



# On the margin: Kenya's pastoralists

From displacement to solutions, a conceptual study on the internal displacement of pastoralists



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March 2014

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Cover photo: Turkana herdsmen with their cattle in northern Kenya. Pastoralist movements cease to be normal once factors that give rise to them are 'coercive' in nature. Credit: IRIN/Gwenn Dubourthoumieu, July 2010

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## Foreword

Pastoralists' internal displacement is often overlooked. Consequently, displaced pastoralists suffer of increased marginalisation and get trapped in poverty with no solution in sight. The marginalised situation of pastoralists in Northern Kenya stands for many others in countries across the African continent.

As a well-founded advocacy call for putting the rights of pastoralist IDPs more to the forefront, this study provides the new thinking required to better understand the complexity of the internal displacement of pastoralists. Three findings of the study stand out in particular:

First, the notion of the internally displaced pastoralist as conceptualised in this study, helps to sharpen the understanding of policymakers and operational agencies alike and refutes the prevailing assumption that nomadic people cannot become forcibly displaced.

Second, internal displacement of pastoralists is presented as a process of impoverishment and decreasing resilience. Human rights can provide a solid and agreed upon fundament to reverse both of these processes to achieve durable solutions for the displaced.

Thirdly, the study analyses drought and other slow onset disasters as a cause of displacement of pastoralists, yet highlights that such displacement is often multi-causal. Recognising and understanding the multi-causality of internal displacement is an especially relevant finding and requires a more nuanced and comprehensive response.

It is my hope too that the fresh thinking of this study creates further innovative thoughts on complex challenges of internal displacement. I would like to thank the Nansen Initiative, the Kenyan Red Cross Society and NRC's Internal Displacement Monitoring Centre for making this study possible.

*Dr. Chaloka Beyani, United Nations Special Rapporteur on the human rights of internally displaced persons*



## Foreword

Given their dependence on climatic factors, pastoralists around the world are likely to be uniquely affected by the growing prevalence of natural disasters and negative effects of climate change. The Nansen Initiative welcomes “On the Margins: From Displacement to Solutions” as a significant contribution to the growing body of knowledge on the protection and assistance needs of people displaced in the context of natural disasters. In addition to highlighting the particular protection needs of displaced pastoralists, the paper also sheds light on the challenge of identifying people in need of protection and assistance in the context of slow-onset disasters, which by nature develop gradually over time and are multi-causal.

Schrepfer and Caterina's study on the internal displacement of pastoralists in Northern Kenya delves into challenging questions such as, “How can pastoralists become displaced when they traditionally lead mobile lifestyles?” and “What specific measures can help displaced pastoralists improve resilience and find durable solutions to their displacement?” In exploring these seemingly paradoxical queries, the authors discuss the heterogeneous nature of modern-day pastoralism, and identify the multi-causal factors that influence the displacement of

pastoralists, including drought and flash floods, conflict, cattle rustling, localised violence, population growth, the privatisation of grazing lands, and exploitation of natural resources. Through this analysis Schrepfer and Caterina argue that pastoralists' varying levels of resilience to multiple stresses can contribute to an impoverishment process that may ultimately lead to displacement, when they lose access to their habitual pastoral living space. In finding durable solutions, the authors emphasise the need to address the multi-causality of displacement through a rights based approach, highlighting in particular the importance of providing pastoralists with different livelihood options and preserving mobility as a way to build resilience.

These conclusions are not only helpful for humanitarian and development actors working with displaced pastoralists in Northern Kenya and the Horn of Africa more broadly, but also for the Nansen Initiative as it seeks to understand the nature of displacement in disaster contexts, and to ultimately build a global consensus on a protection agenda for people displaced across international borders in the context of disasters.

*Prof. Walter Kälin, Envoy of the Chairmanship of the Nansen Initiative*



## Executive summary

Pastoralism is a global phenomenon. In Africa, where 66 per cent of land is used for pastoral production, it is recognised as part of the continent's cultural heritage. More than just a means of production, it is a way of life intrinsically linked to the identity of the individuals and communities that practise it. Given their traditionally nomadic lifestyle, the fact that pastoralists can become internally displaced is often overlooked. Some even question whether it can happen at all.

This study focuses on northern Kenya, a mostly arid and semi-arid area where pastoralists make up the majority of the population. It argues that their internal displacement is a reality that has to be understood within a broader discourse about mobility, and creates a conceptual understanding of the phenomenon by examining its multi-causality and sub-regional implications. In doing so, it also discusses processes and options for improving protection and assistance for those affected.

Three typologies of pastoralist movement are defined: traditional nomadism, adaptive migration and displacement. The first two are considered voluntary forms of mobility, the latter forced. Migration is well-known to be a primary coping strategy, particularly in times of drought and other processes that encroach slowly on pastoralists' living space, but the distinction between voluntary and forced mobility is difficult to draw and not always clear. Rather they constitute two poles of a continuum characterised by growing pressures and fewer choices. This goes hand-in-hand with a steady increase in people's vulnerabilities and a decrease in their resilience. Low resilience creates special needs and puts rights, such as those to food, water, health, safety and education, at risk.

Pastoralists face manifold pressures on their communities and lifestyle. These include drought and other disasters brought about by natural hazards and advancing climate change, localised and cross-border conflict and violence, cattle rustling, cross-border incursions, the exploitation of natural resources and ever less land to range over. When adaptive migration is no longer possible and coping capacities are largely exhausted, the result is forced displacement.

Internally displaced pastoralists are defined in this study as persons or communities who have lost access to their habitual pastoral living space

- as a result of or in order to avoid the impacts of conflict, violence, human rights violations, cattle rustling, natural or human-made disasters, or similar sudden onset events,

- as a result of drought, environmental degradation or similar slow onset processes,
- due to direct intervention by state or private actors, or due to a combination, sequence or accumulation of any of the aforementioned causes, and who have not crossed an internationally recognised state border.

Internal displacement is an impoverishment process characterised by a fundamental disruption of life, and pastoralists are no exception. They lose access to their natural pastoral living space, and with it their basis for subsistence. Their displacement is in essence linked to the loss of livestock, but lack of access to land, resources and markets also contributes to the inaccessibility of their natural living space.

The Guiding Principles on Internal Displacement focus on the concept of forced movement, but the displacement of pastoralists does not necessarily include the element of flight. It can also be the result of the forced interruption or termination of the mobility inherent in their lifestyle. As they lose access to their natural living space, they may ultimately be excluded from their community and consigned to poverty.

This study analyses drought and other slow-onset processes, as well as sudden shocks and state and private interventions as causes of pastoralists' displacement. Drought linked to climate variability is the most prevalent hazard in northern Kenya. Pastoralists' regular exposure to it means that coping, adaptation and innovation have long been part of their lifestyle, but weather patterns are changing. The longer and more severe a drought, the less accessible their natural living space is likely to become, which in turn may make subsistence impossible.

Drought is, however, seldom the only cause of displacement. It often comes on top of cattle rustling and conflicts over resources as a result of which pastoralists have already lost livestock and mobility. The loss of traditional grazing land to privatisation and land concessions can also increase the risk of conflict when drought hits, given that it makes dwindling resources scarcer still and interferes with migration routes. Isolating an individual or primary cause of displacement is difficult if not impossible, because the different factors are so inextricably intertwined. Displacement in such contexts can genuinely be said to be multi-causal, with resilience decreasing and displacement risk increasing with every shock and stress.



The resilience of a pastoralist community affected by chronic poverty in a country with fragile institutions will already be low and will decrease further in times of drought. If the same community is then affected by conflict over scarce resources as a result of the drought, or by unrelated cattle rustling, it will become less resilient still. This multi-causality and its implications must be recognised and understood, because a drought or conflict response on its own will inevitably lead to shortfalls. To do so requires a move away from the siloed approach to analysing risk, making policy and designing programmes to develop an integrated set of responses.

This study presents pastoralists' internal displacement as a process of impoverishment and decreasing resilience, which leads to the disenfranchisement of rights, marginalisation and neglect. As such, it is as much a human rights as a humanitarian and development concern that requires a holistic approach. Human rights provide a solid and agreed foundation for a response to reverse these processes and achieve durable solutions. Applying a human rights framework also ensures that resilience initiatives do not undermine people's rights, which also leads to poverty.

Pastoralists in northern Kenya inhabit borderlands and cross into neighbouring countries as part of their traditional migration, meaning that the relevance of state borders becomes somewhat blurred. The imposition of Kenya's colonial borders decreased pastoral migration, but it still takes place. Regional mobility should be facilitated as provided for by the African Union (AU) Policy Framework for Pastoralism in Africa of 2010, as a means of preserving the pastoral lifestyle even in times of stress. Considerations of national sovereignty should not undermine it. When pastoralists become displaced, however, the country in which it happens will matter, because national sovereignty determines responsibility.

In conclusion, this study discusses four outlooks to guide advocacy, policy and the response to pastoralists' displacement:

1. Preserving pastoralism by addressing political marginalisation
2. Using information technology as source for action
3. Adding value by using a rights-based approach
4. Moving towards solutions by reversing impoverishment

The first outlook builds on the opportunities offered by Kenya's 2010 constitution, and particularly its focus on national unity by making the recognition of diversity an objective of devolved government. The constitution also acknowledges communities' right to manage their own affairs and advance their development through self-governance and increased participation in decision-making. By devolving government, Kenya seeks to protect and

promote the interests and rights of marginalised and minority communities. The constitution categorises pastoralists as a marginalised community, defined as having been disadvantaged by discrimination through law and/or practice, and this has a number of consequences, one being that state bodies and all public servants are duty-bound to address their needs.

The devolution of government also carries risks, in that conflict and power struggles that may flare up at election times are devolved as well. Implementation will also take time, funding and political will. Until it is complete, the risk of frustration over broken promises, the exclusion of minority tribes at the county level and obstacles to the establishment of functioning local institutions are real and need to be mitigated early on.

The implementation of the National Policy for the Sustainable Development of Northern Kenya and Other Arid Lands, which was adopted by cabinet in 2012 and domesticates the AU policy framework on pastoralism, will become a vital driver of the constitutional process of devolution. The preservation of pastoralism must be an overall goal for the Kenyan government, and addressing the political marginalisation of pastoral communities through devolution will be key to achieving it. Existing constitutional and policy commitments offer hope, but no certainty until concrete steps towards implementation show results.

The second outlook examines the use of technology to bring together and manage information and knowledge vital for policy development and implementation, and for the improvement of planning, preparedness and response. Multi-causality requires different information sets to be collated in a multi-disciplinary way, and research must also build on, reinforce and complement the traditional knowledge of communities and their elders. A system dynamics model can be used to develop to such an evidence base, deepen understanding of existing trends and explore possible future scenarios. Such models give all stakeholders a common basis for discussing potential interventions and policies, and allow them to test assumptions and better align development and humanitarian policies with pastoralists' priorities.

The third outlook highlights the fact that both the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act of 2012 and the accompanying draft policy apply fully to all internally displaced people (IDPs) and communities in Kenya, including pastoralists. Neither instrument addresses pastoralists specifically, but they do provide relevant hooks and even some provisions that include them. Displaced pastoralists share many protection needs with other IDPs, but they also have specific ones, primarily related to loss of livestock and the inability to access their living space. The 2012



Pastoralist farmers travel increasingly long distances to find water for themselves and their animals. EC/ECHO/Daniel Dickinson, Sept. 2008

Act provides an important framework for accountability. It establishes the government as primary duty bearer, and states that all those involved in the response are bound to respect the obligations that both it and domesticated international law set out. It is also absolutely critical that human rights are used as the basis for the design, planning and implementation of relief and development.

Advocacy must be undertaken to ensure that pastoralists and their rights are considered in preparations to implement the 2012 Act, and that particular attention is paid to their specific protection needs. Pastoralists and the internally displaced among them lack effective advocates at the national level, leaving Kenya's vibrant civil society to fill the gap as a campaigner for the forgotten.

The fourth and final outlook discusses the reversal of impoverishment as a path towards solutions. Some displaced pastoralists may choose to settle, but the concept of durable solutions included in the 2012 Act - to be achieved "through a voluntary and informed choice of sustainable reintegration at the place of origin, sustainable local integration in areas of refuge, or sustainable integration in another part of Kenya" - must be interpreted more broadly to embrace options for mobile lifestyles, including return to pastoralism in its various forms, diversification and alternative livelihoods. Measures might include ensuring access to land, markets and education; restocking options and subsidised microcredit schemes in the aftermath of drought; and vocational training, the facilitation of national and regional strategic mobility and the establishment of social protection schemes. IDPs themselves play a critical role in the search for durable solutions. It is their right to choose which option to pursue, based on the information available to them. Settlement options cannot be imposed. Limitations may be introduced in exceptional circumstances, but only if they have a basis in law and serve as a measure of last resort.

Internally displaced pastoralists in northern Kenya require simultaneous humanitarian support and development initiatives if they are to be able to choose their future path and make their choice a reality. Understanding the achievement of durable solutions as a process of reversing impoverishment and increasing resilience invites a new dialogue between the humanitarian and development sectors based on the following four premises:

1. **Not talking the same language, but understanding each other:** Understanding internal displacement as a process of impoverishment and decreasing resilience speaks to humanitarian and development agencies alike.
2. **A common normative framework supports coordinated action:** Human rights set out the normative basis for processes to reverse communities' impoverishment and increase their resilience, and as such provide a common footing for humanitarian and development action.
3. **Different goals towards solutions:** The goals of reversing impoverishment and increasing resilience allow for processes that consider the multi-causality of displacement and lead towards solutions.
4. **Coordination and integration towards lasting impact:** Activities to reverse impoverishment and increase resilience do not take place sequentially but simultaneously, and include short, medium and long-term interventions that achieve goals and sustain solutions. The coordination of both processes and the integration of activities across different timeframes result in a mutual improvement in terms of impact.

## Purpose and scope of this study

Until the eruption of Kenya's post-election crisis in December 2007, internal displacement was not acknowledged by the government. Only the ensuing two months of violence, which forced more than 600,000 people to flee their homes, prompted both the government and the wider public to recognise the phenomenon. Not so, however, in the marginalised north of the country. Much of northern Kenya is an arid or semi-arid area where pastoralists make up the majority of the population. Internal displacement there continues to go largely unnoticed, and little is known about its impact on pastoralist communities. Given their traditionally nomadic lifestyle, some even question whether pastoralists can be defined as internally displaced at all. This study argues that the internal displacement of pastoralists is a reality that has to be understood in a broader discourse around mobility. It does not intend to label people, but to create an understanding of what internal displacement means for pastoralists, and so to inform policy and operational responses. These should go beyond addressing vulnerabilities to provide solutions that re-establish the lifestyle and resilience of those affected.

### Insight: needs in northern Kenya

According to Mohamed Elmi, the former minister for the development of northern Kenya and other arid lands<sup>1</sup>, most resources in the region go towards humanitarian assistance, while the development focus has largely been on livelihood projects. Without robust investment in broader development initiatives, however, dependence on humanitarian assistance will not be broken and livelihood projects are likely to fail. In his view, this constitutes a gridlocked response, which requires investment in climate change adaptation, peacebuilding and human security, and human development to ease. Interventions based on these three pillars would help to prevent the displacement of pastoralists, and to provide solutions for those who have already been displaced.

This study aims to shed light on the displacement situation of pastoralists in northern Kenya. In particular:

- It creates a conceptual understanding of pastoralists' internal displacement. The analysis examines the multi-causality of their displacement and its sub-regional implications;

- It discusses processes and options in terms of solutions for internally displaced pastoralists.

The study was undertaken by the Office of the UN Special Rapporteur on the human rights of IDPs and the Norwegian Refugee Council's Internal Displacement Monitoring Centre (IDMC), with support from the Kenya Red Cross Society (KRCS). It is based on consultations that took place with internally displaced pastoralist communities, and government and civil society interlocutors in Nairobi, Isiolo, Marsabit, Maralal, Moyale, Garissa and Wajir, between October and December 2012. Secondary sources include selected literature from different disciplines, and applicable national, regional and international legal and policy instruments. The analysis also benefited from the concurrent development of a system dynamics model by IDMC and Climate Interactive, which drew partially on the study's conceptualisation.

The authors wish to thank all of their interlocutors for their interest in, and contributions to, this study. They express particular gratitude to the pastoralist communities they visited, who shared their experiences, views and concerns openly. Appreciation and gratitude also go to a number of former ministries: the Ministry of State for Development of Northern Kenya and other Arid Lands, the Ministry of State for Special Programmes, the Ministry of Livestock and the Ministry of Lands; the National Disaster Operation Centre, the Kenya Livestock Marketing Agency, KRCS and its field offices in the locations visited, the Pastoralists Development Network of Kenya, the Turkana Development Initiative, the District Peace Committees, CordeAid, Food for the Hungry (FHI), Community Initiative Facilitation and Assistance (CIFA), Care, Oxfam GB, the Kenyan NGOs WASDA and ALDEF, the International Crisis Group (ICG), the Refugee Consortium of Kenya (RCK), the Kenya National Commission on Human Rights, the Norwegian Refugee Council (NRC)'s Horn of Africa office, the Kenya branches of the UN Refugee Agency (UNHCR) and the UN Office for the Coordination of Humanitarian Affairs (OCHA), the International Organisation for Migration (IOM), the UN Environment Programme (UNEP), the UN Food and Agriculture Organisation (FAO), the UN World Food Programme (WFP) and the Institute for Security Studies (ISS). Special thanks also go to the experts who contributed to the peer review. The authors also wish to acknowledge the generous funding provided by the Norwegian Ministry of Foreign Affairs.

Pastoralism is a global phenomenon. It is prevalent in arid and semi-arid areas of Africa, the Arabian peninsula, the highlands of Latin America and in Asian countries such as Afghanistan and Mongolia. Pastoral production takes place on an estimated 25 per cent of the world's land, and pastoralists account for ten per cent of the world's meat production, with a billion head of livestock supporting some 200 million households<sup>2</sup>. In most countries, however, pastoralists are a minority<sup>3</sup>.

Pastoralism was previously understood as a stepping-stone in socio-economic evolution between hunter-gatherers and a sedentary agricultural lifestyle<sup>4</sup>. It has, however, proved a highly innovative production system, and a livelihood that has evolved to adapt to climatic and environmental conditions that limit agricultural expansion<sup>5</sup>, and other impacts and stressors. In Africa, where 66 per cent of land is used for pastoral production<sup>6</sup>, nomadic pastoralism is recognised as part of the continent's cultural heritage<sup>7</sup>. More than just a means of production, it is a way of life intrinsically linked to the identity of the individuals and communities that practise it.

The Horn of Africa is home to one of the world's largest groups of pastoralists, living in areas of Kenya, Somalia, Ethiopia and Uganda where other livelihoods are barely viable. Pastoralists rely heavily on strategic mobility to ensure access to grazing land and water in areas where seasonal weather patterns mean such resources are not available all year round<sup>8</sup>, and as such their livelihoods have a regional dimension<sup>9</sup>. They migrate across borders, access regional and international markets, and are affected by impacts such as conflict or drought, which often spread across national boundaries.

In Kenya, pastoralists inhabit large parts of the north of the country and its borderlands. The region is generally seen as impoverished and underdeveloped, and it lacks infrastructure and basic services. It suffers from the absence of governance and the rule of law, and from economic, political and social marginalisation. It is also badly affected by recurrent droughts and is prone to conflict. Kenya's pastoralists are not a homogenous group, but include the Turkana, Samburu, Pokot, Boran, Somali, Gabra, Burji, Rendille and Garre communities. They voted overwhelmingly against unification with the rest of country in a 1962 referendum<sup>10</sup>, and some still do not consider themselves as Kenyans<sup>11</sup>, which suggests a lack of national cohesion.

Pastoralists face manifold pressures on their communities and lifestyle. These include drought and other disasters brought about by natural hazards and advancing climate change, localised and cross-border conflict and violence, cattle rustling, cross-border incursions, the exploitation of natural resources and ever less land to range over. Migration is well-known to be a primary coping strategy, particularly in times of drought and other processes that slowly encroach on their living space. When such adaptive migration is not possible and coping capacities are largely exhausted the result is forced displacement or sedentarisation. The internal displacement of pastoralists is, however, a hidden phenomenon and those affected tend to be characterised as drop-outs. Their reality is a story of impoverishment, decreasing resilience, the disenfranchisement of their rights, marginalisation and neglect<sup>12</sup>. As such, it is as much a human rights as a humanitarian and development concern and requires a holistic response.

#### Pastoralist voice

"It is very hot here and we have no water. Sometimes we are given food and clean water, but we are at the mercy of well-wishers. As a mother, I tell you, the most important thing is schooling for my children, but they cannot go to school here as we have no school and no teachers. What will their future be? We have no rights and no future here. But we cannot go back because there is nothing to return to."<sup>13</sup>

This woman's concerns illustrate the equal need for humanitarian and development action that addresses displaced pastoralists' rights to both water and education. Her testimony underlines the fact that they are not only needy people or beneficiaries, but also holders of rights. The African Union (AU) Policy Framework for Pastoralism in Africa recognises this, and builds on pastoralists' human rights<sup>14</sup>.

# 2

## Pastoralism in the broader mobility discourse

### 2.1 The faces of pastoralism: differing perceptions

Pastoralists tend to be perceived in one of two very different ways. On the one hand, they are seen as backward conservatives who refuse change and stubbornly resist adaptation to modern realities<sup>15</sup>, and on the other as resourceful and innovative entrepreneurs with ample coping capacities and traditional knowledge<sup>16</sup>. The same divergence of views applies to the areas they inhabit. Northern Kenya remains an economically, politically and socially marginalised and underdeveloped, drought and conflict-stricken and impoverished area linked to the perpetuation of Kenya's colonial past<sup>17</sup>. For some, these arid and semi-arid areas are deserts, unviable land with no resources, lawless borderlands with increased security threats, somewhat autonomous and with it a threat to Nairobi's power. As an International Crisis Group analyst said: "Northern Kenya is by and large an anarchic area."<sup>18</sup> Others see the same areas as offering opportunities and resources, and value the economic, social and security advantages of pastoralists inhabiting, using and governing them<sup>19</sup>.

