

# **THE NEW WILDLIFE POLICY IN TANZANIA**

## **Old Wine in a New Bottle?**

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### **INTRODUCTION**

The government of Tanzania recently adopted a new Wildlife Policy intended to better address the problems and obstacles that have plagued wildlife management in Tanzania. The new policy, however, retains state ownership and control of wildlife resources. Continued state ownership and control of wildlife resources perpetuates the "wildlife-first" philosophy of biodiversity conservation -- the use of a protected area network as a principal management tool -- and patron-client relationships that have marked government-community relations in wildlife and other natural resource management. Rural communities are in effect dispossessed of customary land and resources on which they depend for their livelihoods and from which they could generate in-come for local-level development. State trusteeship is a fundamental cause of land and natural resource conflicts that have intensified in recent years within and around protected areas in Tanzania.

### **ABOUT THE AUTHOR**

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### **LAWYERS' ENVIRONMENTAL ACTION TEAM**

The Lawyers' Environmental Action Team is the first public interest environmental law organization in Tanzania. It was established in 1994 and formally registered in 1995 under the Societies Ordinance. Its mission is to ensure sound natural resource management and environmental protection in Tanzania. It is also involved in issues related to the establishment of an enabling policy environment for civil society, including civil liberties and human rights. LEAT carries out policy research, advocacy, and selected public interest litigation. Its membership largely includes lawyers concerned with environmental management and democratic governance in Tanzania.

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During my work, several things became abundantly clear. First, use of democratic legal institutions and tools in Tanzania is only beginning to develop. Second, wildlife in Tanzania simply cannot survive without direct involvement of local communities in their management. Perhaps most significantly, addressing the problems of human-wildlife conflicts in the buffer zones and migration corridor areas must be among the highest priorities of all stakeholders. It is my hope that the analysis herein will enrich the ongoing debate on wildlife conservation in Tanzania for the betterment of the Tanzanian population and humankind in general.

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## **BACKGROUND**

For decades, the government of Tanzania has been the principal legal guardian of the country's wildlife population, undoubtedly one of its most valuable assets. Under the framework Land Ordinance Cap. 113, all lands became 'public lands' controlled and administered by the colonial Governor and a colonial state land bureaucracy created for that purpose. State ownership of wildlife, indeed, control of all natural resources including minerals, forests and water, was a fundamental feature of colonial governance. Post-independent governments have maintained and even strengthened state ownership and control of most land and natural resources.

This type of "trusteeship" to manage wildlife and a focus on protected areas, which comprise about 25 percent of Tanzania's land, have only partially succeeded in conserving Tanzania's biological resources and contributing to sound land use and natural resource management. While the numbers of some species are increasing, certain keystone and other species are declining in numbers and even threatened by extinction. In 1995, the former Ministry of Tourism, Natural Resources and Environment revealed that in protected areas the black rhino was almost extinct and two-thirds of elephants and increasing numbers of buffaloes had been lost to illegal hunting (MTNRE, 1995a:14-6). Today, the black rhino's existence in Tanzania's protected areas is so precarious that the government and conservation agencies 'import' some from zoos in Germany and private game reserves in South Africa to reintroduce them into areas where they were once plentiful and to bolster dwindling populations (TWPF, 1998).

Commercial poaching and inadequately regulated foreign and resident trophy hunting sanctioned by the Wildlife Division have adversely affected wildlife populations inside and outside Tanzania's national parks to a greater extent than subsistence hunting (Newmann, 1992; Metcalfe et al., 1998). Internal Tanzania National Parks (TANAPA) reports, including those of Arusha National Park, allege that game wardens are also involved in illegal poaching of black rhinos (Newmann, 1992; Lissu, 1999). The former head of the Ngorongoro Conservation Area Authority law enforcement department was heavily implicated in illegal poaching and later discharged (Metcalf et al., 1998).

