

Declaration

I, **Bernadette Iyodu**, declare that the work presented in this dissertation is original. It has never been presented to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the LL.M Degree in Human Rights and Democratisation in Africa.

Signed.....

Date.....

Supervisor
Signature
Date.....

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Dedication

For

Mr. Gaudesius Opio

and

Mrs. Janet Aguti Opio,

my parents, who lost their 80 heads of cattle and 20 goats to the Karamojong cattle-rustling incident in Teso in June 1987, all is well!



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Nothing could have been written here, but for God who saw me get into the LLM-HRDA Programme and continued to manifest His favour by sustaining me through it all. I am therefore most indebted to the Centre for Human Rights, University of Pretoria for affording me the opportunity to further my studies, gain immense experience in research and giving me new eyes with which to view the world. Specifically I am grateful to Prof. Michelo Hansungule for his incisive comments that structured this research and for useful contacts with Minority Group International. I would also like to thank Solomon Ebobrah, my tutor, the first drafts of this research could not have been without your comments and unceasing support despite your equally busy schedule

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To all my friends whom I have not been able to mention, I appreciate your support, encouragement and love. You are in my thoughts

Maps

1.1. Map of Uganda: Karamoja Region

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List of Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
CSOs	Civil Society Organisations
DANIDA	Danish International Development Agency
EPD	Ethiopia Pastoralist Day
FDRE	Federal Democratic Republic of Ethiopia
GoU	Government of Uganda
HRBA	Human Rights Based Approach
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGAD	Intergovernmental Authority on Development
ILO	International Labour Organisation
KDAA	Karamoja Development Agency Act
KIDDP	Karamoja Integrated Disarmament and Development Programme
KPW	Kenya Pastoralist Week
MDGs	Millennium Development Goals
OPM	Office of the Prime Minister
PCDP	Pastoralist Community Development Programme
PFE	Pastoralist Forum Ethiopia
RLP	Refugee Law Project
UDHR	Universal Declaration on Human Rights
UHRC	Uganda Human Rights Commission
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNDP	United Nations Development Programme
UN OCHA	United Nations Office for the Coordination of Humanitarian Affairs
UPDF	Uganda Peoples Defence Forces
WISP	World Initiative for Sustainable Pastoralism

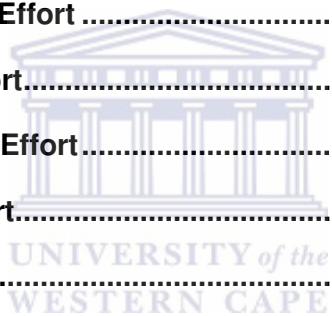
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CHAPTER ONE

INTRODUCTION

1.1. Background to the study

Development in pastoralist regions has long perplexed governments, frequently resulting in neglect and marginalisation. The perceived incompatibility between pastoralist cultures and livelihoods and development has led to top-down interventions which in turn have met with resistance from the pastoralists themselves. This has sometimes been termed the 'pastoralist dilemma'.¹ Ironically, interventions aimed at "developing" the pastoralists have oftentimes led to the violation of their rights and freedoms by governments and international actors. Like all persons, pastoralists are entitled to enjoy international legal protection of their rights and freedoms, including those of particular relevance to their survival and development as peoples, such as the right to culture, collective ownership of property, equality, and non-discrimination.²

Broadly speaking, pastoralists are people organised in tribal groupings whose livelihood comes from herding domestic animals for subsistence across thinly-populated arid lands, and who practice communal landholding allowing for flexibility and manoeuvrability in an unpredictable natural environment.³ They 'inhabit inhospitable or fragile environments that no other human group has ever wanted to occupy'.⁴ Although historically, most human societies went through pastoralist phases as evidenced by archaeological remains and biological analysis,⁵ pastoralism became increasingly marginalised as agriculture and urban centres developed forcing pastoralists into more marginal arid areas, where nearly all are

¹ Report on the African Commission's (ACHPR) working group of experts on indigenous populations/communities (ACHPR Report) 86-87.

² These rights are provided for in the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, International Labour Organisation Convention 169 and African Charter on Human and Peoples' Rights; see chapter five for a detailed discussion on international human rights law.

³ A Scott-Villers 'Rain, prosperity and peace: Reporting from the global pastoralists gathering: Turmi, Ethiopia' UN OCHA Report (2005).

⁴ D Knaute and S Kagan (eds) *Sustainability in Karamoja? Rethinking the terms of global sustainability in a crisis region of Africa* (2009) 6.

⁵ Recent studies show that lactose tolerance is a proximate indicator of a culture who went through a pastoral phase in their history with some notable exceptions, including the lactose *intolerant* Maasai, who curdle their milk! See R Dawkins *An ancestor's tale: A pilgrimage to the dawn of life* (2004) 32-33.

found today.⁶ Given the marginality of the land which they inhabit, sedentarisation is not a viable option for most pastoralists, even if the communities in question were willing to abandon their traditional lifestyles.⁷

The major descriptive elements of pastoralism are 'nomadism' entailing seasonal mobility (often across district or international borders) of both herds and shepherds in search of water and pastures, and a communal system of land-use. Their pattern of settlement usually involves loose mobile or semi-permanent structures for housing both themselves and their animals.⁸ Of paramount importance to a pastoralist is the availability of water and pastures for the animals, and these resources are sometimes the subject of contention amongst pastoralist communities. Among pastoralists in East Africa, animals define one's status in the society; it is the heritage, wealth and a source of pride. Cattle-rustling or raiding with a view of acquiring more animals is an acceptable, even integral, practice within the East African pastoralist communities.⁹ In addition to providing the community with additional wealth, it represents one's ability and capacity to found and protect a family.¹⁰

In the Ugandan context, the Karamojong are the most well-known pastoralists and the ones most likely to be presented by government and development actors as a "problem in need of a solution". The Karamojong populate a region in the north eastern corner of the country commonly known as Karamoja. Their lands abut to both sedentary populations (within Uganda) and pastoral communities (bordering Uganda). Like all pastoralists they are largely nomadic and dependent on cattle for survival, although some communities are located in a few arable areas and are therefore able to seasonally grow crops, Karamoja generally experiences high temperatures because of its semiarid climate.¹¹

⁶ P Spencer *The pastoral continuum: The marginalization of tradition in East Africa* (1997) 247-248 – in Africa, a strong correlation between aridity and pastoral expansion is found with cattle arriving in Kenya around 2000 BC, along with an expansion of aridity from the Sahel.

⁷ N Mburu 'Firearms and political power: The military decline of the Turkana of Kenya 1900-2000' *Nordic Journal of African Studies* 10(2) (2001) 148-162.

⁸ Scott-Villiers (n 3 above).

⁹ B Knighton *Historical ethnography and the collapse of the Karamojong culture: Premature reports of trends* (2002) 8.

¹⁰ Oxfam internal paper 'Karamoja conflict study: A report' (2000) (unpublished, on file with author).

¹¹ B Knighton 'The vitality of the Karamojong religion: Dying tradition or living faith?' (2005) 19.

The pastoralists' nomadic lifestyle is a means of 'adapting to patchiness of the resources and the spatial and temporary variability of the environment'.¹² In part because of this mobility, sedentary communities and governments tend to view nomadic pastoralists as primitive, backward and even lawless, difficult to administer, tax and control. In turn, pastoralists often view governments as foreign, oppressive, and exploitative.¹³ The antagonism between states and pastoralists has turned into a blame game in the modern era. States see pastoralism as an obstacle to social and economic development and a wasteful lifestyle leading to environmental degradation.¹⁴ The identities that pastoralists have constructed for themselves are often at odds with those imposed on them by the development planners, resulting in outright rejection and resistance to development interventions.¹⁵ States argue that the solution to overcoming obstruction and resistance from nomadic pastoralists or tribes is to settle and force them to take up agriculture as a new lifestyle.¹⁶ The antagonism has seen to misunderstandings between pastoralists and the state and underdevelopment in pastoral regions as most attempts at developing pastoral regions have disastrously failed.

1.2. Statement of the research problem

Historical attempts to 'develop' pastoralist groups in the region, including in Karamoja, have typically stemmed from orthodox notions of development including forcible inclusion in market economies and the use of traditional indicators of development such as modern irrigation schemes, permanent settlements, factories, privatisation schemes (and then forcibly pushing the locals into these facilities) to measure the success of interventions. Most of these development strategies have clashed with pastoral cultures and ways of life, culminating in the violation of fundamental rights and freedoms of pastoralists. As the successive failures of these attempts through the 1980s and 1990s becomes evident,

¹² JT McCabe *Cattle bring us to our enemies: Turkana ecology, politics, and raiding in a disequilibrium system* (2004) 32.

¹³ E Fratkin & A Meir 'Pastoralists and the state: An editorial introduction' in *Geography Research Forum Special issue: Pastoralists and the state* 25(2005) 1.

¹⁴ Fratkin & Meir (n 12 above) 3.

¹⁵ B Straight 'Development ideologies and local knowledge among Samburu women in northern Kenya' in L Dorothy & I Hodgson (eds) *Rethinking pastoralism in Africa: Gender, culture and the myth of the patriarchal pastoralist* (2000) 228.

¹⁶ J Markakis *Pastoralism on the margin* (2004) 8.

development practitioners are being forced to rethink how best to approach the problem.¹⁷ However, a gap continues to exist between empirical research indicating the need for creative solutions to the “pastoralist dilemma” and the legal and policy frameworks governing the lives of Karamojong in Uganda.

Question of research interrogated in this study is that the move toward development and adoption of modern change should not necessarily be a replacement of culture especially where traditional living has proved most viable in certain circumstances such as life in semiarid regions. In such cases, ways of life and cultures that have sustained socio-economic life in the harsher environments should not be sacrificed at the table of modernisation or development as parties antagonise over priorities. Instead avenues such as participation should be used for development to meet culture halfway without violation of pastoralists’ rights. Moreover researchers argue that the antagonism is lowest where pastoral development processes have incorporated rights-based approaches for the supposed ‘beneficiaries’.¹⁸



1.3. Significance and aim of the study

The emphasis of this study is on the rights of particular significance to the Karamojong in a development context, namely the right to collective ownership of property (land), and the right to culture fostered by the right to participation in decisions likely to impact their communities. Although these rights are provided for in international and regional human rights law, such instruments are of general application and make no specific reference to protection of pastoralists. Without specific legislation, the rights of Ugandan pastoralists are insufficiently implemented at the national level.

Research indicates that Africa is home to the largest pastoral communities in the world,¹⁹ and that the pastoralist way of life is both productive and harmonious with the ecology of the difficult territories they inhabit.²⁰ Given these findings, it is crucial that ways be found to preserve pastoralist cultures and ways of life not only in Uganda but regionally. It is an

¹⁷ S Homann *et al* *Towards endogenous development: Borana Pastoralists’ response to environmental and institutional changes* (2005) 1.

¹⁸ Homann *et al* (n 16 above).

¹⁹ KA Mkutu *Guns & governance in the rift valley: Pastoralist conflict and small arms* (2008) 13.

²⁰ Knighton (n 9 above) 20.

underlying premise of this study that the provision of proper legal protection to pastoralist communities is a crucial step in ensuring their survival as a people.

1.4. Definitions and concepts

'Development' is a term loosely used in this study to mean positive change. According to Sen's seminal work, development is not merely the expansion of economic growth, nor the passive delivery of ready-made services or expansion of social facilities. Instead, Sen focuses on the individual and asks what development might mean to each man and woman. The general answer he induces is that development represents the expansion of choices available to the individual – that is, freedom.²¹

The United Nations adds to Sen's definition by stating that development entails the "expansion of human capability".²² From these definitions it follows that a rights-based approach, which seeks to enhance individual agency, should be well-suited to promoting development goals.²³

The human rights-based approach (HRBA) is a legal concept referring to 'efforts to undertake development activities in a manner that serves to promote the human rights of the affected populations'.²⁴ There are four tenets of HRBA however: the most important two central to this study are non-discrimination and equality; and participation and inclusion. In that non-discrimination and equality requires a state to identify the most marginalised, and actively discriminated against;²⁵ while participation and inclusion empowers the rights-holder for which power is to be manifest in all of the processes and outputs which impact for their wellbeing.²⁶ Therefore this study measures government's interventions against these tenets in assessing development approaches in Karamoja.

²¹ AK Sen *Development as freedom* (1999) 53.

²² UNDP approach to development in P Alston and M Robinson *Human Rights and Development: Towards mutual reinforcement* (2005) 39.

²³ Homann *et al* (n 17 above).

²⁴ M O'Flaherty 'Towards integration of United Nations human rights treaty body recommendations: The rights-based approach model' in MA Baderin & R McCorquodale (eds) *Economic, social and cultural Rights in action* (2007) 33.

²⁵ O'Flaherty (n 24 above) 38-39.

²⁶ Amnesty International, 'Our rights, our future, human rights-based approaches in Ireland: Principles, policies

The concept of 'culture' is used to mean 'the expression of a meaningful lifestyle to which pastoralists remain committed—a concept that yields guiding principles when men and women are faced with uncertainty'.²⁷ This understanding of culture assumes the capacity of pastoralists to respond to change.

1.5. Methodology

The study engages in a socio-legal analysis, comparative studies, and critical analysis of issues raised in the literature reviewed. Research relied on library based information, electronic and internet sources. Desk research was employed to analyse international and regional human rights instruments, national constitutions and legislation from different countries, as well as case law on the protection of pastoralists.

1.6. Limitations of the Study

The clearest limitation of the study is that the concerns of pastoralists' vis-a-vis development are complex and cannot be fully explored given the stated space constraints. As a result, this study has tended towards a cursory analysis of issues, and is intended as an entry point for future debate. A further difficulty was posed by the fact that little has been written on the Karamojong compared to other pastoral communities in Africa. The major up to-date texts relied on were personally procured by this author in an effort to provide a balanced and current perspective of the present situation in Karamoja.