#### Pastoralist voice

"What the town is for you, this land is for us. This is our home. What the bank is for you, our animals are for us, and much more."<sup>20</sup>

Pastoralists' own perceptions are different again. For them, pastoralism is not only a livelihood. It is their lifestyle and their identity. Children born into their communities are steeped in pastoralism. As they grow up, they acquire pastoralist skills and assume traditional roles in their communities' hierarchy and systems. Being a pastoralist is not a choice, but a social, cultural and economic construct to which one is either an insider or an outsider. Modernisation has brought about tensions within the pastoralist social system. Becoming a pastoralist may not be a choice, but opting out is, especially for the younger and educated generation. Some see this as a threat to the future of pastoralism<sup>21</sup>, but others see it as a means of diversifying their livelihood that strengthens trading and marketing links with towns and brings in remittances with which they can access additional resources<sup>22</sup>. This explains pastoralists' peculiar relationship with urban centres. On the one hand, towns represent poverty<sup>23</sup>, and on the other they offer commercial markets<sup>24</sup> and the same

education opportunities that may introduce tensions into their communities. Put simply, urban centres are where pastoralist opt-outs and drop-outs tend to go, but the former at least have a better chance than the latter of integrating into an urban lifestyle because of the assets, education and other skills available to them.

The pastoralist cliché does not exist<sup>25</sup>. On an individual level, the lonely herder wandering the wilderness in search pasture and water is a romanticised picture of the harsh living conditions pastoralists face. Neither do they collectively form a homogenous group. Pastoralist communities are tribally affiliated groups with different histories and languages. They have different social and cultural values and ties, engage in distinct power struggles and work with different species of livestock. They have varying degrees of mobility and different migration routes. Some are more diversified and commercialised than others. They have different levels of access to resources and markets, and different views of themselves and their future<sup>26</sup>.

#### Issue in focus: exclusion, dominance and coalitions

Pastoralist tribes do have in common that they are minorities to Kenya's powerful governing clans, but power struggles also take place among them. These became more evident during the March 2013 general election when, for the first time in the country's history, powers were devolved to the local level. Communities competed against each other for representation, and particularly for the role of governor. A tribe's local dominance can swing a local election, and in some areas smaller ones formed alliances such as the Rendille, Gabra and Burji (REGABU), which was established to counter the dominant Boran. Whether the outcome is the rule of one dominant tribe at the exclusion of others or a coalition of minority tribes ruling over a dominant one, there is an inherent risk of instability and tension. This, however, seems to be the story of Kenyan elections, in which one ethnic coalition is simply replaced with another<sup>27</sup>.

Traditional mobile pastoralism is becoming increasingly rare<sup>28</sup>, but the vision of the lifestyle and the identity it carries remain central despite realities that constrain or even threaten it. The changing face of pastoralism is a



challenge in terms of policymaking and programming, because drought, violence and conflict, state interventions and private encroachment on pastoralists' land have different impacts on different communities and their futures<sup>29</sup>. That said, while acknowledging such diversity<sup>30</sup>, pastoralist lifestyles share three core criteria<sup>31</sup>:

1. Some degree of mobility;
2. A livelihood based on livestock;
3. Special attachment to land in terms of access to resources, particularly grazing areas and water, and to markets.

The harsh living conditions in northern Kenya, and the boom-and-bust cycle of pastoral systems<sup>32</sup> mean pastoralists and their coping strategies have to be highly flexible and adaptable. By necessity, it is argued, they are resourceful, entrepreneurial and innovative<sup>33</sup>. Despite these adaptive qualities, however, they are also under significant pressure from external factors, the fact that their land is in marginalised and/or border areas, and aspects of the pastoral lifestyle itself.

#### Issue in focus: pressures on pastoralism in northern Kenya

Pastoralists have faced many challenges and pressures on their way of life. Some, such as conflict, cattle rustling, localised violence, flash floods and drought are recurrent. Others, such as privatisation, food insecurity and population growth, have intensified; while other still, such as poverty and underdevelopment, are chronic. Harvest failures linked to advancing climate change have become more frequent.

Northern Kenya is known as a marginalised area in political, social and economic terms, leaving this large part of the country underdeveloped. Pastoralists inhabiting borderlands are also susceptible to cross-border factors, such as incursions and the proliferation of small arms and other weaponry. Kenya's foreign policy in the sub-region also affects the borderlands. Its invasion into Somalia had negative impacts on livestock markets and reduced trade, as a representative of the Livestock Marketing Agency in Garissa confirmed.

Pastoralism remains highly diverse despite the pressures it has faced. Pure pastoralism may have become rare, but this diversity reflects an innovative approach to sustaining the lifestyle beyond mere survival. Subsistence pastoralism is likely to face the most serious threats, along with increased risks of displacement and food insecurity.

## 2.2 People on the move: a typology

The internal displacement of pastoralists has to be understood as part of the mobility dynamics prevalent in northern Kenya and its bordering areas, and the broader discourse around them. The question is: who are the people on the move?

Given the degree and diversity of mobility, it is not possible to give a typological answer that distinguishes between internal and cross-border, or voluntary and forced movements. That said, different legal frameworks protect different groups depending on the nature of their mobility, and different gaps exist in their protection.

### 2.2.1. Nomadic movement

Nomadic migration has to be understood as the strategic mobility of people and livestock. Aside from seeking pasture and water for their animals, pastoralists also migrate for other economic purposes, to access livestock, markets or urban centres, and particularly if they have diversified their lifestyle. This form of migration is pursued primarily for livelihood purposes and is a matter of choice.

Nomadic movements do not stop at internationally recognised state borders, which restrict but have not halted them<sup>34</sup>. It is not unusual for a pastoralist community to straddle a border and regular movements take place regardless of it. This applies to the Boran, Garre and Gabra communities along Kenya's border with Ethiopia<sup>35</sup>, and to Somali pastoralists along the Kenya-Somalia border. Such cross-border migration goes both ways. Pastoralists tend to say that they respect borders, but also take advantage of them<sup>36</sup>. In effect, pastoralist communities manage large parts of northern Kenya's borders and borderlands.

#### Issue in focus: cross-border dynamics during elections

Interesting cross-border dynamics emerge in the run-up to elections in Kenya, as was witnessed in November and December 2012. Pastoralists from the Boran and Gabra communities from the Ethiopian side of the border came to settle on the Kenyan side so that they could register to vote. This way of broadening a constituency is not a new phenomenon<sup>37</sup>, but with the decentralisation provided for by Kenya's 2010 constitution, the implications are different. Power struggles among pastoralist communities had largely been about the roles of county authorities, and particularly governors. With the devolvement of powers, however, the risk of election-related violence has also been devolved.



Credit: EC/ECHO/Malini Morzaria

Nomadic movements within Kenya's internationally recognised borders are protected by the right to freedom of movement and choice of residence. This is accorded by Kenya's bill of rights and by regional and international human rights law<sup>38</sup>. It protects, for example, against imposed sedentarisation or resettlement policies. The colonial creation of national borders turned pastoralists' traditional nomadic migrations into cross-border movements, dividing established pastoral units<sup>39</sup> and traditional routes and sometimes cutting communities off from their access to water or pasture<sup>40</sup>. The colonial agenda was a sedentary life of pastoralists within demarcated national borders, but mobility across Kenya's borders remains a reality. The human right to freedom of movement does not protect cross-border mobility and the International Covenant on the Rights of Migrant Workers and their Families is not adapted to this particular form of livelihood mobility<sup>41</sup>. As such, cross-border mobility may for the most part be condoned, but it is largely unprotected. Some African countries have developed progressive mobility policies<sup>42</sup>, and both the AU and a number of Regional Economic Communities (RECs) have acknowledged the need for regional solutions. The 2009 Policy Framework for Food Security in Pastoralist Areas drafted by the Common Market for Eastern and Southern Africa (COMESA) suggests the regional harmonisation of national policies to support pastoralists' mobility and make efficient use of transnational rangelands and livestock trade<sup>43</sup>. Though not applicable to Kenya, the Economic Community of West African States (ECOWAS) regional framework for cross-border transhumance among 15 member states provides for transnational mobility based on certain conditions, in particular the International Tran-

shumance Certificate<sup>44</sup>. The AU explicitly supports strategic mobility within and across borders as a "basis for the efficient use and protection of rangelands", and states that "mobility is key to appropriate adaptation to climatic and other trends". It also acknowledges the benefits of regional approaches<sup>45</sup>. The National Policy for the Sustainable Development of Northern Kenya and other Arid Lands, which was approved by Kenya's cabinet in 2012, domesticates the AU policy framework and seeks to protect and promote mobility essential to pastoral production<sup>46</sup>. Any policy on regional pastoral mobility must be based on the understanding that for pastoralists borders are not barriers. On the contrary, the different conditions on either side of a border create reciprocal interests that present them with opportunities for trade and economic growth<sup>47</sup>.

### **2.2.2 Migration as a form of adaptation**

As the AU alludes to<sup>48</sup>, migration allows pastoralists to adapt to climatic and other trends that negatively impact their lives. Adaptive migration is different from traditional nomadic movement in that pastoralists are exposed to increased pressures that push them to migrate. It is still considered voluntary, but is steered primarily by the need to adapt to external circumstances trying to maintain the pastoral lifestyle. Adaptive migration often takes place in response to land being gradually encroached upon, or to water and pasture being slowly depleted, as happens in times of drought. This form of mobility is likely to be seasonal or cyclical, as the International Organization for Migration (IOM) confirms: "Ethiopian pastoralists have for a long time crossed the border into Kenya when water was scarce and then moved back again."<sup>49</sup> As drought

becomes prolonged and encroachment onto pastoral land increases, such migration may become permanent. It may also cause tension with other communities as more people and different tribes have to share the same land and resources. A recent study suggests that financial assets and transferable skills allow the decision to move to be taken before livelihoods fail<sup>50</sup>, increase communities' capacities to adapt and prevent their displacement.

Typical forms of adaptive migration typically involve recourse to other routes, grazing land or water points than those usually used, either within or across borders. Unlike traditional nomadic movements, it may affect the land of other pastoral communities, farmers and other private owners, and in such cases pastoralists sometimes have to pay grazing fees<sup>51</sup>. They also often find themselves as a minority tribe, and while they may be tolerated at least for a time, adaptive migration tends to create or increase tension, conflict and violence. Often labelled as conflict over scarcer resources, it is actually about land, and more precisely about ethnic territorialisation. This trend towards ethnic concentration in given areas accelerated during Daniel arap Moi's period of rule between 1967 and 1978, and has remained a key factor in Kenyan politics since<sup>52</sup>, shifting the discourse from host community to rightful residents, and from brothers to intruders. Such rhetoric can become sharp, as illustrated in the following letter:

**Letter to the provincial commissioner: visit to Moyale<sup>53</sup>**

"Garre social and cultural relations with the host community where characterised by a widespread antipathy. They have employed all means to antagonise the host community using aggressive means, which they inherited from the Somali culture. Integration of the alien Garre communities into the mainstream of the host communities has been one of strife and bitter hostilities. The recent Garre migration into this district gave rise to a situation in which they suffered from a negative social image (...), thereby influencing the dominant culture of the host community (...)

Garre culture (...) does not conform to the traditional culture of the indigenous community of this district. They have already polluted the social norms of the host community members. Hence this anti-social practices have posed a situation of major hostilities and would continue to do so, now that the indigenous community would no longer tolerate."

The constitutional and human right to freedom of movement protects adaptive migration, as long as it remains within internationally recognised state borders, but this

does not address the challenges migrating pastoralists encounter when moving onto the land of other communities or across borders<sup>54</sup>. Given that pastoralists may need to cross borders to adapt to climate stress and other factors<sup>55</sup>, adaptive migration requires the facilitation of their regional mobility<sup>56</sup>. Such a regional approach must not only consider facilitating traditional nomadic movement, but also the particularities of those who migrate as a form to adapt to drought and similar stressors.

It may also give rise to harmful practices, including the separation of families. Pastoralist parents in Turbi said that when worsening drought forced them to migrate with what little livestock they had left, they had to leave their children behind in Bobisa so they could continue their education. The children walk for more than two hours to be reunited with their parents at weekends and during school holidays<sup>57</sup>. In other cases, male heads of household have separated from the rest of their family to seek alternative livelihoods elsewhere.

Migration management is key to addressing the challenges and risks adaptive migration entails. Pastoral governance systems and rangeland management in particular are critical to avoid conflict and mitigate against harmful practices. As analysts confirm, "conflict is a symptom of a failure to manage scarcity, rather than symptom of scarcity itself"<sup>58</sup>. Pastoral governance of rangeland, including access to water and pasture, cannot be separated from the management of social relations<sup>59</sup>.

**2.2.3 Displacement of pastoralists within and across borders**

Pastoralist victims of forced displacement either remain displaced within Kenya or cross borders. Displacement, particularly across borders, will in some cases be a secondary movement if those affected have undertaken adaptive migration first. Internal displacement is also sometimes a precursor to cross-border displacement<sup>60</sup>. A typical feature relating to the forced nature of pastoralists' displacement, is the disruption of rangeland management systems, which become dysfunctional in times of flight, especially because needs are no longer mutual<sup>61</sup>. Communities' mutual support and assistance structures collapse, potentially leading to the structural impoverishment of those displaced<sup>62</sup>. Adaptive migration is a managed part of pastoral life, but forced displacement is not, and creates a situation the pastoralist system does not provide for.

Like all Kenyans, internally displaced pastoralists are protected under the country's bill of rights, irrespective of the cause of their displacement<sup>63</sup>. The Guiding Principles on Internal Displacement are the internationally recognised framework for the assistance and protection of internally displaced people (IDPs)<sup>64</sup>. They have been



domesticated into national law via the Great Lakes Pact and its protocols, to which Kenya is member state. The country's Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act of 2012 also applies to internally displaced pastoralists, as does the cabinet-approved 2012 policy on IDPs. As such, the legal and policy framework to protect internally displaced pastoralists is in place, but in practice ignorance and disregard for displaced pastoralists' rights continues unabated.

Crossing borders matters. The international protection system clearly distinguishes between internal and cross-border displacement and applies different protection regimes to each. Pastoralists displaced across borders may qualify as refugees if they fulfil the criteria under the 1951 Geneva Refugee Convention or the broader notion of the 1969 Organisation of African Unity (OAU) Refugee Convention<sup>65</sup>. The threshold for the Geneva Refugee Convention is comparatively high as it requires individual persecution on discriminatory grounds, but pastoralists who flee their country as a result of conflict or violence may qualify as refugees under the OAU convention. Refugee law also offers certain protection in cases where conflict and disaster drive each other. As one pastoralist from Somalia put it: "The drought and the war, they ran side by side. It is difficult to say which

one forced us to move."<sup>66</sup> Refugee law was not, however, conceived to extend substitute protection to those fleeing their country as a result of sudden or slow-onset disasters in the context of climate change<sup>67</sup>. Such protection is also limited under regional and international human rights law, as the primary needs to access and stay on foreign territory are not addressed<sup>68</sup>. The Nansen Initiative<sup>69</sup>, a state-driven process launched in 2012, aims to address this gap by developing a protection agenda for those displaced across borders in such circumstances. As a member of the initiative's steering committee, Kenya has an obligation to ensure that the agenda adequately reflects displaced pastoralists' particularities so that its own citizens' rights are better protected if they are displaced across borders. The Nansen Initiative's sub-regional consultations in the Horn of Africa scheduled for first part of 2014 should make efforts to include pastoralists in their consultations as the protagonists of this relevant discourse in the Horn of Africa.

#### **2.2.4 Overview: protection of people on the move**

Three typologies of pastoralist movement have been distinguished; traditional nomadism, adaptive migration and displacement. The first two are considered voluntary forms of mobility, and the latter forced. All three may take place within Kenya's borders or across them.



Internally displaced Turkana pastoralists from Baragoi in Loikas. Credit: N. Schrepfer, November 2012

Type of movement	Character	Protection of mobility
Traditional nomadic movement	Internal	Right to freedom of movement and choice of residence as contained in Kenya's constitution, regional and international human rights law provides protection.
	Cross-border	Need for national and regional pastoral mobility policy in line with the AU Policy Framework for Pastoralism in Africa.
Adaptive migration	Internal	Right to freedom of movement and choice of residence as contained in Kenya's constitution, regional and international human rights law provides limited protection to those who migrate as a form of adaptation. Need for migration management through strengthening of pastoral governance and in particular rangeland management.
	Cross-border	Need for national and regional pastoral mobility policy in line with the AU Policy Framework for Pastoralism in Africa.
Displacement	Internal	Kenya's constitution, its 2012 Act and cabinet-approved policy on IDPs, the Great Lakes Protocol on IDPs and Guiding Principles on Internal Displacement provide protection. Need to acknowledge internal displacement of pastoralists and implement the above listed instruments considering their particular needs.
	Cross-border	Applicability of regional and international refugee law limited to cases of cross-border displacement related to violence and conflict. Regional and international human rights law provides only minimal protection and does not address key protection needs of environmentally displaced persons, including access and stay. Need for the Nansen Initiative to consider particular needs of pastoralists displaced across borders as a result of drought and other climate change impacts in order to ensure that their specific needs are reflected in regional pastoral mobility frameworks in line with the AU Policy Framework for Pastoralism in Africa.

Internal movements are broadly protected by Kenya's bill of rights, particularly by the right to freedom of movement and choice of residence, which is also enshrined in regional and international human rights law. This right protects traditional nomadic movements, including from imposed sedentarisation or resettlement, but it does not address the risks and challenges inherent in adaptive migration. Internally displaced pastoralists are also protected under the Guiding Principles and Kenya's Act and policy on IDPs. These instruments are still to be implemented, however, and unless advocates make themselves heard there is a risk that implementation will focus on other groups of IDPs. If this happens, internally displaced pastoralists will remain in protection limbo and become increasingly impoverished.

Cross-border migration, be it nomadic or adaptive, is a reality in the Horn of Africa. It is largely condoned, but there is an overwhelming need for regional or sub-regional facilitation of pastoral mobility as supported by the AU Policy Framework for Pastoralism in Africa. Any such efforts should address the risks and challenges inherent in adaptive mobility and strengthen pastoral governance and rangeland management as a means of mitigating against conflicts. Those displaced across borders may qualify as refugees and receive protection under international and regional instruments, but those who flee environmental factors are largely unprotected.

This protection gap is increasingly acknowledged, but no framework is yet in place to protect such people. States involved in the Nansen Initiative are encouraged to consider the special needs displaced pastoralists may have.

### 2.3 The migration-displacement nexus

The distinction between voluntary forms of mobility and displacement is difficult to draw and not always clear, particularly in situations of drought and other processes that encroach slowly upon nomadic living space. "Voluntary and forced movements often cannot be clearly distinguished in real life but rather constitute two poles of a continuum, with a particularly grey area in the middle, where elements of choice and coercion mingle."<sup>70</sup>



This continuum is characterised by increasing pressures and decreasing choices. As aptly described by Graeme Hugo, "population mobility is probably best viewed as being arranged along a continuum ranging from totally

voluntary migration, in which the choice and will of the migrants is the overwhelmingly decisive element encouraging people to move, to totally forced migration, where the migrants are faced with death if they remain in their present place of residence.”<sup>71</sup>



Greater pressures and fewer choices, the two determinants of this mobility continuum, go hand in hand with a steady increase in people's vulnerabilities and a decrease in their resilience.



Low resilience creates special needs and puts rights, such as those to food and water, health, physical security and education, at risk. A significant protection need displaced pastoralist have compared to other vulnerable groups is the need for a durable solution to their displacement<sup>72</sup>. Low resilience levels linked to their displacement mean most will not have enough rebound capacity to restore their lives. “I have two cattle and a few shoats left. I can barely survive,” one displaced herder said<sup>73</sup>. His comments suggest that even if not all livestock is lost as a result of displacement, those affected are still left unable to re-establish their previous lifestyle.

This study has no intention of labelling or categorising people as either IDPs or migrants, but the differences are relevant for policies and in programmes. The Guiding Principles are based on the premise that IDPs have special assistance and protection needs as a result of their displacement, and the Kenyan government has acknowledged the need to address these by adopting the 2012 IDP Act. Implementation will require it and other agencies to conduct assessments that inform their responses to ensure that IDPs' specific assistance and protection needs, including those of displaced pastoralists, are addressed.

## 2.4 Dropped out or displaced?

The terms “drop-out” and “internally displaced pastoralist” are often used interchangeably, but while there is

an overlap, they are not synonymous. A pastoralist may drop out without having been displaced, and a displaced pastoralist may drop out following their displacement. Dropping out of pastoralism is an economic failure, not primarily linked to external factors. Displacement is mainly caused by external factors and any ensuing economic stress is a result of it.

Globalisation has given pastoralists more mobility and commercial opportunities, but only a wealthy few have benefitted. They make up today's pastoral elite<sup>74</sup>. This differentiation has eroded social networks in pastoralist communities, and undermined the tradition of sharing and economic equity<sup>75</sup>. While a few become wealthier as a result of new opportunities, many more drop out<sup>76</sup>. The slogan “too many people and too little livestock”<sup>77</sup> has become a reality for many pastoralists in northern Kenya because their system cannot sustain the rapidly growing pastoralist population<sup>78</sup>. Too few alternative livelihood options, and too little land and access to resources are further constraints. Pastoralists interviewed for this study confirm that there have always been drop-outs, and that the exclusion of the poor was a mechanism to protect pastoral society from structural poverty<sup>79</sup>.

