

POLICY IMPLICATIONS OF COMMON POOL RESOURCE KNOWLEDGE IN INDIA, TANZANIA AND ZIMBABWE

Village governance and common pool resources in Tanzania

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TABLE OF CONTENTS

| | |
|---|-----------|
| ABBREVIATIONS | 4 |
| PREFACE AND ACKNOWLEDGEMENTS..... | 5 |
| EXECUTIVE SUMMARY | 7 |
| 1. INTRODUCTION | 13 |
| 2. THE COUNTRY PROFILE..... | 14 |
| 2.1 The Macro Economy | 14 |
| 2.1.1 The Political Economy | 14 |
| 2.1.2 Some Economic Indicators | 24 |
| 2.2 The Poverty Profile..... | 27 |
| 2.3 Administrative and Governance Structure | 30 |
| 2.4 The Current Context of CPR Policies: The Reform Process | 34 |
| 2.5 Geographical Landscape and Ecological Zones..... | 41 |
| 2.6 Common Pool Resources..... | 43 |
| 2.6.1 Cultivation | 43 |
| 2.6.2 Pastoralism | 44 |
| 2.6.3 Forest resources | 44 |
| 2.6.4 Wildlife resources..... | 45 |
| 2.6.5 Genetic resources..... | 46 |
| 2.6.6 Mineral and marine resources..... | 47 |
| 2.7 Dependence on CPRs | 49 |
| 2.8 Common Pool Resources: Use and Conflict..... | 50 |
| 3. COMMON PROPERTY REGIMES: LAW AND POLICY..... | 58 |
| 3.1 Land Policy and Tenure..... | 58 |
| 3.1.1 Land tenure regime: 1920s to 1990s..... | 58 |
| 3.1.2 Recommendations of the Land Commission | 61 |
| 3.1.3 The National Land Policy and the 1999 Acts | 62 |
| 3.2 Wildlife and Forestry: Tenure and Policy | 66 |
| 3.2.1 Pre-liberalisation Conservation Policies | 66 |
| 3.2.2 Liberalised Conservation | 71 |
| 3.2.3 Conclusions: Community Based Management or Community Ownership and Governance?...76 | |
| 4. POLICY DIALOGUE AND DEVELOPMENT DISCOURSE: A DIALOGUE OF THE DEAF?..... | 78 |
| REFERENCES | 82 |

LIST OF BOXES

| | |
|--|-----------|
| BOX 1: APPROPRIATION OF COMMON POOL RESOURCES: BARABAIG v. THE STATE | 52 |
| BOX 2: LAND ALIENATIONS TO PRIVATE INVESTORS..... | 54 |
| BOX 3: INTER-COMMUNITY CONFLICT OVER COMMON RESOURCES | 55 |
| BOX 4 THE MKOMAZI CASE | 67 |
| BOX 5 NGORONGORO CONSERVATION AREA: CONSERVATION AND DEVELOPMENT OR DEVELOPMENT OF GOVERNANCE | 69 |
| BOX 6 BUFFER ZONES, WILDLIFE CORRIDORS AND WMAS: APPROPRIATION BY OTHER MEANS? | 72 |

ABBREVIATIONS

| | |
|--------|---|
| BIS | Basic Industries Strategy |
| CPR | Common Pool Resources |
| DC | District Commissioner |
| ERB | Economic Research Bureau |
| GCA | Game Controlled Areas |
| GR | Game Reserves |
| HIPC | Highly Indebted and Poor Countries |
| IFIs | International Financial Institutions |
| IMF | International Monetary Fund |
| IPR | Intellectual Property Rights |
| LC | Land Commission (Presidential Commission of Enquiry into Land Matters, 1991-1992) |
| NAFCO | National Agricultural and Food Corporation |
| NARCO | National Ranching Corporation |
| NCA | Ngorongoro Conservation Area |
| NCAA | Ngorongoro Conservation Area Authority |
| NCAO | Ngorongoro Conservation Area Ordinance |
| NLC | National Land Commission (recommended by LC) |
| NLP | National Land Policy, 1995 |
| PSRC | Parastatal Sector Reform Commission |
| RC | Regional Commissioner |
| SUA | Sokoine University of Agriculture, Morogoro |
| T.L.R. | Tanzania Law Reports |
| TANU | Tanganyika African National Union |
| TIC | Tanzania Investment Centre |
| TLR | Tanganyika Law Reports |
| URT | United Republic of Tanzania |
| VA | Village Assembly |
| VC | Village Council |
| VDI | Village Democracy Initiative (A report by the author for UNDP) |
| VEO | Village Executive Officer |
| VNRCs | Village Natural Resources Committees |
| WEO | Ward Executive Officer |
| WMA | Wildlife Management Area |
| WTO | World Trade Organisation |

PREFACE AND ACKNOWLEDGEMENTS

Common pool resources is not a subject which is common in popular consciousness in its academic form. Yet, the use and exploitation of natural resources by peasant and pastoral communities in a collective form is at the centre of the livelihoods of rural folks in many developing countries, particularly in Africa. Fortunately, this study required that we translate the academic understanding of, and policy-making on, common pool resources into the languages and parlance of rural communities. This was done at the Mpwapwa Workshop attended by village leadership from around the semi-arid region of Dodoma.

The conversation, the debate, and the feedback that we received from this workshop unambiguously endorsed two major hypotheses of this study. One, that any study and policy-making on common pool resources has to be centrally related to the structures and processes of governance at the village level. It is in the 10,000+ villages of Tanzania that rural communities live and procure their livelihoods. Two, that within village governance structure, the village assembly, a meeting of all adult villagers, is the most potent and legitimate organ. It is this organ which has the central role to play both in the village level policy-making and participation in the governance of common pool resources. The most important task for the policy-makers and their advisers, therefore, is how to interlink, in a consistent and coherent manner, the ongoing policy-making on natural resources - land, forests, wildlife, minerals, etc. - with the ongoing local government reform programme.

I am grateful to a number of people who assisted me with research and formulation of some ideas in this report. First, I would like to thank sincerely Dr. Dan Brockington who was instrumental in 'recruiting' me to the Cambridge project. He also assisted me in organising the Mpwapwa workshop and in drafting the section on 'dependence on CPR'.

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Finally, Professor Marshall Murphree from Zimbabwe and Professor Kanchan Chopra helped to recreate 'third world' camaraderie, which helped to get through our debates with great understanding and mutual enrichment. The summaries of their studies, which are being disseminated together with this study, provide an excellent contrast to our situation in Tanzania and ought to be looked at closely by our researchers and policy-makers.

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EXECUTIVE SUMMARY

1. Tanzania is a union of two countries. This study deals with common pool resources in semi-arid areas of Mainland Tanzania only. The study is divided into three main sections. Section two covers in broad strokes the historical evolution of the political economy (2.1) and gives a bird's eye-view of some poverty indicators (2.2). Then the section discusses the administrative and governance structures in the country, in particular village governance, since 80 per cent of Tanzania's population lives in over 10,000 villages (section 2.3). Currently, the country is involved in a broad reform process including making of several sectoral and sub-sectoral policies. This is addressed in section 2.4.
2. Policy on the use and development of common pool resources has been and continues to be a very contentious process. Conflict between local communities immediately dependent on common pool resources and the State has been pervasive throughout the post-independence period as the State pursued its avowed development project from 'modernisation' through 'statisation' to current liberalisation of trade and privatisation of state assets. This is discussed in section 2.8.
3. In section 3, the discussion centres on common property regimes, that is to say, the legal regime, which governs the use, control, and disposal of natural resources. At the heart of the common property regime is the land tenure system, whose guiding philosophy and main contours were laid down by the colonial state in its 1923 Land Ordinance. The comprehensive land reform process undertaken by the Tanzanian Government beginning with the appointment of the *Presidential Commission of Inquiry into Land Matters* in 1991 and ending with the passing of two major pieces of land legislation, the Land Act and the Village Land Act in 1999, is also dealt with in this section.
4. The final section questions the relevance, usefulness, and even the rationality of a policy dialogue that is not centrally situated in the broad development vision and project of the society concerned. It interrogates the current wisdom among consultants, so-called development practitioners, donor agencies and state bureaucrats - the erstwhile policy community- of dialoguing policy among "stakeholders" without acknowledging that policy-making is a contentious social and

political process and that there is not necessarily a symmetry of interests and vision between, and among, various stakeholders.

5. Tanzania is one of the ten poorest countries in the world with half of its estimated population of 32 million living below poverty line, spending US\$0.65 per day. Poverty in rural areas is worse than in urban areas. Basic needs poverty in rural areas was estimated at 57 percent in 1991/92 and food poverty incidence at 32 percent. The country ranks 156th in the human development index although during the 70s and 80s, it showed remarkable progress in some social welfare indices such as life expectancy, access to medical care, adult literacy and infant mortality rates. This was largely due to its populist policy of *Ujamaa na Kujitegemea* or socialism and self-reliance. One of the outstanding achievements of that period was to keep the ratio of income inequality fairly low. The neo-liberal structural reforms initiated at the behest of International Financial Institutions (IFIs) in the 80s and enforced through aid and debt conditionalities have begun to erode some social achievements of the *Ujamaa* period. The ratio of the average income of the better-off to the hard-core poor rose by more than 350 percent between 1983 and 1991 (Voipio & Hobnik 1999, 17).
6. Tanzania is predominantly an agricultural economy producing primary commodities for export. Almost half of the GDP is contributed by agriculture while the contribution of the manufacturing sector has declined from around 12 percent in the 70s to the current 8 percent of the GDP. In recent years, the mining and quarrying sector has registered high growth rates, with mining multinationals taking advantage of generous incentives to exploit rich gold mines in the Northwest of the country.
7. A study done in 1997/98 shows that there were 4.4 million small agricultural households translating into some 23 million people or slightly more than 70 percent of the population. The contribution of the large-scale agriculture is rather small although reliable estimates are difficult to come by. Smallholder agriculture is heavily dependent on the hoe as the major implement thus suffering from low productivity.

8. Forest resources are another important common pool resource, which is exploited both for subsistence and the market. The total forest cover is about 33.5 million hectares of which 12.5 million ha. are gazetted as reserves and therefore fall under direct government control. Another 2 million ha. are within the boundaries of national parks which means they are under the jurisdiction of statutory organs charged with the management of national parks.
9. Local communities rely on forests on public and village lands for their building material, herbal medicines, wild fruits, bees products, etc. Most important of all, forest is the main source of bioenergy for rural households, which accounts for 92 percent of the total energy consumption in the country. In semi-arid areas, the average per capita consumption is around 1 cubic metre of solid wood.
10. The grasslands and open woodlands in the Northeast and Northwest of the country provide important habitat for wildlife and here are found some of the world's greatest concentration of large mammals. 28 percent of the total land area of the country or almost 25 million ha. has been set aside as protected areas (PAs) with various levels of restriction on human habitation and use. Almost one-fifth of Tanzania's surface area is devoted to wildlife where no human settlement is allowed.
11. As the PAs take away large amounts of land from pastoral and cultivating communities or restrict their use by local communities, national parks, game and forest reserves etc. have been a significant site of conflict between state organs and local communities. This is particularly true of the appropriation by the state of large tracts of pastoral lands thus, among other things, increasing pressure on limited pastureland and undermining the transhumance system of pastoralists like Maasai in the Northeast of the country.
12. Conservation of wildlife for touristic purposes, among other things, has undergone some policy changes recently. Previously, conservation policies revolved around excluding local communities from these areas and enforcing exclusion by means of penal laws. Over the last decade or so, the international conservation "community" and lobbies shifted towards emphasising community based conservation (CBC) philosophy for various paternalistic ("indigenous-cultures-need-to-be-protected") and pragmatic ("top-down-conservation-has-not-worked")

reasons. The new sectoral policies on Wildlife and Forestry have followed suit and are providing for "community-based management" and participation. Whether these policies truly address the basic questions of ownership, control and governance of natural resources is of course another question. This study argues that they do not address the fundamental question of natural resource tenure and governance.

13. The conceptual framework of natural resource tenure in Tanzania was laid down by the land tenure regime established by the colonial state in 1923. In spite of the recent land tenure reform, the fundamental premises of the colonial system, which endured for some 80 years, have been maintained. These are that (a) all lands are public lands (b) whose ultimate ownership (radical title) is vested in the State and (c) the same are to be controlled and regulated top-down by the state bureaucracy. Immediate occupiers are given time-limited usufruct rights in the form of rights of occupancy. Historically, these came to be called granted rights of occupancy and were given to immigrants while the customary rights of indigenous communities were recognised as deemed rights of occupancy. The latter were considered to be inferior to granted rights and were regulated essentially by administrative policies rather than law. In fact, customary rights were judicially categorised as 'permissive' rights, whose security was at the goodwill of the state, as opposed to contractual rights of the grantees of right of occupancy, whose rights were titled and registered and could be enforced against the state as a matter of law.
14. Both the colonial and the post-independence states used the flexibility allowed them by the land tenure system in respect of customary lands to appropriate customary land, as and when they wanted, depending on the exigencies of contemporary state policies. Customary rights were therefore fragile and insecure.
15. The new land laws passed in 1999 have placed the customary land tenure at par with granted rights but otherwise has done little to redress past injustices and illegitimate appropriation of customary lands by the state and private investors. The philosophy underlying the new acts is to create an enabling environment for market in land on the one hand, and regulate it top-down by a rule-based system of bureaucratic control, on the other. While the law places some restrictions on the expropriation of land by state agencies, and provides for the process of consultation, the ultimate power over, in particular, village land continues to be in

the hands of central state organs. In this regard, the land regime is singularly inconsistent with the local government reform policy, which advocates devolution of power to district and village levels.

16. Following the forced village settlements of rural communities in villages in the early 1970s, two major organs of administration were created at the village level, the village assembly (VA) composed of the entire adult population of the village and the village council (VC), an elected body of up to 25 representatives (2.3). Given the historical political outlook which saw the village as a site of development and, therefore, recipient of top-down orders, the democratic potential of the village assembly as the immediate organ of village governance has not been tapped, much less realised.
17. The Land Commission's central recommendation was precisely to locate the ownership, control and governance of land at the village level and vest it in the VA to be managed by the VC on its behalf (section 3.1). The Government did not quite accept this recommendation but the current local government reform programme has once again brought forth the discussion on the place and role of village governance. In another report done by the author with a colleague, it was recommended that the village should be reconceptualised as the site of governance in which the principle of direct participation through the village assembly should have the place of pride while the relations between different levels of governance should be regulated by the *rule of law* rather than administrative fiat.
18. The present study takes the thinking of devolved governance as its point of departure for the ownership and control of common pool resources and argues that only in that context can village communities, and the poor among them, have the chance of benefiting. This of course does not mean that village communities are homogenous bodies. They are not. There are undoubtedly contentious and differentiated interests within the communities themselves. The position of the study however is that in the case of Tanzania the village has never had the enabling environment to address and resolve these contentions at the village level; rather it has always been that intra-community and inter-community issues within the village have been mediated through an outside agency - the state during the statisation period and now some donor-driven project functionaries. This has meant that the potential for the developments of the internal organic forces for

change (drivers of change) within the village has been suppressed and or distorted thus undermining genuine self-determination of village communities (3.2.3.).

19. The central thesis of this report therefore is that the issue of ownership, control and use of common pool resources on which local village communities heavily depend, has been contentious and that the process of policy-dialogue and policy-making cannot be a politically neutral process. Secondly, the current approach to policy-making which pays lip-service to stakeholder consultation, community participation and poverty alleviation as if these (a) did not relate to relations of power and wealth in society as they have evolved historically and (b) were issues of management, rather than ownership, control and governance is not only misleading and self-defeating but also self-perpetuating.
20. For these reasons, the study places at the centre-stage two fundamental contexts so far as common pool resources are concerned. The first is to link the question of common pool resources with the reform of village governance, and, second, to vest the ultimate ownership and control over common pool resources in the village communities through their village assemblies. This was indeed the outcome of a workshop held with village leadership in Mpwapwa.
21. The study argues that it is counter-productive to attempt to resolve contentions over common pool resources through ad hoc measures such as creating project-led village natural resources committees or "authorised associations" outside the regular organs of village governance. Whatever the short-term successes of such measures, in the long run, they are neither sustainable nor politically viable and much less rooted in the soil of local politics. Thus the success stories of Mgori forest in Singida and MBOMIPA project in Iringa are shown to depend on the goodwill of local bureaucrats, funding by donor agencies and "enthusiasm" of foreign consultants. Astute observers have doubted their sustainability. This report doubts the replicability of such *project-based* successes and questions the validity and wisdom of organising village life and development around donor-driven projects.

1. INTRODUCTION

This study gives a bird's eyeview of the problems of common pool resources and common property regimes governing those resources on Tanzania Mainland. It is contextualised briefly in the political economy and historical evolution of the administrative and governance structures in the country. This is necessary because CPRs, in both their senses, exist in the larger social and economic setting and polity. The approach adopted here enables the author to identify conceptual gaps or problems of conceptualisation in the mainstream literature on CPRs. Some of the issues for conceptual discussion are set out in the conclusion where we highlight the parallel policy dialogues and development and rights discourses.

Section 2 is a country profile in which we give an overview of the political economy and some salient economic indicators. We also touch on some broad indicators of overall poverty. Data on these, and many other parameters, are either totally missing, or are estimates or simply inaccurate and inconsistent. While Tanzania in the 60s and 70s was a subject of a lot of basic research, there was not sufficient nation-wide empirical work to build a baseline database. In the late 80s and 90s, basic research has virtually ceased as researchers have tended to spend much more time and energy on consultancy and policy briefs. Invariably, these are based on rapid research appraisals, which may give the illusion of subject-participation but do not generate reliable data. It has not been possible therefore to make reliable estimates on the quantity of CPRs and the extent of direct dependence of the people on common resources. Nonetheless, we believe this study gives a fairly reliable picture of the state of CPRs. As for the extent of poverty and its relationship with CPRs, it is the author's view that where the country as a whole is so poor, it makes little sense to spend research time on the poorest among the poor.¹ This means that policies and strategies of the so-called poverty alleviation in themselves make little sense outside a broad vision of development. The premise underlying this report is that mainstream literature and policy making on both CPR and poverty is abstracted from a broad discourse on development and, therefore, conceptually poor and practically of limited use. It is this thinking that has influenced the presentation in this report.

¹ Perhaps that time would be more usefully spent on the minuscule rich section of the society and its relationship with the world's rich.

Considerable time has been spent on discussing the evolution of the land tenure regime. Property regimes of common resources can hardly be intelligently understood or discussed outside the land tenure system of the country, as it has evolved historically.

Section 3 discusses the policy and legal framework of CPRs and explores the contentions around the use of CPRs. It includes case studies as well as considerable amount of illustrative material.

We conclude in Section 4 by raising the apparent paradox, the paradox of how policy dialogue and the discourse on development seem to be running parallel. Neither the erstwhile policy consultants nor the decision-makers in the government seem to notice, or if they notice, seem to ignore, the obvious irrationality of de-linking sectoral and sub-sectoral policy-making from the broad vision of development.

2. THE COUNTRY PROFILE

2.1 The Macro Economy

2.1.1 The Political Economy²

Tanzania is a text-book case of what may be described as an extraverted economy, dependent on export of primary agricultural commodities (Amin 1990 *passim*). A large country with a massive petty - largely middle and poor - peasantry, it is firmly integrated in the world commodity market. Export agriculture has been its mainstay, whereas the fate of food production for domestic consumption is inversely related to that of export crop production and directly dependent on the vagaries of weather.