1.7. Literature Review

Most literature on nomadic pastoralists of East Africa, especially early colonial and post-independence writing, has tended to be ethnographic in nature. In particular, Kenyan-based groups have been better studied than elsewhere, perhaps owing to the greater stability and security of the country in comparison with the likes of Uganda, Sudan, and Ethiopia, which have all experienced wars overlapping with these regions.

and practices' (2005) 16.

²⁷ Spencer (n 6 above) 2.

Ethnographic sources are both a blessing and a curse. On the one hand, the anthropological attention to traditional institutions has provided a rich pool of knowledge from which to understand pastoralist cultural norms and how these might be reinvigorated. On the other hand, they have tended to mythicise pastoralists, creating static views of their culture as unchanging and pristine cultures, failing to acknowledge the way in which all cultures change in response to varying conditions and circumstances.

Spencer²⁸ and Markakis²⁹ represent an important break with the latter trend. They investigate pastoral groups in East and Horn of Africa continuously stressing the responses and innovations that each of them has made in reaction to changes around them from colonial times into the present. Their major concern is the threats brought about by sudden population growth and Malthusian (demographics) scenarios and development that threaten these groups' way of life and governments' response in forcing pastoralists to sedentarise as a solution to their environmental problems.

Knighton³⁰ writing specifically on Karamoja, discounting Malthusian scenarios and colonial technocratic approaches on land issues argues that traditional means should be the preferred way of solving problems. He also argues that, there is room in the Land Act 1998 for communal ownership and this, he says, should be the preferred means of managing Karamojong land. In separate studies Knighton³¹ is later joined by Mkutu³² and Mburu³³ in demonstrating the long history of culture and conflict in the region owing to resources, *inter alia* and showing how various disarmament programmes by both government and NGOs have failed because of their narrow understanding of the various cultures.

²⁸ Spencer (n 6 above).

²⁹ J Markakis (ed) *Conflict and the decline of pastoralism in the Horn of Africa* (1993); Markakis (n 16 above).

³⁰ B Knighton 'Eroding the Concept of Commons: A history of an idea inapplicable to natural resource management by Karamojong pastoralists', paper presented at *Pastoralism in the Horn of Africa: Surviving against all the odds* PENHA Conference, London (2005).

³¹ B Knighton 'The state as raider among the Karamojong: 'Where there are no guns, they use the threat of guns'' in *Journal of the International African Institute*, 73, 3 (2003).

³² Mkutu (n 19 above).

³³ N Mburu *The proliferation of guns and rustling in Karamoja and Turkana districts: The case for appropriate disarmament strategies* (2002).

McCabe³⁴ writes on semiarid ecosystems and pastoral rangelands arguing that pastoralism is the most adaptive and best suited way of life in arid and/or semiarid rangelands and it is nomads with their mastery of surviving in the deserts who can maintain its delicate balance.

Various reports and research papers (international, regional and international) have utilized numerous consultations and interviews to report on the Karamojong situation from a humanitarian perspective. Knaute and Kagan³⁵ present the most comprehensive account of the situation prevailing in Karamoja. Their work is based on a thorough analysis including consultations and interviews with the Karamojong, government and international development actors over a five year period. The focus of the work is on global responsibilities of development actors while exploring local, national and international solutions that may pave way to sustainability and conflict mitigation in the region.

In contrast with these reports, government has created a wide-ranging action plan for the region that demonstrates a lack of consultation and lack of consideration for pastoralist rights.³⁶

1.8. Arrangement of Chapters

The study is divided into six chapters. Chapter two introduces Karamojong as the case study focusing on their historical background, and main concerns and looking at how previous governments' attempted to develop their region. Chapter three reviews various current government's development interventions and assistance in Karamoja, assessing any improvements to their situation and where failure is registered, highlighting reasons for such failure. Chapter four draws on the experience of other jurisdictions to derive best practices that could be of use in Karamoja. Chapter five discusses the legal protection accorded to pastoralists by international and regional human rights instruments with specific reference to the African Charter. Chapter six concludes the study with a summary and proposes recommendations that could be adopted at the international, regional, sub-regional and national level by practitioners to better address the needs of Ugandan pastoralists.

³⁴ McCabe (n 12 above).

³⁵ Knaute & Kagan (n 4 above).

³⁶ National Environment Action Plan (NEAP) Report 'Karamoja Topic Paper' (1992); Example section 3.3.2.5, Unsustainable Nomadic Lifestyle, states bluntly: "Mobility undermines proper land use planning and practices. It also facilitates the spread of cattle diseases, encourages [sic] cattle rustling and makes the provision of social services such as water, schools and hospitals difficult" 25.

CHAPTER TWO

HISTORICAL CONTEXT OF PASTORALISTS IN UGANDA – KARAMOJA

2.1. Introduction

This chapter engages in a historical analysis of the Karamojong people and Karamoja as a region. It seeks to foster an appreciation of the way of life, culture, and environment of the Karamojong and place in perspective their concerns with regards to Uganda's policies. The chapter concludes with an analysis of past interventions by the government in dealing with Karamojong concerns.

The Karamojong are not the only pastoral community in Uganda. However, Karamojong present a unique and complex case because of historical discrimination and marginality of the region they occupy, Karamoja's proximity to pastoral neighbours in East and Horn of Africa; and their tradition of raiding cattle. It should be noted, however, that to the extent that some Karamojong concerns mirror those of other pastoral communities in Uganda, this study will be relevant to furthering their recognition and protection as well.

2.2. Historical, social, and cultural context

The Karamoja region is home to approximately one million people, which makes it the least populated region in Uganda.³⁷ The area covers 10,550 square miles and is composed of 5 districts. There are nine tribal groupings in Karamoja, belonging to and forming part of the three main ethnic groups i.e. Dodoth, Jie and Karamojong.³⁸ However, they are generally referred to as the Karamojong by outsiders, sometimes in an attempt to create a unifying identity.³⁹

Droughts in Karamoja have become increasingly severe due to climate change, which in turn has affected the way of life for both agro-pastoral and purely nomadic pastoral communities.

³⁷ See Reliefweb population estimates as updated on 27 July 2009. See <[http://www.reliefweb.int/rw/fullMaps_Af.nsf/luFullMap/DE07769BECFDEF07852576010052A14F/\\$File/map.pdf?OpenElement](http://www.reliefweb.int/rw/fullMaps_Af.nsf/luFullMap/DE07769BECFDEF07852576010052A14F/$File/map.pdf?OpenElement)> (accessed 08/08/2009).

³⁸ E Stites & D Akabwai 'Livelihood impacts of disarmament in Karamoja, Uganda' (2009) 6 sourced <<http://www.fic.tufts.edu>> (accessed 08/08/2009).

³⁹ Knighton (n 11 above) 23.

Karamoja's neighbours in Sudan and Kenya face similarly arid conditions; the region receives very little and irregular rainfall during the months of March to August.⁴⁰

Anthropologists argue that it is impossible to understand aspects of day-to-day behaviour and social organisation of pastoralists until one appreciates the real impact of drought on pastoral peoples.⁴¹ Droughts are not easy to predict, but 'pastoralists know that they will occur and their survival depends upon their ability to cope with them'.⁴² Anthropologists have arrived at a conclusion that droughts are part of a normal functioning of the ecosystem in arid and semiarid regions in Africa.⁴³ Pastoralists have traditionally coped with droughts by walking distances traversing their region and into other regions in search of water and pasture; however, due to climate change, it is increasingly difficult for them to survive.⁴⁴

Because of its remote location, Karamoja has for a very long time been a "forgotten" region of Uganda. Some researchers maintain that since colonial times till the present day, Karamoja continues to receive minimal national attention, aside from the occasional disarmament exercise. The effects of this are reflected in the poor infrastructure, inadequate social services and lagging economic development in the region.⁴⁵



⁴⁰ Knighton (n 11 above) 19.

⁴¹ SM Hoffman & A Oliver-Smith (eds) *Catastrophe & culture: The anthropology disaster* (2002) 214.

⁴² Hoffman & Oliver-Smith (n 41 above) 214.

⁴³ Hoffman & Oliver-Smith (n 41 above) 215.

⁴⁴ JG Galaty 'States of violence: Ethnicity, politics and pastoral conflict in East Africa' in *Geography Research Forum Special issue: Pastoralists and the state* 25(2005) 115.

⁴⁵ Stites & Akabwai (n 38 above).

1.1. Karamoja Region



Source: Reliefweb

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2.3. Marginalisation, Discrimination & Conflict

The Karamojong depend on their lands for survival and livelihoods, and retain most of their traditions and values as a central part of their lives. This attachment to tradition, along with a legacy of colonial discrimination, has resulted in their being marginalised and discriminated against by mainstream Ugandan society.⁴⁶ Karamoja region has long been viewed by outsiders as a place apart requiring a different kind of rule until it can be made more like the rest of Uganda.⁴⁷ In fact there is a local saying now in Uganda stigmatizing underdevelopment in Karamoja: '*They cannot wait for Karamoja to develop*'.⁴⁸

⁴⁶ ACHPR Report (n 1 above) 89.

⁴⁷ Refugee Law Project (RLP) Briefing Paper: *Changing the lens: preliminary findings from research conducted into the situation of Karamoja* (2007) source <www.refugeelawproject.org> (accessed 15/08/2009).

⁴⁸ See for example, 'Could Mama Janet be the Messiah for Karamoja?' *The New Vision*, 2 April 2009 at <<http://www.newvision.co.ug/PA/8/459/676772>> (accessed 26/10/2009).

The marginalisation and discrimination of the Karamojong has been officially attributed to their culture and way of life. Yet Knighton describes the Karamojong way of life to mean a 'society's whole, accumulated response to its environment, where environment is the aggregate of the given external conditions affecting life with its physical features and primary resources'.⁴⁹ In short, rather than being a problem, Karamojong culture and way of life with regard to prime concerns of the Karamojong, discussed in the following section; can be better understood as that society's adaptive means of coping with their environment, and a valuable resource in and of itself.

2.4. Prime concerns of the Karamojong

There are three major interrelated concerns in the Karamoja. First, is land use. Pastoralists maintain a communal system of land-use favouring their settlement patterns while allowing flexibility in livestock grazing.⁵⁰ Second, is mobility of animals and people in search of water and pastures. Karamojong have crossed national borders in search of pasture and water as necessary. Third, is security emanating from the inevitability of being mobile and their location at the border region. What follows is discussion of each of these concerns.

2.4.1. Land-use and natural resources

The importance of land to pastoralists cannot be overemphasized. Land in pastoral production is identified as one of the means of production, and includes such features as watering points, salt-points, and pastures. This resource base has been better explained in terms of territory "in the sense that it is not modified by man for productive purposes, rather it is used on 'as it were' basis".⁵¹ Due to the arid nature of pastoral regions, watering points and salt sites are widely scattered. Territory that contains all the necessary elements and allows for manoeuvrability and mobility during migration is a lucky find.⁵² Sometimes such a find is shared communally, but during severe droughts it is typically closely guarded.⁵³

It has proved unhelpful to drill boreholes or build windmills in an attempt to establish permanent watering-points and abolish the mobility of pastoralists. Governments' efforts

⁴⁹ Knighton (n 11 above) 16-17.

⁵⁰ Scott-Villers (n 3 above) 5.

⁵¹ DK Ndagala *Territory, pastoralists, and livestock: Resource control among the Kisongo Maasai* (1992) 60.

⁵² Ndagala (n 51 above).

⁵³ Mkutu (n 19 above) 13.

have been frustrated by the rate at which the water tables lower causing the drying up of such water sources.⁵⁴ Rivers and lakes have dried in these regions. Such pumps and dry wells are abandoned in the dry season when the nomads go out in search of water.⁵⁵

2.4.1.2. Karamojong and systems of land tenure in Uganda

Pastoralists' communal land holding system defies the national policies regulating land tenure in Uganda. There are four recognised land holding systems stipulated in the Constitution of Uganda (the Constitution).⁵⁶ Land under article 237 of the Constitution and the Land Act can only be owned under customary, freehold, mailo and leasehold tenures.⁵⁷

Aside from customary land tenure, the other land tenure systems entail exclusive private ownership in which the title holder of the land has full powers to develop and dispose of his land as private property.⁵⁸

Unique to the customary tenure are the following characteristics: it is applicable to a specific area of land, specific description and to a specific class of persons who agree on rules to govern the use of the land. It provides for communal ownership and use of the land. Parcels of the land can be recognised as divisions belonging to a person, family or traditional institution. Land under this tenure can be owned in perpetuity.⁵⁹

At first sight, customary tenure seems to be compatible with the pastoralists' land holding system. However, on further reading and critical analysis of the provision, there is a divergence in the meaning that conflicts with the pastoralists understanding of land ownership. Section 3(1) of the Land Act on customary tenure specifies that ownership and use of the land is restricted to an area of land with a specific description, for a specific class of people. Further, section 4(1) states that ownership of the customary land is to be evidenced by show of a certificate of customary ownership obtained by an individual, family or community. To think of this as a suitable land tenure system applicable to the nomads

⁵⁴ T Dietz 'The state, market and the decline of pastoralism: challenging some myths, with evidence from western Pokot in Kenya/Uganda' in Markakis (n 29 above) 88.

⁵⁵ Knighton (n 11 above) 19-20; Mkutu (n 19 above) 14, 43, the bedrock is the basement complex and the plains are swamp deposits which drain off badly, dry and bake.

⁵⁶ The Constitution of the Republic of Uganda 1995.

⁵⁷ Land Act of 1998, Chapter 227 Laws of Uganda. Descriptions, forms of acquisition and registration of land tenures are provided for in part II of the Act.

⁵⁸ S 3(2), (3), (4) Land Act.

