



KATIBA INITIATIVE

**PASTORALISTS AND HUNTER-GATHERERS DEMANDS FOR THE NEW
CONSTITUTION (KATIBA INITIATIVE)**

**A SUMMARY OF DEMANDS THAT WERE PRESENTED BEFORE THE CONSTITUTIONAL
REVIEW COMMISSION IN JANUARY 2013**

1. INTRODUCTION: WHO ARE HUNTER-GATHERERS AND PASTORALISTS

- 1.1. Hunter-Gatherers (otherwise, forest dwellers) is a group of Tanzanian citizens who are still attached and reliant on their natural environments for survival. These groups which are made mostly of two ethnic groups-the Hadza and the Akiye are known to be practicing hunting, gathering of fruits and fruits, and collection of honey.
- 1.2. Hunter-Gatherers who belong to the large Khoisan family use clique languages from which they distinguish themselves from the rest of the languages that are in use by other ethnic groups. In terms of their history of occupation in Tanzania, hunter-gatherers are indisputably the first occupiers of the territory and their existence predate modern history.
- 1.3. Hunter-gatherers are also further characterized by the fact that they are found only in few areas of the country. Akiye are found in Ngorongoro, Meatu and Kiteto Districts only whereas the Hadza are found in Mbulu, Karatu, Meatu and Iramba Districts. The fact that these groups have now been confined in very few areas of the country is not an accident but rather the result of external forces which have alienated their lands -by other groups like pastoralists, farmers and conservation authorities.
- 1.4. A crucial factor underpinning hunter-gatherers predicament is their numerical characteristics as compared to other communities in Tanzania. The population of the Hadza is estimated at between 1000-1500 while that of the Akiye is estimated at between 300-500. Surely these numbers are alarming in a country with a population of 45 million. These numbers are further depressing and worrying as they indicate quite negative progression for communities which could as well be perishing from existence. Those numbers do not have implications only on survival of these groups but most importantly the factors responsible for this are life threatening.
- 1.5. Hunter-gatherers are masters of their environments and have managed for centuries to thrive and live in some the hardest environments, managing at it were literally to survive from nothing. The fact that they now have difficulties surviving is testimony to the attention that they require from Government for them to continue surviving.
- 1.6. Pastoralists are citizens of Tanzania who are mostly dependent on traditional livestock keeping for their livelihood and daily needs. These communities depend on livestock for at least 50% of their daily requirement. Besides, livestock keeping, they also practice other economic activities like farming. The types of animal breeds that are kept by pastoralists are indigenous breeds which long historical selection are the most resilient in dry environments where pastoralism is practiced. Pastoralism is also practiced in collective property regimes managed by

traditional /customary institutions which have overtime built the necessary institutional competence to manage its complex dynamics. Pastoralism should also be understood in wider context which includes not only its economic dimension, but most significantly, its social and cultural dimension as indeed pastoralism is also largely a way of life for those practicing it. The way of life in pastoralism is reflected in the cultures of pastoral communities.

- 1.7. Pastoralism is one of the major land use systems in the country. It is estimated that out 88 million ha of land in Tanzania 60 million ha are rangelands suited for pastoralism and animal keeping in general. This is to suggest that quite a big part of the land in Tanzania is suitable for livestock keeping than any other activity. Abundant and suitable land for pastoralism is also reflected by the huge number of livestock in the country which makes Tanzania the third largest owner of cattle in Africa. The country has an estimated cattle population of 21 million, 98% of which are found in traditional pastoral systems.
- 1.8. The livestock sector where pastoralism is part makes significant contributions to the national economy. The sector makes some 30% contribution to the agricultural GDP and a whopping 4% of the overall GDP. Pastoralism would have made more contributions had appropriate investments been directed to its development. The practice since colonial times has been to direct more efforts in investing in farming to the exclusion of pastoralism. Countries such as Botswana which have invested seriously in pastoralism have managed to boost its contributions to the national economy.
- 1.9. Besides making significant contributions to the national economy, pastoralism provides employment, food and income opportunities for Tanzanians estimated in the neighbourhood of 10% of the total population. Besides, pastoralism contributes indirectly to other economic sectors like farming through the provision of manure and animals for traction.
- 1.10. Despite the actual and potential contribution that pastoralism can make to national development, legal and policy frameworks have mostly characterised pastoralism and those practicing it in negative terms. Since colonial times pastoralists have been portrayed as troublesome people, who wander aimlessly in search of nothing, flagrantly violating other people's rights to land. Still, pastoralism is routinely taken to be a primitive way of earning a living, a practice that best illustrates how a human person can evolve from old state of development to modern ones like farming. Worse still, pastoralists are seen the number one culprit when it comes to environmental degradation and soil erosion. The breeds and species of livestock that pastoralists keep are said to be inferior and less productive compared to modern breeds which have evolved as a result of scientific innovation. The way pastoralists use land which is collective in nature is seen a disincentive to rational utilisation of the rangelands.