The government of Tanzania recently adopted a new Wildlife Policy intended to better

address the problems and obstacles that have plagued wildlife management in Tanzania (MNRT, 1998). The Wildlife Policy has introduced some positive concepts: it calls for better management of the protected estate, sustainable use of wildlife resources, devolution of wildlife user rights to communities and sharing of benefits derived from wildlife uses and resources.

The new policy, however, retains state ownership and control of wildlife resources.

In recognition of the importance of conservation of biological diversity to the livelihood of mankind, the state will retain [sic] the overall ownership of wildlife. The government will access user rights to various stakeholders, provide clear policy guidelines, stimulate public and private sector investment in the wildlife industry and provide support to investors (MNRT, 1998:7).

Continued state ownership and control of wildlife resources perpetuates the "wildlife-first" philosophy of biodiversity conservation -- the use of a protected area network as a principal management tool -- and patron-client relationships that have marked government-community relations in wildlife and other natural resource management. Rural communities are in effect dispossessed of customary land and resources on which they depend for their livelihoods and from which they could generate income for local-level development. Wildlife and the land and resources that support them are critical to small-holder agriculture, animal husbandry, subsistence hunting and fishing and other economic activities. State trusteeship is a fundamental cause of land and natural resource conflicts that have intensified in recent years within and around protected areas in Tanzania (Neumann, 1992; Homewood and Rodgers, 1991; Potkanski, 1997).

## **RECOGNIZING LOCAL COMMUNITY INTERESTS**

Tanzania's new Wildlife Policy recognizes for the first time the need to empower local communities by giving them wildlife user rights and management opportunities and responsibilities. However, to effectively capitalize on opportunities and successfully carry out responsibilities, communities need normative authority and access rights to both wildlife and benefits derived from their use.

The policy recognizes that wildlife conservation and management can no longer disregard interests of rural communities, especially adjacent to protected areas. There is also a realization that communities must obtain benefits if they continue to bear significant costs of living with wildlife and managing them well. In the early 1990s, TANAPA established a modest 'Parks as Neighbors' Programme (Ujirani Mwema) also known as the Community Conservation Service (CCS) under which social services are provided to rural communities near national parks. Instead of providing local communities control or ownership of wildlife, this program, which continues today, is primarily seen as a way of placating local communities and minimizing conflicts with TANAPA.

The Wildlife Division, for its part, has spearheaded the creation of a number of community-based natural resource management programs including pilot projects that enable rural communities to obtain tangible benefits from wildlife, primarily through hunting. These projects have been established with the assistance of international conservation NGOs and donor agencies, but have been confined to game reserves away

from national park boundaries primarily because of TANAPA's resistance to such approaches.

These experimental efforts are based on the willingness of local communities to subscribe to conservation agencies' vision of the wider landscape, habitat, and ecosystem. In practice this means that there will be no wildlife benefit until communities agree to agency landuse planning and zoning decisions. It does not amount to empowerment and could potentially transform rural communities into dependent clients of conservation agencies.

The new Wildlife Policy calls for the creation of wildlife management areas (WMAs) which give local communities some control over wildlife resources on their lands and enable them to benefit directly from these resources. Rural communities are allowed to establish WMAs, defined in the policy as "an area declared by the Minister to be so and set aside by village governments for the purpose of biological natural resource conservation" (MNRT, 1998:34). In turn, communities may lease trophy hunting or game viewing concessions to tourist outfitters or themselves engage in hunting for food.

The policy is not clear, however, on the procedures and processes for establishing WMAs. In a few pilot projects, the Wildlife Division adopted an eight-step administrative procedure (see Box 1). First, village assemblies meet and make a resolution to form a WMA. The resolution is then sent to the District Council for ratification. Surveys of the WMA area are then carried out and a village landuse plan prepared and approved by the District Council. The latter forwards the surveys and landuse plans to regional authorities and to the Minister responsible for natural resources. The Minister then makes a declaration which must be published in the government gazette to establish the village WMA (Metcalf et al., 1998; Hitchcock and Shauri, 1999). Procedures to establish WMAs or obtain licenses and easements are lengthy and will lead to unnecessary delays and bureaucratic red tape. Indeed, the very idea of WMAs and devolution of power and authority over wildlife might be nullified if these procedures for establishing management structures for local wildlife conservation remain.