⁵⁹ S 3(1) Land Act.

would be unreasonable. Ownership of land is a foreign concept to nomadic pastoralists; they own no grazing land 'for it is not worthwhile defending plots that they can only use for a short period'.⁶⁰

It is illogical from a pastoralist perspective to specify a watering point, salt-sites and pasture land in a specific area of land and make binding rules governing its use and expect to find it in the same state next season. Many factors, including invasion of a place by enemy raiders, depletion of forage, and presence or absence of other inhabitants in the area determine whether an area will be abandoned.⁶¹ Under the current Land Act this would necessitate the constant rewriting of rules for every place claimed as a temporary territory. Given that climate in arid and semiarid areas is not controlled by man, in order to cope, pastoralists live one day at a time.⁶²

During the application process, the application form and fee for a certificate for customary ownership must be submitted to the committee or parish in which the land subject to the application is situated.⁶³ Reference to a parish or committee implies a settled community. A parish is a unit of local government authority at sub-county level in a district set up in rural settled areas. A committee is a local government office at county level in a district set up in semi-urban areas.⁶⁴ In essence these are permanent office structures set up to administer land issues but such structures are not viable for wide-ranging nomads in semiarid regions.⁶⁵

The Land Act has gone through two amendments; one in 2001 and the latest 2004.⁶⁶ However, neither of these amendments has addressed the issue of collective land use by pastoralists. Instead, pastoralists are under pressure from the government and international development agencies to live a settled life if they are to be helped.⁶⁷ However, as Knighton

⁶⁰ Knighton (n 11 above) 29.

⁶¹ McCabe (n 12 above) 128.

⁶² Ndagala (n 51 above) 60.

⁶³ S 4(3) Land Act.

⁶⁴ Local Government Act 1997, Chapter 243 Laws of Uganda ss 3 & 45.

⁶⁵ Knighton (n 11 above) 29-30.

⁶⁶ The (Land Amendment) Act 2001 & the Land (Amendment) Act 2004 respectively. Both amendments to the Land Act 1998 on a large part inform on the administrative handling of land affairs/disputes i.e. extension of magisterial courts time in handling disputes on land before the coming into force of the Land Act 1998 – for first amendment and for second amendment is on funding, remuneration and set up of land committees, district land commissioners and land tribunals.

⁶⁷ Stites & Akabwai (n 38 above) 7.

puts it, there is some room in the Land Act 1998 for communal ownership and this should be a preferred means of managing Karamojong land.⁶⁸

2.4.2 Migrations and border crossing

The term 'migration' is loosely used in this context to refer to internal and cross border movements, none of which are permanent.⁶⁹ Migrations are largely prompted by the need to access resources. Availability of these resources is not a given; accessing them necessitates wandering for long periods, sometimes into enemy territory.⁷⁰

To cope, pastoralists divide their herds in order to utilise more land and while catering for family members (usually the elderly, women and children) who cannot travel easily. Thus pastoral communities often separate during droughts and dry seasons,⁷¹ even though such separations may heighten insecurity.

The government of Uganda (GoU) has consistently sought to restrict pastoralist mobility in order to encourage sedentarisation. This program represents a continuation of British colonial policies aimed at turning the Karamojong into farmers so that they may be easier to control, govern, rule and tax. One such initiative by the British involved giving them hoeing equipment in the form of steel ploughs. Although accepted, the Karamojong blacksmiths reworked many of them into new spear blades for use during cattle rustling and for protection during migration. This was typical of early attempts to 'modernise' Karamojong.⁷²

The GoU's present day attempts range from provision of permanent water sources which unfortunately dry up in the dry season, to provision of seeds for cultivation and ploughs. Cultivation is not a readily available option in most of Karamoja as not much a crop can grow out of the soil to maturity before it gets scorched.⁷³ In rare good seasons and in the very best areas of their arid lands, pastoralists do grow some crops such as millet and maize. Unique among pastoral tribes they have no objection to tilling the ground but rather

⁶⁸ Knighton (n 3 above) 23.

⁶⁹ Because of the need to be mobile Karamojong nomads have been unable to set up permanent homesteads or kraals (cow shelters) when they move out of their own villages in search of water and pastures.

⁷⁰ Ndagala (n 51 above).

⁷¹ McCabe (n 12 above).

⁷² B Giles *et al Peoples of Africa: peoples of East Africa* (1997) 63.

⁷³ Knighton (n 11 above) 19.

turn their hand to anything and everything which will help to support them.⁷⁴ This admirable adaptability, however, is a far cry from the government's notions of commercial agriculture.

2.4.3 Security

Karamoja recently has attracted national, regional and international attention over security issues. The concern arises because the Karamojong are armed and there is widespread proliferation of firearms in the region.⁷⁵ Armed pastoralists are not peculiar to Karamoja, but also to the neighbouring pastoral communities in Sudan, Kenya, Ethiopia and Somalia.⁷⁶ Weapons proliferation within this belt has been facilitated by vast, porous borders and marginalisation of the region that impeded arms control.⁷⁷

Firearms are primarily used for protection during cattle rustling, migration, and protection against government's military repressive rule.⁷⁸ 'Cattle rustling' or 'raiding' refers to the practice by pastoralists of attacking and stealing cattle from neighbouring communities. It is usually carried out by armed warriors to instil fear in the opponents.⁷⁹ While such rustling has long historical precedent and arguably forms part of Karamojong culture as a 'major occupation',⁸⁰ its nature has changed drastically in recent years leading to an increase in casualties. Bows and spears have been replaced by guns, and an activity traditionally *inter alia*, aimed at demonstrating courage of new warriors and acquisition of bridewealth has become increasingly commercial as cattle are sold off to slaughterhouses for immediate consumption.⁸¹

The adoption of firearms began after contact with European, Ethiopian and Arab traders in the 19th century.⁸² But it was their proximity to protracted conflicts in Uganda and Sudan that led to the proliferation of small arms, particularly an arms race between the groups,

⁷⁴ Knighton (n 11 above) 19.

⁷⁵ Mkutu (n 19 above) 3.

⁷⁶ Mburu (n 7 above).

⁷⁷ Mkutu (n 19 above) 2.

⁷⁸ Knighton (n 31 above).

⁷⁹ Giles (n 72 above).

⁸⁰ Giles (n 72 above).

⁸¹ Mkutu (n 19 above) 13.

⁸² I Hazama 'Disarmament policies for ending armed conflicts in an East-African pastoral society' in Knaute and Kagan (n 4 above) 424-425.

leading to the full-scale use of automatic weapons,⁸³ and even heavy weaponry such as rocket propelled grenades to protect their herds, raid others and resist government disarmament.⁸⁴

In the past warriors followed various rules of engagement when fighting another group – in order to limit unnecessary damage and prevent undue conflict.⁸⁵ Currently, cattle rustling (now renamed 'raiding') has taken on major transformations. In the face of increasing poverty brought about by a combination of environmental degradation and failed interventions, raiding is being used to supplement individual income. No longer targeting only cattle, raiders now often rob their victims of all possessions including food and clothes.⁸⁶ Finally, the influx of strong liquor into Karamoja has resulted in warriors going on raids while drunk,⁸⁷ which in turn has led to increased incidents of rape and other violence not sanctioned by tradition.⁸⁸ Thus, raiding, far from being a continuation of Karamojong culture, has instead itself become a major threat to pastoralism and has drastically affected relations with Karamoja's neighbours.

2.4.3.1. Karamojong and their neighbours

Karamojong are surrounded by both sedentary (within Uganda) and nomadic (in Kenya, Ethiopia and Sudan) communities.

In relation to sedentary neighbours, Karamojong have been involved in a longstanding conflict with the Iteso of eastern Uganda due to raiding.⁸⁹ Whereas both groups keep cattle, the Iteso are unarmed and not nomadic in nature, practicing a mix of sedentary agriculture and herding. The Karamojong see them as an easy target unlike her neighbours, who are

⁸³ Perhaps historically significant was the Karamojong raid on Moroto barracks in 1979 following the ouster of Idi Amin. No precise figure on the number of firearms circulating in the region is known, but its estimated some 150,000 firearms held by Karamojong alone - see Mburu, (n 8 above) 8-10; Oxfam "*Conflict's children: The human cost of small arms in Kitgum and Kotido, Uganda*" (2001) 11.

⁸⁴ Giles *et al* (n 72 above) 63.

⁸⁵ Giles (n 72 above).

⁸⁶ Mkutu (n 19 above) 13.

⁸⁷ Stites & Akabwai (n 38 above).

⁸⁸ Oxfam (n 10 above) notes that rampant raiding has led to human rights violations of which Karamojong are also guilty especially when raiding unarmed sedentary neighbourhoods.

⁸⁹ RLP – Beyond Juba Project: 'Conflict, justice and reconciliation in Teso: Opportunities and obstacles' Briefing note (2008) sourced <www.beyondjubaproject.org> (accessed 15/08/2009).

often heavily armed, i.e. the Turkana of Kenya to the East, the Ze'lan of Ethiopia to the North and the Tepeth of Sudan in the North West.⁹⁰

To deal with armed pastoral communities Karamojong have entered in complex alliances and feuds with other groups in their pastoralist belt. There is an unchecked guns trafficking corridor in the belt involving multiple actors; the Toposa of Sudan and Turkana of Kenya are alleged to have been armed by different governments.⁹¹ Thus living within the belt unarmed is dangerous as one group becomes an easy target for the rest.

2.4.4. Past development assistance in Karamoja

The government of Uganda with the support of international and national NGOs has invested in Karamoja with a view to developing the region and its people. Development attempts are targeted at transforming the Karamojong to conform to mainstream Ugandan society by encouraging an agricultural lifestyle. These attempts have met with little success as such programs are a continuation of colonial and post-independence legacies which set Karamoja apart as a place in need of forcible civilisation. For instance, when Idi Amin came into power in 1971, he banned traditional Karamojong attire in an attempt to enforce the use of western clothes – a policy continued to this day by the Ugandan Army which harasses men wearing the traditional 'shukas' on the basis that they can be used to hide guns and harasses women on the basis that they are 'indecent'.⁹²

Various attempts to disarm the Karamojong have also taken place since the colonial era, and have often resulted in further marginalisation. Force has been misused in the course of these attempts, sometimes pushing the Karamojong to more remote areas, out of the state's reach. Far from being a source of protection, the law has often been used as a coercive mechanism in the course of disarmament. This was the case in the newly-independent Uganda's 1964 Administration of Justice (Karamoja) Act, which:

jettisoned the normally strict rules on admissibility of evidence, placed sole discretion in the hands of a single judge, and overturned the time-honoured legal principle of the presumption of innocence in cases within the district. Indeed, any person who was accused of engaging in

⁹⁰ Mkutu (n 19 above).

⁹¹ RLP 'Changing the lens' (n 47 above).

⁹² DANIDA Report 'Karamoja Access to Justice' (2008) (Unpublished, on file with author).

a cattle raid, in which someone had been killed, was presumed guilty until they had proven their innocence.⁹³

Administration of justice in the region was done without due regard to the existing traditional justice mechanisms, resulting in further alienation of the community.⁹⁴

2.5. Conclusion

The current GoU, in part responding to international pressure to conform to the requirements of the Millennium Development Goals (MDGs), has intervened in Karamoja with a view to 'developing' the region. These attempts, as discussed in chapter three, however, bear the mark of past legacies of discrimination, and risk further alienating the Karamojong in so far as they fail to take the rights and views of their intended beneficiaries into account.



⁹³ J Oloka-Onyango, G Zie & F Muhereza 'Pastoralism, Crisis and Transformation in Karamoja' IIED Drylands Network Programme, Issues Paper 43(1993) 4.

⁹⁴ In a recent field study conducted in the Karamoja region it is reported that laws worsened the situation and raiding death tolls increased – see DANIDA Report 'Karamoja Access to Justice' (Unpublished report, on file with author) (2008).

CHAPTER THREE

DEVELOPMENT ASSISTANCE AND INTERVENTIONS

...the main threat to Karamojong is if the government keeps throwing resources to make them sedentary⁹⁵

3.1. Introduction

The focus of this chapter is on government development policies in responding to the Karamojong concerns. The litmus test for examining various development initiatives will be the capacity of such initiatives to expand pastoralists' capabilities and choices, through a human rights based approach.

A majority of interventions attempted in Karamoja though well-meaning have two characteristics – firstly, they tend to deal with symptoms rather than underlying causes;⁹⁶ secondly, they are largely focused on how to transform pastoralists into peasants in view of 'modernisation'.⁹⁷ These interventions, however, do not support their struggle for cultural survival as a minority group. Moreover, the voice of the Karamojong is not heard in the planning of interventions.⁹⁸

In what follows is an examination of a few of GoU's recent development interventions that cut across Karamojong concerns discussed in chapter two categorised under themes of Karamoja-specific government interventions and general national state policies.

3.2. Karamoja-specific government interventions

While GoU has engaged in various specific interventions in Karamoja the focus of this section is on three areas namely legislative, service provision and security intervention.

⁹⁵ Knaute 'Rethinking sustainability in pastoralist areas of East Africa' in Knaute & Kagan (n 5 above) 65.

⁹⁶ Mkutu (n 19 above) 128.

⁹⁷ Oxfam Briefing Paper, 'Survival of the fittest: Pastoralism and climate change in East Africa' (2008) at <http://www.oxfam.org.uk/resources/learning/pastoralism/downloads/karamoja_conflict.pdf> (accessed 15/08/2009).

⁹⁸ Knighton (n 31 above).