- 1.11. Negative perceptions about traditional pastoralism have informed the manner in which policies and laws are made in respect of pastoralism and these have had the effect denying a battery of rights to pastoralists. A substantial amount of pastoralists lands have been converted to other uses thought by those in charge of resource allocation to be most deserving. A big percentage of lands which we now refer as conservation areas used to form the bulk of premier pastoralists lands, some of which they still holds claims to todote. Wildlife sanctuaries like Ngorongoro, Serengeti, Manyara, Tarangire, Mkomazi, Arusha, Maswa have a common denominator to their origin in that they used to be or still are pastoralists lands. Besides conservation, large scale farming is the second beneficiary of pastoralists' lands as can clearly be demonstrated by farms in Basutu, Hanang, West Kilimanjaro, Sukenya, Loliondo, Simanjiro, etc. A few other areas have been taken for army camps (Monduli) and Air-strips (Arusha and Kilimanjaro).
- 1.12. Alienation of pastoralists has had adverse consequence not only to themselves but other communities practicing other livelihoods as well. Migration of pastoralists to other parts of the country which are not traditional to them has caused unprecedented conflicts and rivalries some of them precipitating into bloody feuds claiming innocent lives and destroying vluale property.

2. RATIONALE FOR BRINGING RECOMENDATIONS TO THE COMMISSION

- 2.1. Hunter-gatherers exhibit cultures and traditions which stand consistently in the direction which is useful in determining our heritage and history as Tanzanians. Preserving these cultures which in some other contexts are seen as as doomed to belong an earlier epoch of human civilization is something that the New Constitution should by all means afford accommodation in terms of preservation.
- 2.2. Hunter-Gatherers belong to a class of Tanzania whose survival and development can only be achieved by affirmative action. The fact that their numbers have deteriorated to alarming proportions is enough reason to warrant special Constitutional provisions protecting them as a class of people meriting special attention.
- 2.3. Hunter-gatherers lands have been taken this time not just by Government for purposes of conservation, among others but also by their neighbours, this time pastoralists and farmers. The fact that laws of the country criminalise hunting and gathering in protected areas which used to be hunter-gatherers lands mean that these communities are left without means in which they can sustain themselves for food. Since they have no other means of livelihood and since it is an inherent human right for them to choose and practice the livelihood of their choice and within legal limits,

it is imperative that New Constitution should afford protection of their only way of livelihood lest they perish and become bygones in our midst to the shame of us all.

