THE EVICTION OF INDIGENOUS PEOPLES IN TANZANIA: DO THE JUSTICE SYSTEM AND LEGAL FRAMEWORK PROTECT THE LAND RIGHTS OF PASTORALISTS?

EL DESALOJO DE PUEBLOS INDÍGENAS EN TANZANIA: ¿EL SISTEMA JUDICIAL Y EL MARCO LEGAL PROTEGEN EL DERECHO DE PROPIEDAD DE LOS PASTORES?

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ACHPR- African Commission on Human and Peoples Rights

CBO's – Community Based Organizations

CHRAGG - Commission for Human Rights and Good Governance

DC - District Commissioner

DLHT- District Land Housing Tribunal

EALR - East African Law Report

EACA - East African Court of Appeal

GCA - Game Controlled Area

ILO - International Labour Organization

IWGIA - International Working Group on Indigenous Affairs

ICCPR - International Covenant on Civil and Political Rights

ICESCR- International Covenant on Economic, Social and Cultural Rights

LSRP- Legal Sector Reform Programme

NCAA- Ngorongoro Conservation Area Authority

NGO - Non-Governmental Organization

NSGRP- National Strategy for Growth and Reduction Poverty

PINGO's- Pastoralist Indigenous Non-Governmental Organizations Forum

SENAPA - Serengeti National Park Authority

UN - United Nations

URT - United Republic of Tanzania

WGIP – Working Group on Indigenous Population

I. INTRODUCTION

This study aims at examining the effectiveness of the justice system and legal framework existing in Tanzania on protecting customary land rights of the indigenous people, the primary focus being, the pastoralist community living in the district called Loliondo. Specifically, the study intends to achieve several objectives which are essential in protecting the welfare of the indigenous population in the developing countries. Among others, the study seeks to explore the awareness of the Maasai community on the existing justices system and legal framework vis-à-vis protection of their right to own land, assessing forms of justice systems employed by Maasai community in protecting their customary land rights, to depict the extent to which the employed justice systems and legal framework have protected customary land rights among Maasai community members and critically examine the challenges that indigenous people encounter whilst striving to protect customary land rights notably the Maasai community.

1. Background of the Problem

For many years the Maasai community members in East Africa and Tanzania in particular have faced challenges in obtaining their rights and land rights in particular. They have been victims of unjust and inhuman treatment since the colonial period and even after independence in Tanzania. The government neither understands nor respects their customary land rights or recognize their way of life. More so they have been named as primitive, uncivilized or backward society.

In recent years, they have opted peaceful recourse for seeking their land rights. They have gone to the justice system in demand of their land rights. Still the question remains as to whether the justice system is helping them to get their land rights. This is the main pre-occupation of this study. It examines the effectiveness of the justice system in protecting customary land rights among pastoralist indigenous community in Loliondo.

Lives of many indigenous people in East Africa and Tanzania in particular mostly depend on various natural resources and hence any decline in natural resources whether by restricting them to access or a diminishing resource base, is likely to affect

them negatively. Any sort of competing interests over natural resources represent a threat to access and availability of such resources and also affect livelihood security[1].

Similarly, other scholars have found out that, community members residing around national parks have continued bearing disproportionate costs of wildlife conservation, whether they lose crops and livestock to raiding wildlife or must forego access to natural resources[2]. An image of marginalization and decline is obviously observed among pastoralists.

Consequently, pastoralist community members are diversifying their livelihood into strategies other than livestock-based economies. Ngorongoro district in Tanzania is a representation of one of the places which has been for a long time a main livelihood strategy for the Maasai community members. Despite that, historically, pastoral land use has co-existed with wildlife, however in recent years the government has decided to forceful evict all Maasai people living around the conservation areas. The eviction process started in 2009 whereby some private companies claimed to own Maasai lands. In August 2017 more than 185 Maasai homesteads were destroyed by Police with the help of rangers from Ngorongoro Conservation Area Authority (NCAA) and Serengeti National Park (SENAPA). This rendered more than 6.800 people homeless, most of their properties were destroyed and more than 2000 livestock were reported missing in Ololosokwan village alone. In Tanzania land tenure insecurity of the Maasai contains land enclosures and displacement from their traditional lands that is initiated by the government, local and foreign businesses[3].

Lack of legal protection is negatively affecting Maasai people's way of life as well as threatening their indigenous sustainability in the area. A combination of forceful eviction by the government and harsh environmental conditions have resulted in recent changes of traditional Maasai land use practices. This is also attributed to the formal Land tenure system in Africa and Tanzania in particular which has created problems to pastoralist community members such as the Maasai. In the case of Tanzania, most of these affected villages are classified as legally registered village lands as per the Village Land Act no. 5 of 1999 under the formal administration of their respective village

[1] See Igoe, J. Brockington, (1999). Pastoral Land Tenure and Community Conservation: A Case Study from North-East Tanzania'. London, UK, International Institute for the Environment and Development, Pastoral Land Tenure Series No. 11: 1-103.

[2] See Mbattiany O., (2009). Maasai In Loliondo continue to be forcefully evicted: Loliondo gate has become a police project. Indigenous Peoples Issues and Resources.

[3] See Navaya O. N (2003). Stop the killing fields of Loliondo. A letter to the President of United Republic of Tanzania. Indigenous Rights for Survival International

governments as per the Local Government. This Policy makes legal provision for securing land rights for extensive grazing among pastoralists community members. It is disheartening to say that these are not widely understood or used while certain features of the Land Act of 1999 policy have been found to the last nail in the coffin of pastoralist. As a result, efforts to obtain land and resource tenure for pastoralists are limited and private game reserves investors continue to secure large swathes of pastoralist communal land, often with direct or indirect support from government security[4].

Generally, the aims of the land policy are to promote and ensure secure land tenure system that encourages optimal use of land resources and facilitate broad based social and economic development without upsetting or endangering the ecological balance of the environment (Land Policy 1999: 5 section 2.0). The problem of lack of security of tenure facing pastoral groups is best exemplified by eviction of Maasai pastoralists from eight villages of Oloipiri, Maaloni, Ololosokwan, Soitsambu, Arash, Piyaya, Malambo and Oloerien Magaiduru in Loliondo District. This is a challenge because this land has been occupied by these pastoralists for over a hundred years. Such kind of ownership is legally recognized under the laws of Tanzania, specifically, the Land Act, Cap. 113, the Village Land Act, Cap. 114 and the Local Government (District Authorities) Act, Cap. 287. Ironically, known existence of this law, the Tanzanian government granted a commercial hunting license to private investors on a land owned by more than eight registered villages. This action led to the loss of land of many Maasai people which was fundamental to their livelihood and were forced to migrate into other parts of the country in search for a livelihood[5].

In view of the above, the majority of the development policies in Tanzania are still based on the notion that, pastoralism is not an efficient use of land (Oxfam international, 2008). Consequently, most of the pastoralists over the years have continually lost land to other uses, as their lands continue to be converted into game parks, game reserves and game-controlled areas (Matee and Shem, 2006; Sendalo, 2009). Matee and Shem (2006) support this by saying that, some policies in Tanzania protect pastoralists where some other policies show little understanding of pastoral way

[4] Lobulu Ben (1999). "Dispossession and Land Tenure in Tanzania: What Hope from the Courts? Volume 22 (4) Cultural Survival Quarterly

[5] See, Snyder K. A and Sulle E.B. (2011). Tourism in Maasai communities: A chance to improve livelihoods? Journal of Sustainable Tourism.

of life or recognize pastoralism as a sustainable livelihood. They identified two major reasons for these to be, inadequate knowledge regarding pastoralism among policymakers and pastoralists lacking a clearly articulated voice and influence in the policy debate. Even the new Livestock Policy of 2005 fails to acknowledge the genetic potential of indigenous livestock breeds and landraces, or the wisdom of extensive grazing regimes in dry land areas.

2. Statement of the Problem

Tanzania is without doubt, one among the countries in the world which protects and guarantee human rights on paper having incorporated the Bill of Rights in her Constitution[6] and ratified various international human rights instruments[7]. In the country, there are several rights which are recognized, promoted and protected by the Constitution, one of them being right to own property[8] . Right to own land is obvious covered under that subtitle.

In recognition of the above, the Parliament of URT have enacted numerous laws to provide for key issues pertaining to land, for instance, land use, land acquisition, protection of the right to own land, disposition of interest in land, compensation and dispute settlement, just to mention a few.

The Land Act[9], the Village Land Act[10], and the Local Government (District Authorities) Act[11], among others, ought to recognize, protect and promote the right to own land for Tanzanians without any form of discrimination. Such rights extend to the

[6] Such as Universal Declaration of Human Right 1948

[7] Article 24, Supra

[8] Article 24, Supra

[9] [Cap 113 R.E 2002]

[10] [Cap 114 R.E 2002]

[11] [Cap 287 R.E 2002]

pastoralist community in Loliondo District having customarily acquired their land for grazing and settlement for more than hundred years[12].

It is well established that once enacted, the laws have binding force over all authorities and persons, however, there have been several evictions of indigenous people from their parcels of land in Loliondo district by Government or private investors aided by the Government machineries. This has resulted to many Maasai people losing their parcels of land which was fundamental to their livelihoods and hence, force them to flee towards other parts of the country in search for livelihood and peace. The puzzle remains as to whether:

1) the Justice System or Legal frameworks existing in Tanzania are effective enough to promote, protect and guarantee the rights of Maasai Community to own land and peaceful enjoyment of the same,
2) the issue is on the implementation of the Laws
3) or it is both a and b above.

Few literatures (such as Joseph, 2014; Michael, 2017; Matee and Shem, 2006; Sendalo, 2009) have explored the challenges facing pastoralists after eviction and none of them has yet explored the role of justice system in protecting, promoting and guaranteeing their land tenure rights and to be specific in Loliondo district. This study intends to fill the knowledge gap and unveil the role and efficacy of the legal system and legal framework in Tanzania in ensuring the right to own land by the indigenous people of Loliondo District majority of whom are the Maasai is not only guaranteed but also promoted and protected.

3. Purpose of the Study

The study aims at making a thorough examination of the effectiveness of existing justice systems and legal framework in Tanzania in protecting indigenous land rights among pastoralists, the focus being eviction of the indigenous of Loliondo District from their land parcels.

[12] See, URT (2009) The Wildlife Act, 2009; URT (1999). The Land Act and URT (1999). The Village Act; URT (1998). The Wildlife Policy of Tanzania. Ministry of Natural Resources and Tourism Dar Es Salaam. United Republic of Tanzania p44

4. Specific objectives

Specifically, this study intends to:

1) Explore the extent to which Maasai community members access the available justice system for protecting their customary land rights;
2) Explore the extent to which justice system employed has been effective in protecting customary land rights among Maasai community members;
3) Explore challenges facing Maasai people whilst accessing justice to protect their customary land right;
4) Consider Policy options to raise awareness of Maasai community.

5. Significance of the Study

This study is significant in many ways for instance:

1) The study findings will shed light to both domestic and international communities on the effectiveness of justice systems available in Tanzania in protecting land rights of the indigenous population such as the Maasai in Loliondo District;
2) The study findings will help the government and international organization in addressing the inevitable consequences of evicting people from their land parcels;
3) The study will analyze the effectiveness of the existing laws on protecting indigenous land rights in Tanzania with the view of pinpointing, the weaknesses in such laws, if any, and suggests the appropriate means to curb the situation;
4) The study will ultimately be a device to conscientize Tanzanian population on the adequate procedure to follow in order to address their key issues especially on matters relating to land rights.
5) Lastly, findings suggestions will provide a framework on the role of justice systems in protecting land rights of indigenous minority in Sub-Saharan Africa drawing a lesson from Tanzania and Loliondo District in particular.

