

REPORT ON THE STATE OF PASTORALISTS' HUMAN RIGHTS IN TANZANIA:

SURVEY OF TEN DISTRICTS OF TANZANIA MAINLAND 2010/2011

[Area Surveyed: Handeni, Kilindi, Bagamoyo, Kibaha, Iringa-Rural, Morogoro, Mvomero, Kilosa, Mbarali and Kiteto Districts]



Cover Picture: Maasai warriors dancing at the initiation ceremony of Mr. Kipulelia Kadege's children in Handeni District, Tanga Region, April 2006.

**PAICODEO
Tanzania
Funded By:
IWGIA,
Denmark**

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**PARAKUIYO PASTORALISTS INDIGENOUS COMMUNITY
DEVELOPMENT ORGANISATION-(PAICODEO)**



Funded By:
IWGIA, Denmark

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Finally, we really acknowledge materials from our likeminded organizations that we have used in this report. Thank you and everyone for your continuous support to the work of PAICODEO.

Asante Sana!

FOREWORD

Legal Status and Objectives of PAICODEO

Parakuiyo Pastoralists Indigenous Community Development Organisation (PAICODEO) is a Non-Governmental Organization (NGO), which was established on 25th June 2003 after a consultative meeting with the participation of more than 50 representatives from the Manyara, Morogoro, Tanga, Mbeya, Iringa and Coast regions held at Lugoba village in Bagamoyo district, Coast region.

PAICODEO aims to act as a forum to bring Parakuiyo pastoralists together and discuss issues of concern, in particular to advocate for the protection of their rights as pastoralists. The consultative meeting identified several challenges affecting the livelihood of the Parakuiyo pastoralists, including a deteriorating environment, a diverse and competitive economy and human rights violations. PAICODEO was officially registered under the Office of the Vice President on 24th August 2006 with registration number OONGO/1618.

PAICODEO's Vision

To have an indigenous pastoralist community attain sustainable development and have its culture recognized, respected and preserved.

PAICODEO's Mission

To promote the livelihoods of Indigenous pastoralists through preservation of their cultural values, utilization of locally available resources and informed participation with consent for their development.

About this Report

This report aims to highlight some of the challenges which the Indigenous peoples in Tanzania, particularly the Maasai pastoralists, are facing. Its scope is limited to only a few districts and villages which are predominantly occupied by the Indigenous Maasai pastoralists. The phase covered by this report is January – December 2011, but some of the previous human rights incidents which took place before this time are also mentioned in this report to provide more context and facts and enrich the argumentation.

The report is one of the outputs which PAICODEO is required to deliver under the Pastoralists Human Rights Project (2010-2012) funded by the International Work Group for Indigenous Affairs (IWGIA) of Denmark.

The information contained in this report is a result of a comprehensive survey and human rights analysis which used both primary and secondary data collection methodologies covering a total of 10 districts and 18 villages. A total of 109 people were interviewed. Out of those, 34 (31.2%) were women and the remaining 75 (68.8%) were men. The sample represented Community Leading Paralegals (CLPs), and District Human Rights Committees (DHRCs); others were ordinary community members (villagers); some local government officials mostly at ward and village levels; traditional leaders; primary and secondary school teachers and nurses. Both individual and focus group discussions were used as survey tools to get insights into the human rights situation in those areas. The selection of samples was based on, inter alia, PAICODEO's project districts and the representation of respondents in terms of gender, age and locality (urban-rural basis). Secondary data were collected from different credible sources including UN reports; CSOs reports; government's reports; policies and other materials indicated in the bibliography section of this report.

The target group for this report includes government officials, parliamentarians, development partners, CSOs, ordinary citizens, as well as academics who will wish to learn more about the situation of indigenous populations. The way it is written suits all groups and, apart from it being an advocacy tool for positive change or rather areas of improvement, it can be used as educational material as it contains a good flow of arguments supported by national and international human rights instruments/ standards.

The report has five comprehensive chapters arranged in accordance with the three groups of human rights namely: Civil and Political Rights (Chapter Two); Economic, Social and Cultural Rights (Chapter Three); and Collective Rights (Chapter Four). In each of these three groups, only a few categories of human rights are picked to illustrate the general and special human rights situation that the indigenous peoples are experiencing in Tanzania. A chapter on Tanzania's obligations relating to international human rights law (Chapter Five) is also included together with a note on the current Tanzania constitution making processes. In order to give the reader, especially those who are not Tanzanians, a general socio-economic and political overview, Chapter One covers that. The author of this report advises the reader and user to read the whole report as the facts, flow and ideas of each paragraph of this report are interlinked. Sometimes one can miss a point

if concentrating on reading just a portion of the report. However, we have included an Executive Summary to give you a quick overview of the report.

Finally, while PAICODEO really appreciates and recognizes the efforts of the government to improve the wellbeing of its people, this report mainly focuses on areas which need further improvements. Therefore, very few positive trends are included in this report. Your feedback on any part of this report will be highly appreciated. I wish you all a good time to read and give support where it is necessary.

A handwritten signature in black ink, appearing to read 'AOM', with a stylized flourish at the end.

Adam Ole Mwarabu
Coordinator - PAICODEO

EXECUTIVE SUMMARY

About the Report

This report highlights some of the human rights challenges which the Indigenous peoples in Tanzania, particularly Maasai pastoralists, are facing. It also proposes some areas of improvement in order to make Tanzania a better place for everyone, including indigenous pastoralists. It should be noted that Tanzania has more than 120 different ethnic groups, which are Bantu-speaking, Nilo-hamitic (including the Maasai) and Cushitic. The Maasai are universally recognized as indigenous people because of the distinctiveness of their way of life, which inter alia, totally depends on the nature surrounding them.

The study for this report was conducted in the ten districts mentioned on the cover page. The selection of sampled districts was based on two main criteria: firstly, PAICODEO's project areas and, secondly, areas which are predominantly occupied by the indigenous Maasai pastoralists. It covers the period of January-December 2011 plus information beyond that used to enrich some of the arguments and presentation of the facts contained in this report. Both primary and secondary data collection methodologies were used. A total of 109 people were interviewed. Out of that number, 34 or 31.2% were women and the remaining 75 (68.8%) were men.

Main Findings

- (a) Pastoralism and agro-farming are contributing to development in Tanzania. Both pastoralism and agro-farming employ more than 80% of all Tanzanians, especially among the rural population, but there has been an obvious failure by the government to pursue improvements to pastoralism in terms of increasing budgets for livestock development, ensuring sufficient grazing areas and other necessities for livestock enrichment.
- (b) Increased foreign investments and commercialization of the natural resources by the government of Tanzania have led to a situation whereby the Maasai and other indigenous peoples of Tanzania are suffering losses related to their means of livelihood without being compensated.
- (c) The Maasai and other indigenous peoples' traditional land is increasingly confiscated and taken for use by mainstream society. As a result, they face serious food insecurity, poverty and generally poor standards of living.

- (d) Despite the fact that Tanzania has ratified and/or voted for a good number of international human rights instruments on the rights and welfare of indigenous peoples, its legal system does not recognize their presence. Therefore, there is no law which gives special attention to indigenous peoples.
- (e) The Maasai communities in Tanzania face several types of human rights violations including those relating to arbitrary arrests, torture and extra-judicial killings; confiscation of their livestock; denial of access to lands, sacred sites and other natural resources, which logically makes them unable to secure food for their survival.
- (f) There is little representation of Maasai in decision making bodies. This situation is attributed to a number of factors including low awareness about the importance of engaging in governance issues among Maasai communities and discrimination against them by some government officials and members of other communities.
- (g) The current education system does not incorporate the Maasai's traditional knowledge. Maasai children who are enrolled at schools fail to comprehend subjects easily because they are taught in Swahili or English languages and the content of the subjects does not cover traditional norms of the Maasai and other indigenous people. Moreover, the schools do not have sufficient teachers and teaching materials.
- (h) There is a serious shortage of water and healthcare facilities in Maasai villages and the Maasai people have to walk long distances in search of those services. The few villages with healthcare facilities do not have adequate doctors, nurses and medicine.
- (i) There is a negative perception about pastoralism partly attributed by some religious and missionary education systems which plays a major role in creating and perpetuating negative perceptions and myths about pastoralists. The negative perception is also reflected in policy and legal processes where pastoralism is seen as a 'primitive' mode of production to be replaced by a 'modern' one.

Recommendations

- (a) The government of Tanzania should safeguard the interests of the local communities against the greed of rich people from urban areas and foreign investors, who go to the villages, manipulate the leaders and get access to pastoral lands and other resources.

- (b) Informed consent of the Maasai and other community members should always be sought before allowing any investment or re-allocation schemes in the village areas.
- (c) The pastoralists need to be compensated by the government for the losses they have incurred because of illegal operations conducted by the police officers and district authority officials.
- (d) Government agencies, in particular the police and district authorities are urged to stop harassing the pastoralists. They should instead guide pastoralists in better ways of livestock keeping, if they think that the traditional ways are not suitable.
- (e) The government and civil society should continue supporting and intensifying awareness campaigns in order to empower the Maasai, especially women and children.
- (f) The government should allow pastoralists to have access to wildlife protected areas. This is especially important during drought seasons where the wildlife protected areas are vital for the survival of the pastoralists and their livestock.
- (g) The government, in particular the Ministry of Education and Vocational Training, should design an education system that incorporates the knowledge of indigenous peoples in order to secure a prosperous future for the Maasai children.
- (h) The government should increase the budget for health facilities and doctors so that they can be available in all Maasai villages.
- (i) The ongoing Constitutional review and enactment processes should include Maasai and other indigenous peoples. The new constitution to be enacted should make specific provisions to promote and protect the rights of indigenous peoples in Tanzania.

Conclusion

The situation of Indigenous peoples in Tanzania is deteriorating due to policies which are not favourable to their ways of life. Other factors are pressure for land and natural resources brought about by foreign and local investments. Dispossession of indigenous peoples' land and natural resources is constantly taking place via the creation of protected areas, military bases, urbanization, poor governance and marginalization of Indigenous peoples. There are no redress mechanisms in place and indigenous peoples receive no compensation from the violations and losses they suffer.

The survey conducted in ten districts of six regions of mainland Tanzania revealed gross violations of human rights. The most serious problem is the problem of evictions that take place with impunity, and where reports of various enquiry commissions are simply shelved by the responsible authorities. The government should now deploy the necessary remedies to Indigenous peoples in the same way it is delivering to the mainstream society and thus ensure that they enjoy their human and constitutional rights on an equal footing with all other citizens of Tanzania. The new constitution should incorporate recognition of Indigenous peoples and their ways of life, that is their culture, customs, norms and traditions.

LIST OF ABBREVIATIONS

ACCORD	African Centre for Constructive Resolution of Disputes
ACHPR	African Charter on Human and Peoples' Rights of 1981
Adv.	Advocate of the High Court
ASDP	Agricultural Sector Development Programme
Cap.	Chapter of the Laws of Tanzania
CBOs	Community Based Organizations
CCM	Chama cha Mapinduzi (Revolutionary Party-The Ruling Political Part of Tanzania)
CERD	Convention on Elimination of All forms of Racial Discrimination of 1965
CMP	Constitutional Making Process
CPPDCE	Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005
CRC	Convention of the Rights of the Child of 1989
CRCo	Constitutional Review Commission of Tanzania
CROs	Customary Rights of Occupancy (of land)
CSOs	Civil Society Organizations
DC	District Commissioner
Dec.	December
DED	District Executive Director
DHRC	District Human Rights Committee of PAICODEO
GCA	Game Controlled Area
GDP	Gross Domestic Product
HAKIARDHI	Land Rights Research and Resources Institute
Hon.	Honorable
HRC	Human Rights Committee
HRDs	Human Rights Defenders
ICCPR	Covenant on Civil and Political Rights of 1966
ILO	International Labour Organization
ILO's C169	ILO Convention No. 169
IWGIA	International Work Group for Indigenous Affairs
KMs	Kilometres
LHRC	Legal and Human Rights Centre
LGCA	Loliondo Game Controlled Area
LSDP	Livestock Sector Development Programme
MKUKUTA	National Strategy for Growth and Reduction of Poverty
Moro.	Morogoro Region

MP	Member of Parliament
Mr.	Mister
Ms.	Miss
MWM	Mbomipa Wildlife Management
NAFCO	National Agriculture and Food Corporation
NARCO	National Ranching Corporation
NCAA	Ngorongoro Conservation Area Authority
NGOs	Non-Governmental Organizations
No.	Number
OBC	Ortello Business Corporation
ODC	District Police Commanding Officer
PAICODEO	Parakuiyo Pastoralists Indigenous Community Development Organization
PFM	Participatory Forestry Management
Pgs.	Pages
PINGO's Forum	Pastoralists Indigenous NGOs Forum
PM	Prime Minister
Prof.	Professor
REDD	Reduced Emissions from Deforestation and Forest Degradation
Ref.	Reference
Rev.	Reverend
S/No.	Serial Number
Sq. KMs	Square Kilometers
SULEDO	Sunya, Lengatei and Dongo Wards Forestry Group
TASAF	Tanzania Social Action Fund
TMBs	Treaty Monitoring Bodies
TPDF	Tanzania Peoples Defense Forces
Tshs	Tanzanian Shillings/ Currency
UDHR	Universal Declaration of Human Rights of 1948
URT	United Republic of Tanzania
USAMBECO	Usangu Farmers and Mbeya Development Co-operatives
UN	United Nations
UNGA	United Nations General Assembly
URT	United Republic of Tanzania
VEO	Village Executive Officer
Vs.	Against
WEO	Ward Executive Officer

CHAPTER ONE

GENERAL OVERVIEW

1.1 Geographical Location and History of Tanzania

1.1.1 Geographical Location

Tanzania comprises Tanzania Mainland (formerly Tanganyika) and Zanzibar. The two independent countries, Tanganyika and Zanzibar, united on 26 January 1964 to form the United Republic of Tanzania (URT). The URT is bordered to the north by Kenya and Uganda, to the west by the Democratic Republic of the Congo, Burundi and Rwanda, to the south by Malawi, Mozambique and Zambia, and to the east by the Indian Ocean. It is one of five countries which form the East Africa Community. This country has a total land area of 945,090 KM² which makes it the largest country in East Africa.

1.1.2 Brief History of Tanzania

Until 1919, Tanzania (formerly known as Tanganyika) was under German colonization. After World War I the British took over until 1961. On 9 December 1961, the then Tanganyika (Tanzania Mainland) became an independent nation under the leadership of the first President of this country, the Late Mwalimu Julius Kambarage Nyerere.

On 26 April, 1964, the then Tanganyika united with Zanzibar to form a sovereign union known as the United Republic of Tanzania. Currently, Tanzania follows multi-party democracy whereby periodic national and local government elections are conducted every five years.

1.2 Natural Resources and Economic Activities

1.2.1 Natural Resources

Tanzania is home to Mount Kilimanjaro,¹ which is the highest mountain in Africa. It is located in the northern part of the country. The country borders three of the largest lakes in Africa namely: Lake Victoria, the world's second largest freshwater lake; Lake

¹ According to LHRC's Tanzania Human Rights Report of 2009 (written by Clarence Kipobota), Mount Kilimanjaro is 5,895 meters above sea level. Mt. Meru is slightly smaller than Mt. Kilimanjaro with an altitude of 4,566 meters above sea level. The smallest (famous) mountain on the list of 32 large mountains in Tanzania is Usambara, which is 2,300 meters above sea level.

Tanganyika, the world's second deepest lake; and Lake Nyasa. Tanzania has tremendous wildlife resources and has established 15 national parks² and 17 game reserves³ on mainland Tanzania in an effort to preserve and protect these resources. It is estimated that about 26% of the total landmass of Tanzania is designated as reserved area. As for the forestry resources, Tanzania is regarded as one of the largest forested countries in Africa. It is also blessed with numerous natural resources, such as tin, phosphates, iron ore, coal, diamonds, gold, natural gas and nickel.

Despite all these endowments, as this report discusses in detail in the coming chapters, Tanzania does not have national strategies to ensure that marginalized communities who live within or adjacent to areas with valuable natural resources (such as the Maasai and Hadzabe) benefit from these resources. The current government focus seems to be on removing these peoples and creating more spaces for protection of natural resources.



Picture No.1: Maasai warriors grazing cattle

The current main economic activities in Tanzania are livestock keeping, agriculture and trade which are operated mainly by private individuals and companies. Despite the fact that livestock keeping and agro-farming are key driving forces of economic development and poverty alleviation in Tanzania, they are not recognized by the government. Agriculture and livestock keeping (mainly indigenous pastoralism) employ more than 80

2 Large national parks include the Serengeti in the Serengeti District (14,750 sq. km), Ruaha in the Mbarali District (13,000 sq. km), Ngorongoro in the Ngorongoro District (8,320 sq. km), Mikumi in the Morogoro Region (3,230 sq. km); others are Tarangire in the Manyara Region, Katavi in the Mpanda District, Saadani in the Tanga Region, Udzungwa in the Morogoro Region, Kilimanjaro in Kilimanjaro Region, Rubondo, Kitulo, Mahale Mountains in Kigoma Region, Manyara in the Arusha Region, Arusha in the Arusha Region, and Gombe Stream in Kigoma District.

3 These are Selous in the Lindi region (50,000 sq. km), Ruangwa in the Ruangwa district (9,000 sq. km), Kigosi in Shinyanga district (8,000 sq. km), Moyowosi in Kibondo district (6,000 sq. km); others are Uwanda in Sumbawanga district, Burigi in the Biharamulo and Karagwe districts, Maswa in Maswa district, Kizigo in the Manyoni district, Umba in the Lushoto district, Biharamulo in the Biharamulo district, Mkomazi in the Lushoto district, Mount Meru in the Arumeru district, Ibanda in the Karagwe district and Saa Nane Island in the Mwanza district.

percent of all Tanzanians especially among the rural population.⁴

Despite this reality though, there has been an obvious failure by the government to pursue improvements to pastoralism. For the past six years, the budget allocations for these important livestock and agro-farming subsectors of the economy have never exceeded 7% of the national budget. It is very unfortunate that out of these 7% generally allocated for the agricultural sector (which is said to comprise both livestock and crop farming), only a small fraction goes to pastoralism and livestock development.⁵ The reasons for this are explained in this report.

As for strategies for economic development, the government of Tanzania endeavors to



Picture No.2: Barbaig women in traditional dress, in Hanang District, Manyara Region, Tanzania

expand its macro-economy by inviting more (foreign) investments in the country, at the same time commercializing the natural resources (tourism of all kinds, hunting, mining and conservation) and modernizing the means of productions (Kilimo Kwanza discussed in Chapter Four of this report). Such development strategies and priorities lead to a situation whereby the Barbaig, Sukuma, Maasai, Hadzabe, Tatoga and Akiye ('Dorobo') ethnic groups (indigenous peoples of Tanzania) continue to suffer losses related to their means of livelihood without being compensated.⁶ Their land and natural resources are

4 LHRC (2009) Tanzania Human Rights Report of 2009, page 119. Therefore, as this report argues, improvement of these economic subsectors means improvement of peoples' livelihoods through increased income, ensured food security and enlarged GDP through taxes and levies.

5 LHRC (2007) Tanzania Human Rights Report of 2007.

6 PINGO's Forum Human Rights Shadow Report June 2009, page 2.

confiscated and taken for the use of mainstream society. As a result, the macro-economy of the nation is seen to be growing, while the micro-economy of the marginalized populations is deteriorating and they face serious food insecurity, poverty and generally poor standards of living.

1.3 Population and Cultural Information about Maasai Communities

1.3.1 Population Size, Growth and Density (Generally) Tanzania is estimated to have a population of 40 million people⁷ of whom about 51% are women and the remainder are men. The young people (below 15 years of age) constitute around 44% of the total number of Tanzanians, while the middle aged (16 to 25 years) constitutes about 29% of the said total number. Tanzania Mainland comprises 97.05% of all people in Tanzania, while Tanzania Zanzibar comprises only 2.95% of the stated population.⁸ The population growth rate is 2.9% per annum. It should be noted that citizenship is one of 21 union matters between Tanzania Mainland and Zanzibar. Therefore a citizen of Zanzibar or Tanzania Mainland can choose to live anywhere within the United Republic of Tanzania.

The average population density was estimated to be 39 people per square kilometer in 2005,⁹ which would therefore be around 45 per square kilometer in 2011 (from only 14 people per square kilometer in 1967).

Because of different factors specified in this report, land pressure is on the increase both in urban and rural areas. In urban areas, the said pressure is caused by the migration of people from rural areas to the cities in search of a better life, while in rural areas land pressure is caused by several factors, including land grabbing tendencies for conservation or investment reasons (as will be discussed in this report). The pressure is even higher for traditional pastoralists in Tanzania such as the Maasai and Sukuma, whose livelihood activities depend on the availability of large chunks of land for grazing.