3.2.1. Legislative and policy measures

Most of the legislation obtaining in Karamoja was handed down by the colonial administration. These laws, though obsolete and not reflective of current circumstances, are in the statute books and operational.⁹⁹

Having failed to contain the Karamojong politically, the British colonial administration enacted the Cattle Grazing Act in 1945 to effect taxes. This Act has not been repealed and is currently enforced in its original form.¹⁰⁰ The Act criminalises grazing on any land declared by a veterinary officer or district administration as a 'prohibited area'.¹⁰¹ A district administration or veterinary officer is authorised to dictate the maximum number of cattle that can be grazed on any given area of land.¹⁰² Contravention of these provisions results in impounding of cattle which may be sold and proceeds thereof disposed as the Minister deems fit.¹⁰³ A person convicted under the Act is liable to payment of a fine or to imprisonment or both.¹⁰⁴

The Cattle Grazing Act was later followed by numerous pieces of legislation that were amended and repealed for being ineffective in curtailing both human and animal mobility.¹⁰⁵ These inefficient laws were finally and collectively repealed by the Special Regions Act, legislation first enacted in 1958 by colonial administration that operates today upon incorporation of a few modifications.¹⁰⁶ It still serves the colonial purpose of declaring any place a 'prohibited area' and closed to any movement of animals and humans without a permit.¹⁰⁷ Notably, the new provisions are arguably more stringent than those established by the colonial administration. Aside from imposing a 'collective fine' (which usually constitutes confiscation of cattle),¹⁰⁸ an officer presiding over a case of prohibited entry and exit from a special region may order for the destruction of huts, tents or any other enclosure or

⁹⁹ DANIDA Report (n 92 above).

¹⁰⁰ Cattle Grazing Act, Chapter 42 Laws of Uganda.

¹⁰¹ S 2(1) Cattle Grazing Act.

¹⁰² S 2(2) Cattle Grazing Act.

¹⁰³ S 3(1) Cattle Grazing Act.

¹⁰⁴ S 6 Cattle Grazing Act.

¹⁰⁵ Markakis (n 16 above) 28.

¹⁰⁶ Special Regions Act 1958, Chapter 306 Laws of Uganda.

¹⁰⁷ Special Regions (Karamoja) Ordinance Act 1958, Supplement to the Uganda Gazette, Vol.II, 14 August 1958, 318-327 in DANIDA Report (n 97 above).

¹⁰⁸ S 8 Special Regions Act.

property of any person who either entered or exited the special region as additional punitive measures.¹⁰⁹

In recent times the GoU enacted the Karamoja Development Agency Act (KDA) 1987.¹¹⁰ The Act is aimed at ushering in state-led developments in the region. The GoU also established a Ministry of State of Karamoja Affairs in 2002 to spearhead development activities in the region and in 2008 it launched the three year Karamoja Integrated Disarmament and Development Programme (KIDDP). However, this plan is still in its initial stages and has prioritised disarmament over development.¹¹¹

In summary, legislative interventions have two major implications. First, they maintain a colonial approach to the Karamojong dilemma favouring authoritarian rules that disregard the current conditions prevailing in the region such as prolonged droughts owing to climate change. Second, as the legislation was set in the colonial era and before the promulgation of the 1995 Constitution,¹¹² the Karamojong constitutional rights and freedoms fundamental to their survival and development such as right to equality,¹¹³ freedom from discrimination,¹¹⁴ right to culture,¹¹⁵ right to development and participation in development programmes,¹¹⁶ among others were not taken into account while drafting Karamoja specific legislation. These laws therefore violate rights of the Karamojong to the extent that they are in contravention of the Constitution which is the supreme law of the land.¹¹⁷

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¹⁰⁹ S 3(6) Special Regions Act.

¹¹⁰ Chapter 241 laws of Uganda.

¹¹¹ Office of the Prime Minister (OPM) (A Report), 'Karamoja Integrated Disarmament and Development Programme (KIDDP): The government of Uganda Plan for "Conditions to promote human security and development in Karamoja, 2007/2008/2009/2010"' (2007), sourced <<http://www.ugandaclusters.ug/dwnlds/0204Karamoja/KIDDP.pdf>> (accessed 15/08/09).

¹¹² The Constitution of the Republic of Uganda 1995.

¹¹³ Article 21 Constitution.

¹¹⁴ Article 21(2) & (3) Constitution.

¹¹⁵ Article 37 Constitution.

¹¹⁶ Constitution - National objectives and directive principles IX – right to development, X – Role of the people in development, XI – Role of the state in development & XI – equitable and balanced development in the country.

¹¹⁷ Article 2 Constitution.

3.2.2. Intervention through service provision

One example of how current GoU policies continue to undermine pastoralist culture in favour of sedentary solutions can be found in the implementation of the KDA Act, one objective of which is to provide sufficient water to the region for the purpose of developing agriculture and animal industry.¹¹⁸ In line with the stated objectives the GoU established permanent water sources in Karamoja region such as boreholes, valley dams and irrigation services.¹¹⁹ These services proved untenable as they became sources of conflict among communities.¹²⁰ The Uganda Human Rights Commission (UHRC) found that conflicts arose due to the exclusion of Karamojong from decision-making and the non-transparent manner in which resources were distributed.¹²¹

The negative consequences of permanent water provision services in a semi-arid environment also became apparent within a short time. The concentration of many animals in an area resulted in disturbance of the delicate ecology from effects of overgrazing and desertification.¹²² A pattern of settlement became noticeable along water services requiring provision of other services.¹²³ The effects of overconcentration led to rapid drying up of water sources (as shepherds resumed mobility), poverty and spread of diseases among animals.¹²⁴

It is argued that the GoU intended to sedentarise Karamojong through water provision.¹²⁵ However, the scheme proved self-defeating as the costs outweighed the benefits hoped for by the government. Critics further argue that the collapse of the water project accrued from

¹¹⁸ S 3(c) Karamoja Development Agency Act.

¹¹⁹ OPM report (n 111 above).

¹²⁰ Uganda Human Rights Commission (UHRC) (Special Report), 'Human rights and the search for peace in Karamoja' (2004) 88-89.

¹²¹ UHRC (n 120 above) 88.

¹²² E Stites *et al*/Medford: Feinstein International Centre Briefing Paper 'Angering Akuju: Survival and suffering in Karamoja' (2007).

¹²³ OPM report (n 111 above).

¹²⁴ Stites *et al* (n 122 above).

¹²⁵ Oxfam (n 97 above).

the government's lack of basic knowledge of Karamoja's environment, which in turn was a result of the lack of consultations with beneficiaries prior to implementation.¹²⁶

3.3. Security interventions

Research notes that 'without general security of persons and property, there is nothing that can be achieved in terms of securing people's lives as well as livelihoods'.¹²⁷ Cattle mobility can only be achieved under conditions of relative peace, yet this peace has increasingly been threatened by raiding. As previously stated, the traditional rules of engagement in cattle rustling changed with the wave of modernisation.¹²⁸ Guns and mobile phones found their way into the pastoralists' world increasing the risk and scale of lethal conflicts.¹²⁹

To counteract increasing insecurity, the GoU engaged in disarmament exercises led by the - Uganda Peoples Defence Forces (UPDF). The Karamojong were promised effective protection by the UPDF in exchange for their guns.¹³⁰ However, the process of disarmament in Karamoja in the last decade has generated much criticism from both the Karamojong and researchers.¹³¹ One of the many unanimous points of agreement is that disarmament as an intervention has exacerbated the insecurity in the region instead of bringing peace.¹³² While disarmament itself is widely viewed as desirable, its consequences and the manner in which it has been carried out have proved problematic for relations within Karamojong communities, between Karamojong and neighbouring pastoral communities, and for civil-military relations.¹³³

¹²⁶ Knaute (n 95 above) 63.

¹²⁷ DANIDA Report (n 92 above) 22.

¹²⁸ See chapter two.

¹²⁹ MN Amutabi, 'Transient, mobile nations and the dilemma of nationhood in the Horn of Africa: Interrogating nomadic pastoralists, insecurity and the uncertainty of belonging', in FA Yieke (ed.), *East Africa: In search of national and regional renewal* (2005) 119; DANIDA report (n 92 above) 13 – warriors use mobile phones to plan and execute raids, and maintain contacts with accomplices who buy raided animals.

¹³⁰ OPM Report (n 114 above).

¹³¹ Stites & Akwabai (n 38 above) 10-11.

¹³² Mkutu (n 19 above), 128; Stites & Akwabai (n 38 above) – GoU disregarded inherent traditional mechanisms of handling conflicts and dispute resolution in disarmament efforts.

¹³³ Stites *et al* (n 122 above).

Unable to adapt to the Karamoja environment, the UPDF have proved ineffective at providing protection, and have been widely accused of failing to prevent the theft of animals by armed neighbouring pastoral communities. This has led to distrust of the UPDF among the Karamojong, and regret at having surrendered their guns.¹³⁴

Stites and Akwabai argue that regardless of the process, the act of disarmament has had 'what might be called unintended consequences'¹³⁵ including summarily:

increased insecurity for communities; stripping of essential and productive assets; the erosion of traditional mechanisms to cope with vulnerability and food insecurity; shifts in gender-based labour roles, responsibilities and identities; transfer of animal management responsibilities; and the collapse of the dual settlement and migratory systems central to the success of pastoral and agro-pastoral livelihoods.¹³⁶

Research conducted in the area of disarmament in Karamoja also shows that the Karamojong had a positive attitude towards disarmament and voluntarily surrendered guns prior to forced disarmament.¹³⁷ The voluntary nature of the exercise was encouraged by inclusion of community elders in the planning process and participation of civil society organisations including the UHRC in the disarmament exercise.¹³⁸ However, the process required a considerable investment of time and resources owing to the delicate and complex nature of the issue as it affected core aspects of livelihood of the Karamojong. Consequently, the GoU became impatient and excluded other parties and stakeholders from planning processes and turned to full-scale military operations of forcible disarmament.¹³⁹

The employment of forcible disarmament withdrew amnesties and incentives that came with voluntary surrender of guns and forced out CSOs. There was no prior warning or reason given to Karamojong upon expulsion of civil society organisations. Instead the military began detaining people voluntarily handing in guns: "If you turn in a gun then both you and

¹³⁴ Stites & Akabwai (n 38 above) 28- soldiers 'have no value as protectors' as not only do they fail in protecting the animals as they graze but they also fail in tracking animals that have been stolen.

¹³⁵ Stites & Akabwai (n 38 above).

¹³⁶ Stites & Akabwai (n 38 above).

¹³⁷ Initially, Karamojong who surrendered guns were called ambassadors and were co-opted in the sensitisation activities, see Mkutu (n 20 above) 128.

¹³⁸ UHRC (n 120 above) 90-92.

¹³⁹ Mkutu (n 19 above) 133.

your gun are detained! It made no difference whether one kept a gun in his house or surrendered it to the barracks; either way, one is in trouble".¹⁴⁰

Due to these developments Karamojong became increasingly mistrustful of the military and refused to hand over guns, seeing the state as a perpetrator of insecurity.¹⁴¹ As a result the military engaged in harsher means of disarmament called 'cordon and search' in 2005-2007- a process whereby an area is surrounded by the army, families forced out of their houses and an indiscriminate search for weapons is conducted usually at night or daybreak.¹⁴² Mkutu states that with the civil-military operations terminated, the military engaged in 'bombing sorties' using helicopters which resulted in massive slaughter of both animals and man.¹⁴³ Karamojong refugees were generated from this operation with some fleeing to Sudan, Kenya, and Ethiopia and as far as Tanzania where other pastoral communities exist.¹⁴⁴

Human Rights Watch has criticised GoU interventions in Karamoja as acting with impunity and in disregard of Karamojong rights and accused the UPDF of engaging in unlawful killings, torture and ill-treatment, arbitrary detention, theft and destruction of property in a bid to stem proliferation of guns in Karamoja.¹⁴⁵ In one of the interviews conducted, the army was accused of operating in a manner inconsistent with the laws of war:

I heard the army vehicles and just ran out. I was trying to run but I saw that the soldiers were already there surrounding the [homestead]. I didn't even know I was shot until I lay down and saw the blood.¹⁴⁶

Thus security interventions associated with disarmament have translated into human rights abuses instead of bringing peace and development to the region. GoU has intervened by

¹⁴⁰ Excerpt from an interview with Karamojong elder in Stites & Akabwai (n 38 above).

¹⁴¹ Oxfam (n 97 above).

¹⁴² Human Rights Watch (HRW) Report "Get the Gun!": Human rights violations by the Uganda's National Army in law enforcement operations in Karamoja region (2007) sourced <http://www.hrw.org/reports/2007/uganda0907/uganda0907web.pdf> (accessed 22/08/2009).

¹⁴³ Mkutu (n 19 above) 138-139 – interestingly, cordon and search also encouraged rearmament as Karamojong communities flee to Kenya for safety and return rearmed to fight the state.

¹⁴⁴ Amutabi (n 134 above) 122 – Karamojong went to Tanzania to for refuge.

¹⁴⁵ HRW (n 142 above) 5.

¹⁴⁶ Interview with B.P., young girl shot during disarmament operation - HRW (n 142 above).

placing social and economical aspects of Karamojong livelihood under the control of the military. The implications of which are continued control of herds by the military as herds are kept at the military barracks; increased restriction on mobility of both shepherds and herds as shepherds are required to obtain both movement permits to graze herds and permits to sell an animal; increased sedentarisation and increased food insecurity and security vulnerabilities.¹⁴⁷ In fact DANIDA research reveals further negative consequences from the surrender of arms as unarmed Karamojong are exploited by neighbouring pastoral communities from Kenya, Sudan and Ethiopia.¹⁴⁸ Consequently the Karamojong have reverted to their original survival strategies, even resorting to making homemade guns with materials looted from schools and boreholes.¹⁴⁹

In conclusion, the failure of security interventions appears to stem from the government's narrow perspective on security. Properly understood, security encompasses not only the physical removal of arms; it must extend to physical, social cultural and psychosocial spheres of a society. Moreover 'human security' cannot be addressed without considering the socio-economic context of the pastoralists, because the root causes of violence within societies stem from cultural and socio-economic circumstances as argued by Kofi:

Human security can no longer be understood in purely military terms. Rather, it must encompass economic development, social justice, environmental protection, democratization, disarmament, and respect for human rights and the rule of law. ... Moreover, these pillars are interrelated; progress in one area generates progress in another.¹⁵⁰

¹⁴⁷ DANIDA Report (n 92 above) 11; see also Stites & Akwabai (n 38 above) – Greater challenges have been posed on the already delicate environment by the army who are usually ignorant of the environment while they take control of the grazing.

