

**1990's TANZANIA LAND LAWS REFORMS AND ITS  
IMPACT ON THE PASTORAL LAND TENURE**

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## List of Abbreviations

DC	District Commissioner
GCA	Game Controlled Area
G.A	General Assembly
LGCA	Loliondo Game Controlled Area
MP	Member of Parliament
NCA	Ngorongoro Conservation Area
NGO's	Non-Governmental Organization
NAFCO	National Agriculture and Food Corporation
NCAA	Ngorongoro Conservation Authority
NLP	National Land Policy
NP	National Park
OBC	Ortello Business Corporation.
PINGO's	Pastoralists Indigenous NGO's
TANAPA	Tanzanian National Parks
TBL	Tanzania Breweries Limited.
UAE	United Arab Emirates
URT	United Republic of Tanzania
UNESCO	United Nation Education, Science and Cultural Organization
WMA	Wildlife Management Area

## 1.0 Historical Background of Pastoral Land Tenure in Tanzania

**P**astoralism is a way of livestock production in which livestock keepers move their cattle, sheep and goats from place to place to take advantage of pasture and water which are available at different times during the year. On the dry-land planes of Tanzania, livestock and their herders, sometimes entire families, can move large distances to reach suitable pastures, which causes some pastoralists to live a nomadic or semi nomadic existence.<sup>1</sup>

The development of pastoral land tenure can be traced from colonial era to the present. **Dr .Kennedy** says; the pastoralist land tenure has been the subject of conjecture and turbulence from the colonial trough the independence era.<sup>2</sup> Subsistence farming and pastoralism constitute a substantial component of the livelihoods of the people. At the global level, the pressures for liberalization of land and natural resources, specifically with a view to putting land in the market place have been critical in revisiting land legislations. Tanzania has almost 2 millions pastoralists scattered in several regions. The Maasai pastoralists are large in number and widely known.

### 3.2 During Colonial Epoch

After the intrusions of Germans in East Africa all the Tanganyika land was taken by German East Africa Company. Any land which was evidenced not to be private was considered to be public property. German recognized the customary land rights and tried to facilitate proof of them in order to integrate them into formal production of western system<sup>3</sup>

Then the recognition of customary survived only for short time when German East Africa declared that all land was un-owned. Then ownership of the land was vested to German Empire and land title had to be obtained by conveyance of ownership or leasehold. According to Dr G Kennedy the natives by then had only

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<sup>1</sup> Sendalo, D(2009).A Review of Land Tenure Policy Implication on Pastoralism in Tanzania.p 7.

<sup>2</sup> Kennedy, G.(2007).The Impact of Tanzania New Land laws on the customary Land rights of Pastoralists.p 21

<sup>3</sup> Ibid. p 24

user rights not ownership, and ownership had to be proved by documentation. Then one of the major implications of this to pastoralism is the fact that “occupancy of the land became narrowly defined as tilling where as pasturage and fallow were not seen as occupancy.”<sup>4</sup>

**Sendalo** reiterates that, the colonial legislation and programmes viewed pastoral land as reserves awaiting proper allocation and exploitation. Wildlife reserves and prime land for settlers were always cut-out of the rangelands.<sup>5</sup> There is plenty of indication to suggest that the primary objective of new land policy and legislation at this point is *not* to secure the land rights or interests of the majority poor but to make more land available for commercial and often foreign-backed investment, I will later revert to this when discussing the impact of land law reforms on pastoral land tenure.

The system of pastoral land ownership faces many challenges including the categories of ownership. Land tenure in pastoral societies of Tanzania comprises of two key concepts namely, territory which denotes land as defined by the jurisdiction of state or community, etc.; and domain which refers to the range of customary control or sphere of influence (**Kaare**, 1996, 5). Then due this huge challenge **Potnaski** says It is this climate-driven mode of land and resource use which has led to their lands being dubbed as uninhabited, barren or under-utilized. As a result, these lands have been confiscated without concern for the pastoralist way of life on the pretext that they were ‘no man’s lands’. (To be discussed later).

The reasons for these challenges are much more complex than experienced on the farm. They reach back to land grievances that have a century-long history, which remain unresolved and this will continue to resurface periodically, and with greater and greater disturbance until they are resolved.