1.3.2 Cultural Information about Maasai Communities

1.3.2.1 General Cultural Information

Tanzania has a multi-ethnic population. There are more than 120 different ethnic groups

7 The current population size has increased from only 12.3 million people in 1967 when Tanzania carried out its first national census. Therefore it has increased by 30 million people within 50 years of independence (which as a nation, we celebrated on 9th December, 2011).

8 The Speech of the Minister for Finance and Economic Planning, Hon. Mustafa Haidi Mkulo (MP), presenting in the Parliament the State of National Economy Report for 2008 and Plans for 2009/10 – 2011/12. Dodoma, June 2009, pages 28 and 29 of the Swahili version of the Speech.

9 URT, Tanzania Demographic and Health Survey, December 2005, page 2.

living in Tanzania.¹⁰ Tanzania's official languages are Kiswahili and English. However, the national language is Kiswahili. English is the primary language of commerce, administration, the judiciary and education. In addition, there are over 120 ethnic languages, which are the first language of most of the people in the country.

The largest of these ethnic groups is the Bantu-speaking group, which comprises peoples such as the Sukuma, Haya, Nyakyusa, Nyamwezi and Chagga. The Bantu group originates from River Adamawa in present Nigeria, Congo Forest and Taita Hills (between Kenya and Tanzania). The Bantu people are dominant in terms of population. There is also the Nilo-hamitic group which includes the Maasai and the Cushitic group such as Iraqw tribes.

1.3.2.2 Brief Narration of the Origin and Culture of Maasai

The Maasai are composed of diverse sub-tribes, which all speak varied forms of the Maa language. The Maasai sub-tribes are the Parakuyo, Arusha ('Larusa'), Samburu ('Sampur') and Njems ('Iltiamus') among others. The ancestors of the modern Maa-speakers (collectively and commonly called 'Maasai') participated in a general north-south movement from the northern part of Africa which commenced early in the first millennium AD.¹¹ By the end of the ninth (9th) century, the Maasai were inhabiting large areas of the Kenyan northern steppe together with other Nilots, such as the Tatoga and Kalenjin people.



Picture No.3: Maasai men in one of their traditional meetings

10 LHRC (2009) Tanzania Human Rights Report of 2009, LHRC.

11 Ojalammii, Sanna (2006) Contested Lands: Land Disputes in Semi-arid Parts of Northern Tanzania Case Studies of the Loliondo and Sale Divisions in the Ngorongoro District (academic dissertation, University of Helsinki), page 6.

The Eastern Nilots started their southbound expansion from the north toward the Rift Valley (Tanzanian side) across Loita, Mara and the Serengeti plains at the earliest by the mid-sixteenth (16th) century and, later on, further south, toward the foothills of Kilimanjaro in Tanzania¹² (northern part of Tanzania). Other literature narrates that the Maasai were living in central and other parts of the country. For instance, in 1880, one European visitor found the Maasai in the eastern and central part of the country.¹³

The Maasai are polygamous and generally live in scattered homesteads in the villages. The “land” where they live has been considered as collective property Enkai Naishorua, meaning a gift of God to the Maasai and, thus, all the Maasai people have the right to use land (Olchoni le Nkai) and natural resources.¹⁴ However, property rights over grazing lands and water resources can be claimed communally by different Maasai communities, mostly depending on the clans they come from.¹⁵

1.3.2.3 Maasai as an Indigenous Peoples in Tanzania and Africa

The Maasai peoples can be classified as indigenous¹⁶ (pastoral) peoples because of the

- 12 Extract from Ojalamm, Sanna (2006) *Contested Lands: Land Disputes in Semi-arid Parts of Northern Tanzania Case Studies of the Loliondo and Sale Divisions in the Ngorongoro District* (academic dissertation, University of Helsinki), pages 44 to 50].
- 13 T.J Last "A Visit to Maasai People Living Beyond the Borders of the Nguru Country" Read at the Evening Meeting June 25th, 1883. Abstract from pages 517 to 543 of Last, T. J (1882) *A Journey into the Unguru Country from Mamboya, East Central Africa. Procedures of the Royal Geographical Society, IV*. Also Read: Maganga, F.P (2002a) *Planning Sustainable Livelihoods for Livestock Keepers in Kilosa District*. Report Prepared for Tanzania Christian Refugee Service, Dar es Salaam, November 2002.
- 14 Rev. Paul Masinga, Mapogoro Village, Iringa-Rural, Iringa Region. Interviewed on 28 December, 2011 during PAICODEO's study –by Clarence Kipobota. ALSO, Interview with Mr. Daniel Losikirai (Traditional Leader "OLAigwanani", Oloipiri Village, Ngorongoro District), on 22/10/2011 during University of Nairobi's study –by Clarence Kipobota.
- 15 Interview with Ms. Kasema Samau (District Land Officer, Ngorongoro District), on 20/10/2011 during University of Nairobi's study –by Clarence Kipobota.
- 16 The term indigenous derives from the Latin word *indigena* made up of the two words, namely *indi* ('within') and *gene* or *genere* ('root'). It can therefore mean, 'born in' or 'something that comes from the country in which it is found' or 'native of' [See: Barume, Albert Kwokwo (2010) *Land Rights of Indigenous Peoples in Africa*. IWGIA Document 115, Copenhagen. Page 20]. The indigenous people differ from the rest of the people in the country in terms of language and culture. They live in close interaction with nature [See: MS-Danish Association for International Co-operation 'Strategy and Action Plan for Support to Pastoralists and Hunters Gatherers, MS-Tanzania', Dar es Salaam, Tanzania. June 1997, page 6. ALSO see Chris Maina Peter 'Human Rights of Indigenous Minorities in Tanzania and the Courts of Law' (2007) 14 *International Journal on Minority and Group Rights* 4, 455 for more clarification on 'indigenous peoples'. Professor Chris Peter is of the view that, the people are identified as indigenous when some or all of the following four elements are present. One, they occupy and use specific territory; two, they voluntarily perpetuate their cultural distinctiveness, which may include the aspects of language, social organization, religion, spiritual values, modes of production, laws and institutions; three, they self-identify, as well as are recognized by other groups, as a distinct collective; and four they experience subjugation, marginalization, dispossession, exclusion or discrimination. Looking at these two definitions, it is certain that those several tribes mentioned above are indigenous people in Tanzania because

way they identify and distinguish themselves from the mainstream communities. The way the Maasai relate to the land, their culture, and the nation-state make them distinct among African peoples or rather other ethnic groups in Tanzania.

According to the African Commission's Working Group of Experts on Indigenous Populations/ Communities, the key characteristic¹⁷ for most indigenous communities¹⁸ is that the survival of their particular way of life depends on access and rights to their traditional land and the natural resources therein.¹⁹ In this way, the argument that all Africans are indigenous people in Africa can be defeated by the fact that the distinction of different groups within a country (including Tanzania) depends not only on their origin, but also on the way they have constantly given special attachment to, and use of, their traditional land whereby their ancestral land and territory is of fundamental importance to their collective physical and cultural survival as people.²⁰

The way the Maasai Communities of Tanzania are organized and accustom themselves fits into this key and other characteristics provided by different international experts and human rights instruments. The discussion on the state of affairs regarding the rights of Maasai communities in Tanzania for the year 2011, which is covered by this report, will revolve around this conceptualization and understanding of Maasai as indigenous peoples in Tanzania.

1.3.2.4 Tanzanian Legal Framework on Recognition of Indigenous Communities

The Tanzanian legal system does not recognize the presence of specific indigenous peoples. It considers all tribes, ethnic groups and communities in the same way. Therefore, there is no law which gives special attention to indigenous groups. This is notwithstanding the fact that this country has several indigenous peoples including, as stated above, the

they live and possess all those characteristics. However, it should be noted that the situation and more pecuniary characteristics of indigenous people tend to differ from one place/ country to another.

- 17 Ms. Erica-Irene Daes, Chairperson of the UN Working Group on Indigenous Populations (established by the UN Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1982), gave four (other) criteria that can be used in identification of indigenous peoples. The four criteria are: (a) the occupation and use of a specific territory; (b) the voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions; (c) self-identification, as well as recognition by other groups, as distinct collectively; and (d) an experience of subjugation, marginalization, dispossession, exclusion or discrimination [See: ACHPR and IWGIA "Report of the African Commission's Working Group of Expert on Indigenous Populations/ Communities of 2005" Eks/Skolens Trykkeri: Copenhagen, Denmark. Page 93].
- 18 The rights, duties and interests of indigenous and tribal peoples' groups are safeguarded and guaranteed under several international human rights instruments including the C169 Convention of Indigenous and Tribal Peoples of 1989 of ILO which came into force in September 1991.
- 19 ACHPR and IWGIA "Report of the African Commission's Working Group of Expert on Indigenous Populations/ Communities of 2005" Eks/Skolens Trykkeri: Copenhagen, Denmark. Page 89.
- 20 ACHPR and IWGIA "Report of the African Commission's Working Group of Expert on Indigenous Populations/ Communities of 2005" Eks/Skolens Trykkeri: Copenhagen, Denmark. Page 93.

Maasai, Barbaig, Hadzabe, Akiye ('Ndorobo'), Sandawe, Iraqw, Gorowa and Burungi. Some of these indigenous peoples are nomads, gatherers, hunters, collectors and fisher folk. They have particular forms of production and methods of subsistence that they have maintained for generations.²¹

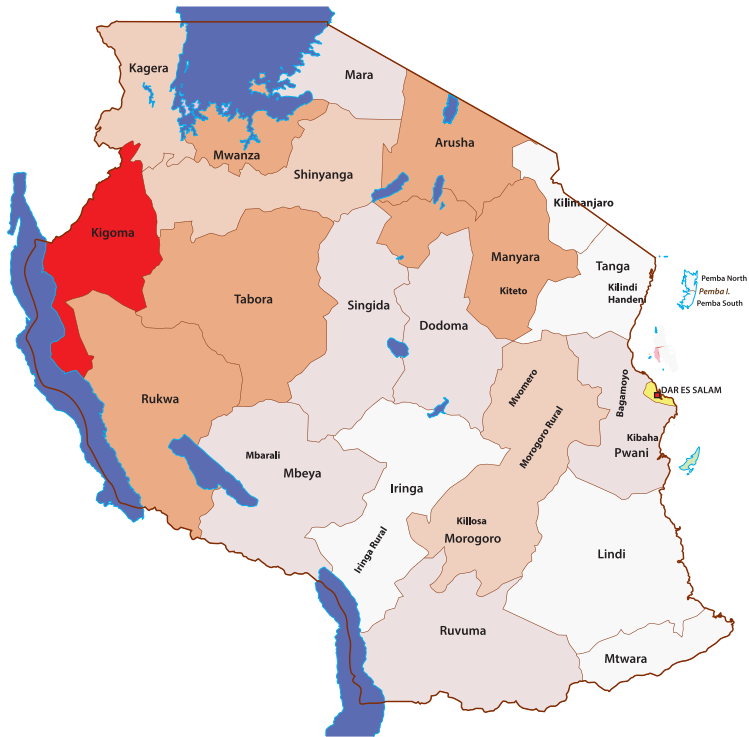
1.4 Political and Administrative Governance

Tanzania is a multiparty democracy. It holds local and national elections every five years. The right to universal franchise is guaranteed under the Constitution of the country and other laws, but has some restrictions including: the prohibition of private candidacy; a lack of mechanisms to allow eligible voters living abroad to vote; and a denial of prisoners' right to vote.

The country is divided and sub-divided into administrative divisions known as regions, districts, divisions, wards, villages, streets and hamlets. In total, there are 30 regions and more than 140 districts in Tanzania. The ten districts which PAICODEO targets, namely Handeni, Kilindi, Bagamoyo, Kibaha, Iringa-Rural, Morogoro-Rural, Mvomero, Kilosa, Mbarali and Kiteto, are within 6 regions namely: Tanga Region (Handeni and Kilindi Districts); Coast Region (Bagamoyo and Kibaha Districts); Iringa Region (Iringa-Rural District); Morogoro Region (Mvomero, Morogoro Rural and Kilosa Districts); Mbeya Region (Mbarali District); and Manyara Region (Kiteto District).

21 MS-Danish Association for International Co-operation 'Strategy and Action Plan for Support to Pastoralists and Hunters Gatherers, MS-Tanzania,' Dar es Salaam, Tanzania. June 1997, page 10. The rights and welfare of the indigenous people are protected by a number of international human rights instruments. The ILO's 169 Indigenous and Tribal People Convention of 1989 and the United Nations Declaration on the Rights of the Indigenous Peoples, 2000 maintain that, indigenous peoples have a right to self-determination. In pursuance of this right, they shall freely determine their political status and freely pursue their financial, social and cultural development. Article 27 of the International Covenant on Civil and Political Rights, 1966 states that these people have the right to enjoy their own culture, practice their own religion and use their own language.

Map of Tanzania showing districts covered by the survey in 2011



There are central and local government authorities. At each level, there are executive officials and political leaders. Most of the political leaders represent the central government. The main role of political leaders such as Regional Commissioners (RC) and District Commissioners (DC) is to enforce the political interests of the ruling party. The supervision and implementation of development programmes is in the hands of executive officers including the District Executive Officers (DED); Ward Executive Officers (WEO); and Village Executive Officers (VEO).

CHAPTER TWO

CIVIL AND POLITICAL RIGHTS

2.1 Recognition of Civil and Political Rights in Tanzania

Civil and political rights comprise individual (personal) and group entitlements. Those entitlements include the right to life; freedom from torture; freedom of thought; right to association; right to assembly; freedom of movement; right to take part in the governance of the country and the like. These rights are provided for under the international human rights instruments (laws)²² discussed in Chapter six of this report (most of which Tanzania has ratified or adopted). Some of these rights are also protected as human/legal rights under the Constitution of the United Republic of Tanzania of 1977 and other laws enacted to enforce the same.

2.2 Situation of Enforcement of Some of those Rights for Maasai Communities

2.2.1 Right to Life

The right to life is the most fundamental human right of every person. It is the origin of all rights. This right is protected under the international human rights instruments²³ and the Constitution of Tanzania.²⁴ Local and international jurisprudence interprets the right

22 Including the Universal Declaration of Human Rights of 1948 (UDHR); the Covenant on Civil and Political Rights of 1966 (ICCPR); the Optional Protocol to the ICCPR; the Second Optional to the ICCPR; the African Charter on Peoples and Human Rights of 1981 (ACPHR); the Declaration on the Rights of Persons Belonging to National or Ethnic, Linguistic and Religious Minorities of 1992; the International Labor Organization Conventions (ILO Conventions Nos. 107/1957 and 169/1989); the Convention on the Elimination of All Forms of Racial Discrimination of 1965 (CERD); the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005 (CPPDCE); the United Nations Declaration on the Rights of Indigenous Peoples of 2007 (UNDRIP) and so many others.

23 For instance, Article 6(1) of the ICCPR of 1966 states that, every human being has the right to life and protection of his/her life according to the law. Article 7(1) of the United Nations Declaration on the Rights of Indigenous Peoples of 2007 gives specific attention to the indigenous people like Maasai. It states that, "[I]ndigenous individuals have the rights to life, physical and mental integrity, liberty and security of person."

24 Article 14 of the Constitution of the United Republic of Tanzania of 1977 contains the same phrase (*pari matiria*) as Article 6 of ICCPR of 1966. There are several laws in Tanzania including the Penal Code, Cap. 16 of the Revised Edition of 2002 of the Laws of Tanzania, which incriminate some acts or omissions detrimental to this right.

to life to include access to and availability of food and other necessities such as access to and control of a clean and healthy environment.

Despite the protection provided by both national and international law, Maasai communities in Tanzania continued to face incidents which threatened their right to life during the year 2011. There have been reported cases of torture and extra-judicial killings of members of these communities; confiscation of their cattle and goats (the Maasai's main source of livelihood); denial of access to lands and other natural resources, which logically makes them unable to secure food for their survival.




Picture No.4: Late Mr. Issa Lipasyo Kandir
(See Explanation Below).

One of the recent incidents of murder involved Mr. Issa Lipasyo Kandir, a 20-year-old Maasai warrior from Kisiwani hamlet of Kilangali Village, Kilosa District of Morogoro Region. This young warrior was killed by a police officer on 21st September, 2011. On the day in question, the police officers ambushed the village. It was around 10AM. For unknown reasons, they started to chase the deceased warrior and then shot him in the back. The mysterious killing caused his parents to boycott the burial arrangements.

Fomu: D 1

BD **JAMHURI YA MUUNGANO WA TANZANIA** **NAKALA YA MWANZO**

IDARA YA MSAJILI WA VIZAZI NA VIFO **KIBALI CHA MAZISHI**

00010802  Namba ya Kituo cha Tiba

1. JINA LA MAREHEMU: Issa la kwanza Lipasyo la ukoo 2. TAREHE YA KIFO: 21 Siku 09 Mwezi 2011 Mwaka

3. WAKIUME/WAKIKE* Wakiume Wakike 4. UMRI: 20 miaka au mwezi au siku

6. MAHALI ALIPOISHI/MASKANI KISIWANI KILANGALI KILOSA
Kijiji na Kata au Mtaa Kata na Mji Wilaya

Baada ya kuchunguza na kuthibitisha sababu ya kifo cha marehemu, natoa kibali cha mazishi:

9. SABABU ZA KIFO: KUVUJA DAMU KICUUMI NA MGONGOMU

15. TAREHE: 21 Siku 9 Mwezi 2011 Mwaka 16. MSAIDIZI USAJILI WA: KILOSA HOSP KANZEI
(Taja jina la Kituo cha Tiba) SAHIMI

KIBALI KIMETOLEWA KWA (Jina): KAMEI KANDILI SAHIMI

Picture No.5: Burial Permit of the Late Mr. Issa Lipasyo (See Explanation Above).

When they asked the District Police Commanding Officer (OCD) the reasons for the killing, he became furious and pompously stated that they (the parents) could not do anything to him. The post mortem report confirmed that the warrior was shot in the back and that some sharp metal came out of his chest causing him to bleed, profusely leading to his death.²⁵

No action has been taken against the killers, and this reflects the obvious impunity that exists. This is just one of the incidents which have denied the Maasai communities their right to life. PAICODEO urges the government to take action against those who are responsible for this and other mysterious deaths reported in other reports. Independent committees of inquiry should be engaged to investigate the human rights violations committed against the Maasai people.

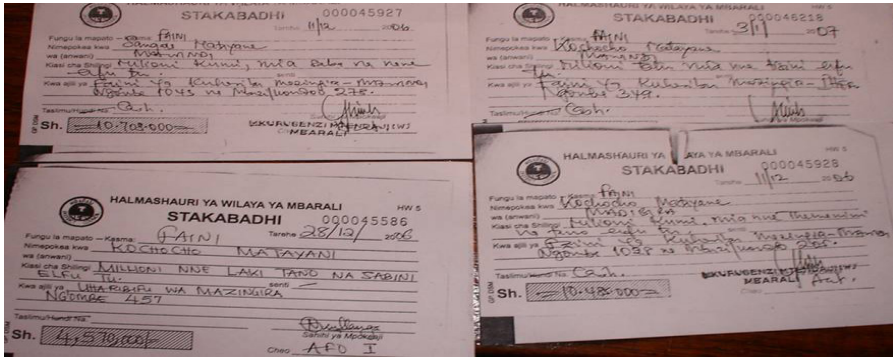
2.2.2 Freedom from Torture and Extra-Judicial Killings

The provisions of the Constitution of Tanzania, in particular Articles 13 and 15, prohibit arbitrary arrest and detention. Article 13 of the same also prohibits any form of torture and discrimination against any person. The Criminal Procedure Act of 1985 provides for, among other things, proper procedures for handling a suspect. The procedures include non-use of force, retributions, or any form of extra-judicial (outside the legal) procedures.

However, owing to a number of factors, including taking people's ignorance of the law for granted, many pastoralists have been detained, jailed and fined outside the court process in Same and Mwanza Districts in Kilimanjaro Region; Ngorongoro District in Arusha Region; Mikumi, Kilosa and Mvomero Districts in Morogoro Region; Serengeti and Tarime Districts in Mara Region; Nkasi and Mpanda in Katavi/Rukwa Region and other Regions.²⁶ For instance, during the year 2011 a number of framed cases, torture, illegal fines and delays in taking suspects to court occurred.

25 PAICODEO, Progress Report on the Implementation of Pastoralists Human Rights Project, June-December 2011, Pages 20 and 21.

