

Moran No More

The Changing Face of Cattle-rustling in Kenya



KENYA HUMAN RIGHTS
COMMISSION

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KHRC Vision and Mission

The Kenya Human Rights Commission (KHRC) was established in 1992 with the vision of working for the establishment of a Kenyan state that protects and promotes human rights and democratic values. KHRC's mission is to protect, promote and enhance the enjoyment of all human rights for all people of Kenya. To achieve this mission, KHRC's work is structured within the following two key programme areas:

- a. Research, Monitoring and Advocacy (now called Research and Advocacy Team)
- b. Human Rights Education and Outreach (now called Civic Action Team)

Both programmes are geared towards achieving two main goals: first, stimulating the formation of social movements and offering pragmatic solidarity to community-based organisations that advocate for human rights and second, working towards the establishment of a Kenyan state founded on the pillars of accountability and respect for human rights-centred governance. In order to achieve the foregoing goals, KHRC has the following strategic objectives:

1. Civic action for human rights;
2. Accountability and human rights-centred governance;
3. Leadership in learning and innovation in human rights and democratic development in Kenya;
4. Mainstreaming equality, non-discrimination and respect for diversity; and
5. Organizational stability.

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List of Abbreviations

ASALs	Arid and Semi-Arid Areas
CEWERU	Kenya's Conflict Early Warning and Response Unit
CBOs	Community-Based Organisations
IMLU	Independent Medico-Legal Unit
ISS	Institute of Security Studies
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights (KNCHR)
KPRs	Kenya Police Reservists
OCHA	United Nations Office for the Co-ordination of Humanitarian Affairs

Glossary of Terms

Moran	A young warrior, especially among the Samburu and Maasai communities
Dumisha Maisha	Sustain or maintain life
Manyatta	Traditional homestead
Ngorokos	Bandits
Nyama Choma	Barbequed meat

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Methodology

The compilation of this report was made possible through the use of both primary and secondary sources. A team from the Kenya Human Rights Commission conducted two field missions to Isiolo and Samburu to collect primary information. The mission was undertaken from the 12th to the 16th of October 2009 while the second was carried out from the 24th to 27th September 2010. The information obtained from interviews and observations during these missions was used as the source of primary data for compiling this report. Further, interviews were held with different stakeholders, including civil society organisations, politicians from the affected areas and relevant experts in the field. Lastly, the report also relies on secondary sources such as papers, journals, theses and other published sources obtained through research conducted on the internet.

Executive Summary

The practise of cattle-rustling remains a major cause of insecurity and conflict amongst the pastoral communities in Kenya. Pastoral communities occupy the arid and semi-arid lands (ASALs) of Samburu, Turkana, Pokot, Trans-Nzoia, Marakwet, Isiolo and Marsabit regions of the country and mainly rely on livestock farming and pastoralism for their subsistence. The recent upsurge of incidents of cattle-rustling has been greatly facilitated by the ready availability of small arms and light weapons in the cattle-rustling prone areas. The increased use of weaponry in cattle-rustling by the pastoralist communities has not only grown to become a major daunting security threat to the lives of the pastoralists but also a key threat to the very core of their livelihoods, which is anchored on ownership of large herds of livestock.

Incidents of gross human rights violations—including wanton killings, rape, torture and loss of property—have been reported among the warring factions of the pastoral communities. Of concern is the fact that although cattle-rustling seems to be a perennial problem, there has been no effective intervention by the state to curb this practice. As a result, most of the cattle-rustling prone regions have been left to fend for themselves in so far as security is concerned. Heavily armed community vigilantes, criminal gangs, and gun-toting bandits have emerged as the *defacto* organs of [in]security to fill up the vacuum left by the deficient and/or non-existent state security system. State security agents have been ineffective in keeping the peace and/or in protecting the lives and property of the Kenyan citizens who occupy the so-called marginalized regions. If anything, the state security agents are mostly known to intervene after a raid has long occurred and when serious human rights violations have already occurred. Further, the involvement of state security agents has at times been reported to fuel the tension and conflict in these regions as their intervention almost always involves the perpetration of human rights violations, especially

among the most vulnerable members of the community, notably, the women and children.

Pastoralist communities have experienced both official¹ and non-official marginalisation over the years, and are often viewed by the rest of the country as a people who do not deserve a share of the country's 'cake' due to the many years of violence and conflict that have bedevilled these communities. The foregoing mindset has led to continued marginalization of these communities and the effect of such sidelining has been gross under-development of the ASALs manifested through high levels of poverty and constant tension and violence in these regions. The high levels of desperation and the sense of feeling abandoned by the rest of the country has provided the perfect excuse for some people (both from among the pastoralists and non-pastoralist communities) to engage in criminal activities such as livestock theft (euphemistically referred to as "cattle-rustling") both for self-enrichment and commercial purposes. Over the years, pastoralist communities have engaged in a vicious struggle over control of grazing land and watering points mostly under the cover of cattle-rustling. Oftentimes, these struggles over land and water have ended with devastating consequences as was witnessed in the Kanampiu killings of 2009.

While it is KHRC's firm position that the current practice of cattle-rustling must be dealt with from a criminal perspective, it is imperative that we adopt a more nuanced approach to the practice of cattle-rustling, especially if we are to develop a deeper understanding of this practice as it was carried out within the traditional setting. Additionally, special attention must be paid to the genesis of the changing face of cattle-rustling as was or has been set in motion by the realities and dynamics of both the colonial and the post-colonial eras. It is only after developing a critical understanding of the historical as well as the contemporary socio-economic and political challenges of the ASALs that both the state and non-state actors can be in a better position to devise effective intervention strategies aimed at offering long-term solutions to the issue of endemic cattle-rustling-related insecurity in these regions.

¹ Official marginalization of the pastoralist communities by virtue of their occupying the so-called low agricultural potential areas is best captured in Tom Mboya's *Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning and Development in Kenya*.



The Face of Marginalization: Pastoralist communities have experienced both official and non-official marginalisation over the years.

The Kenya Human Rights Commission (KHRC) commends the Government of Kenya for putting in place affirmative measures (like the dedication of 25% of the CDF money to marginalised and grossly under-developed regions) and the establishment of the Ministry of Northern Kenya to confront the plethora of socio-economic and political challenges among the pastoralist communities. However, these measures are grossly inadequate given the rampant cases of the misuse of CDF funds by politicians and the meagre budgetary allocation to the Ministry of Northern Kenya². KHRC remains concerned that the Government of Kenya has continued to neglect the plight of ASALs regions by failing to devise effective policies aimed at curbing the long-running and persistent problems of insecurity and cattle-rustling in these regions.

The KHRC therefore reminds the Government that it is solely responsible for the provision of adequate security for all its citizens wherever they may be residing within the country's borders. The Government's security sector must play a proactive role in maintaining law and order, especially in those areas – like the ASALs – that are known to experience constant flare-ups of conflict.

² For example, in the 2008—2009 Financial Year, the ministry was awarded a paltry budget of KES 2.4 billion.

What is more, all state security agencies and the relevant line ministries should collaborate with each other and with key stakeholders so as to ensure that the underlying causal factors fuelling the cattle-rustling conflict are promptly and effectively resolved.

Highlight of the Findings

The following are the key findings that the KHRC was able to establish with respect to the problem of cattle-rustling in ASAL regions of Kenya:

- ◇ That cattle-rustling has been practised from time immemorial among the pastoral communities, and the same was an acceptable traditional practise carried out within clearly set out rules of engagement which were fundamentally different from the current practice of livestock theft.
- ◇ That some politicians and businessmen are the main beneficiaries of livestock theft in the ASALs and as such, they are likely to do everything in their power to continue fanning conflict among the pastoralist communities in the name of cattle-rustling.
- ◇ That in the past three decades, the motive behind cattle-rustling and its *modus operandi* has significantly changed. The traditional practice, which involved the use of arrows and bows and which forbade the targeting of women and children, has been increasingly replaced by the criminal activities of livestock theft, which rely on the use of guns and bullets and which are equally indiscriminate in their execution as they target all the members (men, women and children) of the rival community.
- ◇ That the successive marginalisation of the pastoral communities, both during the colonial and post-colonial periods, has led to the under-development and higher poverty levels in these regions, which has in turn resulted to aggravated levels of insecurity in the pastoralist lands.
- ◇ That further, the proliferation of illegal small arms and light weapons from the war-torn countries bordering Kenya has contributed to the rise of militarised cattle-rustling in Kenya.

- ◊ That the practice of cattle-rustling and livestock theft has had an adverse and negative impact on the socio-economic, political and cultural aspect of the pastoralists, key among them being, general insecurity, underdevelopment and the systemic violations of human rights amongst the pastoralist communities.
- ◊ That the Government of Kenya has ratified and/or is a member state to regional and international instruments aimed at curbing the problem of cattle-rustling. However, due to lack of political will, the Government has failed and/or neglected its obligations to fully implement these instruments leading to the progressive worsening of the cattle-rustling and livestock theft problem.
- ◊ That the problem of livestock theft must be addressed with the seriousness that it deserves, and that concerted efforts must be made by the Government, the civil society, the media and other developmental stakeholders in intervening to address the underlying problems that lead to insecurity and livestock theft among the pastoralist communities.

Key Recommendations

The following are the key recommendations that the KHRC proposes to be implemented by the various stakeholders in order to curb the perennial problem of cattle-rustling in Northern Kenya:

- ◊ That as the chief duty-bearer, the Government of Kenya should promptly and effectively address the problem of cattle-rustling and other related security issues affecting the pastoral communities in Kenya as a matter of priority.
- ◊ That livestock theft must be treated as a serious criminal activity and that all those who are either complicit or implicit in this vice should face the full force of the law. To this end, the Government should start by investigating the serious allegations that some powerful government officials as well as businessmen are the key drivers of the perennial conflict among the pastoralist communities as they are the main beneficiaries of livestock theft.

All those found to be either aiding or abetting the culture of livestock theft under the guise of cattle-rustling must be fully dealt with in accordance with the law.

- ◇ That the issue of proliferation of illegal small arms and light weapons must be addressed both at the national and the regional levels. The Governments of Kenya and her neighbouring states should collaborate in order to curb and stem the menace of the proliferation of illegal small arms and light weapons in the region.
- ◇ At the national level, the Government must investigate claims that some politicians from the ASALs are known to arm their constituents as part of a political strategy to gain votes. Stern action must be taken against any politicians found to be behind any arming activity in the ASALs.
- ◇ The Government should adopt and implement measures within its national legal framework (which should be in tandem with regional and international standards) aimed at ensuring that the problem of livestock theft is adequately addressed.
- ◇ That the Government, civil society and other stakeholders jointly address the issue of poverty and under-development in the affected areas by initiating and supporting development projects and alternative livelihood programs so as to economically empower the pastoralist communities.
- ◇ That peace-building programs and conflict resolution initiatives be undertaken by the Government and the civil society, both at the grassroots and national level to raise awareness on the adverse effects of conflict by bringing the combatant communities together so that they may develop a deeper understanding and appreciation of each other.

Chapter One

1.1 Introduction

The modern, as opposed to the traditional, practice of cattle-rustling has been defined to mean, ‘the stealing or planning, organising, attempting, aiding or abetting the stealing of livestock by any person from any country or community where the theft is accompanied by dangerous weapons and/ or violence.’³ The act of cattle-rustling mainly involves and affects the pastoral communities in Kenya and around its borders. The term “pastoralism” denotes ‘a practice whose main ideology and production strategy is the herding of livestock on an extensive base or in combination with some form of agricultural activity’ while “rustling” refers to armed attacks by one group on another with the purpose of stealing livestock and not necessarily for purposes of territorial expansion.⁴

Pastoralists in Eastern Africa have been defined to possess the following three main characteristics⁵:

- ◇ They mostly occupy borderline areas of their respective states
- ◇ They are highly marginalised and occupy underdeveloped areas experiencing high levels of poverty.
- ◇ They share similar, but distinctive ethno-linguistic features across the specific national borders that separate them.

³ This is the definition adopted by *The Protocol On the Prevention, Combating And Eradication Of Cattle-rustling in Eastern Africa*, to which Kenya is a signatory state.

⁴ Joshia O. Osamba, *The Sociology of Insecurity: Cattle-rustling and Banditry in North-Western Kenya*, at p 13.

⁵ Frank Muhereza, *Overview of Cattle-rustling in the Great Horn of Africa: Knowledge Gaps and Research Intervention on Livestock Theft*, a presentation at the Stakeholder’s meeting, Mifugo Programme, 2008.

