Rules of the range

Natural resources management in Kenya–Ethiopia border areas

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HPG Working Paper

September 2011

hpg Humanitarian Policy Group

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EUROPEAN COMMISSION Humanitarian Aid

odi Overseas Development Institute

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Acknowledgements

This study was undertaken as part of an ongoing partnership between the Humanitarian Policy Group (HPG) at the Overseas Development Institute (ODI) and CARE International under the ECHO-funded Regional Resilience Enhancement Against Drought (RREAD) Programme, together with HPG's Integrated Programme under the theme 'Livelihoods and Local Institutions'. Since 2008 HPG has been providing support to CARE International to document and strengthen best practices around drought cycle management in the Horn of Africa. This study was jointly designed and planned by HPG and CARE International.

For their invaluable support to the planning and implementation of this study the authors would like to thank the staff of CARE International, particularly Hassan Hulufo Oda, Adan Wako, Abubeker Tussa, Hussien Tedela and Aliyu Mustafa. For their insightful comments on earlier drafts we would like to thank Jonathan Davies (IUCN), Belachew Deneke (UN-ISDR), Halake Dida (CARE Ethiopia), Fiona Flintan (independent), Saverio Krätli (Nomadic Peoples Journal) and Adrian Cullis (FAO).

The authors are grateful to the many pastoralist communities, elders and cross-border committee members interviewed in the locations visited in northern Kenya and southern Ethiopia, who generously gave their time to take part in this study.

Many thanks to Matthew Foley for his expert editing of the report.

ODI gratefully acknowledges the financial support of the European Commission Directorate General for Humanitarian Aid and Civil Protection (DG-ECHO) and the donors to HPG's Integrated Programme 2011–13. A full list of funders to the Integrated Programme can be found at www.odi.org.uk/hpg/integratedprogramme.

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ISBN: 978 1 907288 46 3

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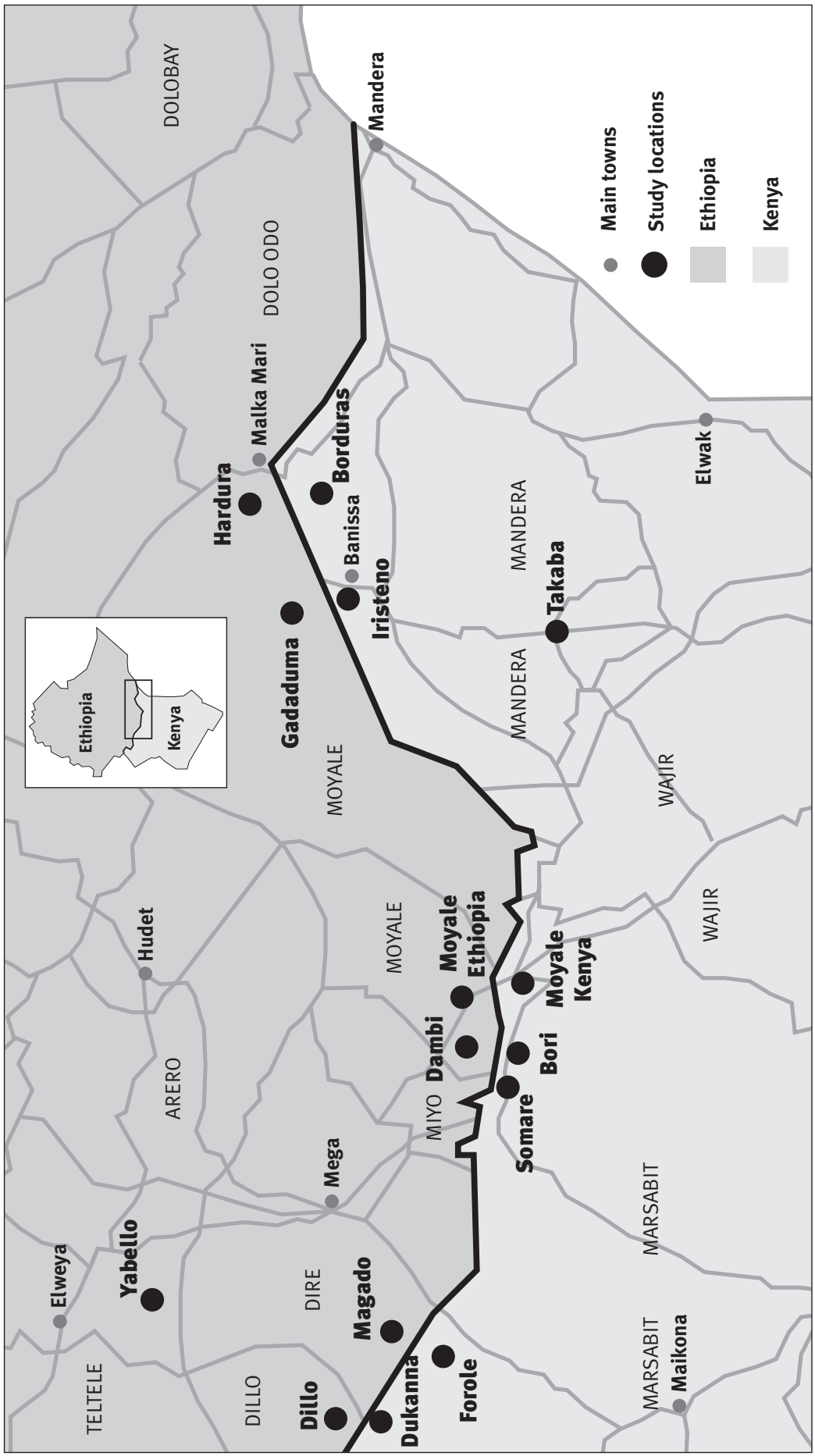
Acronyms

ASAL	Arid and Semi-Arid Lands
AU	African Union
AUBP	African Union Border Programme
CEWARN	Conflict Early Warning and Response Mechanism
CIFA	Community Initiatives Facilitation Assistance
COMESA	Common Market for East and Southern Africa
DC	District Commissioner
DO	District Officer
DRR	Disaster Risk Reduction
ECHO	European Commission Directorate General for Humanitarian Aid and Civil Protection
GoE	Government of Ethiopia
GoK	Government of Kenya
IGAD	Inter-Governmental Authority on Development
IUCN	International Union for Conservation of Nature
MDNKOAL	Ministry of State for Development of Northern Kenya and Other Arid Lands
MoFA	Ministry of Federal Affairs (Ethiopia)
OLF	Oromo Liberation Front
PA	Pastoralist Association
PPFA	Pastoral Policy Framework for Africa
RREAD	Regional Resilience Enhancement Against Drought (NGO project)

Figure 1: Map of the study areas in Ethiopia and Northern Kenya



Source: FAO.

Executive summary

Boran, Gabra and Garri pastoralists in the border areas of northern Kenya and southern Ethiopia have long relied on the management of natural resources to maximise land use and sustain livestock productivity. Managing herd movements plays a key role in rangeland management, with some areas suitable for use during the dry season and some during the wet season. The rangeland as a whole constitutes a communally owned economic resource that must be shared among the different pastoralist ethnic groups and clans living in the area. They have developed an institutional system of primary and secondary rights of access with procedures and principles for negotiations between different pastoralist groups to regulate the sharing of water and pasture. This indigenous institutional framework governs the mobility of herders and their livestock, including across the international border, maintains and restores collaboration among clans and ethnic groups and provides a framework for managing disputes and conflict.

For decades the viability of livelihood systems in the region has been weakened for a number of reasons, including the erosion of pastoralist institutional arrangements around natural resources management. This is in part due to state policies and actions that have not recognised the right of the pastoralists to own or manage their rangelands, and have therefore ignored their institutional system. The expropriation of parts of the rangeland is one reason why their livelihoods have lost some resilience, and thousands have been pushed out of pastoralism, forced to settle in or around urban centres and compelled to look for alternative livelihood opportunities. Although support for people in pastoral communities to pursue alternative (and complementary) livelihoods is badly needed, pastoralism remains the most resilient and economic use of the rangeland. But for pastoralism to remain a viable livelihood option, and one which continues to contribute millions of dollars to exports and to national economies, institutional arrangements around natural resources and land management need to be better supported, including institutions for cross-border mobility.

These institutional aspects, including land rights, have rarely been given the necessary attention in national policy-making. This is in part the outcome of broader attitudes and policies towards pastoralism. For policy-makers pastoralism is often linked to backwardness and poverty, which should be 'solved' with the sedentarisation of pastoralist communities. In many cases governments have failed to recognise the very existence of customary institutional arrangements; in other cases such arrangements have been sidelined and undermined. There are a very limited number of national policy documents in Kenya and Ethiopia that mention issues related to the cross-border sharing of natural resources and livestock mobility. Ongoing sharing arrangements around natural resources currently take place in a legal and policy vacuum, and so depend more on the attitudes of individual local government officials. The consequences have been serious: conflict and tensions in pastoralist areas have escalated, rules and practices around natural resources management have been eroded and pastoral livelihood systems have been further weakened.

Since the late 1990s, some external interventions in the study area have sought to strengthen customary institutional arrangements, particularly for conflict management. Some organisations have supported the establishment of cross-border committees. Cross-border committees involve representatives of both state and customary institutions, and they operate by blending formal (state) and informal (indigenous) rules and mechanisms in a hybrid structure. Although they have no official status, some are taking on roles as authorities in natural resource management, and are becoming the structures through which some communities are negotiating or claiming rights to access grazing land and water sources. Since state institutions cannot possibly govern rangeland management, and since customary authorities are being undermined by state officials, such hybrid institutional arrangements could represent a compromise, offering what some pastoralists called a 'modern' approach to cross-border rangeland management.

This outcome will depend upon the committees becoming institutions with authority, where customary and formal institutions collaborate as equal partners and work jointly towards a shared development objective. It is far from clear that these conditions can be fulfilled, especially where pastoralists are regarded as exploiting 'free' land which the state can take away from them at any time it chooses.

Little attention has been paid to issues of representation within the committees, or their accountability and independence, and there is a need to better understand how power and competing interests play out between different spheres of authority. Another institutional option for integrating state authority and customary land management would be for the committees to be a coordinating structure between the state and customary authorities, rather than an authority in themselves, working within a framework that gave clear rights, roles and responsibilities to both the state and customary institutions and laid down ways for them to work together. Although this latter option is a very different model from that which sees cross-border committees as hybrid institutions with authority, neither the differences nor their implications have been well understood by those working with the committees – or indeed by the committees themselves. Ultimately, the role and possibly the future existence of these committees

will depend on the formal recognition that they are given in policy, legal and administrative structures as well as by the recognition that they are given by pastoral communities themselves and by the customary institutions which they may, to some extent at least, replace.

The main recommendations of this report are:

Recognise the links between natural resources management, conflict and resilience. Peace initiatives which ignore the institutional dimension and its link to natural resources management are unlikely to bring long-term impacts. Support to peace initiatives needs to address the problems of conflict at a much more fundamental level and understand natural resources management as inextricably linked to conflict and conflict management. The 'technical' side of natural resources management cannot be addressed in isolation from the institutional and governance aspects, which together are the main determinants of how rangeland users relate to each other.