26 PINGO's Forum Human Rights Shadow Report June 2009, page 7.



Picture No.6: Some of the receipts issued to Pastoralists after paying fines in Mbarali district, Mbeya region 2006 (Receipts issued for payment of Tshs 29,253,000/=)

In a number of cases, the Paralegals and Human Rights Monitors of PAICODEO documented that the police officers of Chalinze Police Station (Bagamoyo District, Coast Region) had framed and fabricated criminal cases against pastoralists. Their interest in doing this is unknown. Once they have framed a fake case, they arrest and torture the suspects and then illegally remand them until they pay fines ranging from Tshs 500,000 to more than Tshs 1,000,000.²⁷

On 15th July, 2011, one pastoralist, Mr. Nanguchuki Lumbe, was arrested and died in custody at the police station in Bagamoyo District, Coast Region. This followed allegations laid against him by a man called Mr. Mushi who claimed that he (Mr. Mushi) had entrusted Mr. Lumbe to look after 30 goats for him, which were later lost at the hands of Mr. Lumbe. Then, Mr. Mushi reported this matter to the police. Mr. Lumbe was arrested, taken to the police station, interrogated, tortured and ultimately died due to injuries inflicted on him and the poor health condition he had. The way this allegation was framed by Mr. Mushi and how he was arrested, tortured and died at the hands of the police indicates that Mr. Mushi had certain personal interests to gain from Mr. Lumbe and that the police officers were used as a way of achieving them.²⁸

Earlier on, in October 2010, six villagers of Gibaso village in Tarime District were reported to have disappeared mysteriously in the Serengeti National Parks.²⁹ They were arrested by the Game Rangers on allegations that they were grazing in this national park

27 PAICODEO, Progress Report on the Implementation of Pastoralists Human Rights Project, June-December 2011, Page 15.
 28 PAICODEO, Progress Report on the Implementation of Pastoralists Human Rights Project, June-December 2011, Page 15.
 29 Letter from Gibaso's Village Executive Officer, Mr. Paulo Mariba Sagirai to the District Commissioner of Tarime, dated 16/11/2010.

without permission. The six villagers were not taken to court; instead, they disappeared mysteriously. Efforts to locate their whereabouts were still in vain as of 2011.³⁰

2.2.3 Intimidation and Persecution of Human Rights Defenders

Tanzania does not have any law which provides specific protection for Human Rights Defenders (HRDs). Sections 7 and 10 of the Criminal Procedures Act of 1985 cover whistle blowers who are not necessarily HRDs. Obviously, some of the government authorities and officials use this gap to harass, intimidate and persecute the HRDs who, among other things, stand for the interests of Maasai communities. The reports produced by Non-Governmental Organizations (NGOs) (such as FEMACT, in August, 2009)³¹ show that the HRDs defending Maasai people have been facing intimidation.

For instance, during the year 2011, Honorable Dickson Modestus Kilufi,³² the Parliamentarian for Mbarali Constituency who is a great supporter of pastoralists in Mbarali district, was accused by the police of attempting to kill one Mr. Jordan Masweve, Ruwiwa Ward Executive Officer (WEO). The brief account of his case (according to the Charge Sheet Number CC/158/2011 of Mbarali Police Station) shows that on 16th March 2011 he threatened to kill Mr. Jordan Masweve at Mbarali District Council's Headquarters. Having wrangled in court for sometimes, ultimately, on 11th November, 2011, the court ruled that Mr. Kilufi was guilty and he was fined Tshs 500,000.³³ Hon. Dickson M. Kilufi said that he would appeal against the ruling in a Higher Court to challenge the judgment. This is one incident in which HRDs are implicated in criminal cases as a way of mitigating their efforts or shutting their mouths on the part of government and non-government individuals.

In another incident in November 2011, the District Executive Director (DED) and other government officials went to Kambala village, Mvomero District, Morogoro Region. They forced Mr. Kashu Moretu the Village Chairperson to give them the official village government's stamp/ seal, which he had used when writing a letter to an investor³⁴ who wanted to initiate irrigation farming in the village.³⁵ The Chairperson refused to

30 UPR NGOs Report 'Joint Stakeholders (NGOs) Submission to the Human Rights Council' 11th March, 2011. Paragraph 14, pages 5 and 6.

31 FemACT (2009) Fact Finding Mission Report, August 2009.

32 Mr. Kilufi has been a renowned HRD of the pastoralists, agro-pastoralists and small scale farmers' interests in his district for quite some time. He is one of very few government officials who stood up against the 2006 Ihefu (Mbarali) evictions of pastoralists from Ihefu Basin. At that time (2006), he was Councillor of Mbarali District.

33 PAICODEO, Progress Report on the Implementation of Pastoralists Human Rights Project, June-December 2011, Pages 6 and 7.

34 The investor's company/project is CDM Irrigation and Rural Roads Project, which was coordinated in Morogoro Region by its Project Engineer, Keith F. William.

35 In this village, there is Mgongola River/ Gorge. Note that, this village is registered as a village under the law

give the stamp because he knew that this would be to the detriment of his people. The DED reported him to the police station. The police hesitated to take action because they could not see any criminal offence in that. This incident followed a decision by this Village Chairperson to write a letter to the prospective investor informing him that the village area in which he wanted to invest in his irrigation project was a disputed area – information which is contrary to what the DED and other officials had told the investor. The Village Chairperson stated in his letter that there was a case pending in court and that the investor should therefore await its conclusion.³⁶ This information caused the investor to suspend the concession in that area. Therefore, the DED wanted to take the Village Chairperson to task for his decision, probably because of his personal interests, which were noted from the beginning.³⁷

On 17 February 2011, the Village Executive Officer (VEO) for Mabwegere Village, Kilosa District, Morogoro Region, Mr. Sadick A. Mwibela, was fired because of his stance on defending the rights of the Maasai villagers whose livestock were illegally confiscated on 29th January 2009 on the orders of the District Executive Officer (DED), Mr. Ephraim Kalimalwendo, and the District Commissioner (DC) of Kilosa, Mr. Athuman Mdoe, and under the supervision of the Ward Executive Officer (WEO) of Msowero Ward, Mr. Fedreck Majele, and the District Commanding Officer of Police (OCD) for Kilosa, Mr. Justine Kamugisha.³⁸ One of the reasons for the firing of the VEO given by the District Executive Officer (DED) was that he allegedly “ignored orders of the employer contrary to public service regulations.”³⁹ The letter of termination of employment did not give details of the accusations against the VEO. Mr. Mwibela lodged a labour case in the Commission for Mediation and Arbitration in Morogoro challenging the legality of the said termination. The case was still pending for final determination as of December 2011.

The government has since 2009 been carrying out destocking operations of Maasai livestock in the legally registered pastoralist village of Mabwegere as well as in other pastoralist and non-pastoralist villages in the district. Similar evictions and confiscation of livestock took place in 2006/2007 in Mbarali District, Mbeya region. Any persons attempting to challenge these operations usually faces a lot of intimidation and

since 1990.

- 36 Reference: A letter “Irrigation Project at Mgongola Area” dated 10th October, 2011. Written and signed by Mr. Kashu Moreto, Village Chairperson.
- 37 Interview between PAICODEO’s Consultant and Village Chairperson, Kambala Village, Mvomero District, Morogoro Region on 20 December 2011.
- 38 The letter from Mr. Sadick Mwibela, VEO, to Chairperson of Kilosa District Council. The letter is dated 3rd May, 2011.
- 39 A letter of his termination of employment was dated 17th February, 2011, referenced with numbers KDC/CS.2/1/A/VOL.1/69, signed by one Mohamed A. Maje, Acting District Executive Officer of Kilosa District. Mr. Sadick A. Mwibela, the former Mabwegere Village Executive Officer, received this letter on 10th June, 2011 (Paragraph 4 item 1 of this letter).

persecution. PAICODEO urges the government's law enforcement agencies, in particular the police force and the district leaders, to stop persecuting Human Rights Defenders (HRDs).

2.2.4 Arbitrary Arrests and Detention of Maasai Community Members

The international and national laws mentioned prohibit the arbitrary arrest and apprehension of anyone. Article 13(6) (b) and (e) of the Constitution of Tanzania, for instance, require a presumption of innocence and prohibit any form of torture. But there appears to be a trend that members of Maasai communities - especially those who live along or nearby national parks - have been subjected to arbitrary arrests and rounds of frequent ambushes by police officers and game rangers. Sometimes, when police officers (some of them) fail to arrest suspects, they take innocent women and children belonging to the family of the suspect to the police station as assurance of the availability of the suspects they wanted to arrest. They also charge the people they have arrested heavy fines outside court procedures as payment for releasing them.⁴⁰ As stated by a Maasai person:

The Maasai do face lots of incidents of police brutality. The police take it for granted that we are ignorant of our rights and easy to bribe once arrested even for framed cases. When a person is arrested, he can remain in police custody even for two weeks, while we know that a suspect is required to be brought before court within 24 hours. You know, they treat us as invaders of the place which is claimed to be predominantly home of the Wakwere tribe.⁴¹

PAIDOCEO Human Rights Monitors' Reports⁴² show that this has been the case for quite some time. For instance, between December 2010 and August 2011, a total number of 31 pastoralists were arbitrarily arrested and unlawfully confined by the Mikumi National Park Rangers and the police officers of Doma Police Station of Mvomero District,

40 The incident which involved Mr. Kafuna Steti a pastoralist from Parakuyo village, Kilosa District can illustrate this point. This person was forced by the Park Rangers and police officers of Mikumi National Park and Doma police station respectively on 8th July 2011 and 26th June, 2011 to pay a total of Tshs 3,000,000 in order for his family to be released after being arrested and taken hostage for allegedly grazing in the national park areas. Note that the laws of Tanzania do not provide for collective punishment or prosecution of related persons if they did not commit a crime at the same time. Collective punishment (example of punishing the whole village if the offender is unknown) is also prohibited.

41 Part of the explanation gathered during an interview between PAICODEO's Consultant and Mr. Moringe N. Sangido, a Maasai of Lugoba Village, Bagamoyo (13 December, 2011).

42 The reports prepared by the field Human Rights Monitors detailing human rights situation in their localities. Those reports are submitted to PAICODEO for further follow-up of reported human rights violations.

Morogoro Region especially. Some of the pastoralists taken hostage are youths,⁴³ children,⁴⁴ women with children⁴⁵ and pregnant women.⁴⁶ The operations do not spare old and other persons as well.⁴⁷ What the police and range officers do is to ambush the villagers, sometimes in their homes, and then arrest them on allegations that they were grazing in the wildlife protected areas, especially in Mikumi National Park of Morogoro Region. The villages most affected by these incidents are Ngaite/Luhoza, Kiduhi and Parakuyo in Kilosa district and Mela in Mvomero district in Morogoro region.⁴⁸

2.2.5 Access to Justice/ Equality before the Law

Article 107A of the Constitution of Tanzania vests powers and authorities in the judiciary to adjudicate justice. Different legal disputes are dealt with by different laws and procedures. For land issues, there are established land bodies under the land laws.⁴⁹ The laws establish the Village Land Council; Village Land Adjudication Committee; Ward Tribunal; District Land and Housing Tribunal; and High Court (Land Division). Each village, ward and district is supposed to have a body of appropriate rank. The aim is to speed up justice by bringing these bodies close to the people.

However, as the survey for this report finds, almost none of the districts with pastoralists visited in December 2011 had District Land Tribunals. Kilindi District depends on Handeni District's tribunal, which is located about 200 KMs away. Iringa Rural District depends on a tribunal located about 150 KMs away.

Village Land Councils are established in all villages, but they are not properly constituted and most of them are not functioning. For instance, Mabwegere village has a Land Council but it is not functioning because the members are ignorant of the procedures. Moreover, it is unfortunate that there is no Ward Tribunal in their newly established Kitete Ward.

Therefore, they normally use the tribunal in Dumila Ward. This is about 18 KMs from the

43 For instance, the following youth (with their years/age in brackets) were arbitrarily arrested and taken hostage: Huseni Kijaji (25); Embutwai Mbaire (25); Ng'ong'a Fadiga (26); Msikule Mahiya (24); Hubi Mahiya (27); Sauyaki Losambu (20); and Lepilal Kirendu (23).

44 The children taken hostage (with their years/age in brackets) were: Kisonga Manjura (12); Kisaiwa Mgomba (16); Ning'ori Kimeni (12); Samiji Palanda(12); Ning'ori Kimeni(12); Child of Mzee Monji (12); Ngayoy Ngoiyani (12); and Lepurko Kafuna (16).

45 For instance, the following women (with their years/age in brackets) had young babies when taken hostage by the said authorities: Sereti Kafuna (31); Noman'duleni Kimeni (31); Ng'ayai Mfuluke (30); Tinau Oropina (19); Nematila Oropina (20); and Sambera Oropina (19).

46 For instance, Neema Daniel (34) was 9 months pregnant when taken hostage on the day in question.

47 Others (with their years/age in brackets) were: Naboru Daniel (50); Maria Silongoi (42); Teresia Mrigo (45); Soyoi Rambaiwa (45); Neiyeyo Haningo (32); Oropina Niuyai (55); Emanuel Msando (27); Monji Mkandi (32); and Karani Kandiri (37).

48 PAICODEO, Progress Report on the Implementation of Pastoralists Human Rights Project, June-December 2011, Page 20.

49 Namely the Land Act of 1999; Village Land Act of 1999; and the Courts (Land Disputes Settlements) Act of 2002.

village centre.⁵⁰ The Kambala Village Land Tribunal is in place, but it does not function properly because the DC, DED and other political leaders control and command it. They sometimes provide directives to the members of the tribunals and so it is not independent.⁵¹ Mela Village of Mvomero District does not have a Village Land Council. Therefore, the land disputes are illegally determined by the Village Council (government).⁵² Mbwade Village of Kilosa District has a Village Land Council. It is, however, not certain how the members of that council were appointed. They were just announced to the villagers by the village government. They have been in power for over six years⁵³ while the law limits the time in office (tenure) to only three. It was the same story for all the villages visited during the December 2011 survey for this report.

Apart from the challenge relating to the availability of and access to the tribunals, there is also a challenge in terms of delays in ruling on cases. For instance, the Maasai of Mabwegere village lodged a case in the High Court of Tanzania at Dar es Salaam three years ago. Having lost in the High Court, they appealed to the Court of Appeal of Tanzania.⁵⁴ The case was filed in this court on 31st August 2010 and it was heard for the last time in November 2010. They have been waiting for a judgment on-notice for over one year now.



Picture No. 7: Maasai women in a decision-making meeting

- 50 Interview between PAICODEO's Consultant and Mr. Sharifu Kisenga, Village Chairperson, Mabwegere Village, Kilosa District, Morogoro Region on 15 and 22 December 2011.
- 51 Interview between PAICODEO's Consultant and Mr. Ibrahimu Rejuwa, Villager, Kambala Village, Mvomero District, Morogoro Region on 15 December 2011.
- 52 Interview between PAICODEO's Consultant and Ms. Sayato Singa, Member to the Village Council, Mela Village, Mvomero District, Morogoro Region on 15 December 2011.
- 53 Interview between PAICODEO's Consultant and Ms. Neema Sairutie, Villager, Mbwade Village, Kilosa District, Morogoro Region on 15 December 2011.
- 54 *Halmashauri ya Kijiji cha Mabwegere (Mabwegere Village Council) Vs. Hamis (Shaabani) Msambaa & 32 Others*, Civil Appeal No. 53 of 2010, Court of Appeal of Tanzania at Dar es Salaam. "Halmashauri ya Kijiji cha Mabwegere" means "Village Council/Government of Mabwegere Village."

Another problem is the high costs of initiating court cases. Many of the Mabwegere pastoralists suffer from an acute impoverishment caused by the confiscation of their cattle, sheep and goats and this prevents them from making a claim for compensation in court. They have already issued a statutory 90 days' notice of the intention to sue the government (District Commissioner) for ordering confiscations of their animals, but they cannot go further with the case because their lawyer needs Tshs 10,000,000 as initial instruction fee to pursue this case.

We are really poor. The police officers took away my 385 cows. I have been left poor. When I followed up, they had only 303 cows in their impoundment centre and they needed me to pay a fine of 30,000 per each cow! It was just too much for me. We have many wives and children and sometimes we sleep hungry. In this way, there is no way I can afford to run this case while I don't even have something to eat ... [Mr. Mayon Mwirana, a Pastoralist of Mabwegere, 30th December, 2011].

The time limit within which they are supposed to lodge a civil suit of this nature is set for 29th January 2012 and they do not have any indication of support for lodging their claims in court. Justice is easily lost like this.

2.2.6 Right to Take Part in Governance of the Country

Participation in governance affairs is a fundamental political right. Article 21 of the Constitution of Tanzania states that every person has the right to participate in decision making, including the right to vote and be voted for.⁵⁵ Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples of 2007⁵⁶ states that:-

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Despite the fact that there are a number of members of parliament coming from areas with pastoralist and hunter-gatherer constituencies; Kiteto, Simanjoro, Arumeru West, Longido, Monduli, Ngorongoro, Kilosa, Mvomero, Kongwa, Bariadi, Maswa, Serengeti, Hanang, Kilindi, Babati, Sengerema, Mbarali, and Chalinze to name but a few;

55 It is also worded in the same way by the African Charter on Human and Peoples' Rights of 1981 (Article 13); The ICCPR of 1966 (Article 25); and the UDHR of 1948 (Article 21).

56 Adopted by General Assembly Resolution 61/295 on 13 September 2007

representation of pastoralist issues is insignificant due to a majority of the population of such districts being non-pastoralists and hence defence of pastoralists' interest being limited.⁵⁷



Picture No.8: *Maasai in a political rally listening to a politician in 2006*

The low representation is attributed to a number of factors including low awareness about the importance of engaging in governance issues among Maasai communities and discrimination against them by some government officials and members of the dominant communities. For instance in Mbarali District, Maasai and Burushi (Asian origin) are discriminated against in issues relating to politics and governance because of their origin. In this district, some of the people, including leaders, openly tell the Maasai that they cannot be elected because they are Maasai, thereby indicating that they are 'aliens' of the district. The effect of this can be seen. For instance, despite the fact that Maasai in this district constitute more than 2,000 residents, only two out of about 100 VEOs are Maasai. There is no WEO who is Maasai.⁵⁸

Pastoralists are denied political participation by the ruling political party Chama cha Mapinduzi (CCM). In August 2010 the names of three Parakuiyo pastoralist men who had participated in the party's primary (nomination) elections were eliminated, despite the fact that they had won. The CCM party picked non-pastoralist contestants who came in second in the primaries. The three pastoralist men were Mr. Lekope Laini in Bagamoyo district in Coast region, Mr. Ngimundala Niuyai in Kilosa district, and Mr. Majuka Lekake in Mvomero district, both in Morogoro region.⁵⁹

57 PINGO's Forum Human Rights Shadow Report June 2009, page 3.

58 Mzee Tera, former Village Chairperson, interviewed on 27th December, 2011 at Matebete Village, Mbarali District, Mbeya Region.

59 Mr. Adam Ole Mwarabu "Statement on the Current Human Rights Situation of Pastoralists in Tanzania by Arid Lands Institute at the 48th Session of African Commission on Human and Peoples Rights held in Banjul Gambia, from 10-24th November 2010." Pages 2 and 3.



Picture No.9: Maasai men in a meeting without women

As for Maasai women, they face many challenges in terms of participation in decision making. These include very low levels of education; cultural norms which place them in subordinate positions; and a lack of confidence caused by these other factors. The cultural norms also prohibit women from participating in traditional decision making bodies like Inkigwenat or “council” and Enkingwena or “meeting”. The Oloiboni, a respected Maasai traditional and spiritual leader and healer, is elected by men only but is supposed to serve and deliver justice to both men and women.

Ms. Sofia Kaney, a Maasai lady of Matebete Village, Mbarali District, Mbeya Region, believes that the discrimination against women in educational opportunities causes them to be inferior and unable to vie for political positions. Apart from that, she is of the view that politics is a rough and unclean game to be played by men only. She says, “ ... [w]e, women, do not like politics because it involves lies and lots of other bad things, we do not want to be shamed ... let men do that, I think they are best suited for those things ...”⁶⁰

Generally, PAICODEO feels that civic awareness is needed to brush out or mitigate all these hindrances. It is important that Maasai communities are actively involving themselves in governance issues in order to defend and safeguard their interests, unlike the current situation whereby their weak representation leads to a lack of protection of their human and legal rights.

60 Ms. Sofia Kaney, Founder of Korduni Group (Women Group) of Matebete Village, Mbarali. Interviewed on 27 December, 2011 at Matebete Village.

2.3 Protection of Special Groups within Maasai Communities

2.3.1 Recognition of Special Groups within the Communities

The international human rights instruments mentioned above and some of the Tanzanian laws and policies recognize the presence of special (vulnerable)⁶¹ groups within the communities. The most well-known vulnerable groups are women; children; people with disabilities; prisoners; older people; indigenous peoples and people living with HIV/AIDS. Within each of these groups, there are more vulnerable groups namely, widows and orphans, whose situation this report gives a brief account of within the Maasai communities in Tanzania.

2.3.2 Rights of Children: The Orphans

The general countrywide trend in the situation of children shows that they remain the victims of torture, rape, assault, cruelty and even killings⁶² perpetrated by different people and authorities, including their parents and guardians. All these violations occur notwithstanding the fact that Tanzania is a signatory to the Convention on the Rights of the Child (CRC) of 1989; the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990; and that it has enacted a number of laws⁶³ and policies⁶⁴ on the same.

The Maasai have their own traditional ways of protecting the welfare of children. They have perfect social protection whereby every adult member of the community is duty bound to ensure that a child behaves in accordance with the cultural norms. Equally the case, every child is accountable for his or her ways to any adult.