Dropping out is seen as economic failure of imprudent pastoralists<sup>80</sup>. It implies failure at the individual level, while displaced pastoralists have become poor as a result of external factors such as conflict or drought. Drop-outs are socially marginalised in ways similar to other unemployed people, while displaced pastoralists face more severe disruption to their lives, social ties and identity, associated largely with their flight and/or impeded mobility. The greater the disruption and the more external factors involved, the higher the likelihood that someone is an IDP rather than an economic drop-out.

Both groups, however, are likely linked to the growth of urban populations. “[E]stimates of population growth and poverty levels in pastoral areas are consistent with estimates of increasing urban populations”<sup>81</sup>. As drop-outs are the pastoralist poor and internal displacement is also a process of impoverishment, an increase in urban poverty is also predictable. Kenya's national climate change response strategy builds on the premise that most IDPs will head towards urban areas, and recognises the “enormous social, health, infrastructure and management challenge for cities, subjecting them to unplanned population growth.”<sup>82</sup> Urban planning and livelihood initiatives should consider the particular circumstances and local integration needs of both pastoral drop-outs and displaced pastoralists, beyond mere economic reintegration.

# 3

## Poverty and internal displacement of pastoralists

Who are the poor? The answer depends on who defines poverty and to whom. Some consider there to be an intrinsic relationship between pastoralism and poverty, while others acknowledge its economic value. Pastoralists themselves reject poverty as an intrinsic feature<sup>83</sup>, but agree that the excluded constitute the poor. The path from pastoralism to displacement is one of impoverishment<sup>84</sup> that leads from pastoralists' self-perception of "the poor are not us" to "the poor are us".

### 3.1 Poverty is for others

Pastoralism in east Africa is a moral and existential universe tying together humans and herds<sup>85</sup>, a self-contained egalitarian system that has historically excluded the poor, rendering them unable to sustain their pastoralist lifestyle and eventually forcing them to abandon it<sup>86</sup>. A case study on the Turkana confirms that "dislocation of the destitute, both spatially and economically, results in the identity of the poor person being remade into that of an ethnic 'other' – a non-Turkana"<sup>87</sup>. The aim is to ensure the community's survival. "The poor are not us" represents pastoralists' perception of their social order, which does not reject the reality of poverty but accepts impoverishment of the community only in comparative terms<sup>88</sup>. As such, experts suggest that structural poverty has not existed in pastoralists' social system in eastern Africa, but conjunctural poverty has<sup>89</sup>. Poverty is for others, for outcasts, or as one Ngikebootok elder<sup>90</sup> put it, "hungry people who came one by one to settle in this area as hunters. They were just unfortunate people who had no cattle."<sup>91</sup>

#### Pastoralist voice

"We suffered a lot. This year we lost everything we had. Livestock means a lot to us. We not only use animals for food, but also for accessing schools or clinics. But now we cannot access these services anymore. Poverty has hit us hard, but we are all equal now, as we have all lost everything."<sup>92</sup>

Social networks to sustain the poor in pastoralist communities are more prevalent today than in the past<sup>93</sup>. This is likely linked to an implicit acknowledgment of external factors such as drought, famine and conflict that cause impoverishment and can affect everyone. It also reflects a distinction between dropping out and displacement.

Exclusion continues, however, especially when impoverishment is linked to an individual. "You make poverty or prosperity through the ways you move your livestock,"<sup>94</sup> pastoralists say. The Turkana believe poverty is the result of choices and decisions, and that the prudent will either not fall into the poverty trap or will recover, while the imprudent will drop out<sup>95</sup>.

#### Issue in focus: the tragedy of the commons

The tragedy of the commons narrative<sup>96</sup> is based on the notion that a self-interested individual or group of individuals will use a commonly-held resource and try to maximise benefit from it. The costs, however, are spread among all users, and if everyone were to behave that way the result would be the ruin of the commons. When applied in the context of African pastoralism, the result – according to the narrative – would be overgrazing and other forms of land degradation<sup>97</sup>. This view, which was used to justify commercialisation, privatisation, commodification and modern land management, has been criticised and widely disregarded among scientists and academics, but it is still reflected in land management policies. The theory of the tragedy of the commons was used as an argument for modernisation, but the outcome has been a self-fulfilling prophecy as only a few wealthy pastoralists have benefitted, while many more have either dropped out or become IDPs.

### 3.2 Internal displacement as impoverishment process

Poverty among pastoralists is intrinsically linked to loss of livestock and displacement. The exclusion of the poor forces them into a non-pastoral lifestyle<sup>98</sup>, and through this mechanism pastoralists avoid shifting the paradigm of poverty.

Internal displacement is an impoverishment process<sup>99</sup>. Literature confirms that "dislocations of war and famine have been the principal factors contributing to an emerging pattern of impoverishment"<sup>100</sup>. IDPs are disproportionately affected, mainly linked to the loss of their livelihoods and the loss or exhaustion of their assets<sup>101</sup>. As such, displacement may either be the cause or the result of pastoralists' impoverishment. This complex intertwining of displacement and worsening poverty needs to be unravelled if impoverishment risks for displaced pastoralists are to be addressed and they are to recover and achieve a durable solution<sup>102</sup>.





Internally displaced Garre pastoralist women and children in Kilimani, Isiolo district. Credit: N. Schrepfer, November 2012

Poverty has different manifestations in different disciplines. Most commonly, impoverishment is understood as the loss of natural and human-made physical, human and social capital<sup>103</sup>. Human rights are fundamental guarantees that safeguard human dignity and the development of a human being<sup>104</sup>, and as such they are essential in countering poverty. The inability to access and/or enforce individual and collective rights leaves individuals and communities unprotected and poor<sup>105</sup>. Risks to their rights, known as protection risks, are a common feature among IDPs, who are sometimes referred to as the poorest of the poor<sup>106</sup>.

Internal displacement most often results in the fundamental disruption of people's lives. It puts their safety and security at stake; strips them of their social networks; forces them to leave their homes, land, livestock and other belongings; cuts them off from their livelihoods and production systems; separates families; and interrupts education. In short, it can have a devastating impact on IDPs' human rights. "I beg for food and I am thankful for the merciful people who give me something to eat", one displaced pastoralist woman said<sup>107</sup>. She was a widow whose family had lost all of their livestock in 2011. She was unaware of her rights and certainly not empowered to exercise them. Humanitarian and development interventions should be based on solid and objective grounds, and should not depend on ethical or moral values. The principles of humanity, independence, impartiality and neutrality provide for an objectified backdrop and human rights the solid basis for interventions.

Given the complex and inextricable links between pastoralists' internal displacement and their impoverishment, policy and response must go beyond addressing vulnerabilities to seek solutions that avoid a vicious cycle resulting in chronic poverty and protracted displacement. Human rights underpin the addressing of impoverishment risks<sup>108</sup>, the countering of impoverishment processes and the path towards solutions, a path from humanitarian aid to human security and development.

# 4

## Internal displacement of pastoralists in northern Kenya: notion and concept

Internal displacement in Kenya is a complex phenomenon. The only large-scale displacement the country has experienced has been linked to elections, most recently in late 2007 and early 2008, and previously in 1997 and 1991. Smaller-scale displacement has, however, been widespread as a result of causes that include armed conflict, localised and political violence, sudden and slow-onset disasters, the exploitation of natural resources and environmental protection projects. Whatever the primary trigger, however, internal displacement in Kenya tends to be multi-causal and recurrent in nature. This has to do with the recurrent nature of the causes of displacement, the unsustainability of solutions, the lack of grassroots reconciliation, a rise in the ethnicisation of territory, and the absence of effective prevention mechanisms, including disaster risk management. Some areas and communities are affected by overlapping and sometimes inter-related causes of displacement.

Given Kenya's location in the Horn of Africa, bordering Somalia and Ethiopia to the north-east, South Sudan and Uganda to the north-west and Tanzania to the south, sub-regional dynamics are also important<sup>109</sup>. Cross-border drivers of displacement come into play, including cattle rustling, the proliferation of small arms, incursions, spillover effects from conflicts in neighbouring countries and the repercussions of Kenya's military forays into Somalia. Internal displacement dynamics also have a bearing on cross-border displacement, especially where international borders are porous as in northern Kenya.

### 4.1 The notion of internally displaced pastoralists

With the global recognition of the Guiding Principles by all heads of state in 2005<sup>110</sup>, international agreement was reached that "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border"<sup>111</sup> be accorded status as IDPs. This is not a legal status<sup>112</sup>. The notion is descriptive and is based on two core parameters, the forced nature of the movement and the internal dimension of the flight. It aims to make IDPs more visible because of the specific assistance and protection needs they often have as a result of their displacement.

That pastoralists can become internally displaced too is reflected in the specific obligation to protect those who have a special dependency and attachment to land<sup>113</sup>, but the notion of an IDP needs adapting to their situation:

Internally displaced pastoralists are persons or communities who have lost access to their habitual pastoral living space

- as a result of or in order to avoid the impacts of conflict, violence, human rights violations, cattle rustling, natural or human-made disasters, or similar sudden onset events,
- as a result of drought, environmental degradation or similar slow onset processes,
- due to direct intervention by state or private actors,

or due to a combination, sequence or accumulation of any of the aforementioned causes, and who have not crossed an internationally recognised state border.

Guiding Principles on Internal Displacement	Adaptation to pastoral internal displacement
Forced or obliged to leave their homes or places of habitual residence	Have lost access to their habitual pastoral living space
As a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters	<ul style="list-style-type: none"> <li>■ as a result of or in order to avoid the impacts of conflict, violence, cattle rustling, human rights violations, natural or human-made disasters, or similar sudden onset events,</li> <li>■ as a result of drought, environmental degradation or similar slow onset processes</li> <li>■ due to direct intervention by state or private actors,</li> </ul>
--	Or due to a combination, sequence or accumulation of any of the aforementioned causes
Have not crossed an internationally recognised state border	Have not crossed an internationally recognised state border

## 4.2 Elements of internal displacement of pastoralists

### 4.2.1 Inaccessibility of natural pastoral living space

Internal displacement is characterised by a fundamental disruption of life, and pastoralists are no exception. They lose their subsistence basis as a result of their displacement, which is characterised by an inaccessibility of the natural pastoral living space<sup>114</sup>. Because of the fundamental nature of the disruption of life displacement brings about, its consequences are severe and often risk becoming protracted, particularly as pastoral living space is ever shrinking. Unlike those who migrate as a form of adaptation, who will also lose livestock in times of stress, displaced pastoralists do not have enough rebound capacity to re-establish and revitalise their lifestyles. They become unable to replace their lost livestock, either because they have depleted their financial resources and/or because the cost of doing so in the aftermath of drought increases dramatically.

The displacement of pastoralists is intrinsically linked to the loss of livestock as their primary basis of subsistence, but lack of access to land, resources and markets also contribute to the inaccessibility of their natural living space and thus displacement. Livestock is unable to survive without water and pasture, and access to markets is important to sell animals as a means of destocking and trade, and to sell products such as milk, meat and leather. If pastoralists do not have access to markets to destock before a drought, they are left with livestock that is likely to perish, or they are pushed into distress sales. The more traditional the form of pastoralism practised, the more important access to resources becomes, while more commercialised pastoralists depend to a greater extent on access to markets.

While in the original notion of the Guiding Principles, internal displacement is linked to a forced movement, internal displacement of pastoralists does not necessarily include the element of flight, i.e. to forcibly move away from a habitual place. Their displacement may also consist of the forced interruption or ending of the mobility inherent in their lifestyle, be it of people and/or animals. In most cases, loss of livestock will result in loss of mobility. As they lose access to their natural living space, pastoralists may ultimately be excluded from their community and consigned to poverty.

The extent to which pastoralists lose access to their natural pastoral living space and so risk displacement is linked to the form of pastoralism they practise. Pastoralism in northern Kenya varies widely from the traditional mobile form to highly diversified and commercialised forms. In all cases, however, it is a lifestyle that is linked

to some extent to mobility. As such, the inaccessibility of natural living space affects all pastoralists, but this study argues that the more traditional and mobile the pastoralism practised, the greater its impact and the subsequent risk of displacement:

Form of pastoralism	Risk of displacement
<p>Settled and commercialised pastoralism:</p> <p>This includes communities who have settled, who own ranches or afford herders moving with the community's animals; or communities who have good access to internal and external markets and highly diversified livelihoods.</p>	<p>The risk of displacement is minimised by a high level of diversification and commercialisation of communities' livelihoods.</p>
<p>Adapted and diversified pastoralism:</p> <p>This includes communities who have adapted to stress factors, including through migration, or who have diversified their livelihoods. Examples include pastoralists who only move with the seasons, and those whose families split to allow children to continue their education or family members to seek work or alternative livelihoods elsewhere as a means of adaptation.</p>	<p>The risk of displacement is medium. Adapted and diversified pastoralists are more resilient to stress factors, but remain at risk, particularly when such factors accumulate or intensify and their coping capacities are exhausted.</p>
<p>Traditional mobile or pure pastoralism:</p> <p>This includes communities who move with their livestock to ensure access to resources and markets as a means of subsistence. This form of pastoralism still exists, but has become increasingly rare.</p>	<p>The risk of displacement is high as communities have little resilience. The direct causal dependency on livestock as their exclusive means of subsistence severely increases the risk.</p>

#### 4.2.2 Encroaching processes, events and interventions: causality of displacement of pastoralists

Pastoralists' internal displacement can be triggered by a variety of individual causes, but more often it is multi-causal<sup>115</sup>. Typical causes are slow-onset processes such as drought, salinisation, environmental degradation<sup>116</sup> and the gradual encroachment of community land; and sudden shocks such as conflict, violence, cattle rustling, flash floods and epidemics. These causes are often interrelated and may be compounded by drivers such as the proliferation of small arms, spillover effects from conflicts in neighbouring countries, cross-border incursions, foreign investment, privatisation and political instigation (see diagram below). Kenya's military operations inside Somalia, for example, had a negative impact on pastoralists, as livestock markets in north-eastern Kenya became deserted. The affect on the livestock trade has been lasting<sup>117</sup>. The direct intervention of the state or private actors licensed or condoned by authorities can also cause pastoralists' displacement. Examples include resource extraction, environmental protection and development projects,<sup>118</sup> which often involve the forced eviction, relocation or sedentarisation of whole communities<sup>119</sup>.

When communities flee in anticipation of a conflict or disaster in order to avoid the impact of such sudden events, this is also recognised as displacement<sup>120</sup>. The concept of pre-emptive displacement is, however, more difficult to apply to slow-onset processes such as drought, because the initial impacts are likely to lead to different forms of

migration. Only with increasing pressure, do population movements gradually turn into forced displacement<sup>121</sup>.

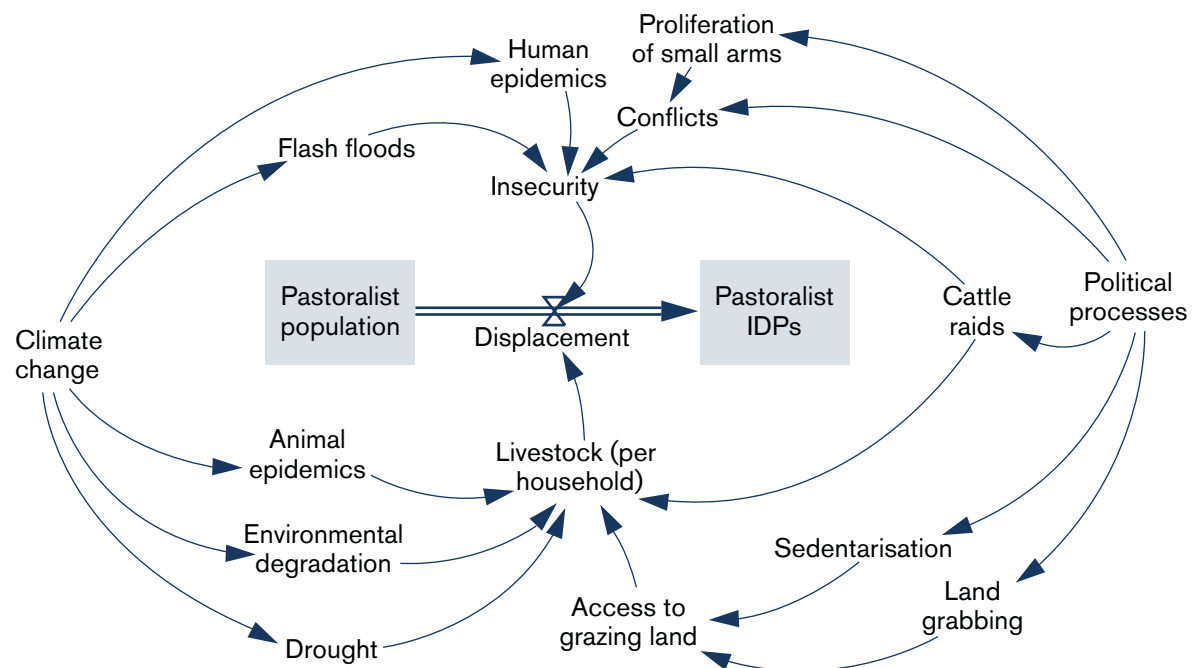
The following three sub-sections discuss the relevance and dynamics of slow-onset processes, sudden events and interventions as causes of displacement in northern Kenya.

##### a) Slow onset processes: drought, climate variability and climate change

Drought linked to climate variability is the most prevalent natural hazard in northern Kenya. Pastoralists' regular exposure to it means that coping, adaption and innovation has long been part of their lifestyle<sup>122</sup>, but drought and weather patterns have also changed: "Drought is war; it has got us in its grip."<sup>123</sup> More prolonged and more frequent droughts and greater climate variability, all of which are likely linked to climate change<sup>124</sup>, have brought significant changes and stress to the pastoral lifestyle. Dry and wet seasons have shifted, seasonal cycles have become less regular, rainfall distribution has changed and there is a perception among pastoralists that overall precipitation has declined<sup>125</sup>. Rain precipitation levels, and the climate risks associated with them, vary greatly over time and geographical area, and as such they are a significant influence on livestock population dynamics, herd composition and vegetation<sup>126</sup>. According to the Kenya Meteorological Department, the rainfall deficit in the two drought years leading to the 2011 food crisis was less serious than during the severe droughts of the 1980s and 90s<sup>127</sup>, but the impact on pastoralists was greater

#### Pastoralist Displacement

(Simple conceptual diagram, does not include drop outs)





because they had become less resilient. As analysts confirm: “Levels of vulnerability amongst pastoralists are increasing, even to slight variations in the frequency and intensity of rainfall.”<sup>128</sup>

Kenya's draft policy on IDPs recognises drought as a cause of displacement and that “internal displacement may be among the gravest effects of climate change”<sup>129</sup>. What constitutes pastoralists' displacement in the context of drought or similar slow-onset hazards has, however, generally not been explored. The country's national climate change response strategy recognises that “population displacement and migration from climate disaster-prone areas (e.g. drought prone northern Kenya and sea-level rise in the coastal region) are expected to increase. It is expected that most of those on the move from rural areas will head towards urban agglomerations where assistance, income opportunities and infrastructure may be perceived to be more accessible and readily available. This will create an enormous social, health, infrastructure and management challenge for cities, subjecting them to unplanned population growth”<sup>130</sup>.

Pastoralists identify drought as one of the major causes of their displacement, mostly linked to loss of livestock and access to resources. Some have lost all of their livestock. Others have a few head left, but barely enough to survive and certainly not enough to recover their livelihoods. One pastoralist elder in Turbi said he had been displaced by the severe 1984 drought when all his livestock perished, but had received very little assistance since<sup>131</sup>. His is a clear case of protracted displacement caused by drought. He had practised the pure form pastoralism, and the loss of his livestock meant he also lost mobility and was no longer able to subsist. Nor did he have the assets to be able to restock. Today he and other community members form a so-called relief catch, a small settlement on unviable land close to a road, where they have the chance of occasional access to humanitarian assistance. Such cases confirm that the purer the form of pastoralism practised, the higher the risk of displacement. They also indicate that recognition of drought as a cause of displacement must increase if protracted situations are to be avoided in the future.

Whether or not a person or community becomes internally displaced relates to the impact of a hazard and the extent of their resilience, vulnerabilities and capacity to cope and innovate.

#### Issue in focus: typical adaptation and coping strategies in times of drought

Pastoral communities are by nature adaptable, innovative and equipped with traditional knowledge and customary coping strategies to survive in times of drought. They adapt their migratory paths, reserve grazing areas for times of drought, harvest rainwater, change the composition of their herds, split herds to keep dairy and weak animals at homesteads and slaughter calves. They also have recourse to community early warning systems, preparedness strategies and rangeland management based on their traditional knowledge of weather patterns and ability to forecast. Pastoralists also tend to diversify their livelihood, and some resort to night grazing<sup>132</sup>. Wealth matters in times of drought<sup>133</sup>, as fodder and food prices spike and pastoralists are sometimes requested to pay a fee for grazing on ranches.

At the beginning of a drought, pastoralists attempt to adapt by applying their coping strategies, including migration. As pressure increases and resilience decreases, however, their natural pastoral living space becomes less accessible, and this may mean subsistence is no longer possible. The longer and more severe the drought, the more likely this is to be the case.