During German era pastoral land tenure was not properly legislated, Germans were highly interested with plantation economy and oriented market economy. After world wars Tanganyika became mandate territory and later trust territory under British Governors. British rule struggled to favor the interest of natives in

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<sup>4</sup> Ibid. 25

<sup>5</sup> Sendalo.Op.cit.,p 8.

land matters by enacting various laws including the land ordinance of 1923 Cap 113. Regardless the enactment of those laws; the land law Cap.113 had no provisions relating to customary tenure. **Dr Kennedy** says, 1928 land law amendments did not in practice protect natives and pastoral land tenure as a whole.<sup>6</sup> **Prof Juma** elaborates that, British took advantage of this ambivalent and tenuous nature of customary tenure system to accommodate shifts of administrative and economic policies at the expense of customary lands<sup>7</sup> Grazing lands or rangelands became vulnerable to encroachment and remained insecure against land alienation in favor of establishment or expansion of commercial farming, wildlife reserves, or conservation schemes and all this were justified by British rule.<sup>8</sup> Despite the efforts made by British to establish Maasai District in 1926 and Land (Pastoral Purposes) regulations of 1927 to defend Maasai land rights, pastoral land tenure was still unsecured.

### 1.3 Post Independence Period

Land tenure regime in Tanzania never became new even after independence. The independence government went on using the same land laws in land administration by retaining the legal heritage left to it by British rule.

According to **Dr Kennedy**, during post independence period there was only one attempt to regulate pastoral land under customary law until 1999 when the land and village Land Acts were enacted. The only attempt made was the introductions of rangelands under 1964 Range Development and Management Act.<sup>9</sup> Operation vijiji and creation of ujamaa village hardly took into account the land rights of pastoralists.

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<sup>6</sup> Kennedy., Op.cit. p 30.

<sup>7</sup> Juma, I.H. (2000), "Extinctions of customary Land Rights in the Wildlife Conservation Areas of Tanzania: The Case of Mkomazi Game Reserve. In *Rethinking Africa 2000*:133-172, at p.142.

<sup>8</sup> Ritcher, R.E. (1996), "the land Law in Tanganyika since the British Military Occupation and under the British Mandate of the League of Nation, 1916-1946", in Debusman, R and Anorid, S. (eds.), *Land Law and Land Ownership in Africa: The case Studies from Colonial and Contemporary Cameroon and Tanzania*, op.cit., pp75-77.

<sup>9</sup> Kennedy., Op.cit., p 37.

## **2.0 A Summary of 1990's Land Law Reforms**

### **(i) Presidential Commission on Land Matters**

**T**he 1990's land reforms, was initiated by the commission of inquiry into land matters in 1991. The commission was commonly known as Shivji commissions due to the fact that Prof Issa Shivji was the chairperson of the commission. The report was a gear towards all land reforms took place in 1990's. In 1992 the findings of the report were submitted to the President covering all legal, administrative and institutional dimension on land.<sup>10</sup> The report had good recommendations on pastoral land tenure like range mechanism to protect pastoral land.<sup>11</sup>

### **(ii) The National Land Policy**

Before enactment of any law it's legally advised to have a policy in place before. 1995 in responding to presidential commission, Tanzania government released a National Land policy basing on the recommendation of the commission of inquiry on land matters of 1991. The policy admitted the existence of the shortage of grazing land coupled with government policies that favored cultivation at the expense of pastoralist.<sup>12</sup> The policy addressed the problem of pastoralism without giving straight forward mechanisms to secure pastoral land tenure.<sup>13</sup>

### **(iii) Land and Village Land Acts of 2009**

In responding to the National Land Policy, the parliament of Tanzania enacted two legislations i.e Land and Village land Acts of 1999 for the management of land matters in Tanzania. According to Prof Fimbo the major concern of the policy makers in the land law reforms has been the tensions between on the one hand ,freedom to deal with the land in the market and on the other ,security of tenure or protection of users and occupiers of land.

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<sup>10</sup> United Republic of Tanzania(1994),Report of the Presidential Commission of inquiry into the land matters,Vol.1 & 2.

<sup>11</sup> Presidential commission Report on land matters.Op.cit. ,Vol 1,Chapter 15-16.