- 2.4. Hunter-Gatherers like pastoralists are most marginalized when it comes to provision of key social services as they lag behind in terms of access to education, health, clean and reliable water and physical infrastructure.
- 2.5. Because of their small numbers hunter-gatherers are not represented in decision making institutions in any level Government, including the lowest at the Village level. This means at all times decision making is made by other people in the mainstream who often dismiss their livelihood as primitive to be worth of any particular attention in resource allocation. A New Constitution is thus a golden opportunity for hunter-gatherers to demand for special provisions which give special privileges when it comes to representation in decision-making processes
- 2.6. Pastoralism is a livelihood system that is depended /relied upon by up to 10% of all people in Tanzania and hence a matter that should be taken seriously in the New Constitution. Existing negative policy perceptions on pastoralism have undermined this livelihood causing a plethora of challenges that need to be addressed urgently. The new constitution is a golden opportunity to address these challenges and secure pastoralism as a livelihood system that can make contributions to the national economy.
- 2.7. Land conflicts between pastoralists and other land users (farmers, investors, Government agencies) have steadily been on the increase recently thereby threatening peace and security in the country. The peace and security can only be strengthened and guaranteed if these conflicts are addressed and permanent solution sought. The new constitution is a golden opportunity to address these challenges.
- 2.8. Pastoralists have lost many parts of their land since colonial times to give in to land uses that are considered to more useful by those in charge of policy making (conservation, farming, and urban planning. The new constitution is a new opportunity to return these lands or where it is not possible to pay just, fair and prompt compensation or address any legal redress. The new Constitution is an opportunity for affording legal protection for pastoralists and lands and those of other small producers.
- 2.9. Pastoralism is an economic activity that has a lot of potential to contribute to national development but only if deliberate measures are taken to allocate enough resources for its development. The country has a lot of livestock (the third in Africa) but its contribution to the national economy is minimal compared to other countries with far fewer animals like Botswana and Kenya. Getting constitutional protection is important for opening opportunities for pastoralism in the interest of national development.

- 2.10.** Recently, there have been egregious violations of the rights of pastoralists stemming among others from evictions from their traditional lands to give space for investment but also allegedly to avert environmental degradation which is said to be caused by pastoralists. From 2006, there has been an increasing trend to evict pastoralists from their lands practices which are often escorted by brutal violations of human rights. Good examples in this category include the evictions of pastoralists in Ihefu (2006), Loliondo (2009), Kilosa (2008), Kilombero and Ulanga (2012) and Vilima Vitatu (2010) just to mention a few. Violations of human rights done in the process of evictions have been reported continuously by the media and other actors but despite this Government does not seem to have learned any lessons as indeed every other violation is normally worse than that preceding it when it comes to human rights violations. Even when Commissions of inquiry formed probe allegations of human rights, their recommendations have not been implemented. A good case in mind is the Commission of Judge Othman Chande which was formed to probe alarming violations meted out to pastoralists during the famous Ihefu eviction in 2006. The report of this important Commission has never been made public and neither has its recommendations been implemented. The new constitution offers a rare opportunity for pastoralists who have suffered different kinds of violations to demand compensation and legal redress but more importantly to put in place protective mechanisms to prevent similar violations from happening.
- 2.11.** The ever increasing population of people and livestock in the country in finite land and other natural resources demand for proper land use plan nationally. When scarcity of land combines with noticeable effects of climate change, it means that many more challenges need to be addressed. When it comes to pastoralism these challenges can only be addressed in a constitutional imperative which recognises pastoralism as a legitimate land use activity which is worth allocation of land in the national land use plan.

3. OUR RECOMMENDATIONS

3.1. GENERAL RECOMMENDATIONS

- 3.1.1.** The New Constitution should recognise and protect all livelihood systems that are depended on by Tanzanians for survival including pastoralism, hunter-gathering, fishing and farming. This is important because there has been a tendency to think that Tanzania is only a country for farmers and hence building a false image that other livelihood systems do not have any important part to play in national development. To recognise a livelihood system is the beginning of allocation of resources for its development.

- 3.1.2. The New Constitution should recognize the existence of marginalized communities which will be characterized among others by being few in numbers or on account of historical reasons have not been able to participate in mainstream economic activities. Many of these communities do also lag behind in economic development and provision of social services. These groups do also have a very strong attachment to their land and culture. In this category are pastoralists and hunter-gatherers.
- 3.1.3. The new Constitution should recognise that the protection of marginalised communities should form part of the ideas for good governance and administrative justice.
- 3.1.4. The New Constitution should explicitly recognise that national unity is built by the peaceful coexistence of different communities that are diverse in terms of culture, customs, religion, livelihood systems. The new Constitution should foster national unity by recognising diversity. To this end, the New Constitution should have provisions which recognise the existence of groups which need special constitutional protection as a result of historical circumstances which have placed them in a marginal position.
- 3.1.5. The new constitution should recognise pastoralism as legitimate and economic and land use system. This is important because existing laws and policies on national development tend to portray pastoralism as a bad land use system. This negative perception is responsible for comparatively low levels of investment on pastoralism as an economic system and thereby diminishing its potential contribution to the national economy.
- 3.1.6. The New Constitution should recognise that hunter-gathering are legitimate livelihood systems notwithstanding their modest levels of modernisation and contribution to the national economy. The criterion to be used at all times is the fact that hunter-gatherers have a right to practice a livelihood of their choice provided that it is not in conflict with existing law and policy.

