Integrating Local Communities in the Policy and Legislative Framework for Wildlife Conservation and Management in Tanzania

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Abstract

This paper analyzes the efforts taken by the Tanzanian government to devolve wildlife rights to local community members living in proximity to wildlife. It traces the legislative approaches applied that have a bearing on the livelihoods of the local community members in different historical epochs. The paper's underlying thesis is that local community members have consistently been marginalized in wildlife management processes. The paper argues that Tanzania's government's initiative to change this trend is at the verge of being foiled by some Machiavellian stakeholders in the private sector of the wildlife industry.

1. Introduction

The government realized that the contribution of the wildlife sector to economic development could be improved. In a move aimed at increasing the contribution of this sector to economic development, the government has changed its policy on the management of wildlife resources from one of directing economic investment to control and regulation.[1] In order to achieve this objective, the government has opted for a shift in paradigm by involving a broader section of stakeholders particularly the private sector and local communities.[2]

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The move to integrate local communities in the conservation and management of wildlife resources side by side with the private sector has been perceived with a sharp divergence of opinion among a number of stakeholders. It had been suggested that there would be no fair playing ground as private investors would have an added advantage over local communities.[3]

2. Some Reflections on Historical Perspectives

2.1 The Pre-Colonial Period

Local communities in most parts of Tanzania generally utilized resources in a collective manner. In most societies of Tanzania, during the pre-colonial era, members also had equal access to the resources which were essentially owned by the community as a collective entity. The concept of individual (private) ownership of land, upon which natural resources are found, during this period was not common in most societies. This preposition was acknowledged and upheld by the colonial courts in Tanganyika (as Tanzania was known then).[4]

The specialized units (institutions) charged with enforcing the rules and setting out strategies for conservation or utilization of the resources had the specific objectives of managing the resources.[5] The emergence of the concept of private ownership of the means of production had implications for communal ownership of natural resources. Institutionalized ownership of natural resources on a formal level at this time started in the form of state ownership. Eventually this led to the breakdown of the concept of

communal ownership of natural resources as these were placed in the hands of the state machinery.

Rudiments of early involvement of private persons in wildlife management during the pre-colonial period can be traced from the early hunting initiatives that commenced as a result of expeditions by Arabs from Zanzibar into the interior of East Africa in search of slaves and ivory.[6] Later, during the early part of the second half of the 19th century there emerged the British safari expeditions, which involved sport and commercial hunting. The input and effort of local community members, in varying degrees, facilitated the success of these expeditions. It was they who served as guides and porters, directing safari-hunting expeditions to areas where there were abundant wild animals. They also occasionally saved the foreigners from deadly beasts of the wild in the tough and winding terrains.

2.2 The Colonial Era

In Tanzania, like most colonial empires, state ownership of natural resources was achieved through the legislative machinery by the German colonial administrators. The British later took charge. The place of local communities in wildlife conservation and management legislation was to a great extent tactfully placed at the periphery during the colonial era. The German colonial administration enacted decrees that reflected the fences and fines approach in its strategy to protect wildlife resources in protected areas.[7]

The Game Conservation Ordinance was one of the earliest British colonial pieces of legislation for the conservation and management of wildlife.[8] It was, to some extent, an

improvement of the German decrees in terms of consideration of local community members' use of and access to wildlife resources. The Ordinance had provisions that permitted local communities to practice hunting, albeit with some limitations. Section 28 of the Ordinance, for example, was gauged in a very cautious manner:

> *…nothing in the foregoing provisions of this Part shall make it an offence for a native to hunt, without a license, any animal not protected under the provisions of section 24, for the purpose of supplying himself and his dependents with food, or for any other purpose which may be prescribed, provided that he does not use arms of precision and provided that the animal is not for the hunting of which a special license or major game license is required.*(Emphasis underlined)

It is also worth noting that some of the subsidiary legislation made under the Ordinance sought to protect native customary rights in the exercise of the use of wildlife resources. Order 4 of the Wild Animals Protection Order, for example, stated:

> *"Provided that nothing in this Order shall be deemed to prohibit fishing in Lake Rukwa Controlled Area by persons in the exercise of native rights."*[9]

The enforcement (and subsequent interpretation of the provisions) of the law, as elsewhere, was left at the discretion of the colonial wildlife administrative personnel. These officials were preoccupied mainly with regulating licenses and permits for the professional hunters. A number of examples exist which clearly show that the intent of the law was ignored.[10] The Game Ordinance, however, contained no safeguards for the appropriation of land for the creation of National Parks and Game Reserves. Like its

predecessors, the provisions of this colonial piece of legislation provided for the fines and fences approach in keeping away wildlife use by local community members.

