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**Policy and Legal Issues on Wildlife
Management in Tanzania's Pastoral Lands:
The Case Study of the Ngorongoro Conservation Area**

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Abstract

The Ngorongoro Conservation Area (NCA) in northern Tanzania is one of Tanzania's best known wildlife protected areas. It is part of Tanzania's Maasai land and the Maasai have lived in this area since the 18th century. The British colonial administrators gazetted the area as a wildlife reserve and it was declared a national park. Administrative powers were vested in the Board of Trustees of the national parks who exercised it in a manner in ways which encroached the land and resource rights of the native communities. The pastoral people of East Africa have been the most prominent victims of wildlife conservation policies and practices, and of the various developmental ideologies. The alienation of pastoral lands has generally been a result of the misconceptions about the sadly misunderstood modes of pastoral land and resource use. The possible options for the building of a more balanced relationship between the interests of conservation and those of the pastoral communities in the NCA should be guided by an appreciation of the NCA environment and its resources – both natural and social. Further a fundamental change in the philosophy vis-à-vis the existence of pastoral people in the natural surroundings is required. The people should be made part of the decision making and management of the natural resources.

Keywords: Ngorongoro Conservation Area, Pastoral lands, Maasai, preservation policies, alienation, empowerment, management

1. Introduction

Wildlife conservation policies and laws which have been pursued over the years in the Ngorongoro Conservation Area have not only undermined the security of land and resource tenure of the Maasai pastoralists, they also threaten the future of wildlife itself. Policies and institutions for wildlife conservation are dominated by the 'old orthodoxy' which separates man from his natural environment. This protection-against-man conservation has led to the exclusion and/or direct displacement of the Maasai of Ngorongoro from the lands and the resources they have traditionally considered their own and which they have utilised in a system of land and resource use which is today considered environmentally benign.

While the argument for the creation of protected areas such as the NCA has proceeded on the assumption that the state and its conservation agencies using modern scientific methods and with the help of international conservation agencies and conservationists were better placed to ensure the conservation of wildlife resources, the reality on the ground suggests otherwise. Losses of key wildlife species has continued unabated, and while this has often been blamed on illegal poachers from outside the protected areas, the evidence from the NCA suggests that this problem is just as internal as it may be external. Only that internal poachers are hardly ever caught and if caught, they are hardly ever prosecuted. As a result of these factors there is an urgent need now more than ever before to re-examine the assumptions, the thinking and the policies and practices which have been in place for over half a century now in the NCA. This work is part of this soul-searching.

In this article I will bring forth the findings of the study conducted, first, to document the evolution of wildlife conservation policies and practices in the NCA and their impacts on land and resource tenure of the pastoral communities. Secondly, it attempts to explain the land tenure conflicts that have emerged in the NCA in the light of the assumptions, the policies, laws, institutions and their practices underlying wildlife conservation in a multiple land use

area which NCA is. Thirdly, it re-examines the impacts of these conservation policies and practices on wildlife conservation and asks to what extent have they been successful in fulfilling their conservation objectives. Finally it attempts to chart out a general course for the future which is responsive to the legitimate needs of communities without necessarily compromising the conservation interests.

Several methods have been used to collect data for the study. First, primary sources of information such as official documents like administrative orders, directives, circulars and correspondence were relied upon. These were supplemented by other official documents such as legislative instruments, policy documents and declarations, and other publications. Library research was conducted in the High Court Library, Arusha and in the Attorney General's Chambers, Arusha, as well as in LARRRI/HAKIARDHI's documentation centre in Dar es Salaam.

Secondly, an *in situ* research in the study area was conducted. I conducted open-ended interviews with 32 people representing various interests in the NCA. There were NCAA officials - both in the management and in the lower cadres - and both the official and traditional leaders and representatives of the Maasai communities of the Ngorongoro Conservation Area. Since - given budgetary constraints - it was not possible to visit all the areas and villages in the NCA, the author visited only some of the villages and settlements in the area. These include Endulen, Esirwa, Ngorongoro, Kimba, Ngoile, Olbalbal, Nainokanoka and the NCAA headquarters. I am, however, confident that these areas and personalities involved in the research provide a fairly representative opinion of the issues and findings of this report. Thirdly, secondary sources of information were also made use of in this study. These include studies and commentaries carried out by other writers and commentators on this subject or about the area of study.

A number of institutions and individuals made the undertaking of the study possible. The study was helped immensely by the people living in the NCA, as well as many personal friends and family*.

Researchers, as an old sage said, have a way in opportuning people to meet their always - pressing need for data and information. If it is true that 'a researcher is someone who borrows your watch to tell you what time it is', then all these people have been more than generous in lending their timepieces! And while expressing my gratitude for all those who contributed time, materials and ideas for this study, I take full responsibility for any errors of fact or interpretation (and I know there are quite a few) that may have escaped my scrutiny. The buck stops, as it were, with me!

2. Background to the Ngorongoro Conservation Area

The Ngorongoro Conservation Area in northern Tanzania is one of Tanzania's best known wildlife protected areas. Its unique topographical features apart, it also attracts some of the largest concentrations of the plains herbivores anywhere. It is also a renowned palaeontological and archaeological site, remains of the early hominids having been discovered here in the late 1950s and 1970s. As a result of these natural and historical features, the NCA is a prime conservation site in the country and in the world. It is a World Heritage Site and also a Biosphere Reserve.

The NCA is also part of Tanzania Maasailand and Maasai have lived in the area since the 18th century. The NCA is, therefore, unique in the conservation theory and practice for, unlike national parks and other wildlife protected areas, it is a conservation area where human activities such as pastoralism and cultivation is carried out to a greater or lesser extent.

The NCA attracted the attention of the colonial administrations as far back as the early years of this century. But it was during British colonial rule that it was gazetted as a wildlife reserve. It was declared a national park - part of the greater Serengeti National Park - in 1940. These developments did not, however, affect native land and resource rights such as grazing, hunting and cultivation. They nevertheless granted wide powers of control over the use of natural resources to the Board of Trustees of the National Parks who were soon to exercise those powers in ways which encroached the land and resource rights of the native communities.

The conflicts that ensued led the colonial administration to form a Committee of Inquiry to recommend a more lasting solution to the conflicts over the resources of the NCA. The Committee of Inquiry, heavily influenced by the international conservation lobby and naturalists, recommended the partition of the Serengeti National Park into two. The western part of the region was to be designated an exclusive wildlife protection area; while the eastern highlands and the plains adjoining them plus the three craters were to form the Ngorongoro Conservation Area. Here wildlife conservation was to be reconciled with the rights of the Maasai pastoralists in a multiple land use context. The Maasai were evicted from Serengeti National Park and moved to the NCA which was henceforth to be their permanent home.

The law establishing the NCA and the NCAA did not grant any title to the NCA land to the NCAA. NCA land continued to be owned by the Maasai communities under deemed rights of occupancy. But while this is the case, that law gave enormous powers of controlling and regulating the land and resource use in the area and the bureaucratic machine with which to exercise that power. That bureaucratic machine was, and still is, organised in ways which make it unresponsive to the interests, needs and concerns of the NCA Maasai pastoralists.

Because of the nature and character of the NCAA and the manner in which it has exercised its powers, conflicts have intensified with the resident pastoralists. The neglect by the NCAA of its responsibilities to the Maasai pastoral economy; its increasingly restrictive measures against grazing and cultivation; its repressive and punitive measures against the local population; and its increasingly evident failure to stem the tide of poaching from within its ranks and environmental degradation caused by land and resource uses which affect both wildlife and pastoralist interests such as the effect of big hotels on the NCA ecosystem, all show that the NCAA has failed to fulfill its dual mandate of conservation and pastoral development.

On the other hand it has been shown that pastoral land and resource use has not had any deleterious effect on the NCA ecosystem. That pastoralism is compatible with wildlife conservation is today widely acknowledged. It is, therefore, obvious that there is no scientific basis for continued restriction of Maasai livestock in certain parts of the NCA, which are also crucial to their climate-driven pastoral land and resource use. On the basis of the foregoing we recommend a massive overhaul of both institutional and legal structures in place in the NCA. We recommend the disbanding of the NCAA and establishment of an institution which will have a substantial local representation to ensure that local interests are not compromised by central government bureaucracies. We also recommend the removal of all restrictions

imposed on the Maasai and their livestock in those areas which are crucial to the maintenance of a viable pastoral production system.

3. The Wonders of Ngorongoro Conservation Area

The Ngorongoro Conservation Area (NCA) of northern Tanzania covers 8290 square kilometres of some of the most extraordinary geography on earth. It can be divided into five topographical regions, namely the Crater Highlands, the gently undulating Salei plains, the Gol Mountains, a portion of the Serengeti short grass plains and the Kakesio hills and the Eyasi escarpment to the south (Lane, 1994, Potkanski, 1997). Rainfall is highly seasonal and spatially variable, ranging from around 1700mm in the Crater highlands to as little as 400mm to 600mm in the lowland plains (Lane, 1994) The vegetation is equally complex consisting of montane forest and grasslands in the highlands to semi-arid woodlands and grasslands in the escarpment and in the plains. It is this physico-ecological diversity which produces both spatial and temporal grazing, water and mineral resources that result in the extensive migration of both wild and domestic animals that underpins pastoral production (Lane, 1994)

The NCA offers spectacular and beautiful topographical features and plays host to some of the highest concentrations of wildlife anywhere when over a million wildebeest, half a million gazelles and a quarter a million zebra move into the area from Serengeti National Park to the west (NCAA, 1995). The Ngorongoro Crater itself contains a high concentration of herbivores and numerous predators such as lion and cheetah. It also provides refuge for elephants and one of the remaining wild populations of black rhinos in Eastern Africa. There are two other smaller craters to the north, Empakaai and Olmoti. Apart from this fantastic wealth in natural resources and topographical beauty, the NCA also provides some of the most important archaeological and palaeontological sites in the world. It was here (at Oldupai Gorge and the Laetoli Site) that hominid remains and tools which provide evidence that the forebears of mankind occupied this area about four million years ago were found (Leakey, 1979).

It is precisely for these reasons that NCA has attracted, and continues to attract, the attention of conservationists, governments and big business interests since early colonial period (Arhem, 1985). Fosbrooke (1972) christened it 'the Eighth Wonder of the World'; it was proclaimed a World Heritage Site in 1979 and classified as a Biosphere Reserve by UNESCO in 1981. It is the jewel in the crown of Tanzania's tourist industry, attracting nearly a half of the tourists visiting the country in 1994 alone (NCAA, 1994).

The NCA is not, however, only important for its beauty, ancient history and wildlife resources.¹ It is also a Maasai country, hosting more than forty two thousand Maasai and Tatoga pastoralists and numerous Hadzabe hunter-gatherers.² The former move with their herds of cattle, goats and sheep estimated at slightly over 300,000 in 1994 (Potkanski, 1997,133) making optimal use of dry and wet season pastures offered by the different resource niches in the NCA. They also move constantly to avoid large herds of wildebeest which carry a viral disease, Malignant Catarrh Fever (MCF), which is fatal to cattle (Potkanski, passim, Homewood and Rodgers, 1991). The Maasai have done this without substantial change for over two centuries, while pastoralism has been practised in the area for at least seven millenia (Arhem, 1985, 28, Bower and Grogan-Porter, 1994). Ngorongoro has, therefore, been an area where people coexisted with wildlife for thousands of years, accommodating both long before it was classified as a multiple land use area. The latter

concept is, therefore, not a creation of some Western trained conservationist, rather it is the crystallization of an experience as lived by the pastoral communities for ages.

What explains the prevalence of wildlife only in the pastoral lands of East Africa such as NCA and, as a general rule, nowhere else in this region? Natural scientists have long recognised the important role that wildlife has long played in African cultures and ways of life. Wildlife not only supported life but also gave spiritual satisfaction: it was not only hunted for food but was also used in tribal ceremonies and rituals (Lusigi, 1981, 88). Although the Maasai, as a rule, do not kill wildlife for food (Laigwenan Olkidir Nduyoto, pers. comm.); they have nevertheless, used it as a 'second cattle' to see them through years of terrible disasters such as drought or outbreak of diseases when their herds were depleted. According to Western (1994, 21-22), the reliance on this 'second cattle' helps to explain the traditional Maasai tolerance of wildlife to this day. It is this tolerance for wildlife which was lacking in other cultures which explains the existence of high concentrations of the plains herbivores and their predators in Maasailand and other pastoral lands in East Africa.

