

Ngorongoro



Broken promises –
What price our heritage?

Dr James Bellini

January 2008

Ngorongoro

Broken Promises –
What price our heritage?

Prepared by Dr James Bellini

January 2008

About the author

Dr James Bellini is a broadcaster, writer and futurologist with a strong interest in environmental and related public policy issues. He regards the preservation of our human and natural heritage as the critical challenge of this century.

Acknowledgements

Copies of this publication can be obtained from PINGOS-Forum

Contents

1. Introduction.....	3
2. Ngorongoro – A people’s homeland.....	5
3. An end to broken promises	9
4. Flawed arguments	12
5. White hunter legacy	14
6. A price too high	16
7. A people-friendly solution	18
8. Good heritage citizens	21
9. The stark choice	23
Annex	24
Bibliography	30

1 Introduction

Are 50,000 Maasai, Tatoga and Hadza families and their herds to be evicted from their homeland in Tanzania in the name of conservation?

Are they the victims of the flawed idea that people and wildlife cannot co-exist?

The government Ordinance that created the Ngorongoro Conservation Area in Tanzania confirmed the legal right of Maasai and other smaller tribes to live there as they have for generations. The Area has been granted World Heritage Site status in recognition of its pattern of multiple land use, where people, wildlife and habitat co-exist. But recent years have seen growing pressure to evict the inhabitants and destroy this unique phenomenon. Soon it may be too late.

So the question is a simple one. How do we treasure and preserve our global heritage for future generations but also meet the needs and respect the rights of people today?

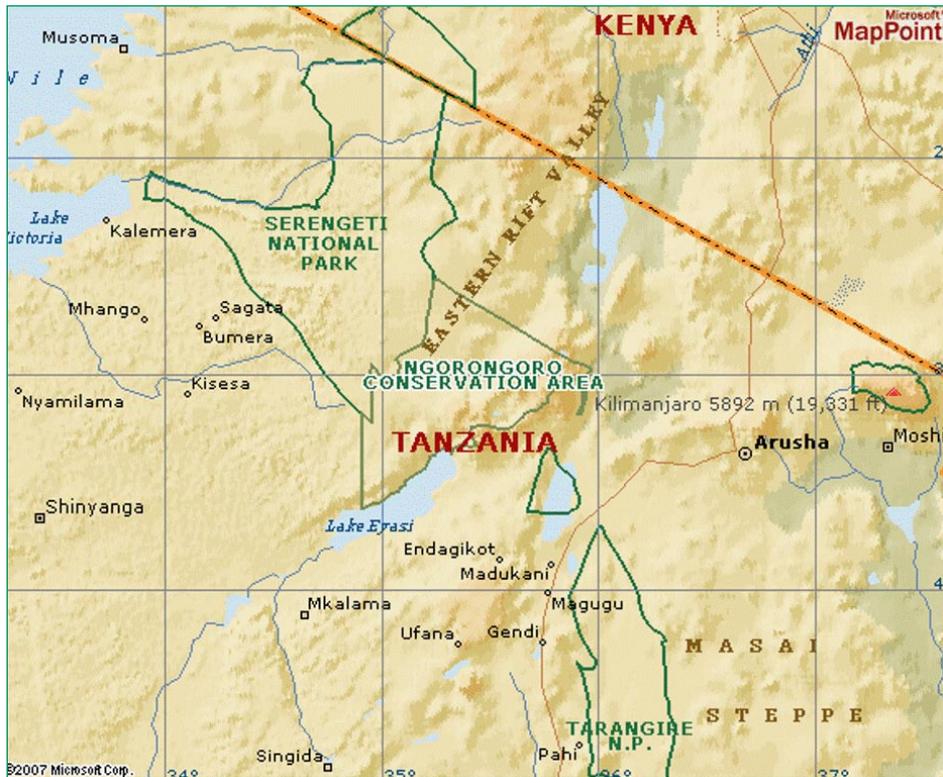
UNESCO's 1972 World Heritage Convention calls on the international community to work together to protect our precious inheritance, both natural and human. Some 177 countries have ratified the Convention and pledged their support for its goals. The United Republic of Tanzania signed and ratified this Convention in February 1977.

The Convention's key goal is protecting places, peoples and wildlife deemed to be of 'outstanding universal value' – irreplaceable, priceless, unique expressions of our world's cultural and natural history. There are now close to eight hundred properties on the World Heritage List. It's a remarkable catalogue and the loss of any would impoverish us all.

Box 1: World heritage list – A selection

Great Barrier Reef	Great Wall of China	Galapagos Islands
Iguazu National Park	Tsodilo in Botswana	Timbuktu
Chartres Cathedral	Acropolis in Athens	Vatican City
Taj Mahal	Medina of Marrakesh	Petra
Kremlin and Red Square	Dja Reserve in Cameroon	Robben Island
Grand Canyon	Tower of London	Island of Mozambique

But who decides how should they be preserved? Who has the right to pick and choose which elements of a heritage site we elect to conserve? That right also gives a power that carries with it immense responsibility. Each property on the List possesses a unique mosaic of characteristics – natural, cultural, historical. It betrays the very spirit of the Convention – and our commitment to unbiased preservation – if some component part of any heritage property faces destruction, whether through ignorance, prejudice, neglect, commercial greed or lack of political will.



2 Ngorongoro – A people's homeland

It is this very issue of power and responsibility that overshadows the inhabitants of the Ngorongoro Conservation Area (NCA) in north-east Tanzania. They have suffered a long war of attrition to evict them and thereby destroy their way of life. For them, time is running out fast.

Ngorongoro has been popularly described as 'the eighth wonder of the world' – the Garden of Eden. Neighbouring the Serengeti National Park in northern Tanzania, it is one of the biggest inactive, unbroken and unflooded calderas in the world – a vast basin carved out by volcanic action. The landscape is unusually beautiful, with key archaeological sites. The legendary anthropologists Louis and Mary Leakey discovered human relics in



Ngorongoro crater seen from the rim

Olduvai Gorge and with other fossils and artefacts they have produced a record of human evolution spanning four million years – the earliest clues to human genesis. It boasts one of the most important concentrations of wildlife on this planet, with some of the largest concentrations of plains herbivores seen anywhere. And it is home to a small group of black rhino, a threatened species dating back to an earlier geological age.