Loss of livestock is the core factor that inhibits access to pastoral living space, and it is the most significant impact pastoralists face as a result of drought and shifting weather patterns. The main drivers of livestock loss in times of prolonged drought are disease and lack of pasture and water, but flash floods can also be an issue. “When camels are weak in times of drought, the heavy rains just wash them away”, pastoralists near Garissa said<sup>134</sup>. This is compounded by the high cost of fodder during droughts. For subsistence pastoralists in particular, livestock ownership is critical in times of stress because meat and milk ensure their communities' survival. “We depend on those who own camels for milk and meat. Camels are expensive so only few of us own them, but it is the responsibility of the whole community to protect them because we all depend on them”, a Garre elder in Kilimani said<sup>135</sup>. “Animals before people”, a typical pastoralist slogan, reflects a dependency rather than a hierarchy. Camels and goats are more resistant to drought than cattle<sup>136</sup>, and donkeys are more resistant still, making them a rare and expensive commodity at livestock markets during drought periods. Donkeys' wellbeing is seen as reflecting that of the community, or as the Maasai would put it, if drought kills donkeys it will kill people<sup>137</sup>. The loss of livestock is an important indicator of displacement risk, and the more drought-resistant the animals that perish, the higher the risk becomes.



Internally displaced Turkana pastoralists in Ngaremara, Isiolo district.  
Credit: N. Schrepfer, November 2012

The loss of access to resources and markets may also lead to pastoralists' displacement in slow-onset disaster settings. The ability to destock before drought takes hold, and while animals are still in good health, helps to avoid distress sales and improves their chances of recovery<sup>138</sup>. That said, even if they are able to destock effectively, prolonged or severe droughts can still exhaust their finances, especially as food prices increase during times of food insecurity. Cultural reluctance to destock is also still prevalent, but agencies involved in campaigns to raise awareness on the issue note some progress<sup>139</sup>. The traditional and intuitive strategy is the opposite, to increase herd sizes. Destocking is associated with livestock loss, and possession of an animal may be more appealing than cash, particularly in times of drought. Saving money rather than animals remains a foreign concept for some. "What the bank is for you, animals are for us," pastoralists in Ngaremara, Isiolo said. If communities are not familiar with or cannot access banks, the monetary alternative may not always be useful. Access to markets is also critical for the sale of products such as milk, meat or leather. Pastoralists in north-eastern Kenya, however, said that getting to market was difficult because roads were in poor condition and they couldn't afford donkeys to use as transport.

Access to pasture and water sources is becoming increasingly difficult, and competition and the risk of overgrazing create the potential for conflict. Such conflicts, which are essentially over land, are often compounded by tribalism, and affect pastoralist communities' drought resource management and usage schedules.

### Pastoralist voice

"This war (...) has been brought by our neighbours from North Eastern (...) We welcomed them during the distress of the drought and now they have refused to go back home and have started to provoke us and to bring death to our district."<sup>140</sup>

Drought is seldom the only cause of displacement. It often comes on top of cattle rustling and conflicts over resources in which pastoralists have already lost livestock and mobility. The loss of traditional grazing land as a result of privatisation and land concessions can also increase the risk of conflict when drought hits, given that they can make dwindling resources scarcer still and interfere with migration routes. Isolating an individual or primary cause of displacement in such slow-onset contexts is difficult if not impossible, because the different factors are so inextricably intertwined. Displacement in such situations can genuinely be said a result of multi-causality<sup>141</sup>. Analysts also point to "marginalization in decision-making" and "unfavourable government policies" as further causes of pastoralists' vulnerability to climate stressors such as drought<sup>142</sup>.

### b) Sudden events: insecurity, resource-based conflicts and cattle rustling

The absence of state security, law enforcement and an effective justice system in northern Kenya is significant, as is the prevalence of small arms and other weaponry<sup>143</sup>. It has been witnessed with concern that the government has increasingly used military intervention to restore law and order in an area where the state otherwise has little authority<sup>144</sup>. Such interventions, and sometimes the mere anticipation of them, can have severe humanitarian consequences. This was the case in November 2012 when thousands of pastoralists fled from Baragoi<sup>145</sup> following the announcement of an impending military operation.

There is little police presence in northern Kenya. Even where a police station exists, officers hardly ever intervene if conflict erupts. "They are afraid themselves. They are just a few with some guns. They cannot do anything", pastoralists in Marsabit said of the police near their homesteads<sup>146</sup>. Others also voiced concern about the police's failure to respond, and about their lack of impartiality. One pastoralist in Kilimani said: "We knew that the raid would happen, but when we gave them early warning, no one reacted. When the other side reports on planned raids, the police intervene in time."<sup>147</sup> And newly displaced Turkana pastoralist from Baragoi said: "They only came in when it was too late, and then they took side by including Samburu police reservists in their attack."<sup>148</sup>

### Issue in focus: controversy over the Kenya Police Reserve

The Kenya Police Reserve (KPR) is a community-based force mainly active in rural areas. It is an auxiliary force to the national police, and its aim is to assist in the maintenance of law and order by filling security gaps. In some northern parts of the country, the reservists are the only police presence. They are volunteers, aged 18 and over, and are armed by the state. Their recruitment and management, however, is said to be flawed. As the Police Act states: "The Reserve may be employed in Kenya for assisting the Force in the maintenance of law and order, the preservation of peace, the protection of life and property, the prevention and detection of crime, the apprehension of offenders, and the enforcement of all laws and regulations with which the Force is charged."<sup>149</sup> Outsourcing the state's monopoly of power raises a number of human rights concerns, particularly as the poorly trained reservists may be called upon in difficult security contexts. In a part of the country where the proliferation of small arms is already a problem, any approach to increasing security through the controlled provision of weaponry is questionable. Some reservists use their weaponry for private and criminal purposes, and make the security situation worse rather than better by doing so. Government efforts to disarm the reservists have proved inconsistent and less than effective, and communities in which they operate oppose disarmament as they perceive it as one-sided<sup>150</sup>.

The absence of a security and law enforcement apparatus, ineffective community-based policing, human rights violations, the excessive use of force and the proliferation of small arms and other weaponry have made northern Kenya highly insecure, created space for vigilantism and increased the overall risk of displacement. The unpredictable nature of flare-ups in violence and localised conflict creates a difficult operational environment, which is complicated further by cross-border factors that affect the region's stability and security<sup>151</sup>.

Kenya's 2012 policy on IDPs acknowledges conflict in various forms as a cause of displacement, including conflicts over land and other resources<sup>152</sup>. Most such conflicts are localised and they often have a very complex history<sup>153</sup>. Displacement is mainly triggered by the use of weapons, but conflicts also often cause livestock losses, which in turn lead to displacement and inability to access traditional pastoral living space. Conflicts in northern Kenya are mostly linked to dwindling resources, disputes over land,

the ethnicisation of territory, the militarisation of ethnic relations and cattle rustling. Violence was also reported in the run-up to the 2013 general election.

Pastoralists have mutual needs such as animal husbandry<sup>154</sup> that require negotiation and contractual agreements between communities. Pastoral governance and rangeland management also often involves different communities pre-agreeing access to the same land and the use of its resources. The system, however, can tend to break down during times of stress. Rather than reaching agreements, communities compete for ever-scarcer resources, potentially resulting in tensions, hostilities or conflict<sup>155</sup>. Analysts argue that it is not scarcity in itself, but failure to manage it that triggers conflict<sup>156</sup>. The risk of conflict increases when communities seek access to beyond their tradition areas, whether it be farmland, other private land or that governed by other pastoralist communities. Such intrusion may be agreed as part of rangeland management when "access has been socially mediated through an inclusive process of management"<sup>157</sup>.

### Issue in focus: mutual benefits of pastoralist-farmer agreements<sup>158</sup>

Reciprocity is key to concluding agreements between pastoralists and farmers during times of stress, when resources become scarcer. Such agreements help to avoid conflict that might be caused by practices such as night grazing. The negotiation process is a trust-building exercise that mitigates against misunderstandings and outsmarting, and allows concerns on both sides to be addressed. This is particularly relevant if there are conflicting historical claims over land or if pastoralists have previously intruded on ranches without permission. What are the incentives to conclude such agreements?

For pastoralists	For farmers
<ul style="list-style-type: none"> <li>▪ Improved relations with neighbouring farmers that help to increase coping capacity in times of drought</li> <li>▪ Access to pasture and water</li> <li>▪ Sale of weak livestock to farmers at a higher price than it would fetch at market</li> <li>▪ Cheaper farming products</li> <li>▪ Acquisition of agro-ecological and other farming knowledge</li> <li>▪ Opportunity to buy small plots of land</li> </ul>	<ul style="list-style-type: none"> <li>▪ Improved relations with pastoral neighbours that avoid night grazing and establish controlled access to their ranches</li> <li>▪ Use of under-grazed areas and improvement of soil quality by grazing. Animals also help to break up the soil for sowing.</li> <li>▪ Grazing fees</li> <li>▪ Small supplies of milk and meat</li> <li>▪ Purchase of weak animals for fattening and sale at higher prices</li> <li>▪ Sale of farming products</li> <li>▪ Acquisition of herding and pastoral production knowledge</li> </ul>

Tribal alliances play a significant role and may be decisive in determining whether the use of territory by other communities will be condoned or contested, which may lead to conflict.

#### Pastoralist voice

“Leave our land, our pasture and our water. People who have grudges about each other never live together. We have provided you with much hospitality. In the past you have denied us your water and pasture. Now it is my turn to act in such a way. Know that if you resist leaving our land, you too will be moved out in the same way that you moved us off your land.”<sup>159</sup> A Boran elder

Similar dynamics exist across borders: “We did not quarrel with the Ethiopian Gabra and Boran, but the livestock on this land belongs to the Kenyan Gabra and Boran. The pasture and water is not enough for us Ethiopians. And something is following the Gabra and Boran of Kenya. That is why we denied them pasture and water.”<sup>160</sup>

The ‘something’ referred to by the Garre elder quoted here is the Oromo Liberation Front (OLF). The OLF allegedly continues to operate and is involved in cross-border conflicts among pastoralists along the Ethiopia-Kenya border, according to interlocutors in Moyale.<sup>161</sup>

The risk of overgrazing and the over-exploitation of water resources, and damage done to land by other communities’ animals are also likely to lead to access being denied. Pastoralists with cattle and shoats, for example, said that

camels belonging to communities from the east had destroyed the vegetation on their grazing lands. The increasing ethnicisation of territory at the same time as the amount of land available to pastoralists is shrinking raises the risk for local violence and conflict when resources dwindle.

#### Pastoralist voice

“The war of today is not only about pasture and water, there is a claim to the land behind it. The Gabra and Boran who settle on our land will want to claim it later. We have come to know about it, and therefore we cannot let them in. But peace is good for all, as for us, we have accepted peace.”<sup>162</sup>

Conflict over resources and land claims also emerge when displaced pastoral communities continue to occupy land on which they took refuge, as is the case with the Degodia community in Moyale. The 1991/92 drought was devastating and displaced the Degodia from Wajir. They brought some livestock with them to Moyale, and were granted access to the Golbo plains, an area traditionally inhabited by local pastoralists who had lost almost all of their livestock in the same drought and were displaced to urban areas. A few years later, when the local communities had restocked and wanted to resume their pastoral livelihoods, pastureland came under pressure and tensions arose<sup>163</sup>. Such experiences have stoked fears that communities granted access to others’ land would remain and might even claim the land, leading to tensions and conflict. This created reluctance among pastoralists to allow other communities access to their land, as they confirmed in Moyale.

Conflicts over resources and access to them are equally prevalent between pastoralists and farmers, as illustrated by the flare-up in violence in the Tana river delta in 2012<sup>164</sup>. The increasing privatisation of land for farming and other purposes will shrink pastoral land further. Privatisation is more than an administrative act, as one pastoralist elder observed: “Privatization says: I am more powerful than you are.”<sup>165</sup> Land and power are closely linked in pastoral areas and loss of land equates with loss of power. Pastoralists often feel outsmarted by farmers and private investors, and neglected by the government, which is supposed to protect their land rights.

Cattle rustling is a major cause of insecurity, hostilities, localised violence and the ensuing displacement of pastoralists, and Kenya’s 2012 policy on IDPs calls on the government to enforce national laws and regulations that prohibit such acts<sup>166</sup>. State security officials, however, have ignored or even condoned the practice on the basis of historical precedent, and national human rights organisations have condemned the fact that cattle rustling has not been criminalised<sup>167</sup>. Not only is the practice on the rise, its character



has changed with the proliferation of small arms. Bows and arrows have been replaced with guns and bullets. Cattle rustling is no longer a traditional or cultural practice with rules and limits, such as the prohibition of killings or the targeting of women and children. The changing face of the practice is best illustrated by the definition contained in the Protocol on the Prevention, Combating and Eradication of Cattle Rustling in Eastern Africa, which refers to “stealing or planning, organizing, attempting, aiding or abetting the stealing of livestock by any person from one country or community to another, where the theft is accompanied by dangerous weapons or violence”<sup>168</sup>. This notion does not conceal the violent nature of the theft and also hints at the regional dimension of cattle rustling, which has become a commercialised activity and industry<sup>169</sup>. The Kenya Human Rights Commission even talks of “cattle warlordism”<sup>170</sup>. Interestingly, according to pastoralists, cattle rustling has had the unintended advantage of preserving their land from state exploitation. Analysts note: “Coping with the influence of international capital may prove more difficult to fight in comparison.”<sup>171</sup>

#### Pastoralist voice

“They came, were armed, burned down our homesteads and took almost all our cattle. We fled here, but we don't have enough livestock left. Milk and meat is not enough and we cannot return to our land because it is insecure there.”<sup>172</sup>

Cattle rustling was also used as a cover for political violence in northern Kenya in the run-up to the 2013 general election. Pastoralists in various locations confirmed both an increase in raids and the political nature of the violence, not least the alleged political instigation of the Baragoi violence that led to the displacement of thousands of pastoralists in November 2012<sup>173</sup>. Some pastoralists even believe it is the government's policy to displace them: “For them, we do not count. People here are not the priority” they said<sup>174</sup>.

Before the establishment of Kenya's District Peace Committees, community mechanisms to limit the impacts of communal violence had lapsed<sup>175</sup>. The committees, which were set up across the country following the success of the Wajir Peace Committee in north-eastern Kenya, re-introduced community-based reconciliation, but existing patterns of conflict will remain a challenge and new types of conflict will emerge, analysts say<sup>176</sup>.

#### c) Interventions: development or land grabbing?

“All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals” the country's 2010 constitution states<sup>177</sup>. The holding, use and management of land must be fair, efficient, productive

and sustainable<sup>178</sup> and ensure equitable access<sup>179</sup>. The constitution distinguishes between public, private and community land<sup>180</sup>. Pastoral land is the latter; held, managed and used by specific communities for grazing<sup>181</sup>.

Despite the constitutional and legal reform of land rights, pastoralists remain vulnerable to losing land<sup>182</sup> as a result of expropriation, appropriation or dispossession by public and private actors<sup>183</sup>. Such actions are regularly justified as leading to a more efficient, productive and sustainable use of the land. The myths that pastoral land is non-economic and unproductive, and that pastoralists' use of it leads to overgrazing and degradation, have been refuted<sup>184</sup>. They still, however, legitimise intrusion<sup>185</sup>, which often leads to the displacement of the communities affected. The conversion of the town of Isiolo into a resort, the introduction of commercial agriculture, the establishment of game parks, the exploitation natural resources and other development projects in northern Kenya would appear to be in the public interest. Opponents, however, question the genuine nature and legitimacy of such initiatives and instead refer to agrarian colonialism, environmental imperialism, theft and the smokescreen of development<sup>186</sup>.

Such interventions may be a direct cause of displacement, and they may also become a source of tension and conflict<sup>187</sup>. As experience from other countries shows, the exploitation of natural resources carries a high risk of doing so. Interventions in drought-stricken areas may cause or intensify conflict if they restrict access to scarce resources even further and affect pastoral communities' usage schedules. Kenya's draft policy on IDPs recognises this vulnerability and specifically provides that the government seek to protect communities from any potential conflict over natural resources<sup>188</sup>.

#### Issue in focus: legal pluralism

Legal pluralism exists in countries with both customary and formal legal systems, and it can create particular challenges in relation to land rights. It may be the source of misunderstandings, for example when the same or similar terminology means something different in the two systems. It can sometimes result in irreconcilable positions in which an action is legal under one system, but illegal under the other. In such situations, the formal legal system will often prevail and condone an action that is perceived legally as theft by a community under its customary system. In Kenya, where the formal legal system governing land is based on historical injustices, many pastoral communities see it as introduced by farmers and based in crime. One of the consequences of legal pluralism is that land appropriation may be lawful, but unjust.

Such practices today are described as land grabs. Aptly characterised as the “appropriation of rangelands by a variety of actors who use political means to achieve what would normally be socially and economically impossible”<sup>189</sup>, land grabs and the scale of them critically undermines pastoral land use, production and innovation<sup>190</sup>. That pastoralism in its diversity is an effective and resilient use of arid and semi-arid land seems to have been forgotten<sup>191</sup>. Herds, however, are not only moved to access resources, but also to maintain the ecosystem and biodiversity: “They strive to maintain the right balance of species in the best possible condition over the long term through careful control of grazing pressure and the timing of grazing”<sup>192</sup>. It remains unrecognised that pastoralism is a highly diverse but also holistic system of dryland management and governance, which may be undermined by interventions and ensuing encroachment<sup>193</sup>.

#### Issue in focus: national responsibility and that of private actors

The primary role and responsibility to assist and protect IDPs, including displaced pastoralists, lies with Kenya’s national and local authorities, and they are accountable for doing so. People’s rights, however, are increasingly put at risk by private sector interventions, including those of national and multi-national businesses. Unlike authorities and other organs of the state, private actors are not usually duty bearers under international human rights law. This dilemma is far from resolved, but the 2012 CFS-FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, and the 2011 Guiding Principles on Business and Human Rights<sup>194</sup> – also known as the Ruggie Principles – provide interesting and implementable frameworks to increase private actors’ human rights compliance. In chapter one, the Ruggie Principles set out the state’s general regulatory and policy functions to ensure businesses respect human rights, to strengthen the human rights component when there is a state-business nexus and to ensure policy coherence. At the core of the principles is corporate responsibility to protect human rights, as laid out in chapter two where, building on a policy commitment, requirements for human rights compliance are identified. The standard of due diligence is used for private actors’ human rights compliance. The principles conclude in chapter three by calling for access to remedies to be ensured. Kenya’s 2012 IDP Act on IDPs obliges the state to protect people from displacement by private actors<sup>195</sup>.

Both state and private interventions encroach on pastoral land and impede access to natural nomadic living space, and following discoveries of oil and gas in northern Kenya, the exploitation of natural resources has become an emerging cause of pastoralists’ internal displacement. In the north-western county of Turkana, 63 per cent of land has been earmarked for potential exploitation<sup>196</sup>. The land itself may be community land, but the constitution also identifies land containing “minerals and mineral oils” as public, and includes “all natural resources completely contained on or under the surface”<sup>197</sup>. Such land is held by the national government and administered by the National Land Commission<sup>198</sup>. For some analysts, the displacement of pastoralists by such interventions deprives northern Kenya of its “agents of arid and semi-arid change, innovation and potential prosperity.”<sup>199</sup> Or as a representative of the Turkana Development Initiative put it: “What remains after exploitation?”<sup>200</sup>

Pastoralists fear land grabs. “Anyone can come to our lands and take them away in the name of development”, one Turkana elder said. The collision of pastoralists’ legitimate concerns with the legitimate goal of interventions is the challenge to overcome, and an increasingly common one. To avoid unbridled intervention, projects must be justified by compelling and overriding public interest<sup>201</sup>. When they affect community land used by pastoralists, the public interest must meet a higher threshold that outweighs pastoralists’ on the basis of their special dependency and attachment to their lands<sup>202</sup>. As a rule, the less diversified the affected pastoralists’ livelihood, the higher the threshold. A representative of the Turkana Development Initiative highlighted another concern and stakes out a claim: “We ask for information because we fear that decisions are made without us even knowing. And if they find oil, we want a share because it is our land.”<sup>203</sup> What he demands is the right to development.

### The right to development<sup>204</sup>

In the case of the Endorois against the Government of Kenya<sup>205</sup>, the African Commission on Human and Peoples' Rights clarified the scope of the right to development contained in the African Charter. Article 22 of the charter states: "1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. 2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development." Given their common history, culture and religion, and because of their special attachment to their lands, pastoralist communities are entitled to claim this right as a people<sup>206</sup>. Individuals do not have the same entitlement. According to the commission, the right contains both a procedural and a substantive element.

States are obliged to fully inform pastoralist communities of the nature and consequences of the development intervention; to adequately and effectively consult them in a manner appropriate to the situation and let them meaningfully participate in all parts of the process relevant to their lives, including the planning stage. Most notably, in cases where a pastoralist community faces a major impact on its territory, the commission highlights the duty to obtain the community's free and informed consent in accordance with its customs and traditions. Such cases also create further entitlements. Communities contributing to the development process by giving up their land have a right to just compensation for the losses suffered, and an equitable share of the benefits of the intervention.

In short, development processes should empower pastoralist communities, and not be detrimental to their choices, opportunities and wellbeing. This creates a positive obligation for authorities to improve the choices and capabilities of a community.