The practice of cattle-rustling has evolved over the years. Understood in the traditional sense, cattle-rustling, was considered to be a deeply entrenched cultural practice where young men, known as “morans” would steal livestock as a means of re-stocking or acquiring more heads of cattle for various purposes, which included raising enough animals for the payment of dowry, or as a show of heroism and/or a means to wealth enhancement. However, if the stolen cattle were identified by elders of the neighbouring communities, the same would be returned to the respectful owners. Traditions, cultural songs and dances carried from one generation to another highlight the existence of cattle raiding before the coming of the Europeans to East Africa.⁶ The taboo-regulated traditional nature of cattle raids, which shunned the killing of members of the rival communities, was confirmed by the former President of Kenya, Mr. Daniel Arap Moi, who once quipped that, “Traditionally, cattle-rustling did not involve killing people”.⁷ The taboo nature of killings under traditional cattle-raiding missions is best demonstrated by the rigorous cleansing rituals that followed when death occurred during a raid. Ali Chemisto in his, “*Understanding Inter-Pastoralists’ Conflict in Uganda: The Cattle Raiding Phenomenon in Kapchorwa*,”⁸ describes the cleansing ceremony as follows:

“If death occurred during the raid, extra cattle from the killer’s family were given to compensate the victim. A Moran (warrior) who killed during armed conflict could not enter his Manyatta (homestead) and had to be cleansed at the nearest water point with blood from a slaughtered goat and intestinal contents smeared all over the body. The Moran would then be cleansed with water and had to stay alone overnight in the bush before being declared clean to re-enter the Manyatta.”

However, this traditional practice of cattle-rustling was fundamentally altered with the advent of colonialism in the late 1800s and during the post-colonial, the practice of cattle-rustling has been radically affected by new internal and external trends since the 1970’s to the present [2010]. Internally, cattle-rustling has increasingly become a commercialized activity. The commercialization of

⁶ ALI CHEMISTO SATYA, *Understanding Inter-Pastoralists’ Conflict in Uganda: The Cattle Raiding Phenomenon in Kapchorwa*, MA Thesis, June 2004- Centre for Peace Studies, European Peace University at p. 100.

⁷ See *Daily Nation*, 18 April 2001, as discussed in *ibid* at 102.

⁸ *Supra* note 5

cattle-raids has pushed the practice outside its traditional parameters, which has in turn led to runaway insecurity among the pastoralist communities. While the traditional practice was carried out within clearly established ‘rules of engagement’, the current practice has fundamentally deviated from such rules, into a criminal venture where the laws of the land are flouted and egregious human rights violations such as loss of life, rape and torture are visited on innocent citizens with alarming regularity. Matters are made even worse by the Government and its security agents who have inherited the colonialists’ negative “war-like” tag attributed to pastoralist communities.



The current practice of cattle-rustling targets all and sundry, women included, for attack.

Hence, the government security agents have been known to approach security challenges (like disarmament) in the ASALs with imperial ruthlessness, which has oftentimes led to the perpetration of serious human rights violations by the very security apparatus meant to restore law and order in these regions.⁹ At the external level, the main contributor to the flourishing practice of criminal livestock theft has been the poorly patrolled and highly porous Kenyan borders which have greatly contributed to the proliferation of small arms and light

⁹ Paula Palmer (2010), *When the Police are the Perpetrators*, Cultural Survival. Available at www.culturalsurvival.org/publications.

weapons in the country. Further, regional conflicts in countries like Somalia, Ethiopia and Uganda have also significantly contributed to the proliferation of small arms and light weapons within the countries—Kenya included—of the region.

The combination of the foregoing internal and external factors and the continued cover offered to criminal elements operating in the ASALs in the name of cattle-rustling can be said to be significantly responsible for the state of lawlessness and insecurity as well as systemic human rights violations in these parts of the country. The recent series of cattle-rustling attacks among the Samburu and Pokot, with the worst incident taking place in September 2009, are illustrative of grave insecurity concerns in the ASALs. There is therefore an urgent need for the government and other stakeholders, both local and international, to intervene and bring a permanent stop to the menace of livestock theft and its attendant human rights violations.

It is against this backdrop that the Kenya Human Rights Commission (KHRC), upon conducting a series of fact-finding missions in the area, found it prudent to conduct further research into the issues surrounding the practice of cattle-rustling in the ASALs. The fact-finding missions and the research sought to address the following questions:

- ◇ What is the historical context of pastoralism, cattle-rustling and the infiltration of guns into Kenya?
- ◇ What are the key factors fuelling cattle-rustling and how and why did cattle-rustling evolve from being a traditional practice into a criminal practise driven by deep-seated commercial interests?
- ◇ What is the legal framework that addresses the problem of cattle-rustling in Kenya and how effective has the same been in curbing the criminal activity associated with livestock theft?

- ◇ What intervention mechanisms have been put in place by the Government and other stakeholders to ensure a stop to the practice of livestock theft in the ASALs?

This report attempts to offer an insight and response into the above issues and other arising matters on livestock theft in the ASALs. The report is based on research conducted in the field, interviews with state and non-state actors as well as online desktop research into the issues of criminal livestock theft operating under the cover of the more traditionally respectable practice of cattle-rustling. The report is divided into five chapters. Chapter one provides the historical context of cattle-rustling and examines how the same has evolved from its traditional norms under both the colonial and post-colonial eras into the current criminal activity of livestock theft. In Chapter two, factors that fuel cattle-rustling are examined where the focus is placed on how factors such as progressive marginalization, harsh ecological and environmental realities, state-repression, entrenched cultural practices as well as new developments and trends among the pastoralist communities contribute to the practice of cattle-rustling and livestock theft. The chapter concludes by examining the effects of cattle-rustling and livestock among the pastoralist communities. Chapter three probes the responsiveness of the domestic, regional and international legal framework in curbing the practice of livestock theft among the pastoralist communities. In chapter, a brief discussion is offered on steps being taken by both state and non-state actors in curbing the livestock theft in the ASALs and suggestion made on how the state and non-state actors can devise more effective intervention strategies in dealing with the problem of livestock theft among the pastoralists. Chapter five provides the way forward and recommendations.

1.2 Cattle-rustling In Kenya: The Historical Context

1.2.1 Cattle-rustling in the Colonial Era

The origin of cattle-rustling as a form of resource conflict among the pastoralists dates back to the colonial period where pastoral communities, such as the Maasais and Kalenjins, were pushed out of their land through unfair treaties and/or by the might of the gun, making way for the Rift Valley based ‘White

Highlands.¹⁰ The colonising Europeans turned the fertile lands previously owned by the pastoralists into large scale ranches for farming while relegating the pastoral communities to the unproductive arid and semi-arid regions. With the establishment of the colonial rule, the government adopted a number of policies that favoured the white settlers' plantation economy to the detriment of the local pastoralist communities. This report identifies the following policies.

First, the colonial government fixed borders for the different ethnic communities in Kenya by creating "tribal reserves" all in a measure to create more land for crop farming. This had a significant negative effect on the pastoralists as their nomadic lifestyle demanded that they move from one place to another in search of pasture and water for their cattle. The establishment of the fixed borders meant that the pastoralists could not freely move and this in effect created social tension amongst the communities. The Pokot, for example, were displaced from their fertile land and restricted in less fertile areas, which consequently led to increased tension and pressure for water and pasture with their neighbours. Cattle raids started to increase among the Pokots and their neighbouring communities as a restocking measure to replenish the stock that had died due to drought.¹¹

Second, the colonial government imposed movement restrictions and other impediments such as the imposition of market taxes, quarantine and campaigns discouraging cattle farming. All these had the ultimate effect of making cross-border trade in stock difficult and unprofitable, increasing frustration and tension amongst the pastoralists. Due to these policies and measures, communities such as the Turkanas and the Pokot adopted the transhumance form of pastoralism, where only the cattle are moved but the owner's families settle at a particular place. This form of pastoralism entailed the development of hostilities among the various groups over grazing grounds and an increase in cattle raiding missions as a way to re-stock depleted herds.¹²

¹⁰ Abdi Umar, *Resource Utilisation, Conflict and Insecurity in Pastoral Areas of Kenya*, a paper for the USAID Organised Seminar on Conflict Resolution in the Horn of Africa, held at the Methodist Guest House, Nairobi, and 27—29 March 1997.

¹¹ As discussed by Ocan, C.M. n.d., *Pastoral crisis in North-Eastern Uganda: The changing significance of raids*. Working paper No. 2. Kampala.

¹² Joshua O. Osamba, *The Sociology of Insecurity: Cattle-rustling and Banditry in North-Western Kenya*, at 16 and 17.

Third, the colonial government saw the pastoralist way of life as a primitive and hence no serious socio-economic support was extended to pastoralist communities. Hence, compared to other prime agricultural regions in the country, which were deemed as being of economic value to the colonial government and which were supplied with a colonial-supporting infrastructure like roads, schools and hospitals, the ASALs were conspicuously absent from the colonial government's development agenda. What is more, the pastoral communities did not endear themselves to the colonizers since most of them strongly resisted the influence of the white man and instead clung to their culture. The non-pastoralists on the other hand were, either through collaboration or coercion, easily co-opted into the colonizers culture and were quick to learn such skills as reading and writing. It is the educated elite of these non-pastoralist communities that took up the mantle of leadership in the country upon the exit the colonizers and it is the same elite which also finally moved to consolidate its economic position by settling in the productive former white highlands.

Fourth and finally, the marginalization of the pastoralist communities was further exacerbated by the "war-like" tag which had been placed on these communities by the colonialists. A case in point is that of the Turkana community. With the inception of colonisation, the Turkana built up a strong armed resistance and continued to defy colonial orders between 1895 and 1925. As early as the year 1900, the Turkana had organised themselves into well structured military-like units, hence resisting the European influence for over 25 years. However, in 1925, the Turkanas were subdued and the colonial government was able to dominate them economically through various government policies and initiatives.¹³ This, coupled with other factors such as successive marginalisation even after the end of British colonisation, has relegated the Turkana community to marginal socio-economic and political existence and the community has continued to stagnate in so as the general development of the region is concerned.

¹³ Odegi-Awuondo, C. 1992. *Life in the Balance: Ecological Sociology of Turkana Nomads*, as discussed by Joshia O. Osamba, *The Sociology of Insecurity: Cattle-rustling and Banditry in North-Western Kenya*, at 15.

1.2.2 The Infiltration of Guns and the Changing Nature of Cattle-Rustling in Post-Colonial Kenya

Traditionally speaking, cattle-rustling was carried out with the use of bows and arrows and as was mentioned above, wanton acts of killing were not part and parcel of the practice. However, as has already been discussed, this was to change with the arrival of British colonizers in Kenya. The policies and practices established by the colonialists to marginalize pastoralist communities were carried on in independent Kenya. New regional dynamics, particularly the political instability experienced in Uganda, Sudan, Somalia and Ethiopia have led to the replacement of bows and arrows with bullets and guns as the latter have become increasingly readily available due to a number of factors that will be shortly discussed below.

The genesis of the current trend of increased militarisation of cattle-rustling and its transformation from a traditional practice to the current criminal activity of livestock theft can be traced back to the 1970s. In the early 1970s, the pastoralists were faced with acute and prolonged famine and were at the mercy of donor-assisted development programmes. In keeping in line with a “fend-for-yourselfes” approach which was anchored on government policies of developing the “high potential areas first”¹⁴, the government made no particular effort to alleviate the suffering of the pastoralist communities occasioned by the said famine. On the contrary, the government policies of the seventies, the eighties, the nineties as well as those ushering in the second millennium have focused on agriculture and cultivation, thereby persistently relegating and sidelining the development concerns of the pastoralists to the periphery. Naturally speaking, such endemic marginalisation has led to the upsurge of livestock theft among the pastoralists, manifested through intense inter-clan and inter-tribal armed conflict, as a means of survival.