The Game Ordinance was repealed and replaced by the Fauna Conservation Ordinance.[11] The latter's preamble stated that it was intended to make *"better provision for the conservation of and control of wild animal life."* Ostensibly the new law came in to improve upon the provisions of the repealed Ordinance, including provisions relating to the place of local community members. This was, however, not the case. On the contrary, this legislation set the basis for further alienation of local communities in wildlife management processes by the post-independence government.

Despite setting a bad foundation for post-independence government, in relation to engaging local community members in wildlife management, the Fauna Conservation Ordinance was a slight improvement of its predecessor in terms of accommodating local community members' interests. The Ordinance contained provisions that permitted specified communities to hunt wildlife animals that ordinarily required licenses. The tribes in this category comprised of the *Tindiga*, the *Bahi* and the *Wanderobo* who lived with wild animals and were predominantly hunters.[12] On the other extreme, the Fauna Conservation Ordinance had its own shortfalls in comparison with its predecessor. For example, the blanket provision found in the Game Ordinance that provided access to all natives (local communities) without exception to hunt was eventually struck off the statute books.[13] The provisions acknowledging the use of wildlife resources under customary rights were equally not spared.

Save for the three specified communities, and isolated cases in subsidiary legislation, the interests of the multitude of other community members who lived in proximity to wildlife areas were not generally taken into account.[14] Some of the provisions of the Ordinance were specifically gauged in a manner that sought to ensure that the "left out" local community members did not get access to wildlife resources. For example, section 22 provided that:

> *"No game licence shall be issued to any person who is in the opinion of the person issuing the licence incapable of understanding the requirements of this Ordinance"*

Due to their marginalization by colonial wildlife conservation and management laws, most local community members viewed the whole notion of conservation of wildlife with some indifference after independence.

3. An Evaluation of Post-Independence Legislation

3.1 Introduction

Legislative intervention in the human-wild animal interaction that commenced during the colonial era was not guided by any official comprehensive policy. The views and interests of the colonial government were generally transmitted directly to the lower level of personnel in charge of wildlife management and conservation for implementation.

The post-independence government's adoption of the colonial wildlife management and conservation legislation and its inherent legacy of marginalizing local communities meant the adoption of the lacuna in respect of a wildlife policy. The government's "unofficial"

policy focused at encouraging the private sector by promoting tourism as a conduit for generating the much-needed foreign exchange.[15] The interests of local community members had not risen on the list of priorities on the government's agenda for wildlife conservation and management for quite some time.

What has often been referred to as being the main guide in conserving and managing Tanzania's wildlife resources during this period is the statement made by the late Father of the Nation, Mwalimu Julius Nyerere in 1961 who stated that:

> *The survival of our wildlife is a matter of grave concern to all of us in Africa. These wild creatures amid the wild places they inhabit are not only important as a source of wonder and inspiration but they are an integral part of our natural resources and of our future livelihood and well being. In accepting the trusteeship of our wildlife, we solemnly declare that we will do everything in our power to make sure that our children's grand children will be able to enjoy this rich and precious inheritance…*[16]

Tanzania's official wildlife policy was promulgated in 1998 and it has since set a milestone for the conservation and management of the country's unique wildlife resources.

3.2 Post-Independence Legislative Approaches

The whole corpus of wildlife conservation and management laws that were developed by the British colonial administration were basically adopted wholesale by most of the independent governments of Africa, including that of Tanzania.[17] There were two main

changes that were made that have a bearing on local community involvement in wildlife management processes. The first was the striking out of the law provisions that permitted wildlife dependent communities to access wildlife resource. The second was the removal of provisions that gave opportunities to local community members to apply customary rights in the utilization of wildlife resources. These conspicuous changes were unquestionably not inadvertent.

