



# Evolving Customary Institutions in the Drylands

An opportunity for devolved natural resource governance in Kenya?

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**Drylands and pastoralism**

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*Keywords:*

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## Resource Advocacy Programme (RAP)

RAP promotes and facilitates community access and management of the resources upon which local livelihoods depend. RAP provides a platform for dialogue and shared learning between stakeholders towards equitable outcomes. RAP's work focuses on advocacy for supportive policies at the county and national-levels. It also supports capacity building of customary institutions at the local-level. RAP is based in Isiolo County Kenya and has been working with communities across Kenya's drylands since 2008.

## National Drought Management Authority (NDMA)

The NDMA is a statutory body of the Government of Kenya. It has the mandate to establish mechanisms which ensure that drought does not result in famine, and that the impacts of climate change are sufficiently mitigated.

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Improved governance of natural resources is crucial for building climate resilient livelihoods and economies in Africa's drylands. This paper looks at why the authority and capacity of customary natural resource management institutions has been weakened, and how this impacts on resource governance and climate resilience. Our case study looks at a new hybrid form of customary/formal institution that is emerging as a response to the stagnation of development and increasing conflict around resource access. The paper demonstrates that legitimising and supporting customary institutions can be a more successful and sustainable approach to addressing the 'drylands development deficit' than projects that focus on technical fixes or work in parallel to customary institutions.

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# Summary

Improved governance of natural resources is crucial for building climate resilient livelihoods and economies in Kenya's arid and semi-arid lands (ASALs). Specialised dryland production systems such as mobile pastoralism do not just 'cope with a hostile environment', as commonly perceived. Rather, through livestock mobility pastoralists can harness climatic variability to raise productivity above what would be possible if the environment were more uniform.<sup>1</sup> Good governance of resources in this context means supporting mobility, communal land tenure and reciprocal access to pastures and water across administrative boundaries; and supporting mechanisms for resolving competing claims. In

environments with highly variable and unpredictable rainfall, it is essential that resources are managed by local institutions that, in contrast to centralised decision-making processes, have the capacity and flexibility to respond to rapidly changing conditions on the ground. This paper examines the changing role of customary natural resource management institutions (CNRMIs) in Isiolo County (see figure 1) in response to a range of factors including government policy, increasing climatic variability and social factors. The 'selection pressure' acting on CNRMIs dictates that in order to remain effective they must be able to articulate both with the priorities of local people (through consensus) and conform to the requirements of the state in terms

Figure 1- Map of Isiolo County



<sup>1</sup> See Krätli, S and Schareika, N 2010. Living off uncertainty: the intelligent animal production of drylands pastoralists. European Journal of Development Research, Vol 22, 5, 605-622.



of democratic process and adherence to principles of 'good governance' (which are frequently at odds with traditional institutional management). Achieving legitimacy in the eyes of the State is increasingly important as pastoral communities become more differentiated and consensus becomes more difficult to negotiate without State support for enforcement of CNRMI regulations.

Extensive community meetings, household interviews, and group discussions<sup>2</sup> were conducted in five wards<sup>3</sup> in 2011/12. The research findings established that the breakdown of natural resource governance is one of the key issues undermining community resilience to increasing climatic variability. Efficient management of natural resources is becoming more important as resources come under increasing pressure due to intensifying resource competition, loss of grazing lands to other uses (irrigated agriculture, conservation, biofuel projects), and climate change (more frequent droughts and more erratic rainfall distribution). In this context, improving the efficiency of natural resource management is essential if families in Isiolo County

are to be able to continue to pursue their livelihoods and move out of poverty. Secure land tenure encourages decision-making based on longer-term perspectives whereby short-term gains (at the cost of the environment) can be foregone secure in the knowledge that sustainable use of the land will benefit the community in the longer-term.

The paper reviews the constitutional provisions for granting new more secure forms of community land tenure. Among several pieces of legislation supportive of the role of CNRMIs, the National Land Policy (2009) requires Government to "invest in capacity building for communal land governance institutions and facilitate their operations". Merti Rangeland Users Association (RUA) is presented as a case study for CNRMI transformation in line with the new legislative provisions for devolved governance of natural resources. In examining how Merti RUA has evolved in order to remain relevant and effective in the context of multifaceted change, the paper seeks to draw out the key challenges and avenues for support of this emergent trend for 'hybrid' institutions.



<sup>2</sup> Ten community meetings- 2 in each of the 5 wards for a total of 8 days in each ward; 75 household interviews were conducted across 5 wards; 15 group interviews with women and youth were conducted across 5 wards.

<sup>3</sup> Garbatula, Oldonyiro, Sericho, Merti and Kinna Wards.

# Introduction



It is useful at the outset to define two important terms which are used throughout the paper—'natural resources', and 'natural resource governance':

'Natural resources' – is used for simplicity although it is acknowledged that in the case of land which has been managed by pastoralists for many centuries, this cannot be considered a purely 'natural' resource. Referring to it as such devalues the careful stewardship of rangeland environments by pastoralists. This is an important distinction, particularly in the context of land-use debates where the value added by pastoralism as a land-use system (in terms of tourism, ecosystem services, and conservation) is often ignored.

'Natural Resource Governance' – this definition will be used throughout the paper:

*'the norms, institutions and processes that determine how and by whom decisions pertaining to natural resources are made, and how power and influence is exercised in the implementation of those decisions'*

In order to ground the discussion of CNRMIs, the remainder of this introductory chapter summarises the role of communal land tenure in facilitating a pastoral livelihood and some of the misconceptions associated with it.

Traditionally pastoral land belongs to a group that is linked by decent or cultural affiliation. However, the land is not regarded as private property and those currently controlling access do not have unlimited rights to exploit or exclude others from the land. Key pastoral resources such as water and pastures are available to all pastoralists depending on prevailing conditions. The principle of reciprocity is based on the idea that resource access is something to be negotiated and is part of an on-going mutually beneficial relationship.

Traditional laws protecting the future productive capacity of the land are common to many different pastoral groups. Tree cutting, tree pod harvesting and grazing controls are just a few of the activities governed by CNRMIs. As well as environmental protection, CNRMIs enforce and negotiate dynamic and overlapping user rights which enables herd mobility across vast landscapes. In policy documents and in the literature there is a long running confusion concerning the use of 'open-access resources' as a synonym for 'communal resources' (or similar terms). In reality these forms of land tenure could not be more different. Open-access resources are not subject to access restrictions or differentiated user rights, whereas communal resources are tightly controlled during critical

periods by overlapping, dynamic and differentiated user rights governed by CNRMIs. Birgegard (1994) argues that tenure is a social institution, a relationship between individuals and groups consisting of a series of rights and duties concerning the use of land. In this sense, tenure institutions (such as CNRMIs) touch all aspects of life through their role in supporting household production (and survival in extreme years), political power and cultural expression. Therefore in addition to changing the way that people use land as a productive asset, enforced changes in land tenure can also have profound social and cultural impacts.

Today pastoral land tenure remains poorly understood and respected by African Governments and Western donors. This has resulted in land policies that have undermined the pastoral production system. Communal land tenure enables mobility because it provides an overarching institutional framework within which user rights are dynamic and can be renegotiated based on changing environmental conditions. In the case of the Boran, *Jarsa Dedha* (the *Dedha* council of elders) is a key CNRMI. The *Dedha* council enforce laws and provisions (or *Seere*) which are governed by the *Gada* council (the supreme Boran governance structure). Livestock mobility allows pastoralists to capitalise on transient and scattered patches of pasture at peak nutritive value.<sup>4</sup> A skilled herder maximises the time that a herd is grazing on the best quality pasture by utilising a deep knowledge of the local environment and by managing herd mobility within the limits set out by the *Dedha*. One of the main management objectives of *Dedha* is to ensure that standing forage is preserved for the dry season near to permanent sources of water-grazing is therefore restricted in these areas during periods when alternative grazing resources are available.

Forms of land tenure that restrict herd movements reduce pastoral productivity and increase the risk of livestock death during droughts. An important aspect of *Dedha's* management of communal resources is negotiation of reciprocal use agreements between neighbouring pastoral groups. These agreements are essential in environments with highly variable rainfall because increasing the spatial scale of utilisation reduces variability which, in turn, maximises access to nutritious grasses. Maintaining communal tenure under the control of *Dedhas* is therefore essential to support climate resilient livelihoods and reduce conflict associated with competing claims over resources. Having a tenure system which is flexible enough to incorporate negotiated reciprocal access, and a hierarchy of user rights which allow *Dedhas* to achieve the fine balance between livestock numbers

<sup>4</sup> See for example: de Ridder N and Wagenaar K T. 1984. A comparison between the productivity of traditional livestock systems and ranching in eastern Botswana. ILCA Newsletter 3(3). ILCA, Addis Ababa; Breman H and de Wit C T. 1983. Rangeland productivity and exploitation in the Sahel. Science 221:134–1347; Krätli, S., Schareika, N. 2010 Living off uncertainty: The intelligent animal production of dryland pastoralists European Journal of Development Research, 22 (5), pp. 605-622.

and available resources, is key to a successful pastoral system.