For centuries Ngorongoro has also been the homeland of more than 50,000 pastoralists and hunter gatherers.¹ Apart from small numbers of Tatoga and Hadzabe most are Maasai, who feature widely on tourist posters and brochures as the symbol of Tanzania. Pastoralism has been practised in Ngorongoro for at least 7000 years and the Maasai have lived there since the early 17th century.² Together with the area's wildlife they practice a pattern of land use increasingly recognised as the gold standard for the multiple land

1. NCA Draft Management Plan 2005-15 p 6.

2. Lissu T, Policy and Legal Issues on Wildlife Management in Tanzania's Pastoral Lands in *Law, Social Justice and Global Development Journal*, Washington December 2000; also Geoff Taylor and Lars Johansson in *Forest, Trees and People Newsletter No 30 Source for 17th century is reference to Jacobs [1975] in Rugumayo p 123.*

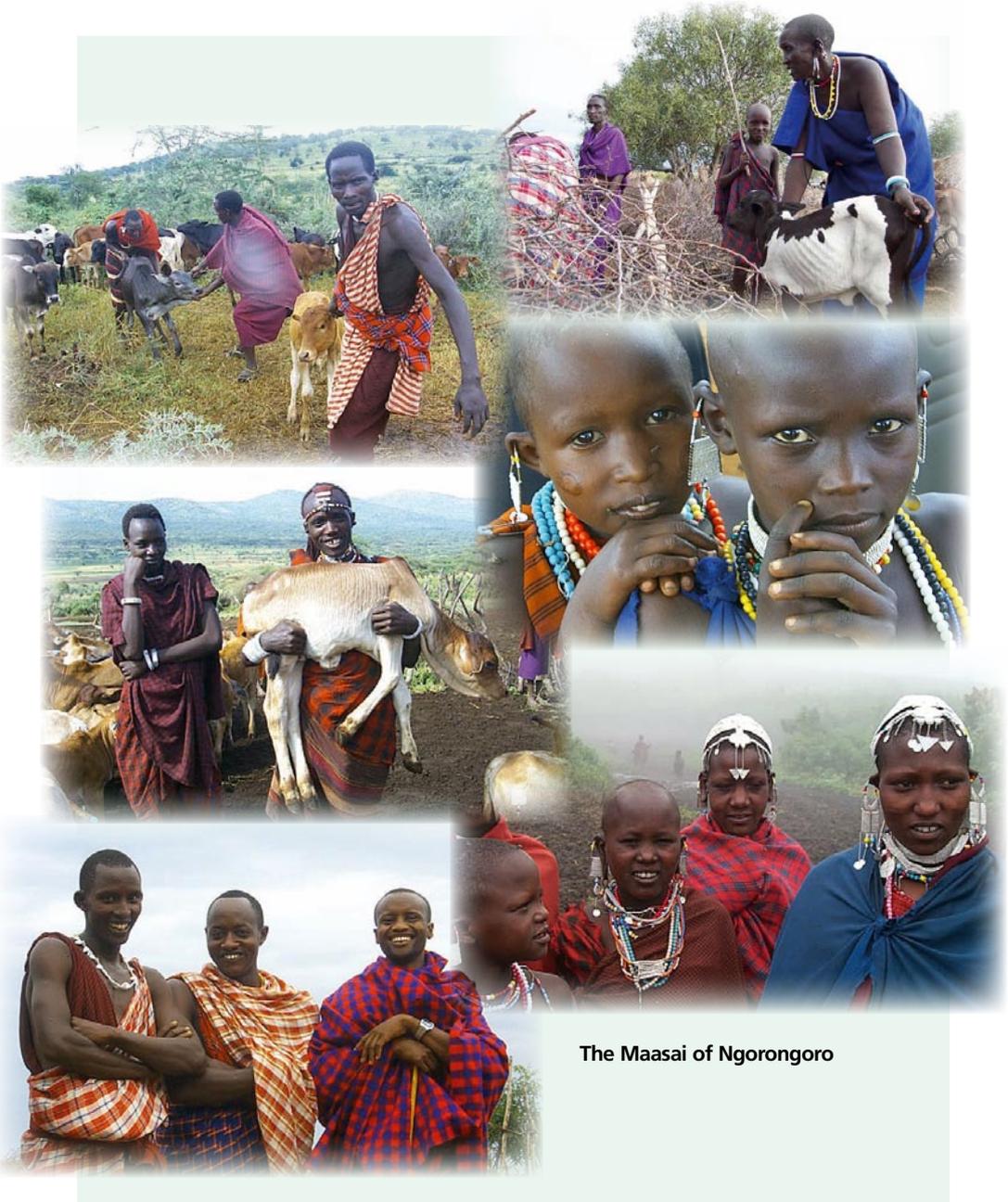
Box 2: The natural treasures of Ngorongoro

The NCA covers over 8000 square kilometres and has a rich diversity of landforms and climate that has created several distinct habitats. It teems with wildlife. In 1980, the number of wildebeest was estimated to be 1.06 million. Today, during the annual migration, the Area sustains the highest concentration of wildlife on earth when up to 1.3 million wildebeest, half a million gazelles and a quarter of a million zebra come into the Ngorongoro lowlands. The crater has the densest known population of lion while on the crater rim there are buffalo, elephant, mountain reedbeek and leopard. Birds include ostrich, kori bustard, Verreaux's eagle, Egyptian vulture, rosy-breasted longclaw, the lesser flamingo and varieties of sunbird.

Source: C R Rugumayo *The Politics of Conservation and Development* p 93

use concept while being environmentally sustainable. In recognition of this unique mix of wildlife and people, Ngorongoro was inscribed on the World Heritage List in 1979. It is also a UNESCO Biosphere Reserve. Yet despite a host of guarantees and protective laws, World Heritage Site and Biosphere status and widespread international support, the people of Ngorongoro face a battle for survival they are perilously close to losing.

But unlike the famines, epidemics and other disasters that have stalked so much of Africa down the years, this tragedy is not about the ravages of unpredictable Nature. It is about flawed conservation theories, human rights and responsible governance. If these flawed ideas succeed and the people of Ngorongoro are driven from their lands it would spell the end of multiple land use and NCA's claim to 'outstanding universal value'. It would also create a dangerous precedent for tinkering around with other special places around the world. Maybe replace crumbling bricks in the Great Wall with shiny new ones. Or remove street lamps from St Peter's Square on the grounds they were erected by Mussolini's fascists. Or allow fast-food joints in the Taj Mahal. That, too, would be madness. The injustice in Ngorongoro must be stopped.



The Maasai of Ngorongoro

3 An end to broken promises

This story is not only tragic, it is deeply ironic. The roots of this crisis lie in the creation and subsequent management of the Ngorongoro Conservation Area. As its very name implies – and its governing statutes confirm – it was set up to conserve everything that gives Ngorongoro its unique character: landscape, wildlife and the people with their herds. It has done nothing of the sort.