Establish clarity on 'developing' pastoral areas. The development of a broad vision and strategy for supporting pastoralism to guide the efforts of all actors working in pastoral areas is needed. The African Union Pastoral Policy Framework for Africa provides a useful framework for this.

Recognise the cross-border nature of pastoralism. International and national development partners need to find ways to translate their recognition of the need for a regional (and cross-border) approach to pastoralism into practical support on the ground that is designed, planned and implemented with a regional perspective.

Develop a legal and policy framework. The governments of Kenya and Ethiopia need to establish a clearer policy and legal framework that recognises the cross-border nature of pastoralism. This must be a concerted effort by all stakeholders including the Kenyan and Ethiopian governments at all levels, cross-border committee representatives and other civil society actors, with regional bodies playing a prominent, catalytic coordination role.

Land tenure. A legal framework that recognises the nature of communally owned private property in pastoral areas is needed.

Involve customary land institutions. Formal legal support is needed for customary institutional frameworks governing natural resources. This involves legal recognition of customary institutions, and agreement on the respective roles and responsibilities of state and customary institutions.

Rangeland management as an entry point. Ongoing external interventions to enhance the productivity of the rangelands must be informed by a deep understanding of the institutional picture rather than by technical perspectives alone. If natural resources management is seen both as a technical and as an institutional issue it will be easier to ensure that rangeland support is not constrained within administrative boundaries, but rather follows ecosystems and grazing/livelihood systems.

In-depth understanding of cross-border committees. As social and communal relations are bound up in arrangements for sharing rangelands, the role of cross-border 'peace committees' in natural resources management and land administration should be understood. Any external support to these committees should be premised on a thorough understanding of their roles, functions and rules, their accountability and representation, their impact on other institutions and the underlying development vision towards which they are working.

Chapter 1 Introduction

Pastoralists manage their livestock herds by managing their rangelands and their mobility across those rangelands. This basic truth needs stating as a starting point for any discussion of pastoralism and rangeland management, because it is frequently denied or ignored: pastoralists are too often believed to simply 'exploit' a natural resource (indeed, to over-exploit it, to degrade it).

Rangelands are vast tracts of land with natural vegetation comprising native grasses and shrubs (Nalule, 2010). Rangeland ecosystems in the study area are characterised by high temperatures and low, unpredictable and highly variable rainfall, creating low vegetation cover density. For pastoral systems, they are endowed with a wide range of natural resources, including water sources, forests, salt/mineral licks, honey and a huge variety of grasses, plants and shrubs that are used for livestock grazing and browsing, as well as for medicinal and other purposes.[1] Some of the rangelands of northern Kenya and southern Ethiopia are suitable for grazing mainly in the wet seasons, others in the dry seasons.

There are two sets of logical principles underpinning livestock migration. The first is quite simple and determines movement between wet and dry season grazing areas.[2] Livestock need both water and pasture, and most parts of the rangelands have both abundant water and good grazing only at certain times of the year. The rangelands of the Gabra, for example, are located in the very dry and hot lowlands that extend from the fringes of the Chalbi desert in Kenya up to the border with Ethiopia. Here, surface water sources, such as ponds, lakes and rivers, are only found during the wet season, and since there are no permanent sources of water, access to and use of these lands is only possible during the wet season. The Borana plateau, by contrast, is naturally endowed with perennial underground water sources, making it particularly suitable during the dry season and in periods of drought. However, it is unsuitable during the wet season, because some areas become infested with biting flies, ticks and mosquitoes. Most communities thus have a normal seasonal movement, with wet and dry season grazing/watering areas in reasonably close proximity, and they will also have areas of migration in particularly dry times, which are further afield. Pastoralists from southern Ethiopia commonly migrate to northern Kenya during wet seasons, while during dry seasons and drought northern Kenyan communities often migrate to southern Ethiopia.

The second set of principles is linked to the management of rangeland quality. Mobility allows pastoralists to track good-quality grazing, turning diversity and change into a positive feature 'to take advantage of the ever-changing diversity of dryland ecology' (IIED and SOS Sahel, 2010: 15). The way herders manage the range also maintains its quality. While this paper does not aim to undertake a technical analysis of rangeland management, broad principles are nonetheless important. If too many livestock are grazed for too long in one area, they will degrade the rangeland. Pasture quality also depends on the quality of the vegetation. This goes beyond the species composition and the presence of palatable or poisonous plants, to include more detailed factors such as protein content.

Annual plants are crucial to pasture quality because they contain more digestible and higher-protein matter. Species composition is much harder to manage than simply preventing overgrazing. If pastures are grazed permanently, even at low pressure, then they will never set seed and the pasture dies off quickly. If they are not grazed at all seeds are not dispersed, vegetation is not broken down and again there is loss of pasture quality. Rangeland management means that pastoralists have to get the balance right, using seasonal combinations of intensive grazing of higher quality with movement to zones with higher levels of vegetation, but usually of lower quality, and often with greater disease burden (see IIED and SOS Sahel, 2010; Krätli and Schareika, 2010; Homewood and Krätli, 2009; Barrow et al., 2007a and 2007b for further discussions on migration, mobility and rangeland management). The role of active management in the creation of the rangelands is so important that some scholars have argued that the very term 'natural resources' is inappropriate, since it implies that pastoralists exploit a resource given by nature, rather than creating a resource for themselves (out of what nature provides).[3]

The complexity of all these factors – browsing/grazing, water and other resources, wet and dry season areas, high- and low-quality grazing – together constitute a single resource: interlinked components of *one* single physical and economic asset – whose different features are 'combined' through herd mobility. In the nineteenth century the establishment of the international border between Kenya and Ethiopia effectively cut this single asset into two. Given that for mobile pastoralists the rangeland is only economically viable when used and managed as a whole, they have continued their seasonal movements, often including movement across the border to access dry and wet season grazing areas and water.

1 Although grazing and browsing are not identical (broadly speaking, cattle graze grass, goats and camels browse shrubs) since this is not a technical analysis of the rangeland, for simplicity we use 'graze' to cover both grazing and browsing.

2 In northern Kenya and southern Ethiopia the year is divided into two rainy seasons and two dry seasons.

3 See Krätli, 2010. Whilst accepting the fact that the rangeland is indeed created through use by pastoralists, we nevertheless follow normal usage and take the term 'natural resources' to include the rangeland, as we would include soil as a natural resource in farming, even though its structure and fertility are also the creations of use and management.

1.1 Threats to pastoralism

Rangeland management has come under increasing threat from a number of directions. Parts of the rangeland are suitable for irrigated farming, and some of the most critical parts of the rangeland (typically dry season reserves) have been taken away from pastoralists for farming schemes.[4] If rangeland productivity is assessed without understanding how the rangeland works as a single asset, it would be easy to conclude that irrigated farming in certain areas would generate more income than pastoralism. This however fails to consider how the productivity of the whole rangeland depends on all of its parts, and by taking the dry season and drought reserve grazing areas out of the system the rest of the rangeland is rendered less productive. Better economic comparisons have shown that pastoralism is both the most economically productive and the most resilient way of using the rangeland (e.g. Behnke and Kerven, 2011).

The rangeland has also been fragmented by settlements, by national parks and, crucially, by war and conflict, all of which have reduced access. Mobility has also been threatened directly by states' efforts to confine pastoral populations within certain restricted areas, a continuation of policies favoured by colonial governments. Restrictions on cross-border movement have also had a detrimental effect, since rangeland management depends in part on cross-border mobility. In recent years, these challenges to pastoralists' freedom of movement have intensified, partly (and ironically) because of a much greater integration of the pastoral economy into national and international markets (and the desire of governments to control and profit from that trade) and partly because of increasing worries about national security. All these factors have contributed to the weakening of pastoralist livelihoods, with pastoral communities finding it increasingly difficult to cope with and recover from drought shocks. This is one factor behind many being forced out of pastoralism altogether.

Clearly, the political environment in which pastoralism operates is crucial. Pastoralism remains linked in many politicians' minds to backwardness and poverty, despite the fact that it takes advantage of conditions that are often unsuitable for any other economic activity, and contributes millions of dollars to national economies. The accusation is repeatedly made that pastoralists have over-exploited the rangeland, causing its degradation; the consequent loss of productivity is then blamed both for the economic vulnerability of pastoralists and for conflicts over scarce resources. There are fears, across countries in East and West Africa, that climate change will make future rainfall even less reliable, further undermining the resilience of pastoral livelihoods and bringing an inevitable escalation in conflict over resources. The solution often proposed is for pastoralists to settle and start farming crops.[5]

4 For a fuller discussion of the importance of such areas, see Scoones, 1992.
5 For example, see the Prime Minister's 13th Ethiopian Pastoralist Day Speech (25 January 2011) or statements by the Minister for Karamoja Affairs in Uganda (http://janetmuseveni.com/karamoja_transform.php).

Specialists in pastoralism, however, argue that mobility is the *cure*, not the *problem*, and that conflict, food insecurity and land degradation are mainly the results of policies designed to restrict mobility (Scoones and Graham, 1994; Hatfield and Davies, 2006; Cullis, 1992). While acknowledging that for many pastoralism no longer represents a sustainable livelihood system and that more support is needed for livelihood diversification (both alternative and complementary livelihood options), they argue that pastoralism remains the most viable livelihood option in the region for many, especially in the face of a changing climate. However, this will only be possible if the institutional constraints to its development are removed.

1.2 The study

This study explores issues of rangeland management and mobility and how they link to economic outcomes and to conflict. It does not appraise the management rules of pastoralists from a technical perspective, but rather explores how the rangeland is governed, looking at natural resource management through an institutional lens. The relationship between natural resources management and institutions of land management and land tenure has been examined in agricultural and forestry contexts. There is also a growing literature coming from agricultural contexts on the relationship between formal (i.e. state) land administration and customary land tenure. Land management and natural resource management depend on institutions and systems that set rules on what can and cannot be done. Without such institutions land is a free-for-all, and the likely outcome is the well-known 'tragedy of the commons' (Hardin, 1968): where there is no power to manage land, there is no individual incentive to manage land for the future, and destructive exploitation and resource degradation will often result.

