

WILDLIFE CORRIDORS AND BUFFER ZONES IN TANZANIA

Political Willpower and Wildlife Management in Tanzania

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INTRODUCTION

Tanzania's rich wildlife heritage has attracted many tourists and hunters, who bring the equivalent of billions of shillings in much-needed foreign currency. Many local populations also depend on wildlife for meat and hides. Despite its values and contributions, Tanzania's wildlife is in crises. This brief focuses on policy and management options for migration corridors and buffer zones in Tanzania, considered to be critical priorities for the survival of wildlife and opportunities to experiment with solutions to the human-wildlife crisis. It addresses the new Wildlife Policy of Tanzania and the draft National Parks Bill and proposes a series of practical changes through administrative and management decisions that will benefit wildlife and help solve the human-wildlife conflicts.

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LAWYERS' ENVIRONMENTAL ACTION TEAM

The Lawyers' Environmental Action Team is the first public interest environmental law organization in Tanzania. It was established in 1994 and formally registered in 1995 under the Societies Ordinance. Its mission is to ensure sound natural resource management and environmental protection in Tanzania. It is also involved in issues related to the establishment of an enabling policy environment for civil society, including civil liberties and human rights. LEAT carries out policy research, advocacy, and selected public interest litigation. Its membership largely includes lawyers concerned with environmental management and democratic governance in Tanzania.

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During our work, several things became abundantly clear. First, use of democratic legal institutions and tools in Tanzania is only beginning to develop. Second, wildlife in Tanzania simply cannot survive without direct involvement of local communities in their management. Perhaps most significantly, addressing the problems of human-wildlife conflicts in the buffer zones and migration corridor areas must be among the highest priorities of all stakeholders. It is our hope that the analysis herein will enrich the ongoing debate on wildlife conservation in Tanzania for the betterment of the Tanzanian population and humankind in general.

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BACKGROUND

Tanzania's rich wildlife heritage has attracted many tourists and hunters, who bring the equivalent of billions of shillings in much-needed foreign currency. Many local populations also depend on wildlife for meat and hides. Despite its values and contributions, Tanzania's wildlife is in crises. Several species such as the black rhino and wild dog are nearly extinct, and the populations of others are declining at alarming rates. Wildlife habitat is being lost, and this is concentrating populations in Tanzania's network of protected areas.

There are many causes of these conditions, including contradictory policies, weak law enforcement and poor performance of institutions with wildlife management responsibilities. Commercial poaching by locals and foreigners takes heavy tolls on certain species. Due to interest in short-term economic gains, trophy hunting is viewed primarily as a revenue source by government officials, and not controlled by a system of permits and quotas that promotes sustainability (Williams, 1994; MTNRE, 1995; FAO, 1997). Similarly, inappropriately regulated game viewing has resulted in the loss and degradation of critical wildlife habitat.

An increase in competition for land and resources in Tanzania also has grave implications for both wildlife and human populations. Government has allocated land to foreign investors and state operations. Absentee landlords have gradually acquired larger and larger blocks of land, many of which are then farmed by local farmers who do not have a legal claim on the land. Many farmers from the Arusha region and elsewhere have had to move in search of additional farmland. Pastoralists such as the Maasai and Barabaig and hunter-gatherers including the Dorobo have been forced to survive on smaller and more confined land areas each year.

While the Wildlife Department has the authority to govern utilization of wildlife through hunting concessions, these concessions are not always granted on "open-land" (Marmo Report, 1994) (open land is land not subject to any claim, including customary claim). With or without titles, communities occupy and have either a granted or deemed (customary) right-of-occupancy over much of Tanzania's land. They have as much a legal as a moral right to know what is transpiring in their communities. Failure to involve concerned communities in granting hunting concessions, establishing quotas, and other permissible activities has fostered wildlife-human conflicts and poor state-society relations.

Land around protected areas and migration corridors between them are particularly hard hit and critical to wild-life survival. Competition and conflicts are particularly acute in the crowded "Northern Circuit" -- the areas of the Serengeti, Ngorongoro, Lake Manyara, Tarangire, Arusha and Kilimanjaro. Though wildlife migration corridors and dispersal areas between the Northern Circuit protected areas are central to the health of the wildlife inside the national parks and game reserves, they are being lost or cut off as a result of changing land use practices. Much of the region, including many of the protected areas, was once Maasailand (and grazed under nomadic herding practices) or customarily held by other local groups. With formation of the parks and other protected areas, many people were dispossessed of land and resources, including pasture and water, central to their livelihoods and well-being. These conditions have resulted in considerable human-wildlife conflicts.