4. National Land Policy and Pastoralism

That the pastoral peoples of East Africa have been the most prominent victims of wildlife conservation policies and practices, and of the various developmentalist ideologies is widely acknowledged today. In pre-colonial times, the Maasai and other pastoral Datog groups controlled a vast area stretching from central Kenya to central Tanganyika. Today, they occupy less than two thirds of their former territory and there are indications that this will go on dwindling (Kaare, 1996, Okoth-Ogendo, 1992). Wildlife conservation policies, characterised by the creation of exclusive wildlife protected areas, and state-sponsored agriculture - both large and small scale - and commercial ranching have been responsible for this plight of the pastoral peoples in dryland ecosystems of East Africa (Lane, 1991, 1994, Scoones, 1995, Mustafa, 1997).

The alienation of pastoral lands has generally been a result of the misconceptions about the sadly misunderstood modes of pastoral land and resource use. Pastoral peoples practise a way of life which, in many respects, is 'unconventional' in that their way of life, in particular their mode of land and resource use, differs significantly from the general agricultural land use patterns dominant in many parts of East Africa. Land tenure in pastoral societies of East Africa comprises of two key concepts namely, territory which denotes land as defined by the jurisdiction of state or community, etc.; and domain which refers to the range of customary control or sphere of influence (Kaare, 1996, 5). The pastoralists continually move from their territories to their domains and back in a way which makes the most of the forage and pasture regimes that semi-arid climatic conditions offer (Lane, 1995, Scoones, 1995, Potkanski, 1997). It is this climate-driven mode of land and resource use which has led to their lands being dubbed as uninhabited, barren or under-utilised. As a result, these lands have been confiscated without concern for the pastoralist way of life on the pretext that they were 'no man's lands'.

Economic rationalizations apart, there is also an underlying socio-cultural justification for confiscating pastoral lands which is akin to racism. In a thoughtful article, Kaare (1996, 2) argues that these 'National Cultural Minorities' lead a way of life which is said to be incompatible with the requirements of modern states and economic needs of modern societies. Consequently, they have been a target for change and radical transformation as a way of

disentangling them from their perceived backwardness. And due to what is seen as their failure to participate in their countries' economic processes, the pastoralists have been singled out for the heaviest dose of developmentalist intervention whose *raison d'être* has been to change their way of life to sedentary life and make them embrace agriculture in lieu of pastoralism (Kaare, 1996, Scoones, 1995).

The assault on pastoral land rights has, furthermore, been justified on environmental considerations. The development policy discourse in pastoral systems in Tanzania is still dominated by the scare-mongering emanating from the 'tragedy of the commons' theories of the 1960s and 1970s (Hardin, 1968, 1988). These see pastoral land and resource use as leading to environmental degradation, desertification, drought and disaster. A naturalist has, for instance, written the following in connection with the Maasai pastoralists of the Mkomazi Game Reserve in north-eastern Tanzania:

'The population of both pastoralists and livestock has increased to such an alarming point that unless something is done immediately, there is no hope that this once spectacular game reserve can continue to exist as a wildlife refuge. ... It is disheartening to note that Mkomazi is threatened by continued and relentless encroachment by man and his livestock' (Mduma, in Mustafa, 1997, 11).

This kind of alarmist scare-mongering has, thus, provided a pseudo-scientific justification for an anti-nomadic paradigm in the consideration of the environmental consequences of collective range use and management by pastoralists³; and in development planning with respect to the pastoral sector.

The above issues are best illustrated by the place of pastoralism and pastoralists in the National Land Policy adopted by the Government in 1996 (MLHUD, 1996). The Policy puts pastoral concerns at the periphery of policy-making. It acknowledges, to be sure, the 'growing social conflicts, environmental concerns and land use conflicts due to haphazard alienation of rangelands for large scale agriculture ... (which) frequently disown (sic!) pastoralists of their grazing lands'; and proposes that security of tenure for pastoralists in pastoral land areas will be guaranteed by appropriate measures including gazetting to protect grazing land from encroachment; issuing of certificates of village lands to protect common property regimes; restoration to pastoralists of under-utilised or neglected former pasture land; and reversion to pastoral land uses of rangelands where any other activity therein ceases.

Then on the same breath, the Land Policy turns against the pastoralists, blaming them for encroaching into agricultural lands and causing conflicts with other communities and for land degradation! It states that 'the free movement of pastoralists with their cattle bring about land ownership and land use conflicts with settled communities.' Furthermore, in the manner of the 'old orthodoxy', 'unregulated movement of livestock causes land degradation in areas through which they pass.' The moral is clear: pastoralism and pastoralists are the villains who are degrading the environment. From there on the route to alienating their lands for more 'appropriate' land use is very short (Mustafa, *passim*.) In fact, an earlier version of the Policy had openly stated that '... nomadism will be prohibited'! (MLHUD, 1995, 36).

This, then, becomes some kind of a self-fulfilling prophecy:⁴ A situation where pastoral lands are alienated - often by the state or with its greenlight - to cultivators or for wildlife conservation on the basis of the 'tragedy of the commons' ideologies. This triggers off the migration of the pastoral communities because the interference with their pastoral land use

regimes renders their economies difficult to manage. The ever shrinking areas to which they are forced to move are then unable to sustainably hold their herds, leading to land degradation. And when this happens, they are blamed for it and the state gets further 'tragedy of the commons' justification to interfere with their way of life and economy (Lane, 1994, passim.; Scoones, 1995).

These views have also coloured the NCAA's approach to pastoralists' land rights in the NCA. The original official description of the Serengeti National Park and Ngorongoro Conservation Area stated clearly that Maasai interests were to be excluded from the Park not on the basis of any supposed damage, but because of the political problems envisaged in a multiple land use future, and because of the possible eventual incompatibility of Maasai and conservation interests. However, the subsequent Serengeti Committee of Enquiry (1957) took a different tone. Professor Frank Pearsall together with Pasture Research Officer T. Robson gave subjective evidence to the effect that serious damage to the environment was already being caused by the Maasai through burning, overgrazing, trampling around water points and tree cutting. It was felt that human and stock numbers would inevitably rise, that damage by Maasai would increase and competition for grazing and water would intensify. The original decision to exclude Maasai from the 12,000 square kilometers Serengeti National Park and to place substantial restrictions on their use of NCA was justified on these grounds (Homewood and Rodgers, 1991, 82).

As Homewood and Rodgers have argued in their ground-breaking study of the Maasailand ecology:

'accusations of overgrazing have typically been poorly defined, unsubstantiated, and based on spot judgements which themselves relate to standards of range condition inappropriate to semi-arid rangelands and pastoralist/wildlife land use' (1991, 186).

Taking the example of the 1957 study by Professor Pearsall for the Serengeti Committee of Enquiry, they have further argued that 'comments on range degradation by livestock in NCA have tended to be based on supposition, and not infrequently motivated by ulterior political designs rather than objective ecological criteria' (1991, 188).

Nevertheless, over the years they have lost access to crucial grazing areas in the highland forests, the Oldupai Gorge, Laetoli Site and the Ngorongoro Crater, on the argument that the effect of cattle grazing in these areas endangered their conservation values. As to why this has not been the case in the hundreds of years before the first modern conservationist appeared on the scene is never satisfactorily answered (See, for instance, ole Saibull, 1978). Currently substantial areas of the 8292 km square NCA are banned to livestock – 40 km square around Olduvai Gorge; 250 km square Ngorongoro Crater, with its mineral rich grazing grounds, salt licks and permanent water; 650 km square of forest reserve, the higher portions of which have reserved dry season grazing in forest glades; and the Olmoti and Empakaai Craters (Homewood and Rodgers, 1991, 182).

Perhaps the most important restriction to Maasai livestock, however, is one that is not directly imposed by the NCAA administration but that is most rigorously observed: the short grass plains must be avoided during the rains because of the wildebeest and the MCF they carry. MCF is a viral disease endemic to wildebeest and it is common for newborn wildebeest calves to suffer a mild version for a short time. The disease is highly contagious and fatal to cattle. Cattle coming into contact with calving wildebeest are likely to succumb and the Maasai

believe that it is the wildebeest placentas which harbour and transmit the infection. They therefore keep their stock well away from wildebeest during the calving period until no placentas remain on the pasture. MCF is really transmitted in saliva and mucus from the nasal passages, but the practical outcome of the Maasai theory is that cattle are protected during critical period when transmission is likely. The corollary is that cattle are excluded from the high quality short grass pastures during their period of peak production, with far reaching implications for cattle performance (Homewood and Rodgers, 1991, 183-6).

The ability to move away from wildebeest and MCF is therefore of crucial importance to the NCA Maasai. Their situation is, however, not helped at all by the various restrictions imposed by administrative bans whose dubious rationale continues to be repeated in policy documents and much of the conservationist literature. A Draft Policy for Ngorongoro Conservation Area (NCAA, 1995) repeats the essentially 'tragedy of the commons' orthodoxy in relation to access by Maasai pastoralists to the crucial grazing areas mentioned above. Writing in Tanzania's leading conservation journal, Mr. Victor Runyoro, NCAA's Chief Ecologist, has argued: 'The poor Maasai pastoralists (sic!) in the NCA who unknowingly are misusing their land at risk (sic!), are in danger of impoverishment, face a more difficult and uncertain survival if environmental destruction is not checked in the near future' (1998, 10). Here the limits of absurdity are surpassed. So the 'poor Maasai' have only themselves to blame for their impoverishment, for 'they are unknowingly misusing their land'. And if the environmental destruction caused by these poor fellows is not checked in the near future, probably by withdrawing even more areas in the NCA from their cattle or by 'encouraging' them to settle outside the NCA where there are much bigger lands for their cattle and for cultivation then, indeed, they face 'a more difficult and uncertain survival'! So how did all this come about?

4.1 NCA and Modern Conservationism in Tanzania

The advent of colonialism in Africa during the last quarter of the 19th century brought with it the Western notions of nature and wildlife conservation, whose *modus operandi* was the separation of people from their natural environment and the prohibition of consumptive uses of wildlife (Western, 1994). The most conspicuous feature of this conservation philosophy is, of course, the creation of national parks and game reserves where cultivation, hunting and grazing are either completely proscribed or tightly controlled. A perceptive Kenyan writer has termed this conservation paradigm as 'protection-against-man conservationism' (Lusigi, 1981).

Significantly, this conservation paradigm was in all fours with the fundamental interests of the colonial economic project whose central feature was the 'nationalization' of lands and natural resources and their separation from African communities (Okoth-Ogendo, 1992). No wonder then that the creation of wildlife protected areas during the early years of this century did nothing to curb tourist sport hunting in the East African territories, as a substantial part of whose revenue was dependent on these 'big game massacres' - described in one participant's account as 'one of life's greatest sports' (Reid, 1934, 69).⁵

Given its natural resource riches, the Serengeti-Ngorongoro area (which comprises present-day Serengeti National Park and the NCA) was recognized as a wildlife area as early as the turn of the century. A fragmented legislation to protect its wildlife was drafted by the German colonial administration in 1907 but was never enacted into law (Arhem, 1985) The first fairly

comprehensive conservation legislation - the Game Preservation Ordinance, 1921, which was introduced by the British, declared this area a Game Reserve. In 1928 the Ngorongoro Crater was declared a Closed Reserve and all hunting and cultivation was prohibited by law. The remainder of the Serengeti-Ngorongoro followed suit in 1930. Yet, hunting for sport continued unabated in large parts of the reserve and towards the end of the 1930s it had assumed such proportions that the British administration became concerned about the future of the area as a wildlife reserve (Arhem, 1985)

Consequently, it was declared a National Park under a new Game Ordinance enacted in 1940 'to make better provisions for the protection and preservation of wildlife and in particular to give effect to the provisions of the International Convention signed in London on the eighth day of November, 1933, in so far as those provisions relate to the preservation of fauna in its natural state'. In a path-breaking study of the social origins of natural resource conflicts in Tanzania's protected areas, Roderick Paul Neumann (1992) has argued that the enactment of this Ordinance indicates the power and influence of the international conservationist organizations of the time, particularly Britain's Society for the Preservation of the Fauna of the Empire (SPFE). The London Convention, according to Neumann (1992, 113), 'was almost exclusively the result of the SPFE's efforts.' The Ordinance covered both national parks and game reserves. The boundaries of this new national park were revised under the National Parks Ordinance, 1948, but it was not until 1951 that the new legislation was actively enforced. According to Arhem (1985), the year 1951 thus marks the beginning of effective wildlife protection in the Serengeti-Ngorongoro area.