Rules can be established by the state with formal powers of law and statutory responsibilities – everything from courts of law to Land Registries, with rules deriving from acts of parliament covering inheritance, planning regulations, etc., and local authorities with powers to set by-laws. Other institutions can be based on what people locally accept as authority. These institutions, often called customary institutions, may or may not have legal recognition, but their importance comes from the degree to which people follow such 'ways of working'.[6] Customary institutions include locally accepted practices around inheritance and marriage, and locally respected authorities, such as 'elders'. Such

6 'Customary' is commonly used to describe indigenous institutional arrangements and practices. The term is however is misleading since it implies that practices and institutions are somehow less modern than those of the state, and that these institutions are largely static and unchanging. Another common term is 'informal', which is no less misleading since 'informal' laws and institutions may actually be more formalised than 'formal' (i.e. state) ones. With some reservation, this report follows common practice in its use of the term 'customary', but draws attention to the fact that no implication is made that indigenous institutions and practices are archaic, unchanging and 'informal'.

authorities often do not have the same degree of separation of powers as formal institutions, and the same elders often set the rules and adjudicate disputes. There are an increasing number of institutions with no clear legal status, such as water committees established by local government services, but with no formal legal powers or mandate. 'Hybrid' institutions have one leg in a state framework and one in customary tradition, while NGOs often set up structures that have neither state nor customary sanction.

In many countries customary institutions have become weakened and are not performing their intended roles adequately, in part because formal institutions have repeatedly disregarded or undermined them. A small number of studies have analysed the role and functioning of customary institutions in relation to pastoralism (see Barrow et al., 2007b; Muir, 2007; Flintan, 2010; Tache and Irwin, 2003; Tache, 2010, Watson, 2001; Davies and Roba, 2010). Cross-border mobility adds a new dimension of complexity to the analysis of both customary and formal institutions. Although there has been increasing recognition of the need to take a cross-border perspective in many fields – in development planning, contingency planning, humanitarian interventions and peace-building – the institutional frameworks which regulate cross-border activities around natural resources remain unexplored. This study is designed to address this knowledge gap.

1.3 Study aims and methodology

This study aims to gain an understanding of the institutional framework and key actors regulating and involved in cross-border natural resources activities in the Kenya–Ethiopia border areas. The purpose is to highlight key entry points to government agencies, international donors, regional bodies and I/NGOs wanting to support initiatives in cross-border natural resource management. Although there are many 'natural resources' in the range, the study concentrates on pasture (grazing and browse) and water resources, since these are the primary determinants of mobility and hence the best entry-point to understanding the institutions of interest to the study. This is not intended, of course, to deny the importance of other resources.

This study relies on a qualitative methodology and on primary and secondary data. Research on cross-border dynamics in this area has been undertaken by the Humanitarian Policy Group and CARE International over the past two years (see Pavanello 2010a and 2010b). A further period of primary field research specifically to investigate institutions of natural resource management took place during two weeks in March 2011 in the following pastoralist settlements along the Kenya–Ethiopia border: Borduras-Hardura, Iristeno-Gadaduma, Bori-Dambi, Moyale Kenya-Moyale Ethiopia, Dillo-Dukanna and Magado-Forole (see Table 1 and Figure 1). The following cities and towns were also included in the field visits: Nairobi, Takaba (Mandera West District) and Somare (Moyale District) in Kenya, and Addis Ababa, Mega (Dire Woreda) and Yabello (Yabello Woreda) in Ethiopia. The study areas were selected through discussions with staff from CARE and included both areas where CARE Kenya and CARE Ethiopia are operating and areas where CARE has no operations.

The research methods used involved focus group discussions (FGDs) and in-depth key informant interviews. Participants of FGDs included pastoralist men, community elders, village chiefs, Pastoralist Association (PA) chairmen and cross-border committee representatives. The limited time spent in the field and the long distances involved in reaching border settlements meant that, in some cases, the research team was able to undertake only one FGD in a selected area and in none of the study areas was it possible to conduct separate interviews or FGDs with women and youth. One-to-one semi-structured interviews were also undertaken with a wide range of key informants, including elders, chiefs, representatives of local NGOs and CBOs, UN agencies, research institutes, regional bodies and government officials at local, district, regional and central levels. The research team was composed of one international researcher accompanied by two or three CARE project staff, who facilitated access to communities and key informants in all the areas visited and provided translation when needed.

Secondary data was gathered through an extensive review of available literature, including programme documents, research studies by UN agencies, I/NGOs and regional bodies, government and regional policies and journal articles. Available material on cross-border natural resources management in the study area is however extremely limited.

Table 1: Districts/Woreda, locations and ethnic groups in the study area

Kenya			**Ethiopia**		
District	*Location*	*Ethnic group*	*Location*	*Woreda*	*Ethnic group*
Mandera West	Borduras	Garri	Hardura	Moyale, Somali Region	Garri
Mandera West	Iristeno	Garri	Gadaduma	Moyale, Somali Region	Garri
Moyale	Bori	Borana	Dambi	Moyale Oromyia Region	Borana
Marsabit North	Forole	Gabra	Magado	Dire	Borana
Marsabit North	Dukanna	Gabra	Dillo	Dillo	Borana

Chapter 2
Customary institutional frameworks in cross-border natural resource management

2.1 Sharing arrangements

The pastoral groups that were the focus of this study are linked by strong cultural and social ties, ethnicities, identities and idioms, and institutional settings spanning the international border. Boran, Gabra and Garri are all found both in southern Ethiopia and northern Kenya, and many hold dual citizenship (Wachira, 2009).[7] Communities living in the border areas of Kenya and Ethiopia all speak Oromo (Tache and Irwin, 2003; Watson, 2001; Bassi, 2005).[8]

The Boran and Gabra, who are part of the Oromo ethnic group, have long relied on a particularly strong body of institutions, the *rabba gada*, to guide social organisation, livelihoods and the management of natural resources and conflict (Desalegn et al., 2007; Watson, 2001).[9] The Boran also have a strong culture of planning around the use of natural resources. One Boran proverb, which can be applied to natural resources management, runs thus: 'before you load the camel, you have to plan for what it can bear' (*waan lafatatti falan, gaalatti fahan*). Somali institutions across the Horn are less formalised, less hierarchical and hence less accessible to outsiders. The Garri code of practice is called *Heer*.

Border communities engage in a wide range of cross-border activities and sharing arrangements around natural resources, as well as the trading of livestock, livestock products and other commodities, sharing of information (on livestock prices and water and pasture availability) and sharing of basic services. There is some evidence that external relief is also shared. At the time of the visit, for example, Forole and Magado community members were redistributing and sharing among themselves the water that NGOs were distributing in Magado to alleviate the effects of drought.

The importance that communities attribute to these sharing arrangements cannot be overstated; as one elder noted, 'it looks and feels like we are one [community]'. For Gabra and Boran communities these ties were being renewed following the end of years of conflict in 2009. When discussing cross-border strategies to minimise drought risks, several elders stressed the vital importance, not only of water and pasture *per se*, but also of the wide range of sharing arrangements among pastoralist communities.

2.2 Customary conservation activities

Customary conservation activities and rules in relation to pasture and water have also long been used by pastoralist communities in the study area to maximise and sustain land use and productivity. Customary practices include bush thinning, cutting invasive trees and plants to prevent their spread, and burning, which entails setting areas of the rangeland on fire at the end of the dry season to encourage new grass growth, control pests such as ticks and check the spread of invasive plants (Barrow et al., 2007a; PFE, IIRR and DF, 2010). Livestock mobility is also guided by *finna*, a complex concept referring to the overall quality of the grazing environment, which enables animals to thrive.[10] There are customary rules for establishing reserves (called *kallo* in Oromo) near to pastoral settlements for use by weak, young and lactating animals that cannot move long distances during the dry season. Customary rules also govern the use of water sources. Among the Boran, animals are not directly watered from a water source, such as a pond, but instead animals drink from hollowed out tree branches which are filled from the water source. This rule, called *meri* in Oromo, ensures that the water source remains clean and can be used both by livestock and people.

2.3 Communal land tenure and rights of access

It is usual in settled agricultural areas for grazing lands to be owned and managed as common property (frequently by a village or by several villages surrounding the grazing land), rather than by individuals. Similarly, in pastoral rangelands specific territories are also considered as 'belonging to' and managed by a particular group. In pastoralist settings however there are two complexities. First, rights to water sources and land rights can be distinct. In Boran communities, for example, water sources are owned by the people who developed them, and while there is an obligation to share water with others, there is a pecking order that considers factors ranging from clan affiliation to the level of contribution made during the development of the well (Watson, 2003). Since the possibility of using grazing land is dependent upon being able to access water there, this creates a complex link between water and land rights.

7 Boran and Gabra are of Oromo ethnic origin, while Garri are Somali.

8 Garri communities living in the border areas of Kenya and Ethiopia speak Oromo in addition to Somali.

9 The institutional setting of the Boran, including their social arrangements and customary norms for managing water and pasture, has long attracted the interest of researchers and practitioners of various disciplines (see for example Bassi, 1997; Beyene and Korf, 2008; Coppock, 1994; Muir, 2007; Tache and Irwin, 2003; Tache, 2010; Watson, 2001).

10 See Homewood and Krätli, 2009 for a more in-depth discussion of the concept of *finna*.

Box 1: Planning for livestock migration in times of scarcity

The decision to migrate during times of drought is usually taken jointly by a community's elders on the basis of an understanding of the state of natural resources and the host communities' attitudes in potential areas for migration.[11] When water and pasture are dwindling, a team of emissaries (in Oromo called *aburu*) is sent to potentially suitable locations for migration to check the availability and quality of water and pasture, and the willingness of the host community to accept 'visitors'. On the basis of the emissaries' feedback, elders meet to discuss and assess potential sites, and eventually decide whether to migrate, when and where. During these meetings decisions are usually achieved by consensus and all participants are given the chance to express their opinions on the matter discussed. Decisions are not taken hastily but elders reconvene after one or two days to allow some time for reflection. During this 'cooling-off period', elders also have the opportunity to discuss the issues with their wives at home, and their opinions may also influence the final decision.

Second, land rights are allocated in ways that do not neatly match the way terms like 'ownership' are used in the English language. The ethos and the economic rationale underlying communal ownership of land and natural resources are deeply embedded in pastoralist societies, and pastoralists frequently refer to water sources and grazing land using collective terms and expressions such as 'our land', 'our resources', 'we manage', 'we decide'. The 'we' is both inclusive and exclusive and can be interpreted as 'the land does not belong to me, but to my whole community; but it belongs to *my* community and not to *yours*'. At the same time, however, because the whole rangeland constitutes a single economic resource, it must also be shared in some way: different ethnic and clan groups need to move in search of water and pasture and access grazing areas in the territory of other clans and ethnic groups. In pastoral areas specific sets of access rights have developed to respond to the particular needs of mobile pastoralist livelihood systems. Under this system, members of one ethnic group or clan can claim the right to move temporarily into areas under the domain of other ethnic groups or clans. Such secondary rights can be attained through negotiations with the primary right-holders. In technical terms, the rangeland is managed under a communal land tenure system based on non-exclusionary, flexible and negotiable rights of use.

