

**A REVIEW OF THE TANZANIA INVESTMENT ACT IN THE LIGHT OF
PASTORALIST LIVELIHOOD SYSTEMS**

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CCRO	Certificate of Customary Rights of Occupancy
CORDS	Community Research & Development Services
CVL	Certificate of Village Lands
DLO	District Land officer
GDP	Gross Domestic Product
ICSID	International Centre for Settlement of Investment Disputes
IUCN	International Union for Conservation of Nature
IIED	International Institute of Environment and Development
IKS	Indigenous Knowledge System
NGO	Non Government Organization
NSGRP	National for Growth & Reduction of Poverty
PINGOS	Pastoralists Indigenous Non Governmental Organisation Forum
SPILL	Strategic Plan for the Implementation of the Land Laws
TAPHGO	Tanzania pastoralists & Hunter Gatherers Organization
TIA	Tanzania Investment Act
TIC	Tanzania Investment Center
VAT	Value Added Tax
VLA	Village Land Act
VLC	Village Land Certificate
VEO	Village Executive Officer

CHAPTER ONE

1.0 GENERAL INTRODUCTORY CONSIDERATIONS

1.1 Introduction

This report contains a review of the Tanzania Investment Act in the light of pastoralism as a livelihood system. The review was made with reference to the Village Land Act which in the views of many activists ensures security of pastoral land tenure if implemented on the ground. The report shows that pastoralists are justified to worry about the promulgation and coming to force of the Tanzania Investment Act given the level of emphasis accorded to investment by the **policy framework** as well as the historical and contemporary dispossession of pastoral lands most often for investment purposes.

The report is divided into four chapters. Chapter one contains the **General** introductory remarks. Chapter two deals with salient features of the two Acts namely the Tanzania Investment Act and the Village Land Act respectively. Chapter three looks at how the Tanzania Investment Act impacts on pastoralism as a livelihood system. Chapter four contains the Conclusion and Recommendations. Let us now see the background of the review.

1.2 Background of the Review

A recent study conducted by IIED and Reconcile on the contribution of pastoralist cattle to the *nyama choma* (roast meat) industry in Arusha demonstrates an annual turnover of US\$ 86 million. It further provides that each head of cattle slaughtered in Arusha contributes 0.2 full jobs, supports 1.07 dependents and provides US\$ 172 in Value Added Tax (VAT) to the Tanzanian Economy.¹

¹ Adopted from IUCN World Initiative for Sustainable Pastoralism (WIMS) Policy Statement named “Squandered wealth: A Global economic Review of Pastoralism.” On its part, the National Strategy for Growth and Reduction of Poverty (NSGRP) commonly known by its Kiswahili acronym MKUKUTA provides that pastoralism is a viable livelihood system.

Despite the above significant contribution (and despite the fact that pastoralism is an optimal use of range resources in complex ecosystems), pastoralism is still subjected to considerable attacks from various policy circles. Reasons for such attacks relate to the fact that other land uses such as wildlife management as well as large and small scale farming command more policy recognition than pastoralism. It follows therefore that contents of many pieces of legislation, policies, strategies and plans have been found to be negative on pastoralism.

For example, the National Land Policy of 1995 contains a policy statement which is straight forward: “.....nomadism will be prohibited.”² On its part, the Strategic Plan for the Implementation of the Land Laws (SPILL) has a number of negative statements about pastoralist production systems which lead to conclusions like: “.Sustainable ownership of land rights requires land users to settle down and discourage nomadism.”³

Another document which is biased against pastoralism is the Wildlife Management Act of 2009. During a public hearing held in Arusha prior to the passing of this law, pastoralists opined that if passed into law, the Bill would be even more oppressive and draconian than the then existing Wildlife Conservation Act of 1974.⁴

It is against that background (of having negative legal and policy environment on pastoralism) that the Tanzania Pastoralist and Hunter Gatherers Organization (TAPHGO) commissioned a study on the Tanzania Investment Act (TIA) with the view to identifying how it affects pastoralism as a livelihood system.

In particular, the study seeks to show the dissimilarities between the Tanzania Investment Act and the Village land Act which gives the village as a legal entity the mandate to manage the village land. Other objectives of the study are provided below:

² P.36

³ P.43

⁴ It is important to note that the then applicable law, that is to say the Wildlife Conservation Act of 1974 did not require people born or whose places of ordinary residence are on the game controlled areas to have permits in order to live [and graze livestock] in a game controlled area. In an extra ordinary turn of events, the Wildlife Conservation Bill of 2008 which was tabled for public hearing provided that “Any person shall not, save with the written permission of the director previously sought and obtained, graze any livestock in any game controlled area.”