Finding solutions that will conserve Tanzania's wildlife and resolve competition for land use is an urgent matter. Recent attention has focused on "buffer zones" (areas near and around protected areas - although without specific legal status as buffer zones) where land use practices compatible with wildlife management are promoted. In practice, the Government has restricted conflicting practices and forced local people to undertake supportive practices -- only those activities that the Government views as compatible with wildlife. This has limited opportunities and benefits for local people and strained relations with the Government (Metcalf et al., 1998).

This brief focuses on policy and management options for migration corridors and buffer zones in Tanzania, considered to be critical priorities for the survival of wildlife and opportunities to experiment with solutions to the human-wildlife crisis. It addresses the new Wildlife Policy of Tanzania and the draft National Parks Bill and proposes a series of practical changes through administrative and management decisions that will benefit wildlife and help solve the human-wildlife conflicts. The recommendations are designed to provide short-term, immediate solutions that do not require substantial funding or a lengthy legislative process but can be accomplished with the commitment and goodwill of all concerned. Debate on these issues has been lengthy -- volumes of research reports sit on shelves, and the new Wildlife Policy took more than 12 years to develop. The National Parks Ordinance, enacted in 1959, is long outdated. It is time for the Government and all stakeholders to act.

GOVERNMENT POLICY, WILDLIFE CONSERVATION AND COMPETING LAND USES

The Government has formally recognized the value of wildlife to the people and economy of Tanzania since the Arusha Declaration of 1961 when former President Julius Nyerere

spoke of the need to conserve wildlife. Even before independence, the establishment of the Serengeti National Park, Ngorongoro Conservation Area, and other protected areas showed colonial recognition of the importance of wildlife. Prior to colonialism many people considered wildlife part of the natural environment to which all belonged and some hunted wildlife for meat and hides.

In recent years, the Government has clearly articulated the need to conserve wildlife for future generations. The 1997 National Environmental Policy states:

Wildlife resources shall be protected and utilized in a sustainable manner on the basis of a careful assessment of natural heritage in flora and fauna fragile ecosystems, sites under pressure and endangered species, with participation of, and benefits to, the local communities. Environmentally adverse impacts of development projects (e.g., tourist hotels, rail construction) in wildlife conservation areas will be minimized by EIA studies. Game ranching and captivity breeding for certain species will be encouraged (VPO, 1997, p. 19. sec. 58).

The Wildlife Policy of 1998 states:

Wildlife is a natural resource of great biological, economical, environmental cleaning, climate ameliorating, water and soil conservation, and nutritional values that must be conserved. It can be used indefinitely if properly managed. (MNRT, 1998:8)

The Wildlife Policy also addresses the human-wildlife crisis by calling for the establishment of Wildlife Management Areas (WMAs) that provide communities wildlife user rights, such as hunting, and enable them to benefit economically from uses of their land. Through support for the new concept of WMAs, the Government seems to recognize that wildlife conservation without community involvement will not succeed; the Government, local communities and even the private sector must learn to collaborate. The theory behind WMAs is that when wildlife has economic value for communities, wildlife conservation can compete with other forms of land use such as agriculture or grazing. WMAs encourage communities to manage wildlife so that they can continue to benefit from wildlife in the long term.

In addition, the National Policies for National Parks, issued by the Tanzania National Parks Board of Trustees, emphasize the need for wildlife conservation and cooperation from local communities (TANAPA, 1995). The new Land Policy also recognizes the importance of wildlife, in particular wildlife habitat, by calling for the revocation of land titles in all wildlife migration corridors and buffer zones (MLHUD, 1996; sec. 7.5.1). These and other policy statements are written demonstrations of the Government's recognition of wildlife problems.

These wildlife conservation policy pronouncements do not, however, effectively address the issue of competition for land use in wildlife areas, and particularly buffer zones and migration corridors. The problem is twofold. First, the policies are focused on wildlife conservation at the potential expense of community needs and priorities. Second, they do not recognize communities as equal and genuine partners with government and other stakeholders in wildlife management.

