

ALIGNING AND HARMONIZING THE LIVESTOCK AND LAND POLICIES OF TANZANIA

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In light of persisting land use conflicts and marginal productivity on village lands, a research in the captioned topic was deemed necessary. This report makes a review of policies on land and livestock agriculture behind the backdrop of the Constitution of the United Republic of Tanzania, policies on land and agriculture, and aspirations for land reform. Violations in land rights and prevailing tenure insecurity lasting for decades have skewed mindsets of many users and the land administrators. Policy implementation and enforcement are in dire need of enhancement. Livestock agriculture should be practiced, guided by practical revelations and recommendations provided in this document on policy gaps, commonalities and focus.

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ACRONYMS AND ABBREVIATIONS

| | |
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| ASDP | Agricultural Sector Development Programme |
| ASDS | Agricultural sector Development Strategy |
| CBO | Community Based Organization |
| CCRO | Certificate of Customary Right of Occupancy Tenure |
| CVL | Certificate of Village Land |
| CO | Certificate of Occupancy |
| CoL | Commissioner of Lands |
| CSO | Civil Society Organisation |
| DLHT | District Land and Housing Tribunal |
| DLO | District Land Office |
| GoT | Government of Tanzania |
| HSDD | Human Settlements Development Division |
| ICT | Information and Communications Technology |
| LAS | Land Administration System |
| LGA | Local Government Authority |
| LGRP | Local Government Reform Programme |
| LIS | Land Information System |
| MDA | Ministries, Departments and Agencies |
| MLHHSD | Ministry of Lands, Housing and Human Settlements Development |
| NGO | Non – Governmental Organisation |
| NLUPC | National Land Use Panning Commission |
| NSGRP | National Strategy for Growth and Reduction of Poverty |
| PMO-RALG | Prime Minister's Office – Regional Administration and Local Government |
| PPP | Public Private Partnership |
| SMD | Surveys and Mapping Division |
| SPILL | Strategic Plan for the Implementation of Land Laws |
| SWOT | Strengths, Weaknesses, Opportunities and Threats |
| URT | United Republic of Tanzania |
| VLA | Village Land Act |
| VLC | Village Land Council |
| ALP | Agriculture and Livestock Policy of 1997 |
| EU | European Union |
| AU | African Union |
| GDP | Gross Domestic Product |
| EAC | East African Community |
| NLP | National Land Policy of Tanzania |
| NBS | National Bureau of Statistics |
| FDI | Foreign Direct Investment |
| ASAL | Arid and Semi Arid Land |
| TANAPA | Tanzania National Parks |
| VLUP | Village Land Use Plan |

CHAPTER 1: INTRODUCTION

Land regulation is of fundamental importance to agricultural production, land and environmental management, addressing effects of climate change and to the governance and conservation of Tanzania's natural resources. It is for this reason that Tanzania has designed a land regulatory framework, comprised of the National Land Policy of 1995, its instruments¹ and institutions to back stop land administration. The framework² is meant to ensure that: (i) land is distributed equitably and fairly, (ii) land rights are secure; and (iii) support to an environmentally friendly socio-economic development. It is also expected that good governance of the land will be enhanced by this framework so as to instil into the lives of landowners a sense of belonging to their lands, for better land custodianship, sustainable food security, a growing land based economy, peace and stability in the extraction of minerals and other natural resources, and to higher investment in landed projects.

The national land policy formulation process that started in 1992 and culminated in an adopted policy in 1995 was the prescription long waited to stop land use conflicts both in urban and rural areas of Tanzania. But this did not happen. Instead, conflicts have escalated especially, between crop and a group of livestock farmers known as pastoralists. Insecure tenure and weaknesses in land administration are the main reasons behind most land conflicts and disputes that in Tanzania are blamed for, among others, the marginal production in crop and livestock agriculture (ALP, 1997). It is also known that land use conflicts can lead to over-exploitation of marginal lands. On this account, conflicts on land adversely affect rural development and entrenches poverty and poor livelihoods (Mwamfupe and Mng'ong'o, 2004).

The national land policy is 16 years old and the basic legislations on land is 12 years old now. There is also a Strategic Plan for the Implementation of the new Land Laws (SPILL) which is 7 years old. This is a long enough period to see positive fruits of any regulatory framework. But land conflicts, as indicators of tenure insecurity among farmers and sporadic land use, are still prevalent and growing. More so land degradation is on the increase as the conflicting forces take a strong hold on land based production. These problems have been compounded by the effects of climate change on the livelihoods of Tanzanians and the country's weakness in adapting to them.

1.1 Background

Tanzania developed a new Agriculture and Livestock Policy (ALP) in 1997 following the adoption of the national land policy in 1995. This was in consideration of land as the "most important input in agriculture" among other reasons (ALP, 1997). The ALP cycle has been taken a few steps further and now includes the Agriculture Sector Development Strategy (ASDS) and Agriculture Sector Development Programme (ASDP). The agricultural and livestock policy of 1997 has now been split into sub-sector policies on crop and livestock

¹ (i) The Land Act No. 4 (CAP 113), (ii) The Village Land Act No. 5 (CAP 114), (iii) The Land Disputes Courts Act (CAP 115), (iv) The Land Acquisition Ordinance (Caps. 118); and (v) other sector laws including; The Land Survey Ordinance (CAP 324), The Professional Surveyors Registration Act (CAP 270), The Land Registration Ordinance, (CAP 334), The Land Use Planning Act (CAP 116), The Urban Planning Act , Unit Titles Act of 2009

² The National Land Policy, 1995

agriculture. The Livestock Policy of 2006 touches on the area of great controversy with regard to land use and is yet to be harmonized with that of the land so as to promote productivity and higher incomes in the livestock industry.

Statistics provided in the National Livestock Policy of 2006 indicates for example, that although the contribution of the agriculture sector to the national Gross Domestic Product (GDP) was 45.6% in 2005, the livestock sub-sector contributed only 5.9% to this figure, which is equivalent to 2.69% of the GDP. Further, the livestock industry had not grown for a decade in the run-up to the formulation of the sub-sector policy. It has remained at 2.9% against expectations of the National Strategy for Growth and Reduction of Poverty (NSGRP) of 9%. Yet, the livestock sub-sector is the biggest land user in the economy with 60 million hectares available against the 4 million hectares for crop farmers. In other words, 68% of the land contributes only 2.9% to the GDP.

It is also recalled that against this dismal performance, the livestock sub-sector is embroiled in land use conflicts of gigantic proportions that has lately been responsible for many deaths in village lands and losses of livestock herds. Clashes over land use rights have for example occurred in Ngorongoro, Kilosa, Mbarali, Kilombero, Simanjiro, Ngorongoro, Kiteto, Longido, Monduli and other districts between crop farmers and pastoralists. Most of this would have been minimized had the land administration system been well directed and harmonized with the regulatory mechanisms in the livestock agriculture sector.

Issues of land rights and tenure security have not been given due consideration as expected by the constitution of the United Republic of Tanzania. It is argued that some of the conflicts emanate from controversial statements and misconceptions in the two policies – land and livestock. They also find origins in the lack of understanding over the primacy of policies on land use. But most importantly, there is confusion of concepts and what the government would like to uphold as the key policy with regard to movements of livestock and the mobility of the livestock owners alongside their stocks. This study also aims at unveiling the regressive factors in land administration practice through an analysis and evaluation of causes and adverse effects of recent land use conflicts.

1.2 Scope

This research work has singled out one area of land use that has adversely been affected by poor land administration, mindsets, tenure insecurity and disharmony in public policy frameworks namely, livestock agriculture. It looks at aligning the livestock policy³ with the land policy so that the two can work in harmony for peace to enhanced productivity in the livestock industry. It has attempted to read the thinking in the two policies and identified the lines of departure or gaps of the livestock policy from the lands policy, mindful of the overall policy on agriculture of which livestock agriculture has over many years been and still is a part.

³ The livestock policy regulatory instruments include statutes enacted following the ALP and the new national livestock policy. These are: the veterinary Act No.16 of 2003, Animal Diseases Act No. 17 of 2003, Dairy Industry Act No. 8 of 2004, Meat Industry Act No. 10 of 2006, The Hides Skins and Leather Trade Act No. 18 of 2008, the Animal Welfare Act No. 19 of 2008, the Grazing Land and Animal feed Resources Act of 2010 and the Livestock Identification, Registration and Traceability Act of 2010.