One recent study shows that in 1993/94, there were 3.7 million agricultural households on mainland Tanzania, amounting to a population of 20 million. The number of agricultural households had increased to 4.4 million in 1997/98, with a population of 23 million, an increase of 19 per cent in households and almost 16 per cent in population. The proportion of female-headed household is almost one-fifth. 90 per cent of farmers cultivated less than 2.0 hectares while large scale farmers cultivated only 14 per cent of arable land (Itika 2002, 4). Tanzania is thus a country of smallholders *par excellence*, the population directly dependent on smallholder agriculture being over 75 per cent.

² This section is based on the author's previous article, Shivji 1994.

The peasantry has continued to provide the economic surplus which has been pumped out of agriculture to sustain different forms of capital, the latter being essentially some combination of merchant and monopoly capital. Merchant-monopoly has manifested itself in different legal forms of ownership such as private (both individual and corporate), co-operative, state, etc. Perhaps the most intriguing aspect of the Tanzanian formation has been the system of land tenure, particularly in the case of peasant production (for overviews on land tenure see James 1971, Lyall 1973, Fimbo 1974, Tenga 1987).

The ownership relation of the peasant to his/her land has been deliberately ambiguous since the colonial times. Having declared all land 'public land' vested in the Governor, the colonial state became the super landlord. This conveniently (a) allowed the state to alienate land to settlers and plantations governed by the statutory and common law land tenure system and (b) rendered the rights of the peasant under customary land tenure both ambiguous and tenuous (see, for instance, *Mtoro bin Mwamba v. A.G.* 1953 (2) TLR 327). So long as the peasant produced crops as the state dictated, he/she held a 'deemed' right of occupancy, as the customary tenure is christened in legal literature. When the state wanted to alienate land, or move the peasant around, his/her right offered no more security than that of a tenant-at-will at best, or a squatter at worst³ (see the Meru land case in Kirilo & Seaton 1967).

To be sure, the state, as a landlord, formally charged only nominal land rent. But it was the monopoly of land ownership, coupled with the control and monopoly of purchase of peasant products, that allowed the state to incorporate a substantial element of 'ground rent' in the price differential - that is the difference in the price obtained on the world market and that paid to the peasant. After independence, with the elimination of the private merchant from the market, this differential became the main mechanism for the state to appropriate surplus from the peasantry (Ellis 1983). In this regard, the state betrays a profoundly 'feudal' characteristic⁴. Lacking the traditional/religious legitimacy of the feudal lord on the one hand, and the managerial control of the labour process of a typical capitalist enterprise, on the other, the reproduction of this system of agrarian production and appropriation relied heavily on

³ This ambiguity, which allowed the colonial state to have the best of both worlds, comes out quite clearly in Government Circular No.4 of 1953.

⁴ I describe this as 'feudal' as opposed to capitalist because the process of peasant production - labour process - is not capitalist.

the use of extra-economic coercion. State coercion is therefore integral to the process of peasant production (Mamdani 1987 *passim*). State-peasant relations in Tanzania have been typically characterised by the use of overt and covert state coercion throughout the colonial and post-colonial periods of its history (Williams 1982).

To round up the picture, one must mention the extremely low level of productive forces in the agriculture sector in Tanzania, as manifested in the hoe-economy. Mechanisation, chemicalisation and irrigation are all at a very low level resulting in low agricultural productivity. Adverse terms of trade - both on international commodity markets and national, between rural and urban areas - leave the peasantry with little surplus for investment and development. Extensive agriculture - both increase in labour input (family, child labour) as well as increase in acreage - and cutting into the necessary consumption of the producer - result in the destruction of material (soil, ecology) and social (crippling of labour power, starvation of the peasant) conditions of production (Shivji 1987, cf. Bernstein 1979, Williams 1983:458-502). Village lives and livelihoods are thus marked by extreme forms of material and social poverty (see below). The rural poor rely heavily on social safety nets, including networks of social capital, to survive (SUA/NRI n.d.:*passim*).

The features sketched above broadly sum up the main character of the Tanzanian agrarian structure through the colonial and post-colonial periods. Various economic policies have not frontally, or even peripherally, addressed these fundamental features, because the necessary social and political conditions have been lacking. Vested interests of the national elites and international forces have mutually reinforced the existing economic structures, as a quick overview of the major policies shows.

Three sets of policy, which have been followed in Tanzania at one time or another, may be identified. These are: modernisation, statisation and liberalisation. A broad periodisation of these policies would be some thing like this: modernisation - late 50s to 60s; statisation - 70s to early 80s and liberalisation - mid-80s to the present. Although each shift in policy has been marked by dramatic turning points such as the village settlement schemes of the early 60s, the Arusha Declaration of 1967 and the IMF budget of 1986, this is a broad periodisation in the sense that elements of different policies have overlapped as well as extended into different periods.

Modernisation implied an agrarian structure based on capitalist farmers firmly integrated in the world market, whose linchpin would be the exploitation of the labour of the landless and poor peasantry. Underlying this option was a political consideration of which the colonial state was acutely aware. In Kenya the colonial state successfully saw the consolidation of a yeoman farmer through its land individualisation and registration policy. The yeoman farmer was seen as a bulwark against the Mau Mau rebellion, which threatened a radical land reform in the form of outright appropriation (Sorrenson 1967). In the late fifties the colonial state suggested a similar programme for Tanganyika but Nyerere, as the President of the independence movement Tanganyika African National Union (TANU), firmly opposed it (Tanganyika Territory 1958, Nyerere 1967:55).

The rich peasant has never been a part of the political bloc in Tanganyika. TANU was firmly based on the alliance of the urban middle class (clerk, trader etc.) with the petty peasantry. The colonial programme of modernisation based on the so-called 'progressive farmer' hinged on a kind of land reform from the top by the state, which essentially meant security of tenure for the rich, commercial farmer and landlessness for the poor peasantry. It involved individualisation and titling of land ownership to facilitate negotiability and transfer of land; in effect introducing a commodity market in rural lands. While this form of 'land reform' was opposed by Nyerere, the underlying thesis of the 'progressive farmer' was in fact adopted, as prescribed by the World Bank report of 1961 (IBRD 1961).

The villagisation scheme, which involved settling model farmers in model villages, was experimented with in the early sixties. This was not based on any land reform as such. Given the precarious nature of customary land tenure mentioned earlier, the state could shift around the peasantry as expediency demanded without having to take into account the system of land tenure. The whole scheme was predicated on the state supplying necessary capital and managerial input. The scheme proved a disaster as indeed could have been predicted (Cliffe & Cunningham 1968). In the absence of a concomitant industrialisation policy, linked to agriculture, any agrarian development based on intensification of agriculture - mechanisation, chemicalisation etc. - within an extraverted economy was bound to fail.

The failure of the village schemes of the 60s did not have as catastrophic an impact as the villagisation of ten years later (1974-76). This was because the scheme was on a

small scale. The large mass of the peasantry continued, as before, being cajoled into producing more. And it did produce more based on the extensive methods that it was used to. The production of many export crops, particularly cotton, increased in volume during the 60s. The extensive method of course took its toll in terms of soil exhaustion, neglect of food crops and general adverse impact on ecology (for example, deforestation in tobacco-growing areas).

Meanwhile the post-independence state moved rapidly to eliminate the private merchant from the commodity market. Initially the co-operatives, and eventually the state itself, took on the role of the merchant in the form of crop authorities. As the state monopoly tightened over the peasant and the inefficiency and corruption of the state bureaucrat began to have effects, the surplus appropriated from the peasant became even larger. It is this trend which characterised the subsequent period of statisation.

As for industrialisation, the immediate post-independence policy continued the trend begun after the Second World War. This was largely import-substitution industries, relying heavily on imported capital-intensive technology and supplying the narrow domestic market. The inappropriate nature of this form of industrialisation was pointed out in the University debates of the late sixties (Rweyemamu 1973, Shivji (ed). 1973). But University debates had little impact on policy-makers for their ears were tuned to hear foreign expert advice. Belatedly, Nyerere admitted that import-substitution industrialisation was a failure (Nyerere 1977). As always, though, the realisation came too late in the day. And as always, the solution was seen in another inappropriate strategy - export-industries - to be discussed below.

Statisation is often linked to the Arusha Declaration nationalisation. However, as we have seen, the crucial element in statisation - the state monopoly of the purchase of peasant produce - had already been established before Arusha. What Arusha did was to consolidate this monopoly by nationalising banks and finance houses; taking over major processing and other industries and, most significantly, assigning a hegemonic role to the populist ideology of *Ujamaa* or socialism and self-reliance.

Three important achievements of *Ujamaa* all lay in the social, rather than in the economic, sphere. *Ujamaa* had a strong element of welfarism, which no doubt was instrumental in improving social indicators - health, education, water, etc., - of the

large majority of the people. Secondly, the policy took deliberate steps to restrain widening of income inequality and, thirdly, *Ujamaa* helped in providing a shared vision, thus cementing social solidarity across religious and ethnic divide. All these were quickly eroded when *Ujamaa* was abandoned during the liberalisation era, thanks to the neo-liberal policy prescriptions of the IFIs and the erstwhile donor community.

At first sight, a two-fold approach seems to characterise the agriculture sector during the period of statisation - state farms and villagisation. State farms were more or less an extension of the crop purchasing and marketing parastatals into agricultural production (NAFCO-type) or specific projects with aid from socialist countries (Mbarali, Dakawa) as a fall-out from socialist rhetoric, just as the Friendship Textile Mill was one of the few such fall-outs in the industrial sector. But state farms remained largely peripheral in so far as peasant production was concerned. The hub of the agrarian structure continued to be the peasant. And it is the relation of the state to the peasant that really gives us the defining characteristic of the period.

Ujamaa made its debut on a peasant-populist platform. Instead of 'incubating' progressive farmers producing for export in settlement schemes, which was the underlying motif of the village settlement schemes of the sixties, the mass of the petty peasantry would now be persuaded and cajoled into producing for export in their *Ujamaa* villages. Centralisation of production - collective or otherwise - at the village level, which could be controlled by the state, was still of course the leit-motif. Both persuasion and communalism, the populist elements of the ideology of *Ujamaa*, were soon abandoned in practice as *Ujamaa* villages per se became a distant goal. The immediate goal was development villages. Peasants shall live in villages, they had no option. And they shall live in villages marked out by state bureaucrats, they had no say in it (Coulson 1982:ch.22).

Thus ensued the forced villagisation of 1974-76 under which a massive movement of peasants into 8000-plus villages was carried out with disastrous effects on production and ecology as well as on the social fabric of existing communities.

Three salient features of the process of villagisation, which have had far-reaching effects on the peasant-pastoral communities, may be quickly re-capitulated.

Firstly, as we have seen, the process of villagisation was carried out from the top, using coercion and without the serious participation of the people concerned. The result was that enormous powers, without much check or balance from below, were exercised by state functionaries leading to grievous abuses, maladministration and simply wrong and irrational technical decisions. Village governments, which were set up subsequently, replicated the authoritarian structures and practices of the state and the ruling party. This paved the way in many villages for the rise of petty tyrants in connivance with district bosses to the detriment of the mass of villagers.

Secondly, villagisation was carried out without taking account of the existing land tenure system and without much thought having been given to the new tenure system in the so-called development villages. Existing collective and individual land rights - particularly community rights based on custom and tradition - were almost totally ignored resulting in injustices and abuses (including digging of ancestral graves, enclosure of water-points etc.) which left a volcano of grievances resulting in numerous land disputes. Indeed, the resultant confusion was taken advantage of by cleverer 'outsiders' - bureaucrats, merchants, investors of dubious credentials, parastatal heads, etc. - to grab peasant and pastoral lands for their own benefit.

To be sure, the rhetoric of Ujamaa and the traditional hostility towards rich peasants, resulted in some cases in the expropriation of the lands of the rich peasantry - such as Ismani maize growers of Iringa (Awiti 1972a, b) and wheat farmers of Mbulu etc. (Coulson op.cit. 58; see *National Agriculture Food Corporation v. Mulbadaw Village Council*, Court of Appeal, Civil Appeal No.3 of 1985, unreported and Shivji & Tenga 1985 for a comment thereon). But villagisation was not a radical land reform in the interest of the petty peasantry either, in conception or in its implementation. For such lands in many cases ended up being literally squandered by, even less efficient but more voracious, parastatals, state bureaucrats, businessmen and private companies from outside the village communities.

Thirdly, it must be emphasised that, notwithstanding the populist rhetoric, villagisation was not conceived in the context of a global transformation of an extraverted, dependent political economy into an auto-centric nationally integrated one. The peasantry therefore continued to be the main producer of surplus siphoned off to sustain the state bureaucracy and its grandiose projects (capital transfer, army adventures in Seychelles, Comoros, etc.), intense embezzlement, conspicuous

consumption and surreptitious private accumulation (foreign accounts, real estate, transport, construction, later consultancies and commission agencies of the liberalisation era). There was no link between the industrialisation strategy of the period and agriculture to create a basis for national integration.

We now briefly look at industrialisation of the statisation period.

The late Rweyemamu characterised import-substitution industrialisation as 'perverse' (Rweyemamu 1973 op.cit.). He suggested a basic industries strategy (BIS) as an alternative. Eventually, the state co-opted Rweyemamu as a presidential economic adviser and expropriated the label 'basic industries strategy' for its next statist project.

The basic industries strategy had two components to it. One was the emphasis on export-oriented industries to earn foreign exchange and, two, the installation of some industries to cater for the domestic producer goods market (Havnevik et.al. 1988:79 et.seq.). Export-industries not only included processing of some local products specifically for export (cashew nuts, for example) but even re-orientation of existing mass-goods industries to export (textile and sugar, for example).

It is now clear that the basic industries strategy did not operate as a *national* strategy of industrialisation. Under the influence of aggressive transnational salesmen, foreign 'aid' and experts, it turned out to be a list of unrelated ad hoc projects whose character was determined by influences other than national interest. The major consideration, which went into the setting up of such projects, was that the foreign exchange component (including technical advice) was available from a foreign source. Much of the investment that went into large industrial projects during the late seventies and early eighties came from foreign sources. As one donor source puts it:

[T]he foreign aid doubtless influenced the pattern and character of industrial investment. On the Tanzanian side, there was in many instances a preference for large-scale, capital- and import- intensive projects in order to reach planning and disbursement targets, and because large, capital-intensive projects would ensure deliveries from the donor country. ... This tendency was reinforced by the economic recession in the industrial countries. Quite often it could also be difficult for aid agencies to find consultants with knowledge of other technologies, or suppliers of alternative technologies [Havnevik et al 1988:80].

In simple language, what this quote tells us is that the character of industrial investment was decisively influenced by foreign interests who had little or nothing to do with Tanzanian national needs and requirements. This influence operated at several levels:

(1) Foreign financiers preferred technology choices that they knew and that their consultants could handle. This meant large-scale, capital-intensive projects thus providing markets for their technical know-how, machinery, spare parts, primary and intermediate inputs. That is the meaning of import-intensive industries. In 1984 alone, the foreign exchange consumption of the manufacturing sector was estimated at US\$ 365m. (ibid.:83) This was almost twice the average annual foreign aid received by industry during 1977-80 (ibid.:129). Can there be any doubt that the BIS simply opened up a veritable market for western capital goods? (ibid.:133)

(2) Many projects actually originated with foreign consultants or salesmen offering turnkey projects.

(3) Offers of loans and other assistance, whether bilateral or multilateral, were often tied to particular sources of supply of machinery, expertise etc.

(4) And finally offers of kickbacks to key Tanzanian decision-makers cannot be ignored either.

The over-all result of the BIS was to tie a necklace of foreign debt around the Tanzanian economy. The industries so established did not break the dependency stranglehold nor did they cater for the local market (Crouch 1987 *passim*). As a matter of fact, one of the severe manifestations of the foreign exchange crisis of the 80s was underutilisation of industrial capacity; shortage of basic consumer goods; declaration of redundancies, etc. The high point of this crisis was the early eighties, which provided an opening to neo-liberal pundits to force through their policies.

Liberalisation: The first half of eighties found Tanzanians smarting under the worst economic crisis since independence. This was also the period when the state had lost even a semblance of control over the parallel market operators. Political legitimacy itself was at stake.

The Tanzanian state had lost whatever initiative it had vis-à-vis its foreign backers and creditors. After a long wrangling debate between Nyerere and the IMF⁵, by 1984 Tanzania had begun to give in. In 1986 it unveiled the IMF budget including the traditional IMF package of structural adjustment (for a comment see Campbell 1986; and see generally Campbell & Stein, eds., 1991).

Curtailing of social services and removal of subsidies began to undermine one of the two major pillars - welfarism - of the Ujamaa ideology. The other pillar - equality, which in practice meant narrowing of income differentials - also came under severe strain as public officials and 'saboteurs turned entrepreneurs' could now flaunt their ill-gotten wealth in public (Shivji 1990). According to a World Bank study (1996), the richest quintile of Tanzanians controlled about 45 per cent of total income in 1993 while the average ratio of the better-off to the poor rose between 1983 and 1991 from 8.1:1 to 29.6:1, that is more than three times (quoted in Voipio & Hoebink 1999: 17).

Liberalisation, privatisation of parastatals, removal of subsidies and foreign exchange controls have all picked up rapidly in the last ten years. While some macro economic indicators, such as inflation and GDP growth rates, have shown some improvement, researchers agree that these have not been translated into the improvement of the standards of living of the large majority, nor does the economy show any sign of sustained development. We quickly examine some economic indicators in the next section.

⁵ The debate was indeed between Nyerere and the IMF for in spite of his condemnation of IMF policies - which no doubt was very powerful - Nyerere, the President, never permitted public protest against the IMF by his people. It is reported that he even stopped a serious debate on the issue in the National Executive Committee of the ruling Party.

2.1.2 Some Economic Indicators

The fundamental structure of the economy has not radically changed in the post-independence period as is shown by the distribution of the GDP (see Table 1).

**TABLE 1: SECTORAL CONTRIBUTION TO OVERALL GDP
(in percentages; at constant 1992 prices except 1976 at 1976 prices)**

| | 1976 | 1987 | 1989 | 1992 | 1995 | 1998 | 1999 | 2000 |
|--|-------|-------|-------|------|------|------|------|------|
| Agriculture | 41.78 | 48.70 | 48.30 | 48.0 | 50.7 | 49.1 | 48.9 | 48.2 |
| Mining and quarrying | 0.99 | 0.8 | 0.8 | 1.1 | 1.4 | 2.0 | 2.1 | 2.3 |
| Manufacturing | 12.98 | 8.8 | 9.0 | 8.2 | 7.9 | 8.4 | 8.3 | 8.3 |
| Electricity and water supply | 1.01 | 1.3 | 1.5 | 1.5 | 1.6 | 1.7 | 1.7 | 1.7 |
| Construction | 4.08 | 4.7 | 4.7 | 5.4 | 3.8 | 4.3 | 4.5 | 4.6 |
| Trade, restaurants and hotels | 13.11 | 16.4 | 16.1 | 15.8 | 15.7 | 15.9 | 16.1 | 16.4 |
| Transport, and communication | 7.78 | 5.0 | 4.9 | 5.2 | 5.3 | 5.3 | 5.4 | 5.4 |
| Financial and business services | 9.40 | 9.6 | 10.4 | 10.0 | 10.3 | 10.5 | 10.4 | 10.4 |
| Public administration and other services | 10.82 | 8.4 | 9.0 | 9.2 | 8.2 | 7.8 | 7.7 | 7.7 |
| Less: Financial services indirectly measured | 1.96 | -3.9 | -4.6 | -4.5 | -4.8 | -5.2 | -5.1 | -5.0 |
| Total | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

Source: Figures for 1976 to 1989 are taken from URT, *Hali ya Uchumi wa taifa Katika Mwaka 1989* (Economic Survey, 1989), table 4, p.36 and those for 1992 to 2000 are URT, *The Economic Survey 2000*, table 4B, p.16. (See also ERB, *Tanzania Economic Trends*, Vol.12, Nos. 1 & 2, (1999) table 4, p. 54, where the percentages for construction and financial and business services are significantly different).