1.3 Objectives of the study

The objective of the study is threefold (*Please refer Terms of Reference attached herewith and marked Annex 1*)

The first objective is to prepare a document for TAPHGO's use in its advocacy for pro-pastoralists legal and policy environment. The second objective is to identify, share and disseminate information on the impacts of the Tanzania Investment Act to TAPHGO's stakeholders and the public at large. The third objective is to generate research data that can be used to influence the pro-pastoralist policy arena.

1.4 Methodology and scope of the study

This study has been conducted on the desk review approach. It involved analysing how the Tanzania Investment Act impacts on pastoralism by making reference to the Village Land Act and other relevant existing literatures. For the sake of clarifying some concepts, key people have been interviewed. Interviewees included people working in the areas of rights of pastoralists, members of the academia, legal and development practitioners, as well as government officers (*Please find attached herewith, a list of people interviewed marked annex 2*).

In relation to the scope of the study, investment in Tanzania is not a union matter;⁵ Zanzibar is constitutionally justified to have its own investment laws and indeed it does have. To this end, the discussion below focuses only on Tanzanian mainland.

In the coming chapter, this report focuses on salient features of the two Acts with the aim of laying the foundation for understanding impacts on pastoralism contained in chapter three.

⁵ Union matters are provided for under the second schedule to the Constitution of the United Republic of Tanzania 1977 (as amended from time to time).

CHAPTER TWO

2.0 SALIENT FEATURES OF THE TANZANIA INVESTMENT ACT AND THE VILLAGE LAND ACT RESPECTIVELY

2.1 The Tanzania Investment Act

2.1.1 Introduction

The Tanzania Investment Act, Act No 26 Of 1997 is the main law relating to investment issues in Tanzania. It is an Act to make provisions for investment in Tanzania, to provide for more favourable conditions for investors, and for related matters.⁶ It is divided into four parts. Part one contains preliminary issues such as the long title, application of the Act and its interpretations/definition of key terms.

Part two provides for the establishment of the Tanzania Investment Center (TIC) and its functions. Part three deals with the provisions relating to investment whereas the last part focuses on general provisions such as offences and penalties. Let us now consider some important features of this Act.

2.1.2 The National Investment Center: Its objectives and functions

This legislation creates the National Investment Center (TIC).⁷ It also provides for its objectives and functions. According to the Act, objectives of the center are two fold: to be a primary agency of government to coordinate, encourage, promote and facilitate investment in Tanzania. Another objective is to advice the government on investment policy and related matters.⁸

⁶ See the long title to the Tanzania Investment Act, Act No 26 Of 1997

⁷ This is a predecessor of the Investment Promotion Centre (IPC) which was established under the repealed National Investment (Promotion and Protection) Act, 1990. Section 7 of the new law for example, provides that employees of the IPC, with effect from the coming into operation of the new Act, are transferred to and be employed by the Tanzania Investment Centre (TIC).

⁸ See Section 5 of the Act

Functions of the center according to the Act include initiating and supporting measures geared towards enhancing the investment climate in Tanzania. The center is also empowered to collect, collate, analyze and disseminate information about investment opportunities and sources of investment capital and advice investors upon request on the availability, choice or suitability of partners in joint venture projects.

The third function of the board is to assist all investors including those who are not bound by the provision of the Act to obtain all necessary permits, licenses approval consents, authorizations, registrations, and other matters required by law for a person to set up and operate an investment; and to enable certificates issued by the center to have full effect.

The fourth function is to provide, develop, construct, maintain and administer investment sites, estates, or land together with associated facilities of those sites, estates, land and subject to relevant law, the creation and management of export processing zones

The center is also empowered to provide and disseminate up to date information on benefits or incentives available to investors. It is also carry out and support local investment promotion activities which are necessary to encourage and facilitate increased local investments, including entrepreneurial development programmes.

Other functions are the preparation of an overall policy and strategy for investment promotion and to prepare an annual investment promotion programme for approval of the Government and to apply the approved policy, strategy and programme.

It is also mandated in promoting, assisting and developing all aspects of economic activity by taking measures to encourage investment in Tanzania by persons other than the state in accordance with the aim of the government policies and any other Investment promotion Programmes.

