STUDY ON OPTIONS FOR PASTORALISTS TO SECURE THEIR LIVELIHOODS

CURRENT PASTORAL LEGAL ISSUES AND STATUTORY REFORMS IN TANZANIA

PART A

Dr. Ringo Tenga

Report submitted to CORDS

April, 2007

[*ABSTRACT: An Overview of the Legislative space for Pastoralists in Tanzania, considering relevant legal provisions and current reviews done in that regard. This part proposes options for legislative change to support stakeholders' initiatives, involving CORDS, TNRF, IIED, and CORDAID, in seeking pastoralists' livelihoods options and advocacy platform for change. It is to be complemented by a Case law (Pt 3 herein) and Constitutional Law (Prt. 4 herein) options paper, which will become the basis for a joint review covering Policy Options, Legal and Investment matters]*

TABLE OF CONTENTS

1 LEGAL ISSUES 4

1.1 Governance Regulation 5

1.2 Local Government Acts 5

1.3 Governance at Village Level 6

2 CUSTOMARY INSTITUTIONS & LAW 8

3 STATUTORY REGULATION OF PASTORAL LIVELIHOODS 11

3.1 Land Law, Land Use & Planning Laws 11

3.2 Conservation Laws 15

3.3 The Inclusion of Pastoralists in Conservation: The case of Wildlife Management Areas (WMAs). 18

3.4 Livestock & Range Management Laws 20

3.4.1 Legislative Reform: 20

4 REFERENCES 28

1 LEGAL ISSUES

The pastoralists are significantly by-passed in most statutory schemes. Where they are granted some recognition it is either for purely penal sanctions, or for purposes of supporting some other legislative scheme (be it conservation, tourism, etc.), or some production system objective that addresses traditional pastoralism for the markets. Almost no piece of legislation exists that comprehensively addresses the livelihood aspect of pastoralism. Consequently, any consideration of legal regulation of pastoralism must arise from gathering various pieces of legislative material, which address pastoralists, and from these scattered instances situate pastoralism within the legal framework. As would be seen the resultant overview of legal regulation of pastoralism is haphazard, incoherent, contradictory and thus inadequate for securing the pastoralists' livelihoods. This is not a discovery at all; literature on the topic of pastoralism is explicitly and impliedly replete with this negative assessment. What is pursued here is to make a general review that would assist in designing pro-active options for better security of pastoralist legal livelihoods within the existing framework, and provide as well a starting point for advocacy on change of policy and law reform. Our presentation is delimited to three general sections: Governance Regulation; Statutory Regulation of pastoral Livelihoods; and, Constitutional and Human Rights Protections.

The first section on Governance, seeks to situate pastoralists within the constitutional and legal framework that recognizes pastoralists as citizens and lawful members of communities within which they live. This is important in the sense that pastoralists have only a role of influencing policy change and claim legal security where they are legitimate members of their communities. Furthermore, once again, literature is replete with the resilience of traditional governance institutions, operating ***sub-rosa***, and re-asserting themselves time and again despite formalization of governance by statutory regimes. Opinion is divergent on the status of these 'customary' institutions between those who argue for their abolition, those who think they should be actively preserved and those in between arguing for incorporation or 'live and let live' attitude.
The second section on Statutory Regulation of pastoral livelihoods is largely a technical overview of pieces of legislation. For purposes of brevity, the statutes are grouped in five thematic sub-sections: Land law, land use and planning laws; conservation laws; livestock laws and range management; other laws touching on pastoralist livelihoods; and dispute processing mechanisms.

The third section on constitutional and human rights protections covers the interesting area of constitutional rights and remedies in relation to pastoral livelihoods. Is it possible to secure livelihoods within the arid and mechanical basic rights provisions, as they exist it the Constitution of the United Republic of Tanzania, 1977? Under Basic Rights Enforcement Mechanisms can statutory regimes that enable government to deny people their livelihoods be challenged? If not, is there recourse within the new international law human rights regimes.

1.1 Governance Regulation

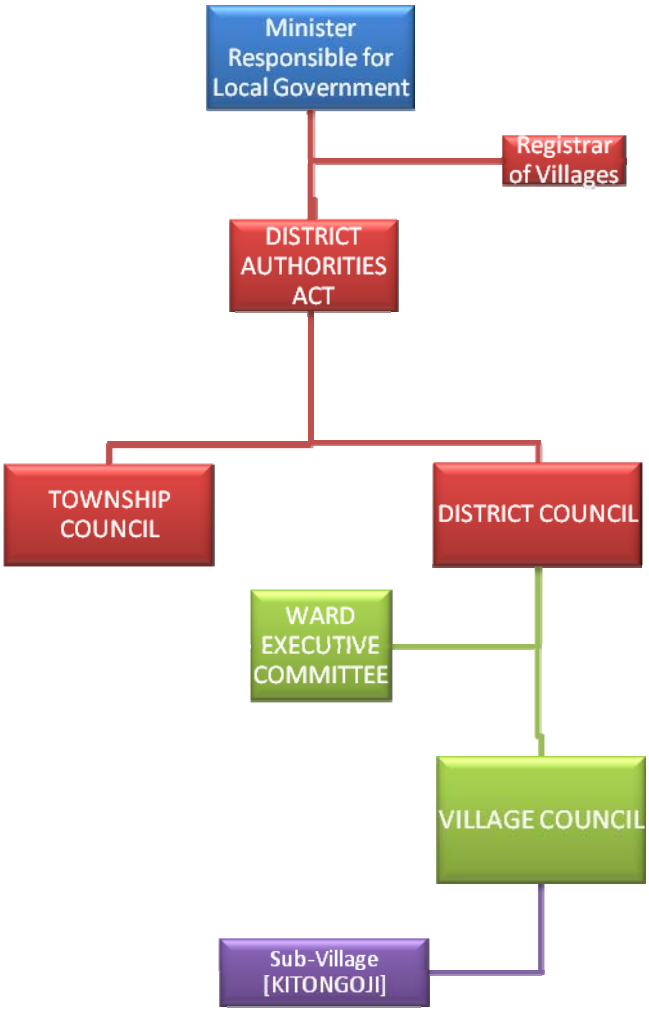
The pastoralists in Tanzania are rural based as such communities of pastoralists are found in village lands. Villages are established under the Local Government Authorities system, which in turn derives its legal foundation from the Constitution – Articles 145 and 146.

> ***CHAPTER 8 - LOCAL GOVERNMENT AUTHORITIES***
> *145.-(1) There shall be established local government authorities in each region, district, urban area and village in the United Republic, which shall be of the type and designation prescribed by law to be enacted by Parliament or by the House of Representatives.*
> *(2) …….*
> *146.-(1) The purpose of having local government authorities is to transfer authority to the people. Local government authorities shall have the right and power to participate, and to involve the people, in the planning and implementation of development programmes within their respective areas and generally throughout the country.*

It is important to note that Article 146 of the Constitution emphasizes the main purpose of establishing Local governments being, first, the devolution of governance authority to the people. Secondly, in pursuit of democratic governance, Local governments are enjoined to involve the people in the planning and implementation of development programs. Consequently, governmental power at the Village level, being the lowest grassroots level of local governance, must be based on popular power and derives this feature from the Constitution. Furthermore, the Local Government organs are enjoined by the Constitution to involve the people in planning for their development. It is important to keep in mind these two constitutional principles, that is, on the one hand, the devolution of governmental power to the people; and, on the other hand, the participatory imperative out of which the involvement of the people is fundamental in development planning, since as we shall see later, in relation to pastoralists, the practice falls far short from the ideal.

1.2 Local Government Acts

Local Governance structures are regulated in Tanzania Mainland principally by two Acts one rural and the other urban: **Local Government (District Authorities) Cap. 287**, R.E. 2002 [Act No. 7 of 1984]; and, **Local Government (Urban Authorities) Cap. 288**, R.E. 2002 [Act No. 8 of 1984]. Local Government authorities operate from the District level and are thus separate from the Central Government which operates nationally. The Districts are divided into Divisions (Tarafa), and the Divisions are divided into WARDS (Kata), and Wards into Villages (Vijiji). The Village is the lowest rung of local governance, but administratively it is also divided into sub- villages known in Swahili as 'Vitongoji' (singular 'Kitongoji'). However the Kitongoji is not a governance level but an administrative and representative structure for the governance of the Village. The following Diagram represents the hierarchical setup of District Authorities:



1.3 Governance at Village Level

The District Authorities Act under Sections 141, 142 and 164 sets out the governance structures of the Village, as the lowest rung of local government. In matters related to policy, election and supervision of the Village Council, etc., the **Village Assembly** is the supreme organ of governance and is made up of all adult members of the Village. Executive functions for running the affairs of the Village are bestowed upon the **Village Council**; and it is this organ that the law has given corporate personality and hence it is the Village Government. The Council has a variety of powers including organization of economic activities, raising revenues, proposing by-laws for the governance of the Village to the Village assembly, and generally, to run all the affairs of the Village as the executive organ.

