

# ABCG MEETING



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## Protected Area Degazettement, Downlisting and Downsizing

### Summary

On November 11, 2010, an ABCG meeting was held at The Nature Conservancy to discuss Protected Area Degazettement, Downlisting and Downsizing (PADDD). The meeting was Chaired by Mike Mascia, Social Scientist, Conservation Science Program, World Wildlife Fund-US. Speakers included:

- Sharon Pailler, Social Scientist, Conservation Science Program, World Wildlife Fund-US
- Jane Dwasi, Faculty of Law, University of Nairobi
- Michelle Gadd, US Fish & Wildlife Service, International Programs

Protected areas (PAs) are critical elements of global, national and local conservation strategies and provide critical protection for ecosystems, wildlife and plant biodiversity. The creation of a new PA is often a major event, with media coverage and official statements by policy makers, conservation professionals and community groups. However, far less attention has been paid to the degazettement, downlisting and downsizing of PAs. This meeting presented new findings by researchers working on this issue in Africa and provided an opportunity for insightful discussion on important questions and next steps. USAID's Biodiversity Analysis and Technical Support (BATS) program has provided support for some of the research presented.

### Objectives

- To learn about Protected Area Degazettement, Downlisting and Downsizing (PADDD)
- To discuss the causes, impacts and questions about PADDD in Africa
- To consider recent or proposed PADDD cases in Africa, such as the Serengeti Road

### Introduction – Michael Mascia, Social Scientist, Conservation Science Program, World Wildlife Fund-US

PADDD is a bit of a blind spot in the conservation arena. It is tempting to think of ever-increasing number and extent of the protected estate as becoming permanent fixtures on landscape. However, protected areas lose legal protection and status quite frequently, but there has been little research done on the drivers, process and consequences of such changes.

Mike noted that the international conservation field was founded as result of degazettement. In response to the British colonial government's proposal to degazette the White Nile Reserve in Sudan, a group of social and political elites challenged the idea, maintaining the park and subsequently formed an organization known today as [Fauna & Flora International](#). Later, this 100,000 km<sup>2</sup> reserve was ultimately degazetted. Even high-profile, world famous sites such as the USA's Arctic National Wildlife Refuge, Kenya's Amboseli National Park and Tanzania's Serengeti National Park are currently targeted for legal changes to their protection. This meeting will provide opportunities to learn more about PADDD, discuss trends and consider some case studies and current challenges.

## Protected Area Downgrading, Downsizing and Degazettement in Africa: local pressures, global demands, and everything in-between

Sharon Pailler, Social Scientist, Conservation Science Program, World Wildlife Fund-US

The PA network is dynamic, and changes in the system follow those in government administrations, economic conditions and priorities. Growing demand for resources coupled with limited capacity and funding place increasing pressures on existing protected areas. This presentation seeks to identify to what extent PADDD is taking place (when, where and why) and to examine the greater implications of PADDD. PADDD is defined as legal changes affecting PAs, not those associated with management only. *Downgrading* is a decrease in legal protection or an increase in legally authorized activities; *downsizing* is a decrease in size of a PA; *degazettement* is the elimination of a PA.

The research team looked to authoritative datasets on PAs, including lists from the UN and from the World Database on Protected Areas ([www.wdpa.org](http://www.wdpa.org)). The team looked for changes or differences between such lists to identify possible PADDD. Together, the team analyzed documents including scientific literature, technical reports, legal documents and popular media and sought additional information from regional experts. Full methods are available in Mascia & Pailler 2010.

In Africa, between 1900 and 2009, the team found 343 cases of PADDD in 27 countries. There was a hotspot of PADDD cases in East Africa, encompassing Tanzania, Kenya, Uganda and Zambia. More than half of the total cases were due to downsizing, and 20% of the cases were degazettement, with a smaller percentage of downgrading. Kenya had the highest number of PADDD cases, but these affected only a small percentage of the PA estate in Kenya. In Sudan and Namibia, single cases of PADDD had enormous impacts on the percentage of PAs – a decrease of 75% of the PA estate in Sudan and a 50% decrease in the size of Namibia's Etosha National Park. In terms of percentage of land, 42% of PADDD cases were downsizing; 36% degazettement; and 21% downgrading. A total of 16% (270,000 km<sup>2</sup>) of the PA estate has been affected by PADDD in the 27 African countries where they have taken place – this is roughly 9% of PA estate affected continent wide

PADDD events are often clustered, with many events occurring in one place at the same time. In 1996, Uganda revised its PA network, which resulted in many PADDD cases. In 1998, Zambia changed its laws to permit mining in National Parks. In 2001, Kenya's President Moi allowed timber concessions in PAs, giving away PA land to constituents.