The law further enjoins the center to cooperate with ministries, divisions, departments, corporations, boards, agencies, public enterprises, municipal or regional authorities and other relevant persons to implement the Investment Promotion Programme to undertake steps to coordinate motion and regulation of the development of forestry and the construction of infrastructure necessary for the development and protection of the Area.⁹

2.1.3 The Board of the national Investment Center

The responsibility of discharging functions of the National Investment Center (TIC) discussed above is vested in the board of directors. This board is a creation of the Tanzania Investment Act.¹⁰ Activities of the Board as set out under the Investment regulations made pursuant to S.29 of the Act include constantly reviewing the functions of the center in order to ensure that it achieves its objectives.

The board is also mandated to constantly monitor the national investment environment as well as the world investment climate in order to propose measures geared towards ensuring that the Investment Environment in Tanzania is more competitive and finally, to submit to the minister quarterly progress reports on the activities of the Center.¹¹

The secretary to the board is the Executive Director of the Center who is appointed by the President (upon recommendation by the minister) for the term of five years and who may be reappointed for a further non renewable term of five years.¹² The President also appoints the chairperson of the board to preside over board meetings.¹³

Other members of the board include four members appointed by the minister; two from the public sector and two from the private sector. The minister can also appoint two more

⁹ *Ibid*,S.6(d)-(f)

¹⁰ *Ibid*, S 7

¹¹ Government Notice Number 381A published on 25th of august 2002

¹² *Ibid*,S.7(1)

¹³ S. 7 (2) (a) of the Act

members of the board who should not necessarily be from the private or public sector respectively.¹⁴

The Act does not contain detailed information regarding the procedures to be employed by the minister in making such appointments. It only stipulates that the minister must appoint persons with sound knowledge and experience in public or private sector investment and management issues.”

2.2 The Village Land Act, No. 5 of 1999

Land in Tanzania is divided into three categories namely general land, Village land and reserved land. The main laws in this regard are the Land Act, Cap 113 of 1999 and the Village Land Act, Cap 114 of 1999. The two pieces of legislation provide for the basic law in relation to land other than reserved land. Reserved land on the other hand is governed by a plethora of pieces of legislation such as the Ngorongoro Conservation Act, The Forests Act, and the National Parks Act.¹⁵ This part focuses on the village Land Act.

This Act, that is to say the Village Land Act, 5 of 1999 was promulgated for the purposes of enforcing the National Land Policy. Both the Village land Act and the National Land Policy came into being following recommendations of the Presidential Commission of inquiry into Land Matters popularly known as the Shivji Commission.¹⁶

The National Land Policy stipulates that Village Councils shall administer village land.¹⁷ This policy also provides for demarcation of village boundaries and resolution of village

¹⁴ See S. 7 (2) (d). This can be a window of opportunity for pastoralists to lobby for their inclusion in the board. The only requirement is that those they lobby for must be persons with sound knowledge and experience in public or private sector investment and management issues. Read S. 7 (3).

¹⁵ See S. 6 of the Land Act [Cap 113 R.E 2002]

¹⁶ This Commission is named after its chairperson Prof. Issa G. Shivji, It was formed by President Ali Hasan Mwinyi on 3rd of January 1991 and it handed over the report in two volumes on 11th of November 1992

¹⁷ See Policy Statement Clause 4.2.2

boundaries disputes.¹⁸ Objectives of the Village Land Act include: ensuring that existing customary land rights are legally secured.

Another objective is ensuring efficient and effective village land administration. The other objectives relate to enabling villagers to participate in land administration, and ensuring gender balance in land administration and ownership.

The role of the Ministry of Lands and Human Settlements in the implementation of the Village Land Act is to ensure that procedures and standards are adhered to. NGO also have a key role to play in the implementation of the said law on the ground.¹⁹

¹⁸ See Policy Statement Clause 5. 2.28

¹⁹ A perfect example in this respect is Community Research and Development Services (CORDS) which is implementing the Act in Monduli, Kiteto and Longido Districts respectively.

CHAPTER THREE

3.0 IMPACTS OF THE TANZANIA INVESTMENT ACT TO PASTORAL LIVELIHOODS

3.1 Introduction

The law relating to Investment in Tanzania does not expressly provide for any provisions that negatively impacts on pastoralism as a livelihood system. However, if some provisions of this law are construed in the light of historical and contemporary land dispossessions, pastoralists can have justification for worrying about its inclusion in the National statute book as well as its practical implementation on the ground; including the policy environment within which the law operates.