1.3 Methodology

This study has been carried out using a combination of methodologies that covers both desk studies and analysis of field data and information. Secondary data obtained in the Ministry of Lands, Housing and Human Settlements Development (MLHHSD) has been analyzed as the main stakeholder input into the research. The field work has been used to update some of the archived MLHHSD data and information. A significant part of the research has involved a synthesis of the data related to the subject matter. The following activities were done:

- (i) A deep study of the policy and law on land was undertaken to identify areas of commonality with regard to land tenure and land use. In particular, the policies on both crop and livestock agriculture, the land policy and the environmental policy;
- (ii) A desk study was made of documents published by various MDA and special committees and task forces or researchers and media outlets to identify land use conflict occurrences. Some of the documents are: various benchmark papers developed in the preparation of SPILL, The agriculture census of 2002/03 and 2007/08, papers on pastoralism and livestock agriculture,
- (iii) Papers on land rights and land reform and publications on arid and semi arid ecosystems.
- (iv) Interviews made with various stakeholders on land use conflicts

1.4 Approach to the Study

The alignment and harmonization of policies demands that the entry point for the alignment and harmonization be clearly identified and known. At the national level, this study identifies three entry points to the process namely; (i) the Constitution of the United Republic of Tanzania, (ii) the national policy framework, and (iii) policy instruments (strategies and laws) or regulatory framework level. The case of land misalignment and disharmony could also be examined from the point of view of possibly inadequate consideration for implementation implications within the overall sector operational frameworks based on national statutes. It is acknowledged that consideration for statutes implies that the laws of the land conform to the basic law that is the Constitution. But, it is quite possible that some policy instruments could have been formulated with background considerations of an old constitution or without regards to it, and are still operational. Though most land related laws were receded with the enactment of the Land Act No. 4 and 5 of 1999, they have left behind a legacy of regressive mindsets that land administration must contend with. Also, the politics of the past was particularly susceptible to misconceptions that have now been receded by constitutional amendments and/or similar provisions at other international levels.

At the global level, this study considers land matters as purely national and in no way worthy of using international approaches to backstop any assessments there may be. By the same token regional platforms and trans-boundary resource management initiatives will not be taken as points of entry in this study. The East African Community (EAC) has developed the agriculture and rural development policy (2006) and strategy (2006) but apart from identifying national commitments in regional settings these documents will have no bearing on this study. In recognition of past practices and political situations the entry point most applicable to this study is therefore the Constitution of the United Republic of Tanzania and the policy

framework, mindful of the fact that Land matters are not union matters. The study will eventually dwell on the latter as intra-policy gaps are identified.

CHAPTER 2: THE CONSTITUTIONALITY OF LAND TENURE SECURITY IN TANZANIA

Constitutional Provisions

Land is not a union matter in the United Republic Of Tanzania (URT) but, has been touched upon by provisions of the Republic Constitution with regard to citizen rights. This is the only commonality and further down the vertical each of the two parties in the union has own framework for land tenure and use. Reference henceforth is made to Tanzania mainland and in no way does it refer to Zanzibar.

The bundle of basic rights and duties of Tanzanians in the constitution of the United Republic of Tanzania of 1997 state in section 24 that:

- (1) Subject to the provision of the relevant laws of the land, every person is entitled to own property, and has a right to the protection of his property held in accordance with the law.
- (2) Subject to the provision of sub-article (1) it shall be unlawful for any person to be deprived of property for the purposes on nationalization or any other purposes without the authority of law which makes provision for fair and adequate compensation.

Also, article 27 (1) underscores that "Every person has the duty to protect the natural resources of the United Republic, the property of the state authority, all property collectively owned by the people, and also to respect another person's property."

The interpretation of the word property in English literature is very wide. It normally includes anything real or personal that any person rightfully and legally can own. This breadth in meaning often embraces areas of property that many take for granted or tend not to take seriously. Among this group is real property referring to rights in land and developments thereon, known as an estate in land. Real property consists of land, developments thereon and all rights and profits arising from and annexed to the land in a permanent and immovable nature (Sinclair, 1969). Similarly, many do not view land as a natural resource that is covered by the resource protection clause in the constitution. On the contrary, many view land only in the context of content such as the vegetation layer (forests, trees, savannah, grass, etc), water bodies (lakes and rivers), minerals on and under the Earth and the morphology or relief of the land (valleys, hills, plains, mountains) that make up the many ecosystems. All these notwithstanding, this study adopts a broader view of land as the ultimate resource and host of all natural resources in ecosystems, providing ecosystem services upon which livelihoods depend. Land is therefore a natural resource and land parcels are properties carved out of it for use by individuals, communities, businesses and government, and land rights are, in this regard, covered by the constitution.

The National Land Policy (NLP) of Tanzania, developed two years prior to the quoted version of the constitution, has vision in section 4.1.1(i) for land to "be graded as a constitutional category". The draughtsman of the policy intended therefore that the following three aspects of the land policy would be a part of the "objectives and directive principles of state policy" with regard to land tenure and use and that

these principles be embedded in the constitution of the URT. The three are: (i) vestment of land in the President as trustee on behalf of the citizens of the united republic, though administered separately by the two governments; (ii) land value in line with personal property to be appreciated by all; and (iii) loss of rights to land holdings (for whatever reason), without compensation for that loss, to be safe guarded by the constitution.

The constitution and the spirit of the NLP are therefore both supportive of possessory rights in real estate, upholding protection of real estate against all odds, and outlawing dispossession of real property except in due processes of law that provide for rights to compensation against loss of such entitlements. In the constitution therefore, Real property ownership is a citizens' right, a lawful holding, and an entitlement. In other words, the constitution and hence the Government sworn to protect that constitution, must safeguard tenure security and work towards such security at all times. Gaps in policies should also be traced to the way that the constitution has been upheld in a historical context in Tanzania.

Land Tenure Security and Good Governance:

In a nutshell tenure security is the right of individual citizens or groups thereof in the republic to effective protection by their government against unlawful and forcible evictions. It is a status of people to property (Boudreax and Sacks, 2009). Tenure security is an element of property rights anchored in the constitution – the right to remain on ones land and make use of and make profit on it, so long as they do not cause harm to other land or non-land users (*ibid.*). The government is duty bound to ensure secure tenure to all, including vulnerable groups of its citizenry. The vulnerability of the poor to let go of land rights at below market prices, women evictions from family lands after death of spouse, and bodily impaired is common place in tribal customs of Tanzania. A land reform should therefore be instituted to uphold secure tenure for all land holders.

Land tenure security for all land users is needed not only as a right but also to ensure long term productivity and environmental protection. Tenure security provides confidence in the users to put land to good and productive use. The National Geographic Magazine interviewed an onion farmer in USA about production on his farm in 1998. This is what he had to say: *"fifty years ago ... an acre planted in onions would produce about 200 sacks ... of yellow onions. When we got that up to 350 sacks per acre, we thought we were the hottest thing in farming. Today if we cannot produce 800 sacks per acre, we can't compete with the guy down the road."* One would be quick to attribute the increase in production to better inputs, including technology and labour. Yet, there are long term investments that are crucial to success in crop agriculture and to livestock keeping that lead to higher food production. That the quoted farmer increased investment in his business is not in doubt. But underlying this investment is a sense of belonging to the land, confidence in long term investments as a result of the security of tenure guaranteed by national laws including open markets and easy transferability of the real estate should he wish to do so any time.

In Tanzania tenure security has been problematic for decades due to inappropriate approaches to property rights, experiences in the context of colonialism, nationalization of assets, the villagization programme and poor land administration. The relocation of peasants during Operation Vijiji caused land tenure confusion and numerous disputes. Peasants whose lands had been taken and handed to other peasants sued in courts of law for restoration of those lands. Some succeeded as high court judges upheld the constitution, to the dismay of the government. The central government in turn reacted by publication of Government Notices

that sought to extinguish customary tenure. The government even sought to “regulate land tenure” through negating the existence of customary tenure in the Regulation Land Tenure (Established Villages) Act, No. 22 of 1992 - the Act provided for extinction of customary tenure without compensation and ousted the jurisdiction of courts (Fimbo, 2004).

In this regard, it is appropriate to say that it is not easy to find a piece of land in areas affected by “Operation Vijiji” that is not contested, if contestation was to be freely allowed. Moreover, sections 15 and 16 (see Box No. 1) of the Village Land Act No. 5 of 1999 has disallowed reversal of tenure on lands allocated by the villagization programme, mindful that third party interests abound on village land parcels. This aspect of the law does not only contradict the constitution of the URT but also the NLP and goes against the ideals of good governance. Many ancestral pastoral lands were lost as people were collected in villages but cannot claim such lands back.

In accordance with the ideals of good governance, land delivery and use in the whole villagization exercise was built on incorrect premises as per present day constitution. It is known that in “operation vijiji” most people were not consulted, and government was not accountable for their deeds. The NLP was formulated when it was felt that the country had been inundated by tenure insecurity including land conflicts that threatened peace in village neighbourhoods, and farm production at a national scale.

The National Land Policy needs assessment provides thirteen reasons/needs for the formulation of a new policy to guide land tenure, land use and land administration with a new vision. It is important to note that the last reason was carefully crafted to read that: *“Finally, recent Court of Appeal decisions affirming customary tenure rights in areas affected by villagisation provided guidance for addressing such land tenure problems in a fashion compatible with the basic values and ideals of the nation.”* We shall discuss the link of land tenure security that, as discussed, has been under threat for decades, with the breakdown of peace in rural lands further in this study since conflicts are on the rise despite new mechanisms put in place.

Box: Village Land Act – Sections 15 (1) & (2), &Section 16

- (1) An allocation of land made to a person or a group of persons residing in or required to move to and reside in a village at any time between the first day of January 1970 and the thirty first day of December 1977, whether made under and in pursuance of a law or contrary to or in disregard of any law, is hereby confirmed to be and to have always been a valid allocation capable of and in law giving rise to rights and obligations in the party to whom the allocation was made and extinguishing any rights and obligations vested in any person under any law which may have existed in that land prior to that allocation.
- (2) A granted right of occupancy made to a person or group of persons residing in or required to move to and reside in a village at any time between the first day of January 1970 and the thirty first day of December 1977 whether granted in accordance with the procedures of the Land Ordinance or not, and whether registered under and in accordance with the provisions of Land Registration Ordinance, or not is hereby confirmed to be and to have always been from the time of the grant a valid granted right and obligations in the grantee as from the date of the grant and extinguishing any rights and obligations vested in any persons under any law which may have existed in that land prior to that grant.