The policy also claims that the "government has set clear, transparent and simple procedures for participation in the wildlife-based tourist industry, and investment in other wildlife-related activities" (MNRT, 1998: 30). Yet, once again, the criteria and procedures for licensing tourist operators are so rigorous that only powerful private tour operators with considerable financial resources or foreign connections can qualify.

**Box 1. Steps for Establishing a Wildlife Management Area**  
(Metcalf et al., 1998)

1. Village assemblies meet and make a resolution to form a WMA;
2. The resolution is sent to the District Council for ratification;
3. Surveys of the WMA area are carried out;
4. A village land use plan is prepared and approved by the District Council;
5. The District Council forwards the surveys and land use plans to regional authorities;
6. The regional authorities review the plans;
7. The regional authorities send the plans to the minister responsible for natural resources. Upon review and full approval, the minister finally makes a declaration establishing the

WMA; and,

8. To be valid, the declaration must be published in the government gazette to establish the village WMA.

If the WMA approach is to go beyond TANAPA's Community Conservation Service and the Wildlife Division's pilot projects and become more than a public relations exercise, the government must streamline procedural aspects of establishing WMAs to avoid potential problems, such as:

- The costly and lengthy process of village titling as a prerequisite for establishing a WMA. If village titling results in the loss of existing customary land rights, it would probably lead to a legal quagmire of the kind that ensued in the post-Operation Vijiji period.
- Increased loss of village lands to large-scale farmers, ranchers and other elites in the wildlife-rich areas of Maasailand where WMAs have significant economic potential for communities.
- A limited capacity of local communities to manage resources given them, as they currently have restricted ownership of natural resources and lack technical skills.

The processes of village surveys and titling alone are 'tardy and cumbersome' (Gondwe, 1992). These procedures could be streamlined. Delays could be avoided or minimized by removing the roles of intermediary authorities such as regional ones, and leaving more regulatory and supervisory powers to districts and responsible ministries.

Strong enabling legislation for the new Wildlife Policy is also needed to ensure that communities capitalize on WMA opportunities. Existing legislation provides legal opportunities for community-based conservation (CBC), but requires some creative interpretation and has not resulted in widespread CBC. For example, local government legislation in Tanzania creates village councils as basic units of local government, endows them with a legal personality and vests them with powers to manage natural resources in village lands. The 1974 wildlife conservation legislation gives the minister responsible for wildlife discretionary powers to designate village councils as authorized associations, in order to allocate hunting concessions to them. Village councils have control and regulatory powers over the administration of village common lands. The creative linking of these provisions makes it possible for local communities to undertake CBC for their benefit, centered on the village council, perhaps through its natural resources committee, as a local natural resource management institution. In practice, however, such interpretations have not often been understood or capitalized on (Metcalf et al., 1998).

Other legal avenues for local community participation in wildlife conservation include the management of marine parks by villages under the 1994 Marine Parks and Reserves Act and the creation of Local Authority Forest Reserves under the Forest Ordinance. Under the Forest Ordinance, local governments at the district level and in some cases the village level are given a mandate to manage and utilize forest resources within designated forest reserves with supervisory powers from the Director of Forestry and the responsible minister. The latter was common during colonial times when Native Authority Forest Reserves were run by Native Authorities. However, after independence and the

consequent abolition of the Native Authorities in 1963, local control of the forests became less common even though the law was not significantly changed (Neumann, 1992).