Kenya's 2010 constitution and its 2012 IDP Act seek to strike a fair balance between the colliding interests. According to the constitution, the government is obliged to respect the environment, particularly in relation to the exploitation of natural resources. The sustainable exploitation, use, management and conservation of the environment and natural resources must be ensured and the accrued benefits equitably shared<sup>207</sup>. It must only be for the benefit of the Kenyan people<sup>208</sup>. The 2012 Act provides for special protection against pastoralists' displacement<sup>209</sup> and obliges the government, any other organisation, body or individual to prevent internal displacement in the context of development projects<sup>210</sup>, including the exploitation of natural resources. If such

interventions cannot be justified by compelling and overriding public interest, any ensuing displacement is considered arbitrary and constitutes an offence<sup>211</sup>. The Act also makes clear that any displacement caused by such interventions must be an exception rather than the rule. If it can be justified, it must be authorised and carried out in accordance with applicable law, and only when no feasible alternatives exist<sup>212</sup>. Authorities are also obliged to provide for a durable solution if the displacement caused is permanent<sup>213</sup>. Detailed procedures and conditions for such displacement are further laid out<sup>214</sup>.

### 4.3 Multi-causality: an argument for a resilience discourse

Sudden shocks, slow-onset processes and interventions may result directly in pastoralists' displacement. In reality, however, it is often a combination, sequence or accumulation of different causes, and this multi-causality makes it impossible to establish direct and exclusive causal relationship with a single event<sup>215</sup>. Other factors include the widespread proliferation of small arms and other weaponry in northern Kenya, chronic poverty among many pastoralist communities, population growth, tribalism, humanitarian dependency, and the social, political and economic marginalisation of the region and its inhabitants<sup>216</sup>.

Multi-causal displacement is likely to prevail in any slow-onset disaster context, during protracted or cyclical crises and in fragile states. At first sight, the notion of an IDP in the Guiding Principles and in regional instruments suggest that displacement can have a single cause, but in fact it is a matter of the vulnerability, and the coping and innovation capacity of the community and the individual<sup>217</sup>:

$$\text{Displacement} = \frac{\text{hazard (causes + drivers) + vulnerability}}{\text{capacity + innovation}}$$

Internal displacement of pastoralists is therefore a matter of resilience<sup>218</sup>.

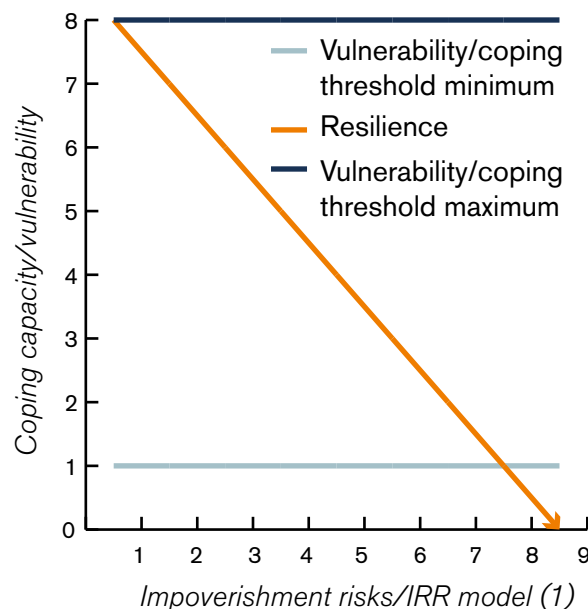
### The notion of resilience

There is no internationally agreed notion of resilience. It is closely linked to programmes of respective agencies engaged in the resilience discourse.

DFID resilience approach paper 2011 <sup>219</sup>	USAID resilience policy 2012 <sup>220</sup>
The ability of countries, communities and household to manage change by maintaining or transforming living standards in the face of shocks or stresses without compromising their long term prospects.	The ability of people, households, communities, countries, and systems to mitigate, adapt to, and recover from shocks and stresses in a manner that reduces chronic vulnerability and facilitates inclusive growth.

Recognising the multi-causality of displacement is necessary to inform policymaking and guide responses, because resilience decreases and displacement risk increases with every shock and stress. The resilience of a pastoralist community affected by chronic poverty in a country with fragile institutions will already be low and will decrease further in times of drought. If the same community is then affected by conflict over scarce resources as a result of the drought, or by unrelated cattle rustling, it will become even less resilient. As such, an exclusive drought or conflict response will inevitably have shortfalls. Understanding this multi-causality requires a move away from the siloed approach to analysing risk, policymaking and programme design. Responding to one set of causes will be ineffective and unsustainable. The innovation of the resilience framework is to unite two different institutional set-ups and schools of thought, planning, and response; one for disasters and one for conflict from both a humanitarian and development perspective. The multi-causality of pastoralists' displacement requires an integrated set of responses<sup>221</sup>.

If internal displacement is understood as an impoverishment process, it can generally be said that the more impoverishment risks accumulate, the lower the resilience and the higher the risk of displacement:



1. The horizontal numbers represent the nine impoverishment risks displacement entails, as identified in the impoverishment, risk and reconstruction (IRR) model conceived by Michael Cernea<sup>222</sup>. In no particular order, they are landlessness, joblessness, homelessness, marginalisation, food insecurity, increased morbidity and mortality, the loss of access to common property and services, social disarticulation and the loss of education opportunities.
2. Vertically, the capacity to cope with impoverishment and vulnerability to it vary conceptually between nine and zero. Resilience exists between eight and one.

The plotting of resilience, while not linear in reality, demonstrates pastoralists' displacement in a multi-causal context where decreasing resilience means increasing displacement risk as more impoverishment risks materialise. Vulnerabilities will increase and coping capacity decrease with every impact, and the impact will be greater if pre-existing vulnerabilities or additional drivers exist.

High resilience (8-5)	Medium resilience (5-2)	Low resilience (2-0)
Pastoralists have the capacity to maintain their lifestyle despite some stressors.	Pastoralists are likely to migrate as a form of adaptation and/or deploy other coping strategies.	The risk of displacement occurs at 2 and displacement at 1-0. It is important to note that the minimum vulnerability threshold for displacement is not necessarily zero. Displacement also occurs when some coping capacity left, but is too low to be resilient to the impact of the stressors.





Dialogue with newly displaced pastoralists from Baragoi, Kenya. Credit: N. Schrepfer, November 2012

Declining resilience is a process that may be temporarily or permanently reversed, for example by humanitarian and development interventions. Human rights provide a relevant framework, because rights can guide the design, planning and implementation of projects to increase resilience by reversing impoverishment risks. The right to food leads from the impoverishment risk of food insecurity to food security. The right to education leads from loss of education opportunities to access to schooling, and so on<sup>223</sup>. Applying a human rights framework also ensures that resilience initiatives do not undermine people's rights, which also leads to poverty<sup>224</sup>. Increasing resilience has short, medium and long-term goals, and the discourse runs through the displacement process from prevention, to assistance and protection, to the achievement and sustainment of durable solutions.

A resilience approach based on a rights framework requires the relief-development paradigm to be addressed and overcome. It calls for integrated analysis, planning, programming and response based on a comprehensive policy framework that provides for the addressing of needs across different timeframes and in a simultaneous rather than sequential manner. It also requires longer planning cycles as different components of a multi-disciplinary response integrate<sup>225</sup>. Humanitarian, recovery and development initiatives have to be prepared together, for example by using joint assessment and planning tools, and they have to overcome institutional limits and perhaps embrace a change of mentality. Funding strategies also have to be rethought, to converge humanitarian and development streams, provide for longer funding cycles for humanitarian action and adopt a less rigorous approach to applying conditions for development action in volatile contexts.

#### 4.4 Territorial limitation: do borders matter?

IDPs are by definition people who are displaced within a country's territory, as delineated by its internationally recognised state borders. Territorial delineation is used to distinguish between internal and cross-border displacement, a distinction relevant at the policy level. National sovereignty and the concept of sovereignty as responsibility underpin the primary responsibility of national authorities to assist and protect their IDPs<sup>226</sup>, as opposed to those who flee across borders<sup>227</sup>. Territorial limitations have implications not only for definitions, but also for operations. Some civil society organisations work across borders, but other humanitarian and development organisations with country programmes in northern Kenya do not. Some agencies do not operate in border areas at all, as they are out of bounds for security reasons. This is particularly the case along the border with Somalia.

As pastoralists in northern Kenya inhabit borderlands and move across borders as part of traditional pastoral migration, the relevance of state borders becomes slightly blurred. Traditional nomadic living space straddles borders for some communities. The imposition of Kenya's colonial borders decreased such migration, but it still takes place. Regional mobility should be facilitated as provided for by the AU Policy Framework for Pastoralism in Africa<sup>228</sup> in order to preserve the pastoral lifestyle even in times of stress. Considerations of national sovereignty should not undermine such mobility. When pastoralists become displaced, however, the country it happens in will matter, because national sovereignty determines responsibility.

# 5

## Future pathways: processes and options towards solutions

“The word ‘future’ is unknown to us. We know what you mean, but this only God knows. We have paths that lead us where we have to go.” This was the response of a displaced pastoralist elder when asked how he saw his future<sup>229</sup>. Displaced pastoralists’ thoughts about their future vary considerably, or in their terms, they lead down different paths. Two common issues emerged, however, during consultations in Isiolo, Marsabit, Maralal, Moyale, Garissa and Wajir. First, education is a primary concern. Parents would like their children to be educated to broaden their options for the future. Second, though the majority of those interviewed upheld their vision of pastoralism, they also said they would like to diversify their livelihood.

### Pastoralist voice

“As much as I would like to be a pastoralist, farming is more suitable for this area. For instance, I grow tomatoes. The problem is that we don’t have the know-how and water levels are decreasing. Farming is also safer. If raids come, our land is safe.”<sup>230</sup>

### 5.1 The future of pastoralism in northern Kenya: thoughts and trends

“[N]omadic pastoralism has been viewed as a stage in socio-economic evolution and thus an intermediate between hunting/gathering and sedentary agricultural life. The consequence of this was that pastoralism was expected to die a ‘natural death’.”<sup>231</sup> That pastoralism was not meant to have a future is supported by a number of negative narratives. Examples include that it equates to poverty, is economically inefficient, a waste of land and that it degrades the environment. Though largely refuted, such narratives are tenacious and become dangerous where they transform into formal or implicit policy and practice.

At least four such policies can be identified in the context of northern Kenya. The first is the “stop, no entry” policy introduced with the country’s borders. This carried forward the colonial agenda of a sedentary life for pastoralists within demarcated national territory, and had a negative impact on their mobility and access to their traditional cross-border living space. The second is the “disturb” policy, informed by the narrative that pastoralists’ land would yield more in economic terms if turned over to farmers or investors. The third relates to poorly designed relief and development projects based on the premise that “we know pastoralists better than they

know themselves”. The provision of relief over decades has created a humanitarian dependency syndrome<sup>232</sup>. Analysts found that the targeting and timing of food aid was often inadequate, and today it is considered an ineffective intervention in the region<sup>233</sup>. Humanitarian agencies even acknowledge that long-term relief was detrimental to the preservation of the pastoral lifestyle. “Pastoralists have no incentives to take on their hard life again if they can get food and water for free”, a Kenyan Red Cross interlocutor said. Many relief and development projects to support pastoralists fail, it is argued, because of inaccurate or outdated images of them, and pastoral communities are then blamed for their failure to embrace a modernised lifestyle<sup>234</sup>. Consequences of development and humanitarian failures can be severe and may threaten pastoralists’ lifestyle<sup>235</sup> in particular if these projects are based on the implicit assumption that pastoralism has no future<sup>236</sup>. The fourth policy justifies state or private interventions detrimental to pastoralists, including those that encourage their sedentarisation, on the basis that their lifestyle “has no future”. Some experts argue such narratives can longer be based on ignorance, and attribute them instead to rather more sinister motives and political agendas<sup>237</sup>.

Globalisation is an overarching pressure on pastoralism. Only a few wealthy practitioners, the pastoral elite, benefit, while many more drop out and very few find a path back<sup>238</sup>. As such, this trend reduces the diversity of pastoralism. Land encroachment is another trend associated with globalisation. Pastoral land is being lost not only to drought and soil degradation, but also because of privatisation. Population growth in pastoral areas is also an issue, the end result being insufficient land to support larger pastoralist communities and their livestock. Population in pastoral areas of Kenya has more than doubled in the past 20 years<sup>239</sup>. Urban growth encroaches on land too and puts further constraints on pastoralists’ mobility<sup>240</sup>, which in turn risks driving up urban poverty. Shrinking land, a growing population and the negative impact on rangeland management of territorial ethnicisation also combine increasingly to hamper pastoralists’ ability to undertake adaptive migration, a primary way of coping during times of drought and other forms of climate variability.

Pastoralists consider education to be an asset. They acknowledge it as critical to their future, a potential way out of poverty, a means to diversify their livelihoods and a way to generate remittances<sup>241</sup>.

### Pastoralist voice

"Insecurity is growing. What was previously peaceful co-existence is now animosity, hostility and conflict. In the past ten years the situation here has got much worse and we have lost many people. I lost my son. He was educated and our family depended on him, especially in difficult times."<sup>242</sup>

That said, the increasing demand for education is relatively new, and it is still an ambivalent issue for them<sup>243</sup>. In the past they tended to be resistant because they saw it as undermining their values and future<sup>244</sup>. The change is the result in part of new education efforts in pastoral areas that seek to complement pastoralist knowledge and increase their opportunities. New technologies and distance-learning options<sup>245</sup> also help to overcome the dilemma of having to choose between schooling and a pastoral lifestyle. Despite these efforts, however, education levels among pastoralist children remain low, and especially for girls<sup>246</sup>.

### Issue in focus: Kenya's Policy Framework for Nomadic Education of 2010

The government introduced free primary education in 2003, but for pastoralist children it was nothing new given that school fees had been abolished in the country's arid and semi-arid areas in 1971. In fact, the introduction created significant challenges, such as forced family separations, and appeared if anything to encourage children out of pastoralism<sup>247</sup>. The Policy Framework for Nomadic Education of 2010 was the result of a collaborative process between the government, pastoral communities and development agencies. Based on an understanding of the nomadic lifestyle, it was intended to address pastoralists' fears about education and guide the development of strategies more beneficial to their communities<sup>248</sup>, with the ultimate aim of delivering good quality education sensitive to needs of mobile populations<sup>249</sup>. It seeks to improve access and provides for the recognition and integration of traditional nomadic knowledge in the curriculum<sup>250</sup>. The policy framework also introduces flexibility into the education cycle with the suggestion that school calendars and timetables be adaptable to the climate, and the lives and needs of nomads more generally<sup>251</sup>. It fully embraces the idea of using modern information technology<sup>252</sup>, and overall provides a promising framework for the fulfilment of pastoral children's right to education without compromising the future of pastoralism.

Education plays an increasingly important role in pastoral adaptation and innovation, especially in terms of the diversification of livelihoods. Kenya's draft policy on IDPs, in turn, considers such diversification, including skills training, market access and micro-credits, as a means to prevent pastoralists' displacement<sup>253</sup>. Diversification will continue as a way of adapting to, and mitigating against stress and is likely to become more complex. The process can be accumulative and may eventually go beyond addressing the survival needs that for the most part currently drive it<sup>254</sup>. Improved access to education, urban centres and new technologies provide new opportunities for diversification<sup>255</sup> beyond agriculture<sup>256</sup>. With the increase in non-pastoral populations outnumbering pastoralists in Kenya's drylands, including internally displaced pastoralists unable to return to their previous lifestyle, further diversification of livelihoods is required<sup>257</sup>.

Even in its most traditional forms, pastoralism is likely to exist in the future because Kenya's vast arid and semi-arid areas cannot be transformed in their entirety to make them viable for agriculture, other forms of livelihoods or investment. Indeed, pastoralism will remain the economic foundation of these areas<sup>258</sup>. It will, however, undergo many changes as a result of restricted mobility and will be practiced by fewer people.

There is a security advantage to pastoralists continuing to inhabit Kenya's drylands, as uninhabited areas may create a security vacuum that the government is unable to fill. Despite the economic, security and other benefits that pastoralism has to offer, which should help to counter negative narratives, a prediction of its future in northern Kenya is hard to make. "Future pathways are highly contingent and deeply uncertain – pastoralists must live with uncertainty and continuously adapt and innovate."<sup>259</sup>

Four outlooks are now discussed to guide advocacy, policy and the response to pastoralists' internal displacement.

## 5.2 Outlook: preserving pastoralism by addressing political marginalisation

It is widely held that prevention is better than cure, and this certainly applies to the internal displacement of pastoralists. The consequences of what is by and large an impoverishment process for individuals, communities, regions and the country as a whole, are grave and difficult to reverse<sup>260</sup>. Kenya acknowledges the importance of preventing internal displacement in its 2012 Act and draft policy on IDPs. Prevention is even more important for pastoralists, given their special attachment to their land<sup>261</sup>, and as such the preservation of the pastoral lifestyle is relevant to preventing displacement.

Pastoralists' political marginalisation began in the colonial period<sup>262</sup> and continues today, and it is a critical issue to address<sup>263</sup>. North-eastern Kenya remains one of the most economically, politically and socially marginalised areas of the country, and the poorest<sup>264</sup>. Political marginalisation, analysts say, has left pastoralists in eastern Africa economically sidelined since the early 1980s<sup>265</sup>. Pastoralists feel the lack of national cohesion strongly and identify their political marginalisation as an important factor that undermines their future, as statements such as "Kenyans are the others" and "policies are made by farmers for farmers" show. The Kenya Pastoral Parliamentary Group, which was set up to keep pastoral concerns on the national political agenda and to integrate them into policymaking, has had only limited success in addressing the issue. It is largely made up of the pastoral elite, who cannot be said to fully represent those who face the hardships of pastoralism in northern Kenya<sup>266</sup>.

### **5.2.1 Devolution: opportunities and risks under Kenya's 2010 constitution**

Decentralisation and devolution can be effective means of countering political marginalisation. Kenya's 2010 constitution presents new opportunities and prospects for northern Kenya<sup>267</sup>, as fostering national unity by recognising diversity is among the objectives for devolved government<sup>268</sup>. It also acknowledges self-governance and increased participation in decision-making as the right of communities to manage their own affairs and advance their development<sup>269</sup>. By devolving government, Kenya seeks to protect and promote the interests and rights of pastoralists along with other marginalised and minority communities<sup>270</sup>. In an effort to recognise and afford special attention to collective identities, the constitution categorises pastoralists as a marginalised community, whether they are nomadic or "a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole"<sup>271</sup>. Marginalised groups are defined as having been disadvantaged by discrimination through law and/or practice<sup>272</sup>. This has several consequences, one being that state bodies and all public servants are duty-bound to address pastoralists' needs<sup>273</sup>. The bill of rights, and particularly the right to equal treatment and non-discrimination, contains further promises for pastoralists.<sup>274</sup>

The constitution also contains a number of provisions to support the increased participation of marginalised communities<sup>275</sup>, making pastoralists potential beneficiaries of affirmative action programmes that aim to ensure their participation and representation in governance and other spheres of life; their access to special educational and economic fields, employment, health services, infrastructure and water; and the development of their cultural values, languages and practices<sup>276</sup>. The equalisation

fund is another important new institution provided for by the constitution with the sole purpose of providing basic services to marginalised areas to bring them into line with the rest of the country<sup>277</sup>.

Devolved government also carries risks. The 2013 general election was the first time a vote was held at both the national and county level, and increased tensions and political unrest were observed in different parts of the drylands. Pastoralist communities, for example, noted a rise in politically motivated cattle raids. Minority communities, such as the Rendille and the Burji, expressed fears of being excluded from local governance by the dominant Boran tribe. The devolution of government risks the devolution of conflict and power struggles that may flare up at election times. It is worth noting that the 2013 elections for county-level institutions were just the beginning of a longer process of devolution which will not be complete until effective and functional structures are in place. Devolution can all too easily be ruined by patronage, which is a real risk in Kenya<sup>278</sup>.

### **5.2.2 A new policy for pastoralists implementing the AU policy framework for pastoralism**

The National Policy for the Sustainable Development of Northern Kenya and Other Arid Lands, which was approved by cabinet in 2012, reinforces the constitution in its efforts to increase national cohesion and decrease the marginalisation of pastoral areas and their inhabitants<sup>279</sup>. It is a response to the recognition contained in the 2008 National Accord of the threat posed by Kenya's regional inequalities and the potential of all of the country's people and production systems<sup>280</sup>. The sessional paper introducing the policy to cabinet has the provocative title of *Releasing our Full Potential*,<sup>281</sup> in deliberate contrast to sessional paper No. 10 of 1965. The latter "perpetuated the biased distribution of public investment established under colonial rule. Resources were directed towards the so-called 'high potential' areas of crop production, overlooking the wealth of lowland livestock-based economies and creating the deep inequalities in human development which we see in Kenya today"<sup>282</sup>, the former minister for the development of northern Kenya and other arid lands, Mohamed Ibrahim Elmi, wrote.

The 2012 policy complements the Vision 2030 Strategy for Northern Kenya and other Arid Lands of 2011<sup>283</sup> and supports the realisation of its social, economic and political pillars, particularly through the identification of investment priorities for the region<sup>284</sup>. The policy also establishes linkages with the 2012 Country Programme Paper on Ending Drought Emergencies in Kenya by re-directing the resilience discourse that emphasises the need for investment in a development foundation<sup>285</sup>. Last but not least, it domesticates the important AU Policy Framework for Pastoralism in Africa of 2010, which is



a regional recognition of the value of pastoralism. The framework reinforces the relevance of strategic mobility and seeks to preserve it within and across borders, for example through innovative forms of service delivery. It reflects a strong regional commitment to preserve pastoralism in its diversity and to decrease the marginalisation of pastoralists across the continent<sup>286</sup>.