The Village Council is assisted by other statutory committees which include – the Finance, Economic and Planning Committee; Social Services and Self-Reliance Activities Committee; and, Security and Defence Committee. The Council is however empowered to form other committees, permanent or ad-hoc, to assist it in the performance of its functions.
Other statutes require the Village Council to form Committees for the implementation of various legislative schemes. The **Village Land Act**, for example, requires the Village to

have a Village Land Council for settlement of land disputes, an Adjudication Committee for the resolution of boundary conflicts, and allows the Village Council, where it finds necessary, to set up a Village Land Committee to advise it on land matters. The **Forests Act, Cap. 323, [Act No. 14 of 2002]**, under s. 33, requires the Village Council to set up a Village Land Forest Management Committee to oversee and manage Village Land Forest Reserves. Similarly the **Beekeeping Act, Cap. 224**, under s. 20, requires the Village Council, where a Village Bee Reserve has been established, to form a Village Bee Reserve Committee. Other similar statutes on Natural Resources; land use planning; etc. all require the Village Council to form some committee, or give some formal recognition to the statutory directives, in order to execute the legislative scheme of such a statute within the Village. The resulting scenario has been to over-burden village committees and functionaries with a myriad of regulatory demands when the capacity to effectively relate to each statutory scheme is low. On the accountability level the record shows low level of transparency and participation in village governance so much that in the pastoralists' case this has been attributed as one of the major causes of alienation of communal village lands by Village Councils.[1]

The Government through the new grazing lands bill is somehow addressing this structural lacuna and some reviews have lauded the attempt as partly positive to pastoralists.[2] The **Draft Grazing Lands Management and Utilisation Bill, 2007** envisages the creation under Clause 17 of Village Grazingland Development Areas (VGDAs) where another village committee for the regulation of these areas shall be set up, namely, the *Village Grazingland Development Committee* (VGDC). The VGDC is mandated to be the principal village or villages' body concerned with the management of the VGDA and must report on regular basis to, and take account of, the views of the village council or assembly on its management of the village range development area. The Bill does not directly refer to pastoralists' participation in the VGDC but states in the following provision (Clause 18[3]) that the VGDA may be managed by the VGDC or "*in accordance with such other arrangements as may be proposed by the village council and agreed to by the village assembly*". This is odd as it seems some other entity, unspecified, may as well be given control of the VGDA; and this means pastoralists, where well organised, may as well influence the decision to hand over management of the VGDA to other entities. It is therefore clearly essential that bodies of well-organised pastoral communities stand a better chance of exploiting these legislative gaps or ambiguities in favour of their livelihoods interest.

Yet, where pastoralists have a significant population presence, their control of Village governance has not been detailed from the studies we revisited. This absence may arise

---

[1] ***Jim Igoe and Dan Brockington,*** *"Pastoral Land Tenure and Community Conservation: A Case Study from North-East Tanzania,"* ***IIED Pastoral Land Tenure Series*** *(London), 11 (1999); F. Nelson, "Wildlife Management and Village Land Tenure in Northern Tanzania,"* ***TNRF Occasional Paper No. 6*** *(Arusha, TNRF, March, 2005)*

[2] ***John Letai,*** *"An Audit of the Rangelands Act and its Implications on Pastoral Livelihoods in Tanzania: A Report for Tanzania Pastoralists and Hunter-Gatherer Organization (TAPHGO),"* *(Arusha, TAPHGO, August 2007)*

either from the lack of demographic study detail, which bedevils pastoralists' studies generally [3] or from the fact that any investigation on the pastoralists' oversight in village governance would be negatively perceived as an ethnic investigation. In either case, it is highly recommended that a general study be undertaken with the specific focus of profiling governance in pastoral villages in both the formal and customary spheres. The study should be a livelihoods based study whereby part of its focus would be whether control of formal governance is in the hands of pastoralists or non-pastoralists.

2 CUSTOMARY INSTITUTIONS & LAW

The view that customary institutions have been resilient and overtime have re-asserted their spatial and territorial functions is well founded in literature.[4] In the case of pastoral land tenure in Tanzania Sanna Ojalammi states:

> " *In the Loliondo and Sale Divisions, the study considers that one major cause for the land disputes of the 1990s has been linked to transforming spatialities, and another to overlapping claims on land property (State and informal). Inequalities of holding property and property rights have led to many conflicts, especially in specific places where people have different production systems (Lund 2002: 14* The reality of what we may term to be informal tenures (or customary land tenure) has been a perennial issue in the jurisprudence of Tanzania since the colonial times. The Germans chose to recognise customary tenures as the 'law of the natives' without delving much into its mechanics. The Imperial Decree of 1895 did declare all land to be Crown Land but somehow allowed the existence of the native title to land. This approach was taken by the British colonialists who, through the Land Ordinance of 1923 (Cap.113), established the Right of Occupancy system of Land Tenure and the Governor could issue Certificates of Titles for use and occupation of land to, largely, non-native residents. The majority African peoples were 'deemed' to have Rights of)."[5]

Occupancy on the land they possessed provided such lands were held under African native law and custom which had to be proved through oral evidence as written records were absent. These deeming provisions allowed the British administration to avoid an otherwise Herculean task of recording and codifying native customary tenures. Sociologists and anthropologists did publish

---

[3] ***Ernestina Coast, "Maasai Demography," (PhD thesis, University of London, 2000); Ernestina Coast, "Colonial Preconceptions and Contemporary Demographic Reality: Maasai of Kenya and Tanzania," IUSSP Conference S.50 The Demography Of Indigenous Populations (London, LSE, 2000)***

[4] *Lorenzo Cotula, ed., Changes in "Customary" Land Tenure Systems in Africa (London and Rome: International Institute for Environment and Development [IIED], March, 2007; Platteau, J.P. 1996. "The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment" Development and Change Vol. 27 at p. 29-86; Migot-Adholla, Shem E. & John Bruce. "Introduction: Are Indigenous African Tenure System Insecure?" in Bruce, J. & Shem E. Migot-Adholla (eds.) Searching for Land Tenure Security in Africa Chpt. 1 (World Bank, 1993); S.E. Migot-Adholla, P. Hazell, B. Blarel and others, "Indigenous Land Rights Systems in Sub-Saharan Africa: A Constraint on Productivity?," World Bank Economic Review (Washington) 5, 1 (1991)*

[5] *Ojalammi, "Contested Lands"; Lund, Christian (2002). 'Negotiating Property Institutions: On the Symbiosis of Property and Authority in Africa'. 11−41 pp. In Juul, Kristine & Lund Christian (eds).* ***Negotiating Property in Africa****. Heinemann, Portsmouth.*

research that haphazardly analysed native institutions, for example, Hans Cory's sociological reports on various Tanganyika's tribes.

For pastoralists the story is the same and even worse. No official record exists of their customary tenure. Moreover, much as the sociological record has massive documentation on pastoralists' socio-economic detail, land tenure does not receive equal attention perhaps due to the assumption that the mobile pastoralist has little concern over land occupation - a pre-occupation of sedentary agricultural peoples.[6] The non-pastoral Bantu have had some of their customary law codified through the Hans Cory project but it never extended to non-Bantu tribes including pastoralists.

The independence government has been guilty of the same oversight. Today customary land tenure is recognised under the Land Acts; but only in 1992 the present Prime Minister Edward Lowassa, a member of parliament from the Monduli pastoral district, then Minister for Lands, moved in parliament a statute to abolish all customary land tenures! The Courts declared the statute unconstitutional.[7] Therefore, this recognition of customary land tenure in the Land Acts is merely salutary, populist, and done without critical reflection. A detailed analysis undertaken by a leading authority on Tanzanian Land Law, Prof. G.M. Fimbo, found out that the recognition of Customary Titles under the Land Acts is actually most vague when it comes to the land allocation authorities for traditionally held customary land. The Village Councils authority over such lands is questionable under the law, as their authority directly covers only lands allocated by the Village Councils or allocated to them by statute and not otherwise. The implication of this observation means that a large portion of the rural land, which is still under the control of traditional systems of land allocation and land tenure, is outside the purview of the Village Councils. Actually, the Village Land Act itself states that such lands would be administered in accordance with the prevailing customary law. Yet there is official and popular belief that holds that under the Village Land Act in particular all rural land is under the auspices and singular control of the Village Council! The MKURABITA Diagnosis report has also noted this discrepancy.

In the case of Pastoral Land the view is worse in the sense that it assumes that such land is terra nullius (no man's land). The Village Land Act for instance has provisions that indicate recognition of common property for the pastoralists, such that land sharing arrangements are possible. According Liz Wily and others this is a laudable step forward.[8] Wily shows several provisions

---

[6] *See for some information on Pastoral Land Tenure – Gulliver and Peter Rigby*

[7] *Issa G. Shivji, A Legal Quagmire: Tanzania's Regulation of Land Tenure (Establishment of Villages) Act, 1992, Pastoral land Tenure Series No. 5 (London: International Institute for Environment and Development [IIED], 1994)*

[8] *Liz Alden Wily, Community-Based Land Tenure Management: Questions And Answers About The* ***Tanzania'S New Village Land Act, 1999****, Issue Paper No. 120 (London: IIED, 2003); Sanna Ojalammi, "Contested Lands: Land Disputes in Semi-Arid Parts of Northern Tanzania - Case Studies of the Loliondo and Sale Divisions in the Ngorongoro District," pp. 35 – 40 'The Common Property Debate'. (PhD diss., Department of Geography, Faculty of Science, University of Helsinki, 2006)*

that are pro-pastoralists especially the issuance of a Customary Certificate of Right of Occupancy over land held under traditional pastoral tenure [S. 29.2(iii)]. The problem that remains seems to be that of defining the incidences of the pastoral tenure – how pastoralists acquire, hold and dispose land.