61 'Vulnerability' for the purposes of this report refers to the risk of adverse outcome, such as impoverishment, ill health, social exclusion [Ref.: Leach, Valerie (2007) Children and Vulnerability in Tanzania: A Brief Synthesis. REPOA and UNICEF: Special Paper 07.25, page 1. This literature also states that vulnerability reflects not only the likelihood that an untoward event may occur but also the capacity to cope with it. It is therefore the result not only of individual mishap, but also the social conditions which follow from systematic differences in the flow of resources and opportunities which themselves influence capacities].

62 LHRC (2010) Tanzania Human Rights Report of 2010, page 117.

63 In 2009, Tanzania enacted a landmark law known as the Law of the Child Act, 2009 to centralize and enhance protection and safeguard the rights and welfare of children in Tanzania. To a large extent, this law has taken into account the spirit of the CRC and ACRWC.

64 For instance, the Child Development Policy of 2008, which gives general policy directives on the rights and responsibilities for the protection of children in Tanzania. Other policies include Education Policy of 2005; and Health Policy of 2002.



Picture No. 10: Maasai children with their mothers

As for the protection of orphans, it was found during the survey for this report that orphans are taken by relatives of their parents. Some of the relatives use them (orphans) as sources of income and labour.⁶⁵ The girl child is quickly forced into married life once she attains puberty in order to give the guardian cows by way of dowry while the boy child remains a shepherd the whole time. In this way, they miss school and other entitlements. It was noticed during the survey that this is not considered a serious issue for the elders and traditional leaders (ILaigwenak) because it is so common. However in some of the places, especially peri-urban areas, community members themselves ensure that every child attends school.

2.3.4 Rights of Women: The Widows

The main social protection that a widow can get from the community is to be inherited by another man, mostly a relative of her deceased husband. This ensures the continuity of her residence and access to her matrimonial property which, according to Maasai culture, is not inherited by girls or women.

65 Most of the women interviewed explained this point even without being asked. It seems to be a serious problem to be addressed by PAICODEO or/and other CBOs/NGOs.



Picture No. 11: An old Maasai woman receives a greeting from a young married woman

Ms. Anna Almas, a Maasai widow from Wami-Sokoine, Mvomero District, Morogoro Region summarized the situation of Maasai widows when interviewed on the 17 December, 2011:

... [w]hen a woman remains alone after the death of the husband; she usually experiences lots of problems caused by some of the traditions which require inheritance of widow and confiscation of the estates of her deceased husband. A widow has no value to them. We (widows) are given very bad names which really defame us. They call us Intang'oro (hawkers). We are discriminated even by fellow women who have husbands. This situation makes us lonely and obviously forces most Maasai women to get into unwanted re-marriage (being inherited) by brothers of their husbands). If one refuses to re-marry she can be sent back to her family empty-handed. Sometimes in the past, they wanted to inherit me as a widow. They organized a clan meeting. But I refused and I told them that I will initiate a probate case in court of law to demand for my husband's estates. I won! And look, here I am, with my own house, cows and have managed to send my children to school. My first born is in Parakuyo Secondary School. Other widows are in trouble every day, but I am trying to

educate them ‘behind closed doors’ because it is dangerous to spread this ‘poison’ of awareness to others. The whole village will be against me, except, maybe, the Pastor.⁶⁶

A lot of issues need to be opted for and accomplished in order to ensure a better world for women and children. Some of them could be systematic civic awareness-raising on their rights and this should include the right to self-determination as equal partners with men. PAICODEO urges the government and everyone to continue supporting and intensifying awareness campaigns in order to empower Maasai, especially women and children.

2.3.5 Traditional Norms: Breaking the Myth

As stated elsewhere in this report, the Maasai tradition does not give women a direct right to speak, own property or participate in decision making. Those are the traditional roles and responsibilities of men. But things have started to change. The message of gender equality is penetrating even to tribal people like the Maasai. The struggle for gender equality and equity is intensifying and is bringing some changes to break the myth.

The women can now express themselves and speak about their rights and the rights of the community members, as the case of Anna Almas stated above illustrates.



Picture 12: A Maasai lady standing and speaking in front of men in a community meeting

As Ms. Ester Laban, a Maasai lady of Chamakweza Village, Bagamoyo says, some of the

⁶⁶ Ms. Anna Almas, Widow, Member-PAICODEO, Wami-Sokoine village, Mvomero District, Morogoro Region on 17 December 2011.

Maasai women are now confident to speak in front of leaders and men. She says that the current situation is different from that of the past in her village, Chamakweza, Bagamoyo District, Coast Region.

[I]n the past we (women) were left behind, we did not understand these legal issues or rights. In most cases, it was men who fought for the rights, of course, they were giving bribes most of the time because of fearing the technicality of cases. But today, we (women) have land and I am fighting to protect it ... I am now confident, not fearing anything, and can even argue with the Magistrate or Judge in a court of law ... ⁶⁷

For her part, Ms. Sayato Singa of Mela Village, Mvomero District, said⁶⁸ that now even Maasai women can own land because they know that land ownership is one of their basic rights. They can now apply for a plot of land, cultivate it and even sell it. Ms. Rebeca Mussa, a Maasai lady of Parakuyo(Twatwatwa) village, Kilosa District in Morogoro Region, said that⁶⁹ apart from starting to own valuable assets like land, Maasai women can get at least one cow when their marriage breaks down irreparably. In the past, they left the marriage and went back to their families empty-handed. Mr. Ibrahim Rijuwa of Kambala Village, Mvomero District, Morogoro Region said that he has given all his children, including the girls, three cows each. He is happy to see that they still own and control them even after marriage to their husbands.⁷⁰

PAICODEO is of the settled view that a little effort can change the whole system without distorting the cultural norms entirely. In this context women and men as well, traditional leaders and institutions should play a pivotal role in ensuring that women are included in all decision making spheres and that they can own property in the same way men do.

67 Ms. Ester Laban, Maasai lady of Chamakweza Village, Bagamoyo (Interviewed by PAICODEO's Consultant on 13 December, 2011 at Chalinze Area, Bagamoyo, Coast Region).

68 During Interview between PAICODEO's Consultant and her on the Region on 15 December 2011.

69 Interviewed by PAICODEO's Consultant on 15th December, 2011 at Parakuyo, Twatwatwa Village, Kilosa District, Morogoro Region.

70 Interviewed by PAICODEO's Consultant on 15th December, 2011 at Parakuyo, Twatwatwa Village, Kilosa District, Morogoro Region.

CHAPTER THREE

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

3.1 Recognition of Economic, Social and Cultural Rights in Tanzania

Economic, social and cultural rights include the right to own property and work (economic rights); access health services and education (social rights); and places for traditional rituals and recognition of ways of life (cultural rights). These rights are specified in international⁷¹ and national⁷² legal arenas. However, the Constitution of the United Republic of Tanzania of 1977 does not specifically provide for the right to health and education in its Bills of Rights and Duties section. Therefore, it is not easy to enforce these two rights under aspects of constitutional enforceability, once violated.⁷³

3.2 Situation of Enforcement of Some of Those Rights for Maasai Communities

3.2.1 Right to Own Property: Land and Livestock as Sources of Pastoralists' Livelihood

The Constitution of the United Republic of Tanzania of 1977⁷⁴ and the interpretations made by the judiciary⁷⁵ recognize the right to own property and the right to work. As underlined in Chapter one of this report, the key characteristic for most indigenous

71 The main instrument being the International Covenant on Economic, Social and Cultural Rights of 1966. Tanzania ratified it in 1976. Other relevant international human rights instruments which specifically provide for the economic, social and cultural rights of indigenous groups include the Universal Declaration on Cultural Diversity of 2001; Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005; Convention for the Safeguarding of the Intangible Cultural Heritage of 2003; Convention Concerning the Protection of the World Cultural and Natural Heritage of 1972; Convention on Biological Diversity of 1992; Indigenous and Tribal Peoples Convention of 1989 (ILO 169); and UN Declaration on the Rights of Indigenous Peoples of 2007. Chapter Five of this report discusses these in more detail.

72 For instance, the Land Act, 1999; Village Land Act, 1999; Forestry Act, 2002; and Ngorongoro Conservation Area Authority Act, 1959.

73 Violations of constitutional rights (those included in the Bill of Rights and Duties (Articles 12 – 29) of the Constitution of Tanzania of 1977) can be challenged in court through the Basic Rights and Duties Enforcement Act, 1994. Other rights mentioned in this constitution but outside the Bills of Rights cannot be enforced because they are outside the ambit of this law. This is one of the weaknesses which necessitates current constitutional reform in Tanzania.

74 Article 24 of the Constitution of the URT of 1977 provides that everyone has the right to own property, including traditional land.

75 In the case of Lohay Akonaay and Another Vs. The Attorney General, High Court of Tanzania at Arusha, Miscellaneous Civil Case No. 214 of 1992 (Unreported). Held that 'land' is 'property.'

communities (including Maasai communities) is that the survival of their particular way of life depends on access and rights to their traditional land and the natural resources therein⁷⁶ for various socio-economic and cultural activities, including grazing their livestock and celebrating traditional rituals/worship. Therefore, to the Maasai, a piece of land is more than common property: it is his/her life. The international legal instruments purport to safeguard this notion⁷⁷ and call for protection and respect of the same.⁷⁸

Despite this reality, this research finds that forced removals of Maasai from their traditional and other lands have continuously taken place, from the colonial period to the current government administration. In recent years, the current government has used different techniques, including the expansion of wildlife protected areas; granting of hunting block concessions; destocking of livestock for conservation reasons;⁷⁹ change of use of the land mostly for agricultural investments and the commercialization of traditional land; and so many other justifications discussed below.

3.2.1.1 Land Grabbing for Wildlife Conservation Reasons

Land grabbing for reasons of extending wildlife or forestry protected areas is a serious problem in all pastoral villages which border national parks or game reserves. As stated earlier in Chapter one of this report, the land mass for wildlife is steadily expanding and moving towards the village areas without seriously taking into account customary land holdings and traditional settlements.⁸⁰ The new Wildlife Conservation Act of 2009 allows⁸¹ the Minister⁸² to order the demarcation of villages and reserved areas, including the game-controlled areas (GCAs) in which the Maasai have been co-existing (multiple tenure system) with the wildlife for many centuries.

76 ACHRR and IWGIA "Report of the African Commission's Working Group of Expert on Indigenous Populations/Communities of 2005" Eks/Skolens Trykkeri: Copenhagen, Denmark. Page 89

77 For instance, Article 10 of the UN Declaration on the Rights of Indigenous Peoples of 2007 states, inter alia, that "[I]ndigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."

78 Article 14 of the Convention on Indigenous and Tribal Peoples of 1989 (ILO's C169) states that the rights of ownership and possession of the (indigenous) peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

79 Clarence Kipobota "Community Mobilization against the Government Proposed Land Use Planning in Loliondo Division, Arusha Region Tanzania: Research and Opinion" Commissioned by PINGO's Forum, June 2010. Page 10.

80 LHRC (2003) Protection of Wildlife and Human Rights on the Balance Sheet: A Case of Serengeti Killings, page 8.

81 Section 16(5) states that, for the purposes of subsection (4), the Minister shall ensure that no land falling under the village land is included in the game controlled area. The provision is silent on whether it is the village land that has to be 'removed' from the GCA or a GCA which has to be 'removed' from the village land.

82 Responsible for Wildlife and Natural Resources.



Picture No. 13: One of the houses burnt down by Tarangire National Park game rangers

The effects of these public interventions are obviously to the detriment of the Maasai. For instance, Namelok hamlet, a sub village within Tungamalenga Village, Iringa-Rural District, which was formerly allocated to pastoralists for grazing purposes by the village government under the village land use planning arrangement, has now more or less been confiscated by the same village government in favour of investors. These outside investors have constructed five hotels in or near the village because of the village's proximity to the Ruaha National Park⁸³, which attracts tourists. Large parts of pastoralist land in Iringa rural district have also been taken by MBOMIPA Wildlife Management Area (WMA), which covers Idodi and Pawaga villages, for conservation activity. The beacons (the boundary marks) are placed right up to the Maasai homesteads. All this is happening notwithstanding the fact that the Maasai have been in Iringa rural district, Iringa region since even before the villagization operation of 1974.⁸⁴

83 Eight (8) villages around Ruaha National Park including Ikonga, Mabindasi, Upagamo and Ukwaheni in the Mbarali District have been grabbed by the government and made part of the Ruaha National Park without consultation of indigenous villagers [Ref.: Information from testimony of some of the residents of the areas, made in Arusha on 22 February 2011 during the UPR Consultative Meeting Organized by Pastoralists' (indigenous peoples organizations) CSOs in Arusha Tanzania].

84 Mr. Kilamei Ole Mtemisika, Maasai Traditional Leader of Maasai for Idodi Sub-Division and Mr. Mang'unda Ole Puya, Chairperson of Namelok Hamlet and Mr. Malo Ole Tanju Traditional Leader (Maasai Youths), interviewed at Tungamalenga Village on 28 December, 2011.

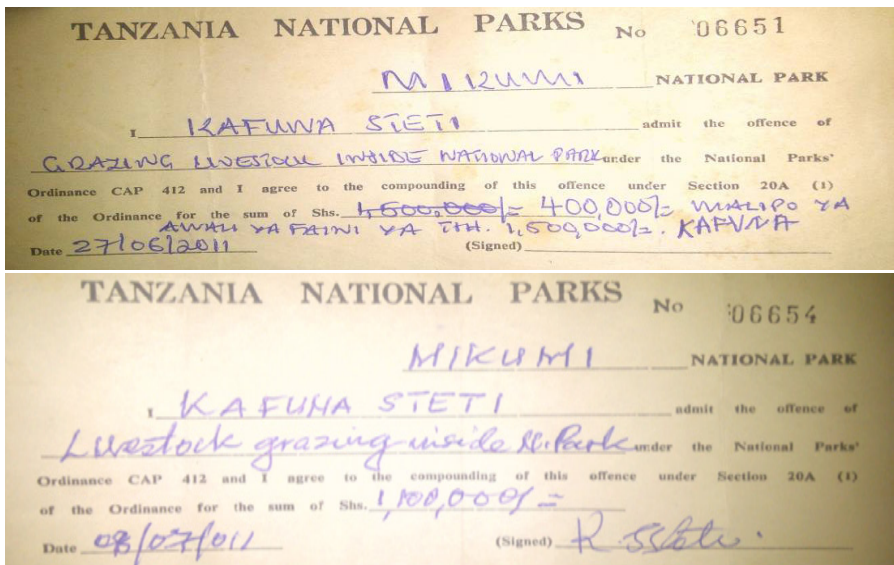
The conflicts of interest between Maasai pastoralists and conservation and tourism development initiatives implemented by the government are evident almost everywhere in the country. For instance, an incident almost similar to that of the Tungamalenga Village occurred in Loliondo, Ngorongoro District, Arusha Region in July 2009, whereby the government, through the District Commissioner, ordered the eviction of the Maasai pastoralists inhabiting several villages in Loliondo, including the Orelia, Kalkakamoo, Girgiri, Ololosokwan, Soitsambu, Arash, and Olorien-Magaiduru villages.



Picture No. 14: Maasai bull killed in Mikumi National Park during the eviction 2009

Although government representatives claim that the evictions took place because of environmental concerns related to the conservation of the Loliondo Game Controlled Area (LGCA), the circumstances surrounding the evictions indicate that the evictions were in fact part of a larger government policy favouring the interests of private enterprises engaged in conservation, tourism and wildlife hunting,⁸⁵ principally the Ortello Business Corporation (OBC), an Arab Royal Family, over the rights of indigenous peoples, particularly the Maasai pastoralists.

85 UN Report by the Special Rapporteur (Mr. James Anaya) on the situation of human rights and fundamental freedoms of indigenous people, 14 September 2010 for Cases examined by the Special Rapporteur June 2009 – July 2010. Human Rights Council, A/HRC/15/37/Add.1, Para 427 (a) and (b) page 173.



Picture No. 15: Two receipts for fines paid by pastoralist to the Mikumi National Park Authority

PAICODEO urges the government to safeguard the interests of the local communities against the greed of rich people from urban areas who go to the village, manipulate the leaders and get access to pastoral lands and other resources.

3.2.1.2 Land Grabbing for Investment Reasons

Traditional pastoral land has also been commercialized for investment reasons, which include the introduction of zero-grazing schemes such as ranching (trying to regulate grazing), and these schemes dispossess the Maasai of their lands.

The situation in the Kilosa and Mvomero districts illustrates this point. As the literature quoted in Chapter one of this report shows, the Maasai have been living in some parts of Morogoro Region (including Kilosa and Mvomero Districts) since before the 19th century. But when the government established the ranching system in the 1960s and 1970s, indigenous pastoralists, who prefer nomadic grazing, were forced out. In the 1990s, the government started to privatize the ranches created in those years. However, it is unfortunate that, during the dissolution of the government ranches in 2002, the government did not make sure that this land first and foremost reverted back to the Maasai who occupied those areas at the time when they were taken from them in the 1960s and 1970s.

For instance, in early 2002, the Dakawa Ranch was privatized. That is, the government ceased to control it. Therefore, it decided to reallocate its ownership to private individuals and companies after paying an unspecified amount of land survey charges. One of the companies was the Super-doll Company Limited, which is allegedly owned by big politicians. The company was given a lions-share of 30,000 hectares; the (cane grower) farmers were allocated 5,000 hectares; the Mvomero District Council's Headquarters 3,000 hectares; Luhindo village 2,000 hectares; Wami Sokoine pastoralist small ranch group 5,000 hectares; and traditional pastoralists 5,000 hectares. The pastoralists have not yet been given this portion of land despite the fact that the Cabinet of Ministers directed, on 29 August 2002, that this land should be given to them.⁸⁶

Another example relates to the Ngaiti village, Kilosa District, which has a total of 2,500 pastoralist households. Large portions of this village's land were confiscated by the government in the 1970s under its agency known as the National Ranching Company (NARCO).⁸⁷ In 2003 this land was privatized and allocated by the government to two large scale Maasai livestock keepers and, later, in 2008 another investor was offered a portion of land.

Land grabbing for investment reasons is a widespread problem in Tanzania. For instance, in Kambala Village, Mvomero District, where the district council is trying to give part of the pastoral land to a CDM Irrigation and Rural Roads Project (Company) without the consent of the villagers, as the land laws mentioned above require. In that village, there is a water source called Mgongola Gorge, which seems to attract investors. But that same water source is the only place where pastoralists can fetch water for domestic and livestock use.⁸⁸

While PAICODEO supports investment concessions in Tanzania, it urges the government to always seek the free, prior and informed consent of the Maasai and other community members before allowing any investment or re-allocation schemes in the village areas.

3.2.1.2 Land Grabbing for Agricultural Development Reasons

For many years now, the government's attention on agricultural development (which does not include pastoralism) has intensified. It is a focus that the politicians have chosen

86 Interview between PAICODEO's Consultant and Mr. Legairo Maha21/09/2011 ly members opasyo happened at Kisiwani Hamlet in Kisiwani village Kilosa, Morogoro Tanzania randa, Village Chairperson, Wami-Sokoine, Mvomero District, Morogoro Region on 15 December 2011.

87 Note that the Ngaiti pastoral communities had occupied the land since the 1950s and even before the initiation of the NARCO ranching project in the area.

88 Interview between PAICODEO's Consultant and Mr. Kufuna Kanduru, Member of the Village Council and Chairperson of CCM, Kambala Village, Mvomero District, Morogoro Region on 17 December 2011.

ever since the first decades of independence. For instance, in 1981, the then President of Tanzania, the Late Julius Kambarage Nyerere proclaimed that:-

... [W]e must now give it (agriculture) the central place in our development planning. For agriculture is indeed the foundation of our progress ... [t]he history of the world development shows that no single country in the world has ever made outstanding developments in socio-economic structure without first achieving the modernization of its agriculture. That is, no country has ever succeeded in eradicating poverty without raising productivity in agriculture.⁸⁹

At the moment, the government implements the Kilimo Kwanza ('agriculture-first') strategy under the Agricultural Sector Development Programme (ASDP) which, among other things, prioritizes the commercialization of the land, the adoption of modern technology in agriculture as well as subsidized inputs. Therefore, agricultural development receives first priority, justified by the government as part of the Kilimo Kwanza initiatives.



Picture No.16: Sign post of land owned by Mr. Kalaita Parkuris Karanga, a pastoralist who lost 363 cattle during the evictions in Kilosa District, 2009.

Incidents of evictions of pastoralists carried out in order to make way for agricultural development can prove this assertion. For instance, a consortium of Tanzanian

89 Ministry of Finance and Economic Affairs of Tanzania, "Kilimo Kwanza" in MAPAMBANO Magazine, June – December, 2009, pages 26 to 27.

organizations⁹⁰ found out that large numbers of Sukuma agro-pastoralists and IIParakuiyo/Maasai, Taturu and Barbaig pastoralists and their livestock had been forcefully evicted from the Usangu (Ihefu) Plains in Mbarali district, Mbeya region in the period 2006 to 2007. The reasons for the evictions advanced by the government were that the activities of the pastoralists in the plains threatened important water sources which were needed mainly for rice farming, for the Kidatu Hydroelectric Power Plant and for wildlife conservation in the Ihefu wetlands.

