

**TANZANIA PASTORALIST AND HUNTER - GATHERER  
ORGANIZATION (TAPHGO)**

**THE REVIEW OF POLICIES IN THE AREAS OF WILDLIFE AND FORESTRY  
AND THEIR BROAD IMPLICATIONS TO PASTORAL AND HUNTER –  
GATHERER LIVELIHOODS.**

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## **LIST OF ACRONYMS**

AA	Authorized Associations
CBO	Civil Based Organisation
DCs	District commissioner
DGO	District Game Officer
GCA's	Game Controlled Areas
GMP	General Management Plan
GR	Game Reserve
LGRP	Government Reform Programme
LUP	Land Use Plan
MP	Member of Parliament
NCAA	Ngorongoro Conservation Area Authority
NFP	National Forest Policy 1998
PFM	Participatory Forest Management
TANAPA	Tanzania National Parks Authority
VGS	Village Game Scouts
WCA	The Wildlife Conservation Act 1974
WD	Wildlife Division
WMA	Wildlife Management Areas
WPT	Wildlife Policy of Tanzania

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## **1. Introduction**

The role of pastoralists in conservation is increasingly being acknowledged. This recognition is happening at the same time when prime grazing lands for pastoralists have and continue to be alienated for conservation related activities. This short report is analysis of the policy environment and in relation to the wildlife and forest sector and their implication to pastoralists. The review will also be aimed at practical recommendations on how pastoralists can engage with these sectors for their own benefit. It will also where appropriate seek to point out those areas of law and policy where further change is required for a more pro-pastoralist policy environment.

The report will cover issues related to the Wildlife Policy of Tanzania of 1998(WPT), the Wildlife Conservation Act, 1974 and different regulations made under it, the Forest Policy of 1998 and the Forest Act of 2002.

## **2. An overview of Conservation Environment in Relation to pastoralism**

It is difficult to talk of conservation in Tanzania without at the same time acknowledging the role that pastoralism has played in preserving some of the most critical ecosystems. Many protected areas in the country are either pastoralist's lands now or they are areas that they claim ancestral rights to. The country has set 28-30 % of its land surface to conservation. About 4% of it is 13 National Parks, 1% is Ngorongoro Conservation Area, 15% is 31 game reserves and 8% is 38 game controlled areas. About 19 % of the country's land surface is set aside for protected areas where no human settlement is allowed and 9% of its surface area where wildlife coexist with humans<sup>1</sup>. Many of these are concentrated in the northern part of the country, which is where many pastoralists are found. The famous Serengeti National Park was once the home of Maasai pastoralists. They were evicted from it in 1958/1959 and have not been allowed to return there ever since! Ngorongoro Conservation area is also home to Maasai pastoralists. This area is a multiple use area but the pastoralists are restricted from accessing many resources in it and their human rights situation is wanting.

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<sup>1</sup> The Wildlife Policy of Tanzania, 1998

The predominant conservation methodology is of the type-the one that excludes communities from the management and control of natural resources. The wildlife Conservation Act, 1974 puts the control of wildlife resources under the central government bureaucracy. Pastoralists whose lands have been taken to create wildlife-protected areas do not benefit adequately from these resources.

The National Parks Ordinance, 1959 prohibits human activities in National Parks. Pastoralists whose former lands constitute the largest share in the national parks cannot access these lands anymore.

The country has adopted a Wildlife Policy<sup>2</sup>, which promises to change the present thinking and practice regarding conservation of wildlife resources. The policy realizes the limitations of the existing centralization of the management of wildlife resources. As a result, the policy proposes to make communities participate in the management of wildlife as well as assuring equitable sharing and distribution of benefits. Wildlife conservation is to be integrated with rural development as one the means of eradicating rural poverty.

The policy has introduced a new kind of protected areas called Wildlife Management Areas (WMA)<sup>3</sup>. These areas of village lands that will be set-aside for community managed wildlife resources. Rural communities living adjacent core protected areas will be able to benefit from wildlife resources in their lands. This arrangement can benefit pastoralists whose lands are abundant in wildlife resources.

There are efforts to amend the Wildlife Conservation Act, so that the objectives of the policy can be enforceable.

When it comes to forests, the existing policy environment is said to be exemplary in empowering local communities to participate in management as well in accessing benefits from forests resources. The Forest Act provides the enforcement mechanism to the policy choices.

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<sup>3</sup> WMA's have officially been established under Wildlife Conservation (Wildlife Management Areas) Regulations of 2002

### 3. The Wildlife Conservation Act 1974(WCA)<sup>4</sup>

The WCA is the framework legislation dealing with the conservation of wildlife resources in the country. The legislation is drafted very much in line with the thinking and approaches to conservation in use during that time. The approach to conservation is the one that excludes and separates human beings from wildlife resources. This approach is commonly referred to as the fines and sticks approach. The extent to which this approach has helped to conserve the nation's wildlife is arguable as indeed many wildlife resources have been lost to poachers for more than thirty years when the legislation and approach have been in use.

The WCA is loaded with many 'don'ts' by communities and other land users when it comes to dealing with wildlife resources. A typical example of these restrictions is that which relates to the hunting of wildlife. The hunting of wildlife and dealings with their trophies, both and outside core protected areas is prohibited and can only be undertaken with the permission of the director of wildlife.