Agriculture contributes some 50 per cent of the GDP while manufacture is around 8 per cent. The latter has fallen from the 1970s. The growth rate in the manufacturing sector between 1965 to 1974 was 7.5 per cent annually and the share of manufacturing in the GDP rose from 4 percent to 11 per cent between 1961 and 1975 (Chachage 2000: 115). In the 1990s, the manufacturing sector, except beer, cigarettes and cement, has virtually collapsed (ERB 1999, tables 8 and 9: 38-9). The most affected have been the mass goods industries like leather, textiles, cooking oil, etc., producing for the domestic market. Taking 1985 as the base year, the indices for the industrial production of textiles fell to 78, for sisal ropes to 30, for fishnets and products to 37 and for iron sheets to 67 in 1998 while fertiliser production has stopped altogether (ibid., table 9). One of the fastest growing sectors in the 1990s has been the mining sector, although its contribution to GDP remains only around 2 per cent.

Between 1964 and 1970, the GDP grew at 5.3 per cent, falling to 3.5 per cent between 1970 and 1978 picking up again slightly between 1985 and 1989 (3.8 per cent) (Strom et. al. table 2.1.5, p.101). In the 1990s, the growth rate has slightly picked up being 1.8 per cent in 1992, 3.6 per cent in 1996 and 4.0 per cent in 1998 (ERB 1999, table 5: 35). Throughout the pre-liberalisation period, percentage share of investment in GDP remained high above 20 per cent (Strom 101).

Meanwhile, cash crop production of coffee, cotton and sisal have all fallen since 1989. Production of food crops has not registered any big gains during the 1990s. Maize has had chequered history while the production of paddy has fallen. Given the population growth rates hovering around 3 per cent, per capita production of food crops shows a downward trend (ERB 1999, table 6).

The inflation rate has definitely been brought down to one digit figure as the Government has been forced to reduce its budget deficits under the supervision of the IMF. Whether this has translated into better standards of living for the poor is doubtful. Taking 1994 as 100, the index of retail consumer goods consumed by minimum wage earners in Dar es Salaam was 151 in 2000 while that for middle level wage earners was 153 (URT 2000, table 8, p.;27 and table 10, p. 29).

Tanzania is still very much an aid-dependent and debt-ridden country. Since the 1970s, the country's external indebtedness has been increasing and stood at US\$7.6 billion in 2000, or, almost 29 times what it was in 1970 (ERB 1999:30 and URT

2000:67). 'The proportion of debt service to recurrent expenditure exceeds the proportion of health and education added together.' (ERB 1999:34).

Reliable figures are difficult to come by but the trends of post-liberalisation economy seem to be fairly clear. Agriculture will continue to be the largest sector although investments in that sector are wanting. For the foreseeable future, it will perhaps continue to depend on the hoe, exporting primary commodities in spite of the declining terms of trade and falling productivity. The manufacturing sector, particularly in the capital and intermediate goods sectors and mass consumption goods, does not show the prospect of picking up in spite of the much heralded programme of privatisation. Extractive industries (mining), financial and catering services and tourism are likely to attract investment but these are all porous so far as foreign exchange gains are concerned. To what extent they would have substantial spillover effects remains to be seen. Although foreign direct investments (FDI) have increased in the 1990s, from US\$150.86 million in 1995 to US\$ 192.8 million in 2000, absolute amounts are insubstantial (URT 2000: 86). The yearly average of FDI for the 6 year period (1995-2000) was only US\$ 167 million (ibid.), amounting to perhaps less than one-third of the total investments approved by the Tanzania Investment Centre (TIC)⁶. The sectoral distribution of these investments is unlikely to have a major impact in transforming the economy as most of them are export-oriented with little inter-linkages. The impact of these investments on the creation of employment is also minimal. Whereas it is estimated that some 600,000 to 700,000 new entrants come on the job market every year (ibid. 79), the yearly average of expected employment in the investment projects approved by the TIC between 1995 and 2000 was 60,000; in other words, less than 10 per cent of the new entrants on the job market (ibid., 89-90.).

Increasingly, therefore, the large majority and especially the poor, will continue to rely on smallholder agricultural and pastoral production in which natural resources play a central role. But, as we shall see, the access of the large majority to natural resources has become precarious, and among them that of the poor, even more so. Since it is the thesis of this paper that the smallholder population of Tanzania who are living in 10,000+ villages cannot improve their life and livelihoods unless they have

⁶ This is a very rough computation from the total investments of T.shs. 2.5 billion during this period, using US \$ 1=900 T.shs. as the conversion rate (URT 2000:89-90).

access to decision-making processes in the country, the issue of local level governance becomes crucial. We next give an overview of some poverty indicators before we turn to examine the governance structures of the country.

2.2 The Poverty Profile

Tanzania is among the 10 poorest countries in the world with over 50 per cent of the people living below poverty line - spending US\$0.65 per day (*The Observer*, Tanzania, 1/07/2001). It ranks 156th in the human development index (URT 2000: 97). In the year 2000, enrolment for primary education declined to 77 percent of children of eligible age, while only 6 percent of eligible children enrol for secondary education. At the same time, the rate of constructing new schools and training teachers has not kept pace. The number of students in Government primary schools increased by 28 percent between 1990 and 2000 while the number of schools increased only by 10 percent. The ratio of pupils to teacher increased from 35 in 1990 to 40 in 2000. Thus even those who find place in schools do not get required academic attention and the standard of education is known to have been falling. (URT 2000:203, table 83) Hunger, malnutrition and illness are rampant. By the end of December, 1999, it was estimated that some 1.7 million people were infected by HIV while some 600,000 had already contracted AIDS. Some 7.2 million people do not get adequate food and 1.6 million of these actually experience hunger. (ibid. 98) Poverty in the rural areas is even more that these average figures suggest.

'The incidence of poverty appears to have declined during 1983-1991 and 1991-1993, and risen during 1993-1998. The more recent deterioration in the poverty situation is probably attributable to worsening income inequality, and relatively low rate of economic growth, particularly in the rural areas.' (URT, 2000, 8). This recent trend in increasing poverty noted by the Government's own *Poverty Reduction Strategy Paper* is in no small measure due to the liberalisation and open market policies pursued by the Government since 1986 (see discussion below).

Poverty in rural areas is widespread and may have increased in the last decade following liberalisation. Basic needs poverty in rural areas was estimated at 57 per cent in 1991/92 and food poverty incidence at 32 per cent. (ibid. 6). Only 44 percent of the population in rural areas have access to water. The average varies greatly from

region to region. For example, in Singida, one of the semi-arid areas, the figure is only 32 percent. (URT 2000:187, table 79)

Table 2 below summarises some of the indicators of poverty at national level.

TABLE 2: SOME INDICATORS OF POVERTY AT NATIONAL LEVEL

| INDICATORS | 1960 | 1980 | 1992 | 1999 |
|--|------|------|------|---------------|
| A. BASIC INDICATORS | | | | |
| 1. Average life expectancy | 35 | 51 | 52 | 48 |
| 2. Male | 32 | 49 | | |
| 3. Female | 38 | 48 | | |
| 4. Infant mortality rate (IMR) | 190 | 137 | | 99 |
| 5. Child death rate (CDR) 1-5 years | 300 | 231 | | 158 |
| 6. Maternal mortality rate (per 100,000) | 453 | 263 | | 529 |
| B. NUTRITION | | | | |
| 7. Percent infants with low birth weight | 12 | 13 | 13 | 8.2 (1995) |
| 8. Percent of children suffering from: | | | | (30)* |
| -- moderate malnutrition | 55 | 50 | 48 | |
| -- severe malnutrition | 8 | 8 | 6 | |
| C. HEALTH | | | | |
| 9. Percent of pop. With access to drinking water | 20 | 23 | 51 | 50.52 |
| -- urban | 65 | 70 | 80 | 68 |
| -- rural | 10 | 15 | 45 | 45 |
| D. EDUCATION | | | | |
| 10. Adult literacy rate | 10 | 90 | 90 | 84 |
| 11. Gross enrolment ratio for primary school | 20 | 93 | 69 | 77 (1995) |
| 12. Net primary school enrolment ratio | 50 | 65 | 76 | 57 |

Source: Adapted and modified from: Strom ed. *Change in Tanzania, 1980 - 1994*, Sweden, SIDA, 1995, Table 2.2.2 p. 106; United Republic of Tanzania, *Poverty Reduction Strategy Paper (PRSP)*, Dar es Salaam: Government Printer, October 2000, pp. 8-11, United Republic of Tanzania, *Poverty and Welfare Monitoring Indicators*, Vice-President's Office, November 1999, Table. Table 1, p. 47 et. seq.

Micro-level studies also show that while rural poverty is spread across ecological zones, it is even more intense in semi-arid regions (SUA/NRI n.d.: 28 et.seq). It is also important to note that female-headed households tend to be poorer (Itika 2002:12). A rhetorical reply by a poor woman to a researcher who wanted to know the meaning of poverty from her says it all:

* This is a figure for a combined measure of chronic and acute malnutrition, which measures children under five who are under weight for their age (URT 2000, 9)..

Do not ask me what is poverty! Look at my clothes, pots, house and everything. What you see write it. That is poverty! (quoted *ibid.*)

To no small measure, the fall in social service sector - education, health, water etc. - in the 1980s was due to the introduction of cost sharing and user-fees at the behest of the World Bank and IMF. These led to significant dropouts in primary schools. Although I could not find any figures showing the causal link, it is almost obvious. When visiting Ngorongoro in the course of the work of the Land Commission, the Maasai women kept telling this author that they were forced to withdraw their children from schools because they could not afford to buy uniforms for their children and pay T.shs.20/= as contribution.

Fifteen years later, the same IFIs and the donor-community are imposing new conditionalities, including 'poverty reduction' or 'poverty alleviation', particularly in relation to debt-relief under the HIPC programmes. As a result, beginning this year, the Government has embarked on a crash programme of enrolling eligible children, including those who missed out in the previous years, in primary schools. Initial reports in terms of resources available are not very encouraging as the media has shown classes of 100-200 children sitting on floors while teachers trying to maintain semblance of order.

The Government National Vision 2025 sees poverty eradication to happen as a result of the growth of a diversified, industrial-based economy, growing at the rate of 8 percent per annum. It is expected that concomitant employment growth will take place in both the industrial and agriculture sector, which in turn will contribute towards poverty reduction. (see URT 2000:98-99) According to the President, the engine of this expected growth is the private sector.

If the trends of the liberalised economy in the last five years is anything to go by (see for some discussion *supra*), these expectations are far from realistic. The new private investments have been largely in the extractive and services industries using capital-intensive technologies with very little forward and backward linkages. This is true also of the investments in manufacturing, which has very little backward linkages. Left to the market and the private sector, and given the experience of the early 1960s and the experience of contemporary liberalised economies of Latin America (for example Argentina), one needs to have strong faith to believe that the present trends

in rate and character of private investments will impact substantially on poverty reduction in the next decade or so.

2.3 Administrative and Governance Structure

The United Republic of Tanzania is a union of two countries, Zanzibar Islands and Tanganyika, now known as Tanzania Mainland. This report covers only Tanzania mainland. Tanzania mainland is divided into 20 regions, each one of which is in turn divided into districts.⁷ There are a total of 113 districts. Under the district there are divisions, wards and villages in that order. The rural population of Tanzania lives in over 10,000 villages (see Map 1).

A regional commissioner and a district commissioner at the regional and district level represent the central government respectively. The district is further divided into divisions, headed by a divisional secretary and wards where the Ward Executive Officer (WEO) Secretary is the main functionary. The divisional secretary is the representative of the central government while the WEO is employed by the District Council. The local government administration at the district level is composed of elected representatives who constitute district councils in rural areas and municipal and city councils in urban areas. In law, village councils, which are elected by village communities, are also part of the local government (see the Local Government Act, 1982). In administrative practice, and official and unofficial perception, however, most of the time villages are not perceived as governance units and local government seems to stop at the district level (Shivji & Peter 2000).

There are two major organs of governance at the village level, village assembly (VA) and village council (VC). The village assembly is composed of all adult members of village residents. The village assembly elects village councils of 25 members headed by an elected chairman and assisted by an appointed village executive officer (VEO). The village council has an entrenched representation of women. Villages may divide into sub-villages (*vitongoji*) not exceeding five in number. Sub-village residents elect the chairman of *kitongoji* who is an *ex officio* member of the village council.

⁷ Recently the President mooted that he had made a decision to divide the Arusha region into two. Already, there have been undercurrents of tension and political manoeuvring as to the demarcation of the boundaries given that each contending force would want to include the revenue-generating Ngorongoro Conservation Area (NCA) in their region.

Village assembly is theoretically the supreme body at the village level but in practice its only major function is to elect the council every five years. The reason is that neither in law nor in practice the village assembly has ultimate legislative and executive powers, which are vested in the village council. The village council is a corporate body. It is accountable to the district council, which in turn is linked to the central government through the Ministry of Regional Administration and Local Government. Currently, the country is involved in the local government reform programme, which will be discussed later in the report.

The structure of local governance, and in particular the place of village governance in it, is shown diagrammatically in Figures IA and IB.

FIGURE IA: THE STRUCTURE OF LOCAL GOVERNANCE

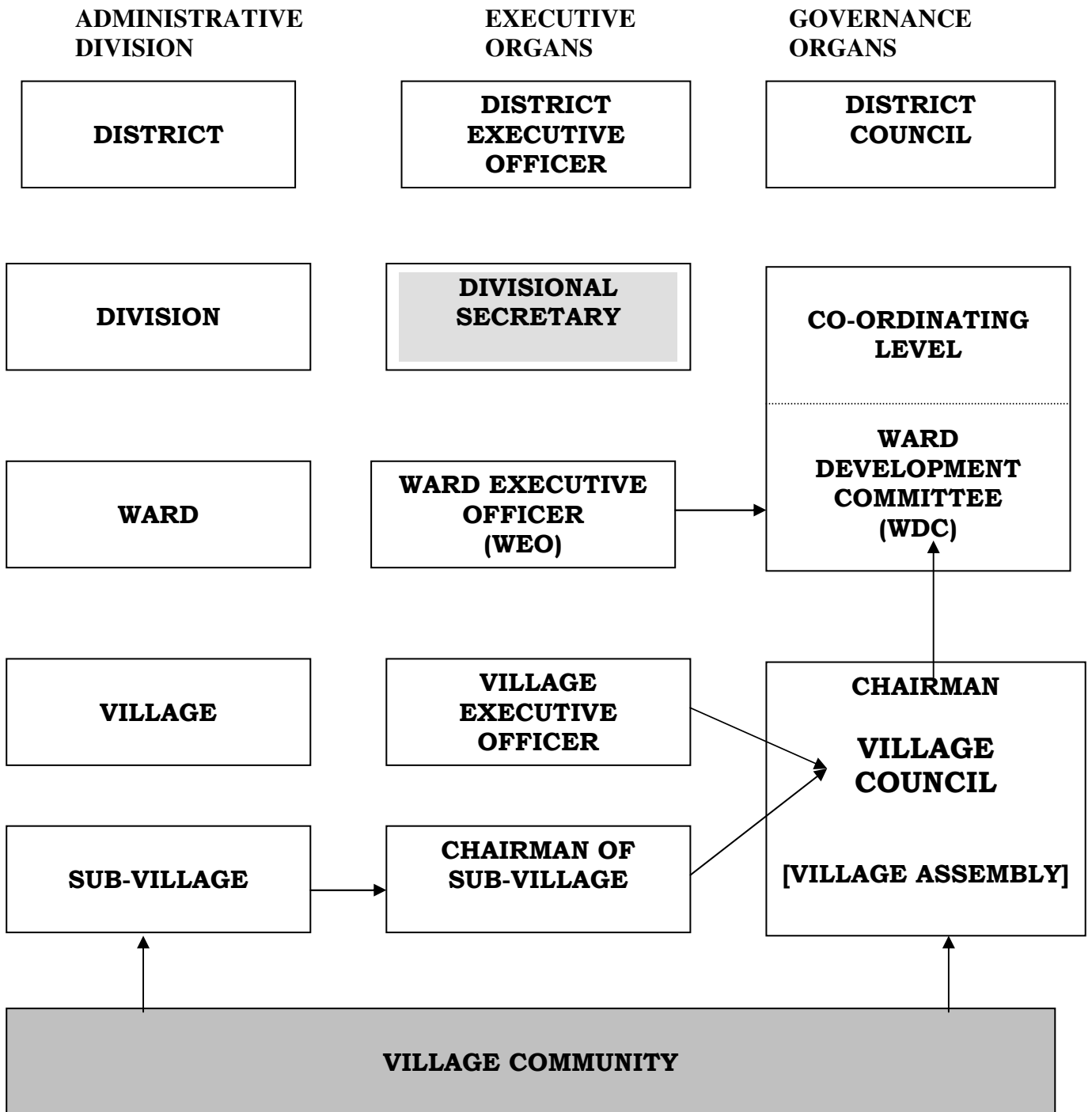
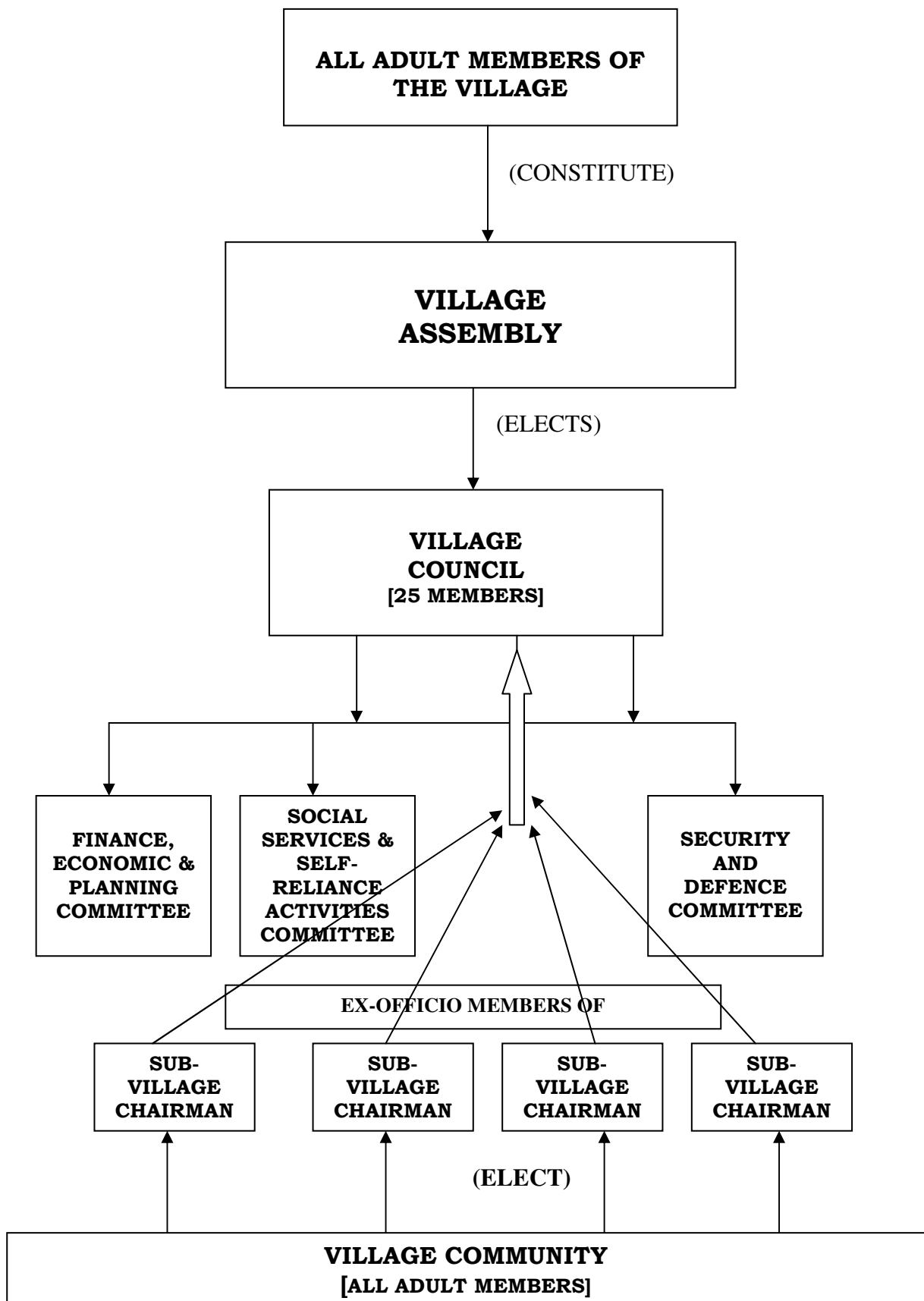