In adopting the colonial wildlife management laws and policies with the above modifications, the post-independence government retained an unofficial policy that was primarily based on alienating and marginalizing local community members from the wildlife management processes.[18] The implication of this approach was that it set a base, at the outset, for the resentment of efforts to develop the wildlife sector by community members living in areas where wildlife conservation and management activities are regulated.[19] One Olaigwanani (a traditional Maasai leader in the Ngorongoro Conservation Area) in northern Tanzania pertinently sums up the misgivings of most local community members who live in the vicinity of wildlife protected areas in Tanzania:

> *I was born in Engitati in Ngorongoro Crater where I spent my youth. I remember the rhino. They were so many. They outnumbered the buffalo. They were everywhere. We rarely killed the rhino and when we did it was because they threatened us in some way. We have lived in the Crater together with wild animals, listening to the lions roar. Then we were moved to where we are now.*

When I look at the Crater I feel a dead sadness. Once control of the Crater was given to someone else, the rhinos started to disappear. Now they have (are) almost gone. Is this what they call conservation? [20]

At this stage, it is important to point out that the immediate post-colonial government in Tanzania did not involve the private sector in managing wildlife resources. This was a departure from the practice in some of the neigbouring States, for example in Kenya, where the government had entrusted the coordination of hunting in some parks to private organizations.[21]

The independent government enacted the Wildlife Conservation Act in 1974.[22] This new law repealed and replaced the Fauna Conservation Ordinance. It redefined the laws relating to wildlife conservation and management outside National Parks and in the Ngorongoro Conservation Area and opened the way for hunting in Game Reserves by private persons. The Act has served as the main legislation governing wildlife conservation and management in Tanzania for the past three decades.[23] The Act has not adequately addressed the participation of local community members in the conservation an management of wildlife. On the contrary, its main features generally reflect the colonial legacy – the fences and fines syndrome. Although the Act has provisions for designation of villages into Authorized Associations for purposes of utilizing game meat, (not conservation and management), this provision has hardly been applied.[24] It cannot therefore be used, as some authorities seem to suggest, as a basis for the assertion that the

provision takes into account the interests of local community members living in the proximity of wildlife protected areas.[25]

The government commenced efforts to involve local community members in wildlife conservation and management towards the late 1980. Its initiative led to the establishment of the Serengeti Conservation Project in 1986. This was followed by the creation of the Selous Conservation Programme (SCP), the drafting of a policy on wildlife conservation and utilization and the institutionalization of the Community Conservation Services Programme (CCS) by Tanzania National Parks (TANAPA) two years later.[26] Other initiatives were the establishment of Wami-Mbiki in 1996 in Bagamoyo and Morogoro Districts, *Matumizi Bora ya Maliasili Idodi na Pawaga* (Sustainable Use of Wildlife Resources in *Idodi* & *Pawaga*) (MBOMIPA) in Iringa District and Ruaha Ecosystems Wildlife Management Project (REWMP) in the same year. The Ugalla Community Conservation Project in Tabora and Rukwa Regions commenced in 1998.[27]

The initiatives were funded by the government with support of the donor community in some cases.[28] At the outset, the initiatives were designed to form a basis for the foundation of a viable wildlife policy. The envisaged policy was to take into account the role of local community members as managers of wildlife resources on their lands. The initiatives had envisaged devolving power to local communities under the Wildlife Management Areas (WMA) concept, a component of the Community-Based

Conservation policy. In fact MBOMIPA was targeted as the guiding pillar and used as a pilot to initiate the implementation of the wildlife policy.[29]

As noted earlier, there was basically no formal policy basis for the active participation of local communities in planning and putting into practice wildlife conservation and management schemes. The efforts by the government largely depended on the good will and persuasion of the Wildlife Division.[30] The coming into force of the Wildlife Policy of Tanzania in 1998 has to some extent assisted in alleviating the situation. It has paved the way for formal recognition of local communities as important stakeholders in the management and conservation of wildlife resources.