Despite research findings that consistently demonstrate the productive superiority (per unit of land area) of pastoralism compared with commercial ranches in comparable ecological conditions (see Box 1), pastoral production and the communal land tenure arrangements that make it possible are still regarded as obstructions to development. Improved understanding of plant herbivore interactions in highly variable dry environments have debunked the theory that the pastoralist system necessarily leads to overgrazing and land degradation. Several studies have shown that pastoralists do not generally keep livestock in numbers in excess of current economic requirements purely for reasons of pride. Rather, increasing herd numbers between droughts or 'herd maximisation' has been shown to be an effective strategy to avoid herd loss during drought that would push livestock numbers below critical thresholds for herd recovery.<sup>5</sup>

Out-dated views of pastoral land management result in policies that advocate the alienation of vast areas of rangeland for non-pastoral use (commonly, commercial agriculture or the conservation of wildlife) by individuals and the state. Of particular concern is the targeting of lowland or riverine, and in some zones, highland, pastoral resource areas for alternative land uses. These areas are particularly attractive for cultivation or wildlife based tourism and conservation because they are usually the wettest areas in the larger dryland environment. However, the role of these areas in supporting pastoral systems over the dry season or in drought years is not visible to policy-makers. These key resources underwrite the functionality of the pastoral system over vast areas despite the fact that their usage may only be critical every few years.

Before examining some of the transformative processes necessary for CNRMIs to engage effectively with devolved government structures, the next section outlines customary natural resource management institutions of the Boran.

### BOX 1- PRODUCTIVITY OF PASTORALISM VERSUS RANCHING

Modern ranching is often believed to be an improvement over traditional livestock management. Many governments in Africa believe ranches will produce greater quantities and better quality beef and milk than pastoralism. Ranches, which control stocking densities and invest in high-yielding cattle breeds, water development and veterinary inputs, are able to meet the international health standards required for the export trade. But research in Ethiopia, Kenya, Botswana and Zimbabwe comparing the productivity of ranching against pastoralism all came to the same conclusion: pastoralism consistently outperforms ranching, and to a quite significant degree. Whether measured in terms of meat production, generating energy (calories) or providing cash, pastoralism gives a higher return per hectare of land than ranching. Whereas commercial cattle ranching tends to specialise in only one product – meat – pastoralism provides a diverse range of outputs including meat, milk, blood, manure, traction, which when added up is of greater value than meat alone (see table below).

STUDY	PRODUCTIVITY OF PASTORALISM AND RANCHING	UNIT OF MEASURE
Ethiopia (Borana) (Cossins, 1985)	157% relative to Kenyan ranches	MJGE/Ha/yr (Calories)
Kenya (Maasai) (Western, 1982)	185% relative to East African ranches	Kg of protein production/ha/yr
Botswana (De Ridder & Wagenar, 1984)	188% relative to Botswana ranches	Kg of protein production/ha/yr
Zimbabwe (Barnett, 1992)	150% relative to Zimbabwean ranches	US \$ generated/ha/yr

<sup>5</sup> See: Lybbert, T.J., Barrett, C.B., Solomon Desta S. and Coppock, D.L. 2004. Stochastic wealth dynamics and risk management among a poor population. The Economic Journal, 114 pp.750-777.



# Boran Customary Natural Resource Management Institutions

# 2

The Boran of Isiolo County like their kin in southern Ethiopia, derive their customary laws from a general assembly called **Gada**. The *Gada* governing council preserves traditional laws and codes of conduct as well as issuing amendments and additions based on the evolving environmental, social and cultural context. The *Gada* system has a set of laws and provisions (**seere**); customs and culture (**aada**); and norms and values that govern society. The recognition and observance of *seere* and *aada* are still considered vital for the well-being of the community, and the *Gada* Council remains a legitimate institution in the eyes of Borana society. However, adherence to these laws is declining and the power of Borana customary institutions to enforce regulations is being undermined in a number of ways (as described in detail in the next section). The council of elders, which is the custodian of these unwritten rules and regulations locally, no longer has the capacity or authority to enforce them as it had done prior to colonial rule.

Table 1 below summarises the different forms of NR management and their role in the overall natural resource governance system. Natural resource access is governed by the combination of these different institutions in operation at different levels.

## Management of Resources

### Water

The *Dedha* council and other resource governance institutions have to strike a delicate balance between livestock numbers, the supply of water, and the amount/ quality of standing pasture within range of the water points. This process is complicated by dry seasons and droughts of unknown length, and pressure from the community to open grazing reserves as livestock condition and health deteriorates. The wrong decision can spell the end of a livelihood for families with moderate livestock assets.<sup>6</sup>

Table 1- Different jurisdictions of Borana natural resource management

LEVEL OF NR MANAGEMENT	DESCRIPTION
<i>Warra</i>	A <i>warra</i> is a household. Household and herd movement is controlled by the male head of the household- the <i>abawarra</i> , which literally means “the father of the house”.
<i>Olla</i>	An <i>olla</i> consists of between 30 and 100 <i>warras</i> . The head of the <i>olla</i> is called <i>aba olla</i> (“father of the <i>olla</i> ”), who is usually the first man to have founded that <i>olla</i> or is the senior descendant of the person who did so. The <i>aba olla</i> is responsible for the well-being of those who reside in the <i>olla</i> . He decides in consultation with other men about the strategic movement of the <i>olla</i> .
<i>Artha</i>	A small group of <i>ollas</i> - usually two or three only, who may cooperate together in their grazing patterns. They may jointly delineate and fence-off an area called the <i>kalo</i> . The <i>kalo</i> is for grazing calves and must not be used except when grazing in other areas is extremely scarce.
<i>Dedha</i>	This is a wider unit of grazing which is used by different <i>arthas</i> . The satellite grazing camps of different <i>warra</i> (known as <i>fora</i> ) may cut across the boundaries of different <i>dhedas</i> in the pursuit of grass for their animals. The administrators of this level of resource access is a council of elders known as <i>jarsa dheda</i> .
<i>Qunn</i>	Literally meaning ‘transit’, it refers to migrating livestock. <i>Qunn</i> livestock of any pastoralist group have immediate priority at water points but cannot use the same water point twice (livestock may be on their way to market or migrating with a family).
<i>Dhargulla</i>	Literally ‘neighbourhood of the well’. There are many restrictions in these areas e.g. cleanliness- no human can defecate in this area and livestock faeces must be cleared so that it is not trampled into the well.
<i>Aba Ella/ Qonfi</i>	All wells have an owner known as <i>aba ella</i> or <i>qonfi</i> - this is usually the most senior descendent of the man who first dug the well. He and his clan have ‘first rights’ to the well but they do not decide on the rota.
<i>Aba Erega</i>	Use of water from wells and dams is coordinated at the community level by <i>aba erega</i> who is appointed by <i>jarsa dedha</i> . He decides on the watering rotation at each water source. <i>Aba erega</i> literally means ‘father of the rota’.

<sup>6</sup> Strong threshold effects take hold when the herds fall below a certain size- this threshold herd size is dependent on conditions, family size, and support networks. Movement below this threshold involves a switch from livestock accumulation to decumulation dynamics (or entry into a form of ‘poverty trap’).

Different types of water sources are subject to different forms of management. The most intensive management occurs during periods of drought at deep wells and boreholes which require the most labour to operate and maintain, and are the most reliable and productive sources of water. Due to the strategic importance of these resources, management falls to the *jarsa dedha* (the *dedha* council of elders). The use of shallow wells is tightly controlled by both the *aba ella* and *aba erega* (refer to table 1) working together. *Aba ella* assigns 'first rights' to water, based on *konfi* (ownership) and *sunsuma* (clan membership and affiliation). However, if there is spare capacity then 'second rights' to the resource are decided by *aba erega*. Second rights would typically fall to those of a different clan to the owner, while 'third rights' might fall to pastoralists from a different ethnic group (although for those 'in transit' or *Qunn*, first rights temporarily apply). The Borana *aada* (customs and culture) defines not only those who are entitled to access certain wells, but also the order of priority for watering animals among those with entitlement.

In addition to coordinating the watering of community herds at shallow wells, in consultation with the *Dedha* council of elders, *aba erega* also manages use of dams and access to rivers. Generally, use of flowing river water is restricted to the dry season and access is limited to a number of designated watering points. These points are located some distance downriver from any settlements to minimise disruption to inhabitants and to reduce the risk of water contamination. Temporary water sources available during and after the rains are not subject to usage control by the *Dedha* council of elders except when their use conflicts with restrictions on grazing areas e.g. grazing in dry season grazing areas or drought reserves.

## Grazing

The high inter and intra-annual variability of rainfall in most pastoral areas leads to similarly variable pasture availability. Therefore management of grazing resources by pastoralists is done in such a way as to maximise productivity while ensuring livestock survival. The long-term survival of the production system depends on the maintenance of adaptive traits within local livestock breeds, maintaining the resource base, and managing resources strategically. It is only within these broader goals that the concept of 'maximising productivity' has meaning. The mistake that external actors often make when they apply their scientific knowledge to the problem of pastoral poverty, is to prioritise productivity outside of these broader and more important principles. This leads to promotion of cross-breeding (and loss of adaptive traits) and privatisation of rangelands (leading to overgrazing and ineffective management of resources). Maximising productivity in a pastoral context generally means ensuring livestock mobility so

that herds can feed on transient high quality grazing resources for more of the time. To truly benefit from this production strategy, local breeds with highly selective feeding behaviour are required.

Management of grazing resources is principally done by the *Jarsa Dedha* (*dedha* council of elders).

The weak, calving and lactating herds are usually kept around the settlement (*olla*). Mature livestock (known as *gues*) which are not lactating are moved to remote pastures referred to as *mata dhedha*. The *gues*, which make up the majority of community livestock, are herded by young unmarried men. By utilising remote pastures, grazing resources closer to permanent water sources can be preserved for the dry season and periods of drought.

