

***Socio-Legal Analysis of Community-Based
Conservation in Tanzania:
Policy, Legal, Institutional and Programmatic Issues,
Considerations, and Options***



Executive Summary: April 1998

By:

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EXECUTIVE SUMMARY

Please Note: *This document provides an executive summary of a report completed by LEAT. Copies of the full report can be obtained from EPIQ/Tanzania. The study area is Manyara/Tarangire Complex (MTC).*

1.1 Fundamental Pillars of the New Wildlife Policy

The recently adopted Wildlife Policy of Tanzania (1998) marks a progressive and welcome departure in the wildlife conservation discourse. Unlike previous policies and practices, this “charter” recognises the need and makes provisions for community based conservation (CBC) of wildlife on local communities' lands. However, while the policy has become “use” orientated, the legal environment is still characterised by “protectionist” assumptions that regard "use" by local communities with suspicion.

The new policy proclaims the Government of Tanzania's intention to establish sustainable utilisation of wildlife by private landholders, especially rural communities, and particularly those who reside inside and adjacent to state protected areas. The government intends to implement the policy by allowing rural communities to establish and manage Wildlife Management Areas (WMAs), as a new category of protected area, organised around villages as common property management regimes. Further, government commits itself to use the protected areas for the generation of revenue, employment, income, and food for local communities.

The innovative feature of the policy is its support of the sustainable use of wildlife by rural communities. It may be said to form a new supportive pillar of the wildlife policy in Tanzania. Other pillars of policy remain state ownership of the wildlife resources and the central role of the exclusive wildlife protected areas system in wildlife conservation. The previous policy relied only upon the latter two pillars.

A Maasai elder told the Study Team that the government's conservation and development policy was like “a multi-storied house without a foundation”. We would wish to believe that the new policy, by introducing the possibility of CBC, creates a link between the ground floor and higher levels.

The rural communities are weak because they have lacked power for so long with respect to wildlife resources. Both their rights of access and their indigenous knowledge systems have been denied. In addition, they can be "divided and ruled" as individual village units with ease. The development of voluntary WMA Associations, as community-based organisations (CBOs), is indicated, so communities can register a collective response and become partners with the government.

The private sector also lacks a cohesive voice. The positive value of competition could become the chaos of concession and lease grabbing. Although tour operators and safari hunters are ostensibly organised in independent organisations, these are weak and have not yet played an independent role in conservation discourse in the country

The policy appears to be inadequate on the role of the non-governmental sector (NGOs), saying merely that they should assist government. NGOs are formed to safeguard or further the interests of particular constituencies, which may not necessarily be always consistent with the policies and practices of the Government. This engenders a constructive dialogue. To assume that NGOs would always support or assist the government in implementing the latter's policies is unrealistic. We might suggest that the Policy could state the role of NGOs as being to assist the various stakeholders in the wildlife sector to implement the Policy and help provide a conducive policy atmosphere for NGOs to play that role.

The new policy developments call for significant reforms of the legal structure to implement them. There is in this connection a need to create a forum for dialogue on legal reform between the Government, conservation agencies, local communities, the private sector, and NGOs on the kind of reforms which are needed to implement the Policy.

1.2 Legislative Issues

Eventually, it would be advisable to bring the legal order into conformity with the policy requirements. However, we can now work, *within the existing legal framework*, to empower local communities to implement CBC projects. **This presents a golden opportunity.**

Local government legislation in Tanzania creates Village Councils as basic units of local government, endows them with a legal personality and vests onto them powers to manage natural resources in village lands. The wildlife conservation legislation, on the other hand, grants the minister responsible for wildlife discretionary powers to designate Village Councils as Authorised Associations for purposes of allocating hunting concessions to them. Furthermore, Village Councils have control and regulatory powers over the administration of village lands. The creative linking of these provisions makes it possible to allow local communities to undertake CBC for their benefit, centred on the Village Council, as a local natural resource management institution.