In the case of pastoralists, however, official practice does not appear to recognise a customary pastoral title to land it only recognises a usufruct – a mere license to use someone else's property.[9]

The Draft Grazingland Development Bill is similarly guilt of this perception. Pastoral communities are not directly recognised in the Bill as having customary titles, written or unwritten, over grazing land.The Bill goes on to regulate the management of grazing lands in pastoral areas as if the pastoralists are mere licensees who are temporary with no permanent rights over their lands.[10] In fact, under the provisions of the Bill a Joint Village Land Management Committee may review plans for managing the gazetted village grazingland area [s. 20.4(c)]. The Joint Committee has power to amend, alter, adjust or abolish '*any of those customs, practices and rights which in the opinion of the Joint Committee would be likely to impede the management of the gazetted village GDA in accordance with the revised village GDA management plan*'. The traditional pastoral land title and rights, unless formally registered under the VLA, are highly vulnerable and insecure under the proposed Grazingland Bill. Although the Constitution protects the right to property absolutely the drafters of the Bill, when it comes to pastoralists, are oblivious of its protections.

To pastoralists however this means there is still on the agenda the issue of detailing pastoral land tenure especially in relation to the collective titles and land held in common over grazing lands, and the concomitant identity and powers of the land allocating authorities in those traditional systems. The team observes that it is possible to incorporate such traditional institutions onto the present land management system as the law itself recognises the existence of the substance of customary law over such lands. It is also noted that no authoritative records and analyses of such systems have been undertaken other than sporadic sociological reports [see Charles Lane, Grandin, etc.]. A much more comprehensive research, with a multi-disciplinary approach is urgent and necessary to make a formal record of pastoral land tenure. Terms of reference for such approach may be developed through a stakeholder consultation in order to create a knowledge base that would be useful for reform and work related to range management and regulation of traditional pastoral systems. An initial and innovative attempt is in the process of implementation and sponsored by several stakeholders including Oxfam, Norwegian Peoples Aid, etc. It is important, we recommend, that the initiative be widened and supported. Some of the points of this innovative approach are discussed below.

---

[9] *Usufructuary right is defined as 'A legal right to use and derive profit from property belonging to someone else provided that the property itself is not injured in any way'*

[10] *Letai, "An Audit of the Rangelands Act.."(TAPHGO, 2007)*

3 STATUTORY REGULATION OF PASTORAL LIVELIHOODS

3.1 Land Law, Land Use & Planning Laws

Sanna Ojalammi, captures the statutory model's hegemony over customary models of land ownership in pastoral areas in her study of land conflicts in Loliondo and Sale Divisions of Ngorongoro District, where she states[11]:

> *In common lands, State legal properties have transformed the collective property rights of people to land/resources in State-owned granted rights into public lands (statutory form). This transformation process occurred in the perpetually changing native local space and in indigenous territorial domains where land and its resources were conceptualized in widely different ways. Due to the transformation process, traditional property and rights evolved but were also undermined. The State legality has entailed a right to design a model of land ownership where land use and ownership has been discrete, bounded and an indigenous right of occupancy has been strictly controlled. The State has retained the power of planning for itself, especially in State public lands. (see UTR 1994: 118; Wøien 1997; Blomley 1998: 579; Wily 2000a: 3; Blomley 2004: 3).*

The Village Land Act (VLA) applies essential principles of Land Reform to Village land. By identifying the village land manager as the Village Council the VLA gives it extensive powers of land allocation and land use planning. However this institutional design has raised so far several concerns.

First, as noted above, land, which is allocatable and managed by the Village Council, appears to be land that is not traditionally owned. The customary institutions do not appear to have been affected by the reforms. Actually the VLA reserves space for customary land law in the regulation of land tenure. In doing so a potential conflict or grey area exists in terms of land management – is it the responsibility of the Village authorities or of traditional land allocation authorities?[12]

Second, common lands, which in many cases cover grazing land, appear to be 'no man's land' as such subject to the exclusive management of Village authorities by virtue of the VLA. For pastoralists this raises a critical concern in that without pro-active response to this ambiguity the

---

[11] ***Sanna Ojalammi, "Contested Lands: Land Disputes in Semi-Arid Parts of Northern Tanzania - Case Studies of the Loliondo and Sale Divisions in the Ngorongoro District," (PhD diss., Department of Geography, Faculty of Science, University of Helsinki, 2006), p. 2; and she quotes Issa G. Shivji, Report of the Presidential Commission of Inquiry into Land Matters (Uppsala: Scandinavian Institute of African Studies, 1994), URT; Blomley, N.K. "Landscapes of Property." 32 Law & Society Review 567–612 [1998]; Halvor Wøien, " 'Enkutoto is Just a Place with Homesteads Around,' Territoriality and the Management of the Tanzanian Maasai Land", Centre for Environment and Development Report, 3 (London, CED, 1997); Wily, Alden, Liz "Reconstructing the African Commons." A Conference Paper presented at the Eighth Biennial Conference of International Association for a study of Common Property May 31–June 4, Indiana (http://www.indiana.edu/iascp/drafts/wily.pdf).***

[12] ***G.M. Fimbo, "Land Law Reforms in Tanzania," A Lecture prepared to Commemorate the author's 60th Birthday Anniversary on the 8th day of August, 2003. (Dar Es Salaam:2003)***

VLA virtually dispossesses the pastoralists from their grazing lands.[13] A close reading of the Draft Rangeland Management Bill 2007 confirms this official perception. The perception is also exemplified by the fact that lands that are frequently alienated for large scale farming, for forest and wildlife conservation, and other general uses are the village commons where grazing land is situated. The reaction to this has been either to generally block grazing land as a use class in the process of land use planning and protect it from further alienation through by-laws, or allocate such lands to individuals or groups by issuing customary land titles. Each solution raises a number of problems. In the first case, the security of demarcated commons depends on the governance structure of the village. If control is in the hands of non-pastoralists then other uses, even reallocation, would be given priority to the detriment of pastoralists. In the second case, the grant of customary titles over the commons has its own weak spots. It brings to issue the problem of the focus group (the holders of the land) is it the individual or a group? How do you define the group and what legal form must it adopt? In addition what of the principle of open access to grazing land - how is it incorporated once land is allocated to individuals or groups? The solution that appears most tolerable is one of registration of the commons to a focus group and for those in favour, including the MKURABITA programme, a number of challenges have to be addressed[14]:

- ✓ *who is a member of the collective?*
- ✓ *in mixed agricultural-pastoral communities, how can the interests of people who depend on the common land be balanced with those of people who do not?*
- ✓ *how is a collective legally constituted and how does it relate to the Village Council, which holds land in trust for the community?*
- ✓ *how are beneficial interests and decision-making rights distributed among members in ways that maintain fair access to common resources and appropriate distribution of benefits from their use?*
- ✓ *how can access to rangeland across village boundaries continue to be assured?*
- ✓ *how can a collective guard itself against exploitation by its own leaders?*
- ✓ *why not rely on the provisions of the Village Land Act to define and safeguard common land?*

The viability of registration programmes for pastoral land, within the mandates of the Village Land Act, is yet to be tried out and the known vulnerabilities of titling as tested in Rangeland schemes present a formidable challenge. Government so far has not designed a Pilot Registration programmes for Pastoral lands. In the Handeni titling project, for example, Pastoralists were either given very small portions of land or totally excluded as people 'who do not own land' and hence completely marginalised[15]. It is recommended that the proper approach to this problem should be immediate design of what formalisation would entail for the

---

[13] ***Liz Alden Wily, "Land Rights Reform and Governance in Africa: How to Make it Work in the 21st Century," Discussion Paper, UNDP Oslo Governance Centre (New York: UNDP Drylands Development Centre, 2006)***

[14] ***Notes on 'Draft Concept Note in Support of Registration of pastoral common land rights', Draft obtained from the Teams' Interview with Oxfam's William Ole Nasha – 10th August, 2007***

[15] ***Lembulung M. Ole Kosyando, "A Participation Report of the Pilot Project in Handeni District, September 18 - December 8, 2006," MKURABITA AND THE IMPLEMENTATION OF THE VILLAGE LAND LAW ACT NO 5 OF 1999 (Arusha, TAPHGO, January, 2007)***

commons, and a pilot programme be initiated similar to the Mbozi and Handeni Projects, which have largely favoured non-pastoralists.[16]

Third, procedural complexities with regard to both titling and land use planning have generated implementation and follow-up fatigue to the extent that a fallback to traditional mechanisms increasingly appears to be a welcome alternative.[17] Many commentators on both titling of village land and land use planning have noted the difficulties involved in following the procedural steps. These range from bureaucratic red tape, too many forms to deal with, level of skill required to manage the process, absence of infrastructural support and manpower, etc.