The constitution offers genuine hope and prospects that via devolution, pastoralists in northern Kenya may gain from improved national cohesion that takes local particularities into account. The 2013 general election marked an important milestone in the implementation of these vital constitutional provisions and pastoralists' political inclusion. A note of caution, however, is warranted. Implementation will take time, funding and political will, and until it is complete, risks of frustration over broken promises, the exclusion of minority tribes at the county level and obstacles to the establishment of functioning local institutions are real and need to be militated early on. The implementation of the National Policy for the Sustainable Development of Northern Kenya and Other Arid Lands will become a vital driver of the constitutional process of devolution.

The preservation of pastoralism must be an overall goal of the Kenyan government, and addressing the political marginalisation of pastoral communities through devolution will be key to achieving it. Existing constitutional and policy commitments offer hope, but no certainty until concrete steps towards implementation show results<sup>287</sup>.

### 5.3 Outlook: using information technology as source for action

The possession and management of information and knowledge are critical to inform policy development and implementation, and to improve planning, preparedness and response. The multi-causality of pastoralists' internal displacement requires different knowledge and information sets to be brought together in a multi-disciplinary way. In particular, scientific research must build on, reinforce and complement the traditional knowledge of communities and their elders. Internal displacement is a disruptive event in many ways, and it has the potential to undermine the passing on of traditional knowledge, which is essential to strategic mobility. Young displaced pastoralists in Wajir said their elders had traditional knowledge, but it had not been imparted to them. In order to have a sound evidence base for policymaking and programming, it is vital to preserve traditional knowledge and to mitigate against its loss.

#### Example

N'Djamena Declaration on Adaptation to Climate Change, Indigenous Pastoralism, Traditional Knowledge and Meteorology in Africa<sup>288</sup>

“The challenge for both systems of knowledge – traditional and scientific – is how they can be made usable for decision-makers, and how they can be used in synergy with each other to ensure a robust, shared approach to adaptation. Attention and expertise is required to facilitate the intercultural mediation of science and TK [traditional knowledge], generating understandable and usable research that helps decision-makers at local, national and regional scales.

Delegates call on African States to recognise the value of combining Traditional Knowledge along with atmospheric sciences to achieve synergies in policy making. Both systems of knowledge need to be interpreted to make them useful in adaptation planning and implementation.”

The development and use of models<sup>289</sup> is one way to contribute to such an evidence base, deepen understanding of existing trends and explore possible future scenarios. Any model is by definition a simplification and abstraction of reality, but a system dynamics model can accommodate the interactions between environmental, economic, cultural and political factors that impact pastoralist livelihoods and wellbeing. Such a model includes a visual representation of these diverse factors and the relationships between them, giving all stakeholders a common basis for engaging in discussion about potential interventions and policies.

One challenge in understanding the interplay between humanitarian assistance, development plans and pastoralist practices is that pastoralism is constantly evolving. The effect of each intervention may play out over different time scales, with both immediate and long-term consequences.

A system dynamics model replicates the behaviour of the pastoralist system over time, giving stakeholders the ability to examine and understand the impacts of past interventions and policies, and to explore potential scenarios how future initiatives may pan out. Using empirical data, humanitarian and development actors can test the potential effectiveness of different interventions and policies in the context of a pastoralist system that will continue to evolve based on changes in endemic demography (urbanisation), the environment (increasing climate variability) and culture (increased access to education).

Stakeholders can also use a system dynamics model to answer more specific questions, such as:

- How many pastoralists are likely to be displaced if a drought were to occur in 2015? In 2020?
- How many would be displaced if the drought lasted for more than a year?
- What would the impact of future changes in land use or soil quality be?
- In the context of drought, what are the best ways to maintain and rebuild livelihoods in the short term?
- How can these interventions be designed to facilitate longer-term development objectives?
- How can education, migration and livelihood diversification complement traditional pastoralism?

By doing so, pastoral communities, policymakers and operational partners will be able to test assumptions and better align development and humanitarian policies with pastoralists' priorities. System dynamics models must, however, be used with care and with recognition of their limitations. They are developed by academics, and despite consultations are not bottom up processes involving communities themselves. They rely on existing primary data and are of only limited use if such data is scarce. The selection of data does not factor in the relevance of agreement and consensus over it by a representative number of stakeholders. Such models do not fully reflect multi-causality either, because they focus primarily on drought as a cause of displacement.

## 5.4 Outlook: adding value by using a rights-based approach

The fundamental disruption of life displacement involves for individuals and communities often comes with increased risks to people's rights, which are known as protection risks. With the adoption of the 2012 Act on IDPs and the cabinet's approval of the accompanying draft policy, the government has recognised that constitutional and human rights are endangered when people are displaced and has accepted its respective obligations<sup>290</sup>.

Internally displaced pastoralists are also protected by this legislation. The government is obliged to address IDPs' assistance and protection needs with particular regard to displaced communities with a special dependency on and attachment to their land. As such, it has to ensure that IDPs' needs in rural and urban areas are addressed on equal terms<sup>291</sup>. The draft policy contains specific provisions for displaced pastoralists. It acknowledges, for example, that cattle rustling is a cause unique to pastoralists' displacement<sup>292</sup>. It also recognises the need to address pastoralists' marginalisation<sup>293</sup>; to engage with their wishes in terms of diversification without prejudice to their right to freely choose their lifestyle and livelihood<sup>294</sup>;

to take precautionary measures against their separation from their livestock in times of emergency<sup>295</sup>; and to provide assistance in regaining livelihoods and diversifying, including by restocking and the provision of veterinary extension services<sup>296</sup>. Access to livestock in the process of achieving durable solutions is acknowledged<sup>297</sup>, and the duty to protect land and property including livestock is also provided for<sup>298</sup>.

In restoring land and property, the government must provide special protection for pastoralists' land, ensuring that they are able to return to it. If return is not possible, it must provide adequate alternatives in terms of both land and livestock<sup>299</sup>. This could include subsidised restocking programmes in the aftermath of drought when livestock prices spike and are unaffordable for the majority of displaced pastoralists, many of whom will have depleted their assets during their displacement. The participation of IDPs in decisions affecting their lives and their future, which should inform all humanitarian, recovery and development efforts<sup>300</sup>, is also firmly anchored in both instruments.

Both the Act and the draft policy on IDPs apply fully to all internally displaced people and communities in Kenya, including displaced pastoralists. The two instruments address internal displacement in general and not displaced pastoralists specifically, but they provide relevant hooks and even some specific provisions targeting them. Displaced pastoralists share many protection needs with other IDPs, but they also have specific ones, primarily related to loss of livestock and the inability to access their living space as a result of encroachments on their land.

### **5.4.1 Kenya's 2012 Act on internal displacement: establishing a framework of accountability**

"Every person, including any public body, State officer or public officer and private body or individual involved in the protection and assistance to internally displaced persons in Kenya shall act in accordance with the Protocol, the Guiding Principles and as provided for in this Act."<sup>301</sup> The 2012 IDP Act, as any legislation, provides an important framework for accountability. It establishes the government as primary duty bearer, and declares that all those involved in the response are bound to respect the obligations that both it and domesticated international law set out. As such, the accountability framework it establishes is a broad one.

The framework is an achievement in itself in a country that for decades withheld acknowledgment that internal displacement even existed. IDPs in Kenya are no longer trapped in legal limbo, but have access to the rights to which they are entitled, and the government has accepted its obligation to guarantee them. Displaced pastoralists have long suffered the disenfranchisement of their rights

as a result of their marginalisation, which has contributed to their impoverishment. They have been at the mercy of good people, they say, and people who act out of mercy cannot be held accountable for their actions or inaction. The 2012 Act constitutes a paradigm shift in this sense, basing the response to internal displacement on a legal framework instead<sup>302</sup>.

#### **5.4.2 Need for an effective advocate for pastoralists' rights**

Pastoralists and the internally displaced among them lack effective advocates among policymakers and practitioners at the national level. Kenya's Pastoral Parliamentary Group (KPPG) cannot meet this purpose fully, mainly because pastoralists do not feel properly represented by it, but also because it lacks influence<sup>303</sup>. Kenya's vibrant national civil society is called upon to fill the gap and become an effective advocate for the forgotten. Pastoral civil society groups are particularly important. They could make a valuable contribution by establishing links with KPPG to strengthen it and by reaching beyond the pastoral elite. Systematic advocacy is critical to influence decision and policy-making and to ensure that pastoralists' rights are given due consideration in order to reduce their political marginalisation<sup>304</sup>.

Advocacy on pastoralists' rights must be conducted with authorities to ensure they are considered in preparations to implement the 2012 Act. Particular attention must be paid to displaced pastoralists' special protection needs<sup>305</sup>. Pastoralists' vulnerability to loss of land remains at the core of displacement and an important obstacle to their finding a path back into pastoralism after it. Customary land and land use rights remain weakly protected in reality, despite their recognition in the constitution. These rights are vital to protect pastoralists' access to their living space and need to be asserted and enforced. The mapping of land rights and an analysis of prevailing power relations and competing interests<sup>306</sup> must form the basis of any intervention on pastoral land.

Customary pastoral institutions and the relevance of rangeland management need to be recognised in order to strengthen pastoralists' land rights and not to undermine their governance system, which is vital to sustain productivity and mitigate conflict. Customary institutions ensure harmonious and reciprocal relations between communities<sup>307</sup> and are especially important in defining new rules to govern them as land and resources become scarcer. The constitution does not recognise these institutions, which amounts to a missed opportunity to define a way of harmonising the authority of customary and state systems in the drylands, and to share in the mutual benefits of doing so<sup>308</sup>.

#### **5.4.3 Rights as a basis for the design, planning and implementation of relief and development**

The 2012 Act establishes the legal framework for all assistance and protection activities for IDPs in Kenya and demands that all organisations, bodies and individuals take their rights and freedoms as afforded by the constitution into account<sup>309</sup>. It provides the foundation for all design, planning and implementation of relief and development projects that serve IDPs, and applies to all those operating in support of displaced pastoralists in northern Kenya.

Human rights provide a useful basis for the response in many respects<sup>310</sup>.

1. They define the scope of a right-holder's claim and the corresponding responsibility of the duty bearer;
2. They require the informing, consultation and participation of intended beneficiaries in the planning and implementation of interventions, to ensure that their realities are taken into account. This is particularly important in light of the overwhelming criticism relief and development projects in pastoral areas have received. Participatory approaches invert the "pastoralists follows project" narrative, and can improve the sustainability and ownership of interventions. The 2012 Act<sup>311</sup> fully incorporates such an approach for IDPs in formulating assistance and protection programmes and in defining durable solutions to their displacement.
3. They ensure that relief and development interventions do not violate and are consistent with displaced pastoralists' rights;
4. Their application in the design, planning and implementation of interventions provide important safeguards to ensure that projects do no harm and do not undermine or infringe upon displaced pastoralists' rights;
5. They provide an accountability framework. By determining that the government is the primary duty bearer, they support the idea of accountable governance<sup>312</sup>.

Overcoming the ontological conflict between "us" (pastoralists) and "the others" (responders)<sup>313</sup> is complex. It requires interaction with and understanding of the pastoral system and customary institutions. For the participation of pastoral communities in the design, planning and implementation of projects to be real and meaningful rather than symbolic, three criteria are key<sup>314</sup>. First, representation must reach beyond the pastoral elite and must be sensitive to the roles of different age groups and women; second, a forum for dialogue among equals that overcomes existing power relations must be created; and third and most important, participatory approaches must fully recognise pastoralists' voices as a legitimate source<sup>315</sup>. They should also reject lack of education or illiteracy as exclusion mechanisms. "My grandfather told

us that they called him uneducated and illiterate. But he spoke Somali and Arabic. Is that illiteracy?" a young pastoralist in Garissa rightly asked<sup>316</sup>. The quality and success of any policy, project or programme will depend on the legitimacy of the process through which it is developed.

The application of a human rights framework, be it explicit or implicit, can significantly improve the quality and impact of relief and development interventions<sup>317</sup>. This is particularly true if the analysis for them and their design and planning fall together or are even combined as such a framework calls for, an important consideration given the multi-causality of pastoralists' displacement and the urge to increase their resilience<sup>318</sup>.

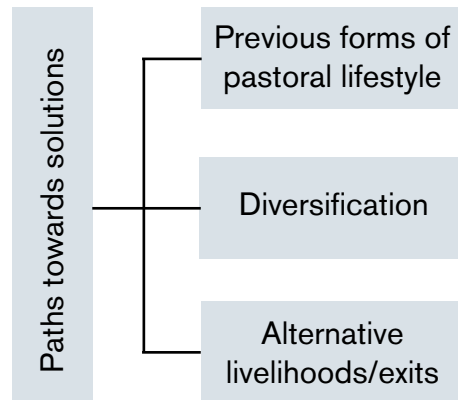
## 5.5 Outlook: towards solutions by reversing impoverishment

Internally displaced pastoralists tend to experience a process of impoverishment that is difficult to reverse. One community representative at a 2009 meeting organised by the US Agency for International Development (USAID) used the metaphor of an "S-shaped slide" to explain: "Here', he said pointing at the top (...) 'are the few pastoralists who have many animals and are doing well. Here', pointing to the precipitous slope, 'is what happens during each drought – people fall to the bottom. And here, in the trough, are the mass who have lost everything and can never get back up that slope again.'"<sup>319</sup>

Finding durable solutions for IDPs is a global challenge. Obstacles to them, and unsustainable solutions create protracted or cyclical displacement. In the case of displaced pastoralists, the aid and development discourse has focused very much on vulnerability, which is important in re-establishing their resilience, but the same focus has hindered a solutions-facing discourse.

### 5.5.1 Kenya's policy approach to durable solutions for IDPs

Kenya's 2012 IDP Act on IDPs states that "a durable and sustainable solution to the displacement of persons" is achieved "through a voluntary and informed choice of sustainable reintegration at the place of origin, sustainable local integration in areas of refuge, or sustainable integration in another part of Kenya"<sup>320</sup>. This traditional concept of durable solutions for IDPs makes sense for those who have been uprooted from a settled life in one place. However, while displaced pastoralists may choose to settle, for them the solutions concept must be interpreted more broadly to embrace options for mobile lifestyles, including return to pastoralism in diverse forms, diversification or alternative livelihoods.



The 2012 Act sets out conditions for the achievement of durable solutions that are fully compatible with international standards<sup>321</sup>. It is contingent upon long-term safety and security, which given the multi-causality of pastoralists' displacement would include protection from land grabbing and cattle rustling; the full restoration of freedom of movement, which for pastoralists would include their herds and cover traditional pastoralism, adaptive migration and strategic cross-border mobility; an adequate standard of living without discrimination, which includes protection against food insecurity; access to employment and livelihoods, including traditional, diversified and alternative forms of income generation; and access to effective mechanisms that restore housing, land and property, including customary dispute settlement and mediation and rangeland management schemes. In many contexts access to documentation; family reunification and the establishment of the fate and whereabouts of the missing; equal participation in public affairs; and access to justice without discrimination are also necessary to sustain a solution.

These conditions provide for paths back into the pastoral lifestyle, and the draft policy that accompanies the Act also calls for the creation of additional and alternative livelihoods for pastoralists, "who in any circumstances maintain the right to freely choose their lifestyle and livelihood"<sup>322</sup>. In essence, displaced pastoralists need to be able to choose their own path forward. Options to this end can be created by ensuring access to land, markets and education, by providing restocking options, subsidised restocking micro-credit schemes in the aftermath of drought, and through vocational training, the facilitation of national and regional strategic mobility and the establishment of social protection schemes appropriate to the diversity of pastoralism<sup>323</sup>.

IDPs themselves play a critical role in the search for durable solutions. It is their right to choose which option to pursue, based on the information available to them. Settlement options cannot be imposed. They may, under exceptional circumstances only, be limited, but limitations can only be imposed if they have a basis in law and serve



as a measure of last resort. They must be absolutely necessary to protect from serious risk to life, integrity or health<sup>324</sup>. The 2012 Act establishes that IDPs should be consulted on the formulation of durable solutions<sup>325</sup>, and the accompanying draft policy further commits to their role in the assessment, planning and management of their solution<sup>326</sup>. The policy also states that the government must take measures to ensure that processes supporting durable solutions are inclusive and involve marginalised communities<sup>327</sup>.

Literature confirms that “estimates of population growth and poverty levels in pastoral areas are consistent with estimates of increasing urban populations”<sup>328</sup>. This alludes to a real risk that pastoralists’ internal displacement results in an increase of urban poverty. Pastoral communities see towns and cities as places of destitution and poverty, where they slough off their poor<sup>329</sup>, and both drop-outs and displaced pastoralists risk being lost among the urban poor and swelling their number. Their lack of assets, education and skills to cope with life there turns urban areas into poverty traps for them, if their integration is not part of urban development plans. According to the constitution<sup>330</sup>, national legislation will provide for the governance and management of urban areas. Such legislation should consider the existence and integration of different populations present in urban areas in different parts of Kenya, with special attention given to marginalised groups, including IDPs in general and displaced pastoralists in particular. This would help to avoid consigning them to urban poverty.

### **5.5.2 Solutions: reversing impoverishment risks and increasing resilience**

Kenya recognises that for IDPs to achieve durable solutions requires concerted humanitarian and development action. The draft policy on IDPs acknowledges that the path to durable solutions “is a gradual and often long-term process that due to the complexity of the process facing human rights, humanitarian, development, reconstruction and reconciliation challenges requires coordinated and concerted engagement of different actors”<sup>331</sup>. The conditions set out for the achievement durable solutions in the 2012 Act also acknowledge this. In reality, however, humanitarian and development interventions often remain separate and uncoordinated, impeding a process they are meant to facilitate. Understanding the achievement of durable solutions as a process of reversing impoverishment and increasing resilience invites a new dialogue framed on the following four premises:

1. **Not talking the same language, but understanding each other:** Understanding internal displacement as a process of impoverishment<sup>332</sup> and decreasing resilience speaks to humanitarian and development agencies alike.

2. **A common normative framework supports co-ordinated action:** The nine impoverishment risks Michael Cernea describes in his impoverishment risk and reconstruction model<sup>333</sup> identify obstacles to the attainment of durable solutions and call for reversing processes. Human rights law contains equivalents to these risks<sup>334</sup> that, while not identical, are compatible with the conditions for durable solutions set out in the 2012 Act<sup>335</sup>. This sets out the normative basis<sup>336</sup> for processes to reverse communities’ impoverishment and increase their resilience, and as such provides a common footing for humanitarian and development action.
3. **Different goals towards solutions:** The goals of reversing impoverishment and increasing resilience allow for processes that consider the multi-causality of displacement and lead towards solutions.
4. **Coordination and integration towards lasting impact:** Activities to reverse impoverishment and increase resilience do not take place sequentially but simultaneously, and include short, medium and long-term interventions that achieve respective goals and sustain solutions. The coordination of both processes and the integration of activities across different timeframes result in a mutual improvement in terms of impact. KRCS has committed to this: “The KRCS emergency response activities have now fully embraced medium to long-term interventions geared towards recovery and rebuilding resilience.”<sup>337</sup> Its policy of an integrated response shows that mindsets are shifting slowly in this direction.

Internally displaced pastoralists in northern Kenya require simultaneous humanitarian support and development activities if they are to be able to choose their future path and make their choice a reality. As one displaced pastoralist near Isiolo said: “There is poverty of the mind too. If people are hungry, they only think about their survival. Not about their future.”<sup>338</sup> And as the Kenya Red Cross Society with its policy on one integrated set of response demonstrates, mindsets are shifting slowly overcoming the division between relief and development towards solutions.