For decades the people of Ngorongoro have suffered steady erosion of their traditional rights by a succession of conservation programmes, even though those rights were formally recognised at every stage. The British colonial authorities first gazetted the area as a wildlife reserve. Then, in 1940 they declared it part of the greater Serengeti National Park. Official assurances about people's rights to live and raise cattle there

Box 3: Promises on Maasai rights

"On all grounds of equity and good faith no government could contemplate excluding the Maasai from the whole of the great game areas....the policy was altered to establishing the Park in the plains to the west, leaving the conservation of the Ngorongoro area to be built around the interests of its inhabitants."

Address of the Governor to the Legislative Council 14 October 1958 quoted in Shivji and Kapinga, *Maasai Rights in Ngorongoro*, IIED, 1998, p10.

"...the government intends to protect the game animals in the area, but should there be any conflict between the interests of the game and the human inhabitants, those of the latter must take precedent".

Speech by the Governor of Tanganyika to the Maasai Federal Council, 27 August 1959, quoted in Shivji and Kapinga, *op cit*, p 10.

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

1959 Ordinance creating the NCA Authority, Section 6; quoted in Shivji and Kapinga, *op cit*, p 11.

were given by the colonial Governor to the country's Legislative Council and the Maasai Federal Council.

The Ngorongoro Conservation Area was created in 1959, on the eve of Tanzanian independence. A new Ngorongoro Conservation Area Authority (NCAA) was given a clear purpose: to ensure that 'the conservation of the Ngorongoro area be built round the interests of the inhabitants'. Further legal changes in 1975 reinforced this guarantee, giving NCAA a duty 'to safeguard and promote the interest of the Maasai citizens of the United Republic engaged in cattle ranching and the dairy industry within the Conservation Area'.³

Given this unambiguous mandate the Maasai were entitled to believe their ancient heritage was valued, encouraged and protected by law. But the Maasai were mistaken. Without their realising it, the goalposts had moved. In 1956, before the founding of NCA, a Commission of Inquiry recommended Serengeti Park would be better protected from human activity if it were separated from the area that now forms NCA. An agreement was signed with Maasai elders who consented to vacate the Serengeti on condition they 'retained rights of habitation, cultivation and socio-economic development'.⁴ Because of this agreement, the entire Maasai community in Serengeti, along with their livestock were moved. There was partial resistance and some were forcibly evicted.

To compensate the Maasai it was agreed to provide them with a package of social and other services within NCA and regular investment in water supply projects. This compensation deal has not been honoured. As the authorities admit, though there were initial water development projects 'most are currently non-functional'.⁵

Worse still, the Maasai soon discovered they were not welcome in the NCA, either. Instead, the NCAA has seen its chief priority as the preservation of wildlife, despite its clearly defined obligation to promote multiple land use. For many years the Authority has been trying to evict the Maasai and other hunter-gatherer peoples. This first started in 1975 with an amendment of the NCA Ordinance banning residents from living in the crater and around the crater rim. Under a new Section 9A cultivation was statutorily prohibited, a major blow to Maasai communities that had traditionally fallen back on subsistence cultivation in times of crisis. Small plantings of maize, beans and potatoes are essential to their survival and part of traditional Maasai practice for generations. Evidence of such planting goes back to at least the 1890s, while some studies point out that cultivation has a thousand year history in the NCA.⁶ Leading lawyers regard Section 9A as a fundamental breach of the Maasai right to life and livelihood. The NCAA takes a totally different view. It says their livestock herds destroy the environment and interact

3. Section 5A(c) of the Games Parks Laws Act 1975 – quoted in Shivji and Kapinga op cit, p15.

4. Charles Lane: *Ngorongoro Voices: Forests, Trees and People* Working Paper p 2 quoting from URT 1990:5.

5. Draft General Management Plan 2005-15 p9.

6. Rugumayo, p141.



The Maasai of Ngorongoro farmlands

badly with local wildlife. It regards their family farms as a blot on the landscape – an eyesore for tourists.

The 1975 ban on cultivation was not over-turned until 1991. During the ban Maasai families were forced to sell a higher proportion of their reproductive cows, further diminishing their vital pastoral assets.⁷ A ban on grass burning is blamed for a growth of unpalatable species and an increase in tick infestation. Another device is to hinder livestock production. Olmoti Crater is a traditional dry season grazing area but now has restricted access and has been developed as an area for hiking safaris; residents need to get permission to go there. Livestock have been completely banned from the forests, a major source of feed in the dry season and critical for their well being and ability to endure the harsh dry season. The Crater also provides salt licks, very important for livestock diets, as well as high-value dry season grazing and permanent water. This is now denied the Maasai. As a result they have become unable to look after their animals properly; milk production has suffered, as have children's diets.

These factors have combined to undermine livestock numbers such that the livestock: human ratio declined to below subsistence level for 37 per cent of residents. Over 40 per cent of children suffer from malnutrition.⁸ At present 58 per cent of the population

7. Rugumayo, p141

8. *Multiple Land Use in the NCA* Community Donor/Supporter Meeting, London August 1997, IIED p 1.

in the NCA are classified as 'destitute', 'very poor' or 'poor'.⁹ Bizarrely, the NCAA today allows farms run by non-resident outsiders – including government and NCA employees – in the Endulen area, where crops are grown for profit using hired labour on plots twice the size of Maasai homesteads.¹⁰

Over the past few years the pressure to move residents out of the Area has been stepped up. In the early 1990s an indication of government policy can be seen in a summary of a meeting between the then Prime Minister and leaders of Ngorongoro District Authority. It refers to 'phasing out' cultivation over a two to three year period and persuading those who wished to continue cultivation to do so outside the NCA. When discussing long-term plans for the NCA the summary says: "Ngorongoro district council, in collaboration with the NCAA and the Ministry of Natural Resources, Tourism and Environment should prepare a plan to develop areas outside the conservation area, particularly Loliondo and Sale plains, for agriculture and pastoralism."¹¹

This was only the beginning. In September 2001, during a visit to Ngorongoro, Tanzania's Prime Minister Frederick Sumaye announced subsistence cultivation would not be tolerated much longer. The country's President assured worried local people any ban only affected immigrants. But in October and November 2002 the NCAA wrote to councillors and village chairmen saying all cultivation is illegal and residents will have to relocate.¹²

The result is growing conflict between the Maasai and the Authority, with pastoralists painted as the unruly villains. It is a sad reflection on an area renowned for its bounteous natural riches and a magnet for tourist dollars that many of its indigenous inhabitants live on the edge of starvation. As one Norwegian study put it: '*Famished Maasai in a World Heritage site famous for its cultural heritage and rich wildlife resources are not only a contradiction, but a human tragedy on a grand scale.*'¹³

Box 4: Evictions – The human rights and wrongs

"Evictions of Maasai from their ancestral territories on both sides of the [Kenya-Tanzania] border started during the colonial period and are continuing to the present. The famous fake treaties signed between the British and the Maasai in 1904 and 1911 to evict Maasai from their best land [in Kenya] to make room for colonial settlers have never been settled. In Tanzania a similar treaty was concocted to remove the Maasai from Serengeti without their consent. As late as 1988 they were again evicted from the Mkomazi Game Reserve by the government".