To illustrate the Draft Land Use Planning Bill provides the procedure for Village Planning process by establishing the Village Planning Authority, which is the Village Council (s.20), and the procedure for preparing Village plans (s.34). In the course of the process the planning authority is required to consider a list of 13 issues some of high technical nature such as soil surveys, population analysis, socio-economic and bio-physical data, proposals for multiple land use systems, etc. Then the process itself covers 10 steps all requiring a multidisciplinary and participatory involvement. See **Box 1** below. Surely all this is necessary but way above the resources of an ordinary village in Tanzania and more so for pastoral villages. Numerous reviewers of these processes have called upon the planning authorities to simplify and cut-down the lengthy procedures and approvals. It seems the procedure arises from the logic of the framework used in the planning process and planners, according to Gerald Mango of NLUPC, are constrained by that logic.[18] Practitioners elsewhere are trying innovative ways to break out of this planning-cycle vice grip and the Team recommends a collective action to do so, otherwise inertia would jeopardise the whole process.

---

[16] ***William Ole Nasha, "Formalisation of Land in the Commons: the Future or the End of Pastoralism in Tanzania?," MKURABITA Newsletter (Dar Es Salaam), March, 2007***

[17] ***Per Larsson, "The Challenging Tanzanian Land Law Reform: A study of the implementation of the Village Land Act," (MSc diss., Swedish Royal Institute of Technology [KTH], 2006)***

[18] ***Team's Interview with Gerald Mango, Ag. DG of the National Land Use Planning Commission, on 9th August, 2007 in Dar es Salaam. The Planning Bill is now an act of Parliament.***

BOX 1

MATTERS TO BE INCLUDED IN VILLAGE LAND USE PLANS

Part A: Issues for consideration

- ✓ Existing tenure arrangements land uses and development patterns.
- ✓ Proposals for multiple land use systems to accommodate different land use practices.
- ✓ Participation of local committees and villages in managing their resources.
- ✓ Pattern of rural settlements.
- ✓ Population growth, migration, density and distribution, age sex structure, household size.
- ✓ Employment and incomes of the population including where people go to work and what trend and problems there are in relation to services.
- ✓ Agricultural potential of the rural areas showing various agricultural activities and the problems faced by the local communities.
- ✓ General statements on the terrain, soils and climate.
- ✓ Soil survey (land classes, soil texture, erosion, soil suitability
- ✓ Analysis of social economic data and bio-physical data.
- ✓ Proposed implementation of existing tradition technologies.
- ✓ Potential role of wildlife in local community, village development.
- ✓ Potential role of forests in local community development.

Part B: Procedures

- ✓ State goals and objectives
- ✓ Prepare of community action plans for the management of land use
- ✓ Preliminary activities
    - o establish or ascertain village boundaries
    - o prepare or update village land use and base maps
    - o motivate villagers for land use planning
    - o mobilise and motivate stakeholders in the village
    - o assemble necessary resources.
- ✓ Organise meetings with Village Council and sub village authority
- ✓ Agree on broad zoning for land uses and community facilities
- ✓ Negotiate tenure rights between individuals and the community
- ✓ Involve stakeholders in actual planning
- ✓ Draft and finalise village land use plan
- ✓ Present draft land use plan to stakeholders for discussion and approval
- ✓ Establish institutions for evaluation and monitoring

3.2 Conservation Laws

Impact on Pastoral livelihoods.

The Teams' second concern with regard to laws that affect pastoralism is that of conservation laws. This is a well-researched area to such an extent that information overload may cloud analysis. The following nine (9) core conservation statutes deserve attention:

- The Ngorongoro Conservation Area Act, Cap. 284, R. E. 2002 (No. 14 of 1959)
- The Wildlife Conservation Act, Cap. 283, R. E. 2002 (No. 12 of 1974)
- The National Parks Act, Cap. 282, R. E. 2002 (No. 12 of 1959)
- The Forests Act, 2002 (No. 7 of 2002) replacing the Forests Act, Cap. 323, R. E. 2002 (No. 14 of 1959).
- The Natural Resources Act, Cap. 259, R. E. 2002 (No. 30 of 1948)[19]
- The Environmental Management Act, 2004 [replacing the National Environmental Management Act, Cap. 191 R. E. 2002 (Act No. 19 of 1983)]
- Land Act, Cap. 113 R. E. 2002 (Act No. 4 of 1999)
- The Village land Act. Cap. 114 R. E. 2002 (Act No. 5 of 1999)
- Local Government (District Authorities) Act. Cap. 287 R.E. 2002 (Act No. 7 of 1982)

The Team's policy overview on conservation covers these laws but the focus here is on legislative impacts.

The National Parks legislative scheme incorporates the 'fortress conservation' theory where the exclusion of people from the parks is primary. The main target for conservation in the Parks is tourism and according to conventional wisdom, exclusion of people secures the park area from disruptive activities. However, this kind of scheme is receiving continuous challenge and TANAPA in response thereto has initiated Community Conservation Services (CSS) in all its twelve parks geared at incorporating people, living adjacent to the parks, in conservation initiatives. The initiatives appear peripheral and suspect but the initiators of the schemes, i.e. TANAPA, have registered what they see as positive results in terms of community responses and the lessening of anti-conservation activities such as poaching of wildlife and grazing in the parks.[20]

---

[19] *See punitive rules under it, styled as the Natural Resources (Destocking Arusha Region) Rules, 1983 (G.N. No. 114 of 1982)*

[20] *Justin Hando, "Community Conservation Services: Experiences from Serengeti National Park," in* ***Linking Universal and Local Values: Managing a Sustainable Future for World Heritage. UNESCO World Heritage Paper No. 13****, eds. de Merode, Eleónore, and others (UNESCO, November 2004), Available online at whc.unesco.org/documents/publi_wh_papers_13_en.pdf. Cf. Mara Goldman, "Partitioned Nature, Privileged*

Nevertheless, it is not clear in the framework how ownership issues are resolved and how the community manages and owns the conservation scheme. In most cases where such ownership issues are ambiguous, success is not sustainable.

In relation to other fauna conservation schemes the Team notes that there are two statutory areas are significant to pastoral livelihoods. On the one hand, schemes related to the Wildlife Management Areas and the Ngorongoro Conservation Area, and on the other hand, Game Reserves as creations of the Wildlife Conservation Act that have affected negatively the pastoral populations hitherto resident in the reserved areas. The classic example of this negative impact is the Mkomazi Game Reserve evictions. Case studies on Mkomazi evictions bring to the fore lessons and challenges that pastoralist stakeholders need to take into account. Government in the proposals for a new Wildlife Conservation Act is currently addressing the shortcomings of policy and law in this regard. What appears be to still controversial is the overlap between consumptive and non-consumptive tourist activities, and the continuous conflict between conservation and other statutory schemes for example on environment, land and now rangeland development.

The case of Ngorongoro Conservation Area brings out challenges that legislative schemes must confront in providing for an inclusive conservation model that does not exclude people. Both official and non-official case –studies have generated recommendations that must be addressed.[21] For populations living outside and adjacent to the conservation areas (e.g. National Parks and Game Reserves) the Wildlife Conservation Act has generated the concept of Wildlife Management Areas (WMAs) that appeals to Community Based Conservation strategies. Leading organisations such as LEAT, IUCN, AWF, TNRF, FAO, HAKI – ARDHI, LHRC, TAPHGO, PINGOs, OXFAM, IIED, and many more, have made detailed analyses of this initiative. Individual researchers have also added much value to the critique of this participatory model. We make a legal analysis of the model in a subsequent part of this report.

Pastoralists are also concerned about other conservation initiatives especially with regard to forests and catchments areas (such as the Ihefu/Usangu Basin phenomenon). The Forest Act Cap. 323 has had a significant impact on pastoral livelihoods where forest reserves have to be regulated taking into account pastoral resource rights. An Example of this is the Suledo Forest in Kiteto covering about 167,000ha of Miombo Woodlands over nine villages with sizeable grazing lands of pastoralists [Sjoholm and Louno, FAO 2002]. Other instances include the Kilosa case where pastoralists are accused of grazing in forest reserves and are in conflict with the forest conservation authorities on the Western Highlands in Kilosa, District (Mung'ong'o and Mwamfupe, REPORT, 2003 P. 32). Programmes such as those done by FARM – AFRICA in

---

Knowledge: Community Based Conservation in Maasai Ecosystem, Tanzania," ***Environmental Governance in Africa****, Working Papers No. 3 (Washington: World Resources Institute, 2001)*

[21] *Issa G. Shivji and Wilbert B. Kapinga,* ***Maasai Rights In Ngorongoro, Tanzania****, Drylands Programme IIED (London: IIED/Hakiardhi, 1998); Amon Z. Mattee and Martin N. Shem, "Report on Policies and Laws that Affect Pastoralism In Tanzania,"* ***Consultancy Report on ERETO II, Ngorongoro Pastoralists Project, Phase 2.*** *(Dar Es Salaam, Royal Danish Embassy, Dsm & URT, Ministry of Natural Resources., 2005)*

pastoral areas in Tanzania have provided alternatives for dealing with Pastoralists interests in areas adjoining forest reserves. In the case of Kiteto the success of the Village Forest Management Scheme is based primarily in the involvement of the pastoralists in the whole planning and design of the forest management scheme. The scheme takes traditional institutions as a basis for management, the formulation of by laws and their enforcement.[22] The programme is a lesson to other conservation paradigms that are top-down and tend in most cases to ignore local knowledge and institutions.