3.2. RECOMMENDATIONS DEALING WITH LAND MATTERS

- 3.2.1. The New Constitution should have a separate and independent chapter with deals with land and other natural resources (wildlife, forests, minerals, water, environment, petroleum, gas, etc). The fundamental principles on how to manage these for national interest should be clearly articulated in the new constitution to afford better protection against any arbitrary attempts to remove them by Parliament. These resources are not protected sufficiently against alienation and abuse. This is because the principles to manage them are not a constitutional category and as a result have continuously been subjected to changes leaning on the interests of those in power and well to do persons and not for public interest.
- 3.2.2. The new constitution should mandate Government to come with a land use plan which will set aside special areas/lands for pastoralism. This is necessary as one of the means to address present live endangering and ongoing conflicts between pastoralists and other land users. How to go about this precisely is going to be challenging but it is not impossible as they are already areas in the country which are indisputably recognised as traditional pastoralists lands (eg the regions of Arusha, Manyara, Singida, Simiyu, Shinyanga, Mara). This important aspiration can only be realised if the new constitution will make it mandatory for government to come with a national land use plan. It is also important that the lands that will be set aside for pastoralism be protected and regulated by a special Act of Parliament.
- 3.2.3. The setting aside of special areas for pastoralism should go hand in hand with putting special mechanisms for pastoralists to move from one place to another within their recognised territories in accordance with the national Constitution. This should ideally go hand in hand with special measures to delineate stock routes which will be regulated by a special Act of Parliament. This should go hand in hand with opening up old stock routes which have been closed and obstructed by among others, conservation areas and commercial farms.
- 3.2.4. The new Constitution should establish a new category of land called community lands. The existing land laws do recognise three categories of land only-general, reserve and village land, forgetting a very important cluster which cannot be captured sufficiently by any of the three categories. The existing categorisation does not afford security against alienation for lands with special significance for a community or a group of persons. A clear example is the **Endoinyo Ormoruak' hill** in

Kilimanjaro which has for centuries been used by the the Maasai of both Kenya and Tanzania for initiating their young to elderhood. This hill has now been alienated and intruded by outsiders as the present land laws do not afford protection for these kinds of lands. Because of this, there is a need to establish community lands which will among other things include lands to be occupied, used and managed by the community or group of persons for purposes of worship, burial, pastoralism, gathering, hunting, among other uses. . The control and administration of these lands should better be placed in the hands of those communities or groups in accordance with their customary or religious laws as the case may be.

- 3.2.5. The New Constiution should recognise collective/communal ownership of land for pastoralists and other communities which are known to be sharing and owning their land resources together. These communal/collective lands should be managed and controlled by customary institutions in accordance with the customary laws of different communities as they are currently in use. This is important because communities like hunter-gatherers and pastoralists are used to collective ownership and use of land and other natural resources. The present legal and policy dispensation encourages private and individualised ownership of land and other natural resources something which threatens pastoralism and hunter-gathering .In the present legal arrangements pastoralists and hunter-gatherers own and use their lands collectively but without any legal protection making their land rights to be extremely vulnerable.
- 3.2.6. The New consitution should obligate governmet to come with procedures to allow pastoralists to have access to pasture and water sources in protected areas in times of crises and periods of acute draught. While we acknowledge, the challenges that can be met when implementing this, we recommend that a special law be enacted to regulate the entry of livestock in protected areas in times of crises especially when allowing the said entry will not have adverse/negative impacts to the environment and widlfie resources. This is possible because it is known that in some pastoralists' areas wildlife and livestock are used to grazing together without any negative impacts to one another. A good example of this interaction between wildlife andpeople is to be found in areas which are inhabited by Maasai pastoralists who practice and abide by very strong taboos against eating wild meat In the East African Region, there is already good precedent/practice when it comes to this and hence our country will not have somewhere to learn from. In neighbouring Kenya where the conservation environment is almost similar with ours, the Land Policy of

Kenya of 2009 provides very clearly that pastoralists should be allowed to have access to protected areas in times of crises:

183. To secure pastoralists livelihoods and tenure to land, the Government shall:

(a) Recognize pastoralism as a legitimate land use and production system

(b).....