While both the new Wildlife Policy and the National Policies for National Parks address the need for community-based conservation (CBC), their approaches reflect a government attitude that communities must be "taught" how to manage wildlife and that they themselves are not capable of implementing this concept. For example, the Wildlife Policy is vague about the process of creating WMAs. The Wildlife Division's administrative procedures used in the few experimental or pilot wildlife projects with WMAs are complex, cumbersome, time-consuming and expensive. At least eight procedural steps are required, beginning with a village resolution and ending with a published declaration in the government gazette (Metcalf et al., 1998; Shauri and Hitchcock, 1999). If the Government is committed to address both the human and wildlife crises and recognizes that both are linked, the procedures must be streamlined.

Effective implementation and legal enforcement of Tanzania's wildlife policies and community-based development interests require addressing framework matters such as the rule of law and government duty and discretion, as well as multiple immediate and medium-term decisions.

RULE OF LAW

Since independence, many of Tanzania's economic and social policies have been implemented without the force of law or enabling legislation. For example, Operation Vijiji (a forced resettlement scheme to promote collective agriculture) was carried out principally through presidential decrees and administrative decisions and actions. Legal scholars and professionals argue that for Tanzania to become an effective democracy, the country's legal authority, its "rule of law," should support and implement government policies, including the new Wildlife Policy (Nshala, 1997).

A classic statement of the Tanzanian judiciary on the meaning of the rule of law was issued by Justice Mwalusanya in the 1988 case of *Chumchua s/o Marwa vs. The Officer I/C of Musoma Prison and the Attorney General*. The judge stated, "the Rule of Law means more than acting in accordance with the law. The Rule of Law must also mean fairness of the Government. The Rule of Law should extend to the examination of the ideal; and that the law does not give the Government too much power. The Rule of Law is opposed to the rule of arbitrary power. The Rule of Law requires that the Government should be subject to the law rather than the law subject to the Government. If the law is wide enough to justify dictatorship then there is no Rule of Law" (HCT, 1988).

This definition of the "rule of law" indicates that:

- Government must have the legal authority to take any action;
- In cases where the Government is given the "duty" to act, such as in the Constitution or in any law, it must act; and
- In other cases, the law may explicitly give the Government the authority to act, but not require a specific action.

In other words, the Government must act if it has a clear legal duty to do so, and it may act if it has clear discretion. In either case, though, *it must have the authority under law to take the action.*

Local communities, essential to the survival of Tanzania's wildlife, are distrustful of the disjointed public policies that different government agencies undertake without legal authority. For example, in one instance, a District Council issued a letter upon the request of TANAPA to villagers to order them to cease farming within a wildlife corridor (Metcalf et al., 1998:34). This type of administrative action, based on TANAPA's perception of authority in the migration corridor, is clearly not enforceable in law by TANAPA alone, pursuant to the National Parks Ordinance or any other law.

Even if the Government, rather than TANAPA, were to "take" such land for a wildlife corridor, it could not do so without a proper procedure to evaluate customary claims to the land and just compensation payable to the disenfranchised farmers as required by the Land Acquisition Act of 1967. This is supported by several court rulings. The Court of Appeal decision in *Maagwi Kimito v. Gibeno Werema* demonstrated that customary laws have the same status as other laws, subject only to constitutional and any other statutory law to the contrary (CA, 1979). More recently, *Attorney General Chambers v. Lohai Aknonaay and Joseph Lohai* recognized that customary (deemed) land rights were equivalent to granted rights of occupancy (CA, 1994). It follows that if any part of the Wildlife Policy is not legally permissible today, the law will need to be amended to allow the Government to act.

GOVERNMENT DUTY

While the new Wildlife Policy clarifies the role of government in wildlife management, it can be argued that even without the policy the Government must take certain actions. Indeed, the Wildlife Policy reiterates some existing government duties. Even without additional legislative authority, the Government has a clear legal duty to take administrative actions to address the human and wildlife crisis in buffer zones and migration corridors based on interpretation of the Constitution.