The difficulty of 'translating' land rights from one system to another in this way should not matter, as long as it is clear who holds which rights. Unfortunately, because no one group has all the rights usually contained within the word 'ownership' this often leads to the idea that the land is not really 'owned' at all, despite the fact that, on any understanding of land rights, the rangeland is clearly held customarily to be private property.[12]

As Box 1 shows, negotiations to gain access to resources outside one's own area have customarily been undertaken between elders of different clans or ethnic groups and are a key customary mechanism that has, at least in principle, allowed for the sharing of resources beyond not only ethnic but also national administrative boundaries and international borders. Negotiations and eventual agreements usually entail discussions over issues related to which water sources and grazing areas secondary users can access, how long they can stay, the number and species of livestock allowed and assurances that livestock is healthy (Beyene and Korf, 2008; IADC, 2009). Particularly during periods of drought and resource scarcity, access can (in theory, at least) be denied or restricted, for example by limiting the number of livestock allowed in.

2.4 Customary principles of resource sharing

The important link between natural resources management and social relations between clans and ethnic groups has often been downplayed. Pastoralist groups must move, and in doing so they inevitably move into each other's territory, sometimes in competition for resources. Natural resources management is thus intimately linked with the management of the relationships among pastoralist clans and ethnic groups. These relationships do not take place in an institutional vacuum, but depend on rules, behavioural norms and principles to maintain and restore collaboration within competition and to provide a framework for managing conflict over pastoralists' divided-but-shared resource base.

In particular, normative principles of reciprocity and mutual cooperation have customarily guided and informed sharing mechanisms among clans and ethnic groups, both within and across the international border. The *nagaa Boran* or the peace of the Boran, for example, traditionally entails harmonious relationships with God (*Waaqa*), and cooperation, mutual respect and peaceful coexistence among different clans, villages and households and other ethnic groups (Desalegn et al., 2007; Beyene and Korf, 2008; Temsegen, 2010). Granting access to water and pasture to needy members of another clan or ethnic group is ultimately viewed as an ethical obligation and is seen as insurance against the future, since it is expected that the same support will be returned during times of stress. As a Gabra elder put it, this is 'the pastoral tradition of sharing'.

11 Note that this type of migration is different from the form of migration described in Chapter 1, where animals are moved in order to optimise nutrition in 'standard' conditions. The migration described here takes place in 'exceptional' conditions and is dictated by drought stress and the need to find water and pasture (see also Krätli and Schareika, 2010)

12 There is also widespread confusion between private property and individual property. The new Constitution of Kenya creates a new confusion by equating private property with registered property. Community lands are thus distinguished from private property. We use 'private property' in its normal English sense, according to which property is owned by an individual or a restricted group of people, whether titled or not, and over which others may or may not be granted some subsidiary rights. Land may be recognised as property in customary law but not under state law or vice-versa.

This 'tradition' has not, of course, always been respected and conflict is also a part of the history of the region. Indeed, struggle over resources and conflict have been defined as the 'leitmotiv' of relations between the Garri, Gabra and Boran (Bassi, 1997: 29 in Watson, 2001). Historically, the local institutional framework was capable, if not of preventing conflict, then at least of managing and containing it in most cases. As discussed below, however, increasingly over the past century formal institutions have tried to manage – and limit – pastoralists' sharing of natural resources, and have often disregarded customary regulated access and normative principles; in many cases this has led to growing conflict and insecurity in pastoral areas.

Chapter 3
Customary institutions under stress

Customary institutions have long been under multiple external pressures. States' presence – even through inaction – has had profound impacts on customary institutions. Formal policies and programmes rarely take into account customary institutions, and tend to see natural resources management, in as much as they recognise it at all, in purely technical terms. Where institutional arrangements around natural resource management have been repeatedly sidelined and undermined, the consequences for peace and stability, and for the economic security of pastoralist communities, have often been dramatic.

3.1 Environmental degradation

Environmental degradation, particularly with reference to the ongoing shrinkage and disappearance of palatable grass cover, was frequently indicated as a major challenge to rangeland productivity in the study areas. In the immediate aftermath of prolonged dry seasons or droughts, the first rains have become particularly destructive, causing excessive runoff and soil erosion. A number of pastoralists and key informants made the link between runoff and poor soil infiltration capacity, caused by reduced ground cover. In the forest areas around Moyale both pastoralists and urban communities were reportedly increasingly relying on charcoal-making as a year-round income-generating activity, rather than only during times of stress, as in the past. The decreased tree cover resulting from sustained charcoal production was seen by many as contributing to ongoing land degradation. A more in-depth analysis of the underlying causes of land degradation (e.g. from over-grazing) and a better understanding of the causal linkages between the different factors in play was beyond the scope of this study, but is certainly important and needed.

In the Borana zone, the encroachment of bushes and invasive plants on the rangelands at the expense of palatable grass cover was also seen as a manifestation of land degradation caused by the abandonment of customary rangeland management practices. There may be two reasons for the abandonment of these indigenous practices. During the 1970s the traditional use of fire in the Borana zone was prohibited by the Proclamation of Forest Conservation, Development and Utilization law. Unclear wording and misinterpretation of this law, which was originally intended for highland forest areas, led to its application to the rangelands (LaMalfa et al., 2008). The ban was lifted in 2005 following lobbying by NGOs, pastoral leaders and the Oromyia Regional State government. However, a number of respondents noted that, since fire can be started and maintained only when there is enough dry grass underneath the bush cover, the limited and patchy grass cover that characterises the rangeland today makes this technique very difficult to use, contributing to the encroachment of bushes and decreased grass cover (see also Oba and Kotile, 2001). In addition, as a result of both environmental stresses and complex political, economic and social processes, including the weakening of customary institutional mechanisms to manage natural resources, pastoralists' ability to cope with drought is weakening. Drought after drought herds are depleted, reducing the ability of and incentives for pastoralists to undertake traditional soil and water conservation activities on the rangeland. As one informant put it, pastoralists 'are always fire fighting, one drought after another, and have little time for anything else'.

In some areas there may also be institutional factors at play behind land degradation. The findings of this study indicate that there have been instances where access to grazing and water have been granted by government officials, rather than by customary authorities or elders through traditional negotiations. As highlighted below, as far as primary rights holders are concerned this constitutes open and unregulated access to pastureland and water, overriding customary rules designed to ensure management of the natural resource base, both for primary and secondary users. Where others can essentially 'free ride', the incentive to invest in the rangelands and protect water sources may be seriously compromised.

Especially in some areas of Ethiopia, such as in the border areas between Somaliland and the Somali Region, the weakening and disregard of customary institutions by pastoralists themselves is also contributing to land degradation and constraining livestock mobility. A number of recent studies have highlighted a growing trend whereby communal grazing areas have been fenced off and enclosed by powerful and often affluent pastoralists for their individual gain (Tache, 2010; Talasan Consultancy PLC, 2009; Flintan et al., 2011). While this study did not find this practice along the Kenya–Ethiopia border, it is clear that pastoralist communities themselves also share responsibility for the weakening and disruption of customary institutional arrangements, and that environmental degradation can also be in part the result of changes in practice within pastoralist societies.

3.2 Disregard of customary institutions and conflict in border areas

Conflict in pastoral areas has long been ascribed to competition for natural resources. One contributing factor to conflict has been broader political processes, including the erosion of customary institutions of natural resource management. For example, during the late 1990s a member of the Kenyan Parliament of Gabra origin created new settlements around Marsabit and appointed Gabra Chiefs. This political move, aimed at consolidating political power, fuelled tensions

and conflict between the Gabra and Boran in Marsabit and elsewhere, including in the border areas visited for this study (see also Temasgen, 2010).

Changes in administrative boundaries without regard for pastoralist institutions have also been a recipe for conflict. Since 1991, a policy of ethnic federalism has been implemented in Ethiopia, entailing the division of the country along ethnic lines. In some cases this process paid insufficient attention to existing customary institutional arrangements. This, it has been argued, has contributed to inter-clan and inter-ethnic conflict (Temasgen, 2010). In particular, such tensions have arisen when administrative boundaries (i.e. the boundaries of the Regional States) differed from the territorial boundaries of ethnic groups. For example, regional boundary demarcations that were established in 1991 reportedly increased disputes between Boran and Garri communities.

At the same time, federalism has also hardened boundaries along ethnic lines and weakened the customary principles of negotiable and flexible rights of access. For example, federalism and the right of ethnic groups to 'self-determination', as enshrined in the 1994 Ethiopian Federal Constitution, have prompted a race towards control over land, as territorial gains at the Pastoralist Association (PA), District and regional levels 'translate into more administrative power, land, tax revenue, and potentially food aid' (ICG, 2009: 24). As part of a quest for political control over land and resources, government administrators at different levels have at times pressed pastoralist communities to adopt a more exclusionary approach to access to natural resources. Here, institutional arrangements around natural resources and principles of coexistence and sharing have been undermined because government authorities have failed to recognise the land rights of pastoralists, and the fact that granting secondary users rights of access is in customary law a legal obligation, which reinforces, rather than undermines, primary holders' claims of ownership rights and sovereignty over their territory. These failures have led government authorities to create exclusive rights which have never existed in customary law, precisely because they are incompatible with the livelihood needs of pastoralism.

These dynamics have played out in the border areas that were the focus of this study, and have led to tensions among Garri clans living on both sides of the border. Since 1991 a shift from negotiated customary rights to more exclusionary rights, driven by the political processes taking place in Ethiopia, meant that, for example, the Garri community of Borduras from Kenya were no longer 'welcome' in the Garri community of Hardura in Ethiopia. Livestock raids became increasingly common.

Since pastoral communities are scattered across different parts of the country and their ethnicities, identities and alliances span national borders, politically instigated tensions in one area often have serious repercussions elsewhere, including across administrative boundaries and international borders. Changes in administrative boundaries, the establishment of new ones and indeed the presence of international borders are not a problem *per se*. Problems arise when administrative changes fail to take into account land rights and the customary institutions of land management and negotiation of clans and ethnic groups living in the territory.

Disregard of elders' authority by government officials at local and district levels also weakens customary institutions and carries with it the potential for conflict. Kenyan Somali clans around Wajir and Marsabit have for example increasingly been unable to cope with droughts in their areas of origin, and have been migrating with their livestock in larger numbers, more frequently and staying for longer periods in Moyale and surrounding areas in Boran-controlled territories. Boran elders interviewed were visibly frustrated at these developments, particularly because they were taking place in a context of decreasing natural resources in their territories. Elders have reportedly tried to control the influx of these secondary users by limiting or denying them access, but this often failed because Somali elders appeared to ask local authorities (the Chief and/or the District Officer) for access, which is often granted. On a number of occasions district-level officials have reportedly upheld the principle of freedom of movement guaranteed to Kenyan citizens by the Kenyan Constitution to grant access to Somali clans into the rangelands of Boran clans around Moyale.

Whether the refusal by Boran elders to grant Somali pastoralists grazing and watering rights is in accordance with customary principles and rules around natural resources management and land ownership is not the subject of this study. But what is clear is that, where government officials overrule customary institutions and make decisions with reference to a different authority and a foreign set of principles, the potential for inter-clan and inter-ethnic tensions is high. In this case, formal institutions have not recognised ownership rights or the customary institutions around natural resources management, and livestock migration has been seen largely in terms of 'freedom of movement'. But from the point of view of Boran elders and communities this constitutes open and unregulated access to pastureland and water, and it means allowing trespassing on private property without owners' permission, making constructive natural resource management very difficult.