(f) Provide for flexible and negotiated cross boundary access to protected areas, water, pastures and salt licks among different stakeholders for mutual benefit...

3.2.7. The New Constitution should place the management and control of land and other natural resources in the hands of democratically elected and/or peoples representative institutions and thereby departing from the present situation where these resources are placed under the control of the President and other executive organs of Government. To this effect, we make the following recommendations:

1. We recommend for the formation of a National Land Commission which will have the mandate to managed and administer national lands. We recommend that the said commission should have ten commissioners who will be appointed by the President with the approval of the National Assembly. The said commissioners should ideally be in power/service for five years subject to being re-appointed for a one more term of five years. The Commissioners should ideally be drawn using a criterion which will make sure that different interest groups are represented(eg gender, different producers, national distribution, etc)
2. We do also recommend that at the village level, the new Constiution should state categorically that the Village Assembly shall be the most authorative organ with final decision making powers when it comes to village land. This is different from the existing arrangement where it the Village Council (composed of some 25 members) which has overall mandate of managing and administering village land, a factor that is responsible for alienation of village lands without the consent of villagers.

- 3.2.8. The new constitution should put a ceiling of the maximum amount of land that an individual can own in Tanzania. We recommend that a series of research/assessment should be undertaken to determine the size of land that is required for different economic activities to enable a proper decision to be undertaken on the most appropriate land ownership ceiling in the country.
- 3.2.9. The New Constitution should clearly define public interest in respect of land matters. This is important because lack of a proper definition which is known very well in advance has been responsible for village land to be alienated by Government in the pretext of meeting of public interest obligations. To further complicate matters, under the existing land laws, public interest is defined to include investments in the public interest. This generous construction of the definition is problematic because land alienation for investments is not always done in public interest.
- 3.2.10. The New Constitution should recognise and find remedies and solutions to historical injustices when it comes to land matters. Historical injustices in land could among things mean incidences where there was alienation of land which was done without following legal procedures. Pastoralists and a few other communities have suffered historical injustices since colonial times, the result of which is a trend of marginalisation and destitution of these communities in areas where they live in at the moment. Because of the said historical injustices, we recommend that the new constitution should address historical injustices by among others, doing the following:
1. The new Constitution should clearly establish a mechanism to address incidences of historical justice including defining the scope of these cases of historical injustice.
 2. The New Constitution should clearly put in place mechanisms on how victims of historical justice in land matters can take their grievances forward to get available redress.
 3. We recommend that the duty to receive, scrutinise and make decisions on grievances of historical injustices should be done by the National Land Commission, OR
 4. The New Constitution should establish a Special Commission to investigate issues of historical injustice and violation of human rights meted out to marginalised communities. This commission should also have the mandate to recommend for appropriate action in respect of necessary actions to remedy incidences of historical injustice.
 5. In respect of specific issues of historical injustice, the new constitution should ideally define historical injustice to include community lands that

have been taken for national projects like the former farms of NARCO and NAFCO and those taken to suit the interests of private individuals.

6. The new Constitution should have specific provisions which require Government to effect compensation or provide other effective remedy to pastoralists and other communities that have suffered flagrant human rights violations including impounding/confiscation of their livestock, land and other properties as a result of illegal actions that have been undertaken with the sanction of Government.
7. The New Constitution should put in place a mechanism for repealing and amending laws which were put in place to regulate and justify incidences of historical injustices. A clear example in this regard is the Ngorongoro Conservation Area Act which continues to limit and violate the human rights of pastoralists living in the area.