FIGURE 1B: THE STRUCTURE OF VILLAGE GOVERNANCE



2.4 The Current Context of CPR Policies: The Reform Process

For over quarter of a century, Tanzania was well known for its policy and development vision known as *Ujamaa na Kujitegemea* or 'socialism and self-reliance', which was spelt out in the document *Arusha Declaration* under its first president Julius Nyerere. The centrepiece of this policy was rural development through collective or communal labour and state ownership (nationalisation) of the commanding heights of the economy. In practice, this meant nationalisation of financial institutions, import-export businesses, a few manufacturing enterprises and the plantation sector. Contrary to widespread belief, land was never nationalised by the Arusha Declaration because in effect it had been already "nationalised" by the colonial government as long ago as 1923, as will be explained later. It is also relevant to mention that Nyerere's government never carried out any land tenure reform under the Arusha Declaration. For the purposes of this report, the most important policy consequence of the Arusha Declaration was the villagisation programme, which was implemented during 1971-73.⁸

Having become exasperated by the slow pace of movement into villages, the ruling party decided to implement its villagisation programme by forcible movement of peasant and pastoral communities into villages, demarcated and planned from the top by state officials. Some 9 million people are estimated to have been moved into villages. A short piece of legislation established the administrative structure of villages and provided for village assembly and village council as the organs at the village level under the overall supervision of the ruling party in the single party system. In the long tradition going back to colonialism, the village was not conceived or perceived as the site of governance; rather it was promoted as the site of *development* (see Shivji & Peter 2000). The village organs thus established were absorbed in the local government structure when the local government was *reintroduced* following the failure of de-centralisation strategy implemented between

⁸ There is enormous amount of literature on the socialist experiment of Tanzania. For a quick bird's eye-view, which also contains a comprehensive bibliography, see Cliffe and Saul 1972 and Coulson 1982. For a more critical analysis from a socialist standpoint see Shivji 1976, Coulson 1979 and von Freyhold 1979. For a critique of the *Ujamaa* experiment from an anti-peasant, modernisation viewpoint see Hyden 1980.

1972 and 1979. (In 1972 the local government structure was abolished under the decentralisation policy).⁹

Following the intense economic crisis of the early 1980s, the Government embarked on several structural adjustment programmes, partially accepting some of the conditionalities of the International Monetary Fund and the World Bank. The piecemeal reforms begun under Nyerere were intensified and consolidated under the next president, after Nyerere stepped down in 1985. In particular, the economy was liberalised in the form of opening up the import export trade, attracting foreign investments by establishing a centre for promoting foreign investments (see Lipumba et. al 1984, Campbell and Stein 1991, Gibbon ed. 1995).

In 1991, the then President also established the *Presidential Commission of Inquiry into Land Matters* (the "Land Commission") to look into the land tenure policy and system. The process begun by the commission resulted in the adoption of the National Land Policy, 1995 and eventually culminated in the passing of two pieces of legislation in 1999, the *Land Act, 1999* and the *Village Land Act, 1999*. These pieces of legislation were brought into force in May, 2001.

Besides the land policy, policy formulation in various sectors and developing strategy papers has been one of the main activity of the third phase government under the third president, Mr. Mkapa. Among others, the following policy and strategy papers are now in place.

The National Vision 2025: This is an elaborate planning or budget type statement on developments and growth strategies in various sectors based on attracting foreign investments, opening up of markets, privatising parastatals, creating enabling environment for business and intense exploitation of natural resources. It does not have an overall social vision as such, except for broad statements on building a developed modern society through economic growth, reducing poverty and be part of the globalised world in the new millennium.¹⁰

Parastatal Sector Reform Programme: This puts into effect the Government's privatisation programme. Essentially, the body called the Parastatal Sector Reform

⁹ For a critical account on the abolishing of local government see Pratt 1976. For the institutional development of local government organs see Max, J. O.. 1991.

Commission (PSRC), which is established by law and which is under the direction of the President, is charged with restructuring and divestiture of various parastatals and public corporations. This includes some of the leading agricultural corporations like the National Food and Agricultural Corporation (NAFCO), which among other things, owns wheat farms in the Hanang area of Arusha region (see below) and the National Ranching Company (NARCO). Both these corporations have had direct impact on the local communities and their CPRs in their area of operations.

National Investment Policy: The policy of the Government is to promote, protect and create an enabling environment for foreign investments. For this reason it has established a semi-autonomous body called the Tanzania Investment Centre (TIC). The law provides for the usual incentives - tax holidays and exemptions, provision of land, easy access to natural resources, attractive labour legislation or the promise of it - to attract investments.

Tanzania today boasts to be at the top of Sub-Saharan African countries in attracting foreign direct investment. Net foreign direct investment as a percentage of GDP increased from 0.3 per cent in 1992 to 2.1 per cent in 1998 (*The Guardian* - Tanzania, 2/07/01). (Ironically it is virtually during the same period that rates of poverty have also increased)(see *supra*). The investments are mainly in the financial, mining, hotel and tourism sectors. In a recent report on the "Achievements and Problems in Implementing the National Investment Policy", TIC's managing director revealed that Tanzania attracted investments at the rate of US\$300 million per year¹¹ which is one-third of the target (annual investment of US\$1 billion) set so as to reach the GDP to investment ratio of 40 per cent. Leading investors in the past decade are shown below (*The East African*, June 25- 1 July, 2001, 23):

| <u>Country</u> | <u>US\$ million</u> |
|----------------|---------------------|
| United Kingdom | 365.17 |
| United States | 218.00 |
| South Africa | 160.00 |
| Kenya | 122.47 |
| China | 101.12 |
| Canada | 97.75 |
| Germany | 48.31 |

¹⁰ For the papers and discussions of the so-called experts which led to the formulation of the National Vision see Mwandosya et. al. eds. *Towards a New Millennium: Perspectives on Tanzania's Vision 2025*: Proceedings of a Retreat Workshop held at Mkonge Hotel, Tanga, 16th - 20th September, 1996.

The TIC report recommends that the economy should be boosted by large scale farming and increasing the contribution of the mining sector from the current 2 per cent of GDP to 10 per cent. Both of these, needless to say, would impact the CPRs directly and, as discussed below, are already important sites of conflict between local communities and 'outsiders'.

Local Government Reform Programme: The policy paper on LGRP was adopted by the Government in June 1996. Donors through a Basket Fund support it. The Programme stretches from 1999-2004 and is being implemented in phases. The main aim of the programme is to improve service delivery at the local level, introduce efficient management, accountability, transparency and devolution of power to the district level, although the last is not spelt out explicitly.

Probably the most important omission in the programme is the whole issue of village governance. As pointed out earlier, historically the village has been conceived and perceived as the site of *development* rather than the site of governance. Governance stops at the district level. The top-down approach has been dominant in various developmental programmes and, in the outlook of government officials, village communities are the object of development and recipients of knowledge, wisdom and orders from the top (see Havnevik 1993).

In a recent study done by this author and a colleague, it was argued that the village should be at the centre-stage of restructuring governance as part of the local government reform (Shivji & Peter 2000). The main recommendations of this study for institutional reform at the village level are based on the following principles.

1) Governance at the village level should be based on the principle of separation of power and rule of law. The policy making and legislative power should be vested in the Village Assembly (VA) while the elected Village Council (VC) should be an executive body accountable to the VA.

2) The village community/electorate should not only elect members of the VC every five years but should have powers to hold them accountable and, if necessary, have power of recall.

¹¹ Of this, FDI between 1995 and 2000, was only US \$ 167 million, that is, 56 percent (see *supra*).

3) The relationship between the village government and the next rung, the district council, should be based on law and not administrative fiat. Their jurisdictions ought to be clearly demarcated in law.

The institutional reform recommended in this study is summarised in a diagrammatic form in Figure 2. As I will argue later, the reform of village governance recommended in this study has direct relevance to the ownership, management and disposal of CPRs and provides an excellent framework within which to situate the reform and restructuring of the CPR regime.

FIGURE 2: ORGANISING PRINCIPLES OF VILLAGE GOVERNANCE

ORGANISING PRINCIPLES:

- ❑ DIRECT AND PARTICIPATORY DEMOCRACY;
- ❑ SEPARATION OF POWERS;
- ❑ SUPREMACY OF THE LEGISLATIVE BODY;
- ❑ ACCOUNTABILITY OF ELECTED AND APPOINTED OFFICIALS TO THE PEOPLE;
- ❑ CHECKS & BALANCES TO PREVENT ABUSE OF POWER;
- ❑ RULE OF LAW AND DUE PROCESS.

CRITERIA FOR EFFECTIVENESS

INSTITUTIONAL LEVEL

- ◆ RATIONALITY
CONSISTENCY;
LOGIC;
EFFICIENCY.
- ◆ GOVERNANCE LEVEL
ACCEPTABILITY;
CREDIBILITY
RESPECTABILITY
- ◆ LEGAL LEVEL
ENFORCEABILITY BY &
AGAINST GOVT. ORGANS
& OFFICIALS

CONCEPT

PRINCIPLE

BODY

LEGISLATURE

**DIRECT
PARTICIPATION**

**VILLAGE
ASSEMBLY**

EXECUTIVE

**ACCOUNTABILITY
&
TRANSPARENCY**

**VILLAGE
COUNCIL**

JUDICIARY

**ACCESSIBILITY
IMPARTIALITY
LEGITIMACY**

**VILLAGE
COURT**

Other sectoral policies: A number of policy documents in other sectors relevant to CPRs have come out over the last few years. These are:

- i) National Environment Policy, 1997;
- ii) National Forestry Policy, 1998;
- iii) National Bee-keeping Policy, 1998;
- iv) National Fisheries Policy, 1997;
- v) Agricultural and Livestock Development Policy, 1997;
- vi) National Tourism Policy, 1999;
- vii) National Wildlife Policy, 1998.

The thrust of these policies has been to reassert the state's ultimate ownership of natural resources on the one hand, and creating an enabling environment and promoting private sector participation, on the other (for a quick review see LEAT 1998, Kabudi and Majamba 2001). As far as the role of local communities is concerned, the policies reiterate the need for educating local community on the importance of conservation and their participation in the management of the resources and sharing of benefits. We will discuss in a subsequent section in some detail the National Wildlife Policy as a typical example of the underlying assumptions and approaches to recent policy-making in Tanzania.

One of the common features of the policy making in recent years has been that it is usually donor-funded and donor-driven. Consultants/experts are hired to review and draft policies after the usual round of RRAs (rapid rural appraisals). Consultations are held with stakeholders in workshops. Stakeholders include experts and consultants, representatives of donor agencies, a motley of handpicked community leaders, government bureaucrats, and representatives of civil society organisations or NGOs. The policies are eventually finalised and endorsed by the cabinet or minister as the case may be.¹² In some cases, where local academics have been used as consultant counterparts, they have tried, albeit under veritable opposition of bureaucrats, to

¹² This is in great contrast to policy-making processes of the 1970s and 1980s where policies were made by government task forces (for example, the Agricultural Policy of 1983) on instructions from the ruling party. While people may not have had much input into these neither did donors dictate terms. The Land Commission, however, worked on a different footing. Its finance came exclusively from the Government Treasury. It toured all the districts of the country holding public meetings, receiving complaints, grievances and opinions of village communities as well as government officers. In the process it collected evidence of over 4000 pages now deposited in the national archives. The National Land Policy, however, did not directly emerge from this process but was a result of a parallel, donor funded project within the Ministry.

consult representatives of the concerned communities but, 'Such a process does not give quick results because it takes time to consult people and allow the organic development of a consensus on some of the sensitive and burning issues' (Kabudi 2001:4).

2.5 Geographical Landscape and Ecological Zones

Tanzania has an area of 945,000 sq. km. of which the land surface is 886,000 sq. km. and the rest, 59,000 sq. km. are covered by water (Moyo et. al. 19, 234, Havnevik et.al 1988, 19). At the time of the last census in 1988, the population was estimated to be about 24 million. The annual average population growth rate is estimated to be 2.8 per annum (Maro 2000, 77). The present population is likely to be around 32 million, which is perhaps an underestimate since some other authors have suggested population growth rates of between 3.3 and 3.5 per cent per annum (Havnevik *ibid.* 17.)

The pattern of population densities is extremely uneven ranging from over 80 persons per square kilometre in Kilimanjaro and Mwanza regions to less than 15 in regions like Tabora and Rukwa. The population density of Dar es Salaam (the most populous city) would be considered exceptionally high, estimated to be over 200 persons per square kilometre. Areas with high density are located around the fringes of the country (over 30 persons/sq. km.) along the coast and around Lake Victoria; western and southern Tanzania are sparsely populated (less than 15) while central and north-eastern areas have medium population density (between 15-25 persons per sq. km.) (Moyo *ibid.* 235). Map 2A shows arid and semi-arid areas and population density while map 2B depicts land resources zones. (Moyo *ibid.*, 236). Table 3 gives the land resource zones of the country and rainfall pattern.

TABLE 3: LAND RESOURCE ZONES

| LAND RESOURCE ZONES | PROPORTION OF AREA | RELATIVE POPULATION DENSITY PER SQ. KM | RAINFALL (mm). |
|----------------------------|---------------------------|---|-----------------------|
| Coastal | 7.2% | Medium | } Over 1500 mm. |
| Islands | 0.3% | High | } " |
| Arid lands | 12.0% | Low | Below 600 mm |
| Semi-arid lands | 23.6% | Medium | 600 - 800 mm |
| Plateau | 35.5% | Low | } 800 - 1000 mm |
| North & Western Highlands | 8.7% | High | } " |
| Alluvial Plains | 2.6% | Medium | } " |

Source: Adapted from IRA 1993, Table 1, p. 18 & Moyo 19, Fig. 8.2, p. 236

There is some debate about the classification of arid and semi-arid areas in the country but broadly the identification of the central and southeaster zones as semi-arid (see map 2A) has broad consensus (SUA/NRI n.d.:24-22-25). Northern areas and the Maasai steppe are classified as arid where the rainfall is almost unimodal (Sosovele, pers. com.)¹³. In semi-arid rangelands, the rainfall pattern is bi-modal but here too rains are heavy and short, soils are sandy with high infiltration rates and the sub-surface run-off is high. Much of the northern-central plateau receives an average of less than 800 mm. of rain. A large part of this area actually receives less than 750 mm., a level defined as critical for rainfed crop production. Nevertheless, some crop husbandry - grains, oil seeds and legumes - does take place but savannah grasslands, the common vegetation of the area, can only support agro-pastoral and pastoral (Igoe & Brockington 1999, 4, Moyo *ibid.* 236) production systems and seasonal variation of rain and drought means that pastoral Maasai have to adopt transhumant movement (Igoe & Brockington *ibid.*, 7).

In spite of low rainfall, the arid and semi-arid areas carry about 20 per cent (about 6.5 million people)¹⁴ of the country's population and half the national herd of 12.5 million head of cattle, 6.4 million goats and 3.1 million sheep (Moyo *ibid.* 237).¹⁵ In terms of

¹³ I am very grateful to Dr. H. Sosovele for his assistance in researching the geographical information.

¹⁴ This is likely to be a gross underestimate. To compute an accurate figure one would have to compute population figures at district level. (see SUA/NRI n.d.:26-7.

¹⁵ These figures are difficult to reconcile with those given in the *Economic Survey 2000* where it is estimated that Tanzania has 16.4 million cattle, 1.7 million goats and 0.63 million sheep. (p.112)

administrative division, semi-arid areas include Dodoma, Northern Tabora, Singida, Shinyanga, Arusha and Northern Handeni (see map 3).

2.6 Common Pool Resources

Tanzania is primarily a small producer country heavily dependent on natural resources, the most important of which is land. The manufacturing sector contributes only around 8 percent of the Gross Domestic Product while agriculture is almost half of the GDP. In spite of high urban growth rates, rural population constitutes some 75 to 80 per cent of the total.

2.6.1 Cultivation

The majority of rural population is involved in crop and animal husbandry for subsistence and sale. The average landholding of small peasant household is less than 1.2 ha. Smallholders are estimated to produce more than half the export crops (Itika 2002:4). There is a very small large-scale farm/plantation sector whose size is difficult to estimate. Around 1990, this was estimated to occupy about 110,000 ha or one per cent of the land area (MLHU 1994, Table 1.2, 24). It was perhaps an underestimate and is likely to have gone up since, as anecdotal evidence and micro-research seems to suggest, there has been large-scale alienation of land in the 1990s (newspaper and workshop reports, various, see also Igoe & Brockington *ibid.* for Simanjiro district). One study quoted by Itika estimates that large-scale farmers use 14 percent of the arable land. Unless there is a comprehensive agricultural census, it is very difficult to estimate the division between large-scale and smallscale agriculture except to say that the smallscale is overwhelmingly dominant.

Crop production, using hoe-technology and family labour, is heavily dependent on rain since irrigation is not highly developed. The well-watered highlands and the areas of higher rainfall around Lake Victoria and along the fringes of the country account for high share of marketed food and export crops. It is in these areas also where population is concentrated. The Southern Highlands in Iringa and Mbeya, the Ufipa Plateau in Rukwa and the western part of Ruvuma Region accounts for highest output of maize, the staple food of the country. Some of the leading cash crops, like tea, tobacco and coffee, are also grown in this area (Havnevik *op. cit.* 20-21).

2.6.2 Pastoralism

The country has the third largest cattle population in Africa, after Ethiopia and Sudan. The greatest concentration of cattle population is found in central and eastern Shinyanga region, which practices agropastoralism and also produces the country's important cash crop cotton. More than half the cattle population is spread all over the semi-arid areas, in particular Dodoma, Singida and Arusha Regions. Various grasslands of these areas provide the essential grazing grounds for the cattle (Moyo *ibid.*, 237-8).