<sup>12</sup> National Land Policy, paras 7.3(iii)

<sup>13</sup> Fimbo,G.(2003),Land Law Reforms in Tanzania. p 44

### **3.0 The Impact of Land Law Reforms on Pastoral Land Tenure**

#### **3.1 Policy implementation**

**B**oth the policy and the report of the presidential commission attempted to address the problem of pastoral land tenure. The questions of issuance of village land certificates and restoration of range lands were strongly addressed by the policy. But in practice the situation is not the same due the fact that the policy is silent on the mechanism to address those problems. With regard to the nature of pastoral community, they need a vast area for grazing and sometime to practice transhumance, but surprisingly the policy is silent on that. NLP requires all range lands to be reverted to its original use as soon as existing activities ceases<sup>14</sup>

#### **7.3.1 Policy Statements:**

- (i) Security of tenure for pastoralists in pastoral land areas will be guaranteed by appropriate measures including gazetting to protect grazing land from encroachment.**
- (ii) Certificates of Village Land will be issued to protect common property regimes.**
- (iii) Underutilized or neglected former pasture land will be reclaimed and restored to pastoralists, when not in conflict with national interests.**
- (iv) When any activity other than pastoralism ceases in rangelands (eg. abandoned ranch) that land will revert to its original land use.**

But this is not the same in practice, look at the case of NAFCO as well the case of Soit sambu grazing land (12,000 Acres) granted to TBL in 1980's for for commercial farming activities and when farming activities ceased, that land was never reverted for pastoral activities instead the land was sold to Thomson Safaris for tourism activities.

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<sup>14</sup> National Land Policy, para 7.3.1(a), p 35.

## **2 Objectives of Land Law Reforms**

Tracing back the objectives behind Tanzania land law reforms, it is easily to note what impact the law reforms will have on pastoral community. There is plenty of indication to suggest that the primary objective of new land policy and legislation at this point is *not* to secure the land rights or interests of the majority poor but to make more land available for commercial and often foreign-backed investment. The evolution of Tanzania's reform of its land laws is an initiative embarked on as part of broad economic liberalization supported by donors and the World Bank Group. The liberalization of the economy and emphasis on privatization fueled by the IMF/World Bank agenda on markets and privatization has increasingly opened the rangelands to a host of external forces. Land acquired by the state either for direct economic activity)<sup>15</sup>

### **3.3 Expansion of Protected Areas**

The Policy became a thorn to rural communities particularly pastoralists, as it advocates for dispossessions and expanding of boundaries of protected areas at the expense of pastoralist (e.g. Mkomazi game reserve and NCA). The Policy has inherited the colonial system of land management from top to dawn. The principle of the policy promoted by the land laws of 1999 clearly stipulates that all the land in Tanzania is the public land, with radical title vested in the president as the trustee on behalf of all citizens.<sup>16</sup>

The Land Policy turns against the pastoralists, blaming them for encroaching into agricultural lands and causing conflicts with other communities and for land degradation! It states that 'the free movement of pastoralists with their cattle brings about land ownership and land use conflicts with settled communities. Furthermore, in the manner of the 'old orthodoxy', 'unregulated movement of livestock causes land degradation in areas through which they pass.' The moral is clear: pastoralism and pastoralists are the victims of who are degrading the

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<sup>15</sup> Sendalo.Op.cit.,p 8

<sup>16</sup> Section 3(i)(a) and 4(1) Land Act, section 3(i)(b) Village Land Act,1999;National land Policy,para 4.1.19(i)(a).