4.2 Modern Conservationism and Pastoral Rights in NCA: The Beginning

To be sure, the Game Preservation Ordinance, 1921, which preceded the Game Ordinance, 1940, did not substantially affect native rights to residing, grazing and subsistence hunting in the game reserves. Equally, under the latter Ordinance neither the national parks nor the game reserves were conceived as conservation areas exclusive of any human habitation and all consumptive human activities. In fact the pre-existing rights of native residents to use and occupy the land in the Serengeti National Parks were preserved, although regulated to a larger or smaller extent depending on the status of the reserved area. Rights of entry, exit and residence of the residents were saved both in the national parks as well as in game reserves by a prohibition against persons from entering or residing in a national park or game reserve without a permit; except, among others, persons whose place of birth or ordinary residence, or who had any right over immovable property within the park. This clearly covered the then Maasai residents of the whole of Serengeti-Ngorongoro area, being persons born and resident in the park and also with rights over immovable property - land - held under their customary laws (Shivji and Kapinga, 1997).

Rights of tourist hunting were completely proscribed in national parks except with the Governor's permit; while they were regulated in game reserves through licensing system. Significantly, native hunting rights without Governor's permit or licence were, however, saved where the hunting was for the purpose of supplying the native or his dependants with food, or for any other prescribed purpose. The natives were, however, prohibited from hunting by using arms of precision, or animals the hunting of which required a special licence or a major game licence. This clearly referred to big game hunting which was reserved for tourist hunters. The pre-existing rights of grazing and cultivation of the residents presumably continued to subsist, since they were neither prohibited nor explicitly regulated. The

legislative debates on the Ordinance clearly show that grazing rights were considered as rights over immovable property (Shivji and Kapinga, 1997, 7).

That the Maasai of Serengeti-Ngorongoro continued to enjoy their 'deemed rights' to land did not change with the enactment of the National Parks Ordinance, 1948, which repealed and replaced the Game Ordinance, 1940. The provisions of the latter, as discussed above, were re-enacted in identical terms in section 11 of the former. The 1948 Ordinance, however, presaged the separation between the administration of national parks and game reserves while maintaining the principle that local communities could continue to use and occupy their customary lands within national parks. In a speech to the Legislative Assembly on 17th November, 1953, the colonial Governor stated, when referring to the creation of the Serengeti National Park:

'(W)hen this area was declared to be a national park it was recognised that there were people who had traditional grazing and water rights within its boundaries and that it would not be possible to forcibly evict these people' (quoted in Shivji and Kapinga, 1997, 8 fn. 2; original emphasis).

The above position was categorically affirmed by the Government Sessional Paper No.1 of 1956:

'The original creation of the Serengeti National Park under the Game Ordinance and its subsequent reconstitution under the National Parks Ordinance did nothing to affect the existing rights of any person in or over the land included in the Park. On the contrary, not only were these rights expressly preserved but the Maasai already living within the area of the Park were given positive assurances by the Government that their rights would not be disturbed without their agreement' (Tangaanyika, 1956, 1, Shivji and Kapinga, 1997, original emphasis).

These promises were given in the background of growing tension between the Maasai communities on the one hand and the colonial administration on the other over the direction wildlife conservation was taking in relation to native land and resource tenure rights. This is the subject of the next section.

4.3 The Prelude to 1959

The 1948 Ordinance did not, as we have seen, as yet affect the rights of the communities residing in the park. In the course of the decade, however, conservation measures became increasingly strict: subsistence hunting was forbidden, human settlement and movement of domestic stock subjected to multiple restrictions, the use of fire strictly regulated and - in 1954 - all cultivation in the Park was prohibited. Not surprisingly, the local pastoralists and cultivators reacted strongly and mobilised the support of the provincial and district administration for their stand against the park authority (Arhem, 1985, 31, ole Saibull, 1978). According to ole Saibull (1978, 101) although only a small area of the Park was then under cultivation, the few cultivators 'sought and gained solidarity with the pastoralist majority on the argument that a restriction on cultivation was only the beginning, and that the next step would be restrictions on grazing, watering and salt licks for cattle.' In this the inhabitants showed remarkable farsightedness, as their fears have been completely justified and indeed

borne out by the events of the last four decades of conservation in the Ngorongoro-Serengeti area. More of this later.

The resistance against the expulsion of cultivators by pastoralists and cultivators alike followed the 1954 attempts by the Park Trustees to implement their policy (ole Saibull, 1978 101). The pastoralists wanted assurances that they and their cattle would have free access to any part of the Ngorongoro highlands and the Serengeti plains. In addition, they insisted that the cultivators be free to continue their limited cultivation:

‘subject only to control by the pastoralists against excessive ingress on pastures’ (ole Saibull, 1978 original emphasis).

The ‘unexpected’ resistance alarmed the Park Trustees and caused them to take a much harder conservationist line seeing that ‘the continued presence of the Maasai and their stock within a national Park was irreconcilable with the purpose of a Park’ (Fosbrooke, 1962, quoted in Homewood and Rodgers, 1991, 71).

As a result of this conflict and because of the powerful interests involved, debate was initiated in government circles which led to the publication in 1956 of the Government White Paper cited above. The White Paper suggested solution to the conflict by recommending the breaking up of the Park into three smaller parks: the Western Serengeti, consisting of the bush country west of the Serengeti plains; the Ngorongoro Crater and the Northern Highlands Forest Reserve; and the Empakaai Crater. These would be set aside exclusively for wildlife protection while the rest of the original Park would be opened up for cultivation and pastoralism.

This proposal drew international consternation and provoked a storm of protests from conservationists in Europe and North America. These protests resulted in the colonial Government forming a Committee of Inquiry headed by Sir Barclay Nihill, a Judge of the Eastern African Court of Appeal to study the issue and propose a new policy solution to the crisis. During the inquiry that followed, the Park Trustees took a clear position against all human rights within any area designated as a national park. The colonial administration was heavily represented by bureaucrats from various departments and disciplines. Though ostensibly neutral, few of these officials could, according to ole Saibull (1978, 103):

‘ignore the spell of the unique richness of wildlife and nature in the area, so they favoured conservation’, as did conservationists and wildlife managers.

The international conservationist lobby was also heavily involved in the activities of the Nihill Committee. The American Wildlife Management Institute and the American Committee for International Wildlife Protection sent out a team of natural scientists to make submissions on their behalf, while the Fauna Protection Society of London commissioned a Professor W.H.Pearsall to carry out a similar investigation. The latter’s report, issued after a two month’s visit to the area, had a profound influence upon the course of events and came to form the scientific basis for the final recommendations of the Nihill Committee, which were presented in the Government Sessional Paper No.5 of 1958 (Arhem, 1985, 32). The recommendations and their policy and legal import are the subject of the next chapter.

5. The Legal Foundations of Multiple Land Use in the NCA

The Nihill Committee recommended that the original Serengeti National Park be partitioned into two separate units: the western part which would retain the original name of the Park and would be designated as an exclusive wildlife area; and the eastern part, including the eastern fringes of the Serengeti plains, the Kakesio-Endulen area (previously outside the Park) and the whole of Ngorongoro highlands which would form the NCA.

5.1 The Maasai Agreement 1958: Culmination and Rout

As we stated above, the colonial government had given assurances that the Maasai rights over their land would not be encroached without their agreement. With the recommendations of the Nihill Committee, the colonial government now went about obtaining the 'consent' of the Maasai to move from Serengeti to the NCA, their new home. In an agreement between twelve Maasai Laigwanak (traditional leaders), and the Provincial and District Commissioners of the Northern Province and the Maasai District respectively, the Maasai ostensibly agreed to renounce their claim to the Serengeti Plains. The Maasai leaders further stated:

'We understand that as a result of this renunciation, we shall not be entitled henceforth in the years to come to cross ... the boundary of the new Serengeti National Park ... which will be demarcated. We also understand that we shall not be entitled to reside in or use in future the land lying to the west of this line (the boundary), which we have habitually used in the past. We agree to move ourselves, our possessions, our cattle and all our other animals out of this land by the advent of the next short rains, that is, before the 31st December 1958' (quoted in Shivji and Kapinga, 1997, 74, emphasis supplied).

On its part, the colonial government solemnly pledged that the Maasai would be:

'permitted to continue to follow or modify their traditional way of life subject only to close control of hunting' in the NCA⁶.

The Maasai community would also be compensated in the form of provision of water supplies in their new home. At the same time the government rejected the recommendation of the Nihill Committee that the Ngorongoro and Empakaai craters be set aside as nature reserves within the NCA. The language of the Government Sessional Paper No. 5 of 1956 was unambiguous on this subject:

'...(T)he proposals for nature reserves in the two crater floors were not acceptable. They envisage the eventual exclusion of the Maasai from these two areas. It was not thought proper to seek Maasai consent to a relinquishment of their rights in the two craters at the same time as they were giving up established rights within the Park itself; whilst to seek their removal, gradually, as the Report recommended, was contrary to the need to find a clear-cut and final solution now' (quoted in Shivji and Kapinga, 1997, 9).

These pledges were repeated on various occasions by the colonial administration at the highest levels. For instance, in his speech to the Legislative Council on 25th April 1956 the Governor reaffirmed that:

'when the Serengeti National Park was proclaimed in 1940, solemn pledges were given by this Government to the Maasai. This does not, of course, include the whole of Maasai tribe, but those who had legal or customary rights in the area. I'm quite sure that no-one could expect this or any other British Government to break its solemn pledges. It has, therefore, been necessary to get the agreement of the Maasai for the changes that are proposed' (Shivji and Kapinga, 1997, 9-10).

Again in his address when opening the 34th Session of the Legislative Council on 14th October 1958, the Governor said:

'I feel I must take this opportunity of emphasising that on all grounds of equity and good faith no Government could contemplate excluding the Maasai from the whole of the game areas of the Serengeti and the Crater Highlands. Lest some Honourable Members have not followed the enquiries and debates of the last three years, I would remind them that in 1956, the Government chose the Highlands as the focus of the new National Park. It was in response to public reaction, backed by scientific opinion, that the policy was altered to establishing it in the plains to the west, leaving the conservation of the Ngorongoro area to be built around the interests of its inhabitants. These interests include, of course, the preservation of all its amenities' (Shivji and Kapinga, 1997, 10).

The idea that 'the conservation of the Ngorongoro area be built around the interests of its inhabitants' was made even clearer in a speech made by the Governor to the Maasai District Council in August 1959:

'I should like to make it clear to you all that it is the intention of the Government to develop the Crater in the interests of the people who use it. At the same time, the Government intends to protect the game animals in the area, but should there be any conflict between the interests of the game and the human inhabitants, those of the latter must take precedence' (quoted in Homewood and Rodgers, 1991, 72)

It would appear, on its face, that this agreement and the various pledges showed sufficient resolve on the part of the colonial administration that Maasai land rights would be guaranteed. But was this the case? If not, what do we make of the Agreement and these promises in terms of their legality?

5.2 Colonial Treaty-Making and Native Land Rights

In colonial jurisprudence the agreements between colonial administrations and the 'native tribes' were considered as treaties, for these tribes were considered, for the purpose, as sovereign and therefore the agreements were held to be acts of sovereign states and therefore beyond the purview of the courts. Indeed, Shivji and Kapinga (1997) seem to argue, on the basis of a decision in *The Maasai Case*⁷ that the Maasai Agreement of 1958 was one such treaty which intended to secure the land rights of the NCA Maasai. We respectfully differ with this view. First, on the question of the legal basis of these kinds of treaties. Treaties, as understood in international law, are agreements between more than one *sovereign* states; they are sovereign acts. It would be stretching the meaning of the term 'sovereignty' too far to imply that the NCA Maasai were a sovereign state for purposes of treaty-making for, if

anything, they were a conquered and colonised peoples who had no shred of sovereignty to enter into a binding international agreement with their conquerors!

