



# **Wildlife Management Areas: A Legal Analysis**

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*“The survival of our wildlife is a matter of grave concern to all of us in Africa. These wild creatures amid the wild places they inhabit are not only important as a source of wonders and inspiration but are an integral part of our natural resources and of our future livelihood and well being.”*

*-Mwalimu J.K. Nyerere 1961*

## **Introduction**

Wildlife is one of Tanzania’s most valuable natural resources. Wildlife produces important economic activity through tourism activities as well as providing food for millions of people. The new National Strategy for Growth and the Reduction of Poverty highlights wildlife as an important resource for local economic opportunities and benefits. The sustainable management of Tanzania’s wildlife is therefore, as President Nyerere observed over forty years ago, is a matter of great importance to the country.

The wildlife management system in Tanzania as provided for by the Wildlife Conservation Act of 1974 is being changed. The Wildlife Conservation Act No. 12, 1974 has been the main legislation responsible for regulating wildlife outside of National Parks and Ngorongoro Conservation Area for the past thirty years. The areas governed by the Wildlife Conservation Act include Game Reserves, where human settlement and utilization is prohibited, and Game Controlled Areas (GCAs) where human habitation co-exists with wildlife conservation, as well as all the wildlife found outside of any type of protected area.

The Government of Tanzania, through the Ministry of Natural Resources and Tourism (MNRT), is currently in the process of reforming the Wildlife Conservation Act of 1974 in order to address the challenges facing sustainable wildlife management, and to implement the Wildlife Policy of Tanzania released in 1998. One of the main objectives of the Wildlife Policy is to increase the role of local communities in managing and benefiting from wildlife on village lands. Related to the revision of the wildlife law and implementation of the Wildlife Policy has been piloting increased community involvement through the Wildlife Conservation (Wildlife Management Area) Regulations released in 2002 and launched in January, 2003. These WMA Regulations are part of the wildlife sector reform process and central to implementing the goals of the Wildlife Policy to increase community involvement in wildlife management.

During the past three years there have been many discussions of wildlife management and legal reform issues in a variety of forums, some organized by government and some independently by an array of civil society organizations working to raise awareness and dialogue on these issues. This brief summarizes some of the central issues emerging from these meetings, workshops, seminars, and consultations, and ties them to the basic issues of legal and policy reform in the wildlife sector. The brief is intended to be a reader friendly guide to the basic legal reform issues for government, civil society, and other interested parties.

## **1.0: Background: Policy and Law**

When looking at sectoral reform process it is important to distinguish between the purpose and role of a policy and that of a law. Policy is a directive of how sectors should be managed, including what the objectives and goals are and how to achieve those goals through actions and activities. A policy identifies problems and identifies strategies of how the said problems can be solved in order to improve things in a particular sector. Law is used to implement policy by defining rights and authority among different actors and parties. Policy provides guidance as to the contents and prescriptions of the law and what management objectives law should serve to further. Thus in the wildlife sector the Wildlife Policy of Tanzania provides guidance for a new Wildlife Act to be prepared by the Ministry and passed by Parliament.

## **2.0: The Old Law: The Wildlife Conservation Act 1974**

For the past thirty years Tanzania's principle wildlife law has been the Wildlife Conservation Act No. 12 of 1974 (WCA). This law was passed during the *Ujamaa* period and deals mainly with restricting and regulating the utilization of wildlife resources and creating certain types of protected areas.

The WCA creates regulations for **hunting wildlife**, both inside the protected areas and outside of them, so that people can only hunt animals with licenses issued by government officers. It also has many regulations for controlling the type of hunting that people can do, prohibiting some activities like trapping animals in pits or snares.

The WCA also creates three types of protected areas which have different functions and rules. These protected areas are:

### **A. Game Reserves**

Game Reserves are the foremost category of protected areas under the WCA and may be established by the President. Entry into a Game Reserve without the express permission of the Director of Wildlife is prohibited by the WCA, with the exception of people who are ordinarily resident within the reserve or persons travelling in a highway passing through the reserve. Section 9 restricts setting of fires, felling, cutting, burning, injuring, or removing any standing tree shrubs, sapling, seedling or any part thereof without the express permission of the Director of Wildlife, and livestock grazing is similarly prohibited in Game Reserves.

### **B. Partial Game Reserves**

These are the categories of wildlife protected area which are created by the Director of Game for any animal or class of animals which are referred to as protected animals. Partial Game Reserves are a holdover from the colonial system of wildlife management before the WCA and have not been created or used following the passage of the WCA thirty years ago.