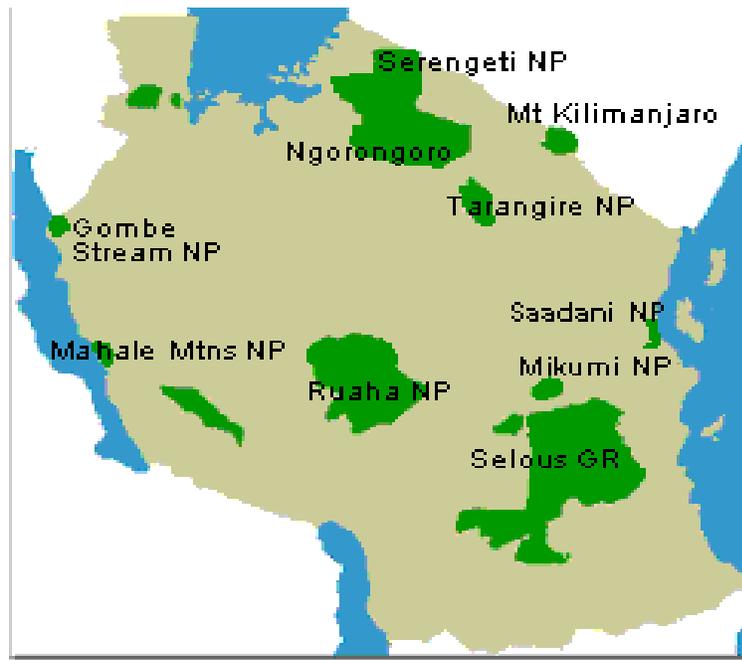
environment. About 1/3 of the country's total area is protected to a certain degree as *National Park*, "Game Reserve", *Marine Park*, *Forest Reserve*<sup>17</sup>

The pastoral people in Tanzania have been the most prominent victims of protected areas and wildlife conservation policies and practices widely Acknowledged today. Today, they occupy less than two thirds of their former territory and there are indications that this will go on dwindling. (**Kaare, 1996, Okoth-Ogendo, 1992**).

Dealing with the impact of new land laws on the pastoral land tenure can't be done in isolation of new wildlife and environmental laws. Pastoral communities have for many years been moving to the south, Tanzania tremendously faces another kind of the Maasai migration to urban centers beginning during early 1990s in search of wage labour and other income earning activities. The reasons for such movements include loss of livestock due to diseases, drought, and limited land for livestock keeping, worshiped investors like OBC, extended conservations , protected areas etc.

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<sup>17</sup> Ibid., 9



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**Sendalo proclaims that**<sup>18</sup>, Pastoral areas continue to be viewed as unproductive “wastelands”, and government investment is rarely proportionate to the contribution made by these areas to local and national economies. Furthermore, the contribution that pastoralism makes to the national economies is rarely quantified in national development statistics. For example, there is little recognition of the fact that pastoralism is the backbone of the commercial livestock sector for both domestic and foreign markets, or that almost all the wildlife that attracts significant foreign earnings is located in pastoral areas. The fact that pastoralism is able to make profitable use of the million people in Tanzania, is also often not recognize

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<sup>18</sup> Sendalo.,Op.cit., 19

### 3.4 Copping Mechanism

Literature shows that the pastoral community have been forced to develop coping mechanisms against these changes of land reforms. The coping mechanisms include; Migrations to new areas of the country and diversification of productive activities, a good example are evictions of pastoralist from Ihefu valley to Lindi. These changes could mean greater insecurity or greater vulnerability for certain social groups, while bringing prosperity for other groups. During Ihefu evictions many pastoralists lost their livestock due to long walking distance.

### 3.5 Inheritance of Old and Impolite Colonial Land Tenure

The land tenure in Tanzania never change, the new land laws retain right of occupancy as the sole system of land holding or land tenure. Right of occupancy is a dual system divided into Granted and Customary rights of occupancy. Customary right of occupancy include issuing of certificate and deemed right of occupancy according section 25 of Village Land Act, 1999. However, the issue of deemed right of occupancy is nowhere to be seen as secured by the land laws due to the controversy surrounding section 18 of the village land Act, 1999.

**Dr Kennedy** reiterates, validation of land use occupation into granted right of occupancy infringes the rights of customary land owners.<sup>19</sup> This is more practicable in many pastoral villages, particularly in Northern Tanzania where quite substantial areas of land have been alienated to companies like OBC, Thomson Safari, individual etc under granted right of occupancy.

Pastoralist in Simanjiro District faced with severe challenges; the most acute is shortage grazing land as the result of land alienation. Due to seasonal movements of livestock under transhumance system seasonal grazing land have been labeled as **terra nullus (no man's land)** and legally or illegally alienated into larger plantations, mining caves or creation of National Parks Like Tarangire.<sup>20</sup>

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<sup>19</sup> Kennedy., Op.cit., p 64, see also Lane, C. (ed). (1994), Pasture Lost alienation of Barbeig Land in the context of Land Policy and Legislation in Tanzania, Op.cit.

<sup>20</sup> Kennedy., Loc.cit., p 105.