The WCA creates different types of protected areas as well as activities that can be undertaken in them. Different authorities are responsible for the creation of these categories of protected areas but the overall administration of these protected areas is vested with the central government bureaucracy. Three categories of protected areas are created under the WCA. The first category is that which relates **game reserves**. This is a category of conservation where entry and residence is not allowed without the express permission of the Director of Wildlife. Livestock grazing is expressly prohibited unless the Director of wildlife consents. The consent can also be withdrawn and what befell Maasai pastoralists when they were evicted from Mkomazi Game Reserve in 1988.

Other prohibited activities include setting of fires, felling and cutting, burning, injuring, or removing any standing tree shrubs, sapling, and seedling.

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<sup>4</sup> Act No 12 of 1974

Secondly, there is established a category called **Partial Game Reserves**. This is a special game reserves created by the director of wildlife for the benefit of what the WCA refer to as protected animals. The director of wildlife is yet to create any of a partial game reserve and one wonders whether there is any value of this category remaining in the statutes books.

The third is found in what are called **Game Controlled Areas (GCA's)**. This is a category of conservation areas where though human habitation and activities are not prohibited as such but the director of wildlife has enormous powers in regulating activities that touch on wildlife resources. GCAs are a conservation category where human activity is not prohibited but any use of wildlife and its products are under the exclusive domain of the Director. Some activities are completely prohibited in GCAs save with the consent of the Director. These include, hunting, killing, wounding, molesting and capturing of animals.

A generous construction of the provisions of the WCA will seem to indicate that the intention of parliament was simply to find a mechanism of protecting animals that are found in human settlement. It does not appear that the intention was to put restriction on the manner people utilise resources. A cursory glance of real conservation practices in GCAs will reveal that the intention of parliament has been done away with, with the central government bureaucracy meddling with the rights of the people to use their resources in GCAs.

Many of the hunting activities in Northern Tanzania are undertaken in GCAs which also double up as village lands where human beings live and are expected to carry a multiplicity of activities which are important for their well-being.

The retention of GCAs in village's lands is seen many as the biggest impediment to the realization of community access to wildlife resources in villages land and is the leading cause of conflicts between different stakeholders in the wildlife sector.

### **3. The Wildlife Policy of Tanzania 1998**

The Wildlife policy (WPT) 1998 departs from the fences and fines approach to conservation put into place by the WCA. When it comes to local communities, is the aim of policy to allow rural communities and private landholders to manage *wildlife on their land for their own benefit*. The overall objective of the policy is to *ensure the conservation of biological resources and the sustainable utilization of wildlife resources and ensuring that this conservation contributes to poverty alleviation and improving the quality of life of Tanzanians*.

That broad objective is said to address the critical problems facing the sector and these include:

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

Some of the strategies laid down to improve the sector include:

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

The policy also recognises that for the vision of the sector to be achieved, deliberate attempts must be undertaken to overhaul the existing legislative framework related to wildlife resources in the country. The policy is categorical thus : *“The value of any new legislation in the wildlife sector will therefore be how effectively it serves to further the objectives of this policy, and in particular how it addresses the challenges facing the sector and implements the recommended strategies”*.

We try below some attempts that have been taken to enforce the WPT and whether those approaches are in conformity with new ways of doing conservation.

#### **4. Wildlife Management Areas Regulations of 2002(the regulations)**

The making of the Wildlife Management Areas Regulations of 2002 has signaled a resolve of the government to come up with new legal provisions for the wildlife. The creation of WMA is thought to be in tone with the policy direction in devolving management, control and benefits of wildlife resources to local communities. The concept of WMAs itself is brainchild of the WPT. But what exactly are WMAs? According to the regulation, WMA’s are defined as village land set aside for wildlife conservation<sup>5</sup>. The overall purposed of WMAs is “to enable the local communities living in villages to participate in the protection and utilization of wildlife resources on village land.”

As can be seen from the purpose of WMAs, there is a deliberate shift from centralization to decentralization of the management of wildlife resources. The extent to which is realizable in practice must pass the test of time but as will be seen shortly, the WMAs empire is clouded with a lot of procedural and substantial inadequacies which make their implementation something next to impossible.

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<sup>5</sup> Section 2(2) of the Regulations

#### ***4.1 Procedures for the establishment of WMA<sup>6</sup>***

##### ***(a) Awareness and sensitization of local communities***

Before anything concrete takes shape in the establishment of a WMA, it is good practice that before any area is designated as WMAs local communities must be made aware of the this new way of doing business: A sensitization of some sort must is required to enable them to make informed decisions on whether or not they will want to be associated with WMAs. This awareness should also apply to as to the procedures and expected benefits of WMA. Although this is not a legal requirement per se, it is very much in line with good governance and democracy in natural resource management. The law does not impose the duty of awareness creation to any specific organ or authority but one will assume that leading national conservation structures like TANAPA, the wildlife division and the Ngorongoro Conservation Area Authority will take the lead. District Councils where the said WMAs will administratively be under are also expected to take a lead in this kind of awareness creation. Civil society organizations have however shouldered the biggest task already when it comes to this awareness. Pastoral CSO's like TAPGHO have the enormous task ahead of making pastoralists aware of these new policy directions. There cannot be a blue print on how to undergo this, but one way of proceeding with it is to allow communities to decide whether they want to have WMAs without necessarily imposing ideas as to whether WMAs are good or bad.