4. NATURAL RESOURCES AND THE ENVIRONMENT

4.1. The New Constitution should place the control and management of wildlife resources in the hands of communities living in or adjacent protected areas unlike the present legal order where wildlife resources have been placed under the Government and therefore denying local communities the opportunity to participate in decision making processes on matters that affecting them . In pursuit of this , we give the following recommendations:

- 4.1.1.** National Parks and other protected areas (Game Reserves, Game Controlled Areas, etc) should be placed in the control and management of District Councils where those protected areas are found. In this regard, our country can learn something from neighbouring Kenya where National Parks are controlled and managed directly by County Councils.
- 4.1.2.** The New Constitution should also put mechanism through which communities living in or adjacent protected areas can benefit directly from income that is generated from wildlife resources. To meet this, the New Constitution should clearly stipulate that these communities should get at least 50% of the net income that accrues from Wildlife resources in their lands.
- 4.1.3.** Community land should be used and managed using practices and customs of relevant communities. If the relevant community is made up of hunter-gatherers then the said land should be set aside for traditional hunting and gathering for benefit of the said community and should preferably be protected by an Act of Parliament in the same manner as wildlife and forests are protected.

- 4.1.4. The Constitution should place special mechanisms for hunter-gatherers to be allowed to hunt in protected areas in times of crises or where there is slight reduction of wildlife in their traditional areas
- 4.1.5. The New Constitution should strictly prohibit community and villages lands from being converted into protected areas without explicit consent of the owners of those lands. This recommendation is important because pastoralists and hunter-gatherers lands have been alienated to create national parks and very much against the will of the people a fact which is responsible for loss of land by pastoralists. In this regard, we recommend that the Constitution should entrench the concept of **Free, Prior and Informed Consent** as a benchmark to be used before pastoralists' lands are alienated.
- 4.1.6. The New Constitution should recognise and protect forests belonging to villages and communities as well traditional ways of managing and utilising water sources.
- 4.1.7. The New Constitution should make it mandatory that all contracts/agreements which touch or deal with the natural resources of Tanzania, must be discussed and approved by Parliament. It will also be in the public interest to promulgate a special law that will guide the scope of contracts on natural resources that must be put through Parliamentary scrutiny.
- 4.1.8. The New Constitution should prohibit Government to enter into contracts on natural resources which have adverse impacts to the country and its citizens. This should include agreements which prohibit or restrict citizens from utilising their natural resources. A good example is the RAMASAR agreement which has been used to justify evictions of pastoralists from wetland areas like Kilosa and Kilombero.

5. CULTURE AND INTELLECTUAL PROPERTY RIGHTS

- 5.1. The New Constitution should recognise and protect culture and customs of the different communities in the country as a foundation of our unity as a nation and diversity as specific communities. This is important because cultures and customs are disappearing at an alarming rate for not being afforded appropriate constitutional and legal protection.
- 5.2. The New Constitution should recognise and protect intellectual property rights of individuals and communities including putting in place legal procedures to make sure those intellectual property rights are protected from piracy and unwarranted interference by third parties, making sure at all times that their access can only be done with permission and in

accordance with existing law. This is important because at it stands, a good number of intellectual rights of Tanzanians have been trespassed and patented and used for profitable ventures by other parties without their consent. A good example is the patenting of the genes of the Masai Red Sheep (Tanganyika) in Australia without the consent of the Maasai of Tanzania and Kenya who should ideally be the legal holders of the intellectual property.

- 5.3. The New Constitution should be put in place a mechanism for compensation for individuals and communities whose intellectual property rights are used by other people. This important because at the moment third parties are making a lot of profits using these intellectual property rights while the real owners are not getting anything in compensation.
- 5.4. The New Constitution should clearly stipulate that every Tanzanian has a right to use his/her native language and to practice his/her culture without interference and restriction.
- 5.5. The new Constitution should recognize intellectual property rights as one and part of Bill of Rights provisions in the New Constitution.
- 5.6. The New Constitution should put in place a special commission to manage and administer matters pertaining to intellectual property rights and therefore providing enough safeguards and controls to prevent abuse and trespass while forging positive exchange which can have economic benefits to communities and other parties.
- 5.7. The New Constitution should put in place a special intellectual property rights fund which shall be contributed to among others by the users of intellectual property rights of different communities in the country and especially those of pastoralists and hunter-gatherers.

