

Dynamics and Trends of Conflict in Greater Mandera

EXECUTIVE SUMMARY

The former Mandera District, which now comprises of three Districts, Mandera East, Mandera Central and Mandera West, is located in the northern part of the North Eastern Province of Kenya. The arid District has sparse population density, majority of whom are poor pastoralists. The Districts depends on relief food for long periods. The population is predominantly ethnic Somali, living in the rural areas, and a few small and scattered settlements. The infrastructure is poor, with only parts of Mandera Town served with facilities like electricity, piped water and telephones. There is a significant lack of modern economic activities in all areas except the major towns. Compounding this underdevelopment, Mandera has suffered clan-based conflict dating back to the start of the colonial Kenyan state. Conflict in Mandera is chronic and has a tendency of taking a cross-border dimension. Numerous cross-border raids and alliances, especially along the Mandera-Gedo Border complicate the conflict even further.

The Mandera Somalis divide themselves traditionally into four 'clan' groupings, the Garre, Murulle, Degodia; and 'corner tribes.' There is a sedentary agrarian population along the Daua River, and pockets of agro-pastoralists in better-watered sites. Permanent water sources are rare and the amount of water available from boreholes and springs is limited. Resources such as pasture and water sources are often at the center of conflict between the local clans. The ever-increasing human population in the District, especially over the last few decades has put more pressure on natural resources. Availability of water and pasture fluctuates with seasons and differ between areas. Mobility as well as considered sharing of resources is a major and traditional coping strategy.

Several challenges are now facing this traditional mobility. The changing administrative and constituency boundaries which are resulting in shifts in boundaries have profound implications on livelihood patterns and grazing movements these communities. The creation of divisions, locations and sub- locations and the posting of chiefs are extremely sensitive and contested. Confusion and overlap between ethnic, community, administrative and electoral boundaries exacerbate competition, with communities laying claim over land that they believe will secure them political, economic or social advantage. The proliferation of constituency districts has brought with it unrealistic expectations and the view that new districts are exclusive homelands of specific clans.

The local administrative system in Mandera is characterised by inadequate capacity and the declaration of new districts has only exacerbated the situation. Transport and communication is a major problem for the local security forces, in an area where the terrain is most challenging.

Proliferation of small arms is a major problem in greater Mandera District. This is attributed to failure by the state to protect communities from invasion by Ethiopia and Somalia militia. This is also attributed to the porous borders which have made it easy to acquire arms from the Ethiopian and Somali communities across the border, coupled with the civil war in Somalia.

Over the last two decades, there have been clashes in the Province involving the Garre and Murulle clans who lived peacefully together from independence days up to the 1980's sharing pastures in all parts of the District. Since then, there have been three explosions of violent conflict: in 1983/4, a major conflict in 2001/5 after which the Murulle were evicted from El Wak town, and the recent one in 2007/8. These conflicts have had negative impacts on lives, livelihoods, trade and education of the communities. There has been unnecessary loss of life and many injuries, cases of rape and displacements. Factors that influence these conflicts include severe drought, boundary issues, access to pasture and water resources, identity politics, and the crisis in Somalia.

A number of actors have been involved in ending conflict and restoring peace in Mandera District. These include government, civil society organisations, community based organisations, local leaders (clan elders, religious elders) and local communities (comprising of herders and pastoralists).

Finding a lasting solution to the Mandera conflict will require commitment of all actors including government, civil society, and local communities. The government will in particular need to demonstrate more commitment in addressing the underlying causes of conflict in the District. Improving the socio-economic situation of the District in terms of infrastructure development, enhancing access to watering points and pasture, improving community livelihoods, resolving boundary related issues are particularly crucial. Involvement of the people of the District in decision making especially regarding creation of administrative units should also be a key consideration.

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1. LIST OF ACRONYMS

| | |
|--------|---|
| AP | Administration Police |
| AIDS | Acquired Immune Deficiency Syndrome |
| BBC | British Broadcasting Corporation |
| CBO | Community Based Organisation |
| CEO | Chief Executive Officer |
| DC | District Commissioner |
| DO | District Officer |
| DSC | District Security Committee |
| IDP | Internally Displaced Persons |
| IRIN | Integrated Rural Information Network |
| ITDG | Intermediate Technology Development Group |
| KANU | Kenya African National Union |
| KNA | Kenya National Archives |
| MAMDEV | Mandera Mosques and Madrassa's Development |
| MOU | Memorandum of Understanding |
| MP | Member of Parliament |
| MP&DC | Mandera Peace and Development Committee |
| NAMLEF | National Muslim Leadership Forum |
| NEP | North Eastern Province |
| NFD | Northern Frontier District |
| NFDLF | Northern Frontier District Liberation Front |
| NGO | Non-Governmental Organisation |
| NSC | National Security Council |
| OCHA | Organisation for the Coordination of Humanitarian Affairs |
| OCS | Officer Commanding Station |
| OCPD | Officer Commanding Police Division |
| OP | Office of the President |
| PC | Provincial Commissioner |
| PPO | Provincial Police Officer |
| RACIDA | Rural Agency for Community Development and Assistance |
| SODAF | Somali Democratic Front |
| SUPKEM | Supreme Council of Kenya Muslims |
| UK | United Kingdom |
| UN | United Nations |
| US | United States of America |
| USAID | United States Agency for International Development |
| USSR | Union of Soviet Socialist States |

2. 1. INTRODUCTION

1.1 District Profile

1.

2. 1.1.1 Administrative, Geographic and Physical Description

The former Mandera District, which now comprises the three Districts of Mandera East, Mandera Central and Mandera West, is located in the northern part of the North Eastern Province of Kenya. The District has a land area of 26,474 km² and shares district borders with the larger Wajir District to the south and south west. It also shares international boundaries with Ethiopia to the north and Somalia to the east. The larger Mandera District has three Parliamentary Constituencies namely: Mandera East, Mandera Central and Mandera West, which correspond to its three Districts. The new Districts of Mandera West with its headquarters at Takaba, and Mandera Central with its headquarters in El Wak are still in the process of establishment.

Most of the functions of the newly formed Districts are still performed in Mandera Town. For instance, the Officer Commanding Police Division (OCPD) based in Mandera Town is still in charge of all the stations in the three Districts. Other government departments like the Arid Lands Resources Management Project, Forestry, Livestock Development, as well as all major NGOs are yet to set up offices in the new Districts. There are two local authorities operating in Greater Mandera, namely the Mandera County Council catering for the rural parts of Mandera and the Mandera Town Council, which represent different wards within the town.

3. 1.1.2 Topographic and Weather Conditions

Low-lying rocky hills and plains that rise gradually from the south at El Wak towards Malkamari area in the north characterise the terrain of Mandera District. The altitude of the plains rises between 400 and 1000 meters above sea level. The District has one perennial river- Rive Daa that originates in the southern Ethiopia highlands and flows along the Kenya/Ethiopia eastwards through Malkamari, Rhamu, Hareri and Central Divisions into Somalia at Border Point One (BP1). Otherwise, the District is characterised by dry riverbeds (laga), which fill up with run-off water during the rainy seasons but dry up as soon as the rains cease.

Rainfall in the District is scanty and erratic with an annual average of about 200mm. The long rains fall in the months of April and May while the short rains fall in October and November. The temperatures in the District are high throughout the year, making it one of the hottest Districts in Kenya with a mean annual temperature of 30°C. The highest temperatures are in February to April and September to December, with February being the hottest month having an average maximum temperature of 37°C.

4. 1.1.3 Infrastructural and Economic Development

Population density of Mandera District is sparse, averaging less than 35 persons per square kilometer. Most parts of the greater Mandera lack basic infrastructural facilities like electricity, piped water and telephones (only found in Mandera town). Similarly, the District lacks significant economic activities, except trading in livestock products and petty trade in handcrafts. Majority of the population are poor. Drought, wildlife menace/conflict, floods, and human and livestock epidemics and diseases related to pests' infections are common in Mandera District. As such, a large proportion of the population depends entirely on relief food for long periods. The school dropout rate is alarmingly high and stands at about 6.5%. Girl-child education commands low priority with 4% enrolment in primary schools and 2.9% in secondary schools.

Mandera Town is the largest town in the region, with a population of approximately 100,000 inhabitants.¹The town has the best health and educational facilities by the local standards. These facilities attract users from across the border in Ethiopia and Somalia, hence their over-utilisation. Similarly, the

1 Town Clerk, Mandera Municipal Council

Mandera livestock market is popular with traders from across the border and is thus prone to outbreak of clashes between different clans in the region².

The population in the towns in Mandera District is increasing fast and putting pressure on already limited resources. The rise in population is as a result of a shift from pastoralist livelihood patterns to urban sedentary lives. This has led to mushrooming of slums with their attendant challenges like poor housing, chronic food insecurity and potential for inter-clan conflict in the towns.

1. 1.2 Settlement Patterns in Mandera

Majority of the people living in the greater Mandera District (99%) are ethnic Somalis, giving the District a considerable degree of homogeneity. Among these ethnic Somalis, more than 80% are from the Samale dialect of Somalis. The Mandera Somali divide themselves traditionally into five 'clan' groupings, as follows: the Garre; the Murulle; the Degodia; the Corner Tribes; and the Marehan.

1.2.1 The Garre

The Garre are the majority and the most widespread clan in Mandera. They live in Mandera North, West, and Central and around Mandera town. The Garre are a diverse and complex clan consisting of two major sections, the Tuff and the Quranyo. Garre clans use three languages to communicate among themselves, including the common Somali; the Rahanwein dialect of Southern Somalia, and the 'Garre' language of Mandera, which is a Somalised dialect of Borana. The main Garre groupings descended from Mayle ibn Samal, and are thus equals to Irir and Saransor as sons of Samal, the original head of the Somali people. The Quranyo section of the Garre claim descent from Dirr, who are born of the Irrir Samal. Garre live in Southern Somalia, North Eastern Kenya and Southern Ethiopia. In Southern Somalia, they live in Kofur near Mogadishu and El Wak District in Gedo Province. In Ethiopia, they live in Moyale, Hudet and Woreda of Liban zone. In Kenya, the Garre inhabit Wajir North and Moyale. The Garre share ancestry with other Borana tribes in Northern Kenya including the Sakuye of Saku, Isiolo and Moyale; the Rendille of Laisamis; the Gabra of Marsabit North; and the Wa-Katwa Bajun clans of Lamu. Certain Garre families have over time taken up dominant leadership positions, both in Kenya and Ethiopia. In Rhamu (Kenya), the family of Sayid Abass Sayid Sheikh Ali³ rose to prominence both as religious and political leaders, while in El Wak, the family of Chief Adawa Eno, remains influential. In Ethiopia, the influence of the Aw Gababa family continues. According to the colonial records, the Garre clan of River Daau emigrated around the turn of the 19th Century from the Garre Kofur country near the coast of Italian Somaliland. As such, the clan speaks the Rahanwein dialect of Somali⁴. The records point out in reference to the Garre that:

'They are keen traders, travel to Luk, Moyale, Isiolo with stock, soda, coffee and cotton goods, they dislike the Tigre looters and Abyssinians generally, like to live in settlements when they can, some families are of very light color and show Arab blood, possibly acquired in Kofur from contact with the Arabs of Mogadishu'

Over the first three decades of independent Kenya, Garre businessmen and politicians dominated the Greater Mandera District. Garre clan members have also established thriving businesses in the major towns like Nairobi, Eldoret, Mombasa, and Nakuru. Similarly, they have penetrated the local councils in these towns to secure seats as councilors.

1.2.2 The Murulle

The Murulle are the next most populous clan group, and are dominant in rural parts of Mandera East.

2 <http://eastafrica.usaid.gov/...>

3 Sayid Abass Sayid Sheikh Ali was a respected religious leader, while two of his sons were at one time MPs for Mandera East and West.

4 District Records, 1926 pg 7 KNA.

Murulle are descendants of the Gogondhobo clan of the large Hawiye group⁵ that dominates central and south Somalia. The Gogondhobo consist of four families, including the Bedisle, the Badi Ado and the Jidle. Murulle are part of the Jidle. The Marehan of Gedo first hosted the Murulle a few hundred years ago on their way to their present settlement in Mandera. Apart from the natural increase in population, the Murulle numbers have received a boost over time from immigration from Somalia. According to the 1944 district records, '*More Delo*' Tira infiltrated into Kenya, and Murulle sent agents to entice fellow tribesmen in Bardera to join them, a few came; the visit of the Ugaz of the Jidle was clearly to pave the way for more infiltration⁶. Today, Murulle clan dominates Mandera East, where they have become a political power. For a long time, Murulle clan has had a good relationship with Garre clan. The two clans have a history of sharing pasture and water points. For a long time, Murulle livestock consisted mainly of camels, sheep and goats while Garre had cattle. As such, the two communities were able to graze and water their animals together without much competition. However, this relationship has deteriorated over time.

1. 1.2.3 The Degodia

The Degodia live in Mandera North and Central in towns like Wangai Dahan; Chir Chir; Ashabito; Malka Mari and Rhamu. They also live in Mandera town. They share pastures with the Garre in parts of Mandera West. The clan shares ancestral links with the Murulle through ancient blood link to the Gogondhobo Hawiye. According to the colonial records, the Degodia had good internal unity and organisation. In 1926, the colonial DC wrote of the clan, '*All the Degodia in the district acknowledge one head chief, Wober Abdi. Garre are not so organised, the mixed composition of the tribe in part accounts for this, as does the flight of their head chief Gabaab and his most influential man Mahad Hussein into Abyssinia.*'⁷ Twenty years later, another colonial DC would affirm the unity of the clan, '*They still hold fast to their unity as a tribe as a whole and maintain their allegiance to the Sultan Wober Abdi's successor in Oddo.*'⁸ The Degodia in Mandera agreed to pay tax to the British after the Second World War. This agreement granted the Degodia good relations with the British and grazing rights over Ashabito and Banisa. In the past, relationship between Garre and Degodia was rather difficult, however this softened for sometimes and the two communities were able to share villages and grazing areas. But, current trends on the ground are pointing to possibility of clashes in the near future.

2. 1.2.4 The 'Corner Tribes'

The 'Corner Tribes' brings together between four and nine numerically small clans, of diverse origins, who live around Mandera town and in the small triangular corner that makes the Ethiopia, Kenya and Somalia border. The tribes that have lived together, cooperated, and operated as one clan from around 1959 to the extent that they pay the "Mag" (blood fine) together. The tribes include Shirmogge, Shekhal, Gobawein, Shabele, and Leisan. The others are the Waraabeeye, the Ogaden, and the Herti; and the Ashraf and Hawadle.

3. 1.2.5 The Marehan

The Marehan clan is considered as the 'fifth clan'. The members of the community have recently increased in numbers and wealth in Mandera town. The Marehan clan is closely related to the Ogaden and Harti clans. The Marehan have had a long history as a militant clan⁹. They assisted the forces of Imam Ahmad Gure in the invasion and subsequent conquest of Abyssinian Empire in the 1534. In the 19th Century, they fought on the side of the Dervishes of Sayid Mohamed Abdullah Hassan against the British. This earned the Marehan

5 According to most anthropologists, there are six major Somali clans confederacies, the pastoral Dir, Hawiya (who are children of Samal); Isaq, Darod born by daughters of Samal; and the riverine Rahanwein and Digil who are children of Sab, brother to Samal. Hawiye are made of six sub clans, namely: Gurgate; Gogondhobo; Xaskul; Madarkas; Karanle; and Jianjele.

6 District records, 1944 pg 6 KNA

7 Ibid, 1926: pg 12

8 Ibid, 1948:pg3

9 The ancestor of Marehan is said to have told his people to be prepared to always be fighting, as they would forever be surrounded by enemies; the two larger confederacies of the Darod, the KablaAllah, and the KumAde, are able to call upon their many clans spread on about half of the Somali-speaking territory, while the Marehan are a lone branch which fights hard to be heard.

the wrath of the British who expelled them across the border into Somalia and by 1945; the British banished all Marehans from Mandera District. The Marehan migrated to their present home in Gedo on the border of Mandera in two waves. The first group was the bigger Rer Guri group that came from southern Mudug and Galgadud regions of central Somalia about three hundred years ago. The group uses 'Hiran' accent, which they share with the Murulle. The other group is the Rer Galti that arrived in the last one hundred years. Marehan are always a factor in the clan conflicts between the communities living in Mandera, since they have clashed with the Garre clan over control of Boru Hache (El Wak Somalia). They often assist the Murulle clan in their clashes with Garre clan. Indeed, the Kenyan Murulle sometimes attack the Garre, while disguised as Marehans from across the border¹⁰.

3. 2. FACTORS INFLUENCING THE MANDERA CONFLICTS

4.

2.1 Pre-Independence Conflicts in Mandera

2.1.1 The Pre-Colonial Period

The fight for occupation of the greater Mandera District has gone on for a very long time now. The first two groups to fight for its control were the Borana people who were the first to arrive from Ethiopia against the Garre from Somalia¹¹. The first seat of the Garre leaders was near the ancient trading city of Luq in the middle reaches of the Galana-Juba system. Fighting broke out at a place called Dadacha Warrab, as the Garre struggled to overthrow the Borana who were entrenched in large settlements around Korome and Rhamu hills, whose narrow gorges provided good defense lines¹². Many Garre and Borana fighters died in the battles that ensued. The Borana forces were pushed to two new defense bases, one between present day Rhamu and Ashabito, and the other at El Wak wells under their leaders Qubla Hallow, Golich Ergemsa and Boru Hache. The Borana were defeated and control of the land passed over to the victorious Garre. Most of the Borana migrated to Moyale where they are still powerful, while some of them were absorbed into various branches of the Garre.