The usual daily and seasonal migrations have been rendered difficult by the present land laws and wild life laws. For instance, during periods of serious conditions, pastoralists have attempted to utilize some of this alienated areas for dry season grazing but have found them inaccessible. In turn they have been brutally treated to the extent of being called foreigners from Kenya. (refer the Iolondo saga 2009<sup>21</sup> and the case of Simanjiro 2006.)



**TANZANIA MAP SHOWING PROTECTED AREAS**

<sup>21</sup> Olengurumwa, P. (2009) "Untold Story of the Ngorongoro District", p 15.

### **3.6 Participation and Flow of information**

The NLP advocates for the participation of people in land management and administration. In practice there is huge evidence that up to date pastoral communities are still unaware of new land laws reforms. This subsequently has a negative impact on pastoral land tenure as they still practice what can't be enforceable into the court of law in case of any interventions.

The land laws advocate for villagers to secure their land, they need first to get a certificate of village land granted by the commissioner for land. The whole process of certification according to my own experience and studies made by other researchers like **Dr Kennedy** and **W.Olenasha** is very problematic due to cumbersome procedures which seem to be, expensive and prohibitive. For instance up to date only 3 villages in Ngorongoro out of 34 villages have managed to have village land certificates.

### **3.7 Land Dispute Settlement System**

The system of land dispute settlement under new land laws is still a theory to the pastoral community. In many pastoral areas this system is not yet established and whenever established it happens to be unworkable. The involvement of the Ministry of Land in land matters and at the same time involved in the appointment of chairpersons of the District Land Tribunal overrides the principle of impartiality.<sup>22</sup>

### **3.8 Inclusion of Unused Land in the Category of General land**

The inclusion of unused or unoccupied lands in the category of general land has a negative impact on pastoral land tenure. PINGOS therefore argues that the land laws lean favorably towards foreign investors, there is a lack of land security for land owners who reside in different villages when their land is labeled as unoccupied. This question was even discussed before the enactment of new land laws. For instance in the parliamentary debate on the land bill, the chairman of the Economic and Finance Committee, Hon Late **Juma J. Akukweti** (MP), raised the concern that the Bill had not clarified pastoralists' lands. He said pastoral lands need legal

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<sup>22</sup> National Land Policy, para 4.2.25

protection due rotational grazing system<sup>23</sup>. According to Dr Kennedy many official justified the inclusion of unused land into general land as it simplifies the creation of land bank to be granted to investors without going into detailed procedures of transfer of village land and payment of any compensation.<sup>24</sup> These have been the same justifications used by colonialist to expropriate and plunder the land of the poor. Customary law/tenure has functioned at the level of peoples' communities and statutory law has operated on the national level.

### **3.8 Marginalization and Conflict over natural resources**

**Chachage and Shivji (2001)**<sup>25</sup> concede that liberalization has prompted high marginalization of the rural poor as a lot of pieces of land are being alienated from peasants and pastoralists, thus causing conflicts over natural resources. This was possible because when they move elsewhere in order to secure for forming and grazing are, they cause conflict with people they meet, we have at hand live examples at Rufiji, Ihefu, Kilosa and Lindi. On his part, Shivji propounds that from 1990'S lands disputes have become common in Tanzania due to poor management of land matters.

Land conflicts can be put into various categories as follows; conflicts between pastoralists and farmers, conflicts between indigenous and investors, conflict between central government and citizens and conflicts between reserved areas authorities and citizens. <sup>26</sup> These conflicts matured to be a threat to peace, loss of life and properties. Pastoralists lost their homes and properties during evictions in many parts of the county. For instance in Kilosa, evictions left many pastoralist homeless. Many of them lost their cattle and money.<sup>27</sup>

***One of the member of parliament had this to say;***

*“Wafugaji wanazunguka bila ya kuwa na maeneo maalum ya kufugia. Kila wanapokwenda wanaambiwa ni hifadhi. Wengine wameishi maeneo hayo kwa muda mrefu zaidi ya miaka 20 leo wanaambiwa ni hifadhi”.*<sup>28</sup>

<sup>23</sup> Hansards, Parliamentary Debate, pp 27 and 61.

<sup>24</sup> Section 4 Village Land Act, 1999, see also Kennedy., Op.cit., p 178

<sup>25</sup> Mtwale., Op.cit., pp. 29-40.