### **C. Game Controlled Areas**

Game Controlled Areas (GCA's) are another type of protected areas provided for in the WCA. But unlike the Game Reserves, land and resource uses in GCA's other than wildlife are not restricted under the law; residence, cultivation, and livestock keeping are

all unrestricted. Because GCA's allow residence and human activity and were created on areas of traditional use and settlement, many GCA's are entirely overlapping with customarily managed village lands. In GCA's, tourist hunting administered by the Wildlife Division and resident hunting managed by the districts is the primary form of wildlife use.

**Box 1: Village Land, Reserved Land, and Game Controlled Areas**

Under Tanzania's land laws, the Land Act No. 4 and Village Land Act No. 5 of 1999, all land in the country is divided into reserved, village, and general land. Reserved lands include areas created or established under sectoral legislation, which includes the Wildlife Conservation Act. Game Reserves and Game Controlled Areas both are therefore included in the definition of reserved land. But the Village Land defines village lands as areas which are customarily used and occupied by local people living in registered villages and which may have been demarcated during any previous administrative procedure or where the boundaries among neighbouring communities have been agreed to. Most areas, for example all of Monduli District, where the Game Controlled Areas are also fall under this definition of village lands. So many parts of the country are reserved land and village land at once!

This is a conflict between the Land Act and the Village Land Act but also involves the wildlife legislation. The National Strategy for Growth and Poverty Reduction calls for removing these conflicting provisions between wildlife and land law and policy so that rural community land tenure can be supported.

In addition to the provisions for restricting wildlife use and for creating the different types of protected areas, the WCA has a number of other important provisions.

Section 26 allows the Director of Wildlife to create "Authorized Associations" which may utilize wildlife; these associations may include villages.

Section 40 states that hunting carried out with a legal license may not occur on private land without the consent of the landowner, although the Director of Wildlife may overrule the landowner, should he refuse to grant permission to hunt on his land, in the "public interest." It is important to note however that although village lands are held under customary rights of occupancy, hunting is still carried out on village lands without the villagers' permission and villages have not, under the WCA, had any direct role in the granting of tourist hunting concessions on the customary lands.

A number of root main problems with the WCA have emerged from many studies and consultations as follows:

1. The law restricts use of wildlife but does not promote participation of local communities in wildlife management on the village lands; it does not give communities incentives to conserve wildlife on their customary lands;

2. Some of the protected areas in the law are no longer relevant or serving their purpose. For example the Wildlife Sector Review Task Force convened by the Ministry in the 1990's said that the GCA's were "totally ineffective" at conserving wildlife;
3. Fundamentally, the law is outdated and by being a very strictly centralized sector with nearly all powers in the Ministry, wildlife is not in accord with new laws, policies, and sectoral strategies for example in areas like local government, land, and forestry.

These problems in the management of wildlife in Tanzania for the past thirty years are described and addressed in detail in the Wildlife Policy of Tanzania.

### **3.0: Policy Reform: The Wildlife Policy of Tanzania 1998**

Tanzania's national Wildlife Policy was released in March, 1998 after many years of working to develop it in order to help the country face up to the challenges facing the wildlife sector. *The Policy's core objectives include ensuring the conservation of biological resources and the sustainable utilization of wildlife resources and ensuring that this conservation contributes to poverty alleviation and improving the quality of life of Tanzanians.*

The Policy describes the specific problems facing the wildlife sector as including:

- The failure of wildlife conservation as a form of land use for rural communities;
- The loss of wildlife habitats to settlement, agriculture, grazing, mining and logging due to human population increase;
- Escalating illegal wildlife off-take and trade.
- Inadequate wildlife use rights granted to rural communities.

The Policy describes the following challenges for the wildlife sector as including

- Promoting the involvement of local communities in wildlife conservation;
- Increasing foreign exchange earnings;
- Integrating wildlife conservation with rural development and fostering sustainable use of wildlife;
- Ensuring that wildlife conservation competes with other forms of land use.

Strategies laid out in the Policy for dealing with these challenges include:

- Involving a broader section of society in wildlife conservation, particularly rural communities and the private sector.
- Promoting the establishment of Wildlife Management Areas (WMA's) by local communities as a means to protect and conserve wildlife outside of protected areas.
- Granting user rights to various stakeholders, providing clear policy guidelines, and stimulating public and private sector investment in the wildlife industry.
- Developing an enabling legal, regulatory, and institutional environment for rural communities and the private sector to participate in wildlife conservation.