It is estimated that Tanzania has 44,245,000 ha. (50 per cent) of the land in the rough grazing lands category. But much of this land cannot be inhabited and is closed to grazing because it is designated as protected area. The result is that there are less than 2.9 ha. per livestock unit resulting in severe undermining of pastoral production system and generating perpetual conflicts (Moyo *ibid.*, 241, URT 1994). Population pressure, coupled with alienation of large tracts of land to investors and other agriculturists, has necessitated use of even marginal grazing land for cultivation resulting in over-grazing and migration of pastoral people to other regions, for example, Maasai have moved to Morogoro Region giving rise to intense conflicts between cultivators and herders in the immigrating areas.¹⁶

In 2000, livestock sub-sector contributed 13.3 percent to the agriculture sector. (URT 2000:112) although its contribution to the overall GDP has fallen from 7.0 percent in 1987 to 6.4 percent in 2000 (*ibid.* 16).

2.6.3 Forest resources

Tanzania has a rich variety of flora and fauna with great biodiversity. The total area of forest cover in Tanzania is about 33.5 million hectares or 34 per cent of the land area. Of this about 12.5 million ha. are gazetted as reserves and therefore fall within government control. Another 2 million ha. are within the boundaries of national parks and therefore within the jurisdiction of statutory organs. The remaining 19 million ha. are on public lands and would fall within village lands or accessible to villages (MNRT(a) 1998, 7-8).

The production forest area is almost 24 million hectares while some 10 million ha. are protected as water catchment areas. Forest resources in Tanzania are exploited both

¹⁶ As recent killings in Kilosa district in Morogoro region show.

for subsistence and the market. The most important forest industry is of course timber, which is largely now in the hands of private investors. Logging to supply wood for furniture manufacture is done by licensed businesspersons. Export of secondary forest products includes wattle extract, wattle bark, bees wax, honey, palm nuts and gum arabic (Jones 1981, 142). In 1989 it was estimated that the forest sector provided 2-3 per cent of the Gross Domestic Product and 10 per cent of the country's registered exports (MNRT(a) op. cit. 9). In value terms, the export of forestry products has risen from US \$2.6 million in 1996/7 to some US \$ 6.9 million in 2000/01 (URT 2000:132). Some of these products, such as honey and beeswax, are predominantly produced by local communities.

Local communities rely on forests to supply their other needs such as building material, herbal medicines, wild fruits, bees products, etc. Most important of all, forest is the main source of bioenergy for rural households (and even poorer urban and semi-urban households in the form of both wood and charcoal) which accounts for 92 per cent of the total energy consumption in the country (ibid.). In semi-arid areas, including those with wood shortages, the average per capital consumption is around 1 cubic metre of solid wood (Havnevik op. cit., 27). It is estimated that some 97 per cent of the total 25 million cubic metre of solid wood is consumed as firewood (Moyo op. cit, 241). Figures for the rate of deforestation are not reliable. They tend to vary from 130,000 to 500,000 ha. per annum (MNRT(a) op. cit. 8). The figure most often quoted puts the rate of consumption between 300,000 to 400,000 ha. (Moyo op.cit. 241, IRA op. cit. 19).¹⁷

2.6.4 Wildlife resources

The grasslands and open woodlands in the Northeast and Northwest of Tanzania provide important habitat for wildlife and here are found some of the world's greatest concentration of large mammals. Miombo woodland is a habitat for the continent's significant populations of elephants and black rhinos (MNRT 1998(b), 3). 20 species of primates, 34 of antelopes, many species of fish, reptiles (290 species), amphibians

¹⁷ The figures of deforestation are truly unreliable. For example, the Institute of Resource Management (IRA op.cit., 1993, Table 2, 20) citing the Ministry of Natural Resources and Tourism as its source quotes the total forest cover for 1989 at 44.5 million ha. amounting to some 50 per cent of the land area.. Havnevik (citing another independent source) also arrives at the estimate of 50 per cent. But the same Ministry in its National Forest Policy document published in 1998 (MNRT op.cit. 1998(a)) citing FAO (1992) *Forest Resources Assessment for Tropical Countries and FBD statistics* gives the figure of

(40 endemic), invertebrates and plants (around 11,000 species) have been identified in the country. Wildlife uses such as game viewing and hunting are central to the national economy.

28 per cent of the total land area of the country or almost 25 million ha. (250,000 sq. km. or more than the area of the United Kingdom) has been set aside as protected areas with various restriction on human habitation and use. Almost one-fifth (19 per cent) of Tanzania's surface area is devoted to wildlife where no human settlement is allowed (MNRT(b) op. cit. 2-5). When some 15 per cent of the land area set aside as forest reserve is added, the total of protected area amounts to 40 per cent of the total land area.

Local communities vary in their use of game meat. For example, Wamaasai do not eat game meat at all. Small communities of Watindiga and Hadzabe may be described as hunters and gatherers who depend on hunting with traditional weapons, bows and arrows. Their numbers are small yet they have felt the pressure of restrictions, which operate in reserved areas. Hunting of wildlife for subsistence by other local communities is fairly restricted and breaches result in severe sanctions. Wildlife is almost exclusively utilised for game viewing, tourist hunting and resident hunting by permits and licenses, the latter being mostly persons from outside local communities. Earnings from tourist hunting increased from US \$6.44 million in 1994/95 to US \$8.53 million in 1999/00 (URT 2000: 134). There has been considerable abuse of the power to grant licenses and permits by Government officials, including ministers at the expense of local communities (Nshala 1999).

2.6.5 Genetic resources

The country is extremely rich in genetic resources but its potential remains unexplored. It is one of the fourteen "hotspots" of global biodiversity.¹⁸ However, with the development of gene patenting and the membership of the country in the WTO, with its IPR regime, the debate on genetic resources and the dangers of biopiracy has just begun. Yet, as Dr. Kabudi points out, Tanzania's legal regime falls far short of regulating effectively possible abuses of bioprospecting. The Draft Bill for a Forest Act has a provision asserting sovereignty over biological resources. Whether

33.5 million ha. amounting to some 34 per cent of the land area, that is, 16 per cent.. It is difficult to believe that the forest cover of the country was depleted by 16 per cent within three years.

state sovereignty alone will protect the interests of the people is debatable since the state in Africa has been singularly weak in protecting the interests of its people in world economic fora such as the WTO.

2.6.6 Mineral and marine resources

Tanzania is well endowed with mineral resources, in particular gemstones, gold and diamonds. Of recent, the production of tanzanite in the Simanjiro district (Mererani village) has attracted a lot of publicity because of the conflict between small indigenous miners and a South African company. In the Mwanza and Musoma Regions, particularly Kahama and Geita, there has been considerable investment in mining of gold by well-known multinational corporations. Between 1989 and 1992, the exports of gold increased from US\$1.2 million to almost US\$40 million (Chachage, 1995, Table 4, 57). Since then there have been more investments and alienation of large tracts of land of hundreds of square kilometres to mining companies (Lissu pers. comm.). According to official figures, in the year 2000, the value of gold exports amounted to US\$117.4 million. (URT 2000:149).

The country also has long coast and inland waters with rich marine resources. Local fishing communities have existed on fish resources but of recent, as the state has withdrawn, private investors have established fairly large-scale fishing and fish-processing operations. Exports of fish products was about US\$ 64.5 million in 2000. (Ibid., 127) Since this report does not directly deal with water resources, I will not deal with marine resources further. Suffice it say that both in the case of mineral and marine resources, there have been situations of conflict between local communities and big-time investors.¹⁹

¹⁸ Unless stated otherwise, this section is based on Kabudi 2002. I am grateful to D. Kabudi for letting me see his paper in draft.

¹⁹ For example, sometime in 1996 the Kahama Goldmining Company and local small miners were involved in court battles as local miners refused to leave their areas. It was even alleged that a number of miners were buried alive when the company ordered the open pits to be filled up (various newspaper reports).

In 1997, another company, the African Fishing Co., faced stiff resistance from local village communities and fishing villages when it proposed to invest in a prawn farming project for which it was officially allocated hundreds of acres of land in the Rufiji delta.

TABLE 4: LAND USE PATTERNS*

| LAND USE | NO. | AREA (million ha.) | PER CENT | ECONOMIC ACTIVITY |
|--------------------------------------|------------|-----------------------------|---------------------|---|
| Small scale cultivation | | 4.5 | 5.1 | Crop husbandry, subsistence and for sale |
| Large-scale cultivation | | 1.2 | 1.4 | Plantation mainly for export |
| Grazing land | | 35.0 | 39.5 | Pastoral activities, subsistence and for sale |
| Forests & woodlands | | 43.5 | 49.1 | Forestry products, timber, firewood, hunting, gathering, wildlife tourism |
| Other lands (incl. urban lands) | | 4.4 | 5.0 | Varied activities. |
| TOTAL | | 88.6 | 100 | |
| OF WHICH PROTECTED AREAS (PA) | | | | |
| TYPE OF PA | NO. | AREA (mill. ha.) | PER CENT | DEGREE OF RESTRICTION |
| National parks | 12 | 3.54 | 4 | No human habitation, no hunting |
| Ngorongoro Conservation Area | 1 | 0.89 | 1 | Maasai allowed to reside, only grazing permitted, no cultivation, entry and exit controlled |
| Game reserves | 31 | 13.29 | 15 | No habitation, no cultivation, hunting with permits |
| Game controlled areas | 8 | 7.01 | 8 | Restricted settlement and use, no hunting without permits. |
| TOTAL | 52 | 24.73 | 28 | |
| Forest reserves | (510) | 10.63 | 12** | Restricted access and use |
| TOTAL | | 35.36 | 40 | |

Source: Adapted and modified from: Ministry of Land and Human Settlement, *Report of the Presidential Commission of Inquiry into Land Matters*, Uppsala, SIAS, 1994, table 1.2, p. 24, Sam Moyo et al, *The Southern African Environment: Profiles of the SADC Countries*, London, Earthscan, 19, p. 241, Ministry of Natural Resources and Tourism, *National Forestry Policy*, Dar es Salaam, March 1998, p. 8 & *The Wildlife Policy of Tanzania*, 1998.

* The figures are very rough estimates from the sources cited because the information on land distribution varies from publication to publication and even within the same publication.

** The total of forest reserves is 15 per cent but 3 per cent overlaps with national parks.

2.7 Dependence on CPRs²⁰

It is important to understand what common pool resources materially contribute to people's lives. There are several areas of importance – grazing for livestock, timber and non-timber forest products, water, and wildlife. We will not dwell on water or wildlife here. The importance of the former is obvious for people and irrigation, the latter is best dealt with separately when the work of MBOMIPA in Iringa is discussed. Wildlife is often used illegally in Tanzania. Consequently it is difficult to gauge how much meat is used and how valuable it is. The work of MBOMIPA offers some insight as to how valuable wildlife could be if local use, and local control of use, is allowed.

A great deal of grazing for livestock in Tanzania depends upon commons. Herds are an integral part of many rural people's livelihoods. They provide a store of capital, day to day food needs, oxen for ploughing, and they offer ready access to cash in times of hardship. Owning stock is the common goal of many people, because it is a relatively simple and accessible way of improving their standard of living.

Pastoral people gain a considerable proportion of their income and nutrition from their herds. In Ngorongoro in the dry season milk affords 34% of the recommended calorie intake, in Kajiado in Kenya it provided 48% (Homewood 1992). At the Mkomazi Game Reserve, in northern Tanzania, after herders were evicted from the Reserve they still took gained up to 13% of the recommended calorie intake from milk in the wet season (Brockington and Homewood 1999). For wealthier families much more milk was available.

Livestock also afford considerable financial means. Buying cattle is a considerable investment for the smallholder, owning them gives security. Smallstock are also important because of their ability to breed up rapidly. They are renown as the 'small change' of livestock keepers - easily slaughtered or sold to provide for every day needs. At Mkomazi, although herders had lost animals following eviction and herd performance was low over 50% of herders earned 20,000/- (approx UK£20) or more a month from selling stock (Brockington 1998). At a District level the livestock trade generates valuable income which fuels local economies. At Mkomazi before evictions between 200-500 cattle a month were sold at the four district market, generating considerable revenues and supporting numerous other businesses. Similarly in Rukwa

²⁰ I am grateful to Dr. Dan Brockington for assisting me with this section.

in the south west of the country, the arrival of stock keepers has seen a surge in economic activity supported by the profits of the cattle trade.

Gathered produce is also an important part of people's diets. In a sample of 39 households in Pare District, Kiwasila found 92% gathered and used wild vegetables as food, particularly at the end of the dry season. Firewood, often gathered from common lands is again vital. 36% of Kiwasila's sample reported using charcoal. Common pool resources are also important for house construction and making every day implements. Rogers and Hall have found that the extent of use can have a significant effect on forest dynamics (Rodgers and Hall, 1986). In Rukwa grass reserves are set aside by village governments to provide roofing material. Grass is also gathered and sold to people who live too far away easily to gather their own.

Common pool resources are also important for intra-household dynamics. Milk is often controlled and sold by women. The income resulting is theirs to dispose. Similarly medicines and forest products gathered from commons and sold by women offer an income independent from men (Brockington 2001). Kiwasila has shown that gathering edible wild leaves forms a significant income for school children and women around the Pare mountains in northern Tanzania (Kiwasila and Homewood, 1999).

2.8 Common Pool Resources: Use and Conflict

Land is, arguably, the most important common pool resource in Tanzania. As will be explained below, neither traditionally nor during the colonial or post-colonial period, private ownership of the soil in the typical sense of European jurisprudence was recognised in the country. The division between 'private' and 'public' or 'individual' and 'common' therefore has to be located primarily at the **use and management** of resources rather than **ownership**. This has profound implication for the concepts and definitions associated with common pool resources and common property regimes in the mainstream academic and policy literature. I will return to this issue in subsequent sections of this report.

Agrarian lands and pastoral lands both fall within common pool resource for some **local** communities. By and large though, it is pastoral land both within agrarian, agropastoral and pure pastoral communities, which strictly falls within common pool resources. Grazing lands and pastures are thus the premier common pool resource.

Such lands may occur within village boundaries, as the village commons, or on "public lands" (for discussion of 'public lands' see below) outside village boundaries.

The issue of what are village commons and what are commons on public lands, which in Tanzania are under the control of the state, is one of the major sites of conflict between local communities and state organs (see URT 1994, vol.1 and 2, *passim*). These disputes intensified particularly after the massive, forced villagisation of Tanzania's rural population in early 1970s (URT *ibid.*, Chs. 3&4, Coulson 1982, ch.22). Although the official justification of villagisation was to bring rural producers together in 'development villages' to make it easier for the state to provide services, it is strongly doubted that pre-villagisation rural smallholders did not live in a community and or had no sense of community life and resources. Be that as it may, since villagisation, the issue of what constitutes village boundaries has been one of the most contentious terrain between local communities and state or other landholders allocated land by the state.

The boundary issue obviously is not simply one of demarcation or geographical space. Rather it is about resources and, very frequently, common resources. This is so because it is precisely the common community resources - like pastures and forests - which may not be physically occupied by households but to which the community has defined access. Yet, it is easier for outside interests, including the state, to rationalise and justify excluding such lands from village land on the ground that they are unoccupied lands. This is one reason which explains, for example, why pastoral lands like the Maasai's, who practice transhumance, have been subjected to massive appropriation by the state and other interests without much ado (Parkipurny 1991, Lane 1996, *passim*, Mwaikusa 1997). Among development writers and policy makers priority, if at all, is given to sedentary communities and agrarian interests over pastoral community, the later being considered lower on the scale of "development" (Mwaikusa *ibid.*, Mustafa 1986), further rationalising the alienation of pastoral lands.

In relation to the state, the 'commons' of cultivating communities too have faced the same problem of appropriation, such commons being considered unoccupied lands and not part of a village. Local communities, however, have very different perceptions of their boundaries and their lands, which include the commons, to which they have had traditional access defined and governed by customary tenures.

The state has appropriated land in Tanzania for various reasons. As we have already seen, Tanzania has one of the biggest area set aside for conservation as protected areas. This has invariably meant encroaching on the commons of the local communities. And as invariably the boundary between protected areas and adjacent villages has been and continues to be one of the important sites of disputes.

The second form of appropriation by the state has been to provide land for state companies or Government projects. During the period of the state control of the economy, it was common to appropriate village lands for state corporations for various projects giving rise to perpetual grievances and disputes. The classical case is that of the alienation of over 100,000 acres in Hanang in the Arusha region, where the state agriculture company (NAFCO) with Canadian aid established wheat farms. The Barabaig people who were most affected have fought against this in various forums for the last two decades. An open letter to the Canadian people written by the leaders of the Barabaig community (see excerpts - Box 1) well summarises the dispossession of common pool resources of the Barabaig by the state with the assistance of foreign aid.

BOX 1: APPROPRIATION OF COMMON POOL RESOURCES: BARABAIG v. THE STATE

We live close to the land. It is an arid land where droughts are common. Many of our children suffer deprivation and die for want of better health care. Our livestock dies also from lack of veterinary services. Our womenfolk walk many miles of water. They grind maize by hand using stones. Many of us are illiterate. Few people visit us to hear our problems and attend to our needs. Some of our leaders have tried to help us. However, not enough is being done to support our development compared with other Tanzanians.

Traditionally, we live on the plains that surround Mount Hanang in Hanang District of Arusha Region. We have done so for well over a hundred years. Here we build our homes, herd our livestock, cultivate our plots, and live our lives. In colonial times we had our own Barabaig Native Authority and Chief. At that time we cleared the land to control the tsetse fly. Today we burn the pasture to control ticks and improve the grazing. Some of the land is grazing land. Some of the land is sacred. Our esteemed elders are buried here in graves that are tended and visited for generations. We value and respect the land. We want to preserve it for all time.

Our herds need forage, water and salt. Our land has all these things. Without them we cannot survive. From as long ago as we can remember our land is being taken from us. People are continuously moving in to grow crops on our pastures. They take the best land which we rely on to sustain our herds. The loss of this land has resulted in the drastic reduction of our livestock and a decline in production that cause us great suffering. If our land continues to be taken we shall have to move away or perish. The

choices for survival are few; either we accept the risks and hardships of migration or go and become paupers in the towns.

The largest tracts of land being taken from us are for the cultivation of crops. The government has taken more than 100,000 acres for a wheat scheme.

The decision to take this land was done by the non-Barabaig leaders. Official approval for this was given without our consent. We were just told the project needed the land and we would have to move. We have not been compensated for the loss of this land. A little was paid to some of us, but only for the loss of housing, provision has been made for those dispossessed to go anywhere else to live.

Canada through its aid programme (CIDA), has been involved in the Tanzania-Canada Wheat Project for twenty years. In that time Canadian aid in partnership with Tanzania's National Agriculture and Food Corporation (NAFCO) has established a vast wheat-growing complex on the Hanang plains. The original plan was to cultivate seven farms of 10,000 acres each, totalling around 70,000 acres. This is the area we were told we would have to go give up. Now we find NAFCO has obtained titles to more than 100,000 acres, 30,000 acres more than we had been advised. This was prime grazing land. We can ill afford to lose such a large area of pasture.

The growing of wheat on what was once pasture is destroying the environment. By stripping away the vegetation cover with mechanised cultivation, the soil is laid bare to be carried away by flash floods, deep gullies and silting up water sources and our sacred Lake Basotu. The area of land we were left with is generally less fertile and too small for our needs. It is becoming denuded by overgrazing. The vegetation has changed, making pastures less productive than they were before.

Source: quoted in Lane, Pastures Lost, op. cit. Pp.171-2.