II. RESEARCH METHODOLOGY

As pointed out earlier, this study entails examination of the effectiveness of the existing justice system and legal framework in Tanzania in protecting, promoting and guaranteeing the indigenous peoples land rights. The focus is mainly on the role and mechanisms set by the Land Act, the Village Land Act, Local Government (District Authorities Act) and several other laws regulating land matters in Tanzania in guaranteeing, promoting and protecting such a vital right especially of the marginalized Tanzanian communities specifically the Maasai community from Loliondo District.

To achieve that end, this study is divided into three parts. The first part which is covered by four chapters contains preliminary information and clarification of important concepts such as a brief overview of the indigenous people in Africa and Tanzania, Political and Economic overview of the Maasai Community, the Justice System in Tanzania and a highlight of the laws that regulate and protects the land rights of the indigenous people in Tanzania as well as a detailed review of the Literatures on the rights of the indigenous people. Likewise, the objective of the study and statement of the problem, among other things, is found in the first part of the study. the second part provides a brief analysis of land and land rights in Tanzania, exploration of eviction of Maasai communities from their land parcels, Tanzania human rights obligations. the last part covers, findings interpretation, conclusion and recommendations. this is to be found in chapters seven, eight, nine and ten.

This study is to a large extent a theoretical examination of the justice system and legal framework existing in Tanzanian in protecting land right of the indigenous Tanzanian societies especially the Maasai people in Loliondo District. In this regard, most of the content of the study is an output of an in-depth study of the relevant Acts of parliament and customary law. Also, consultation of text books and other writings on the subject both hard and soft copies. In the context of search in text, it will be observed in the bibliography that, there are very few Tanzanian books on land law and non on the customary land tenure. Not much has been written on the land rights of the indigenous people in Tanzania. But I consulted papers, articles, reports and thesis as we could find related to the study at hand.

A field research was conducted in Tanzania. I thought the field research would help to test the hypotheses on the ground. I was convinced that a field research not only would enhance my understanding on effectiveness of the Justice system and the Legal framework in Tanzania but would unearth some issues which otherwise would not have

been covered by the study. In the field research I targeted academics, the victims, professional advisors (legal practitioners), NGOs and Legal Clinics.

I also managed to talk to legal practitioners (professional advisors). As people who are aware of the existing justice system and legal framework in Tanzania and their effectiveness when it comes to addressing issues pertaining to cases which involves eviction of the indigenous people from their land and alike, I wanted to share their practical experiences whenever they are in one way or another engaged in settling the disputes involving the indigenous communities. I thought their views on this will be essential to ascertain the extent to which the indigenous communities are consulting them whenever their land rights are infringed. I also visited organizations dealing with land, human rights and legal aid issues. I visited government institutions especially the Ministry responsible for Land, and finally I visited the Judiciary especially the High Court (Land Division), and Loliondo Ward Tribunal and District land and Housing Tribunal. In connection to the above, I managed to meet a member of the Village Land Council - an adjudication institution in the primary level, Chairperson of Loliondo Ward Tribunal and Loliondo District Land and Housing Tribunal.

The mode of the research was mainly by way of interview. In rare occasions I embarked on questionnaire. However, contrary to my plan, I failed to be afforded with much information from the Ministry responsible for Land, and to meet some prominent academics whose views I believe would have been useful. All in all, we are convinced that the overall objectives of the study were achieved.

Also, after Informing the interviewees the purpose of the interview they accepted to be interviewed but with the condition that their names should not appear anywhere in the paper due to the sensitivity of the issues surrounding the evictions in Loliondo District. Some have even gone through harassment by the government for speaking out on this issue.

The outcomes of the field research are used for illustrative purposes throughout this work but not the basis for conclusion.

III. LITERATURE REVIEW

1. An overview

This chapter presents the review of the related literature on land eviction in Loliondo district by looking at whether the justice system and legal framework effectively protect indigenous land tenure rights among pastoralists. This chapter is presented into different sub–themes, starting with the concept on the use of the term indigenous peoples in Africa and in Tanzania, the concept justice system followed by a critical review of the literatures and their respective synthesis.

2. Term Indigenous Peoples in Africa And in Tanzania

The term "in-digenous" is often misunderstood for various reasons, including an opinion that most Africans are indigenous to the African continent.

Etymologically, the term "indigenous" derives from the Latin word "indige- na" made up of two words, namely indi, meaning "within" and gen or genere meaning "root".[13] In other words, the term "indigenous" refers to "born in", "something that comes from the country in which it is found", "native of", or "aborigine", in contrast to "foreign" or "brought in".

To reach its current understanding in international law, the meaning of the term "indigenous" seems to have evolved through several distinct phases.

The first meaning of the concept, referred to hereafter as "the colonial meaning", can be considered as an alteration of the term's etymological understanding for colonial purposes.

The second meaning of the term "indigenous" can be seen as having emerged in the aftermath of the creation of the United Nations and the decolonization process and was confirmed by the adoption of ILO (International Labour Organization) Convention No. 107.

Finally, it seems that the current understanding of the term "indigenous" is the result of the process starting with the Martínez Cobo study launched in 1972 that lead

[13] Charles Annandale, Home Study Dictionary (London: Peter Haddock Ltd., 1999), p. 374. See also Collins School Dictionary (UK: Harper Collins Publishers, 1993), p. 370, and Longman Dictionary of Contemporary English, 3rd ed. (Harlowe: Longman, 1995), p. 724.

up to the adoption of ILO Convention No. 169 in 1989, as well as of subsequent efforts to develop the concept by—among others—the U.N. Working Group on Indigenous Populations (WGIP, established in 1982), the World Bank (OD 4.20 in 1991 and OP 4.10 in 2004) and the African Commission on Human and Peoples' Rights (2003). In Eastern Africa, the Maasai (estimated to number up to 500,000) self-identify themselves as indigenous peoples to lands stretching over Kenya and Tanzania.[14]

They could be considered as amongst the most active Eastern African communities with regard to claiming indigenous status and all this involves, including rights over resources. As early as 1912, the Maasai of Kenya were already in court to proclaim and protect their indigenous lands against the colonial Government. Despite ruling against the Maasai plaintiffs, the court recognized that they were sovereign over their lands.[15]

The Maasai have also used regional and international stages to proclaim their indigenousness. At the 1999 "Conference on Indigenous Peoples from Eastern, Central, and Southern Africa", held in Arusha (Tanzania),[16]a representative of the "Maa Development Association"—a Kenyan Maasai development organization stated: "The Maasai comprise some of the indigenous peoples of East Africa"[17]. On the same occasion, a representative of the Maasai community of the Kiteto District in the Arusha area of Tanzania declared: "We are the people of South Maasai Steppes, we live on semi-arid land. We value our livestock and natural vegetation with relative resources ... we struggle to protect our land, which is home to all the habitats we know in our ecosystem" [18]. Similarly, at a conference held in Kigali/Rwanda on Indigenous Peoples

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[14] In Kenya, the Maasai live in the areas of Narok and Kajiado in the southern part and Nakuru and Laikipia in the central part of the country, whereas the Maasai of Tanzania are found in the areas of Ngorongoro, Simanjiro, Kiteto, and Oldoinyo le Engai. The Maasai communities in Kenya and Tanzania are estimated to have some 155,000 and 330,000 members, respectively. See Website of Maasai-Infoline: http://maasai-infoline.org/TheMaasaipeople.html

[15] Ole Njogo and 7 Others v. The Honorable Attorney General and 20 Others, Civil Case No. 91 of 1912 Court of Appeal for Eastern Africa [1913], 5 E.A.L.R. 70.

[16] This conference was organized by PINGOs Forum—a Tanzanian umbrella organization for pastoralists and hunter-gatherers and IWGIA.

[17] Mary Simat, "The Situation of the Maasai Women", Indigenous Affairs 2/1999, pp. 39-39. Copenhagen: IWGIA.

[18] Statement by Saruni Ndelelya representing Kinnapa Development Programme, a local non-governmental organization operating in the Kiteto District of Arusha in Tanzania, at the Conference on Indigenous Peoples of Eastern, Central, and Southern Africa, Arusha/Tanzania, January 18- 22, 1999 (unpublished).

in Conservation Areas, representatives of Maasai communities living in the Ngorongoro area of Tanzania showed how their communities considered themselves as indigenous to the Serengeti [19].

There is no a clear-cut definition of indigenous peoples as there is no global consensus on a single universal definition, and nor would such a definition be desirable or necessary.

The question of who an "indigenous" person in Africa is, is of course, controversial and contentious [20].

It is far more relevant and constructive to try to outline the major characteristics that can help identify who the indigenous peoples and communities in Africa are [21].

The overall characteristics of groups identifying themselves as indigenous peoples are that; their cultures and ways of life differ considerably from the dominant society, and that their cultures are under threat, in some cases to the point of extinction. A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional lands and the natural resources thereon.

They suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society. They often live in inaccessible regions, often geographically isolated, and suffer from various forms of marginalization, both politically and socially. They are subjected to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority. This discrimination, domination and marginalization violates their human rights as peoples/communities, threatens the continuation of their cultures and ways of life and prevents them from being able to genuinely participate in decisions regarding their own future and forms of development.

The question of aboriginality or of 'who came first' is not a significant characteristic by which to identify indigenous peoples in itself. Limiting the term 'indigenous peoples' to those local peoples still subject to the political domination of

[19] M. Kaisoe, and W. Ole Seki, "The Conflict between Conventional Conservation Strategies and Indigenous Systems: The Case Study of Ngorongoro Conservation Area" in Indigenous Peoples and Protected Areas, edited by John Nelson and Lindsay Hossack (Moreton in Marsh, UK: Forest Peoples Programme, 2001), p. 141.

[20] Booklet on Indigenous Peoples in Africa by African Commission on Human and Peoples' Rights (ACPHR) and International Working Group on Indigenous Affairs (IWGIA)

[21] https://www.iwgia.org/images/documents/indigenous-world/indigenous-world-2018.

the descendants of colonial settlers makes it very difficult to meaningfully employ the concept in Africa.

Moreover, domination and colonization had not exclusively been practiced by white settlers and colonialists. In Africa, dominant groups have also repressed marginalized groups since independence, and it is this sort of present day internal repression within African states that the contemporary African indigenous movement seeks to address.

Rather than aboriginality, the principle of self-identification is a key criterion for identifying indigenous peoples. This principle requires that peoples identify themselves as indigenous, and as distinctly different from other groups within the state.

There is a strong emphasis on the importance of the principle of self-identification among organizations working on indigenous issues, including the ACHPR, the International Labour Organization (ILO), other UN agencies and indigenous peoples' own organizations.

Most importantly, it is crucial that the critical human rights situation of indigenous peoples is addressed, and, for this purpose, it is necessary to have a concept by which to highlight and analyze their situation.

'Indigenous peoples' is today a term and a global movement fighting for rights and justice for those particular groups who have been left on the margins of development, who are perceived negatively by dominant mainstream development paradigms and whose cultures and lives are subject to discrimination and contempt.