The Murulle, under their charismatic leader Adan Hirsi, came from Hiran region of Somalia and first settled in Gedo region as '*Shegat*'¹³ of the Marehan on their way to the Garre territory in Mandera.¹⁴ Their initial request for friendship through Mandera Garre under Shaba Aliyow, based on their common Hawiye ancestry was turned down by the Sultan of the Garre, Ugaz Gababa who turned away both Murulle and Degodia. The Garre later on allowed Murulle and Degodia to settle and graze their animals in Mandera alongside the Quranyo Garre who had accepted to pay tax to the British, while the Tuff section of the Garre under Sultan Gababa migrated to Ethiopia after refusing to pay taxes to the British¹⁵.

The Degodia and Murulle were initially grateful to Shaba Aliyow for accepting them and lavished praise

10 In 2004, supposed invaders from Somalia killed 27 Garre people in El Golicha. They later turned out to be Murulle from Kenya.

11 Mandera Elders

12 'A coalition of Marehan, Aulihan, Garre, and Rer Galana drove Borana out of the El Wak wells forcing them westward into Wajir and Marsabit. The Garre hired Degodia who sought socio-economic refuge among them, and employed them as mercenaries during ruthless inter-clan wars of 1906-12' Nene Mburu, 2005, 'Bandits on the border: the lost frontier in the search for Somali Unity.' Red Sea Press.

13 Claimants

14 According to the colonial District Commissioners records, 'Anxious to be free, for they were formerly 'shegat' to the Marehan in Jubaland, the Murulle obey Government orders probably better than the Garre and like the Degodia they are better organised and more coherent' - District records, 1928 pg 6 KNA

15 According to the colonial records, 'Murille are Hawiya of the Jidle branch, the first migrants came with the Degodia from Jubaland some 20 years ago. They obey orders and have provided more than their share of baggage -camels and meat stock without fuss and without need for sending police probably -they were roughly treated by Marehan when they were Shegat, and so are anxious to stay here. During the year they were constituted as a separate section under their own chief Adan Hersi, and are now shegat to neither the Garre nor the Degodia.' District records, KNA 1926 Pg 13

songs on him. However, the two communities soon changed tune, singing protest songs, probably due to the increasing influence of the British as an overall authority and the rapidly expanding numbers of the Murulle and Degodia, coupled with their fast expanding herds. The two clans rebelled against the Quranyo and soon after fighting started in the form of targeted assassinations in an undeclared war. The two Garre clans, Tuft and the Quranyo joined forces to expel Degodia and Murulle from Garre land. According to elders in Mandera, the Degodia and Murulle were defeated, and scattered, and their camels taken by Garre. Garre made considerable use of Ethiopian troops¹⁶. Murulle and Degodia fled to Ado in Ethiopia. The Murulle were later on allowed grazing rights in Rhamu by the Sayid Ali¹⁷ after they had paid him a “*Shaben*”¹⁸ of one hundred camel calves and given one hundred girls into marriage to the Garre.

The Degodia, who were specialised in rearing camels, came in from Ethiopia at the turn of the Century. They paid camels to the Garre who had settled in the area for access to grazing domains¹⁹. The conflict between the Degodia and the Garre over pasture, political supremacy, livestock rustling and assassinations continued throughout the colonial period and increased in tempo after independence. The worst fighting took place as Northern Frontier Defense Liberation (NFDL) Front was distributing arms in the District. After a failed attempt by Abdinoor Gesay of the Murulle to bring harmony, both Garre and Degodia members asked for the intervention of the NFDL Front. The Front organised a peace meeting in Banisa in 1960 that involved religious leaders and elders for one month until they reached an agreement. Because of the agreement, the Degodia and the Garre have managed together, sharing pasture and other resources amicably.

The Pre-Colonial rivalry is important in understanding the inter-clan conflicts in Mandera because it clearly shows that resource based clan rivalries in Mandera are still going on. The genesis of the Garre clan’s claims to superior rights over larger portions of Mandera than other clans also become clearer- to them, the clan was the first Somali group to arrive in Mandera, chased away the Borana, fought and defeated the Murulle and Degodia and then allowed the two clans back to graze-as visitors. In Garre’s view, the status quo has not changed. On the other hand, the Murulle are also quick to play the identity card to isolate the Garre. The Murulle believe that since the Garre culture and language is loaded with lots of Borana elements-some Borana, including their language and culture found their way into the Garre community after Garre defeated them-the Garre are not authentic Somalis and they must enlist support from “authentic” Somali clans like the Degodia and the Marehans to defeat the Garre. This apparent difference is used all the time there is a conflict between the Garre and the other Somali clans in Mandera. The issue of resource sharing also comes to the fore- during the pre-colonial period, there were set rules on grazing and watering in territories belonging to other clans, such that a visiting clan would not just wake up and start grazing on a piece of land controlled by another.

1. 2.1.2 Colonial Period

When the colonial administrators arrived in Northern Kenya, they waded into the existing clan rivalries in Mandera. However, to them this was a blessing as it was in sync with their divide and rule policy. The colonial administrators noted the trend territorial disputes take in the north. From the records below, it is clear that they took their time to understand the dynamics around the rivalries and acted accordingly. According to the colonial Mandera DC:

16 Mandera District Records, 1926 pg 11 KNA: ‘Ali Buke collected and led a force of Garre and Tigre and after considerable fighting drove them out. 1912 is known as Ali Buke’s year. Most of the Degodia went to Wajir and Oddo. In 1916, they came back in force. Gababa Mohamed the Garre chief collected a considerable force with Tigre Shufta as shock troops and fought two battles with them at Korma and Awabone. More than 30 Tigre were killed, and 50 Garre and 43 Degodia in the first battle, but in the second battle the Degodia were completely defeated, loosing 50 men, and 2500 camels. Between 1925 and 1926 Degodia made a come back, looting back a lot of the camels

17 Sayid Ali had inherited the leadership of the Tariqa, lived in Habaswein in Wajir South on the banks of the Ewaso Nyiro, moved to Rhamu on the banks of the River Daua, was succeeded by his son Sayid Abass, whose sons would become secular leaders as the MPs for Mandera East and Mandera West.

18 Gift,

19 Mandera District Records, 1926 pg 8, KNA.

'Garre- Somali relations at present hinge on territorial issues. The Garre maintain that they have grazing rights throughout the District, whereas in order to apply effective grazing control, the government has tended towards a policy of exclusive areas for each tribe. The Murulle have now had their area since 1950, and it is inevitable that the Degodia in time would agitate for their own area too. However, as the Garre are not yet reconciled to the Murulle boundary – witness their agitation in August over Alango in the south, Harari in the north and 'Shamba' disputes – it is not surprising that they become violently excited at the thought of being excluded from a Degodia area. Their fears were heightened by the Degodia digging two very successful water pans at Ashabito and Wakho of which the Degodia were understandably allowed sole use²⁰.'

Other records from the colonial era also show that the clan rivalry was alive then:

In 1945²¹ the colonial administrator wrote, 'When the tribal boundary orders were made, the few Degodia remaining in the Murulle triangle were evicted to the west of the Rhamu-El Wak road.' 'In general the Murulle settled down to their imposed boundaries and there was no trouble with the Garre Wante or Alango. They did however press urgently and consistently for more salt in any form. Their own salt areas are close together and far from the best grazing area in the Gaari Hills. They went to Tessissa earlier in the year, and in September and October were allowed to use Ashabito'.

In 1947, the colonial administrator wrote: 'There was no trouble between Murulle and Garre at Wante or Alango and in general they behaved peacefully with their neighbours.'

In 1953, the colonial administrator wrote: 'The tribal boundary of the Murulle was extended in August to include grazing within 12 kilometers radius of El Wak, and one more well was authorised. In return for this concession, the Murulle have agreed to admit Garre cattle and goats into the Gaari Hills during the rains.'

In 1953 the colonial administrator wrote: 'The Provincial Commissioner flew to attend a special meeting in Rhamu to tackle quarrels between Garre and Degodia over grazing rights, but some adjustments were made to the boundary'.

Because they were able to understand the issues propelling the rivalry between the local clans, the colonial administration introduced and enforced strictly defined exclusive clan grazing areas with lines drawn on maps. In the colonial system of indirect rule, clans and their traditional hereditary leadership were recognised and respected. The communities throughout Mandera remember these boundaries with nostalgia.

The relative success by the colonialists in handling the rivalry between the clans in Mandera can be attributed to the genuine interest the administrators put in understanding the clan dynamics and deal with them accordingly (for the benefit of the colonialists though). This is an indictment of the current administrators for not taking their time to study the clan dynamics. The contentious geographical locations between the Garre and Murulle have not changed. In the colonial era, they were the very same Alango, Wante, Ashabito, Garri Hills and the El Wak road. What may have changed could be that the post-colonial government has treated the flashpoint with less keenness than the colonialist. It is therefore imperative that, to avoid future conflicts over resources, the relevant ministries of government such as, Water, Livestock Development, Provincial Administration must work together to ensure that resources are used in a manner that does not provoke conflict between the clans.

1. 2.2 Contemporary Conflicts in Mandera (1983-2008)

Clan based conflicts have broken out among different Somali clans of the North Eastern Province at different times. There have been conflicts between; the Degodia and Garre; the Ajuran and Garre; Ajuran and

20 District records: 1952, pg11,KNA

21 District Records kept KNA.

Degodia; the Ogaden and Degodia; and the Marehan and Garre among others.

The most recent clashes in the Province involved the Garre and Murulle clans.²² Murulle and Garre lived together from independence days up to the 1980's. All this time they shared pastures in all parts of the District, lived side by side in towns, such that Bulla Afya estate of El Wak was a predominantly Murulle sub-location with a large population needing more than four Duksi,²³ while the two clans were both represented in the administration of El Wak town and Mandera town²⁴. After 1980, episodic fighting has ranged between the Garre and the Murulle, concentrated in a radius of about one hundred kilometers, around a few villages known as the hot spots including Lafey, Gaari hills, Wante, Alango, Warankara, Wargadud and El Wak²⁵. There have been three explosions of this violent conflict in post independent Kenya. These were in 1983/4, 2001/5 after which the Murulle were evicted from El Wak town, and the recent one in 2007/8. In the month of October 2008 at least 13 people were killed and 31 houses burnt.²⁶ It is telling that the three episodes occurred just before and after Kenyan national elections. The Murulle and Garre violent rivalry started in the 1980s, when a Member of the Murulle clan (a minority in the constituency) won the Mandera East constituency seat against the Garre majority. As a solution to the conflict, the constituency was split into Mandera Central and Mandera East, allowing each group to control a seat; for a number of years there was relative peace. Then in 1996 the KANU regime, started creating locations and sub-locations, generating a new raft of perceived winners and losers. The crisis in Somalia has also been a source of friction between the two clans as it has affected the power relationship between the proximate clans on the Kenyan side with each clan trying to forge military alliance with their counterparts in Somalia.²⁷ The two warring clans (Murulle and Garre) have accused each other of harbouring and supporting foreign militia.

Fighting between the clans typically began as random killings of members of the rival clan for no other reason, but that they were members of their clan. Such killings targeted vulnerable members of the other clan going about their normal day-to-day activities. Initially, chiefs and other local forces tried to seek *Maslaha*²⁸. Local people sent desperate messages to the District Commissioner's Office, reporting credible threats from armed bandits. Because of lack of response from the government security organs the attackers got bolder. The residents then supported local militias/vigilantes that soon mushroomed as defenders against attackers from the other community. Soon the vigilante groups turned into raiders against the rival community, thus spawning hatred between the two communities, communities became hostage to the few bent on causing chaos. Selective action, such as assassinations, by a handful of bandits had thus power to make clans hate one another, and even go to war. As the logic of fighting and war took over, group hatred, nasty poems and provocative songs found resonance. Clan chauvinists glorified the 'bravery of their sons', escalating tensions, attacks and counter attacks, in a vicious cycle of violence.

1. 2.2.1 The 1983 - 2005 Clashes

Between 1983 and 2005, there were intermittent clashes between the Murulle and Garre where people lost their lives and property through assassinations and militia raids. However, it is notable that there was no serious attempt by the state to apprehend the culprits, some who were well known and often feted as Heroes in their home villages. Naturally, the two communities continued arming themselves even more. The mood of intolerance also pervaded the areas such that the minority Murulle in Garre towns started leaving the western parts of Mandera, while in Mandera town, tension between the two communities got so bad that clashes were a daily possibility. The attacks can be traced as follows:

22 <http://kenyasomali.blogspot.com/2008/10/genesis-of-mandera-clashes-between.html>

23 Traditional Somali Islamic schools

24 Key informants from Garre and Murulle

25 See Map 'Mandera Triangle 06 November 2008 North East Region – Kenya' in Situation Report Mandera Crisis by UNOCHA Kenya

26 Daily Nation: Friday Oct 31, 2008

27 <http://en.wikipedia.org/wiki/mandera>

28 Peaceful resolution to conflict between two clans

1983: Murulle and Garre clashed over shared pasture and water in Wargadud, Sotowa oro, and Lafey.
 1984: A man²⁹ was killed in his house in El Wak. Soon after that, ten people, including an old man,³⁰ were killed brutally, and their tongues were cut off. According to charged informants, the action was deliberately provocative to say, “*You who talk forcefully, do whatever you can.*”

1985: six people were killed around El Wak Town. The dead included two brothers killed in El Wak town³¹; two herders looking for their lost camels who were killed and their bodies hanged on a tree as a provocation³²; and two pupils killed in Jabibar area as they went for their holidays.

2000: a murder of a Garre clansman in Wargadud led to clashes between Garre and Murulle; suspected Murulle warriors passing on as Garre killed a Degodia in El Wak. The incident led to a major clash that claimed lives of forty Garre and twenty Murulle in El Golicha. Murulle clansmen are forced to flee El Wak.

2002: a pregnant Garre woman died from injuries after an attempted rape where her breasts were cut off. Three days later a student from El Wak Secondary School is killed on his way home.

2004: two Murulle were killed in the “*Ade Nyencha*”³³; a family of three killed on the same day; (a man, a woman and her child); another man was killed near a Murulle settlement³⁴; Garre militia killed two people and injured another two in a dawn raid in Lafey; six Murulle herders were killed in September 2004 at Gaari dam; suspected Murulle attackers killed five Garre in Rhamu-two. On December 19th, a Garre relief worker is killed by suspected Murulle gunmen at Fino-El Wak road junction.

2005: the Fino-El Wak murder led to a full-scale battle in January 2005. The battle claimed about 100 lives³⁵. Degodia boy was killed in El Wak; eight persons, including three girls and one young boy were killed in an early dawn at Qorobo Inn; twenty-one Garre (fifteen women, one man-the local imam, and five children), were killed by Murulle raiders in El Golicha. Garre defenders on their part killed seven of the raiders.

March-April 2005, 17,000 refugees fleeing the Somalia border town of Boru Hache (El Waaq-Somalia) and the surrounding villages due to violent clashes between the Marehan and the Garre clans in that area arrive in Mandera³⁶.

In 2005, the Sheikhs promoted dialogue between the two communities under what came to be known as the *Umul Accord*³⁷. The number of dead on both sides was discussed, and traditional Somali blood fines were agreed. As more people on the Garre side had died, the Murulle were asked to pay the difference, and displaced people were to be returned to their areas. The compensation payments included in the *Umul Accord* were made. The return of the displaced however did not happen.

2.2.2 The 2007/8 Clashes

The most recent conflicts in Mandera began in 2007 and intensified between September and November 2008, when the Kenya army intervened. The incidents of violence started in isolated villages, and later to trading centers like Wargadud, El Wak and Shimbir Fatuma. The elders from both the Garre and Murulle see their community as the victim in the 2007/8 Mandera clashes, and believe that their clan was wronged. Murulle elders claimed they readily participated in the peace meetings held in El Wak and Mandera,

29 Maalim Alio Siyow

30 Mzee Hache Galo

31 Namely Abdirahman Karika and his brother Mohamed Haro

32 Mohamed Sheikh Amow

33 The tree of Lion

34 Ali Ibrahim Salow

35 <http://en.wikipedia.org/wiki/mandera>

36 <http://www.benadir-watch.com/2005>

37 See section on Community Responses’ of this report

unlike the Garre elders who did so half-heartedly³⁸. They cited an incident in 2007 when Murulle elders traveling to attend a peace meeting brokered by the Degodia clan (seen by both to be neutral in the conflict) were ambushed resulting in deaths of two peacemakers and injury of one in the hands of Garre militia. In Murulle's view, the Garre elders were not remorseful and instead dismissed the incident as work of unruly Murulle youth out of their elders' control. The Murulle elders pointed out that they were denied access to pasture and water resources in Mandera Central and Mandera West, yet their (Murulle) areas of Warankara and Gaari do not have sufficient water resources, unlike the Garre areas of Lafey, Hareri, Kalaliyo, or Libeheyia which have river front, wells and hand pumps. Access to the water resources of Alango and Wargadud are therefore very important to Murulle, yet these are the contested areas.