Report of the African Commission of Human Rights and Peoples' Rights; Working Group on Minorities; Eleventh Session 30 May – 3 June 2005, p15.

9. Rugumayo, p 299.

10. Shivji and Kapinga *op cit*, p 40.

11. Summary of meeting in Dodoma on 17 September 1992 pp 2- 3.

12. *Haramata*, No 43 March 2003 p 16.

13. Rugumayo

4 Flawed arguments

The NCAA claims it has sound conservation reasons for wanting the Maasai out of Ngorongoro. Among its arguments it cites research by the University of California based on computer simulation modelling of interactions between livestock and wildlife. The study suggests the Area's wildlife and ecosystems – and its tourist industry – can only be preserved if the Maasai give up their pastoral way of life and either move out of the Area or find other ways to make a living. To quote from the study's summary: " Policy makers must search for means of limiting population growth within NCA, encourage emigration or provide more access to income sources other than through livestock raising".¹⁴

Box 5: POLEYC – Key findings

Policy Options for Livestock-based livelihoods and EcosYstem Conservation

- The NCAA asked the researchers to address three questions:
 - a) How many animals can be supported in NCA?
 - b) What is the effect of cultivation on wildlife, livestock and people?
 - c) What are the likely effects of improved veterinary care?
- The answers:
 - a) It depends on the ratio of livestock to wildlife and the methods used to estimate them. One modelling approach in fact suggests the capacity of NCA is greater than the current level of livestock/wildlife
 - b) The study showed only 3967 hectares or 9800 acres were under cultivation – including non-Maasai areas, a minute percentage of the 8200 sq. kilometres covered by NCA. To quote: " Our simulation modelling suggested only modest changes to wildlife/livestock populations under current or increasing cultivation in its current distribution"
 - c) A marked increase in livestock populations and potential damage to the ecosystem, unless markets are available for the sale of livestock produce
- The study also asked questions of its own and reached conclusions highly detrimental to the Maasai desire to protect its pastoralist traditions. Using conservative estimates of Maasai population growth it concludes the 1999 population of 51,600 will grow to 100,000 by 2019 and 150,000 in 2030. Given that increased cultivation is politically difficult, the study says, growing numbers of Maasai will have to turn to wage labour outside NCA or become more involved in local tourism.

Source: POLEYC Project: <http://www.nrel.colostate.edu/projects>

14. Report of the POLEYC Project, June 2002, p45.

A closer look suggests the research has flaws and shows the perceived 'threat' to the NCA ecosystem may have been exaggerated. It points to 'the pattern of relatively stable resident livestock and wildlife populations in NCA over decades' and says the capacity of NCA is greater than current levels of stocking. But it also points out livestock numbers are way below the eight per person needed to lead a pastoral lifestyle; it currently stands at just 2.7 per person. To bring that level back up to only 6 per person, it says, would be more livestock than the Area could support. Ironically, the fall in livestock numbers can be attributed in part to the failure of NCAA to provide adequate veterinary services in the Area, something they were obliged to do under the 1956 agreement.

Of equal concern is how the study was conducted. Computer modelling is exactly that: the mechanical employment of computer simulation to analyse an immensely complex matrix of factors. Their comment about livestock ratios rising to levels beyond NCA capacity, for instance, is based on a modelling exercise. Yet such methods can't possibly capture the subtle socio-economic nuances between people and habitat that make Ngorongoro's multiple land use system so unique. As the study's authors admit, "Each of the analyses described includes limitations". For example, they use fifteen different methods for estimating appropriate stocking rates. The fifteen results range from 164,900 large herbivore units to 2.7 million, sixteen times greater.¹⁵

Moreover, their research brief was set exclusively by NCAA with no input from Maasai representatives. The questions they were asked to address omitted, for example, charting the effects of better management policies in the Area. The Authority stands accused of using the study to support its own unwritten agenda. It must also bear responsibility for its failure to protect wildlife and conservation in Ngorongoro, a key part of its mandate. On its own admission, poaching remains a challenge, with elephant and dikdik particularly vulnerable.¹⁶ Other sources describe a more worrying trend towards commercial meat poaching for urban customers. In addition, according to the NCAA, there has been serious decline in numbers of certain wildlife species over the past thirty years, especially wild dog, oryx and lion.¹⁷

15. *ibid*, p 20.

16. Draft Plan 2005-15 p 10.

17. Plan 2005-15 p 9.

5 White hunter legacy

The current plight of the inhabitants must nevertheless be seen from a wider, and more menacing, perspective. The Maasai of Ngorongoro have fallen victim to what anthropologists and land use experts call 'Fortress Conservation'. This concept derives from a western colonial legacy focused exclusively on wildlife preservation. It ring-fences wildlife populations for the enjoyment of a largely international tourist elite while local peoples and their livestock are driven from homelands they have occupied for generations. Hemmed in, without access to traditional pastures, livestock numbers fall and livelihoods degenerate.

We know this from brutal experience. In 1988 the Tanzanian government decided to evict 8,000 Maasai and 75,000 cattle from the Mkomazi Game Reserve, even though when it was established in 1952 the law preserved pre-existing customary land rights. . They were moved – some at gunpoint – to a corridor of arable land on the edge of the Reserve. Villages were torched and resisters beaten. There was soon friction with local farmers and Maasai herdsmen were arrested and fined. Marginalised and intimidated, faced with overgrazing of remaining grasslands and the decline of their life-sustaining herds, most have suffered long-term distress and disease.¹⁸

In all some 100,000 Maasai have been displaced over the years by the establishment of protected areas in this part of Africa.¹⁹ In human terms, fortress conservation has been a disaster.

18. Simon Ward: *Boy Tarzan v Rambo of the Bush* in *The Southern African Trumpet* No 2, June 1997. Source for customary land rights: Ibrahim H Juma, Faculty of Law, University of Dar es Salaam: *Wildlife Conservation and customary land rights of pastoralists: Lessons from the Mkomazi Game Reserve Case* and also see: Peter Veit and Catherine Benson: *When Parks and People Collide in Human Rights Dialogue Series 2*, Number 11, Spring 2004.