These legal opportunities have existed for years. Local communities have not used them due to the dominance of the state-centered conservation paradigm, which restricted community participation in wildlife and natural resource management. There was and remains, with the new Wildlife Policy, a lack of sufficient political will to put natural resource management powers into the hands of rural communities and make them beneficiaries of the wildlife and natural resource wealth on their lands.

The current policy also does not adequately recognize the transhumantic, or nomadic, nature of many communities living within or near wildlife areas and Tanzania's protected estate. Pastoralism in semi-arid environments requires regular movement and flexibility in order to utilize the different climate-driven resource niches (Potkanski, 1997; Lane, 1995). The concepts of 'domain and territory' (Kaare, 1996) which inform pastoral land use and resource tenure do not coincide with the sedentary, village-centered thinking that informs the WMA concept.

To accommodate nomadic communities successfully, the policy must give legal recognition to traditional social and political organizations by granting them Authorized Association status under the Wildlife Conservation Act of 1974. The Act empowers the Director of Wildlife to grant hunting concessions and other wildlife user rights to villages by declaring them Authorized Associations. The policy could lessen procedural requirements by allowing these communities to submit verbal or simple written plans on how they wish to use natural resources to benefit the entire community and how they plan to ensure that the resources and environments are managed well.

Wildlife agencies must learn to build upon existing institutional strengths of communities when considering WMAs. Following the outcome of projects to create villages in the 1970s, all state agencies should recognize that what the government believes beneficial for targeted communities does not necessarily satisfy these communities.

## **SIMPLIFYING THE LEGAL FRAMEWORK**

A significant feature of the new Wildlife Policy is that the existing management framework has been left intact. The policy stresses that both the legal and institutional status quo shall be maintained (MNRT, 1998:25). From a legal perspective, the wildlife sector is governed principally by:

- National Parks Ordinance of 1959, which covers wildlife within national parks and is enforced by TANAPA;
- Ngorongoro Conservation Area Ordinance of 1959, enforced by the NCAA;
- Forestry Ordinance of 1957, which covers forest reserves and is enforced by the Forestry Department;
- Wildlife Conservation Act of 1974, which covers wildlife outside national parks and the Ngorongoro Conservation Area and is enforced by the Wildlife Division;
- Marine Parks and Reserves Act of 1994 and the various fisheries laws and regulations enforced by the Fisheries Department.

The Ministry's own Wildlife Sector Review Task Force has criticized this fragmented system not only for its "top-down" approach to community participation but also for the threat it poses to maintenance of the protected area network (MNTRE, 1995a, 1995b). Because the new Wildlife Policy maintains the status quo, one can expect institutional fragmentation and rivalry between various conservation agencies to continue as has been the norm in the wildlife management sector (Makaramba, 1998).

For example, under the National Parks Ordinance, TANAPA has no legal mandate, without ministerial consent, to manage wildlife outside national parks. Yet TANAPA, often with donor support, brings its "wildlife-first" operations to many areas outside national parks, particularly to areas with wildlife corridors and dispersal areas, as though this were its right or duty. The Wildlife Division has the legal mandate to manage wildlife outside of national parks but neither the requisite resources nor the apparent willingness to do so in ways that support both the integrity of the national parks and neighboring communities. TANAPA "interference" in areas over which it has no jurisdiction creates conflict with the Wildlife Division.

The proposed maintenance of the legal and institutional *status quo* has, in addition, extremely serious and far-reaching consequences for the relationship between the state and rural communities. State-centered wildlife conservation is usually unsympathetic to the needs and concerns of the local people, and this leads to an essentially militaristic strategy, which heightens conflict. It is for this reason that national parks agencies have become armed paramilitary organizations whose main preoccupation and investment is in law enforcement and public relations.