Chapter 4
Formal institutional frameworks

Over the past century, formal institutions have increasingly sought to manage – and limit – the sharing of natural resources in a number of ways, often with dramatic consequences. Current formal institutional frameworks governing cross-border mobility and natural resources management need to be interpreted as the outcome of broader attitudes and policies towards pastoralism, particularly in relation to the management of pastoral rangelands. Table 2 in section 4.2.2 summarises dominant paradigms around pastoralism, natural resources management and cross-border activities and suggests alternative paradigms.

4.1 The institutional framework at the national level

4.1.1 Pastoralism in national policy discourse

In the national policy discourse of Kenya and Ethiopia pastoralism has long been surrounded by perceptions of (economic) inefficiency and even backwardness – in Kenya, since colonial times. The national policies of both countries have largely prioritised sedentary agriculture in national development plans and have shown less understanding of how pastoralist livelihoods and arrangements for natural resources management function.

In 1979 the arid and semi-arid land (ASAL) policy attempted to address 'the nomadic pastoralism "menace"' (GoK, 2007: 1) in Kenya through settlement and irrigation schemes, ranches and other alternative land use systems, such as assigning fixed grazing lands to pastoralist communities (*ibid.*; Oxfam, 2008). These efforts ended up damaging pastoral areas and undermining local livelihoods (GoK, 2007; Oxfam, 2006 and 2008; Markakis, 2004). In Wajir in Kenya, for example, sedentarisation efforts interfered with seasonal livestock mobility and led to overgrazing (Oxfam, 2008). In recent years, Kenyan policy-makers have recognised the need to support pastoralism (GoK, 2007 and 2009a), and a Ministry of State for Development of Northern Kenya and Other Arid Lands (MDNKOAL) has been set up to take forward pastoral issues within the national policy-making process.

In Ethiopia, the approach to pastoral development at federal and regional levels remains focused on the sedentarisation of pastoral communities. The overarching objective of the Ministry of Federal Affairs' (MoFA) Pastoral and Agro-Pastoral Development Policy and Strategy is to 'transform pastoral societies through rapid socio-economic development' and to 'augment and accelerate the [settlement] process' (MoFA, 2010).

4.1.2 Formal land tenure regimes

Under the banner of 'developing' and 'modernising' pastoral areas, government approaches, policies and programmes have typically disregarded customary pastoral institutions around land tenure, access and use. Land use in pastoral areas, particularly in Ethiopia, is subject to change as deemed necessary by the government, rather than by the priorities, interests and needs of local communities.

In Kenya, the government acknowledges that the formal land tenure system has not guaranteed community rights and has 'constrained social and economic development in the ASAL areas' (GoK, 2007: 47; see also GoK, 2009a and ASAL, 2005). For decades, disregard of communal land rights has led to the loss of significant portions of land to irrigation schemes, wildlife conservation projects, military exercise grounds and other private and government investment (GoK, 2007; Rutten, 1992).

Until recently formal land tenure arrangements in Kenya fell into three categories: Government land, Private land and Trust land. The ASALs were primarily regarded as Trust land, a system established by the colonial authorities to address insecurity in the African reserves (Wayumba, 2004; GoK, 2007). The Trust land regime vested land management and administration in the County Councils, in principle as trustees for people living in these areas. County Councils have often exercised strict control over the allocation of land and have been poorly accountable to local communities; local communities have been poorly informed of their rights and of the legal mechanisms to claim them (Davies and Roba, 2010: 2). The new Kenya Constitution, endorsed in August 2010, will bring major legal changes in relation to land issues and in particular with regard to Trust lands. The new Constitution reclassifies land categories in Kenya as 'public, community, or private' (Art 61(2)). Although not explicitly stated in the new Constitution, Trust lands have been replaced by Community lands. Article 63 (1 and 3) establishes that 'Community land shall vest in and be held by communities identified on the basis of ethnicity, culture, or similar community of interest', though County Councils will continue to hold in trust any unregistered community land.

It is not clear if these new arrangements will entail the continuation of the (highly imperfect) *status quo* or a radical change in the protection of (unregistered) community land, since specific legislation has not yet been formulated. In the interim (which could be five years), much will depend on how Courts adjudicate challenges to County Council decisions, and whether they use the spirit of the new Constitution to interpret the trusteeship of community land. (For a very clear discussion of the changes and ambiguities of land rights under the new Constitution, see Alden Wily, 2010.) It remains unclear how communities will distinguish themselves as land-owning units and how they will establish sufficient ownership claims over land in order to be able to register those interests.

The new Kenya National Land Policy, which was approved by parliament in 2009, represents another positive policy step towards more secure communal rights to land. The policy acknowledges the importance of 'securing pastoralists' tenure to land' and, recognising pastoral communal land tenure as a separate tenure category, states the need for 'alternative methods of registration of land for pastoral communities while allowing them to maintain their unique land use system and livelihoods' (GoK, 2009a: 21). Experience, though, shows that the mere existence of well-articulated policies does not necessarily guarantee meaningful change.

In Ethiopia, the 1995 Federal Constitution (Articles 40, 51 and 52) approved and reconfirmed the principle of state ownership of land previously articulated in the Land Reform Act of 1975. Article 40 states that 'the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the state and the peoples of Ethiopia' (FDRE, 1995). Farmers are explicitly given constitutional rights to security of tenure: 'Ethiopian peasants have the right to obtain land without payment and the protection against eviction from their possession' (Article 40 (4)). Pastoralists are, at first sight, granted something similar, but their rights are in fact much weaker: 'Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands' (40(5)). The operative word here is *free*: the moment the state chooses to claim any grazing land, and declare it no longer 'free', the pastoralists lose any right to graze. Constitutional protection from eviction from grazing land is thus no protection at all for pastoralists, who are effectively tenants at sufferance. Their right 'not to be displaced' would only include their grazing land if this was recognised as being 'their own lands' – which they are not. The discrimination is clear. Peasants 'obtain' land which becomes their legal 'possession'; pastoralists merely exploit free land.

The Rural Land Administration and Land Use Proclamation No. 456/2005 issued by the federal government in 2005 was explicitly designed to increase the tenure security of individual rights holders. However, since the proclamation provides that communal holdings can be changed to private holdings at the discretion of the government, the security of tenure of the communal land holdings of pastoralists is weaker than that of farmers, with pastoralist communities essentially seen as squatters on their own land.[13] There has been repeated appropriation of pastoral land for government development projects and private investment, and repeated attempts to promote changes in land use in pastoral areas (Beyene and Korf, 2008; Halderman, 2004; Helland, 2006; Hundie and Padmanabhan, 2008).

13 Paragraph 5.3 of the Proclamation states that the 'Government being the owner of rural land, communal rural land holdings can be changed to private holdings as may be necessary' (FDRE, 1995). This appears to contradict Article 40 of the Constitution, quoted above, which vests ownership 'in the State and the peoples of Ethiopia'. Such lack of clarity makes it hard to analyse policy on recognition of land rights.

Individual states are mandated to issue their own land policies and directives in accordance with federal policies and legislation, but these follow the same model. For example, the Oromyia Rural Land Administration and Use Proclamation No. 130/2007 stipulates that 'any pastoralist and semi-pastoralist whose holding falls under irrigation construction … is obliged to permit his holding' (Art. 14(f)), and '[i]n any type of rural land where soil and water conservation works have been undertaken, free grazing shall be prohibited' (Part 3, Art. 18(3)).

4.1.3 The Guiding Land Use Master Plan for the Borana Zone

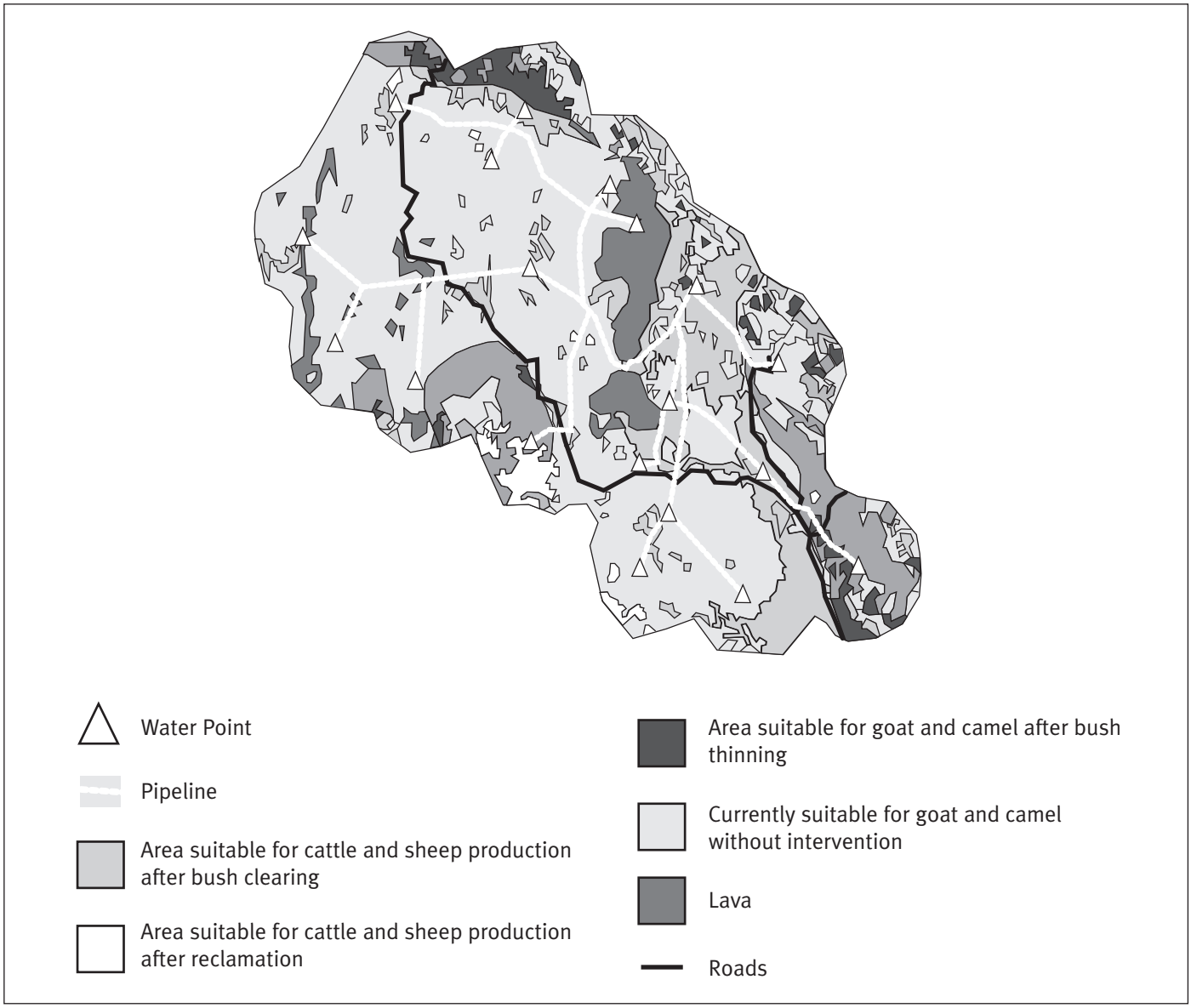
Using the Proclamation as the legal basis,[14] for the past three years the Regional Government of Oromyia has been drafting a Guiding Land Use Master Plan, with the Oromyia Pastoral Area Development Commission in charge of the coordination and implementation of project activities. According to a number of government representatives interviewed for this study, the Master Plan, which was due to be submitted to the Oromyia National Regional Administrative Council in April 2011, aims to develop water sources and improve rangeland productive capacity in the Borana zone (see also Alemayehu, 2010).