On the other hand, the Garre elders accused Murulle men of raping their girls and women out collecting firewood, hawking milk, small business people out early in the morning and late evening, or gum Arabica collectors, small stock herders and those whose husbands, fathers or brothers have migrated with livestock in search of pasture and water.³⁹ They further pointed out that the Murulle are not remorseful when caught "because they do not regard such act as taboo⁴⁰"; and that Murulle harboured and protected suspected rapists. They pointed out an incident when a rapist was arrested and taken into police custody, but the Murulle went to Alango and had him released after bribing the authorities. The Garre elders also felt that the Murulle do not respect Garre land rights. Murulle would say as Kenyans, they could live anywhere in Kenya that they wish to, without respecting local rules. Garre also felt aggrieved by Murulle claims that their grazing territory extends to Wargadud town. This led to the Garre expelling Murulle from shared grazing lands.

The descent into full-blown chaos between the two communities can be attributed to the severe drought that hit Mandera and especially the Murulle areas in 2007. The Murulle opted to negotiate with the Garre for access to grazing resources (negotiations for pasture and water during droughts are common among pastoralists-and neighbours are not supposed to turn down such requests). Garre asked for twenty-one days to allow their elders make a decision. Murulle herders, who were now desperate, interpreted this to mean tacit denial of access and proceeded to water and graze their animals through Sogle and Gaari (Murulle areas) into Qura' Madow and Wargadud area (Garre territory). To justify their foray into Garre territories, Murulle raised the old claim that the two areas (Qura' Madow and Wargadud) belonged to them too. This elicited great resentment from Garre clan who waited for an opportunity to hit back at Murulle. This came sooner rather than later, when it emerged that Murulle bandits had raped two Garre girls from Qura' Madow. Garre militia attacked Sabito (about fifteen kilometers from Gaari) killing two Murulle youth. In retaliation Murulle, killed two men leading to full-blown fight between Lafey and Wargadud. The fights led to deaths of many members of the two clans, while Murulle clansmen claim to have lost many camels to Garre raiders during the attacks.

2. 2.2.3 Impact of the 2007/2008 Conflict

The impacts of the 2007/2008 were twofold; on one hand, there is the impact of the conflict between the Garre and the Murulle clans and on the other hand is how the intervention by the combined security forces-Operation Chunga Mpaka-impacted the local communities.

(i) Deaths and injuries

The clan conflict led to loss of lives of innocent members of the two communities who were assassinated in isolated roads, or were attacked in their homes either at night or in broad day light. Many of the combatants from the two communities lost their lives during engagement in the attacks and defense before the military intervened.

(ii) Loss of livelihoods

In the inter clan fighting, houses were burnt, food destroyed and livestock lost. The army displaced

38 Murulle Elders interviewed in Lafey and Garri

39 Practical Action Eastern Africa

40 Many of the Garre interviewed for the study painted Murulle as uncultured perverts who are ready to rape even animals.

people from Lafey to Damasa (25 km away) where they stayed for two weeks without food or water and they had to depend on rainwater for the whole of that period⁴¹. The displacement of people led to increased dependence on government relief food by the families that were displaced.

(iii) Displacement of persons

Inter clan conflicts created Internally Displaced Persons, (IDPs) as minority pockets of clans flee back to the ethnic home grounds, and distant trading groups are forced out of hostile areas. IDPs in Mandera are found in Qura' Madow (about 1000 households), Elele (about 300 households), and in Wargadud town (about 500 households). Even wealthy members of society are affected by the clan related IDP phenomena. There are landlords who have been forced to flee the areas where they had houses, and are now unable to personally collect their rents because they feel insecure.

(iv) Loss of trade and business

In many villages visited by this study group, a common complaint was that conflict had driven away trade. 'This town has no more business' many would say. As traders were driven out of business, there were some winners among the many losers: 'Only the businesses of Degodia traders were going on' the study team was told. El Wak, which was the other business hub, has seen business go down as a result of conflict. The busy livestock market across the Somalia border at Bur Hache has almost collapsed, as it was also affected directly by conflict and blockage of stock routes. Prices of items which were gotten cheaply from across the border, like sugar, have gone up since the army closed the borders.

(v) Effect on education

Education was affected by conflict both directly and indirectly⁴². As people ran away from the conflict hot spots, the population of the school-going pupils went down by as much as fifty per cent in some places. Garre primary school pupils abandoned the Lafey primary school⁴³, which is in Murulle area, while those in the local secondary school 'disappeared.' Likewise, Murulle students in schools on the Garre majority locations were 'displaced'. For those who remained, learning at night and preparations for examinations could not go on as usual because of the insecurity. According to Mohamed Sheikh, the executive secretary of the Kenya National Union of Teachers in Mandera, '*Parents have fled with their children. The children are traumatised after they saw their parents being beaten*⁴⁴'.

(vi) Inter-clan relationships

The communities in Mandera, all Muslims and Somalis have a good level of interaction and are guided by common cultural practices. However, the conflict has cultivated a lot of hatred, especially between the Garre and the Murulle not only living in Mandera, but also those living elsewhere in the country. By extension and through alliances, other clans are viewed as aligned to one group or the other.

(vii) Increased insecurity

The Kenya government security system was overwhelmed by the conflict in Mandera because they were overstretched, ill equipped and highly exposed to danger. The armed youth from the two clans took control of everything until the military intervened and suppressed their operations. Proximity to Somalia posed a major threat as the marauding militiamen had safe passage and attacked the Kenyan side frequently with little resistance. These exposed towns such as El Wak and Mandera to great security risk.

41 Discussions with the Lafey Chief.

42 Discussion with the District Education Officer, Mandera, January 2009.

43 Head Teacher, Lafey Primary School, January 2009.

44 IRIN 31 October 2008. 'Hundreds injured in attacks'

2.3 Conflict over Resources- Pasture and Water

Majority of the people of Mandera District are nomadic and semi-nomadic pastoralists. However, there is a significant riverine sedentary agrarian population along the Dawa River. As of February 2008, the number of livestock kept in the larger Mandera District was about 230,000 cattle, 180,000 camels, 330,000 sheep, 300,000 goats and 31,000 donkeys⁴⁵. In North Eastern Kenya, unlike in North Western Kenya, cattle rustling is not a major issue⁴⁶. However, resources that support livestock such as pasture and water sources are often at the center of conflict between the local clans⁴⁷. The ever-increasing human population in the District over the last few decades has put a lot of pressure on the resources. Permanent water sources are rare and the amount of water available from boreholes and springs is limited. During drought, there is overcrowding at the few permanent water facilities such as boreholes, whose engines tend to be overworked or clogged due to siltation, leading to frequent breakdowns⁴⁸. Since running a borehole pump is very expensive due to high prices of fuel and spare parts, the cost of maintaining borehole engines are passed on to the poor livestock owners who have to pay set amount of money when watering their animals⁴⁹. The elders in the communities maintain a tight schedule on sharing of water to ensure that competition over access does not get out of hand. The boreholes get so crowded to the extent that some pastoralists have to wait for more than two days to water their animals. At such times, a small misunderstanding between herders may lead to a major fight. Again, whenever a new water source (borehole) is developed, clan ownership becomes an issue, especially when the water point is near a boundary between two clans. The sinking of a borehole in Alango is a case in point. When the government sunk it, leaders from the two communities, including the District Livestock Development Officer, were not involved in choosing the site. In the end, both the Garre and Murulle claimed ownership, leading to skirmishes between the two clans.

Pasture availability, like availability of water, also fluctuates with seasons and differs between areas. The pastoralists know and prefer to graze their animals in specific areas where the grasses are 'sweetest' and where water is salty. As pasture becomes scarce over the dry season, the pastoralists have traditionally employed migration with their herds as a coping strategy. However, conflict between groups restricts options for movement by limiting the number of suitable areas to move to or move through. For instance, the Murulle cannot access water in the El Wak complex, while the Garre cannot access the pastures and boreholes in Fino and Lafey.

In Mandera, the struggle for control and access to pasture and water has become intertwined with administrative and constituency boundaries which tend to be politicised, leading to conflicts between clans. As such, there is still a big debate in Mandera as to whether indeed the 2007/2008 conflict was resource based. One Elder in Lafey put the conflict thus: *"There should not be pretence we are fighting over water and grass. Our opponents want to stay in our district but to be administered by chiefs from the next district across the border.* Noteworthy, pastoralism in northern Kenya means a need to share and dependence upon rainfall, leading straight to boundary related problems. Disagreement over who owns which piece of desert, who settled first, who controls access to particular areas are intricate and beyond the conservative administrative set up in Kenya. With their militia, absence of government, and perpetuation of ancient means of production, things are sorted out by who can bring the largest and meanest force to bear.

45 According to the District Livestock Production Officer (DPLO)-Mandera

46 Rustling is not a common crime in Mandera and is considered a petty theft, unlike in North West Kenya where it is an integral component of pastoral conflict.

47 The necessity of movement by pastoralists has been always been troublesome for administrators, as seen in this quote from the colonial records of Mandera, 'Movements of Murulle were difficult to control, due to deficiencies in rainfall. They grazed in Oddo (Ethiopia) in January, February and March, crossed into Somalia in November, and in December headed for Goochi (in Kenya). District records, 1950, KNA.

48 In January 2009, Lafey borehole clogged up due to siltation and it needed reinstallation of one-inch diameter pipes.

49 In January 2009, the price of a 20-liter jerry can of water jumped from Kshs. 2 to KSH 3.00

2. 2.4 Politics

Politics was largely cited as a major cause of conflict in Mandera District. Community members told this study team quite a number of times, things like, *'the conflict is about politics'* *'clan supremacy'* and *'chauvinism.'* Some leaders based in Mandera cited some of the motivations of the politicians, saying, *'The politicians are fueling the conflict,'* *'They want to curve fiefdoms,'* *'The conflict is about intolerance and impunity.'* Many respondents in this study saw the local community as being at the mercy of the manipulative powers of the politicians, weakened as they were by high levels of illiteracy, poverty and lack of exposure to the outside world.

An alternative view saw the local people to be partly responsible for their situation. The Mandera District Commissioner observed that local people start to distinguish themselves into various hostile groupings during electioneering period and that when it comes to choosing leaders, people would recoil to their clan cocoons. This recoiling is attributed to the belief that political, social and economic benefits are best dispensed by own clansmen/women. Violence often erupts during election period because this is the only time that the poor (including majority of residents of North Eastern Kenya) participate, albeit briefly, in the national politics and the pastoralist clan system of North Eastern Kenya meet the modern state of Kenya. This precipitates excessive rivalry between clans as they struggle for their favourite sons to ascend into the national assembly and glory, power, resources and belonging. Elections related clashes are not peculiar to Mandera alone. Another case in point is Rift Valley Province where different ethnic communities fight each time there is a national election. For long, it has been convenient in Kenya to see 'clan fighting' and killing as a Somali way of life. Except for the political dimensions, it would probably be easy for the communities competing over the Alango borehole to come to some agreements and terms of sharing. In some boreholes, each group has a day to use the water, and everywhere, complex schedules are adopted under the guidance of elders to control access and ensure optimum use. However, in the face of clan chauvinism, harmonious relationships are destroyed, as chauvinists ally themselves with politicians who are seeking votes, and in an atmosphere of divide and rule and complete impunity, violence produce strange bedfellows. As such, the circle of violence that accompany every election year should be examined from this perspective.

1. 2.4.1 The Councilors

There are two councils in Mandera District, the town council and the country council. There are nine councilors in the town council, seven of whom are elected, while two are nominated. The number of elected councilors generally reflects the characteristics of the clans in the town: three are from the Garre clan; two are Murulle, one from the Degodia clan, and one from the Corner Tribes. The Town Council has so far not been involved in direct clashes between the clans, although there is intense competition for power between clans. The councilors are involved in allocation of plots, licenses and large contracts. In theory, the powers of the Mandera County Council are vast as it is the custodian of all the land in the district under the Trust land Act. So far, this power has not been exercised. Complex issues over land rights, access and development, like building of boreholes and dams at Alango are not brought forth to the Council for debate.

2. 2.4.2 Members of Parliament

The Kenyan Member of Parliament has gained great power over the last decade. Their remunerations and allowances have increased tremendously to rival the best-paid parliamentarians in the world. MPs control quite a number of so-called decentralised funds at the constituency level, increasing their power of patronage. To gain or retain their popularity, politicians take some populist stances, which may be unacceptable. Many promise to push out of their constituencies opposing or rival clan. For instance, candidates for the Mandera Central seat are reported to have promised to expel Murulle from the constituency, while Murulle candidates promised that they would struggle to regain control of all their historical territories⁵⁰. Those who succeeded to occupy seats then have these expectations to fulfill. Conflict

50 Interviews with members of Murulle and Garre clans in Lafey, Garri, Wargadud and El Wak, January 2009

entrenches and strengthens clan solidarity. According to an interview in the East African Standard, the then Madera District Commissioner, Kimani Waweru said, *'When their popularity ratings go down, they instigate clashes and their popularity shoots up'*⁵¹.

3. 2.4.3 Elections

The Somali of North East Province, who were bent on cessation, boycotted Kenya's first national elections. This boycott was faithfully observed over most of the NFD except in Mandera and Garissa where the families of Sayid Abdi Noor, and Yusuf Haji, respectively presented themselves for parliamentary election and were automatically elected. The Sayid family from the Garre clan dominated Mandera politics over the next decade such that when the seat was split into Mandera East and Mandera West, the two parliamentary seats were captured by two sons of the Sayid, consolidating the Sayid family and Garre hold over Mandera. However, in 1974 a Murulle challenger for the Mandera East won the seat with the help of the imported Murulle voters from Mandera West, Corner tribes and the Degodia. Some of the informants for this study advanced the claim that Garre leaders started the clashes to displace the Murulle from Mandera Central and thus safeguard that seat for the Garre clan. The Garre struggled to hold onto the Mandera West seat while mounting a credible challenge for Mandera East. In 1982 the rivalry over the seat culminated into armed conflict. From 1988, the Garre were able to retain both seats, and this held on until 1992. Constant fighting, especially at electioneering times resulted in the seat being split to create Mandera Central, seen as a Garre stronghold, and Mandera East, seen to be Murulle stronghold. The Garre focus now shifted to the two seats of West and Central, and elections became runoffs between Garre candidates. The competition then narrowed down into sub-clan race, pitting the two Garre sub-clans-the Quranyo and the Tuff. Meanwhile, the Mandera East seat was fought out by Murulle candidates, and as most of the votes in the East seat came from Mandera Town, the influence of the Corner Tribes came into play. Garre resented the movement by Murulle from Mandera Central to go and register their vote in Mandera East. It was felt Murulle loyalties were split, as they lived in Mandera Central but supported candidates and were concerned about issues in Mandera East. Their voting power could have been a factor, and by supporting one candidate or another could have been used to cement relationship with one or the other Garre sub-clan. The Garre of Mandera Central felt that if the Murulle hearts are not in Mandera Central then they should just move out.

2.4.4 Politics of Mandera Central and Potential Future Conflict

The elections of 2007 caused a surprise upset with the fall of both Garre candidates, the Hon Billow Kerrow (the immediate former MP) and the Hon Adan Mohamed Noor, a veteran who held the seat for several years. The intense rivalry between the two major sub-clans of the Garre found expression in the struggle between Hon Adan Mohamed Noor and Hon Bilow Kerrow, as they directly confronted one another, leading to their overall defeat and the capture of Mandera Central constituency seat by a Degodia lawyer named Abdikadir Mohamed. It is clear that had the Garre voted for only one candidate from their clan, the seat would not have gone to Hon. Abdikadir⁵². One full year after the elections, stunned Garre youth still find it unacceptable that Garre lost the Mandera Central seat⁵³.

There were allegations of rigging and denial of the incumbent Mandera Central MP's victory by a cross section of members of the Garre community⁵⁴. It is alleged that many voters from outside the Constituency, including people from Ethiopia and Mandera East, were quietly registered and ferried to vote in Mandera Central. It is also alleged that the Degodia exaggerated their numbers, since their registered voters only totaled eight thousand, yet their candidate managed to get twelve thousand votes. The Garre clan members concluded that there was an illegal topping-up of votes during the elections for the winning candidate. Recent tensions between the Degodia and the Garre also date back to 2007 on the location of the Mandera Central District headquarters, when the Degodia proposed Rhamu, while the Garre proposed El Wak.

51 Adow Jubat and Boniface Onger, 'Clashes remain thorn in flesh of Mandera' East African Standard, 2 Nov 2008

52 Election results in Mandera Central in 2007: Abdikadir (Degodia Jibrail) 12,000 votes; Billow Kerrow (Oifire Quranyo) 9,000 votes; Adan Mohamed Noor (Tuff Sabdawa) 6,500 votes.

53 Field interviews Mandera January 2009

54 Discussions with two Garre Secondary teachers (local intellectuals) in El Wak town, January 2009

There is speculation that competition between Garre and Degodia over the Mandera Central seat may lead to new conflicts at some stage over the next five years, triggering a conflict like that between Murulle and Garre in 1983 when the Murulle first won a parliamentary seat in a constituency where they were the minority. The Garre – Murulle fighting has been advantageous for the Degodia, as large pastoral areas are left for them uncontested, like the Ashabito. The prospect of having to share the Constituency with another group challenges the boasting rights of Garre who claim to be the largest clan in Mandera.

