



KATIBA
INITIATIVE

Policy Briefing

Improving pastoralist and hunter-gatherer interests in Tanzania's constitution.

MAIN MESSAGES

- The first draft of the Tanzanian constitution incorporates many provisions that will improve the rights and interests of pastoralists, hunter-gatherers and women in these communities.
- However, there remain some important outstanding issues that must be addressed in order to ensure adequate reform that protects these marginalized groups' interests, including strengthened provisions on:
 - » Land and natural resources;
 - » Intellectual property rights;
 - » Involvement in decision-making processes;
 - » Acknowledgement of historical injustices;
 - » Customary laws and institutions; and
 - » Marginalized groups.
- Although measures to strengthen land and natural resource access and rights are not included in this draft (as it is assumed land and natural resource issues will be addressed in the mainland and Zanzibar constitutions instead), they remain a top priority as rights and access over land and natural resources are essential to the livelihoods and prosperity of pastoralists and hunter-gatherers.

I. Overview

Tanzanian hunter-gatherers and pastoralists are both highly marginalized groups in society, in part because they are minority groups but also because of policies and perceptions at national level that disregard or undermine their cultural and livelihood systems. They lack access to basic social services, such as education and health care, are under-represented in local to national level decision-making processes, and are vulnerable to outside pressures that curtail their rights to land and natural resources thus threatening their livelihood security. Numerous laws and policies restrict or undermine their ability to manage and utilize the resources their livelihoods depend on. Therefore, engaging in legal and policy processes that will strengthen support for pastoralist and hunter-gatherer livelihoods is a major priority for these communities.

In 2011, the Tanzania Constitutional Review Commission (CRC) was established by Parliament to review and revise the Constitution of Tanzania, with a specific mandate to ensure public opinion and input was included in the process. That same year the *Katiba Initiative* (KAI) was formed, which is an informal coalition of civil society organizations and representatives advocating for the interests of pastoralist and hunter-gatherer communities to be represented in the new constitution. Since its formation, this initiative has advocated for a more inclusive constitutional review process, mobilized pastoralist and hunter-gatherer communities to engage directly in the review, developed recommendations for key provisions to be included in the new constitution, and presented their recommendations to the Commission.

On June 3, 2013, a first draft of the proposed new constitution was shared with the public. The purpose of this brief is to provide an overview of the status of pastoralist and hunter-gatherer interests in the new draft constitution. Specifically, this brief looks at what recommendations were made by KAI, what was incorporated and what issues remain a priority for further attention.



Contact KAI at:
constitution.pastoralists@pingosforum.or.tz

KAI representatives visit the State House and President Kikwete to push for pastoralist and hunter-gatherer representation on the CRC commission.



Note about land and natural resources

It is important to note that in this new draft the Commission is recommending a three-government federal structure, which would include Zanzibar, Mainland Tanzania and the United Republic of Tanzania (URT) (this is different from the current dual structure comprising the governments of Zanzibar and URT). Under this proposed system, all issues of land and natural resources would be regulated and managed by the parties forming the Union (e.g. Zanzibar and Mainland Tanzania would each have their own land laws and policies, and their own constitutions). Therefore, this current draft includes very little about land and natural resources as it assumes those issues will be covered in the Zanzibar and Mainland Tanzania constitutions. More than 50% of the recommendations made by KAI to the Commission pertained to land and natural resource rights, and these issues remain a top priority to the coalition (see *'Recommendations for addressing land and natural resources in the constitution'*).

II. Hunter-gatherers and pastoralists in Tanzania

Hunter-gatherers and pastoralists in Tanzania bring significant historic, cultural and economic qualities to the nation, shaping the country's heritage and profile, while also contributing to the national economy. However, because they are minority groups, they remain under-represented and highly marginalized in governance and societal systems, and they face incredible challenges that threaten to undermine and even destroy their way of life, and in turn, their existence. Therefore, it is imperative that the Tanzanian constitution provides special provisions to protect, honor and support these groups, safeguarding their livelihoods, cultures and long-term well being.

Hunter-gatherers – Tanzania has three remaining hunter-gatherer ethnic groups, the Hadzabe, the Sandawe and the Akie, two of which subsist off of hunting and gathering food, such as wild fruits, plants and honey.

- *Historically and culturally significant:* The Hadzabe and Akie are undisputedly 'first occupiers' in Tanzania, having lived in northern Tanzania for what is estimated to be 40,000 years or more. They have lived sustainably and in harmony with their surrounding ecosystems, surviving extreme environmental, social and political pressures over time.
- *Increasing challenges:* Over the past 50 years the Hadzabe and Akie have been gradually displaced from their territories, losing more than 90% of their lands to outsiders seeking land for grazing and farming. Today, the Hadzabe and Akie populations are at alarmingly low numbers, estimated at 1,000 – 1,500 and 300 – 500, respectively.