19. Veit and Benson *ibid*.

Box 6: International law backs Masaai rights

Discrimination, forced eviction, destitution, poverty and malnutrition, specifically widespread amongst the Maasai of Ngorongoro, raise many issues under human rights law. Tanzania is party to a number of international agreements that may provide a basis for a claim by indigenous and local communities against actions of the NCA, although the country has distanced itself from some key provisions. For instance, Tanzania has signed up to both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The two Covenants are legally binding multilateral treaties. Both the ICCPR and the ICESCR establish monitoring mechanisms in the form of reporting requirements. In addition, an Optional Protocol to the ICCPR empowers individuals and States to lodge complaints against violating States with the Human Rights Committee. But since Tanzania has not ratified the ICCPR protocol this option is not available to its citizens.

Tanzania is also party to specialized human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), providing a set of rights relating to the non-discriminatory enjoyment of life. Again, complaints made by individual citizens or citizen groups against Tanzania for alleged violation of CERD are not possible because the Tanzanian government has not made a declaration recognizing the competence of CERD's monitoring committee to consider them.

At the regional level, Tanzania is party to the African Charter on Human and Peoples' Rights (ACHPR) – a comprehensive treaty providing civil, political, economic, social and cultural rights, as well as collective rights. The Charter establishes the African Commission on Human and Peoples' Rights, a quasi-judicial body modelled on the UN HRC. The Commission interprets the Charter, examines state reports and considers communications alleging violations, issued both by States and individuals. In 1997 a Protocol to the ACHPR establishes the African Court of Human and Peoples' Rights. This Protocol entered into force in 2004. While the Court has no rules of procedure yet, in July 2006 eleven judges were sworn in and Tanzania is likely to be the seat of the Court.

There is also a substantial casebook of decisions by international human rights bodies of direct relevance to the matter of Maasai land and other rights. A comprehensive assessment of the position in international law can be found in the Annexe.

6 A price too high

And there is worse. NCAA has given no thought to the true costs of evicting the Maasai or to building a more workable socio-economic framework for the Area's future.

To begin with, fortress conservation is not cost free. Evicting over 50,000 pastoralists and their herds from Ngorongoro will have a devastating impact on the Maasai and the regional economy.²⁰ Will the Tanzanian government pay for this colossal people-moving exercise? Where do they go? Will local communities accept them? On the evidence of Mkomazi displaced Maasai communities will not prosper in restrictive new surroundings. Cynics say the government is not prepared to fund a properly managed migration; eviction without compensation is the cheapest solution.

Indeed, the Maasai are caught in a cruel catch-22 situation. Tanzanian law provides that if compensation is paid it should reflect the amount of investment in the development of the land. Since the founding Ordinance of the NCA prohibited pastoralists from investing in 'development' – fences, wells and so on – there is no inherent value that could justify any compensation. And the idea that pastoralism in itself contributes to the maintenance of a rich biosphere, the very reasoning behind Ngorongoro's World Heritage status, is unlikely to attract much sympathy within government or the NCAA.

There has never been any serious blueprint for helping the Maasai develop a sustainable future in their traditional homeland. Instead, there's been a progressive economic squeeze. Undertakings to invest in water supply projects, enshrined in the 1956 agreement, have not been kept. Twenty-six systems built between 1954 and 1962, plus other facilities, were to be continuously serviced. This has not happened. A recent – and comprehensive – study on the NCA notes that after a dam built in 1966 quickly silted up no comprehensive water projects were initiated in subsequent years.²¹ Promised livestock services such as veterinary support have not materialised, despite persistent requests from pastoralists. Pastoral development has been meagre. Now they are to lose their land and villages as well.

How much thought has been given to the potential social, political and financial ramifications of a fortress policy? Thousands of displaced people will inevitably lead to

20. Figures quoted in NCA Draft Plan 2005-15 p 6.

21. Rugumayo, p115.

friction with local farmers and the authorities. That certainly was the lesson of Mkomazi. The negative impact on tourism of driving out the Maasai has not been addressed – certainly, the travel brochures and posters carrying their colourful pictures will have to go. Nor do we know the potential effect on NCA's wildlife of radical changes in the Area's traditional grazing patterns after Maasai herds are evicted. Getting rid of the pastoralists to preserve wildlife could upset a long-established natural balance and produce the opposite result. In many other protected areas in east Africa species such as elephants, giraffes and lions have continued to decline.

Then there's the heritage of Ngorongoro – eviction will spell the end of multiple land use and the Area's claim to 'outstanding universal value'. It will be nothing more than a vast private zoo for the world's rich surrounded by an impoverished population of former residents.

7 A people-friendly solution

There has to be a more enlightened approach to conservation that respects the originating duty of NCAA to support wildlife, landscape and indigenous peoples whilst fostering the Area's economic development. The current blinkered policies of NCAA are a rejection of its mandate and thousands of people face catastrophe as a result.

There is a better way. Respected anthropologists say fortress conservation is based on the misguided belief that humans and wildlife don't mix – that to be 'saved' a wilderness has to be devoid of people. They point to a very different approach centred on communal involvement – a people-friendly alternative to fortress conservation. At its core is the conviction that conservation goals will only be achieved if local people receive other benefits to compensate for reduced access to natural resources. Support for this idea gained momentum when research showed that climatic variability and drought were the key factors affecting rangelands and wildlife, not livestock levels and grazing pressures.

Community-based wildlife management relies on the regulated use of wildlife populations and eco-systems by local stakeholders. These stakeholders could be a village, a group of villages or individuals with a shared interest in those natural resources. Rather than separating wildlife conservation and sustainable community development, the communal solution brings them together. Local people can voice their preferences, needs and concerns about conservation policies and play their role in managing a micro-economy in which wildlife and pastoralism co-exist.

Although community-based conservation is not a panacea, there is no evidence the NCAA has considered this or any other alternative to the ring-fence option.²² For the community-based approach to succeed there needs to be an effective planning system that involves all parties, including residents. This inclusive approach has never been followed in Ngorongoro. No proper, formalised dialogue between Maasai residents and Area authorities has ever been established. Significantly, only 5% of NCAA employees are Maasai. The NCAA did introduce a Pastoralist Council as a gesture towards involving local people, but the Council is merely advisory and has no say over the Authority's legislative activity.²³ Divisions within the different Maasai groups residing in Ngorongoro

22. Unequal power relations both within local communities and the external organisations with whom they collaborate make the sharing of benefits highly complex.