The linking up to a global movement by applying the term 'indigenous peoples' is a way for these groups trying to address their situation, analyze the specific forms of inequalities and repression they suffer from, and overcome the human rights violations by also invoking the protection of international law.

It is the modern analytical understanding of the term 'indigenous peoples', with its focus on the above mentioned criteria of marginalisation, discrimination, cultural difference and self-identification, that has been adopted by the ACHPR. Other organizations, such as the International Labour Organization, the United Nations Working Group on Indigenous Populations and the Indigenous Peoples of Africa Coordinating Committee, have proposed characteristics for identifying indigenous peoples that are very similar to those adopted by the ACHPR.

Even though Tanzania voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007, it does not recognize the existence of any indigenous

peoples in the country and there is no specific national policy or legislation on indigenous peoples per se[22].

In Tanzania the recognition of Indigenous people is the same as all the parts of Africa though the understanding is evolving but there is a growing recognition of the specific rights that they enjoy.

3. Access to Justice

The term "justice" refers to an economic justice or distributive justice, it is concerned with fairness in sharing and procedural justice. It involves the principle of fairness in the sense of fair play, retributive justice or corrective justice (restorative justice)[23]. The term justice is thus a wide concept. The concept of access to justice is a complex term and not easy to construe.

The concept may imply a situation where people in need of help find effective solutions available from justice systems which are accessible, cost-effective and above all, one that will dispense justice more expeditiously, fairly and without fear, favour and or discrimination. The concept access to justices also implies an equitable, fair and legal framework that protects human rights and ensures delivery of justice[24]. More importantly, it also means administrative and judicial remedies and other procedures available to a person aggrieved or likely to be aggrieved by an issue[25]. In addition, access to justice system implies to the opening up of structures and formal systems of the law to the marginalized groups in the society, eliminating financial, legal and social obstacles such as lack of knowledge, language, of legal rights and intimidation by the law and legal institutions[26]. For example, according to ***Dry Associates Limited v Capital Markets Authority & another,*** the court's conception was that; access to justice caters for the enshrinement of rights in the law, expeditious disposal of cases, understanding

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[22] Indigenous World 2018

[23] Kariuki Francis & KariukiMuigua (2015). "Alternative Dispute Resolution, Access to Justice and Development" 1(1) Strathmore Law Journal 1-21, 6.

[24] Hollander-Blumoff Rebecca, & Tom R Tyler (2011). Procedural Justice and the Rule of Law: Fostering Legitimacy in Alternative Dispute Resolution‟ 2011(1) Journal of Dispute Resolution

[25] See, Allison F. & Chris C., (2010). The Role of Indigenous Justice Agreements in Improving Legal and Social Outcomes for Indigenous Peoples‟ 32 Sydney Law Review 660.

[26] Kariuki Francis, &KariukiMuigua (2015).

and awareness of the law, equality in the protection of rights, access to information, affordability of legal services, access to justice systems such as formal or informal and enforcement of judicial decisions without delay.

Access to justice is two-sided. It involves substantive access (fair and just remedy for violation of individual's rights) and concerns with procedural access (fair hearing before an impartial tribunal). In Tanzanian constitution, access to justice demands equality before the law, by demanding that all persons, regardless of ethnic origins, race, or gender are entitled to equal opportunities in all fields, use of community facilities and access to services. Without justice, people are unable to exercise their rights, have their voices heard, challenge discrimination or hold decision-makers accountable[27].

Effective access to justice for indigenous society has several pillars such as the constitution and other laws, formal justice mechanisms, customary justice systems, legal aid policy, administrative mechanisms and rights-based education and awareness which should operate holistically in order to enable the vulnerable indigenous to protect their rights. To them access to justice is based on the interaction between these pillars and with collective rights, such as the right to recognition; the right to land, right natural resources; the right to non-discrimination; the right to be free from violence; the right to development; the right to participation and substantive equality[28].

Although customs have been a conduit for access to justice in Sub-Saharan Africa and Tanzania in particular, but these systems have been subjugated by the colonial-oriented repugnancy clause in. This has further suppressed community elders traditionally representing the indigenous peoples. Addressing their concerns and claims has therefore been ineffective with the State being reluctant to integrate customary systems into national systems.

Studies shows that most of the indigenous peoples in Sub-Saharan Africa and Tanzania in particular have often resorted to courts, but, despite courts affirming their petitions, many governments have blatantly refused to enforce the decisions. The same trend has been observed on the decisions pronounced by regional human rights institutions such as the African Commission on Human and Peoples Rights and the

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[27] SHIVJI, I. G. (1990). *State Coercion and Freedom in Tanzania*, (Human and Peoples' Rights Monographs Series No. 8), Roma, Lesotho: Institute of Southern African Studies of the National University of Lesotho, pp. 81-90.

[28] See, Hollander-Blumoff R, & Tom R.T. (2011).

African Court on Human and Peoples Rights[29]. A notable example is the *Endorois* case, which demonstrates Kenya's failure to recognise and implement judicial decisions on indigenous rights despite the continuous advocacy from the indigenous peoples and their allies. According to Kariuki, due to their inefficiency and corruption courts in Sub-Saharan Africa have become theatres of dramatising the predicaments of indigenous peoples. This example gives important insights into the current study preferably on the failures of the government of Tanzania on the question of access to justice systems and the constitutional recognition of the rights of Maasai people over their customary land right.

For example, Muigua and Kariuki maintain that, legal and law processes in Kenya articulate very confusing and complex codes for indigenous peoples to find the way in the absence of solicitors and barristers[30]. Indigenous peoples in most cases have to contend with unfamiliar system of foreign and complex procedures, rules and forms[31]. Authors added that limited awareness of legal services available exacerbates this complexity as a large number of people are not aware of the means and methods available to get sufficient legal representation. With historical inequalities, modern and disadvantaged indigenous peoples are often impaired in their ability to participate effectively in matter such as obtaining legal assistance and engaging effectively in legal reform processes. They argue that, currently, resources offered to legal service that would assist indigenous people in Australia are inadequate and uncertain. Hence, becoming a challenge to meet the high demand on the legal assistance sector and in turn negatively prohibits indigenous peoples' access to justice system.

Laura and Korir Sing'Oei, argue that inability of the marginalized to access justice in courts is premised on a number of conundrums[32]. For example, include, *inter alia which stands for* lack of information, corruption, excessive legal formalism, geographical distance and inordinate delays. They add that, general challenge of legal poverty comprises many subsidiary problems such as, lack of understanding of what to do in order to vindicate their rights, inadequate basic knowledge on what rights one is

[29] Kariuki F. (2014). "Applicability of Traditional Dispute Resolution Mechanisms in Criminal Cases in Kenya: Case Study of Republic v Mohamed Abdow Mohamed [2013] KLR" (2014) 2(1) Alternative Dispute Resolution Journal 210.

[30] Muigua and Kariuki (n 99) at 8.

[31] Laura A. and Korir Sing'Oei, "Access to Justice for Indigenous Peoples in Africa" 89-112 at 94

[32] Laura A. and Korir Sing'Oei, "Access to Justice for Indigenous Peoples in Africa" 89-112

constitutionally entitled to and the inability to understand the legal language and procedures. Regarding economic challenges, authors maintain that the marginalized are more likely not only unable to initiate a legal process but also carrying it through. Most of the good layers are very expensive and the cost of high court is also very high, hence becoming a heavy burden to most of the disadvantaged people. It is well understood that, any absence of good lawyers significantly reduces the chances of succeeding in a case. Thus, maintaining that, the absence of free legal services for the marginalized and the indigenous peoples in particular, is a teething barrier to access to justice for many indigenous people and poor community members. The author vows that, within the bureaucratic and formalistic subtleties in the adversarial system, an advocate will do better if he/she is aware of how to exploit the existing legal complexities to his or her advantage[33]. These complexities transform justice into something exclusive, reinforcing existing inequalities to the detriment of the disadvantaged. They also added that, these challenges represent significant impediment to the disadvantaged and greatly obstruct their access to justice.

Major concern occupying Laura A. and Korir Sing'Oei' s study is that, the judiciary is far removed from the underprivileged. Their opinion is that, most of the earlier discussed challenges emanate from the very laws that apply to the underprivileged through the judiciary. Some court decisions may be against the underprivileged not out of the judge's personal prejudice, but because the laws applied are inherently skewed against the poor. In the same direction, judicial reforms to enable the poor with better legal representation and impartial judges could still not be a panacea to access to justice. They argue that, these reforms may not shape the rules of law or increase the poor's legal bargaining power. Broader and comprehensive institutional reforms are needed to enhance the unprivileged people access to justice system. This study is much related to the current study on the role of justice systems in protecting Maasai customary land rights in Tanzania.

Writing on the justice for indigenous people in Sub-Saharan Africa context, Makundi found that accessible courts, efficient and quasi-judicial forums are significant to ensure access to justice for all including indigenous community members[34]. He cited that in the case of ***Bernstein v Bester*****105** the Constitutional Court of South Africa

[33] Ibid

[34] Mukundi, G. (2009). South Africa: Constitutional, legislative and administrative provisions concerning indigenous peoples. Geneva: ILO

observed that the state has a duty to establish independent tribunals for the resolution of civil disputes and the prosecution of accused persons. Additionally, Mukundi insisted that courts have a role to play in protecting the rights of the minorities and the marginalized people. It has the power to provide a judicial forum in which the poor can be heard and seek redress in circumstances where the political process could not have successively mobilised to assist them.

From Mukundi's argument, in Sub-Saharan Africa states judicial processes are expensive, technical and take relative too long for matters to be determined. Basing on that, most of indigenous poor people because of their historical and continued marginalization are indigent, hence the need for more courts to espouse their rights[35]. Mukundi, appreciate the fact that Courts in South Africa recognise the need for legal aid in civil aid and criminal matters. The right to legal aid is envisaged for poor people in civil matters under section of the South African Legal Aid Act (1999).

[35] Ibid

4. Challenges facing the marginalized communities in accessing justice support to protect their customary land rights

Many studies worldwide have analysed the question of access to justice by the indigenous communities. For example, Sing'oei, observed that the Constitution of Kenya 2010 is a progressive document that aims at overcoming the failed legal and moral systems developed by earlier regimes. He noted that Kenya's former Constitution separated most of the Kenyan citizens from the state, but marginalized and indigenous peoples bear the burden of exclusion. Sing'Oei spells that, for many years traditional governance structures have been subjugated, leaving poor people and minorities to contend with dominant formal decision making institutions where they have limited or no representation. More specifically, the minority indigenous people have no voice in the formulation and implementation of public policy and are not represented by people belonging to the same social, economic and cultural class as themselves. Lack of participation translates into increased sense of exclusion and vulnerability within the state[36].

The land policy in Tanzania has some deficiencies because it does not guarantee security of tenure to some users, especially smallholder groups. In effect, these deficiencies have resulted into large areas of land being handed over to alternative users and consequently marginalizing the pastoral populations. The root of the conflicts between farmers and herders is the lack of well-defined policies on land especially village land where majority of these two societies are dwelling. The overall objective of the land policy is to promote and ensure secured land tenure system that encourages optimal use of land resources and facilitate broad based social and economic development without upsetting or endangering the ecological balance of the environment (Land Policy 1999: 5 section 2.0)[37]. The problem of lack of security of tenure facing pastoral groups is best exemplified by eviction of Maasai pastoralists from eight villages of Soitsambu, Oloipiri, Ololosokwan, Loosoito/Maaloni, Oloerien Magaiduru, Piyaya, Arash and Malambo in Loliondo District of northern Tanzania.