6. CUSTOMARY LAW AND TRADITIONAL INSTITUTIONS

- 6.1. The New Constitution should recognise traditional institutions as a foundation of customs, wisdom and customary law of the different communities in Tanzania. Traditional institutions have been operating side by side formal institutions but without any clear legal recognition and protection. Despite non legal recognition Traditional institutions have continued providing means for dispute resolutions, management of land and other natural resources and a critical fountain of customs and traditions of different communities in the country.
- 6.2. The New Constitution should give traditional institutions the right and space to make decisions on land disputes and other matters which traditional

authorities are placed in a better position to decide in accordance with customary law.

6.3. To enable traditional institutions to be recognised and function in accordance with the laws of the country, we give the following recommendations:

1. The New Constitution should recognise traditional institutions as part of local government. In this regard, representatives of traditional institutions should be part of local government decision-making institutions (village Councils, District Councils)
OR:
2. Traditional institutions should legally be allowed to operate side by side formal government institutions. The New Constitution should make it mandatory that the Government comes with legislation to make this possible in reality. Or
3. Should it not be possible to recognise and legalise the operations of traditional institutions in the country, then the New Constitution should at least recognise and provide legal accommodation to traditional institutions of those communities/societies/groups which are still strongly relying on these institutions for the systems of governance and decision-making in their ordinary lives. Pastoralist and hunter-gatherers are among those communities which are still strongly relying on traditional institutions for daily decision-making process. To recognise and accommodate these institutions in the new constitution resonate well with constitutional aspiration to preserve and defend the cultures of Tanzanians. The New Constitution should recognize traditional authority as relevant authority which adheres with widely recognized and respected customs and traditions
4. Traditional authority is still the most authoritative institution when it comes to the management of land and other natural resources but also when it comes the settling of disputes arising from the use and control of these resources. We respectively recommend in each village and especially among pastoralists and hunter-gatherers that there shall be formed a Council of Elders (Baraza la Wazee) which shall side by side formal Government institutions at the village level (Village Council and Village Assembly (and the later shall be required to consult the former in those matters in which traditional knowledge and customary law is the decisive

factor. In this regard, there is a comparative constitutional good practice which can be borrowed from. The Constitution of Ghana is one such example, as it provides:

39 (1) Subject to clause (2) of this article, the State shall take steps to encourage the integration of appropriate customary values into the fabric of national life through formal and informal education and the conscious introduction of cultural dimensions to relevant aspects of national planning.

(2) The State shall ensure that appropriate customary and cultural values are adapted and developed as an integral part of the growing needs of the society as a whole; and in particular that traditional practices which are injurious to the health and well-being of the person of the person are abolished.

7. SPECIAL EQUALISATION FUND)

- 7.1. We recommend that the New Constitution should establish a special equalisation fund to bring equality of development in the country. This is because, as it stands, there is a big disparity in development between Regions, Districts and among different communities in the country something that can be contributed to historical factors but increasingly as result of policy measures adopted in the present era. The occasion to re-write the constitutional order should ideally be used to put in place a special equalisation fund to address the said development disparity. We recommend that the following modalities be used in the running the special equalisation fund: The New Constitution should direct Government to set 1% of its annual budget for the equalisation fund.
- 7.2. A special legislation should be enacted to put in place mechanism on how the fund should be managed including on how to identify areas where the fund is going to be directed.
- 7.3. A Board or Committee to manage the fund should be instituted with members drawn from among others, Regions, Districts and communities which lag behind in development.
- 7.4. The budget and expenditure reports of the Equalisation Fund should ideally be discussed and passed by Parliament.
- 7.5. The Equalisation fund should only be utilised to address inequality in the provision of key social services in the areas of education, water, health, and

road infrastructure in the areas that would have been found to lag behind in the provision of these services.

- 7.6.** The constitution should provide clearly that the Equalisation Fund should be only be dissolved if the purposes for which it was made have been achieved, which satisfaction should only be reached after discussions and deliberations in Parliament.