##### ***(b) Designation of WMA's***

Before an area is designated as a Wildlife Management Area, the following procedures have to be followed:

- (i) The Village Council shall recommend to the Village Assembly a village land that is suitable for the establishment of a Wildlife Management Area.
- (ii) The CBO shall submit an Application to the Director of Wildlife, which should include:
  - A certified Copy of the Minutes of the Village Assembly Meeting endorsing the designation of a Wildlife Management Area
  - A duly completed Information Data Sheet

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<sup>6</sup> These are procedures are elaborated in the guideline for the Designation and Management of WMAs

- A certified copy of the Certificate of Registration of a Community-Based Organization
- A Land Use Plan approved by the Village Assembly
- A draft General Management Plan and a Resource Management Zone Plan

(iii) The Director shall gather information relating to the proposed Pilot WMA indicating:

- Name of Project
- Funding
- Investment element (if any)
- Economic Activities (if any)
- Development Activities (if any)
- Actors in the Project/Programme

***(c) Criteria for establishing Wildlife Management Areas***

Wildlife Management areas may be established in the following areas:

- Areas that are outside of core wildlife protected areas
- Areas used by local communities
- Areas within the village land

No area shall be designated as a WMA unless it meets the following criteria:

- It has significant accessible resources
- Its natural resources are of significant economic value
- It is ecologically viable or forms part of an ecologically viable ecosystem
- It belongs to one or more villages in accordance to the relevant provisions of the legislation governing village land, and other legislation relating to occupation and use of village land

***(d) Approval or disapproval and appeal***

Upon receipt of an application for the designation of WMA, the Director shall inform the applicant in writing whether the application has been approved or not, stating reasons for

such a rejection. The Director may also re-consider the rejected application that has been modified to comply with the directives that were issued.

***(e) Declaration of wildlife management area and authorized association***

After receiving the recommendation from the Director, the Minister shall:

- Declare a designated WMA for use by traditional communities
- Issue a Certificate of Authorization
- Publish the Authorized Association and the Wildlife Management Area in the Gazette.

***4.1.2 Roles of different institutions in the establishment and Management of WMAs***

The establishment and management of WMAs is a function of a multiplicity of actors. These include, Authorised Associations, Village Councils, District Natural Resources Advisory Board, District Council, Ministry of Natural Resources and Tourism, the Wildlife Division, TANAPA, and Ngorongoro Conservation Area Authority, CSOs and the private sector. The fact that many actors have different and sometimes overriding roles in the establishment of these critical conservation areas complicates the whole matter is a hurdle for the smooth operationalisation of the whole concept of WMA. A detailed presentation of actors and their key roles is elaborated in the table below.

**The Roles of Different institutions in the establishment and Management of WMA**

S/N	Institution/Actor	Responsibility/Role
1.	<b>Authorized Associations</b>	<ul style="list-style-type: none"> <li>• Acquire WMA status of the village land set aside for wildlife conservation</li> <li>• Manage WMA in accordance with existing General Management Plan (GMP) and laws.</li> <li>• Review GMP for the WMA and Strategic Plan for the AA</li> <li>• Recruit Village Game Scouts (VGS) from within the villages forming the WMA and manage the VGS</li> <li>• Participate in developing by-laws</li> <li>• Negotiate and enter into contractual agreements regarding the</li> </ul>

		<p>utilisation of resources in a WMA</p> <ul style="list-style-type: none"> <li>• Promote transparency and accountability</li> <li>• Ensure equitable sharing of benefits</li> <li>• Manage conflict/arbitration on matters pertaining to the WMA</li> <li>• Report to the Village Assembly</li> <li>• Report and seek authorisation of investments from the Village Assembly.</li> <li>• Co-opt technical expertise as required</li> <li>• Protect resources in the WMA</li> <li>• Carry out problem animal control</li> <li>• Ensure efficient financial management</li> <li>• Ensure and maintain proper record keeping</li> <li>• Oversee collection and payment of required fees and taxes</li> <li>• Identify and organise training for the AA</li> <li>• Undertake entrepreneurship</li> <li>• Liase with other institutions for information and technological exchange</li> <li>• Acquisition and safekeeping of arms and ammunition</li> <li>• Apprehension of illegal users and sending them to appropriate institutions</li> <li>• Acquire and dispose of AA property</li> <li>• Ensure conservation of biodiversity</li> <li>• Undertake resource monitoring.</li> </ul>
2	<b>Village Councils</b>	<ul style="list-style-type: none"> <li>• Co-ordination of natural resources management activities at the village level</li> <li>• Prepare Land Use Plan (LUP)</li> <li>• Formulate natural resource by-laws</li> <li>• Monitor AA activities and report to the Village Assembly and District Council</li> </ul>

		<ul style="list-style-type: none"> <li>• Provide land for establishment of a WMA</li> <li>• Ensure a secure and favourable business environment in the WMA</li> <li>• Ensure that sectoral policies are implemented by the AA</li> <li>• Enter into an agreement with the AA on the management of the WMA</li> </ul>
<b>3</b>	<b>District Natural Resources Advisory Board</b>	<ul style="list-style-type: none"> <li>• Act as a forum for arbitration and resolution of conflicts</li> <li>• Resolve major land and natural resource conflicts pertaining to WMAs</li> <li>• Reconcile interests of major stakeholders in WMAs</li> <li>• Provide and co-ordinate technical advice to the AA</li> <li>• Provide legal advice (including by-laws and contracts)</li> <li>• Facilitate setting of wildlife quota by the AA through the DGO or designated wildlife authority and then forward it to the DW for endorsement.</li> <li>• Furnish the appropriate District Council Standing Committee with the deliberations of the Technical Advisory Body.</li> <li>• Verify and approve AA contracts.</li> <li>• Advise the District Council on investments in WMAs.</li> </ul>
<b>4.</b>	<b>District Council</b>	<ul style="list-style-type: none"> <li>• Facilitate applications by CBO to become an AA and to establish a WMA.</li> <li>• Ensure that the District Advisory Body is functional</li> <li>• Form a linkage between the AA and the WD</li> <li>• Approve natural resource by-laws</li> <li>• Approve LUP</li> <li>• Implement and monitor adherence to the WPT in and outside WMAs</li> <li>• Endorse investments in the WMAs</li> </ul>
<b>5.</b>	<b>MNRT and WD</b>	<ul style="list-style-type: none"> <li>• Facilitate the initiation of the establishment of WMAs</li> <li>• Authorise CBOs to become AAs</li> </ul>