Appropriation of land from pastoralists in Tanzania like elsewhere in Africa is usually backed by the enduring perception that pastoralism is an irrational, ecologically

[36] See, Sing'Oei Abraham Korir (2015). Kenya at 50: Unrealized Rights of Minorities and Indigenous Peoples. London: Minority Rights Group International

[37] See URT 1999

destructive and economically inefficient production system[38]. These perceptions have consequently resulted in efforts by government policy makers to re-distribute pastoral lands directly to commercial investors in the belief that this is an economically rational policy[39].

Another area where policy deficiencies are conspicuously revealed is on Grazing Land and Animal Feed Resources Act which translates and implements the National Livestock Policy of 2006. The Act provides guidance for the management and control of grazing lands and animal feed resources. Some of the problems identified in the Act include the interpretation of the terms used. For example, the Act defines ―communal grazing land to mean a grazing land owned by a ―livestock keeper and it defines the ―livestock keeper as a person who engages on livestock keeping for ―production.

[38] Manji, A. (2006). The Politics of Land Reform in Africa: From Communal Tenure to Free Markets. Zed Books.

[39] ibid

IV. POLITICAL AND ECONOMIC SYSTEM OF MAASAI PEOPLE

The current land administration structures and tenure concentrated in the pastoralists Maasai areas in Tanzania are as sensitive as they are complex[40]. The concern is on environmental destruction, overgrazing backwardness[41] and a "Tragedy of the Commons" fear regarding degradation of communal lands permeate and, despite at times being contextually inaccurate, continues to underpin agricultural and livestock sectors" policies debates over land tenure and natural resources management in Tanzania[42]. The Maasai are reliant upon access to communal grazing land to earn a living through livestock[43]. Land, and, by default any land policy and/or land administration institution matter(s), therefore is a resource that the Maasai care deeply about.

For many years pastoralists Maasais are conceived by the Tanzanian government as "rigid and backward" community[44]. This conception underpins many decisions made with regards to natural resources governance, at times, devastating consequences not for the Maasai only but for the economic and environmental aspirations of Tanzania [45]. In Tanzania, pastoralism is mainly found in the northern plains and it is traditionally practiced in areas where climatic and soil conditions do not support crop production. The current geographical boundaries of the Maasai areas in Tanzania are spread from the northern savannah plains to the southern highlands. Maasai people livelihood largely depends on cattle and other small livestock. Additionally, they also supplement their livelihood through small scale subsistence farming although in some geographic areas cultivation is banned for ecological reasons

[40] Igoe, J. & Brockington, D. (1999). Pastoral Land Tenure and Community Conservation: A Case Study from North-East Tanzania'. London, UK, International Institute for the Environment and Development, Pastoral Land Tenure Series No. 11: 1-103.

[41] Ibid

[42] Hayakawa, S. H. (2011). Maasai women protest land seizure in Tanzania, 2009. Published on Global Non-violent Action Database.

[43] Ibid

[44] See Igoe, J. & Brockington, D. (1999) and Arusha Times Newspapers, April, (2010). Maasai communities adopting agriculture in Loliondo GCA

[45] MacGregor, J. and Hesse, C. (2006). Valuing pastoralism in East Africa. IIED (in press).

including protection of wildlife but also as a means of preventing erosion and land degradation[46].

Soon after her independence in 1961 Tanzania became a socialist country whereby all resources belonged to the public sector. This included land. However, things were practically the contrary. Due to the sense of oneness the government devised "villagilization" program for specific geographic areas which included Maasai land. In these designated areas, the government provided social services by building health facilities, schools and other infrastructures. Such investment was beneficial and much needed[47]. Unfortunately, since then and even currently, the pastoral Maasai continue to be neglected from many service provision and developments simply because of the notion that the Maasai people are living in inaccessible areas and roam around[48]. This was true when the Maasai had the land available to practice nomadic pastoralism but with the increasing land evictions and reductions of permitted grazing land areas, pressure has increased on the land, rendering pastoralism form of livelihood no longer sustainable for the entire Maasai population[49]. Establishment of conservation areas has to a large extent forced Maasai people to change their livelihood system, forcing the Maasai to re-structure their pastoralist system accordingly[50]. For example, the creation of Serengeti National Park affected important grazing and water resources, including early wet season grazing areas, permanent water sources (the Gurmeti and Pololet rivers) and drought refuge site from use by Maasai pastoralists in Loliondo. Consequently, this has affected utilization of resources throughout the Maasai rangelands.

Arguably, increased land demands for urban and conservation expansions are in conflict with the pastoralists communal use of grazing land[51]. This situation has

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[46] Sundet, Geir. 1997, unpublished. The Politics of Land in Tanzania. PhD Thesis (Unpublished), University of Oxford, Oxford, UK.

[47] Shivji, Issa, and Marc Wuyts. 2008. "Reflections, Issa Shivji, Interviewed by Marc Wuyts." Development and Change no. 39(6): 1079-1090.

[48] Ndagala, D. (1990). Pastoralists and the State in Tanzania ', Nomadic People 25–27: 51 64.

[49] Ole Lengisugi, N.A. (1997). An Overview of Pastoral Situation in Tanzania. A Paper presented at a seminar on Pastoralism and Environment organized by JET, Arusha.

[50] Rodgers, W.A. (2009). *Maasai land Ecology: Pastoralists Development and Wildlife conservation.* 298 p. Cambridge University Press, Cambridge.

[51] Havnevik, K.J. 1995. "Pressing Land Tenure Issues in Tanzania in Light of Experiences from Other Sub Saharan African Countries," *Forum for Development Studies*, No.2.

necessitated diversification within pastoralist Maasai communities[52]. This is the main source of conflict encroachment of a capitalist system with indigenous ways of life. On one hand, in many ways by entering into the capitalist economy and diversifying, Maasai people are able to benefit from the services such as better education, healthcare facilities and increasing their capacity through education to seek and defend their rights[53]. However, on the other hand it led to conflicts, creation of classes between those who wish to continue to exist and maintain the Maasai traditional way of life and those who wish to have a new way of life. This creates groups that want different property rights within the Maasai community, those who prefer traditional system and those who opt for private land ownership.

Since the government of Tanzania shifted towards a neoliberal economy in the 1980's, pressure on land increased thus pastoralist lands have increasingly been considered as the best opportunity for investment or for protecting nature areas that underpinned economic development through increased tourism[54]. For instance, the Maasai people in Loliondo were evicted from their traditional land to create space for wildlife conservation in "savannah ecosystems"[55], under the heading of the "green economy" pressure[56]. Land continues to be a significant resource since the resource demand legacy of the colonial period to both former colonial powers and local demands that required access to Tanzania's valuable resources including land[57]. Pastoralist traditional way of life and the way they use and manage their lands and resources have now started to be viewed as a major obstacle an "*opportunity* cost" to the contemporary economic development of Tanzania[58].

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[52] Shem, M.N., Mtengeti, E. and Mutayoba, K.S. (2005). Development of Livestock Management and Policy Strategies for Pastoralists in Kilosa, Morogoro Region, Tanzania. Final Report for ICAD.

[53] Igoe, J. & Brockington, D. (1999). Pastoral Land Tenure and Community Conservation: A Case Study from North-East Tanzania'. London, UK, *International Institute for the Environment and Development,* Pastoral Land Tenure Series No. 11: 1-103.

[54] Campbell, K., V. Nelson, and M. Loibooki. 2001. Sustainable use of wildland resources: Ecological, economic and social interactions. An analysis of illegal hunting of wildlife in Serengeti National Park. Final Technical Report. DFID, London.

[55] Holmern, T.E. Roskaft, J. Mbaruka, S. Y. Mkama, and J. Muya. 2002. Uneconomical game cropping in a community-based conservation project outside the Serengeti National Park, Tanzania. Oryx 36:364-372

[56] Ibid

[57] Ibid,

[58] Johannesen, A. B. 2002. Wildlife conservation policies and incentives to hunt: an empirical analysis of illegal hunting in Western Serengeti, Tanzania. Economy, Trondheim.

Economic growth and development have put an economic value on land that in the past days had intrinsic value to those who owned it and expanded intensification of land use changes which, consequently, challenges, the once, sustainable pastoralism. Subsequently, development within Tanzania has been observed by the great expansion of conservation areas and urban settlements reducing and encroaching upon the land available for pasture[59]. This has caused many common grazing systems to consequently become less sustainable than or increased the likelihood of overgrazing than what was traditionally. In the past decades such systems such as stock routes, grazing lands during dry or wet season were regularly changed to avoid overgrazing, but lately the Maasai are facing challenges in rearranging their common systems to ease the flow of their system due to land pressure surrounding them[60]. The economic and political changes within Tanzania resulting from this process of rapid economic development have transformed ideas, practices, and power relations in a manner that has failed to take account of and engage with pastoralism.

[59] Kaltenborn, B. P., J. W. Nyahongo, and M. K. Tingstad. 2005. The nature of hunting around the Western Corridor of Serengeti National Park, Tanzania. European Journal of Wildlife Research.

[60] Sinclair, A. R. E. 1995. Serengeti past and present. Pages 3-30 in A. Sinclair, and P. Arcese, editors.

V. JUSTICE SYSTEM AND LEGAL FRAMEWORK IN TANZANIA

In order to appreciate the essence of this study, it is of utmost significance to provide an overview of the Justice system as well as a highlight of the legal framework in Tanzania. Basically, this chapter will provide a brief explanation of the existing Court system in Tanzania, much emphasis being on addressing land issues and some pieces of legislations as well as international instruments which protects, recognize and promote human rights especially rights to own land.

1. Justice system in Tanzania

Under this subtitle, with due respect to broadness of the term justice, I will concentrate on the Court system in Tanzania as established by various domestic and international laws.

In Tanzania, the hierarchy of the Courts in both Civil and Criminal matters start from the Primary Court which is the lowest Court in the hierarchy, followed by the District Courts, the Resident Magistrate Courts, the High Court of Tanzania and the Court of Appeal of Tanzania which is the supreme and highest Court in the hierarchy. Like other Countries there are a number of factors that must be considered before instituting a matter or referring a matter to a particular court.

In that case, an individual seeking assistance from the court must ascertain the jurisdiction of the court prior to instituting a matter or referring a matter. The determining factors are ranging from geographical position, subject matter, value and so forth.

Due to the complexity and influx of land disputes in Tanzania, the Government with effect from 2002 established a new court system specifically to address land issues. The said Courts were established by the Land Dispute Courts Act[61] which provides for, among other things, their jurisdiction, composition and procedure.

[61] Act no 2 of 2002/ [Cap 216 R.E 2002]

A. The Village Land Council

This is the council of seven members of whom three shall be women nominated by village council and approved by the Village Assembly so as to address land disputes at the village level. The members of the Council are nominated and approved pursuant to the Village Land Act[62]. The council is vested with powers to receive and mediate land disputes. The Village Land Council is recognized as a Court and empowered under the Land Dispute Courts Act [63] to mediate land disputes and to assist the disputing Parties to reach an amicable settlement. The rules of procedure to be followed by the Village Land Council are provided under the Village Land Act[64].