## Notes

1. IDMC interview with former minister Mohamed Elmi, Nairobi, November 2012.
2. Isolina Boto, Janet Edeme and Isaura Lopes, Resources on new challenges and opportunities for pastoralism in the context of African countries, Briefing No. 26, Brussels, 22 February 2012, p.4.
3. Somalia is a notable exception.
4. Ahmed Idris, Taking the Camel Through the Eye of a Needle: Enhancing Pastoral Resilience Through Education Policy in Kenya, in Resilience: Interdisciplinary Perspectives on Science and Humanitarianism, Volume 2, March 2011, p.25.
5. N'Djamena Declaration on Adaptation to Climate Change, Indigenous Pastoralism, Traditional Knowledge and Meteorology in Africa, 2011, conference summary.
6. Boto et al, (fn.2) 2012, p.4.
7. AU Policy Framework for Pastoralism in Africa, 2010, executive summary.
8. AU Policy Framework for Pastoralism in Africa 2010, executive summary. See also IDMC/ISS, Kenya's Neglected IDPs: displacement and vulnerability of pastoralist communities in northern Kenya, 2012, p.2
9. Catley notes links to national, regional and international trends. See Andy Catley, Jeremy Lind and Ian Scoones, Development at the margins: Pastoralism in the Horn of Africa, p.3f, in Catley/Lind/Scoones (eds), Pathways to Sustainability, Pastoralism and Development in Africa, Dynamic Change at the Margins, 2013.
10. See Paul Goldsmith, The future of Pastoralist Conflict in the Horn of Africa, in Catley/Lind/Scoones (eds), Pathways to Sustainability, Pastoralism and Development in Africa: Dynamic Change at the Margins, 2013, p.141-142.
11. For the Turkana, Kenyans are 'people with long trousers', see IRIN: Kenya: Oil, hope and fear, [http://www.irinnews.org/report.aspx?ReportID=95547&utm\\_source=twitterfeed&utm\\_medium=twitter](http://www.irinnews.org/report.aspx?ReportID=95547&utm_source=twitterfeed&utm_medium=twitter) (accessed 25 November 2013).
12. See <http://www.irinnews.org/Report/96669/KENYA-Pastoralists-too-can-be-displaced> (accessed 25 November 2013).
13. IDMC interview with displaced pastoralists, Wajir, November 2012.
14. AU Policy Framework for Pastoralism in Africa, 2010, section 4.1.1.
15. Catley et al, (fn.9), p.6 qualify this view as 'policy and development myths'; similarly Dorothy L. Hodgson, Images & Interventions: The Problems of Pastoralist Development, in Anderson/Broch-Due (eds), p.221ff
16. Catley et al, (fn.9), p.2.
17. *Ibid.*, (fn.9), p.3.
18. IDMC interview, Nairobi, November 2012.
19. Dereje Feyissa and Markus Virgil Hoehne, State Borders and Borderlands as Resources – An Analytical Framework, pp.8ff, in: Dereje Feyissa and Markus Virgil Hoehne (eds), Borders and Borderlands as Resources in the Horn of Africa, 2010. See also Catley et al, (fn. 9), pp.11-14, who points out that pastoral areas are also seen as a threat to the political, security and commercial interest Kenya's neighbours, and highlights the emergence of initiatives dubbed development or peacebuilding projects, but which in reality seek to serve global goals such as the fight against terror in Somalia. Kenya's 2012 National Policy for the Sustainable Development of Northern Kenya and other Arid Lands, para.2.3.1, acknowledge the sophisticated governance structures in pastoral areas. Para.3.3 elaborates on the region's potential.
20. IDMC interview with displaced Turkana elder, Ngarama, November 2012.
21. See chapter five of this study.
22. Peter D. Little, Reflections on the Future of Pastoralism in the Horn of Africa, in Catley/Lind/Scoones (eds), Pathways to Sustainability, Pastoralism and Development in Africa: Dynamic Change at the Margins, 2013, p.245-247.
23. Vigdis Broch-Due, Remembered Cattle, Forgotten People: The Morality of Exchange & the Exclusion of the Turkana Poor, in Anderson/Broch-Due (eds), p.88.
24. Catley et al, (fn.9), table 1.1, p.23.
25. McPeak stated that '[P]astoralists are too often treated as a homogenous aggregation of people and places. Our analyses reveal striking heterogeneity (...)', quoted in Stephen Devereux and Karen Tibbo, Social Protection for Pastoralists, in Catley/Lind/Scoones (eds), Pathways to Sustainability, Pastoralism and Development in Africa: Dynamic Change at the Margins, 2013, p.218.
26. For a typological overview of the diverse forms of pastoralism, see chapter four, section 4.2 (i) of this study. On adaptable livelihoods, see Gufu Oba, The sustainability of pastoral production, in Catley/Lind/Scoones (eds), Pathways to Sustainability, Pastoralism and Development in Africa: Dynamic Change at the Margins, 2013, p.34ff.
27. Günther Schlee and Abdullahi A. Shongolo, The Post-Moi Period 2002-2007, in Schlee/Shongolo (eds), Pastoralism & Politics in Northern Kenya and Southern Ethiopia, 2012, p.117-118, explain how elections and conflict relate.
28. Catley et al, (fn.9), p.15-16 argues that traditional or pure pastoralism was predominant in the past, but illustrates that as long as 50 or even 100 years ago it was already

- diversifying.
29. *Ibid.* (fn.9), p.14 explains that pastoralists' pathways are shaped differently by different shocks and negative processes concluding that 'future pathways are highly contingent and deeply uncertain'. This is further discussed below in chapter five of this study.
  30. *Ibid.*
  31. Adapted from Catley et al, (fn.9), p.14-15.
  32. Catley et al, (fn.9), p.16.
  33. *Ibid.* (fn.9), p.2.
  34. Catley et al, (fn.9), p.3, Fekadu Adugna, Making Use of Kin beyond the International Border, Inter-Ethnic Relations along the Ethio-Kenyan Border, in Dereje Feyissa and Markus Virgil Hoehne (eds), *Borders & Borderlands as Resources in the Horn of Africa*, 2010, p.45.
  35. The market town of Moyale, for example, straddles the border, Ethiopian Moyale on one side and Kenyan Moyale on the other.
  36. IDMC interview with pastoralists, Moyale, November 2012.
  37. Adugna, (fn.34), 2010, p.53, explains that since the 1990s, a number of inhabitants of Ethiopian Moyale have acquired Kenyan ID cards rendering them eligible to vote. This was a strategy of constituency chiefs and MPs to strengthen their respective constituency.
  38. Constitution of Kenya, article 39; African Charter on Human and Peoples Rights, article 12; ICCPR, article 12.
  39. AU Policy Framework for Pastoralism in Africa, 2010, p.12.
  40. Adugna (fn.34), p.45, alluding to the case of the Obbu Borana whose access to water in Ethiopia's highlands became closed.
  41. In article 2(i) the treaty describes a migrant worker as a 'person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national'. This term cannot be easily transferred to pastoralists who move across borders as part of their traditional mobility.
  42. The Pastoral Charter of Mali and the Pastoral Code of Mauritania, for example, explicitly protect pastoral mobility.
  43. Section 2.1.2 COMESA Policy Framework for Food Security in Pastoralist Areas 2009, draft.
  44. ECOWAS decision, Abuja, October 1998.
  45. AU Policy Framework on Pastoralism in Africa, 2010, p.22, sections 4.1.4 and 4.1.5.
  46. National Policy for the Sustainable Development of Northern Kenya and other Arid Lands, approved by Cabinet in 2012, introduction.
  47. Similar Christopher Clapham, Conclusion, Putting back the Bigger Picture, in Dereje Feyissa and Markus Virgil Hoehne (eds), *Borders & Borderlands as Resources in the Horn of Africa*, 2010, p.187-188. See also OCHA, IOM, UNEP, ISS, Security in Mobility, *Advocating for Safe Movement as a Climate Change Adaptation Strategy for Pastoralists in the Horn and East Africa*, highlights and key messages, June 2010, p.11.
  48. AU Policy Framework on Pastoralism in Africa, 2010, p.22, section 4.1.4.
  49. Cited, in: Tamer Afifi, Radha Govil, Patrick Sakdapolrak, Koko Warner, *Climate change, vulnerability and human mobility: Perspectives of refugees from the East and Horn of Africa*, UNU-EHS/UNHCR Report No. 1, June 2012, p.41.
  50. Afifi et al, (fn.49), p.43.
  51. Oba, (fn.26), 2013, p.35.
  52. Schlee/Shongolo (fn.27), p.115.
  53. Reprinted in Schlee/Sholongo (eds), *Pastoralism & Politics in Northern Kenya and Southern Ethiopia*, 2012, p.144.
  54. The UN migrant worker treaty does not address the specific needs of those who move as part of such an adaptation strategy. See Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change, Normative Gaps and Possible Approaches*, UNHCR Legal and Protection Policy Research Series, February 2012, p.35.
  55. AU Policy Framework on Pastoralism in Africa, 2010, p.22.
  56. See this chapter, section 2.2, sub-section one above.
  57. IDMC interview with Gabra community, Turbi, November 2012.
  58. Simon Levine and Sara Pavanello, *Rules of the range, Natural resources management in Kenya-Ethiopia border areas*, HPG policy brief 45, April 2012, p.2.
  59. Levine/Pavanello, (fn.58) 2012, p.2.
  60. This finding is broadly confirmed for displacement in relation to climate change. See Afifi et al, (fn.49), key findings (f) and (i), pp.12-13 and 42. See also Kälin/Schrepfer (fn.54), 2012, p.22, confirming that much of the displacement in the context of climate change will initially remain internal. See also Nansen Conference, *Climate Change and Displacement in the 21<sup>st</sup> Century*, 5-7 June 2011, chairperson's summary, para.5.
  61. Levine/Pavanello (fn.58), p.2, argue that systems to negotiate access rights into territories of others have been developed and that requests cannot be lightly refused because of mutual needs. See also David Anderson and Vigdis Broch-Due (eds), *The Poor are Not Us – Poverty & Pastoralism: Poverty & The Pastoralist: Destructing Myths, Reconstructing Realities*, 1999, p.16, referring to a need for mutual assistance determined by indigenous measures, as argued by Tomasz Potkanski, *Mutual Assistance among the Ngorongoro Maasai*, in Anderson/Broch-Due (eds), pp.199.
  62. Similar Anderson/Broch-Due (fn.61), p.16.
  63. On the multiple causes of internal displacement, see chapter four, section 4. 2 of this study.
  64. 2005 World Summit Outcome, UNGA Resolution 60/1, para.132.
  65. According to article 1A (2) the Convention relating to the Status of Refugees of 28 July 1951; 189 UNTS 137 (1951 Geneva Refugee Convention), a refugee is any person who '...owing to well-founded fear of being persecuted

- for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it'. The OAU Refugee Convention also includes flight due to serious disruption of public order.
66. Statement by a pastoralist from Somalia. Afifi et al, (fn.49), key findings (f) and (i), p.47.
  67. See Kälin/Schrepfer (fn.54), pp.31-34. The authors identify specific cases in which refugee law is nevertheless applicable.
  68. International and regional human rights law does not provide sufficient protection. See Kälin/Schrepfer (fn.54), pp.34 - 36.
  69. Walter Kälin, From the Nansen Principles to the Nansen Initiative, *Forced Migration Review* No. 41 (2013), pp.48ff. For more information on the Nansen Initiative: <http://www.nanseninitiative.org/>
  70. Kälin/Schrepfer (fn.54), p.62.
  71. Graeme Hugo, Migration, development and environment (draft paper for workshop: Migration and the environment: Developing a global research agenda), April 2008, p.11.
  72. Chapter five, section 5.5 of this study.
  73. IDMC interview with displaced Boran community, Gambela, Isiolo, November 2012.
  74. Catley et al, (fn.9), p.19
  75. Catley et al, (fn.9), pp.19 and 20 explain the results of this differentiation process in pastoral society. See also John Letai and Jeremy Lind, Squeezes from all sides: changing resource tenure and pastoralist innovation on the Laikipia Plateau, Kenya, in: Catley/Lind/Scoones (eds), p.164ff.
  76. Andy Catley and Yacob Aklilu, Moving up or moving out? Commercialization, growth and destitution in pastoralist areas, in Catley/Lind/Scoones (eds), p.98-91. See also Levine/Pavanello (fn.58), p.1.
  77. Used by Stephen Sandford, Pastoralists and Irrigation on the Horn of Africa – Time for a rethink? in Catley/Lind/Scoones (eds), p.47ff, advocating a rethink of the principal focus on livestock-based pastoral production. See also Catley et al, (fn.9), p.18, arguing that 'the value of growing trade and the opportunities for diversification are too small to sustain the growing number of people.
  78. Former minister Mohamed Elmi argues that drop-outs are needed as the population grows. Interview with IDMC, Nairobi, November 2012.
  79. See also Anderson/Broch-Due (fn.61), p.3. See also chapter three of this study.
  80. Anderson/Broch-Due (fn.61), p.8; Broch-Due (fn.23), p.51, quoting a standard statement by pastoralists: 'You make poverty or prosperity through the ways you move your livestock!'
  81. Catley et al. (fn.9), p.18.
  82. Section 2.2.3.4 of Kenya's 2010 national climate change response strategy.
  83. Patta Scott-Villiers, We are not poor! Dominant and sub-altern discourses of pastoralist development in the Horn of Africa, *Journal of International Development* No.23, 2011, pp.771-781.
  84. Anderson/Broch-Due (fn.61), p.4 argue that among the reasons for pastoralists currently experienced impoverishment are a 'number of dislocating events'.
  85. See Anderson/Broch-Due (fn.61), p.10, and in particular Broch-Due (fn.23), p.50ff.
  86. As opposed to pastoralist communities with non-egalitarian social systems in west or southern Africa. See Anderson/Broch-Due (fn.61), p.3.
  87. Broch-Due (fn.23), p.88.
  88. Anderson/Broch-Due (fn.61), p.4.
  89. Richard D. Waller, Pastoral Poverty in Historical Perspective, in Anderson/Broch-Due, p.20ff.
  90. Ngikebootok means 'loss of livestock'.
  91. John Lamphear, Report on Historical Research in Turkana District, 1976, quoting interview T43, unpublished manuscript cited in Anderson/Broch-Due (fn.61), p.58.
  92. IDMC interview with displaced pastoralist woman, Garre community, Kilimani, November 2012.
  93. As noted by a pastoralist elder, quoted in Patta Scott-Villiers (fn.83), 2011, pp.774.
  94. Broch-Due (fn.23), p.51.
  95. Anderson/Broch-Due (fn.61), pp.8-9.
  96. Garrett Hardin, 1968. This paragraph reflects references to the theory in the AU Policy Framework on Pastoralism in Africa 2010, pp.14-15. See Abdullahi A. Shongolo and Günther Schlee, Moi Era Politics, Transnational Relations and the Territorialization of Ethnicity, in Schlee/Shongolo (eds), *Pastoralism & Politics in Northern Kenya and Southern Ethiopia*, 2012, p.103-104, on the potential for conflict linked to the theory as a result of the free rider effect.
  97. Oba (fn.26), p.29ff., refutes the paradigm that prevailed in the 1980s that blamed pastoralists for land degradation.
  98. On the distinction between drop-outs and displacement, see chapter two, section 2.4 of this study.
  99. NRC/IDMC-NTF, Internal displacement in Africa: A development challenge, Exploring development initiatives to alleviate internal displacement caused by conflict, violence and natural disasters, 2012, p.4. Walter Kälin/Nina Schrepfer, Internal displacement and the Kampala Convention: an opportunity for development actors, NRC/IDMC-PSC study, November 2012, p.26-27.
  100. Anderson/Broch-Due (fn.61), p.5.
  101. Kälin/Schrepfer (2), (fn.99), p.26.
  102. See chapter five, section 5.5 of this study.
  103. Kälin/Schrepfer (2), (fn.99), p.26
  104. Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection*, 2009, pp.31ff.

105. Guiding principles on extreme poverty and human rights, UN Doc. A/HRC/21/39, 18 July 2012, para.2.
106. Harild and Christensen, The Development Challenge of Finding Durable Solutions for Refugees and Internally Displaced Persons, background note, World Development Report 2011.
107. IDMC interview with a displaced pastoralist woman in Moyale, November 2012.
108. See chapter five, section 5.5 of this study.
109. See Sara Pavanello, Pastoralists' vulnerability in the Horn of Africa, Exploring political marginalisation, donors' policies and cross-border issues – literature review, HPG-ODI and CARE, November 2009, pp.17ff.
110. 2005 World Summit Outcome, UNGA Resolution 60/1, para.132.
111. Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998, introduction.
112. See Walter Kälin, Guiding Principles on Internal Displacement: Annotations (revised edition), Studies in Transnational Legal Policy No.38, Brookings-Bern Project on Internal Displacement and American Society of International Law (eds), 2008, pp.4-5.
113. Guiding Principle 9, reflecting ILO Convention No. 169. This standard is further reflected in WB Operational Directive 4.12 and the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement. Article 4(5) of the Kampala Convention also obliges state parties to protect such communities from displacement.
114. The adapted notion of an IDP replaces the term 'place' with 'living space' in order to embrace the socio-economic environment of pastoralists who, given their mobility, do not necessarily have a home or habitual place of residence in the legal sense implied in the Guiding Principles, where homes and places of residence require an objective element - factum of presence over a certain period of time - and a subjective element, a certain level of the *animus manendi*. Legal arguments continue over the need for the subjective element to prove habitual residence and to what extent. Academics in human geography suggest that 'place is a tool of sociality' and therefore also applies to nomads: 'rather the opposite to or disruptive of place, mobility is an inherent part of how some places are defined and operate.' See John Agnew in J. Agnew and D. Livingstone (eds.) Handbook of Geographical Knowledge, 2011, Chapter 23: Space and Place, p.25.
115. See sub-section three of this chapter.
116. The Guiding Principles explicitly refer to natural disasters, as causes of displacement, which would include drought. Walter Kälin, however, who led the legal team that drafted principles in 1998, confirmed that the drafters had sudden-onset disasters in mind. Discourse on the humanitarian implications of drought, environmental degradation and the broader impacts of climate change had not begun at that point.
117. IDMC interview with Livestock Marketing Agency, livestock market, Garissa, November 2012.
118. The Guiding Principles do not explicitly mention development projects as a cause of displacement, but they do refer to them indirectly in Principle 6 on the prohibition of arbitrary displacement, and in Principle 7, which refers to all displacement that requires a decision beforehand. The Guiding Principles do not exclude this cause of displacement, see Kälin, Annotations (fn.112), p.4. Kenya's 2012 Act on IDPs also explicitly acknowledges development projects as a cause of displacement and sets out conditions and procedures for relocation; see sections 6(3) and 21-22.
119. Catley et al, (fn.9), p.14, agrees that while pastoralists' diversity will be reflected in the variety of future courses they take, all will be shaped by long-term processes and sudden shocks. He refers to interventions as long-term processes encroaching upon pastoral lands.
120. The Guiding Principles explicitly refer to displacement 'in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters'. See Kälin, Annotations (fn.112), p.5.
121. See mobility discourse, chapter two of this study.
122. See Polly Ericksen, Jan de Leeuw, Philip Thornton, Mohammed Said, Mario Herrero and An Notenbaert, Climate Change in Sub-Saharan Africa, What consequences for pastoralism? in Catley/Lind/Scoones (eds), pp.71ff.
123. Guracha Galgalo, former MP for Moyale, quoted in Shongolo/Schlee (fn.96), p.80.
124. IPCC, Managing the risks of extreme events and disasters to advance climate change adaptation, summary for policymakers 2012, pp.5ff; See also Afifi et al, (fn.49), p.23.
125. Afifi et al, (fn.49), p.24.
126. Ericksen et al, (fn.122), pp.72,75 and 78.
127. Quoted in Letai/Lind (fn.75), p.169.
128. Letai/Lind (fn.75), p.169.
129. Draft policy on IDPs approved by cabinet in 2012, section 46
130. National climate change response strategy, 2010, section 2.2.3.4
131. IDMC interview with displaced pastoralists in Turbi, November 2012.
132. Letai/Lind (fn.75), pp.169-170 describe these coping strategies. See also Afifi et al (fn.49), p.31.
133. So Letai/Lind (fn.75), p.170.
134. IDMC interview with pastoralists, Garissa, November 2012.
135. IDMC interview with Garre community, Kilimani, November 2012.
136. Changing the balance of species in a herd is a typical adaptation strategy. See Ericksen et al, (fn.122), pp.79-80.
137. This Maasai saying appears in Letai/Lind (fn.75), p.169.
138. Distress sales tend to increase during drought periods. See Letai/Lind (fn.75), p.170.
139. On the benefits and limitations of emergency market interventions, including destocking, see John Morton,



- Pastoralist coping strategies and emergency livestock market interventions, in John G. McPeak and Peter D. Little, *Pastoral Livestock Marketing in Eastern Africa, Research and Policy Challenges*, 2006, pp.227ff.
140. Chairman, Isiolo County Council, 2000. Quoted in Schlee/Shongolo (fn.27), p.98.
  141. On the multi-causality of internal displacement, see sub-section three of this chapter.
  142. Y. Gebre Michael et al, *More than climate change: Pressures leading to innovation by pastoralists in Ethiopia and Niger*, presented at conference: *More than climate change – the future of pastoralism*, Addis Abeba, 21-23 March 2011, p.6. See also N'Djamena Declaration on Adaptation to Climate Change, Indigenous Pastoralism, Traditional Knowledge and Meteorology in Africa, 2011, calling for better governance and human rights consistency to counter the increasing social and economic challenges caused by climate change.
  143. Small Arms Survey, *Availability of Small Arms and Perceptions of Security in Kenya: An Assessment*, 2012.
  144. Goldsmith (fn.11), p.141, refers to the problem of centralised state sovereignty. Military interventions to uphold or restore law and order, normally a task for the civilian police, raise human rights concerns as to their proportionality.
  145. OCHA Kenya, *Kenya: 42 killed, 11000 displaced in Samburu Conflict*, 29 November 2012, available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/KEN\\_Samburu\\_Conflict\\_Map\\_29Nov2012%20copy.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/KEN_Samburu_Conflict_Map_29Nov2012%20copy.pdf) (accessed, 25 November 2013).
  146. IDMC interview in Marsabit, November 2012.
  147. IDMC interview, Kilimani, Isiolo, November 2012.
  148. IDMC interview of newly displaced pastoralists, Maralal, November 2012.
  149. Kenya Police Act, section 57.
  150. See also Small Arms Survey (fn.143), 2012, pp.29-32.
  151. Goldsmith (fn.11), p.141, argues that this has created the development of regional security institutions.
  152. Draft national policy on IDPs, approved by cabinet in 2012, para.5-6
  153. Catley et al, (fn.9), p.3.
  154. Levine Pavanello (fn.58), p.2; See also John G. Galaty, *Land grabbing in the eastern African rangelands*, in Catley/Lind/Scoones (eds), *Pathways to Sustainability, Pastoralism and Development in Africa: Dynamic Change at the Margins*, 2013, p.144.
  155. Levine/Pavanello (fn.58), p.2, argue that land management depends on the power to decide who can use the land, when and how.
  156. Levine/Pavanello (fn.58), p.2.
  157. Galaty (fn.154), p.144.
  158. This box draws heavily from Letai/Lind (fn.75), pp.170-173.
  159. As cited in Schlee/Shongolo (fn.27), p.130.
  160. As cited in Shongolo/Schlee (fn.96), p.113.
  161. See Schlee/Shongolo (fn.27), p.121.
  162. Garre elder as cited in Shongolo/ Schlee (fn. 96), p.114.
  163. The case of the Degodia occupation is illustrated in Shongolo/Schlee (fn.96), p.47ff.
  164. Kenyan National Commission on Human Rights (KNCHR), *29 Days of Terror in the Delta: KNCHR Account Into The Atrocities at Tana Delta*, October 2012.
  165. IDMC interview with displaced pastoralist community in Wajir, November 2012.
  166. Draft national policy on IDPs, approved by cabinet in 2012, para.45(b).
  167. KHRC (fn.165), pp.5-6.
  168. Protocol on the Prevention, Combating and Eradication of Cattle Rustling in Eastern Africa (EAPCCO), 2008, Art.1(e)
  169. KHRC (fn.165), p.2,4,8, the commission concludes that the purposes of cattle raids are self-enrichment and commercial, and that businessmen and politicians are among the main beneficiaries. Several pastoralist communities confirmed the involvement of politicians during interviews with IDMC.
  170. KHRC (fn.165), pp.27ff. See also Goldsmith (fn.11), p.141; G.J Cheserek, P. Omondy and V.A.O. Odenyo, *Nature and Causes of Cattle Rustling among some Pastoral Communities in Kenya*, *Journal of Emerging Trends in Economics and Management Series 3 (2)*, 2012, p.173-174.
  171. Goldsmith (fn.11), p.134.
  172. IDMC interview with pastoralist elders, Ngaremara, November 2012.
  173. IDMC interview with newly displaced pastoralists from Baragoi, November 2012.
  174. IDMC interview with newly displaced pastoralists from Baragoi, November 2012.
  175. Goldsmith (fn.11), p.141.
  176. Goldsmith (fn.11), p.133, identifies factors relevant for such variation, including population growth, development gaps, the imposition of taxes and others.
  177. Constitution of the Republic of Kenya, Para.61(1)
  178. *Ibid*, para.60(1).
  179. *Ibid*, para.60(1)(a).
  180. *Ibid*, para.61(2) and paras.62–65.
  181. *Ibid*, para.63(2)(d)(i). Schlee and Shongolo note that this recognition of communal land rights remains very general and unsupported by legal instruments. See Schlee/Shongolo (fn.27), pp.134-135.
  182. Galaty (fn.154), p.144, attributes this vulnerability to pastoralists' 'systematic refusal to embrace a bounded, alienable and exclusionary notion of landed property, or the attitudes of land seekers'.
  183. The constitution provides for the protection of property in paragraph 40 and chapter 5. Deprivation of property is prohibited except in situations stipulated by paragraphs 40(3)(a) and (b).
  184. Galaty (fn.154), p.144; Catley et al, (fn.9), p.11 and Roy Behnke and Carol Kerven, *Counting the costs: replacing pastoralism with irrigated agriculture in the Awash Valley*, in Catley/Lind/Scoones (eds), *Pathways to Sustainability, Pastoralism and Development in Africa: Dynamic*