Pasture within the vicinity of homesteads (known as *maar qaae* – literally 'near grass') is protected from grazing by non-lactating livestock (this is similar to *kalo* (see table 1) but a *kalo* reserve need not be next to the homestead). This pasture is set aside for young animals (calves, lambs and kids). Migrating livestock have predefined routes that maintain adequate distance from settlements to preserve each *olla's maar qaae*. Settlement patterns are therefore controlled to some extent by the *Dedha* council of elders in order to preserve key migratory routes. Movement of livestock between different *Dedhas* must be prearranged with the respective *Dedha* council of elders (*Jarsa Dedha*) who assess spare capacity in terms of water and grazing resources. Equally, use of Boran grazing resources by neighbouring pastoral groups should also be negotiated in advance with all affected *Dedha* councils. The failure of other pastoral groups to negotiate access prior to migration is a frequent source of conflict.

The flood plain grazing area known as *chaafa* is a very crucial area for the community because it acts as a refuge for livestock during periods of extreme drought. Grazing in *chaafa* is strictly prohibited during the wet season and one of the critical decisions for *Jarsa Dedha* (*Dedha* council of elders) is when to open *chaafa* for grazing after rains have failed. Due to the relatively moist conditions in *chaafa* compared with the surrounding rangelands, there are a number of additional challenges to animal and human health in the form of trypanosomiasis, ticks, pneumonia, and malaria. *Jarsa Dedha* make decisions on community mobility, primarily concerning seasonal movements from wet to dry season grazing grounds and also the opening of boreholes and *chaafa* to livestock. The overwhelming consensus among households and small groups interviewed as part of this study was that efficient resource use depends on the ability of CNRMIs to enforce these regulations. An ability which has been gradually eroded over time for reasons outlined in the following section.

# Why Have CNRMIs Broken Down Over Time and What are the Consequences?

# 3



Across Africa, pastoralists' rights to the land on which they live have been eroded since colonial times. The broad trend of this change has been a shift from communally managed land, towards nationalisation, group ranches and private ownership. This is evident from the experiences of Kenya, Botswana, Sudan, Somalia and Ethiopia.<sup>7</sup> Despite the inexorable nature of this transition during the 1980s and 90s, there was very little evidence that it resulted in more efficient use of resources. The current consensus is that land privatisation schemes such as that carried out in Maasai rangelands were wholly inappropriate in a highly variable environment where unencumbered livestock movement is central to the efficient use of spatially dispersed and transient grazing resources (Catley *et al.* 2012). Consequently, privatisation led to deterioration in the environmental stewardship of the land and reduced the efficiency of resource utilisation – especially affecting those who remained reliant on drastically shrunken communal land (i.e. the poorest and most marginalised). 'Free-riding behaviour' on the part of land-owners who can effectively use their land as private drought reserves, led to over-grazing and more intensive tree cutting on remaining communal areas.

Fortunately, in the Kenyan policy context, the Land Policy (2009) recognised that the drive towards privatisation of pastoral land undermined CNRMIs. The National Constitution (2010), and National Policy for the Sustainable Development of Northern Kenya and Other Arid Lands (2010) also recognise the need for legitimisation of communal land tenure and CNRMIs.

*"In order to ensure sound land and natural resource management in the ASALs, the Government will: Reinforce the authority of traditional natural resource management systems which promote sound environmental practices" Section 5.4.2.2 National Policy for the Sustainable Development of Northern Kenya and other Arid Lands*

The result of the sustained drive towards privatisation of land has been the fragmentation of a communal resource, creating barriers for livestock mobility, land access, and therefore efficient natural resource management. In addition to the drive for land privatisation, there are a number of other threats to communally managed grazing lands. In Kenya,

land gazetted as national parks and reserves,<sup>8</sup> land appropriated for conservancies<sup>9</sup> or for loan to foreign governments and private companies (often for irrigated agriculture or biofuels projects,<sup>10</sup> and government infrastructure projects e.g. LAPSSET (Lamu Port-South Sudan-Ethiopia Transport) Corridor Project, have also contributed to the shrinking and fragmentation of grazing lands. These processes exacerbate the pressure on customary natural resource management systems, and it remains to be seen if recent reforms to the legal framework will make it easier for communities to contest government land-use decisions, particularly when political interests are at stake.

Loss of grazing lands is only one process which increases the pressure on CNRMIs. Other processes can be grouped under: market integration and social differentiation; third-party enforcement; lack of formal recognition for customary natural resource governance; intensification of existing development challenges; and changing norms and culture.

## Market Integration and Social Differentiation

The trend of consolidation of community livestock into the hands of fewer wealthy pastoralists and the overall reduced productivity of livestock has led to declining milk production for the average family. This is due to several factors including: loss of access/control over high quality pastoral resources, the declining authority of CNRMIs and the effects of successive droughts which have not allowed time for herd recovery. The effect of declining milk production is compounded by reduced access to milk due to a reduction in household mobility (sometimes lactating animals have to be taken significant distances from the family). The combined effect is that fewer pastoral families are able to subsist directly from the products of their livestock (i.e. milk and meat). Aside from engagement in alternative income generating activities, families have increasingly come to rely on favourable market exchange rates between livestock and agricultural products (principally maize flour) to satisfy household consumption requirements. However, during drought the terms of trade between livestock and agricultural products change drastically such that the effects of drought on food security are exacerbated rather than alleviated by increasing market integration. To some extent this process is driven by

<sup>7</sup> See Munei 1987; Taylor 2007; Behnke 1985; Mirreh 1977; Takele, Bashir & Bashir 1994, respectively for examples.

<sup>8</sup> Nearly 92 percent of the land annexed as national parks and reserves, and over 50 percent of forest reserves are found in pastoral areas (Barrow & Mogaka, 2007). Many of these expropriated lands are pastoralist dry season grazing reserves, which generally have higher levels of biomass production or more permanent water sources than surrounding areas, effectively magnifying the impact of land expropriation as a percentage of total grazing land.

<sup>9</sup> See for example: Little, P. 2013- Chapter 3 'We Now Milk Elephants'

<sup>10</sup> For example, the contested Mumias Sugar irrigation project in Tana River County which was approved to sell Certified Emission Reduction (CER) credits under the Kyoto Protocol's Clean Development Mechanism (CDM).

imperfect markets<sup>11</sup> whereby local supply dictates prices rather than national or regional supply (which remains relatively constant except in the case of national/regional droughts).

Under the traditional system, when families subsisted almost completely from their herd, richer pastoralists had a lot of spare milk to exchange with poorer families for labour and common defence of herds. Due to increasing integration with the market, rich pastoralists can afford to 'speculate' on wildly fluctuating livestock prices by selling when prices are high and taking advantage of forced sales during or immediately after drought. These purchased animals can be fattened using hired grazing resources, purchased feed, or by transporting livestock to areas of adequate pasture, for quick resale when prices improve. Such capital-intensive strategies concentrate wealth into the hands of an increasingly small number of wealthy pastoralists. The process of market integration has therefore contributed to creating an increasingly stratified pastoral society. Pastoral customary institutions function through community consensus whereby resources are managed to benefit the community as a whole. As families' wealth levels become increasingly stratified their priorities for natural resource management can diverge significantly making community consensus building more problematic. This further undermines the authority of CNRMIs.

## Conflicting Systems of Governance

Another factor that contributes to the diminished authority of CNRMIs is the increasing role of third party enforcement (police, provincial administration, and general service unit<sup>12</sup>) in the lives of Kenyan pastoralists. As the interests of different families within the community diverge (social differentiation), individuals that are unwilling to abide by the customary regulations can seek recourse with the local authorities by claiming their 'rights' as Kenyan citizens to move anywhere on 'trust land'.<sup>13</sup> The existence of contradictory formal and customary governance structures (particularly with respect to natural resource management) progressively diminishes the authority of CNRMIs. The rich are increasingly likely to make claims based on one or both systems of governance when advantageous in a particular context. If customary rules cease to apply to everyone within the wider community, the rules and the institution itself become progressively marginalised.

## Lack of Formal Recognition for Customary Natural Resource Governance

Under colonial law customary institutions were recognised and supported (albeit selectively). Since independence however, there has been little government acknowledgement and support for CNRMIs. CNRMIs routinely fine people who do not abide by *Dedha* resource use regulations, but offenders increasingly seek recourse with the chief and the police, who do not recognise the authority of customary institutions to issue fines (as described above). The diminished capacity of CNRMIs to negotiate shared or reciprocal access with elders from other ethnic groups (neither institutions can effectively control the actions of their community members), and the lack of ability to exclude competing resource users by force (this is illegal) has a number of knock-on effects. Firstly it means that conflicts are more likely, and secondly, it further diminishes the capacity of CNRMIs to control natural resource use internally (because drought grazing reserves and other regulations are flouted by other ethnic groups so there is little motivation for the host community to respect them). The diminishing authority of CNRMIs leading to more natural resource-based conflict also potentially leads to a vicious cycle due to the key role of CNRMIs in conflict resolution.

## Intensification of Existing Development Challenges

In tandem with these processes of diminishing CNRMI authority, many of the natural resource use issues that these institutions have traditionally addressed are also intensifying – with increasing numbers of people seeking to utilise the same natural resource base, and increasing climate variability bringing more frequent droughts and poorer rainfall distribution (even in good seasons). There is a general perception among communities within Isiolo County that rainfall frequency, intensity and distribution patterns are changing. The same applies to drought which is becoming more frequent and unpredictable. Even elderly respondents who had seen changes in the climate throughout their lifetime regarded the current patterns as unprecedented.