3. 2.5 Governance

2.5.1 Administrative Boundary Issues

Some people view the Mandera conflict as ‘totally a human creation’⁵⁵. Those holding this view point out that government officials and politicians made wrong decisions when they decided to create many locations without considering the location of resources and how the residents of the new entities would share them. *“People are fighting over boundaries because the provincial administration created so many locations and sub-locations, which has led to conflict over resources”*⁵⁶. Part of the problem is that the splitting and sub-division of the larger administration units creates new winners and losers, and facilitates the emergence of rivalries at lower levels.

The fact that access to and utilisation of major resources like water and pasture are determined by administrative boundaries, creation of divisions, locations and sub-locations and the posting of chiefs is an extremely sensitive issue. Between 1992 and 1996, the KANU regime created many such entities. Corrupt and influential local elites took the opportunity to influence this process in order that their areas got more locations, and chiefs of their choice thereby appointed. The Provincial Administration did not demarcate the boundaries of the locations, but relied on the use of the centers from where such locations were administered for their identities. The local administration adopted an ad-hoc and flexible understanding of boundaries that was only threatened when key resources like dams, boreholes, and trading centers were contested.

2.5.2 Attempts at Integrating Clans Administration

In 1994, Mandera District leaders tried to integrate Garre and Murulle administrations in the commonly used areas, by having a chief from each clan administering in areas dominated by the other clan. The Garre were to have a chief in the Murulle controlled areas of Warankara and Lafey, while Murulle were to have a chief in the Garre controlled areas of Wargadud and El Wak. The leaders argued that this administrative arrangement would help bring the two communities together⁵⁷. Some Councilors from Murulle and Garre strongly opposed this initiative. They agitated and wrote letters to various government offices and mobilised against the idea, arguing that the two communities have different languages and religions. The administration ignored their objections and proceeded to deploy the chiefs as planned, but almost immediately, some of them requested for transfer. Some of the local people turned against the new chiefs from the other clans. The Murulle Chief in Wargadud was expelled and he moved to Warankara where he is now a displaced chief, although he has become a butt of local joke (he was nicknamed ‘*Arare*,’ the escapee). For most people though, the incident portrayed the lack of commitment by the administration, for had the government exercised its administrative authority, the community would not have expelled the Chief.

2.5.3 Problems with ‘Constituency’ Districts

The proliferation of ‘constituency districts’ has brought with it unrealistic expectations on the part of ignorant and uninformed clan members who view the new districts as exclusive homelands of specific clans. The division of Mandera into three districts has heightened clan identity, division and clan competition. Since districts were identified by specific clans, administrators identified with the people they were

55 District Forest officer Mandera, RACIDA CEO, January 2009

56 District Forest Officer, Mandera, January 2009

57 Displaced Chiefs in Wargadud, Lafey and El Wak, January 2009

administering based on clan. Some administrators were accused of being inclined to specific clans and thus unable to provide the impartial and professional services expected of them.

1. 2.5.4 Politics of the Boundary Lines

The communities of Mandera are confused about ethnic, community, administrative and electoral boundaries. Each community is laying claim on land that they feel will give them political, economic or social advantage. Settlements in Mandera are associated with the dominant clans in the area, and as voting is along clan lines, the distribution of settlements among the constituencies is politically inclined. The settlements that are in a constituency are an important determinant of whether or not a politician will succeed. Clan affiliation and networks control access to grazing land. While traditional tenure relationships recognised multiple and overlapping bundles of rights, modern tenure recognises exclusive rights on parcels of land defined by line boundaries on the ground. On gaining independence, Kenya dismantled the clan based administrative system, and traditional Sultans were undermined. The post-colonial administration in Kenya abandoned promotion of clan exclusive grazing areas, but never replaced them with an alternative system.

The changes in administrative boundaries in northern Kenya have critical implications on livelihood and grazing patterns of the people. All elders interviewed during this study supported the clan grazing boundaries imposed by the British, yet where these colonial boundaries lie is also contentious. Murulle elders claim the main road from Rhamu to El Wak is the boundary marking the western boundary of their grazing lands⁵⁸. They would like the Mandera East Constituency and District to reflect such. Garre contest this interpretation, saying the colonial rule allowed them to graze east of this line⁵⁹. Over time a lot has changed, old settlements have either grown or been abandoned, and new ones have cropped up.

A number of new districts were created in the North Eastern Province during the campaigns in the run-up to the 2007 national elections, so that every constituency became a district. In Mandera, existing clan disputes were exacerbated because there is no clear boundary between Mandera East and Mandera Central. A team came in from Nairobi and demarcated boundary (after the Alango incident) without involving local people.

4. 2.6 Conflict with the State

From the outset, the people of the North Eastern Province identified more with people in Somalia with whom they share origins, religion, language and culture. As such, they took the earliest opportunity to convey this wish to both the outgoing British and the newly independent Kenyan authorities during the Lancaster House Conference in the 1960s and the referendum that followed. The paradox of the relationship between the Kenyan state and its northern half is that –the state ignores the northern half, yet it fought an international war and has spent a huge portion of its budget to retain the region. The Kenyan state insisted on retaining the province and when the people of the region resisted through the Northern Frontier District Defense Force, the state responded violently, hence the shifta war and the massacres that ensued. The violent antagonism between the state and the people of the North resulted into enhanced proliferation of small arms, entrenched underdevelopment and chronic distrust for the state and especially its armed forces.

2.6.1 The Shifta War

The ‘Shifta war’ took place between 1963 and 1967 in the North Eastern Province - the Northern Frontier District (NFD) between the Kenya government and local Somali secessionist forces supported by the Republic of Somalia. The roots of the Shifta war lay in the colonial period and the process of decolonisation in the Horn of Africa, and division of Kenya into two⁶⁰. During the colonial rule, most interest and attention

58 Murulle elders in Lafey and Garri, January 2009

59 Garre elders in Wargadud and El Wak, January 2009

60 Dr Akuru Aukot, ‘The Kenya of the North: A Legal-Political Scar in the Creation of the Kenya Post-Colony. Pambazuka.

was focused on the 'white highlands' where European settlers developed a rich homeland⁶¹, while neglecting the Northern Frontier District (NFD).⁶² The north was an isolated buffer, a frontier that was legally and militarily isolated from the rest of the country such that one had to get an official pass to move in and about⁶³. Legal enactments like the Northern Frontier Province Poll Tax of 1930, the Special Districts Ordinance of 1934 and the Stock Theft and Produce Ordinance of 1933 were put in place to reinforce the control. All these bred resentment among the local population. The former British colony of Somaliland and the former Italian Somaliland united to form the Republic of Somalia in 1960, taking about 50% of the total Somali population in the Horn of Africa into an independent Somali state. The British and the UN drew a straight borderline between Kenya and Somalia that was devoid of ethnic consideration, hence artificially dividing ethnic Somalis into two nationalities in disregard to their wishes. The Somali Republic's independence captured the imagination of Kenyan Somalis who saw it as heralding 'a wind of change' in NFD such that when political parties were allowed in Kenya in 1960, 'the people of NFD formed the Northern Province Peoples Progressive Party (NPPP) whose main agenda was the secession of the NFD and its reunion with Somalia.'⁶⁴ The wish to join the Somali Republic by the NFD was partly due to sixty years of unjust rule of the British colonialists characterised mainly by administrative isolation and political disenfranchisement of the region that made the frontier (NFD) a closed district through draconian legislation of 1926 and 1934.⁶⁵

As Kenya approached independence, the clamor for special attention by the people of northern Kenya elicited some response. At the Kenya Constitutional Conference of 1962, the Secretary of State for the colonies proposed an independent commission to investigate public opinion in the north.⁶⁶ The 'northern referendum,' found the majority of the population in favor of secession. However, the British proposed the matter be referred to the 'Regional Boundaries Commission' after independence, which divided the NFD into two, with the western part joining Eastern Province, while the Eastern part was given a brand new province-the North Eastern Province. The decision of the boundary commission led directly to the start of hostilities'.⁶⁷

The people of North Eastern province, led by the NFD Liberation Front, rejected the 1963 national elections and instead formed a guerilla force that terrorised the Kenya Army in the whole of the Province. In response, the Kenya Army fought back by placing inordinate pressure on civilian populations, to cut off local support for the guerillas in what Alex de Waal termed '*a military assault upon the entire pastoral way of life.*' A state of emergency was declared and with it came detention without trial; confiscation of property in case of attacks; prohibition of assembly; and killing of livestock. Any suspected bandit at the border was shot on sight, while people were concentrated into villages under close watch of military guards. Propaganda through radio and print media downplayed the political context of the conflict while terming Somalis as bandits.

61 Allen, C. 1979, Tales from a Dark Continent', ('Kenya .. is divided roughly into two halves, the southern half of which consists what we call the settled area where white people had their farms and the agricultural natives and plantations, and the northern area .. consisting of a hundred thousand square miles of acacia scrub.. the administrators in the southern half thought we were mad to live there at all' (pg 112-113)

62 Sir Geoffrey Archer, Officer -in-Charge NFD 1920, cited in Harden, C., Africa: Dispatches from a fragile continent, '*there is only one way to treat the northern territories and that is ... to leave them alone to their own customs.. anything else is certainly uneconomic*' (pg 193.)

63 NFD was also isolated from Somalia, and visiting religious scholar were expelled, as these quotes from colonial records testifies: '*a band of holy men from Somalia perambulated the Murulle area during September and there was resentment when they were arrested, imprisoned and expelled*'. KNA District Records, DC reports, 1955

64 Ahmed Issack Hassan, Advocate of the High Court of Kenya, 'The legal impediments to development in northern Kenya.' Pambazuka (pg1).

65 Nene Mburu, 1999, 'Contemporary banditry in the Horn of Africa: Causes, History, and Political Implications' Nordic Journal of African Studies 8(2): 89-107 (1999). (pg 99)

66 David D. Laitin, 1977, 'Politics, Language, and Thought: the Somali Experience.' University of Chicago Press (pg 77).

67 Ahmed Issack Hassan, Advocate of the High Court of Kenya, 'The legal impediments to development in northern Kenya.' Pambazuka (pg 2). '*This (boundary commission) decision was seen as a betrayal ... and the people of the region boycotted the 1963 election, and started ...the Shifta war*'.

'Somali leaders were routinely placed in preventive detention. News from the NFD were very difficult to obtain, but a number of reports accused the Kenyans of mass slaughters of entire villages of Somali citizens and setting up large 'protected villages' in effect concentration camps. The government refused to acknowledge the ethnically based irredentist motives of the Somalis, making constant reference in official statements to the shifta (bandit) problem in the area'.⁶⁸

As the conflict deepened, the traditional Somali clans' heads (Sultans) like Sultan Abdwak Somali of Garrisa were forced into exile in Somalia where they took up leadership of the NFDLF. Back at home there was a large scale population decline as people moved out of the region, and camps were opened for refugees in Southern Somalia.

In 1968, Prime Minister Mohamed Ibrahim Egal came to power in Somalia and steered the national policy towards negotiation with Kenya for integration of the people of North Eastern Kenya rather than confrontation. The Zambian President Kenneth Kaunda mediated peace talks between Prime Minister Egal and President Jomo Kenyatta in Arusha Tanzania, and in October 1967, an MOU was signed between the Republic of Kenya and Somalia. Somalia would stop supporting fighting by NFD guerillas. Kenyan Somali citizens' rights would equal before the law with other Kenyans. All the former fighters were given amnesty. Major fighting ceased in the NFD, schools and colleges were built, and the USAID funded a huge livestock development initiative. Unfortunately, the MOU did not lead to lasting changes on the ground, partly because a radical military regime took over Somalia, but mainly because the Kenya army behaved like a victor entitled to its spoils. Two decades of violent crackdowns followed and *'over 80% of the regions budget has been spent on security.'*⁶⁹ Banditry along roadsides made travel in the north nearly impossible, and clashes between clans frequently broke out. Harsh legal climate was created to deal with the populace like an occupied people. The declaration of state of emergency in northern Kenya and the legal provisions of the North Eastern Province and Contagious Districts Regulations of 1966 made the northern region *'technically a war zone and a virtual police state'*⁷⁰. The administration and the security forces were given power to hold trials, and the requirement that an inquest should be held if somebody died in police custody was suspended. In 1970, the passing of the Indemnity Act, Chapter 44 of the Laws of Kenya completed the immense blank cheque given to the security forces to deal with residents of the Northern districts inhumanely as it shielded government agents in northern Kenya from claims for any loss or damage occasioned by their actions.

2.5.2 The Massacres

Particularly memorable are the iconic massacres carried out in various parts of the Province, including the Bulla Kartasi massacre of Garissa, the Malka Mari, Garse, Derkali Dandu and Takaba massacre's of Mandera, and the Wagalla massacre of Wajir. The November 1980 Bulla Kartasi massacre in Garissa by the security forces was in response to killing of six-government officials in Garrisa. Suddenly all roads to Garrisa were cut off, and hostile security forces fanned out into the town. The army rounded up men and detained them for three days at Garissa Primary School grounds in clan groups. Elsewhere soldiers went on a rampage, looting, raping and burning down as much of the Bulla estates as possible over the three days. At the end of the operation, the sprawling Bulla Kartasi was completely leveled. Many people died of stress; others were executed for 'resisting'. Their bodies were thrown into the River Tana. While this was going on, a security operation was launched in all major towns of Kenya picking up Somalis at random for interrogation, harassment and deportation.

The Wagalla massacre of the Degodia clan of Wajir happened in February 1984 at Wagalla airstrip where more than five thousand people were rounded up and detained under armed guard. Soldiers opened fire on the detainees then attempted to hide their bodies. An independent witness, an Italian nun, Dr. Annalena Tonelli, compiled a report on the massacre. This earned her banishment from the country by the Kenyan

68 Rhoda E. Howard, 1986, 'Human Rights in Commonwealth Africa.' Rowman and Littlefield Publishers, Inc. (pg 95)

69 Ahmed Isack Pg 5

70 Ahmed Issack pg 2

government.⁷¹ The death toll is put at more than five thousand people⁷², though the official government death toll was fifty seven,⁷³ later revised to three hundred and eighty after Hon Elias Barre Shill raised the issue in the Kenyan parliament in October 2000.⁷⁴ There has been demand by the people from North Eastern Province for apology and compensation⁷⁵.

5. 2.7 Weak Formal Security Infrastructure

Despite the increased security interest in northern Kenya, there is a power vacuum due to absence of government in the northern pastoralist districts, as well as a near total abdication of responsibility over security issues. The only way to explain a situation where two armed rival militias fight it out for days on end with heavy and automatic weaponry, right within the boundaries of two districts, is that government security system has failed⁷⁶. The national academic, political activists and commentators, pay little attention to the failure of the state in the northern part of the country. All influential voices at the national level appear satisfied to describe the failure to provide security in the north as a peculiarity of pastoralism, or an example of the un-governability of the Somali.

The administrative infrastructure in Mandera is characterised by low capacity that has been exacerbated by the declaration of new districts in the region⁷⁷. For example, President Mwai Kibaki created Mandera Central District in April 2007 with seven divisions but by January 2009, the Office of the President had posted only five District Officers. One Officer Commanding Police Division (OCPD), based in Mandera town, was in charge of all the three districts of Mandera (each district normally has an OCPD). Transport and communication are a major problem for the local security forces due to challenging terrain, bad roads and long distances between settlements-distances from one village to another average more than twenty kilometers. Mandera Central District has only one four-wheel drive vehicle between the District Commissioner's office and the District Police Department. There are only two police stations, at El Wak town and Rhamu. A little relief has come in the form of mobile telephony that has connected almost all the divisional headquarters, enabling the reporting of conflict incidents in real time. The District received a platoon of officers from the Rural Border Patrol Unit; however, their deployment has been delayed by infrastructure constraints.

Ordinary crimes rates are extremely low in the Mandera District compared to other Kenyan districts⁷⁸. The local communities are able to manage and resolve most issues except for violent inter-clan conflicts, which the police system of evidence gathering and prosecution is unable to deal with because each clan tends to protect its own militia, whatever the crime committed. Nobody within a clan would provide testimony to indict their own. As such, when the police arrest a suspect for committing a crime, it is difficult to

71 Daily Nation, John Kamau, 'Where is the envelope on the Wagalla massacre?' Nov 28, 2008, Nation Media Group, Nairobi.

72 Ahmed Issack Hassan, pg4

73 Maliti, Tom (2003-09-26), 'Kenyans seek commission to discover truth of '84 mass killings' The Philadelphia Inquirer: pA18

74 BBC World Service, 'Kenya admits mistakes over 'massacre' 18 October 2000 (BBC online)

75 Opondo, Owino (2000-10-19), 'Wagalla issue causes uproar in the House', The Daily Nation.

76 In April 2008, 40 people were killed in Central Kenya in retaliation raids between vigilantes and militia. An editorial in the Daily Nation of April titled 'Massacre planners must face the law' makes poignant reading for observers of northern Kenya: 'early this week 13 suspects had been lynched, many hacked with machetes, other burned alive ... it is not clear what police ever did to discourage this 'mob justice' .. this points to a dearth of intelligence that is quite baffling... we Kenyans live in a world where life has become very cheap. It may be that the death of 40 people may have no major impact on an administration so besotted with politics that nothing else matters , but if this is a pointer of things to come, then this country is in great trouble.' Daily Nation, 23 April 2008. The same copy of the daily ran an article 'police reforms vital to smash killer squads' which said, ' the killings put the Kenyan security agencies and political elite to shame.. Kenyans should be worried they live in a country where a militia group can assemble, declare it will avenge the killings of its members, and go ahead to execute the mission in the most callous manner possible .. The Waki and Kriegler commissioners proposed radical reforms in the police force to make it more effective...'