The legal circumstance that these kinds of agreements are of dubious legality notwithstanding, examples of 'treaty-making' between colonial conquerors and the vanquished native tribes are legion. This does not, however, in any way invalidate our point. On the contrary it reveals how colonial powers have cynically used treaties inversely to their meaning in international law and understanding, as a tool of colonial conquests and to alienate native lands. Critical commentators have reached similar conclusions in relation to treaty-making between the US Federal Government and the various Native American peoples (Messerschmidt, 1981); and colonial administration in Kenya in relation to the Maasai peoples (Okoth-Ogendo, 1992).

Our position is further reinforced by the fact that the various pledges 'solemnly' given by the colonial government were, significantly, not directly translated into legislation. The law establishing the NCA imposed a dual mandate upon the NCAA to conserve the natural resources of the area and to develop the pastoral Maasai. Minute and detailed provisions were made on how the NCAA was undertake its first mandate, while only a few general provisions were made on how it was to carry out its second mandate to develop the Maasai residents.

One other important matter related to the Maasai Agreement was the methods the colonial state employed to obtain the consent of the Maasai to vacate from the Serengeti National Park. Arhem (*passim*.) argues that although in the colonial records this solution appears as a compromise approved by the Maasai, the decision in effect compelled all the inhabitants of the Western Serengeti to abandon their homeland, their pastures and their water sources. Under pressure, he says, from international conservation interests and the colonial administration, the Maasai agreed to leave the rich grazing areas of Serengeti and the permanent springs and streams of Sironet and Moru. This was also confirmed by the accounts of several Maasai elders interviewed by the author who talked of violence orchestrated by police and park wardens against the Serengeti Maasai in the run up to their eviction (Laigwanani ole Lerug, *pers. comm.*) One of the signatories to this Agreement informed the author that they were literally faced with a *fait accompli*: to either sign on the dotted line or be forcibly evicted; and that, in fact, the evictions had started even before the Agreement was signed! (ole Sikai Serep, *pers. comm.*). All in all, around 1000 Maasai were expelled, together with nearly 50,000 livestock (Homewood and Rodgers, 1991, 71).

It suffices to say that state coercion and lawlessness have historically been an important weapon in the armoury of colonial treaty-making with the native tribes. Covert war would be waged against the natives. They on their part would fight back in self defence and this would provide the colonial administration with the justification to wage a full scale war. Often badly outgunned and outmanouevred, the natives would be compelled to sue for peace, signing away huge chunks of their lands in the 'peace treaties' which almost invariably followed (Messerschmidt, 1981, Okoth-Ogendo, 1992).

In the next chapter we look at how this compromise was worked out in the legislation which was enacted soon later and its effect on pastoral rights and wildlife conservation in the NCA.

5.3 The Dual Mandate: NCAA, Conservation and NCA Maasai

The terms of the Maasai Agreement had to be enacted into the law, and consequently the Ngorongoro Conservation Area Ordinance, 1959, was promulgated. As we mentioned above, the various pledges given by the colonial administration were, however, not directly translated into legislation. Though, as Shivji and Kapinga (1997) argue, this ambiguity was typical of the colonial state when it came to 'native' land rights, there was nothing in the Ngorongoro Conservation Area Ordinance, even remotely, to indicate that these rights were derogated from. In fact, the typical formula used in the earlier legislation to exempt persons ordinarily resident in the Area from requiring permit to enter or reside in the area was repeated in the Ordinance, albeit with slight modifications.

The provisions of section 6 which empowered the Minister to make rules prohibiting, restricting or controlling entry into and residence within the NCA provided, in sub-section 2, that:

'nothing in the rules made under this section shall operate so as to prohibit, restrict or control the entry into or residence within the Conservation Area of any member of the Maasai tribe'.

Rules could however be made requiring the Maasai residents to apply for certificates of residence, thus imposing further restrictions on the rights of the residents. Nonetheless this power was not used to restrict the entry and residence of the Maasai residents in the Rules enacted in 1964 which imposed the requirement of certificates of residence for some categories of residents. These Rules thus remained within the pledges made by the colonial administration.

Ominously to the Maasai pastoralists, however, the Ordinance gave the Minister and the Authority wide powers to prohibit, restrict, control and generally manage cultivation, grazing, collection of forest produce and generally residence and settlement in any part of the Area. This power did not apply to freehold land, leasehold land, or to land held under the granted right of occupancy, or to a mining lease granted under the mining laws. It, therefore, clearly applied to land held by the Maasai communities under the deemed rights of occupancy. The Ordinance thus marks the beginning of discriminatory laws and practices in terms of the treatment of the Maasai peoples (Shivji and Kapinga, 1997)

The 1959 Ordinance also created an institutional structure - the Ngorongoro Conservation Area Authority (NCAA), with the dual mandate of developing the pastoralist residents and conserving the natural resources of the NCA. Initially the decision-making organ which administered the Area consisted of four expatriate officers working with the natural resources departments of the provincial administration, and four Maasai elders representing the interests of the resident pastoralists, under the chairmanship of the District Officer. There was no legal provision requiring Maasai representation on the Authority, but their substantial representation has been ascribed to the sensitivity to, and 'astute understanding' of, the Maasai community of the then Conservator, Mr. Henry Fosbrooke. This representation was also consistent with the colonial administration's pledge that:

'the conservation of the Ngorongoro area be built round the interests of its inhabitants' (Shivji and Kapinga, 1997).

However, within a year the organizational set-up of the NCAA's administration had run into difficulties and fell into abeyance as the conceptual and practical differences between the government bureaucrats and Maasai representatives could not be bridged. Consequently, the Minister reconstituted the Authority in 1961, with a newly appointed Conservator as Chairman and the regional heads of divisions in place of the Maasai representatives. The reconstituted Authority also included the District Commissioner and retained one Maasai representative. From 1962, however, there was no Maasai representation in successive conservation authorities until 1981, when the Member of Parliament for the Ngorongoro District - who happened to be an NCA Maasai - was included in the NCAA's Board of Directors (Arhem, 1985). The 1975 amendments to the 1959 Ordinance and the various rules made under it have witnessed the dual characteristic of concentration of power and authority in the NCAA and central government bureaucracies and the systematic diminution of the rights of the Maasai pastoralists. The most serious inroad into Maasai rights, as a result of the 1975 amendment, was the complete proscription on cultivation in the NCA. That same year, four Maasai settlements were evicted from the Ngorongoro Crater (Laigwenan Ng'atait ole Lerug, pers. comm.) As a result of these dual tendencies, conflicts have intensified between the NCAA and the Maasai community.

6. NCAA and the Contemporary Reality of NCA Maasai

In this part I will examine the situation obtaining now in respect of the relations between the NCAA and the NCA pastoralists. I first look at how the former has discharged the duty imposed on it by law, i.e. 'safeguarding and promoting the interests of the Maasai citizens ... engaged in cattle ranching and dairy industry within the Conservation Area'. The reference to ranching and dairy industry in this section betrays once again the official policy thinking on pastoralism which sees the latter as an anachronism which has to be eliminated through the rationalization and industrialization of the livestock economy rather the development of the pastoralist communities⁸. There seems to be a unanimity, however, that this provision has been taken to mean a duty on the part of the NCAA to safeguard and promote the interests of the NCA Maasai engaged in pastoralism (See Tanzania, 1990, Rusten-Rugumayo, 1994, NCAA, 1995). I look specifically at issues of the rights to life and residence, access to resources and participation in decision-making organs and in the sharing of the benefits accruing from the natural resources in the NCA.

Secondly, we look at issues arising from the manner in which the NCAA has discharged its legal duty. We look at the impact of NCAA policies and practices on Maasai pastoral economy and livelihood; and also on the conservation of the natural resources of the NCA, which is another mandate imposed on the NCAA by law. We also examine the impact of the tourist industry on Maasai rights and the natural environment of the NCA.

6.1 'We Will Not Go Anywhere Else, NCA Is Our Home'

That the NCA pastoralists feel too many restrictions and rules have been imposed on them by the NCAA has been known for a long time (See Arhem, 1985). Over the years, they have lost crucial dry season pastures in the Oldupai Gorge, Laetoli, Ngorongoro Crater and the Northern Highlands Forest Reserve; there are severe restrictions on grass burning to control ticks and unwanted grass species; and cultivation, though allowed to some extent since 1992, remains uncertain since the amendment to the 1959 Ordinance which prohibits cultivation still remains in force. In fact, a recent General Management Plan prepared by the NCAA has

proposed reimposition of the ban on cultivation. This is in spite of the demands and wishes of NCA pastoralists that cultivation be legally permitted in order to ensure food security for them; and studies showing that limited cultivation in the NCA has not had adverse impacts on the natural environment nor on wildlife (McCabe et al., 1995).

These restrictions are interpreted by the NCA Maasai as attempts to force them out of their home through scorched earth tactics i.e. to make their life so difficult that they have no other choice but to leave the area. This perception was expressed to the author on various occasions in the course of this investigation. Though the official NCAA's position is that Maasai pastoralism will continue to form an important part in the multiple land use concept in the NCA, this position is compromised by the clearly anti-pastoralist biases of the NCAA and the central Government. In fact the Maasai fears of eviction from the NCA are not just founded on past history alone: Similar thoughts, sometimes expressed but often implicit, are held in the high circles of the Government. For instance, in a communication to the then Prime Minister John Malecela, the former ruling party General Secretary, the late Horace Kolimba drew the Premier's attention on the decision reached by the party's Central Committee on land tenure conflicts in the NCA. The letter⁹ stated in part:

'(1) Long term strategies

To encourage the (NCA) pastoralists/cultivators to move from the conservation areaⁱ to larger and fertile areas such as Loliondo where they will cultivate and herd their cattle without adversely affecting the environment or wildlife.

This decision was to be implemented taking into consideration the following:

- (i) That it is not a forced eviction but the pastoralists concerned should be persuaded to move voluntarily of their own accord after raising their awareness about its benefits.
- (ii) Social services and livestock and agricultural extension facilities should be improved in the new area so that the pastoralists are encouraged to move to those areas on their own accord.' (emphasis supplied)'.

The letter further stated that Maasai elders in the conservation area be persuaded and educated on the necessity of this decision and that urgent steps be taken so that areas earmarked for the resettlement of NCA pastoralists are not taken over by other people!

In another letter¹⁰ by the Minister for Tourism, Natural Resources and Environment to the Chief Conservator, NCAA, the Minister directed that 'the pastoralists' communities resident in Ngorongoro Conservation Area be allowed to continue residing and undertaking their pastoral and limited agricultural activities

'until such time as the Government shall have finished preparation of the areas where they will be resettled by providing necessary services such as water supplies, etc.' (Emphasis supplied).

And in an international meeting called in London on 27-29 August, 1997, to discuss 'Multiple Land Use in the Ngorongoro Conservation Area', the Member of Parliament for the Ngorongoro constituency, Hon. Mattei ole Timan, drew attention to four new political developments which exacerbate the insecurity of NCA Maasai:

1. The reimposition of the ban on cultivation being called for in the General Management Plan;
2. The proposed relocation of the NCAA headquarters outside the Ngorongoro District;
3. The move being made by the NCAA to secure title to all land in NCA - the Maasai consider that this would give NCAA the legitimacy for forcing them out of Ngorongoro;
4. The proposed move to split Arusha Region into two regions: Arusha and Rift Valley. The Maasai district of Ngorongoro would become part of the predominantly agriculturist Rift Valley Region and gives rise to a fear of displacement felt by the Maasai' (IIED, 1997, 6 - emphasis supplied).