## **LAND AND RESOURCE TENURE ISSUES**

The National Land Policy acknowledges the growing land and resource tenure conflicts caused by 'haphazard' allocation and extensive exclusion of rangelands for large-scale agriculture (MLHUD, 1996: para. 7.3.0). It proposes to guarantee the security of tenure in pastoral lands by taking 'appropriate' measures such as gazetting, titling, and restoration of pastoralists' lands when they do not conflict with 'national interests' (MLHUD, 1996: para. 7.3.1(i-iv)). It is hoped that the customary land rights of pastoralists and farmers with small holdings will have thus been 'recognized, clarified, and secured in law,' and one of the major aims of the policy fulfilled (MLHUD, 1996: para. 2).

Titling is problematic on both practical and legal grounds and as a result may not be the best option for increasing security of property. In addition, customary land rights, known in Tanzanian land law as 'deemed rights of occupancy,' were first recognized in 1928 when the Land Ordinance Cap.113, Tanzania's basic land law, was amended to include these rights. Since then, and especially from the 1980s on, the position of deemed rights of occupancy has been 'clarified' by a series of decisions by Tanzania's superior courts which found them on equal footing in law with the state's granted rights of occupancy (Court of Appeal of Tanzania, 1994).

Despite the legal status of customary land rights, however, rural lands and particularly pastoral lands, primarily held through deemed rights of occupancy, have been highly susceptible to allocation by the state in favor of outside interests. A prominent threat to customary rights is from wildlife conservation interests; today about 25 percent of

Tanzania's landmass is in the protected estate. Before being gazetted protected areas, these lands and resources were customarily held and utilized by rural people. Because of active state intervention, many citizens have been dispossessed of their property, and this has resulted in 'landscapes of consumption' and not 'landscapes of production.' (Neumann, 1992).

The National Land Policy does not 'recognize, clarify, and secure in law' customary land rights vis a vis 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 disputes...' (MLHUD, 1996: para. 7.4.0). The Land Policy proposes converting these game controlled areas into buffer zones between national parks or game reserves and settlements and agricultural lands; 'upgrading' them into game reserves; or designating them for resettlement but only after 'detailed studies...to determine the wildlife ecosystems in the game controlled areas' (MLHUD, 1996: para. 7.4.1).

The Land Policy also notes the danger posed to wildlife by large-scale farms and ranches that surround some national parks and block wildlife migration routes and dispersal areas. Conservationists and ecologists suggest that declining populations and extinction of certain wildlife species in national parks are linked to increased isolation caused by human settlements adjacent to the parks. They argue that wildlife corridors should be established to link parks together (Griffin, 1996). In response, the Land Policy calls for the revocation of titles of farms and ranches with wildlife corridors and their addition to the protected areas.

These and other aspects of the Land Policy mean in practice that the boundaries of protected areas will likely be further expanded at the expense of customary land-holders. While it might be difficult to revoke titles as envisaged by the Land Policy, as such large tracts of lands are usually held by powerful, often absentee landlords with political connections, these actions would compromise the spirit behind the concept of WMAs (Otto et al., 1998; Metcalfe et al., 1998: 30-1).

In Tanzania, as elsewhere in Africa, wildlife corridors, dispersal areas and buffer zones have become the latest battlefield in the long-running struggle between wildlife departments and communities living around national parks (Metcalfe et al., 1998: 34-5; Hitchcock and Shauri, 1999). Few initiatives to date have been effective at achieving both better wildlife management and community development.

Few buffer zone initiatives can really claim to have succeeded in establishing stable and compatible land use systems around a protected area in such a way that local people are genuinely reconciled to the conservation function of the area (ODA, 1994: 41).

This failure of buffer zone initiatives to engender genuine community participation in wildlife conservation is partly related to the continuing centralized and top-down nature of land use planning in wildlife management (ODA, 1994).

The principal intention of the Land Policy is revealed in two land bills prepared by the government since the adoption of the Land Policy in 1996 -- the Land Act Bill of 1998 and the Village Lands Act Bill of 1998. The Land Act Bill of 1998 proposes the creation of three categories of lands and gives the President powers to move lands from one category to another. The three categories are:

- General lands -- lands removed from the domain of deemed rights of occupancy, also known as granted rights of occupancy;
- Reserved lands -- lands reserved principally for various conservation purposes; and
- Village lands -- the rest of rural lands.