Section 16:

For the avoidance of doubt and in order to facilitate security of tenure and contribute to the development of village land, the provisions of section 15, other than subsections (2) and (3), shall apply to any and every allocation of village land made by village council or by any other authority on and after the first day of January 1978 until the date of commencement of this Act as if for the dates referred to in subsection (1) of that section, there were substituted the dates between the first day of January 1978 and the date of commencement of this Act.

Briefly, the situation linking tenure insecurity to low agricultural production during the villagisation programme was assessed as part of a situation analysis for the formulation of the Agriculture and Livestock Policy (ALP, 1997). The assessment concludes that “export crop production in Tanzania declined between 1970 and the mid-1980s as the growth rate of total production declined at an annual rate of 4.5% - during the same period, food crops declined by 0.2% per annum between 1986 and 1991 while livestock registered negative growth rates (GoT, 1997)”. It is worthy of note that many factors contributed to the state of affairs and many have not been studied but, it is generally believed to be a result of command economy policies and consequences such as policies on villagisation and nationalisation of properties. Of note is the fact that the negative impact continued way into the decades of the 1980s and 1990s as no meaningful reversals of the adversity of the villagisation program had been instituted and market economic principles had not taken hold on the economy. The assessment continues that, hunger has persisted in the rural areas of Tanzania. The Agriculture Sector Development Strategy (ASDS) of 2003 has it that “around 42 percent of households regularly have inadequate food. Localized food insecurity and hunger are common and reflect inadequate resource⁴ endowments at the household level”. Land resources in the villages has since been inadequate and the latest figures show that the average land size of crop farmers is a dismal 1.5 hectares per household for the 5.8 million peasant farmers (NBS,2008).

2.1 Land Reform and the Constitution

Reversing land tenure insecurity in a place where land administration has, for so long, been misguided requires building institutions that meaningfully promote land rights and land use. The ideals set by the constitution on property rights must be met against odds by instituting meaningful land reform. In order to address the issues, policies and policy instruments are not sufficient, but implementable programmes and projects aimed at attaining the overall goal of guaranteeing tenure security and facilitating higher farm production. Production in both livestock and crops have the emphasis in land reform for the reasons that this sector is the largest land user and one that supports most livelihoods in the country. But, it is also the genesis of most land use conflicts. Upon this sector depend not only economic growth but also peace and poverty reduction in rural Tanzania. Land reform shall encompass key areas that provide information, guarantee property rights and make it easy to transact in land. The reader is referred to Boudreux and Sacks, 2009 for details on the three pillars of land reform namely; a fully functioning land information system, clear definition of property rights and enabling land markets. Tanzania has a long way to go to build up meaningful advances on all three pillars.

2.2 Conflicts in Land Tenure and Use in Tanzania

Overarching Issues to Land Tenure and Use

It is often quick to blame an undesirable situation, such as land tenure insecurity, on foreign forces but, the post-independence governments in Tanzania not only have had missed opportunities for rectification but have often aggravated an already regrettable situation. Experience has shown that in instituting land reform measures, incorrect approaches often result in land owners and users opting for alternatives that, more often

⁴ Includes land scarcity per household in villages

than not, lead to conflicts and disputes. To avoid such situations in Tanzania and in order to harmonize land related policies, it is important and necessary that the scene for land reform be set on the fundamental concepts. In this context, the background discussed earlier raises several overarching issues, such as: (i) **legitimacy** - who has the rightful claim on what piece of village land in terms of originality of settlement to and use of land (revisit sections 15 and 16 of the Village Land Act) and the concept of ownership based on occupation and use as upheld by the national land policy?; (ii) **Baselines** – in the events of opting for a new beginning, where exactly in history's time domain should Tanzania land users anchor claims to possession of land holdings? How far back should claims to land be legalized?; (iii) **Community Holdings** - are tribal claims to land use and hence to communal possession (maasailand, sukumaland, chaggaland, etc) as communities legitimate under the constitution and laws of the land? And if not when and under what law that considers compensation (revisit the constitution) were tribal legitimacy extinguished (consider the case of chiefdom lands practiced in many lands such as Zambia)?; (iv) **Clearance** - Are customary land rights extinguishable? If the answer is a "yes", the follow-up question is "how" and if the answer is a "no" it is "why not?" In order to clarify these issues, this study has a set of cases on land conflicts to consider.

Some Land Conflicts Cases

Few conflicts have been studied beyond feature stories in the media. However, following the persistent clashes between crop farmers and pastoralists in Morogoro and Kilosa Districts, Mung'ong'o and Mwamfupe (2003) elected to make a detailed study on the livelihoods of Maasai who are predominantly pastoralists. The researchers found out that pursuant to their constitutional right of movement, the Maasai migrated to Morogoro and Kilosa Districts. The migrations were propelled by "social-economic developments and environmental changes in the so called maasailand." In their ancestral lands, the maasai people are confronted with loss of grazing land, due to "several geographical factors and political marginalization". The pastoralists had also decided to change livelihoods to agro-pastoralism as a result, drawn by better incomes from crop agriculture as compared to dwindling fortunes from livestock keeping.

The researchers acknowledge that pastoralism in Tanzania has been in deep crisis as a result of prolonged draught and loss of grazing land as a result of crop farmers encroaching on rangelands in Kiteto Districts, but not confined to this District. Other Districts of Simanjiro, Longido and Ngorongoro in the arid and semi-arid agro-ecological zones are equally in crisis. The researchers' report points out further that over 10,000 acres of grazing land had been converted to barley and serena farming around Loliondo town, the District headquarter of Ngorongoro. Further, in Naberera the same phenomenon continues particularly as some pastoralists settle down into crop agriculture as agro-pastoralists. These zones have been deeply affected by climate change without adequate mechanisms for adaptation. The result was for many families to migrate elsewhere in search of pasture and water for their livestock.

Land use change has also taken place in most areas where pastoralists used to make their livelihoods. This includes the expansion of national parks being a conversion from livestock range lands into wildlife sanctuaries resulting in over 70 per cent of the then maasailand converted to wildlife parks. It is believed that population increases of both animals and humans are a major reason for land use change. **The issue here is whether Tanzania can manage demographic changes in animal and human population without one hurting the other.**

The Impact:

Pastoralism was not a welcome livelihood to crop farmers in Morogoro and Kilosa District, for the resultant environmental degradations and onslaught on their crops in the fields. A feature article in The Guardian on 1st January 2001 reviewing the Kilosa/Morogoro saga argued that the real cause of clashes was not the migration *per se* but, the attitude of pastoralists to property. The cause of the killings in Kilosa was that “herders routinely and deliberately allowed cattle to feed on crops.” The author cautions that unless there is a change of attitude, other measures proposed to make crop farmers live harmoniously with pastoralists would not yield desired results. He was referring to the proposal in the Livestock policy that calls for the demarcation of grazing areas. Demarcation, he argues, will not bring about change of attitude of pastoral communities. If this was a viable solution authorities would have employed it as an option in range management. Again, there seemed not to be a land administration institution to address the issue in good time to avoid such disasters.

As a result of tenure insecurity, deaths of people and loss of livestock have occurred leaving behind communities that are antagonistic to one another. That antagonism has continued to spread around Tanzania and as a result of bad blood between groups of land users, several other blood shedding conflicts have occurred since the 2000. A more pronounced one was the one in the Usangu valley in 2006 mostly over ownership and management of resources for livestock agriculture. There seems to be a systemic breakdown of peace emanating from tenure insecurity in village lands that must be resolved through guarantee of tenure rights, in the spirit of building lasting peace and increasing productivity and incomes for the poor small scale crop and livestock farmers.

Land tenure conflicts have not been confined to farming communities in village lands. More explosive ones occur between mining ventures of both Artisan Small-Scale Miners (ASM) and village communities who had claims over land before the mining companies took over the land. The North Mara Gold Mine has particularly been a source of complaint over indigenous land rights and environmental effects of chemicals and other debris from the mines. There have been conflicts on the Bulyanhulu Kahama gold mine, the Anglogold Geita Gold Mine, the Buckreef IAMGOLD Rwamagaza gold mine, and on several gemstone mines in Arusha Region where in 2002 eleven ASM were shot for entering Mining company's concession on area owned by Tanzania One. Analysis of issues shows that the case of land allocations to the miners has not been addressed from the land claimants' point of view, although a legal framework exists to facilitate land administration of hazardous lands that include mining dumps.

Land rights conflicts have been discussed in Odgaard (2006). Also in a workshop convened on the theme “Land Policy and Act, 1999” held in 2009, Pingos Forum and Haki Ardhi presented lists of such clashes over land rights and land use. Here are some of the issues discussed at this workshop:

1. The 2006 land conflicts between rice farmers and pastoralists in Ihefu-Usangu valley areas of Mbarali District 2007 – 2009 that resulted in the removal of about 1000 pastoral families.
2. The spontaneous clashes between crop farmers and pastoralists in Kilosa (Mabwegere and Ngaiti villages), Mvomero, Mikumi and Kilombero Districts beginning 2000 to 2009. On 8th of December 2000 thirty people were killed in Rudewa-Mbuyuni village clashes of Kilosa District.