Apart from the natural calamities and skewed government policies, a number of factors have led to the increased militarisation of cattle-rustling in Kenya. The advent of guns into the practice of cattle raiding in Kenya can be traced to a number of factors dating back to 1979. This report highlights two such factors. First, there were natural disasters where cattle were wiped out by

¹⁴ See Sessional Paper Number 10 of 1965

diseases and a two-year drought caused famine and crop-failure. This meant that the communities most affected had to organise cattle-raiding missions to replenish the lost livestock. Second, unlike in earlier periods when such acts of replenishment took place on a smaller scale, 1979 saw an upsurge of cattle raids between the Ugandan Karamajong and Turkanas of Kenya who were collectively known as 'Ngorokos' (bandits). The upsurge was caused by the presence of illegal arms which these bandits had obtained from the Ugandas ex-president Idi Amin's fleeing soldiers.¹⁵

Initially, the Turkana community seemed to be caught unawares by the use of the new weaponry in cattle-rustling and had thus suffered a series of attacks from the Karamojong of Uganda. The Government of Kenya intervened by providing ammunition to the Turkana community for self-defence. However, when there was no conflict between the Turkana and the Karamojong, the Turkanas instead trained their guns on the Pokot. The conflict further spread to the Samburu and Borana, reducing it to a continuous cycle of violence among the pastoralist communities.¹⁶ By the beginning of the 1980s, the state of insecurity in the region was threatening and the Government of Kenya intervened by deploying military troops to man the areas. For example, from 1984 to 1986, the Government held a highly militarised operation in the Pokot district, which led to the loss of thousands of cattle. This increased the tension amongst the Pokot and fuelled insecurity in the area.

However, numerous disarmament exercises have not yielded much in terms of reducing the inter-ethnic tension in the ASALs.¹⁷ The reason for the failure of the disarmament efforts seems to stem from the fact that the efforts are geared more to dealing with the symptomatic aspects of livestock theft and are as such a dismal failure in so far as addressing the systemic aspects of the problem is concerned. The root cause of perennial conflict in the ASALs remains the successive political and economic marginalisation and scarcity of resources (such as productive land, water and good infrastructure) faced by the

¹⁵ Joshua O. Osamba, *The Sociology of Insecurity: Cattle-rustling and Banditry in North-Western Kenya*, at 22.

¹⁶ This information was obtained by the KHRC during an interview with the Laikipia District Commissioner, Mr. Lincoln Njunge on its follow-up mission in Isiolo and Samburu from 24-27 September 2010.

¹⁷ Refer to Hon Samuel Poghiso's comments in the *Business of Violence*, KHRC Documentary, 2010.

pastoralist communities from the colonial period to date. However, since the pastoralists are politically weak, no serious efforts have been put in place by the government to redress the many years of systemic marginalisation suffered by people living in these areas.

Apart from what one might call official neglect by the government, traditional land rights in the ASALs have not been respected by development policies in the past and greater pressure has been put on grazing lands and water resources, as populations have increased and grazing land has been taken up for cultivation, conservation purposes, or for state use. This has only led to increased tension and subsequent conflict among the communities. As already mentioned above, the pastoralist communities occupy mainly the arid and semi-arid areas of the country, which covers three quarters of the country's total land mass, spreading out over the dry north-east, north-west, southern Rift and inland parts of the coast, and bordering with Somalia, Ethiopia, Sudan, Uganda and Tanzania. Due to the increase in incidences of cattle-rustling in these regions, the general security of the area has been compromised and the livestock theft conflict is thus seen to be synonymous to these regions.

The rate of recent fatalities, mostly caused by livestock theft-related conflict has been graphically demonstrated by the United Nations Office for the Co-ordination of Humanitarian Affairs (OCHA) as seen in the graph and map below:

Number of Pastoral Fatalities since July 2008

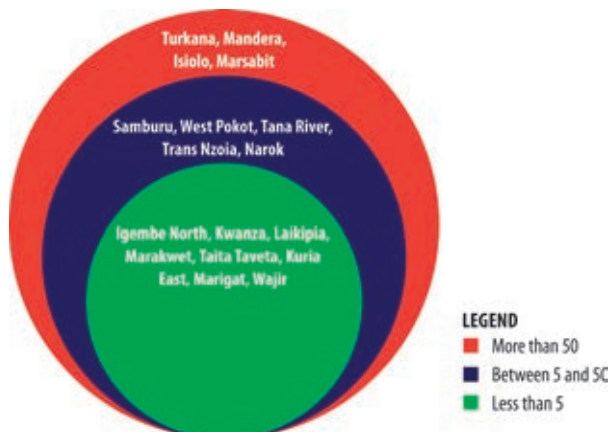


Figure 1: Graphic demonstration of the rate of fatalities in Kenya since July 2008. Source: *United Nations Office for the Co-ordination of Humanitarian Affairs, Pastoralist Voices*, October 2009, vol.1, Issue 16.

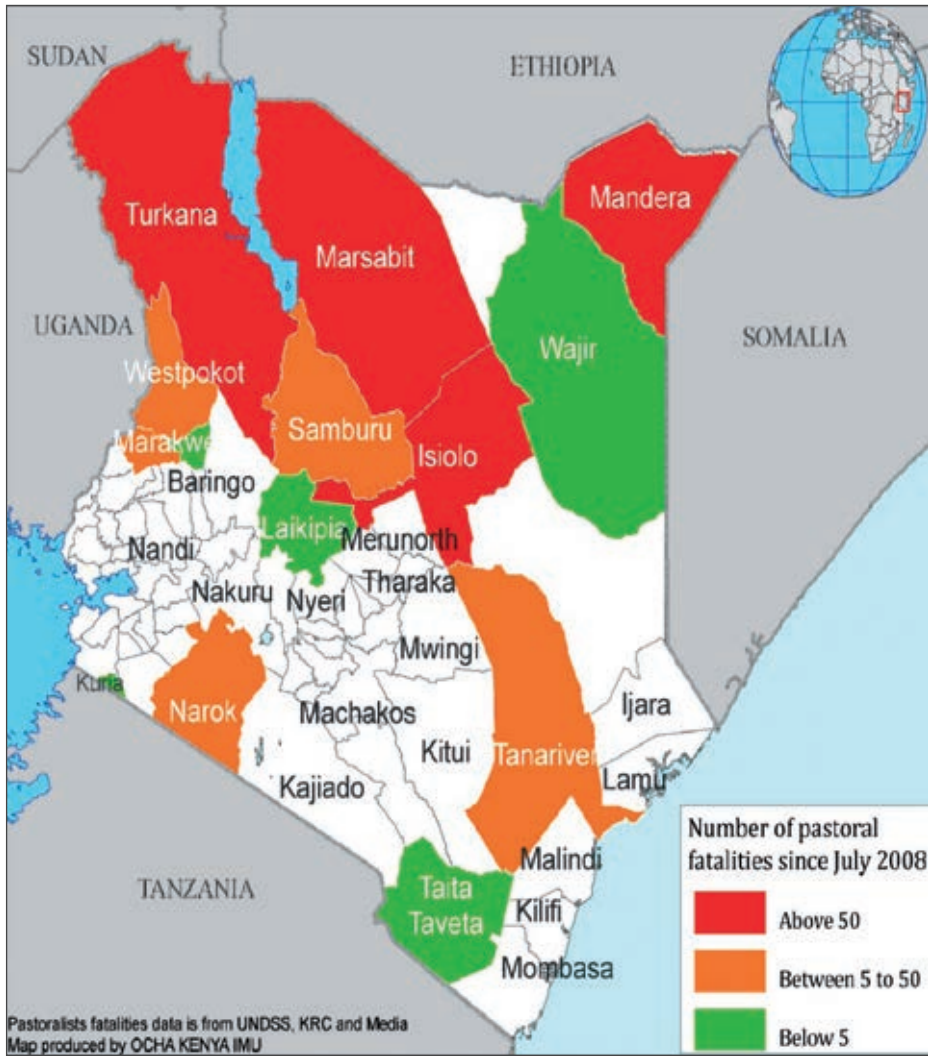


Figure 2: Map above demonstrates the conflict-related fatalities in Kenya since July 2008.

Source: United Nations Office for the Co-ordination of Humanitarian Affairs, *Pastoralist Voices*, October 2009, vol.1, Issue 16.

Chapter Two

2.0 Introduction

This chapter begins by offering a summary of the main factors responsible for the entrenched practice of livestock theft in the ASALs. It then examines the evolution of cattle-rustling from a traditional practice to the current criminal activity of livestock theft by looking at some of the recent developments and new trends in the practice of cattle-rustling. The chapter concludes by looking at the socio-economic and political effects of livestock theft in the ASALs.

2.1 Factors that Fuel Cattle-rustling

The following are some of the factors that fuel cattle-rustling among the pastoralist communities:

The Successive Marginalisation of the Pastoralists

As has already been discussed herein, the pastoralist communities have experienced years of successive marginalisation at the political and economic fronts from the time of colonisation to the present independent Kenya. This may be attributed to the fact that at the advent of colonialism, many pastoralist communities were unwilling to adopt new cultures and changes that the white man brought, and consequently, they were relegated to the unproductive regions of the country. Further, the pastoral communities, due to their deep culture and their nomadic way of living, failed to obtain the white man's education. Lack of western education among the pastoralist communities partly explains their failure to actively participate in the political governance of the country at independence and after.

For many years, the pastoral communities have been sidelined by the Government from the mainstream of the countries socio-economic and political fronts. The pastoralists are seen not to contribute much to the country's

economic GDP. Pastoralist areas are the least developed and the infrastructure is poorly developed in the ASALs. There are few schools, health facilities and poor telecommunication services. Indeed, the disparity in the economic and living standards between most of the pastoralists and the rest of the country is extremely wide.¹⁸

The statement of Sessional Paper No. 10 of 1965 governed the allocation of the state's resources for over 40 years. This development policy document gave resource allocation preference to the so-called high potential areas (which cover only 20% of Kenya's total land coverage) while consciously ignoring and marginalizing the ASALs in the developmental agenda of the state. The extent of the marginalisation has been clearly illustrated in a document prepared by the Ministry of State for the Development of Northern Kenya and other Arid and Semi-Arid Areas.¹⁹

Impact of Environmental and Ecological Factors

Pastoral systems are by and large products of climatic and environmental factors. Hence, apart from the Government's failure to take pro-active and corrective policy measures to ameliorate the socio-economic conditions of the pastoralists, the problem of underdevelopment in the ASALs can be attributed to that fact that people living in these regions are prisoners of geography. Due to the prevalence of harsh climates in these regions, the livelihoods of pastoralists are oftentimes seriously threatened by famine and drought. Table 1 and below shows the extent of aridity in Kenya, and from the same, it can be deduced that areas which are mostly affected by cattle-rustling are actually the ones which are 100% arid. Environmental factors have therefore contributed largely to the practice of cattle-rustling.

¹⁸ Abdi Umar, Resource Utilisation, Conflict and Insecurity in Pastoral Areas of Kenya, a paper for the USAID Organised Seminar on Conflict Resolution in the Horn of Africa, held at the Methodist Guest House, Nairobi, 27 - 29 March 1997 at 2 and 3.

¹⁹ For more details please visit the website of the Ministry of Northern Kenya and other Arid Lands at: www.northernkenya.go.ke

Table 1: ASAL districts classified by extent of aridity²⁰

Category	Districts	% Total of ASAL area
A. 100% ASAL	Turkana, Moyale, Marsabit, Isiolo, Wajir, Mandera, Garissa, Jjara	62%
B. 85–100% ASAL	Kitui, Makueni, Tana River, Taita Taveta, Kajiado, Samburu	25%
C. 50–85% ASAL	Machakos, Mbeere, Tharaka, Laikipia, West Pokot, Kwale, Kilifi, Baringo, Meru North	8%
D. 30–50% ASAL	Lamu, Narok, Malindi, Keiyo, Marakwet	3%
E. 10–25% ASAL	Nyeri (Kieni), Rachuonyo, Suba, Kuria Thika, Koibatek	2%

Map Demonstrating the Extent of Aridity and Geographical Distribution of ASALs in Kenya

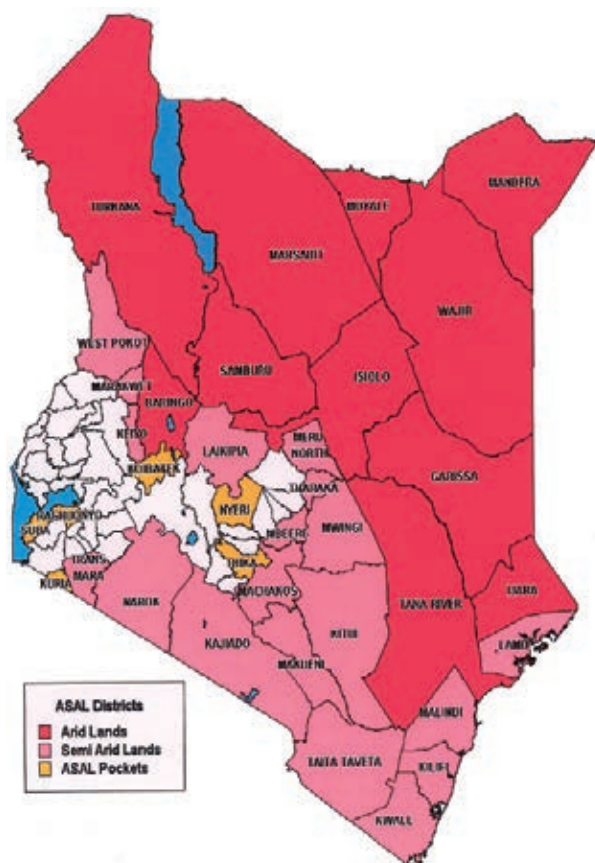


Figure 3: Extent of Aridity and Geographical Distribution of ASALs in Kenya

Source: Ruto Pkalya, Mohamud Adan, & Isabella Masinde, (Ed) Martin Karimi, *Conflict in Northern Kenya, A focus on the Internally Displaced Conflict Victims in Northern Kenya*, at 7.