The third form of appropriation has been by, or, for private investors, both local and foreign. This is particularly true after the liberalisation and privatisation policies since 1986. It takes two forms. One, privatisation of former parastatals means that the land passes into the hands of the new private owner who is even more assertive of his private rights. Two, land is appropriated by the state, in the name of creating and assisting foreign investments, pressurising villages to sign away their lands to the so-called investors. Many examples of this have been documented by researchers (see Igoe & Brockington op. cit., Shivji 1998.) and the Land Commission report (URT *ibid.*) discussed these at great length. Some examples in Box 2 illustrate the nature of the conflict.

Granting of hunting blocks, which is usually done on village lands, has also resulted in a kind of alienation because the villagers' access to the hunting block areas is either excluded altogether or restricted (Nshalla op. cit)

BOX 2: LAND ALIENATIONS TO PRIVATE INVESTORS

The Land Commission received a complaint from the Wildlife Division of the Ministry of Tourism, Natural Resources and Environment on the proposed alienation of land for 'natural ranching'. This complaint was the subject of the Land Commission's preliminary report no.2. It illustrates some typical features of modern investment in Tanzania's rural lands that meets the approval of the Investment Promotion Centre, now called the Tanzania Investment Centre.

An Irish company was given a certificate of approval for a project, which involved grant of a right of occupancy in Simanjiro plains of then Kiteto district sometime in 1991. The proposal was to occupy land, which fell across the migration path of wildlife, particularly wildebeest. The occupier would shoot game when they stepped on his land and export game meat to Europe where it is increasingly preferred to other red meat. The Wildlife Department had earlier refused the project on the grounds that it amounted to game cropping and would have had very harmful effect on the reproduction cycle of wildlife.

The land that was proposed to be appropriated also contained a number of pastoral villages.

Another contentious project was the proposed alienation of some 200,000 acres of Kiteto district to a locally incorporated company purportedly dealing in cattle products. The company had foreign shareholders with connection to a locally owned company of consultants. Local Maasai had vigorously opposed the alienation. The then Minister of Lands approved the application while her successor reduced it to 50,000 acres. Meanwhile, on the strength of a letter of offer the company had already started operations in the face of bitter opposition by surrounding villagers and complaints from the local Member of Parliament.

After over five years of tension the issue was finally determined against the company. The company then moved to Ngorongoro district where it was interested in getting around 100,000 acres. In 1992 it was granted around 25,000 acres in the village of Ololoskwan on the following conditions:

- (i) that the village will be given 10% of shares in the company;
- (ii) that the company will facilitate the production of good heifers for the villagers;
- (iii) that the company will repair the broken down vehicle of the village;
- (iv) that the company will subsidise cattle medicines for the village;
- (v) that the company will reconstruct/rehabilitate the village dip.

Although this application was approved at all levels, opposition from the villagers continued. According to one recent research, the conflict continues and there have been cases filed in the High Court by both sides.

Source: Adapted from Issa G. Shivji, Not Yet Democracy, 1998, p. 34-5:

Finally there are also conflicts between agrarian and pastoral communities over common resources adjacent to villages. Often this is caused by the alienation of pastoral lands forcing the pastoralists to migrate and come into conflict with communities of cultivators. The conflict between the Maasai and Sonjos who are neighbouring communities in Ngorongoro district of Arusha region is a classical case of inter-community conflict induced by external pressures and Government policies

(see Box 3). The other conflict between pastoralists and cultivators, which has intermittently led to violence, is that in the Kilosa district.

BOX 3: INTER-COMMUNITY CONFLICT OVER COMMON RESOURCES

The Sonjos are a small community who live in the Sale division of Ngorongoro district in Arusha region. They are surrounded entirely by the Maasai, to the north of Lake Natron. The Sonjos are agriculturists but also keep livestock and have a fairly developed system of traditional irrigation.

Traditionally, the two communities lived peacefully as neighbours with well-defined and respected boundaries. During the dry season, when grass was scarce on their land, the Maasai would bring their cattle into Sonjo villages where greener pastures could be found. The Sonjo would let them in. After the season, the Maasai would leave and move to Wuasso within what is the now Loliondo district. Considerable amount of land in Wuasso has been appropriated by Government officers and other cultivators from outside making it more difficult for the Maasai to return to Wuasso after the dry season. Thus increasingly they have stayed on Sonjo lands giving rise to violent conflicts between the two groups. The situation has been further complicated by boundary disputes.

In the late '80s, apprehensive of the insecurity of their lands, a Maasai NGO, with the help of some donor organisation, set in motion the process of demarcating their village boundaries so as to get titles. In the process, they have tended to include Sonjo villages within Maasai villages intensifying the struggle between the two communities further.

Source: Extracted from: United Republic of Tanzania, *Report of the Presidential Commission of Inquiry into Land Matters*, 1994, vol. II, p. 42.

The conflict over land described here repeats with respect to other common resources such as forest products and wild life. Thus granting of hunting blocks exclude hunting and gathering ethnic groups like Hadzabe who live in Singida and Arusha regions. Timber and logging interests invariably come into conflict with villagers for whom forest products like poles are also building material. Villagers also complain that they do no benefit from the exploitation of forests by outsiders (see boxes 5 & 6).

All in all, we may draw the following conclusions so far as the use of common pool resources by the communities is concerned.

- 1) That the common pool resources have come under increasing strain from forces outside the communities resulting in the dispossession of these resources from the communities and consequent poverty.

2) That the state and the governance structures have played an important role in this, either directly as during the period of state control of the economy, or indirectly, during liberalisation in the process of encouraging, enabling and facilitating private investors from outside the community.

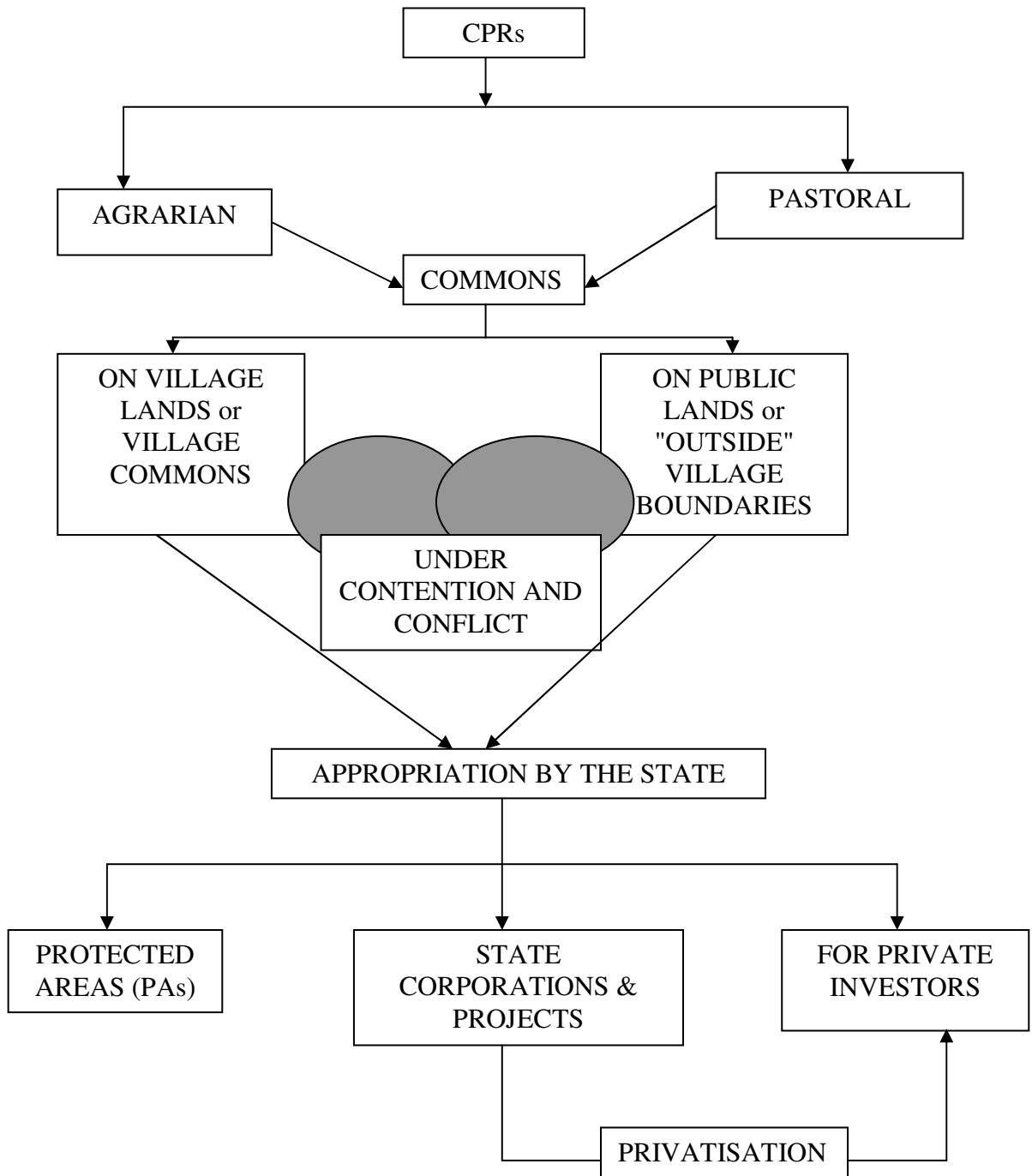
3) That the creation of protected areas (national parks, forest reserves etc.), which is justified in the apparent interests of larger national community, has also resulted in the dispossession of resources from the local community. It is certainly perceived to be so because local communities have not been involved in the planning and decision-making processes of creating protected areas and have not benefited from them.

4) That dispossession and, or, perception of dispossession, has happened in the environment of state policies such as nationalisation and monopolisation as well as privatisation and liberalisation.

We have tried to represent the conflicts over CPR in a diagrammatic form in Figure 3.

The next question that arises is to what extent the legal regime protects and or enables the processes of dispossession/privatisation of common pool resources contrary to the interests of local communities.

FIGURE 3: COMMON POOL RESOURCES: USE AND CONFLICT



3. COMMON PROPERTY REGIMES: LAW AND POLICY

3.1 Land Policy and Tenure

In this section we will first discuss the land tenure legal regime established by the colonial state in 1923 and which endured for over eight decades. We will then look at the period of land tenure reform starting with the Land Commission (1991) through the National Land Policy (1995) culminating in the passage of the new land laws (2001).

3.1.1 Land tenure regime: 1920s to 1990s

The conceptual base of the land tenure system in Tanzania was laid by the British in their Land Ordinance, 1923. During the British period, the land tenure policy was influenced by two major factors. First, that Tanganyika was a Mandate and then a Trust Territory. The other factor was the colonial policy of developing Tanganyika as a plantation/peasant economy rather than a settler colony. Under the terms of the trusteeship, the interests of the 'natives' were paramount and the Administering Authority was required to pay special regard to native laws and customs with respect to the occupation and use of land (URT op. cit. 11).

The most important section of the Land Ordinance declared all lands, occupied or unoccupied, to be 'public lands' under the control and subject to the disposition of the Governor. The radical or ultimate title over land was thus vested in the Governor, meaning the state. The Governor was empowered to grant rights of occupancy (something like a lease but not exactly a lease) of up to 99 years. The right of occupancy was defined as a right to use and occupy land including 'the title of a native or a native community lawfully using or occupying land in accordance with native law and custom'. The net result was that two types of right of occupancy were developed: *granted* rights of occupancy which were registered and evidenced by a negotiable certificate of title and *deemed* rights of occupancy, which were essentially the rights of a 'native' or 'native community' held in accordance with customary law. These were not registered lands. The legal regime thus established gave the colonial state considerable flexibility in their administration of land. Land alienated to foreigners for various reasons was under the granted right of occupancy. Indigenous peasant and pastoral communities held their land under customary laws, which were recognised by law but not secured in law. Their security depended on the prevailing

policy of the state at the particular time. As a matter of fact, judicial interpretation classified customary occupation by 'natives' as merely 'permissive', which did not establish any rights against the government.

The Land Commission succinctly captured the position in following terms.

Legally the effect of section 2 of the Ordinance was to vest the radical title in the state so as to allow it to control land. The section ingeniously expressed the two-fold character of the British colonial state - internationally as a 'trustee' and internally as a 'conqueror'. ... [Thus] sovereignty over land and property in it merged in one entity, the state. Conceptually the term 'public lands' expressed an *administrative* relation between the state and 'public lands'²¹

This distinction between *legal relation* and *administrative relation* allowed the colonial state, and subsequently the independent state, to exercise its power and control over customary lands with great flexibility without being tied by law. Customary land rights were regulated by administrative fiat while granted rights were regulated by contract in which each side (the state on the one side and the occupier on the other) had legal rights and duties.

The corpus of land tenure regime developed during the colonial period continued to apply fully after independence with only one change: 'President' replaced 'Governor'. All public lands were vested in the President as the head of the executive under the control and administration of the state bureaucracy. The jurisprudence developed by the courts until recently considered customary tenure, which is deemed rights of occupancy, inferior and less secure to granted right of occupancy. Major displacement of customary holders like the villagisation programme was carried out without any fundamental change in the land tenure regime. Similarly, the state after independence alienated village lands for various, so-called public purpose, without first following due process provisions of compulsory acquisition of the Land Acquisition Act, 1967 as happened in the case of Barabaig agropastoralists in the 1970s (Box 1) and the

²¹ A Belgium representative, Van Rees, in his report to the Permanent Mandates Commission, agonising over the meaning of the term 'public lands' made the following perceptive observation:

It appears to be more likely that he [the draftsman] did not wish to establish a legal relation between what are known as 'public lands' and the State, and that consequently he had in view merely an administrative relation in the sense that these lands have been

eviction of Maasai herders from the Mkomazi Game Reserve in the late 1980s (Box 4).

In the 1980s, judicial attitudes seem to show some change by placing customary tenure at the same level as granted rights.²² The Land Commission noted this change in judicial attitude but was cautious on celebrating it as an irreversible victory for customary titles. The celebration of some judicial pronouncements (see footnote) by lawyers was rudely cut short recently in the decision in *Lekengere Faru Paratu Kamunyu & 52 Others v. Minister of Tourism, Natural Resources and Environment & 3 Others*, (Mkomazi case) (Civil Appeal No. 53 of 1998, unreported) sadly vindicating the Land Commission's caution. In the *Mulbadaw* (Barabaig) case, the court observed in passing that customary rights, just as granted rights, could not be acquired by the state without following the due process provided under the *Land Acquisition Act*. Yet the appeal in that case went against the local community (mainly Barabaig although some original claimants were of Somali origin) who wanted their land, appropriated by the state company, to be restored. The reason being that the appellants had not proved that they were 'natives' and only natives could claim customary rights.²³ In the *Mkomazi case*, there was absolutely no doubt that Maasai were 'natives' but the Court of Appeal, in an inexplicable topsy-turvy reasoning, decided that the Maasai may be natives but not sufficiently ancestral to the Mkomazi area, because, to quote the court's own words, 'the Maasai community or tribe in question was not the first tribe to arrive in the geographical area which is the subject of this case'. In a bitter comment on this utterly novel notion of "first tribe" in the land jurisprudence of Tanzania, one of the legal aid counsel who represented the Maasai, wrote,

We have all along believed that the law of Tanzania is settled around the proposition that proof of customary land right in Tanzania is not pegged on a tribe or tribes or which tribe moved into a geographical area under

placed in their entirety under Government control. [quoted in URT
ibid. p. 12n.]

²² See the cases of *NAFCO v. Mulbadaw Village Council* [1985] T.L.R. 88, *Nyagwaswa v. Nyirabu* [1985] T.L.R. 103 and *Kakubukubu v. Kasubi* (Civil appeal No. 14 of 1991). In the celebrated case of *Attorney General v. Lohay Akonaay & Joseph Lohay* [1995] T.L.R. 80, the Court of Appeal went even so far as recognising deemed right as a (private) property protected by the right of property in the Constitution. Yet, in each one of these cases, the points of principles discussed here were all *obiter* (i.e. made in passing) and the courts found means of wriggling out of drawing logical conclusions.

²³ For a critique of this decision see Shivji & Tenga 1985. A good discussion of this and other cases filed by the Barabaig community is also found in Lane 1996, 166 et. seq.

consideration. We have all along believed that customary land tenure is proved if there is preponderance of evidence showing use and occupation of land in accordance with customary laws and practices. (Juma 2000, 154)

The fragility of customary land rights, which in effect is the legal regime governing common pool resources such as grazing lands and village commons, particularly in relation to the state, has once again been confirmed and reinforced by such court decisions. Whether, and how, the new National Land Policy, 1995 and the subsequent land laws have addressed this issue will be discussed in the next subsequent sections.

To summarise then the legal and regulatory regime governing CPRs.

1) All lands are public lands vested in the President. Users and occupiers of land do so either under granted rights of occupancy or under deemed rights of occupancy. Granted rights are regulated by statutory law, which broadly follows the Torrens system of registering and titling lands. Customary lands are regulated by customary laws and practices of local communities as they have evolved over time but also strongly modified by state laws, both central and local, administrative directives, and official policies.

2) Common pool resources falling on public lands, other than those within village boundaries, are theoretically regulated by state agencies. In practice, adjacent local communities are invariably likely to have claims over these, apparently unoccupied lands, which lead to intense contentions and conflict.

3) Those public lands, which fall within various protected areas, are governed by specific legislation such as national parks, wildlife and forestry laws. The management of such areas is typically vested in statutory bodies created for the purpose or governmental departments under their respective ministries.

4) In sum, three categories of land rights, which are strictly use rights, may be identified in Tanzania: (a) rights of statutory bodies, (b) private rights, both customary and statutory and (c) rights of *common* use, mainly, customary.

3.1.2 Recommendations of the Land Commission

The Land Commission's (LC) recommendations are pretty elaborate. Here we will summarise its salient points, which are relevant to CPRs.

- 1) The LC recommended that the source of radical title be diversified, democratised and delinked from the executive arm of the state. In other words, state sovereignty and property should be separated.
- 2) The Constitution should contain the main features of the land tenure system. All lands should be classified into national lands and village lands. National lands should be vested in a semi-autonomous body called the National Lands Commission (NLC) and village lands should be vested in respective village assemblies (VA) which would be corporate bodies. NLC would hold national lands in trust (legal trust) for the people of Tanzania and would be accountable to Parliament. VAs would hold village lands for the benefit of the villagers.
- 3) All holders of land on national lands, including state and statutory bodies, would hold land from the NLC under rights of occupancy. Villagers would hold land of the VA under customary tenures as modified by statute in terms of the recommendations of the LC. Rights of occupancy would be surveyed, registered and titled as under the present system. Customary rights in villages would be recorded in a simple village registry operated by the village bodies themselves.
- 4) Village boundaries would be demarcated taking the perception of the villagers as their point of departure and boundary disputes would be resolved by the dispute settlement machinery recommended by the LC.
- 5) Common resources such as grazing lands, forests etc. would be owned and managed by the villagers through their village bodies supported and advised by government bodies. Where such resources cut across village boundaries, they would be managed by neighbouring villages entering into joint management agreements.
- 6) The LC recommended procedures for granting of lands to non-villagers including state bodies.

The central recommendation of the LC, which anchored the whole land tenure structure, was no doubt the diversification of the radical title. This point became most contentious in the subsequent debate and was rejected by the Government.