The 2006 IUCN study on Community Conserved Areas (CCA's) in Tanzania makes an overview of the variety of conservation laws covered here and all have an impact on pastoral livelihoods.[23] In the assessment some of the statues mentioned above are found wanting in obtaining their stated conservation objectives, and these include the Wildlife Conservation Act, the Ngorongoro Conservation Area Act, and the Environmental Management Act. The others such as the Land Act, the Village Land Act, the Forest Act, etc., raise little or no issues at all with regard to conservation. Taking our cue from this study and similar others we shall give an overview of the Wildlife Management Areas (WMA) regulations as a detailed statutory attempt to grapple with sustainable conservation issues; and with the proposed Grazing Land Bill which focuses on rangeland management as an example of a statute that regulates core pastoralists resources.

Again, as stated by legal Anthropologists it is only in the "Crucible of conflict" that an understanding and evaluation of rules can be usefully made.[24] In the case of Conservation laws outstanding disputes in Tanzania are those of Ngorongoro, Mkomazi, Serengeti's Nyamuma killings, Ihefu/Usangu Evictions etc. All of these areas have received detailed legal analysis[25]

---

[22] *H. Sjoholm and S. Louno, "Traditional Pastoral Communities Securing Green Pastures through Participatory Forest Management: The Case of Kiteto District, Tanzania,"* ***Proceedings of the 2nd International Workshop on Participatory Forestry in Africa*** *(Rome: FAO, 2002)*

[23] *Yves Hausser, "Tanzania Survey of Conservation Legislative Framework on Community Conserved Areas [CCAs],"* ***Evaluation By The IUCN Commission On Environmental, Economic And Social Policy [CEESP]*** *(IUCN, 2006), Inputs by Igoe, Jim; Lasgorceix, Antoine*

[24] *Snyder, F.G., "Anthropology, Dispute Processes and Law: A Critical Introduction."* ***8(2) Brit. J. of L. & Soc.*** *142-144. (Winter, 1981); Cf. generally: Llewellyn, K. and E.A. Hoebel,* ***The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence.*** *(Norman, 1941); Leopold Pospisil,* ***Anthropology of Law: A Comparative Theory****, (HRAF Press, New Haven, 1974); Moore, Sally F.,* ***Law as Process: An Anthropological Approach*** *215-216 (Routledge & Kegan Paul, Lond. 1978).*

[25] *Shivji & Kapinga,* ***Maasai Rights in Ngorongoro*** *(1998); William Ole Nasha, "Parks Without People: A Case Study of the Ngorongoro Conservation Area, Tanzania,"* ***Indigenous Information Network****, 2006; Dan Brockington,* ***Fortress Conservation: The Preservation of the Mkomazi Game Reserve, Tanzania.*** *(Oxford: James Currey Ltd, 2002); Ibrahim H. Juma, "Extinction of Customary Land Rights in the Wildlife Conservation Areas of Tanzania: The Case of Mkomazi Game Reserve,"* ***Africa: Zeitschrift der Gesellschaft fur afrikanisches Recht*** *2 (2000) ; LHRC, "Protection of Wildlife & Human Rights on the Balance Sheet: A Case of Serengeti Killings,"* ***An Evaluation by the Legal & Human Rights Centre (Tanzania)*** *(Dar Es Salaam) (2003) ; PINGOs, HakiArdhi, LHRC, and HIMWA. 2007. Eviction and Resettlement of Pastoralists from Ihefu and Usangu-Mbarali District to Kilwa and Lindi Districts.* ***Collaborative Report by PINGOs, HakiArdhi, LHRC and HIMWA****, Arusha, PINGO's Forum.; Martin T. Walsh, "Pastoralism and Policy Processes in Tanzania: Case Study and Recommendations,"* ***A***

Tin order to put our recommendations into proper perspective the Team's focus is thus on, first, the legislative framework that seeks to include pastoralists in conservation, especially the concept of wildlife management Areas and the proposed scheme for managing the rangelands. Second, the team has looked into the case of exclusion of pastoralists from their lands in the name of wildlife conservation the case of Mkomazi Game Reserve and the case of the eviction of the Barabaig pastoralists from their traditional grazing lands for wheat farms.

3.3 The Inclusion of Pastoralists in Conservation: The case of Wildlife Management Areas (WMAs).

The operation of the present wildlife conservation laws stems from the wildlife policy framework analysed above. The involvement of communicates in conservation strategies has been accepted to be necessary for successful legal processing of the WMA concept.

The concept of wildlife management Areas (WMA) has been at the core of this strategy and its basic purpose is to give communities full mandate of managing and benefiting from conservation efforts. The Wildlife Regulations of 2002 contain the statutory statement for the operationalisation of the WMA concept. The principal legislation i.e. the Wildlife Conservation Act, Cap. 283 gives, under Section 26, the Director of Wildlife the mandate to grant user rights to any legal entity in the management of wildlife. The resultant regulations create an institutional set up establishing a Community Based Organisation (CBO) at the Village level which is then granted the status of an Authorised Association (AA) once the Director of Wildlife is satisfied that the institutional design incorporates the necessary legislative prescriptions. There is no need to repeat here the whole statutory scheme. This has already been done in excellent detail by other studies (STOLLA, TNRF review, Baldus, Walsh, Fred Nelson, etc).[26] Suffice to note here that these analyses have shown the fragility of the WMA concept. The most recent is the TNRF critique which has made substantial recommendations in three aspects: Institutional Design; Facilitation; and political will and Implementation[27]

The central criticism of the WMA concept has been on institutional design. The process of establishing a WMA is woefully cumbersome and bureaucratic a twelve steps process is

---

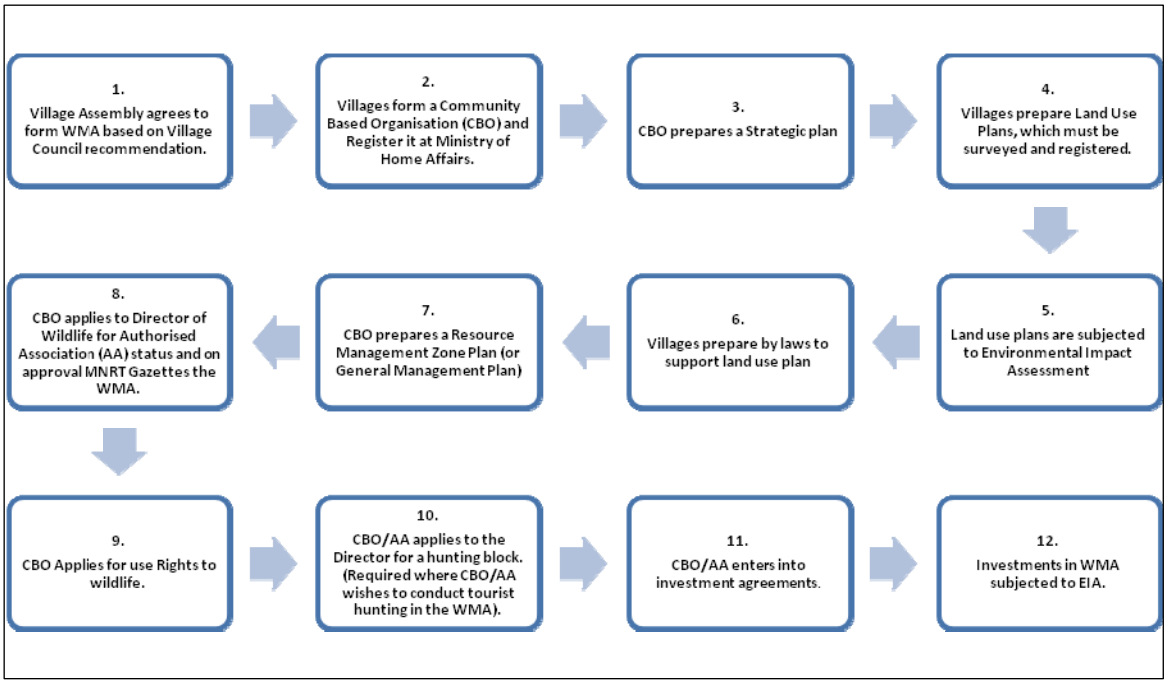
Report to the TNRF & Contribution to the Collaborative Study *(Arusha, TNRF, September 2007), Filling in the Knowledge Gaps to Better Understand Policy Options for Pastoralism and Rangeland Management.*