The trend still continues as a field survey for this report has documented. For instance, in Kambala Village, Mvomero District, Morogoro Region, the district authority, through the District Commissioner (DC) and the District Executive Director (DED) of Mvomero, have been constantly moving to evict Maasai pastoralists from their land in order to make way for the establishment of irrigation farming in the area. This move has been strongly resisted by the Maasai. Not because the Maasai do not want farming but due to the fact that the irrigation scheme is not a people-driven project and because the Village Assembly has not authorized the project on the village land in the way the law requires.⁹¹

The field survey revealed that the village started in the 1950s when this place was occupied by virgin forest. In 1972 the then Morogoro-Rural District Council went there to cultivate 100 acres through a cooperative farm. This plot is called 'Council' to date. When the farm was established, the villagers complained to the then Regional Commissioner of Morogoro and the government responded that the farm was just for demonstration. In the late 1970s and early 1980s, the government decided to intensify agriculture at this place and it fenced off the area. Therefore, any villager who entered the area was regarded as a criminal trespasser. In protest, the village government wrote a letter to the Prime Minister (Mr. Joseph Warioba by then) and he went there physically. The Prime Minister (PM) ordered that the pastoralists should be respected as they were the first dwellers of the place. The camp established for agriculture was subsequently closed but later on the farmers restarted agricultural activities. The pastoralists took the farmers to the high court in Dar es Salaam but the ruling has not been issued yet.

Today, the cause of land conflicts in this village is the land pressure and the outside farmers' disregard for the authority of the village administration. The farmers from outside the village come to the village and start farming without following the proper procedures. All Regional Commissioners, including Mussa Nkangaa and Mustapha Nyang'anyi, assigned

90 Comprising PINGOs Forum (Pastoralists Indigenous Non-Governmental Organizations' Forum), Hakiardhi (Land Rights Research and Resources Institute), HIMWA (Huduma ya Injili na Maendeleo Kwa Wafugaji), Legal and Human Rights Centre (LHRC), ITV (Independent Television Limited) and the newspaper Majira.

91 Interview between PAICODEO's Consultant and Mr. Ibrahimu Rijuwa, Villager, Kambala Village, Mvomero District, Morogoro Region on 15 December 2011.

to work in Morogoro Region have, on different occasions, ruled out the source of these land conflicts being the farmers who do not want to respect the village government. These farmers occupy and use the village land without the authorization of the village council as the law requires, and they have now forcefully occupied about 8,000 acres.⁹² It is stated that, they (farmers) have strong backup from the politicians at district and regional levels. There is a case pending in the court to try to evict these farmers from the village land.

In Mbwade Village, Kilosa District, Morogoro Region, land related conflicts are, just like in most of the other Maasai villages, fuelled by the fact that farms are located within the grazing areas. Despite the fact that there is a specific grazing area at Sanjulu hamlet within this village, the way the farms are organized tends to cause these conflicts all the time.⁹³

PAICODEO urges the politicians and other authorities to adhere to the principles of the rule of law because the Village Land Act of 1999 gives powers to the village government to have full control of the village land. Personal vested interests in agricultural development should not be to the detriment of Maasai communities who deserve protection under the law.

3.2.1.3 Land Grabbing for Administrative and Political Reasons

For many years, administrative and political arrangements have been aimed at destabilizing indigenous pastoralism. The first remarkable initiative in this regard was the Ujamaa⁹⁴ Villagization or Resettlement policy whereby in early 1970 the government launched village resettlements in new areas for the purposes of easily providing social services. This was done under the justification of the law.⁹⁵ The new villages distorted the traditional Maasai spatiality, which raised problems of local land and natural resources management.⁹⁶

Political and administrative arrangements of these kinds are still ongoing as a survey for

92 Interview between PAICODEO's Consultant and Mr. Majuka Koira, former Councillor, Kambala Village, Mvomero District, Morogoro Region on 20 December 2011.

93 Interview between PAICODEO's Consultant and Ms. Neema Sairutie, Villager, Mbwade Village, Kilosa District, Morogoro Region on 15 December 2011.

94 The "Ujamaa" is a Swahili word meaning "Communal" or "Socialism." The essence of Ujamaa was to put people together, cause them to work together for collective gain. It intended to fight capitalism.

95 The Rural Lands Act of 1973 and the Villages and Ujamaa Villages Act of 1975. Both Acts aimed at eliminating customary rights through due process of law. In addition, the law of 1975 provided for the territorial jurisdiction of Ujamaa villages and the registration of administrative village boundaries.

96 Ojalammi, Sanna (2006) *Contested Lands: Land Disputes in Semi-arid Parts of Northern Tanzania Case Studies of the Loliondo and Sale Divisions in the Ngorongoro District* (academic dissertation, University of Helsinki), pages 44 to 50.

this report reveals. For instance, the Mabwegere villagers cannot forget the incident which took place on 29 January 2009 whereby Mr. Athumani Mdoe, the District Commissioner for Kilosa District ordered the confiscation of the Maasai's cattle and goats on the allegation that they were illegally residing in this village.⁹⁷ On the day in question, several residents were arrested including the Village Executive Officer (VEO) who tried to question the legality of the operation. The villagers can recall that about 210 fully-armed policemen in seven vehicles ambushed the village and randomly took away the cows and goats. The cows and goats were impounded. Each owner of those animals was required to pay Tshs 5,000 per day per animal as impoundment (retention) fee and Tshs 30,000/= per animal as fine. The animals stayed there for five to six days, and some of them died because of a lack of water and grass/feed.



Picture No.17: Livestock transported by lorries from Kilosa District during evictions in 2009

The order from Mr. Athumani Mdoe, the District Commissioner and Mr. Ephraim Kalimalwendo, the District Executive Director through Mr. Justine Kamugisha, the District Police Commander (OCD) was that the cows and goats should be transported by lorries to the Pugu market in Dar es Salaam, about 300 KMs away. The carriage fees for the arranged lorries were between Tshs 600,000 to 8,000,000 per trip, an expense that the

97 Information was narrated by Mr. Sadick A. Mwibela, former Village Executive Officer of Mabwegere Village; Mzee Mangetu; Mr. Mangitu Mtio; Mr. Mayoni Mwirana; and others on 30th December, 2011 at Mabwegere Village, Kilosa District, Morogoro Region.

villagers were forced to pay. The records⁹⁸ show that a total of 3,897 cows, 514 calves and 1,163 goats of 25 pastoralists were lost during the operation. The district officials stated that the operation was aimed at removing the Maasai pastoralists who are, according to them, trespassers.

Moreover, the Mvomero District Council has grabbed at least 3,000 hectares of Wami-Sokoine village and converted it into a part of the District Council's land and apparently they have refused to give the Maasai pastoralists a portion of land from Dakawa Ranch⁹⁹ mentioned above. In order to follow up on this matter, the pastoralists of the Sokoine village informed Hon. Amos Makalla, the Member of Parliament (MP) for Mvomero Constituent, about the occurrence in 2011. The MP wrote a letter in mid-2011 to Hon. Mizengo Pinda, the Prime Minister (PM) of Tanzania and Hon. David Mathayo David, Minister for Livestock and Fishery Development requesting the land be allocated to the pastoralists as per the decision of the Cabinet meeting of 9th August 2002.¹⁰⁰ On 23rd June, 2011 the same MP raised this matter with the parliament. The Minister for Lands and Human Settlement responded that the land which the pastoralists are claiming (plots No. 229/3A and 229/3B) was already granted to the Katenda Group (Company) and Mr. Elisa D. Mollel. The Katenda Group is believed to be owned by Hon. Fredrick Sumaye former Prime Minister and Mr. Elisa Mollel was an MP for Arumeru West in Arusha region.¹⁰¹

Mistreatment of this kind seems to get the blessing of high ranked political leaders. Therefore, those at district level can conduct all these injustices with impunity. The strong official negative discourse towards pastoralism also contributes to paving the way for these injustices. Hon. Jakaya Kikwete, the President of Tanzania himself has on different occasions been quoted by the media as condemning indigenous pastoralism. For instance, in his inaugural speech to parliament on 30th December 2005, the President said:-

[H]onorable Speaker, we will take actions to improve our livestock keeping ... [w]e are obliged to move away from pastoralism which is turning the whole country into grazing

98 Orodha ya Wafugaji wa kijiji cha Mabwegere Walionyanywa Mifugo Yao na Halmashauri ya Wilaya ya Kilosa. Tarehe 7 Disemba, 2011 (List of Pastoralists of Mabwegere Village whose Livestock were confiscated by the Kilosa District Council). Dated 7 December, 2011).

99 Interview with Mr. Legairo Malanda, Village Chairperson, Wami-Sokoine, Mvomero District, Morogoro Region on 15 December 2011.

100 On 31st October, 2002, the Secretary to President's Office and Local Government wrote a letter with reference numbers RALG-C/C.110/1 to Morogoro District Executive Director (at the time Mvomero District which Sokoine is in it was part of Morogoro District) to inform the Director that the Cabinet had to allocate the two pieces of lands to pastoralists, one plot for pastoral use and another for small ranch holders. However nothing was done to allocate the piece of land to pastoralists.

101 PAICODEO, Progress Report on the Implementation of Pastoralists Human Rights Project, June-December 2011, Pages 17 and 18.

land ... [n]either pastoralists nor cattle are getting any fatter
 ... [w]e cannot go on with pastoralism in the 21st century.¹⁰²

On 22nd February 2006, the President reiterated his stand against pastoralism. He said, “it is better for a few pastoralists to be angry, but protect the lives of the next generation.” The presidential statement meant that, being a minority community and indigenous, one has no place in the mainstream society of Tanzania.¹⁰³

PAICODEO urges the politicians and other authorities once again to adhere to the principles of the rule of law. It also urges the Mvomero District authority to implement the decision/ resolution of the Cabinet of 2002 in order to bring justice to indigenous pastoralists.

3.2.1.4 Destocking as Denial of Right to Property

Between 2006 and 2007 more than 300,000 cattle; 20,000 sheep and goats; and more than 4000 families were evicted from Mbarali District and forced to trek more than 1,000 KMs to Lindi Region. Pastoralists were also coerced by police and district authorities to pay heavy fines allegedly for destroying the Usangu wetlands to the tune of Tshs 10,000 per head of cattle.¹⁰⁴ Moreover, at least 8,000 livestock animals were apprehended by the government following the evictions.¹⁰⁵ More than 10 houses were burnt down.

Similar evictions and destocking of pastoralists took place in January 2009 in Mabwegere , Kilosa District, Morogoro Region where 3,897 cattle and 1,163 goats were lost during the destocking operation as the table below shows:-

Table 1: Destocking Operation of 2009

No.	Name of Pastoralist	Number of Livestock Lost /Seized by Government	
		Cattle	Goats/Sheep
1.	Mayoni Moirana	385	-
2.	Mangeti Mtiyo	256	-
3.	Jasani Sityo	429	-
4.	Mabindu Mwesongo	528	-

102 Quoted from PINGO’s Forum Human Rights Shadow Report, June 2009 at page 6 available online at www.pingosforum.or.tz [Viewed on 31st December, 2011].

103 PINGO’s Forum and Partners, Pastoralism as a Livelihood and Economic Activity in Tanzania, April 2009.

104 Statement on the Current Human Rights Situation of Pastoralists in Tanzania by Arid Lands Institute at the 48th Session of African Commission on Human and Peoples’ Rights held in Banjul Gambia, from 10-24th November 2010, By Adam Kuleit Ole Mwarabu, Coordinator of PAICODEO.

105 UN Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, [Ref: A/HRC/15/37/Add.1, 14/9/2010], paragraph 427, pages 177 and 177.

5.	Kombeti Katuli	22	-
6.	Mberesero Musisi	389	-
7.	Machau Leyani	130	-
8.	Maitei Musisi	10	-
9.	Mason Lemameo	520	-
10.	Tisini Madamanya	-	250
11.	Mang'unda Madamanya	-	350
12.	Laini Kisau	220	310
13.	Tikoni Pololeti	30	40
14.	Doto Lembile	80	-
15.	Jeremia Sokoine	76	-
16.	Selemani Teika	25	5
17.	Kalaita Parkuris	320	-
18.	Pololet Baini	215	-
19.	Sadick Mwibela	33	-
20.	Muumbi Langwa	-	30
21.	Kayombo Hemedi	15	-
22.	Ormusee Sanoto	-	76
23.	Hayoo Kisulumu	72	102
24.	Leyo Modeko	135	-
25.	Tumuna Kashu	7	-
	TOTAL	3,897	1,163

Source: PAICODEO, Progress Report, June-Dec., 2011, Pgs. 22 & 23.

Furthermore, during the evictions in July 2009 at Loliondo, Ngorongoro District, Arusha region, over 50,000 cattle were left without grazing land or water due to their exclusion from their traditional grazing areas, and more than 200 Maasai homesteads (Bomas) were burnt down.

In Losimingori village, Monduli District, Arusha region, pastoralists were evicted in 2011 from their ancestral land by the Tanzania Peoples Defense Forces (TPDF) on claims that the land belonged to the latter. Some of the livestock were lost in the process.¹⁰⁶

PAICODEO urges the government to compensate the pastoralists against the losses they have incurred because of the illegal operations carried out by its subordinate officers. It also urges the government agencies, in particular the police and district authorities, to

¹⁰⁶ Information from testimony of some of the residents of the areas, in Arusha on 22 February 2011, during the UPR consultative meeting organized by pastoralists' (indigenous peoples' organizations) CSOs.

stop harassing the pastoralists, and instead guide them to use better ways of livestock keeping, (if they think traditional ones are not suitable), but after being adequately consulted and informed.

3.2.2 Right to Work: Grazing, Farming and Employment

3.2.2.1 Right to Work as Constitutional Right

Article 25(1)(a) of the Constitution of the United Republic of Tanzania of 1977 states that “work alone creates the material wealth in society, and is the source of the well-being of the people and the measure of human dignity. Accordingly, every person has the duty to participate responsibly and honestly in lawful and productive work”. Grazing, agro-farming and other forms of work including formal employment are all works to which this provision of the constitution refers. Article 22 of the same constitution states that “everyone has the right to work and should be given equal opportunity to work”.

The right to work in the context of this report means engagement in productive labour for social or economic gain through the informal and formal sectors. The informal sector includes the traditional occupation of grazing and farming activities, while the formal means being employed by the government or non-government institutions. The situation on the ground shows that Maasai communities are disadvantaged and discriminated in all these forms of employment.

3.2.2.2 Limited Access to Grazing and Farming Areas

The evictions mentioned above obviously violate the pastoralists’ right to work. Their key economic activities, namely grazing and farming, are seriously disturbed by the evictions.¹⁰⁷ As stated in Chapter one of this report, these two activities employ more than 80% of rural Tanzanians. This means that the majority of Tanzanians including Maasai peoples are seriously disturbed by the evictions and other forms of denial of grazing and farming areas.

The provisions of some of the laws, especially the Village Land Act of 1999, ensure pastoralists the right to own land for grazing communally, albeit with limited freedom. For instance, Section 6(d) of the Ngorongoro Conservation Area Act, 1959¹⁰⁸ states that one of the functions of the Ngorongoro Conservation Areas Authority (NCAA) shall be “to safeguard and promote the interests of Maasai citizens of the United Republic engaged in cattle ranching and dairy industry within the Conservation Area.”

107 William Olenasha, *Reforming Land Tenure In Tanzania: For Whose Benefit?* Presented during one of HAKIARDHI's workshops (undated). Page 2

108 This law establishes the Ngorongoro Conservation Authority (NCAA).

But experience shows that entry into the Ngorongoro Conservation Area (NCA) is very limited for Maasai and other pastoralists. Moreover, agricultural activities are strictly prohibited within the NCA, a situation which causes famine every year to Maasai communities in the area.¹⁰⁹



Picture No. 18: Maasai warriors grazing their cattle adjacent to protected areas

The situation is also difficult for pastoralists living near other national parks. For instance, in Kilosa District, over 149 cattle and 20 goats were seized and killed by the Mikumi Game Rangers between April and August 2010 on allegations of trespassing into the Mikumi National Park.¹¹⁰

Moreover, the Natural Resources Act, 2002 and the Wildlife Conservation Act, 2009 which are discussed in details in the coming chapter (Chapter Four) of this report, contain some provisions which openly restrict the entry of pastoralists into wildlife areas and other so-called reserved or protected areas.

Maasai cattle have been the victims of these laws, especially in villages located near Mikumi and Ruaha National Parks. PAICODEO urges the respective authorities to allow pastoralists access to the wildlife protected areas, especially during drought seasons. It is a matter of the natural relief they can regain, having been pushed out of it through the public interventions mentioned above.

109 C. S. L Chachage (1996) Land Policy and Tenure in National Parks, Game and Forest Reserves in Tanzania, page 15 (Seminar Presentation). Note, Chachage was Professor at the University of Dar es Salaam.

110 Information from one of the villagers who attended a workshop on the pastoralists' (indigenous peoples organizations) CSOs on 22nd February, 2011 at Arusha. Information is also corroborated by 'A Fact Finding Mission Report on Cattle Shot Dead in Mikumi National Park, Kilosa District.' Report of August 2010, pages 2-8. Available online at www.pingosforum.or.tz

3.2.2.3 Denial of Employment Opportunities and Good Working Conditions

Some Maasai people have been lucky to get opportunities to attend school and have managed to secure jobs in the formal sector such as ministries, government departments, schools and health centres including private institutions. Because of the negative perceptions of Maasai people mentioned in previous chapters of this report, experience shows that some of them are mistreated and discriminated against by employers, by suspending, sacking or imposing difficult working conditions on them, or withholding or delaying payment of salaries.

In the late 1990s Maasai men started to migrate to urban centres to find work as security guards; their reputation for both bravery as warriors and honesty, coupled with a lack of formal education that would qualify them for more professional jobs, means that security is one of the few areas in which people will employ them. Many of these Maasai men are employed under very bad working conditions. The principal reasons for Maasai urban migration are poverty and hunger. “The two conditions are a result of the diminishing livestock herds, due to disease, drought and also importantly land alienation; by agriculturalists, and by the state for creation of parks and investments.”

Some of these Maasai men and women who are employed in various sectors face challenges in their working environment and are underpaid. In Kilosa district, Morogoro region, a threat of expulsion of a pastoralist from work has been witnessed, where one Maasai lady, Mrs. Viktoria Oltaretoy, a Parakuiyo primary school teacher, has received a number of threats aimed at getting her to leave her job; and she has been under-paid for almost five years without explanation. She is paid Tshs 60,000, 70,000/=, 80,000/= or Tshs 100,000/= depending on the mood of the district government official that particular month instead of Tshs 350,000/=, the normal rate paid to other teachers of her grade. She has tried in vain to rectify the situation by notifying her supervisors and employer. The best she has received so far are empty promises.

Threats that she would lose her job started in August 2008. One of the reasons may be that her husband is a human rights defender. On 4th February 2009 her husband attended a meeting organized by Morogoro Regional Commissioner and Kilosa District Commissioner over the eviction of pastoralists in the district. On the same day a letter with Reference **No. KL/EWL/C.PF.4055/10** was written by District Education Officer to the Public Service Commission (Teachers Services Commission Department) informing the office that Mrs. Viktoria Oltaretoy had left her job for 30 days from 25th February to 25th March 2008 without permission and so she would have to be either fired from her job or underpaid. The letter surprised her because there was no warning letter previously

written to her and there was no clear explanation as to why she should quit her job.

Article 23(1) of the Constitution of the United Republic of Tanzania of 1977 states that every person, without discrimination of any kind, is entitled to remuneration commensurate with his work, and all persons working according to their ability shall be remunerated according to the measure and qualification for the work. Sub-article 2 of Article 23 further states that every person who works is entitled to just remuneration. Furthermore, the Employment and Labour Relations Act of 2004, which regulates the working environment, prohibits discrimination against anyone by reason of his/her sex, tribe, gender and other factors.

PAICODEO urges every employer to ensure an equal working environment for everyone regardless of his/her ethnic background in accordance with those laws. PAICODEO also urges all employers to ensure effective implementation of the laws.

3.2.3 Right to Education

3.2.3.1 General Overview of Rights to Education: Position of Informal Education

Article 11 of the Constitution of Tanzania of 1977 provides for equal and affordable education opportunities for all. Indeed, the government has made a quite commendable effort to construct primary schools in many pastoral villages as is explained below. However, the current education system which is called ‘formal education’ does not incorporate traditional knowledge, which is commonly known as ‘informal education.’ The said system also does not take into account the fact that, because of their socio-economic backgrounds, Maasai children who are enrolled in schools have difficulties in understanding subjects which are taught in Swahili or English languages. It takes almost a year for a Maasai child who is enrolled in a primary school for the first time to become familiar with the school’s environment and the new languages used as a means of instruction.