²⁰ Adopted from the 1992 ASAL development policy, Government of Kenya, as cited in the Oxfam Briefing Paper, Delivering the Agenda, Addressing Chronic Under-development in Kenya’s Arid Lands. Available online at http://www.oxfam.org.uk/resources/policy/trade/downloads/bp88_kenya.pdf



Every year, the effects of drought and famine leads to the death of hundreds of livestock.

The long spells of drought experienced in most parts of the pastoralist communities, mainly the North Eastern part of the country, has led to undue suffering of these communities, which has in turn led to a struggle for pasture and water for livestock. This has led to the pastoralists crossing borders and trespassing to other communities' land in search of pasture and water. In the process, the pastoralists engage in inter-ethnic conflict mainly because of two reasons. First, the effects of drought and famine leads to the death of hundreds of stock, and for this reason, the pastoralists desire to engage in rustling to restock and compensate for their lost cattle. Secondly, some of the pastoralists engage in rustling as a way of increasing their wealth or as conduits for unscrupulous businessmen out to make a quick kill from the miseries and hardships of the pastoralist.

The increasing commercialization of livestock theft has led to further tension and conflict amongst the pastoralist communities. The sad reality of the commercialization of cattle-rustling is that while the pastoralists go for each other's necks (in order to satisfy the demand of the livestock buying middlemen), the meat-loving urbanite Kenyans are the unsuspecting accomplices of these

unscrupulous businessmen. Most urbanite Kenyans offer a ready market for conflict *nyamachoma* as they go about ordering the choicest cuts of meat in their fun-filled weekend rendezvous in Nairobi, Nanyuki, Isiolo or Nyeri towns oblivious to the fact that they could be feasting meat for which some other Kenyan living in the ASALs has paid for dearly.

State Repression

Both the colonial and the post-colonial governments have subjected the pastoralists to undue repression through the state security agents. During the colonial period, free movement of people and animals in Northern Kenya region was restricted, and this adversely affected the economic and social development of the inhabitants of the region, who are mainly pastoralists. Their region was heavily controlled by military officers. The pastoralists were viewed with suspicion as they were seen to be ‘war-like’, and were denied many of the state’s privileges. Further, any incidents of traditional cattle-raids amongst the pastoral communities were handled with maximum brutality, often leading to the deaths of many pastoralists. As already noted above, the brute force meted out on the pastoralists by the colonial government only led to the resistance from the pastoralists to colonial domination and influence, and in return, hampered the development of the new colonial economy that was taking root in other parts of the country.

Unfortunately, the independent Kenyan Government seems to have borrowed a leaf from their colonial predecessors in that they adopted the same heavy-handed approach to the issue of cattle-rustling among the pastoralist communities. Since independence, state security agents have contributed to the continued repression of the pastoralist communities by perpetrating serious human right violations among the communities during their so-called ‘state-operations’ in the ASALs. Oftentimes, these violations are carried under the terms of collective punishment where everyone—the young, the old, the women and the men—suffer in equal for committing real or imagined transgressions against the state. This blanket approach by state-security agents to security concerns in the ASALs has increased tension and animosity between the security agents and

members of the communities, thereby impeding the likelihood of there being any effective collaboration in efforts aimed at curbing livestock theft.

The state security agents have, in a number of operations conducted for various purposes including disarmament processes, been grossly implicated in the perpetration of human rights violations. A case in point was the Government's 'Operation Okoa Maisha' in Mount Elgon which was aimed at curbing the activities of a local militia group known as the Sabaot Land Defence Force. In the said operation, the state's security agents, especially the Kenya Army, were involved in gross violations of human rights, including extra-judicial killings and disappearances, torture and unlawful detention of the suspects. Civil society organizations such as the Kenya National Commission on Human Rights (KNCHR)²¹ and the Independent Medico-Legal Unit (IMLU)²² documented these violations and called for legal action against the offending officers but to date, the Government has taken no action against the security agents involved in the brutal repression of Kenyans in Mount Elgon.

Deeply Entrenched Pastoral Culture

The pastoralist communities have continued to follow their traditions and cultural way over many centuries. Many have refused to embrace the western lifestyle. Many of these communities continue to rely on pastoralism as their sole source of livelihood and continue to lead nomadic lifestyles. To many pastoralists, cattle is seen as a valuable asset, a wealth reserve and a sacrificial gift and a pastoralist can do all it takes to protect and seek for more cattle. Traditionally, having large herds of livestock was seen as a source of a secure livelihood base and a sign of prestige. A very high premium is placed on the ownership of cattle, which is an integral part of the pastoralists' culture. High pressure is therefore placed on pastoral communities as culture demands that a successful member of community is one who has the biggest herd of cattle.

²¹ See the Kenya National Commission on Human Rights Report, 'Mountain of Terror Report - Report on Torture by Military Officers in Kenya'.

²² For full account of the atrocities committed at the Mount Elgon Region, Kenya, see: "Double Tragedy" -Report on Medico-Legal Documentation of Torture and Related Violations in Mount Elgon "Operation Okoa Maisha" August 2008- An Investigative Report by the Independent Medico-Legal Unit (IMLU), available at http://www.imlu.org/index.php?option=com_content&task=blogcategory&id=17&Itemid=30 (follow "Report on Medico-Legal Documentation of torture and related violations in Mt. Elgon

Although it has been argued elsewhere in this report that the traditional practice of cattle-rustling and ownership is increasingly acquiring a new face characterized by livestock theft, there can be no denying the fact that the vestiges of the traditional perceptions and practices of cattle-rustling continue to play a big role in the current incidents of livestock-related inter-ethnic conflict among pastoralist communities. Research conducted by, Practical Action, an NGO working among pastoralist communities, further reveals the role of culture in fuelling inter-ethnic conflict through women who openly ridicule their men through songs if they do not raid other communities to provide for the women's needs. This is prevalent among the Rendille, Samburu, Gabra and Borana communities.²³

The centrality of cattle among the pastoralist communities is further augmented by Baxton's observation when he avers that, "*a person stripped of stock is stripped of the most active social relationship and thereby of selfhood and self-respect; so it is no wonder that almost every one strives to keep some livestock and those fortunate few who have incomes from trade and regular employment continue to invest in stock*"²⁴. However, it must be noted that strictly speaking, traditional culture did condone the current practice of livestock theft which seems to be governed by the rules of the jungle as opposed to the sanctions of tradition and culture.

The traditional basis of cattle raiding was solely for purposes of, *inter alia*, obtaining cattle to be used as dowry payment, as a rite of passage or as a show of heroism and social power and prestige. The same was closely monitored by elders to ensure that no excesses were committed. The raids used to be conducted within well accepted rules of engagement, and the practice was acceptable to the participating communities. Retaliatory attacks also followed the said acceptable rules. However, there has been experienced a total transformation of this traditional practice, to well organized banditry attacks where livestock is often raided for commercial purposes and where the practice is more often

²³ Mohamud Alan and Ruto Pkalya, *Closed to Progress: An Assessment of the Socio-Economic Impact of Conflict on Pastoral and Semi-Pastoral Economies in Kenya and Uganda*, at 25.

²⁴ As Baxton has been quoted in Markakis, J. (ed) 1993. *Conflict and the decline of pastoralism in the Horn of Africa*. London: Macmillan at 148.

than not, characterized with human rights violations such as killings, rape and torture.

Graphic Illustration of Causes of Cattle-rustling

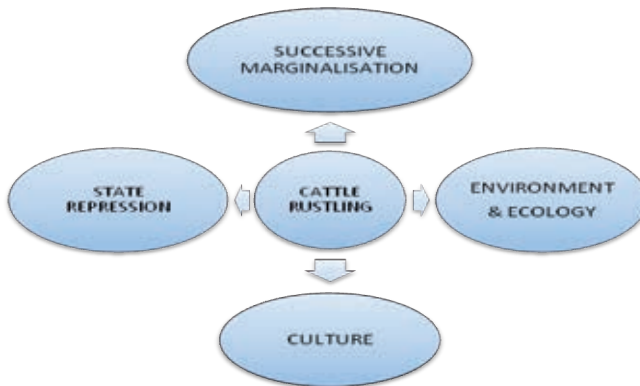


Figure 4: The Causes of Cattle-rustling in Kenya

2.2 The Evolution of Cattle-rustling: Recent Developments and New Trends

As has already been discussed, the act of cattle-rustling has evolved over a period of time from being an accepted traditional practice sanctioned by the village elders into being a commercialised and criminal venture, with attendant grave human rights violations. Some of the causal factors that have contributed to the recent development and new trends in cattle-rustling in Kenya and her neighbouring countries are discussed next.²⁵

New Administrative Units as an Impediment to the Pastoral Way of Life

The establishment of the colonial administration, which introduced the imposition of permanent tribal boundaries, had major ramifications on the pastoral communities as these boundaries were set up without due regard to the seasonal variations and demands of the nomadic lifestyles of the pastoralists. Although the new administrative units were meant to provide distinct and exclusive units of governance along ethnic lines, pastoral communities were oftentimes forced to ignore these colonial boundaries during times of drought. This has inevitably led to tensions between them and the agricultural

²⁵ These factors have generally been discussed by Joshua O. Osamba, in *The Sociology of Insecurity: Cattle-rustling and Banditry in North-Western Kenya*.

communities over allegations of trespass. In the past, such conflicts have led to the loss of lives and damage to crops and property. An example of a conflict attributable to exclusive units of ethnic governance is the attack between the Samburu pastoralists and the Laikipia farmers in February 1998 where the conflict ended with the fatalities of 70 people.²⁶

Proliferation of Small Arms

Since time immemorial, the nature of the pastoralists' way of lifestyle demanded that they be armed with some form of weapon for purposes of protection or self-defense both for themselves and their cattle from attacks by wild animals and theft. Bows and arrows were the weapons of choice. However, in the past three decades, there has been an escalation of cattle-rustling attacks, which has been fuelled by the increase in small arms. These illegal arms normally originate from the neighbouring countries which have been experiencing internal strife, including Uganda, Somali and Ethiopia. This has led to the formation of heavily-armed and militarised groups. This has further led to the rise of criminal gangs who engage in cattle-rustling for purely commercial reasons. The presence of the illegal arms has led to the commercialisation of cattle-rustling and those who engage in this practice act purely on self-enrichment basis. The Government of Kenya has been engaged in various disarmament efforts to mop up the illegal arms. However, due to the porous nature of Kenya's borders, it is not practically impossible to conduct an effective disarmament exercise without effectively engaging the neighbouring countries.

KPR and Home guards: Community Policing Initiatives or Avenues for Armament?

Another aspect that has been fronted by different pastoralist communities as well as local NGO's as the key contributing factor in the increased use of ammunition and increase in cattle-rustling is the Government's initiative to recruit and arm the Kenya Police Reservists (KPRs) and home guards as complementary security providers in the ASALs. While this was initially meant to be a transparent community policing initiative, the same has been marred with allegations of corruption, incompetence and favouritism along tribal lines in so far as the decision on who should be armed as a KPR or home

²⁶ See *Daily Nation* newspaper of 13 February 1998.

guard is concerned. In some instances, there have been allegations of political interference with respect to recruitment, as the politicians are said to ensure that their clan members and/or community members outnumber those of their rivals in the recruitment exercise. Even more worrying is the fact that there are weak accountability procedures within the KPR and home guard operations and it has been reported that some of them either use their official guns to conduct criminal activities like livestock theft or loan out the said guns to criminals. Although started with the noblest of intentions, it must now be categorically stated that the KPR and home guard community policing initiative has, on the contrary, aided in the fuelling of crime and livestock theft among the pastoralist communities.