		<ul style="list-style-type: none"> <li>• Declare an area as a WMA</li> <li>• Facilitate the gazettment of WMAs</li> <li>• Confer user rights of wildlife resources in the WMA and on the lands of the participating villages.</li> <li>• Enter into contractual agreements, such as a Memorandum of Understanding(MOUs), with AAs on the management of WMAs</li> <li>• Oversee the performance of an AA in management of WMAs</li> <li>• Endorse animal quota</li> <li>• Screen prospective investors in WMAs</li> <li>• Oversee investment in the WMAs</li> <li>• Assist in protection of natural resources</li> <li>• Provide technical assistance to the AAs</li> <li>• Develop a standardised syllabus and provide modalities for conducting VGS raining</li> <li>• Assist to undertake resource monitoring and inventory</li> <li>• Assist in training</li> <li>• Monitor and evaluate development trends of WMAs</li> <li>• Assist in anti-poaching activities</li> <li>• Assist AAs in monitoring the resources</li> </ul>
6	<b>TANAPA, Wildlife Division and Ngorongoro Conservation Area Authority</b>	<ul style="list-style-type: none"> <li>• Develop modalities with the WD to work in WMAs that they are stakeholders in.</li> <li>• Facilitate the establishment of WMAs</li> <li>• Act as an agent of the WD in a WMA.</li> <li>• Participate on the District/Inter-District Advisory Committee in areas where they operate</li> <li>• Assist to conduct resource monitoring and inventory in the WMAs</li> <li>• Assist AAs to undertake anti-poaching activities</li> </ul>
7	<b>NGOs</b>	<ul style="list-style-type: none"> <li>• Facilitate the initiation and establishment of WMAs in collaboration with WD, TANAPA, NCAA, GR, NPs and District Commissioners (DCs).</li> </ul>

		<ul style="list-style-type: none"> <li>• Sensitisation of communities</li> <li>• Facilitate community organization</li> <li>• Facilitate villages to prepare LUPs</li> <li>• Provide legal advice (by-laws and contracts)</li> <li>• Provide technical advice to AAs</li> <li>• Undertake capacity building activities (financial management, annual action plans, audits, strategic action plans and gender mainstreaming)</li> <li>• In collaboration with the WD, TANAPA, NCAA and/or DC facilitate joint ventures</li> <li>• Participate in District Advisory Board upon request</li> <li>• Collaborate with wildlife authorities in resource monitoring</li> </ul>
<b>8</b>	<b>Private Sector</b>	<ul style="list-style-type: none"> <li>• Enter into concessions/joint ventures, agreement on resource utilisation and investment in the WMA with AA</li> <li>• Adhere to/fulfill the terms and conditions of the concession agreement/joint venture contract</li> <li>• c) Market and promote the WMA's resources</li> <li>• Assist in protection of natural resources.</li> <li>• Participate on District Advisory Body meetings upon request.</li> <li>• Ensure that it pays AA and government dues promptly and correctly</li> </ul>

***4.1.3 Shortcomings of the WMA regulations and recommendations***

It is not contested that the adoption of WMA's regulations in 2002 is a concrete indication of the intention of the government to implement the WPT in a manner that is beneficial to local communities living in and or adjacent key protected areas. While the intention of creating WMAs is clear, the methodology that is proposed to operationalise them as well comes somewhat in between the said objectives and what can be achieved in practice. The procedures for establishing WMAs is tainted with a lot of bureaucratic and technical red tape that can making it frustratingly difficult for local communities to

put them in place. The way benefits are shared from the proceeds of the WMA project makes it unlikely that local communities will benefit meaningfully and thus get motivated to sustain the WMA project. The existing WMA regulations need to be amended for a more community friendly environment in their implementations. The following are some of the recommendations:

1. The procedures for the establishment of WMAs should be amendment so that their establishment is not a nightmare to local communities. The technical requirements, which are apparent at the moment in the establishment of WMAs, should be done away with, as this is responsible for the slow pace in the realization of the objectives of the WPT.
2. The indication that the government is ready to de-gazette GCA should be translated in practice. Since the adoption of the WMA regulations in 2002 no single GCA has been degazetted. This is can give a false impression that the government is not serious in its resolve to establish WMAs. Beside this, GCAs are not a meaningfully conservation category and their existence is responsible to a large existence for many conflicts between different stakeholders as is elaborately demonstrated by a tug war between local communities, tourist hunters and non-consumptive tourist operators.
3. The issue of benefit-sharing in the proceeds of the WMA is somewhat a nightmare as to its clarity. The exact *modus operandi* for how benefits are shared between the central government, local governments and local communities is not properly ascertained in law. In any case attempts must be taken to give local communities the largest share in the said benefits as indeed the prime object of establishing WMAs is to give benefits to local communities over and above what is presently the case with the existing arrangement
4. The placement of the control of WMAs with Authorized Associations (AA's) is heavily contested as to its logic in a place where village governments are already entrusted with management of resources in their villages. The bitter experiences of cooperatives in villages in the Ujamaa era may make local communities to shy away from giving support to AAs which places control of critical village resources to an entity which villagers have no complete control over.