The National Investment Promotion Policy for example provides that potential investors passing through the center will be assured priority access to land set aside by the government for allocation for investors. It is not clear what land has the government set aside for investment although the Policy provides that “the investor is entitled to apply to the Government for a lease of land *outside registered villages.*”

Many pastoralist villages as will be seen elsewhere in this report are yet to secure village certificates and therefore they are ‘unregistered.’ However, the main source of worry among pastoralists when it comes to Investment promotion in the country relates to what has come to be known as the “land bank” initiatives.

A government owned daily puts it well enough: “*Land availability is not a problem in Tanzania where only 11 to 15 per cent of arable land is under cultivation. The Tanzania*

Investment Centre has compiled data from all regions on what is called a land bank. It shows where there is arable land and its accessibility.”²⁰ In this part of the report, we try to show why pastoralists’ views are justified by necessary construction of the existing legal and policy framework. Prior to doing this it is informative to situate pastoralism within the land use concept.

3.2 Pastoralism and land use

Pastoralism is a land use pattern involving indigenous livestock grazing by making use of sparsely distributed resources such as salt licks and water sources.²¹ To this end, it requires mobility or unrestricted movement of livestock from a point of resource abundance to the point of resource scarcity as may be determined from time to time using indigenous knowledge system (IKS) or as it may be necessitated by ecological needs.

The above land use pattern and in particular the tradition of extensive use of land and other scarcely available range resources has unfortunately been wrongly perceived or misunderstood by many scientists and policy makers alike since colonial era to the present. It is therefore highly probable that the above “land bank” comprises of pastoralists land due to the following reasons/misconceptions:

3.2 Pastoralists Land is perceived as unused land

The Interpretation section of the Village Land Act stipulates that the village Land means the land declared to be Village land in accordance with Section 7 of the Village Land Act. The main threat posed by this law to pastoralism relates to the definition of General land as provided for in the Land Act. The latter defines general land to mean “all public land which is not reserved land or village land *and includes unoccupied or unused village land.*” Emphasis added.

²⁰ Tanzania needs to attract investors in commercial farming *The Guardian* 17th June 2005 Quoted in Laltaika, E. “Land Loss and Poverty: The Case of Tanzania” Paper Presented at The Maa Conference on Culture, Livestock and livelihood held at the Bomas of Kenya, Nairobi Kenya 7th-10th of Nairobi 2006

²¹ In Tanzania, the livestock sub-sector which is highly characterized by indigenous livestock breeds or pastoralism. This livelihood system contributes about 30% of the entire gross value output of agriculture.

Due to the need for investment, it is easy for the above provision of the Land Act to be construed in a manner that regards pastoral land as unoccupied or unused and henceforth falling within the category of General Land.

3.3 Individual Certificate of Customary Right of Occupancy (CCRU).

Another threat relates to the fact that the Village Land Act recognizes the possibility for a villager to apply for an individual title on village lands.²² The immediate consequence of this alternative is that a villager who secures an individual title on an area of a village comprising pastoral land could then at will dispose of his or her land to a non pastoralist for the purpose of investment. In our views, individual titling of pastoral village lands, much as it makes it easy local investors to access land for investment, it is in no way compatible to pastoralism as a livelihood system but rather it threatens its continued existence.

3.4 Lack of Public Participation in decision making

In a discouraging flow of events, a study commissioned by an indigenous peoples organization shows among other things, that the ministry in charge of wildlife conservation in Tanzania is “redefining” boundaries relating to protected areas. This exercise has resulted in pastoralist’s village lands²³ being encroached without compensation, leaving villagers poor and landless.²⁴ This undoubtedly takes place without public participation.

For example, Tarangire National Park “redefined” its boundaries to the extent of encroaching on village land which included a school, a dispensary and village offices built by the Park under the “good neighbourhood scheme”.²⁵

²² In fact the Village Land Act, 1999 states the ‘customary right of occupancy’ to mean an individual right granted on village land. See Sections 25 and

²³ See section 4 of the Village Land Act which distinguishes village land from Reserved Land

²⁴ Masara, Y.B. 2005. *Report on Wildlife Areas Expansion and Local Land Rights: The case of Kimotorok Village, Simanjiro District*. PINGOS Forum, Arusha, May, 2005.

²⁵ *ibid*

This “good neighbourhood scheme” was devised as an incentive for community to support conservation efforts. The problem with this scheme is that it does not encompass adequate safeguards or benchmarks to ensure effective public participation by pastoralists.