¹⁴⁸ DANIDA (n 92 above) 12.

¹⁴⁹ D Akabwai & PE Ateyo, Medford: Feinstein International Centre, Briefing Paper 'The scramble for cattle, power and guns in Karamoja' (2007); Knaute (n 1 above) 76.

¹⁵⁰ K Annan "Towards a Culture of Peace" 2001 <<http://www.unesco.org/opi2/lettres/TexteAnglais/AnnanE.htm>> in J Baylis, S Smith & P Owens in *The globalisation of world politics; An introduction to international relations* 4th ed. (2008) 493.

3.4. General National policy that affect Karamoja

3.4.1. Local government policy

Local government interventions in Karamoja have tended to focus on 'modernising' and sedentarising the Karamojong, with little consultation or input from the Karamojong themselves.¹⁵¹ In the last decade alone, government engaged in technocratic attempts to hold the Karamojong in one place through 'districtisation', creation of several districts within the region as a means of containment and immobilisation.¹⁵² District boundaries originally were a creation of the British colonial administration who found the Karamojong lifestyle untenable owing to its high levels of mobility making tax and court fees collection difficult. As a result Karamoja was divided into manageable administrative units using boundaries such as counties, sub-counties and sealed off as a 'closed district'.¹⁵³ However, while Karamoja was only one district at the time of independence, under local government ministry it has now been divided into six districts, further hindering mobility.¹⁵⁴

Critics say this has culminated in further marginalisation of certain parts of Karamoja, creation of numerous factions amongst the Karamojong and factions demonising each other as boundaries prohibit access to resources – water, salting points and pastures for the cattle.¹⁵⁵

Whereas the process of district creation might be beneficial to Uganda's mainstream society via job creation or other benefits, it is ill-suited to Karamoja owing to the need for mobility and manoeuvrability.¹⁵⁶ Wabwire argues:

For a pastoral people the concept of boundaries is linked to the basic needs of their herds rather than geography. The territory expands or contracts according to the availability of grass and water for livestock.¹⁵⁷

¹⁵¹ UNDP 'Human development report office occasional paper: Kenya and Uganda Pastoral conflict case study' (2005) at <http://hdr.undp.org/en/reports/global/hdr2005/papers/HDR2005_Mwaura_Ciru_20.pdf> (accessed 21/08/2009).

¹⁵² RLP 'Breeding fragmentation? Issues in the policy and practice of decentralization in Uganda' Issue Paper 1(2009) 15 <www.refugeelawproject.org> (accessed 15/08/2009).

¹⁵³ Knuate (n 95 above) 42.

¹⁵⁴ RLP 'Breeding Fragmentation' (n 152 above) 6.

¹⁵⁵ RLP (n 156 above).

¹⁵⁶ JT McCabe 'Mobility and land use among African pastoralists: Old conceptual problems, new interpretations', in E Fratkin, KA Galvin & EA Roth (eds) *African pastoralist systems: An integrated approach* (1994) 72.

While the progressive districtisation of Karamoja was ostensibly carried out in the name of equitable development countrywide its consequences were not hard to predict.¹⁵⁸ Districtisation has had the effect of sedentarising Karamojong as it curtails their mobility through confinement within district boundaries. While sedentarisation appears to be the GoU's primary development policy with regards to Karamoja, it is based on a 'profound misunderstanding of the logic behind pastoral production, favouring production systems imported from developed countries and inappropriately supported by the theory of 'the tragedy of the commons'.¹⁵⁹ Districtisation has however proved unsuccessful as little notice of the boundaries is taken during periods of droughts

GoU's local government interventions have further led researchers to compare the government to the British colonial administration approaches at development. It has been concluded that the current government's (as well its predecessor's) intervention in Karamoja has worsened the situation as opposed to the colonial administration. Despite the fact that the colonial government demarcated administrative boundaries to make it easier for structures of 'modern' administration to be established:

chiefs were appointed to enforce administration in the newly established administrative structures, and exercised both executive and judicial functions. While the government created new patterns of authority relevant to sustain the effective maintenance of law and order and centralised bureaucratic administration, they did not interfere with the operation of the traditional system.¹⁶⁰

Today, the RLP found that participation in decision-making processes is circumvented by the government as no consultations are made, instead 'the tendency is to think that people are conflict prone.'¹⁶¹ Even when consultations have been made and communities make their priorities and projects known during planning processes, often no feedback is received as to which projects will be implemented, funded or why.¹⁶²

¹⁵⁷ Wabwire in Knaute & Kagan (n 4 above) 67.

¹⁵⁸ Stites & Akabwai (n 38 above) 11.

¹⁵⁹ World Initiative for Sustainable Pastoralism (WISP) A report 'A global initiative to promote pastoralism as an effective and efficient land use and production system for the drylands of the world' (2008).

¹⁶⁰ DANIDA (n 92 above) 9.

¹⁶¹ RLP (n 152 above) 12.

¹⁶² RLP (n 152 above) 12.

In summary there is reason to doubt the wisdom of schemes that do not consider pastoralism a viable livelihood strategy and do not involve beneficiaries in the planning process.¹⁶³ Such schemes chronically suffer from a lack of regard for the Karamojong's basic rights and freedoms and fail to benefit from historical lessons. Additionally, the lack of knowledge of the Karamojong environment coupled with importation of western ideas of modernisation to fit into pastoralist ecology has seen government's resources go to waste. In response, the Karamojong have devised various coping mechanisms to handle their dilemma and maintain their identity as government interventions fail to work for them.

3.5. Conclusion

Too many well-meaning schemes designed to improve standards of living in Karamoja have proved ineffective because they are inappropriate in a nomad's world. Interventions have failed to influence Karamojong culture mainly because interventionists are more concerned with their own programmes than with their beneficiaries' needs.¹⁶⁴ While improvements to the pastoralist way of life may be possible through mediums such as meaningful participation and engagement of pastoralists in development activities, such improvements cannot try to abolish pastoralist mobility, which has been the single most important factor in the Karamojong's mastery of a very difficult environment.¹⁶⁵

This need for mobility is not unique to the Karamojong of Uganda and Uganda can therefore look to neighbouring countries with pastoral communities on how best they have dealt with and addressed the pastoralist dilemma as it prepares to implement the KIDDP.

¹⁶³ EP Napeyok (a Karamojong herself); Ambassador Extraordinary and Plenipotentiary of the Republic of Uganda to France, Portugal and Spain and the Permanent delegate to the UNESCO, writes in a foreword in Knaute & Kagan (n 5 above) vii.

¹⁶⁴ Knighton (n 39 above) 8.

¹⁶⁵ Stites & Akawbai (n 38 above) 24.

CHAPTER FOUR COMPARATIVE PERSPECTIVE

4.1. Introduction

This chapter focuses on comparative analysis drawing case studies from Ethiopia and Kenya on how pastoralists have tried to deal with their concerns. Ethiopia and Kenya pastoral communities neighbour and share similar concerns with the Karamojong including; striving for recognition, the importance of livestock, access to rangelands, and importance of social and economic ties to non-pastoral neighbours and shared problems of political marginality of pastoral communities vis-a-vis national governments.¹⁶⁶ They also share similar pressures from their governments, especially to settle, exacerbated by governments' privatisation policies of pastoral land, increasing urbanisation, and commoditisation of resources.¹⁶⁷ This has often led to displacement and maladaptation of pastoralists to new lifestyles in mainstream society.¹⁶⁸

4.2. Ethiopia

4.2.1. Legislative Recognition

The current government of Ethiopia has been lauded for its legislative recognition of land policies that take into consideration pastoralist lifestyle. Ethiopia is home to some of the largest pastoralist communities in the world with an estimate of over 10 million peoples.¹⁶⁹ It is authored that 61% of the total land is under communal landholding by pastoralists who constitute 12% of the total population.¹⁷⁰ Pastoralism is considered a distinct way of life with pastoralists living in seven out of nine regions of Ethiopia.¹⁷¹ Owing to pressure from pastoralist advocacy organisations such as Pastoralist Forum Ethiopia (PFE), the government

¹⁶⁶ K Ikeya & E Fratkin *Pastoralists and their neighbours in Asia and Africa* (2005) 1.

¹⁶⁷ Ikeya & Fratkin (n 166 above) 4.

¹⁶⁸ E Fratkin 'Pastoralism: governance and development issues' (1997) 264 sourced <www.arjournals.annualreviews.org> (accessed 02/10/2009).

¹⁶⁹ WW Gulelat 'The Role of NGOs in pastoral advocacy: Experiences of Pastoralists Forum Ethiopia' in Knaute & Kagan (n 4 above) 329.

¹⁷⁰ M Abdulahi 'The Legal status of communal land holding system in Ethiopia: The case of pastoral communities' in 14 (2007) *International Journal on Minority and Group Rights* 85-125.

¹⁷¹ K Wessendorf (ed) *The indigenous world* (2009) 464.

ushered in a new wave of policy and legal reform that saw the constitution and land laws and policies being amended, recognising pastoralists' rights to communal landholding.¹⁷²

A. Ethiopia's Constitution (1995)

The Constitution explicitly provides for communal landholding tenure as a right applicable to pastoralists. It provides that:

Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands.¹⁷³

In addition, the constitution also stipulates that pastoralist land is not subject to sale or other means of exchange.¹⁷⁴

Following the constitutional provisions on land rights, subsequent legislation and policies on land rights detailing their implementation further makes Ethiopian pastoralists' rights to communal landholding extremely robust.

B. Land law and policies

In the Preamble of the Rural Land Administration and Use Proclamation (2005),¹⁷⁵ the Proclamation sets out among its aims the need to overcome the problems encountered by pastoralists in accessing land. Moreover, the legislation for purposes of clarity explicitly defines a pastoralist as:

a member of a rural community that raises cattle by holding rangeland and moving from one place to the other; and the livelihood of himself and his family is based on mainly the produce from cattle.¹⁷⁶

Further, the Proclamation defines 'communal holding' to mean:

¹⁷² Gulelat (n 169 above) 340.

¹⁷³ Federal Democratic Republic of Ethiopia (FDRE) Constitution, 1995; see article 40(5) at <<http://www.law.ugent.be/pub/nwr/elw/MainConstitutionpage.html>> (accessed 30/09/2009)

¹⁷⁴ Article 40(3) FDRE Constitution.

¹⁷⁵ FDRE Rural Land Administration and Use Proclamation No.456/2005; see preamble sourced <http://www.eltap.net/download/TenureSecurityandResolution/Comments%20SNNP%20Draft%20Land%20Administration%20Land%20Use%20Proclamation_AM_Edited%20Final_15%20Feb%2006.pdf> (accessed 30/09/2009).

¹⁷⁶ Article 2(8) Rural Land and Use Proclamation.

Rural land which is given by the government to the local residents for common grazing, forestry and other social services¹⁷⁷

Significantly, Ethiopian pastoralists are not required to procure a landholding certificate in pastoral areas as evidence of land ownership.¹⁷⁸

Additionally, national government environmental policies were enacted reflecting the spirit of the Constitution as regards land rights of pastoralists. For example, the Ethiopian Environmental Policy adopted in 1997 recognises the constitutional rights of land users to secure and uninterrupted access including grazing lands for pastoralists.¹⁷⁹

Ethiopia's states are enjoined by the Constitution to enact legislation in consonance with the Constitution and national legislation and policies. This has benefited pastoralist states such as Oromia, which in its land law recognises communal landholding system for pastoralists providing customary rights of access to land for communal uses such as grazing, ritual ceremonies, and public activities shall be maintained for both peasants and pastoralists.¹⁸⁰

The Inclusion of and recognition of Ethiopian pastoralists in legislation was achieved through meaningful engagement of pastoralists with the FDRE.

4.2.2. Participation by pastoralists

One groundbreaking practice in Ethiopia is the Ethiopia Pastoralist Day (EPD) every 25th January.¹⁸¹ The practice started in 1999 through the initiatives of pastoralists, and was later backed by advocacy groups and endorsed by the government in 2006.¹⁸² During celebration of EPDs pastoralists interact with each other and politically express themselves in their language, through traditional dress and dance.¹⁸³

¹⁷⁷ Article 2(13) Rural Land and Use Proclamation.

¹⁷⁸ Article 6 Rural Land and Use Proclamation.

¹⁷⁹ FDRE Environmental Policy 1997, see para 4(3)(a).

¹⁸⁰ Abdulahi (n 170 above).

¹⁸¹ K Wessendorf (ed) *The indigenous world* (2008) 410; this year's celebration theme was on education for pastoralists and request for establishment of pastoralist specific ministry led by pastoralists see <<http://www.afarfriends.org/Dok%20t%20websida/APDA/apda20090210.pdf>> (accessed 01/10/2009).

¹⁸² S Stidsen (ed) *The indigenous world* (2007) 464.

¹⁸³ D Vinding (ed) *The indigenous world* (2004) 361.