It is clear, therefore, that the Government and NCAA have never really been fully converted to the idea of sharing the resources of NCA with the pastoral communities resident in the area, which is a defining feature of any multiple land use regime. Obviously, it would be advantageous to NCAA and the Government if the NCA Maasai were somehow to be 'encouraged' to vacate the area and leave it as some sort of a national park. But the declaration of NCA as a national park is not politically expedient. The history of the NCA, its resources and its peoples is too well known for the Government to create a national park which will mean the eviction, forcible if necessary, of its indigenous people.

7. NCAA and Development of Pastoral Production

From the early beginning, the reasons for the creation of the NCA were seen in the light of what is known in today's parlance as 'sustainable development.' The first General Management Plan drawn up in 1960 summed this position up in the following terms:

'As the Ngorongoro conservation area is not only the home of the Maasai resident therein but is also a source of water for neighbouring areas, an asset of national value and an area of international interest, the natural resources... must be conserved and developed in such a way that they may provide a maximum sustained yield of products for the benefit of the humans dependent thereon without causing deterioration in the habitat and so maintaining the area's unique tourist attraction, aesthetic value and scientific interest' (quoted in Homewood and Rodgers, 1991, 72).

The 'natural resources' included, significantly, water, soil, flora, fauna and domestic animals.

That the NCAA has failed to discharge its mandate in relation to Maasai rights is no longer a moot question, even to the NCAA itself (see, for instance, NCAA, 1995). Numerous studies by scholars and Government Commissions appointed to investigate the problems of conservation and human development in the NCA have reached a unanimous conclusion that 'little progress has been made in achieving human development objectives', primarily due to 'lack of commitment and low priority accorded to development activities by the relevant authorities' (Tanzania, 1990, viii). We have seen how the NCA pastoralists have lost critical pastures and water resources, and the Government/NCAA's ambivalent attitude to cultivation,

even though it is universally acknowledged that food security remains a major problem for the NCA Maasai.

A recent study commissioned by DANIDA (1995) found that in the three years leading up to the study, the NCAA had only constructed three grain stores, one cattle dip (in disrepair); built two water systems (one defunct, the other incomplete), a primary school and a dispensary. This is despite an estimated annual income of over US\$ 10 million from gate fees alone! These factors have combined to impoverish the Maasai residents to the point where about 50% of their households has less than 10 livestock units¹¹ per household - which is regarded as below the level of subsistence - with as many as 40% being considered destitute as they have fewer than two livestock units per household (Potkanski, 1997, 70-75).

Livestock population has declined not only in relative terms but also in absolute terms, with the ratio of livestock per capita continuously falling from 14-16 livestock per capita in 1960 to 8 in 1980 and between 3-4 livestock per capita in 1997 (Potkanski, 1997, 70,117). This represents a decline of livestock per capita ratio of between 71 and 75 per cent over a period of more than three decades! This staggering decline did not come about as a result of some sudden natural calamity, rather it is a result of extremely high livestock mortality rates caused by diseases such as East Coast Fever (ECF) and Bovine Cerebral Theileriosis (BCT) which are tick-borne. For instance, in the 1991/92 calf mortality was estimated at between 61 and 66 per cent in certain localities, falling substantially to between 25 and 39 per cent in the 1992/93. The sad irony of this sharp drop in calf mortality is that it was not brought about by any measures to contain the tick-borne diseases, but it was a result of much lower rainfall in 1993 which reduced tick infestation and the incidence of tick-borne diseases! (Potkanski, 1997, 64-65).

By 1993, the generalised economic crisis among the NCA Maasai had reached such alarming proportions as to pose a threat to the physical survival of the pastoralists. In response to appeals for assistance to stem the downward spiral of pastoral destitution, the NCAA, Government of Tanzania, DANIDA and a Danish NGO by the name of Natural Peoples World (NPW) reached an agreement under which a five year Economic Recovery Programme for the NCA Maasai was to be prepared. The Programme, to be funded by DANIDA and supervised by NPW, was aimed at improving the pastoral production base through reducing livestock losses by improving veterinary services; better range utilisation mainly through water development; and to uplift the NCA Maasai's destitute families from the poverty trap through restocking (NCAA, 1994).

A joint Project Preparation Team (PPT) of NCAA and NPW submitted the proposal to DANIDA for funding (DANIDA, 1995) and a number of pilot projects on containment of tick-borne diseases and restocking of the most destitute families were underway with promising results (Potkanski, 1997) By 1996, however, the programme had collapsed due to what can be described as intransigence and obstructionism on the part of the NCAA. Between October, 1994 and October, 1995 NCAA had done its utmost to prevent NPW from working in NCA. It ordered the cancellation of delivery of acaricides for dipping; the withdrawal of entry permits to NPW officials; the cancellation of pilot restocking projects; cancellation of tick-control workshop; cancellation of the construction of veterinary drugs depot; and it finally ordered the expulsion of Mr. Martin Loft, NPW's coordinator in the NCA (CPI, 1995, 12). According to the Danish Committee for Pastoralist Issues (1995), the Programme's undoing was its conceptual basis which saw empowerment of the indigenous resource tenure

system under common property regimes as the best option for the NCA ecosystem and for the pastoral economy.

'However, an empowerment of the indigenous land management system will also render the official institutions partly redundant. For this and other ulterior reasons, the NCAA management and GOT (Government of Tanzania) authorities ... oppose any attempt to recognise the proficiency of the pastoralist resource management system and land rights' (CPI, 1995).

8. NCAA and Constitutional Rights of NCA Maasai

On the general question of Maasai human rights, the situation is not any better, as a number of critical studies have recently shown. In an exhaustive study of the legal rights of the NCA pastoralists, Shivji and Kapinga (1997, 23) have argued that the exercise of governmental and police powers by the NCAA has been:

'in flagrant violation of the rule of law and the human rights of the Maasai in the NCA. Under the guise of law enforcement by the Authority's dreaded ... wardens allegedly to curb illegal cultivation and grazing ... (the MNR wardens) have subjected the local community in the NCA to punitive expeditions ... resulting in loss of human life and property; violation of right to livelihood (through denial of grazing and access to water sources and salt licks for cattle); and liberty (through illegal incarceration and restriction of movement of the pastoralists by agents of the Authority)'.

Other democratic rights such as the right to be consulted, to participate in decision-making and of representation; freedoms of assembly, association and of expression have also been found wanting in the NCA (ibid. Ch.4, 5 & 6. NCAA has also attempted to evict whole communities or individuals from the NCA thus violating their right to reside in this area.

8.1 *The Nainokanoka Confrontation*¹²

Nainokanoka is one of the four wards which form the Ngorongoro Division which is NCAA's administrative area. It is situated to the north of the Ngorongoro Crater and borders the Northern Highlands Forest Reserve to the south. The latter Reserve was created in the 1960s but since then the forest has outgrown the original boundaries to include parts of the Irkeepusi village land. Grazing is forbidden in the Reserve but Nainokanoka villagers usually graze their herds in that part of the forest which is within Irkeepusi village boundary during dry season.

On 18, 20 and 22nd March, 1997 an operation was ordered to apprehend herdsmen who were allegedly grazing their herds of cattle in the Forest Reserve. On 21st, March, an armed squad of NCAA's game wardens raided Nainokanoka herdsmen who were grazing their herds of cattle in that part of the forest which forms Irkeepusi Village. Three herdsmen (Ringoine Sepeu, Parkepu Kasale and Singore Lemailoya) were severely assaulted and beaten with the iron ends of their own spears while their 'sime' (machete) were used to slash their herds of cattle with. Some 15 herds of cattle belonging to nine villagers were either killed, maimed or lost in the ensuing stampede. Maasai warriors mobilised immediately for war against the NCAA game wardens. A potential bloodbath was only averted after the intervention of the

Maasai Laigwanak, the District Commissioner and the Member of Parliament for Ngorongoro District.

In a public meeting at Alailelai Village called on 28th March to discuss the conflict, the Chief Conservator was compelled to apologise for the misconduct committed by his subordinates. Another meeting held at the Ngorongoro Sopa Lodge on 23rd April decided that those whose cattle were killed or lost be compensated for their losses at the rate of TShs. 70,000/per herd, and the victims of the beating were to be compensated in a traditional Maasai way by being given two rams and a bull to be slaughtered and eaten by all the villagers. This settlement was, however, rejected by the villagers as the third meeting held on 26th May revealed that the Maasai felt that the amounts agreed upon were puny compared to the affront caused them by the NCAA wardens. This third meeting demanded that the amount of compensation be raised to between TShs. 200,000 and 300,000. It was later agreed that the amount of the fine should remain the same but those who were beaten up should also be compensated at the rate of TShs. 150,000/- each. In total the NCAA paid some TShs.1,200,000, in compensation plus a pledge that those involved from NCAA would be relieved of their posts in the Authority.

It is most interesting to note the Chief Conservator's explanation for this incident. The Conservator admitted that it was all due to the fact that he did not know the true boundary of the Forest Reserve and asked for time to seek counsel from his experts in order to resolve the issue of the boundary.ⁱⁱ Strangely, however, in a letter to the Minister of Natural Resources and Tourism, the Conservator blamed the pastoralists for the incident, arguing that they had encroached into the Forest Reserve, destroying the forest and water sources and their cattle could have infected the wildlife with anthrax! The Conservator further explained that it was in the process of driving the cattle out of the forest, that the park wardens - instead of handing the herds of cattle over the village laigwanak as is Maasai custom - handed them to women. According to this letter, this is what caused the conflict which necessitated intervention of the District authorities and the Conservator. Furthermore, despite failure by the pastoralists to prove allegations of beatings and loss of 15 herds of cattle, NCAA Board of Directors decided to pay compensation of TShs. 1,200,000, 'in order to restore good relations with the pastoralists'!

This letter is revealing. Apart from peddling outright lies about what truly happened, it shows the low esteem in which the top management of the NCAA holds the Maasai communities in the area. So the three month-long conflict was just because NCAA wardens handed the herds of cattle to some Maasai women, thus presumably hurting the Maasai warriors' ego. And the NCAA paid a large sum of taxpayers money to the Nainokanoka pastoralists even though there was no evidence of assault and loss of cattle. The author, to be sure, was made to understand that NCAA would take disciplinary action against the wardens concerned who were actually served with notices demanding explanation as to why they should not be dismissed from employment for their misconduct. To the author's knowledge, the wardens were included in the list of NCAA employees made redundant in late 1997, and their boss was forced to resign from his post as head of the Department of Management of Natural Resources (MNR). All these people lost their jobs 'in order to restore good relations' with the 'cheating' locals even though there was no shred of evidence of any wrongdoing on their part!

This being the dominant attitude is it difficult to see why the Authority has failed to build any sense of trust with the NCA Maasai communities; and the pervasive sense of impunity exhibited by its servants or agents?

8.2 *The Irmelili Killing*¹³

Irmelili is a small village situated in the Engaruka Ward of Monduli District which borders the NCA to the north-east. Part of its land lies within the Northern Highlands Forest Reserve of the NCA. At the time of the events discussed herein there was some confusion within the ward and district authorities of both Monduli and Ngorongoro districts as to which authority should have jurisdiction over Irmelili village. The NCAA maintained that since part of the village land is within the NHFR then it should be part of the Nainokanoka Ward. The Irmelili villagers had no interest in being part of the NCA as that would mean the various restrictions imposed on the NCA residents would apply to them as well. NCAA's orders to the villagers to desist from encroaching into the Forest Reserve to cultivate were apparently being ignored or resisted by villagers and, in any case, went unheeded.

Then on 8th August, 1993, the Nainokanoka Ward Executive Secretary wrote to the Conservator of Ngorongoro claiming that four Irmelili villagers (Oltukai Maandalo, Ngoilenya Njipaine, Kesembe Maandalo and Ekesengei Maandalo) were allocating and selling land within the NHFR to villagers outside the NCA. It was also alleged that these people were conspiring with poachers to hunt wild game. One of them was alleged to own a gun which was being used for the poaching activities. It was recommended that the persons mentioned should be arrested immediately. This letter was forwarded to the Conservator by the Zonal Coordinator, Northern Zone with the comment that if this was indeed the case then decisive measures should be taken against the alleged conspirators.