3. Similar conflicts have occurred in Mpanda, Nkasi and Sumbawanga Districts in 2009, Kilindi and Kiteto (2008-2009).
4. The long standing conflicts in Loliondo area between Sonjo farming communities and Maasai pastoralists starting in 2000.

The government of Tanzania has sometimes attempted economic growth measure without due consideration to the consequences with regard to the importance and value of land to its citizens. There is a tendency to attract investors almost at any cost so long as there is growth in the Foreign Direct Investment (Fdi). The key attractions for FDI are conservation, tourism, mining, carbon trading, biofuels and food security, all depending on large tracts of land. It is important that in the drive for investment promotion, due consideration should be given to local needs since over 70 percent of rural livelihoods depend on the land⁵. But, it is well known that Tanzania is not endowed with lands of good soils and climates. The NLP and ALP concurrently underscore that "75 percent of the land of Tanzania is difficult to inhabit and manage." Therefore scarcity of good arable land exists at the national level and Tanzania is short of land for the needs of its citizens (Lugoe, 2010). There is dire need therefore to take stock of land suitability patterns of Tanzania before accommodating the need of foreign investors.

Policy Gap Indicators from Past Conflicts:

The discourse in this chapter has pointed at several indicators of the regulatory climate that led to misunderstanding between various land users and ultimately to the serious conflicts witnessed between crop farmers and pastoralists. These are:

- Destructive pastoralist migrations,
- Advantages of agro-pastoralism over pure pastoralist livelihoods during drought,
- Uncontrollable encroachment on grazing land,
- Demographic upsurge of both animals and humans,
- Expansion of conservation areas (game reserves and national parks),
- Attitudes and differing mindsets between crop farmers and pastoralists,
- Sloppy land administration systems,
- Prolonged drought, and
- Effects of climate change on the poor, etc.

A closer look at how these indicators are addressed in the land and livestock policies will be undertaken in latter chapters.

⁵ The total numbers of small scale agricultural households in 2007/08 were 5,838,523 constituting 98 per cent of all small scale agricultural households. National sample census of agriculture, 2007/08

CHAPTER 3: SYNERGIES, LINKAGES AND GAPS

It is acknowledged that the livestock industry is covered in both the agriculture and livestock policy of 1997 and the livestock policy of 2006. Farther developments are provided in the agricultural sector development strategy of 2003. As stated in the livestock policy, “this is the third policy document of the livestock industry.” The significance of each of the three has been evaluated in the policy with conclusions that “the new policy seeks to address specific key issues not so satisfactorily underscored in the previous two”. The 2006 document is a sub-sector one, which allows this study to focus both on the sector and this sub-sector, though with differing emphasis. In identifying synergies, linkages and gaps therefore, this study shall consider the three documents as forming the livestock policy documents.

3.1 Livestock Agriculture and Pastoralism in Public Policies

The National Livestock Policy of 2006 defines pastoralism as “a production system in which livestock owners depend *solely* on livestock and livestock products for sustenance and income. It entails seasonal movements in search of water and pasture⁶. ” The second part in this definition draws the line between pastoralism and livestock agriculture. The same policy defines a livestock farmer as any person who engages in livestock farming for production purposes. The policy therefore seems to underscore, in these definitions, that pastoralism is a part of livestock agriculture. The focus is on the production system and makes a pointer to the differentiation of the two in policy statements and instruments. *This difference needs to be identified in all other policies linked to livestock agriculture or the development thereof.*

3.2 Pastoralism in Policy Statements

Pastoralism is a key subject area in the formulation and implementation of policies on land, production and rural development. It is dealt with in section 3.5 of the livestock policy and is a subject of sections 7.2 and 7.3 of the national land policy. However, a close examination of the way pastoralism is covered in these policies and the policy objectives therein, one notes a basic misalignment. The issue of seasonal movement of livestock herds and their keepers goes contrary to the national land policy where nomadism is to be prohibited⁷ but stock movements allowed through regulation⁸ probably on their way to markets, etc. In other words, domesticated animals may be moved through established stock routes but people may not migrate with the animals as a lifestyle. The enforcement of the latter requires the establishment of inter and intra-village stock routes – a measure that still evades village land use planning, where it has so far been undertaken.

The Water-Pasture Dilemma:

The major reason behind the migration of people with their herds is the search for water and pasture, which of late has been necessitated by droughts and poor climate change adaptation options available to pastoralists. In this regard, if and when these resources are available, then pastoralists should settle down,

⁶ See glossary

⁷ Section 7.3.3 (i) of the National Land Policy

⁸ Section 7.3.3 (iii) of the National Land Policy

look after their stocks and enjoy their livelihoods based on agro-pastoralism in one place⁹. It would then remain for the land administration system to provide tenure security as it should to all citizens in accordance with the Constitution and the national land policy.

Another key provision of the NLP is that of resource sharing¹⁰ in order to reduce conflicts with settled communities¹¹. The Village Land Act of 1999 regulates the movement of livestock and indirectly, seems to favour the practice of livestock agriculture over pastoralism. The land policy talks of the adverse effects of uncontrolled movements of livestock on crops and infrastructure and possible remedy through policy options.

In what seems to be a policy controversy the word “pastoralism” is a common occurrence in the land policy¹² and the livestock policy¹³. This policy provides for pastoralists¹⁴ and, in this regard, at times seems to rescind its stance on prohibiting nomadism. An example of this situation is in section 7.3.3 (ii) of the policy where the policy provides for the creation of incentives to “proper pastoral land stewardship” implying that pastoralism is encouraged¹⁵ and should be enabled where land degradation is controllable. Many observers think the wording implied here is the “stewardship of grazing land” and NOT of pastoral land. If this is so, then there could be a credibility problem, which leads to a bigger policy issue of policy interpretation. A policy should in principle be easy to interpret. Policy statements therein should not be left to the policy implementer to second-guess the policy maker but should be clear as to what ought to be the practice, in the spirit of policy enforcement and effectiveness. With this kind of confusing statements, it is of no wonder that many mindsets stand on pastoralist livelihoods being upheld in society and overriding over other land uses. Land administration has been difficult to function under such mindsets. A parallel can be drawn here with regard to the mineral policy where all land uses are supposed to be extinguished upon discovery of minerals on land.

The 1 and policy also introduces the idea of “modern transhumant pastoralism¹⁶” but does NOT define what should be modern about it and whether or not transhumant pastoralism can be modernized. The land policy stance on prohibiting nomadism, if upheld, should apply to all of its different forms - modern or transhumant or other. The policy goes further as to provide agro-pastoralism and livestock agriculture clauses - an idea that seems to reflect the idea that pastoralism and livestock farming are congruent practices. Still other statements focus on transhumant pastoralism and nomadism more emphatically.

This study has noted a clear and hard line departure of the land policy from the livestock policy definition of the phrase “pastoral practice” in its several senses whether pastoralist, pastoralism, transhumant pastoralist, etc. A misunderstanding of what is or is not pastoralist torments land administration in its interpretation and

⁹ Section 7.3.3 (ii) of the NLP of 1995

¹⁰ Section 7.2.1 (iv) of the NLP of 1995

¹¹ See section 7.3.2 and 7.3.3 of the NLP of 1995

¹² See for example sections 7.2.1.(ii), 7.1.3 (iii), 7.3.0 and 7.3.2 of the NLP

¹³ Section 3.5.1 of the National Livestock Policy of 2006

¹⁴ Section 7.3.3 (iv) of the NLP of 1995

¹⁵ Section 3.5.1 (iii and vi) of the National Livestock Policy of 2006

¹⁶ Section 7.3.3 (ii) second part in the NLP

hence enforcement and implementation of the policy. Amidst all the confusion on substance is the key question namely, What is government's stance on pastoralism and where in policy is it reflected.

Pastoralism on the Ground

The practice, in both the land and livestock policy arena has so far been to encourage and promote livestock agriculture, without cattle mobility across village boundaries unless the villages so agree to share common resources. The implementation of the Village Land Act of 1999 and its regulations reflect this understanding of the livestock agriculture notion more forcefully. For example, the establishment of village governments with clear jurisdictions, including demarcated village boundaries, is to allow populations to settle down and enjoy individual and communal land rights in their production systems. A sample of people interviewed in the course of this study seems to prefer that all people in rural areas find permanent settlements, in order to live more bountiful lives, benefit from social services offered by the Government, avoid conflicts with other rights holders as well as maintain harmony with the environment. As suggested by participants in the run-up meetings to the formulation of the strategic plan for the implementation of the land laws (SPILL): Pastoralists *should be given land* in order that they may settle and hence transform their nomadic lifestyles to sedentary livelihoods.

The thinking of the lands sector regulatory framework is not well shared with remnants of pastoralists including contract herders in rural Tanzania, particularly those seriously hit by effects of climate change. Many pastoralists regard their mode of production to be more of a cultural and traditional heritage nature, than an economic one, as recent events of urbanization and livelihood change has indicated. Contract herding that is now common among the Sukuma people for example, seeks an entry point and a pathway into pastoralism for young people, and is practiced by the youth usually under the age of 25 years.