The wildlife policy sets out the mission and vision for the next twenty years.[31] It seeks to remove obstacles that hinder investment in and development of the wildlife industry by the private sector.[32] As noted earlier, the policy restricts the government's role to administering wildlife laws and regulations and coordinating activities of the wildlife industry.[33] The government is not supposed to engage itself in direct utilization of wildlife resources, but rather, to encourage the private sector to invest in conducting hunting and photographic safaris, ranching and farming in wildlife and wildlife products.[34] The policy reiterates that the private sector will play a key role in directing investment in the wildlife sector and that investors will be accorded, among other things, a wide scope of private sector involvement in the wildlife industry.[35] The bottom line is to create an enabling environment for the private sector to invest in different forms of wildlife utilization and conservation.[36]

The policy's strategies on protecting wildlife against illegal use call for, among other initiatives, enrolling the good will of rural communities. The training of village game scouts, from among local community members, to protect wildlife resources in their jurisdictions is also emphasized.[37] Human-wildlife conflicts have persistently haunted the wildlife sector, causing friction between local community members and wildlife enforcement institutions. The policy provides for long-term strategies for solving the human-wildlife conflict. Among these are to devise ways that will ensure that communities affected by problem animals become the beneficiaries of revenue earned from wildlife and incorporating the number of animals killed on problem animal control into hunting quotas that can derive greater economic benefits to the affected communities.

The establishment of a new category of protected areas, (the WMAs referred to above) as a way of involving local community members in wildlife conservation is one of the main strategies that the wildlife policy advocates.[38] The policy's goal in this endeavor is to integrate wildlife conservation with rural development which is in line with the governments local reform program which aims at bringing powers, functions and resources to the local communities.[39] The policy calls upon the government to facilitate the establishment of this new category of protected areas where local people will have full mandate of managing and benefiting from their conservation efforts, through community-based programs. The policy advocates for encouraging local communities to

establish WMAs in areas of critical wildlife habitat with a view to ensuring that wildlife competes with other forms of land use.[40]

In re-echoing its concern for local community members' involvement, the policy directs that rural communities be encouraged to engage in resident hunting in WMAs. Taking into account the fact that law is the government's main tool for implementing policies, the wildlife policy directs that all legislation that have a bearing on wildlife conservation and management be revised with a view to taking on board the policy's proposed conservation goals, objectives and strategies.[41]

The WMA Regulations came into force in 2002 after a lengthy and relatively expensive participatory process involving virtually all stakeholders at the national level.[42] The government identified 16 pilot areas that had acted as pilot WMAs since 2002 to kick start the WMA phase, which involves 85 villages in 10 districts throughout the country.[43] So far most of the WMAs have recorded commendable successes leading to four of the pilot MWAs acquiring full status. An official assessment of the performance of the rest will be known after an assessment process required by the Regulations is conducted towards the end of this year.[44]

It is interesting to note that the well-intended initiatives by the government and donor partners were almost thwarted as they became vulnerable to shrewd private investors at the very early stages. These investors used the existing legal loopholes to sabotage the exercise. They convinced local communities to enter into questionable agreements with

them so that they (private investors) could conduct wildlife-related activities on their (local communities) land. This led to a scenario not envisaged by the law, but where the local communities lost out.[45]

Also, the delay to effectively create a regime to devolve wildlife user rights to local communities was unnecessarily delayed. This was mainly due to pressure that was mounted by lobby groups led primarily by private investors, especially from the northern tourist circuit (Arusha and West Kilimanjaro). These sought to frustrate the governments' initiatives of sensitizing communities and other stakeholders at almost all costs.[46]

The opposition from some of the private sector stakeholders has seriously frustrated wildlife officials who have been charged with the task of overseeing the implementation of the WMAs. The delay in disbursing funds by some of the facilitators and the bureaucracy by some of the government departments whose delay in taking action to launch the WMAs has also been attributed to lobbying tactics of the private sector stakeholders to stall the process.[47] The Ministry of Lands, for example, delayed the process of converting Game Controlled Areas into village lands until just before campaigns started for the General Elections towards the end of 2005. The Treasury also stalled the process of approving the benefit sharing scheme proposed under the WMA Regulations. It approved the scheme in 2006 after a tug-of-war with the Wildlife Division. In fact, a high ranking official in the Wildlife Division, who preferred anonymity, confirmed that very few private investors in the wildlife industry support

WMAs. The official noted that the detractors had gone to the extent of initiating legal proceedings with a view to challenging the WMAs process.[48]

Some of the individuals and groups in the private sector who have tried to derail the establishment of the WMAs actually participated fully and actively in the national stakeholders' workshops. They actually made constructive contributions, some of which have been taken on board in the WMA Regulations.[49] It is therefore ironical for the same group to lobby for stalling of the process of devolving wildlife rights to local communities, worse still often on the basis of erroneous premises. In fact some of the suggestions for improving the WMA scheme that have often been advanced by this faction of stakeholders have often been vague and elusive.[50]