On 11th August, 1993, the head of the MNR - the law enforcement arm of the NCAA - ordered a squad of seven game wardens to proceed to Irmelili to investigate the matter and, if possible, arrest the culprits. On reaching the area, they found a number of villagers who had cleared part of the forest to cultivate. On seeing the game wardens these people ran away but one of them was arrested. The game wardens followed those who had run away into the village and there they were informed that one of them (Oltukai Maandalo) was hiding in a nearby hut with his gun. They immediately surrounded the said hut and ordered those inside to come out with their hands raised up. All obeyed the order except one Ekesengei Maandalo who allegedly refused to surrender and started throwing spears at the game wardens surrounding the house. In alleged self-defence and perhaps to force him out, the wardens then allegedly fired into the air, but one bullet presumably ricocheted and somehow hit him on the head, killing him instantly. The game wardens were later arrested and charged with the murder of Ekesengei Maandalo (*Republic vrs Ramadhani Pemba & Others*, Crim. Sess. Cas. No.33 of 1995 (HC) (Arusha))

What is interesting about this incident is the conflicting accounts of what really happened on the fateful night. In their statements to the police after their arrests, the accused maintained that they shot in the air and in self-defence, believing that the deceased had a gun, even though there was no evidence of this as, by their own accounts, he only threw spears at them! Eye witnesses, however, contradicted this version of the events saying that the wardens did not stand outside the hut but went inside and ordered everybody out except the deceased who remained inside the hut with the wardens. Soon after that there was a burst of gunfire from inside the hut. Later the wardens came out and said that the deceased had been accidentally shot and killed.

The nature of the wound itself raises doubt on the accounts of the events given by the accused persons. The post-mortem report signed by Dr. Sanya, the Monduli District Medical Officer

found the cause of the death to be due to brain damage caused by a 'big wound on the scalp destroying the vault and brain matter with haemorrhage'. The medical examination also revealed that the skull and its contents had been 'blown out'. This suggests that the deceased was shot from a very close range.

A letter from the Arusha Regional Criminal Investigation Officer to the Principal State Attorney in the Attorney General's Chambers, Arusha, also raised serious doubts on the version of the events given by the accused persons. Among others, how could a shot fired in the air ricochet and hit a person standing only a few steps from where the accused persons were standing. Furthermore, the accused knew that the deceased was not the person they had been informed had a gun. In fact, they could see that he had remained with a 'sime' after throwing two spears to them. 'This weapon', according to the RCO, 'was too ineffective as compared with the five guns that the accused possessed'. This suggests the accused persons had used more than excessive force against the deceased thus causing his death. Quite inexplicably, however, the RCO recommended that since it was difficult to prove malice aforethought i.e. intention to kill before the shooting, the accused persons should be charged with manslaughter instead of with murder! This recommendation was accepted without further ado by the Attorney General's Chambers.

In the course of this research, the author was informed by, among others, the Conservator of Ngorongoro and Mr. Swedi, who was NCAA's Northern Zone Coordinator at the time the killing took place that the reports of poaching given to the NCAA were in fact not correct and that there seemed to be a vendetta against the deceased and his family. Allegations of poaching were intended to goad the NCAA into action against the deceased and his brothers. The author was also shown a long list of Irmelili villagers - including the deceased's brothers who were alleged to be 'trouble-makers' and it was recommended that they be expelled from Irmelili. When this research was being conducted the accused persons were out on bail, and to the author's knowledge the case is still pending in court.

8.3 Threats of Eviction: The Kimba Story¹⁴

Kimba is a small trading post about five kilometers to the north of the NCAA headquarters and about three kilometers from the western rim of Ngorongoro Crater. About nine families with a total number of about 100 people have lived here since 1971 when they were moved from the area where the Ngorongoro Serena Hotel stands today - right on the rim of the Crater. Some of the families have been in this area since 1947, while others settled here in the 1950s. When these families were moved out of Old Kimba the reason given then was that their settlement was too close to the crater rim and that it was on a wildlife corridor.

On the night of 31st July, 1996, Kimba residents woke up to find their houses engulfed by a huge fire. Everything was razed to the ground. Police officers from the Ngorongoro District headquarters accompanied by the District Commissioner visited the burnt settlement and conducted investigations. Neither the cause of the fire was established nor any suspects ever apprehended. In fact, no report of the police investigations, if any, was ever made public. The matter was just left at that.

Then, about a month later, this matter reappeared but in a different face altogether. On 28th August, 1996, the Conservator of Ngorongoro wrote a letter to the nine family heads

'reminding them of the long term plan by the NCAA to move all settlements and businesses which are too close to the Crater, Kimba being one of them.'

On this basis Kimba trading post was to be vacated from. The Conservator informed those whose houses were razed by fire not to rebuild them but to seek another area near Maghoromba - about ten kilometers away - to build a new settlement! Those whose houses were spared by the fire were given one year notices to vacate Kimba and resettle elsewhere.

Some of the families sought the Conservator's permit to build temporary structures to live in until such time as they will be allocated new areas to rebuild their homes and lives. But in a letter dated 23rd September, 1996, the Conservator maintained his stance that they had to move out of Kimba. He advised them to hasten seeking a new area from the Maghoromba village to build houses there instead of Kimba. He further informed them that it would be too costly for them to build new houses at Kimba and then demolish them after a month. It would also greatly inconvenience the NCAA. He, therefore, told them to comply with his earlier directive that they vacate Kimba.

As stated, Old Kimba used to be in an area where Serena Lodge stands today, right on the rim of the Crater. The Ngorongoro Crater Lodge also stands on the Crater rim, as does Sopa Lodge to the east. In fact, the NCAA headquarters itself stands much nearer the Crater rim than Kimba Village. Apart from Kimba, the rest are huge steel and concrete structures which are potentially more harmful to the Ngorongoro ecosystem than the small mud and corrugated iron sheets shacks belonging to the Kimba residents. In fact all these lodges were ostensibly built against the wishes of the NCAA, no environmental impact assessment was conducted prior to their construction and, already serious environmental problems are emerging in relation to them. Sopa Lodge has, for instance, been accused of diverting for its use the Oljoronyuki Stream which is used by both Maasai pastoralists for their cattle and by wildlife; and also of dumping solid waste from the hotel into the Crater. This Lodge also caught the eye of the Presidential Commission of Inquiry Against Corruption (the Warioba Commission) which observed that the construction site for it was shifted twice due to 'pressure' from the top leadership in the Ministry of Tourism (Tanzania, 1996, Vol. 2:431).

These hotels and lodges were, however, not served with similar notices to vacate the rim of the Crater. It seems to the author that the only sensible explanation for this significant omission is that these lodges are owned by powerful foreign tourist interests with connections in the high circles of power. It is understood that Serena Lodge is owned by H.H. The Aga Khan, while the Ngorongoro Crater Lodge is a subsidiary of the Conservation Corporation (Africa) Ltd. with interests in a number of African countries. Sopa Lodge is also owned by wealthy business interests of Asian origin with foreign connections. These powerful mercantile interests are untouchable for they bring the badly needed dollars to the Government, unlike the Maasai who are seen as a nuisance at best and something less than human beings at worst. This attitude has also been noted by previous researchers. Homewood and Rodgers (1991) have, for instance, reported being 'bluntly' told by 'officials associated with the Tanzanian Government and NCAA that NCA Maasai 'live like beasts and must be civilized ...'! (ibid., 3)

That a convergence of interests between conservation agencies, high state officials and top leaders on the one hand and powerful corporate interests on the other is at the heart of the problem here is no longer secret. The Presidential Commission of Inquiry Against Corruption characterised this phenomenon as 'closeness between leaders and corrupt businessmen' which

has led to political leaders 'interfering in taking executive decisions which were not their responsibility in order to please their business friends.' These decisions do not often consider national interest but are 'for personal interest (of the leaders) and that of the businessmen' (op. cit., Vol. 1:63). The Presidential Commission argued that 'often the investors have been insisting to be permitted to build (hotels) inside protected areas hence endangering the environment. Pressure to facilitate such requests sometimes has been originating from the top leadership in the Department (of Tourism)' (ibid., Vol. 2:431). As evidence, the Commission gave a long list of hotels and lodges which have been built within National Parks and other protected areas as a result of these 'pressures' (See Appendix D, ibid., Vol. 2:439).

9. 'Ill Fares the Land': The NCAA and Wildlife Conservation

If, as we have shown above, the NCAA has not fulfilled its mandate of 'promoting and safeguarding the interests of the Maasai citizens', has it fared any better in its other mandate of conserving the natural resources of the NCA? In much of the literature on wildlife conservation in Tanzania generally, and in the NCA in particular, this question has generally been answered in the positive (See, for instance, Homewood and Rogers, 1991, MTNRE, 1995, Rusten-Rugumayo, 1994, Potkanski, 1997). If, however, this conclusion is put to a much closer scrutiny the picture becomes much less rosy, for there are quite a few ugly truths which are often glossed over in much of this celebratory literature.

In a review of the wildlife sector carried by a Task Force formed by the Ministry of Tourism, Natural Resources and Environment (MTNRE, 1995), the question as to whether protected areas have succeeded in conserving resources within gazzeted areas was answered in the negative. The review shows that data on population trends for key species indicate an almost total loss of the black rhinos, loss of two thirds of the elephants and increasing losses of buffaloes to illegal hunters. In 1970, the number of rhino in the Selous Game Reserve alone was estimated at over 2,000, but this had dropped to less than 150 by 1996. At this rate it is estimated that rhinos will be extinct in this area by the year 2000 (TWPF, 1998, 21). Furthermore, habitats are being encroached in areas which do not allow human settlement and valuable species of timber are being lost from protected areas under the control of both wildlife and forestry sectors. The inevitable conclusion is that:

'This evidence would suggest that PAs have only partially fulfilled their objectives of conserving Tanzania's biological diversity' (MTNRE, 1995, 14-16, emphasis supplied).

The above conclusion fits the NCA as well. We will take the case of the black rhinos to illustrate our point. The Ngorongoro Crater is one of the few areas in Tanzania with a remaining viable black rhino population. The other areas are the Serengeti National Park and the Selous Game Reserve to the south of the country. Five years after the creation of the NCA, a naturalist by the name of John Goddard individually identified 108 rhinos in the Ngorongoro Crater between 1964 and 1966. This was the period when the late Henry Fosbrooke was the Conservator of Ngorongoro and the Maasai participated in NCA management and acted as local anti-poaching units, reducing rhino poaching to the minimum (Potkanski, 1997, 117, fn. 38). But between 1980 and 1988, another conservationist by the name of Humphrey Kiwia individually identified 14 resident and seven transient rhinos in the Crater (TWPF, 1998, 14). Today, there are no more than 12 rhinos in Ngorongoro (TWPF, 1998)

Like in other parts of Africa where rhinos existed, the major reason for their virtual extinction is hunting for their commercially valuable horn. In Ngorongoro Crater, according to TWPF (passim.), poaching of the black rhinos began in the 1970s and was a major source of mortality in the late 1980s. In the course of interviews with various NCAA officials the author was often struck by the consistency with which these officials pointed an accusing finger at the Maasai pastoralists as being responsible for the rhino poaching in the NCA, or for harbouring poachers. At no point, however, was the author ever given a single incident of poaching in which the Maasai residents were involved. On the contrary, the available evidence seems to show that much of the rhino poaching is an insider job by the very people entrusted with their protection!

9.1 Stephen Makacha and Rhino Poaching in NCA¹⁵

Stephen Makacha was one of the longest serving employees of the NCAA. In more than twenty years of service, he rose to become Chief Manager at the department of Management of Natural Resources (MNR). The latter is responsible for, among others, law enforcement in the NCA and, therefore, Makacha was the head of NCAA's game wardens. During his tenure as MNR's Chief Manager, Stephen Makacha gained widespread notoriety and hatred among the NCA Maasai. He led the punitive anti-cultivation campaigns in 1987 in which more than a thousand hectares of food crops belonging to the Maasai pastoralists were destroyed (See Makacha and Sayale, 1987). In this campaign he was denounced by the Maasai residents for extorting money from them to spare their crops. These allegations were later confirmed by an internal inquiry by the NCAA Board, which recommended that Makacha be relieved of his post. This was never done, of course. Makacha's name reappeared in 1993 in connection with the Irmelili killing. The Conservator confirmed to this author that it was Makacha who ordered the game wardens to go to Irmelili to arrest the alleged poachers which resulted in the killing.