<sup>26</sup> Hansard., 16th session–27th Meeting .p.67

<sup>27</sup> Ibid

<sup>28</sup> Hansard., Op.cit. 16th Session – 14th Meeting. p 129

The Constitution, make it clear that everyone has the right to own or hold any property lawfully acquired, and that the deprivation of such a right must be done lawfully and compensation paid. Pastoralists have continued to traverse the whole country or continue to have their land encroached upon, both processes lead regular conflicts.

**On the same agender another member of parliament had this to say;**

*“Wafugaji wamenyanyaswa kupitakiasi. Hivi ukinyang’anywa mifugo 400 uliyonayo ikauzwa, ukabaki maskini, ni sheria gani hiyo.....Kinachonisikitisha ni swali linaloulizwa kwamba hivi wametoka wap.... Huu ni ukiukwaji wa Katiba na haki za binadamu.”<sup>29</sup>*

This is a parasitic stratum. It strengthened tour and travel companies in the same way in which local communities are weakened. It is polarization of wealth and poverty at two opposite extremes. It is all sheer robbery, criminal plunder of the weak by the strong. To borrow the late Dr. Rodney’s in his book How Europe underdeveloped Africa “capitalism is parading in without even a loin cloth to cover its nakedness.”<sup>30</sup>

**Blomley** <sup>31</sup> says that, state has a legal monopoly over the land territory through legal enactments. In principle, law should provide tools for administrations and judicial procedure to protect the land rights. The study shows the multiple legal situation in Tanzania, whereby land and resource property has accommodated notions of private, common /collective or granted law in land ownership in the beginning of the 1990’s. State law also lagged decades behind states policy changes. Tenga, <sup>32</sup> went on saying that changes in law and property have taken place with force and violence ever since the colonial time example the land ordinance 1923 remodified and re- co -structuring the local systems of customary land tenure from 1921 on wards.

<sup>29</sup> Ibid.,20th Meeting.p 115

<sup>30</sup> Olengurumwa,Op.cit., p 10

<sup>31</sup> Blomley,K. (2004).Unsettling The City, Urban Land and the Politics on Property.

<sup>32</sup> Tenga, R.(1991).“Tanzania Land Law, A Paper Presented in Proceedings of Arusha Workshop on land Policy” August 27-29 -1991.

The land leased to OBC and the other sold to Thomson Safari in Loliondo are seasonal migrated corridors. The same situation was found taking place in Sudan whereby most of the pastoralist seasonal migrated corridors were granted to investors from U.A.E, Saudi Arabia and Egypt.<sup>33</sup>

It is not at all surprising that resource-based conflicts should constitute one of the major development challenges in Tanzania. Indeed, this is consistent with the reality all over the dry lands of Africa where conflict has become endemic. In a global review of pastoralism and conflict, have shown how areas occupied by pastoralists are characterized by conflicts emanating from competition for natural resources<sup>34</sup>

**Babiker**<sup>35</sup> says the existing policies and legal institutional framework were put in place in 1950s and the tensions between the state legislations in Sudan and customary land regimes and continual grabbing of land and displacement of pastoralists was leading for conflicts among pastoralists, commercial farmers, sedentary farmers and state security forces.

According to **Helland**,<sup>36</sup> Land tenure systems must be linked to a number of organizational features (social, political, economic) of pastoral society; on the other hand land tenure arrangements are also assumed to have evolved in response to the nature of the resources involved. The main contemporary problem in Ethiopian pastoral societies, however, is that various indigenous forms of tenure that no doubt evolved as indicated above now are increasingly subordinated to unitary national land tenure legislation

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<sup>33</sup> Babiker, M. (2007), Fighting For Inclusions Conflicts Among Pastoralists in Eastern Africa and the Horn. pp 94-95.

<sup>34</sup> Michele, Nori. Jason Switzer and Alec Crawford (undated). Herding on the Brink: Towards a Global Survey of Pastoral Communities and Conflict. (An Occasional Working Paper from the IUCN Commission on Environmental, Economic and Social Policy)

<sup>35</sup> Babiker., Op.cit., pp 103-104.

<sup>36</sup> Helland,J.(2006), "Pastoral Land Tenure in Ethiopia.p 3.