The government's endeavor to establish WMAs, despite its well intended motive, did not effectively address the envisaged ability to detract the process that had been shown by some of the stakeholders in the private sector in the initial, and later throughout the stages of piloting the WMAs.[51] As a result, the onslaught by this group has heavily impacted on the whole initiative. The onslaught has been accompanied by the investors luring local communities which had already devoted themselves in the WMAs initiative to give up on the initiatives. As a consequence, some communities have given up their land at throw away prices under dubious agreements. It has been noted that the approach that is applied by the private stakeholders was successfully applied to dominate areas with potential wildlife resources, by similar interest groups in Namibia, Zimbabwe and South Africa. The government took note of this.[52]

The unscrupulous private investors have forced the government to divert its attention from monitoring the implementation of the WMAs. These private sector investors were interpreting the wildlife policy as having ushered a full-fledged private sector involvement in the wildlife sector.[53] Some of them went as far as stating that the policy justified their actions despite the lack of a legal framework.[54] In response to this threat, the government hurriedly addressed the regulation of some of the non-consumptive uses by way of subsidiary legislation. These activities include wildlife safaris, game viewing, bird watching and eco-tourism.[55] At one time the policy had to be hurriedly reviewed to remove paragraphs that permitted or could be construed as permitting some forms of non-consumptive forms of wildlife utilization such as game ranching. The government opted for this approach in the wake of its fear of the interest shown by some private investor lobbyists to take advantage of such forms of utilization. The government has ensured that the revised wildlife legislation, which is in draft form, also contains stringent provisions to ensure that private sector activities do not hamper the development of strategies to involve local community members in wildlife conservation and management initiatives.

4. Conclusion and Recommendations

The history of local community members' participation in Tanzania, as evidenced by the review of legislative approaches in different epochs, reveals that this group has undergone a hectic period of marginalization. Local community members are likely to continue to be under siege if the government abandons its duty of being at the forefront in ensuring that they are fully involved in wildlife conservation and management initiatives.

It has been noted that some of the provisions of the colonial wildlife conservation law had to some extent taken on board the interests of some local communities. However, the immediate post-colonial government regime ignored and ultimately removed these provisions. It was not until the emergence of the Wildlife Policy in 1998 that most of the interests of local community members were seriously considered by the government. The government became aware of efforts by some of the stakeholders in the private sector to thwart the process of establishing the WMAs. However, it acted rather too late and is now confronted with a series of skirmishes with some private investors for control and regulation of wildlife activities in some of the lands adjacent to those occupied by local communities.

Unfortunately the wildlife policy did not adequately address the dangers posed by the private sector which had hitherto been anticipated. Instead of concentrating on improving the pilot WMA schemes, the government has been forced to divert its attention to address potential problems brought about by some shrewd private sector stakeholders. These have consistently aimed at demoralizing local communities with a view to undermining and wiping out some of the successes already achieved in the WMA scheme.

There are two important lessons, for other jurisdictions, that can be derived from the experience of Tanzania in relation to devolving righ[56]ts to local communities in endeavors to effectively manage and conserve wildlife resources. One lesson is that the reduction of government control of the wildlife sector and subsequent encouragement of private sector investors to invest in the wildlife industry requires adequate preparation.

Mechanisms and sensitization of all stakeholders, especially local community members must be put in place, monitored and assessed for long-term benefits. It is common for most businesses involving the private sector to rush to generate profits, often outweighing other considerations, at whatever cost, if need be.

The other lesson that emerges from this review relates to challenges faced by governments in efforts to involve local communities in the wake of paradigm shifts in natural resources management. In most cases it is usually African governments that have usually been charged of "bending" laws, in the course of promoting development projects involving local folks. They have often been blamed for opting for "shortcuts," leading to adverse effects on targeted communities. This review has shown that the trend seems to be taking a different turn. It is now a different clique of stakeholders, some private investors, who are now at the forefront in re-directing wildlife conservation and management process that seek to take on board local community members' interests, at the detriment of the local folks. Governments must exercise extreme prudence when putting in place legal, regulatory and institutional frameworks aimed at devolving rights over wildlife to local communities in view of this reality.