Consequently, and without discounting the difficulties engendered by the present lego-institutional arrangements, the present policy can be implemented – without further legislative revisions -- if there is sufficient will on the part of the government and its wildlife management agencies.

The Study Team noted with alarm that the implementation of the proposed WMAs would be made conditional upon village councils acquiring title to village lands before their being designated as “Authorised Associations”. The Team considers this conditionality as wrongly conceived, controversial and likely to lead to unnecessary delays and bureaucratic "bottlenecks". It is a misconception to assume that lack of formal titles over rural lands is equivalent to their being 'no man's lands' over which village councils should apply for grants of title from the government. Village lands are owned under customary law by individual or clan members of the villages concerned so that they cannot be allocated to the village councils without customary titles first being legally revoked. It is also a misconception to view customary titles as being somehow inferior to granted titles. Superior courts of law in Tanzania have stated on a number of

occasions that customary titles are in every respect of equal status and effect as the granted titles. This position has now been codified under the proposed Land Act Bill, 1998.

Conditionality, related to villages having granted titles before being authorised to carry out WMAs, would establish a long and cumbersome process that could severely undermine the intention of the policy to provide incentives to local communities to manage wildlife. Evidence of attempts to grant village titles suggest that this exercise has not been successful as it is too complicated, time-consuming and costly. It involves a number of institutions and departments, demarcation of village boundaries, surveys, intensive land use planning requirements, mapping and tiers of oversight and approval which make it difficult and costly. Given the present economic climate characterised by cost cutting in the government, it is difficult to see it succeeding.

It is the Team's view that the establishment of WMAs could proceed more efficiently and effectively on the basis of the present villages, as politically and administratively constituted, without interfering with customary land titles. The local government legislation in force recognises Village Councils as bodies corporate with all the legal capacities to enter into contractual arrangements and own property. Under this system, Village Councils could be deemed "Authorised Associations" for the purposes of establishing WMAs. This is, incidentally, envisaged even under the existing Wildlife Conservation Act, 1974, which empowers the Minister responsible for wildlife to declare existing villages as "Authorised Associations" to which game licenses can be granted. Several pilot projects have proceeded on this basis with promising results.

Consequently, a combination of the Wildlife Conservation Act (1974) and the Local Government Act (District Authorities) (1982) is sufficient to implement the Wildlife Policy (1998) in regard to establishing CBC through authorised village-based WMAs.

It is worth highlighting that the Wildlife Conservation Act largely relates to control of "consumptive" use and a Village Council is already entitled, through its control of land uses of village lands and by virtue of being body corporate, to enter "non-consumptive" (e.g. photo-tourism, camping safari or hotels) joint ventures.

1.3 Institutional Aspects

A central feature of the Policy is that the present institutional arrangements have been left intact. Institutional fragmentation and rivalry continue to be the norm in the wildlife sector as is its "top-down" approach to local communities. These issues were quite obvious to the Study Team in the course of this inquiry. For instance, TANAPA has no legal mandate to manage wildlife, without ministerial consent, outside the National Parks Estate. However, they appear to do so through attempts to control land and wildlife use on the basis that the Wildlife Division, which has the mandate, seems to lack the resources to do so in a way which does not impair the integrity of their Estate.

The Wildlife Division, on its part, seems to feel that TANAPA lacks a strong mandate outside the parks. This institutional fragmentation and rivalry has been carried over into the area of community conservation outreach programmes. Whereas the Division has had a Community Based Wildlife Conservation Unit doing community outreach projects with local communities, TANAPA on its part has a fully fledged Community

Conservation Services Department doing similar outreach work in areas around National Parks. The two outreach programmes are not well coordinated and could be seen as being in competition with one another.

The policy outlines that villages would manage their WMAs through Natural Resource Committees (NRC). The NRC would effectively be a sub-committee of the Village Council (VC). As the VC is body corporate, this means that the NRC can have similar status and therefore operate accounts and sign contracts. This has profound possibilities, unique in Africa, and means that there is no institutional impediment to the village becoming an effective wildlife management regime. Village WMAs could voluntarily associate with other WMAs to form larger management units (conservancies) in order to manage and market their resources through leases and concessions at the appropriate scale. This would mean that associations of WMAs could manage hunting blocks, corridors and dispersal areas.