The Policy states clearly that, with respect to local communities: ***“It is the aim of this policy to allow rural communities and private land holders to manage wildlife on their land for their own benefit.”***

Thus the basic strategies to implement the Wildlife Policy include:

Continuing to maintain a large Protected Area network.

Establishing a new category of protected area to be known as Wildlife

Management Area for the purposes of effecting community based conservation.

***Devolving management responsibility of the settled and areas outside unsettled Protected Areas to rural people and the private sector.***

It has been understood for the past fifteen years that implementing the new directions in the policy, particularly with respect to the involvement of local communities, will require reform of existing wildlife laws. This has led to the current legal reform process. ***The value of any new legislation in the wildlife sector will therefore be how effectively it serves to further the objectives of this policy, and in particular how it addresses the challenges facing the sector and implements the recommended strategies.***

#### **4.0: Legal Reform #1: The Wildlife Management Areas Regulations of 2002**

A main theme of the Wildlife Policy is that one of the big problems facing the sustainability of wildlife management in Tanzania is the lack of participation in managing and benefiting from wildlife outside the protected areas. The Policy calls for local communities to be given responsibility and rights for wildlife management on village lands so that they can benefit and value wildlife as a form of land use.

The way that the Policy aims to enable local communities to manage and benefit from the wildlife on their lands is through creating Wildlife Management Areas (WMA's). Between 1998, when the Policy was passed, and 2002 the WMA's were only an idea in the Policy, but in December 2002 the Ministry produced Regulations under the Wildlife Conservation Act which provide for the formation of WMA's on village lands.

The WMA Regulations define what WMA's are: ***“village land set aside for wildlife conservation”*** (Section 2.2) which are created according to decisions by the Village Assembly and Village Council. The WMA Guidelines state that the ***purpose of WMA's*** is ***“to enable the local communities living in villages to participate in the protection and utilization of wildlife resources on village land.”***

The WMA Regulations provide detailed provisions for establishment of the WMA's, which are roughly as follows:

1. The Village Assembly decides to form a WMA based on the recommendations of the Village Council.
2. The villages forming the WMA on parts of their lands form a community-based organisation (CBO), and register it as such with the Ministry of Home Affairs according to the provisions of the Societies Ordinance.

3. The villages prepare land use plans which provide for the proposed WMA on their lands. These land use plans are to be subjected to basic environmental impact assessments.
4. The CBO prepares a general management plan for the WMA, or as an interim measure for up to five years, a more basic resource management zone plan showing the designation of different resource uses in the WMA.
5. The CBO can then, following the completion of the above steps, apply to the Director of Wildlife to become an Authorized Association (AA), meaning the CBO has been granted user rights for wildlife in the WMA.

If the CBO is granted user rights by the Director (meaning the Director approves the CBO's application) and becomes an Authorized Association, then the WMA is gazetted and comes into existence. A number of the pilot WMA's, however, have a very important caveat emptor which must be added to the above procedures. According to the WMA Regulations, for villages situated in Game Controlled Areas, the Game Controlled Areas must be transferred to village land status before the WMA can be created (see Box 1 above).

Additional procedures apply for the AA to enter into investment agreements in the WMA's as may be desirable in order for the community to generate benefits from wildlife through commercial activities such as tourism or hunting. Investment agreements also are subject to Environmental Impact Assessments and all investments in WMA's must be approved by the Director of Wildlife.

The WMA Regulations represent a major legal reform in the wildlife sector. The question is: do the WMA Regulations fulfill the goal of the Wildlife Policy of Tanzania to enable local communities *"to manage wildlife on their land for their own benefit."* There are a number of problems with the WMA Regulations in terms of their realizing this aim. The procedural requirements of the Regulations for communities to form WMA's are daunting and complex as has been reported by local representatives in many seminars and workshops during the past two years. Some requirements, such as formation of CBO's and development of participatory land use plans subjected to Environmental Impact Assessments, may take several years to complete. More problematic are those procedural hurdles, particularly the transfer of reserved land in Game Controlled Areas to village lands, for which the way forward is not addressed by the Regulations. *It is partly because of the complexity of these procedures that as of January, 2005, two years after the launching by the Ministry of the WMA Regulations, none of the pilot WMA's have yet been gazetted.*

Second, even if communities are able to complete all the procedures and form WMA's, the degree of authority they receive for management of these areas is limited. All investments in WMA's must be approved by the Director of Wildlife, and little influence on hunting block allocation is granted to local people and instead remains with the Director of Wildlife. Section 73.1 of the WMA Regulations is a problem because it states that benefit sharing will be determined by circulars issued by the Ministry from time to time. This means that the communities establishing WMA's do not know what

proportion of the revenue in the WMA's they will keep and what proportion will go to the Government. This is a serious problem because it undermines the potential for WMA's to compete with other forms of land use and for communities to evaluate the sensibility of forming a WMA in the first place.