References

Books

Assa Okoth (1987) A *History of Africa, (1885-1914)* Nairobi, Bookwise Ltd

Eltringham, S.K (1979) *The Ecology and Conservation of Large African Mammals*, Baltimore, University Park Press

Jonathan Adams et al (1992) *The Myth of Wild Africa: Conservation Without Illusion*, New York, Norton & Co.

Mchome, S. (2002) *Eviction & Rights of People in Conservation Areas in Tanzania*, Dar-es-Salaam, Faculty of Law

Riney, T. (1967) *The Conservation and Management of African Wildlife*, Rome, FAO

Shivji I. and Kapinga W. (1998) *The Rights of Maasai in Ngorongoro Conservation Area*, Dar-es-Salaam, IIED

Shivji et al (1999) *The Village Democracy Initiative: A Review of the Legal & Institutional Framework at Sub-District Level in the Context of Local Government Reform Programme*, Dar-es-Salaam United Nations Development Programme.

Veit, (Ed.) (1998) *Africa's Valuable Assets: A Reader in Natural Resources Management*, Washington D.C. WRI

Articles

Barrow et al, (2000) "Rhetoric of Reality? A Review of Community Conservation Policy and Practice in East Africa," Evaluating Eden Series No. 5) London IIED/IUCN

Hartely, D (1997) "Community Wildlife Management: A Review of the ODA's Experience in Tanzania," Report of the Overseas Development Administration, London

Juma, I.H (2000) "Extinction of Customary Land Rights in the Wildlife Conservation Areas of Tanzania: The Case of Mkomazi Game Reserve," Recht in Afrika, 133

Kjekshus, H. (1977) *Ecology Control and Economic Development in East African History: The Case of Tanganyika 1850-1950,* Berkeley, University of California Press

Orsinger, V. (1971) "Natural Resources of Africa: Conservation by Legislation," 5 African Law Studies

Veit, P. et al, (1998) "Africa's Development that Works," in Veit, (Ed.) Africa's Valuable Assets: A Reader in Natural Resources Management, Washington D.C. WRI

Unpublished Reports

Martin Walsh, (2001) *The Wildlife Conservation Act, 1974, and the Wildlife Policy of Tanzania: The Place of Local Communities,"* (paper presented at a Workshop to Review

the Wildlife Conservation Act, 1974, convened by the Ministry of Natural Resources and Tourism, 21st -23rd February, Arusha. on file with the author)

Clive Jones *et al*, (1999) An Assessment of Community-Based Natural Resource Management: The Case of Ngorongoro Conservation Area, Consultancy Report, EPIQ/Tanzania

United Republic of Tanzania, (2001) Report on the Analysis of the Findings of WMA Studies, Wildlife Division, Ministry of Natural Resources and Tourism, Dar-es-Salaam

Legal & Human Rights Center et al, (2003) WMAs and Beyond: Options and Opportunities for Community-Based Natural Resources Management in Tanzania, Workshop Report, Hakikazi Catalyst, Arusha

PINGOs (Pastoralists Indigenous Non-Governmental Organization) FORUM, (2004) Reforming Wildlife Law in Tanzania, Workshop Report, Golden Rose Hotel, Arusha

Walsh, M (2000) The Development of Community Wildlife Management in Tanzania-Lessons From the Ruaha Ecosystem, (paper presented to the Conference on African Wildlife Management in the New Millennium, College of African Wildlife Management, Mweka, Tanzania

Policies

United Republic of Tanzania, (1998) Wildlife Policy of Tanzania

United Republic of Tanzania, (1998) National Forest Policy

United Republic of Tanzania, (1997) National Environmental Policy

International Conventions

Convention on Biological Diversity, I.L.M. 818 (1992)

Cases

Mtoro Bin Mwamba v *Attorney General* (1953) 2 T.L.R 327 (Court of Appeal)

Gathomo v *Murito* 9. E.A.P.L.R 102

Director of Tanganyika National Parks v *Ngutata s/o Lesila* et a*l* (1953-1957) 2 TLR (R) 14

Newspapers

The Citizen August 21st 2006

Websites

www.wildlife-programme.gtz.de/wildlife/download/colonial.pdf 30th August 2006

http://www.wildlife-programme.gtz.de/wildlife/download/W_Policy.pdf 10th April 2007

http://www.mbomipa.info/later_reports_papers.htm 10th April 2007

Endnotes

[1] The Vision of the Wildlife Sector for the next 20 years calls for raising the contribution of the sector in the country's GDP from 2% to 5%. See the Mission and Vision in the Wildlife Policy of Tanzania, 1998 at p. iii

[2] The phrase "local communities" as used in this context denotes the members of social-cultural groups which have time-immemorial lived in particular areas and whose livelihoods predominantly depend on the natural resources (wildlife, for purposes of this paper) of those areas. "Private sector" is used here to refer to investors, both local and foreign. It purposefully omits civil society organizations and the Non-Governmental Organizations (NGO's).