23. Shivji and Kapinga, p61.

Box 7: Come see the Maasai of Ngorongoro! (Before it's too late)

have not helped the situation either, and have been skilfully used by local politicians and the NCAA to ensure the absence of a common dissenting voice among the residents.

For over 40 years efforts to introduce effective, inclusive planning machinery have failed. Before the 1996 General Management Plan (GMP) was drafted, four previous plans were developed – in 1962, 1966, 1982 and 1990. The first three failed to establish formal mechanisms for Maasai involvement in the planning process. The 1990 exercise was not a plan at all but a report based on fourteen technical studies produced by an ad hoc ministerial committee. One of its recommendations was the creation of the Pastoral Council, which was promptly hijacked by the NCAA and given no authority whatsoever. The NCAA never took up other recommendations.

Box 8: Development failures in NCA

Though its original founding Ordinance and subsequent management plans have stressed the importance of development programmes in the NCA, the reality has fallen far short. In the 1960s the Catholic Church set up a hospital and primary school in Endulen. This was followed by more substantial relief efforts in the 1990s with the creation of the Arusha Diocese Development Office. This led to a debate about how to move from relief to development and the arrival of a Danish NGO, which tried to develop water and livestock services. The authorities threw them out, presumably over concerns such activities gave too strong a role to pastoralists. Since then DANIDA has supported two development projects. But externally sponsored programmes have had mixed success in addressing the sensitivities of different actors. The NCAA does not want its powers to be diluted. Trust has been eroded by cases of misused funds. And donors like the Frankfurt Zoological Society and NORAD, are accused of making no effort to include resident Maasai in their development projects.

Source: Rugumayo, p289

The GMP finalised in 1996 was widely seen as the last chance to preserve the multiple land use concept. It re-stated a commitment to the three elements of multiple land use: conservation, tourism and pastoralism. A key purpose of the NCA, the Plan makes clear, was “to safeguard and promote the rights of indigenous residents of the area to control their own economic and cultural development in a manner that leaves exceptional resources intact”.²⁴

So much for the official undertakings. As this paper demonstrates, the NCAA's practical agenda since then has shown a clear imbalance in favour of conservation and a bias towards letting the interests of nature prevail over those of residents. Despite that clearly worded commitment, the fortress conservation mentality still rules the future of Ngorongoro.

There is now a new Draft General Management Plan covering the years 2005 to 2015, produced by the Ministry of Natural Resources and Tourism. It reiterates the same responsibility of the NCA in playing ‘a crucial role in supporting the pastoral land use of Ngorongoro District’ as well as assurances about protecting the interests of residents and refers to the 1956 agreement to compensate Maasai for leaving Serengeti.²⁵ At the same time it is also a catalogue of serial failures by the NCAA in key areas: inadequate integration of scientific research, lack of information on vital water issues, non-functional water development projects, declining species, re-occurring and new animal diseases across the Area, poaching, forest destruction, soil erosion and other problems.²⁶ Given the history of NCA management planning over four decades the Draft can hardly inspire confidence amongst the Maasai community.

24. 1996 Gen Management Plan p 10.

25. Draft Plan p 6.

26. Draft GMP *passim*.

8 Good heritage citizens

There is another option for the NCAA to meet its legal obligations towards wildlife and natural resources while preserving Maasai rights. It must formulate a forward strategy that includes pastoral communities in the long-term development of the Area. This strategy must involve local peoples as good heritage citizens working for the common future of all the elements that make up Ngorongoro.

There has been no lack of effort by the Maasai to become involved. Their fears of being marginalised in NCA affairs have prompted radical changes in how they approach the political process. Traditionally, they were never a single tribe with a unified political system, but were organised into sections and localities each with their own councils of elders. The coming of the NCA prompted the development of several local NGOs seeking to represent the interests of the local communities and gain a bigger voice. Though driven by noble objectives, these organisations lack the capacities to represent fully all local interests and engage effectively with the NCAA.

But if these efforts are to succeed attitudes elsewhere have to change. A first step is to treat these peoples as residents, not incidental nuisances who rely on handouts. This means streamlining NCAA to make it more transparent and giving the Maasai better representation. Land rights should be clarified to give pastoralists a sense of security and belonging. There is sound legal opinion that the Maasai have a 'deemed right of occupancy' not even NCAA enjoys. The Pastoral Council should be made fully independent from the NCAA, with its own funds and genuine powers to act as a watchdog and counterbalancing force. Yet, though the Draft Management Plan accepts that 'residents have felt a sense of powerlessness and resentment' and want to be more directly involved in managing the NCA, the Pastoral Council does not have a single mention.

A second step is to give Maasai a share in the economic future of Ngorongoro, particularly in tourism. World Heritage status has made the area Tanzania's most visited destination and its biggest earner of tourist foreign currency. Yet residents have been forced to bear the costs of conservation and receive very few of the benefits. As the Draft Plan notes: "*There have been few opportunities for indigenous residents to benefit directly from tourism in the NCA.*" Less than 25 per cent of the surplus from tourist spending is ploughed back into communities. One factor has been the high tax load imposed on the

NCAA by Tanzania's Treasury.²⁷ Meanwhile, tour operators make profits and hoteliers are given land – privileges currently denied the Maasai.

One idea is to help residents acquire shares in some of the tourist companies so they can influence how the industry develops. Another is a revenue-sharing arrangement that means residents see a clear link between conservation and their own livelihood. Or residents could be stimulated to work out sustainable and competitive cultural eco-tourism activities, from walking safaris to new ways for the Maasai to show off 'their' Ngorongoro to visitors. Qualified Maasai should be given positions within NCAA where their best skills can be put to work. Others could be employed as guides and wildlife wardens to prevent poaching, a practice alien to the Maasai, as is the eating of game.

Even so, tourism is not free of great risks for Ngorongoro and its inhabitants. Care must be taken to avoid destroying the unique beauty of the NCA through uncontrolled growth in the tourism industry. The Draft Plan notes that vehicle numbers coming into the NCA have climbed steeply. During high season it is common to see up to 200 vehicles at one time negotiating the crater. It also observes that human-caused soil erosion recorded in the NCA has been linked to 'concentrated off-road driving'.²⁸

27. Rugumayo, p 301.

28. Draft Plan p 20 and p 12.

9 The stark choice

If the NCAA's hidden agenda wins the day and – despite the endless promises – the people are expelled from Ngorongoro it will conclude a bitter history of discrimination, persecution and flagrant abuse of human and legal rights. Dispossessed peoples and shattered communities will face inexorable decline and slow absorption into urban and mechanised life. And we lose a precious fragment of our past that can never be recovered.