[26] ***F. Stolla****, "Wildlife Management Areas - A Legal Analysis,"* ***TNRF Occassional Papers No. 5*** *(Arusha, TNRF, 2005;* ***Y.B. Masara****, "The Conflict of Legislations and Collisions of Jurisdiction: An Impediment to the Realization of Community Based Conservation in Tanzania,"* ***Consultancy Report of the AWF, Arusha*** *(Arusha, AWF, 2000);* ***R.D. Baldus****,* ***David T. Kaggi, and P.M. Ngoti****, "CBC: Where are we now - Where are we going?,"* ***Miombo - The Newsletter of the Wildlife Conservation Society of Tanzania*** *(Arusha), July 2004;* ***Fred Nelson****,* ***Emergent or Illusory? Community Wildlife Management in Tanzania****, Pastoral Civil Society in Tanzania (London: International Institute for Environment and Development [IIED], July, 2007), Issue Paper No. 14;* ***F. Nelson, Emmanuel Sulle, and Peter Ndoipo****, "Wildlife Management Areas in Tanzania: A Status Report and Interim Evaluation,"* ***Report Prepared for Tanzania Natural Resource Forum*** *(Arusha, TNRF, August 2006)*

[27] *Nelson, Sulle & Ndoipo, "Wildlife Management Areas in Tanzania" (TNRF, 2006).*

designed that requires competence, skills and resources way above the capability of an average Tanzania Village council. The following steps according to TNRF's view are essential

Box 2: Process for Establishing a WMA



According to TNRF's report (2006) the success rate so far of the Pilot WMA, is only at 25% with only 4 gazetted i.e at step 8, and as yet to complete the benefits structuring steps 9 -12. Without clarity in benefit generation, the concept of WMA remains fuzzy and theoretical.
The Team has reviewed evaluations on the WMA concept that point out to the complexity of the regulations as a problem. The evaluations converge on the major assumption that the WMA concept has positive potential for bringing together local communities into a conservation strategy that would bring real benefits to the communities involved. Some of the core recommendations are as follows.

- The regulatory scheme of the WMAs must clarify the issue of benefit sharing as presently what has to be retained by the ministry vis-à-vis the communities is left to the opportunistic directives and circulars of the Director of Wildlife.

- The authorities (ministerial, regional and district) must relinquish control of wildlife utilisation activities, such as tourist hunting, over to the Communities in order to assure the communities' hegemony within the WMA.

- The procedural framework for registration of WMAs is complex and bureaucratic in the extreme. The linkages between the processes of land use planning, acquisition of certificates of village land, overlaps with other sectoral schemes, such as forestry, over complicate the formation of the WMA. Both the MBOMIPA Project and those of the Selous Game Reserve are proof to this. The procedures for the formation of the WMA must be streamlined and 'best practices' benchmarks for simplified processes are in existence such as those used in the formation of Village Forest Reserves.

- Hand in hand with the simplification of WMA formation procedures is the need to streamline the provision of certificates of village land and land use planning requirements. This can be achieved by decentralising more superintendence and executive authority to District government rather than the current situation where much power is concentrated at the national ministerial level.

- The CBO as the corporate body that would administer the WMA on behalf of the community is yet to get a balanced design in terms of community control, democratic governance, accountability and transparency. For example, village assemblies appear to have no powers for determining the composition of members of the CBO. In some recorded cases executive officers appoint relatives and spouses to the CBO board. According to the current regulations it appears that the CBO is more accountable to the Ministry rather than the community. Regulations must set up minimum organisational requirements that would assure CBOs accountability to the community.

The Team recommends that stakeholders should intervene in the current review process by proposing a model code that would reflect the ideal WMA design. Stakeholders may use the model code as a lobbying tool with the ministry and as an advisory tool for the pastoral communities in relation to the formation of the CBOs, benefit-sharing schemes, contracting formats and related matters.

3.4 Livestock & Range Management Laws

3.4.1 Legislative Reform:

The containment of pastoralists in grazing areas has been on the agenda from the colonial period. The Maasai reserve is testimony to this and the need to regulate range lands has been paramount due largely to the fact that there has being increasing pressure to open up the range lands for other activities, chief among them being conservation. Immediately after independence the Government Commissioned a Report for the Management of Range Resources within the Modernisation paradigm of the World Bank. This initiative resulted into the Fallon Report of 1963.[28] This Report suggested a social engineering design whereby the Pastoral Maasai would be brought into a 'modern' ranching system. The same design proposal was made in neighbouring Kenya.[29] Later a FAO Survey (1967) was also to recommend a 'Western style' capital intensive ranching as the progressive path to commercial livestock development.[30]

The result was the **Range Development and Management Act 1964** (No. 51 of 1964) titled "*an Act to provide for the conservation, development and improvement of grazing lands*" for the means to establish Range Development areas and Commission charged to rehabilitate, conserve, develop and improve natural resources in the area.(Ss. 3-4). The Commission could regulate

---

[28] *Leland Fallon,* ***Development of Range Resources in the Republic of Tanganyika*** *(Dar Es Salaam: USAID, 1963)*

[29] *Mathew Forstater, "Bones for Sale: development,environment and food security in East Africa,"* ***Review of Political Economy*** *14, 1 (2002) 47-66.*

[30] *Forstater, "Bones for Sale" p. 56*

and restrict every, residence and settlement in the range development area. (S.6) and, where necessary, the Commission was empowered to issue certificates of residence and impose conditions thereupon. In its general regulatory powers the Commission could impose penalties for breaches. Under Part III of the Act the Ranching Associations could be formed and ranch lands established. In long-winded sections, the Act provided for the procedures to establish a ranching association with organisational structures by-laws, eligibility criteria prospective members, etc. Once the Association is formed and land granted to it all customary rights and rules regarding land, grazing, passage and counter rights are extinguished.(s.26(3)) The Ranching Association was a body corporate and had detailed functions over the ranch lands. It had powers of acquisition and disposal of land owned by it. The Commission however had powers of intervening in the Affairs of the Association and even dissolve it where necessary.
Lastly, Part IV of the Act provided for the Development and Management of ranch lands. It established procedures for authorised stock units and ranch management schemes. It also provided for how to make by-laws for a ranching association and the regulation of membership. Any defaulting member would risk attachment of property or expulsion. The Act, under its first schedule, established the first Range Development Area (RDA) known as the Maasai Range Development Area.

From its enactment the Act was bound to fail. It targeted the Pastoralist Maasai who were not even consulted in the process. The whole structure was reminiscent of a western corporate body unknown to the non-literate Maasai society. The governance structure would fly against the traditional territorial and age-set division of power and labour that was at the core of the indigenous range management system. Out of the 20 ranching associations scheduled to start only two took off. The critique of the programme ranges from insensitivity to customary rangeland management's assumptions that apply to non-equilibria range settings e.g. the carrying capacity concept on the busts of which stock quotas are established,[31] the pastoralists had virtually no role in the use, plan the administration and management of the land.[32]

Pastoralist related policies have ever since been subordinated either to the predominant agricultural oriented paradigm or where separated from this to the modernisation paradigm that targets the Western Oriented business ranch.[33] After the Range Development Associations debacle there followed the sedentarisation long term strategy – "*Operation Imparnati*" – whose sad consequences are chronicled elsewhere[34]. With the new liberalisation policies time and again the pastoralists feature under ranching policy strategies insensitive to their livelihoods. Where the pastoralist are given recognition this becomes a token gesture when weighed against

---

[31] *R. Hatfield and J. Davies, "Global Review of the Economics of Pastoralism,"* ***World Initiative for Sustainable Pastoralism*** *(Nairobi, WISP/IUCN, 2006)*

[32] *Issa G. Shivji,* ***Report of the Presidential Commission of Inquiry into Land Matters*** *(Uppsala: Scandinavian Institute of African Studies, 1994), URT*

[33] *Mattee,* ***Ambivalance and Contradiction - A review***

[34] *Daniel Ndagala, "Operation Imparnati: the sedentarization of the pastoral Maasai in Tanzania,"* ***Nomadic Peoples*** *10 (1982); Moringe ole PARKIPUNY, "Some Crucial Aspects of the Maasai Predicament," in, Coulson, Andrew, African Socialism in Practice: The Tanzanian Experience (Nottingham: Spokesman, 1979)*

other concomitant legislative events that strengthen the expropriation of pastoral land e.g. wildlife conservation, alienation of land to non-pastoralist tourist interests, etc.[35]

Presently, there are new initiatives to re-introduce Range Management through statutorily recognised "Ranch Groups" and a **Grazing Land Bill** is in Draft. Mattee and Shem have analysed it and see it as wide-ranging statute. But they doubt its eventual efficacy given the underlying policy paradigm that refuses to acknowledge the superiority of the traditional range management techniques suitable for "non-equilibria" range conditions (i.e. semi-arid, marginal and subject to constant seasonal variations). While a rhetorical acknowledgment is made towards traditional practices, policy implementation is negative to mobility and transhumance, which is the key to the system. Mattee and Shem conclude:

"The provisions within this Act betray the same misconceptions held by government of pastoralism as a backward, unproductive and environmentally damaging livelihood system. The proposed Act seeks to modernise pastoralism by limiting livestock husbandry to specific areas in which forage, water and other inputs are provided, and livestock's movement and numbers are strictly controlled. It is a "ranchers" vision of livestock production in Tanzania, which seeks to control, through technical means, the major factors of livestock productions access to forage and water. Such a vision, however, fails to accommodate the highly dispersible and unpredictable nature of natural resources in Tanzania" [36]

TAPHGO has undertaken a more detailed study of the **Range Development Bill, 2007**. The study shows how the same misconceived strategies are reproduced in 'new bottles', as it were.[37] The first noticeable repetition in the law is the over-bureaucratisation of the scheme. The major criticism of the 1964 statutory scheme is its top-down approach that stifled local initiative. The new scheme goes some way in addressing this problem by establishing a National Ranching Commission supported by District Rangeland organs that would presumably be nearer to the communities. However, a quick look at the composition of these organs shows the heavy hand of the executive vis-à-vis the other stakeholders. The National Commission has eleven members and six of them, including the secretary of the Commission, are ministerial appointees. The five remaining minority is composed of members from SUA, Milk producers association, pastoral association and two members from meat producers association. The pastoralist voice has only one representative behind that of meat producers who have two representatives. The same skewed representation is manifest at the District level where the nine-member committee is composed of a majority of district officials (6) and the minority three from meat, milk and pastoral associations. The statutory sidelining of the pastoralists is therefore astonishing, as range management would affect them more than any other group.