Pastoralists – Tanzania's pastoralist groups are highly dependent on traditional livestock-keeping to support their livelihoods. Pastoralism is practiced through collective property regimes, managed by traditional and customary institutions, which are dynamic and able to adapt to various and extreme climatic variables.

- *Economically, environmentally and culturally significant:* Pastoralist groups have effectively co-existed with wildlife in different ecosystems in Tanzania for hundreds of years, as they sustainably manage the resources in order to support their livelihood systems. Although comprising only an estimated 10% of Tanzania's total population, Tanzania's pastoralist groups raise and manage the third largest cattle population in Africa, which contributes approximately 30% of agricultural GDP.
- *Numerous challenges:* Negative perceptions about traditional pastoralist practices have led to policies and laws that weaken pastoralist systems, in turn harming productivity, conservation efforts and community development. Other land uses, such as agriculture and tourism, are prioritized over pastoralism, which has resulted in a significant loss of land, mobility and access to resources, which are all essential components to maintaining pastoral systems.



Representing KAI, Edward Lekaita, an attorney from UCRT, gets feedback from traditional leaders in Monduli District about the constitution.

III. Overview of recommendations – progress and gaps

The first draft of the constitution addressed many of the recommendations submitted by KAI last January, especially those pertaining to providing specific recognition and safeguards for hunter-gatherers and pastoralists. However, there remain some recommendations that have not been addressed. The following summarizes what KAI sees as the progress made so far as well as the gaps that still need to be addressed.

Progress:

- *Special provisions for minorities, including hunter-gatherers:* Approximately 90% of KAI's recommendations for improving provisions for hunter-gatherers were included in this first draft, mostly in reference to safeguarding and protecting rights of minorities. The draft provides a new constitutional requirement that these groups shall participate and be involved in national political systems and administration; shall have special access to development and employment opportunities; shall be given land and have access to food in areas where they have traditionally lived; and shall be given state-run support, such as housing infrastructure and health care and educational services.
- *Recognition of pastoralism as a livelihood system and pastoralists given equal treatment to farmers and fishermen:* The new draft recognizes that pastoralism is a way of life and not just another form of livestock keeping (which it was previously referred to). It states that the government shall provide mechanisms to develop, protect and recognize pastoralists, including setting up a pastoralist association (similar to farming associations) that can access government-sponsored programmes. Further, because pastoralism is mentioned as part of the National Objectives section, the State is required to provide regular reports to parliament explaining how it is implementing new strategies to achieve these objectives. This means that monitoring and evaluation at national level will be carried out to ensure equal and fair implementation of National Objectives, including how it is allocating resources to support the growth and development of pastoralist communities.
- *Increased attention to human rights, including women –* The new draft treats women's rights as human rights (Article 46), which will give issues associated with women's rights more weight and priority under the constitution.

Article 46 of the draft constitution provides for women's rights as a human right. This is a very powerful recognition of women's rights and a positive step for improving gender equality. However, because land and natural resource issues are not addressed, issues of women's access and rights over land and resources still remain outstanding and need to be properly addressed to ensure greater equality.

Gaps:

- *Land and natural resources not included:* As noted, the main gaps in this draft have to do with the lack of attention given to land and natural resource issues; however, KAI members believe this is the result of proposed structural governance changes in the draft constitution (i.e. the proposed three-government structure), and we are confident these issues will be addressed in the Mainland and Zanzibar Constitutions when those are drafted.
- *No mention of marginalized groups:* Although the draft does mention and recognize minority groups, it does not mention marginalized groups, which KAI highly recommended. The concern with this is that pastoralists are marginalized, but may not be considered or recognized as minorities and therefore may not be given the special rights they need to fairly access social, political and economic opportunities.
- *Lack of consideration of Intellectual Property Rights:* KAI recommended that the constitution recognize and protect intellectual property rights (IPR) of individuals and communities, including putting into place clear legal mechanisms to prevent abuses and unwarranted interferences and systems to ensure adequate compensation and royalties be awarded for the use of individual or communities' IPR. However, the current draft makes no mention of IPRs or any systems or mechanisms to ensure their recognition.
- *No acknowledgement of customary law or institutions –* KAI recommended that the constitution recognize traditional institutions as a source of authority for certain cultures and groups where customary law is still prominent. However, the current draft fails to mention the role of customary law or institutions.