Tanzania's Constitution, the highest national law which directs the Government and citizens, requires the state to "ensure that the national resources and heritage are harnessed, preserved and applied to the common good of Tanzanians" (TC, 1977; Article 9(1)(c), (i)) (*see also* Article 27). The Constitution's Bill of Rights states that every person has "the right to life and protection of [life] by the society." Read together, these and other provisions of the Constitution show that the Government is required to ensure that "every citizen gets a share in the benefits of existing natural resources, including wildlife" (Metcalf et al., 1998; Section 7.4). The Wildlife Policy calls for similar benefit sharing.

In the future, the Government may also be bound by the "public trust" doctrine, although this is not yet directly applied in Tanzania. The "public trust" doctrine, a common law doctrine that is applicable in other Commonwealth nations, holds that the Government must manage land and natural resources "for the public trust." In other words, the Government has an obligation to ensure that multiple types of land and natural resource use, consumptive and non-consumptive, be allowed for, and that future generations not be prevented from enjoying land and natural resources as a result of the current generation's actions. It is only a matter of time before the courts in Tanzania are asked to interpret this common law doctrine, and, because of the Constitution's language and much of Tanzania's natural resources legislation, it is likely to be found applicable.

Thus, where the Government has the legal duty to act -- according to either the Constitution or national legislation -- it must act, with or without direction of the Wildlife Policy. Where the Wildlife Policy restates existing government duty, that duty becomes more obvious.

GOVERNMENT DISCRETION

Some laws give the Government discretion to take certain actions but do not require it to act. For example, the Wildlife Conservation Act of 1974 permits the Minister responsible for wildlife to recognize "Authorized Associations" and grant exclusive hunting concessions to these Associations. Villages may become Authorized Associations and set up WMAs where they would be responsible for entering into wildlife use leases or easements with hunters and other enterprises. In other words, there is no need to wait until the existing Wildlife Conservation Act or the National Parks Ordinance is amended to begin the process of establishing WMAs.

Most importantly, in his or her duty to carry out the daily functions of the Ministry, the Minister responsible for wildlife has ample administrative authority to implement a series of actions to address the human and wildlife crises in migration corridors and buffer zones. This type of action requires no specific statutory mandate, but rather the political will and courage of the Government to take action, even if it means experimenting with successes and failures.

Therefore, some of the objectives in the Wildlife Policy and the National Policies for National Parks may be achieved now based on interpretation of current law. Given the general ministerial discretion granted in the National Parks Ordinance and the Wildlife Conservation Act, many of these objectives could have been implemented long ago without a new Wildlife Policy. Just because a concept is not directly indicated in existing law does not mean that the Government cannot carry it out. One of the major shortcomings of the Tanzanian Ministries is their failure to interpret existing law to give administrative authority to take action. Ministers must be more responsive to the mandates and authority of their governing legislation, and issue regulations or by-laws to implement the law. Standing orders and other methods can also be used but haven't been on a regular basis since independence.

AMEND LAWS TO FILL THE VOID

Even with the Government's current duty and discretion to carry out some of the strategies encompassed in the Wildlife Policy to address the human and wildlife crises in buffer zones and migration corridors, additional actions are clearly necessary. In particular, incorporating the Wildlife Policy goals into direct language in law will ensure that the policy is supported, enabled and enforceable, both by the Government and members of the public who challenge or support government action.

Any challenge to the interpretation of the Wildlife Conservation Act, the National Parks Ordinance or the Constitution will be clarified if the Government is given more specific duties and clearer responsibilities. In particular, the Parliament must have the will to ensure that responsible government institutions are accountable and open to public scrutiny. Citizens and civil society can then act as private attorney generals to challenge abuses of

government authority or failure to perform required duties. Such a provision is included in the draft National Parks Bill to enhance TANAPA's performance by subjecting it to public scrutiny. Many countries have increased their governments' accountability by allowing public scrutiny through law. Enactment of new, comprehensive wildlife legislation or amendments to wildlife laws would establish the new Wildlife Policy's positive provisions as law.

NEXT STEPS: WHAT SHOULD BE DONE?

Millions of dollars in donor aid has been spent to help the Wildlife Division, TANAPA and Tanzania's other wildlife management agencies address the wildlife-human crisis, especially in the Northern Circuit. To date, however, few real changes have been made to limit the alleged impacts of encroachment into protected area boundaries and buffer zones or migration corridors by large and small-scale farmers, nor the obvious problems with poaching or legal over-utilization of wildlife. Primarily, the lack of real changes stems from the failure to recognize the need to substantially re-think the role of communities as co-stewards of wildlife on customary lands.