Unless these problems are addressed in future reforms, the WMA experiment is unlikely to prove successful and the Wildlife Policy's essential objectives will not be met. Sound legal institutions are required to implement the community-based management strategies that the nation's policies call for. The existing WMA Regulations do not provide that essential need, and stakeholders should collaborate to produce a better legal mechanism for community wildlife management in the near future. Recommendations are made in the final section of this brief for ways to improve the WMA recommendations based on a wide array of stakeholder input.

### **5.0: Legal Reform #2: The Proposed Wildlife Conservation Act 2004**

A much broader and long-term reform process in the wildlife sector is the repeal of the Wildlife Conservation Act of 1974 and passage of new principal wildlife legislation. The issue in this process is whether the new law will adequately conform to the principles of the Wildlife Policy and the issues of concern amongst the stakeholders and particularly the people in rural areas.

During 2004 a draft bill entitled the Wildlife Conservation Act of 2004 was circulated among stakeholders and was the subject of a number of consultative meetings, some of which were organized by government and others organized by interested civil society organizations. Discussions were held on the content of this important new proposed law. A number of important issues arose in relation to the content of the draft bill, which are summarized here. It should however be noted that the draft under discussion here is still subject to many changes before being read in Parliament or being passed into law. These comments therefore apply only to the draft circulated in mid-2004 and any of its provisions which may remain in future drafts or in the final bill or act.

As stated above, the new wildlife act will be evaluated on how effectively it responds to the challenges to Tanzania's wildlife sector as described by the Wildlife Policy, and how well it serves to implement the strategies for management detailed in that Policy. It will also be evaluated in terms of whether or not it is in accord with other sectoral laws such as those for forestry and land, which link heavily to wildlife and which impact on each other, as well as to cross-cutting processes such as the Local Government Reform Programme and the implementation of the National Strategy for Growth and Reduction of Poverty.

A number of concerns with the draft wildlife act have been raised during discussions and consultation which are summarized here in order that the final bill may take them into consideration for the benefit of Tanzania's wildlife, economy, and citizens.

The first concern is a general issue which has been raised. This is that while the Wildlife Policy calls for significant reforms to the system of wildlife management in Tanzania, the draft wildlife act, by contrast, is structured very similarly to the outdated Wildlife Conservation Act of 1974. Nearly all the powers under the draft act for managing wildlife are given to the Director of Wildlife and the Minister; while the Wildlife Policy emphasizes the importance of local community rights and participation, these local stakeholders are given almost no new rights and responsibilities under the new act.

Some specific concerns with the draft act include the following:

The new draft act retains the provisions for Partial Game Reserves and Game Controlled Areas without any changes despite these areas being outdated and not performing conservation functions. The draft act does not in any way address the conflicts between Game Controlled Areas and the village lands which are prevalent and which inhibit implementation of WMA's as well as implementation of the Village Land Act and constrain local community land tenure security. The draft wildlife act does not seem to have been harmonized with the land legislation and the local government legislation. The draft wildlife act gives new powers to the Minister of Natural Resources to create reserved land which is in contravention of the powers of the President under the Land Act to transfer village land to reserved land.

The draft wildlife act has not clearly and securely established the Wildlife Management Areas under the law but will leave them to be dependent on regulations which can be changed at any time by the Minister. This reduces the security that communities can have to manage and conserve wildlife on their lands. The Act has absorbed the WMA regulations without any improvement but with all their shortcomings.

While the draft wildlife act does little to increase the ability of local people to benefit from wildlife on community lands, it provides for new regulations and restrictions in the form of *corridors, buffer zones, and dispersal areas*. The draft gives the Minister new powers to declare and regulate these areas. It is possible that this will represent a new type of protected area in customary village lands and a new source of conflict between wildlife authorities and local communities. This is in contrast to the provisions of the Wildlife Policy which call for using community-based conservation through WMA's in the corridors and dispersal areas to achieve conservation in these places.