77 Discussions with the DC and OCPD Mandera

78 OCPD Mandera District

collect evidence due to non-cooperation by community members. So far, the police have processed one case that took place in 2007⁷⁹. The arrest and subsequent release of clan violence suspects makes the local population to lose faith in the police force and the national justice system's ability to deal with conflict. One businessperson in Mandera town poured out his frustration with inability of the state to deal with the conflict formally thus:

'Nobody has been arrested for participating in the Mandera conflict that has cost so many lives'⁸⁰.

The security forces, unlike the national political elite, do not look across the borders to explain local failings. For example a senior official pointed out that the abduction of two foreign nuns by Al Shabab militia forces from Somalia was easy because the abductors knew there was confusion on the Kenyan side of the border, with the military operation and the raging clan fighting, so they took advantage.

The failure by the local security forces to prevent escalation of clan conflicts points to lack of or inadequacy of security intelligence system on the ground. Conflicts build up over time, and a working intelligence system should be able to detect them in good time. For example, 'Proxy indicators' may highlight preparation for conflict by a clan, for an effective militia cannot be organised secretly. Water will have to be ferried by those going to fight; youth and fighters mobilise for hostility. Conflicts are costly, and belligerents will make efforts to collect money. The price of bullets usually goes up before clashes, and goes down when conflict is dying down. The activities of tribal leaders may give away intentions. Yet the reality on the ground is constant administrative finger pointing; *'The chiefs are also to blame - they do not give intelligence reports about the militias on time for prompt action by the police'⁸¹.* The police accuse the clans, especially the religious elite, the 'Ulama', the traders, the intellectual and developmental elite who 'sometimes work together and sometimes are divided along clan lines'⁸². The community members are accused of complicity with their militias to conceal information from the administration. Such a mental framework absolves the local security forces of responsibility for protecting lives, limbs and property, shifting the onus to the local communities, who they demonise as being responsible for the banditry, eventually justifying the meting out of communal punishment.

However, while making the above argument, it must be borne in mind that the police have paid with their lives several times in the course of intervening in local clan conflicts. During the 2008 clashes, the clan militias killed two police officers in Alango, another died in Gaari, and another two were killed near Mandera town. Al Shabab from Somalia also kidnapped police officers from both regular and administrative police and took them across borders, or had their bodies thrown back into bushes after disappearing for a few days.

1. 2.7.1 Proliferation of Clan Based Militias

All the communities in Mandera have militias that act as a standing army. Key informants pointed out that: *'Like all other nomadic communities, we have guns for our protection'⁸³.* Each group justifies its aggression as self-defense because the government cannot guarantee the safety of life and property. The government sponsored disarmament initiative failed to achieve its objective because while the local people kept their guns, those that the elders handed over to the security forces were from Somalia to avoid further communal punishment⁸⁴. The army operation never netted local militia because they had already fled by the time the operation was starting.

Each clan fully supports its militia. The militias receive material support from successful business people

79 Ibid.

80 A trader in Mandera Town, January 2009

81 A senior Police Officer, El Wak, January 2009

82 Ibid.

83 Elders in Wargadud, Lafey and El Wak, January 2009

84 Lafey elders, January 2009

and politicians from the clans, often in the form of money, guns, ammunition, uniforms (half-coat preferred by the militias) and food. Similarly, clansmen in the Diaspora are also another source of donations during the conflict. Apart from donating money, the Diaspora clansmen take their campaign a notch higher to the cyberspace and other mass media. The community contributes money, food, water, transport and clothes for use in the bush as well as ‘*miraa*’ or ‘*khat*’. The women, apart from giving financial support, also prepare food for the militia, especially the dried Somali meat, which can last for several weeks in the bush. The women also compose the songs and poems used to mobilise support for the clan ‘war effort’. The militias also slaughter the animals they raid for food. According to some elders, modern militia leaders have turned conflict into a business, ‘because there is a lot of money being contributed both by local community members and those in the Diaspora⁸⁵.’

The youth dominate the clan militias, largely because they are strong and are able to survive the rigors of the bush. Most of the youth in Mandera are unemployed and idle, as such readily avail themselves for “the cause of the clan”. Many of them are mildly addicted to *Miraa* and other drugs. The guaranteed income from the incentives that come with participating in the militia activities, apart from getting recognition as defenders of the clan, is readily welcome. According to some elders, ‘The militias are populated by boys who have been brainwashed by businessmen and politicians⁸⁶’. The two militias often get assistance from across the borders in Ethiopia and Somalia⁸⁷. The Garre claim they are able to call upon jobless youth from their clan from across the Kenya /Ethiopia border to assist. The youth in the militia are inducted, trained and directed by a core vanguard of ex-military or guerilla. It was however pointed out by some key informants that Kenyan Somali youth are not as experienced in handling firearms as their Somali or Ethiopian counterparts, who swell the ranks of the militias whenever there are clashes. The Garre from the western side of the District are said to know how to handle guns quite well, as some of them are said to be remnants of the former Somali national army. The Murulle also do not take many of their children to school, and as such, many of their youth are easily recruited into the clan militias.

6. 2.8 Regional Factors

The position of Somalia and to some extent Ethiopia is a major factor in the conflicts in Mandera. Each clan in Mandera has an affiliation to other clans across the border in these two countries. The cross-border clan relationships, coupled with lack of proper governance structures in these neighbouring countries, especially Somalia, has exacerbated the Mandera conflict in two ways; one, the clan support for each other, and two, cross border militia engagements and participation in the clashes. The Somali militia groups have on various occasions, invaded adjacent Kenyan towns and settlements. This situation has led to serious insecurity on Kenyan side as well as promoting security lapses on the Kenyan security management processes. The Ogaden war and the 19 years old civil war in Somalia have ensured constant supply of arms, ammunition and militiamen to help execute the conflict across the border in Kenya.

1. 2.8.1 The Ogaden War

After the army coup in Somalia in 1969, in which the Somalia’s President was assassinated and the Prime Minister Egal was detained, the coup leaders turned east to USSR, Iraq, Syria, Libya, East Germany and North Korea from where they received vast amounts of arms and training for the soldiers, making Somalia Army the best-equipped army south of Sahara. The new regime revived militant pan-Somali nationalism, and joined the Arab League of States. It supported the Western Somali Liberation Front, a guerrilla outfit that was to liberate the Somalis in the Ogaden. In 1977, Somalia invaded Ethiopia and quickly captured the entire Ogaden area. However, the USSR was disturbed by the brazen Somali mechanised assault on weak

85 Wargadud elders, January 2009

86 Elders in Mandera Town, January 2009

87 According to the Red Cross agents in the District, it is true that forces are recruited from across the international boundaries. ‘The district is unique in that it borders two countries that are unstable. Guns and militias abound across the borders. The information we got was that the militias were hired from across the border.’

Ethiopia. President Siad Barre was told to accept rapprochement with Ethiopia, which would reciprocate by granting the Ogaden internal self-rule. President Siad Barre rejected the request at a Yemen summit chaired by President Fidel Castro. Soon after massive cross-continental Soviet airlifts began to rearm the demoralised Ethiopian army, which was reinforced by the arrival of columns of elite Cuban and East German mechanised brigades. The balance of power in the Horn of Africa rapidly changed, and in 1978, the Somali army was dislodged from their strong hold on the strategic Kara Marda pass on the flanks of the Ethiopian highlands. The tides turned further as Ethiopia organised and armed local Somali guerillas against President Siad Barre. Colonel Abdullahi Yusuf made a lasting alliance with the Ethiopians and from 1978, he directed the Somali Democratic Liberation Front's (SODAF) attack's on Somalia⁸⁸. The Somalia government eventually fell apart in 1991 and a brutal civil war has been going on ever since.

The Ogaden war is significant to the conflict in Mandera in the sense that many of the small arms used in the war were never mopped up by either Ethiopian or Somali governments, hence found their way into northern Kenya to be used in local conflicts. Again, many of the veterans of the Ogaden war often participate in the conflicts in Mandera in alliance with the local clans.

2.8.2 The Civil War in Somalia

In 2006, the Islamic Courts Union defeated warlords and stayed in power for six months bringing some semblance of order in Mogadishu. The Islamic Courts Union imposed Sharia law. However, the international community, led by the US, waged a deadly proxy war against the Islamic Courts Union and through the Ethiopian army invaded Somalia and took over Mogadishu. Kenya joined the US global war on terror, and closed its border to lock out the fleeing Islamic Courts Union members. However, in the North Eastern Province, the brilliance of the brief rule of the Union caught the imagination of the populace, and young men streamed across the border to support the growing insurgency against the Ethiopian army. Religious leaders in Nairobi organised fund raising for the Islamic Courts Union, MPs led by Hon Bilow Kerrow of Mandera were outspoken in their condemnation of the Ethiopian invasion. Ethiopia could not sustain its grip on Mogadishu and so in 2008 it withdrew its army. Soon after the Islamic forces took over Mogadishu and the UN assisted the selection of Islamists into the internationally recognised Somali parliament.

Meanwhile the radical 'Al Shabab' group took control of the region between the Indian Ocean, Mandera and Mogadishu in Somalia, effectively becoming Kenya's neighbour, although the group and its leaders were on the US list of wanted international terrorists. The Al-Shabab has made a number of incursions into Kenya, capturing soldiers and vehicles. The Kenyan government made statements against the Al-Shabab accusing it of using terror, while the Al-Shabab threatened to attack Kenya. Piracy has escalated on the seas around Somalia. In response, the developed world has deployed massive warships in the Gulf of Aden and the Indian Ocean. In Eastern Ethiopia, the Ogaden National Liberation Front stepped up its rebellion.

As such, the civil war in Somalia has resulted in fluidity of security in the North due to the threats of the Al-Shabaab and the proliferation of small arms.

2. 2.8.3 Small Arms Proliferation in Northern Kenya

The proliferation of small arms in Mandera District can be traced back to pre-colonial times. The Marehan together with the Garre fought against the Borana, and later on the British in the Dervish war of resistance. By 1909 small arms in Northern Kenya was already a cause for concern in the British House of Commons⁸⁹. The British decreed that to be registered as a Kenyan, every nomad was required to surrender his weapon, and in Wajir, four hundred and ninety-three (493) rifles were surrendered. However, by 1922, many clans took up arms to defend themselves against their neighbours. The arms race of the 1960s between the West

88 In 2004 Colonel Abdullahi Yusuf would become the President-in exile of Somalia in a meeting held in Nairobi Kenya, and in 2006 the Ethiopian army would escort him into Mogadishu where they protected his brief regime that fell apart when the Ethiopians withdrew from Somalia.

89 During a debate the Secretary of State for the Colonies was asked what steps he had taken to disarm the Somalis and he said that the NFD contained rifles from Abyssinia.

and the Eastern Block also saw massive amounts of small arms flowing into northern Kenya. The Eastern Block and the Arab countries through the Somalia government under Siad Barre supplied the guerilla movement in Northern Kenya and Eastern Ethiopia with large numbers of small arms. On the other hand, the British⁹⁰, Ethiopian and Kenyan governments supplied “friendly clans” with small weapons in a bid to promote counter-insurgency to break up the unity of the northerners⁹¹. Each side trained local people in the use of automatic weaponry, and Somali sent thousands for military training in Middle East and Soviet Union. Soon a black market for small arms was established from where guns were supplied to other regions of Kenya, like the North West.

The Somali civil war from the 1990s opened the small weapons floodgates. Weapons from the former Somali military found their way into civilian, militia and local markets. The Bakara market in Mogadishu became the largest open-air arms market in Eastern Africa for weapons from the former Soviet states. Many of these weapons found ready demand among the clans in North Eastern Province, where clans often boast of their huge arsenals. Others are ferried further to other parts of Kenya. Proliferation of small weapons within the clans in Mandera is very real and a cause for alarm for the Kenyan state. The social linkages of clans on both sides of the Kenya-Somalia-Ethiopia borders have created some sort of military alliance where friendly clans provide armed support from across the border when needed. For instance, the Murulle clan in Kenya received armed support from the Marehan clan of Somalia during this particular conflict, while the Garre received similar support from Ethiopia⁹². The support is often in the form of fighters, hired guns and guarantee of support in case of being overwhelmed. There is an arms race playing out between the clans, with each one out to outdo the other in terms of deterrent firepower, militia and official home-guard strength, while at the same time accusing the other tribe of having more weapons. One of the two clans accused the other of using a very powerful and expensive gun called *Duraminsher* that can fire very far. The other kinds of weapons in the hands of the clan militias include AK47, G3, Bazookas, grenade launchers, heavy artillery, anti-aircraft guns; anti-tank guns mostly sourced from Somalia⁹³. In urban areas, the clans have adopted bows and arrows for street fighting.

The local communities justify their armament and recruiting assistance from across the borders by pointing out that the Kenyan government is very thin on the ground yet rival communities are arming. They criticise the government security agencies on the ground as weak, indecisive and at times outright indifferent to their plight. In other words, they have decided to be in charge of their own destinies as communities. Elders say that their communities must defend themselves against invaders from Ethiopia and Somalia where gun ownership is not an issue and against homegrown youthful bandits, who have rebelled against their elders and clan rule. Administrators and security officers seem to agree with the elders regarding the need for armed security and on its part has been implementing, in partnership with the communities, the home guard security system, where the government provides vetted locals with guns to defend their communities against external invasion. However, this provision has also spawned controversy among the clans with each complaining of fewer slots for recruitment, the quality of the guns and the amount of ammunition given. More seriously, it is said that government supplied weapons have been used to attack innocent victims. On their part, the government security officials tend to downplay the strength of the militias on the ground as inconsequential. The OCPD Mandera had this to say; ‘*Local militias have mostly simple AK47’s and G3 machine guns, possessing such weapons here is only a defense mechanism.*’

90 The first lot of weapons worth about three million UK pounds were supplied to the local friendly clans by the British government.

91 In an attempt to pacify and appease as an administrative strategy, the British armed the Garre in 1921, before they had fully gauged the clans loyalty. After they realised their mistake, they embarked on a firearm registration exercise that the Garre frustrated by relocating to Ethiopia en masse until the situation returned to normal. Nene Mburu, Pg 48

92 Key informants from the two clans accused each other of receiving support from across the border. The police informants from both Mandera town and El Wak also confirmed this allegation, January 2009.

93 Information provided by OCPD Mandera/OCS El Wak

7. 2.9 Other Contributing Factors

2.9.1 Incitement through Sayings and Songs

The prevailing culture of violence and the condoning of clan hatred is justified and propelled by stories of victimisation and rights denied by the other side. The similarity of propaganda-like statements, similar narratives, same justifications, and repeated recital of one sided incidents in far-flung and distant villages was striking to the researchers of this study. It was as if the entire population had rehearsed tutorials to repeat rote-like party-positions. Women, youth or elders randomly made the same impassioned deliveries and repeated the same deep felt stories. This widespread feeling means it would be a mistake to treat the conflict as propelled by disgruntled elements.

There are stories and counter stories told and retold in the pastoral villages, which contradict one another. Each talks of how their clan is attacked, but how brave its sons are who have to be restrained from annihilating the enemy, how it has to defend itself, how its pasture and land is being taken over. None of them is necessarily wrong, but exaggerations abound when it comes to demonising the behaviour of rival clans. There are set 'narratives' from each side that have been fine tuned and stage managed to be like set-pieces in a battle. These positions are used to justify, explain, and advance clan positions.

Two pithy statements used as slogans reflect a fundamental Kenyan national contradiction over land tenure issues. On the one hand is the constitutional right of Kenyans to settle anywhere in the country. This right is flagged in northern Kenya by the short outburst of '*Kenya ni Kenya*' (Kenya is Kenya). Pastoralists who like to move around, like to use this statement. On the other hand, there is the constitutional right for private property and land. This is also flagged in northern Kenya as '*kila mtu na nchi yake*' ('everybody and his land'). Access to land in the northern Kenya is controlled through ethnic or clan lines, as the 'Trust Land' commons have not been demarcated into individual or group parcels. Efforts to control access rights therefore amount to clan control.

It is common to hear the Murulle saying '*Kenya ni Kenya*' to justify their wish to graze in various parts of Mandera. It is also common to hear the Garre say, '*everybody should be in his own land*' to assert what they feel is the greater right to authority, ownership and control in Mandera. Garre view Murulle historically as 'visitors'. Garre poets have composed songs exhorting the clan to evict those disrespectful new comers, from Lafey, Warankara and Alango. Most Garre may wish the two groups continued to live in separate areas, claiming that this would assist in obtaining peace for all. However the fact that the borders for these 'homelands' are hotly contested adds to the violence.

It is therefore quite clear that, while poverty evidenced by the illiteracy, unemployment, is a major driver of the conflict, a less tangible driving force is the tension created by the local people following several systems of governance- the traditional systems, the secular system and the Islamic Sharia - simultaneous without harmony. Struggle for intangibles like 'clan name' and 'clan supremacy' has been identified as one of the root causes that conventional peace meetings have yet to adequately address. Elections have become how ethnic supremacy plays out, as victory by one clan's candidate is seen as victory over the contesting clan. The 'boasting rights' bestowed by such victories are celebrated as far as the Diaspora.