What price our heritage then?

Annex

NCA, the Maasai and International Human Rights Law

Discrimination, forced eviction, destitution, poverty and malnutrition, specifically widespread amongst the Maasai of Ngorongoro, raise many issues under human rights law. Tanzania is party to a number of international agreements that may provide a basis for a claim by indigenous and local communities against actions of the NCA.

For instance, Tanzania has signed up to both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The two Covenants are legally binding multilateral treaties implemented by Parties at the national level. Both the ICCPR and the ICESCR establish monitoring mechanisms in the form of reporting requirements. In addition, an Optional Protocol to the ICCPR empowers individuals and States to lodge complaints against violating States with the Human Rights Committee (HRC). But since Tanzania has not ratified the ICCPR protocol this option is not available to its citizens.

Tanzania is also party to specialised human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), providing a set of rights relating to the non-discriminatory enjoyment of life. Under CERD, Tanzania has a duty to submit periodic reports and may be subject to state-to-state complaints. Again, complaints made by individual citizens or citizen groups against Tanzania for alleged violation of CERD are not possible because the Tanzanian government has not made a declaration recognizing the competence of CERD's monitoring committee to consider them.

At the regional level, Tanzania is party to the African Charter on Human and Peoples' Rights (ACHPR or the Charter). The ACHPR is a comprehensive treaty providing civil and political rights, economic, social and cultural rights, as well as collective rights. The Charter establishes the African Commission on Human and Peoples' Rights, a quasi-judicial body modelled on the UN HRC. The Commission interprets the Charter, examines state reports and considers communications alleging violations, issued both by States and individuals.

In addition, in 1997 a Protocol to the ACHPR establishes the African Court of Human and Peoples' Rights (the Court). This Protocol entered into force in 2004. While the Court has no rules of procedure yet, in July 2006 eleven judges were sworn in and Tanzania is likely to be the seat of the Court. The Court is endowed with adjudicatory and advisory powers and

it may make appropriate orders to remedy human rights violations, including the payment of fair compensation or reparation. The scope of the Court's jurisdiction extends to claims relying on *any relevant human rights instrument ratified by the State concerned*.

Nevertheless, the direct standing of individuals and NGOs before the Court will depend upon a State's declaration accepting the jurisdiction of the Court. Still, NGOs and individuals do have recourse to the Commission, and the Commission has the power to submit cases to the Court in its own right. This mechanism provides the people of Ngorongoro with a potentially powerful tool allowing them to sue the Tanzanian government for the widest possible range of human rights violations.

Human rights violations have been successfully invoked in several cases around the world that bear a strong resemblance to the case of the Maasai of Ngorongoro (See BOX 1). In particular, the destitution, impoverishment and subsequent malnutrition of the Maasai could be deemed a violation of their right to life. This right not only prohibits the arbitrary or negligent taking of human life by or on behalf of the State, but also entails a large set of positive obligations. The prohibition of torture and inhuman and degrading treatment also appears relevant here. However, to date this right has been adjudicated at the domestic level only.

Another substantive human right relevant to the case of the Maasai is their right to be protected against arbitrary or unlawful interference with privacy, family, home or correspondence. The obligations imposed by this right require States to adopt measures that prohibit interferences and / or attacks.

Along the same lines, the right of freedom of movement and the right to choose one's own place of residence provide protections against all forms of forced internal displacement and preclude preventing the entry or stay of persons in defined parts of a State's territory.

Most importantly, discrimination against the Maasai contradicts the prohibition against discrimination provided both by the ICCPR and the ACHPR, and, more specifically, by the CERD. These instruments prescribe that ethnic, religious or linguistic minorities must not be denied the right to enjoy their own culture, to profess and practice their own religion, or to use their own language. Positive measures of protection are required not only against the acts of the State party itself, but also against the acts of other persons in the State.

The right to self-determination, which entitles individuals to freely 'dispose of their natural wealth and resources', is also relevant in this case. However, the enforcement of this right is problematic and the HRC has consistently reiterated that it does not consider it sufficient grounds for a complaint. Nevertheless, the right to self-determination may be relevant to the interpretation of other rights protected by the Covenant.

The right to the highest attainable standard of health may have some bearing on the plight of the Maasai as it embraces a wide range of socio-economic factors that promote conditions in which people can lead healthy lives, extending to a variety of facilities, goods, services and conditions necessary to realise this right.

The right to adequate food provided in the ICESCR is associated with the State's adoption of appropriate economic, environmental and social policies for the eradication of poverty and the fulfilment of human needs. In particular, the notion of availability refers either to the ability to feed oneself directly from productive lands or other natural resources or to well-functioning distribution, processing and market systems that are capable of moving food from the site of production to where it is needed in accordance with demand. The connected right to adequate housing entails a degree of security of tenure and legal protection against forced eviction, harassment and other threats. According to the ICESCR Committee, forced evictions are *prima facie* incompatible with this right.

Finally, implicit in the right to a remedy are the procedural safeguards of access to justice, which requires competent judicial, administrative and lawmaking authority capable of providing relief for violations of the substantive rights just described.

Exhaustion of local remedies

The submission of complaints of alleged human rights violations to the African Commission and the African Court is subject to the exhaustion of local remedies. The Tanzanian Constitution provides certain fundamental rights, such as the right to equality; the right to life; the right to freedom of movement; the right to privacy and personal security; and the right to own property.

In 2001 the Tanzanian Government established the Commission for Human Rights and Good Governance. One of the functions of the Commission is to receive allegations and complaints of human rights violations and to conduct enquiries into matters involving the violation of human rights. The Commission is empowered to take steps to secure the remedy, correction, reversal or cessation of human rights violations, including the institution of legal proceedings. While the Human Rights Commission has issued injunction orders against eviction and has filed court cases to enforce rulings, there has been serious dissatisfaction with the Commission's effectiveness.

Equally, under Tanzanian law customary title to land may not be extinguished without following the provisions of the law that allow the State to acquire landed private property, (e.g. the Land Acquisition Act, 1967). Tanzanian courts have recognised community title to the commons (e.g. pasture land) upon proof of the existence of customary law which provides for ownership of the commons within a community. However, courts appear to have refused to recognise statutory corporate bodies, such as Village Councils, as customary holders of a collective deemed right of occupancy over the commons.

Tanzanian courts have been willing to apply the relevant legal provisions that protect the property rights of native residents in lands that are statutorily reserved for public purposes. The Mkomazi case is an example of this position. It is doubtful, however, whether the courts would be willing to subject the statutes to constitutional standards that guarantee basic rights to life, movement, and property.