3.1.3 The National Land Policy and the 1999 Acts

The National Land Policy (NLP), largely drafted within the Ministry of Lands reaffirmed that land in Tanzania will continue to be vested in the President and

managed and regulated on his behalf by the Commissioner for Lands. At the village level, it prescribed a management role for the village council and a consultative role for the village assembly. Perhaps, the only radical departure in the NLP from the previous land regime was to assert that 'land has value' and that it should become a market commodity. In terms of law and policy, this meant that restrictions on transfer of lands should be relaxed. The assertion that 'land has value' is a coded term in Tanzania, which basically means that it should be able to be exchanged freely on the market.²⁴

Following the NLP, a consultant was hired to draft the law. Eventually two pieces of land legislation, the *Land Act, 1999* and the *Village Land Act, 1999*, were passed. These laws were brought into force in May, 2001. The laws are elaborate pieces of legislation. The vesting of radical title in the President continues with one difference. The President holds all lands in trust. Whether this will be treated as a legal trust or only a political trust remains to be seen. From past experience and experience elsewhere, it is extremely unlikely, and perhaps impractical, to treat this trust as a *legal* trust whereby the President can constantly be dragged into court in litigation. The two Acts vest the administration of land essentially in the Commissioner for Lands and his subordinates and provides elaborate procedure for applications, allocations and regulation presumably to enhance transparency.

The *Village Land Act* provides for the possibility of adjudication and titling of village lands, or interests within village lands, under the overall supervision and ultimate power and control of the Commissioner for Lands. It also makes it possible for pastoral communities to form ranching associations to hold their lands jointly.

How the new *Village Land Act* will affect CPRs is difficult to say at this stage. To the extent that it makes it legally easier for village lands to be alienated to non-village private interests, it has a potential for further appropriation of common land and privatising them. Two potentially positive aspects of the new law may be noted. One, the Acts are very sensitive to gender equality and equity. The laws address the gender issue by providing for equal women representation on the relevant bodies at the *village level* (see generally Fimbo 2002). While this is a welcome development, in

²⁴ For a critical evaluation of the NLP see Shivji ed. *The Land Question: Democratising Land Tenure in Tanzania*, Special Issue of *Change*, vol. 5, First Quarter, 1997. For the process of policy making on land see Sundet 1997 and for various contentious interests involved in the policy making see Shivji 1998.

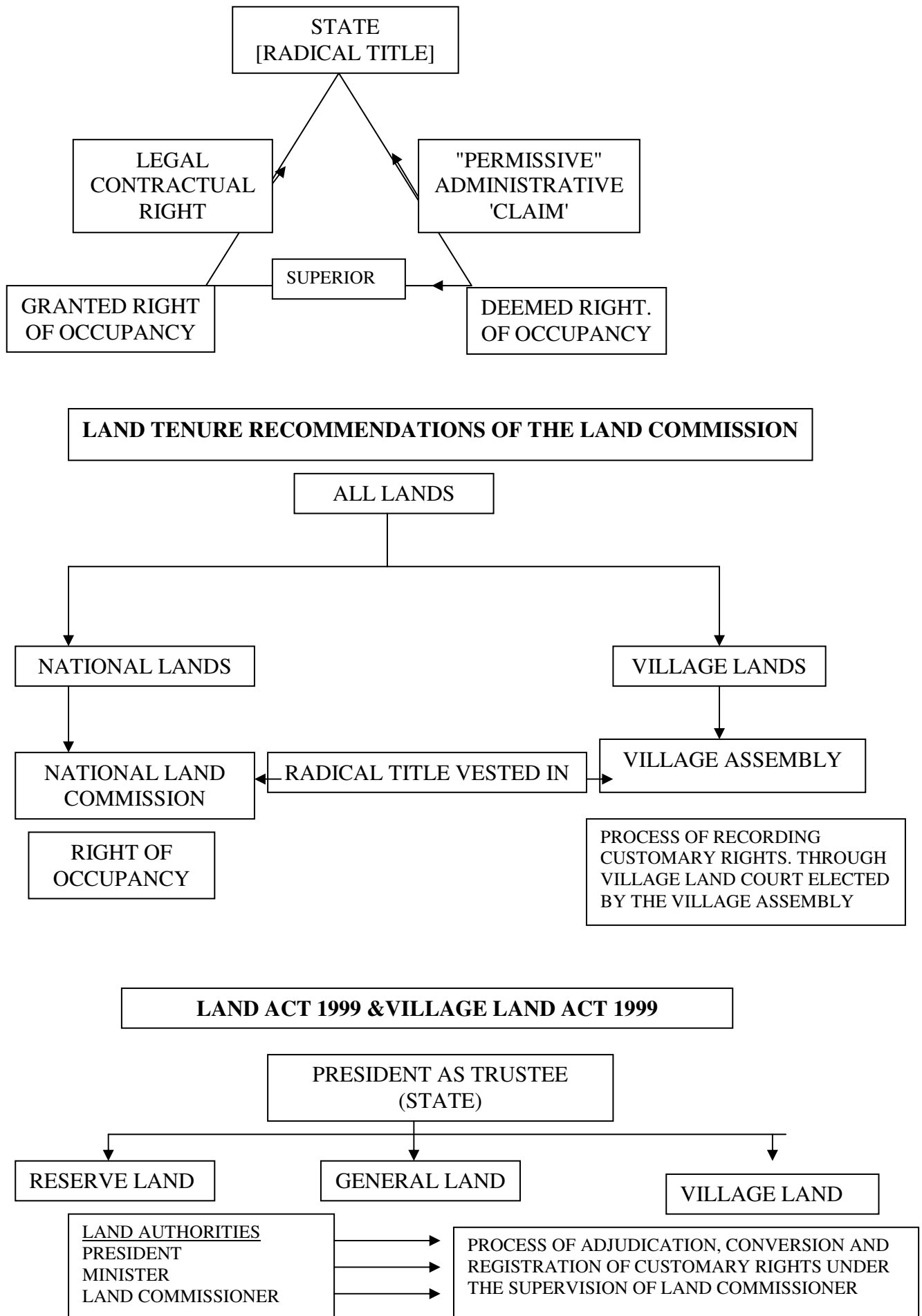
practical terms it may not be very significant because the village land bodies, such as the village land council, have only advisory powers. The overriding powers are vested in the Commissioner for Lands. Thus women's participation is on the bodies which themselves have little power to be able to protect the land rights of the village community.

Sub-section 5 of section 14 of the Village Land Act, 1999, provides that where any person or group of persons have been lawfully exercising any rights in a forest reserve, then such rights 'have always been rights arising from customary right of occupancy'. Thus the rights of, for example, hunters and gatherers, in a forest reserve would henceforth have the status of a customary right. Presumably this will give such rights greater security. Similarly, where land is occupied in the Ngorongoro Conservation Area under a license from the Ngorongoro Conservation Area Authority, such occupation shall be deemed to be occupied under a customary right of occupancy.

Both these positions could be argued to be implicit in the existing law (see Shivji & Kapinga 1998) but unless accepted by the courts, the occupation would have been precarious. Now the law makes it clear and does not leave the matter to interpretation. Interestingly, these sub-sections do not make reference to Game Controlled Areas or Game Reserves. Thus, for example, the Maasai residents in the Mkomazi case (see *supra* and *infra*), whom the Court of Appeal declared to be only licensees, could not have relied upon these sections in their favour.

Figure 4 summarises the development of the land tenure policy and law and gives the main features of the 1923 Ordinance, which lasted for over 75 years, the main recommendations of the LC and the basic building blocks of the new land laws.

FIGURE 4: LAND TENURE FROM 1923 TO 2001



3.2 Wildlife and Forestry: Tenure and Policy

As will be clear from this section, the philosophical and conceptual base of the land tenure regime equally applies to other natural resources legal regime. In this section we briefly examine the wildlife legal regime. Two periods are distinguished. The period before liberalisation, which was premised on state ownership/control and top-down management, and the period of liberalisation where state ownership is continued, but this time around, it is deployed to enable and facilitate private sector appropriation of natural resources. Just as in the first period so in the second, it is the small and middle level peasant and pastoral local communities that receive the raw deal as their customary rights are increasingly restricted and threatened with extinction.

3.2.1 Pre-liberalisation Conservation Policies

The early protected areas laws enacted by the colonial state took their cue from the London International Convention of 1933. This was essentially based on creating protected areas and adopting special conservation measures (Kabudi & Majamba 2001, 13-4). Even where human intervention was permissible for hunting and gathering, for example, it had to be heavily regulated. The *National Parks Ordinance of 1948*, repealed and replaced by the *National Parks Ordinance of 1959*, still applicable, and the *Fauna and Flora Conservation Ordinance of 1951* were based on these principles. The national park legislation made explicit provisions for the exclusion of all human habitation and all interests in land within national parks were extinguished. In lesser grade PAs, such as Game Reserves (GRs) and Game Controlled Areas (GCAs), hunting by indigenous communities was permitted, provided they used traditional weapons. Outsiders were allowed to hunt with permits and licenses.

The Fauna and Flora Conservation Ordinance was repealed and replaced by the Wildlife Conservation Act of 1974. This Act is based on the principles enunciated in the Algiers Convention on the Conservation of Nature and Natural Resources, Algiers, 1968. The Convention recognises the interests of local communities outside protected areas. Protected areas (PAs) are still based on the principle of exclusive conservation owned, controlled and managed by the state, without much regard to the protection of traditional rights of the people to wildlife and its products (Kabudi &

Majamba 2001, 15). Generally, the command and control approach through penal legislation continued to inform post-independence legal regime over natural resources (ibid., 12-13).

While it is true that, for example, the *Wildlife Conservation Act* does not explicitly exclude customary *land* rights in GRs and GCAs (Shivji & Kapinga 1998, Juma 2000), it is doubtful if these rights are any less fragile than the general customary land rights already discussed. If anything, as the *Mkomazi* case shows, when the chips were down even the highest court in the land reverted to colonial jurisprudence to categorise them as "permissive rights" only and thus lend judicial respectability to arbitrary administrative practice (see Box 4).

BOX 4 THE MKOMAZI CASE

Mkomazi Game Reserve was declared a game reserve in 1951. It was inhabited by pastoralists and used by many local people for hunting and honey gathering. In the late 1980s, following the usual outlook of international conservationists to exclude human inhabitation, people were forcefully evicted because it was alleged that human settlement was harmful to the cause of conservation. A group of US and European organisations fund the Tanzanian Trust, which runs and manages the Reserve. The Reserve is being developed into a black rhino sanctuary.

Evictions harmed the people causing loss of livelihoods, shelters and increasing pressures on surrounding communities. Two counsel from the Legal Aid Committee of the Faculty of Law, University of Dar es Salaam took up the matter and filed a suit in the High Court. Their main contentions were that (a) the 53 plaintiffs were natives who occupied Mkomazi area had customary titles to that land, (b) that mere declaration of a game reserve did not extinguish customary rights, (c) that to be able to extinguish customary titles lawfully one has to invoke the due process provisions of the *Land Acquisition Act*, and (d) that the evicted people be restored to their lands and be paid compensation for loss of property and injury which they suffered during and as a result of the evictions.

The High Court agreed with the basic contentions of the plaintiffs but was of the opinion that too much time had gone by and therefore restoration would be impractical. The court therefore awarded some monetary compensation and that the Government should find them alternative land.

The plaintiffs were dissatisfied with part of the judgement and therefore appealed. The Court of Appeal totally overturned the decision of the High Court, even that part which was not appealed from by either party holding that the evidence showed that the Maasai were not the original or first inhabitants of Mkomazi and therefore they did not have ancestral customary titles.

Source: Igoe & Brockington 1999, 44-56 and Juma 2000.

Between national parks, where all customary rights have been extinguished, and GRs and GCAs, where some restricted customary rights are tolerated (their scope remains legally ambiguous), falls the world famous Ngorongoro Conservation Area (NCA) established under the *Ngorongoro Conservation Area Ordinance* (NCAO). The multiple land use philosophy behind the NCA is held up as exemplary. Historically, perhaps, NCA was developed by the colonial state as a multiple land use conservation area for pragmatic and political reasons.

The whole of Serengeti plains and the Ngorongoro highlands have been inhabited by the Maasai for over two centuries. The Serengeti National Park was created in 1940 on the understanding that the Maasai would not be moved without their agreement. It is said that in 1958-9, the Maasai agreed to move to Ngorongoro from Serengeti, when Serengeti was declared to be an exclusive national park, on the understanding that they would be allowed to continue with their pastoral way of life in Ngorongoro. (Shivji & Kapinga 1998, 5-6; Lissu 1998, 9). Since then, though, the Maasai of Ngorongoro have not lived peacefully in Ngorongoro as the Ngorongoro Conservation Area Authority (NCAA), a statutory body charged with managing the NCA, has imposed severe restrictions on the customary rights of the residents (*ibid.*). Customary land, and other natural resources rights, of the community in the NCA remain not only fragile but threatened with extinction as international conservation lobby and founders (like the Frankfurt Zoological Society and the International Union for Conservation of Nature (IUCN), together with local officials, have been contemplating evicting the Maasai altogether from NCA as the NCAA prepares to obtain a title to land within its boundaries (Shivji & Kapinga *op.cit.*).

In an area like the NCA, the prescription for community based conservation (CBC) or community based management of natural resources (CBMNR) falls woefully short. This author with a colleague, after investigating the regime established under the NCAO, the powers of the Board of Directors of the NCAA, various breaches of human rights, including land and resources rights of the residents, discovered that the fundamental underlying problem of NCA was that of governance and meaningful participation of the residents in their own governance rather than CBC or CBMNR, or, for that matter, sharing of benefits from tourist proceeds. We therefore ended up developing an alternative governance structure for NCA (see Box 5).

BOX 5

NGORONGORO CONSERVATION AREA: CONSERVATION AND DEVELOPMENT OR DEVELOPMENT OF GOVERNANCE

NCA is some 8,292 sq. km., which is some 59 per cent of the Ngorongoro district. 42,000 Maasai pastoralists live in Ngorongoro and have lived there for a couple of centuries. The population of Ngorongoro is some 60 per cent of the total population of the district,

NCA is controlled by a statutory body, the NCAA, at the top of which is the Board of Directors. The members of the Board are all appointed by the President and the Minister. The NCA has wide-ranging powers of legislation, execution, quasi-judicial and police powers. It can restrict movement, access to particular areas, entry into and exit out of the NCA. For example, Maasai herders have been excluded from the crater on which they depend for salt for their cattle.

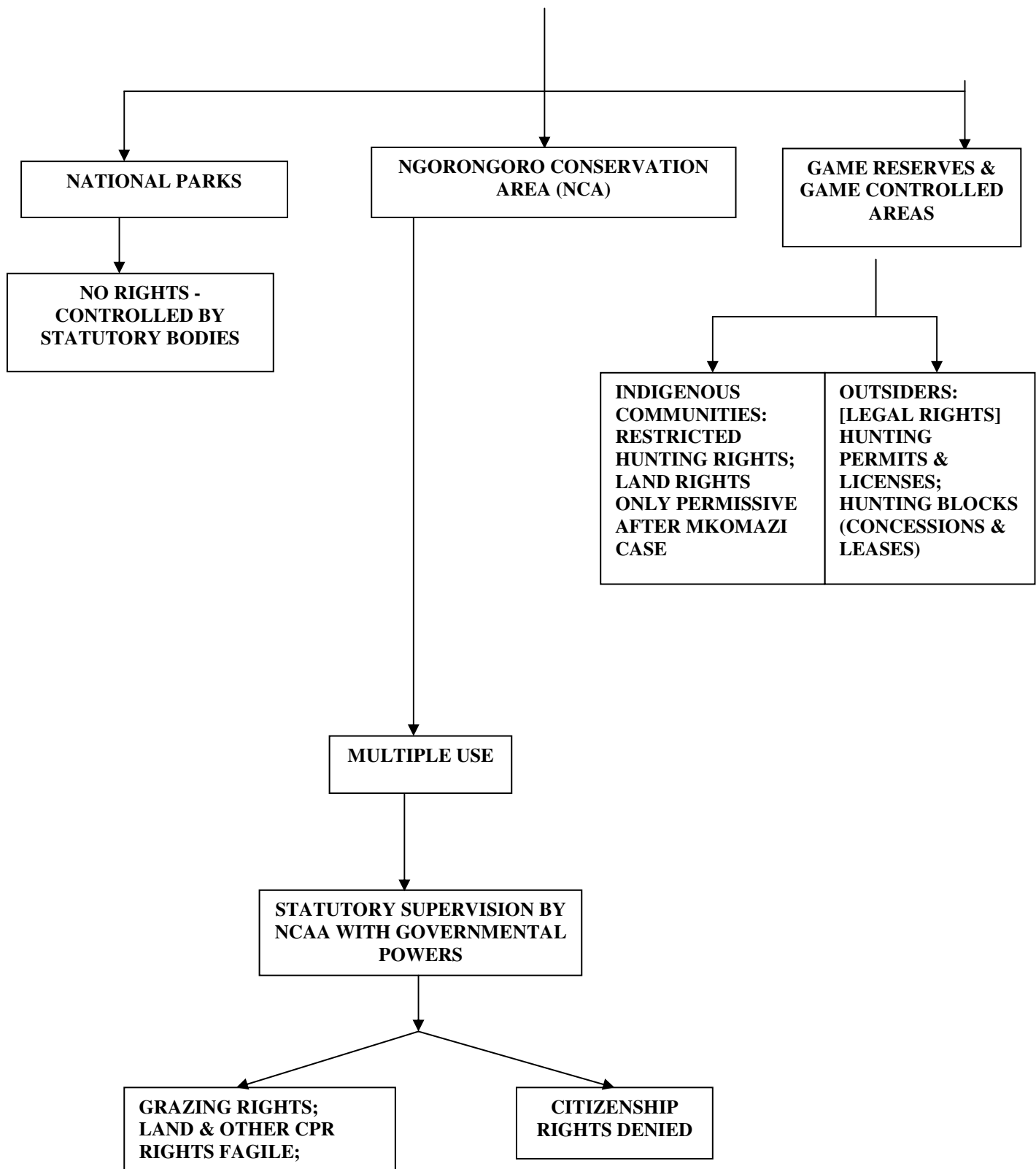
NCAA raises handsome revenue from tourist business but the Maasai suffer from droughts, malnutrition and lack of other social services. NCAA has built some facilities for the residents but the residents have had no say on the planning and allocation of revenue nor on conservation policies.

We found that the powers of NCAA are of the nature of governmental powers, which actually override the powers of the Ngorongoro District Council. We therefore concluded that not only various human rights were violated, including their customary land rights, but the residents were denied their basic constitutional right to participate in their local government. This is so because although the NCAA exercises governmental powers it is not an elected body. Hence we recommended that instead of a Board of Directors, NCA should have an elected body, say, a Council like other local government authorities. The issue here was one of governance of people and not management of things.

Source: Shivji & Kapinga: *Maasai Rights in Ngorongoro, Tanzania*, London: IIED & Dar es Salaam: HAKIARDHI, 1998

CPR rights in protected areas are summarised in Figure 5.

FIGURE 5: CPR RIGHTS IN PROTECTED AREAS



3.2.2. Liberalised Conservation

In the last decade or so, there has been some change of heart in the international conservation "community" and lobbies which have now shifted towards emphasising community based conservation (CBC) philosophy for various paternalistic ("the need to protect indigenous cultures") and pragmatic ("top-down conservation has not worked and is not sustainable") reasons.²⁵ The new sectoral policies developed by the Ministry of Natural Resources and Tourism with the help of international consultants and their counterparts, for example, the National Wildlife Policy, 1998, and the National Forestry Policy, 1998, stipulate CBC and community based management (CBM) as its strategy. This has been welcomed by experts and consultants in this area, cautiously by some (Shauri 1999), enthusiastically by others (Kabudi & Majamba op. cit.)²⁶.