The Master Plan divides Borana land into fixed areas on the basis of pre-established land-carrying capacity and production systems, such as grazing (different fixed grazing areas are allocated to different livestock species), forest, wildlife protection, forage production, irrigation and cash crop cultivation and so on (see Figure 2). A government official explained that, since water will be supplied through a piped network and delivered through boreholes, pastoral mobility both within the Borana zone and across the border 'will no longer be necessary'. The Master Plan fixes four hectares of grazing land for one head of cattle, and grazing restrictions, both related to the number and species of animals, will be put in place to ensure that the carrying capacity of the land is maintained.

Citing recurrent droughts, environmental degradation and the declining natural resource base, government officials stress that Boran pastoralists 'should learn how to maximise the use of their resources and protect them'. In this context the seasonal cross-border migration of pastoralists from northern Kenya into the Borana zone is perceived as upsetting the rationale of the Master Plan and contributing to the further depletion of natural resources. According to a representative of the Oromyia Pastoral Area Development Commission, once the Master Plan is implemented 'Kenyan pastoralists will be no longer allowed to access and use pasture and water in the Borana zone'.

14 Interview with Land Administration Senior Expert, Oromyia Land and Environment Protection Bureau, Addis Ababa, March 2011. The Oromyia Rural Land Administration and Use Proclamation No. 130/2007, Part three, Art. 18(1) mentions the Guiding Land Use Master Plan and notes: '[a] guiding land use master plan which takes into account soil type, landscape, weather conditions, vegetation cover and socio-economic conditions … shall be developed and implemented by the Oromyia Agricultural and Rural Development Bureau'.

Figure 2: Proposed land use plan in Magado Area, Borana zone



Source: Oromyia Pastoral Area Development Commission, no date.

The Master Plan is in line with government efforts at federal and regional levels to develop pastoral areas, with the overall aim of 'revers[ing] the food security problem and bring[ing] … socioeconomic transformation … by promoting sustainable rangeland development' (Oromyia Pastoral Area Development Commission, no date: 3). There is also little doubt that improved food security and sustainable rangeland development is exactly what pastoralist areas in many parts of Sub-Saharan Africa, including in the Borana zone, need. However, range ecology specialists have raised a number of questions regarding the underlying logic and sustainability of the Master Plan. First, the very idea of predetermining land-carrying capacity and managing herds as a stable system rather than a dynamic one is contested in rangelands characterised by a high degree of rainfall variability (see also Behnke and Scoones, 1993; Krätli and Schareika, 2010). Second, the implementation and sustainability of the proposed irrigation system is unclear, as it uses a piped system of questionable robustness. It has also been noted that underground water sources in the Borana zone are highly saline and of doubtful suitability for irrigation, posing risks of long-term salination of the soil. One government official recognised this problem and noted that options were being explored, including 'diluting the water to reduce salinity'. Even if irrigation was successfully implemented, experts believe that it would alter the ecosystem, encouraging drought-tolerant vegetation and turning an ecosystem highly resilient to drought into one highly vulnerable to it.

Sustaining agricultural production and sedentary livestock production systems in the hot and arid rangelands of the Borana zone will be a huge and risky undertaking. As indicated above the returns on the investment are doubtful, both from a financial and social development point of view. Even if the scheme is technically and economically feasible, any failure to sustain this investment and provide adequate support to irrigated farming systems would leave pastoralists with no way

of sustaining their new livelihoods, while at the same time the resilience of their existing system will have been destroyed.

4.2 The institutional framework in cross-border context

4.2.1 Legal frameworks governing cross-border movement and natural resources management

There is currently no overarching framework to provide a legal or policy basis for cross-border exchanges along the Ethiopia–Kenya border, and a very limited number of national policy documents mention issues related to the cross-border sharing of natural resources. In the absence of any legal or policy basis for cross-border exchanges, cross-border activities take place in an unpredictable policy and legal environment, and are dependent on the attitudes of individual local administrators and police. There is some evidence that pastoralists migrating into northern Kenya, especially Boran, have been harassed by the Kenyan police. Elders interviewed in Ethiopia regarded the harassment of Boran pastoralists across the border as a 'serious problem'.

A number of government interviewees in both countries referred to the Ethiopia–Kenya Joint Border Administration Commission as the inter-governmental body in charge of regulating border affairs. Under the auspices of this Commission both countries signed an agreement in 2006 to 'work jointly to create situations for free movement of citizens of both countries in the common border areas'.[15] However, the Commission's focus is on security, and its work – including the 2006 agreement – is classified and therefore plays no role in providing policy guidance to district and local government officials.

The 1999 National Water Resources Management Policy in Ethiopia acknowledges the need to establish 'an integrated framework for joint utilization and equitable cooperation and agreements on transboundary waters' to foster 'regional cooperation and agreements on the joint and efficient use of transboundary waters' (MOWR, 1999: 20). The policy does not explicitly refer to pastoral areas and no steps appear to have been taken to put these commitments into action. As highlighted below the dominant framework for thinking about cross-border movement has often been national security, particularly in relation to the presence of the Oromo Liberation Front (OLF) in northern Kenya and potential links between the OLF and migrating pastoralist communities.

In Kenya, there are signs that pastoral cross-border mobility is being taken more seriously in policy circles. The 2007 Kenya National Policy for the Sustainable Development of the Arid and Semi Arid Lands, for example, talks of support for 'coordinated trans-boundary actions on … natural resource management' (GoK 2007: 33). Significantly, though, this is set in the context of broader conflict management approaches, and not as part of natural resources management or land rights perspectives. The 'promot[ion] of cross-border natural resource management initiatives' also features as a priority area of the 2006–15 ASAL Investment Plan annexed to the policy (*ibid.*: 76). However, there is no indication of the strategic approach or practical steps that the Government of Kenya is planning to take to promote these initiatives. The draft National Policy on Peacebuilding and Conflict Management acknowledges the links between cross-border conflict and pastoralist seasonal migration, but the conflict prevention strategies proposed do not address the joint management of natural resources (GoK, 2009).

4.2.2 Regional initiatives

As part of broader initiatives to promote regional cooperation and integration, the African Union (AU), the Inter-governmental Authority on Development (IGAD) and the Common Market for East and Southern Africa (COMESA) have been developing policies and practical approaches to support mobile livestock production systems, including legal frameworks to support cooperation across international borders.

The African Union Border Programme (AUBP) was launched in 2007. The AUBP seeks to address 'the structural prevention of conflicts and the promotion of regional integration' (AU, 2007: 7), including through the elaboration of legal frameworks for cross-border cooperation, and projects to foster cross-border cooperation between communities, state services and civil society associations and NGOs (ibid.). Four years on, however, the project is yet to get off the ground. Since 2008 the AU, in collaboration with the UN Office for the Coordination of Humanitarian Affairs (OCHA), has been working on a Pastoral Policy Framework for Africa (PPFA). The PPFA seeks to 'facilitate the development and implementation of pastoral policies that can contribute towards securing and protecting the livelihoods and rights of pastoral people' (AU, 2010: 6). The PPFA recognises the need to strengthen traditional resource management systems and improve 'sustainable and equitable pastoral resource governance', including through appropriate land tenure registration, but the AU's influence over policy change at national level is far from clear, and it remains to be seen how and when the PPFA can be taken forward.

15 See http://reliefweb.int/node/204706.

Table 2: Paradigms for pastoral land rights and natural resources management

	Dominant paradigm	Alternative paradigm
Attitude to pastoralism as a livelihood strategy	Backward, primitive Development = settlement Investors generate wealth	Well adapted to arid rangelands Potentially highly resilient Productive pastoralism generates wealth
Attitude to natural resources management	Rangelands are merely exploited Pastoral natural resources management is not believed to exist No natural resources management = rangeland degradation Natural resources management must be introduced by science	Pastoralists actively manage rangeland Natural resources management depends on management of social relations and mobility Natural resources management depends on rules and on respect for rules
Attitude to pastoral land rights	Not recognised Rangelands viewed as not owned All citizens have rights of movement and equal claim to exploit rangeland	All pastoral groups recognise each others' land rights Land ownership includes obligation to consider secondary rights Natural resources management depends on mobility and sharing, made possible by framework of mutual respect of land ownership and secondary rights State law should respect pastoral land rights equally with farmers' rights
Attitude to customary institutions responsible for natural resources management	Since neither indigenous natural resources management nor pastoral land rights are recognised, no recognition of institutions responsible for these Regulation of movement on range by local groups is infringement of national constitutional rights	If ownership rights are recognised, acceptance of authority of owners' institutions to regulate natural resources management of their property. *(But how? Legal recognition? Harmonisation? Incorporation into state-recognised structures?)*
Attitudes to the border	Border crossing is about sovereignty and security Mobility is a 'traditional' fact 'Informal' cross-border markets threaten national economic interests Modernisation will remove need to cross borders	Cross-border mobility is essential to livelihoods and food security of citizens of both countries Supporting mobility (including cross-border) remains most cost-effective way to support livelihoods in arid lands Legal recognition of right to cross border (freely?) granted to specific populations?
Impact on customary institutions	Natural resources management role bypassed Power to enforce natural resources management rules degraded Power to regulate movement and social relations degraded	Respect for authority of customary institutions in natural resources management. Support capacity to manage rangelands – incorporating technical and social dimensions Broader regional development plan, integrating roles for customary authorities (i.e. landowners) 'Take institutions into account' in formal administrative changes
Outcome	Tragedy of the commons: degradation of rangeland Food insecurity Political marginalisation Frequent conflict	Better management and economic productivity of the rangelands Increased food security Better state–pastoralist relations (2-way) Reduced tensions, better capacity to manage tensions
Engagement with outcome	Problems reinforce original attitudes: no recognition that attitudes caused the problem Customary institutions engaged with only to promote peace Temporary respite only: interference may make things worse	Acknowledgement of the linkages between land rights, natural resources management and inter-community relations Natural resources managment and conflict management not dealt with separately Gain in-depth understanding of customary arrangements in natural resources management and ensure that external interventions support and do not hinder such arrangements

Chapter 5
Hybrid institutions

Since the late 1990s I/NGOs and international donors have recognised the need to support institutional arrangements around natural resources management as part of broader efforts to reduce pastoralists' vulnerability to drought and other shocks (Muir, 2007). External interventions have sought to strengthen existing institutions and establish new bodies or structures (Tache and Irwin, 2003; Flintan and Cullis, 2010). In the border areas, these structures have taken the form of cross-border committees.[16]

Typically, members of cross-border committees include pastoralists, mainly elders, representatives of local government (e.g. village Chiefs or PA Chairmen) and a small representation (usually two members) of women and youth. The great majority of committee members interviewed, both government officials and elders, viewed favourably the inclusion of women and youth in cross-border committees. In many of the locations visited, cross-border committees met regularly to discuss water and pasture issues on both sides of the border. Although cross-border committees do not enjoy formal legal powers, by incorporating both customary authorities (elders) and state officials (Chiefs or PA chairmen) they constitute a hybrid authority, capable of blending formal and informal rules and mechanisms.