<sup>11</sup> An 'imperfect market' is a market where information is not available to all participants and where the matching of buyers and sellers is hindered or delayed, either by logistical or information barriers. In the pastoral context this refers mainly to insecurity, and infrastructure and transport constraints working in tandem with asymmetrical market information favouring livestock traders.

<sup>12</sup> The General Service Unit is a paramilitary wing of the Kenyan State Military and the Kenyan Police.

<sup>13</sup> Land held 'in trust' for Kenyan citizens by County Councils.

## Changing Norms and Culture

In addition to the widening gap between rich and poor based on increasing market integration, the process of globalisation is also bringing about changing aspirations and cultural norms. Customary institutions have therefore had to face increasing challenges to their authority including disagreement and dissent from community members questioning customary practices and ways of managing resources. The majority of the families in Isiolo County receive World Food Programme food aid, and there is an increasing belief that investment in education is an effective hedging strategy against an unknown future (climate, political, economic, cultural). This is despite evidence that school leavers face significant barriers to compete successfully for jobs.

Both of these trends necessitate proximity to urban centres. This means that dry season grazing areas near to permanent water sources are coming under increasing pressure in the wet season as many settled families lack the capacity (household or extended family labour<sup>14</sup>) or the will to move their livestock to the more distant wet season grazing areas (where they will not benefit from the milk). The result is a reduction in the buffering function of dry season grazing areas to ensure livestock survival during extended dry seasons or droughts. The diminished authority of CNRMIs and the compromised ability to form community consensus, in combination with these changing priorities places CNRMIs in an increasingly weak position to manage natural resource effectively.



<sup>14</sup> The 'paradox' of pastoral youth was highlighted by participants as one of the central challenges facing modern pastoralism. As more and more pastoral children are educated in response to perceived threats to successful pastoral livelihoods (increasingly variable climate, insecure land tenure etc.) this has the effect of creating one of the most pressing threats to pastoral livelihoods, namely the lack of skilled herders able to capitalise on climate variability. A national distance learning programme has the potential to partially address this paradox but has never got past the planning phase.



# Opportunities for Recognition of CNRMIs

4



## Parallel Systems for Managing the Effects of Droughts

Lack of government engagement with CNRMIs compromises the success of government interventions, which do not benefit from the abundant local knowledge embodied in these institutions. The disconnect that exists between community planning and government planning has impacted negatively on both intervention planning and implementation.<sup>15</sup> The importance of customary institutions is not well understood and therefore not adequately factored into formal natural resource governance. Interventions by formal institutions are mainly reactionary e.g. provision of food aid when there is drought. Minimal attention is given to long-term solutions to address food insecurity caused by underlying development deficits (and triggered by droughts and other climatic events). There have been efforts more recently, with the support of development partners, to integrate the formal and informal systems of planning, but delays in mobilising resources on the part of government has compromised any potential gains from this more harmonised approach.

## Government Devolution and Customary Institutions

In examining the role of customary institutions in natural resource management, the rapidly changing political context in Kenya must be taken into consideration. Specifically, the transformation of the national governance architecture through the implementation of the Kenyan Constitution (2010) and the decentralisation of many governance functions from central government to the new County Governments. There is a strong emphasis in the Constitution (2010), the National Land Policy (2009) and the County Governments Act (2012) on empowering local communities and their institutions to take greater responsibility for natural resource governance. This transformation will provide significant opportunities to re-empower CNRMIs and formally recognise and support their management of natural resources. The focus on customary institutions and the need to support their role in natural resource management is also central to the Africa Union Policy Framework for Pastoralism in Africa (2011).

The significance of this opportunity presupposes that revitalised CNRMIs will improve the efficiency and equity of natural resource management and reduce conflict, therefore enhancing the resilience of the community to climate variability and hazards.

As outlined above, this assumption is made based on extensive consultation with communities across Isiolo County through a process of community workshops and small group and household interviews (involving over 600 participants). This paper therefore examines the traditional structure and function of Boran CNRMIs, and taking the case study of the Rangeland Users Association in Merti Ward, explores hybrid forms of CNRMIs and the specific challenges they face in forming an interface between formal and local governance of natural resources. The following sections will examine how these CIs have evolved in order to remain relevant and effective in the context of multifaceted change.

## Case Study – Formation of the Merti Rangeland Users Association



After national independence in 1964 a structure of government appointed chiefs and institutions began to exert increasing control over the governance of natural resources in pastoral areas. Customary institutions such as *dedha* councils were no longer the sole authority on natural resource management issues. Boreholes were sunk in Merti District by the Ministry of Water during the 1970s. After falling into disrepair, they were rehabilitated by ActionAid in the 1990s and control was handed over to the local *dedha* council. In the 1990s the Rangeland Users Association (RUA) was formed (and registered with social services) in order to manage the boreholes in a more formal way. This was deemed necessary because the *dedha* council was not recognised as a formal institution adhering to government or donor standards of financial reporting, membership procedures, communication in English/Kiswahili etc.

<sup>15</sup> See: Allegreti, A. *et al.* 2014 Community and government planning together for climate resilient growth. IIED/Tanzania Natural Resource Forum WEB LINK? (Draft with Teresa)

RUA initially experienced management problems and some instances of corruption. The community quickly demanded a new RUA management committee which was selected during a series of meetings brokered and facilitated by an elder from another area – to ensure everybody had equal influence on the new institutional structure.

By the start of the 2000s however, *de facto* control of many of the boreholes in Merti District had been taken over by the District Steering Group (DSG) who decided when the boreholes should be opened and closed (based on reports from Arid Lands Resource Management Project (ALRMP) as well as District Development Officers (DDOs) and line ministries). During the 2007 drought the chairman of RUA approached the DSG for assistance in purchasing diesel to run the generators at RUA managed boreholes. The response of the DSG chairman (the District Commissioner) was to question why RUA had the authority to open or close a borehole without first consulting the DSG. The chairman pointed out that most people in the DSG meeting had never been to Merti and were therefore not well placed to make important decisions about natural resource management in that area. The DC conceded that RUA was better placed to make such decisions. Following that meeting RUA was given exclusive control of all 5 boreholes including responsibility for storage of pumps and generators during the wet season. Since the radical reform of the RUA management committee, RUA is widely regarded to be effective in managing the boreholes. Based on this success, other areas of Isiolo County have subsequently sought to constitute a registered natural resource management institution with which to interact with government and donors (using RUA as their model). The transformation of RUA has continued and in March 2014 RUA members and management committee agreed to put in place a constitution that will set out institutional procedures.

### How is RUA Supported?

Since the election of the current management committee RUA has been successful in sourcing funding both from government and from international donors (Drought Management Initiative (EU), Cordaid, Ministry for Development of Northern Kenya and Other Arid Lands, Ministry of Water, ActionAid, ALRMP and Vétérinaires Sans Frontières (VSF) Suisse). Some donors have purchased generators and pumps, others have funded diesel, spare parts, generator maintenance, deworming programmes and more recently trucking of water. Other donors have funded meetings and workshops. According to the current RUA chairman, the largest source of financial support has come from the Drought Management Initiative (EU) followed by the Ministry of Water, and Cordaid (through the Merti Integrated Development Project – a local community-

based organisation). In addition to financial support, the Ministry of Water provides technical advice and training if RUA is able to cover travel, food, accommodation etc. for staff. This is a relatively new development after recent efforts on both sides to improve relations between RUA and government technical staff.

- WAPC – put 2 boreholes in drought reserve in the south – they used to truck water.
- RUA has 2 new boreholes in Bambot and another (Daoud forgot name).
- Northern water service board (they do hydrology and digging but then maintenance is upon you (RUA) – has funded the other borehole – but put under management of RUA. Partly due devolution/ decentralisation management of water.

### RUA Structure

According to the RUA constitution, the management committee is meant to be elected every 3 years. Currently, due to funding issues and general satisfaction with committee performance, there have been no elections since August 2007. RUA's jurisdiction covers Merti Ward and Sericho Division (Garbatula Ward). Each of the 8 locations has a *dedha* council although these are not operational and were constituted very recently as part of a VSF project. Each of the 8 locations within this area (6 Merti Ward and 2 Sericho Division) appoint two representatives to the management committee; this group of 16 is supplemented by 2 women and 2 youth representatives. An executive committee is elected from among the management committee, this consists of a chairperson, treasurer, secretary and their deputies and assistants, none of whom are paid but membership of the executive committee was widely regarded by participants to confer significant fringe benefits. The executive committee manages the boreholes and applies for money from the government and from donors. They are subject to audit and provide annual reports to donors. The executive committee appoints a borehole attendant (member of the management committee), pump attendant and a revenue clerk to each borehole, all of whom are paid, they are in attendance whenever the borehole is in operation.

The RUA constitution also specifies that an annual general meeting should be held to review and reflect on performance, to present annual accounts to members, and to elect the management committee (every three years). Due to lack of funds and the advent of drought, the last AGM was held in 2009 and was funded by Cordaid and from contributions from members. The 4 day meeting was attended by 250 members (of the 546 total), local councillors, chiefs and representatives from donor organisations. The total cost was KSh 460,000 (roughly £3,680).