5. The powers currently wielded by the central and local government authorities in their advisory and regulatory mandates should be relaxed so as to place complete powers of management to local communities.
6. The composition of the District Natural Resources Advisory Board, which brings on board executive elements, as is the case with the District Commissioner should be amended so as to bring in more people centered and elected institutions such as District Council.

### **5. The Wildlife Conservation (Tourist Hunting) Regulations, 2000 (here, the Tourist Hunting Regulations)**

Another interesting instrument which is relevant to our inquiry is the Tourist Hunting Regulations of 2000 made by the Minister of Natural Resources and Tourism under the provisions of the WCA.

The coming into force of these regulations is another major setback to the efforts of realizing the objectives of the WPT in devolving of authority over wildlife resources and it does not for a second help in addressing the contradictory perspectives of the management of wildlife resources in village lands. The regulations outlaw any possibility of villagers living in GCAs to freely enjoy the use of wildlife resources in their lands. The most contentious provision is the one running below:

*“ No person shall conduct tourist hunting, game viewing , photographic safari, walking safari or any wildlife based tourist safari within a hunting block or within any wildlife protected area outside Ngorongoro Conservation Area, and National Parks except by and in accordance with the written authority of the authority of the Director of Wildlife previously sought and obtained*

*Provided that this subregulation shall not apply where such activities are carried in Gazetted Wildlife Management Area or a private captive breeding operation, which has been endorsed by the Director”<sup>7</sup>*

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<sup>7</sup> Section 16(5) of the regulations

The above provision of the regulations has generated severe heat over the last few years at to its propriety in law. This is not the subject of this policy review but it is worth tiptoeing some of the most critical observations. There is a view among some leading activists that the Director of Wildlife cannot legally be conferred with jurisdiction on matters related to game viewing and walking safaris. The term, ‘any wildlife based tourist safari’, used in the above cited is not specific enough to have a definite meaning in law. Indefinite statements of that nature can lead to abuse of discretion by those implementing the regulations. This is to say that tourist activities that wildlife authorities form opinion to properly being wildlife based can be prohibited. Game viewing and walking are themselves, depending on how one sees them, not activities that are not prohibited by the WCA, the principal legislation that empowered the Minister to make the contested regulations. It is not proper in law for have a subsidiary legislation such the tourist hunting regulations to enact something which is new to its principal act, in this case, the WCA. To this effect therefore, the Tourist Hunting Regulations are capable of being declared *ultravires* the WCA, when a matter arises as to the legal compatibility between the two<sup>8</sup>.

Besides the legal debate as to the appropriateness of the provisions of the Tourist hunting Regulations, it is still important to note that the prohibitions enumerated by the hunting regulations have serious implications on land rights of people living in GCAs. Villagers have been given sufficient powers when it comes to the use and management of village lands. The Local Government (District Authorities) Act recognizes that by virtue of village councils being incorporated they are empowered to enter into legal relations with any body, whether natural or corporate, in order to better ensure the prosperity of the village and its habitants. In addition, section 142(2), recognizes the functions of the Village to include:

*“Initiate and undertake any task, venture or enterprise designed to ensure the welfare and wellbeing of the residents of the village; and participate by way of partnership or any other way, in economic enterprises with other village councils”.*

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<sup>8</sup> For a more thorough discussion on this, see R Nshalla(2002), *Village Rights Related to Land Management, Tourism and Tourism Hunting*.

Besides, section 142(3) gives the village Council more general powers, which include, the power to do all acts and things, which appear to be necessary, advantages, or convenient for the carrying out its functions and their proper discharge.

One of the reasons for the special recognition of a category of land known as village and enactment of the specific law governing it, is to give powers to rural populations the right to own and manage resources for their economic and social wellbeing. One of the fundamental principles of the national land policy is to enable all citizens to participate in decision-making matters connected with their occupation or use of land. The biggest concern of the wildlife policy is the absence of sufficient rights on the use of natural resources (wildlife) by villagers. The policy therefore is to allow village communities and private persons to manage in their lands for their own advantages.

## **6. The Proposed Wildlife Conservation Act 2004**

It has been observed before that the WCA is still drafted along archaic conservation principles which have long time been discouraged in many parts of the world. It has also been observed that the WPT has somewhat departed from the approach to conservation that is being employed by the WCA. Many actors, especially CSOs have teamed in different parts of the country to demand for the overhaul of the existing wildlife legislation, which is not in concert with the spirit of the WPT. These efforts seem to have somewhat been heeded as the Government has been in the process of coming up with a new wildlife legislation. The issue however is the extent to which the proposed new legislation takes into account interests of a variety of stakeholders, and especially communities living or adjacent to key protected areas.

The draft new wildlife law was made public sometimes in 2004. There has not been sufficient prior consultation of local communities and CSOs in the whole process of making of the draft law. The whole undertaking has mostly been a secret affair of the wildlife division, consultations and a few privileged international organizations. A few meetings were organized after the draft had gone to advanced stages by the government

but mostly by CSOs. The product of the process is undoubtedly, a very much-repeated version of the WCA with more restrictions and introduction of new categories of conservation areas as will be seen from analysis below. Concerns on the shortcomings of the proposed new law have been communicated to the government but there is yet no concrete signal that they will be incorporated in the final Bill.