Even if the child becomes familiar with the learning environment, he/she may be discouraged from continuing with education because of other factors, including the pressure from some parents who believe that if a child is sent to formal education he/she will be assimilated into other peoples’ culture because nothing in the formal education teaches about Maasai customs. It is all about western culture.¹¹¹

111 Statement By Mr. Adam Kuleit Ole Mwarabu, an Indigenous Youth Representative from Tanzania at the Committee on the Rights of the Child Day of Discussion on the Rights of Indigenous Children, on 19th September 2003, Palais Wilson, Geneva Switzerland. Pages 5 and 6.

PAICODEO urges the government, in particular the Ministry of Education and Vocational Trainings, to design or facilitate an education system that incorporates the knowledge of indigenous peoples and which indigenous children can benefit from for a prosperous future. It should be noted that their knowledge has helped them to survive throughout their history. In fact, the knowledge of these people could also be educational material for others to learn and get inspiration from. For instance, the way the Maasai conserve the environment is something that everyone can take a good lesson from. Therefore, their indigenous knowledge is worth as much as modern ('formal') knowledge is.

3.2.3.2 Maasai Awareness of the Importance of Education

Unlike previously, whereby local government authorities used punitive measures to force Maasai parents to send their children to school, nowadays the parents themselves enforce the punitive measures against other parents who do not send their children to school. For instance in Twatwatwa, Mela and Mabwegere Villages of Kilosa and Mvomero Districts, Morogoro Region the Kamati ya Ulinzi (security committee) and traditional elders' council ('*ILaigwenak*') monitor enrolment and drop-out rates of children, especially at Primary School level.



Picture No 19: Short-staffed school with some pupils seated on floor in Twatwatwa village in Kilosa district

It is the security committee (and not the school administration) which ensures that every child is sent to school and attends classes. Every hamlet (kind of street) leader is duty bound to make an inspection of all families for that purpose. The challenges they face that are highlighted in land rights, injustice and awareness campaigns by PAICODEO and

other CSOs/CBOs are among the factors which trigger them to send their children to school in order to be advocates of their own destiny.¹¹²

3.2.3.3 Situation of Enrolment and Drop-outs

As a result of what is stated above, the enrolment rate is on the increase. For instance, as of December 2011, the Parakuyo Primary School (in Twatwatwa Village) had a total of 502 pupils of whom, 255 (50.79%) were girls and the remaining 247 (49.21%) were boys. There have been no drop-outs for reasons of pregnancy or to take care of domestic chores. At least 10 Maasai children in this village have attained a university degree.¹¹³ The records of Lesoit Primary School, which is located in Lesoit Village, Kiteto District of Manyara Region show that the enrolment rate for primary school is on the increase, from 40 pupils in 2007 to between 80 and 90 in 2011.¹¹⁴

3.2.3.4 Performance Rates

The performance rate is also quite impressive in almost all schools designated for Maasai communities. This indicates that when these people are given an opportunity to excel they can do so. For instance, out of 49 pupils who sat standard seven national examinations in 2010 (Parakuyo Primary School), 41 (83.67%) passed the exams and joined Secondary Schools. A total of 22 (53.65%) girls passed compared to 19 (46.35%) boys.¹¹⁵ In Elerai Village, Kilindi District, Tanga Region, the performance rate has been 100% for the past four years. That is, all pupils (almost all of them being Maasai) have passed the standard seven national examinations. The Elerai Primary School is ranked number one or two at District level and around the 6th position at Regional level, where there are more than 100 primary schools. It is almost same situation for Matebete Primary School of Mbarali District, Mbeya Region.

3.2.3.5 Question of Access

Despite this positive trend, the education system needs to take into account the nature of the Maasai lifestyle, which is nomadic and requires an extensive landmass and where a village covers a very big area. One primary school for a whole village seems to be inadequate. Some children have to walk very long distances and along dangerous roads

112 Interview with Mr. John Peter Mruma, Headmaster of Parakuyo Secondary School, Twatwatwa Village, Kilosa District, Morogoro Region on 15 December 2011 at Twatwatwa Village. Almost the same views as Mr. Kalisti Fabian, Head Teacher Lesoit Primary School, Lesoit Village, Kiteto District - interviewed on 6th January, 2012.

113 Interview with Mr. John Andulile, Head Teacher of Parakuyo Primary School, Twatwatwa Village, Kilosa District, Morogoro Region on 15 December 2011 at Twatwatwa Village.

114 Interview with Mr. Kalisti Fabian, Head Teacher Lesoit Primary School, Lesoit Village, Kiteto District - interviewed on 6th January, 2012.

115 Parakuyo Primary School Statistics of December 2011, viewed on 15 December 2011. The scanned document of these statistics is shown in this report in the form of a picture.

for form one studies. Most of them were married off so that their parents could get the dowry.¹¹⁹ It is not a question of affordability of school fees; rather it is a matter of challenging the customary beliefs of some parents.¹²⁰

3.2.3.7 Adequacy of Teachers and Facilities

Most of the government Primary and Secondary Schools in the rural areas where the Maasai live do not have enough teachers, residential houses for teachers, teaching facilities and dormitories. For instance, Mabwegere Primary School of Kilosa District, Morogoro Region, has only 5 teachers for more than 360 pupils.¹²¹ Kambala Primary School has only 4 teachers for more than 500 pupils.¹²²

This situation discourages teachers from accepting rural postings (to teach in rural areas). It also affects the academic performance of the students. Most of the secondary school students fail to continue to High School level. They cannot imagine an academic life after the ordinary level of secondary school. Therefore they put little effort into their secondary school studies.¹²³

3.2.3.8 Effects of Evictions on Education

In some of the villages like Mbwade of Kilosa District, where there are ongoing threats of eviction, the children's school attendance is poor because parents fear that the government will come to evict them at any time (as the government always threatens to do). Therefore, they are vigilant regarding any action that may occur at any time.¹²⁴

PAICODEO applauds the government and its agencies for the progress made so far with respect to the right to education, but urgently urges the government to adopt affirmative and special measures for Maasai communities who still lag behind when compared with other communities in mainstream society. There is also a need to initiate adult education sessions in Maasai villages in order to give opportunities to those who missed education as children and who can access it as adults.

119 Interview between PAICODEO's Consultant and Mr. John Peter Mruma, Headmaster of Parakuyo Secondary School, Twatwatwa Village, Kilosa District, Morogoro Region on 15 December 2011 at Twatwatwa Village.

120 For instance, recently Adam Mwarabu of PAICODEO offered a sponsorship opportunity for one child after her parent failed to take her to Parakuyo Secondary School. But, the parents decided to move to Tanga Region in order to escape close monitoring of their child going to school.

121 Interview between PAICODEO's Consultant and Mr. Sharifu Kisenga, Village Chairperson, Mabwegere Village, Kilosa District, Morogoro Region on 15 and 22 December 2011.

122 Interview between PAICODEO's Consultant and Mr. Ibrahimu Rejuwa, Villager, Kambala Village, Mvomero District, Morogoro Region on 15 December 2011.

123 Interview between PAICODEO's Consultant and Mr. John Peter Mruma, Headmaster of Parakuyo Secondary School, Twatwatwa Village, Kilosa District, Morogoro Region on 15 December 2011.

124 Interview between PAICODEO's Consultant and Ms. Neema Sairutie, Villager, Mbwade Village, Kilosa District, Morogoro Region on 15 December 2011.

3.2.4 Right to Health Services

There is no law or constitutional provision in Tanzania which provides for the right to health or health services. There are policy directives such as the Health Policy of 2007; the National Strategy for Economic Growth and Reduction of Poverty (MKUKUTA); the Rural Development Strategy; and the Development Vision 2025. These policies call for access to and the availability of health facilities for everyone. The Health Policy, among other things, provides for free medical services for pregnant women, under-five children and old persons. There is also the Mfuko wa Afya ya Jamii (Community Health Fund) which targets the poor rural communities. However it does not cover the whole country.

The survey for this report has noted with serious concern that in most of the pastoral and other villages, the government has failed to provide adequate health services. The major challenges were lack of dispensaries; lack of nurses/doctors; and lack of medicines plus other facilities. Below are some of the testimonies of the respondents to the survey for this report in the ten districts visited.

3.2.4.1 No nearby Dispensaries

Most of the villages visited during the survey did not have a dispensary or any other form of health facility. This situation affects everyone, especially pregnant women who sometimes deliver in the forests on their way to the distant dispensaries. Of course, there is no ambulance around to rush a seriously ill patient to the hospital from these villages. The distance from the villages to a nearby dispensary or hospital is about 10 to 60 KMs as the information below shows:-

Table 2: Distance from the Villages to nearby Dispensaries/Hospitals

S/No.	Village Name/ (District)	Available/ Nearby Dispensary/ Hospital	Distance in Kilometers/ Hours
1.	Mabwegere (Kilosa)	Dumila Dispensary	18 KM or more. ¹
2.	Lugoba (Bagamoyo)	Bagamoyo or Chalinze	About 1.30 Hours' drive. ²
3.	Kambala (Mvomero)	Tuliani Hospital	30 KMs. ³
4.	Wame-Sokoine (Mvomero)	Morogoro or Dakawa	30 KMs (Moro.); 17 KMs (Dakawa). ⁴
5.	Mela (Mvomero)	Kololo/Melela-CCM	2 Hours' drive; 4 Hours walking. ⁵
6.	Mbwade (Kilosa)	Kimamba	4 KMs. ⁶
7.	Matebete (Mbarali)	Chimala	15 KMs. ⁷
8.	Twatwatwa (Kilosa) ⁸	Kimamba or/and Kilosa	8 KMs (Kimamba); 16 KMs (Kilosa). ⁹

Source: Field Interviews, December 2011 by PAICODEO Consultant.

Therefore, the villagers depend on traditional midwives. Many children die on the way to the health facilities because of a lack of modern health facilities.¹²⁵

3.2.4.2 Expenses Associated with Accessibility of Health Services

Because of the distance from the villages to the health facilities, villagers spend a lot of money paying for car or motorcycle hire. As stated by Ms. Sayato Singa, a Maasai lady who is a Member of the Village Council in Mela Village, Mvomero District, Morogoro Region when she was interviewed on the 15 December 2011, it costs Tshs 4,000 to hire a motorcycle and Tshs 50,000 to hire a car from her village to Melela CCM health centre:

“This is too much for women who do not have any income generating activities and we cannot depend on men every time our children or ourselves get ill. The best option is therefore to use herbs and traditional midwives who are easily accessible here and sometimes give their services free of charge because they are our mothers, aunts, or neighbours.” [Said, Ms. Sayato Singa].

Another Maasai lady, Ms. Neema Sairuti, Villager of Mbwade Village, Kilosa District, Morogoro said in December 2011 that the Mbwade Village of Kilosa District did not have a dispensary. They normally use Kimamba village’s dispensary which is located about 4 to 6 KMs away. It costs between Tshs 3,000 to Tshs 20,000 to hire a motorcycle or car to get there. Recently, one person died on the way to that hospital while being transported on the motorcycle. Ms. Naasoi Mulugwa, a Maasai lady from Orkitikiti Village, Kiteto District, said on 6 January 2012 that there was a dispensary structure in their village but it did not have a doctor, nurse or any facilities to make it functional. Therefore, they use Lesoit Dispensary (within Kiteto District) or Songe Hospital, Kilindi District, which is located 18 KMs away. The cost to get there is Tshs 30,000 for a hired motorcycle or Tshs 130,000 for a hired car.

3.2.4.3 Dispensaries Available but No Doctors and Adequate Medicines

The nearby hospitals or dispensaries which the pastoral villages depend on, do face great challenges as well. Most of them do not have sufficient doctors or/and facilities. For instance, the Tuliani hospital does not have sufficient medicine all the time, despite the fact that several villages in the area depend on it. They cannot even screen for malaria because they do not have any malaria test equipment. Therefore, the doctor uses

125 Ms. Amina Msendekwa, a Maasai lady of Wame-Sokoine Village, Mvomero District, Morogoro Region, is one of the District Human Rights Committee members of PAICODEO. She was interviewed on 16 December, 2011.

patients' explanations to ascertain the nature of the illness.¹²⁶

Matebete village, which has 320 families with a total of 1,015 residents, does not have any health facility. There is a structure constructed 12 years ago which was supposed to be a dispensary. But it has remained that way because of a lack of doctors and nurses. There is, however, a clinic session for women and children (under five) once per month.¹²⁷

We really face hardship here. Because of lack of dispensary, most of the women give birth at home. As you know, this is very risky especially nowadays whereby delivery has become very complicated. Raising a child is also very challenging in a situation where there is no doctors or medicine around.¹²⁸

Ms. Winfrida Lingwanda, a nurse of Twatwatwa Village Dispensary (Kilosa District) told PAICODEO's Consultant on 15 December 2011 that this dispensary started to provide services in September 2011. They have so far managed to induce Maasai women to use formal health facilities for maternity services. Indeed, the women have accepted. However, whenever they go there for those services, nothing is offered to them because the government does not bring medicine and other facilities. The rest of her narration is worth quoting in this report. She said:

We do not have facilities here to attend pregnant women even gloves! We can offer pain-killers for stomach only; we do not have even aspirin! We have laboratory room but nothing is there. Normally the doctor uses patient's illness history to speculate what would be his/her problem. But then, afterwards, he prescribes the medicine for patient to buy from private pharmacy. Thus, we normally refer our patients to Kimamba, which is 8 KMs from here or Kilosa Hospital which is 16 KMs from here. We avoid complication especially of young pregnant women who are so many here because Maasai get married as teenagers. I am the only nurse here for everything. When this dispensary was opened in September 2011, we used to attend at least 10 patients per

126 Interview between PAICODEO's Consultant and Rev. Isaya Cheupe Mgusa, Villager, Kambala Village, Mvomero District, Morogoro Region on 20 December 2011.

127 Mzee Tera, former Village Chairperson, interviewed on 27th December, 2011 at Matebete Village, Mbalali District, Mbeya Region.

128 Ms. Sofia Kaney, Founder of Korduni Group (Women Group) of Matebete Village, Mbarali. Interviewed on 27 December, 2011 at Matebete Village.

day. However, nowadays we attend one or none because they have given up coming to the hospital which do not have services they need ...

Orkitikiti Village, Kiteto District has a dispensary building as said above. But it does not have doctors, nurses or facilities. They mainly use Lesoit Village's dispensary, which itself does not have sufficient facilities. They do not even check malaria, (which requires just simple medical equipment). The nurse for Lesoit dispensary lives about 18 KMs from this village. Therefore, it is not easy to access him during an emergency.¹²⁹

The same stories as narrated above were heard in so many other places. PAICODEO strongly urges the government to increase the budget for health facilities and doctors so that they can be available in all villages. Moreover, PAICODEO urges the government to spread the availability of the Mfuko wa Afya ya Jamii (Community Health Fund) all over the country.

3.2.5 Cultural Rights: Negative Perceptions about Pastoralism and Denial of Access to Ancestral Forest for Rituals

3.2.5.1 Negative Perceptions and Myths about Pastoralists

Articles 8, 12 and 15 of the UN Declaration on the Rights of Indigenous Peoples of 2007 and provisions of the Universal Declaration on Cultural Diversity of 2001 provide for



Picture No.21: Maasai warriors carrying Christian symbols of (Jesus) Cross

129 Ms. Nasoe Mulugwa, a Maasai lady from Orkitikiti Village, Kiteto District, said this on 6 January 2012 during interview with PAICODEO's Consultant.

However, religious and missionary education has played a major role in creating and perpetuating negative perceptions and myths about pastoralists and pastoralism. Studies¹³⁰ have documented that the negative perceptions have continued to inform policy processes in the country, even after the county attained political independence.

However, it is noted that in recent times (especially the 2000s), there has been an improved willingness on the part of policy makers and other development actors to engage with civil society, and that this has opened up space for articulating more forcefully and effectively the interests of pastoralists.

3.2.5.2 Denial of Access to Ancestral Forest for Ritual Activities

Tanzanian investment policies and laws, including the Tanzania Investment Act of 2007, allow for the creation of land banks and reserves anywhere in the country without regard to religious and cultural sites such as holy (sacred) sites and tombs of ancestors. For instance, the Ikongoro Grumeti Game Reserves in Serengeti and Bunda Districts were traditionally used by villagers for rituals before they were turned into reserved areas.¹³¹

Similarly pastoral lands occupied by the National Food Corporation (NAFCO) are not accessible by pastoralists for their religious rituals. The ancestral tombs are still located in those areas, yet people are restricted from accessing them.



Picture No.22: Maasai warriors carrying ritual plants

130 RECONCILE and IIED "Challenging the Myths: A workshop on Perceptions of Pastoralism in East Africa" Presented during the Workshop on Pastoralism held at MS-TCDC, Arusha, Tanzania 26th and 27th May 2003. Pages 5 and 6 of the Workshop Report.

131 The Fact-Finding Mission Report of 2008 on Serengeti Natural Resources Based Conflicts, by Samson Rumende (Advocate of the High Court of Tanzania) and Shilinde Ngalula (Legal Officer – LHRC), page 11. Report available at www.pingosforum.or.tz

CHAPTER FOUR

COLLECTIVE RIGHTS

4.1 Meaning and Recognition of Collective Rights in Tanzania

Collective rights include the right to development; the right to a clean and healthy environment; and the right to access natural resources which include forestry, wildlife and water. Unlike other rights described in previous chapters of this report, collective rights are a set of rights which the community is collectively entitled to benefit from. These rights are stated in various international and national legal instruments and everyone, including the indigenous peoples, are entitled to their enjoyment individually or collectively.¹³² The Constitution of the United Republic of Tanzania of 1977 does not explicitly provide for those rights but it has some provisions which imply enforceability of the same, as explained below. This chapter highlights the situation of rights to development, environment and natural resources among Maasai communities in Tanzania.

4.2 Situation of Enforcement of Some of Those Rights to Maasai Communities

4.2.1 Right to Access Natural Resources

There is an intrinsic link between Maasai ways of life and natural resources, especially land, water, forestry and wildlife. The aspect of land is covered extensively in previous chapters of this report. This sub-part assesses the situation of the rights of Maasai to access water, forestry and wildlife 'reserved' areas.

The UN Declaration on the Rights of Indigenous Peoples of 2007;¹³³ ILO Convention No. 169;¹³⁴ the Convention on Biological Diversity¹³⁵ and others affirm that indigenous peoples'

132 Article 1 of the UN Declaration on the Rights of Indigenous Peoples of 2007 states that, "[t]he indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law." [own emphasis].

133 Articles 20, 25-32.

134 Articles 15-19

135 Article 8(j).

natural resources are vital and integral components of their lands and territories. According to the UN Development Group Guideline for Indigenous Peoples, indigenous peoples have been guardians of these natural environments and play a key role, through their traditions, in respectfully maintaining them for future generations.¹³⁶

4.2.1.1 Evictions and Denial of Access to Natural Resources: Irreparable Harm

The situation on the ground shows that despite the vital importance of land, environment and natural resources to the livelihood and survival of indigenous peoples, they are subjected to evictions and total denial of access to same. The previous chapters of this report already cover the incidents of evictions of Maasai people of Mbarali, Kilosa, Mikumi and Ngorongoro Districts, which were conducted to give the Ruaha, Mikumi, Serengeti and other national parks room to expand without any regard to the ways that these Maasai have for many years been living in harmony with the nature of those places. While the Maasai are evicted from their natural homes, the government replaces their spaces with hunting blocks, construction of posh hotels, camps and even airstrips (example at Loliondo, Ngorongoro District). These are forms of economic exploitation of natural resources that benefit the few, which Articles 21(5) of the African Charter on Human and Peoples Rights of 1981 prohibit.

PAICODEO strongly believes and insists that the evictions stated in previous chapters of this report violate Maasai rights to access natural resources and that they have seriously suffered from irreparable harm, for which the government has to compensate them.

4.2.1.2 Criminalization of Access to Natural Resources

The survey for this report finds generally that the current legal framework of Tanzania alienates the local communities from the natural resources that they once owned and that they depend on for their livelihood, identity and culture. They are now required to have permits and licenses to access and use the natural resources. The alienation process is coupled with the criminalization of most of the traditional uses of such resources that were previously to a large extent governed by customary norms¹³⁷ and by people themselves.

136 The United Nations (UN) Development Group Guideline for Indigenous Peoples' Issues, February 2008, Page 17. The guideline further states that the indigenous peoples have managed these resources sustainably for millennia and in many places have created unique bio-cultural landscapes. Many of these indigenous management systems, even though altered or perturbed by recent processes of change, continue to contribute to the conservation of natural resources to this day.

137 Palamagamba John Kabudi, Challenges of Legislating for Water Utilization in Rural Tanzania: Drafting New Laws, International workshop on 'African Water Laws: Plural Legislative Frameworks for Rural Water Management in Africa', 26-28 January 2005, Johannesburg, South Africa, page 2 of this paper.