IV. Next Steps

The Katiba Initiative is forming an officially recognized *baraza* (forum), which is made up of more than 100 CSO representatives concerned with minority and human rights and land and natural resource issues. The *baraza* will raise awareness about these issues at national level, representing their constituents on the ground. Additionally, the initiative is forming an expert review committee to prepare a detailed set of recommendations for the next draft of the constitution. These recommendations – which will include the major gaps identified in this brief – will be presented to the Constitutional Review Commission before their August 30th deadline.

Recommendations for addressing land and natural resources in the constitution

As previously noted, the first draft of the constitution does not include issues of land and natural resources due to a proposed new governance system. However, it is not clear at the moment if 1) this proposed three-government system will be approved by Parliament; or 2) if the Mainland and Zanzibar constitutions, when drafted, will adequately address land and natural resource issues.

Therefore, it is essential that the importance of land and natural resource access and rights to Tanzanians, especially to pastoralists and hunter-gatherers, be reiterated and highlighted so that these issues are addressed in future constitutional drafts. Below is a summary of the key recommendations that KAI has made to the Commission for ways to improve and strengthen these issues in Tanzania's constitutional framework.

Key recommendations dealing with land matters:

- *Guiding principles for managing resources* - The fundamental principles on how to manage land and natural resources for the public interest need to be clearly articulated in the Constitution (including defining what "public interest" for land and natural resources means). In fact, there should be a dedicated separate and independent chapter in the Constitution that outlines how these resources will be protected – guided by the fundamental principles for determining the public interest, and thereby avoiding pressure and abuses from individual influence and power.
- *Creating a national land use plan* – The new Constitution should mandate that the Government develop a national land use plan. As part of this plan special areas and lands for pastoralists and hunter-gatherers, including important stock migration routes, should be gazetted, thereby providing security over land and resources and avoiding conflicts from competing interests.
- *Recognizing community ownership of lands* – A new category of land called 'community lands' should be established, which will include lands that are occupied, used and managed by a community or group of people for cultural, spiritual or livelihood purposes. Such land should be managed and governed by customary institutions in accordance with customary laws of different communities.
- *Providing access to protected land during times of crisis* – During times of crisis, such as droughts, pastoralist and hunter-gatherer communities should be allowed access to pasture and water resources in protected areas.
- *Tanzanians should manage and control lands* – Land and other natural resources should be managed and controlled by democratically elected and/or public representatives, and not just by the President and other executive organs of government. More power should be given to village general assemblies, and different interest groups should be represented in the National Land Commission.
- *Capping individual ownership* – A cap limiting the amount of land an individual can own should be included in the Constitution.
- *Recognizing and remedying historical injustices* – The new Constitution should recognize and offer solutions to remedy historical injustices surrounding land matters. This can include establishing mechanisms to address present and past injustices, acknowledging past injustices and identifying fair compensation packages for those who suffered flagrant human rights violations.

Recommendations dealing with natural resources and the environment

- *Granting communities control and ownership of wildlife* - Communities living in or adjacent to protected areas should have control and management of – including decision-making rights over – the wildlife resources surrounding them. They should receive at least 50% of the net income accrued from wildlife resources on or near their land.
- *Managing lands using customary practices* – Communities should be allowed to use and manage their lands according to customary practices of the communities living on that land. Therefore, hunter-gatherers shall be allowed to hunt on said land, and pastoralists allowed to set aside land for seasonal uses.
- *Prohibiting conversion of community land to protected land* – The new Constitution should strictly prohibit converting village lands to protected lands without explicit consent from the owners and users of that land. Further, the Constitution should support and promote the notion of *Free, Prior and Informed Consent* when engaging in land discussions between communities, especially pastoralist and hunter-gatherers, and outside interests.
- *Recognizing and protecting community forest and water resources* – The Constitution should recognize and protect forest and water resources that are traditionally managed by communities.
- *Ensuring transparent and fair contracts* – The Constitution should stipulate that all contracts or agreements that deal with natural resources in Tanzania should be discussed and approved by Parliament. The government should not be permitted to enter into any agreements that will have adverse impacts on the country or its citizens, especially if such agreements restrict their rights to access and use the resources.

For more information, please contact KAI at: constitution.pastoralists@pingosforum.or.tz

This briefing is by the Katiba Initiative, which has more than one hundred members throughout Tanzania. The following are members of the Steering Committee: UCRT, PINGOs Forum, MWEDO, PWC, TAPHGO, ALAPA, Paicodeo, TNRF, CORDS, Ngonet.