B. The Ward Tribunals

These are Tribunals conferred with the power of the Courts in addressing land disputes in Tanzania. These Tribunals are vested with power to settle land disputes arising in the area of the District in which they are located. Apart from being vested with original jurisdiction, they are appellate bodies for all appeals originating from the Village Land Council[65]. These Tribunals are according to the law, required to be composed of not less than four but not more than eight members of whom three must be women. The members are elected under the provision of the Ward Tribunals Act[66]. The powers, applicable laws and rules of procedure are provided under the Ward Tribunals Act[67], the Land Act[68], Village Land Act[69] and Land Disputes Courts Act[70].

[62] Cap 114 RE 2002
[63] Section(s) 3,5,6, and 7 of the Act
[64] Supra
[65] Section 9 of the Land Disputes Courts Act and Section 62 of the Village Land Act
[66] Section 10 of the Ward Tribunal Act, Supra
[67] Supra
[68] Supra
[69] Supra
[70] Supra

C. The District Land and Housing Tribunals

These are Tribunals established under the Land Disputes Courts Act[71], for the purposes of addressing land disputes in the whole district, zone or region[72] in which they are located. They have original jurisdiction on land disputes if the value of the land dispute is above the pecuniary jurisdiction of the Ward Tribunal and they are appellate bodies for disputes arising from the Ward Tribunals. The Tribunal shall be deemed to be properly constituted when it is held by the Chairperson assisted by two assessors[73]. The powers, applicable laws and rules of procedure are provided under the Land Dispute Court Act[74], the Land Act[75], the Village Land Act[76] and the Land Dispute Courts (The District Land and Housing Tribunal) Regulations, 2003.

D. The High Court of Tanzania (Land Division)

This is a division of the High Court of Tanzania established to settle the land disputes whose pecuniary jurisdiction is above the prescribed limit of the District Land and Housing Tribunals[77]. It is also the appellate body of all disputes arising out of the District Land and Housing Tribunals[78]. The High Court in addressing land issues is required to be presided by a Judge sitting with two assessors. The powers, applicable laws and rules of procedure are provided under the Land Dispute Court[79] Act, the Land Act[80], the Village Land Act[81], The Land Acquisition Act[82], the Land Dispute Courts Act[83] and any written laws relating to Land.

[71] Supra
[72] Supra
[73] Section 22(1) of the District Land and Housing Tribunals, Supra
[74] Supra
[75] Supra
[76] Supra
[77] Section 37 of the Land Disputes Courts Act, Supra
[78] Section 38 of the Land Disputes Courts Act, Supra
[79] Supra
[80] Supra
[81] Supra
[82] Supra
[83] Supra

E. The Court of Appeal of Tanzania.

This is the supreme Court in the Hierarchy. It is established under the provision of the Constitution of United Republic of Tanzania[84] so as to entertain appeals from the High Court and all courts subordinate thereto. Likewise, in land disputes, the Court of Appeal is vested with jurisdiction to hear and determine appeals from the High Court (Land Division)[85]. The composition and laws applicable, procedure and jurisdiction of the Court of Appeal in determining land disputes is stipulated in the Constitution of the United Republic of Tanzania[86], the Land Act[87], Village land Act, The Appellate Jurisdiction Act[88] and so forth.

Therefore, theoretically Tanzania as a country has laid down a well-defined Justice System as explored above. Numerous Courts have been established to ensure the rights of people are protected and justice is done. This study however, has been made to ascertain the effectiveness of the established system in protection of the rights of the indigenous people especially the right to own land, and it went further on exploring the awareness of the indigenous people on the existence of such systems and how helpful is in addressing their land disputes.

2. The legal Framework in Tanzania

In this study, the term legal framework has been narrowed to cover the Constitution of the United Republic of Tanzania, some pieces of legislations that have been enacted by the Tanzanian Parliament, Customary laws and other written laws existing in Tanzania to protect, promote and guarantee land rights.

Throughout this study the term constitution is mentioned. The constitution is the supreme law of the land with which all laws must be consistent. It empowers the government to govern while at the same time, it places a control mechanism to prevent oppressive use of the power [89].

[84] Article 117(1), Supra
[85] Section 48 (1) of the Land Disputes Courts Act, Supra
[86] Supra
[87] Supra
[88][Cap 114 R.E 2002]

[89] The idea of constitutionalism is that government should derive its power from the constitution and that its power should be limited to those set out in the constitution. See De Waal, J. & Currie, I. et al. The Bill of Rights Handbook. 4th ed. Cape Town: Juta, 2000. p. 7.

The Constitution of the United Republic of Tanzania of 1977 as amended from time to time, limits the government's power in two ways. Firstly, it imposes structural and procedural limitations of power by stipulating which institutions or organ of the state should exercise what powers and sets specific procedural limitations to be followed in exercising the power[90]. The Tanzanian Constitution stipulates which organ of state is vested with what power. Secondly, through the incorporation of the Bill of Rights in the constitution, it provides and imposes substantive limitations of the power and the rights of the state and its subjects[91].

Therefore, the Constitution ultimately determines the validity of other laws. The Land Act[92], under section 180 (1) begins with the words "subject to the provisions of the Constitution and this Act", clearly admitting the governance of the constitution in interpreting and applying other laws. However, the constitution by itself is indeed a mother law. As we have seen, the constitution imposes limitations on the exercise of power by the executive in all spheres of people's lives including land ownership. The constitution provides some rights, which can be relied on solely by holders to protect their property rights. For instance, article 12 (1) declares that "all human beings are born free and are all equal".

This provision is used to invalidate Acts of parliament and/or customary laws which subjugate or discriminate against persons on the basis of nationality, tribe, place of origin, colour, religion, or station in life. The list is in exhaustive.

The protections afforded to persons under the Bill of Rights are easy to ascertain. The immediate question is, are the rights equally extended towards the indigenous people?

The 1977 Constitution of Tanzania, (last amended in 2005), does not specifically provide for indigenous peoples. Nor does it use the words "indigenous" and "minorities". It only recognizes the general principle of non-discrimination.[93] Because of this lacuna, a number of early attempts by lawyers to make a case for indigenous communities' right to lands were built upon the constitutional right to property.

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[90] De Waal, p. 7.
[91] Ibid
[92] Supra

[93] Constitution of Tanzania, Chapter 3, Sections 12 and 13, which deals with human rights.

VI. LAND AND LAND RIGHTS IN TANZANIA

This section provides a brief history and explanation of land ownership and tenure in Tanzania. This is crucial in understanding what is at issue between the indigenous people (the Maasai people in particular) and the government over land. It is crucial to take note right from the outset that there is a fundamental difference between practice and law on land ownership in Tanzania today.

1. Historical Context of Land Tenure

A. Pre-Colonial Period

During the pre-colonial period, land was the major means of production. The communities depended on their land and the natural resources found therein. Further, communities had their own system of rules in the form of customs and traditions which regulated the use and sustainable management of land and other natural resources found in their territory

In this period land holding was based on customary laws of the different tribes in Tanzania (in all 127). Land tittle was based on traditions and customs of the respective tribes. Ownership of land was communal, family ownership, clan or tribal ownership. Chiefs, headmen and elders had the power to administer land on behalf of the community.

These powers continued through the colonial era though they were limited by the newly introduced German and later British land tenure systems under which all lands were declared to be crown and public lands respectively. The customary land tenure is still in place, but since 1963 the chiefs, headmen and elders were replaced by elected village councils.

One of the main features of pre-colonial society was that each member of the society was assured land for his own use and the use of the family.

B. Colonial Period

Tanzania was under German colonial rule from 1884 to 1916 and the British ruled from 1917 to 1961. The country attained its Independence in 1961.

The Germans issued an Imperial Decree in 1985 which declared that all land, whether occupied or not was treated as unowned crown land and vested in the Empire, except claims of ownership by private persons, chiefs or native communities which could be proved. A distinction was made between claims and rights of occupancy. Claims were to be proved by documentary evidence while occupation by fact of cultivation and possession.[94] In practice, only settlers engaged in plantation agriculture such as sisal, coffee, rubber and cotton, hence could prove their title and enjoyed security of tenure. The indigenous people could not prove ownership. Hence, they were left with permissive rights of occupancy.

The policy of the German colonial administration vacillated between plantation agriculture ran by settlers and African small peasants cultivation. Generally, the policy favoured alienating land to the settlers by outright sale or lease. By the end of the First World War some of the best lands in the highlands and farm amounting to 1,300,000 acres had been alienated to foreigners.

After the First World War Tanganyika became a Trust Territory under British Administration which by International Agreement was required to take into consideration native laws and customs in framing laws relating to holding or transfer of land or natural resources and to respect the rights and safeguard the present and future interests of the native population. No native land or natural resources could be transferred to non – natives without prior consent of the competent authorities.

The British passed their major land tenure legislation in 1923 called the Land Ordinance Cap. 113 which declared all lands, whether occupied or unoccupied as public lands, except for the title or interest of land which had been lawfully acquired before the commencement of the Ordinance.

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[94] See the case of Mtoro Bin Mwamba v The Attorney General, EACA, Civil Appeal No. 29 of 1952. In this case the East African Court of Appeal provided that the natives of Tanganyika, like other natives of Africa do not know anything about individual right ownership over land which is equivalent to freehold tenure as known to English law. The court further provided that the usual form of native title is that of a usufructuary title, which is a mere right to use land; and may also be termed as occupational or agricultural right.

All public lands and interests were vested under the control of the Governor to be held for use and common benefits of the natives.

The new land law introduced a land tenure system called the **Right of Occupancy** which was either granted or deemed right. The granted right of occupancy was statutory while deemed right was customary, which is a title of a native or a native community lawfully using or occupying land in accordance with native laws and customs.

However, the deemed rights have never enjoyed the same security as the granted rights under the statute. In practice the customary rights were governed by administrative policy, while the granted rights were subject to legal stipulations. In the 44 years of British Rule, 3.5 million acres were alienated from the native lands in favour of settlers (foreigners).

The approach of the colonial regimes to vest land in the State as the ultimate landlord is fundamental and was inherited unmodified by the independent Government of Tanganyika for 38 years. The basic principle of customary land tenure is that; land is held for use, and as long as it is used, the occupier maintains control over it.

C. Post-Colonial Period

At independence the Tanzanian Government maintained more or less the same colonial land policy and practices with some minor reforms till 1995. The land is vested in the President who holds the radical title.

From 1960s following the 1967 Arusha Declaration, Tanzania adopted its own Socialism; Socialism and Self Reliance (Ujamaa na Kujitegemea). Under this ideology, Ujamaa villages were established in rural areas with communal ownership of land and other basic goods. Rural inhabitants were required to settle in these villages. The restructuring of villages into Ujamaa villages ignored the existing customary rights to land[95]. As a result, some people including the indigenous peoples were evicted from their ancestral lands. Although private ownership was highly discouraged during socialism, there were few circumstances where the State allocated land to some private

[95] See Rebecka Isaksson and Ida Sigte, Allocation of Tanzanian Village Land to Foreign Investors Conformity to Tanzania's Constitution and the African Charter on Human and Peoples" Rights, at p.18, available at http://www.jus.umu.se/digitalAssets/52/52924_ida-sigte-rebecka-isaksson-ht09.pdf

investors. A good example is the instance in 1970, when the government allocated 379,000 acres of land in Monduli district to an individual investor.