The potentiality for adversity was summarized by stakeholders in the statement that "pastoralism utilizes large tracks of rangeland particularly in arid and semi-arid agro-economic zones". To crop farmers the vastness of land utilized would lead to localized land scarcity and possible conflicts on land, and land resource allocation for other activities of communities would suffer. The idea of land as a limited non-renewable resource has been underscored in the land policy of 1995 that focuses on "economic use of land." Land scarcity for other land uses besides agriculture would affect livelihoods across entire land use initiatives and would soon or later affect livestock agriculture itself as the national herd, now close to that of the human population increases.

Pastoralism and Land Availability

There are also provisions for equitable distribution of land in the policy that can adversely be affected, if not already affected, by allowing pastoralism or by not enforcing the policy on sedentary lifestyles for livestock keepers. Land use options should be carefully planned especially in a system in which over 5 million crop farmers¹⁷ use about 4 million out of the 88 million hectares of land that makes up Tanzania territory. Land use utility claims of the livestock sub-sector stand at 44 million ha, which is even more than the 35.5 million

¹⁷ Using the data of the National Sample Census of Agriculture and its extended surveys, an overall trend of the area of arable land utilized or planted with crops has emerged. The emerging trend indicates that overall arable land use expanded rather rapidly during the latter half of the 1990s. The Effectiveness of Public Policies: Case of the Agriculture and Livestock Policy of 1997, H. A. Amani, ESRF, 2010

hectares of the nation's resource of permanent pasture (ALP, 1997). If distributed among the 18.5 million cattle and 16.7 goats and sheep and allowing 10 goats/sheep to a cow we obtain a land use average of 2.2 hectares per cow in Tanzania. This land distribution seems not to tally with crop farming lands at only 1.2 hectare per farmer on the average (*ibid.*), itself inadequate for food security and poverty reduction. These are by far not the only land uses of Tanzania. More land has already been allocated, through various statutes to wildlife, forests and settlements whilst there is a sizable portion that makes up hazardous lands (Section 7 of the Land Act). Pastoralism of course, will take up more land, if not properly allocated and controlled in accordance with provisions of the lands regulatory mechanisms. The noted overgrazing in 8.5 million hectares outside the permanent pasture area should be of great concern to land administration and the livestock industry.

Mindsets

In the absence of appropriate public, or even better civic, education on tenure security history and new aspirations proclaimed in constitutional rights to property and the economic focus of the NLP, the mindsets of many, if not most, land users in Tanzania is inundated with confusion, ignorance and self interest. These are the forces that fuel disputes and conflicts over land rights. In this regard Mindsets of Tanzanians fall into several categories: (i) Many Tanzanians, particularly carving livelihoods in rangelands, wish to continue with the concept of land control of our pre-colonial fathers, as against tenure rights of the modern age; (ii) A second category misunderstands the concept of public land. The misunderstanding is guided by skewed policies of the past and actions of property rights abuses through nationalizations, collectivisations, resettlements and government attempts at eradicating customary tenure. Here, public land is understood to be land that belongs to nobody and hence can be occupied by any citizen; (iii) A third category particularly of investors and developers disregard sentiments about the sense of belonging to the land¹⁸ and think that such attachment is extinguishable, and can so be done, by money even outside the will of those who suffer losses of land. The impact of regressive mindsets on land use is that many land use claims are based on false premises.

False Claims of Land Holdings

In times of the command economy in Tanzania, political pronouncements allowed anyone to occupy any seemingly vacant land and claim ownership, in so long as land use of the occupier was visible and no one laid claim of ownership of that land in a time domain. Many ancestral lands were seemingly lost through such careless policies. The repercussions of such changes were serious and still prone to conflicts on several fronts. Firstly, it denied ownership of some communal areas in some cases and allowed false claims in the other. When Chiefs lost grip of power in 1963 communal lands were left without a custodian and open to grabbing. An example of denied ownership has been the case of pastoral areas of Ngorongoro, Kiteto, Simanjiro and Longido Districts that have been prone to serious conflicts recently. An example of allowing false claims is given of Nyanja Division of Musoma District, which is inhabited by mostly crop farmers and fishermen but who also keep livestock at a small scale.

These people are traditionally very selective of the soils on which they build their homes, with preference for sandy soils. The valleys, of mostly black cotton soils were in the past left undisturbed environmentally and

¹⁸ The faith community knows that there was a reason for the creator of man to curve out of all land created, a garden of Eden for the new occupiers on the surface of the Earth especially after stating to them to reproduce and fill the World.

thus attracted wildlife habitation. The lands became communal hunting and subsequently, grazing grounds upon depletion of dangerous wildlife. The absence of homesteads in these lands has subsequently attracted non-indigenous agro-pastoral peoples. Through corrupt village leadership the communal lands were given away to non-indigenous people who have laid claim to possession under the pretext of being vacant, and hence not owned. Developments in the form of houses are the visible indicators of land possession denying communal ownership for lands used by ancestors over generations.

The commercial fishing activities of these people were undertaken in seasons usually, after harvest when the youth would leave their homes to camp out on the islands in Lake Victoria. Small islands were used thus with great emphasis on preventing deforestation as the drying of fish depended on the wood from the branches of trees on the islands. A season later the branches would have grown back in size and hence deforested islands were unheard of. Now the islands have been invaded by fishers from as far away as DRC, Rwanda, Uganda, Kenya including Tanzanians who are not indigenous to the lake zone. The seasons have been breached and over-fishing has become an environmental problem. False claims have been advanced to government for titling where the indigenous never dared to.

3.3 Linking the Land Policy with the Livestock Policy

Basic Premise: The (national land) policy represents a new turning-point in the development of Tanzania. It states in the preamble that “the present system of land tenure accepted since independence, and further developed over three decades is a product of the past. Colonial history, conflicting statutory measures, broad socioeconomic patterns and demographic trends all to some extent contributed to current problems that exist concerning land tenure and land use. These problems cannot be solved merely by piece meal legislation or by policy directives. The right to land with secure tenure must be respected, but land problems extend much further than individual claims to tenure rights. They involve other issues such as economic use of land, rural and urban development, housing, squatting, the quality and security of title, advancement of agriculture and protection of the environment”.

The land policy of 1995 reiterates and retains the four central land tenure tenets in a modified form that land is publicly owned and vested in the President as trustee on behalf of the citizens; speculation in land will be controlled; rights of occupancy whether statutory or customary are and will continue to be the only recognized types of land tenure; and rights and title to land under any consolidated or new land law will continue to be based mainly on use and occupation. There is need, as we proceed, to place special emphasis on what has been underscored in the above statements and that is: (i) In Tanzania, land cannot be owned, it can only be leased because of the vestment clause. Even here, the leases are conditional on use and occupation better known as the legacy of the repealed Land Ordinance introduced in Tanganyika by the British Colonizers.

Occupation and use became the key to land use even in independent Tanganyika and Tanzania even in the absence of a lease (Right of Occupancy) and has led to many false claims of land now that one of the fundamental principles of the new land policy is recognition of “long standing occupation or use of land”. Of late, cattle herders who strayed to far places and could not be evicted seem to be beneficiaries by false claim, of this principle.

Land for Agricultural¹⁹

It has been estimated that about 75% of the land area is either uninhabited or difficult to manage because of either difficult relief, tsetse flies or unreliable rainfall²⁰, national parks, game and forest reserves which are scattered throughout the country, including mountains and inland waters (lakes and rivers). The 2007/08 Sample Census of agriculture shows that 55% of crop farming households have between 0.1 and 1.5 hectares of land while 5.9 percent of households have 5 or more hectares of land. The census further reveals that 73.7 per cent of pure livestock farmers have between 0.1 to 1.5 hectares of land while 6.1 per cent have more than 5 hectares. The census also reveals that 48.7 percent of pastoralists have between 0.1 to 1.5 hectares of land, whilst 16.9 percent have five or more hectares while 15.9 per cent of agro-pastoralists have five hectares or more. The average land area under crop in the two planting seasons was around 2 hectares in Dodoma Region and 1.61 hectares elsewhere.

About 93.4% of farm land is used for small scale farming by land holders who cultivate the land mainly under customary tenure. The remaining 6.6% is under large scale farming under granted rights of occupancy. About 69% of the total land area is pasture or grazing land of which 71.8% is actually used. In this regard, the obvious responsibility of the land administration system is to distribute land and ensure tenure security to agriculturalists to enable food security and poverty reduction even when land is scarce. The objectives of the land policy outlined hereunder focus on this mandate.

Relevant Land Policy Objectives²¹:

- Promote an equitable distribution of and access to land by all citizens
- Ensure that existing rights in land especially customary rights of small holders (i.e. peasants and herdsmen who are the majority of the population in the country) are recognized, clarified and secured in law.
- Set ceilings on land ownership which will later be translated into statutory ceilings to prevent or avoid the phenomenon of land concentration (i.e., land grabbing)
- Ensure land is put to most productive use to promote rapid social and economic development of the country
- Modify and streamline the existing land management systems and improve the efficiency of land delivery systems
- Streamline the institutional arrangements in land administration and land dispute adjudication and also make them more transparent
- Protect land resources from degradation for sustainable development

Linkages and Synergies

The ALP of 1997 states: *that land administration arrangements determine agricultural and livestock land use, such that when land policies change the latter must also re-examine its rules and regulations so as to ensure a good fit.* It acknowledges that land is a valuable resource that must be made available to all actors in a diversified and multi-sector economy. It notes with emphasis that as over 85% of rural folk depend on land for their livelihoods, through agricultural related activities, many land policy statements are therefore directed

¹⁹ Section 1.2 of the National Land Policy

²⁰ Arid and semi-arid zones of very low soil fertility

²¹ Section 2 of the NLP of 1995

towards the rural people. It also accepts the primacy of land over agricultural policy with a statement that “agricultural policy must be revised to meet the demands of the new land policy.”