The first concern is the strong retention the enormous powers of the central government in the form of the Director for Wildlife in the management of wildlife resources very much against the spirit of the WPT which has promised to decentralize and devolve management and control of wildlife resources. The central government seems to be babysitting a conservation approach, which is very much at odds with the prevailing song in conservation.

The second weakness of the legislation is that it has failed to use this opportunity to resolve the conflicting nature of the wildlife area legislation and those related to land and local governance. This is despite the fact that the WPT had promised to reconcile different sectoral policies for a more coherent and enabling environment. The major source of conflict in the wildlife sector –the existence of GCA’s in village lands and overriding powers over utilization of land and other resources in village lands does not seem to have been resolved by the draft wildlife legislation.

The major concerns are summarized in the following box<sup>9</sup>.

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<sup>9</sup> Information extracted from [www.trng.org](http://www.trng.org) (accessed 2nd May 2006)

- The new draft act retains the provisions for Partial Game Reserves and Game Controlled Areas without any changes despite these areas being outdated and not performing conservation functions. **The draft act does not in any way address the conflicts between Game Controlled Areas and the village lands which are prevalent and which inhibit implementation of WMA's as well as implementation of the Village Land Act and constrain local community land tenure security.**
- **The draft wildlife act does not seem to have been harmonized with the land legislation and the local government legislation.** The draft wildlife act gives new powers to the Minister of Natural Resources to create reserved land which is in contravention of the powers of the President under the Land Act to transfer village land to reserved land.
- The draft wildlife act has not clearly and securely established the Wildlife Management Areas under the law but will leave them to be dependent on regulations, which can be changed at any time by the Minister. This reduces the security that communities can have to manage and conserve wildlife on their lands. The Act has absorbed the WMA regulations without any improvement but with all their shortcomings.
- While the draft wildlife act does little to increase the ability of local people to benefit from wildlife on community lands, it provides for new regulations and restrictions in the form of *corridors, buffer zones, and dispersal areas*. The draft gives the Minister new powers to declare and regulate these areas. It is possible that this will represent a new type of protected area in customary village lands and a new source of conflict between wildlife authorities and local communities. This is in contrast to the provisions of the Wildlife Policy, which call for using community-based conservation through WMA's in the corridors and dispersal areas to achieve conservation in these places.
- The draft wildlife act also does not increase participation of local communities in tourist hunting carried out on village lands and does not strengthen the rights of communities as private landholders to determine what hunting occurs on their lands.
- The draft wildlife act does not provide for increasing the transparency and accountability of the tourist hunting concession system as called for by the Wildlife Policy.

Because of the above weaknesses the following recommendations have been given by different stakeholders to improve way the sector is operated and to have a more appropriated legislative environment.

Firstly, the draft wildlife law must be redrafted to reflect the different concerns of different stakeholders. The thrust of the observations that have been given relate to the non-conformity of the draft legislation to the cherished objectives of the WPT. This is particularly in respect of the powers of the Ministry of Natural Resources and Tourism which are wielded at the expense of local communities much against the good spirit of the WPT.

Secondly, the WMA regulations stipulate that GCAs will be degazeted to enable local communities to start and operate WMAs. There is not a repeating emphasis on this important step, the lack which waters down the overall idea behind the policy and a corresponding enforcement mechanism.

Thirdly, the creation of other conservation categories like buffer zones and wildlife corridors is an unfortunate proposal in an environment where restrictionist conservation in no longer tenable. The hostility of local communities who have been exposed to the bitter pills of the fines and fences approaches to conservation is not mitigated by further creation of conservation areas as this will necessarily entail further restrictions and alienation from important resources. It is therefore recommended that these new categories of conservation be done away with in the proposed new wildlife legislation.

Fourthly, the fate of hunter-gatherer communities should explicitly be recognized in the law. Hunter-gatherer communities are depending on the fruits of the forests for survival. The fact that the existing laws put restrictions to hunting is a direct violation of their right to survival. The law should provide some mechanism for these communities to undertake hunting and gathering within reasonable limits and controls.

Fifthly, the WMA's should form part and parcel of the provisions of the expected new wildlife law. This is because, at the moment the regulations are in place at the discretion

of the Minister who can change and even repeal them anytime s/he deems appropriate. Putting the legislations in the new Act will make them not easy to tamper with without the consent of parliament. In any case the regulations do proceed from an enabling principal legislation and there is not harm when those regulations proceed from the legislation itself.

## **7. National Forestry Policy, 1998.**

Tanzanian Government reviewed its 1953 Forest Policy in 1998, and adopted the National Forest Policy, which has a very strong focus on sustainable conservation of forest resources by greater involvement of local communities, the private sector and local governments in the control and management of forests resources. The overall goal of the policy is **"enhancing the contribution of the forest sector to the sustainable development of Tanzania and the conservation and management of natural resources for the benefit of present and future generations.**

Specific objectives include:

- To ensure sustainable supply of forest products and services by maintaining sufficient forest area efficient management;
- To increase employment and foreign exchange earnings through sustainable forest-based industrial development and trade;
- To ensure ecosystem stability through conservation of forest biodiversity, water catchments and soil fertility; and
- To enhance the national capacity to manage and develop the forest sector in collaboration with other stakeholders.

The NFP sets four priority areas for legislation and implementation

- Forest land management;
- Forest-based industries and products;
- Ecosystem conservation and management;
- Institutional and human resources.