EPD provides a forum for all pastoralists to discuss and debate key issues affecting them and pass resolutions.¹⁸⁴ It also provides a platform for various pastoral ethnic groups to have face-to-face discussions with the Prime Minister.¹⁸⁵ The 10-year-old practice has registered noteworthy achievements. This has seen to the implementation by government of some resolutions passed by pastoralists for instance the Pastoralist Community Development Project (PCDP).¹⁸⁶ The PCDP recognises the communal landholding system of pastoralists and seeks to integrate it into the land allocation and management of land rights in pastoral areas of Ethiopia.¹⁸⁷ Also through EPD's, pastoralists have secured pastoral representation at the parliamentary, regional and district levels including council levels.¹⁸⁸

Other examples from EPD dialogues show the government reaching consensus with pastoralists to establish sugarcane factories in one of the pastoral states on the understanding that some of the benefits such as employment and infrastructural development will accrue to the pastoral community.¹⁸⁹

4.3. Kenya

4.3.1. Recourse to Court

Kenya recently emulating Ethiopia has in place a Kenya Pastoralist Week (KPW). The first KPW was held in 2004 with weeklong celebrations, allowing pastoralists to showcase their various traditions through song, dance and dress.¹⁹⁰ However, the KPW alone has not been efficient in fronting pastoralists' recognition on issues such as landuse and access. Pastoralists' have thus had to recourse to court to enforce their rights.

The Maasai for instance whose traditional land has historically been leased out on a private basis to rich foreign nationals to set up private ranches who now 'occupy some 70% of traditional pastoral land in their area',¹⁹¹ were dissatisfied with the government for engaging

¹⁸⁴ Wessendorf (n 181 above) 410.

¹⁸⁵ Wessendorf (n 181 above) 410.

¹⁸⁶ Abdulahi (n 170 above) 122.

¹⁸⁷ Abdulahi (n 170 above) 123.

¹⁸⁸ Wessendorf (n 188 above).

¹⁸⁹ Wessendorf (n 178 above) 413.

¹⁹⁰ Vinding (n 183 above) 362.

¹⁹¹ Mkutu (n 19 above) 16.

in agricultural development programmes on their remaining land without consulting them. This attempt at development had resulted in loss of livestock and illnesses amongst the Maasai for which the Maasai instituted court action to enforce their recognition and protection of rights.

In *Charles Lekuyen Nabori & 9 Others v Attorney General & 3 Others*¹⁹² pastoralists claimed that the weed '*prosopis juliflora*'¹⁹³ as introduced by the government to stem soil erosion in their area was noxious and had run amok. The weed had the effect of choking up indigenous plants causing loss of pastures, blocking roads, leaving dangerous thorns that were hazardous to both humans and cattle, which constipated and starved them leaving meat of livestock with a bad taste. The petitioners also argued that the government needed to take participatory approaches whenever interventions were being introduced and take into account cultural and social aspects obtaining in the communities.

In the Constitutional court ruling it was found that the government had violated the pastoralists' right to life and cultural way of life. Court ordered the state to pay damages to the pastoral community, stipulated a six-month period as a timeframe within which government was to clear the weed and ordered costs to be paid by the state.

Use of the courts to enforce pastoralists' rights is a new avenue that pastoralists can employ. In the East and Horn Africa, only Kenyan pastoralists have utilised the judiciary so far.

4.4. Examples of good practice on Security interventions

As yet, there has not been any best approach identified to address security concerns of pastoralists with certainty in both Ethiopia and Kenya. Attempts by countries to address security concerns of pastoralists have been unsuccessful for a number of reasons. First, is fragmentation of societies and weakening of traditional systems, rendering communities incapable of handling conflict using traditional means.¹⁹⁴ Second, countries have tended to approach security concerns individually whilst ignoring the transnational aspects of

¹⁹² *Charles Lekuyen Nabori & 9 Others v Attorney General & 3 Others* [2007] eKLR at <http://www.kenyalaw.org/bench_cases/62126.pdf> (accessed 02/10/2009).

¹⁹³ Wessendorf (n 181 above) 421 – the weed was nicknamed '*mathenge*' after the officer who supervised its plantation.

¹⁹⁴ N Mburu 'Ilemi Triangle: The complexity of disarming 'fragmentary' societies' in Knaute & Kagan (n 4 above) 319.

pastoralism. Because of the transnational range of nomadic pastoralists, their security cannot be effectively addressed at national level.¹⁹⁵ Third, conflicts in the region are interrelated with sustainable development and successful interventions in dry lands which requires a continuous and programmatic approach for its realisation.¹⁹⁶ Responses to security concerns in the past have been periodic in nature and conducted only in response to outbreaks of organized violence over resources. This approach to security is critiqued by Mburu who says that;

ascribing organised violence only to climatic changes and material want could lead to a simplistic analysis of the complex institution of raiding. In any case, it is possible to accumulate as much livestock through raiding as through peaceful animal husbandry.¹⁹⁷

It can be therefore concluded that failure by states to adequately address security concerns arises from holding overly narrow perceptions of security and it perhaps calls for a regional concerted effort to realise security within East and Horn of Africa pastoral belt.¹⁹⁸

4.5. Conclusion

The practices mentioned above can be adapted by the Karamojong, CSOs and GoU as best practices. From Ethiopia CSOs and practitioners can advance practices of legislation recognition to lobby for legal reforms specifically so that the existing legislation is aligned with constitutional provisions on the rights and freedoms of pastoralists and over time, for enactment of laws that better reflect the situation in Karamoja and define a legislative framework best suited for achieving their aspirations as a people. With regard to effective participation, the EPD model can be adapted to lobby for a pastoralist day in which historic events can be commemorated; for active participation and representation of Karamojong at the parliamentary level seeing it that Uganda already has a Ministry of Karamoja Affairs, an

¹⁹⁵ Knaute (n 95 above) 66.

¹⁹⁶ WR Adano 'Development policies, reactive aid and indigenous institutions of livestock sharing among East African pastoralists' in Knaute & Kagan (n 4 above) 313.

¹⁹⁷ Mburu (n 194 above).

¹⁹⁸ Statement by IGAD's Executive Secretary, Mahboud, during the signing of an agreement between USAID and IGAD in provision of USD \$500,000 to IGAD to enable the bloc to respond to regional pastoral conflict (September 2009) at <<http://world.globaltimes.cn/africa/2009-09/471251.html>> (accessed 06/10/2009).

institution only recently requested for by Ethiopian pastoralists to better their representation and participation.¹⁹⁹

To learn from Kenya is the practice of having recourse to courts, especially for the constitutional court to interpret rights of the Karamojong as pastoralists and for declarations on violation of rights by the government.

On matters of security there is need to understand the multiple dimensions of the situation, in its local, regional and international contexts, how these relate to the struggle for cultural survival of a minority group, and whether or not the potential of Karamojong mechanisms to address the protection of civilians is being undermined as part of the broad thrust to 'modernisation'.

Questions persist relating to the legal framework in which their cultures can be maintained despite assaults on their way of life. Whether international human rights law grants them adequate protection is the subject of the next chapter.



¹⁹⁹ <<http://www.afarfriends.org/Dok%20t%20websida/APDA/apda20090210.pdf>> (accessed 01/10/2009).

CHAPTER FIVE

INTERNATIONAL HUMAN RIGHTS LAW

5.1. Introduction

Given the limited legal protection of Karamojong at the domestic level, can they find protection under international law?

5.2. International Human Rights Law.

International law instruments are classified into binding and non-binding instruments. Those that are binding, such as treaties, conventions, and charters are 'hard' law, enforceable on the basis of states' explicit acceptance through ratification; and those that are non-binding are 'soft' law which includes *inter alia* declarations and resolutions.²⁰⁰ Upon ratification, a state is legally bound to fulfil its obligations in respect to that treaty.

This section focuses on three binding instruments of universal application to assess protection of Karamojong at the international level. These are Universal Declaration of Human Rights (UDHR),²⁰¹ International Covenant on Civil and Political Rights (ICCPR)²⁰² and International Covenant on Economic, Social and Cultural Rights (ICESCR);²⁰³ all collectively referred to as International Bill of Rights (IBR) for the purposes of this discussion. It is noteworthy to mention that Uganda is a state party to the ICCPR and ICESCR thus being enforceable against the state.²⁰⁴ The UDHR though 'soft law' has evolved into customary international law for whose non-compliance is argued to have serious consequences on a state in its international relations.²⁰⁵

None of instruments in the IBR specifically mentions pastoralists as a protected category of persons in its provisions. Although there is no direct reference to pastoralists in the IBR,

²⁰⁰ F Viljoen *International human rights law in Africa* (2007) 19-28.

²⁰¹ Universal Declaration of Human Rights (1948) at <<http://www.un.org/en/documents/udhr>> (accessed 06/10/2009).

²⁰² UN General Assembly Res 2200A (XXI) of 16 December 1966, entered into force 23 March 1976.

²⁰³ UN General Assembly Res 2200A (XXI) of 16 December 1966, entered into force 3 January 1976.

²⁰⁴ Ratified ICCPR 21 June 1995; date of ICESCR ratification 21 January 1987 source <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&lang=en> (accessed 08/10/2009).

²⁰⁵ Viljoen (n 200 above) 28.

protection of pastoralists is inferred on the basis of the IBR being human rights instruments of general application. In this context pastoral individuals and peoples hold the same rights that accrue to all individuals and peoples stipulated in the IBR.²⁰⁶ General rights of particular relevance to the survival and development of pastoralists *inter alia* are the right to culture, property ownership (as individuals or a collective) and equality and non-discrimination as discussed below.

5.2.1. Right to culture

The UDHR and ICESCR provide that everyone has a right to freely participate in the cultural life in a community.²⁰⁷ It is argued that culture as espoused by ICESCR means protection of enjoyment of a way of life of members of special groups, especially indigenous groups and cultural minorities.²⁰⁸

Additionally, it is argued that cultural minorities require special protection because their rights are frequently not effectively implemented, resulting in 'the degradation of their entire way of life, including their means of subsistence, loss of their natural wealth and resources, and ultimately their cultural identities and personal autonomy'.²⁰⁹ The protection of cultural rights is thus not limited to the protection of the dominant culture.²¹⁰

The ICCPR in addition to ICESCR and UDHR goes further in stating that minorities are a distinct cultural group:

²⁰⁶ W Kymlicka *Multicultural citizenship: A liberal theory of minority rights* (1995) 76.

²⁰⁷ Article 27(1), UDHR ; article 15(1) ICESCR.

²⁰⁸ SA Hansen 'The right to take part in cultural life : toward defining minimum core obligations related to article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights', in A Chapman & S Russell (eds), *Core obligations: building a framework for economic, social and cultural rights* (2002) 286; Hansen makes a distinction in the use of word minority, for which this author borrows, that 'minority' refers to any group that is not a part of a majority or national culture and has a culture that distinguishes it from the majority.

²⁰⁹ T Bendiksby 'Minority rights, justice and ethnicity in Guatemala' in H Stokke & A Tostensen (eds) *Human Rights in Development: Yearbook 1999/2000. The millennium edition* (2001) 170.

²¹⁰ D McGoldrick 'Culture, cultures and cultural rights' in MA Baderin & R McCorquodale (eds) *Economic, social and cultural rights in action* (2007) 452.

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language²¹¹

The above right is directed towards ensuring the survival and continued development of cultural, religious, and social identity of the minorities concerned, thus enriching the fabric of society as a whole.²¹² This study argues that these rights can apply individually or collectively over and above the rights protected in the IBR, because cultural groups are usually a minority deserving of special attention.

To realise these rights, states have an obligation to respect and protect the rights of individuals and groups by providing an environment conducive to the equal enjoyment of cultural rights by minorities through recognising them as distinct groups, entitled to their own unique cultures.²¹³ Where states are reluctant or unwilling to establish mechanisms for the realisation of this right, a cultural minority can have recourse to court or 'institutional alternatives for protection'.²¹⁴ Thus the need to protect pastoralists' as a special group arises from their vulnerability, historical and continued cultural marginality.

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5.2.2. Right to Land

The UDHR states that everyone has the right to own property alone or in association with others.²¹⁵ Additionally, no one shall be arbitrarily deprived of such property.²¹⁶ One of the major pastoralist concerns is that their land tenure system is often inconsistent with forms of land ownership recognized by the state. Pastoralists live in traditional communities and own resources such as land collectively.²¹⁷ It is argued that

²¹¹ Article 27 ICCPR.

²¹² CCPR General Comment No. 23, Article 27 UN. Doc.HRI/GEN/1/Rev.1 para 9.

²¹³ Hansen (n 208 above).

²¹⁴ Bendiksby (n 209 above) argues a case for cultural minorities stating that alternative institutional avenues may be an available option to recourse to for protection 166.

²¹⁵ Article 17(1) UDHR.

²¹⁶ Article 17(2) UDHR.

²¹⁷ IM Lewis *A pastoral democracy* (1982) 32.

For many traditional societies land and resources are an integral part of their cultures. In addition, many of these groups do not recognise individual ownership of natural resources but maintain a collective and symbiotic relationship with nature²¹⁸

Although the IBR does not make direct reference to pastoralists because they are principles of general application, the provision therefore generally speaks to collective ownership of property and is thus inferred to apply to protection of pastoralists' traditional communal landholding tenure from third party and state interference as rights of general applicability.

5.2.3. Non-discrimination and equality

Under the ICCPR, discrimination is prohibited on any of the following grounds: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²¹⁹ Additionally, any incitement to such discrimination in violating others' rights is prohibited.²²⁰

Discrimination is defined by the CCPR Committee to mean any distinction, exclusion, restriction or preference based on any of the listed grounds in article 2(1) and which has the effect of nullifying or impairing the recognition, enjoyment or exercise by all people, on an equal footing, of all rights and freedoms.²²¹ While most rights in the ICESCR are to be realised progressively, the ESCR Committee impresses it upon states parties to prohibit discrimination through legislation as of immediate effect.²²²

Therefore discrimination faced by the Karamojong in the form of exclusion, restriction and 'negative' distinction either from the state in the form of legislation and policy or from mainstream society is a violation of their general rights and freedoms as provided for in the IBR.²²³

²¹⁸ Hansen (n 208 above) 293.