[3] See Martin Walsh, The Wildlife Conservation Act, 1974, and the Wildlife Policy of Tanzania: The Place of Local Communities, (22 February 2001). (Paper presented at a Workshop to Review the Wildlife Conservation Act, 1974, convened by the Ministry of Natural Resources and Tourism, Arusha. p. 5 on file with the author)

[4] See *Mtoro Bin Mwamba* v *Attorney General* (1953) 2 T.L.R 327 (Court of Appeal). A similar position was held in neigbouring colonial Kenya in the case of *Gathomo* v *Murito* 9. E.A.P.L.R 102

[5] Peter Veit et al, " Africa's Development that Works," in Veit, (Ed.) Africa's Valuable Assets: A Reader in Natural Resources Management, 1998, Washington D.C. WRI, p 236

[6] See Assa Okoth, *A History of Africa, (1885-1914)* pp 17-21

[7] The main legislation was the Wildlife Decree of 1896 which was amended last in 1911. See Rolf. D. Baldus – Wildlife Conservation Under German Colonial Rule; www.wildlife-programme.gtz.de/wildlife/download/colonial.pdf visited on 30 August 2006

[8] Cap. 159

[9] See Schedule IV of the Game Ordinance, Cap. 159 See also the case of *Director of Tanganyika National Parks* v *Ngutata s/o Lesila* et a*l* (1953-1957) 2 TLR (R) 148 which affirmed some of the rights of natives in national parks prior to enactment of legislation aimed at restricting activities in parks in Tanganyika.

[10] See generally Shivji et al, *The Rights of the Maasai in Ngorongoro Conservation Area*, 1998; Jonathan Adams, et al, *The Myth of Wild Africa: Conservation Without Illusion*, 1992 Norton & Co. N.Y, p. 163 & Eltringham, S.K. *The Ecology and Conservation of Large African Mammals*, 1979 University Park Press, Baltimore, p. 245

[11] See section 62 of the Ordinance, Cap. 302.

[12] See section 12 (ii) and the Twenty-Second Schedule to the Fauna Conservation Ordinance, Cap. 302

[13] See for example the Fauna Conservation (Lion Protection) Order of 1960, for example, prohibited some communities from hunting the lion and the Fauna Conservation (Roan Antelope Protection) Order of 1961 Government Notice No. 462 of 1961, which similarly banned the hunting of the antelope.

[14] Some seem to otherwise, see Mchome, E.E.; Eviction & Rights of People in Conservation Areas in Tanzania, (2002) p 101. However the provisions of the colonial legislation speak for themselves.

[15] See Mchome, S.E., *Ibid*, p. 97

[16] See the Proceedings of the Symposium on the Conservation of Nature and Natural Resources in Modern African States held in Arusha in 1961. (IUCN Publications News Series No. 1 of 1963) Jonathan Adams and Thomas Mc Shane have also reproduced this quotation in their book, *The Myth of Wild Africa: Conservation Without Illusion*, pp 113-114.

[17] See Orsinger, V. "*Natural Resources of Africa: Conservation by Legislation*" African Law Studies, [1971] pp 40-55

[18] It has been noted that the government has conducted operations with "utter disregard of local communities' rights." See Mchome *infra* p. 103

[19] See generally, Juma, I.H, "Extinction of Customary Land Rights in the Wildlife Conservation Areas of Tanzania: The Case of Mkomazi Game Reserve" (2000) *Recht* in Afrika, 133

[20] Quoted from Clive Jones et al *infra* p. 1. The relocation is still going on. See "The Citizen" Monday, 21st August 2006 pp 1-2: "200 Families to Pave Way for Crater's (Ngorongoro) Ecosystem"

[21] See Riney, T. *The Conservation and Management of African Wildlife*, [1997] Rome, FAO p 22

[22] Chapter 283 Revised Edition (2002)

[23] The Act is in the process of being reviewed. Information from sources within the Wildlife Division state that a draft Bill is scheduled to be presented to Parliament by the Government by mid next year.