For instance, as stated in previous chapters of this report, the Natural Resource Act of 2002 provides for various measures to be adopted and followed in order to protect the natural resources. It gives discretionary powers to local government authorities and area commissioners to, among other things, decide on/order the manner of watering animals, grazing, and moving the livestock herds; and to prohibit or restrict cultivation of any part of the land. Those powers include the ordering of destocking and relocation of pastoralists from their areas to various other parts of the country. Section 20(1) of the said law states that:

“Where the Minister is satisfied that the natural resources of any area are being injured or deteriorating through overstocking of domestic animals, he may authorize the reduction and prescribe the maximum number of and class of such animals in such area.”

Over many years now, this law has been used to justify the removal or reallocation of agro-pastoralists and pastoralists from their traditional homes in various parts of the country, even though the pastoralists, due to their livelihoods, have been those who have protected the natural resources. PAICODEO urges the government to amend this law and other laws which tend to alienate the indigenous people from their traditional land. Any enactment or amendment in this regard should take into account the best interests of indigenous people who wholly and exclusively depend on their surrounding environment to make their living. It is so absurd to criminalize people who are simply struggling for their survival through the only available means they have (natural resources).

4.2.1.3 Limited Access to Wildlife ‘Reserve’ Areas

The wildlife ‘reserved’ areas harbour the best grazing grounds for the Maasai¹³⁸ and therefore any restriction on their access to these areas is to the detriment of the survival of the Maasai people and their livestock. For instance, Section 21 (1) of the Wildlife Conservation Act, 2009 prohibits grazing of livestock in Game Controlled Areas (GCAs) and other reserved areas, save with the written permission of the Director for Wildlife Conservation being previously sought and obtained. This is different from previous arrangements (under the repealed Wildlife Conservation Act, 1974), which allowed human activities to be undertaken in GCAs.

138 William Olenasha, *Reforming Land Tenure In Tanzania: For Whose Benefit?* Presented during one of HAKIARDHI's workshops (undated), Page 2

The applicability of the Wildlife Conservation Act directly and negatively affects the pastoralists who are, most of them, living in or nearby the ‘reserved’ areas. There should at least have been a provision which gives pastoralists access to these areas, especially during drought seasons. PAICODEO calls for an amendment of these bad laws in order to give indigenous pastoralists the right to access wildlife ‘reserved’ areas where they find best grazing grounds for their cattle.

4.2.1.4 Limited Access to Forestry Resources: Maasai and Sustainability of Forests

Maasai communities depend on forests and their resources for many obvious reasons including getting herbs, water, firewood and conducting traditional rituals.¹³⁹ But they cannot access every part of the available forests because of the limitation that those are ‘reserved’ areas. The statistics show that about 18 million hectares of the forests (50% of all forests in Tanzania) have been gazetted as forest reserves under government control.¹⁴⁰

Despite the fact that the government allows Participatory Forest Management (PFM) under the National Forest Policy and Forest Act, 2002, the limitation is still there because the PFM is implemented in only 12.8% of the whole country’s forests due to a lack of funds to initiate those arrangements.¹⁴¹

Information gathered from the field work for this report clearly shows that Maasai are protectors and not destructors of the forests and that they can actually use the forests sustainably, even when grazing large groups of cattle in it. Two cases studies can actually prove this:

Case Study No.1: Matebete-Madunguru Maasai Community Forestry Reserve

The Maasai of Matebete Village, Mbarali District, Mbeya Region have since 23/11/1993 owned and managed a 32,000 acre (12,700 hectares) forest (grazing) area. The villagers bought it from the former owner USAMBECO (a joint venture of the Usangu Farmers’ Co-operative Society and Mbeya Development Co-operative). The grazing area is titled

139 Forests are crucial as sources of livelihood and they provide direct benefits like firewood, charcoal, recreation facilities, fruits, poles, timber, traditional medicine and many others. The forest and woodlands also have very important and critical ecological values and are a source of vital services such as conserving genetic resources, providing bee nectar, ameliorating the climate, serving as habitats for wildlife. They provide a wide range of cultural and spiritual benefits and are important sinks for removing carbon dioxide from the atmosphere [Ref. National Framework for Reduced Emissions from Deforestation and Forest Degradation (REDD), August 2009, page 1].

140 URT, National Framework for Reduced Emissions from Deforestation and Forest Degradation (REDD), August 2009, page 11

141 URT, National Framework for Reduced Emissions from Deforestation and Forest Degradation (REDD), August 2009, page 11

with Certificate Numbers (CT) 20507, L.O No. 35067, issued on 1/1/1974 for 99-year occupancy rights. The management of this area is in the hands of every person in the village. However, there is a Forest Committee which comprises 11 members of whom 3 are women.



Picture No.23: Pastoralists of Matebere-Madunguru village planting trees in 2007

The committee membership was decided by the village assembly to whom it is accountable. The village has decided that no more than 5,000 cattle can be allowed in this forest grazing area¹⁴² and that pastoralists from other villages can only graze in this place if they obtain permission from the village authorities. The user fee for a non-resident of this village is about Tshs 2,000 per head of cattle for around 3 months. No grazing is allowed in water catchment areas inside this forest. Cutting of trees for any reason is also prohibited by the village authority.¹⁴³ In order to conserve the resources in this forest, grazing spots are rotational depending on the seasons. Because of these arrangements, the forest is quite dense and ensures the pastoralists' availability of

142 Currently, the villagers have total of 4,210 cows; 894 goats; and 126 sheep. The statistics were as of 27 December, 2011. Obtained from former Village Chairperson, Mzee Tera at Matebete Village, Mbarali District, Mbeya Region.

143 Mr. Julius Galahenga, Committee Member of Matebete-Madunguru Maasai Ranch, Interviewed on 27 December, 2011 at Matebete Village, Mbarali District, Mbeya Region.

grazing areas throughout the year. Note that it is not even part of the PFM under the Forest Act, 2002. It is just a personal/ villagers' idea and arrangement. The way this forest is managed sustainably proves the notion that the Maasai are destroying the forest and environment wrong.

Case Study No.2: SULEDO Maasai Community Forestry

The 'SULEDO' Forestry (which stands for Sunya, Lengatei and Dongo Wards) in Kiteto District, Manyara Region, is a joint conservation and grazing land of those three wards which started in 1995 after the government failed to conserve this forest through its 1993 attempt. When the government gave up (mainly because of a feasibility study which stated that joint conservation was not possible because of land conflicts in the area), it allowed the villagers of those three wards to try to conserve it through their own arrangements.¹⁴⁴ The forest comprises 167,416 Hectares, and it is one of its kind in Tanzania to be managed by indigenous people themselves. The forest is now gazetted as Village Land Forest Reserve under Section 35 of the Forest Act, 2002.



Picture No.24: Engasurai Community Conserved Forest in Lengusero village in Kilindi district, Tanga Region.

The forest is managed by the Forest Manager who is selected by nine village governments (of those three wards). They agreed to delegate coordination powers to one person during a meeting held on the 2nd December 2006. There is also SULEDO Chairperson who is basically a politician for influencing political decisions amongst the Maasai. Apart from those managerial positions, there are hamlet and village committees. The leadership is accountable to the village assemblies of the nine villages (namely; Sunya,

144 Reference: SULEDO 'Mradi wa Jamii ya SULEDO Wilayani Kiteto' (undated), page 1.

Olgira, Loltepesi, Asamatwa, Lengatei, Lesoit, Orkitikiti, Engong’o-Engare and Laiseri). The forest also has by-laws formulated by the Maasai villagers of those villages. It also has Mpango wa Uvunaji Endelevu wa Ardhi ya Vijiji SULEDO 2008/2009 (Sustainable Log Harvest of SULEDO villages 2008/2009). Grazing is free for every villager of those villages. Any money obtained from the sale of forest resources is shared equally among all villages and wards members of this forest.

While PAICODEO encourages other Maasai communities to do the same in other parts of the country, it also wishes to bring to the attention of the government the fact that the sustainability of any natural resource project depends very much on the involvement of the people and not on alienation of the same. The two scenarios prove that Maasai communities can still - as they have done for so many years - conserve and utilize natural resources sustainably.

4.2.1.5 Access to Water: Critical Scarcity

Because of the effects of climate change, among other factors, access to water is a big challenge for most pastoral villages in Tanzania. There are thus many cases where pastoralists are forced to either destock or trek long distances from their families searching for water. This situation affects and disturbs children’s formal education, the family unit and even the security of those who go long distances searching for water.



Picture No.25: Maasai lady washes her clothes in dirty water in Maware River.

Ms. Nasoye Mulugwa, a Maasai lady from Orkitikiti Village, Kiteto District said in an interview on 6 January 2012 that they normally leave their homes at 18.00 hours to walk to the water source, which is located about 15 KMs away in an area close to Lesoit Village.

It takes them in all 12 hours in intervals of 3 hours to, 3 hours from, 6 hours waiting in the long queue and they only return home in the morning the following day. She says that they normally use a donkey to carry the water gallons, but unfortunately, nowadays there are thieves from Gairo who steal the donkeys. The livestock can drink water in the dam found within Orkitikiti Village, but it is also isolated, far from most of residential houses.

Mabwegere village faces the same acute problem of water shortage. They say that there are only two wells for all villagers in Mabwegere village. It was drilled for them by the Rotary Club some years ago.¹⁴⁵ In Wame-Sokoine village there is no clean and free water at all. The villagers depend on two seasonal dams left behind by the companies which constructed the highway passing through the village. The dams dry up during prolonged drought seasons. Of course, the water in the dams is not suitable for human consumption. Therefore, the villagers depend much on water brought to the village by private businessmen using farm tractors. One 20-litre water gallon is sold for between Tshs 250 and Tshs 500.¹⁴⁶ There is one well belonging to NAFCO but managed by one local villager. In that well, they charge Tshs 100 per head of cattle/ animal as users' fee, which is used to buy petrol for the generator. It is very expensive, especially for those with many animals.¹⁴⁷

Kambala Village, Mvomero District, depends on the Mgongora Gorge to get water for livestock. Otherwise, there is no other water system for human consumption. The gorge is located at least 16 KMs from the residential area of the village. But pastoralists still manage to get there to water their cattle. Drilled water supply, which was pumped by a machine 10 years ago, has broken down. The machine experienced a technical problem and the village failed to repair it. Therefore, people depend on the seasonal ponds to get water for domestic use. Otherwise, business persons bring water for sale from nearby villages whereby a 20 Litre gallon is sold at Tshs 500 and Tshs 700. It is a lot of money especially for big families.¹⁴⁸ Moreover, access to the Mgongora gorge is a big challenge. Apart from the distance, which is more than 16 KMs from the village residential areas, a route to it is through irrigation farms and there is no clear buffer zone for cattle to pass through. Secondly, the volume of water sometimes goes down because the same gorge is shared by eight other villages namely Mkindo, Kigugu, Dihombo, Hembeti, Msufini,

145 Interview between PAICODEO's Consultant and Mr. Sharifu Kisenga, Village Chairperson, Mabwegere Village, Kilosa District, Morogoro Region on 15 and 22 December 2011

146 Note that, according to December 2011's exchange rate, USD 1 = Tshs 1,700. 'Tshs' means Tanzanian Shillings/ Currency.

147 Ms. Amina Msendekwa, a Maasai lady of Wame-Sokoine Village, Mvomero District, Morogoro Region, is one of the District Human Rights Committee members of PAICODEO. She was interviewed on 16 December, 2011.

148 Interview between PAICODEO's Consultant and Mr. KASHU Moreto, Village Chairperson, Kambala Village, Mvomero District, Morogoro Region on 20 December 2011.

Kisimaguru and Mndera all of Mvomero District, Morogoro Region. It is a very competitive utilization.¹⁴⁹ A large part of this gorge is within this village, but different users use water from this water source without proper arrangements set by the village government.

PAICODEO calls upon the government or its agencies such as Tanzania Social Action Fund (TASAF) or/and other development partners to assist these and other Maasai villages in Tanzania. Most of them need mere technical support on how to construct or extract water from different or alternative sources. Lesoit Village, Kiteto District for instance, taps rain water and collects the same in reservoirs in almost every house in that village. They were supported by a German company.

4.2.2 Right to a Clean and Healthy Environment: Question of Climate Change

Climate change, which has prevailed for a long period of time, disrupts the normal functioning of the ecosystem, and affects how humans access certain vital resources for their survival. It plays a great role in the shrinkage of key natural resources, especially water, forests and land.¹⁵⁰ The rate of deforestation in Tanzania seems to be very high. It is estimated that 412,000 hectares of forests are destroyed by different causes every year.¹⁵¹

Pastoralism in Tanzania has been blamed for being a source of environmental degradation because of overgrazing. However, the arguments advanced above contradict this notion in that they bring into the picture the fact that pastoralists can be good conservers rather than destructors of the environment. Moreover, the negative perception exists because there have not been efforts to quantify the positive contribution of pastoralism to a healthy environment.¹⁵²

In fact, there are (other) land use activities that tremendously and even more than pastoralism contribute to forest degradation such as farming-irrigation, logging, and charcoal burning.¹⁵³ The National Framework for Reduced Emissions from Deforestation

149 Interview between PAICODEO's Consultant and Rev. Isaya Cheupe Mgusa, Villager, Kambala Village, Mvomero District, Morogoro Region on 20 December 2011.

150 ACCORD (2011) 'Conflict Trends: Environment, Climate Change and Conflicts', pages 5 and 6. [Note 'ACCORD is the 'African Centre for Constructive Resolution of Disputes'].

151 URT, National Framework for Reduced Emissions from Deforestation and Forest Degradation (REDD), August 2009, page 2.

152 Dr. Ringo Tenga, Amon Mattee, Ntengua Mdoe, Raymond Mnenwa, Sengondo Mvungi and Martin Walsh (2008) A Study on Options for Pastoralists to Secure Their Livelihoods in Tanzania: Current Policy, Legal and Economic Issues (The study was commissioned by CORDS, PWC, IIED, MMM Ngaramtoni Centre, TNRF and UCRT). Pages 98 to 100.

153 URT, National Framework for Reduced Emissions from Deforestation and Forest Degradation (REDD) of Tanzania of August 2009, page 12.

and Forest Degradation (REDD) of Tanzania of August 2009 list these other factors as follows:-

Table 3: Factors causing deforestation and forest degradation

Drivers	Deforestation	Forest degradation
Shifting cultivation due to economic inability, soil fertility, land availability	√	
Commercial farming e.g. biofuel, tobacco, sisal and tea	√	
Lack of land use plan	√	√
Forest fires	√	√
Over exploitation of forests	√	√
(Over) grazing	√	√
Mining e.g. minerals, salts, sand	√	√
Infrastructure development e.g. road, power lines, etc.	√	
Energy for domestic and industrial use	√	√
Refugees/civil wars	√	√
Natural disasters – drought, floods, etc.	√	√
Weak law enforcement	√	√
Expansion of settlements	√	√

Source: National Framework for REDD of Tanzania of August 2009, page 12.

It is stated by scientists that pastoral systems contribute to a healthy environment in many ways, notably via wildlife conservation and aesthetic landscape management. For instance, there is now substantial literature that shows that livestock grazing confers significant benefits on wildlife in terms of maintaining or enhancing biodiversity, and the ecosystem services that support such biodiversity, including water and nutrient cycles. Incorporating local communities into conservation is an alternative to the more traditional fortress conservation approach to conserving biodiversity.¹⁵⁴

Therefore, PAICODEO advises that a holistic approach to the challenge of deforestation and climate change should be taken rather than finger-pointing at pastoralism based on political decisions. The tendency to blame pastoralism based on the illusion that pastoralism must be the only or main source of deforestation has caused pastoralists to suffer serious consequences, whereby, instead of looking at the problem in depth, the policy makers are increasingly passing resolutions to destock and discourage pastoralism,

154 Note that, apart from the wildlife conservation and aesthetic landscape management mentioned above, beekeeping (also part of the traditional activities of indigenous peoples) also plays an important role in environmental conservation. Bees are known for facilitating pollination and maintaining genetic pools and the continuation of species, especially of natural forests (Ref. Dr. Ringo Tenga, Amon Mattee, Ntengua Mdoe, Raymond Mnenwa, Sengondo Mvungi and Martin Walsh (2008) A Study on Options for Pastoralists to Secure Their Livelihoods in Tanzania: Current Policy, Legal and Economic Issues (The study is commissioned by CORDS, PWC, IIED, MMM Ngaramtoni Centre, TNRF and UCRT). Pages 98 to 100.)

as Chapter three of this report shows.

It is high time that, within this scientific and complicated issue of climate change, politics is replaced by objective and sound science. This is why PAICODEO suggests using a holistic approach that can grasp the complexity and the root causes of the matter rather than singling out pastoralism as the main problem.

4.2.3 Right to Development

The ability of a human being to access and make use of the resources surrounding him or her is what enables a person to develop. There is no one formula or model of development. Everyone can choose his/her own ways in order to develop. Therefore, the way Maasai have chosen to develop should not be seen as a backward or primitive model of development just because their model does not resemble those of others (mainstream/modern). The important point should be everyone can use his/her ways to develop provided that he/she utilizes the nature sustainably and responsively for future generations.

Articles 2, 4, 6 and 7 of the United Nations Declaration on the Right to Development (DRD) of 1986¹⁵⁵ states that the human person is the central subject of development and should be an active participant and beneficiary of the right to development. The realization of the right to development, which essentially aims at eradicating poverty, requires a two-sided effort: from individuals themselves and via facilitation from the government.¹⁵⁶ But, this should not mean disregarding traditional forms or models of development.

While the economy at national level (macro-economy) is said to have improved in recent years¹⁵⁷ notwithstanding the challenges of the hike in prices of commodities in the local market, the situation in the rural areas is very bad. All key and essential development indicators (education, water, health, infrastructures and housing) are very poor as discussed in previous chapters of this report.

The livestock sector, which mainly comprises traditional pastoralists,¹⁵⁸ is of critical

155 Adopted by the UNGA Res. 41/128 (4 December 1986) UN Doc A/41/53. This was one of the first international human rights instruments to state directly that the right to development was a human right.

156 Principle 5 of the Rio Declaration on the Environment and Development, 1992 states that all States (Tanzania inclusive) and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

157 For instance, GDP increased from 2.6 percent in 2000 to about 7.4 percent in 2008/9 [Ref. URT 'MKUKUTA Annual Implementation Report 2008/2009' Published by the Ministry of Finance and Economic Affairs in November 2009, Dar es Salaam, pages 4 and 5].

158 According to Dr. Ole-Neselle (Ref. Dr. Ole-Neselle, M.B. (ILRI) - Nairobi "Challenges for Pastoralism in Tanzania. The Role of the Livestock and Rangelands Policies and the Evolution of Legislation in Tanzania." Page 11), there

importance to the country's economy and the well-being of, particularly, the rural population. According to the latest information from the Ministry of Livestock Development of Tanzania,¹⁵⁹ the livestock industry contribution to the Agricultural Gross Domestic Product (A-GDP) is low but of tremendous effect on the National GDP of which agriculture as whole contributes about 45% of the national GDP. For example in 2010 the livestock industry contributed 16% and 3.8% to A-GDP and national GDP respectively. The envisaged target was 9% by 2010¹⁶⁰ which could not have been reached for obvious reasons of a lack of good support to pastoralism.¹⁶¹ That information contradicts other available information of March 2011, which shows that the said industry contributes about one quarter of A-GDP.¹⁶² Others say that the livestock industry contributes 18% of Tanzania's national GDP and 30% of A-GDP.¹⁶³

Moreover, Tanzania's annual milk production is estimated at 1.64 billion litres whereby about 60% is produced by indigenous cattle kept in rural areas and 40% by improved cattle mainly kept by smallholder producers.¹⁶⁴

Despite all these notable contributions of this sector, pastoralism is not appreciated. The national development process is not inclusive of everyone, because some of the Tanzanians, especially the pastoralists, are constantly:-

- (a) denied access to the resources which could have helped them to develop;
- (b) having their cows, sheep and goats confiscated by the government officials for their personal gain and motives;
- (c) outrageously forced to pay millions of Tshs in fines for grazing in their own traditional lands;
- (d) not supported in terms of veterinary extension services in the way farmers are supported by the government through **Kilimo-Kwanza** initiatives and other public policies mentioned in previous chapters of this report;

are three livestock production systems in Tanzania, namely commercial ranching; (indigenous) pastoralism; and mixed pastoralism (agr0-pastoralism) which account for about 4%, 16% and 80% respectively of the livestock production in Tanzania. Dr. Ole-Neselle's paper was presented during Joint Pastoralists Stakeholders' Workshop on the Policy and Legal Framework Environment for Pastoralism in Tanzania. Organized by PINGO's Forum, Ereto II Ngorongoro, TNRF and Sand Country Foundation, February 2006.

159 URT, Livestock Sector Development Programme (LSDP), December 2011. MLFD. Pages 1 and 9.

160 The livestock industry has maintained a steady annual growth rate of over 2.7 percent during the last decade (2000-2010). This is lower than the rate of human population growth of 2.9 percent.