The concept of Participatory Forest Management (PFM) is very well reflected in the provisions of the Forest Policy and Forest. The move towards PFM has been motivated by two factors: First, the recognition that both the central government and local government cannot manage forest resources in a cost effective and sustainable manner without involving local communities. This is not specific to the forest sector alone; it touches on all other areas of natural management. As was have seen before for the management of wildlife resources, it is increasingly being realized that an approaches to conservation which puts communities aside is bound to fail as did conservation experiences prior to the coming to fore of Community Based Natural Resource Management (CBNRM) approaches).

The second factor has to do with the overall ongoing government project of decentralizing government functions whose mechanisms are provided under the local Government Reform Programme(LGRP)<sup>10</sup>.

Some salient features of the policy are provided in the box below.

### **Salient features of the Forest Policy**

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- For more efficient Forest Management, the Policy introduces management by specialized executive agencies and the private sector.
- Local governments will continue managing forest reserves under their jurisdiction but they can also to place them under the management of executive agencies or private sector.
- The policy introduces mechanisms were user rights can be exercised through joint management's agreements.
- Clear ownership of forests will be established for sustainable forest management.
- Decentralization of forest resource management responsibilities will be promoted.
- The capacity of the local government to administer and manage forest resources will be strengthened and a coordination mechanism between the

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<sup>10</sup> For a more on this see Charles Meshack, Transaction Costs of Participatory Forest Management: Empirical evidence from Tanzania, The Arc Journal Issue 16 (<http://www;tfcg.org>) accessed 29<sup>th</sup> April 2006

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local and central governments established.

- An enabling environment and regulatory framework for the private sector involvement in forestry will be created.
- Incentives and credit facilities for investments will be promoted including those by joint ventures

### **8. The Forest Act, 2002**

The Forest Act is taken to be one of the most elaborate legislations in natural resource management, which adequately provides for community involvement in the management of forest resources.

#### ***8.1 Objectives of the Act***

These provisions are captured very adequately by the objectives of the Act, which are elaborated in the box below.

#### **The objectives of the Forest Act:**

- To promote, to enhance the contribution of the forest sector to the sustainable development of Tanzania and the Conservation and management of natural resources for the benefit of present and future generations
- To encourage and facilitate the active participation of the citizen in the sustainable planning, management, use and conservation of forest resources through the development of individual and community rights, whether derived from customary law or under this Act, to use and manage forest resources
- To ensure ecosystem stability through conservation of forest biodiversity, water catchments and soil fertility
- To delegate responsibility for management of forest resources to the lowest possible level of local management consistent with the furtherance of national policies
- To ensure the sustainable supply of forest products and services by maintaining sufficient forest area under efficient, effective and economic management

- To enhance the quality and improve the marketability of forest products and regulate their export
- To promote coordination and cooperation between the forest sector and other agencies and bodies in the public and private sectors in respect of the management of natural resources of Tanzania
- To facilitate greater public awareness of the cultural, economic and social benefits for conserving and increasing sustainable forest cover by developing programmes in training, research and public education
- To enable Tanzania to pay, fully in contributing towards and benefiting from international efforts and measures to protect and enhance global biodiversity.

## ***8.2 Classification of forest reserves***

The Forest Act provides different categories of forest reserves, which are in turn provided under the administration, and management of different authorities. The beauty of this Act as will be seen shortly afterwards is that devolution of management and benefits is attempted as much as possible. Below are the different categories of forest reserves as are established by the Act

### ***8.2.1. National Forest Reserves***

This category consists of:

- Forests reserves, or
- Nature forest reserves;
- Forests on general lands

### ***8.2.2 Local Authority forest reserves***

The Act also establishes forests reserves, which are put under the management of local authorities. These forests include:

- Local authority forests
- Forests on general land

### ***8.2.3 Village forests***

Village authorities are also given authority to manage forests located in village lands.

This category includes:

- Village land forest reserves
- Community forests created out of village forests
- Forests, which are not reserved, which are on village land whose management is vested in the village council.

### ***8.2.4 Private Forests***

Besides the above categories of forests reserves above, the Act also recognizes what are referred to as private forests. These include:

- Forests on village land held by one or more individuals under a customary right of occupancy
- Forests on general land of which the rights of occupancy or a lease has been granted to a person or persons or a partnership or a corporate body or NGO or any other body or organization for the purpose of managing the forest which is required to be carried in accordance with the Act.

### ***8.3 Management Plans for Forests in Village Lands***

The Forest Act has provided lengthy but yet participatory mechanisms for the management of different forest categories. Our emphasis here is however on village forests as these are the most relevant for pastoralists. The management of village forests is done by preparation and execution of a Village Land Forest Management Plan.

The Village Councils are given overall powers of establishing the said plans but shall undertake consultations and support from among others, the following:

- The local authorities in the vicinity of the forest;
- Users and users organisations of the forest;
- The local communities
- Such other persons and organisations as may be prescribed.

The village council will later on be required to submit the proposed village land forest management plan to the district council having jurisdiction on that particular area and the district council may within sixty days of the receipt of the plan or after consulting with relevant persons and authorities may consider such a plan. The Proposed forest management plan prepared under this section shall be forwarded to the Director for his comments and consideration. The village council shall, after giving not less than twenty-one days notice and appropriate publicity to the matter, hold one or more village assembly meetings in the vicinity of the forest for which the village land forest management plan is being prepared to explain the plan to the village assembly and to hear and take account of any comments. After revising the plan in the light of comments received the village council shall submit the plan to the village assembly for its approval. The village assembly shall, on being satisfied with the draft village land forest management plan, by resolution adopt the plan. The village council shall manage the forest in accordance with the adopted plan and send a copy of the adopted village land forest management plan to the district council having jurisdiction in the area of the village council.