1. 2.9.2 Rumors, Ridicule and Demonisation

Somali, like many pastoralist groups, take pride in warriorhood and laud their prowess in battle. Like in many other societies living in violent conflict, Somali clans indulge in demonising their 'enemies.' The Somali pride in being a wholly Muslim people with ancient links to the Arabia of the prophet. Frequently, they will misuse this tradition to look down upon neighbouring groups as uncultured. The Somali use their long adherence to Islamic tradition to distinguish themselves from their fellow Cushitic neighbours - the Oromo, who in turn take pride in some of the most complex indigenous customary systems of Africa. Deliberately confusing the Garre with pre-Islamic Oromo traditions, the Murulle disparagingly call the Garre "*Kufur*" - meaning pagan. To build solidarity with other Somali speaking clans of the North East

Province, Murulle negatively point to the Garre mixed language heritage.

Garre demonise the Murulle as a disorderly, uncultured group of people and uncaring about the environment. A deeply hurting accusation however is that the Murulle are particularly prone to raping. '*They even rape goats; such cases have been recorded in the police Occurrence Books*⁹⁴.' The culture of violence has led to changes in the meaning of words, and some words take on a special meaning. Thus, the Somali word for youth '*Dhalin yare*,' takes a new meaning, referring respectfully to the armed militia, or bandits as far as other people may be concerned. It is interesting that the extremist Islamists in Somalia have shunned the term '*Dhalin yare*,' and to distinguish themselves from clan groupings, are using the Arabic wording, '*Al Shabab*' – which simply means 'youth.' With time, words become symbols. The term '*Shifta*', that originally was a derogatory term meaning 'thief' in the official Ethiopian language-Amharic, gained respect as the name of the irredentist Somali guerillas of the 1960's. By 2007, a Nairobi rap music group would name itself '*MaShifta*' to put on a rebel chic.

Murulle complained that Garre used slogans with provocative sub meanings in the national elections. The simple slogan '*Jireen Keen*' meaning 'Our Livelihood', was said to be used by the Garre with a sinister motive, calling for 'action' to secure said livelihoods. Garre activists in El Wak campaigned with grass crowns placed on their heads; the underlying message was that 'let us secure our land for exclusive grazing'⁹⁵.

2.9.3 Failure to Implement the Umul Accord to the Letter

The Umul Accord was the most comprehensive attempt to resolve the conflict in Mandera. It brought together customary, religious and administrative leaders in one process in 2005. Prominent Somali religious leaders facilitated the process, with assistance from the area MPs, secular leaders and government Heads of Departments in North Eastern Province who also provided logistical support⁹⁶. On 4th April 2005, the accord team toured the trouble spots in Rhamu, El Wak, Lafey, Wargadud, and Warankara Divisions. Later, a three-week conference was held in Mandera whose agenda included payment of compensation for those killed, land issues, property, 'unbecoming behaviour', clansmen in police custody and the root causes of the conflict. The committee sought and received an undertaking from the warring clans to accept the outcome of the arbitration process-the Accord. The conference agreed on resolutions and an implementation committee was then drawn. The conference made seven resolutions-later known as the Umul Accord⁹⁷.

This Accord was renewed when the conflict broke out over the same issues in 2007/8 because the peace stakeholders believed that the later fighting was a spillover of the 2004-5 fighting. A group, including the religious leaders, elders from neutral clans, organisations like PACT-Kenya, Women for Peace and Development, Youth for Peace, Arid Lands Project, SUPKEM and NSC from Nairobi, met and facilitated a meeting based on the Umul Accord.⁹⁸ The team concluded that the conflict had reignited because the government had not fulfilled its part of the bargain in the earlier Accord. The government had not enforced the laws of the land, not dealt with complaints raised since it lacked capacity, and did not respond quickly to security issues till they got out of hand. Government officers were also accused of corruption. The team also identified outside influences- Mandera elite living outside the District were financing, inciting and controlling the conflict. The Accord was also seen to be weak as it had 'presumed a support and agreement from government which was not the case'. The UMUL Accord and its process did not have powers to punish those who did not follow agreements. It instead recommended that culprits be handed over to the government. It depended on funding from external donors which was not guaranteed.

94 Contribution in a Focus Group Discussion in Wargadud, January 2009

95 Murulle Key Informant, Garri, January 2009

96 The following account is based on the document 'Resolutions of the Mandera Peace Accord between the Garre and Murulle Communities of 18th March to 18th April 2005, by the Arbitration Committee led by Religious Leaders' known as the Umul Accord, and beefed up by field discussions by the study with religious leaders, NGO heads, and community elders in Mandera in January 2009

97 See the list of the Umul Accord's resolutions in the Appendix 1

98 'The Reinforcement of Previous Accords of 9th November 2008.' Unpublished report, Mandera

According to the OCPD Mandera, ‘*The reason why the conflict flared up in 2008 was because the 2005 Accord was not fully implemented.*’⁹⁹ The Accord did not provide a binding and lasting solution and a number of binding components were not fulfilled because, to start with, it was not clear how the Provincial Administration would ensure the Accord was honored. Again, the Accord was agreed when Mandera East and West was one District, whereas by 2008 there were at least two districts in contention, causing confusion over which DC should take charge. Although all the monies were paid according to the Accord, compensation payouts were not made in El Wak and Wargadud after Mandera was split into three districts. According to the Accord, urban IDPs were to go back to their home areas, yet this has not happened. However, the major reasons advanced to explain the failure of the Accord, was that those in charge did not take their commitments seriously. The Accord also envisaged that the elders from the two clans would use their authority to control their youth, but this did not happen as the youth with guns ignored their elders and went on to attack members of the opposite clan. According to others, the two communities had not fulfilled their agreements because the government came in and disarranged the whole process.

The failure of the Accord is also attributable to lack of enabling peace policies, proactive peace promotion, and conflict prevention activities by both the government and the communities. A sustainable approach needs to take into consideration the perspectives and the aspirations of those in the grassroots, and to give prominence to the role they already play in solving conflict.

A positive aspect of the UMUL Accord and its reinforcement was that the forums which were held were well represented by all stakeholders, and led to an agreement which was universally accepted by the Mandera people. The Umul Accord provided a forum whereby both sides could articulate their grievances with an understanding neutral broker listening in. Using the Umul Accord, government and civil society actors had a platform from where they could discuss the conflict issues in the idiom preferred and understood locally. With the signing of the Accord, in 2005, calm came over the fighting ‘hotspots.’

3. RESPONSES TO CONFLICT

There have been varied responses by a number of actors to resolve the conflict in the larger Mandera District. The actors include governmental and non-governmental organisations as well as non-formal actor such as the clan elders, local religious elders, and the herders and pastoralists. In this chapter, we shall examine their initiatives.

8. 3.1 Government Responses

1. 3.1.1 Provincial Administration

The government through the Provincial Administration imposed a dawn to dusk curfew on Mandera. This was aimed at addressing the rising insecurity in the District. However, the residents argue that this was not successful in restoring peace in the area.¹⁰⁰ It was for instance argued that not even one instigator or perpetrator of the conflict has been apprehended, yet for six months fighting has been on in a very small part of Mandera Central and Mandera East.

2. 3.1.2 The Police

There have been efforts to post more police officers in areas marked as security zones or conflict flash points. For example, in October 2008, about thirty police officers were stationed in Alango to beef up security in the area following the conflict over watering points between the Murulle and Garre pastoralists.

99 Field discussions, Mandera January 2009

100 See section of this report for description and analysis of the military response

The Police were under orders to allow nobody to water animals in the borehole¹⁰¹. However, the sight of animals dying of thirst made the police allow limited access to the borehole. Only Murulle were using the borehole, partly because the area was in Mandera East, which is “the Murulle side”.

The police tried to work with the Degodia and Corner tribes, ‘*even including the Marehan*’ to help find lasting security for the whole District.

3.1.3 The Army Operation: Operation Chunga Mpaka

The Operation “*Chunga Mpaka*” was undertaken by a combination of units of the Kenyan security forces, consisting of officers from the army, regular police, administration police and border security police unit. These were deployed in areas considered to be trouble spots (hot spots) including El Wak, Wargadud, Warankara, Lafey and Mandera town. Different government officials gave varied reasons for involving the security forces and in particular, the army, in the conflict in Mandera. Both government and the civic society leaders agree that by October 2008, drastic action was required to contain the escalating conflict between the Murulle and the Garre. The Umul Accord that had been signed by the two clans in 2005 and updated in early 2008 under the supervision of the officials from the Office of the President (the Mandera DC) and the joint meetings organised by the religious leaders and the District Security Committee did not seem to stem the ever escalating clashes between the two clans. For example, the Mandera District Commissioner ¹⁰² pointed out that the District was losing an average of four people per day just before the Security Operation. In his view, ‘*The government had to stamp its authority once and for all.*’ This is because the militias had now put barriers on the major roads within their “territories” making it impossible to drive along the major District roads. There were reports of militia dragging people out of vehicles and killing them. The police inaction emboldened the militias to the extent that they started hijacking trucks near Mandera town¹⁰³. In the view of the Department of Defense spokesperson, Bongita Ogeri, the army operation was necessitated by the danger posed by international terrorism, especially the rumored involvement of elements of Al-Shabab from Somalia in the clan conflict. He pointed out that:

*“Our intelligence indicates these insurgents are equipped with sophisticated weaponry. It is clear the police was not adequately prepared or equipped to repel them. However, we could not just sit and watch, yet we have the ability and the mandate to protect our nation from foreign aggressors. The Military Act permits the Army to provide assistance in cases where the civilian forces have been overwhelmed.”*¹⁰⁴

The Ministry of Internal Security, as exhibited by reaction of the Assistant Minister of Internal Security, the Hon. Orwa Ojodeh, in Parliament shared the same view. He said that the military intervention was necessitated when it became apparent that foreign militias were involved in the conflict. To prove this, he revealed that 175 foreign militia men had been arrested and arraigned in local courts, with some jailed for six months each, while six chiefs who allegedly facilitated the entry of militia men from neighbouring Somalia and Ethiopia had also been arrested. Other stakeholders were of the view that the militias were too well armed for the regular police to deal with and as such, the army had to be brought in¹⁰⁵. In their view, the security of the whole of Mandera was totally under the control of the militias and a superior force from outside the District was the best solution to deal with it. One pointed out that ‘*The militia phenomenon is being imported into towns. With the assistance of local elders, NGOs, and civil leaders, the government will mop up the firearms once and for all*¹⁰⁶.’

The security personnel conducted house-to-house searches in order to flush out the militia elements. They also disarmed the civilian population. They ran security patrols in the “hot spots”. The government imposed

101 Police Corporal in charge of Alango borehole, January 2009

102 Interview with the study team January 2009, Mandera

103 Discussion with Red Cross officials in Mandera Town January 2009

104 Daily Nation, Deploying soldiers to quell inter-clan strife raises queries over officers’ image. Kipchumba, Nov 18, 2008

105 Discussions with officials from Red Cross and RACIDA-January 2009

106 Red Cross official, Mandera Town-January 2009

a dawn to dusk curfew throughout the District. Every week, the District Security Committee (DSC) would meet to assess the security situation and advise on the next steps¹⁰⁷. The DC passed advisories to NGOs working in Mandera to restrict their movement as Al-Shabab from across the border in Somalia targeted their vehicles for car jacking¹⁰⁸. However, the army was criticised for having used excessive force and targeting innocent civilians.

A national daily newspaper reported the military conduct thus:

‘At dawn on Tuesday, army and police officers invaded El Wak and Wargadud, flushing out residents with whips and kicks while demanding weapons... those rounded up were flogged and forced to walk on their knees over long distances as part of the torture to produce illegally held arms’¹⁰⁹.

It is noteworthy that military intervention in the 2008 Mandera conflict bred a lot of controversy; not just owing to the alleged use of excessive force and violation of human rights, but MPs from the area were opposed to the use of the military in the conflict even before the operation commenced. The MPs issued a joint statement voicing their fear about the possibility of the army abusing human rights of their constituents. The fear was based on previous experiences with similar military operations that had resulted in massive violations of human rights. The leaders suggested instead that a religious leaders’ arbitration process be given priority.¹¹⁰ Human Rights groups were not left out in condemning the actions of the military in Mandera. An officer with the Kenya National Commission on Human Rights was quoted to have said, *‘The security forces have tortured and beaten civilians ... old men and women have not been spared. At least 200 civilians have been admitted in hospital in the past three days.’¹¹¹* The National Muslims Leaders Forum (NAMLEF) condemned the operation for spreading terror in Mandera, while Mr. Hassan Omar, the Vice-Chair of the Kenya National Commission on Human Rights, said the military operation had sparked a crisis, preventing the distribution of relief aid to over one hundred thousand people who depended on it. The Kenya National Commission on Human Rights officially called for investigations into allegations of torture. The East African Standard did an editorial article that said, *‘Denial of excess during security operations are hard to believe given the State’s past record in the area. Security forces have long been accused of grave atrocities, for example in Malka Mari in 1978 and in Garissa in 1980. By blocking access by the media or relief groups to the operation area as they have done before, the police and the army create conditions under which individuals or groups of officers can act with impunity in up-country, secure in the knowledge they will get boilerplate defenses from Nairobi.’¹¹²*

Efficacy of the Security Operation

The Operation Chunga Mpaka ended the open hostilities between the two communities and led to recovery of many arms from the two communities. Some semblance of security returned within the larger Mandera District. Nevertheless, questions still abound as to whether it was the best option, considering the cost to the community, its conduct and what it means for the future of security in Mandera and other hot spots. The conduct of the operation also brings to the fore the issue of protection of human rights, including press freedom.

Many of the locals believe that the security operation was timely as the regular police had been overwhelmed. On the other hand, it is widely felt that the army should not dabble in the issues of internal

107 Interviews with DC Mandera East and the OCPD Mandera

108 Discussions with Mohamoud Issack Duale of RACIDA revealed that NGOs four-wheel drive vehicles were targeted by bandits from Somalia for their engines which were then used to power speed boats used by pirates and fishermen of the Somalia coast.

109 Mutinda Mwanzia and James Ratemo, East African Standard 30/10/2008.

110 Adow Jubat and Boniface Onger, ‘Clashes remain thorn in flesh of Mandera’ East African Standard, 2 Nov 2008

111 Integrated Regional Information Networks (IRIN), 31 October 2008, KENYA: Hundreds injured in Mandera security operation - activist

112 East African Standard, ‘Investigate Mandera abuse claims.’ 02/11/2008.

security because army officers, unlike the regular police, are not trained to handle civilians, hence the many cases of torture and rape.

The use of the army to quell internal conflicts has brought into sharp focus the credibility of the Kenya Police Force as a body charged with maintaining internal security. Inviting the army to do police work could be an admission on the part of the government that the Police Force is ineffective with regard to maintaining law and order. This raises the fundamental question: what is the government doing to make the Police Force effective?

Many observers feel that the whole operation was a failure even though it brought some calm. This is because there was not a single case of any militia arrested by the army. In the end, the locals saw the approach as a communal punishment for allegedly collaborating with the militias, in what a Red Cross official in Mandera termed '*getting peace through the wrong method*'¹¹³. In parliament, Hon. Affey, who declared the operation a total failure, asked why the government had not been able to stop the entry of militia into the country in the first place.

On the other hand, even as there were claims that the operation had failed and that there were grave human rights violations, some residents were of the view that the operation had succeeded in restoring calm in the area. Some respondents were particularly critical of human rights groups criticising the operation noting that these groups seldom come to their rescue when they are being terrorised by militia. A resident of El Wak posed, '*No activist came out when the armed men were on killing spree, but when the government goes after the perpetrators they shout loudest. Who will be the voice of those shot dead by the militia?*'¹¹⁴ Residents pointed out that there were many security officers who had lost their lives in the hands of the militia and in clan fighting, yet no human rights body ever follows up such cases. Examples were cited where on 21, October 2008 a soldier who was part of an army platoon patrolling the border was killed on the spot after alighting from their vehicle and exchanged fire; a body riddled with bullets was found in the bush¹¹⁵; on 27 October 2008, one soldier was critically wounded, and two were reported missing when Al-Shabab fighters ambushed Kenyan forces; on 31 October 2008 body of an abducted soldier was recovered in the bush in Damasa.¹¹⁶

The Impacts of the Security Operation

Injuries and deaths: a number of people were killed and injured following the Operation as evidenced by reports of the Red Cross and other human rights organisations. The Red Cross reported handling one verified fatal case that could be directly attributed to the army's brutality,¹¹⁷ and fifteen other cases of serious injuries. These included cases of people who had severe hemorrhage, loss of blood, soft tissue injuries and fractures of the legs and arms. Red Cross referred four cases to Wajir, nine to Mandera and two to Nairobi hospitals. It is reported that most of the 112 people admitted at El Wak hospital suffered soft tissue injuries to the back and buttocks inflicted by whipping.¹¹⁸ Hon. Mohamed Affey, a Nominated MP pointed out during a parliamentary session that two chiefs who were assaulted were admitted at Kenyatta National Hospital, while a 16 year old was admitted to the Nairobi hospital.