Militarism and the Emergence of Cattle Warlordism

The weakening of state control over the pastoralist region has resulted in the emergence of cattle warlords who run armed militias to protect their interests. The militarism and emergence of cattle warlordism was first experienced among the Pokot and Turkana communities from the 1980's onwards. The first cattle warlord emerged in the 1980's from the West Pokot community, having recruited about 500 young men who underwent military training complete with relevant raiding techniques. The first raiding missions were held in Tugen, Marakwet and Keiyo and later spread to the Turkana, Karamajong of Uganda, and Toposa of Ethiopia.²⁷

The system of cattle warlordism has gained prominence over the years for various reasons. First, there is the fact that the high numbers of destitute, uneducated youth who are desperate to eke a living by any means necessary have proven an easy recruitment ground for the warlords. The warlords keep the youth as retainers who are in turn used for livestock theft for financial gain of the warlords. The second reason is due to the Government's failure and/or unwillingness to curb the spread of warlordism through its security systems. In its second fact-finding mission to Samburu and Isiolo, the KHRC team was reliably informed that the cattle warlords work hand in gloves with some government security agents in propagating livestock theft. The KHRC team was

²⁷ Joshia O. Osamba, *The Sociology of Insecurity: Cattle-rustling and Banditry in North-Western Kenya*, at 25.

informed that the cattle warlords have become increasingly powerful and that even in instances where stolen livestock has been intercepted by non-complicit junior security officers, the same have been called with express “orders from above” to let the stolen livestock free.

Political Influence

Bad politics has also been blamed for the spread of the practice of livestock theft among the pastoral communities. Most of these political leaders are normally anointed by their respective ethnic spiritual leaders and as a result, the communities that they represent follow and obey what their leaders tell them faithfully. Some of the political leaders abuse the hallowed positions they occupy in their communities to mislead their people and/or incite them against other communities, thereby contributing to an increase in tension among the different communities. Further, some of the political leaders have been reported to influence the appointment of KPRs and home guards their communities. These “yes men” of the respective politicians are more likely than not to act in a way that advances the interests of the said individual politicians as opposed to advancing the interests of the whole community.

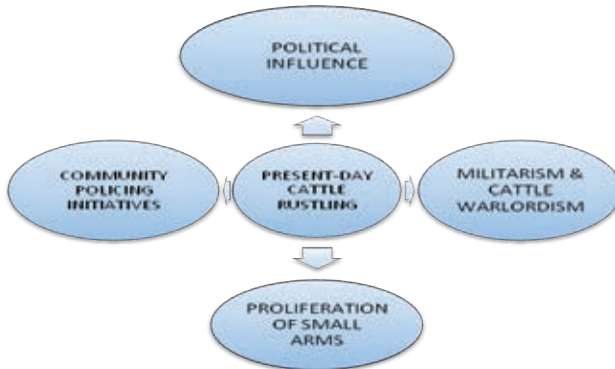


Figure 5: The Major Causes of Present-Day Cattle-rustling In Kenya.

2.3 Effects of Cattle-rustling on the Social, Economic and Political Fronts

Endemic cattle-rustling and livestock theft among the pastoralist communities have led to the following outcomes on the pastoralists’ socio-economic and political fronts.

Insecurity and Systemic Violations of Human Rights

Livestock theft has been reported to be one of the major causes of insecurity in the pastoralist areas in Kenya and its neighboring communities. Livestock theft has affected mainly the Turkana, the Samburu, Pokot, Rendille, Tugen, Marakwet and Keiyo communities. The many years of government’s negligence in security intervention has been attributed to the high levels of insecurity in the area. Even where the state has intervened by sending its security troops, reports of gross human rights violations have been reported, with the security agents being the greatest perpetrators of the violations. Reports of cases of rape, torture, loss of property and even loss of lives have been recorded at the hands of state security agents as well as by non-state actors as was witnessed in the Kanampiu attacks of September 2009. The following tables and figures (drawn from the list given to KHRC of the deceased members of the Samburu community following the Kanampiu attack) is illustrative of the violation of the right to life as well as to the right to safety and security of the individual person in the ASALs.

List of those who lost their lives from the Kanampiu Attack of September 2009

	Name	Sex	Age
1.	Lende Lesoila	M	18
2.	Lenkeireta Lesoilan	M	8
3.	Loiramram Lortianya	M	18
4.	Somintan Letoore	M	18
5.	Nashiba Lolpetai	M	21
6.	Mpeinat Lekiriampu	F	23
7.	Longiro Lesaibile	M	50
8.	Lodika Lesaibile	M	40
9.	Nalotu Lesaibile	F	35
10.	Roipan Leiririo	M	8
11.	Ntarkaunya Lekirenyei	M	30

	Name	Sex	Age
12.	Lpaalua Lekirenyei	F	30
13.	Mingani Lekirenyei	M	8
14.	Lekaimoru Lekaldero	M	18
15.	Simon Lekadaa	M	21
16.	Lekadaa Lekemewa	M	20
17.	Kotikany Lengolooni	M	21
18.	Saaya Leterewa	M	20
19.	Titoo Leterewa	M	8
20.	Taria Lesingiran	M	8
21.	Mpaapin Lekirenyei	F	25

Persons who suffered injuries during the Kanampio Attack

	NAME	SEX	AGE
1.	Meseyeki Leiririo	M	45
2.	Putunye Lolkokoyo	M	18
3.	Loituuta Lolkokoyo	M	18
4.	Signae Lengalae	F	8
5.	Adan Lekumo	M	8

	NAME	SEX	AGE
6.	Lenadokie Lekumo	F	22
7.	Ledonyio Kansas	M	50
8.	Lekempewa Lekadaa	F	50
9.	Paam Lekaldero	F	8
10.	Ntiwai Lenchodor	M	18

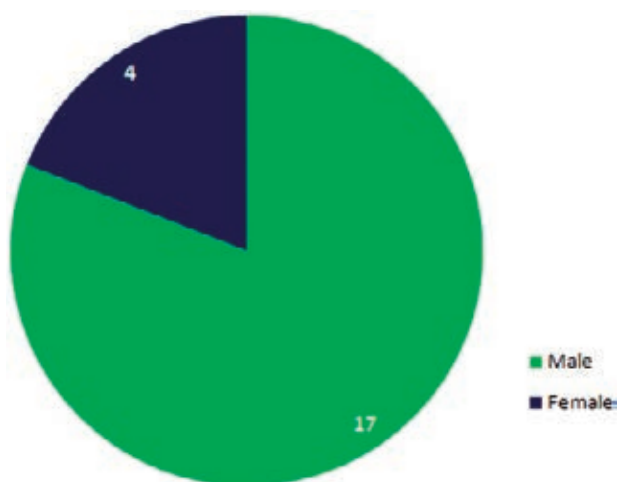


Figure 7: Pie chart demonstrating the actual number of fatalities by sex in the Kanampio attack.

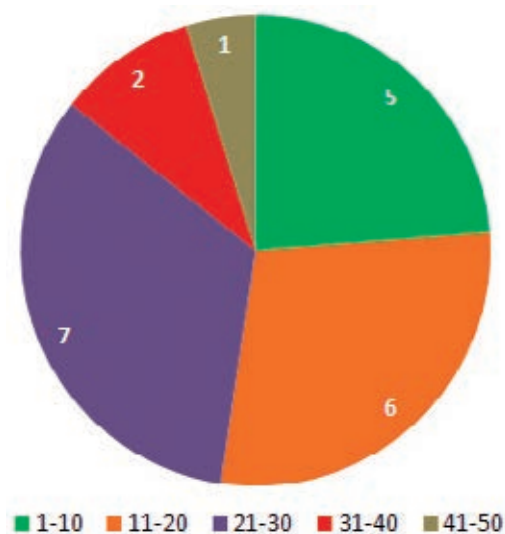


Figure 8: Pie chart demonstrating the fatalities by age (years) in the Kanampio attack.

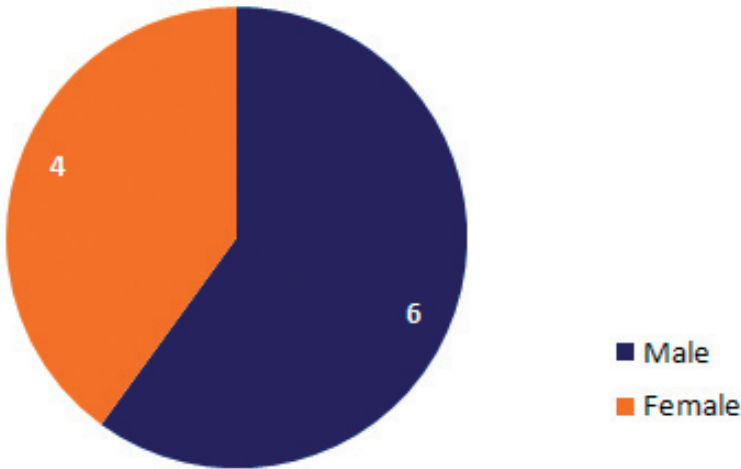


Figure 9: Actual number of injured by sex in the Kanampio attack

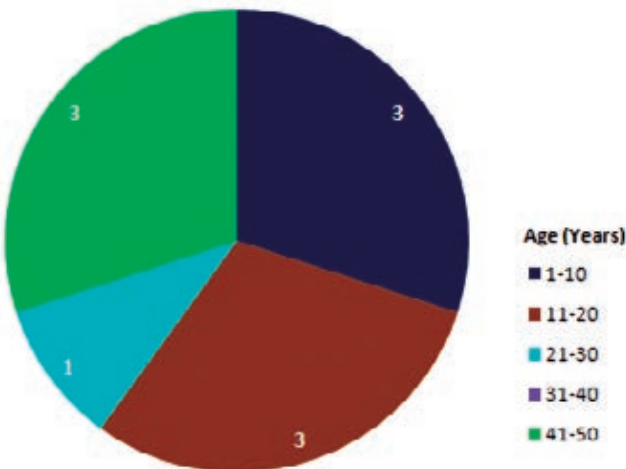


Figure 10: Kanampio attack, injured by age (years)

Persistent Economic Hardship

The practice of livestock theft has led to poverty and despair amongst the affected communities. In the 1980's, 80% loss of livestock was reported among the Turkana and Pokot communities. By 1982, over half of the Turkana population (180,000) was seeking refuge in refugee camps depending on relief supplies.²⁸ Today, the pastoral communities continue to face great financial hardships due to, among others, persistent marginalization and the increase in incidents of livestock theft. The practice of livestock theft has continued to

²⁸ Markakis, J. (ed) 1993. *Conflict and the decline of pastoralism in the Horn of Africa*, as discussed by Joshua O. Osamba, *The Sociology of Insecurity: Cattle-rustling and Banditry in North-Western Kenya*, at 31.

impoverish the pastoralist communities, and with the recent commercialization of the practice, it is only the unscrupulous traders who benefit at the expense of the local communities.

Endemic Under-development

The rise in cattle raids amongst the pastoralist communities remains a disincentive to the government and other stakeholders to invest in the region. This has thus contributed significantly to the successive marginalization in the region, with development projects being instead diverted to other 'stable' regions. The ASALs regions have thus been characterized with poor road networks and communication systems, few industries, schools and healthcare facilities. However, the government has in the recent past put in place initiatives that seek to empower these communities as shall be discussed below.

Effects of Cattle-rustling

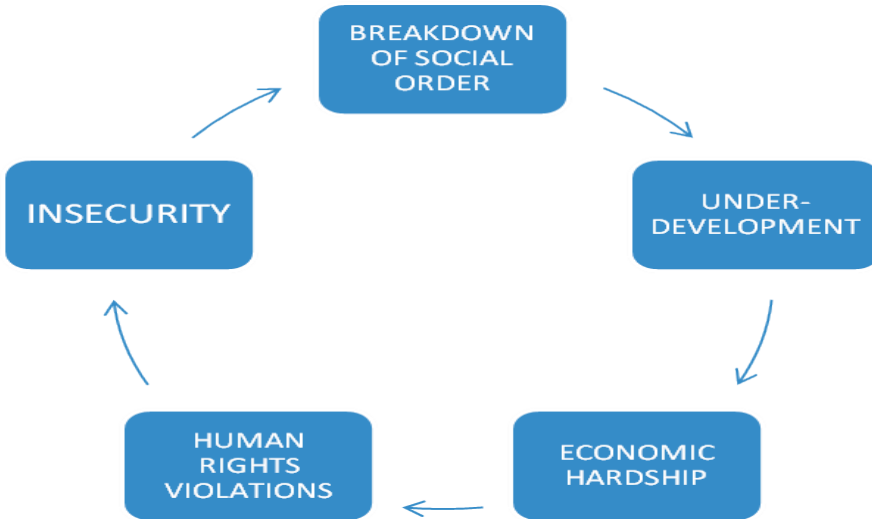


Figure 6 : Graphical Illustration of the Economic, Social and Cultural Effects of Cattle-rustling.