Of the 343 cases of PADDD in African nations, causes were identified for 156 of them. One-third of cases were due to population pressures including human settlements, agriculture, land degradation, and giving land to indigenous groups. One-third of cases were linked to global demand for resources and industrial-scale pressures such as logging, mining, oil and gas, and agribusiness.

What does it all mean? PADDD is not necessarily bad; alternate forms of governance of some PAs may be better, or allow for more efficient allocation of conservation resources, or may address historic injustice, or balance development needs. However, many PADDD events are likely bad for biodiversity (such as increasing mining in Namibia's PAs). PADDD is an indication that a tool in the conservation toolkit is not working as intended.

### Findings:

- PADDD is happening
- Many drivers (including those that advance or hinder conservation): restructuring PA systems, local land pressure, extractive industries
- Growing pressures and competing priorities

### Next steps:

- 3 national PADDD-REDD analyses to include carbon lost to PADDD and the monetary value of lost carbon

- Establish PADDTracker.org, an online wiki-style database and work with experts to bolster the dataset. The tool will be used to build awareness of PADD and to foster transparency and accountability. It will likely be available in Fall 2011.
- Draft PADD overviews of priority places

## Q&A

- Temporary downgrades in PA status of less than 2 years did not count towards PADD events – only those longer than 2 years were included in the datasets.
- While PADD encompasses legal changes to PA status, it does not include management or illegal activities and settlements within parks. There would be no PADD events to report for PAs established with lower levels of protection from the outset. More PAs are now being established with allowances for mining, settlement, etc. It is important to consider the legal and de facto management side of PAs.
- One participant asked why states would go to the legal trouble to change the protection of an area “when bad management covers most sins.” There is also unequal status of PAs across different countries (“National Park” may have a different meaning in one country versus another). IUCN categories have shifted several times, so it can be difficult to get a handle on downgrading. “The math gets really weird in a hurry.” Broad databases of PAs have been less productive sources of material than originally expected.
- Another area suggested for future work is a global or pan-African analysis of the effectiveness of PAs. We may see that some decisions were poorly made. Legal change is “cleaner” to analyze. Need spatially-explicit data for future work.

## [Degazettement and Denotification of Protected Wildlife Areas in Kenya and Tanzania](#)

[Jane Dwasi, Faculty of Law, University of Nairobi](#)

In this presentation, *degazettement* is defined as bringing an existing PA to an end and *denotification* is defined as reducing level of protection or status of PA. The objectives of this work were to review, evaluate and document the policies, laws and actual practice of degazettement and denotification (D&D) in Kenya and Tanzania. This research was limited to cases that occurred **since independence**; though there were some cases of reorganization of some PAs before independence, these were not included in the study. Rather, it was determined to focus on the period since independence since the governments of could take responsibility for the actions reported.

The study included literature review, key informant interviews (particularly with government officials) and case study reviews. While there are some isolated reports on related subjects, there is very little lit on D&D. It was very difficult to access government records on PAs, as they were treated by current officials as very sensitive, protected information.

Key research questions included whether the process was fair and democratic, whether it included public participation, and whether actual practices of D&D conformed to law and policy.

In Kenya, there are two types of protected wildlife areas (PWAs): national parks and game reserves. While communal conservancies are a growing in Kenya, there is no official categorization of them as PWAs. Tanzania, by contrast, includes several main categories of PWAs: national parks, marine parks and reserves, species PAs, game reserves 5) game controlled areas, Ngorongoro Conservation Area and wildlife management areas (WMAs). Each category is governed by distinct act of parliament and each has various government bodies that regulate them; there is no single overarching ministry that includes all PWAs. In Tanzania, policies are such that they favor the creation of more PWAs. Tanzania’s Arusha Manifesto sets the tone to “do everything in our power to make sure that our grandchildren’s grand children enjoy this rich & precious inheritance.” However, in Kenya, the process of D&D is codified in the law.