- Change at the Margins, 2013, p.57ff. This is also acknowledged in paragraph 2.3.2 of Kenya's National Policy for the Sustainable Development of Northern Kenya and other Arid Lands, adopted by cabinet in 2012.
185. Galaty (fn.154), p.144 and 152f.
  186. Galaty (fn.154), pp.144-152, provides convincing case studies from Kenya, Ethiopia and Tanzania of such land grabs.
  187. These linkages are proven to exist in a number of contexts and are intuitively logical. Further research is needed, however, to clarify the interplay between these different causes and their potential for displacement or its prevention. See e.g. Frederick van der Ploeg and Dominic Rohner, War and Natural Resource Exploitation, Institute for Empirical Research in Economics, University of Zurich Working Paper Series, working paper no. 481, March 2010.
  188. Draft national policy on IDPs, approved by cabinet in 2012, section 100.
  189. Galaty (fn.154), p.144.
  190. Galaty (fn.154), p.144 and 152f. 2012 CFS-FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, guideline 12.4, also restates that responsible investments must 'do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights'.
  191. Similarly, Galaty (fn.154), pp.152f.
  192. Levine/Pavanello (fn.58), p.2.
  193. Catley et al. (fn.9), p.17, and Boku Tache, Rangeland enclosures in Southern Oromia, Ethiopia: an innovative response or the erosion of common property resources, in Catley/Lind/Scoones (eds), Pathways to Sustainability, Pastoralism and Development in Africa: Dynamic Change at the Margins, 2013, p.77ff.
  194. 2012 CFS-FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security; Guiding Principles on Business and Human Rights implementing the United Nations "Protect, Respect and Remedy" Framework, were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, UN Doc A/HRC/17/31, 2011. The Human Rights Council endorsed the principles in June 2011 in resolution 17/4.
  195. Kenya's Act on the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities, 2012, section 21(i).
  196. IDMC, IDPs' significant needs remain as inter-communal violence increases, 28 December 2012, p.4; IRIN, Kenya: Oil, hope and fear, 29 May 2012, accessed at: [http://www.irinnews.org/report.aspx?ReportID=95547&utm\\_source=twitterfeed&utm\\_medium=twitter](http://www.irinnews.org/report.aspx?ReportID=95547&utm_source=twitterfeed&utm_medium=twitter) (25 November 2013).
  197. Constitution of Kenya, para.62(i)(f) in conjunction with para.260
  198. *Ibid*, para.62(3)
  199. Galaty, (fn.154), p.153.
  200. Presentation by Eliud Omeri, director of the Turkana Development Initiative, to the ISS event Oil and Gas Discoveries in Kenya and the Region: Opportunities and Challenges, Nairobi, 6 November 2012. Summary of event available at: <http://www.issafrica.org/eventitem.php?EID=877> (accessed 25 November 2013).
  201. Guiding Principles, Principle 6(2)(c).
  202. This is indicated by the government's particular obligation to protect against pastoralists' displacement because of their special dependency on and attachment to land as referred to in Principle 9 of the Guiding Principles and restated in Article 4(5) of the Kampala Convention.
  203. Presentation by Omeri (fn.201).
  204. This box draws from Kälin/Schrepfer, (2), (fn.99), p.53.
  205. ACHPR, case 276/2003, 4 February 2010, Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya.
  206. *Ibid*, paras.155-162.
  207. Constitution of Kenya, para. 69(i)(a).
  208. *Ibid*, para. 69(i)(h).
  209. 2012 IDP Act, 2<sup>nd</sup> schedule, Guiding Principles, Principle 9.
  210. 2012 IDP Act, section 5(2).
  211. 2012 IDP Act, section 6(2) and (3), 2<sup>nd</sup> schedule, Guiding Principles, Principle 6(2), and 2012 IDP Act, section 23.
  212. 2012 IDP Act, section 6(3), 21(2).
  213. *Ibid*, section 21(4).
  214. *Ibid*, section 22. See also section 61ff of the National Policy on the Prevention of Internal Displacement, Protection and Assistance to IDPs in Kenya. The Evictions and Resettlement Procedures Bill, as put before the national assembly in 2012, partly overlaps with the procedures for displacement caused by development projects as laid out in the IDP Act. Enactment of the bill will require ensuring coherence with the Act.
  215. Catley et al, (fn.9), p.14 confirms the multi-causality of pastoral displacement, stating the many pastoral pathways are 'shaped by series of shocks and stresses, acting sequentially or in combination'.
  216. On the multi-causality of displacement in the context of climate change context, see Kälin/Schrepfer (fn.54), p.7.
  217. Adapted from Kälin/Schrepfer (fn.54), p.6.
  218. See a description of the current resilience discourse e.g. IRIN, In-Depth: Building resilience, Understanding Resilience; available at <http://www.irinnews.org/In-Depth/97584/105/> (accessed 25 November 2013).
  219. Defining disaster resilience: A DFID approach paper, 2011.
  220. Building Resilience to Recurrent Crisis, USAID Policy and Program Guidance, December 2012, p.5.
  221. See Promoting innovation and evidence-based approaches to building resilience and responding to hu-

- manitarian crises: A DFID Strategy Paper, 2012, p.10.
222. Cernea identified the risks causing impoverishment as a result of forced relocation, but they can equally arise as a result of internal displacement in conflict or disaster contexts. Michael M. Cernea, *Impoverishment Risks and Reconstruction: A Model for Population Displacement and Resettlement*, in Michael M. Cernea and Christopher McDowell (eds), *Risks and Reconstruction: Experiences of Resettlers and Refugees*, The World Bank, Washington D.C., 2000, pp.11-55.
223. Kälin/Schrepfer, (2), (fn.99), p.26-28.
224. See chapter three of this study.
225. DFID also identifies strengthened linkages between humanitarian and development actors, the integrated analysis of risk and resilience and a multi-disciplinary approach as the three main ways in which the concept of resilience encourages integrated response. See DFID Strategy Paper 2012, (fn.222) p.10.
226. Guiding Principles, Principle 3.
227. Substitute international protection is granted to those qualify as refugees under the 1951 Geneva Refugee Convention or the regional OAU Refugee Convention. For those who flee across borders due to an environmental event, a protection gap exists. The Nansen Initiative aims to develop a protection agenda to address this.
228. See chapter two, section 2.2 of this study. See also OCHA, IOM, UNEP, ISS, *Security in Mobility, Advocating for Safe Movement as a Climate Change Adaptation Strategy for Pastoralists in the Horn and East Africa*, highlights and key messages, June 2010, (fn.47) pp.11ff.
229. IDMC interview with pastoralist community in Ngaremara, Isiolo, November 2012.
230. IDMC interview with Meru and Boran communities, Gambela, Isiolo, November 2012.
231. Idris (fn.6), p.25.
232. See the still applicable analysis of the Humanitarian Policy Group: Jeremy Lind, *Relief assistance at the margins: meanings and perceptions of 'dependency' in northern Kenya*, *Dependency and relief: a critical analysis*, HPG background paper, June 2005.
233. Devereux/Tibbo (fn.25), p.221, quoting McPeak.
234. Hodgson (fn.15), p.221ff argues that 'part of the problem is the formulation of the problem itself'. Examining the failure of the Maasai Livestock and Range Management Project, a 10-year USAID development initiative, she argues that it was bound to fail because it was shaped by a 'narrow, ahistorical, gendered image of pastoralists'.
235. Hodgson (Fn. 15), p. 235f. highlights the consequences such development failure had, including intensified economic insecurity and food insecurity, increased disenfranchisement of Maasai women from their rights and consolidation of state power. She insists that development projects based on wrong images of pastoralists do more to undermine and prevent development rather than enable it.
236. Anderson/Broch-Due (Fn. 61), p.17.
237. Little (fn.22), p.244.
238. Anderson/Broch-Due (fn.61), p.9.
239. Little (fn.22), p.245.
240. *Ibid.*
241. See e.g. David Siele, Jeremy Swift and Saverio Krätli, *Reaching Pastoralists with Formal Education, A Distance-learning strategy for Kenya*, in Catley/Lind/Scoones (eds), *Pathways to Sustainability, Pastoralism and Development in Africa: Dynamic Change at the Margins*, 2013, p.206. Pastoralists try to address the impoverishment risk of 'loss of education' to 'access to education'. With the right to education, they have a sound rights-basis to reverse this impoverishment process.
242. IDMC interview with displaced pastoralists from the Rendille clan, Marsabit, November 2012.
243. Education was traditionally tuned towards encouraging children away from pastoralism, which brought about internal tensions into pastoralist communities. See above, chapter two, section 2.1 of this study. Idris (fn.6), p.29. Such traditional forms of education for pastoralist children have also led to family separations in order to allow children to access education. See also Siele/Swift/Krätli (fn.242), p.206 and 208.
244. Idris, (fn.6), p.25. See also Little, (fn.22), p.246. See further Siele/Swift/Krätli, (fn.242), p.208.
245. Distance and mobile forms of education are identified in Kenya Vision 2030 as relevant policy reforms, p.83. See also Siele/Swift/Krätli (fn.242), p.211-213.
246. Kenya Vision 2030, figure four, p.81.
247. Idris (fn.6), p.31-32.
248. Policy Framework for Nomadic Education 2010, sections 1.1 and 1.2.
249. *Ibid*, para.2.1.5.
250. *Ibid*, para.2.4.1.
251. *Ibid*, para.2.4.3.
252. *Ibid*, para.2.4.5.
253. Draft national policy on IDPs, approved by cabinet in 2012, para.44(e).
254. Little, (fn.22), p.246. Little distinguishes between the survival-type and accumulation-type of diversification or between supportive and competitive/harmful diversification strategies.
255. For alternative livelihoods in northern Kenya, see Elliot Fratkin, *Seeking Alternative Livelihoods in Pastoral Areas*, in Catley/Lind/Scoones (eds), *Pathways to Sustainability, Pastoralism and Development in Africa: Dynamic Change at the Margins*, 2013, p.201ff.
256. Some analysts advocate for large-scale irrigation, but others call for caution. See Sandford (fn.77), p.47ff. vs Little (fn.22), p.247.
257. Little (fn.22), p.245 and 247, argues that the challenge for the development sector will be to assist former pastoralists without putting constraints on pastoralism more generally.
258. Little (fn.22), p.248.
259. Catley et al, (fn.9), p.14, on the uncertainty of pathways in

- light of climate change. See also Ericksen et al, (fn.122), p.80.
260. Draft national policy on IDPs, approved by cabinet in 2012, para.41.
261. The special protection against the displacement of individuals and communities with special attachment and dependency on land, such as pastoralists, as contained in Principle 9 of the Guiding Principles, also indicates the need for preventive measures to avoid circumstances conducive to displacement.
262. Catley et al, (fn.9), p.3.
263. The need to address marginalisation is also identified as a relevant means of prevention in Kenya's policy on IDPs, para 43(b)(e).
264. World Bank, Kenya: Poverty and Inequality Assessment, Executive Summary and Synthesis Report, April 2009, para.13f.
265. Anderson/Broch-Due (fn.61), p.5.
266. Pavanello, (fn.109), pp.7-8.
267. Rendille's general rejection of the new constitution did not relate to these wider politics, but apparently to a rejection of provisions on family law that contravene Rendille family law. See Schlee/Shongolo, (fn.27), p.132, note 16.
268. Constitution of Kenya, para.174(b). The distribution of functions between national and county government is outlined in the fourth schedule to the constitution. Unlike Ethiopia since the 1990s, Kenya does not seek to establish ethnic federalism through devolution.
269. *Ibid.* Para.174(c) and (d).
270. *Ibid.* Para.174(e).
271. *Ibid.* Para.260.
272. *Ibid.* Grounds for such discrimination include ethnic or social origin. See para.27(4).
273. *Ibid.* Para.21(3).
274. *Ibid.* Chapter 4. For further elaboration, see Schlee/Shongolo, (fn.27), pp.133-134.
275. E.g. respect of participatory rights (para.91(e)), parliament's obligation to enact legislation promoting representation of marginalised communities (para.100(e)), and legislation to increase number of members in decision-making bodies at the national and county level (para.177(1)(c)).
276. The constitution contains a delegation clause, para.56. Such affirmative action programmes must first, however, be put in place.
277. Constitution of Kenya, para.204(2).
278. The Standard, Governors memo that made Kibaki hit the roof, 7 April 2013. Available at [http://www.standardmedia.co.ke/?articleID=2000081036&story\\_title=Kenya-Governors-memo-that-made-Kibaki-hit-the-roof](http://www.standardmedia.co.ke/?articleID=2000081036&story_title=Kenya-Governors-memo-that-made-Kibaki-hit-the-roof) (accessed on 25 November 2013).
279. National Policy for the Sustainable Development of Northern Kenya and other Arid Lands, adopted by cabinet in 2012, section 5.1
280. National Accord 2008, agenda four.
281. Sessional paper No.8, 11 October 2012.
282. National Policy for the Sustainable Development of Northern Kenya and other Arid Lands, adopted by cabinet in 2012, foreword.
283. Vision 2030 Strategy for Northern Kenya and other Arid Lands, endorsed by the Ministry of State for Planning, National Development and Vision 30, 16 August 2011. Goldsmith is a critic of Vision 2030, stating it is a 'blueprint for national development that threatens to reduce pastoralists to herders on pockets of range', negating the constitutional legalisation of customary communal tenure and recognition of historic injustices. See Goldsmith (fn.11), p.141
284. National Policy for the Sustainable Development of Northern Kenya and other Arid Lands, adopted by cabinet in 2012, section 4.3
285. See insight provided by former minister Elmi, restated in chapter one of this study.
286. For a brief description and analysis of the AU policy framework, see Schlee/Shongolo (fn.27), pp.12-16.
287. See Schlee/Shongolo (fn.27), pp.135.
288. N'Djamena Declaration on Adaptation to Climate Change, Indigenous Pastoralism, Traditional Knowledge and Meteorology in Africa, 7-9 November 2011.
289. The conceptualisation of internal displacement in this study partly informed the development of a system dynamics model by IDMC and Climate Interactive.
290. The national government bears ultimate responsibility for the administrative implementation of the 2012 IDP Act, while county governments responsibilities derive from their functions and powers according to Article 186 of the constitution. See part III of the 2012 IDP Act.
291. 2012 IDP Act, sections 8(1) and (2).
292. Draft national IDP policy, adopted by cabinet in 2012, para.45(b).
293. *Ibid.*, para.43(e).
294. *Ibid.*, para.44(e).
295. *Ibid.*, para.61(f).
296. *Ibid.*, para.88(a).
297. *Ibid.*, para.117(d) and (e).
298. *Ibid.*, para.98.
299. *Ibid.*, para.117(e)(vii).
300. 2012 IDP Act, see e.g. section 8(3) and 9(4).
301. 2012 IDP Act, section 10. 'Protocol' refers to the Great Lakes Protocol for the Assistance and Protection of Internally Displaced Persons; 'Guiding Principles' refer the Guiding Principles on Internal Displacement. Both instruments are annexed.
302. The IASC operational guidelines on the protection of persons in situations of natural disasters 2011, p.2, also note that IDPs are right holders and not mere beneficiaries and recipients of charity.
303. Pavanello (fn.109), pp.7-8.
304. For a similar recommendation see Pavanello (fn.109), p.13.
305. See chapter four, section 4.2, sub-section 2 and 3 of this study.

306. Levine/Pavanello, (fn.58), p.4.
307. *Ibid.*, p.3.
308. These are elaborated in Levine/Pavanello, (fn.58), pp.3-4.
309. 2012 IDP Act, sections four and 10.
310. This section paraphrases the illustration of the added value of a rights-based approach to development in Kälin/Schrepfer (2), (fn.99), pp.28-32. See also IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, 2011, pp.2-7.
311. 2012 IDP Act, section 8(3) and 9(4).
312. See this chapter, section 5.4, sub-section one of this study.
313. The 'ontological war' is described in Scott-Villiers (fn.83), pp.771-781.
314. Scott Villiers (fn.83), pp.771-781 documents a failed participatory process to support the three criteria.
315. Scott-Villiers (fn.83), p.775.
316. IDMC interview with displaced Somali pastoralists near Garissa, November 2012.
317. Kälin/Schrepfer (2), (fn. 99), p. 29.
318. See above chapter 4, section 4.2, sub-section 3 of this study.
319. Quoted in Scott-Villiers (fn.83), p.774.
320. 2012 IDP Act, sections 2 and 9(1).
321. *Ibid.*, Section 9(2). These are further elaborated in Section 9.4 of the draft policy on IDPs approved by cabinet in 2012. For international standards, see the IASC Framework on Durable Solutions for Internally Displaced Persons, April 2010.
322. Draft national IDP policy, adopted by cabinet in 2012, para.44(e).
323. Devereux/Tibbo (fn.25), pp.215ff, argue strongly for improved integration between social protection, risk management and emergency programming.
324. IASC Framework on Durable Solutions for Internally Displaced Persons, April 2010, p.19.
325. 2012 IDP Act, section 9(4). See also the draft policy on IDPs, section 9.3.
326. Draft national IDP policy, adopted by cabinet in 2012, para.114(b).
327. *Ibid.*, para.116.
328. Catley et al, (fn.9), p.18.
329. See chapter two, section 2.1 of this study, and Broch-Due (fn.23), p.88.
330. Constitution of Kenya, para.184(i).
331. Draft national IDP policy, adopted by cabinet in 2012, para.108(a).
332. See chapter three of this study.
333. Michael M. Cernea, Impoverishment Risks and Reconstruction: A Model for Population Displacement and Resettlement, in Michael M. Cernea and Christopher McDowell (eds), Risks and Reconstruction: Experiences of Resettlers and Refugees, The World Bank, Washington DC, 2000, pp.11-55.
334. Food insecurity, for example, challenges the very idea of the right to food and to be protected from hunger contained in Article 11 Covenant of Economic, Social and Cultural Rights. On the added value of a rights-based approach, see section 5.4 of this chapter.
335. The conditions of safety and security as well as the restoration of freedom of movement do not form part of the IRR model, but the three other critical conditions overlap. See Kälin/Schrepfer (2), (fn.99), p.26-27.
336. See Kälin/Schrepfer (fn.22), p.27.
337. KRCS, Reach Out, Building Resilience, Issue No.45, 2012, p.4.
338. IDMC interview with Garre community in Kilimani, November 2012.





# About IDMC

The Internal Displacement Monitoring Centre (IDMC) is a world leader in the monitoring and analysis of the causes, effects and responses to internal displacement. For the millions worldwide forced to flee within their own country as a consequence of conflict, generalised violence, human rights violations, and natural hazards, IDMC advocates for better responses to internally displaced people, while promoting respect for their human rights.

IDMC is part of the Norwegian Refugee Council (NRC).

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# About NRC

The Norwegian Refugee Council is an independent, humanitarian, non-governmental organisation, which provides assistance, protection, and contributes to durable solutions to refugees and internally displaced people worldwide.

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# About the Nansen Initiative

Launched in October 2012 by the Governments of Switzerland and Norway, the Nansen Initiative is a state-led, bottom-up consultative process intended to build consensus on the development of a protection agenda addressing the needs of people displaced across international borders by natural disasters, including the effects of climate change.

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