The ALP, 1997 accepts that the agricultural sector is the main user of land resources in the country and *calls for the lands sector to ensure access and ownership of land for smallholder farmers so as to assist in the modernization of agriculture.* It further agrees with the fundamental principles of the national land policy including statements on; vestment, land value, customary and statutory rights, land titling and certification, women's land access. It also agrees and advances other land policy statements such as those on; village land zoning, urban agriculture, land use planning, mitigation of conflicting land uses, discouraging nomadism and the protection of rangeland and arable land uses.

Commonalities and Gaps

Agricultural Sector Development Strategy's (ASDS) biggest concern and linkage to the lands sector is about streamlining procedures for legal access to land. According to section 5.7 and 5.8 of ASDS, the concern is divided into the following three aspects, namely: (i) sensitization of the public on provisions of the new Land Acts; (ii) streamlining procedures for legal and physical access to land; (iii) monitoring the implementation of the Land Acts with a view of correcting any shortcomings that may become apparent; and (iv) undertaking surveys and demarcation of potential investment zones.

Land (and Rangeland) Management: Sections 6.6 and 6.7 of the ASDS are basically, sections on land management within rangelands and other land uses. The seasonal and geographic variability of pastures and water for livestock has been the single most important factor in determining the traditional pastoral and agro-pastoral mode of livestock production in the country. While the seasonal migration of livestock is an important coping mechanism in times of drought, there are problems of disease control, land degradation due to lack of sense of ownership of the grazing lands and occasional conflicts between crops and livestock farmers. The management of rangelands will be improved through:

- Identifying the needs of pastoralists and agro pastoralists in terms of water, pastures, rangeland infrastructure through participatory processes
- Demarcating and allocating land to be used by pastoralists and agro pastoralists
- Developing and implementing sensitization and educational programmes on the Land Acts to increase public awareness especially among farmers, of land administration issues

Land and Water resource Utilization and Management:

- Prepare comprehensive land use maps with district-by-district details.
- Land for private sector investment will be surveyed and demarcated by LGAs, in collaboration with sector ministries, in a phased manner according to land use plans. The programme will also identify zones with cropping and grazing potential.

Land Policy Structure and Focus Constraint: Most land users have not fully identified themselves with the land policy and proceed to prescribe own prescriptions or similar, but of diverted emphasis as if the national land policy is silent or indifferent on the issues. This is the rather unfortunate aspect of the national land policy in that it does not address land use sectors and/or sub sectors such as crop farmers, livestock farmers, miners, infrastructure developers, settlements, environmentalists, etc.

A land user would like to see tiled statement on private and communal land use say, land tenure, land administration (tenure, access, allocation, land utilization, surveys and mapping, land use planning, etc) pertaining to say, agriculture or mineral extraction, etc. Other issues regarding public land use such as settlements and conservation areas and utilities could be a separate part of the policy document. Broader issues that are of less importance to users, but pertinent to policy implementation such as; institutional, coordination, legal redress to conflicts and disputes, etc, could be another part of the policy document.

The national land policy seems to be structured in a way of providing the land administration institutions in Government with authoritative tools and working standards in their daily undertakings. This approach is rather weak on two grounds: (i) the lands sector is a service sector to all sectors of the economy and should put the needs of those sectors in proper perspective to avoid ambiguity; and (ii) the land administration machinery already has the authoritative tools and standards of management embedded in the fifteen fundamental principles of the national land policy and land laws (cf. annex 2). It seems to provide for the efficiency and effectiveness of livestock industry, where applicable. The challenges of enforcement have also been analysed in the overall context of the ALP effectiveness report (ESRF, 2010) and have further been examined in the context of this study.

CHAPTER 4: STAKEHOLDER INPUTS ON CONFLICTS IN RANGELANDS

This study has reviewed and analyzed archived data on land administration that was obtained in a series of stakeholder meetings conducted around the country in 13 Regions, 15 Districts and 60 villages in 2004/5, which forms a very good representative sample on rural land reform agenda. The sample also included stakeholders in Non-Governmental Organizations (NGO), Ministries, Departments And Agencies (MDA) of the Government, and the private sector. The broad issues are presented first followed by a matrix of input and a presentation of proposed initiatives that would assist in providing an environment conducive to enhanced tenure security for a better livestock and generally agriculture production and income.

4.1 Broad issues in the Governance of Rural Land

Tenure Security and Sustainable Livelihoods:

Land tenure for rural land cannot be secure enough, in facilitating agricultural production unless livestock keepers agree to settle down and confine their activities to allocated pastoral lands, i.e., land tenure in rural areas is incompatible with nomadic lifestyles. Land tenure in the rural areas can only support sustainable agricultural production and environmental protection if firstly, each small holder peasant and livestock herder shall own enough land on which to undertake their activities and upon which land s/he can learn and practice modern agriculture and / or animal husbandry. Stakeholders think that a minimum 10 hectares for each peasant and about three times for herders ought to be made available by Government.

Mindsets and Rural Development:

People's mindset on land tenure and land use was adversely affected by the lacklustre land administration of the four decades after independence to an extent that major Government policy initiatives, including land reforms of the 1990s, seem to go unnoticed and therefore with little achievement on the ground. Rural development and particularly, modernisation of crop and livestock agriculture are curtailed in this way. The country has witnessed land disputes and conflicts of blood-shedding proportions in recent years. The practice of village territoriality embedded in the land policy and laws is, to say the least, new in rural governance and has led to undesirable boundary disputes.

Conflicts and Disputes over Village Lands – causative factors

Disputes in boundaries are rooted in, among others: the expansion of conservation and reserve areas without consultative considerations to the welfare and aspirations of neighbouring village populations; poor record keeping and fast turnover of Government officials in Villages; inclusion of environmentally sensitive areas within village boundaries; the nomadic culture of livestock herders (pastoralism) and lastly, unknown and unmarked buffer zones. Most serious boundary problems exist in Ngorongoro District and stakeholders there have called for a fresh delineation and resurvey of village boundaries around Loliondo as part of a 'road map' to tranquillity.

Stakeholders believe that *ALL these disputes will only end where each individual person or village shall rely on their well determined and allocated land parcel for all his/her land-use requirements and where need arises to use extra ground, shall seek appropriate permission from the landowner(s) of that parcel.*

4.2 Interventions Recommended By Stakeholders

The interventions proposed are:

- Predominantly crop farming villages should be separated from predominantly livestock farming ones as a self regulating mechanism against conflicts caused by issues of stock management and expansionism of land for agriculture. In this regard, peasants and pastoralists shall live in separate villages and each individual be confined to own land to facilitate peace in villages, modern and sustainable agriculture and livestock keeping. In other words each land user shall depend solely on own land for personal activities and respect other peoples land rights. Communal uses should be directed to or communally owned land. This is more of a land use planning mechanism in which land suitability options would also be looked into.
- Village land users are experiencing land shortages caused by absentee land lords or simply land holdings that have not been put to use. Villagers have built their homes close to these holdings and may not easily resettle. Their eyes are therefore on these farms adjacent to their residences. In this regard stakeholders wish that Government should control land hoardings in the same way that development control is undertaken in general lands. Lands allocated to investors, it is thought, and any land right by investors be reviewed after the first five years.
- It has been established that many laws quickly become obsolete on fines due to inflation and value of money. The constantly undervalued currency is an issue of concern. Stakeholders have experienced cases where penalties were no longer a deterrent against crime in land conflicts and wished that fines played the due role of deterring violators from repeating the same offence. Stakeholders wished that stiffer penalties should be meted to violators of land rights.
- Still on the issue of law and order a quick and more serious redress to trespass is needed. It was underscored that it takes a few hours to deny a crop farmer of an annual harvest and in order to feed a whole stock, many crop farmers would therefore suffer in a day. Stakeholders wish that village governments, in collaboration with police, should forcefully get rid of the pastoralists and other illegal land users found trespassing and destroying crop farms upon call. Due legal process for trespass should be instituted as soon as the culprits are booked.
- Those holding customary tenure need their lands to be registered so that they can benefit from their titles. Stakeholders were therefore of the view that the government should replicate, expand and speed up the Mbozi experiment in all Districts of the country while providing public education on land rights at the same time. The Mbozi experiment was one of issuing Certificates of Customary Rights of Occupancy (CCRO) in village lands. Public education is needed to reverse mindsets towards constitutional and land policy objectives with emphasis of the rights and obligations of a land holder.
- Conflicts over boundaries are many in Tanzania be it village boundaries, reserve areas, conservations, etc. The Ministry of Works has decided to erect visible pillars appropriately labelled to reduce conflicts with users of adjacent lands that cost our economy dearly. Stakeholders on land

issues think that this is an example that should be emulated by all sectors. In particular the boundaries of Ngorongoro conservation area and the Serengeti National Park with pastoral villages have been of great concern to land users. Hunting grounds such as that close to Loliondo has caused the Maasai pastoralists much havoc. The stakeholders in these meetings wish that buffer zone areas between reserved land and village land should be clearly shown. They wish that TANAPA be tasked to show the boundaries of the territories falling under their conservation mandates.