Box 2: Joint management of water through the cross-border committee of Magado and Forole

Out-of-season rains in February 2011 created several ponds around Forole in Kenya. Several pastoralist groups were attracted to these water sources. Members of the local cross-border committee explained that Boran pastoralists from Magado in Ethiopia did not need to negotiate access. Since they were jointly managing resources through the cross-border committee, pastoralists from both Magado and Forole were now considered primary users. However, other pastoralists wanting to gain access to the ponds had to negotiate permission with the cross-border committee and abide by its rules for accessing and using water and pastureland. As a Gabra elder observed in relation to the closely knit relationship of Magado and Forole communities, 'we no longer see the international border as dividing us; instead we feel as if we are joined up and there is a border surrounding us'.

5.1 Roles and functions of cross-border committees

5.1.1 Building links among bordering communities

The work of cross-border committees is geared towards a peaceful relationship between communities on the border. The great majority of respondents from I/NGOs involved in establishing and supporting cross-border committees noted that they were preceded by exchange visits involving both pastoralists and government representatives. Garri communities, for example, said that, before the cross-border meetings and exchange visits, their relationship with bordering clans had been characterised by recurrent bouts of insecurity, occasional livestock theft and general mistrust. Many respondents reported that trust between adjacent communities had deepened, and livestock theft had decreased; in the words of one elder 'a stranger is an enemy, but as soon as one starts to know him a stranger becomes a friend'. Peace agreements in pastoral areas have not always stood the test of time. What may be different here is that exposure visits and peace meetings became part of much deeper changes in the way natural resources and land rights are managed, even if those promoting the peace meetings were perhaps not fully aware of this dimension.

5.1.2 Establishing rules of access over natural resources

The use of and access to natural resources in the areas where cross-border committees were operating was premised on customary rules, including the prohibition against trespassing on a common reserve dry grazing area or watering animals directly from a water source. The modalities of customary negotiation to gain access to natural resources also appeared to have been maintained, though with one significant difference. Rights of access to the natural resources of both bordering communities appeared to be negotiated directly with the committee, rather than separately with elders of each community (see Box 2). Whereas traditionally each community would be expected to negotiate access with primary right-holders, now the land of both communities (on two sides of the international border) is being considered as a single land holding, jointly owned by the two communities, with both communities enjoying primary holders' rights. Just as significantly, the cross-border committee is taking upon itself the management 'authority' over this new land-holding unit, rather than the elders of the two communities. This ought to be seen as a major institutional change, with potentially very far-reaching consequences for land rights and land governance in the area. However, this does not appear to be recognised as such on the ground.

5.1.3 Rangeland conservation

Cross-border committees were also perceived as providing a useful platform for better organised and more efficient

16 For example, in 2002 the PARIMA project, under the Global Livestock Collaborative Research Support Programme, worked with other civil society and government actors to establish local cross-border peace committees among Gabra and Borana communities living along the Ethiopia–Kenya border. These committees have recently been revived under the Conflict Early Warning and Response Mechanism (CEWARN), an IGAD-supported mechanism (Abate, 2011; IGAD, 2009). A number of NGOs, including CARE International, ACTED and VSF-Germany, funded by ECHO, have also established cross-border committees as part of ongoing work on strengthening resilience to drought.

resource management. With the support of CARE Kenya, for example, the cross-border committee of Iristeno in Kenya and Gadaduma in Ethiopia has established a dry-season common reserve (*kallo*) close to the border. Since the establishment of the cross-border committee of Borduras in Kenya and Hardura in Ethiopia, the use of water sources by both communities has been synchronised, with both now using the same pond until it is depleted and only then moving on to another one, making it easier to monitor water availability and reducing water use. Seasonal livestock migration was also felt to be better regulated. The dry and wet migration between Borduras and Hardura is now organised; herders and their livestock migrate collectively, rather than individually, and along specific corridors established by the committee. This allows for better control of livestock influx and hoof damage on pastureland is now limited only to this transit corridor.

5.1.4 The functioning of cross-border committees

There was widespread agreement among interviewees that the cross-border committees could potentially improve institutional arrangements around natural resources management. Elders reported they did not see the committees as eroding their authority, even though they now share decision-making with government officials. Many noted that working jointly with government authorities was necessary and valuable; indeed, the inclusion of formal government authorities such as village Chiefs and PA Chairmen in the committees was widely perceived as positive and as 'giving weight' and formal backing to traditional enforcement mechanisms, for instance in resolving cases of livestock raiding. Cross-border committees were seen as a 'modern solution', providing a forum where both formal and customary authorities could work together. Likewise, government representatives noted that the committees made it easier to engage customary institutions in peace initiatives. As one government official put it, 'there are so many elders in pastoralist communities … but through these committees it is now easier to know who they are and involve them'. Government respondents therefore seemed to recognise the role of cross-border committees only in relation to peace initiatives, rather than, as discussed below, more broadly in relation to natural resources management.

5.2 Strengthening cross-border committees

5.2.1 Legal recognition of cross-border committees

Although the decisions cross-border committees take have been given some *de facto* recognition by local government officers, this is on an *ad hoc* basis as the committees currently have no legal status. As things stand, the work of cross-border committees is limited to local border areas and these structures have no leverage to influence upper levels of decision-making or to protect the rights of pastoralists around land ownership and use. The unstable legal and policy environment in which cross-border activities currently take place has already been discussed, as have the threats to current sharing arrangements from government plans such as the Oromyia Master Plan. Legal recognition of cross-border committees could, in theory, strengthen their role and authority around rangeland management at local level and enhance their position in national policy-making circles.

Giving legal status to these newly formed institutional arrangements would involve complex steps at political, constitutional, legal and practical levels. One step could relate to the creation of by-laws, which entails the formalisation of customary rules and principles into a written code that can be legally recognised by a state judicial system. This is however far from easy. For example, it may be difficult for people to easily articulate the principles governing their conduct and unwritten rules can be a field of contention between competing interests, so that any attempt to define 'customary rules' has to consider and adjudicate possible competing claims. In addition to capturing and writing down rules and principles, mechanisms for monitoring and reviewing their application should also be in place. This clearly adds a further layer of complexity.

The documentation of the participatory rangeland management approach (Flintan and Cullis, 2010) details a number of steps which should be followed in order to establish a legally binding agreement between government authorities and customary institutions. This long-term process requires at the very minimum an agreement on the delineation of the rangeland over which the cross-border committee will have primary authority; a rangeland management plan defining the rights and responsibilities of all parties; the legal procedures to be followed in the event of disagreement or default by any party; and the duration of the agreement (*ibid.*).

The legal recognition of committees also implies fundamental shifts in perspectives and principles from both parties: governments have to recognise customary institutions as partners in legal processes, and customary institutions have to move into the world of formal law. A basic example is that 'elders' would need legal definition in order to establish an entity which state law and judicial systems are capable of recognising. These changes are particularly difficult where there is mistrust between the state and local communities, as is the case in the study area. It is also important to keep in mind that legal recognition itself also poses certain dangers. If the committees are not representative or accountable, if they do not have independence from government or the power to challenge policy in any meaningful way, then their recognition may in fact further underminine customary institutional arrangements and further weaken, rather than strengthen, pastoralists' land rights.

5.2.2 Capacity-building

Help with linking up with other communities, for example through cross-border visits, was widely regarded as important. Committees in Gabra and Boran communities were interested in broadening their relationships across the border, and beyond adjacent communities. The Gabra of Forole were

particularly keen to work more closely with other communities along the border, such as Dillo and Dukanna and beyond, so that, according to one elder, 'peace and collaboration could be found all along the Kenya–Ethiopia border'.

It was also frequently noted that members of cross-border committees would benefit from more substantial technical support in soil and water conservation. One elder explained that historically little had been done to maximise water availability in Borana rangelands because Boran pastoralists traditionally migrate to northern Kenya as soon as the wet season starts. In the past this did not pose any significant problems, but given rangeland degradation these traditional practices are no longer adequate. Help with leadership skills and problem-solving techniques was also mentioned by a number of respondents.

5.3 Challenges to external engagement

5.3.1 Legal status of cross-border committees

As discussed above, the committees are largely seen as peace committees and, particularly within local government circles, are not perceived as being actively involved in natural resources management. This is significant for a number of reasons. On the one hand, the potential contribution that committees can make to managing conflict in the long term could be weakened if they are not seen as part of a broader understanding and comprehensive strategy that links conflict and natural resource management. On the other hand, committees currently have no formal role in land tenure or in land management and though they appear to have some authority it is unclear how this could form the basis for any structured or more formal approach. Furthermore, issues of accountability of the committees as a whole and of their members are also unclear. To whom are the committees accountable? To whom should they be accountable? How representative are the pastoral members of the interests of their communities? To whom are they accountable?

Crucially moreover, the relationship between government and the committees is also unclear and should also be the focus of further analysis. For example, if there are disagreements within the committee between members of customary and state authorities, how are these resolved? If members of state authorities adhere to government policy, and if this policy remains unfavourable to pastoral land rights and pastoralism more broadly, can the committees really be an arena where countervailing power can be effected?

5.3.2 Cross-border perspectives and initiatives

Despite good understanding and recognition of the cross-border nature of pastoralism and the sharing arrangements among bordering pastoralist communities, the great majority of I/NGOs interviewed in the study area are not geared to support cross-border initiatives. Organisational mandates have a national focus, and many respondents noted that this meant that their operations could not span international borders. Internal policies can also hinder cross-border approaches and programmes in pastoral areas. For example, CARE Kenya and CARE Ethiopia require their staff, including those working on cross-border projects, to request permission at country-office level whenever they need to cross the border. This obviously makes cross-border work very difficult.

In Ethiopia, the adoption of the Charities and Societies Proclamation in early 2009 has significantly limited the scope of national and international NGOs to support cross-border committees in conflict-resolution and peace-building activities. The law limits work in areas of conflict resolution, human rights, gender and ethnic equality and the strengthening of judicial practices and law enforcement to Ethiopian NGOs or CBOs that receive no more than 10% of their funds from international donors.[17] Focusing on support for natural resource management rather than the more sensitive areas of peace-building and conflict resolution would not be so limited by this provision, but separating the two is not straightforward.