It follows therefore that, pastoralists are justified to worry about the increase of such encroachments now that investment is a top priority of the country and because the Act does not provide for effective public participation at the ‘unregistered’ village level.

3.5 Applicability of Wildlife conservation laws in village land

In Tanzania, many game controlled areas form part of pastoral village lands, meaning they were established in village lands and hence making wildlife conservation laws applicable in the pastoralist’s village lands. This is evident in Monduli, Simanjiro, Longido and Ngorongoro districts in northern Tanzania. This fact made the Division of Wildlife to come up with an idea of Wildlife Management Areas which unfortunately was not well accepted by pastoralists.

Application of the said wildlife laws in the village lands has been construed as vesting control of the said village lands in the Wildlife Division of the Ministry of Tourism and Natural Resource. The recent conflict involving an Arab investor in Loliondo and village leadership bears perfect attestation in this regard.

Whereas villagers disapprove of such investment, the investor claims legality emanating from a license issued by the ministry of tourism and Natural resources. In all pastoralists’ areas where Game Controlled Areas are in village lands, conflicts over land mostly involving investors are the norm rather than an exception. Now that investment, in particular Foreign Direct Investment (FDI) is viewed as a panacea of our economy, pastoralists have reasons to worry that applicable wildlife management laws can be construed to infavour of using their lands for investment.²⁶

²⁶ The Sukenya Farm conflict exemplifies this point. The current investor has applied for the land use change from Agriculture and Pastoralism to Wildlife Conservation and Tourism.

CHAPTER FOUR

4.0 CONCLUSION AND RECOMMENDATIONS

4.1 CONCLUSION

This study has shown that Pastoralists and in particular their activists have legal justification for worrying about the existence of the Tanzania Investment Act in the country's statute book. In other words, this piece of legislation adds up to the number of laws that are biased against pastoralism, albeit not expressly. However, pastoralist activists have other windows of opportunity for advocating for and ensuring the rights of their beneficiaries in the same legal and policy framework. These windows of opportunity are provided below by way of recommendations of the review.

4.2 RECOMMENDATIONS

4.2.1 Implementing Land Use Planning in the Villages

It was mentioned elsewhere in his report that implementation of the Village Land Act enhances the security of Pastoral land tenure. This is particularly the case given the fact that land use planning reduces/eliminates land use conflicts between different categories of land users. It also minimizes land degradation caused by inappropriate land use.

After resolution of conflicts (if any) and after surveying the village land a village can get a certificate called Certificate of Village Land (CVL) signed by the Commissioner for Lands. In turn, individuals in the village can have Certificates of Customary Right of Occupancy (CCRO). This process is integral in as far as enhancing security of land tenure, particularly among pastoralists whose land is mistaken for unused land. Now that investment, in particular Foreign Direct Investment (FDI) is emphasized in unprecedented measures, implementing Land Use Planning in Pastoral villages is a reliable safety valve.

4.2.2 Continued public awareness rising

This report has shown that some policy statements that are biased against pastoralism are a result of misconception by policy makers. It is recommended that public awareness rising on the importance of pastoralism to the economy and ecology of Tanzania continue to be raised. The Generic course on pastoralism for example, is a commendable effort in particular if it will target more policy makers than pastoralists themselves.

4.2.3 Lobbying for the inclusion of a Pastoralists' activists in the Investment Board

This study has shown that the responsibility of discharging functions of the National Investment Center (TIC) is vested in the board of directors. This board, *inter alia*, monitors the national investment environment as well as the world investment climate in order to propose measures geared towards ensuring that the Investment Environment in Tanzania is more competitive.

In other words, this is a “think tank” for the government in connection to issues related to investment. Pastoralists can lobby for the appointment of a person who can provide the correct thinking when it comes to the rights of pastoralists.

4.2.4 Lobbying for the amendment and or harmonization of the laws

Laws of Tanzania are subject to amendment, harmonization and if need be, repeal in order to be in line with the changing society. Even the constitution which is considered to be the mother law or *grund norm* has been amended more than fourteen times. Pastoralists should therefore make use of this window of opportunity to advocate for the favourable legal environment.

This can be done in collaboration with other institutions such as the Law reform Commission, currently under the chairmanship of His Lordship Judge Professor Ibrahim

Hamisi Juma who is not only a renowned human Rights lawyer but also sympathetic to pastoralists.

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Abbreviations

CCRO Certificate of Customary Right of Occupancy

CORDS Community Research & Development Services

CVL Certificate of Village Land

DLO District Land Officer