Chapter Three

3.1 The Legal Framework Relating to Cattle-rustling

In order to understand the role of the duty-bearers with respect to their responsibility in curbing cattle-rustling, it is important to highlight the key legal provisions that guide and/or obligate the State and other stakeholders to put in place measures that ensure the rights of the pastoralists are protected and that the problem of insecurity and cattle-rustling are effectively addressed. This section shall briefly discuss the normative framework at the domestic, regional as well as international levels applicable to cattle-rustling and livestock theft.

3.1.1 The Domestic Legal Provisions

i) The Penal Code

The Kenyan legal system does not recognise cattle-rustling as a crime under its Penal code but the same has however been categorised under theft, and Section 278 of the Penal Code provides for a maximum sentence of 14 years for the theft of stock. Cattle-rustling has however been recognised in other Acts such as the Fire Arms Act (Cap 114), the Stock and Produce Theft Act (Cap 355), the Meat Control Act (Cap 356), the Branding of Stock Act (Cap 357) and the Hides, Skins and Leather Trade Act (Cap 359).

ii) The Stock and Produce Theft Act

The Stock and Produce Theft Act specifies under Section 9 (1), that:

Any person who has in his possession any stock which may reasonably be suspected of being stolen or unlawfully obtained shall, if he fails to prove to the satisfaction of the court that he came by the stock lawfully, be guilty of an offence and liable on conviction to the penalties prescribed for theft.

The omission by the legislature to recognise cattle-rustling as a crime has been blamed for the ineffective curbing of the crime within the judicial system. This is because those engaged in the act are usually charged with the crime of stock theft which carries with it a lesser sanction of not more than 14 years, yet, in many instances, cattle-rustling involves the use of weapons and force. Community elders and other stakeholders have thus argued that if no special crime of cattle-rustling is legislated, then those suspects should be charged with the more grave offence of robbery with violence, which carries a life imprisonment sentence.

iii) **The Constitution of Kenya**

The new Constitution of Kenya has enhanced human rights protection as the same has enshrined the Bill of Rights as provided for under Chapter Four. Key among the rights to be protected includes:

- ◇ **Equality and freedom from discrimination, Article 27:** This provision states that all persons shall enjoy equal protection of the law and the State shall take such measures, including affirmative action initiatives designed to redress any disadvantage suffered by individuals or groups because of past discrimination. Successive marginalisation of these pastoralist groups has been evident within the pastoralists, and the Government's affirmative action initiatives have not been fully implemented.
- ◇ **Freedom and security of the person, Article 29:** of relevance is the right not to be subjected to any form of violence from either private or public sources. Cattle-rustling often entails violence and violations of human rights, which is largely either due to the unwillingness or inability of the State to protect its citizens from such violence.
- ◇ **Protection of right to property, Article 40:** the State is obliged to protect the property of individuals or a group of persons. The practice of cattle-rustling deprives the victims of their property and the State must therefore put in place measures aimed at the protection of their said cattle and other property. Many pastoral communities claim that their communal land has

continued to be encroached by the State and private developers, hence depriving them of their property. This issue needs to be investigated and remedied, as it is in violation of the pastoralist's right to property. The Bill of Rights under Article 40 clearly provides for adequate compensation in the event the government compulsorily acquires the said communal land.

- ◇ Further, the **Bill of Rights** recognises, under **Article 56**, the special needs of the minorities and marginalised groups, and obligates the State to provide affirmative action initiatives including, inter alia, ensuring their participation in governance and other spheres of life, special opportunities in educational and economic fields and reasonable access to water, health services and infrastructure.

3.1.2 Provisions at the regional level

i) Protocol on the Prevention, Combating and Eradication of Cattle-rustling in Eastern Africa

Eleven member states of Eastern Africa, informed by the negative social, cultural and economic consequences of cattle-rustling within its borders, came up with the Protocol (Kenya is a signatory to the protocol, which is yet to be ratified by the member states) on the Prevention, Combating and Eradication of Cattle-rustling in Eastern Africa. The Protocol seeks to make member states undertake certain measures aimed at the ultimate eradication of cattle-rustling. Some of these measures include:

- ◇ Legislative measures, including the recognition of cattle-rustling as a serious offence within their domestic laws and developing legislation with respect to cattle-rustling.
- ◇ Livestock identification systems such as standardised systems of branding and keeping of records.
- ◇ Improved development and increased awareness amongst pastoralist communities.

◇ Joint combined operations across the borders and mutual legal assistance.

ii) **The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa**

Further and still at the regional level, a key normative framework for combating the militarization of cattle-rustling is the *Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa*²⁹. Popularly known as the **Nairobi Protocol**, Kenya signed the protocol in April 2004 and ratified it in June 2005. Kenya further signed, in May 2005, the associated Nairobi Protocol Best Practice Guidelines to assist in the implementation of the Protocol. The Protocol was drafted based on the realisation that the proliferation of illicit small arms and light weapons was a major concern in the region and a major cause of human rights violations and breach of the rule of law and good governance. The main objective of the Protocol is to prevent and combat the proliferation of illicit small arms and light weapons, through measures such as legislative intervention, strengthening sub-regional co-operation of state security agents and control of civilian possession of ammunition, among other measures.

3.1.3 International Provisions

Whereas at the international front little has been drafted on the specific issue of cattle-rustling, the same may be seen in the context of protection from deprivation of property and the special and unique problems faced by indigenous people. The pastoralist communities in Kenya, namely, the Turkana, Rendille, Borana, Maasai, Samburu, Ilchamus, Somali, Gabra, Pokot, and Endorois have been referred to constitute the indigenous community in Kenya.³⁰ These indigenous groups are therefore protected by various international instruments, namely:

i) **International Covenant on Civil and Political Rights (1966)**

Article 27 states, “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the

²⁹ A copy of the Protocol may be obtained online at <http://www.recsasec.org/pdf/Nairobi%20Protocol.pdf>

³⁰ Joint NGO Submission to the Human Rights Council, Universal Periodic Review Mechanism, UPR 8th Session, 10-21 May 2010, Review of Kenya at 2.

right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

ii) International Covenant on Economic, Social and Cultural Rights (1966)

Obligates State Parties to ensure that everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights, including food security (Article 11) and right to education (Article 13). The pastoralist communities have over the past many years faced food insecurity, with long spells of famine and drought. Further, they are normally deprived of other social amenities, such as proper health facilities and provision of educational institutions.

iii) International Convention on the Elimination of All Forms of Racial Discrimination (1965)

Article 2 (2) of provides that, “States Parties shall, when the circumstances so warrant, take in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.”

3.2 Kenya’s Compliance with its National, Regional and International Legal and Normative Obligations

As mentioned herein before, Kenya has in place a new constitution which calls for more proactive measures in eradicating the systemic marginalization that the pastoralist have suffered over the years. What is more, Kenya is a signatory to the *Protocol on the Prevention, Combating and Eradication of Cattle-rustling in Eastern Africa* and has ratified the *Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa*. Similarly, Kenya is bound by its international law and treaty obligations and must take measures to ensure both the domestication and realization of the same for its citizens.

However, having a progressive constitution and signing and/or ratifying a number of regional and international instruments is not enough. A cursory look at Kenya's compliance with its domestic as well as regional and international legal obligations reveals that Kenya has not done enough to meet its obligations. For example, at the domestic level, Kenya has failed to recognise the act of cattle-rustling as a serious criminal offence within her Penal Code. A lot needs to be done to repeal Kenya's old redundant laws that touch on cattle-rustling and with a focus on harmonising them with the position held at the regional and international levels.

Some positive measures have however been undertaken by the Government of Kenya to resolve the problem of cattle-rustling with respect to matters of conflict management and peace building. This is in compliance with Articles 8 and 14 of the Protocol on the Prevention, Combating and Eradication of Cattle-rustling in Eastern Africa, which provides for public education and awareness programmes and settlement of disputes respectively. This has been achieved through the establishment of the *National Steering Committee on Peace Building and Conflict Management*. Further, the establishment of the *Kenya National Focal Point on Small Arms and Light Weapons* is aimed at achieving the objectives of the Nairobi Protocol within the Kenyan borders. However, both are plagued with capacity issues. The Government needs to invest adequate resources if these two administrative bodies are to effectively discharge their mandates.

Chapter Four

4.1 Intervention Groups: Their Role and Challenges in Curbing Cattle-rustling

The KHRC was able to conduct interviews with a few intervention groups, both with the duty bearers and the rights holders as well as civil society partners involved in issues related with cattle-rustling with a view to getting a deeper insight into the problem of cattle-rustling and how the same can be eradicated.

4.1.1 The Government of Kenya and its Agencies: The Duty-Bearers' Perspective on Cattle-rustling.

Interview with an Officer at the National Steering Committee on Peace Building and Conflict Management

In a brief background, the Officer³¹ explained that the establishment of the National Steering Committee on Peace Building and Conflict Management (NSC) under the Office of the President was necessitated by the rise in incidences of conflict between communities over scarce resources and ethnic-based violence. The NSC brings together different Government ministries, civil society organisations and other stake holders by providing guidelines for them to mainstream the conflict and peace-building agenda in their policies, plans and projects. The NSC further works with IGAD states on the conflict and early warning mechanisms within their borders and liaises with the District Peace Committees at the district levels (now Counties) to promote peace.

The officer further explained that the increase in illicit arms can be traced to the porous nature of the country's borders and the recent commercialisation of cattle-rustling where naked greed for money by some individuals has distorted

³¹ Interview held with Mr. Kiarie, National Steering Committee on Peace Building and Conflict Management (NSC) on 6/10/10. Also see the Standard Guidelines and Terms of Reference for Peace Structures in Kenya.

what was culturally acceptable (i.e. the practice of cattle-rustling) into a criminal activity. However, lamentation about greedy individuals distorting the cultural practice of cattle-rustling is not a solution. As noted by a senior government official, the biggest challenge is that even where the said greedy individuals have been identified, no decisive action has been taken by the Government to bring the said individuals to book.³² Therefore, rather than complaining about greedy individuals, the government should move with speed to arrest and charge in courts of law all those implicated in the criminal activity of livestock theft.



The Government needs to provide more mobile schools and strengthen the school-feeding programs to encourage more young people to attend schools.

In a summary of the Government's efforts, the officer further stated that the Government has set up Administrative Police camps in many of these hot spots, to improve on security and for disarmament processes. A caveat must be added to this assertion from the government since the KHRC fact-finding team found out that the provision of security in the ASALs is grossly inadequate. Oftentimes, the Administration Police officers posted to the ASALs view the postings as some kind of punishment given the harsh survival realities in these regions and the poor supply of sufficient personnel and/or equipment necessary to carry

³² Refer to Hon. Simeon Lesirma's interview in, "*The Business of Violence*" a Documentary by KHRC on cattle-rustling.

out effective policing work in these regions. Therefore, while the government has made some efforts in establishing security posts in the ASALs, a lot more still remains to be done, especially in terms of providing adequate numbers of security personnel and equipment in the ASALs.

Finally, in order to respond to the ever changing needs of the pastoralists, the Government has strengthened the mobile schools and school-feeding programs to encourage more young people to attend schools. Other intervention mechanisms include the introduction of the Stimulus Package of 2009 targeting marginalized communities and the initiation of the Alternative Livelihood Programs which seek to empower and protect these communities. While introduction of the Stimulus Package is a noble idea, extra accountability must be demanded from those who are charged with implementing this project so that we do not end up with cases of gross mismanagement of public funds as has been the case with the CDF funds.