The National Wildlife Policy continues to stipulate that wildlife shall be owned by the state but provides for Wildlife Management Areas (WMA), which is where CBC will be implemented. It is interesting to note that WMAs are not to be implemented on non-village public lands under the direct jurisdiction of the wildlife department (WD) of the Ministry but rather on village lands. The unsettled PAs will be directly under state control and management where the local community has no role. What is more, it is strategised that PAs should be titled (MNRT 1998(b), 10) in which case it would be easier to alienate some of these lands to *private investors*. Similarly villagers are to be encouraged to enter into agreements with private investors on the WMAs. This could turn out to be yet another vehicle of land appropriation by outsiders.

Given the previous experience of the villagers of the expansionist nature of PAs and their insatiable appetite to appropriate village lands, through such measures as buffer zones and wildlife corridors (Shauri & Hitchcock 1999), local communities tend to be

²⁵ In Tanzania, a number of local NGOs funded by international agencies and NGOs have taken up the cause of community based conservation. This is true of government policy makers as well, partly, if not mainly, to attract and retain donor funds. See generally the publications of EPIC (Environmental Protection and Institutional Strengthening Project) in partnership with LEAT (Lawyers Environmental Action Team). AWF (African Wildlife Fund), WRI (World Resources Institute) and USAID (United States Agency for Development) are also active in funding and providing guidance and generally being active in promoting CBC and CBNRM (community based natural resource management). TANAPA (Tanzania National Parks body), a governmental body managing national parks, has its own unit to publicise community services. It seems more interested in co-opting communities than their meaningful consultation and participation (LEAT 1998).

²⁶ Even then these strategies are not without opposition as one of the consultants makes clear. (see Kabudi 2001).

extremely suspicious of apparently 'benevolent' policies like CBC as the massive evidence collected by the Land Commission and other studies show (see LEAT 1998, 4, 25, 33-34, for example, Kikula et. al . 2001, 19).

BOX 6
**BUFFER ZONES, WILDLIFE CORRIDORS AND WMAS:
APPROPRIATION BY OTHER MEANS?**

In their study of villages surrounding Zaraninge Forest Reserve (ZFR) in Bagamoyo district (not semi-arid), Coast region the researchers found that tree planting is the main environmental intervention supported by the World-wide Fund for the Conservation of Nature (WWF). The major objective is to protect forests. Another intervention is encouraging beekeeping.

"Conceptually, the above interventions are based on people's participation. But it was evident during this study that the local communities were not much involved during the planning stages of these interventions. Out of the 102 people interviewed in Saadani, Matipwili-Wami and Mkange villages 96% complained of lack of participation, especially in the establishment of buffer zones which they perceived as "encroachment in reverse", i.e. buffer zones being established in village farm/public land instead of these being curved out from the periphery of ZFR. (p. 16).... .

"Village or Community Forest/Game Reserves

This concept tries to decentralise the ownership and management of the reserves to the villages. Processes have started in five villages in the study area. The WWF is funding some surveys done by the Forest and Beekeeping Division. The objectives of such an intervention is to bring resources as close to the communities as possible. And also to use the reserves for income generation from products and tourist fees, hence alleviate poverty. Unfortunately, the village reserves concept has not been well explained to the communities in the sample villages. Judging from early behaviour of the Division of Forestry and Beekeeping many people think this is the latest gimmick of the government wanting to grab more land, as discussed below.

Buffer zonation

The concept of buffer zones has a long history. It dates as far back as the German days in Tanzania. The objective of establishing buffer zones is two pronged. First, to slow down encroachment into forest/game reserves. Secondly, is to allow people to benefit from such zones, especially in villages, which have land problems such as Saadani. In these zones people can, through good, sustainable planning, be allowed to obtain natural resources products such as firewood, building poles, thatch grass, et cetera. More than 98% of the villagers interviewed in the survey area were opposed to buffer zonation for various reasons. Firstly, after the re-survey of ZFR boundaries some of the farmers have been ordered to move back 500 metres from the former boundary for the establishment of buffer zones. Some villagers argue that the buffer zones should be established in the reserves rather than outside in people's farms or in public land. In Gongo sub-village in Maipwili, for example, some people were bold enough to say they would not allow such interventions to take place. Some openly claimed that buffer zones were a neat way for the government to grab more land from them. Moreover, most of the villagers claimed that they were not involved in the deciding and actual demarcation of the buffer zones."

Source: Kikula, Mnzava & Mung'ong'o, 'Linkages between Environmental Conservation Initiatives and Poverty Alleviation in Tanzania: Observations in Areas Adjacent to the Zaraninge Forest Reserve, Udzungwa Mountains National Park and Kisogo Ward Arusha', Dar es Salaam: REPOA, April 2001 (mimeo.)

In the case of National Forestry Policy also CBC is envisaged. It is further expected that village forest reserves will be created to be managed by villagers themselves. The idea is to replicate some of the success stories of community forestry management. We briefly examine two such success stories, that of Mgori forest in Singida and MBOMIPA project on benefit-sharing from wildlife in Iringa.

3.2.2.1 Mgori and Hangai Forest

The story of the Mgori forest has been told in great detail by a foreign consultant who herself was apparently involved in setting it up (Wily 1995). There are some special features of this experiment which perhaps make it difficult to replicate elsewhere, yet it is a good example to learn from.

- 1) The forest is small (about 200 sq. km.) in a relatively less well endowed part of the country and the forest itself is not subject of great interest by powerful outsiders such as timber merchants or foreign investors.
- 2) The villagers themselves are not heavily dependent on the forest and therefore more inclined to stick to conservation measures.
- 3) The forestry officer and district authorities were sympathetically inclined and supported the initiative. The District Council was also sympathetic and could afford to be altruistic because it was not getting much revenue from fees for hunting and logging.
- 4) A well-funded and well-intentioned consultant was at hand to provide technical advice. Apparently this project seems to have been part of the Swiss funded programme for rural Singida district.

Yet it is significant that on her visit a year later, the consultant herself began to note some problems.

- 1) The forest was established *administratively* without a firm *legal* framework. This means that the 'ownership' of the forest by the villagers is shaky. The author seems to think that a firm legal framework would have been put in place once the village is titled and the forest area is encompassed within the village. It seems the author is

oblivious of the fact that titling of the village means (a) extinguishing the existing customary rights of the local community and (b) making it easier for village leaders and more powerful elements within the village to alienate land to outsiders.

2) The consultant also notes the power struggle within the village leadership. Apparently, the enthusiastic and efficient management of the forest was done through an elected Village Forest Committee (VFC) outside the established governance structures of the village. The conflict arose between this committee and the village chairman, who wanted to appropriate some of the benefits accruing from the village forest to himself and his family. The VFC was able to overcome this with the help of district authorities. This may be a temporary success in the short run but in the long run it undermines the structures of village governance, which is what has happened all over Tanzania when district authorities ally with village forces, usually against the interests of the majority of villagers.

3) The success itself remains shaky as the central government authorities have been still threatening to gazette the Mgori forest as a government-owned reserve. (It is precisely these kinds of possibilities that made the Land Commission recommend that village lands should be constitutionally vested in the village assembly, that is, the community as a whole.) (see above).

In contrast to the Mgori forest story is the story of the Hangai forest in the Liwale district of Southeast Tanzania. It is 900 sq. km. and is covered by *miombo* woodland (Waal 2000). The hardwood locally called *mninga* is heavily logged. The total turnover of the logging business in Liwale is estimated to be anything between US\$ 650,000 and 5 million. The logging is done by merchants, who also own their own transport. The forest is surrounded by 13 villages. Around 1993 the Liwale District Council decided that the Hangai forest should be gazetted as a District Forestry Reserve. RIPS, a Finnish funded Rural Integrated Programme, was asked to fund the surveying and gazetting process. In its Participatory Rural Appraisals, RIPS found that the local community opposed Hangai becoming a district reserve because of fear that they would be excluded as they were excluded from the Selous Game Reserve. They wanted to manage the forest themselves. With the help of the Regional Forestry Department, supported by RIPS, villages established village natural resource committees (VNRCs) who were able to collect reasonable fees from logging. Three years later, taking advantage of the retirement of the regional forestry officer, the

district council under the guise of standardising tax reduced the tax charged by Hangai VNRCs. Some of the councillors themselves were involved in the logging business. The Council went further and revived the idea of the Hangai forest becoming a district forest reserve. Thus the dispute between the villagers and the district authorities simmers on while RIPS agonises over how to resolve such disputes and make videos as new tools of participatory action research and mediation (Waal *ibid.*)

3.2.2.2 MBOMIPA²⁷

The MBOMIPA (*Matumuzi Bora ya Malihai Idodi na Pawaga* meaning 'Sustainable Use of Wildlife Resources in Idodi and Pawaga') project is based in the Iringa region involving some 19 villages and a population of 30,000. It is concerned with community management of wildlife, which was initially part of a larger project on Ruaha ecosystems. The project is financed by the United Kingdom through DfID. The medium term goal of the project is to convert the Lunda-Mkwambi Game Controlled Area into a WMA under village authority. So far, the project has concentrated on benefit sharing, which is mainly cash income from resident hunters.

In effect the participating villages sell their quota allocations for each hunting block to resident hunters. Incomes per village (slightly over 1 million T.shs. in 1999) or per capita (about T.shs. 660/=) are not very high although, if spent on constructing some social service, it may have considerable impact. The more lucrative source of revenue, that is, tourist hunting is still controlled by the District. Villages only receive 25 percent from license fees collected by the district.

Inevitably, the project has experienced conflicts; conflict between district and village authorities, conflict between village and resident tourists, conflict between village governments and the village national resource committees (VNRC), which administer the project.

A perceptive evaluator of the project referring to the perception of the villagers pointed out an apparent alienation of the villagers from the project. As he observed:

While some informants saw positive benefits, more saw MBOMIPA through the lens of contacts with village game scouts, as an enforcement agency for imposed regulations. Most damning of all were the reactions of

²⁷ Information in this section is largely taken from Walsh 2000 and Murphree 2000.

many, who stated that they had little knowledge of what MBOMIPA was about. (Murphree 2000:6)

Walsh also points out that in its early incarnation as village wildlife committees, the village natural resources committees, identified more with the project rather than see themselves as part of village governance structures (Walsh 2000:11-12). Perhaps the most important observation of the evaluator was how to make the project self-sustaining or, as he put it, how to ensure that, 'MBOMIPA is transformed from a project to an ongoing and self-sufficient system of natural resource governance.' (Murphree *ibid.*, 15) This is a comment, which could as well apply to all projects of this kind so long as they are conceived as time-limited, donor-funded, externally assisted **projects**.

3.2.3 Conclusions: Community Based Management or Community Ownership and Governance?

The case studies in this section, and the previous section on land tenure system, raise some very fundamental questions on the underpinnings of the mainstream discourse on CPRs and policy-making generally. In this section we will first make some concrete observations, then slightly at a more abstract level, relate these issues to a general scenario on the current disjuncture between policy discourse on the one hand, and development and rights discourse, on the other. In the final conclusion, we suggest, albeit tentatively, the reasons that account for such a disjuncture.

1) Both the success story of the Mgori forest and the partial success story of the Hangai forest, as well the MBOMIPA project, are based on favourable and perhaps fortuitous *administrative* decisions on issues of *management* taken by higher officers and authorities supported by funds from donors and prodded on by foreign consultants. This is top-down "benevolence" which cannot be easily replicated and sustained without resolving the central question of *ownership* of resources grounded in law and rooted in the community. The agonising over the relationship between the villagers and the project by the evaluator of the MBOMIPA project, as well as one of the technical advisers there (Dr. Martin Walsh) and the reassessment by Dr. Wily of the Mgori project, in our view, demonstrate the fragility of such 'success stories'.

2) The locus of the community in Tanzania is the village. The village has certain governance structures. Creating particular structures (for example, VNRCs or authorised associations) to attain quick or conspicuous 'results' in the interest of

particular projects undermines the medium and long term efforts of the community itself to reconceptualise, transform and democratise the pre-existing village organs like the village assembly and the village council.

For instance, in the case of the Mgori forest, wouldn't it have been far more sensible, from the point of view of reforming governance, for the village assembly to unseat the corrupt chairman and thereby establish a precedent for the right of recall of elected leaders rather than discipline the chairman (an elected leader) with the help of some district official? In the former case, the village leadership would feel *accountable* to the villagers. In the latter case, they would feel answerable vertically to the next top rung in the (appointed) bureaucratic hierarchy.

The next step in the development of the MBOMIPA project, we were told at the workshop, is to register an 'authorised association' (in line with the WMA policy) as a means of enhancing (?) community participation and benefit-sharing. Leaving aside a host of legal-technical problems, such a move raises very fundamental questions on the political and economic governance of their resources by village communities. The conceptualisation behind this thinking, in my view, is no different from the earlier **statist** one, which saw the village as the site of development not governance. Now, the village community is seen as a group of some "shareholders" coming together in a "company" to draw dividends rather than self-determining political communities owning, controlling and determining the direction of the development of their villages and country. This looks like a new corporatist vision to replace the statist one but sharing with it all the fundamental characteristics: top-down driven by benevolent, technocrat-bureaucrats and conceived and presented as an apolitical institutional issue.

3) The benefits of community managed resources are propagated and perceived as short-term material benefits rather than in terms of the basic right of the community to participate in the processes of governance and decision-making at all levels - policy making, planning, and execution and disposal of gains. Short-term gains made as a result of benevolent acts from the top are actually disempowering.

Even at this level, we would like to suggest that a different approach would arrive at a very different policy direction. We would put it as follows.

CPRs, situated as they are within the larger context of policy reform and contentious relations of governance, continue to be threatened by state-driven appropriation and state-sponsored private investors in opposition to the interests of the rural poor. Therefore, if CPRs are to be **protected, secured, and developed** in the interest of the rural poor, policy intervention has to be made at the level of governance, that is to say, at the level of **devolution of power** as opposed to simply **decentralisation of management**.

In this regard, recommendations of the village democracy initiative (VDI) study, where the central governance organ is the village assembly, seem to provide the most feasible direction of securing CPRs for the village community. In this regard, the Mpwapwa workshop attended by village leaders arrived at a similar conclusion.

Now we turn to a more abstract set of conclusions that may be drawn from this study.

Firstly, it is clear that the 'CPR-talk' is isolated from the larger picture of the political economy of the country. The result is that CPR is seen as an isolated project with its own sub-sectoral policy.

Secondly, the problems and constraints over the use and benefits of CPR are articulated as problems of management and efficiency rather than those of ownership and governance.

Thirdly, conflicts over CPR are seen as among local players while national and international actors are cast in the role of some neutral observers or benefactors.

Fourthly, the whole conception of CPR and its relation to question of poverty is straightjacketed into a project limited by time and budget whereas use and conflict of, and over, any resource, is the very kernel of an ongoing political and social process in a society. It is life itself.

Fifthly, the development of CPR is cast as an issue of policy rather than an integral part of a development vision within a broad developmental trajectory.

4. POLICY DIALOGUE AND DEVELOPMENT DISCOURSE: A DIALOGUE OF THE DEAF?

This study has thrown into broad relief one central question and it is this: That issues of 'policy' 'targeting the poor' for 'poverty alleviation' cannot be either understood or

addressed outside the fundamental relations of power and wealth (governance and appropriation) which are raised at a more global level by the development and rights discourse. If we are right in this conclusion, then the next question that immediately arises is how is it possible to conduct such policy dialogue without these questions being asked. It is my suggestion that this becomes possible, perhaps, because of the implicit conceptual base that is deployed in the mainstream policy discussion while advocating the negation of any conceptualisation in policy-debates. I will tentatively highlight some of the conceptual gaps, or underlying assumptions, of this debate relevant to the project at hand.

The concept of CPoR (common pool resources) is a derivative from the concept of common property regime (CPrR), not the other way round. The central idea in the latter concept is that of property.

Underlying the concept of 'property' is the European notion of an atomised, private individual owning (where ownership is separated from possession and in the case of land from occupation) a thing, tangible or otherwise. This notion is essentially based on exclusion of 'others' from 'mine'. The rules of exclusion develop into the corpus called 'management' - of thing. It is submitted that the notion of 'ownership' and 'property' in that sense did not exist in many non-European, particularly African, societies or 'land' as a 'thing'. What you have is an organic whole wherein people, living, dead, and yet to be born, *relate to each other not to a 'thing'*. Land is part of that organic relationship not a thing to be owned or managed.

Lack of such notions of property, particularly in relation to land and pastures etc., make a European observer conclude that there is anarchy (i.e. "open access") because there is no *ownership* and mismanagement because there are no rules of exclusion (Hardin, see IIED 2000, *Land Tenure Lexicon*, 16-17), only relationships determining *inclusion*.

"Communal ownership" (which used to be the term deployed in political economy now transformed into CPrR) is a short step from 'no-property to some property' and 'mismanagement' to 'management', which now juxtaposes the notion of community and ownership still in the same Western mode. It is a *reaction* and in *contrast* to Hardin. The authors of the *Land Tenure Lexicon* illustrate the contrast. 'In contrast to open access resources [of Hardin], common property resources are governed by

institutions who claim ownership and management rights on behalf of a group over the resources in question. These rights include, in particular, the right to deny access to those who do not belong to the community (...) and to regulate the exploitation of the resource by members.' (ibid. 17) The Western conception of 'ownership' and 'management' continues to underlie the opponents of Hardin as well.

The concept of 'local community' is neither a social nor a historical concept. It is 'geographical' (local) and aggregative (a number of individuals). This aggregate of individuals abstracted from social relationships and history can then be studied or targeted by policy-makers and 'development practitioners' (another banal term) without regard to any relationships: relationships of power, wealth, control etc. within the community, and between the community and the policy-maker, or development practitioner.

Once history and politics have been by definition made irrelevant, it becomes possible for development consultants to formulate policies and suggest *management* strategies like CBM without having to ask questions like: how did the 'community' being targeted become what it is? why does it continue to be so? what are the relationships being undermined, or reinforced, and in what direction, by the various policy strategies and management methods being proposed, and, ultimately, for whose benefit and at whose expense.

The most important effect of such a discourse is the total absence of the concept of State and Society (therefore relations of power and wealth or governance) in these so-called policy-oriented dialogues. Governance itself is shorn of relationships and turned into just another sector, the subject of policy-making on 'good governance'. Tanzania has even a ministry of 'good governance'!

Finally, I would like to draw out three important conclusions (without much argument at this stage) on the implication of the review of CPRs and the problems of conceptualisation on policy formulation and policy making.

One, that policy issues relating to CPRs in both its senses cannot be understood outside the broad developmental trajectory and vision of the country concerned.

Two, that issues relating to common property regimes by definition are not static but historical, not definitional but relational, and they call into consideration property and power relations in society: Who owns and controls what, to whose benefit and for

what interest, and to what effect, are basic questions, which can be ignored only at the risk of drawing socially irrelevant recommendations and policy briefs. The current fad of "dialogue" among stakeholders, as if the so-called stakeholders had similar interests, makes sense only if these basic questions are ignored.

Three, there is no way the use and management of resources can be intelligibly discussed, and alternative forms of sustainable, people-driven uses conceptualised, if the so-called "conservation and management" (whether community-, individual or institution-based) of common resources is abstracted from the relations of power and its exercise in society, both local and central, that is, from **governance**. The case studies presented here (see the alternative formulation in the case of Ngorongoro) illustrate the potential of the governance approach to the problems of CPRs, as opposed to the management approach underlying CBC and CBMNR.

In short, the so-called community participation is no alternative to bottom-up democratic **governance** to ensure that CPRs are used and sustained in the interest of the well being of the majority. And this concern cannot simply be constricted in the form of a "neutral" (?) policy dialogue. It is primarily a developmental and political discourse touching on conflictual relations of wealth and power.

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