In 1975, Kenya created its first official policy on wildlife management. The policy attempted to accommodate various interests existing at the time of its creation, including local communities, government, tourists, park-adjacent communities, etc. In the 1975 policy, there was no express provision for denotification, but it allowed for regular review of land uses (including PWAs) to determine the most productive use of land. Degazettement was expressly included in the policy, which would allow degazettement of national parks and game reserves, if proposed by the president and approved by national assembly.

Section 7 of Kenya's wildlife law authorizes the Minister to declare an existing national park or game reserve to cease to exist after following the prescribed procedure. According to this procedure, the Minister must consult with the competent authority, issue a public notice of intention to degazette and invite public comments for 60 days. During that time, the authority should undertake an environmental impact assessment. If Parliament approves the change, then a degazettement notice should be issued.

If a PWA is to be denotified (for example, if a national park is to become a game reserve), it must first go through the degazettement procedure and cease to have any protection. This is to be done in consultation with competent authorities and with public comments. Then a gazette notice may be issued to declare the area a game reserve. There is no policy allowing for direct denotification.

In Tanzania, an additional strategic environmental assessment is required beyond the EIA. However, there is no procedure for degazetting or denotifying Ngorogoro National Conservation Area, which was created to last in perpetuity. Wildlife Management Areas are also not downgradable.

Kenya has only had one case of denotification: Amboseli National Park, which was downgraded to game reserve status in practice, even if not in law, at a time when the constitutional referendum was pending in 2005. While national parks are managed by the central government (which also manages park fees), game reserves are owned and managed by local authorities. Game reserves belong to the people in a way that NPs do not. Hence, proposing denotification of Amboseli to a game reserve could be seen as a ploy for local support.

There has been only one case of total degazettement: Ngaai Ndethya National Reserve. While this was presented as a response to local people's need for land, ultimately the land went to a few people, plus politicians and their supporters.

There have been four cases of partial degazettement (equivalent to downsizing in PADDD presentation): Maasai Mara, Marsabit, Kiunga Marine National Reserve, Kisiti, and Watamu. In none of these cases was the procedure prescribed by law actually followed. Procedures are, in law and policy, democratic, allowing public participation, but this has not been seen in practice. In all cases, degazettement resulted in transfer of public land to private individuals and entities. It has never resulted in resettlement of landless people.

Many people in Kenya do not know that these events have happened, and are not aware of the procedures and explanations for why these have happened. KWS has information regarding changes to status of protected areas, but other agencies do not have access to the same information. In researching this project, the researcher was asked by the Lands office to obtain maps from KWS and share with them, demonstrating that very few people have access to accurate information.

In Tanzania, there were no cases of D&D of a national park. However, four PAs (one GCA and 3 GRs) were degazetted by legal notices without following legal procedures and for unspecified reasons – no public participation was allowed in the process. There has been a *de facto* degazettement of many GCAs, as many are thoroughly degraded by human activities but have had no government restorative action. In Tanzania, there is a greater push to create more PAs. An interesting follow-up study might look at evictions for creation of new PAs.

Overall recommendations on D&D:

- In both countries, care ought to be exercised to ensure that any proposal for justifiable D&D does not attract land grabbing by private persons

- If there is a clear public reason to D&D, then the public must be involved in the process
- D&D has not clearly done to settle landless people in period since independence
- Many cases of disgruntled park-adjacent people who suffer from human-wildlife conflict without any benefit from wildlife conservation

Finally, we discussed the implications of Kenya's new Constitution, adopted in August 2010. The constitution will make it harder to degazette or downgrade PWAs, and strengthens protection for PWAs. It presents national values and principles of governance of PWAs for the first time, including the rule of law. As such, the government must abide by its laws, and anyone can raise a constitutional question on an environmental issue – this is codified in constitution as environmental rights for future generations. Equitable sharing of benefits of conservation is guiding principle as well. Game reserves will be vested in county governments. Regional government must approve denotification or degazettement before it goes to central government. Then Parliament by legislation must approve changes to PWAs. There will be a Constitutionally-established national land commission. In addition, there will be established minimums and maximums for the amount of land that individuals and corporations can own. These will be established by laws that must be passed in the next 18 months.