Many recommendations are made to address the wild-life and human crisis. Because bureaucratic and territorial barriers have been significant in the past, moving forward on these initiatives will not require a substantial amount of time or even money, but rather political will.

Administrative and Ministerial Recommendations

- The Vice-President's Office should convene a series of meetings to establish an ad-hoc community-based conservation advisory group. The CBC advisory group would include the Wildlife Department, TANAPA, other government wildlife bodies, NGOs, community representatives and other experts and stakeholders. It would develop criteria to prioritize "critical areas" for WMAs and recommend how wildlife use benefits should be distributed, among other matters. The group would make recommendations to the Minister as the Ministry develops procedures for implementing the Wildlife Policy, revises the Wildlife Conservation Act in light of the new Wildlife Policy, develops new regulations, reviews the draft National Parks Bill, supports the preparation of model by-laws for communities that are participating in WMAs and engages in other relevant policy matters.
- The Minister responsible for wildlife should issue a Government Notice (GN) which stipulates that the highest priority for WMAs is within specified "critical areas" -- migration corridors and buffer zones that have been identified as problem areas by the CBC advisory group. These areas should be ranked based on the level of poaching, over-hunting, encroachment, problem animals, and wildlife-related damage to farms and residents. The GN should also develop annual targets for the number of WMAs to be established. Because such a Notice would be based on statutory authority under the existing Wildlife Conservation Act, it would not be necessary to follow the strict, bureaucratic requirements of village land demarcation, titling, and other matters associated with the establishment of Authorised Associations. As such, it would not be unrealistic for 10 or more WMAs to be established in the first two years to help the most seriously threatened wildlife and

- human populations. It would also not be overly optimistic of those communities to expect economic benefits from their conservation activities within this time period.
- The Wildlife Policy's bureaucratic requirements for establishing WMAs must be revised and made more "user-friendly" for future WMAs. The process should recognize the role of Authorised Associations as described in the Wildlife Conservation Act and the need to "estimate" village boundaries to alleviate potential conflicts between adjacent communities in allocating contractual benefits from hunting, game viewing and other activities on community lands.
- The Wildlife Department, TANAPA, and the Ministry for Local Government should enter into a Memorandum of Understanding (MOU) to ensure proper coordination and cooperation, including addressing how community-based conservation and wildlife management can best be carried out in areas identified as "critical areas." The MOU should set forth joint functions, such as co-management of community-based conservation activities and associated technical and other assistance to involved communities, when necessary. It could also serve as an intermediate step toward the consolidation of functions and responsibilities of wildlife sector entities, as recommended by the Vice-President's Office (see Metcalfe et al., 1998, s. 12.3.3).
- TANAPA, the Wildlife Department, and relevant community-development authorities such as the Ministry of Agriculture, Health and Education should establish a separate Memorandum of Understanding to ensure coordination. This MOU should be circulated to extension and field officers of all relevant departments and should govern the implementation of CBC on the ground based on established interests and directions of all participating entities.
- The Wildlife Policy should be translated into Kiswahili, along with "Community Guidelines" for the Wildlife Policy and a summary of the draft National Parks Bill and its implications. The translated Wildlife Policy should be circulated to individuals, non-governmental organizations (NGOs), community-based organizations and village, ward, and District governments throughout the country, especially in identified "critical areas." The policy and associated community guidelines should also be given to the media to foster further public debate about the wildlife-human crisis and WMAs. In addition, the Government should convene a series of public hearings to discuss the future of CBC following circulation of these documents.
- The Wildlife Department, the Vice-President's Office and the Attorney-General's Chambers, with assistance from knowledgeable NGOs, should draft model by-laws for villages that participate in WMAs to ensure transparency in agreements, distribution of benefits and governance of resources. The model by-laws should be translated into Kiswahili and distributed to communities for consideration. Such by-laws could be enacted as customary laws. This would be a more expeditious process than formal government channels for village by-laws, which require approval by the Ministry of Local Government in Dar es Salaam. If enacted and recognized by the community, customary laws would have legal force.