## The Functions and Management of RUA

RUA controls five boreholes: Boji, Urura, Yamicha, Duma and Dogogicha with two new boreholes at Bambot and Machalo soon to become operational (see figure 2). These two new boreholes were funded by the Climate Adaptation Fund<sup>16</sup> and the Northern Water Service Board<sup>17</sup> respectively and will be managed and maintained by RUA. Following chemical analysis of a water sample provided to a government chemist in 2010, use of Dogogicha has ceased due to health concerns about the high sodium content of the water. There are 14 diesel generators owned by RUA, of which 12 were operational at the time of the research. The two most powerful generators (used at Duma which is the deepest borehole at 280m) cost KSh 1.4 million each (equivalent of £11,200), the rest cost roughly KSh 800,000 (equivalent of £6,400). When not in use, the generators and water pumps are stored in Merti Town at a purpose built storage facility next to the RUA office. The photograph above shows the current RUA Chairman – Diba Golecha, inside RUA's generator and pump storage room (next door to the RUA office).

When functional, there are two generators at each borehole running in alternating 8 hour shifts. During severe drought the pumps operate 24 hours a day. During the 2011 drought, the daily fuel cost for one of the shallow boreholes was KSh 5,200 (equivalent of around £41). For the Duma borehole the daily fuel cost was KSh 9,100 (equivalent of around £73). Boreholes were operated non-stop for 7 months after 4 consecutive missed rains. The total fuel cost during this period was roughly KSh 5.2 million (equivalent of £41,496). There were also significant costs associated with staff payments, fuel transportation and purchasing 'fast moving' spare parts such as fuel/oil/air filters and engine oil. In total RUA spent KSh 7.5 million (equivalent of almost £60,000) from February 2010 until the end of October 2011. At the time of writing the RUA management committee were deciding whether to invest in further generators to ensure there are at least 3 at each borehole (to reduce the impact of breakdown) or explore the possibility of investing in solar powered pumps which have been shown to work effectively in the neighbouring county of Wajir.

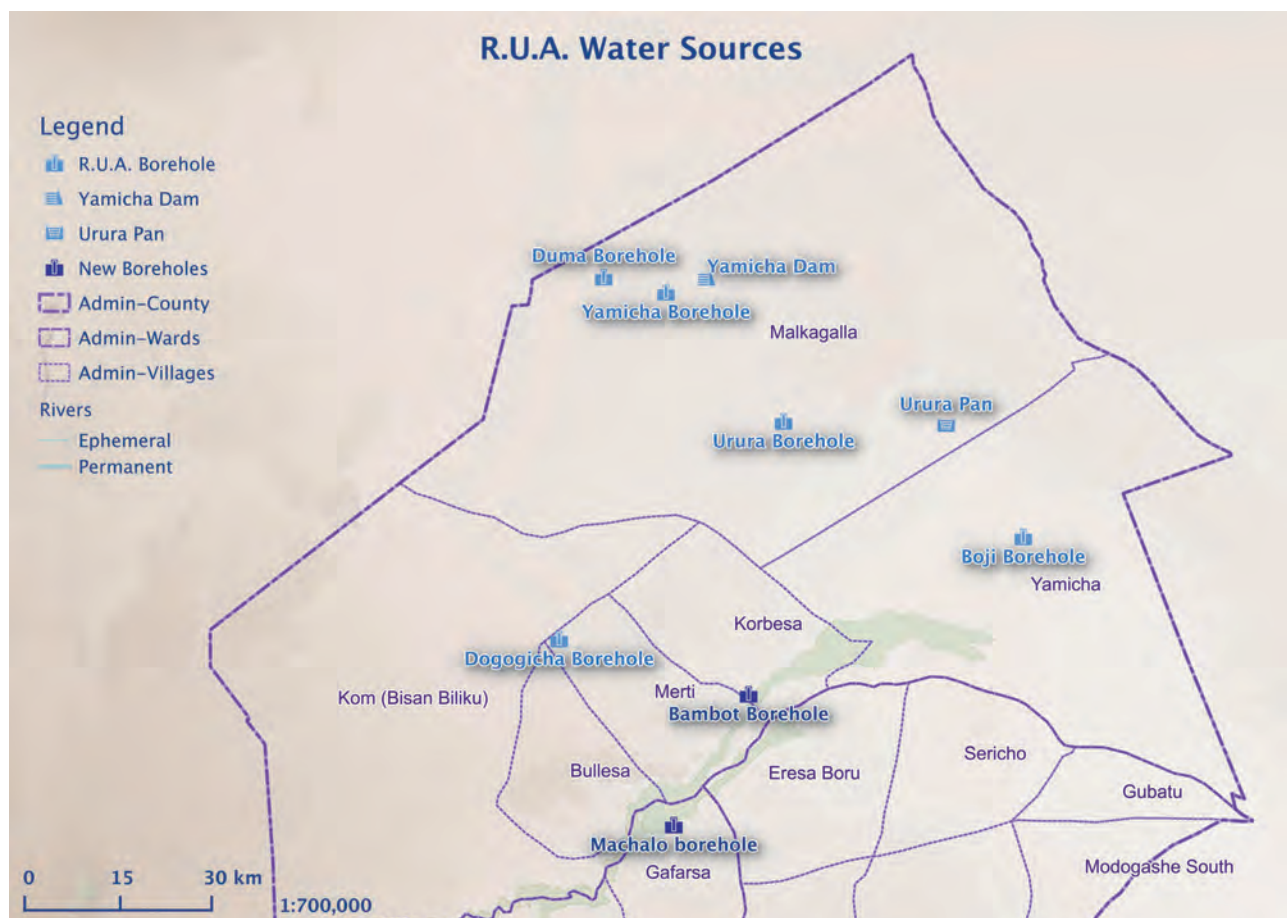
<sup>16</sup> See: <http://pubs.iied.org/pdfs/17161IIED.pdf> for more information

<sup>17</sup> The Northern Water Service Board pays for the hydrological study and drilling the well. RUA will be responsible for maintenance and operational costs

Table 2- Water levies for members and non-members of RUA

LIVESTOCK SPECIES	CHARGE PER ANIMAL (KSH)	
	MEMBERS	NON-MEMBERS
Camel	5	10
Cow	2	4
Sheep or Goat	1	2

Figure 2- Boreholes controlled by RUA An updated version of this figure must be inserted before publication



Water levies are charged at the boreholes and records are kept of how many and which species of livestock use each borehole (additional information concerning the ownership of livestock is also recorded), this is undertaken by the revenue clerk who submits monthly reports to the RUA executive committee. Table 2 summarises the current water levies for RUA members and non-members. In addition to these levies RUA members must pay an annual membership fee of KSh 500. Water for donkeys and for domestic use is not charged, although there are not many families settled near the boreholes.

The boreholes may be opened by the RUA management committee following one missed rainy season but this depends on a number of other factors (grazing conditions elsewhere, petitions made by the community etc.). When the boreholes are opened families are faced with a choice of whether to send their herds to the borehole or move them towards Kinna and Meru National Park. Kinna presents livestock health challenges in the form of ticks and tsetse flies. Paying corrupt KWS officials to access the national park can also be costly and risky. It is a long migration to the boreholes from the Ewaso Nyiro River (dry season grazing area) but as long as the migration begins early



Table 3- Water yields and average number of livestock watered at each RUA borehole under different rainfall scenarios

BOREHOLE	HOURLY YIELD	AVERAGE USAGE	
		(NUMBER OF LIVESTOCK INCL. DONKEYS)	
		ONE FAILED RAINS	TWO FAILED RAINS
Yamicha	9.8m <sup>3</sup>	14–16k	21k
Duma	7.3m <sup>3</sup>	12–15k	18k
Urura	7.6m <sup>3</sup>	12–15k	18k
Boji	3.2m <sup>3</sup>	4–6k	10k

enough it does not present a significant challenge for mature livestock. The main challenge cited by participants was accessing adequate water along the route.

Every family living in Merti Ward and Sericho Division has equal rights to every borehole managed by RUA. Families often combine their herds into larger herds which then migrate to the boreholes if rains are missed. In addition to the different charges that apply to members and non-members, there is also a priority system whereby members are assigned a preferential time-slot (during daylight hours) and are given preferential access if capacity becomes an issue – this is termed locally as ‘first rights’ versus ‘second rights’. However, because only one family needs to be a member of RUA for the whole inter-family herd to get members’ benefits, it is unusual for any Merti or Sericho residents to claim ‘second rights’.

A member of the RUA executive committee draws up a rota for each borehole based on how many livestock are expected there. Cattle are watered after two days without water, whereas camels can go significantly longer (around 10 days depending on conditions). This is all factored into the design of the rota. Before any family or group of families shift their livestock towards a borehole they will make their intentions known to the RUA executive committee who will advise them if there is spare capacity at their chosen borehole. Livestock from *dedhas* outside Merti and Sericho also have ‘second rights’ of access (which should be prearranged between *dedha* councils) as, in theory, do livestock keepers from neighbouring counties, although in practise these are ‘third rights’ with stringent conditions attached (there must be spare capacity in the borehole rota, severe drought in their area, access must be prearranged, and there must be clear agreements concerning the return of livestock following arrival of rains). Influx of livestock and people largely comes from Marsabit, Wajir and Garissa Counties.

In the midst of these competing claims over resource access, the livestock capacity (water yield) of each borehole is a critical variable to understand in order to ensure efficient use of these resources. Table 3 presents the yield of each of the currently functioning boreholes and the average number of livestock which utilise them when one or two rains fail. The figures for average numbers of livestock watered at the boreholes when two or more rains have been missed can be interpreted as the maximum borehole ‘capacity’ according to RUA.