There is a Rhino Conservation Project in NCA with a special unit of game wardens who are detailed to guard NCA's few remaining rhinos against poachers. This unit is heavily armed and equipped with advanced detection gear and vehicles, thanks to the assistance from the Frankfurt Zoological Society (FZS); and it is on duty round the clock. This gave rise to a legend that the NCA rhinos were better protected than the President of the United Republic! As the head of NCAA's law enforcement arm, Makacha also headed this unit. Now amid this tight security, a rhino affectionately nicknamed 'Amina' was killed by poachers in early August, 1995. Strangely, this was not discovered until three days later; and it was not the special guard unit but some German tourists who stumbled onto Amina lying dead with her horns gone!

An investigation that followed established that during the week preceding the poaching, some wardens of the special unit had inexplicably been given guard duties outside the Crater. Others were given a temporary three-day leave of absence and were told to go to Mto wa Mbu township, some 50 kilometers away. All the vehicles used in the rhino guard were taken from the guard unit inside the Crater - Makacha personally took one vehicle which overturned on his way from the Crater! All this was done by none other than Makacha himself. He signed the log books for the transfer of the vehicles, and for the guards' leave of absence.

When these facts came to light, Makacha and four other wardens were arrested and charged with economic crimes (poaching of specified animals is an economic crime in Tanzanian law,

and is triable subject to the consent in writing of the Director of Public Prosecutions (DPP) The case was *Republic vrs Stephen Makacha & 4 Others* Econ. Crim. Cas. No.5/1995, DC (Ngorongoro District) and all the accused were released on bail but suspended from their employment pending the outcome of the case facing them.

What happened thereafter is revealing. On 23rd January, 1996, the Regional Crimes Officer (RCO) for Arusha Region sent the Makacha case file to the Director of Criminal Investigations (DCI) in the police headquarters, Dar es Salaam. The DCI must have contacted the DPP for, on 11th March, 1996, the latter wrote to the DCI, stating in part:

'We have been greatly saddened by the killing of Amina the rhino, especially considering the small number of surviving rhinos and the efforts undertaken with donor support to protect them. It has been established in our examination of the facts in the case file that the exact date of the poaching is not known. If the date of the killing is not known it becomes rather difficult to say with certainty that Amina was killed on the day alleged, that is between 8th and 10th August, 1995.

Even if it were clearly established that the killing took place on the day alleged it is still difficult to say with certainty that the game wardens concerned were directly involved. To be sure, there is strong suspicion against them as they were the guards in the area. We think, however, that the circumstances of this case are such that more evidence is needed to establish the negligence of the wardens (there should be direct and concrete evidence linking the suspects with the commission of this offence, otherwise, however strong the suspicion, it cannot be a basis for conviction)'.

The DPP further argued that the available evidence was 'far-fetched' and that it would be difficult to build a case against the accused persons. On the basis of the DPP's position, the DCI sent the case file back to the RCO, Arusha, with instructions that the prosecution enter nolle prosequi and close the police file! There was further correspondence between the RCO, the DPP and the Principal State Attorney, Arusha and then on 24th October, 1996, the DPP sent instructions to the latter vide letter stamped 'SIRI' (secret) directing him to enter nolle prosequi under the Criminal Procedure law in force. This was done on 27th November, 1996, when the Principal State Attorney, Arusha wrote to the District Court of Ngorongoro to notify the court of the decision to withdraw the case against Makacha and his co-accused.

And so ended the case against Stephen Makacha and his four 'Green Guards' even before it went into full trial. Their suspensions were lifted by the NCAA but so embarrassing was the scandal that their boss, Makacha, was demoted to some lowly position in the NCAA. In the author's inquiries it was widely rumoured that so much money had changed hands to make sure the case did not go to full trial. It was also widely rumoured - later confirmed by the Conservator himself - that Makacha had been involved in another illegal game poaching scam some years previously. Poached game meat would be stored in the cold rooms of the NCAA's Rhino Lodge before being transported to Arusha and Musoma towns for sale. When this scandal came to light Makacha was only rebuked by NCAA management and he continued with his work as Chief Manager of MNR. This time around, the management felt that he had only six months before his compulsory retirement and it would be rather cruel to sack him thus losing his retirement benefits! To the author's knowledge, this is what happened to him and his four accomplices whose services were terminated in the redundancy exercise carried out in late 1997.

It is thanks to this kind of rhino 'protection' that Tanzania has become an 'importer' of rhinos from such countries as South Africa and Germany (TWPF, 1998) The latter has not been known to have an indigenous rhino population since the beginnings of time! Unfortunately, those in power do not seem to even realize that rhino poachers seem to have infiltrated their own fifth columnists within the conservation ranks.

Ironically, the NCA is also said to be becoming less and less suitable as a livestock and wildlife habitat, primarily because of the measures originally taken to preserve it. Like national parks, the NCA was founded on the premise that nature would be allowed to take its own course, albeit with minimal human intervention in the form of pastoralism. Like national parks, the NCA was established on derived grasslands, which had been partly maintained as grasslands by use of fire as a range control tool. In the absence of fire, the land is reverting to the woody vegetation, and the grasslands are being overrun by the *Ormokutian* grass (*Eleusine jaegeri*) which are unpalatable and are not eaten by both cattle and wildlife (Potkanski, passim.; pers. comm. with various Maasai elders). In their important study of the Maasailand ecology, Homewood and Rodgers have suggested that:

'the non-burning policy of the last twenty years has led to unpalatable, undergrazed *Eleusine* spreading at the expense of heavily grazed intervening turf species' (1991, 109).

Since controlled hunting is prohibited both in the NCA and Serengeti National Park, there is an explosion of buffalo and wildebeest populations, thus increasing risks of such diseases as Malignant Catarrh Fever (MCF) (*ingatee* in Maasai) which are fatal to cattle. Ticks have also increased, thus considerably limiting the use of highland and forest pastures and posing a big threat to cattle and wildlife (Potkanski, 1997) In the next chapter we argue that the kind of multiple land use policy in place since 1959 needs a fundamental reappraisal in the light of the foregoing analysis.

10. Conclusion : Rethinking Ngorongoro Conservation Area

10.1 What Kind of Multiple Land Use in NCA?

Much of the literature on the NCA has celebrated the multiple land use concept upon which the NCA is supposedly founded. Even in their otherwise critical and thoughtful work, Homewood and Rodgers have, for instance, argued for the retention of the current model, albeit with minor fine-tuning. They argue:

'Traditional conservationists talk of major problems of Ngorongoro Conservation Area. By contrast we see thirty years of relatively successful multipurpose use following on millenia of co-existence in these and surrounding rangelands. We see no reason to expect anything other than further successes. Of course there will be problems ... and the management will need to maintain flexible approaches to problem-solving within a system' (1991, 264).

This view implicitly takes the institutional structures put in place in the NCA to be fundamentally sound, even if they may require adjustments here and there 'to maintain flexibility'.

We find the above view to be too optimistic. Given the long and bitter history of wildlife conservation in relation to the NCA communities; and given the by no means flattering picture of serious malpractices on the part of the NCAA, we find it hard to accept this conclusion. Issues of conservation and land and resource tenure are not just technical issues to be left to conservationists and bureaucrats. They are fundamentally political issues in which access to, and exercise of, state power becomes of critical importance in securing one's own or one's organization's interests. Conservationists are not just philanthropists who have fallen in love with nature and wildlife. They are also bureaucrats and careerists who are interested in furthering the interests of their institutions and their own careers, with all the power, prestige and material benefits that go with it. And as we have seen in the case of the NCAA, they are not at all immune to the temptations of making an extra buck, even if that means going against their professed calling! In this scenario questions such as whose knowledge and whose reality counts become of particular importance.

We have seen that wildlife management policies in this country have emphasised ownership of wildlife resources by the state and its monopoly of wildlife conservation. This has always been premised on the assumption that it is the state and its agencies and scientists trained in the Western scientific methods who know how to conserve 'biodiversity for future generations.' The circumstance that pastoralists have lived with wildlife for ages; the possibility that the existing system of pastoral resource use may be an adaptive and rational system; that the existing social system of the pastoralists may be an organizational asset; and that the indigenous knowledge of the natural environment and its use is most probably an intellectual resource, all count for nothing. They have to be denied, by force if necessary, lest they serve as a model for others. The entire history of the NCA since its creation consists in attempts to deny the very existence of Maasai civilization and its contribution to what is NCA today.

The multiple land use concept as understood and practised by the NCAA is founded upon the denial of native rights to the resources therein, the denial of the time-tested rationality of their land and resource use patterns and the denial of their 'organic' knowledge of the NCA environment and its resources. Rhetoric apart, the NCAA has never been an institution dedicated to, nor equipped - philosophically, organizationally and legally - to manage a multiple land use area. Its ethos, thinking and practices are those of a typical conservationist agency. The law establishing the NCAA, though it did not give the latter title to the land in the NCA in the manner of national parks, nevertheless gave the Authority the power to allocate and control the land and define its uses within the NCA boundaries. These are not mere 'police powers', they are also powers of eminent domain as understood in land law.

Given these weaknesses, it is no wonder that the NCAA has failed to safeguard and promote the Maasai pastoralists' interests in the NCA. It could not be otherwise, given the realities of the power relations created in the area and augmented by coercive force. What is more, it is no wonder that the Authority seems to be little aware that it is largely responsible for the predicament in which the Maasai pastoralists find themselves in and the problems which the pastoralists and the Authority face today. And it is no wonder that the solution to the crisis endorsed by the Authority and the Government - to resettle the NCA pastoralists elsewhere - rejects the very policy of multiple land use which supposedly underlies the NCA.

It is in this context that we seek to explain and understand the failure to safeguard and promote the interests of the Maasai residents of the NCA. It is also in this context that we seek to explain the widespread abuses of their rights and the lawlessness of the NCAA

functionaries in relation to the Maasai pastoralists. These abuses are, in our view, not just the work of a few 'bad apples' in NCAA's midst, as some might argue. Neither can they be dismissed as resulting from irresponsible incompetence, or as a work of a few overzealous wardens, even if regrettable. For one, they have become too common and too frequent. What has, in fact, emerged is a consistent pattern of misconduct against the pastoral communities living in the NCA. This pattern of misconduct and abuses is, in our submission, not related to incompetence (even if there is a lot of it!) or overzealousness of a few officials, but rather to the very policy and organizational goals of the conservation authority itself. That is why they take care of those of their own who err even against the natural resources they are supposed to conserve!

The relationship of conflict and distrust, the semi-permanent stand-off between the NCAA and the resident pastoralists that we have amply documented herein does not, in our submission, reflect an inherent incompatibility between pastoral resource use and the concerns for environmental conservation. Rather, as Arhem (1985, 98) argues, it is a result of historical circumstances and a particular type of conservation policy and philosophy which stresses conservation at the expense of the interests of the local pastoralists. It is a result of a particular conservation worldview which holds that the NCA pastoralists present an imminent threat to the natural environment in the area even though this worldview is not supported by the facts at hand.

10.2 So What are the Options for NCA?

Any discussion about the possible options for building a more balanced relationship between the interests of conservation and those of pastoral communities in the NCA should be guided by an appreciation of the NCA environment and its resources - both natural and social - and also by the recent history of conservation in the area and in the country as a whole. It seems to us that the following premises ought to guide any attempts at solving the conservation - development problematique in the NCA.

One, the environment of the Serengeti-Ngorongoro area is largely man-made: over thousands of years it has been moulded by the interaction between pastoralists, domestic stock and the wildlife. Extensive herding of domestic stock, grass fires and the grazing of wild ungulates have together created the vast grassland regimes which today hold some of the world's greatest concentrations of wildlife. There is, therefore, and as Kiss (1990) says, little in national parks and nature reserves which is 'intact' and 'natural', in the sense of absence of human influences in these areas. There are national parks and nature reserves precisely because a very important component of those ecosystems - the pastoral communities - were forcibly expelled from those areas.