The second repetition is a subtle one and relates to pastoral organisation, traditional range management and land tenure. The present initiative tries to define pastoralism and agro-pastoralism in what appears to be an attempt to be more sensitive to these livelihoods. The

---

[35] *Mattee,* ***Ambivalance and Contradiction - A review***

[36] *Mattee,* ***Ambivalance and Contradiction - A review*** *pp. 25-26*

[37] *Letai, "An Audit of the Rangelands Act .." supra. [TAPHGO, 2007]*

1964 Act simply ignored such definitions, imposed a western-like form of ranch organisation and rangeland management, the tenure imposed was the statutory granted Right of Occupancy. The present Act has the merit in providing for what has been termed by pastoralist organisations as positive which include, "*the setting aside of grazing lands, recognition of pastoral production system and recognition of the inter village and inter-governmental dialogue for the shared management of grazing lands*".[38] But again closer analysis cuts down these advantages. The definition of pastoralism is merely salutary as the word appears only once in the definition part (s. 3) and practically nowhere else, except for the word 'pastoral' appearing in reference to pastoral associations. This is not mere quibbling for words. If you try to search in the Bill for the words 'ranching', 'ranch' or 'ranches' not only is there a good definition of the activity but the associated words proliferate the statute; just as the 1964 Act did. The voice of the rancher and that of the livestock producer is heard loud and clear; and as already pointed out Meat Producers have two (2) representatives in the National Rangelands Commission whilst the Pastoral Associations have only one (1) representative. If numbers were anything to go by pastoralists outnumber ranchers by thousands and should have more representatives in the Commission than anyone else. The Commission and the Director of Rangelands, who is its secretary, have vast regulatory powers over the whole scheme and fair representation in it is critical for good governance. In omitting and/or sidelining the pastoralists' voice the fundamental principles of the Bill appear cynical to the pastoralist when they state that a major objective is:

to delegate responsibility for the sustainable utilisation of forage, water and soil resources to the lowest possible level of individual users of grazing land resources consistent with the furtherance of national policies;

The issue of representation is not alone in the spate of apparent omissions in the Bill as there are clear blanks with regard to inclusion of traditional pastoral organisation and land tenure. Research on rangeland management is replete with references pointing out on how reform in rangeland management fails where it does not take into account traditional systems. The Pastoral Association appears in the Bill as the non-ethnic corporate entity that is supposed to be the locus for organising pastoralists at the Village level. If this is so then how will such an association be regulated by traditional norms and management styles that are ethnic in origin and orientation? This question remains unanswered in the Bill. Yet it would not go away as it would rise again, as the proverbial sphinx, when grazingland management plans have to be generated and implemented. Paradoxically the TAPHGO review appears to suggest that the Bill recognises the ' pastoral system of production', but the main reference to this implication, Clause 24 (a) of the Bill, states that villagers in relation to Village Grazing Lands have:

"*..the right to exercise existing rights to enter, occupy use and use the pastures of the grazingland jointly with all other members of the village, in a sustainable manner in accordance with the terms of any GDA management plan, by-laws, rules, agreements or customary practices*".

---

[38] *Letai, ibid.*

This apparent right is formulated in the standard 'claw-back' phraseology where the existing right is granted on the premise that it will be subject to other regulations and considerations, which, once considered, take back all what has been granted. If you subject the traditional pastoral land tenure system to the management plan, village by laws and rules, etc, what remains as customary or traditional would disappear in the institutional set-up that is not accountable to pastoralists but to state bureaucrats! The issue of who owns the institutions of governance, and who owns the rangeland would come back again as this Bill is deliberately vague about it, when in actual sense it is the core issue.

The last point is with regard to the penal character of this Bill. It is true that a regulatory statute would have its fair amount of sanction mechanisms. Nevertheless, it is also true that traditional mechanisms of dispute processing have a different style of restoration of balance in society, through mediation and conciliation, which is in total contradiction with the punitive and harsh style of these Acts. Breaches in relation to by laws, rules, general and special orders, etc., are dealt with in the most draconian manner. Authorised Officers may seize stock, implements, weapons, etc.; where there is breach of general orders (cl. 41). Further one may lose his property in livestock and other property by forfeiture to the Republic (cl.46) if he is found guilty of an offence under cl. 43 of the bill. Although cl. 43 is a standard offences clause which attracts fines and imprisonment the Bill is clear that this does not deter the penal sanctions from other statutes where unlawful activity has been carried out within rangelands provided no one may be punished twice for the same offence. The argument here is that this penal orientation could be minimised where traditional mechanisms, highly effective, are incorporated. The case of village forest reserve management schemes, such as Soledo in Kiteto, is an example of the success of traditional management and compliance systems which are simple, inexpensive and efficient.

The Team joins TAPHGO's review in recommending urgent action on this score by lobbying in both policy and legislative frameworks to change the course by heightening the pastoralists' voice in the rangelands reform process. In terms of advocacy, the starting point may be an alternative model based on the initial recommendations found in the tabulated matrix appended to the TAPHGO Report. Stakeholders could then jointly come out with additional inputs that would generate an alternative model, which will enhance the advocacy threshold. Some of the critical considerations would include:

- Defining the means of incorporating and recognition of traditional pastoral systems of rangeland management within the law.
- Clear statutory recognition of traditional pastoral title, with its incidences, over the rangelands and debunking the current idea that the rangelands are terra nullius.
- Define the means and process of identifying and registering the traditional pastoral title as a customary right of occupancy and define the landholding entities.

- Broaden or rather deepen the process of Rangeland Management as envisaged in the present Livestock Policy documents and participate fully as recognisable interest group in the formulation of policy and enactment of statutes. Where possible, lobby for a long term possibility of having a national pastoral policy defining the parameters of pastoralist economy and livelihoods and role in the national economy.

TABLE A: The Range Management and Development Act, No 51 of 1964			
Main Parts	**Sub-Parts and/or Sections**	**Sections**	**Explanations**
Preamble, Short Title & Commencement	An Act to provide for the Conservation, Development and Improvement of Grazing Lands		
	1. Commencement and Short Title	GN 580 of 1964	
Part I Interpretation And Administration	2. Interpretation 3. Range Dev. Areas. (**RDA**) 4. Range Dev. Commission (**RDC)** 5. Failure to Perform Functions.		
Part II Control Of Range Development Areas	(a) Control of entry into, and residence and settlement within, a **RDA**	6. Restriction of Entry and Residence in **RDA** 7. Certificates of Residence 8. Control of Residence	
	(b) Control of grazing and cultivation and protection of natural resources	9. Conservation of Soil & NR 10. Closing Orders 11. Executive Powers of Commission 12. Right of Entry 13. Limitation of Powers	
	(c) Orders and appeals under Part II	14. Making & Notification of Orders 15. Powers of RCs on Special Orders	
	(d) Enforcement and penalties [Ss. 16-20]	16. Power to Demolish Works. 17. Power of Seizure. 18. Power to arrest. 19. Offences 20. Forfeiture of Stock, Animals & Weapons.	
	(e) Miscellaneous [Ss. 21-	21. Prosecutions.	