Despite encouraging initiatives in recent years, for instance by ECHO's regional Drought Decision funding and USAID's RELPA programme, there was also a widespread feeling among INGOs that funding for cross-border programmes remains limited, with the bulk of interventions in border areas operating on one or other side of the border. Target communities are identified as either Kenyan or Ethiopian, with attention focused on local rather than cross-border activities.

Engagement with land tenure institutions requires a long-term perspective, the ability to work with an expectation of slow progress and specialist skills. Few external agencies combine these. Support to cross-border committees needs to be based on a sound understanding of institutional arrangements and dynamics. If bordering communities are indeed using committees to develop joint ownership and management of resources, interventions must take these arrangements into account, and be planned and implemented accordingly. With these changes in ownership, negotiation and access rules, any initiative that focuses on only one side of the border and which does not involve both communities may risk upsetting ongoing institutional arrangements.

17 See http://www.irinnews.org/report.aspx?ReportId=82223.

Chapter 6
Conclusions and recommendations

For centuries, the Garri, Gabra and Boran communities living along the Kenya–Ethiopia border have relied on customary mechanisms, rules and norms to guide the use of the natural resources of their rangelands across international borders, administrative boundaries and ethnicities. The rangelands are not open tracts of idle land, over which pastoralists and their livestock move randomly to use water and grazing land. Rather, the existence and enforcement of customary rules and norms of reciprocity around natural resources management have historically played a key role in controlling and regulating both land use and social relations between ethnic groups.

Seasonal livestock cross-border mobility and ongoing sharing arrangements around natural resources currently take place in a legal and policy vacuum, and so depend more on the attitudes of individual local government officials. At higher levels, governments have long disregarded, and thus undermined, customary institutional arrangements around land tenure and natural resource management. In both Kenya and Ethiopia land tenure security for pastoralist communities is weak. This has resulted in a predictable set of problems: conflict between ethnic groups and clans, mistrust between citizens and the state, weakening of rules and practices around natural resources management and consequent land degradation.

The state does not currently have the capacity or will to put in place its own institutions to administer and manage pastoral rangelands. Even if the political will existed, state bureaucratic structures are not sufficiently flexible and it would be unreasonable to expect them to have the intricate knowledge and experience necessary to manage complex decisions about migration and grazing. This must be recognised. If the rangeland is to be managed, customary institutions must be included. Customary institutions can function effectively when there is some form of collaboration and cooperation with the state. Two broad approaches to achieving this can be identified: delegation or hybridisation.

One approach is for governments to delegate powers to customary institutions. There are however three potential drawbacks to this approach. First, it may be argued that customary institutions have never governed natural resource management without conflict, and governments cannot abdicate their responsibility for the welfare of all their citizens. This would entail that any delegation of responsibility was within a legal framework of formal responsibility and accountability, effectively an institutional harmonisation of customary and state power. The government would set the overall rules within which customary authorities operate, limiting their authority and power and giving them statutory responsibilities. It would then support them and hold them to account for the way in which they used their power. This is a model that seeks to replace the confusion of legal pluralism or the removal of any customary institutional framework with one of synergy.[18] Setting the boundaries of each one's authority would be contentious, but should not be a discussion to be avoided simply on that account. Indeed, the new Kenyan Constitution makes it essential that such a discussion happens there as a matter of some urgency.

Another potential objection rests on whether customary institutions are too weak to be able to manage the rangeland effectively. This is perhaps a feeble objection for two reasons. First, customary institutions have been weakened (in part) precisely by the fact that they do not have authority delegated from the state, and the respect they would command and hence their capacity to manage the range and inter-community relations would be enhanced by an increase in delegated authority. Second, many state institutions do not perform adequately, and this is regarded by most as evidence of a need for institutional support and capacity-building, not for them to be dismantled or bypassed.

The final difficulty is more critical. Although constitutional reform in Kenya offers promise of a much greater recognition of the rights of pastoralists, there is still a long way to go to achieve recognition of customary institutions as having lawful executive power over the land owned by their communities. In Ethiopia, it is hard to see how the government will delegate real powers to customary institutions when they are still considered to exploit 'free' lands, not their own property. It cannot be expected that two sovereign nations necessarily have the same land law, and progress in any one state would be important. However, unless the two countries work in some kind of coordination, it will be difficult to establish a secure legal framework for dealing with cross-border land management and mobility issues.

A second approach is to create a hybrid structure recognised by the state and containing elements of customary authority. Few examples of this approach exist in the sphere of land tenure in Ethiopia or Kenya, but in the past decade, external interventions have established committees in border areas, some of which have become substantially involved in cross-border natural resources management. It is not yet clear if these hybrid structures will take on a greater role in natural resources management, but there are already signs that this is happening to some degree. If hybrid institutions are genuinely independent, they may be a compromise arrangement where both state and customary authorities give up some power

18 For a discussion of this approach in a different context see Levine and Adoko, 2009.

in order to have a shared stake in a more powerful and more positive institutional arrangement. However, meetings of government and customary representatives are not necessarily meetings of equal partners. Customary authorities may have greater power to gain acceptance of rules from their communities, but if they have unequal power in setting those rules and arrangements, or if the hybrid structure is not really independent from government at all, then customary authorities may risk cooption rather than compromise. If there is genuine goodwill and a shared development objective, then they may prove the best possible alternative for dealing with cross-border rangeland management.

So far, the committees have largely been used for specific issues where there is a clear shared interest, such as dealing with instances of cattle rustling. If cross-border committees do engage more in natural resources management, this could be under the delegation model, where they take on a role as a coordination mechanism brokering between the two independent authorities (state and customary); or they could start to claim and be given an authority that is distinct from both of these. Those creating and supporting the institutions will not necessarily be the ones to choose in which direction this goes. The more the committees become an institution with authority, rather than a coordination structure, the greater is the need to pay attention to issues of representation, accountability, independence and, ultimately, issues around the power of competing interests. There is currently not enough evidence that those working with the committees are prepared for a shift in the institutional framework governing natural resources management, with the necessary change in attention that this will need, or that governments and pastoralists have a genuinely shared vision of development on which they can collaborate.

Recommendations

A number of recommendations are put forward for government agencies, international donors, regional bodies and I/NGOs wanting to support initiatives in cross-border natural resource management. A key entry point for all stakeholders is to understand, recognise and take into account the institutional, and not only technical, aspects of natural resources management, which determine arrangements around resources management and access. This should also inform the planning of efforts in pastoral areas so that initiatives on the ground are designed to follow pastoral livelihoods and ecosystem needs rather than international and administrative borders.

Recognise the links between natural resources management, conflict and resilience. Harmonious social relations depend on the harmonious sharing of common natural resources, which in turn requires an institutional framework for establishing and regulating these relationships. Peace initiatives which ignore this institutional dimension and its link to natural resources management are unlikely to bring long-term impacts. Agencies supporting peace initiatives – and those involved from communities themselves – need to address the problems of conflict at a much more fundamental level and understand natural resources management as inextricably linked to conflict. The 'technical' side of natural resources management cannot be addressed in isolation from the institutional and governance aspects, which together are the main determinants of how rangeland users relate to each other.

Establish clarity on 'developing' pastoral areas. The term 'development' is used to justify a wide range of often contradictory policies and interventions by different actors. This lack of clarity is sometimes serving to undermine rangeland management and customary institutions around land. A more open discussion focusing on the development of a broad vision and strategy for supporting pastoralism in the region is needed. This will ensure that all actors working in pastoral areas know what they are working towards, and, if they agree with this vision, they can then be guided by an overall plan. The African Union Pastoral Policy Framework for Africa could provide a useful framework for this discussion.

Current plans for the settlement of pastoralists need to be re-examined in light of the ability of the proposed new livelihood systems to cope with both climatic shocks and possible weaknesses in the implementation of proposed plans. The Oromyia Master Plan would be a good place to start, and an open discussion that examines this strategy in a much wider context is necessary. This should include an assessment of possible negative impacts in the longer term on local and regional livelihoods, food security and peace and stability.

Recognise the cross-border nature of pastoralism. International and national development partners need to find ways to translate their recognition of the need for a regional (and cross-border) approach to pastoralism into practical support on the ground that is designed, planned and implemented with a regional perspective.

Develop a legal and policy framework. The policy vacuum in pastoral border areas should be urgently addressed. The governments of Kenya and Ethiopia need to establish a clearer policy and legal framework that recognises the cross-border nature of pastoralism. It is crucial that this is a concerted effort by all stakeholders including the Kenyan and Ethiopian governments at all levels, cross-border committee representatives and other civil society actors, with regional bodies playing a prominent, catalytic coordination role.

Land tenure. Sound natural resources management cannot exist without secure land tenure. The land rights of pastoralists should be put on the same footing as the land rights of farmers. A legal framework that understands the nature of communally owned private property in pastoral areas is needed. In Kenya long-standing legislation and new Constitutional rights need to be given effect on the ground. More investment is also

needed to increase pastoralists' knowledge of their rights under law and the Constitution, and to strengthen their ability to claim these rights. The Constitution of Ethiopia vests ownership of the land in the state, in trust for 'all peoples': the rights of pastoralists as a people cannot be respected as long as the government of Ethiopia treats them as squatters under sufferance on their lands.

Involve customary land institutions. Since it is not realistic to expect governments to replace the existing customary framework in the short or medium term, ways must be found for states to engage with customary institutions to improve both natural resources management and conflict management. Formal legal support is needed for customary institutional frameworks governing natural resources. This involves legal recognition of customary institutions, and agreement on the respective roles and responsibilities of state and customary institutions. All support to natural resources management, both by national and international actors, should be premised on a robust understanding of institutional arrangements around land use, land ownership and rights of access.

Rangeland management as an entry point. External interventions which prioritise efforts to enhance the productivity of the rangelands can be a useful way of supporting institutions such as cross-border committees, for instance by helping these committees to engage more prominently in soil and water conservation activities in border areas. Such interventions must be informed by a deep understanding of the institutional picture rather than by technical perspectives alone. If natural resources management is seen both as a technical and an institutional issue it will be easier to ensure that rangeland support is not constrained within administrative boundaries (either District, zonal or national boundaries), but rather follows ecosystems and grazing/livelihood systems.

In-depth understanding of cross-border committees. Cross-border committees may be an innovative way of addressing issues of natural resources management and conflict among populations whose livelihoods are intrinsically transnational. They may offer a way of combining practical action and governance, and integrating state and customary authorities. Rather than being viewed merely as 'peace committees', their active role in natural resources management and land administration should be fully recognised. Any external support to these committees should be premised on a thorough understanding of their roles, functions and rules, their accountability and representation, their impact on other institutions and the underlying development vision towards which they are working. Ultimately, their roles and possibly their future existence will depend on the recognition they are given, legally, in policy and in the administrative structure, and also from the customary institutions which they may, to some extent at least, replace.

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