Other Government Initiatives and Intervention Mechanisms

Successive marginalisation of the pastoral communities over the past political regimes has been largely blamed for the increase in insecurity in the pastoral regions. However, in the recent past, the Government has come up with initiatives that it hopes will either directly or indirectly have a positive effect on curbing the rustling menace. The following sums up some of the government's recent efforts:

- ◊ The establishment of the Kenya National Focal Point on Small Arms and Light Weapons, also operating under the Office of the President, is another initiative aimed at curbing the proliferation of illegal small arms and light weapons within Kenya and its borders. It has been realised that the numerous numbers of weapons in the region has contributed significantly to the rise of livestock theft in Kenya. Since it signed the Nairobi Declaration in 2000, the government has engaged in the burning of firearms in public to raise public awareness on the dangers of small arms and light weapons. A recent example is that of March 2010, when, during a public ceremony to commemorate the signing of the Nairobi Declaration on Small Arms and

Light Weapons, a total of 2,545 firearms were destroyed at Uhuru Gardens in Nairobi.³³ However, the biggest problem with the burning of the recovered arms in public is that the exercise does not seal the porous borders through which thousands of guns are smuggled into the country every year. Again, just like the infamous burning of ivory at Uhuru Park by former President Moi did not stop elephant poaching, burning of guns in public at Uhuru Park by the Ministry of Internal Security and Provincial Administration is nothing but a cosmetic move that will not stop the infiltration of guns into the country. However, just like the deployment of serious professionals and adequate anti-poaching measures by the Kenya Wildlife Service eventually led to a reduction in the poaching of elephants, it is only the deployment of serious professionals and the effective manning of Kenya's porous borders by the Ministry of Internal Security and Provincial Administration that will see a reduction in the number of illicit small arms entering the country.

- ◇ The establishment of the Ministry of State for the Development of Northern Kenya and other Arid and Semi-Arid Areas under the Office of the Prime Minister has been seen to be an affirmative action by the state to improve the general development of the ASALs. With the establishment of the Ministry, a lot of improvements have been noted, such as improved infrastructure, increase in the number of mobile schools, initiation of school feeding programs and alternative livelihood projects. However, the Ministry of Northern Kenya still remains grossly under-resourced given the herculean task it is supposed to perform in bringing about tangible economic development in the ASALs. What the government must do is to get its priorities right—like cutting its spending on the Ministry of Defence since we are not at war with our neighbours and are not likely to be if the way the State handled Uganda's provocation over Migingo Island is anything to go by—by injecting more money into the Ministry of Northern Kenya so that it can effectively discharge its mandate.

³³ Augusta Muchai, Disarmament and Destruction of Firearms not a Panacea to Insecurity in Kenya, 22 April 2010, Project Head, Pastoralist Security Programme (PSP), ISS Nairobi.

- ◇ The Arid Lands Resource Management Project II is a community-based drought management project of the Kenya Government that utilises a credit facility from the World Bank. Its core functions include, *inter alia*, to co-ordinate the mobilization of resources for drought management and empower communities to effectively manage their own development. With proper management of drought, resource scarcity will be reduced, and this will have a positive effect on the reduction of cattle-rustling as death of cattle will be reduced and so will the scramble for natural resources such as water and pasture. The Government should follow up on similar initiatives to ensure that the provision of relevant facilities—like the construction of adequate abattoirs in the ASALs—is speeded up.



Media and KHRC team interviewing members of the Provincial Administration in Wamba, Samburu .

- ◇ Disarmament initiatives through the support of the provincial and district administration, in collaboration with the Ministry of Internal Security and Provincial Administration. A series of these initiatives have taken place, and the same have been somewhat successful since they were conducted with no major incidents of human rights violations on the pastoralist communities being recorded. One of these disarmament initiatives that the KHRC was able to obtain a full recording of was the one conducted

in Isiolo on December 30, 2009. A total of 440 guns and 2,150 rounds of ammunition were surrendered by the residents of Garbatula and Isiolo regions, while 381 guns and 10,000 rounds of ammunition were obtained from the KPRs. However, a big challenge still remains since some members of the pastoralists communities feel that they are being targeted for disarmament while their neighbours are left to own guns. If the disarmament exercise is to register any measure of significant success, then the exercise must be carried out simultaneously for all communities without any favouritism being extended to one or more communities over another or other communities.

4.1.2 Civil Society Organisations and Other Development Partners

The civil society, both at the local and regional front, has played a key role through different intervention mechanisms aimed at curbing cattle-rustling. The KHRC tapped into the information provided by these organisations on the work they are doing in the ASALs in compiling this report. Some of the organisations that the KHRC held interviews with on the issue of cattle-rustling include the following:

The Institute of Security Studies

The Institute of Security Studies (ISS) has, through its Mifugo Project, facilitated the signing, domestication and implementation of the Protocol on the Prevention, Combating and Eradication of cattle-rustling in Eastern Africa. The ISS has been able to contribute to the curbing of cattle-rustling through its various programs such as training and capacity building of law-enforcement officers, conducting rigorous research into cattle-rustling, conducting community outreach and promoting regional legal co-operation on matters related to finding a lasting solution to the problem of cattle-rustling. In an interview with one of its officers³⁴, ISS contends that the root cause of cattle-rustling is non-governance and lack of intervention by the Government in the affected areas.

³⁴ Interview held with Abeba B. Amene, Civil Society and Community Outreach Officer, Institute for Security Studies, on 6/10/10.



KHRC Members of staff at a focus group discussion at Lonyek, Samburu.

In terms of gun infiltration into Kenya, ISS avers that the history of gun infiltration may be traced back to the collapse of the Idi Amin era, where the Karamoja cluster was able to acquire guns from the ensuing internal security disruption in Uganda. However, ISS notes that even before the introduction of modern guns among the pastoralist communities, the Turkana community already had homemade guns. Nevertheless, it is the introduction of automatic guns from the Karamoja cluster that led to the upsurge of cattle-rustling among the pastoralist communities. The situation has further worsened by the community policing model, as the KPRs and home guards who were supplied with guns by the government have been corrupted and can no longer be held accountable in the use of the guns. Further, political interference in the area has contributed to the fuelling of tension and hatred amongst the warring pastoralist communities.

The Nairobi Peace Initiative (NPI-Africa)

In an interview held with an officer of the NPI-Africa³⁵, he revealed that through their Peace Building, Healing and Reconciliation Program, they engage the warring pastoralist communities in peace building forums. They further liaise

³⁵ Interview held with Peter Maruga, Co-ordinator, Peace Building, Healing and Reconciliation Program, NPI-Africa on 5/10/10.

with other CBOs on the ground to contribute to peaceful resolution of conflict among the pastoralist communities.

The Africa Peace Forum

Further, the Africa Peace Forum contributes through, among other ways, liaising with the Kenya's Conflict Early Warning and Response Unit (CEWERU).³⁶ It works closely with the District Peace Committees in the affected areas. Developmental partners have also contributed significantly through giving of grants for research on issues affecting pastoralists as well as initiating development projects in the ASALs to encourage other sources of livelihood.

4.1.3 The Media

The media has contributed significantly in highlighting the dire plight of pastoralists through exposing the extent of the cattle-rustling problem in Kenya. This they have done through covering the repercussions of cattle-rustling raids, through interviews and talk shows bringing together stakeholders and other actors to discuss the problem of cattle-rustling. The media have however been criticised by civil society organisations and pastoralist communities in that in some instances, their reports are presented in a manner which aids in the fuelling of tension amongst the warring pastoralist communities. One example that KHRC was informed of was the generalisation of guilt for communities in conflict while reporting. For example, the media encourages the collective condemnation of whole communities when it comes to cases of livestock theft even where such acts are committed by a few members of the community. Hence, it is not uncommon to read of media reports stating that 'community X has attacked community Y'. It is noteworthy that not all members of these communities engage in livestock theft and the media should make an effort to isolate the few criminal elements within the affected communities from the rest of the community. The ISS confirmed that they have acknowledged this problem and have trained the media on proper reporting of conflict arising from cattle-rustling and livestock theft.

³⁶ Interview with an official of the Africa Peace Forum on 4/10/10.



The media has contributed significantly in highlighting the dire plight of pastoralists by exposing the extent of the cattle-rustling problem.

4.2 Reports from the Field: The Samburu and Isiolo Raids of September 2009

Following reports of cattle-rustling raid in Samburu on 15th September 2009 in the Kanampiu region and a subsequent raid in Isiolo on 25th September 2009, the Kenya Human Rights Commission conducted a fact-finding mission between 12—16th October 2009 and a subsequent follow-up mission on 24—27th September 2010 in the affected Samburu and Isiolo areas. A brief of the missions is discussed next.

4.2.1 Senseless Killings in Samburu and Isiolo

On 15th September 2009 at around 5.00 a.m, at Kanampiu region of Samburu, an attack was launched by some members of the Pokot community, leading to the death of 31 people, 10 from the Pokot and 21 from the Samburu community. Both members of the Samburu and Pokot communities used guns in this conflict. Members of the Samburu community lay blame of the attack on the Pokot young men, who reportedly numbered about 300 members, and claimed that the motive of the attack was not really livestock theft but a desire to push the Samburus out of their land.

In Isiolo, an attack was reported in Kambi Garba area on 25th September 2009. Three people (one woman aged 43 years and two men aged 60 and 50 years old) from the Turkana community were reported killed. A total of 89 goats were stolen from the victims who were killed as they were herding the livestock. Interviews held by the KHRC reveal that members of the Turkana alleged that the killings were committed by 6 members of the Borana community, 2 Ajurans and 1 Gare. They claim to know the names of the alleged killers even though they did not physically witness the acts of killing. The members of the Turkana believe that the Isiolo attack may have been motivated by conflict over viable grazing land and was meant to isolate as the Turkana community and push them out of Isiolo.

In both attacks, the security agents only came in after the attacks, despite knowledge of constant tension in the areas. That poor collection of intelligence contributed to the attacks, as the security agents could have detected and restrained the impending attacks, cannot be gainsaid. What is more, the fact that no one has been arrested and charged for the senseless killings in Samburu and Isiolo and that no attempts has thus far been made by the government to arrest the culprits behind the killings is a clear indication of the Government's attitude of "normalizing" violence and crime among the pastoralist communities.

4.2.2 Pastoralists Fight as Urbanites Feast: The Commercialization of Cattle-rustling

From the investigations conducted by KHRC in the affected region, it was evident that cattle-rustling has become highly militarized, with guns and bullets being the preferred weapons of engagement. The raids are no longer carried out within the traditionally set norms where bows and arrows were the main weapons of engagement and where the main driving motivation for the raid were either re-stocking or raising enough cattle for bride wealth. What is even more worrying is the fact that the current practice of cattle-rustling involves indiscriminate attacks on woman and children as was witnessed in the Kanampiu attacks.

The intensified use of guns in cattle-rustling has not only led to the loss of lives but is also quickly transforming cattle-rustling into a serious criminal activity.

Informants told the KHRC team that there is a strong commercial motivation in cattle-rustling backed up by powerful personalities in the political, the security and the provincial administration sectors. Oftentimes, these interests are involved in the confiscation of livestock under the pre-text of fighting cattle-rustling only to channel it to markets in Nairobi, Nanyuki, Nyeri, Isiolo, Meru and Gilgil among other towns.

The respondents told the KHRC team that sometimes security agents are complicit in selling stolen or confiscated livestock. They said that following a government operation [done in February 2009] to recover stolen livestock, 4115 heads of cattle were taken from the Samburu, most of which was sold off. So brazen was this act of officially sanctioned theft that respondents from the Samburu community allege that they witnessed their livestock being exchanged for a thousand (KES 1000) per cow at Isiolo. The respondents stated that commercialized livestock has become very normal in the Samburu-Isiolo area. They mentioned that Security personnel at Kina are involved in selling the confiscated livestock.

According to the respondents, the confiscated livestock is sometimes held in parks by security personnel and never returned to the owners. This was the case at Kora where 1000 heads of cattle that were held there were never returned to the owners. The respondents believe that these animals were sold off by the security personnel at Kora.

Some of the confiscated livestock is sold to the Kenya Meat Commission in Mombasa and some of the livestock ends up at the Dagoretti slaughter house. Finally, the respondents also claimed that some business people are using the Boranas to buy cattle for them under this system of stealing under the cover of an official government operation whereby they buy cattle at five thousand (KES 5000/) shillings and keep one thousand shillings (KES 1000) as commission for every animal sold. Evidence of the increasing commercialization of cattle-rustling was further corroborated through reliable sources on the ground which informed the KHRC team that some of the powerful and well-connected cattle warlords collude with security agents to transport large herds of stolen cattle

at night to a slaughter-house in Rumuruti. At times, when the stolen livestock is intercepted by junior security officers, they are forced to set the same free following orders from above.