	22]	22. Delegation of Powers to Make Special Orders	
Part III Ranching Associations (RAs) And Ranch Lands	a) Formation of ranching associations and establishment of ranchlands. [Ss. 23-33]	23. Investigation on Establishment of a **RA.** 24. Submissions of Proposals. 25. Approval & Registration of a **RA.** 26. Consequences of Registration 27. Acquisition of Contiguous Land. 28. Associations to be Bodies Corporate. 29. Functions. 30. Acquisition & Disposal of Land 31. Amalgamation & Division. 32. Dissolution. 33. Restriction on Alteration of Rules.	
Part IV The Development And Management Of Ranch Lands	(a) Authorized stock units and ranch management schemes	34. Authorised Stock Units & Ranch Management Schemes 35. Seizure of Excess stock 36. Schemes may Include Orders under Part II 37. Works	
	(b) By-laws of a ranching association	38. By Laws 39. Application of By Laws 40. Seizure of Stocks and goods 41. Sanctions: members and their Households. 42. Prohibition Orders. 43. Sanctions: Non Members 44. Conflict of By Laws and Orders	
	(c) Default of ranching associations	45. Declaration of Associations in Default. 46. Power of Commission over	

		Associations in Default.	
	(d) Members of Ranching Associations	47. Rights of Members of Association. 48. Expulsion of Members. 49. Stock Quotas.	
	?		
	(f) Trespassers [Ss. 50-51]	50. Trespass 51. Arrest and Seizure.	
Part V Miscellaneous	52. Jurisdiction 53. Operation of Other Laws. 54. Indemnity. 55. Regulations		
First Schedule	Maasai Range Development Area	The Maasai district other than the lands comprising the Ngorongoro Conservation Area	
Second Schedule	Constitution and Meeting of the Commission		
Third Schedule	Amendments of Certain Laws		

[***The following Part is presented in Part B by Dr. S.E. A. Mvungi in a Paper entitled "EXPERIENCES IN THE DEFENCE OF PASTORALIST RESOURCE RIGHTS IN TANZANIA: LESSONS AND PROSPECTS" - RWT***]

1. Dispute Processing
    a. The Case of Barabaig Pastoralists in Hanang District
    b. The Case of Mkomazi Pastoralists
2. Constitutional and Human Rights Protections

4 REFERENCES

Baldus, R.D., Kaggi D.T., and Ngoti, P.M., 2004,CBC: Where are we now - Where are we going?, Miombo - The Newsletter of the Wildlife Conservation Society of Tanzania, Arusha

Blackstone., Commentaries on the Laws of England

Brockington, D., 2002, Fortress Conservation: The Preservation of the Mkomazi Game Reserve, Tanzania, James Currey Ltd, Oxford

Cotula, L., (ed), 2007 'Changes in "Customary" Land Tenure Systems in Africa'. London and Rome: International Institute for Environment and Development [IIED]

De Merode Eleónore, and others (eds), UNESCO World Heritage Paper No. 13

Fimbo, G.M., 2003. Land Law Reforms in Tanzania, A Lecture prepared to Commemorate the authors 60th Birthday Anniversary on the 8th day of August, 2003,Dar Es Salaam

Forstater, M., (2002) "Bones for Sale: development, environment and food security in East Africa," Review of Political Economy

Fortes and Pritchard, E.,1940, African Political Systems (London: OUP)

Hando, J., 2004, Community Conservation Services: Experiences from Serengeti National Park in Linking Universal and Local Values: Managing a Sustainable Future for World Heritage

Harold, S., "Aspects of Colonial Land Law in German East Africa" Identity in Africa-Processes of Development and Change (University of Bayreuth

Hatfield., and Davies,J.,2006,"Global Review of the Economics of Pastoralism," World Initiative for Sustainable Pastoralism ,Nairobi

Igoe, J., and Brockington, D., 1999,Pastoral Land Tenure and Community Conservation: A Case Study from North-East Tanzania, IIED Pastoral Land Tenure Series, London

Juma, I.H., 2000,Extinction of Customary Land Rights in the Wildlife Conservation Areas of Tanzania: The Case of Mkomazi Game Reserve, Africa: Zeitschrift der Gesellschaft fur Afrikanisches Recht

Kimambo, I.N., 1995, "Environmental Control and Hunger: In the Mountains and Plains of Nineteenth Century North Eastern Tanzania in Maddox et al Custodians of the Land, James Currey, London

Kosyando Lembulung Ole, M., 2007, A Participation Report of the Pilot Project in Handeni District, Mkurabita and the Implementation Of The Village Land Act No. 5 Of 1999, September 18 - December 8, 2006,Arusha

Larsson, P., 2006, The Challenging Tanzanian Land Law Reform: A study of the implementation of the Village Land Act. MSc diss., Swedish Royal Institute of Technology [KTH]

Leland, F.,1963,Development of Range Resources in the Republic of Tanganyika,: USAID, Dar Es Salaam

Letai, J., 2007, An Audit of the Rangelands Act and its Implications on Pastoral Livelihoods in Tanzania: A Report for Tanzania Pastoralists and Hunter-Gatherer Organization (TAPHGO), Arusha

LHRC., 2003, Protection of Wildlife & Human Rights on the Balance Sheet: A Case of Serengeti Killings. An Evaluation by the Legal & Human Rights Centre (Tanzania),Dar Es Salaam

Llewellyn, K. and Hoebel, E.A., 1941, The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence

Maina, Chris P.,2002, "The Human Rights System"

Maina, Chris P.,2007, "Human Rights of Indigenous Minorities in Tanzania and the Courts of Law," Raoul Wallenberg Institute of Human Rights and Humanitarian Law Lund: University of Lund

Masara, Y.B., 2000, The Conflict of Legislations and Collisions of Jurisdiction: An Impediment to the Realization of Community Based Conservation in Tanzania, Consultancy Report of the AWF, Arusha(Unpublished)

Mattee, A.Z., and Martin N.S., 2005,Report on Policies and Laws that affect Pastoralism in Tanzania, Consultancy Report on ERETO II, Ngorongoro Pastoralists Project, Phase 2., Dar Es Salaam, Royal Danish Embassy, DSM & URT, Ministry of Natural Resources

Mattee, A.Z., and Martin N.S., 2006, Ambivalence and Contradiction - A Review of the Policy Environment in Tanzania in relation to Pastoralism, International Institute for Environment and Development [IIED], London

Mchome, S.E., 2002,Evictions and the Rights of People in Conservation Areas in Tanzania,Dar Es Salaam University Press, Dar Es Salaam

Methner,W.,1938,Unter drei Gouverneuren – 16 Jahre Dienst in deutschen Tropen, Breslau

Middleton and Tait (Eds), 1958, Tribes without Rulers, Routledge & Kegan Paul, London

Moore, S.F., 1978, Law as Process, Routledge & Kegan Paul, London

Ndagala, D., 1982 "Operation Imparnati: the sedentarization of the pastoral Maasai in Tanzania Nomadic People

Nelson, F., 2007, Emergent or Illusory? Community Wildlife Management in Tanzania, Pastoral Civil Society in Tanzania, International Institute for Environment and Development [IIED], Issue Paper No. 146,London

Nelson, F., Sulle, E., and Ndoipo, P., 2006, Wildlife Management Areas in Tanzania: A Status Report and Interim Evaluation, Report Prepared for Tanzania Natural Resource Forum, Arusha

Ojalammi, S., 2006, Contested Lands: Land Disputes in Semi-Arid Parts of Northern Tanzania - Case Studies of the Loliondo and Sale Divisions in the Ngorongoro District, PhD diss., Department of Geography, Faculty of Science, University of Helsinki.

Ole Nasha, W., 2007, Formalisation of Land in the Commons: the Future or the End of Pastoralism in Tanzania?, MKURABITA Newsletter, Dar Es Salaam

Parkipuny, M., 1979, Some Crucial Aspects of the Maasai Predicament, In Coulson, Andrew, and African Socialism in Practice: The Tanzanian Experience. 136. Nottingham: Spokesman

PINGOs, HakiArdhi, LHRC, and HIMWA., 2007, Eviction and Resettlement of Pastoralists from Ihefu and Usangu-Mbarali District to Kilwa and Lindi Districts, Collaborative Report by PINGOs, HakiArdhi, LHRC and HIMWA, Arusha

Pospisil, L., 1974, Anthropology of Law: A Comparative Theory,HRAF Press, New Haven

Shivji, I.G. and Kapinga, W.B., 1998, Maasai Rights in Ngorongoro, Tanzania. Drylands Programme, IIED/Hakiardhi, London

Shivji, I.G., 1994, A Legal Quagmire: Tanzania's Regulation of Land Tenure (Establishment of Villages) Act, 1992,Pastoral land Tenure Series No. 5: International Institute for Environment and Development [IIED],London

Shivji, I.G., 1994,Report of the Presidential Commission of Inquiry into Land Matters, Uppsala: Scandinavian Institute of African Studies, Tanzania

Sjoholm, H. and Louno, S., 2002, Traditional Pastoral Communities Securing Green Pastures through Participatory Forest Management: The Case of Kiteto District, Tanzania, Proceedings of the 2nd International Workshop on Participatory Forestry in Africa, Rome: FAO

Snyder, F.G., 1981, "Anthropology, Dispute Processes and Law: A Critical Introduction."

Stolla, F., 2005, "Wildlife Management Areas - A Legal Analysis", TNRF Occasional Papers No. 5, Arusha

Tenga, R.W., 2006, "Minority Rights in Tanzania", in Human Rights, Constitutionalism and the Judiciary: Tanzanian and Irish Perspectives,(Eds) Binchy, Williams; Finnegan, Catherine, Clarus Press, Dublin

Wily, L.A., 2003,Community-Based Land Tenure Management: Questions And Answers About The Tanzania's New Village Land Act, 1999, Issue Paper No. 120,IIED, London

Yves. H., 2006, Tanzania Survey of Conservation Legislative Framework on Community Conserved Areas [CCAs], Evaluation by the IUCN Commission on Environmental, Economic and Social Policy [CEESP], IUCN. Inputs by Igoe, Jim; Lasgorceix, Antoine