Second, pastoralism and pastoral land and resource use is completely compatible with wildlife conservation both in principle and in practice. It is this compatibility which explains the presence of wildlife in pastoral lands of East Africa. This being the case, it logically follows that there is no scientific basis for continuing to keep pastoral land and resource use out of wildlife protected areas such as national parks and in some parts of the NCA which are crucial to livestock. The argument that Maasai cattle might destroy some of the most important natural resources and historical sites in the NCA is baseless as it is refuted by history itself: They have not destroyed these natural resources and historical sites in the hundreds of years before the first conservationist saw the area and they cannot do so now.

Three, that modern conservationism has not worked for local communities such as the NCA pastoralists. This is acknowledged even by the Government itself: 'Measures instituted to conserve wildlife are not viewed by rural communities as actually to their benefit. Rural people view conservation efforts as being centered upon removing them from large tracts of their former land to establish National Parks and Game Reserves. Resources that local people once utilized and regulated through traditional practices have been removed from their control and, instead, central control has been instituted through enacting of wildlife laws. Thus, activities once carried out traditionally for food and other needs ... are now illegal. Furthermore, rural people have received few tangible benefits from legal form of wildlife utilization' (MTNRE, 1995 14)

Four, modern conservationism does not seem to have worked for wildlife either. Illegal poaching has increased and it is now threatening to wipe out some of the wildlife species. This is in spite of the militarization of wildlife conservation which has become one of the most striking features of the conservation effort. Evidence suggests that much of this poaching is actually conducted from within the protected areas by those entrusted with the conservation effort. That is why it has gone on unnoticed or unpunished even when those involved are caught. In fact even where hunting is carried out legally, widespread abuses with devastating consequences have been reported. The Presidential Commission observed, for instance, that since the Ministry of Natural Resources and Tourism does not have statistics of wildlife populations (resulting from its failure to conduct any animal census), 'the Director (of Wildlife) has been demarcating hunting areas without guidance resulting into hunting exceeding the animals' reproductive capacity' (Vol. 2, op.cit., 406).

The Presidential Commission further noted that there were complaints of malpractices in the granting of hunting concessions and animal quotas:

'If a hunter bribes a Game Officer, he is permitted to hunt more animals than specified on the Permit' (loc. cit.)'.

Sometimes hunting quotas far exceed the number of animals available, while weaknesses in supervising hunting expeditions have resulted in 'hunting companies stealing from the Government'! (op. cit., 407). These abuses have been linked with the top decision-making organs with 'some top government leaders ... involving themselves in the allocation of hunting areas for personal gain ... (by) manipulating people in these areas (with wildlife) into deceptively entering into contracts with hunting companies for the leaders' personal gain' (op. cit., 338, 407, 410, 411). It is clear, therefore, that state centred conservationism has had nothing to do with 'sound' wildlife management or anything like it. On the contrary it has facilitated the growth of networks of patronage, favouritism and, in the words of the Warioba Commission,

'grand corruption involving high level leaders and public servants whose involvement in corruptive practices is a result of excessive greed for wealth accumulation and money' (op. cit., Vol. 1:5)

Five, institutional structures put in place in the NCA have not worked for the resident pastoralists. On the contrary, the NCAA has become increasingly repressive and violently lawless as against the legitimate demands of the NCA pastoralists. An institution which ostensibly manages a multiple land use area but engages in the undeclared policy of 'starving out the residents of the area by deliberate neglect and the imposition of bans on normal and

necessary subsistence practices'; and which has been exposed as an 'implementor of this ethnocide as well as committing plunder of the natural resources in its charge' (CPI, 1995, 26) cannot be expected to solve the problems it has itself created. It is itself part of the problem and any serious solution must start by fundamentally transforming this institution!

On the basis of the foregoing, the following legal and policy issues and options appear to the author as forming the foundation for a new and more equitable multiple land use system in the NCA.

1. There must be a fundamental 'philosophical' shift from the 'protection-against-man' conservationism to a philosophy where man not only co-exists harmoniously with the natural world around him but also makes use of that natural world in a sustainable manner to ensure the survival of both.
2. At the level of policy and legal reform, there must also be a fundamental shift in the balance of power in the relationship between the state and conservation agencies on the one hand and local pastoral communities on the other. This shift should be in favour of decentralization of power away from state domination and along the following lines:
 - (a) Ownership and control of the land and natural resources of the NCA in the direction of co-ownership of these resources between the state and local communities. Continued monopolistic state ownership will not do.
 - (b) Equal participation in all aspects of the management and the sharing of the benefits accruing from the resources of the NCA.
 - (c) Freedom of movement of man and livestock should be restored. Controlled grazing areas should be negotiated with the pastoralists instead of being imposed on them by force of arms.
3. At the level of institutional reform, given the animosity the NCA has created towards the local pastoral communities, given its violent and repressive practices against the pastoral communities and given its failure to stem the tide of poaching in the NCA, there is a need to disband this institution and create another which will have, as a matter of principle and practical common sense, equal representation of the Government and local communities in the area.

These recommendations are by no means easy to undertake. They will be violently resisted by those 'stakeholders' who have a stake in the maintenance of *status quo* and who fear being made redundant should the 'natural conservators' be empowered to manage the resources of the NCA (Chausi, pers. comm.) Arguments of 'conservation (by the state and its agencies) of biodiversity for future generations' will be used to resist these kinds of changes, even if there is evidence - acknowledged by the Government and its conservation agencies - that 'the present state ownership of all wildlife breaks down incentives for proper custodianship by rural communities for wildlife among which they live'! (MTNRE, 1995, 14) But given political will and the readiness to acknowledge that local pastoral communities are capable of doing a much better conservation job, these reforms may be successfully undertaken. After all, as Arhem (1985) concludes:

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'it must be remembered that in the African savanna systems, man has traditionally played a very significant role in maintaining the ecosystem - as a livestock grazer, as a predator, and as a bush regulator by burning and cutting wood for cooking or building. Excluding these elements from the parks introduces disastrous elements into the ecosystem.'

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¹. The author is acutely aware of a very valid criticism of the classic top-down approaches to wildlife management literature in which 'publications almost invariably begin with a description of the physical characteristics and highlight the unique nature of certain wildlife species to be found in their zone of operation. The people who inhabit the zone, their social and economic systems and history - even where projects have a specific aim of improving people's livelihoods - are always mentioned second. The effect of this, even if unintentional, is to convey the impression that local issues and the provision of local livelihoods are less important than ensuring that the wildlife resources are conserved for future generations and for the world as a whole' (IIED, 1994:55).

². Like pastoralists, the hunter-gatherers have also been victims of statist conservation policies and practices which have taken away their livelihoods through hunting prohibitions; as well as being at the receiving end of the developmentalist policies of the 1960s and 1970s which sought to change their ways of life and resource use. See Kaare (1996) for a brilliant analysis of the implications of the National Land Policy on these 'National Cultural Minorities'.

³. The case of the Mkomazi Maasai provides a particularly revealing look on the nature of the Tanzanian state and its attitude towards pastoral land rights. Game reserves, unlike national parks, in Tanzanian wildlife law are 'multiple land use areas' where, among others, pastoralism is or ought to be permitted. By illegally prohibiting consumptive human activities and forcibly evicting the Maasai pastoralists, the Tanzanian state not only betrays its anti-pastoralist tendencies but also its coercive and extra-legal nature (On the latter concept see Shivji, 1990).

⁴. I am indebted to Dr. Mammo Muchie formerly of ACTS for drawing my attention to this pithy observation.

⁵. See also MacKenzie, 1988:152 for a critical examination of the importance of big game hunting to the East African economies of the 1920s and 1930s).

⁶. It is interesting to note the parallels between this Agreement and the Maasai Agreement of 1904 under which the Maasai of Kenya acting through their Laigwenak allegedly agreed of their own free will that it was in their best interests to remove their people,

their flocks and their herds into definite reservations away from any land open for European settlement and to move to Laikipia, which was christened 'southern Reserve'. This Agreement was said to endure 'so long as the Maasai as a race shall exist, and ... Europeans and their settlers shall not be allowed to take land anywhere in the reserved area (Okoth-Ogendo, 1991:30).

⁷. *ole Njogo and Others vrs A.G. of the East African Protectorate (1913) 5 EAPLR 70*

⁸. Ranching, a classic model for 'equilibrium ecosystems' has long dominated both the academic and policy debates that it is only now that its relevance to the semi-arid, 'disequilibrium' African rangelands and ecosystems is being questioned (Scoones et. al., *ibid.*)

⁹. Ref. No. CCM/C/T.10/4/3/VOI. VI/76 dated 19th May, 1992.

Twelve years earlier, NCAA's Board of Directors meeting in Arusha had recommended that in the 'long term, humans (i.e. Maasai) must leave' the NCA! (minutes of the 8th Meeting of NCAA Board of Directors, Arusha, 31st December, 1980).

¹⁰ Ref. No. MTNRE/C/180/3 dated 12th August, 1994.

¹¹. One livestock unit is equal to 1 head of cattle and 7 heads of smallstock (Potkanski, *ibid.*, 71).

¹². Apart from the information obtained in interviews with various players involved in this incident, other sources of information given herein are: Minutes of Meetings held between Maasai Community and NCAA Management dated 23rd April, 1997; 26th May, 1997; Letter Ref. VEO/IR/M/Vo.5/26 from Irkeepusi Village Executive Officer to the District Commissioner, Ngorongoro dated 8th April, 1997; Letter Ref. No. NCU/D/230/VOI. III/187 from the Conservator of Ngorongoro to Hon. Minister of Natural Resources and Tourism dated 21st June, 1997; Letters Refs. NCU/STAFF/C.2/Vol. II/80 to 90 from the Conservator of Ngorongoro to Messrs. Laban Moruo, Charles Gunguli, Mlungwana Mchovu, Mikidadi Msosa, Deogratus Marco, Athuman Mikwanga, Frank Anael, Salum Mayombo, Jackson Olokida and Lohay Boniphace, all dated 20th June, 1997.

ⁱⁱThe Conservator has been in NCA since 1968 and yet he admits to not knowing the boundaries of his area of jurisdiction! (Mr. Emmanuel B. Chausi, pers. comm.)

¹³. This information is derived from extensive correspondence and other documents contained in the case file in the *High Court (Arusha) Criminal Sessions Case No. 33 of 1995 Between Republic vrs. Ramadhani Pemba, Alli Lioka, Loda Ngaitati, Kipara ole Kaika & Sevi Nyamoye.*

¹⁴ Apart from information obtained in interviews with Kimba residents and the Conservator of Ngorongoro, another source for this information is Letters Ref. No. NCU/D/443/188 from the Conservator to Messrs. Arusha Gwandu, Saitoti Masawe Kitoi, Samy Huho, W. Mkony, A. Mrema, Edward Emanuel, Zablon Emanuel, Melita Meleiya and Kalanga Drubila, all dated 28th August, 1996; Letter dated 12th September, 1996, from Kitoi Masawe Saidimu to the Conservator; Letter Ref. NCU/D/250/Vol. II/137 from the Conservator to Mr. Kitoi Masawe Saidimu, dated 23rd September, 1996; Minutes of the Meeting held at the Ngorongoro Sopa Lodge on 4th November, 1995, between the Conservator of Ngorongoro, the Maasai community leadership and the Management of the Ngorongoro Sopa Lodge.

ⁱⁱⁱ⁵. Source: Conservator of Ngorongoro, personal communication; Makacha and ole Sayalel (1987); Fosbrooke (n.d); Case file in Ngorongoro District Court Economic Crimes Case No. 5 of 1995 between *Republic vrs. Stephen Makacha, Arcado Zakaria, Lesalaoni Losikira, Ahmad Mikidadi and Asanteeli Uronu*; vide letter Ref. ARR/CID/SCR/446/95/05 dated 23rd January, 1996; letter Ref. JC/C.180/3/AR/143/5, dated 11th March, 1996; letter

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Ref.CID/HQ/C.5/4/4/ARUSHA/Vol.VI/221 dated 7th May, 1996; letter
Ref.J/SA/C.100/I/210/5.