In 1984, the Constitution of the United Republic was amended to introduce, for the first time, the Bill of Rights[96]. Under the amended constitution the right to property is recognised among others[97]. Customary right of occupancy, including a deemed right of occupancy is also recognised as property protected under the Constitution and which cannot be deprived by the State without fair compensation[98].

2. National Land Policy 1995

Since Tanzania attained its political independence in 1961, it was realized that there was a need to develop a coherent and comprehensive land policy that would define the land tenure and enable proper management and allocation of land in the urban and rural areas and provide a clear position on customary land tenure in the light of profound economic and social reforms that had been undertaken in the last 34 years.

Thus, a new land policy was needed to:

1) Accommodate changes in land use and increase in human population;
2) Control large stock population which increases demand for grazing land and creates serious land degradation;
3) Protect the environment from extension of cultivation to marginal areas;
4) Reduce conflicts in land use between agriculturalists, livestock keepers, forest areas, wildlife areas, water sources and miners;
5) Provide for increased urbanization requiring lands for settlements, industries and commerce and to preserve valuable agriculture land;
6) Facilitate prospective investors who require land as a result of liberalization of the economy and investment promotion;
7) Regularize and confirm the effects of the villagilization programme, the Operation Vijiji (1973 – 1976) on customary land tenure;
8) Protect individual land rights under a pluralistic political system since 1992 and

[96] See Article 24 of the Constitution of the United Republic of Tanzania, 1977 (as amended from time to time)

[97] See Article 24 of the Constitution of the United Republic of Tanzania, 1977 (as amended from time to time)

[98] See the case of Attorney General v Lohay Akonaay and Joseph Lohay 1995 TLR 80 (CA), at p.79.

9) Accommodate Appeal Court decision affirming customary land tenure rights of the local people.

In 1995 a special Presidential commission was formed and following the report of the Presidential Commission of Enquiry on Land Matters (Shivji Commission), a new Land Policy was promulgated. The Policy proposed several reforms in the land sector. To put the Policy into force in 1999, the new land laws (the Land Act which regulate land in urban areas and the Village Land Act which applies in rural areas) were enacted. The new land laws incorporated some of the recommendations which were proposed by the Shivji Commission.

The new Land Laws became operational since May 2001.

The entrenched fundamental principles of the new Land Laws are:

1) To recognize that all land in Tanzania is public land vested in the President as trustee on behalf of all citizens;
2) To ensure that existing rights in land and recognized long standing occupation or use of land are clarified and secured by the law;
3) To facilitate an equitable distribution of and access to land by all citizens;
4) To regulate the amount of land that any one person or corporate body may occupy or use;
5) To ensure that land is used productively and that any such use complies with the principles of sustainable development;
6) To pay full, fair and prompt compensation to any person whose right of occupancy or long standing occupation or customary use of land is revoked or interfered with to their detriment by the State or is acquired;
7) To provide for an efficient, effective, economical or transparent system of land adjudication;
8) To enable all citizens to participate in decision making on matters connected with their occupation or use of land;
9) To facilitate and regulate the operation of a market in land so as to ensure that rural and urban small holders and pastoralists are not disadvantaged;
10) To set out rules of land law accessibly and in a manner which can be readily understood by all citizens;
11) To establish an independent expeditious and just system for the adjudication of land disputes which will hear and determine cases without undue delay;
12) To encourage the dissemination of information about land administration and land law through programmes of public and adult education using all forms of media; and
13) The right of every adult woman to acquire, hold, use deal in land shall to the same extent and subject to the same restrictions be treated as a right of any adult man.

Despite the introduction of the new land laws such as the Land Act, 1999 (Act no.4 of 1999) and the Village Land Act, in 1999 it did not change land tenure which gives the president authority over the land. It is this type of land tenure under which the indigenous people in Tanzania are struggling for their rights over land[99]. The majority of indigenous people hold customary land titles under the deemed right of occupancy.

These two Acts cover three types of lands: "general land", "reserved land" and "village land". The general land is understood as "all public land, which is not reserved or village land", including unoccupied and unused village land;[100] and "the reserved land" as those set apart for national parks, game reserves, forest reserves, marine parks and public recreation parks. Both the general and reserved lands are regulated by the Land Act, whereas "village lands" are regulated by the Village Land Act. Nevertheless, the contradiction which exists between the Land Act and the Village Land Act over general land makes indigenous communities land vulnerable to alienation for other investments[101]. Under the Land Act, indigenous peoples land in villages which are not demarcated and registered as required under the law is considered as unoccupied land open to relocation by the government[102].

As mentioned previously, the President is vested with powers to revoke any rights over land if it is for the public purposes[103]. The law defines public purposes to include where the land is required for exclusive government use; general public use; government schemes; development of agricultural land or for the provision of sites for industrial or commercial development; and social services or housing. The land is also required for public purposes if it is required for sanitary improvement; laying out of or improvement of any new city, municipality, township or minor settlement; development of airfield, port or harbour; and mining for minerals or oil. The law also allows the

[99] Odgaard, R (2006).

[100] Village Land Act 1999, Section 2.

[101] See Homewood, K., (2009), "Changing Land Use, Livelihoods and Wildlife Conservation in Maasailand", Pg. 7

[102] Ibid

[103] See section 3 of the Land Acquisition Act, 1967. The term land is defined under the law to include the surface of the earth and the earth below the surface and all substances other than minerals and petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to land. See section 3 of the Land Act, 1999. Thus, under the law some natural resources such as forests are also considered as part of la

President to revoke rights over land held by any person for public purposes if the land is required for use by the community or a corporation within the community; or by any person or group of persons who, in the opinion of the President, should be granted such land for agricultural development[104]. The revocation of rights over land by the President for public purposes involves paying compensation to the holders of the revoked rights. The law requires compensation to be adequate and prompt[105]. However, experience shows that compensation has not only been inadequate but even some of the holders of rights over land, particularly those holding land under customary right, have been denied compensation[106].

From the afore discussed it is right to conclude that, the land rights recognized to communities and villages seems limited in weight and far from constituting land ownership rights in Tanzania.

Furthermore, all the attempts made to reform the land policy in Tanzania leaves a lot to be desired in matters concerning the indigenous communities in the country. It is high time that the indigenous communities of Tanzania should be recognised and their rights be defined clearly under the Constitution of the United Republic and the different Land Legislations.

[104] See section 4(1) Land Act 1999.

[105] See rules 3 and 4 of the Land (Assessment of the Value of Land for Compensation) Regulations, 2001.

[106] Elia Mwanga (2014) „Legal Implications of Land and Forest tenure in Implementing REDD+: a review of ongoing REDD+ pilot projects in Tanzania" 4 Environmental Liability – Law, Policy and Practice at p.159. In the Case of Lekengere Faru Parutu Kamunyu and 52 Others v Minister for Tourism, Natural Resources and Environment and 3 Others (CA) Civil Appeal No 53 of 1998 (unreported), the indigenous Maasai who occupied land for more than 50 years were refused right over the disputed land on the ground that they failed to show that they were occupying such land in accordance with the law. The Maasai wanted to establish that they have been occupying that land under customary right of occupancy particularly deemed right of occupancy. However, the court decided that the Maasai were not the first ethnic group to arrive on the disputed land. They were thus evicted from their ancestral land without being compensated.

VII. LAND EVICTION IN MAASAI COMMUNITY

In Tanzania the problem of land loss among the Maasai is not a new phenomenon and can be traced back before independence when Maasai people started experiencing extensive land loss[107] as they were displaced from different lands by the government to establish either national parks or other game reserves[108]. After independence under economic liberalization policy in the 1980's private businesses were encouraged and the state withdrew itself from doing businesses. At the same time the state witnessed major policy reforms from state run economy to market based economy. As a result, in the 1990's the country allowed private investors to engage in wildlife related activities in the country such as trophy hunting. It was during this time that, the dominant government owned parastatal in the hunting industry in Tanzania ceased its operations and hence all the hunting blocks were leased to private companies. Loliondo area is the home of Maasai pastoralists who for many years have been using land as a major source for their livelihood without any restrictions. The area is divided into different villages and each village government manages village land under its jurisdiction for its development. With this mandate, coupled with the growth of community based tourism in the country in the 1990's, opened up a large number of opportunities in Loliondo which led to signing of agreements with the village government to conduct wildlife viewing and photographic tourism (camping and wildlife viewing safari) in their areas.

The conflict between the indigenous communities and the hunting companies began immediately after these companies started their businesses in Loliondo but in recent years it has increased significantly. In the last ten years also, population and number of livestock have increased significantly. Similarly, in the same period, weather conditions have been unpredictable with frequent severe droughts than before. All this caused poor growth and poor availability of pasture and water for livestock during dry the seasons. For instance, in 2007, 2008 and 2009 this area experienced long periods of drought which led to loss of almost half of the livestocks by pastoralists.

Despite the fact that International law prohibits states from resorting to forcible evictions of indigenous peoples, the indigenous communities of Tanzania have

[107] Rurai M (2012). Framing of resource use conflicts in Loliondo game controlled area. Thesis: Wageningen University-Holland

[108] Hayakawa, S. H. (2011). Maasai women protest land seizure in Tanzania, 2009. Published on Global Non-violent Action Database.

continued to suffer from the effects caused by forcible eviction. For example, in 2009 the conflicts escalated after the government ordered the pastoralists to be forcefully removed from the area in order to promote hunting activities. To end resistances from the indigenous Maasai, in July 2009 the government leadership of the Ngorongoro District, in collaboration with the OBC (Ottelo Business Cooperation a United Arabs Emirates company) security guards, forcefully evicted Maasai pastoralists by burning more than 200 residential houses[109].

This action by the government ignited the already long existing conflict between the community and the hunting companies to be extremely severe where by some indigenous were either killed or injured by police defending the hunting companies and in retaliation the Maasai community attacked the vehicles belonging to the hunting companies. Maasai people have been and still are serious victims of government persecution because of their resistance to change and insistence on sticking to their cultural way of life.

In early 2010, in the government's attempt to curb the conflicts between hunting companies and indigenous Maasai people, the government under the Ministry of land, Housing and settlements in collaboration with the Ministry of Natural Resources and Tourism introduced a land use plan for the entire Loliondo area with the aim of demarcating and separating the area for wildlife conservation and human activities. This was in line with the new Wildlife Act of 2009 [110], which articulates that human activities will not be allowed to be conducted in any new Game Controlled Area. The indigenous community members were against this new policy as they suspected that it was a strategy for the government to take away their land for the interests of the hunting companies Nevertheless, the government implemented its plan to all the villages in Loliondo with game reserves, including the 6 villages with imminent conflict with the hunting company. This was also a trick of the government to expand tourism by removing groups of pastoralists such as the Maasai from their traditional grazing areas. It was a process in disguise of expanding the National Parks so that tourists can watch game at ease without being bothered and disturbed by indigenous Maasai.

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[109] Coalition of Indigenous Pastoralist and Hunter Gatherer Organizations Shadow Report Concerning the Situation of Economic Social and Cultural Rights of Indigenous Pastoralists and Hunter Gatherers of the United Republic of Tanzania,

[110] URT (2009). The Wildlife Act, 2009. Ministry of Natural Resources and Tourism, Dar Es Salaam. United Republic of Tanzania

In March 2011, the government presented a new land use plan to stakeholders at the district council general assembly meeting and it was rejected by a majority of the councilors who are the community representative. Something to note is that, the same Maasai people who were forcefully taken away to pave way for game reserve, are the ones who were evicted to give way to the establishment of the famous Serengeti National Park in 1959. Again today, they have the reminiscence of losing their land to wildlife and today after more than 52 years the state is coming with an identical plan to take another area from the indigenous Maasai community which is already small for their pastoralist activities[111].