²¹⁹ Article 2 UDHR; article 2(1) ICCPR; article 2(2) ICESCR.

²²⁰ Article 7 UDHR; article 20(2), 26 ICCPR.

²²¹ General Comment No. 18 (1989) Non-discrimination UN Doc .HRI/GEN/1/Rev.1, para 7.

²²² General Comment No. 3 (1990) The nature of states parties' obligations UN Doc .HRI/GEN/1/Rev.1, paras 1 & 32.

²²³ W Vandenhoe *Non-discrimination and equality in the view of the UN human rights treaty bodies* (2005) 13-14.

In summary, it can be concluded that the right to culture, property, equality and non-discrimination are cross-cutting themes in the IBR and applicable to everyone, including pastoralists. Moreover Uganda is a state party to both ICESCR and ICCPR and as such is legally obligated to fulfil its obligations to the Karamojong as citizens of Uganda and is similarly bound under UDHR as it is customary international law.

5.3. Other International Instruments

Although the IBR does not explicitly provide for protection of pastoralists' rights to culture and property, other international instruments, specifically the International Labour Organisation Convention 169 (Convention)²²⁴ recognises pastoral ways of life and protects their needs. The Convention imposes legal obligations on state parties. However, Uganda is not a state party and is thus not legally bound to fulfil any obligations towards its nomadic communities on its basis. However, this section proceeds to discuss the Convention and concludes with how Uganda may be obligated to respect Karamojong's rights.

5.3.1. Land rights of pastoralists under ILO Convention

It is appropriate to note the ILO Convention as being one of the very few international Conventions that make explicit mention of 'nomads' as regarding the right to land:

The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. *Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.*²²⁵

The provision further provides that it is the duty of states to take necessary steps in identifying lands traditionally occupied by peoples and guarantee effective protection of their

²²⁴ C 169 Indigenous and Tribal Peoples Convention 1989 at <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>> (accessed 07/10/2009).

²²⁵ Article 14(1) Convention.

rights of ownership and possession.²²⁶ States additionally are required to establish adequate procedures within national legal systems toward resolving land claims by the peoples concerned.²²⁷

This study argues that the above provision is a lynchpin in the protection of property rights of pastoralists as it makes a direct reference to the nomadic way of life. Moreover, the Convention also prohibits displacement of 'peoples' from lands they occupy.²²⁸ And where displacement is inevitable, their opinion must be sought and an agreement as to their relocation and place of relocation arrived at amicably.²²⁹

5.3.2. Right to Culture under the ILO Convention

It is noteworthy that the discussion of culture under the ILO bolsters the foregoing discussion of culture under the IBR. And of particular importance to this study is the Convention's definition of the term 'people' as tribal peoples whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions.²³⁰ As mentioned in chapter one, Karamojong are in tribal groupings and it is thus argued that past protection of pastoralists was contemplated by the drafters of the Convention.

Culture is argued to be that which 'provides its members with meaningful ways of life across the whole range of human activities'.²³¹ It is observed that culture manifests itself in many forms, including a particular way of life associated with the use of land resources and the use of such resources for traditional activities.²³² Moreover culture 'not only provides us with the options from which we choose how to lead our lives; it also provides us with the measurements we use to identify something as valuable'.²³³ For pastoralists, livestock are valuable as they form the basis of their subsistence, just as crops are the basis of

²²⁶ Article 14(2) Convention.

²²⁷ Article 14(3) Convention.

²²⁸ Article 16(1) Convention.

²²⁹ Article 16(2) Convention.

²³⁰ Article 1(1)(a) Convention).

²³¹ Kymlicka (n 206 above) 76.

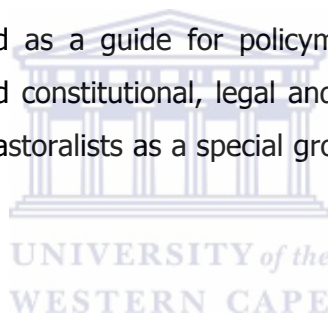
²³² General Comment No.23 on Article 27 UN Doc. HRI/Gen/1/Rev.1 para 7.

²³³ Bendiksyby (n 209 above) 170.

subsistence for farmers. States therefore have an obligation to respect and protect the distinct character of cultures and their values, be those values nomadic or sedentary.²³⁴

In summary, it can be concluded that although the protection of pastoralists is limited under the International Bill of Rights owing to its general applicability, 'general human rights put clear limits on the way in which a state can treat its cultural groups'.²³⁵ Thus where a state is reluctant or unwilling to establish mechanisms toward the protection of pastoralists' rights as a cultural minority group, pastoralists can have recourse to court or 'institutional alternatives for protection'.²³⁶

Although Uganda is not a state party to the ILO Convention, it is argued that the general normative underpinning of the Convention has acted as a powerful catalyst for the consolidation at both the international and domestic level of the common understanding regarding the rights of peoples.²³⁷ It can therefore be relied on by pastoral activists as a persuasion tool in advocacy and as a guide for policymakers in relation to Karamojong concerns. Perhaps this influenced constitutional, legal and institutional processes of reform in Ethiopia in its recognition of pastoralists as a special group, even though Ethiopia is not a state party to Convention either.



5.4. Regional Framework: The African Charter

This section focuses on the African Charter on Human and Peoples' Rights (Charter or ACHPR)²³⁸ in assessing regional protection of pastoralists' rights in Africa. Like the IBR, the

²³⁴ ESCR Committee, General Comment No.17 (2005); UNESCO Convention on the Protection and Promotion of Diversity of Cultural Expression provides for the 'content of culture' to mean the symbolic meaning, artistic dimension, and cultural values that originate from or express cultural identities – see article 4(2). In its 33rd session, the General Conference of the UNESCO emphasized that protection of the right to culture was a primary responsibility of individual states – sourced <<http://www.unesco.org>> accessed 14 October 2009

²³⁵ Bendiksby (n 209 above) 166.

²³⁶ Bendiksby (n 209 above) 166 argues a case for cultural minorities stating that alternative institutional avenues may be an available option to recourse to for protection.

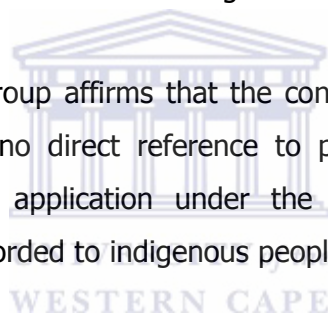
²³⁷ Human Rights Council Report, 'Promotion and protection of all human rights, civil, political, economic and cultural rights, including the right to development' A/HRC/9/9, 11 August 2008, sourced <www.ilo.org/indigenous> (accessed 08/10/2009).

²³⁸ OAU Doc CAB/LEG/67/3 rev.5 (1981) reprinted in C Heyns & M Killander (eds) *Compendium of key human rights document of the African Union*, 3rd ed. (2007).

Charter does not make specific reference to the protection of pastoralists. Nonetheless, pastoralists have been identified as one of Africa's indigenous peoples.²³⁹ The concept of indigenesness has been drawn from the international discussions. It is used 'in association with groups that maintain a continuity of cultural identity with historical communities that suffered some form of colonial invasion, and that by virtue of that continuity of cultural identity continue to distinguish themselves from others'.²⁴⁰ Despite (ongoing)²⁴¹ international debates on the indigenesness concept it has been generally adopted by the African Commission Working Group on Indigenous Populations/Communities (ACHPR Working Group) under international law to highlight the plight and address human rights concerns of marginalised groups in Africa.²⁴²

It is noteworthy to mention the resistance of African states to the concept of indigenesness. The question they pose is that if all Africans are indigenous to Africa, why should some populations be considered 'more' indigenous than others?

Although the ACHPR Working Group affirms that the concept of indigenesness applies in Africa, the Charter still makes no direct reference to protection of indigenous peoples. Nonetheless, rights of general application under the Charter and other international instruments are by inference accorded to indigenous peoples of Africa, including pastoralists.



The ACHPR Working Group of Experts on Indigenous Populations/Communities has this to say in calling for the legitimatisation of protection of pastoralists and other groups:

the issue is that certain marginalised groups are discriminated against in particular ways because of their particular culture, mode of production and marginalised position within the state. A form of discrimination that other groups within the state do not suffer from.²⁴³

²³⁹ ACHPR Report (n 1 above) 15-17.

²⁴⁰ SJ Anaya 'Superpower Attitudes toward Indigenous Peoples and Group Rights', in 93 (1999) *American Society of International Law Proceedings* 251.

²⁴¹ See JM. Pasqualucci 'International indigenous land rights: a critique of the jurisprudence of the Inter-American Court of human rights in light of the United Nations Declaration on the Rights of Indigenous Peoples' (2009) in 27 (2009) *Wisconsin International Law Journal* 51.

²⁴² ACHPR Resolution on the adoption of the ACHPR Report of the Working Group on Indigenous Population/Communities, Ref. ACHPR/Res.65(XXXIV)03.

²⁴³ ACHPR Report (n 1 above) 88.

Perhaps the real question ought to be what legal basis does the working group have to arrive at such a conclusion and what special rights do indigenous people claim?

The ACHPR Working Group derives its mandate from article 46 of the Charter and has exercised its power to identify pastoralists as indigenous peoples.²⁴⁴ Moreover the spirit of term 'indigenous' is used:

as an instrument of true democratisation whereby the most marginalised groups/peoples within a state can get recognition and a voice; a term through which those groups – among the variety of ethnic groups within a state – who identify themselves as indigenous and who experience particular forms of systematic discrimination, subordination and marginalisation because of their particular cultures and ways of life and mode of production can analyse and call attention to their situation.²⁴⁵

Recognition of pastoralists as indigenous peoples seeks to protect pastoralists' rights under the Charter, including the right to equality,²⁴⁶ protection against domination,²⁴⁷ right to self-determination,²⁴⁸ and promotion of cultural development and identity.²⁴⁹ The right to culture and equality and non-discrimination has already been discussed under the IBR.

5.4.1. Protection against domination

Article 19 of the Charter provides that all people are equal and equally deserving of respect, and therefore nothing can justify the domination of one people over another. Jurisprudence from the African Commission on Human and Peoples' Rights in interpreting article 19 said

²⁴⁴ BTM Nyanduga 'Working groups of the African Commission and their role in the development of the African Charter on Human and Peoples' Rights' in M Evans & R Murray (eds) *The African Charter on Human and Peoples' Rights: The system in practice, 1986-2006* (2008) 381 – although nowhere in the Charter are working groups directly mentioned, article 46 gives a broad latitude to African Commission in application of 'appropriate method of investigation' thus establishment of working groups is derived from Rules of Procedure of the Commission (1995) specifically Rule 28(1) adopted under article 42(2) enabling the Commission to discharge its work.

²⁴⁵ ACHPR Report (n 1 above) 102.

²⁴⁶ Article 2 & 3 ACHPR.

²⁴⁷ Article 19 ACHPR.

²⁴⁸ Article 20(1) ACHPR.

²⁴⁹ Article 22 ACHPR.

article 19 is a collective right enjoyed by a group of individuals. The Commission arrived at this conclusion based on the facts white Mauritians discriminated against black Mauritians, thus being a domination of one group over another.²⁵⁰

5.4.2. Right to self-determination

The Charter states that all peoples have a right to existence, the unquestionable and inalienable right to self-determination, and should be entitled to freely determine their political status and pursue their economic and social development in accordance to their own policies.²⁵¹ From the Commission's decisions on self-determination cases, it is inferred that this right is to be exercised within the recognised international boundaries of the state with due regard to state sovereignty.²⁵² Provisions on the right to self-determination also provided for in the common article 1 of ICESCR and ICCPR and the ILO Convention are seen to protect the collective right of peoples identifiable or characterised by some common conditions including 'common historical tradition, racial or ethnic identity, cultural homogeneity, religious or ideological affinity, territorial connection, common economic life, and consisting of a certain minimum number'.²⁵³

Based on the above criteria, the pastoralists' right to self-determination as indigenous peoples ought to be legally protected, and its realization will aid in the realisation of other rights including the right to collective ownership of property, culture and cultural development and participation in development.²⁵⁴ In Uganda, encroachment on indigenous pastoralist ranges are becoming an issue, as discussed in Chapter three. Thus remedial measures to secure the enjoyment of pastoralists' rights are posited as states' duties and justified by reference to human rights standards as set out in the Charter for which Uganda is a state party.²⁵⁵

²⁵⁰ *Malawi African Association and Others v Mauritania* (2000) AHLR 149 (ACHPR 2000).

²⁵¹ Article 20(1) ACHPR.

²⁵² *Katangese Peoples' Congress v Zaire*, Communication No. 75/92 (2000) AHRLR. The Commission acknowledged human rights of the Ogoni peoples while upholding the principle of state sovereignty.

²⁵³ S Joseph, J Schultz, & M Castan, *The International Covenant on Civil and Political Rights: Cases, materials, and commentary* (2000) 100.

²⁵⁴ ACHPR Report (n 1 above) 90.

²⁵⁵ Date of ratification 10 June 1986, see Heyns & Killander (n 244 above) 356.