## **9. Conclusion and Recommendations:**

A few things have become clear in the course of the ongoing review. One, the WCA was seen as outdated piece of legislation, which prevents communities from participating in the management of natural resources and getting benefits therefrom. Second, the WPT was seen as positive attempt to reverse the position and approaches of the WCA and that the policy is loaded with good provisions to enable communities to get actively involved in management of wildlife resources. The policy is however toothless when it comes to enforcing its good provisions and this why there is a need to amend the WCA. Thirdly, WMAs were seen as a good attempt to implement the WPT but the bureaucratic procedures for their establishment and the overall framework of their operations water down their good intentions. The way benefits are designed to be shared does not appeal to communities as something they can seriously benefit from and hence worth of supporting.

Fourth, the policy and legislative environment in the forestry sector was seen as most exemplary participatory and local community friendly in the all of the natural resource arena. Pastoralists and other local communities can benefit from this arrangement by having community managed forest reserves in village lands.

Fifth, it also became obvious that the draft Wildlife Conservation and Management Bill is not in concert with the WPT and did not take into account different recommendations of stakeholders given during different consultations over the last couple of years. This is one area where TAPHGO and its fraternity need to organise around for more lobbying and advocacy. During the finalization of this review rumors were high that the Bill to this expected Act will be tabled to Parliament during the October session of 2006.

**Below are some proposals on how this task can best taken forward.**

One, TAPHGO should liaise closely with others currently engaged with the processes of the making of a new wildlife law for building a critical mass for advocacy. TAPHGO is a close ally of the Tanzania Natural Resource (TNRN), which has done activities around the expected law. It can learn and get associated with the above-mentioned initiatives but at the same time trying to highlight the specific plight of pastoralists in the expected wildlife law legislation. TAPGHO should also work with others to investigate and get to know the exact date for the Bill to be table to parliament. They can easily do these through existing links with members of parliament from predominant constituencies who sit in the Parliamentary committee on natural resource and environment

Secondly, TAPHGO should work with other members of the TNRN to come up campaign materials or leaflets, which summarize the concerns of stakeholders on the wildlife sector legislation as it relates to pastoralism. TNRN has done already prepared a natural resources syllabus. This could be a starting point the interest being to come up with an even shorter and more straightforward document.

Thirdly, TAPHGO and other members of TRNF should mobilize for a CSO hearing at the tabling of Bill in Dodoma and give their recommendations to the new law. Ideally TAPHGO should start linking with the natural resource committee of..... for securing a hearing when the Bill is presented to parliament.

Fourthly, TAPHGO should explore a possibility of organizing a training workshop in Dodoma on the different aspects of the wildlife law and policy, as this will put them in a better position to actually be aware of different matters to the wildlife sector and the concerns of stakeholders. Events like these have taken place already but a repeat could necessary given the fact not all MPs of the last house managed to come back.

Fifthly, in all the above processes there should a deliberate effort to publicise the concerns of stakeholders by using the media.

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# Tanzania Pastoralist and Hunter-Gatherer Organization (TAPHGO)

## *Terms of Reference for the Desk Review of Wildlife and Forest Policies and Laws in Relation to Pastoralist and Hunter-Gatherers*

TAPHGO is in the process of reviewing the Wildlife and Forest Policies. The overall objective of the review is to try and identify how these policies relate to pastoralists and hunter-gatherer communities and its impact on their livelihood systems. More specifically the review/study shall endeavour to realize among others the following objectives.

### **Study Objectives**

1. An overview of and the relationship between the Wildlife Policy, Law and Regulations (WMA Regulations 2002 and Tourist Hunting Regulations). How these relate to pastoralists and hunter-gatherer livelihood systems.
2. The National Wildlife Policy 1998 and the Draft Wildlife Act of 2004, particularly to what extent the Draft Wildlife Act of 2004 reflects the National wildlife Policy 1998.
3. The commonalities and differences between the Wildlife Conservation Act, 1974 and Draft Wildlife Act of 2004, with focus on two issues:
  - I. How this related to the national land policy and more specifically land under pastoralists and hunter gatherer communities
  - II. What added value or negative impacts does this Act impose on pastoralists and Hunter-Gatherers?
4. To make recommendations on how these policies can be approach more proactively to better the lives of pastoralists and hunter-gatherer communities with a focus to the WMA Regulations 2002.
5. Propose measures that TAPHGO and other stakeholders can use to address the short comings of these policies
6. An overview of the forest policy of 1998 and its relation to pastoral and hunter-gatherer communities
7. What are the advantages and disadvantages of the forest policy
8. Are there gaps and or challenges that pastoralist and hunter-gatherer communities can engage on?
9. Propose a strategy to be used by stakeholders in addressing the emerging gaps in the implementation of these policies.
10. Where possible enumerate key proposals that can assist stakeholders to engage with policy makers in ensuring a smooth implementation of these policy and or to influence the inclusion of the views of pastoralists and hunter-gatherers.

**Expected outputs:**

It's expected that the consultant shall undertake the review and submit a draft report within a period of March and April 2006 to TAPHGO for comments. A final report shall be submitted upon receiving comments and thereafter present the review findings in a stakeholders meeting

During the stakeholders meeting the presentations shall guide a process of developing a strategy on how to engage with these policies in relation to their impact with pastoralists and hunter-gatherer communities.

**Budget and Timeframe:**

The consultancy shall be for 16 days desegregated as follows

Desk Review Study	12days
Report Writing	2 days
Facilitation during the feedback workshop	2 days