- It was the overall view of stakeholders that pastoralism is a matter of the past and a transition to agro-pastoralism is needed as reflected in both the NLP and ALP of Tanzania. It is felt that pastoralists need social services provided to other citizens but these cannot be accessed by migrant lifestyles. Climate change has had its toll on rangeland management in Arid And Semi-Arid Lands (ASAL), particularly on poor communities that have little adaptive capacity. There are many disadvantages to the pastoral system as practiced by older generations and a change could be to the advantage of both the pastoralists and non-pastoralists. Some of the disadvantages are that pastoral production: (i) has very low productivity levels (*does not address poverty reduction policy*), (ii) degrades large masses of land (*not environmentally friendly*), (iii) invades established farms and ranches, forests, wildlife conservation areas (*violates security of tenure*), and (iv) at the moment it is impossible to control livestock diseases, thus impossible to export meat, milk, livestock due to international demands on livestock health and products free of infectious agents (*only marginal support to economic development*). Pastoralists have to be given land and told to settle (*nomadic culture must stop for the benefit of land tenure security and a flamboyant economy*) like any other peoples in the country.
- Tanzania's record keeping system has for a long time been confined to the headquarters of the Ministry responsible for lands and in its three key departments namely urban planning, surveys and mapping, lands that hosts the Registrar of Titles offices, also in five zone offices. In recent years the mandate of zone offices has expanded and with this expansion has been an accumulation of data at the zone level. Stakeholders wish that the record keeping or information system should be made more accessible through technology modernization and decentralisation down to the District and village levels.

These proposed initiatives reflect a good knowledge of the stakeholders on the role of land in their livelihoods, their rights and obligations in the land use category, their expectations from both local and central government levels, their vision of production based on land use, etc. Table 3 below summarizes stakeholders' input on land and livestock farming.

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

The conclusions have been made alongside the chapters in the National Land Policy which are also key topics in the Livestock policies. The format has been selected so as to make it easy to make follow up with the source.

5.1 Conclusions and Recommendations towards Land Policy Review

Major Land Uses and Distribution Patterns:

The statistic provided in the National Land Policy of 1995 that 75 percent of Tanzania's land area is "either uninhabited or difficult to manage needs to be carefully examined by each land-use sector, including the livestock sub-sector of agriculture. The statement in the National Livestock Policy of 2006 that the country has a "large untapped resource of about 50 per cent of the 50 million hectares suitable for livestock production is not a bankable statement because of the caution raised in the land policy. Also this livestock policy statement should be properly understood as "suitable" only but not allocated for livestock production. In a similar way, the statistic of "48 million hectares of arable land" simply indicates that it is suitable for crop agriculture and not set aside for this use. It is common in policy documents of Tanzania to come across similar claims made by other big land use sectors (forestry, wildlife, etc) which is confusing to resource planning and policy making processes. One author has aggregated these demands to over 200 percent (Lugoe, 2010) after combining the 50.6 for forests, 19 for wildlife, 52 arable, 69 pasture without including lands used for settlements, infrastructure reserves and as inland waters without identifying areas of overlap, if any and sources of proper mappings.

A careful examination of the figures above and constraints facing land use in Tanzania points to a possibility of land scarcity in Tanzania and not abundance as has been portrayed in policies on agriculture. It is therefore of paramount importance for the land administration sector to rationalize land claims of the big user sectors and actually set aside lands for crop and livestock agriculture production after a rigorous country planning exercise that applies the appropriate tools such as land suitability maps.

Grants of Land and Registration:

Policies on livestock cry out to proper grants of land to livestock farmers²² i.e. with guaranteed tenure security. This is not an impossible proposition even within customary tenure in village lands. The issue of cross-border village land conflicts has been on the rise. Surveying and registration of customary and non-customary lands is the promise of the land policy but, the gap abides at implementation stage where the latter lags far behind. In the villages where the process of granting customary titles has begun, it is too slow to be effective in the longer term. The other gap is that the guarantee of land rights falls far below expectations partly due to multiple possessory claims and delays of justice. Criminal trespass continues often with trespassers ready to defend themselves through violent action as has been narrated earlier in this study. This is a big weakness in the land administration system of Tanzania that ought to be dealt with within a purposeful land reform process addressed in this study and reconsidering section 15 and 16 of the Village Land Act No. 5 of 1999 in favour of constitutional provisions.

²² Section 3.23.1 of the National livestock Policy of 2006

Speeding up the village land registration processes would avert most conflicts and disputes and provide needed security of tenure. High technology using high resolution satellite imagery is available and can come to the aid of a viable and long lasting solution. Stakeholders have beseeched the government to grant land to pastoralists so that they too can enjoy public social services as they carry on with livestock production.

Stakeholder wishes on separating predominantly crop farming villages from predominantly livestock farming villages should be taken seriously. This is an advise on zoning - an old methodology in physical planning.

Protection of Sensitive Areas:

Pastoralism has often been associated with environmental degradation especially of sensitive areas, though another school of thought has it that pastoralism is a good way of managing arid and semi arid areas. It is worth recalling that in most incidences pastoralists' migrations are propelled by the search of scarce resources such as pasture and water for their livestock. This is such a compelling cause that cattle herders often do not mind much about their own welfare as long as their heritage is safe. The promise of the land policy is to develop and put in place mechanisms for protecting sensitive areas. That mechanism is also provided in agricultural policies²³. These policies focus on providing water, pasture, rangeland infrastructure, land demarcation and providing public education. These policies point out the difficulties of adopting the mechanisms in areas where the extensive livestock production system is used. There are other obvious constraints that include poor animal husbandry practices, lack of modernization, lack of markets and accumulation of stock beyond the carrying capacity of the land to which the livestock sector should address itself for the mechanisms to work.

Thus said, both policies contribute to the policy gaps. The livestock sector ought to address the constraints as the mechanisms are put in place within village boundaries by the lands sector. It is a process of two sectors converging towards each other.

Peri-Urban Land and Urban Growth²⁴:

Peri-urban livestock farming constraints, according to the livestock policies, include land scarcity and conflicts among communities. It is well known that urban areas in Tanzania have extensive areas in spite of provisions for vertical growth of towns in the national land policy. In the urban and peri-urban areas there are persistent land disputes as a result of rapid expansion of towns from a total urban population of 686,000 in 1967 to approximately 15 million now. Urban areas are encroaching on fertile farming lands in Arusha, Moshi, Bukoba, Mbeya, Morogoro and other major towns. The existing statutory boundaries of most regional towns in Tanzania are very extensive and include registered villages and most urban land is poorly managed as a consequence. For example, Dar es Salaam City has a area of 1,893 km². Sumbawanga town has a statutory area of 1,329 km², enclosing 30 registered villages. Hence, there are tenurial and land use conflicts in all areas surrounding urban areas and there are serious disputes between customary and statutory tenure owners of land rights. The land administration system should create buffer zones around

²³ Section 3.23.3 and of the National Livestock Policy of 2006

²⁴ Section 3.23.2 of the National Livestock Policy of 2006

towns for small scale vegetable, fruit and livestock farming to provide fresh food to the towns but such has not been possible and the livestock industry remains in waiting for land to enable production.

Rural and Village Land Use Planning:

Land use planning should be preceded by land use and suitability mapping which lags far behind expectations, though recent high resolution satellite imagery can be used effectively. Much of what is done today is socio-economic planning that is not well fitted to the physical environment.

Many villages especially those created during “operation vijiji” are poorly situated with respect to infrastructure, production and social services.

Land Use planning should also be guided by the reality of land rights and tenure security mindful of historical records of explosive adversity on land use.

Land scarcity exists both at the village and national levels as already discussed. The need to speed up land use planning is overwhelming as it needs to precede land use with a focus on controlling extensive movement of livestock, and provide needed services and infrastructure to livestock agriculture.

The location of villages during the villagisation programme²⁵ could have benefited abundantly if a national land-use mapping, aimed at identifying optimal areas for village livelihoods, had been undertaken as a condition precedent. This opportunity was lost and, for some villages, it might be lost forever due to high costs of relocations. In the planning of rural settlements, it is important to pay attention to the citing and situating of the villages, aided by appropriate tools particularly the base maps that should be supplemented by geological, soil and land cover maps as good sites require an assessment of the land in terms of its soils, vegetation, topography, relief, geographical location and orientation.

It is not uncommon to find residences in Tanzania villages, particularly in the Kilombero valley, occupying the best agricultural soils and sometimes, surrounded by less fertile ones and hills that could have served as residential areas. Again, it is not uncommon to find villages that cannot be accessed easily and often, in lack of vital supplies and services especially, during rains.