161 PINGOs Forum (2012) Study Report on Assessment of the Situation of Human Rights Violations in Pastoralists, Hunter-Gatherers (Indigenous) Communities of Tanzania (2006-2012), Pages 4 and 5.

162 Dr. Prosper Ngowi and Melissa Makwarimba, Op cit, Page 9.

163 Dr. Ole-Neselle, M.B, (ILRI), Op cit, Page 11.

164 URT, Livestock Sector Development Programme (LSDP), December 2011. Pages 15 and 16.

- (e) not supported to have social services, in particular, water, education and health facilities;
- (f) blamed for being the (main) causes of environmental degradation and therefore politicians, even senior ones, issue strong statements and proclamations to halt pastoralism; and
- (g) criminalized just because they want to access their ‘means of survival and development’, which is the forests and wildlife ‘reserved’ areas.

PAICODEO insists that livestock keeping is amongst the key driving forces of economic development and poverty alleviation in Tanzania. Therefore, facilitating the self-determined development of this group (pastoralists) would mean not only improving their livelihoods, but also improving the national economy.

CHAPTER FIVE

COMPLIANCE OF TANZANIA WITH INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

5.1 Tanzania's obligations under International Law

In recent years, international human rights law has had an ever-growing impact on domestic legal systems¹⁶⁵ in such a way that it has to be observed, notwithstanding the fact that each State enjoys its sovereignty. No country (including Tanzania) can violate internationally recognized human rights and hide itself under the pretext of sovereignty. There is one legal technicality though, and that is that because Tanzania follows a dual legal system, whereby international treaties cannot be enforced by the local judiciary without being transposed into Tanzanian law, and so a need to ratify treaties becomes very significant. However, ratification of treaties obliges Tanzania to fulfill the requirements of the particular treaty, including submission of periodic reports to the respective treaty monitoring bodies (TMBs).

This chapter assesses the level of Tanzania's compliance with its international obligations by looking at three aspects, namely: firstly whether it has ratified all relevant treaties as far as the rights of indigenous populations are concerned; secondly, whether it fulfills its obligations by submitting periodic reports to the TMBs; and thirdly, whether it implements recommendations issued by the TMBs after submitting its reports. An additional discussion on the Constitution Making Process (CMP) is also included here to highlight important issues that PAICODEO considers appropriate.

5.2 Status of Ratification of Relevant Treaties on Rights of Indigenous Peoples

5.2.1 Main Relevant Legal Instruments on the Rights of Indigenous Peoples

There are several international human rights instruments (treaties and declarations) which specifically or generally recognize the rights of indigenous peoples as distinctive

¹⁶⁵ UN (2003) Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers. Professional Training Series No. 9 of the OHCHR and IBA: Global Voice for Legal Profession, Geneva, page 2.

rights. Tanzania is already party to some of these treaties and it ought to be a party to all of the following treaties and declarations:-

- (a) ILO 169 Convention on Indigenous and Tribal Peoples of 1989;
- (b) Universal Declaration of Human Rights of 1948;
- (c) United Nations Declaration on the Rights of Indigenous Peoples of 2007;
- (d) Convention on Biological Diversity of 1992;
- (e) Convention for the Safeguarding of the Intangible Cultural Heritage of 2003;
- (f) United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities of 1993;
- (g) Convention on the Elimination of All Forms of Racial Discrimination of 1965;
- (h) Universal Declaration on Cultural Diversity of 2001;
- (i) Covenant on Economic, Social and Cultural Rights of 1966;
- (j) Covenant on Civil and Political Rights of 1966;
- (k) Convention on the Rights of the Child of 1989;
- (l) Convention on the Elimination of all Forms of Discrimination Against Women of 1979;
- (m) African Charter on Human and Peoples' Rights of 1981;
- (n) African Charter on the Rights and Welfare of the Child of 1990;
- (o) UNEP Malmoe Ministerial Declaration of 2000;
- (p) Beijing Declaration and Platform for Action of 1995;
- (q) Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005;
- (r) Convention Concerning the Protection of the World Cultural and Natural Heritage of 1972;
- (s) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984;
- (t) Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990; and

- (u) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 2000.

5.2.2 Ratification Status of Relevant Treaties by Tanzania as of 2011

The status of ratification of the international human rights treaties or conventions as of 31st December 2011 by the government of Tanzania is as follows:-

Table 4: Tanzanian Status of Ratification of the International Human Rights Treaties/Conventions

S/No.	Name of the treaty/ convention	Ratification (year/ status)
1	ILO 169 Convention on Indigenous and Tribal Peoples of 1989	Not yet Ratified
2	Convention for the Safeguarding of the Intangible Cultural Heritage of 2003	2003
3	Convention on the Elimination of All Forms of Racial Discrimination of 1965	1972
4	Covenant on Economic, Social and Cultural Rights of 1966	1976
5	Covenant on Civil and Political Rights of 1966	1976
6	Convention on the Rights of the Child of 1989	1993
7	Convention on the Elimination of all Forms of Discrimination Against Women of 1979	1985
8	African Charter on Human and Peoples' Rights of 1981	1984
9	African Charter on the Rights and Welfare of the Child of 1990	2003
10	Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005	2005
11	Convention Concerning the Protection of the World Cultural and Natural Heritage of 1972	Not yet Ratified
12	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984	Not yet Ratified
13	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990	Not yet Ratified
14	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 2000	2007
15	Convention on Biological Diversity of 1992	1996
16	UN Convention to Combat Desertification	1997
17	UN Framework Convention on Climate Change	1996
18	UN Declaration on the Rights of Indigenous Peoples	Voted in favour on 13th Sept. 2007

5.3 Status of Submission of Periodic Reports to the TMBs

Generally, Tanzania submits periodic reports to the TMBs, but in most cases reports are delayed for more than three years. For instance, the Convention on the Rights of the Child of 1989 requires member states to submit reports every five years. The last time Tanzania submitted its report was in 2004 and that was 5 years late. Tanzania has a record of late submissions of all reports relating to all treaties it has ratified. The reasons for delays are not yet known, but can be attributed to the lack of attention given to its international human rights obligations.

PAICODEO is of the view that submission of reports on time is one of the indicators that a country is abiding by the international human rights obligations, and this report urges the government to always ensure that the periodic reports are submitted on time. The Ministry of Constitutional Affairs and Justice should form a specific desk whereby international treaty obligations will be checked and worked on within prescribed time lines.

5.4 Level of Implementation of the Treaties and Concluding Observations

The Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities, 1993¹⁶⁶ requires each state to take a proactive role in protecting and promoting the identity of minorities.¹⁶⁷ Moreover, Article 2 of the Convention on Indigenous and Tribal Peoples of 1989 (ILO's C169) requires the governments, including the government of Tanzania, to develop coordinated and systematic actions for the purposes of protecting the rights of the indigenous and tribal people like the Maasai.

However, it is unfortunate that the Constitution of the United Republic of Tanzania of 1977 does not have any specific provisions on the rights of the indigenous peoples. As said above, there is also no law in Tanzania which recognizes or specifically addresses the welfare of these people as a special group in the community. The recognition of the customary rights of occupancy (CROs)¹⁶⁸ mentioned above under the Land Act,

166 See: UNGA 'Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities' (18 December 1992) UN Doc. A/Res/47/135

167 Also, Article 2 of the United Nations Declaration on the Rights of the Indigenous People, 2007 stipulates to the effect that the indigenous people shall exercise their rights based on their indigenous origin or identity. Article 5 of the same instruments states that they shall have the right to maintain their distinct institutions. This means, their rights should not be generalized because of said reasons.

168 Sections 3(1)(b) and 4(4)(b) of the Land Act, 1999. Also Section 7(1)(c) of the Village Land Act, 1999. These provisions of the law recognize the existence of the customary rights of occupancy, whether the land/ village is registered or not registered.

1999¹⁶⁹ and the Village Land Act, 1999¹⁷⁰ does not necessarily and specifically address the customary rights of indigenous peoples in the way that the international human rights instruments require.¹⁷¹

There have been a number of conflicts between the Tanzanian government and indigenous peoples. These conflicts have primarily revolved around two issues, namely: 1) conflicts over land use where the government has appropriated customary land for the purposes of foreign investments or tourism activities; and 2) the integration of ‘backward’ communities into the mainstream way of life so that these communities can benefit from development.¹⁷² Both of these two issues threaten the ability of an indigenous people to survive as a distinct cultural group that has unique cultural practices, unique social organization and unique modes of production.

The non-recognition of the existence of indigenous peoples by the government of Tanzania has been attracting lots of criticism, especially from the international community. For instance, on 31 July 2009 the Human Rights Committee of the United Nations (UN) issued recommendations to the government of Tanzania to, as a matter of urgency, carry out a study regarding minorities and indigenous communities in the country and adopt specific legislation and special measures to protect, preserve and promote their cultural heritage and traditional way of life. The said committee went further, ordering Tanzania to consult indigenous communities before establishing game reserves, granting licenses for hunting, or other projects on “ancestral” or disputed lands.¹⁷³ Similarly, in 2007, the Committee on the Elimination of All Forms of Racial Discrimination pointed out “the lack of information on certain vulnerable ethnic groups, notably nomadic and semi-nomadic populations, inter alia, the Barbaig, Maasai and Hadzabe, on the difficulties they allegedly face due to their specific way of life and on special measures taken to guarantee the enjoyment of their human rights.”¹⁷⁴ The government has never complied with any of

169 Cap. 113 of the RE 2002 of the Laws of Tanzania

170 Cap. 114 of the RE 2002 of the Laws of Tanzania

171 For instance, Article 1(2) of the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities, 1993 requires states to adopt specific legislative measures to ensure legal protection of this group. Article 2 of the ILO’s 169 Indigenous and Tribal People Convention of 1989 states that, ‘Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.’ Therefore, it is the responsibility of the government to ensure very specific (and not general as it is now) legal protection of these people.

172 Chris Maina Peter ‘Human Rights of Indigenous Minorities in Tanzania and the Courts of Law’ (2007) 14 *International Journal on Minority and Group Rights* 4, 455.

173 Paragraph 26 of the Concluding Observations of the United Nations Human Rights Committee, 96th Session of 13-31 July, 2009 (CCPR/C/TZA/CO/4) in Consideration of Tanzania’s State Report to the Implementation of ICCPR.

174 Concluding Observations of the Committee on the Elimination of Racial Discrimination, United Republic of Tanzania, CERD/C/TZA/CO/16, para. 16 (27 March 2007).

these recommendations.

In March 2011, the government of Tanzania also submitted its first Universal Periodic Report (UPR) to the UN Human Rights Council (HRC). The UPR report was discussed during the 12th Session of the HRC which sat from 3rd to 14th October, 2011. Most of the recommendations proposed by civil society organizations on the rights of indigenous people were put on hold.¹⁷⁵

Some of the recommendations which the HRC issued for the government of Tanzania to implement were: continue to work towards protecting and promoting the rights of marginalized and vulnerable populations (which includes Maasai communities);¹⁷⁶ take adequate measures to protect its population from violence committed by the security forces and establish an independent mechanism for the investigation of complaints regarding abuses carried out by law enforcement officials;¹⁷⁷ and establish an independent body for investigating complaints about the actions of law enforcement officials.¹⁷⁸ These recommendations have also not yet been implemented by the government of Tanzania.

5.5 Constitutional Review Processes

In the year 2011, the Parliament of Tanzania passed the Constitutional Review Act of 2011. The law is aimed at establishing the Constitutional Review Commission which will coordinate the gathering of public opinion for the enactment of the new constitution of the United Republic of Tanzania by 2014.

The Bill proposing to enact this law was swiftly assented to by the President in the midst of much criticism from the public. One of the main issues was that the Bill for this law was prematurely tabled for the second reading in the Parliament while the majority of the people, common citizens, were not sufficiently consulted. Indeed, about 99.9% of the Maasai respondents during PAICODEOP's December 2011 survey stated that they knew nothing about the said law and that they had not even seen the current constitution, which this law proposes repealing and replacing.

It would not be easy to take the process back and start afresh. What is certain is the fact that the constitution making process has begun and that the President has already

175 See Paragraph 86 of the Draft Report of the Working Group on Universal Periodic Review, 5th October 2011 – Reference Number A/HRC/WG.6/12/L.2 Report of the UN Human Rights Council.

176 Paragraph 85.38 of the Draft Report of the Working Group on Universal Periodic Review, 5th October 2011 – Reference Number A/HRC/WG.6/12/L.2 Report of the UN Human Rights Council.

177 Paragraph 85.44 of the Draft Report of the Working Group on Universal Periodic Review, 5th October 2011 – Reference Number A/HRC/WG.6/12/L.2 Report of the UN Human Rights Council.

178 Paragraph 85.45 of the Draft Report of the Working Group on Universal Periodic Review, 5th October 2011 – Reference Number A/HRC/WG.6/12/L.2 Report of the UN Human Rights Council.

endorsed the names of the members of the Constitutional Review Commission (CRC). It is important that everyone takes and uses this opportunity to pursue his or her areas of interest. The said law gives at least three avenues by which individuals or civil groups (CSOs) or anyone can engage in the process. These avenues, though quite limited, are under Sections 7, 17 and 26 of this law. Section 7 of this law provides for the composition of said CRC, which will include also CSOs and common individual citizens. The number of each category mentioned there is uncertain. Section 18 is on gathering of information from the public, whereby everyone is invited to give his or her opinions in oral or written form. Section 26 provides for the conduct of a referendum which is basically for validating the constitution and ultimately leading to promulgation of the new constitution.

PAICODEO urges the government and everyone who will be responsible for gathering views to ensure specific space for the rights and interests of the vulnerable groups, including the indigenous peoples, to be aired. Most of the issues that the indigenous peoples would like to feature in the new constitution to be enacted are issues highlighted in this report, namely:-

- (a) Specific legal and constitutional recognition of the distinctiveness of the indigenous peoples' ways of life as the international human rights instruments listed above require;
- (b) Specific legal and constitutional recognition of the indigenous peoples' rights to access and control of their traditional (and grazing) land and other resources;
- (c) Adoption of specific measures to ensure that access to social services, in particular education, water and health are made available to the indigenous people of Tanzania;
- (d) Specific legal and constitutional directives that will protect indigenous people from arbitrary arrests, apprehensions, persecutions, discrimination and all forms of mistreatment perpetuated by some government officials and other people;
- (e) Specific constitutional requirement that modern development programmes, including the commercialization of natural resources, should not be to the detriment of the indigenous people, who wholly and exclusively depend on the same resources;
- (f) The new constitution should incorporate recognition of Indigenous peoples, their ways of life, that is their culture, customs, norms and traditions; and
- (g) The new constitution should provide necessary services and ensure Indigenous peoples enjoyment of constitutional and human rights.

CONCLUSION

The situation of Indigenous peoples in Tanzania is deteriorating due to policies which are not favourable to their ways of life. Other factors are the pressure for land and natural resources created by foreign and local investments. Dispossession of indigenous peoples' land and natural resources is constantly taking place via the creation of protected areas, military bases, urbanization, poor governance and marginalization of Indigenous peoples. There are no redress mechanisms in place and indigenous peoples receive no compensation for the violations and losses they suffer.

The survey conducted in ten districts of six regions of mainland Tanzania revealed gross violations of human rights. The most serious problem is the problem of evictions that take place with impunity, and where reports of various enquiry commissions are simply shelved by the responsible authorities.

The ACHPR, UN bodies and international organizations have written several letters and made a number of communications and recommendations to the government of Tanzania over the reported violations of indigenous peoples' human rights. However, the government has kept silent. The Indigenous peoples continue to lack adequate facilities in their areas within sectors such as education, health, water and grazing lands. They also lack representation in decision making institutions and there has been a failure to halt further exploitation of traditional knowledge.

The government should now deploy the necessary remedies for Indigenous peoples in the same way that it is delivering to the mainstream society and thus ensure that they enjoy their human and constitutional rights on an equal footing with all other citizens of Tanzania. The new constitution should incorporate recognition of Indigenous peoples and their ways of life, that is their culture, customs, norms and traditions.

Main Findings

1. The indigenous livestock keeping and agro-farming communities in Tanzania are ahead in all aspects of human development in rural areas. They employ more than 80% of all Tanzanians, especially among the rural population, but there has been an obvious failure by the government to pursue improvements to pastoralism in terms of increasing budgets for livestock development, ensuring sufficient grazing areas and other necessities for livestock enrichment.
2. Increased foreign investments and commercialization of the natural resources by

the government of Tanzania has led to a situation whereby the Maasai and other indigenous peoples of Tanzania are suffering losses related to their means of livelihood without being compensated.

3. The Maasai and other indigenous peoples' traditional land is increasingly confiscated and taken for the use of mainstream society. As a result, they face serious food insecurity, poverty and generally poor standards of living.
4. Despite the fact that Tanzania has ratified and/or voted for a good number of international human rights instruments on the rights and welfare of the indigenous peoples, its legal system does not recognize the presence of the same. Therefore, there is no law which gives special attention to indigenous peoples.
5. The Maasai communities in Tanzania face several types of human rights violations including those relating to arbitrary arrests, torture and extra-judicial killings; confiscation of their livestock; denial of access to lands, sacred sites and other natural resources, which logically makes them unable to secure food for their survival.
6. There is low representation of Maasai in decision making bodies. This situation is attributed to a number of factors including low awareness about the importance of engaging in governance issues among Maasai communities and discrimination against them by some government officials and members of the communities.
7. The current education system does not incorporate the Maasai's traditional knowledge. Maasai children who are enrolled at school fail to comprehend subjects easily because they are taught in Swahili or English and the content of the subjects does not cover the traditional norms of Maasai and other indigenous tribes. Moreover, the schools do not have sufficient teachers and teaching materials.
8. There is a serious shortage of water and healthcare facilities in Maasai villages and the Maasai people have to walk long distances in search of those services. The few villages with healthcare facilities do not have adequate doctors, nurses and medicine.
9. There is a negative perception about pastoralism attributed by colonial education and which plays a major role in creating and perpetuating negative perceptions and myths about pastoralists. The negative perception is also reflected in government policies and legal processes where pastoralism is seen as a 'primitive' mode of production to be replaced by a 'modern' one.

Recommendations

1. The government of Tanzania should safeguard the interests of the local communities against the greed of rich people from urban areas and foreign investors, who go to the villages, manipulate the leaders and gain access to pastoral lands and other resources.
2. Free, prior and informed consent of the Maasai and other community members should always be sought before allowing any investment or re-allocation schemes in the village areas.
3. The pastoralists need to be compensated by the government for the losses they have incurred because of illegal operations conducted by the police officers and district authority officials.
4. Government agencies must ensure that, in particular the police and district authorities, stop harassing the pastoralists. They should instead guide pastoralists in better ways of livestock keeping, if they think that the traditional ways are not suitable.
5. The government and civil society should continue supporting and intensifying awareness campaigns in order to empower the Maasai, especially women and children.
6. The government of Tanzania should allow pastoralists access to wildlife protected areas. This is especially important during drought seasons when the wildlife protected areas are vital areas for the survival of the pastoralists and their livestock.
7. The government, in particular the Ministry of Education and Vocational Training, should design an education system that incorporates the knowledge of indigenous peoples in order to secure a prosperous future for the Maasai children.
8. The government should increase the budget for health facilities and doctors so that they can be available in all Maasai villages.
9. The ongoing Constitutional review and enactment processes should include Maasai and other indigenous peoples. The new constitution to be enacted should make specific provisions to promote and protect the rights of indigenous peoples in Tanzania.

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(Footnotes)

1. Interview between PAICODEO's Consultant and Mr. Sharifa Kisenga, Village Chairperson, Mabwegere Village, Kilosa District, Morogoro Region on 15 and 22 December 2011
2. Moringe N. Sangido – Lugoba Village, Bagamoyo (13 December, 2011)
3. Interview between PAICODEO's Consultant and Rev. Isaya Cheupe Mgusa, Villager, Kambala Village, Mvomero District, Morogoro Region on 20 December 2011.
4. Interview between PAICODEO's Consultant and Mr. Legairo Maharanda, Village Chairperson, Wame-Sokoine, Mvomero District, Morogoro Region on 15 December 2011.
5. Ms. Sayato Singa, Member to the Village Council, Mela Village, Mvomero District, Morogoro Region on 15 December 2011.
6. Interview between PAICODEO's Consultant and Ms. Neema Sairuti, Villager, Mbwade Village, Kilosa District, Morogoro Region on 15 December 2011.
7. Mzee Tera, former Village Chairperson, interviewed on 27th December, 2011 at Matebete Village, Mbalali District, Mbeya Region.
8. They have a dispensary but has not had medicine since September 2011 (to December 2011).
9. Ms. Frida Lingwanda, a Nurse of Twatwatwa Village Dispensary (Kilosa District) told PAICODEO's Consultant on 15 December, 2011.
10. They have a dispensary but it does not have doctor or facilities.