#### **Q&A with Dwasi Jane**

- If procedures aren't followed according to the new constitution and associated laws, then anyone could challenge the decision. In other cases in DRC and Liberia, procedures weren't followed correctly and the government was able to cancel actions that were improperly authorized. Could decisions be voided? YES, would love for people to know more about these cases. The Amboseli case hasn't yet been heard to conclusion, but expect that interim injunction will be made permanent.
- Who is on the National Land Commission? Established by Parliament – also decides who will be members
- Land ownership maximums and minimums will apply to both individuals and companies, but have not been set yet. These limits are intended to reduce the amount of land that some people own in Kenya. How will sizes be reduced? The required legislation is yet to be written, but it is likely that the government will buy land rather than confiscate it if it was acquired legally. Public commentary will be sought in establishing the law. However, the government could confiscate it if it was acquired illegally.
- There is excitement in Kenya regarding the anti-corruption and economic crimes act; there is a vibrant director who is not reluctant to prosecute those who have broken the law, even political and social elites.

#### ***Infrastructure development in protected areas in Africa: examining the impact of a proposed commercial road in the Serengeti***

*Michelle Gadd, US Fish & Wildlife Service, International Programs*

This presentation focused on the ecological impact of the proposed development of a commercial road in Serengeti National Park. It did not focus on the social or economic benefits, nor on the motivations behind the proposal, which have been covered by other sources (see references available at [www.abcg.org](http://www.abcg.org)). A key conclusion of this presentation is that there is a subtle but destructive force of road construction of roads and other linear infrastructure in natural environments.

There is currently a proposal for a 50km commercial road to be built across Northern Serengeti National Park. The road would cut East-West through the park, and directly across the North-South migration of at least one million wildebeest. The migration is not orderly migration, but is variable, as the wildebeest are skittish animals which sometimes change their direction even with a small impediment, like a coke can.

Given the ecology and shifting resource distribution of the Serengeti/Masai Mara region, it is biologically best for animals to move with the natural resources. The 1979 Sinclair grazing model shows that grazing stimulates grass production via defecation and urination, and the ecosystem undergoes both intensive grazing and intensive

growth. In the greater Serengeti ecosystem, we find huge collections of animals that don't typically herd; more than 1000 topi have been found together, for example. There are also huge amounts of carnivores that prey on herbivores. The ecosystem is maintained by the random, unpredictable movement of wildebeest that follow the rain and resources. It must be a very large ecosystem to accommodate their random, sporadic movements.

Proponents of the road have argued that it will have no adverse environmental impact. However, Tanzania would need to degazette part of Serengeti to build the road – up to 50 meters of land on each side of the road. This land and the road would not fall within the jurisdiction of the public lands administration nor TANAPA. Proponents have also stated that the road would be just another game trail. This is unlikely, as the road would link to a large network of Eastern Congo traffic as a shorter, easier alternative to the existing Mombasa Road and would carry heavy vehicles at high rates of speed. Proposed speedbumps would likely not protect wildlife from impact, which can kill wildlife even at slow rates of speed. Speedbumps are far more effective at saving human lives than that of wildlife.

In addition, fencing is inevitable when wildlife densities are low and traffic is low-moderate. Many experts state that it would be just a few years until the road is both paved and fenced. Fences have both direct (roadkill) and indirect (prohibiting movement) impacts on wildlife. Fences are typically put in without regard to wet/dry season migrations, and divide both species and family groups. Even animals that should not be deterred by fences are. Known impacts of fences include: altered concentration of wildlife populations leads to habitat degradation and increased disease rates; increased deaths and die-offs when combined with human hunting and in times of environmental stress; high rates of individual death and mass die-offs of migratory species.

Some have discussed building underpasses and/or overpasses for the wildlife, using the example from Banff National Park in Canada. While such structures may help maintain the flow of genes, it has never been demonstrated that even half of migratory populations make it to the other side. Different passages would be needed for different species in Serengeti (wild dog, black rhino, wildebeest). Building under/overpasses would be logistically very difficult and financially impossible.