[24] Section 26 (1). See also Martin Walsh, *op.cit* p 3
[25] See Mchome *op.cit* p 82
[26] The draft policy did not come into effect. See Hartely, D, *Community Wildlife Management: A Review of the ODA's Experience in Tanzania"* [1997] Report of the Overseas Development Administration, London, pp 11-12 & Barrow et al, "Rhetoric of Reality? A Review of Community Conservation Policy and Practice in East Africa" [2000] Evaluating Eden Series No. 5 London IIED/IUCN at 77-79
[27] The initiatives comprised of between 4 up to 19 villages merging to form association to manage wildlife resources in their jurisdictions.
[28] Some of the donors included the GTZ, DFID, NORAD, USAID and DANIDA.
[29] See generally Marshall W. Murhree; Review of Government of Tanzania/DFID MBOMIPA Project, March 2000. http://www.mbomipa.info/later_reports_papers.htm
[30] Martin Walsh, *infra* p 6.
[31] The Policy can be accessed at: http://www.wildlife-programme.gtz.de/wildlife/download/W_Policy.pdf
[32] Paragraphs 2.9 and 3.3.7
[33] Paragraph 4.1
[34] Paragraphs 2.4, 2.4.4 and specifically 4.1
[35] Paragraph 2.9
[36] See also paragraph 4.2
[37] Paragraph 3.3.2
[38] Paragraph 3.3.1 (iii)
[39] See generally Shivji et al, (1999) The Village Democracy Initiative: A Review of the Legal & Institutional Framework at Sub-District Level in the Context of Local Government Reform Programme, Dar-es-Salaam, The United Nations Development Programme.
[40] See paragraphs 3.3.4 and 3.3.2
[41] Paragraph 3.4.1 (i)
[42] Government Notice No. 543 published on 27th December 2002 and has been supplemented by Guidelines. Both have been translated into Kiswahili.
[43] See the Fourth Schedule to the Regulations
[44] See Regulation 18 (2). Information obtained from Wildlife Division official in charge of implementation and monitoring of the pilot WMAs is that the exercise is to commence any time towards the end of 2006.
[45] Martin Walsh, *Ibid*, p 5
[46] Personal observations of the author who has been involved in the initiatives as a Consultant for the government from the very early stages. Also see the Report of the Task Force; Report on the Analysis of the Findings of WMA Studies, 3rd January 2001, Wildlife Division, Ministry of Natural Resources and Tourism, Dar-es-Salaam at 14. & Walsh, M. *The Development of Community Wildlife Management in Tanzania- Lessons From the Ruaha Ecosystem*, paper presented to the Conference on African Wildlife Management in the New Millennium, College of African Wildlife Management, Mweka, Tanzania 13-15 December 2000 p 10. The paper can be accessed at http://www.mbomipa.info/later_reports_papers.htm
[47] Personal observation of the author during a meeting to discuss the Assessment of pilot WMAs at the Wildlife Division on 17th August 2006, Dar-es-Salaam
[48] This information was obtained through personal interviews conducted by the author.
[49] The contributions of the stakeholders are on file with the author.
[50] See the Workshop Report: WMAs and Beyond: Options and Opportunities for Community-Based Natural Resources Management in Tanzania, Legal & Human Rights Center & Wildlife Working Group, Arusha, May 6th – 7th 2003. The Workshop was held at the office of Hakikazi Catalyst (the report is on file with the author)
[51] See note 48 above and Reforming Wildlife Law in Tanzania, Workshop Report, PINGOs FORUM, Ujamaa-Community Resource Trust & Wildlife Working Group, Golden Rose Hotel 14th -15th September 2004. (on file with author)
[52] See the Task Force Report, *infra* note 48 p. 32
[53] Paragraph 3.3.5 of the Policy encourages non-consumptive use of wildlife resources.
[54] Author's observations
[55] See the Wildlife Conservation (Tourist Hunting) Regulations GN 306 of 2000. The government is working on draft Wildlife Conservation (Non-Consumptive Wildlife Tourism) Regulations, 2006 in an

attempt to concretize the legal framework in the wake of continued dubious activities by the some private investors.