Support for water trucking is a recent phenomenon which proved very effective during the 2011 drought. When grazing resources are depleted around the boreholes, livestock have to walk 90km to get to pasture. When water is transported to these grazing areas it puts much less strain on the livestock and significantly enhances survival. RUA received support from MID-P and Ewaso Nyiro North Development Authority (ENNDA) to truck water to these remote grazing sites during the 2011 drought and this strategy is regarded as worthy of on-going support from donors and the county authorities as it addresses the depletion of grazing resources during drought. The location of the new borehole at Machalo was one of the areas targeted for water trucking in 2011.

### Current Management Challenges

**Influx** One of the major management challenges faced by RUA is the migration of livestock from neighbouring wards/counties during drought, without any prior notification or negotiation between elders of the recipient and migrating communities (which is how reciprocal resource access has traditionally been managed). The rangelands of Merti and Sericho Wards produce excellent fodder when it rains due to number of reasons (good soils and seedbank etc.) and have well-defined dry season/drought areas managed by *Dedha*/RUA; this attracts herds from neighbouring areas where

rangelands are less productive. The challenge for the RUA is manage these movements in such a way as to reconcile demands from residents and non-residents without creating over-grazing and conflict.

RUA is unable to control migrating livestock because these livestock may be utilising water sources over the county border. Camels have a far greater range than cattle which enables them to migrate into Isiolo while still watering in their own county. RUA does not have the capacity to negotiate effectively with CNRMIs from neighbouring wards/counties because of the comparative weakness of CNRMIs in neighbouring areas and their consequent inability to control migration.

The result of this institutional weakness is that during periods of drought uncontrolled numbers of livestock move into Isiolo County. Despite the lack of institutional capacity, there are still negotiations between RUA and the elders from neighbouring wards/counties. Traditionally this would have taken place prior to any migration but now occurs once there are already large numbers of immigrant livestock within Merti Ward and Sericho Division. On rare occasions livestock keepers from other counties are allowed to use the boreholes (2011 most recently) but more usually access is negotiated to the shallow wells in the Ewaso Nyiro River. Local chiefs have embedded themselves within the *dedha*/ RUA structure in order to receive payments as part of this negotiation process. Several members of the community expressed the opinion that the role of the chiefs in these negotiations is to serve their own interests as well as those of local elites who benefit from the influx of wealthy livestock keepers from neighbouring counties (in terms of livestock trade, patronage of shops and hotels etc.).

Use of the boreholes can be tightly controlled but there are several 'open-access dams' which compromise control of surrounding grazing resources. This is particularly true when large numbers of camels arrive in the County which, due to their ability to walk far and endure long periods without water, renders large areas 'open-access' grazing. There is particular concern over a large dam in Yamicha (see figure 2) which means migrating livestock from other counties can utilise the drought reserve during the dry season when grazing is prohibited locally. RUA does not have adequate capacity to monitor the drought reserve throughout the year and as a result it is frequently found to have been grazed during the dry and even wet seasons. Both RUA and the community have made various requests to the District Commissioner (DC) that the

dams be destroyed. The DC (or more recently the County Governor) has referred them to the National Environment Management Authority (NEMA) although NEMA has informed them that they need to lobby their District Steering Group (DSG) to approach NEMA on their behalf. Some community members expressed their views on the role of the dams:

*"The dams at Yamicha and Urura are the disaster – they attract people from outside – it's a big problem"*

*"In every meeting they discuss closure of those dams but nothing is done – those dams are of no use to this community"*

During the 2011 drought RUA reported 93,304 livestock using the 4 boreholes despite the capacity being estimated to be 67,000 (see table 3). This led to severe depletion of grazing resources and after the April rains failed, many livestock were taken to grazing grounds in Samburu District (Kom, Kilisa, Sabarwawa and Losesia). These areas have been the site of previous conflicts over grazing resources and livestock raiding which have rendered the areas underutilised since 2005. The 2011 migration triggered several clashes between the Samburu and the Boranas and despite the diminished capacity of RUA to play the traditional role of the *dedha* council as peace maker, there were a number of successful peace building initiatives held in partnership between CNRMIs, the District Steering Groups and other stakeholders (known as Kom 1, 2 & 3). The result of these negotiations was that the Borana were able to graze the drought reserves in Samburu District. This demonstrates that despite the diminished authority of CNRMIs, they still play a key role in reducing conflict and are an appropriate focus for capacity building by County authorities. The success of 'hybrid' (CNRMIs and government) peace-building initiatives suggests that such a hybrid approach may hold significant potential for natural resource management partnerships. Although in many cases reciprocal cross-border grazing agreements are difficult to negotiate due to significant rainfall differentials between wards/counties, there a range of other motivating factors to forging agreements such as trade relationships, security etc. Box 2 provides a summary on the apparently contradictory views expressed by community members concerning cross-border resource use.

## BOX 2- CONTRADICTIONARY VIEWS ON CROSS-BORDER RESOURCE USE?

Despite the negative attitude of respondents to migrating pastoralists from the east, it was clear that during drought Boran pastoralists from Isiolo County frequently migrated with their herds into Samburu and Meru Counties which caused violent clashes with communities there. The explanation for the apparent hypocrisy (whereby immigration from the east should be controlled whereas their own periodic migration to the west (albeit less frequent) was regarded as legitimate) was that respondents believed that Boran pastoralists would not need to migrate out of the county if 'influx' from the east was controlled effectively.

**Non-Payment of Water Levies** Another major challenge faced by RUA is non-payment of water levies. Because RUA is perceived by community members to receive vast amounts of money and resources from external donors, there are some who question why they are still expected to pay for water. The situation has been exacerbated by the funding of 'water vouchers' by donors who transfer lump sums to RUA to cover the water levies for a certain number of livestock at the boreholes. These 'water vouchers' are meant to be targeted at poor livestock keepers although in practise it is very difficult to offer free water to some and charge others (particularly as poor livestock keepers often put their livestock in the herd of a wealthier relative). The result is that community members get accustomed to not paying for water at the boreholes, and when the 'water vouchers' run out there are often problems eliciting levies. While donor support in the form of 'water vouchers' allows RUA to purchase fuel and service their pumps and generators, it undermines the capacity of RUA to raise its own revenue through charging user fees at boreholes, and compromises the potential self-sustaining nature of the institutional funding model (whereby water levies and RUA membership fees cover the costs during drought). It may well be that donor support of this kind should be phased out and replaced by support for institutional capacity building, funding of AGMs and elections, generator and pump maintenance, improving communication between town and the boreholes (there is no mobile phone network), or purchasing vehicles with which to transport fuel. It is very difficult for RUA to report the adverse effects associated with 'water voucher' type support to donors

as they run the risk that support may be withdrawn all together.

Several respondents linked the inability of RUA to elicit water levies with a broader 'dependence mentality' on the part of community members who are accustomed to receiving free resources from external donors. Illustrating this point, the RUA Chairman highlighted the fact that in Cherab location his family is one of only a handful of families not receiving year-round relief food. However, despite claims that 'water vouchers' are damaging to RUAs self-sustainability, it was acknowledged that water levies and school fees are a big burden on many families during drought due to the drastic decline in income as local livestock markets crash. This suggests that there may be a role for government/donors in supporting the provision of water, but it cannot be on a short-term basis because after support is withdrawn RUA would be left unable to generate its own funds to run the boreholes.

**Land Tenure** Many of the challenges concerning effective management of natural resources have the connected issues of land tenure and institutional capacity at their root. The diminished authority of CNRMIs is intimately connected with a decline in the security of land tenure in pastoral areas. In order for an institution to be legitimate it must genuinely represent the interests of a defined group of people and it must have its rules and regulations recognised by the state in order that it can legally implement them. In terms of natural resource management, institutions must also have some form of secure land tenure, whether it is ownership, control or usage rights. Without these rights it cannot legitimately enforce its management regimes. As highlighted in the previous section, the ability to control resource use and to enforce regulations is key to realising the benefits of communal management. Secure tenure encourages decision-making based on longer-term perspectives whereby short-term gains can be foregone secure in the knowledge that the community will benefit from the longer-term gains. This suggests that land tenure is a key issue to address in order to improve natural resource management and resilience to climate variability. This section therefore examines the constitutional provisions for granting new forms of community land tenure and how these new tenure arrangements might be managed by CNRMIs such as Merti RUA.

Historically in Kenya, community land has been held 'in trust' by the county council "*for the benefit of the persons ordinarily resident on that land*". Community rights associated with land held 'in trust' have always been unclear to community members and disregarded by County Councils who are under pressure to grant

<sup>18</sup> County councils are able to designate trust land as private property through a process with limited transparency and consultation. There are many examples of this across Isiolo County- particularly around urban centres.

land for commercial purposes. Consequently CNRMIs are not recognised or supported by government authorities. This severely compromises their ability to effectively negotiate reciprocal access with residents of neighbouring counties, and increasingly their ability to control resource use internally. Trust land is also regarded by communities in Isiolo County as easily appropriable due to the “setting apart” rights<sup>18</sup> of the County Council which supersede any concerns expressed by the community “ordinarily resident on the land”. Therefore ‘trust land’ has effectively meant that communities can live on the land but are powerless to control usage by outsiders, as well as lacking any power of veto when the County Council decides to allocate land to wealthy individuals.