Loss of livelihoods: The army displaced people from Lafey to Damasa (25 km away) where they stayed for two weeks without food or water and they had to depend on rainwater for the whole of that period¹¹⁹. The

113 Field interviews January 2009

114 Adow Jubat and Boniface Onger, 'Clashes remain thorn in flesh of Mandera' East African Standard, 2 Nov 2008.

115 OCHA Tracking of conflicts in Kenya's arid and semi arid lands

116 OCHA Tracking of conflicts in Kenya's arid and semi arid lands ,quoting UNDSS Weekly security advisory

117 Mr. Titus Mung'uo of Red Cross, Mandera: A man who ran across the border from El Wak after being beaten by army personnel was brought back to El Wak District Hospital for two days, when his condition worsened the hospital decided to transfer him to Mandera through Red Cross. He died 15 km out of El Wak. The dead man's name was Abdullah Hassan Kala

118 Mutinda Mwanzia and James Ratemo, East African Standard 30/10/2008.

119 Discussions with the Lafey Chief.

displacement of people led to increased dependence on government relief food.

Displacement of persons: People were displaced during *Operation Chunga Mpaka*. A large number of the injured people had fled their homes into hard-to-reach areas since settlements were deserted for the period of the Operation. According to the Lafey Chief, at least 1,500¹²⁰ families had left El Wak and its environs. Red Cross set up temporary shelters in Kutulo, Shimbir Fatuma and the Wajir Mandera border.

Loss of property: There were claims of loss of property, jewelry and money to the members of the security forces who were searching for guns in the local homes. A Murulle businessman in Lafey pointed out that his house was looted and the army men took ten thousand Kenya shillings from his house. A goat trader claimed to have lost a quarter million Kenyan shillings. In Lafey, twelve shops were broken into and looted, purportedly searching for armament, while some women claimed that they lost jewelry¹²¹.

Disturbance of learning in schools: The military operation took place in November when Kenyan schools undertake their national examinations. Teaching in the affected areas was disrupted, as teachers were beaten or generally harassed by the military¹²². Entire families fled in fear of their lives, especially in El Wak whose population was reduced by 80% as people fled to Nairobi, Takaba, Wajir, Moyale and Isiolo among other places¹²³. Some of the fleeing families managed to transfer their pupils to schools in those places. Candidates for Primary Class Eight and Form IV sat for their examinations under fear and stress.

Harassment and public humiliation of local leaders: The beating was indiscriminate and chiefs, teachers, elders and even the disabled were not spared. Many chiefs complained bitterly about the public humiliation they suffered in the hands of the army personnel, from Lafey, Gaari, Wargadud and El Wak, in both Mandera East and Mandera Central. According to the Lafey Chief, the army personnel asked for the Murulle armory. He showed them his guns, which he owned legally; the interrogators insisted they wanted the guns owned by the militia. The local people were then collected together at the camp where a combined team of army and police officers commenced to beat and harass them, as they were exhorted to identify those with guns. The operation started at six in the morning and went on up to three in the afternoon. Then the elders offered to go and get guns, and they did come back with three guns. The Lafey Chief stressed his disillusionment with the government in an interview with this study team thus: *'I have worked as a chief for the last seventeen years. None of my bones were broken in the assault on my person, but I am traumatised, and have no morale to work; it is only the salary that still makes me to go to work. I have not taken any legal action regarding the matter, but feel bitter and wonder whether I will ever get redress.'*¹²⁴ All the chiefs in the affected areas felt let down by the District Commissioner, whom they accused of abandoning them at their time of need. They pointed out that by January 2009; the DC had not met them to discuss the way forward. The chiefs who were injured by the army included the Assistant Chief of Warankara who had his leg broken; the Lafey Chief who sustained soft tissue injury and a chief in Wargadud who suffered from peeling of skin all over his body after beating by the army. Another chief in El Wak had his thumb broken and back injured. The official explanation¹²⁵ of the assault on the chiefs of the affected locations was that they were promoting conflict by working very closely with the militia from their clans. According to a senior police official, a chief was arrested with six illegal guns. In the same vein, the official said, an old man was arrested with three guns; this means that even elders and chiefs cannot be above suspicion and should be treated as such. Some community members expressed similar sentiments about the chiefs. Yet according to the chiefs, it was futile to ask them to produce illegal guns, for the militia with guns had left the area.

120 Interview with Titus Mung'uo, Red Cross-Mandera, January 2009.

121 Group Discussions with Community members in Lafey, January 2009.

122 El Wak Secondary School Headmaster.

123 Head Teacher, Senior Chief Andawa Primary School, El Wak, January 2009.

124 Chief, Lafey.

125 Both the DC Mandera, DO El Wak, DO Garri and the OCPD pointed out during interviews that the chiefs worked closely with the militias from their clans.

The harassment was not limited to the locals. Both human rights groups and the press also complained of having been blocked and intimidated by the army and the police. The Human rights groups that retrieved the body of Abdullah Hassan Kala, a victim of the operation in El Wak, reported that their pathologist was subjected to a lot of harassment by the police. The police threatened him and surrounded the plane he used and prevented local witness flying to Nairobi to produce statement and testimonials in preparation for a possible case.

Cases of rape and gender based violence: The Red Cross Mandera confirmed a case of multiple rape of a woman whom they airlifted from Elele to Nairobi Women's hospital. There were claims of many unconfirmed cases¹²⁶. However, owing to the stigma attached to rape in the Somali community, few women reported rape cases because of the fear of backlash and the effect it would have on their future in the community. This raised the prospect of infection with HIV, as most of the women lost the window for administration with prophylaxis drugs by medical staff.¹²⁷ There were also allegations of women being tortured in order to extract information. Stories were told in Lafey of women who had their breasts held with pliers to make them reveal their husbands caches of weapons. There were also reports of women in Wargadud and El Wak who were injured while resisting rape attempts by the security personnel.

3.1.4 District Livestock Production Office

The main work of the Department is agricultural-type extension activities, advising communities on livestock utilisation, and range management. The Department also assists the communities to organise themselves by for example facilitating formation of water users associations. Although the Department has the mandate to advice on livestock production, it was neither involved in nor did it advice on the conflict over the Alango grazing areas or the development of livestock and water resources. The Department is '*not clear how decisions were reached*' on sensitive issues, concerning the site of water projects like the Alango borehole, since it is not represented in the security committee meetings¹²⁸.

3. 3.1.5 Arid Lands Resource Management Project

The Arid Lands Resources Management Project, known popularly as Arid Lands Project, has had a significant impact in northern Kenya. The Arid Lands Project has spearheaded policy formulation for northern Kenya like the Arid and Semi Arid Lands Policy, the Sustainable Peace Policy, and other efforts, which are now finding home in the State Ministry for Development of Northern Kenya and other Arid Lands. The Arid Lands project, has gathered immense knowledge and experience on local development in northern Kenya. It is able to bring these cross-district experiences to bear in solving particular problems.

The Arid Lands Project was deeply involved in the mitigation of the Mandera conflict. It facilitated peace elders and other actors like the Provincial Administration, helped with the logistics, and participated in meetings organised by the religious groups among others. Arid Lands Project held conferences jointly with other actors like USAID/PACT Kenya and Practical Action to enhance good neighbourliness.

9. 3.2 Community Responses

1. 3.2.1 Renewal of Umul Accord

The Umul Accord was renewed in 2008 when the conflict broke out over the same issues as in 2004/2005. A group including the religious leaders, elders from neutral clans, organisations like PACT-Kenya, Women for Peace and Development, Youth for Peace, Arid Lands Project, SUPKEM and NSC from Nairobi, met and facilitated a meeting based on the Umul Accord.¹²⁹ The process started with a meeting between religious

126 Discussions with women in Lafey, Garri, Wargadud, El Wak in January 2009.

127 Integrated Regional Information Networks (IRIN), December 2008, KENYA: Insecurity in northeast halts HIV activities.

128 Field discussions with the DLPO's office, January 2009

129 The Reinforcement of Previous Accords of 9th November 2008.' Unpublished report, Mandera

leaders and neutral clans, followed by a separate meeting with Garre and Murulle. Finally, a joint meeting was held with all the stakeholders to together discuss why the UMUL Accord had not worked and to agree on the way forward. Three major concerns that arose were:

- (i) Why the UMUL Accord not implemented fully;
- (ii) How to deal with outside influence; and
- (iii) How to guarantee government support for the elders to enforce the Accord.

The UMUL Accord's 'Reinforcement 2008' asked that government:

- (i) Should not abdicate its responsibility;
- (ii) Should enforce laws of the land;
- (iii) Should strengthen governance and deal with complaints in good time;
- (iv) Should respond early to security issues instead of waiting until things get out of hand;
- (v) Should stop corruption among security officers;
- (vi) Should transfer security officers who have over stayed in an area or are not performing.

However, as has been noted earlier, the renewal of the UMUL Accord did not stop the 2008 hostilities. Again, its impact cannot be quantified as the Security Operation was launched while the peace activities relating to the Accord were still ongoing, in effect forcing them to stop. Indeed, this brings into question the commitment by the government peace actors to working with the local people to bring about peace. Ideally, the operation should have been informed by the findings of the Accord.

3.2.2 Youth Peace and Development Groups

Several Youth for Peace and Development CBOs have been formed at differing times since the major clashes broke out in the Mandera District, some with mandates covering the Greater Mandera, while others concentrating on one or two of the new districts. The youth groups provide forums for exchange of views and ideas for the youth, and are well placed to campaign against drug abuse. However, capacity constraint is a key feature of these organisations, limiting their capability to address the problems affecting the area.

10. 3.3 Civil Society Organisations' Responses

3.3.1 Religious Organisations

The Supreme Council of Kenya Muslims (SUPKEM)

SUPKEM is the leading Muslim organisation in Kenya, with members, officials and offices across the country. SUPKEM Mandera works through the religious elders and community elders to re-inculcate proper Islamic principles/values within the community so that it renounces participating in or glorifying inter-clan violence. SUPKEM participated in Barazas (public meetings) to spread the message of peace. SUPKEM admits frustration that some are not heeding the message of peace. The Chairman of the Mandera branch noted, '*Banditry has been turned into a source of livelihood*'.

Through its elected leaders and its Nairobi Secretariat, SUPKEM provides voice for local concerns. However, it believes that the intervention by religious leaders to solve conflict are limited by lack of logistical capacity, such as transport to visit the hot spots and mobilise for peace, as well as a lack of consistent cooperation by the administration.

Mandera Mosque and Madrassa Development Committee

The Mandera Mosque and Madrassa Development Committee (MAMDEV) is a voluntary organisation bringing together a number of Islamic scholars and it runs an active secretariat based in one of the Mandera mosques. MAMDEV has taken on a broad mandate to coordinate the development of a modern Islamic education and the institutions offering this type of training in Mandera. MAMDEV runs a number of

Madrasas that innovatively combine Islamic and secular education in their curriculum.

MAMMDEV has formed a special sub-committee to participate in peace work in Mandera and to mediate between the two clans fighting each other. This sub-committee was selected from those Islamic scholars (Sheikhs) hailing from the Mandera clans which were not involved in the fighting, and they were chosen from among the ‘Corner Tribes,’ and the Degodia.¹³⁰ The peace and reconciliation committee that the Sheikhs formed has carried out various activities. It has spearheaded the holding of meetings to discuss solutions to the conflict in all its hot spot areas. It has been involved in the meetings that led to the UMUL Accord. It acted as the secretariat for the writing of agreements and accords. It liaises with the administration in implementation of agreements, and has been involved in organising, collecting and delivering to the victims of the traditional Somali –Islamic compensation payments.

3.3.2 NGO Activities for Peace

NGOs have been in the forefront of promoting peace through a number of well-received innovative initiatives. Below is a brief overview of some of the NGOs, which it must be emphasised does not represent all the active organisations on the ground. However, the summaries may highlight common approaches, capture pertinent issues concerning successes and shortcomings.

Mandera Peace and Development Committee

The Mandera District Peace and Development Committee started in 2000. The Mandera Women in Peace and Development was instrumental in the initiation of the Committee, and it provided the first Secretary. Youth, women, elders and other stakeholders like the NGOs, and CBOs were involved in the process. The initial Committee had 32 members of whom 17 were elders, and it was agreed that the Chairman would be an elder, the Secretary a woman and the Treasurer a youth. The Committee participated in making the ‘Maddo Gashe declaration.’ It visited several places in North Eastern Province assisting in solving conflict, including Ires Teno in Wajir North. However, as the Garre and Murulle conflict escalated in 2003, the Committee started to fall apart. Many Committee members became clan oriented and compromised by the conflict, and were accused of behaving like ‘warlords.’

The disagreements between some members of the MP&DC weakened the network, and it came under the general accusation suffered by civil society leaders that they were more interested in looking for money than in peace work. There were also feelings that peace workers were becoming an instrument of the local administration, or were becoming a party to the conflict, *‘The peace workers contribute to the conflict, because they are superficial and are used to cover up the real issues, and the members are only there to get their allowances.’*

The shortcomings notwithstanding, it must be acknowledged that the MP&DC played a crucial role in the districts in bringing together peace efforts, and linking them to similar national programs. It is therefore welcome that the Committee is in the process of re-organising itself and plans to involve its members in peace activities.

PeaceNet

PeaceNet contributed funds to facilitate Islamic religious leaders for peace talks and it trained mediators on the ground- the main result being the dialogue.

Practical Action

Practical Action has run livestock health, livelihoods and peace programs in Mandera for the last four years. Practical Action’s interventions have been through mobilising local traders and politicians and other stakeholders for peace. Practical Action strengthened the capacity of Women for Peace and the Peace Committee with financial assistance. It also brought in external consultants to train trainers (Training of Trainers) with a view to build local expertise on trauma counseling. The training targeted teachers, chiefs

130 See section 2 on clans of Mandera

and NGO workers, who would use the skills in their localities.

COCOOP

COCOOP is an arrangement to work together between three leading local NGOs dealing with relief services, including distribution of food and non-food items. When conflict escalated into Mandera town, the three CEOs met and decided that quick intervention was necessary to '*lower the fast rising temperatures.*' COCOOP formed a task force with Sheikhs from the two warring groups, and they rented vehicles mounted with loud speakers, which drove around in a two weeks campaign urging people to stop the fight and live together as they had done before. However, the activities halted when military intervention moved into the town, and army personnel started beating people indiscriminately. '*The initiative was taken out of our hands when the army came*' says the COCOOP, who felt that their initiative was showing signs of success.

Red Cross

The Kenya Red Cross has played a major role especially with regards to response to emergencies and conflict in northern Kenya. Red Cross assisted the conflict related Internally Displaced Persons in the 'hot-spots,' giving out about one hundred 'Family Kits' consisting of food and Non-Food Items. Red Cross distributed food in hot spots such as Warankara, Korome, Lafey, Alango and Sukela Tinja, on behalf of the government. The Red Cross flew in doctors, nurses, clinicians and medical kits during the Security Operation in Mandera. Its focus during this period was to offer first aid to those injured by the security forces, rescue and refer the very injured for medical attention. When it became apparent that many people had fled established settlements for fear of being beaten by the security forces, Red Cross carried out medical outreach in these hard to reach areas, treating over two thousand people.

5. 4. RECOMMENDATIONS

The people of Mandera and the government can change the trends and dynamics of the conflict in the District. To eradicate conflict, fundamental changes in economic systems will be necessary. A series of compromises between all parties involved will go along way towards such transformation. Below are some solutions suggested by respondents:

1. 4.1 Recommendations to the UN

- (i) There is need for a short term emergency assistance to the people displaced by the militia and the security forces in places like Wargadud, El Wak, Lafey and other places. These IDPs are currently a burden to local households and local institutions like schools. They need to resettle quickly so that they can continue with their livelihoods. The needed emergency support, especially for the IDPs whose houses were either burnt, looted or were forced to flee, include food, water, health care (human and livestock) and non food items. Similarly, the school feeding program should be stepped up in areas hosting IDPs. The assistance should be coordinated in such a way that the entire needy are reached, while adhering to best humanitarian standards/practices;
- (ii) There is need to provide logistical support to credible peace initiatives like the Umul Accord as a way of ensuring that the conflict does not reignite immediately;
- (iii) Timely situational analyses should take precedence in the events of conflict. This needs to be the beginning of UN response as it will inform the kinds of actions and responses;
- (iv) UN-OCHA, together with NSC should work more closely with the peace building organisations on the ground (like Mandera Women for Peace and the Arid-Lands Project);
- (v) There is need for coordination of restocking the families that lost their livestock during the conflict so that their lifestyle can go back to normal;
- (vi) UN agencies should work with government to reduce overdependence on natural resources with a view to address resource-based conflicts;

- (vii) UN OCHA / UNDP need to develop a long-term security management, peace building and conflict management framework in light of the situation of the region;
- (viii) UN agencies should work closely with the government and regional peace and security initiatives to reduce proliferation of small arms in the Horn of African region.

4.2 Recommendations to the Government of Kenya

1. 4.2.1 Peace Building

- (i) The government should develop a long term peace building and conflict management framework for North Eastern Province. This should be done in consultation with all stakeholders including religious leaders, local Mandera elites, elders and other important groups in the area;
- (ii) The government should demonstrate commitment in implementing peace building initiatives like the Umul Accord in a bid to bring lasting peace in the larger Mandera District;
- (iii) NSC and the Provincial Administration should work with the peace stakeholders in the three Districts to reconstitute their District Peace Committees. While at it, vetting should be done to ensure that the Committees include only people genuinely interested in peace. These Committees should then be capacity built in peace building;
- (iv) The government should avail funds through Arid Lands Development Program specifically for peace and security development;
- (v) The Communication Commission of Kenya should ensure that the media covers conflicts in Northern Kenya and other regions in a way that is conflict sensitive without their freedom being infringed upon.