A critical aspect of successful CBC relates to institutional development. We believe that wildlife management incentives (tangible benefits) must be sufficiently immediate and positive to motivate an internally driven development process. Hence the need to empower village WMAs with “authorised association” status rapidly.

1.4 Local Community Perspectives

It was obvious to the Study Team that local communities continue to view wildlife conservation institutions with some hostility and suspicion. Apart from the historic evictions of communities in order to create protected areas for wildlife, local communities continue to complain about abuses and harassment by the law enforcement arms of these institutions. They also complain of the surreptitious and illegal expansion of park boundaries, which encroach on their grazing lands leading to even more loss of land and resources and to the intensification of conflict. There are also complaints against tourist hunting operators, both private and parastatal, who local communities accused of malpractice and of ignoring their legitimate concerns for human safety and ethical hunting on their village lands.

It was clear to the Study Team that local communities are confused, even bewildered, by the lack of coordination, even rivalry, which reigns within the government and its conservation agencies. They find it hard to understand the logic of agencies of the government such as the Wildlife Division, TANAPA and TAWICO undertaking activities independent of each other and often against one another. It is also clear that if the CBC programme is to be effectively and efficiently implemented this position has to be corrected.

Communities are not purely homogenous entities but are differentiated by several factors such as wealth, age, gender, and ethnicity. The SO needs to understand this and ensure a social science research input to complement the natural science backgrounds of the wildlife authorities. It is instructive to realise that the University of Dar es Salaam does not teach anthropology. This may partly explain why an appreciation of indigenous knowledge systems is weak in Tanzania. That information is needed if CBC is to be responsive to communities.

Communities believe that the goals of CBC would be best achieved if they were directly assisted in implementing WMAs by agencies other than TANAPA because it is a statutory party with an obvious vested interest in influencing community land use. A more neutral agency could help both parties to find a new and more balanced relationship over time. It is accepted that TANAPA has valid concerns, as do communities, but these concerns need to be mutually addressed.

1.5 Implementation

Like all policy initiatives, the impressive new Wildlife Policy is meaningless if it is not properly implemented. Both TANAPA and the Wildlife Division appear to insist that the communities must show the capacity to operate CBC before they are given powers and authority to establish WMAs. Should they insist that communities demonstrate the “capacity” to manage as well as have the “intent” to do so, it would considerably delay the empowerment process and negate the immediate incentive of tangible benefit and control. The policy should be implemented on the basis of village communities’ expressing the “intent” to establish WMAs with a general statement on how they plan to proceed. As the benefits “flow” the communities would then have the motivation and resources to develop “capacity”. The institutional development process and related wildlife management activities could then become internally motivated.

General conditionalities, related to quotas, contracts, fund management, monitoring and oversight could be broadly set and, once agreed, attached with authorisation. It should not be a condition that an elaborate wildlife management plan, in conformity with WD’s or TANAPA’s expectations and the Land Act, is in place first. Community-based institutions must be motivated to develop management institutions through granted rights and responsibilities accompanied by corresponding costs and benefits.

To get results the wildlife authorities should bring communities and private sector in as partners for a thorough estimation of implementation modalities and to build consensus and joint ownership of the process. There is a risk that in their eagerness to advance CBC, sub-optimal institutional implementation arrangements may prevail. TANAPA officials, for instance, appear to assume they have a mandate to oversee CBC and the implementation of WMAs and that they can undertake the programme around their “sphere of influence” almost single-handedly. The Team has doubts about these assumptions because TANAPA faces a credibility crisis with local communities. It should not become a rural development agency but should facilitate a collaborative team approach to ensure that a collective effort serves the implementation process.