### 3.10 Overlapping of laws

**Olenasha**<sup>37</sup> articulates that, the WCA is in conflict with the VLA and LGA when it comes to the administration of village land. Village Councils upon being incorporated have given powers of management of village lands for and on behalf of villagers. According to the LGA<sup>38</sup> one of the functions of the Village Council is to 'initiate and undertake any tasks, venture or enterprise designed to ensure the welfare and well-being of the residents of village and participate by way of partnership or any other way, in economic enterprises with other Village Councils.

The VLA has placed village lands under the administration of Village Councils. The WCA has on the other had placed powers of control and administration of wildlife under the Director of Wildlife. The Director has sweeping powers in issuing hunting licenses. Game Controlled Areas (GCA's) is one category of protected areas where the Director has sweeping powers over GCA's also happen at the same time to be village lands. The Director has powers to give hunting licenses for wildlife in village lands. Hunters are not required to get the consent of Village Councils. This will outright be in contradiction with the powers that Village Councils have been given under the provisions of the WCA and LGA.

**Sanna Ojalamm**<sup>39</sup> says when thinking about law, it is also important to remember that Africa has often had two parallel legal systems functioning at the same level: state law and customary law. Also, overlapping land claims (modern and customary) have existed side by side in social space. Customary law/tenure has functioned at the level of peoples' communities and statutory law has operated on the national level.

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<sup>37</sup> Olenasha, W. (2006), "Reforming Land Tenure in Tanzania: For Whose Benefit?" p 31

<sup>37</sup> Section 142(2)

<sup>38</sup> Ojalamm, S. (2005), *Contested Land Disputes in Semi Arid Parts of Northern Tanzania*, pp 90-10 see also Olungurumwa, P(2009), "Resource based conflict in Northern Tanzania; The case of Maasai and Sonjo of Ngongorongoro", p 53.



Maasai Pastoralists grazing livestock in Loliondo Division. This reveals the main activities of people living in Loliondo and the way they coexist with the environment.

**Sourcen.Sanna Ojalammi**

**Mr. Nelson** of Sand County Foundation presented an apparent contradiction in the legislation with respect to Game Controlled Areas and village lands. Game

Controlled Areas are created by the Wildlife Conservation Act<sup>40</sup> and according to the Land Act is therefore included under the definition of reserved lands<sup>41</sup>. At the same time, Game Controlled Areas in northern Tanzania overlap with demarcated and registered village lands and are therefore included under the Village Land Act's definition of village lands.

**Mr. Stolla**<sup>42</sup> stated that, the legislation did not intend land to be both reserved and village lands, and that this was a contradiction and a flaw in the laws. Concern was expressed as to the tenure security implications of this contradiction, and Mr. Stolla advised that the only recourse would be harmonization of the laws by Parliament. **Mtwale** says one factor that brings about land conflict, is the existence of numerous pieces of legislation controlling deferent land resources. Apart from contradicting each other, often clash with indigenous property management system hence result into insecurity to land tenure leading to unsustainable land use practices making policies as well as legislation over resources ineffective and irrelevant to actual situation.<sup>43</sup>

This study shows the multi-legal situation in Tanzania where land and resource property has accommodated notions of private, common/collective or granted rights in land ownership. The Wildlife Conservation Act does not define a game-controlled area, and its provisions thereon are not very illuminating as regards the status of persons who live within these areas. The Act merely provides that the Minister may, by order in the Gazette declare any area of Mainland Tanzania to be a game controlled area, and then places certain restrictions aimed at

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<sup>40</sup> The Wildlife Conservation Act 1974(R.E.2002)

<sup>41</sup> Report on a Workshop on Land & Natural Resources Laws & Policies, Held in Arusha April 11 & 12, 2002

<sup>42</sup> Peter, Stolla. (2005). "A Comparative Analysis of The Land Acts of 1999 and The Land Ordinance 1923

<sup>40</sup>Mtwale., Op cit.

<sup>44</sup>Section 6

<sup>45</sup> Section 11

<sup>46</sup> Act No. 5 of 1999

ensuring that animals are not trapped, wounded or killed. Such is the ambiguity about the import of these provisions that one hears claims among certain groups in Loliondo that the local people have no rights to the land on which they live.