Fortunately, the weaknesses of the current system of community land tenure are recognised by the National Land Policy (2009) and the Land Act (2012). These new policies (supported by the Constitution) recognise the role of secure community land tenure and strong CNRMIs in improving the efficiency and sustainability of natural resource management. Decentralising governance of key natural resources is not without precedent in Kenya. The Water Act (2002) provided a legal framework for decentralising both water management and the provision of water through Water Services Boards’ regulation of Water Service Providers (WSPs). These can be constituted at the community level in the form of Water Resource User Associations (WRUAs). The Forest Act (2005) decentralised management of forests to community-level organisations in a similar way. A serious deficiency of how both of these Acts have been implemented is the lack of capacity of regulators (e.g. the Northern Water service Board) and lack of accountability of providers. Another major limitation of this governance structure is lack of support for CNRMI capacity building, for their legal right to enforce their regulations, and in the case of water, to provide a formal structure at the catchment-level to negotiate with other stakeholders. Land management also requires that CNRMIs are able to plan at landscape-level which requires a mechanism for coherent cross-community planning and management. Such mechanisms should therefore be central to the emerging governance structures.

The Land Policy (2009) establishes a new category of community land in Kenya, as well as establishing mechanisms for direct community land ownership and management. According to the Constitution (Article 63(1)), this new designation of ‘community lands’ “shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest”. Part 4 of Article 63 also requires that “the nature and extent” of the rights of members of each community should be specifically outlined in legislation.

Article 66 (e & f) of the National Land Policy (2009) requires government to “invest in capacity building for communal land governance institutions and facilitate their operations” and “facilitate flexible and negotiated cross-boundary access among communities”. The Land Policy (2009) also sets out a three tier institutional structure in order to operationalise these policies. Provisions are made for the establishment of three land management institutions: the National Land Commission (NLC), District Land Boards (DLBs) and Community Land Boards (CLBs). Constituting the lowest level of the devolved land administration and management, elected CLBs will “hold and manage community land”. It was widely expected that this new inclusive approach to community land ownership would be legislated in the Land Act (2012). It transpired that the Act did not provide further details on the three tier approach, and it is unclear when specific legislation will emerge. A key point that requires clarification is the interface between ‘communal land governance institutions’ and structures such as the CLBs and DLBs. If there is a clear mandate for CLBs to work in close partnership with CNRMIs such as RUA, this would be a strong platform upon which to reform natural resource management across Kenya’s drylands. However, in terms of organisation and capacity, RUA is the exception rather than the rule in Isiolo County. One of the key challenges will be to ensure that building the capacity of CNRMIs occurs adequately in advance of the transfer of responsibility for natural resource management.

Another key challenge will be to ensure that assignment of community lands to specific groups ‘identified on the basis of ethnicity, culture or similar community of interest’ is done in an inclusive manner with proper dispute resolution mechanisms in place and accessible to all stakeholders. Assigning community lands to a particular group should be informed by historical context and the potential to consolidate stable power balances where natural resource conflicts are not a significant issue and to act as an open forum for negotiation in areas where natural resource conflict and disputes over land rights dominate. There may also be potential for these forums to serve as a mechanism through which reciprocal use agreements can be reinstated. Change is rarely neutral and the potential for the transition to produce winners and losers runs the risk of exacerbating conflict. This suggests that the process should not be rushed and should be as inclusive and transparent as possible. Experience of multiple stakeholder resource management projects has shown that identification of different stakeholders, and understanding their different interests is a gradual learning process which requires significant



time for implementation if it is to ensure sustainable positive outcomes.

To quote a previous IIED publication:

*“Much is known about natural resource management systems and institutions of the past. Borana has been well studied and its traditional institutions and systems are held up as lessons for development. What is less well described is how traditional systems might be transformed or revitalised to function in today’s realities” (Securing the Commons No.4, Tache & Irwin, 2003)*

Since the publication of that paper the emergence of ‘hybrid institutions’ such as Merti RUA, which are based on traditional systems of natural resource management but have the capacity to interact effectively with formal governance structures may shed some light on the nature of these transformative processes. This is particularly the case in the Kenyan context where much of the recently passed legislation explicitly supports capacity building of CNRMIs and devolution of natural resource governance to the community-level. The following section explores some of the potential challenges of institutional transformation which must take place if opportunities for improving natural resource management presented by the devolution process are to be capitalised upon.



# The Challenges of Transforming Customary Institutions

5

This chapter outlines some of the key challenges and potential pitfalls in transforming CNRMIs to articulate effectively with a new governance structure. Before addressing these transformative challenges, the nature of the institutional governance criteria required by government and donors are examined with reference to Merti RUA's current strengths and weaknesses.

## Institutional Requirements

A key challenge faced by customary institutions in terms of their role as 'official' or 'legitimate' natural resource management institutions is fulfilling the institutional requirements expected by county government. This is also true to some extent for CNRMIs working with large donor organisations that demand certain institutional governance criteria in order for the donor to maintain its own accountability standards. Many such requirements are of a practical nature (audited accounts, an elected management committee etc.) while others refer to a broader set of 'good governance principles' which can be summarised as: legitimacy, capacity, accountability, and fairness (see Box 3 which examines these principles in the context of CNRMIs). It is therefore imperative that if CNRMIs are not to be marginalised they will have to transform their structures, processes and policies in order to meet these requirements. Before examining some of the challenges associated with institutional transformation, it is worth looking in more detail about the nature of 'good institutional governance' required by government and donors. In light of the principles outlined in Box 3, it is possible to identify the specific institutional shortfalls of Merti RUA.

Based on the testimony of the vast majority of respondents, Merti RUA has a legitimate claim to represent the communities living in Merti Ward and Sericho Division. However, because RUAs main function is currently to manage, operate and maintain the boreholes, their activities have limited relevance for poor families who rarely depend on the boreholes for the survival of their herds during drought.<sup>19</sup> It can therefore be concluded that RUA primarily represents the interests of richer pastoralists but not to the detriment of other groups. It is also worth mentioning that because of the interconnected nature of the Isiolo economy, poorer families frequently suggested that actions benefitting richer pastoralists also benefit them indirectly (due to increased employment opportunities etc.). However, if RUA is to take on significant new responsibilities under the new structures for natural resource governance, it will need to adopt a greater focus on the concerns of poorer sections of society as well as creating greater space for the participation of women and youth. The active inclusion of these marginalised groups in decision-making processes was identified as a particularly weak area by youth and women respondents, who regarded their RUA committee representatives as tokenistic and put in place to meet the requirements of donors.

An area of potential concern is RUA's deficiency with regard to democratic processes, there have not been any elections for the management nor executive committee since 2007 (the RUA constitution required elections in August 2010) and the last annual general meeting (AGM) was in 2009. There is also a very

### BOX 3- PRINCIPLES OF GOOD INSTITUTIONAL GOVERNANCE AT THE COMMUNITY-LEVEL

**Legitimacy:** The degree to which an institution represents the priorities and interests of all sections of society (including marginalised and minority groups). To what degree does the institution represent all the stakeholders (including those from different ethnic groups and cross-border communities). The ability of the institution to produce consensus with broad community backing

**Capacity:** The ability to enforce or influence the behaviour of community members. Adequate skills and knowledge among members to fulfill institutional requirements. Adequate responsiveness to the changing priorities and interests of constituents

**Accountability:** The level of accountability and transparency of the institutional decision-making processes to the community and more broadly to all stakeholders. A clear structure is required for transferring authority and electing committee members and positions (chairperson etc.). Transparency depends on adequate community consultation and freely available information detailing the decision-making process

**Fairness:** Decision-making processes should produce outcomes that do not unduly favour any one group within the broader community at the cost of another. Rules and regulations should be enforced equally and without exception unless special provisions have been agreed (e.g. the poorest families do not pay domestic water levies)

<sup>19</sup> Often poorer families will not have sufficient livestock assets to justify the cost of migration to the boreholes and payment of water levies etc.

limited degree to which stakeholders can influence or appeal against the decision-making process. Despite these weaknesses, most respondents reported being satisfied with the performance of the executive committee. RUA does undergo financial audits and provides an annual report of activities and expenditure to partner organisations. Compared to other CNRMIs in Isiolo County, Merti RUA has considerable capacity to interact with formal governance structures and provide adequate financial reporting to satisfy the requirements of government and donors. RUA's ability to submit proposals to a range of donor organisations, manage significant funds and the intense logistics around borehole management during drought is also unusual and is one of the reasons that Merti RUA was chosen as a case study of 'institutions in transition' in the context of government devolution.

Despite the existence of several areas of weak institutional governance, Merti RUA has maintained legitimacy in the eyes of the community, while accessing significant government and donor funding. It must therefore be regarded as an atypical example of a CNRMI which has become a successful 'hybrid institution'. If Merti RUA is to be successfully legitimised as the principal natural resource management institution under the new legislation it will need to further transform and evolve to continue to meet the new institutional criteria. The following section looks at the challenges associated with the on-going transformation or 'hybridisation' of CNRMIs.

## Devolution: Does Government Need To Replicate Itself At The Community-Level Or Is There An Alternative Approach?

One of the challenges for CNRMIs seeking to engage with formal governance structures is that government generally creates structures 'in its own image'. This has resulted in separate Land, Water, and Forest Acts – each with its respective CLBs, WRUAs and CFAs (Community Forest Associations) not to mention 'village councils' which are mandated under the County Governments Act (2012) and seem to have some overlapping responsibilities. These separate institutions reflect the sectoral structure of central government. In a pastoralist context, CNRMIs manage all these resources in a holistic way. A holistic approach to management

reflects the intimate interconnection between water, grazing and forest resources in pastoral livelihoods. Having separate government prescribed structures in parallel to existing CNRMIs runs the risk that in 'bringing government closer to communities' these new structures fragment natural resource management systems and add bureaucracy rather than enhancing the communities' power to manage more effectively. In transforming CNRMIs it is important that such processes are internally driven and that the inherent strengths of management systems and structures (e.g. holistic management) are not lost in order to better fit with bureaucratic rather than context-driven considerations. It is likely that in a pastoral context management of these three resources is more effective under one umbrella institution, which better reflects the traditional approach to natural resource management.