Rangeland Management and Livestock Stocking:

Migratory livestock agriculture particularly in arid and semi-arid areas is still a big problem to rural development and as already acknowledged it is made worse by effects of climate change. Poor knowledge of village and national land holdings and corresponding carrying capacities²⁶ inhibit regulation as per policies and policy instruments. The NLP has stated categorically that for good land management as well as respect to land rights and tenure security of land holdings, nomadism shall be prohibited. This is one of the key statements in the NLP but one that has not been addressed beyond political statement and desires of leaders to see better livelihoods of these livestock farmers who are perennially on the move. Livestock policies acknowledge that nomadism is sustained in part by overstocking that leads to migrations in search of

²⁵ Several errors were made during the process of villagisation. Some villages are badly located from the point of view of water supply, soil conditions, etc., while some have rather large populations which could pose economic as well as social problems. In all villages there is the risk that the change from shifting to permanent cultivation may lead to soil deterioration and erosion caused by overgrazing (JASPA/ILO, 1978).

²⁶ Section 3.7 of the National Livestock Policy of 2006

resources as the carrying capacity of the land is exceeded most of the year around, save for the rainy seasons. Consequently therefore reducing the stock size and sedentary livestock agriculture would be a way out for livestock farmers.

Overlapping Land Use Areas and Coordination:

There is need to allocate more land for crop agriculture and better manage rangelands so that less acreage are used to produce more meat and milk products than it is possible now. But this is almost impossible now because of inadequate knowledge of the lands sector on village and national land holdings and soil quality. Tanzania should take stock of its land holdings along three lines namely; land size, soil quality and hence land use suitability and the real needs of the land users.

Institutional Framework:

It is quite possible that the land administration machinery can foresee the possibility of eruption of conflicts over land particularly where people do not respect other people's properties in accordance with the constitution. Lack of respect almost always leads to violations of land rights and hence to tenure insecurity. As stated earlier, where the machinery adopts a lacklustre approach to people's rights, or where the courts do not provide adequate protection, people tend to take the law in their hands and the result is often an undesirable scenario. Land administration institutions have often not been able to address issues in a proactive way. Many of the disasters in land conflicts have been addressed as a part of a post-mortem of events in which basic principles to a lasting solution are not upheld. The resettlement of livestock farmers involved in the Usangu valley conflict of 2007, in the southern districts and among peoples who are traditionally not supportive of such production activities is a case in point.

5.2 Conclusions and Recommendations for Policy Implementation

1. Both the land and livestock policies find their origins in the constitution of the United Republic of Tanzania (1997) that upholds property ownership and protection of property rights by the state. It also calls for respect of each other's property. In this study the constitutionality of land has been taken as an appropriate entry point into aligning and harmonizing the two policies and any instruments that could be formulated in pursuit of implementation. The constitution does not provide details on land tenure rights but is apt to interpretation by policies that seek to put its provisions into action. *The onus is therefore on the State to allocate land to land users in a manner that will make it possible for Tanzanians to enjoy and make use of this constitutional provision.*
2. Land administration in Tanzania has a legacy of operating on the basis of instruments formulated without due regard to peoples aspirations and provisions guaranteeing property rights in the constitution of the URT. Such administration was vivid during pre-independence years and continued into independence with the villagization programme and nationalization of assets undertaken a decade into independence and after. The two programmes are mostly responsible for lingering mindsets on violations of land rights and continuing insecurity of tenure for which a meaningful land reform is now necessary.

3. Land reform is the only process that can reverse past misdeeds on land tenure insecurity and pave the way to higher agricultural production. The focus of reform is to enhance land rights to a higher level that is supportive of national socio-economic aspirations. It includes creating a system of land information that is accessible and affordable to land users, identification and registration of land rights and enabling a market in land. In many cases reform requires executive action on issues that need implementation. In Tanzania such action is pending for issues on: (i) re-demarcating urban boundaries and cede land for peri-urban small scale agriculture; (ii) initiating country planning that considers national major land holdings and suitability patterns thereof; and (iii) setting limits to livestock stocking and providing stock routes for market access; and (iv) re-engineering the land administration process so as to achieve a quantum leap in performance and in so doing facilitate the attainment of objectives of the various lands sector laws.
4. *The needs of crop and livestock farmers for more land are ever increasing as farmers increase without corresponding increases in average land holdings, at a time when land productivity is seriously hampered by climate change*. However, many of these farmers have been left to fend for themselves as they did before the formulation of the national land policy in 1995. There is lack of meaningful allocation of land to livestock farmers including fulfilling the “promise” made in the national land policy of converting game controlled areas through upgrading, to resettle village populations. Enforcement of laws on movement of pastoralists that has caused numerous land disputes and conflicts in village lands of Tanzania remains weak.
5. Disharmony of policies has been identified as to what exactly should be the place of pastoralism in the agricultural production system of Tanzania. The national land policy calls for the prohibition of pastoralism, here understood to mean the conversion of practice to its sedentary alternative where movements will be prohibited except *en route* to markets. On the other hand the livestock policy calls for regulating pastoralism which is understood to mean that pastoralism will remain under the watchful eye of the state. History has proved such regulation unworkable. The two are somewhat contradictory and under the current system of land allocation to village governments it is difficult to see how the latter can work in a conflict free atmosphere.
6. The livestock policies are not aligned to the land policy on the land resource available for distribution among major users. Whereas land policy advances the notion that the bulk of the land is “difficult to manage” for various reasons as also acknowledged elsewhere, the livestock policies call such lands an “a large untapped resource base.” There is need for the land administration machinery to sort out the various users against the backdrop of realistic national land holdings. Land for settlements has now increases substantially following the village demarcation project that has been completed in the country and continuing issuance of certificates of village lands to village governments which is on-going.
7. The government has grossly underestimated the land policy desire for “land registration through grant of certificates of occupancy” for all lands including government lands such as conservation areas, and lands under customary holdings. It is along this constraint that the livestock policies’ desire for the lands sector to ensure access and ownership of land to small scale farmers seems

difficult to implement. The social conflicts between livestock farmers and other land users, land degradation and the spread of animal diseases that are blamed by the livestock policy on land utilization “without guaranteed tenure security” will therefore continue way into the future.

8. Great emphasis should be placed on educating Tanzanians to be aware of their constitutional rights on landed property so as to avoid past malpractice and also use land productively so as to increase farm income and reduce poverty. Much has been done so far and it provides a starting point but, the effort is grossly inadequate for mindsets that have been skewed through colonialism, feudalism and on-going malpractice. As stakeholders suggested, the need to include land issues in school curricula is overwhelming. This is vital so that new land users coming out of schools will have a better understanding of the situation in agri-business. In as much as land defines the territorial jurisdiction of Tanzania, it should also define patriotism and production base of its citizens.

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Annex 2. Fundamental principles of NLP and new land laws:

There are fifteen Fundamental Principles of the National Land Policy, which appear as sections 3 (1) and 3 (2) of Part II of the Land Act No.4 and Village Land Act No. 5 of 1999. In other words, the fundamental principles are now a provision in the land laws. These are:

- (a) To recognize that all land in Tanzania is public land vested in the President as trustee on behalf of all citizens;
- (b) To ensure that existing rights in and recognised long standing occupation or use of land are clarified and secured by the law;
- (c) To facilitate an equitable distribution of and access to land by all citizen;
- (d) To regulate the amount of land that any one person or corporate body may occupy or use;
- (e) To ensure that land is used productively and that any such use complies with the principles of sustainable development;
- (f) To take into account that an interest in land has value and that value is taken into consideration in any transaction affecting that interest,
- (g) To pay full, fair and prompt compensation to any person whose right of occupancy or recognised long-standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by the State under this Act or is acquired under the Land Acquisition Act; provided that in assessing compensation land acquired in the manner provided for in this Act, the concept of opportunity shall be based on the following: -
 - (i) market value of the real property;
 - (ii) disturbance allowance;
 - (iii) transport allowance;
 - (iv) loss of profits or accommodation;
 - (v) cost of acquiring or getting the subject land;
 - (vi) any other cost loss or a capital expenditure incurred to the development of the subject land: and interest at market rate will be charged.
- (h) To provide for an efficient, effective, economical and transparent system of land administration
- (i) To enable all citizens to participate in decision making on matters connected with their occupation or use of land
- (j) To facilitate the operation of a market in land;
- (k) To regulate the operation a market in land so as to ensure that rural and urban small-holders and pastoralists are not disadvantaged;
- (l) To set out rules of land law accessibly and in a manner which can be readily understood by all citizen;
- (m) To establish an independent, expeditious and just system for the adjudication of land disputes which will hear and determine cases without undue delay;
- (n) To encourage the dissemination of information about land administration and land law as provided for by this Act through programmes of public awareness and adult education, using all forms of media.
- (o) The right of every woman to acquire, hold, use, deal with; land shall to the same extent and subject to the same restrictions be treated as a right of any adult man.

Annex 3: ESRF PUBLICATIONS

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5. Poverty Escape Routes in Central Tanzania: Coping Strategies in Singida and Dodoma Regions (Volume 2). Dr. O. Mashindano; Dr. F. Kessy; Prosper Charles and Dennis Rweyemamu, September 2011.
6. Poverty Escape Routes in Central Tanzania: Coping Strategies in Singida and Dodoma Regions (Volume 3). Dr. O. Mashindano; Dr. F. Kessy; Prosper Charles and Dennis Rweyemamu, September 2011.
7. Aligning and Harmonizing the Livestock and Land Policies in Tanzania. Dr. Furaha Lugoe, September 2011
8. The Impact of Globalization on the Labour Market: A Case Study of Tanzania. Working Paper Series No. 18. Beatrice Kalinda Mkenda. September 2006.
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3. QER Volume 10 Issue 1 for Jan – Mar, 2010
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