The draft wildlife act also does not increase participation of local communities in tourist hunting carried out on village lands and does not strengthen the rights of communities as private landholders to determine what hunting occurs on their lands.

The draft wildlife act does not provide for increasing the transparency and accountability of the tourist hunting concession system as called for by the Wildlife Policy.

## **6.0: Summary Recommendations**

This brief concludes with summary recommendations for achieving legal change in the wildlife sector for the sustained good of the country's wildlife, national economy, and rural communities.

### ***(a) Draft Wildlife Act***

The following recommendations are made with respect to the draft wildlife act which is expected to become new principal legislation for the wildlife sector in Tanzania:

1. The draft new legislation should reflect the spirit of the Wildlife Policy, which it does not do at present particularly because it expands the powers of the Ministry while not increasing any rights or responsibilities of the local communities living with wildlife on village lands. The new wildlife legislation should state clearly that the people in villages should be involved in the wildlife management and thus they should benefit from wildlife and their resources, and provide some minimum parameters for the rights of villagers with respect to wildlife management.
2. The new wildlife act should be in harmony with other pieces of legislation such as the land laws, and particularly the Land Act of 1999 and Village Land Act of 1999. In this aspect the WCA should provide and be consistent with the land laws on matters such as transfer of reserved land to village land and should work to help resolve the conflict between Game Controlled Areas and village lands
  - a. As such, the new law should provide categorically that Game Controlled Areas (GCA's) should not be in areas demarcated or used as village lands according to the Village Land Act.
3. The new wildlife act should sufficiently incorporate the WMA Regulations for the purpose of safeguarding them from the executive interference and sudden changes that may result from WMA's being defined entirely by Ministerial regulations.
4. The new wildlife act should more formally recognize the rights of the people living inside or near the wildlife protected areas.
5. The new wildlife act should explicitly state and recognize the rights of Hunters and Gatherers and protect their livelihood in their traditional setting.

### ***(b) WMA Regulations of 2002***

The WMA's are one of the most important potential reforms to the way wildlife is managed in Tanzania and in making wildlife management more ecologically and economically sustainable. But the WMA Regulations of 2002 do not design WMA's in a way which will best achieve the Wildlife Policy's objectives. The following recommendations are made in order to facilitate the better implementation of WMA's, in law and in practice, and the successful execution of the aims of the Wildlife Policy of Tanzania.

1. As a starting point, prior to other actions being taken, the transfer of Game Controlled Areas to village lands should be executed. This should be done not only in the listed pilot WMA's but in other GCA's where village lands have been

demarcated and where potential WMA's could exist at some time in the future. This would provide a strong indicator to local communities that the government is serious about allowing communities to benefit from their resources and help build trust in areas where it may be lacking due to historical factors.

2. The issue of benefit-sharing must be made clear under the law. The ambiguity of Section 73.1 of the Regulations must be replaced with a clear explanation of how financial benefits in WMA's will be divided and what proportion the AA's will capture, at a minimum.
3. The Regulations should provide greater authority to the villages and AA's for the management of tourist hunting in WMA's. The allocation of tourist hunting rights in a WMA should not be dependent upon block allocation by the Director of Wildlife, but should be carried out administered openly and transparently by the AA.
4. Investments in WMA's should not require the Director of Wildlife's approval. If a system of checks-and-balances is needed to ensure that the AA's are not taken advantage of, then an independent committee, perhaps the District Natural Resources Advisory Committee, should play this role and be empowered to do so under the law.
5. The procedures for establishing WMA's should be simplified to take better account of village capacities. The minimum, rather than the maximum as currently provided for in the Regulations, of pre-requisites should be established to WMA formation. The requirement of Resource Management Zone Plans should be eliminated and these merged with the land use planning requirement.
6. The three-year trial period needs to be changed. No WMA's have been established under the regulations as of January 2005, making this current system unworkable. WMA's should be provided for under the law and implemented without such caveats (see above); the relevant Ministry can re-evaluate their success at any time of their choosing and work with Parliament to modify the law accordingly. There is no need for a truncated trial period which will mainly serve to increase local insecurity and suspicion of the entire process.

The District Natural Resources Advisory Board (DNRAB) is too executive, technical and administrative, rather than advisory. It currently inhibits community participation and intimidates ordinary community members.