- To ensure social equity and wildlife management, the Government, with NGO assistance, should also prepare model joint venture agreements or wildlife easements which could be included as appendices to the model by-laws. Such community-private sector contracts should explicitly recognize customary by-laws as binding, whether established by a state-sanctioned council or a customary council of elders, for example. Indeed, the drafters should explore the possibility of including language requiring a "conservation bond" to be put up by private partner participants. With such a bond in place, failure to uphold the terms of a contract could result in community restitution for any damages to wildlife or to the community due to actions of a private partner.

Legal and Policy Recommendations

- The Ministry for Wildlife and other relevant ministries should hold a workshop on the draft National Parks Bill specifically for NGOs, CBOs, and concerned citizens. Commentary on the bill should be translated into Kiswahili and disseminated to all NGOs and interested parties. The Cabinet should finalize its recommendations on the National Parks Bill for Parliament as soon as it is practicable. The Parliament should take action on the bill soon thereafter.
- The National Policies for National Parks should be submitted to the Minister for Wildlife for recommendation to the Cabinet as formal national policies. Currently, they are only internal documents for TANAPA. The policies could be incorporated into the Wildlife Policy (Shauri and Hitchcock, 1999) or promulgated as stand-alone policies.
- A joint task force of government agencies and NGOs should be established to review wildlife-related complaints of villagers in the Northern Circuit and make recommendations to the President. The task force should not be bound by the status quo. It should include in its mandate, for example, consideration of opening certain portions of protected areas for sustainable multiple uses, such as grazing, fuelwood and plant gathering and traditional hunting. It should also specifically review issues of just compensation as required under the Land Acquisition Act, and evaluate the amount of compensation rightly due to descendants of tribes originally excluded from protected areas in the Northern Circuit. The task force should also make recommendations, as appropriate, related to WMAs, Authorised Associations, and other issues relevant to wildlife-human conflicts.

CONCLUSION

A number of steps need to be taken to achieve the objectives of the Wildlife Policy and related policies and the Government's inherent duties under the Constitution and general legal principles such as the public trust doctrine. Under existing legal authority of the Wildlife Conservation Act and general ministerial discretion some of these steps can be taken quickly. Much of what is needed is related to good governance, and includes:

- a recognition that the hierarchy between government ministries and communities hasn't been equitable since protected areas were created;

- a recognition that wildlife conservation in Tanzania is difficult, if not impossible, without assistance from local communities, in spite of long-standing academic notions to the contrary;
- an understanding that communities will not assist in wildlife management without insurance that they will benefit from wildlife resources;
- an understanding of the importance of both the wildlife and human crises, especially in the Northern Circuit buffer zones and migration corridors among other areas;
- a change in the institutional culture of government agencies with wildlife management responsibilities; and
- prosecution of wildlife officers who abuse their powers.

Wildlife-human conflicts occur throughout Tanzania and share common issues. Because of the human crisis in the Northern Circuit and the significant numbers of wildlife there with migration patterns, there is a need to implement "emergency" steps quickly especially in the buffer zones and migration corridors to address conflicts. Though WMAs are not the only solution to the crisis, they are an important option for a government that does not have resources to patrol or enforce command-and-control environmental laws and regulations in the broad geographic regions in and around protected areas and buffer zones.

In the 37 years since independence, the Government of Tanzania has not been able to prevent the unsustainable use, legal or illegal, of wildlife, in part because its task was and is impossible if undertaken solely by the state. With some guidance, communities are an important but underutilized resource for wildlife conservation. Effective implementation of TANAPA's National Policies for National Parks and the Wildlife Department's Wildlife Policy will require greater recognition of village self-determination, true benefit-sharing, and real sharing of management responsibilities.

Perhaps the single greatest barrier to sustainable wildlife management in the buffer zones and migration corridors has been, until now, the Government's lack of political will to act. Numerous studies have identified needed reforms, but government bodies have failed, time and again, to understand their ministerial discretion and legal duties by which they are bound to ensure wildlife conservation and solutions to the wildlife-human crisis. Maintaining the status quo will likely result in continued deterioration of Tanzania's wildlife heritage, degradation and loss of critical habitats, and further decline of human welfare and well-being. If this occurs, we will have failed our descendants. The Government at all levels must act courageously to institute the policies and carry out the duties that it is bound by law to perform.

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