For a long time, efforts to curb these conflicts have been going on but nothing tangible has been achieved. A lot of government resources including money has been used to put these conflicts to an end, but all of these have failed badly. This land plan use suggested by the government stirred up anger among the indigenous communities, local NGOs/CBOs, political leaders in the area and tour operators. There are allegations by community members that the government is favoring the hunting companies on the expense of indigenous community livelihood hence the setting aside the community land prerogative for hunting purposes, for wildlife and game reserve companies[112]. The communities did not accept the proposal of setting a new Game Controlled Area but they accepted to set land and manage wildlife themselves in their own village land as they have been doing for ages.

The government on the other hand claims that the Maasai communities are no longer protecting the environment as they used to in the past, instead they are now being involved in activities which are not friendly to environmental conservation like agriculture and establishing permanent settlement in fragile wildlife area[113]. Therefore, the government conducted an operation in the name of environment protection for conducive wildlife habitats. To support this, the wildlife scientists in Serengeti National Park are arguing that Loliondo GCA is an important migratory route and wildlife corridor from Maasai Mara in Kenya in the north and Ngorongoro Conservation Area in the south. In this conflict everyone is accusing the other side and there is a lot of mistrust of the government and skepticism for whatever the government is planning for the area[114].

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[111] Hayakawa, (2011).
[112] ibid
[113] ibid
[114] Snyder K. A and Sulle E.B. (2011). Tourism in Maasai communities: A chance to improve livelihoods? Journal of Sustainable Tourism.

The approach of the government of using excessive force needs to be re-examined. While this can bring temporary "victory" or “success” on the part of the State, it can hardly lead to a lasting solution[115]. This is vivid since as recently as last year, on the 5th of August 2017, the conflict escalated when Ngorongoro District Commissioner (DC), Mr. Rashid M. Taka, issued an order to the relevant authorities that within five days they should remove all livestock from the so-called Serengeti National Park buffer zones, despite the Maasai villages’ legal claims to the area. After five days, law enforcers and special guards had burned down hundreds of houses and left more than 350 people homeless, many of whom were left to food insecurity, harassment and arbitrary arrest.

There is a need to re-examine the whole process so as to come up with humane solutions which will consider the sensibilities of these indigenous communities. These communities have a right to their ways of life, beliefs, their own language and culture. They deserve acceptance and respect. It is important to note that proper change can only come through dialogue, educational campaign and through conviction and not force. The laws in Tanzania does not recognise neither the indigenous people nor their special rights to their ancestral land. Instead of assisting them to exercise their traditional life as required by the international law, the government of Tanzania strive to force them to change from their traditional life and adopt what is termed as a “civilized life”. Their system of owning land and other natural resources has made it simple for dispossession of their traditional land by the government for other investments. This is, in fact, contrary to the international law to which Tanzania is a part.

Involuntary resettlement and forceful eviction causes serious violations of basic civil, social, political and cultural rights. To the indigenous peoples, forceful evictions sever their relationships with their traditional land.[116] Forceful eviction may further put into an end their traditional way of life and may even put to an end the very existence of the indigenous people[117]. Spiritual lives and traditional practices of medicine, food preparation and other ways of life tied to their ancestral land can easily be destroyed by

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[115] Sendalo, D. S.C. (2009). Review of Land Tenure Policy Implications on pastoralism in Tanzania. Ministry of Livestock Development and Fisheries. Dar Es Salaam Tanzania.

[116] See the Case of the Moiwana Community v. Suriname, Series C No. 124, Inter-American Court of Human Rights (IACHR),

[117]ACHPR & IWGIA, 2005, Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities, Banjul & Copenhagen, at p.15

forcible eviction[118]. Involuntary settlement may also stir conflicts between different ethnic groups. As a result of forcible evictions, the Maasai indigenous community are spreading in different regions of Tanzania in search of pasture and water for their herds. This has led into constant conflicts between indigenous pastoral societies and farmers. It can be observed that conflicts over resource use in Tanzania, particularly land and water between sedentary agriculturists and indigenous nomadic pastoralists have been on the increase from time to time. In some areas these conflicts are so serious to an extent of claiming lives of the people[119]. Mvomero and Kilosa districts in Morogoro region and Kiteto district in Manyara region are but a few examples of areas where land conflicts have resulted into killings of people and destruction of properties.

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[118] See Lennox C. Natural resource development and the rights of minorities and indigenous peoples at p. 14. In Tanzania the Maasai serves as a good example. Traditionally the Maasai are pastoral societies. Continuous evictions of the Maasai from their ancestral land, which in turn has led into shortage of land for grazing their animals, have resulted into constant migrations of the Maasai to urban areas. Some are also engaging in other economic activities, such as cultivation and most of the youths (Morani) are employed as watchmen in urban areas. See C Mung'ong'o and D Mwamfupe (above) at p.5.

[119] In December 2000, 31 people were killed in Ludewa village of Kilosa district following outbreak of conflict between agriculturalists and pastoralists. See C Mung'ong'o and D Mwamfupe

VIII. TANZANIA INTERNATIONAL HUMAN RIGHTS OBLIGATIONS.

Tanzania is committed to the protection and promotion of human rights as articulated in the Constitution of the United republic of Tanzania of 1977 as amended from time to time, the Universal Declaration of Human Rights of 1948, and other regional and international instruments. Since independence the Tanzanian government has undertaken important initiatives in the area of promotion and protection of human rights by domesticating and ratifying a large number of regional and international human rights instruments, establishing national institutions, repealing unconstitutional laws such as Good Governance (CHRAGG), the Commission for Human Rights and implementing the Legal Sector Reform Programme (LSRP) through the Ministry of Constitutional and Legal Affairs. The aim of the reforms includes, integrity and professionalism of legal officers, affordability and access to justice for all social groups, a speedy dispense of justice, and enhancement of independence of the judiciary[120].

Hence Tanzanian government has ratified and signed or acceded to the following regional and international human rights instruments and has taken concerted steps toward domesticating them. These treaties include:

- Convention on the Elimination of All Forms of Discrimination Against Women of 1979 and its Optional Protocol of 1999;
- The Four Geneva Conventions of 1949, as well as Protocols I and II of 1949 to the Geneva Conventions;
- International Covenant on Economic, Social and Cultural Rights of 1966;
- International Covenant on Civil and Political Rights of 1966;
- United Nation's Convention Against Transnational Organized Crime of 2003;
- Convention on the Rights of Persons with Disabilities of 2008 and its Optional Protocol of 2008;
- International Convention on the Elimination of All Forms of Racial Discrimination of 1965;
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1957;
- Convention Relating to the Status of Refugees of 1950;
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime of 2000;
- Rome Statute of the International Criminal Court of 1998;

[120] Bryceson, I., K. J. Havnevik, A. Isinika, I. Jørgensen, L. Melamari, and S. Sønvisen. 2005. Management of Natural Resources Programme, Tanzania, Mid-term Review of TAN-092 Phase III (2002- 2006). Pages 103-110. A report presented to the Ministry of Natural Resources and Tourism, Dar es salaam and the Royal Norwegian Embassy, Dar es Salaam.

- African Charter on Human and Peoples' Rights of 1981;
- Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969;
- Convention on the Rights of the Child of 1989 and its Optional Protocols on the Involvement of Children in Armed Conflicts of 2000 and on the Sale of Children, Child Prostitution, and Child Pornography of 2000;
- Convention Against Discrimination in Education of 1960;
- Convention on the Prevention and Punishment of the Crime of Genocide of 1948;
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 2003;
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights of 1998;
- African Charter on the Rights and Welfare of the Child of 1990; and
- African Youth Charter of 2006.

In addition, after conception of the United Nations Millennium Declaration of 2000, the Tanzanian government has taken initiatives to mainstream human rights in its National strategy for Growth and Reduction of Poverty (NSGRP) and to incorporate them with long-term strategies such as the National Development Vision 2025 for the Mainland Tanzania. In order to ensure that the aforementioned measures are sustainable and to promote their further development, the NSGRP aims at strengthening the development strategies, equality and non-discrimination, highlighting cross-cutting principles like accountability, empowerment, and meaningful participation in all stages of their implementation[121].

There are many institutions within the Government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar that strengthen good governance, accountability, transparency, and constitutional democracy, as well as ensuring the protection of human rights. Among the most important institution is CHRAGG. It was established by the Constitution of the United Republic of Tanzania (Art. 129) as an independent National Human Rights Institution (NHRI) with the mandate to protect and promote human rights. As part of its protective mandate, CHRAGG receives allegations and complaints of violations of human rights and the principles of administrative justice and conducts enquiries or research into those matters. It is also mandated to advise the Government, state organs, and private sector institutions on issues relating to human rights and administrative justice[122].

[121] Rurai M (2012).
[122] ibid

Another key institution is the Prevention and Combating of Corruption Bureau (PCCB), a law enforcement body established by the Prevention and Combating of Corruption Act, 2007. The Bureau is mandated to prevent corruption; investigate allegations of corruption; examine and advise on the practices and procedures of public, parastatal, and private organizations to facilitate the detection of corruption or prevent corruption; and educate society on the effects of corruption.

Other institutions include the Public Leaders' Ethics Secretariat; the National Electoral Commission; the Zanzibar Electoral Commission; the Public Service Commission; the Zanzibar Public Service Commission; the Judicial Service Commission; the Zanzibar Judicial Service Commission; the Controller and Auditor General; the Zanzibar Controller and Auditor General; the Public Procurement Regulatory Agency; the Law Reform Commission; the Zanzibar Law Reform Commission; the President's Office, Planning Commission; the Zanzibar Planning Commission; and the Tanzania Communication and Regulatory Authority[123].

Even though Tanzania has made some efforts, it is insufficient to conclude that it is committed to protect the rights of indigenous minorities as we have seen in the chapters above. Tanzania voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007 but does not recognize the existence of any indigenous peoples in the country and there is no specific national policy or legislation on indigenous peoples per se. On the contrary, a number of policies, strategies and programs that do not reflect the interests of the indigenous peoples in terms of access to land and natural resources, basic social services and justice are continuously being developed, resulting in a deteriorating and increasingly hostile political environment for both pastoralists and hunter-gatherers.[124]

Tanzania supported the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and signed various international human rights treaties but has yet to ratify the ILO Convention 169. Furthermore, the country does not explicitly recognize the

[123] Campbell, K., V. Nelson, and M. Loibooki. 2001. Sustainable use of wildland resources: Ecological, economic and social interactions. An analysis of illegal hunting of wildlife in Serengeti National Park. Final Technical Report. DFID, London.

[124] Indigenous World 2018

existence of Indigenous people and there is "lack of legal and administrative measures that address the intrinsic link between land, identity and traditional culture." [125].

This is of critical importance, as article 1.2 of ILO Convention 169 of 1989 grants rights and protection to people identifying themselves as indigenous.