5.5. Conclusion

Although protection of pastoralists' rights can be inferred from various international and regional legal frameworks, the absence of direct reference to pastoralists in these instruments highlights the complicity of such legal framework in pushing pastoralists to the margins of development. This increases the vulnerability of pastoralists to individual states' manipulation of the lacunae in international law and opens them to further discrimination. However, Kymlicka argues that international and regional legal frameworks for the protection of cultural minorities set a foundation upon which national laws are to be enacted, providing for the protection of repressed cultural groups.²⁵⁶ This forms the basis of one of the imperative recommendations to be discussed in the final chapter



²⁵⁶ Kymlicka (n 206 above) 76.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1. Summary and Conclusion

This study set out to investigate the failure of most development schemes in Karamoja by assessing the impact of such schemes on Karamojong rights to culture, property, participation, and development. The results of this investigation reveal various obstacles to the successful implementation of development programmes in Karamoja region. First, it has found that underdevelopment in Karamoja is both a historical and contemporary issue wherein colonial era discrimination was perpetuated by successive governments through legislation and local government policies such as districtisation. This legacy can be remedied through enacting, repealing, amending of legislation and reform of policies. Second, the study found that where attempts at development were made, they failed disastrously owing to GoU's disregard for the voice, culture, and way of life of the Karamojong. It is posited that development can be achieved through policy and institutional reforms aimed at enhancing Karamojong participation, as well as through regional cooperation with neighbouring states in the pastoral belt designed to bring about effective protection and security in the region. The study employed comparative analysis in order to demonstrate how Uganda can utilize best practices from elsewhere in Africa to protect the rights of its pastoralist community. Additionally the study analysed the international and regional legal framework with a view to protection of pastoralists from states' oppression. It found that the existing international treaties and conventions do not adequately address the pastoralist's dilemma due to lack of specificity. Although several legal instruments generally address the protection of pastoralists' rights, only the ILO Convention 169 (to which Uganda is not a state party) makes specific reference to nomadic peoples' right to land-use and way of life. This shortcoming can be remedied through legal and policy reform at both the international and regional level wherein human rights bodies such as committees and commissions and working groups hand down comments, resolutions and observations geared specifically to addressing the needs of pastoralists.

In conclusion, this study has shown multiple reasons for the failure of development interventions in Karamoja, including outright resistance to the interventions by the beneficiaries. In particular, two main reasons for failure are the exclusion and

marginalisation of Karamojong from active participation in development activities in their region, the state-driven violation of their right to enjoy and practice culture, and general disregard for their way of life. This study concludes that the recognition of pastoralists' rights to culture and ways of life, collective ownership of property, and participation is an important aspect in realisation of development (freedom) in Karamoja.

6.3. Recommendations

Although this study was narrowed to the case study of Karamoja, the study proposes both international and regional recommendations towards a holistic and concerted approach in order to achieve protection of Karamojong at the national level seeing it that a considerable number of issues affecting Karamojong are international in nature such as international border crossing, proliferation of guns and human rights violations yet there is deficiency in international protection of pastoralists. Therefore, recommendations are divided into international, regional, sub-regional and national level.

6.3.1. Required International Effort

The following are recommendations to the international community

- a) At the international level, it is settled that there are groups of persons such as indigenous people (inclusive of pastoralists or nomads as in the African context) that have continued to be marginalised and vulnerable owing to their ways of life and cultures even after states have attained nationhood.²⁵⁷ There is therefore an urgent need to build jurisprudence to set the standard for protection of indigenous and other vulnerable cultural groups, by means of general comments and concluding observations handed down by the Human Rights Committee (so that individual states can be held accountable during state reporting sessions)
- b) Perhaps also the flow of arms should be stopped from the source that is to say, manufacturers should ban their supply to pastoral regions. There is therefore need for international cooperation and assistance in stopping the supply of arms at their sources.

²⁵⁷ See chapter five.

6.3.2. Required Regional Effort

On the basis that Africa is home to the largest number of pastoralists in the world, the following should be taken into consideration by the AU:

- a) The African regional human rights system through the ACHPR Working Group has noted that pastoralists are indigenous to Africa.²⁵⁸ The African Charter has not however made direct reference to pastoralists or 'indigenous peoples' and there is no existing treaty in place either filling up this lacunae. Thus in the short term the African Commission relying on its mandate to fill up gaps in the Charter should pass clearer and more explicit resolutions on pastoralists (in building jurisprudence) impressing it upon states to fulfil their obligations under the Charter - to respect, protect, promote and fulfil pastoralists' rights.
- b) In the long term there is need for establishment of a regional binding treaty explicitly recognising pastoralism as a way of life and protecting use of communal land by pastoralists. Procedures and mechanisms for effecting realisation of these rights should be provided for in an additional protocol to the treaty. Moreover, the existence of the ACHPR Working Group on Indigenous Communities/Populations is an added advantage in performing fact-finding missions as well as monitoring observance of the treaty.²⁵⁹

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6.3.3. Required Sub-regional Effort

Since pastoral conflict is said to be rife between Karamojong and her neighbours within the 'pastoral corridor' that is East and Horn of Africa entailing Uganda, Kenya, Sudan, Ethiopia and Somalia, the following recommendations need to be considered in curbing insecurity in the region:

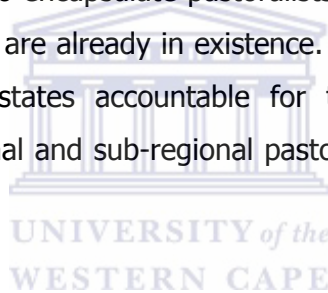
- a) Regional Cooperation on border migrations and insecurity concerns is highly endorsed by this study in addressing the issue of border migrations and insecurity. First, it should be recognized that Karamojong have kin across international borders arising from sharing a common ancestry and conducting business especially within the East and Horn of Africa pastoral communities. Freedom of movement should not be unnecessarily restricted

²⁵⁸ ACHPR Report (n 1 above).

²⁵⁹ The Working Group has already been to Uganda on a fact-finding mission and discovered Karamojong and Batwa as indigenous communities in Uganda – see Viljoen (n 200 above) 400.

where border control is to be used.²⁶⁰ Second, for acts of *force majeure* requiring the need to access resources across borders in areas of common grazing, movements should not be unnecessarily restricted where pastoral communities across the border are willing to share grazing land.²⁶¹ This study agrees with the position that pastoralism as a way of life is one of the best suited models of sustaining rangelands, and is superior to sedentarisation which results in desertification and deforestation. The study therefore recommends working towards a regional treaty establishing the free movement of pastoralists transnationally would be one way of containing the pastoralists' dilemma. Guidelines on regional disarmament must form part of this treaty, as insecurity in the region is caused by scarcity of resources in the regional belt among other factors

- b) For effective regional disarmament to be conducted, the exercise should be supervised by an impartial external body such as the UN and the IGAD/AU (has a protection and 'maintaining peace' mandate within the region),²⁶² and East African Community whose mandate can be broadened to encapsulate pastoralists' need for mobility and protection – all of these regional bodies are already in existence. The need for monitoring is with a view to holding individual states accountable for their citizens and ensuring that timeliness in enforcing regional and sub-regional pastoralist programmes is observed by states.



6.3.4. Required National Effort

The following are recommendations specific to the GoU including government actors and practitioners towards recognition of Karamojong as citizens of Uganda and protection of their rights as pastoralists:

a) Legal and policy reforms

At the national level the kind of state action required to operationalise the rights of Karamojong inferred from international human rights law, regional and national laws would entail an ambitious programme of legal and policy reform. As a first step, Uganda

²⁶⁰ Amutabi (n 129 above) 122-125; PTW Baxter 'The 'new' East African pastoralist' in Markakis (n 29 above) 147.

²⁶¹ Amutabi (n 129 above) 122.

²⁶² See USAID September 2009 meeting (n 198 above).

should become a state party to the ILO Convention 169. Although ratification of this treaty implies imposing obligations on Uganda with regards to its pastoralist communities, Uganda is already a state party to many treaties and conventions obliging it to respect, protect, promote and fulfil the civil and political and economic, social and cultural rights of its all its citizens. Additionally, ratification would help fill the gaps in national law once the convention is domesticated

Second, the apparent discrepancies in the Karamoja specific legislation including the archaic provisions in the Special Regions Act authorising the creation of 'prohibited regions'²⁶³ should be rectified and aligned with constitutional provisions and human rights instruments of general application. Rectification of such state and law driven discrimination and marginalisation requires repealing of colonial administration laws and the enactment of new legislation.

Third, upon repeal the new legislation should explicitly recognise pastoralists as a people of Uganda with the right to participate in developmental policies affecting their welfare, entitled to respect, protection and promotion of their right to culture including their way of life, dress and religion. Pertinently, the Constitution and the Land Act should be amended to provide for communal landholding systems as another form of land tenure, and pastoralists should be exempt from procuring title deeds as evidence of ownership. Legal and policy frameworks and reforms should start at the existing local institutional level so as to accommodate particular needs of the Karamojong.

b) Institutional reforms

There is need to support the traditional institutions of conflict resolution among the Karamojong and to use such institutions to supplement the government's peace building efforts. Doing so would not only promote the right to culture of the Karamojong, but also would provide an efficient system of conflict resolution based on partnership and cooperation.²⁶⁴ GoU has encouraged traditional justice systems to function in a supplementary role alongside the modern justice systems in other parts of the

²⁶³ S 3(6) Special Regions Act.

²⁶⁴ Knaute (n 98 above) 139.

country.²⁶⁵ Having the same arrangement work in Karamoja would go a long way towards promoting culture, participation and development in Karamoja.

As regards land reforms and local government policies, upon recognition of communal land holding as another form of land tenure there is an urgent need for a regulatory body or land committee designed to protect the unique rights of Karamojong to communal landholding from external encroachment by third parties or the state unless such encroachment is justifiable. Where land is to be taken from the Karamojong for mining or other state-related purposes, they should be informed, their opinions sought and compensation made accordingly where necessary. During processes of districtisation, the regulatory body should be consulted to ensure that government upholds Karamojong territorial rights and protects their land tenure through land-use planning based on an understanding of 'pastoralist agro-ecosystems'.²⁶⁶ It is also important that Karamojong elders form part of the advisory body to this regulatory body to ensure local participation.

c) National approach to insecurity

This study recommends that root causes of the conflicts and insecurity in the region be addressed alongside existing consequences. Research on disarmament shows that disarmament exercises failed owing to the GoU's exclusion of Karamojong and other stakeholders such as civil society organisations from the exercise. Civil society, faith-based and non-governmental and legal organisations should be allowed to take part in the disarmament for development programmes. Civil society participation enhances social and political legitimacy of the process and builds pastoralists' confidence and trust in the process, encouraging pastoralists to participate voluntarily in the exercise

d) Enhancing recognition of the rights of Karamojong/pastoralists

Recognition of pastoralists' rights can be done at two levels, first through recognition of pastoralists' culture; second through involving pastoralists in participating in development programmes affecting their welfare.

²⁶⁵ Transitional Justice systems in Northern and Eastern Uganda have incorporated traditional justice in the modern justice system in fostering reconciliation in the regions

²⁶⁶ WISP Policy Note No. 9 'Sustainable pastoralism – moving forward with appropriate policies' (2008).

One, GoU should learn from Ethiopia and set aside a day as a national public holiday either annually or bi-annually in which to celebrate pastoralists' culture and way of life. On such a day, historic events that took place in Karamoja should be commemorated alongside selected themes. Such a forum should: encourage interaction of pastoralists all over the country with government officials to discuss policy issues; interaction amongst pastoral communities to discuss their own concerns and share best practices from different regions within the country; and enable showcasing of traditions and culture in form of songs, poems, dance and dress. Also mainstream society should be encouraged to join in the celebrations with a view to erasing biases held against pastoralism as being outmoded.

Two, engendering Karamojong participation at all levels is a recommendation endorsed by this study. In the provision of services such as water and other infrastructures, effective consultation entailing the use of local languages should be employed to encourage participation of Karamojong in development activities. Second, the peoples that pastoralists interact with should also be heard. This includes Karamojong settled agro-pastoralists and neighbouring farming communities. Solutions to handling some of the differences and conflicts among Karamojong and their neighbors should come from those concerned and take into account dynamics that have maintained the cohesion of the communities, in spite of their differences.

e) Mainstreaming of pastoralist protection issues

Pastoralists' rights and needs should be taken into consideration in the wider policy-making processes and in the establishment of programmatic priorities. This is particularly important in areas in which the realisation of the pastoralists' rights is inextricably connected to general state policies, such as in culture, local government programmes, and in state development strategies and plans.

For effective mainstreaming and promotion of legal and institutional changes, GoU should ensure that the different actors involved in pastoralist development are aware of the needs, rights, and freedoms of pastoralists and are versed in government's plans and strategies with regard to pastoral development. Accordingly, awareness-raising should be extended to all sectors of government and other relevant actors including civil society and pastoralists themselves.

In order to address on the legacy of exclusion, discrimination and marginalization based on culture, to the state should adopt a rights-based approach in development and engage the Karamojong in “belated State-building”, a process through which the Karamojong are enabled to join with all the other peoples of Uganda on mutually-agreed upon and just terms, after many years of isolation and exclusion.²⁶⁷ To argue that the traditional desert societies are perfect and should be left unchanged would be to over-romanticise their condition, but it would be equally a mistake to believe that change is always for the better or that (orthodox) development is inevitable. Moreover culture is neither static nor frozen in a time capsule; instead it is subject to change and development caused by both positive and negative factors.²⁶⁸ Culture should therefore be seen as inseparable from individual’s right to freedom and personal and community development.²⁶⁹ When meaningful participation and engagement of the Karamojong is achieved, a balance can be struck between culture and development.



Word count: 18,150 (excluding table of contents and bibliography)

²⁶⁷ Statement by Ms Erica-Irene (former Chair of Working Group on Indigenous Populations), ‘Some considerations on the right of indigenous peoples to self-determination’, *Transnational Law & Contemporary Problems* 1, 9 3 (1993), alteration is made to this statement wherein this author replaced ‘indigenous peoples’ with ‘Karamojong’ on the basis that pastoralists are regarded as indigenous peoples in Africa – see chapter five.

²⁶⁸ NB Pityana ‘The challenge of culture for human rights in Africa: The African charter in a comparative context (1999) in M Evans & R Murray (eds.) *The African Charter on Human and Peoples’ Rights: The system in practice, 1986-2000* (2002) 225.

²⁶⁹ Pityana (n 274 above).

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