2. 4.2.2 Security:

- (i) **Northern-specific security system:** A special, northern Kenya security system should be designed to enhance its responsiveness to the unique needs of the area and ensure trust, confidence, forward planning, early warning and realistic response;
- (ii) **Enhance community policing:** The government should work closely with the communities to develop a sustainable Community Policing infrastructure in Mandera. This is necessary because the numbers of government security personnel in Mandera is inadequate and is not expected to increase soon, yet the security situation (especially the clan conflicts and the ever escalating civil war in Somalia) keeps on escalating. In this regard, the government should help develop a strong and well thought out Kenya Police Reserve teams in the districts through an unbiased recruitment process, rigorous training and adequate equipment in consultation with the local communities;
- (iii) **Invest more in security:** The government should scale up its investment in security in Mandera. This should target personnel numbers, infrastructure and mobility. At the moment, the security personnel are few, inadequately equipped and lack quick response facilities to conflict hotspots;
- (iv) **Cease communal punishment:** The government should discourage and cease communal punishment in the name of “enforcing peace and security”. This method is prone to abuses by security personnel including human rights abuses in the forms of torture, murder and rape. This method also ends up alienating the local communities rather than bringing them closer to the government. On the same note, the government should avoid use of the army for policing. Such interventions lead to politicisation of criminality (like banditry) and make it more difficult to deal with underlying issues as communities end up uniting against the security forces which may sometimes be seen as an ‘occupation type’ army. Security personnel should be trained to respect human rights when carrying out security operations;
- (v) **Develop strong early warning/early response systems:** The police, local administration and the local communities should develop strong conflict information gathering and early warning systems. All the local peace workers should be trained on the same. The security forces should be enabled to act on information got from the early warning systems. It should also develop a transparent reporting system for the leaders and the chiefs;
- (vi) **Deal with impunity:** The police and the judiciary in Mandera should do as much as possible to

ensure that crimes committed in the districts are punished accordingly in order to discourage the culture of impunity. More courts and judicial officials should be availed in the three Districts. The formal judicial system should also consider working closely with the traditional judicial interventions such as some components of the Umul Accord (e.g. blood compensation) which tend to accommodate the local sensibility of justice (yet seen to contradict the secular legal tenets), to encourage more local people to seek justice in a way that they feel serves them well. The government should incorporate aspects of community governance and customary institutions into the legal regimes of the country, such that the best of the local ways get to be incorporated and help solve local issues.

- (vii) **Disarmament:** Proliferation of small arms is a critical issue in the conflict in Mandera. It is therefore imperative that the government of Kenya intensifies its participation in the regional disarmament initiatives in the Great Lakes and the Horn of Africa regions to facilitate a wider strategy in dealing with the problem of small arms proliferation. The government must think seriously of how to deal with the small arms in the hands of the civilian population in Mandera without further jeopardising their security. It is pointless to disarm people living along porous borders with Ethiopia and Somalia, when owning small arms by the civilians across the border is tolerated, or not controlled due to lack of government. The government may be required to legalise the guns owned so that it may monitor their use for security of the communities, or disarm the community members and beef up security to such a level that the threat from across the borders is sufficiently addressed. Possession of guns by local people should be documented and monitored; government should be even-handed in its policy of arming clans through the home guard system so that it is not construed as supporting certain clans against others.

4.2.3 Governance and Politics

Politics

- (i) The link between instability at the national level and the location level must be appreciated. What is happening in Mandera is not different from what is happening in Molo and Rift Valley, where poor political culture (and a no-prisoners-taken ethos of competition) leads to ethnic cleansing;
- (ii) Reform of Kenyan political system is required: Political office and power is becoming concentrated, and rewards are bountiful at personal and patronage levels. Winning or losing elections resonates with clan identity politics, and make a dangerously combustible combination;
- (iii) Electoral Commission should be enabled to track and punish political inciters, through enactment and enforcement of laws that punish such acts during and beyond the electioneering periods.

Administration

- (i) All posts at the divisional levels should be filled, including police posts, to ensure adequate presence in the area;
- (ii) Members of administration found engaging in unethical acts such as bribery, favouritism, should be brought to account;
- (iii) There is need for tailor made training targeted at newly posted administrators to help them in understanding the culture and ways of life of people of North Eastern Province. This is useful in helping them make informed decisions;
- (iv) Consult with local communities in creating districts, divisions, location and constituencies. While at it, conflict potentials of such subdivisions should always be considered.

Development

- (i) Find ways to assist community members who lost property to restart their livelihood through programs like micro credit;
- (ii) There is need for more boreholes and dams to address the perennial lack of water, while paying adequate attention to their access by different clans;
- (iii) Improve on low levels of literacy through short and long term measures and improvements in access to education;

- (iv) Facilitate diversified livelihood systems that encourage macro-investment and provision of Sharia compliant credit facilities targeting women and youth. Emphasis should be laid on ensuring that the many youth in Mandera are gainfully occupied as a way of preempting their exploitation by politicians and other self seekers;
- (v) Development projects, such as dams, by the government should be well thought out before implementation, and local stakeholders/groups should be involved throughout. Such developments should appreciate peculiarities of pastoralist system; water and other factors that affect pastoralism should be addressed adequately in such a way that does not engender conflict;
- (vi) The infrastructure, especially the transport system in Mandera, has to be improved to allow movement of security vehicles, and personnel during rapid responses;
- (vii) Livestock development is key- its development, especially with regard to marketing, could be an important source of employment for the youth.

Addressing the historical and socio-cultural issues

- (i) There is need for action against powerful negative myths against pastoralists, northern Kenya (NFD) and Muslims in general;
- (ii) There is need for airing and publicly addressing the historical grievances against the Kenyan State by the people of northern Kenya so that the issues are laid to rest in an acceptable manner. This should also refer strongly to the Truth, Justice and Reconciliation process that is in the pipeline;
- (iii) There is need to put an end to the culture of impunity: Impunity at all levels has been the hallmark of the region's history, by administrators; by politicians and their supporters; by actual perpetrators – individual members of the security forces abusing their offices; by bandits, militia, tribal elders, pursuing tribal vendettas;
- (iv) The government needs to adequately resolve issues of land access and control in the specific circumstances of northern Kenya to ensure justice. The present traditional system allows reciprocal use, and works to allocate resources in ways that maximise their use. Nomadic population's shifts are dynamic, a new clan taking over land where another was. However constituency politics and borders do not fit in this system and there is a contradiction between mobile clans and static borders;
- (v) State must invest in urban based non-agrarian employment creation with a view to address the pressure put on natural resources by the growing pastoralist community of North Eastern Kenya.

Boundary Issues

- (i) Proper forums should be set up and funded to discuss boundary issues;
- (ii) 'Districts' should be reviewed in such a way as to avoid engendering feelings of 'clan-exclusive ownership';
- (iii) For increased credibility, non-partisan people should participate in boundary demarcation processes;
- (iv) The benefits of using the colonial boundary to delineate grazing rights should be considered;
- (v) Avoid creating new settlements in disputed areas;
- (vi) Electoral boundaries, tribal boundaries and administrative boundaries should be properly clarified. Such clarifications should seek assistance from the maps at the Kenya National Archives and local elders to inform district and grazing boundaries;
- (vii) Local people should be involved in determination of constituency, community and administrative boundaries;
- (viii) The boundaries should be sensitive to the ecosystem and livestock movements, which should also be very clear in the minds of everybody;
- (ix) There should be a moratorium on more subdivision of the administrative boundaries owing to their negative impacts on the environment;
- (x) A 'Conflict Potential Analysis' and Environmental Impact Assessment should be carried out before any development initiatives are implemented to avoid triggering or causing conflict and negative effects on environment;

- (xi) Demarcation between Mandera East and Central should be done amicably. However, exclusive ownership of districts (Bantustan style) should be discouraged. People should belong to the side they find themselves physically.

Cross-border issues

- (i) The government should increase vigilance at the borders with Ethiopia and Somalia through adequate policing. This is in order to prevent militia and small arms from across the borders infiltrating into Kenya. Community policing should be used to ensure that foreigners are identified and arrested and small arms recovered;
- (ii) Kenya should spearhead search for peace in the horn region.

2. 4.3 Recommendations to Communities and Community Based Organisations

- (i) There is need for a campaign to change the attitudes of people with regard to peace building;
- (ii) Efforts should be made to build trust among the communities through traditional peace building methods;
- (iii) Local organisations, including religious organisations, should take a lead in peace building;
- (iv) Women and youth should be recognised, encouraged and enabled to lead in peace building initiatives;
- (v) Explore more traditional and customary ways of establishing the root causes of the conflict- local problem solving methods be promoted;
- (vi) Ensure that conflict resolution initiatives in Mandera are all inclusive to the extent that the views of the stakeholders at the grassroots are included. This would increase the local stakeholders' confidence in their ability to foster peace among themselves;
- (vii) The limitations of local efforts (such as peace meetings and the work of religious elders) must be appreciated - as they do not have enforcement powers - even while recognising their achievements and successes;
- (viii) Any peace dialogue must tackle the fundamental issues such as boundaries; poverty; alternative livelihoods especially for the youth; disarmament; sharing of pasture and water; and how to resettle the displaced persons;
- (ix) Peace committees should be revamped and facilitated to be more energised and made effective, trusted and appreciated;
- (x) Ensure that the peace accords that were signed are implemented to the letter.

6. APPENDIX 1. THE UMUL ACCORD

Resolutions of the UMUL Accord

Resolution 1.

It was judged, after tabulations of deaths and injuries caused by the conflict and agreements to pay compensation according to Somali Customary Law, that the greater losses suffered by the Garre should be compensated. It was agreed that Murulle would pay KSh. 7,600,000 in three installments, three million on signing, Ksh. 2.3 million by 30th October 2005, and a final Ksh 2.3 million by April 2006. It was agreed that a sum of Kenya Shillings one million, which had been paid by the Garre and held by the Mandera DC, be returned to them.

Resolution 2.

After payment of Phases 1 compensations, combined delegations of Garre and Murulle elders would go to the hot spots and 'preach peace.' Then payment would be made at the ground level of the compensation, and there would be a return of displaced urban people to El Wak, Lafey, Wargadud.

Resolution 3.

It was resolved that there would be no compensation for loss of wealth and property, but Garre would pay Kenya shillings six hundred thousand (KSH 0.6m) to repair houses.

Resolution 4.

It was agreed that rapists would be handed over to government and there would be no acceptance of payment to forgive this crime. Where clear evidence was lacking, an Islamic oath would be used to establish innocence, administered first to the accused, then to the woman. Injuries would be dealt with according to the Islamic Sheria. A woman who was raped would be paid dowry equivalent to what is normally paid for women getting married; a further compensation would be sought if the victim was a virgin.

Farms and pasture land would be separated by clear fencing, and farm owners should guard their farms during the day. Livestock owners would pay for transgressions by their stock; if transgression were proved to be deliberate the culprit would be arrested and made to pay for damage caused. Nomadic communities would have to respect the traditions of place where they move to, and accept the area chief as their chief. Any conflict that arose would be resolved through elders of host community. The host community should have patience and deal with migrants tolerantly. Damage actions against trees and vegetation were prohibited, and such actions should be reported and punished.

Murderers were to be handed over to government. In unclear cases, oath would be used. If a group of elders claimed compensation for murder of one of their own, the oath would first be administered on 50 elders from those claiming compensation. If the 50 elders agreed and underwent the oath, their claim would be accepted and they would be paid. If they declined to undergo the oath, then 50 elders from the accused clan would be asked to take the oath; if the accused clan elders under oath swore they were not transgressors, no payment for compensation should be made. If both sets of elders decline to undergo the oath, the case will be adjourned until clarity is found;

Elders would undertake to control crowds, and avoid any incitement that leads to conflict.

Resolution 5.

It was resolved to ask government to release all those who had been captured by security forces in the name of the conflict.

Resolution 6.

Conflict over pasture and water were not resolved; Issues of peaceful coexistence not solved; Conflict over

administrative locations were not solved; The killing of Garre at Jabibar 20 April 2004 unresolved.

Resolution 7.

It was resolved to create a standing committee, made of 20 persons, including 6 religious leaders, and 7 elders from each clan, Murulle and Garre, to oversee the implementation of the resolutions. It was agreed that not every incident will be treated as a violation of the accords, until the elders from violating community accept that they have failed to resolve the issue at hand. At the height of the post-election violence in Kenya in early 2008, the Orange Democratic Movement which was protesting the result of the presidential election that declared incumbent president Mwai Kibaki re-elected, refused to take its' dispute for judicial determination because it didn't believe that the judiciary was an impartial and independent arbiter to oversee the election petition.

The judiciary is an important component of the rule of law in any country. Its absence or its undermining could lead to insecurity and recourse to private justice. Many of the civil wars that occurred in parts of Africa in the 1990's were as a result of the absence of public confidence that an independent and impartial judiciary that could mediate differences and grievances with the State existed. As a medium for protecting the rights and liberties of the individual, the inability of the judiciary to deal fairly among citizens and to rein in executive excesses contributes to a culture of impunity where might is right and where citizen voices are muscled and denied.

Kenya had signed several international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR).¹ The Covenant enjoins State parties to ensure equal treatment of person before judicial tribunals and to fair and public hearing by competent, independent and impartial tribunals established by law.² The United Nations Human Rights Committee has further declared that the right to be tried by an independent and impartial tribunal is an absolute right for which there should be no exception.³ Kenya is also a signatory to the African Charter on Human and Peoples' Rights which promises individuals the right to be heard. This right includes the resumption of innocence until proven guilty by a competent court or tribunal as well as the right to be tried within a reasonable time by an impartial court or tribunal.⁴ In a landmark decision, the African Commission on Human and Peoples' Rights declared that Article 7 of the Charter cannot be deviated from since it provides the minimum protection the citizens.⁵

The UN Basic Principle on the Independence of the Judiciary;⁶ the UN Basic Principles on the Role of Lawyers,⁷ and the UN Guidelines on the Role of Prosecutors⁸ are major documents that have set out the universal standards on the role of these three institutions. The guarantees provided in these documents were further adopted in the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa which was adopted by the African Commission on Human and Peoples' Rights in 2003.⁹ Despite acceding to these international and regional instruments and protocols, the experience in Kenya was that they were observed more in the breach than in compliance. Between 1960 and 1998 eight different committees and/or commissions were established to examine the state of the judiciary and to make proposals for reform. Most of the reports by these committees/commissions were ignored. Not surprising therefore, the state of the judiciary has been a major point of discourse in Kenya. Decades of one party rule accompanied by the overwhelming power of the president has contributed to a public perception of weakness, ineffectiveness and political manipulation of the institution. Appointment, promotion and discipline of judicial officers have been the preserve of the executive and have not always been on the basis of merit and integrity. Each of the constitution making processes the country has had over the last two decades¹⁰ recommended reform of the judiciary. The recently adopted constitution also directed that all judicial officers in the country must undergo a vetting process. The Constitution provided that within one year from its operative date, Parliament should enact legislation establishing mechanisms and procedures for vetting the suitability of all judges and magistrates who were in office at the time the Constitution came

into effect (that is on 27 August 2010), to continue to serve in accordance with the values and principles established under the Constitution.¹¹

On the basis of the constitutional provision cited above, the Ministry of Justice, National Cohesion and Constitutional Affairs published “The Vetting of Judges and Magistrates Bill 2010” which had been approved by the Cabinet. This paper reviews this draft legislation, using comparative experience to provide strategic policy choices that should be considered in discussing and approving the legislation in Parliament as well as in its implementation.

About The Author

Dr. Ozonnia Ojielo is the Senior Peace and Development Advisor to the UN Resident and Humanitarian Coordinator and Chief of the Peace Building and Conflict Prevention Programme of UNDP Kenya. He is a former Senior Governance Advisor at UNDP Ghana. His previous career positions include Chief of Information Management and subsequently Officer-in-Charge of the Sierra Leone Truth and Reconciliation Commission, Human Rights lawyer and private legal practitioner in Nigeria, University teacher in Law and Conflict Resolution at the Enugu State University of Science and Technology, Enugu and the ESUT Business School, Lagos, Nigeria, President of a research and advocacy NGO, Centre for Peace in Africa, in Lagos, Nigeria, and professional mediator, conciliator and arbitrator in Nigeria. He holds first and advanced degrees in History, Law, Strategic and Project Management, and Peace and Conflict Studies.



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The Amani Papers is published monthly by UNDP Kenya as a contribution to knowledge development and management in Africa. It solicits contributions from researchers, academics and field practitioners with a slant on peace building and conflict prevention issues generally. It promotes policy oriented and actionable research to strengthen national capacities and to generate political will for peace building and conflict prevention interventions. Articles are welcome on any subject related to peace building, security, transitional justice, reconciliation, traditional conflict management, alternative dispute resolution, national cohesion and conflict transformation. Practitioners' notes are also encouraged so as to inform policy from practice. Articles should be sent by email to the Journal Editor, Dr. Ozonnia Ojielo on ozonnia.ojielo@one.un.org.

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United Nations Avenue,
Gigiri
P.O. Box 30218, Nairobi
Phone: (254-2)7624394
Fax: (254-2)7624409
Email: registry.ke@undp.org
www.ke.undp.org