The role of NGOs requires analysis. TANAPA’s anxiety over managing donor inputs is understandable. However, government’s role should be to establish an enabling environment, to facilitate communication among partners, and attend to the partners’ capacity building needs. For example, in the MTC study area, Inyuat e Maa appeared to enjoy the trust, as a CBO, of the Maasai communities the Team visited. It could be encouraged to play a role in mobilising and representing community interests. Similarly, Dorobo Photographic Safari Company appeared to have established acceptable and detailed joint ventures with some Maasai communities in the MTC area and they could be encouraged to participate in the implementation planning process and liase with the private sector. It was also clear to the Team that AWF’s role too closely duplicates that of TANAPA’s Community Conservation Service producing some institutional overlap

instead of the positive collaboration the CBC programme in the Manyara/Tarangire Complex requires. This could be avoided by encouraging AWF's CCSC to facilitate CBO and private sector participation in the implementation process and ensuring technical advice to communities on resource management aspects and marketing is available.

An NGO training input for institutional development related to managing effective common property management regimes (NRCs) is indicated. This would require trainers who have experience in co-operative management (the management by groups of shared resources). Effectively, the villagers are shareholders, the NRC the management, and the Village Council the Directors. This would need awareness raising and training in terms of roles, responsibilities and capabilities.

A summary of agencies and their collaborative roles follows:

- Government motivates the programme by forming a collaborative team with clear responsibilities.
- CBOs mobilise communities and represent them.
- NGOs provide technical assistance and training for institutional development and natural resource management (two distinct roles). International organizations support evolution of local NGOs.
- Research institutions analyse, monitor and evaluate CBC.
- The private sector puts use values on community held resources (through investment and marketing) and participates in collaborative management through associations.

1.6 Summary Findings

- The wildlife policy is a positive blueprint for community based conservation.
- Legislation may be improved but can, in the meantime, empower WMAs through ministerial discretion without further amendment.
- The village, as body corporate, can receive WMA authority and use it effectively.
- Policy and law are not the main problems. But, the “will power” of authorities and management could be. Will the Minister support community access to a full range of wildlife utilisation options? How? When?
- The negative perceived value of wildlife has contributed to loss of its habitat.
- Communities distrust wildlife authorities. Village communities generally welcomed the new policy, provided the "strings attached" are not too demanding. They need proof of a real change of approach.

- Villages would like agencies other than just wildlife authorities to facilitate implementation of CBC on the ground.
- Wildlife authorities do not have rural development extension experience or capacity.
- AWF's work too closely duplicates TANAPA CCS and it should clarify its role and adapt its capacity accordingly.
- Inyuat e Maa, a Maasai CBO, is trusted by local communities in the villages visited in Monduli and Simanjiro Districts. It needs support but must retain its independence. Inputs from Tanzanian agencies such as such as LEAT would help.
- TANAPA is concerned that donor funding will establish new centres of influence over which they do not have enough control.

1.7 Summary Recommendations

- The new policy should proceed into implementation phase without delay.
- A forum for government, community and private sector should be established to develop a partnership approach and general guidelines.
- A collaborative group of government, CBOs, NGOs, and private sector should be established to design an implementation plan, programme and suite of projects.
- Government should not insist on authorising only villages "granted" title under land legislation but recognise "deemed" title and empower Village Assemblies through their Councils through Local Government legislation.
- Government should ensure that incentive to establish WMAs is established early on to ensure the process is dynamic. Therefore, it should satisfy itself that villages want WMAs (intent criterion) and not that they are fully prepared (capacity criterion).
- Wildlife authorities should not attempt to become rural development extension agencies because they do not have the experience or capacity and because it will cause a role conflict in their mandate.
- Implementers of CBC should recognise the indigenous knowledge systems of the communities they work with, including governance systems, as a critical part of community management. "Scientific" and "local knowledge" should complement one another, as should statutory and indigenous institutions.
- WD and TANAPA should not attempt to control donor funding. Their role is to ensure a positive framework for collaboration and co-ordination to ensure the desired results and an enabling environment for CBC, including the development of local NGO and CBO capacity.