The Land Act Bill also proposes that presidential power to allocate lands, particularly village lands, be more limited than in the past. For example, village lands could not be transferred without the consent of the village council or assembly, the national Assembly, or its committees, depending on the size of the proposed land transfer (Shivji and Kapinga, 1998; Lissu, 1999). However, the bill does propose that the President retain the power to allocate village lands through existing legislation such as the National Parks Ordinance of 1959. This ordinance gives the President considerable power to declare national parks and thereby extinguish customary land rights. These same sweeping powers have also been proposed under TANAPA's new draft bill for Tanzania National Parks Act. Should the Land Act Bill be enacted into law as it now reads, it will not secure tenure rights of rural communities over village lands and will jeopardize innovations such as WMAs.

## **THE ROLE OF CIVIL SOCIETY AND INTERNATIONAL NGOS**

The Wildlife Policy suggests that society exists to serve the government, rather than vice versa. The policy calls for the public "...to support government efforts" in the conservation and management of wildlife resources" (MNRT, 1998: 29). It also states that "the role of local and international NGOs is to support the government financially and technically at all levels, in the conservation and management of wildlife resources" (MNRT, 1998: 29).

International NGOs and donor agencies have historically been highly involved in wildlife management in Tanzania. Their role has been both direct, through manpower, technical and financial support to conservation agencies, and ideological, through training within conservation agencies in methods, ideals, and philosophies of Western nature conservation (Neumann, 1992). The Wildlife Policy envisions that this role will continue in the future. Because Western donors and conservation NGOs have been the source of financial resources and suppliers of technical equipment and personnel, the policy focuses, not unexpectedly, on international NGOs.

Because many local NGOs are dependent on the same international benefactors, the government often considers them competitors and acts to marginalize their activities and contributions. Given potential contributions of local NGOs and other parts of civil society to wildlife management, this exclusion calls into question the government's commitment to better management. For the Wildlife Policy to limit efforts of local NGOs and even shut them down on the premise of providing the government with financial and technical assistance negates local NGO support to community-based conservation, benefit sharing and social equity, policy dialogue, and law enforcement. It also makes it more difficult for

them to carry out their duty to protect Tanzania's resources as stated in Article 27 of the Constitution of Tanzania.

Whether the exclusion of local NGOs will endure given their growing numbers, expanding efforts and assertiveness, including advocacy and monitoring of government decisions and actions, remains to be seen. It also depends on the power of the Bill of Rights in the Constitution which guarantees NGOs fundamental and crucial rights, such as the freedom of association and access to information. Given constitutional provisions, it is the right and duty of Tanzanians interested in wildlife management to become more actively involved whether or not they provide financial or technical assistance to government wildlife agencies.

## **MENDING GAPS IN THE POLICY**

- The question of state ownership of wildlife should be reviewed with the objective of making rural communities co-owners and co-managers with the government of wildlife resources on village lands. The legal framework should devolve power and rights to communities to reflect an equal partner relationship.
- The Wildlife Policy and follow-on enabling legislation should be revised to create an institutional structure which reflects co-ownership and co-management of wildlife. It should streamline the currently fragmented institutional and legal structure for wildlife management in Tanzania to minimize institutional rivalry and conflict.
- The Wildlife Policy should place equal emphasis on protecting wildlife and biodiversity and on supporting interests and needs of rural communities that inhabit areas which harbor wildlife.
- The Wildlife Policy should provide simple guidelines and procedures for establishing WMAs and other wildlife user agreements, licenses and easements, and clear government conservation agencies of supporting roles.
- The Wildlife Policy should recognize and reinforce the many roles and responsibilities of Tanzania's citizens, civil society and local NGOs in wildlife management and local-level sustainable development.

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