Sample of Recent Cattle-rustling Raids in Kenya that KHRC has Investigated

15th September 2009: Attacks launched on the Samburus by some members of the Pokot community at Kanampui region of Samburu. No stock theft reported but the attacks led to 31 fatalities, 21 from the Samburu and 10 from the Pokot.

25th September 2009: Three members of the Turkana community (one woman aged 43 years and two men aged 60 and 50 years old) killed at Kambi Garba at around 12 noon. A total of 89 goats were stolen from the victims who were killed as they were herding the livestock. Those interviewed by the KHRC said that the killings were committed by six members of the Borana community, two Ajurans and one Gare.

November 2009: Two members of the Pokot community were killed by the Samburus as the latter tried to restrain the Pokots from entering their grazing ground.

15 November 2009: 11 people were killed in Kisima village in Isiolo in the early morning, in what was believed to be a revenge attack caused by the long drought that hit the area, fuelling competition for water and pasture.³⁷

4.2.3 Guns for Votes: The Role of Politics in the Arming of Communities in Isiolo.

Community leaders in Isiolo told the KHRC team that some politicians were behind the arming of pastoralist communities ostensibly to shore up political support and win political loyalty from certain sections of the community. For instance, they alleged that a prominent politician from the area has contributed to the arming of the Gare, the Ajuran and the Borana community.

³⁷ See further information available online at <http://www.capitalfm.co.ke/news/Kenyanews/11-killed-in-Kenya-cattle-rustling-raid.html>

The respondents further alleged that the said politician got arms from the government after a delegation from his constituency went to State House and were promised guns from the President for self protection. When the guns did arrive, the respondents contended that a total of 300 guns were given to the politician out of which 70% remained in town for the Gare and Ajuran—who hail from the politician’s clan people—and 30% were given to the Boranas.

The respondents alleged that since the guns were given out, the security personnel have become very lax. When conflicts arise, the Isiolo OCS is not keen on intervention and his response is: “*Isiolo mlipewa bunduki mjichunge*” (Isiolo you were given guns to protect yourself). The politics here is that the Ajuran gave the said politician a lot of votes and in return, they wanted guns for protection from the Samburus and Turkanas. Although the guns were given, they have not led to peace but to more conflicts. The issuing of guns was first introduced during Hon. Mokku’s (he served as the MP for 15 years) time and has been carried out to date under the current crop of politicians from the area. The respondents contended that politicians are at the forefront in initiating and inciting gun-conflict in cattle-rustling. The conflicts normally start in Isiolo town, which is also the hub of funding the same.

4.2.4 Summary of Key Findings on a Follow-Up Mission Carried out by KHRC on 24-27th September 2010 in Samburu and Isiolo Regions:-

In the follow-up mission, the KHRC was able to establish that the security situation in both Samburu and Pokot regions had immensely improved since the last major incident at Kanampiu, in September 2009, save for a few isolated security incidences. However, cases of highway robbery incidents between Gachuru and Shaab areas along Isiolo- Meru Highway have been reported to be on the increase, leading to the deaths of 30 people in the past one and half years.

Further, the follow-up mission established that a Government disarmament initiative dubbed, ‘*Operation Dumisha Maisha*’ has led to the successful surrender of 24 arms from Laikipia, 25 arms from Lonyek, 55 from the Ol Moron division and about 700 arms from Isiolo region. However, it was further established that

tension is still rife in the Lonyek location, which is dominated by the Pokot community, with some schools still remaining closed since the September 2009 Kanampiu attack. KHRC would like to ask the Government to restore security in this area so that normal life can resume and so that the schools can be re-opened.

In the Isiolo region, the KHRC team ascertained that civil society organisations and some local political leaders have started tackling the state of insecurity in the region through holding a series of peace meetings. Further, a restructured and more representative security committee team (formed to replace the former that had been marred with allegations of corruption and partiality) has greatly contributed to the restoration of peace and security in the region. The Peace Caravan, a peace initiative launched in April 2010, has covered most of the areas affected by cattle-rustling and has significantly contributed in restoring peace in the areas. However, interviewees who spoke to the KHRC team expressed fears that despite the gains so far made in promoting peace in the area, there are still a few politicians hell-bent on perpetuating conflict in the region and who are therefore keen on watering down the peace processes taking root in the region.

4.2.5 The Business of Violence: A KHRC Documentary on the Samburu -Isiolo Violence

Apart from collecting information from the residents of Samburu and Isiolo, the KHRC also produced a documentary on cattle-rustling based on the interviews given by the residents and other relevant stakeholders. The following is a summary of some of the said interviews:

What some of the Interviewees had to say...



Selina Lemongi, Area Resident “Since individual members could not afford to bury their family members, we decided to bury them in a mass grave. Women and children were killed in the houses.”



Jeremiah Lemiruni, Kanampiu Councillor “Since I was born, I was told by my father that Warani (young men) should fend for themselves...and there is something they call cattle-rustling or raids. Since then, as warani, we would raid cattle and go to exchange them for a bride.”



Macharia Muiruri, Abattoir Manager “The fight is normally over pasture, over water and over zoning-off some areas saying that this area belongs to this community...”



“Cattle-rustling as we know it today should not be about any one particular community. It’s about the amount of time and energy, the number of young people and the factors inspiring them to utilise their energies and their intellect .the issue of abandoning a group of our own citizens to fend for themselves... to find the use for their energies, to find a use for their weaponry, and we have left them for many years, to the extent that they may think its an entertainment. I grew up in a cattle-rustling area, but I went to school early so I know nothing about cattle-rustling.” *Hon Samuel Poghiso, MP, Kacheliba and Minister of Information*



“Look at who is organising these raids, and who is benefiting from the organisation of these raids, because it definitely is not people from these communities who are benefitting... it is people from the community with complicity from state agencies... who have turned it to a money-making operation on the backs of their own people. It’s outrageous and needs to stop, and definitely it needs to be dealt with in terms of criminal activity.” *Muthoni Wanyeki, Executive Director, Kenya Human Rights Commission*



“People hire young people, supply them with guns, collect animals and sell them...there may also be public servants who are involved...pictures have been taken discreetly and given to provincial administration, and no action has been taken...I would like to see these groups that are being reported that they are one the move to go and raid, I would like to see security forces descend on them, capture them, take away their guns...let me tell you, there is nothing more frightening for a pastoralist, than to lose his gun...” *Hon Simeon Lesirma, MP, Samburu West, Assistant Minister, Ministry of Internal Security and Provincial Administration*

Chapter Five

5.0 Way Forward and Recommendations

Various non-governmental organisations and other key stakeholders working with pastoralist communities have in the past given recommendations to the government of Kenya on ways of curbing the cattle-rustling menace. While the government has made some attempts at incorporating some of the said recommendations in their policy documents or work plans on cattle-rustling, KHRC contends that the root causes of the problem have not yet been fully addressed. The KHRC reiterates the fact that the Government is duty-bound to ensure that the socio-economic and political causes of cattle-rustling are fully addressed. The government's duty and responsibility to protect all Kenyans, including those living in the ASALs, has been made even more poignant under the new constitutional dispensation. It is against this backdrop that KHRC make the following recommendation to the Government of Kenya as well as other stakeholders on how the endemic problem of livestock theft in the ASALs can be effectively tackled.

5.1 Recommendations to the Government:

The KHRC therefore calls upon the Government to undertake the following measures urgently in order to address the issues of endemic under-development and poverty in the ASALs:

1. *Provide adequate funding to the Ministry of Northern Kenya so that it may be accomplish the following development goals:*
 - » Improving the infrastructure in the area, including road and communication network in the whole region.

- » Improving the existing social amenities, such as mobile schools, hospitals and dispensaries, taking into account the special needs and nomadic lifestyle of the pastoralists.
 - » Initiating investment and development projects in the region, so as to create employment and other opportunities for the residents.
 - » Empowering and financing the Alternative Livelihood Programs that will ensure comprehensive intervention to the economic problems affecting the region.
 - » Initiating projects on natural resource management, such as projects on best practices on livestock farming in the ASALs.
2. *Encourage close cooperation between the Ministry of Internal Security and Provincial Administration and other stakeholders working in the ASALs so as to:*
- » Bring about a broad-based approach to the issue of conflict resolution in the ASALs through strengthening of existing peace building and conflict resolution initiatives.
 - » Strengthen traditional conflict resolution mechanisms as long as the same are not contrary the state criminal justice system.
 - » Work towards the deployment of adequate state security agents to the affected areas who can effectively restore security in the affected region while respecting the fundamental tenets of human rights.
 - » Enhance a multi-sector approach to the rehabilitation and re-integration of conflict victims among the warring pastoralist communities.
 - » Urgently review the program of Kenya Police Reservists and the home guards in the ASALs, as these have been found to exacerbate conflict in the region.



The Government of Kenya should encourage close cooperation between the Ministry of Internal Security and Provincial Administration and other stakeholders working in the ASALs.

- » Promote gender mainstreaming in all the peace initiatives.
 - » Strengthen the existing community-based early warning system for early action.
 - » Provide timely material support to families displaced by conflict.
3. *Devise effective ways of addressing the issue of illicit arms by:*
- » Empowering the Kenya National Focal Point on Small Arms and Light Weapons to ensure effective implementation of its mandate.
 - » Continuously liaising and collaborating with the neighbouring states to ensure that all the regional states undertake to put measures in place to ensure that the issue of illicit arms across borders is tackled at the regional level.

4. *Establishing an effective legal intervention, through repealing and updating the current legal framework on cattle-rustling to reflect the seriousness of the act of livestock theft as a criminal act punishable under the laws of the land in tandem with the regional and international legal provisions.*
 - » The Government must know that the unjustified loss of life of any Kenyan is a criminal act punishable by law and it doesn't matter at all whether the said life is that of a fisherman on the shores of Lake Victoria, or the life of a coffee or tea farmer in the slopes of Mt. Kenya or Kisii Highlands, or the life of a livestock herder in the expansive Rift Valley or Northern Kenya regions, or the life of a business executive in one of the corporate offices in Nairobi. What matters is that the life of all Kenyans, whatever their station in life or wherever they may be residing in the country, is sacrosanct and the government is duty-bound to protect the same.
5. *Ensuring that the newly created National Land Commission under the Constitution urgently addresses the issue of land demarcation among the pastoralist communities as unclear land boundaries has been found to be a major cause of conflict among the pastoral communities.*
6. *Through the Ministry of Livestock, establishing and improving the current livestock identification systems and record keeping within its borders and working together with the neighbouring states to ensure a standardised system of identification.*

5.2 Recommendations to Civil Society and Other Stakeholders:

Civil society organizations at the grassroots, national, regional and international levels have a key and vital role to play in curbing cattle-rustling and restoring peace and security in the ASALs. This may be achieved through:

- ◊ Liaising with the government through provision of funds and technical know-how and empowering the communities in development projects and investment priorities.

- ◇ Working closely with the pastoralist communities in peace building and conflict resolution mechanisms and discouraging outdated cultural practices.
- ◇ Collaborating with regional organisations in combating the proliferation of illicit arms across the borders of the countries in the Horn of Africa and Eastern Africa.
- ◇ Complementing the government effort in public education and awareness programmes on combating cattle-rustling and by encouraging the education of children and young adults in the ASALs.

5.3 Recommendations to Local Politicians in the ASALs

The politicians in the ASALs should:

- ◇ Work closely across the ethnic-divide to restore peace through holding peace forum and reconciliatory meetings for their constituents.
- ◇ Effectively represent their constituents in Parliament to ensure that affirmative action and development priorities are granted to their regions, especially by pushing the government to meet its ASALs related constitutional obligations as spelled out in Articles 23, 29, 40, 46 and 56.
- ◇ Openly condemn cattle-rustling attacks whenever the same is committed within their region and work with state authorities to ensure reparation of any losses occurred.
- ◇ Cease and desist from being agents of inter-ethnic conflict in the ASALs through arming their respective communities and/or through inciting violence between their respective communities and rival communities or clans.

5.4 Recommendations to the Media

The media should strive:

- ◇ To ensure fair reporting of cattle-rustling and other security-related incidences in the ASALs by avoiding the generalisation of these incidents to the affected communities.
- ◇ To hold talk shows and other programmes aimed at raising awareness and educating the public on the benefits of peace building and reconciliation.
- ◇ Continuously highlight the plight of Kenyans living in the ASALs as a way of keeping the government on its toes in so far as meeting its development obligations to these regions is concerned.

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