Box 1: Key decisions by international human rights bodies

In *Chief Bernard Ominayak and the Lubicon Lake Band v Canada*, the UN Human Rights Committee established that the expropriation of the territory of the band and its subsequent use for oil and gas exploration and timber development threatened the way of life and culture of the Lubicon Lake Band, and constituted a violation of the prohibition of discrimination. (*Chief Bernard Ominayak and the Lubicon Lake Band v. Canada* Communication No. 167/1984, U.N. Doc. CCPR/C/38/D/167/1984 (1990)).

In *Maya Indigenous Communities of the Toledo District v Belize*, the Inter-American Commission found that Belize had violated the right to property to the detriment of the Maya people, by failing to take effective measures to recognise their communal property right to the lands that they had traditionally occupied and used, and by granting logging and oil concessions to third parties to utilise it, in the absence of effective consultations with and the informed consent of the Maya people. (*Maya Indigenous Communities of the Toledo District v Belize*, Case 12.053, IA C.H.R. Report 40/04 (2004) at 153, 194.)

In *Yanomani Indians v Brazil*, the Inter-American Commission considered that the construction of a trans-Amazonian highway crossing the territory where the Indians lived impaired their traditional lifestyle in such a way as to amount to a violation of their right to life, liberty, and personal security; the right to residence and movement; and the right to the preservation of health and to well-being. (*Yanomani Indians v Brazil*, Decision 7615, IACHR, Inter-American YB on Human Rights (1985), p. 264.) The same approach was endorsed in the decision on admissibility of the case of *Community of San Mateo de Huanchor and its Members v Peru*, currently awaiting consideration on the merits. (Case 504/03, Report No. 69/04, IACHR, OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 487 (2004)).

In *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, the Inter-American Court found that Nicaragua had violated the right of the members of the Mayagna Awas Tingni Community to the use and enjoyment of their property by granting concessions to third parties to utilise the property and resources located in that area. (*Mayagna (Sumo) Awas Tingni Community Case* [2001] IACTHR 9, 31 August 2001, Series C, No. 79, para 149).

In *Social and Economic Rights Action Centre for Economic and Social Rights v. Nigeria*, the African Commission on Human and Peoples' Rights found that the Government of Nigeria facilitated the destruction of the Ogoniland, devastatingly affecting the well-being of the Ogonis, in violation of the right to non-discriminatory enjoyment of life; right to life; right to property; right to health; the right to adequate housing; right to a satisfactory environment; and the right of peoples to freely dispose of their wealth and natural resources. (*The Social and Economic Rights Action Centre for Economic and Social Rights v. Nigeria*, African Commission on Human and Peoples' Rights, Comm. No. 155/96 (2001)).

Box 2: Human and Peoples' Rights in the African Charter

Article 2 (Right to non-discriminatory enjoyment of life)

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 4 (Right to life)

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5 (Prohibition of inhuman and degrading treatment)

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 7 (Right to a remedy)

- i) Every individual shall have the right to have his cause heard. This includes the right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force.
- ii) No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

Article 12 (Freedom of movement)

Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality. A non-national legally admitted in a territory of a State party to the Charter may only be expelled from it by virtue of a decision taken in accordance with the law. The mass expulsion of non-nationals shall be prohibited. Mass expulsion is that which is aimed at national, racial, ethnic or religious groups.

Article 14 (Right to property)

The right to property is guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

Article 16 (Right to health)

Every individual shall have the right to enjoy the best attainable state of physical and mental health. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure they receive medical attention when they are sick.

Article 20 (Right to self determination)

All peoples shall have the right to existence. They have the unquestionable and inalienable right to self-determination. They may freely determine their political status and may pursue their economic and social development according to the policy they have freely chosen.

Article 21 (Rights of peoples to freely dispose of their wealth and natural resources)

All peoples have the right to freely dispose of their wealth and natural resources. This right is exercised in the exclusive interest of the people. In no case may people be deprived of it. Dispossessed people have the right to the lawful recovery of property as well as to adequate compensation.

Article 22 (Right to development)

All peoples have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. [To date, the ACHPR is the only binding treaty to include an explicit provision on the right to development.]

Article 24 (Right to a satisfactory environment)

All peoples shall have the right to a general satisfactory environment favourable to their development.

Article 28 (Prohibition of discrimination)

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

Bibliography

- IIED, (2003) 'Are there too many animals and people in Ngorongoro?' *Haramata* 43, March 2003, p.16.
- Jacobs, A.H (1975) Maasai pastoralism in historical perspective. In Monod, T. (ed) *Pastoralism in tropic Africa*. Oxford University Press, Oxford.
- Juma, I. (????) Wildlife conservation and customary land rights of pastoralists: lessons from the Mkomazi Game Reserve Case.
- Lane, C. (1996) Ngorongoro voices: Indigenous Maasai residents of the Ngorongoro Conservation Area in Tanzania give their views on the proposed General Management Plan. Working Paper, Forest Trees and People Programme.
- Lissu, T. (2000) Policy and legal issues on wildlife management in Tanzania's pastoral lands in *Law, Social Justice and Global Development Journal*, Washington, December 2000.
- NCAA (2005) Draft General Management Plan 2005-2015. Ministry of Natural Resources and Tourism, Dar es Salaam, Tanzania
- POLEYC (2002) Integrated assessment results to support policy decisions in Ngorongoro Conservation Area, Tanzania. POLEYC Project of the Global Livestock Collaborative Research Support program , University of California.
- Report of the African Commission of Human Rights and people's Rights: Working group on Minorities, Eleventh Session 30- May – June 2005
- Rugamayo, C.R. (2000) *The politics of conservation and development*. Norwegian Institute for Urban and Regional Research PLUSS series 5-2000, oslo, Norway.
- Shivji, I.G and Kapinga, W.B (1998) *Maasai rights in Ngorongoro*, Tanzania. IIED/HAKIARDHI
- Taylor, G. and Johansson, L. (1996)(translation by Francis Ole Ikayo) Our voices, our words and our pictures. Plans, truths and videotapes from Ngorongoro Conservation Area. *Forest, Trees and people Newsletter, No.30*.
- Veit, P. and Benson, C. (2004) When parks and people collide. *Human Rights Dialogue Series 2, Number 11, Spring 2004*.
- Ward, S. (1997) Boy Tarzan v Rambo of the bush. *Southern African Trumpet, No. 2*.

For more information please contact: PINGOS-Forum



www.iied.org