On the other hand, villagers in the area have applied for and obtained certificates of village land under the Village Land Act. Nevertheless, the multiple, policy, legal and institutional mandates of the Land Act, the Village Land Act and the Wildlife Conservation Act combined with the government's aggressive pursuit of foreign investments in the wildlife sector add to the sense of insecurity and uncertainty that surrounds pastoral land rights in Tanzania, and this is one of the key factors engender resource-related conflicts in the area. Recently Serengeti National Parks (SENAPA) in collaboration with land surveyors from land ministry mercilessly grabbed the richest part of Ololosokwan Village pretending that they are adjusting parks borders. While the village certificate of ownership from the same ministry shows those areas belongs to the village.

**Mtwale**<sup>44</sup> discussed the work of **Juma** and **Maganga** on local resource management at Mbarali District in irrigated areas noted that water utilization (control and regulation) Act of 1979 and other piece of legislation that they have become source of land use conflicts, it is therefore questionable whether or not system that ignore customary laws over resource, appeal to people and will be implementable, because those who were protected by customary law will not secure protection under new legal system.

The National Land Policy does not 'recognize, clarify, and secure in law' customary land Rights vs the wildlife conservation strategy predicated on the state's allocation of customary lands. On the contrary, it enables further dispossession of rural communities' lands. For example, the Land Policy recognizes overlapping and sometimes conflicting land uses, including wildlife use, in many districts such as Kiteto, Monduli and Ngorongoro. 'Some of the game controlled areas are critical habitats for wildlife and also form wildlife migration routes. Those areas have serious land use conflicts and dispute.

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<sup>44</sup> Mtwale.Op.cit ,p. 19

In Tanzania we have Environmental Managements Act of 2004 which works simultaneously with Environmental sector Policy and Legislations like Forest law, Mining, Wildlife, Agriculture and Land laws. Therefore to avoid overlapping of any kind, all these laws must be properly implemented. This was recently manifested where the Deputy Minister for Natural Resources and Tourism under the coercive force of International environmental law insisted that we have to see people around Ngorongoro crater evicted to avoid threats from UNESCO.<sup>45</sup>

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<sup>45</sup> Olengurumwa. ,Op.cit .,p 63

#### **4.0 Conclusion**

**A**s time goes on, the question of pastoral land tenure remains to be a history. Many land laws reforms have been made since colonial time through independence up to now, without any positive concern to improve pastoral land tenure. Tanzania 1990's land laws reforms have been noted to have negative implication on pastoral land tenure. Pastoralism needs a vast chunk of land to practice rotational grazing. The new land is silent on the question of pastoral land rights. The pastoral livelihood and lifestyle have been forced to change to meet the requirement of the new land laws. Copping mechanism like migrations to cities and economic diversification have been the best options for pastoralist to secure their lives. Pastoralist land has been named as No man's land and categorized into group of general land. Encroachment of the pastoral lands to allow huge investment and expansions of the protected areas has been and order of the day and leave pastoralist as internally displaced people. The National Land Policy condemns pastoralist as unfriendly to environment. The given process of certification of the village land by the new land laws to secure their village lands is cumbersome, prohibitive and bureaucratic.

#### **5.0 Recommendations**

The 1990's Land Law Reforms are the most far-reaching land reform projects implemented in Tanzania. However, the reforms have been most of the time condemned to be in disfavor of pastoral community. Therefore, the following recommendations are put forward to adjust the situation.

1. Because Land is the overwhelmingly most important, valuable and scarce capital asset for pastoralism to flourish, the new land laws should be amended to address the question of pastoral land tenure.
2. The state and policy makers should understand that pastoralists need a vast chunk of land to secure their lives against tremendous increase of global climate change.
3. In any case there is no logic in having General Land in Village land. This will be double categorization and it will invite collision of jurisdictions. Therefore, the land Laws should be amended to address the question of inclusion of unused village land into general. The so called unused land, to pastoralist in real sense is not unused land but it is question of rotational grazing.

4. Village certification process should be removed from the administration of commissioner for land and handled it under district or regional administration to reduce bureaucracy and unnecessary expenses.
5. The retention of the radical title is the land tenure is a serious anomaly. For complete democracy to be effected, the radical title should be divested.
6. The government should take all necessary initiatives to implement all recommendation related to pastoral land tenure given by Presidential commission on land matters.

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