In addition to the direct impacts of a commercial road – including habitat degradation, disturbance and wildlife casualties – the many indirect impacts would include facilitating illegal wildlife trade, accidental introduction of exotic species, and increased livestock/wildlife interaction and diseases.

In summary, the impact of the road would include altered migration, injury and death of wildlife, a shift in population dynamics from migratory to sedentary, a reduction in total biomass as well as numbers of each species, and a collapse in productivity of the ecosystem.

#### **Q&A with Michelle Gadd**

- How can we share this information with stakeholders? [Dobson et al \(2010\) in Nature](#). This is the first paper with solid numbers on impact. There are also mass media approaches, including [www.savetheserengeti.org](http://www.savetheserengeti.org), which is run by former tour operator (Dave Blanton), including online petitions. 80% of travel agents have stated that they will redirect clients to other areas if the road is built. There is a scientist survey and a Facebook page as well.
- There is no information yet on who might provide funding to build the road, but several organizations (including the World Bank, the Millennium Challenge Corporation and the US Government) have stated that they will not provide funding for its construction.
- What might the REDD+ impacts of road construction be? Carbon sequestration of wildlife-grazed grasslands is very significant, more so than livestock grazed lands. The carbon potential is more long-term than the immediate direct and indirect impacts and was left out of Nature paper.
- There is no shortage of dialogue about who is behind this, but caution is urged on that front. The road has been proposed previously, but this has gone further than any previous prospecting. There are surveyors' flags in Serengeti now. Parliament has demanded an inquiry and has formed commission or working group. A similar working group was convened 10 years ago but has yet to announce a decision.



- Alternative road proposals include an upgrading of the southern route and paving a new section; this would connect areas currently not connected, benefiting higher population densities (2.3 million people) and a greater diversity of tribes than the Northern route (500,000 people).

#### **General discussion:**

Issues of **transparency** are big deal, encompassing questions about the impact of extractive industries, development pressures, corruption, etc. How can we tackle questions of transparency? Workshop in Nairobi? Publishing in Nature? Transformation of social networking, modern IT, etc. makes it more difficult to hide these sorts of proposals. **Access to information and speed of knowledge transfer** is much better now and transforming public participation. Helping citizens to use new tools more effectively can help to make a difference. Issue of responsible internet use is challenge in libel and accurate information. Hard data to politicians doesn't always generate positive decisions, but public and political pressure might be able to.

Jane Dwasi serves on the National Environmental Tribunal in Kenya – at a recent meeting, it was agreed that they have not been very aggressive on Serengeti issue. The Tribunal will revisit the issue to discuss how to engage with decision-makers in Kenya that have some influence with Tanzania. Invitation to share additional information with the Tribunal.

FZS.org has great deal of information available, including total \$\$ amount of money brought in by Serengeti, employees and their families – the road would have a huge negative impact on the large financial footprint of Serengeti. Distribution of benefits is big question.

D&D could be seen as positive tool for conservation, especially in the light of climate change; when PADDD is appropriate, there should be an emphasis on public participation and transparency and democratic procedure and following it. Shine a light on the process to show how it should and does happen.

In Uganda, the Constitution and law makes it legally impossible to D&D, but it goes underground. “Forest reserves” are all cane plantations.

Transparency and building knowledge – good role for PADDDtracker.org. Capture information, fostering transparency

**Need validation of what PA status means, or standard for different levels of protection.** Need biological data on how well protection works. Michelle feels that PADDD is sweeping the continent and impacts are broad. A recent Steve Blake paper on forest elephants refusing to cross very minor, very sparsely-traveled roads in Congo Basin; she shared an example of elephants stuck against an above-ground oil pipeline, and local people shot the elephants; there will likely be increases in such examples with additional PADDD.

USAID Missions investing in protected estate – investments are now under threat. Does USAID have strategy for how to protect those investments? USAID has recently carried out several long-term reviews of its work in several countries in Africa, as well as an overarching 30-year review of USAID investment in Africa: [Protecting Hard-Won Ground](#).