## Socially Rooted Institutions and Imposed Institutional Standards

To varying degrees, CNRMIs will have to transform their structures, processes and policies in order to meet the institutional requirements of government and donors. While these changes allow customary institutions to articulate more effectively with formal governance structures, there is also a degree to which their legitimacy may be compromised. One of the key opinions voiced by community members concerning the transformation of RUA into an organisation able to fulfil the institutional requirements of government and donors, was that through this transformation the organisation's executive committee will become 'uprooted from the community'. Both the community and the current RUA chairman were adamant that they did not want to become 'just another NGO/CSO writing proposals and getting money'. The RUA Chairman highlighted the dangers, "when you recruit a finance officer and power moves from local representatives, who may not speak English or read well, accountability to the community is lost". Respondents were very familiar with the phenomenon whereby a small organisation is doing good things for the community but then gains access to significant funds and starts to attract the attention of political aspirants and local elites.<sup>20</sup> These elites now view the organisation as a vehicle to appropriate funds or to build political capital and the original goals of the organisation get lost. Hearteningly, the Merti RUA executive committee seem very aware of these dangers, particularly as they spearheaded the ousting

<sup>20</sup> Control of natural resource management brings significant power in the context of an economy built on livestock production.



of the previous management committee which had been dogged for several years with corruption.

So the challenge will be enabling CNRMIs to build their capacity sufficiently such that they can interact effectively with devolved government structures (DLBs, CLBs, WRUAs etc.) while staying firmly embedded in the community. In order to facilitate capacity building to address specific governance weaknesses, careful attention should be paid to the two key challenges highlighted above: sacrificing the strength of traditional management systems to satisfy bureaucratic considerations, and maintaining legitimacy and accountability as institutional capacity to engage with formal governance structures is improved.

## Supporting Community-Driven Transformation of CNRMIs

In order to address some of the issues around community-driven transformation of CNRMIs, IIED, in partnership with the Resource Advocacy Programme, the National Drought Management Authority, the Ministry of Planning, National Development and Vision 2030, and the Kenya Meteorological Service, has been working with communities in Isiolo County to map key natural resources and understand their role

in pastoral livelihoods.<sup>21</sup> The Geodata Institute (UK) has been providing technical support in adapting mapping techniques and representing data in a dynamic and accessible way. The initiative has also funded a community radio station which will broadcast across Isiolo County. One of the functions of this radio is to provide down-scaled climate information in local languages. However, without empowered natural resource management institutions it is very difficult for the community to utilise climate information in a coordinated way. Working with local government and communities across the county over a period of three years, the initiative has co-designed a mechanism to disburse a UK Aid supported 'Climate Adaptation Fund' (CAF).<sup>22</sup> A structure of ward-level community committees has been constituted in order to submit proposals for resilience building activities to a county-level committee. During the design phase, the most highly prioritised activities concerned building the capacity of CNRMIs. When the first round of community proposals were approved (March 2013) CAF funded capacity building initiatives for several of the county's CNRMIs. These investments are addressing many of the challenges highlighted in this paper. The project has also rolled-out across a further 4 counties (Makueni, Kitui, Garissa and Wajir) through consortium partnerships with Christian Aid, CARE International and the UK Met Office.

<sup>21</sup> The fact that Merti RUA paid KSh 65,000 (roughly £500) in 2010 to produce its own set of resource maps (see photograph on next page) only serves to highlight the value of mapping resources for improved management and coordination with government planning processes which have historically proceeded in parallel with community planning.

<sup>22</sup> See this policy brief for more information on piloting devolved adaptation funding in Isiolo County: <http://pubs.iied.org/pdfs/17161IIED.pdf>

# Conclusion



Despite significant investment in research and development projects in the drylands of East Africa by national governments and international donors over the last 5 decades, their impact has been disappointing. There is now a growing awareness that failure to engage with customary institutions when planning and implementing development support devalues the intimate knowledge of local ecology and livelihood systems which is mediated and embodied by these institutions. There is a recognition that many donors have fallen into the trap of working with the 'usual suspects' – local NGOs which may have the capacity to satisfy donor financial reporting requirements for example, but do not truly reflect the priorities and concerns of local people.

As a result of this increased awareness, large international development organisations (FAO, IGAD and the EU) have commissioned reports to assess the possibility of engaging with customary institutions in pastoral areas of the East Africa in order to increase the impact and sustainability of their investments (Odhiambo, 2012). This paper provides a case study from Isiolo County, Kenya, where in order to maintain their role in resource governance, a local institution has

evolved to embrace aspects of more formally recognised institutions while preserving its critical connection to local people and local tradition. This 'hybrid' institutional model benefits from the opportunities afforded under Kenyan devolution, whereby constitutional imperatives to devolve governance of resources are beginning to be implemented through supportive policy measures. In this context, the case study of RUA – a hybrid CNRMI – may offer insights into how the capacity development of customary institutions can be supported by other county governments in Kenya's drylands.

One of the main risks in promoting the development of hybrid customary institutions is that evolution is confused with 'modernisation' in the western model. It is imperative that the motivation for institutional transformation, for the purposes of engaging more effectively with government and other actors, comes from local people themselves. There must also be some acknowledgement on the part of local government that rules and regulations in one context become unnecessarily obstructive in another. Devolved governance provides opportunities for adaptation of government procedures to fit with local realities.



Based on the research on which the case study is based, recommendations for engaging with and building the capacity of customary institutions include:

1. Recognise that local government will often need training in the livelihood system and management strategies of local people before they can effectively work in partnership with customary institutions. This is often best delivered by local people themselves as part of a 'shared learning dialogue'. In this way local people also become more familiar with the restrictions and regulations within which government officers must work;
2. It is often preferable for international donors to build the capacity of local government to partner on an equitable footing with customary institutions than to engage with them directly – this is a more sustainable model for improving development outcomes;
3. Partnerships or support offered to customary institutions must be entered into/ provided as equal partners whereby the institution is involved at all stages of conceptualisation, design, implementation and M&E;
4. When a customary institution does achieve recognition as a legitimate institution with the capacity to partner with local government and other development actors there is often a temptation to overstretch beyond their capacity to implement effectively. It is the role of the customary institution and partner organisations to rationalise capacity and activities. Building capacity too quickly threatens to corrupt the nature of the institution and sever the link with local people;
5. Local to national – successful partnerships between customary institutions and local government must be highlighted at the national level in order to influence national policy. Adoption of enabling policies will allow early successes to be built upon elsewhere in the country.

This is by no means an exhaustive list, and the case study itself must be understood alongside similar project from other parts of Africa. AFD's (French Development Agency) work in Chad over the last 20 years, for example, has involved sustained investment in developing partnerships between customary institutions and government whereby water resources are managed by CNRMIs but funded by government and free at the point of delivery (IIED, 2013). This model could be viewed as an improvement on the RUA model because of the problems eliciting water levies described above. However, what is consistent across almost all examples of progressive partnerships between customary institutions and government is a 'relinquishing of control' by government in recognition of the expertise and knowledge of drylands communities in successfully managing highly variable climatic conditions.



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# Related reading

<http://pubs.iied.org/pdfs/17161IIED.pdf>

<http://pubs.iied.org/pdfs/12565IIED.pdf>

<http://pubs.iied.org/7374IIED.html?k=commons>

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# Acronyms

AFD	French Development Agency
AGM	Annual General Meeting
ASALS	Arid and Semi-Arid Lands
ALRMP	Arid Lands Resource Management Project
CFA	Community Forest Association
CLB	Community Land Board
CNRMIs	Customary Natural Resource Management Institutions
CSO	Civil Society Organisation
DC	District Commissioner
DLB	District Land Board
DSG	District Steering Group
DDO	District Development Officers
ENDA	Ewaso Nyiro North Development Authority
EU	European Union
FAO	The UN Food and Agriculture Organisation
IIED	International Institute of Environment and Development
LAPSSET	(Lamu Port-South Sudan-Ethiopia Transport) Corridor Project
MID-P	Merti Integrated Development Project
NDMA	National Drought Management Authority
NEMA	National Environment Management Authority
NGO	Non-Governmental Organisation
NLC	National Land Commission
RAP	The Resource Advocacy Programme
RUA	(Merti) Rangeland Users Association
VSF	Vétérinaires Sans Frontières Suisse
WRUA	Water Resource User Association
WSP	Water Service Provider

Improved governance of natural resources is crucial for building climate resilient livelihoods and economies in Africa's drylands. This paper looks at why the authority and capacity of customary natural resource management institutions has been weakened, and how this impacts on resource governance and climate resilience. Our case study looks at a new hybrid form of customary/formal institution that is emerging as a response to the stagnation of development and increasing conflict around resource access. The paper demonstrates that legitimising and supporting customary institutions can be a more successful and sustainable approach to addressing the 'drylands development deficit' than projects that focus on technical fixes or work in parallel to customary institutions.

IIED is a policy and action research organisation working to promote sustainable development – development that improves livelihoods in ways that protect the environments on which these are built. Based in London and working on five continents, we specialise in linking local priorities to global challenges. In Africa, Asia, Latin America, the Middle East and the Pacific, we work with some of the world's most vulnerable people to ensure they have a say in the decision-making arenas that most directly affect them – from village councils to international conventions.



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