Furthermore, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are also part of international law, and a number of African states have ratified these conventions, along with other United Nations conventions that protect the rights of indigenous peoples. There is therefore an obligation on African states to honour rights granted to indigenous peoples under common article 1 of the ICCPR and ICESCR, as well as article 27 of the ICCPR. Both the African Charter and the recourse it provides to international law can thus be seen to protect the rights of indigenous peoples.[126]

[125] Chertow, John Ahni. Indigenous Peoples' Rights Ignored as Tanzanian Government Protects Foreign Investors". https://intercontinentalcry.org/Indigenous-peoples-rights-ignored-as-tanzanian-govt-protects-foreign-investors/

[126]The African Commission's work on indigenous peoples Africa http://www.achpr.org/files/specialmechanisms/indigenouspopulations/achpr_wgip_report_summary_version_eng.pdf

IX. FINDING AND FINDINGS INTERPRETATON

1. Overview

The study has examined the effectiveness of the justice system and legal framework existing in Tanzania in protecting the right to land of the indigenous societies, the case study being, the Maasai community in Loliondo District. The study was triggered by the massive eviction of the Maasai community from their ancestral land in the Northern Region of Tanzania called Arusha. As observed in the earlier chapters of this study, the Maasai community lived in Loliondo District since time immemorial.

In chapter three, different sub–themes were presented, starting with the concept of the use of the term indigenous peoples in Africa and in Tanzania, the concept justice system followed by a critical review of the literatures and their respective synthesis. An attempt was made to critically review several literatures pertaining to access to justice by the indigenous communities and the challenges they face whenever they wish to invoke their right to access justice. It has been digested from numerous literatures that, there are various impediments that hinder the marginalized societies like the Maasai to access justice including costs, awareness, discrimination and multiplicity of the laws just to mention a few.

A brief explanation of the political and economic system of the Maasai has been made in chapter four. It can be noted that, since Independence both the National Land Policy and the Land Act have not addressed the problem of pastoral land tenure. The questions of issuance of village land certificates and restoration of range lands were strongly addressed by the policy. But in practice the situation is not the same due to the fact that the policy is silent on the mechanism to address those problems. With regard to the nature of pastoral community, they need a vast area for grazing and sometimes to practice transhumance, but surprisingly the policy is silent on that.

In chapter five, we have basically highlighted the justice system existing in Tanzania, whereby, I provided a summary of the Court system in Tanzania specifically in dealing with land issues. This was crucial to enlighten people in other parts of the world that in Tanzania when conflicts on land arise, there are different set of Courts established to address them. It can be noted that, the jurisdiction of the ordinary courts in land matters has been ousted except the High Court of Tanzania and the Court of

Appeal of Tanzania. Though with the High Court, a division has been established to deal solely with land matters. At the same time, the legal framework is explored, whereby, a summary provision of the laws applicable in addressing land issues in Tanzania ranging from the Constitution of the United Republic of Tanzania, other pieces of principal legislations, customary laws and so forth have been explored.

In chapter six, a historical background of the development and management of land tenure in Tanzania is provided. This chapter clarified the concept of land ownership in Tanzania, that is, how an individual acquire land, proof of ownership and the status he acquires by that ownership. Being aware of the mode of ownership of interest in land, the study pointed out one main fact which is, all land in Tanzania is vested in the President as a trustee, and any other person who acquire interests thereon is a mere tenant. In short, land remains to be a Government property, and no one can acquire absolute ownership of the same. Again, it is established from this part of the study, that in Tanzania there is customary land tenure which is in most cases acquired in the village land and granted land tenure which is normally granted in the surveyed land, majority of which are situated in towns. The two tenures are said to entitle an individual either customary right of occupancy or granted right of occupancy respectively. This chapter was essential because it pinpointed the mode of land ownership exercised by the Maasai community on one hand and shed light on the recognition of the customary right of occupancy by Tanzanian legislations, on the other hand.

Chapter 7 which is the main theme of the study, highlights various episodes of eviction of the Maasai people from their pieces of land by the Government machineries and private companies claiming that the Maasai, who are indigenous in the said area, are trespassers. The chapter trace back the origin of the problem since before independence to the present years whereby, the Maasais are victims of eviction from their land as a result migrating from one area to another hence starring up conflicts with the Agricultural societies. Also, the chapter concentrates mainly on depicting whether or not the manner in which the Maasai land is taken from them is justified or not.

Chapter Eight, albeit in brief, explores Tanzania's International human rights obligation. Herein, I have attempted to point out the commitment of Tanzania as a country to ensure that human rights are guaranteed, promoted and protected. To make it interesting, I have explored the efforts of the country to ensure recognition of human rights it's since independence to date. From this chapter, I found it worth mentioning the fact that Tanzania has incorporated the Bill of Rights in its Constitution, established and allowed to be established various domestic and international

institutions/organizations on human rights, enacted numerous laws as well as ratified a number of international human rights instruments. However, I have not gone into details of each and every international human rights instrument ratified by Tanzania so as to remain within the four angles of the study.

The discussion on the methodology used during this study is discussed in Chapter two, findings and findings interpretation are explored in the current chapter (9) as well as the conclusion is explored in chapter ten. It has been stated in chapter two that, during the study, different data collection methods and techniques such as library research, administration of questionnaires and interviews have been employed. In findings, it can be seen that, the Justice system and legal framework existing in Tanzania are not effective to protect the rights of the indigenous community against unfair and illegal eviction from their ancestral land, because the system have some inherent weaknesses which makes access to justice rather a myth to most of the indigenous communities like the Maasai community.

2. Findings and Findings Interpretation

Before presenting the findings and observations on this study, it has to be noted that, the findings of this study are the output of an independent research that has been conducted and therefore, are neither ill motived nor influenced by any third party or a group of people.

Having devoted much energy, time and resources, I realized that, there are some major setback in the current set up of the existing justice system and legal framework in Tanzania in protecting the rights of the indigenous population notably the Maasai community in Loliondo District. The System is harsh and unsuitable to the indigenous communities as we will find out in this chapter. This study went further on providing an account of other factors that makes it difficult for the indigenous to access justice. Notably:

A. Costs of Advocates

Despite the fact that, in Tanzania Advocates fees are regulated on the basis of the subject matter by the **Advocates Remuneration Order**[127], the costs of engaging an

[127] GN number 267 of 2015

advocate to assist an individual in pursuing his or her rights are very high and unaffordable by the majority of the indigenous people. Only a few are capable of paying an advocate in that regard. As mentioned in the previous parts of this study, the laws, procedures and norms of the Courts in Tanzania makes it cumbersome for an individual to pursue his or her case by themselves due to the numerous sets of legal documents that need to be drafted and submitted to the Court with proper jurisdiction and within the prescribed time, thus, the need for an advocate is inevitable. The knowledge as to where and when to lodge an application whenever ones' rights have been infringed remains a big challenge to the majority of the Maasai people in Loliondo District. The question as to why they shouldn't lodge their complaint or application, as the case may be, at the Ward Tribunals where the procedure is simplified, and advocates are not required cans simply be answered; is because the pecuniary jurisdiction of these Tribunals is three Million Tanzanian shillings (equivalent to 1,200 Euros) only, therefore; if the value of the land is above that threshold then the Ward Tribunals lacks jurisdiction. Therefore, when their right to own land is infringed/ denied by either the Government or Private Companies which claim ownership, access to justice remains difficult to the Maasai community due to the high costs of hiring an advocate, among other things. This was mentioned to be the major setback by most of the indigenous people in Loliondo District notably in Ololosokwan village.

B. Knowledge of the Laws

As we have seen earlier, that indigenous communities suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society. They often live in inaccessible regions, often geographically isolated, and suffer from various forms of marginalization, both politically and socially thus the Maasai are not an exception and their way of life has alienated them from the so called developed areas of the country where the majority of the population are aware of the laws and are educated.

From that, an analogy can be drawn that a majority of them do not possess adequate knowledge of the laws regulating land matters in Tanzania and the appropriate laws that protect their rights as well as the manner in which to enforce the same. As a result of this, when evicted from their parcels of land, it becomes difficult to pursue their rights via the appropriate channels. Therefore, it is not always a question of the ineffective justice system and legal framework but also the knowledge of the indigenous

population which the Government and other private companies take advantage of, to deny them their rights. It is crucial for the rest of Tanzanian population, when need arise, to assist them in pursuing their rights. The African Commission on Human and Peoples' Rights in the case of **Centre For Minority Rights Development & Minority Rights Group International (Mrg) On Behalf Of The Endorois Community V The Republic Of Kenya,** declared the Expulsion of the indigenous people (the Endorois' tribe) from their ancestral land by the Government of Kenya as illegal because the Endorois had Prior to Government interference used the disputed land and lived peacefully thereon as well as were accepted as the owners of the land by all neighboring tribes, and had enjoyed the land for more than 300 years. Endorois were firmly linked to Lake Bogoria and the surrounding area, known as Mochongoi forest through cultural and religious practices but the Government evicted them claiming the area to be a National Reserve.

The lesson that can be drawn from this case is that the indigenous communities right to own land are legally recognized and protected but due to their lack of knowledge on the proper channels to enforce their rights, they end up losing their ancestral land as experienced by the Maasai living in Loliondo District. In Kenya it was MRG and Kenyan non-governmental organization Centre for Minority Rights Development (CEMIRIDE) who lodged a complaint on behalf of the indigenous community with the African Commission in 2003, claiming that the Kenyan Government had violated the African Charter by failing to recognize and protect Endorois' ancestral land rights and refusing to compensate the community adequately for the appropriation of their land, or to grant restitution of their land. Basically, this is an epitome of what must be done to protect indigenous land rights in Tanzania.

C. Stiff Procedures and technicalities.

The procedure adhered by the District Land and Housing Tribunal, the High Court of Tanzania (Land Division) and the Court of Appeal of Tanzania are statutorily provided. In that sense, for an individual to successfully appear or plea his case or matter, as the case may be, before these forums he or she must be conversant with such laws. In short, the forums are not avenues for an individual without or with little knowledge of the substantive and procedural laws of the said courts. All applications, submissions, summons and proceedings of these courts are governed by a specific law

or set of laws and failure to observe such laws is tantamount for the application to be dismissed with or without costs or strike off as seen in various cases in Tanzania.

For example, in the case of **Said Ramadwani Mnyanga V Abdallah Salehe** [1996] TLR 74 (HC) the High Court of Tanzania had the following to say when the matter was brought to it out of the prescribed time:

> "The holding that the appeal to this Court is time-barred is contentious, and accordingly cannot be disposed of summarily without hearing the parties' submissions on the question. The matter raises contentious issues of law and is a fit case for further consideration by the Court of Appeal"

The underlying procedure and technicalities involved in the Courts, therefore, makes it very difficult for an individual or individuals to access justice unless aided by experts. A similar problem is facing the indigenous people from Loliondo District.

D. Language Barrier

With the exception of the Ward Tribunals, which has a very limited pecuniary jurisdiction as we have seen in the previous chapters of this study, the language of record in District Land and Housing Tribunals is English whereas the High Court and the Court of Appeal use English language exclusively. A party in the Court of appeal is served with a memorandum of appeal and has to file his reply to the memorandum in English language. The Proceedings and judgments are also written in English. Without the service of translators or an advocate, the party will effectively be unable to plead his case because he can't engage with it and follow what is going on. This was found to be another main shortcoming of both the justice system and the legal framework existing in Tanzania. The system per se is not friendly to the local communities hence, they are easily manipulated and denied their rights, including right to own land.

E. Distance

Some of the indigenous presented distance to be among the problems that inhibit them from accessing justice whenever their rights are infringed, they stated that, the District Land and Housing Tribunal is far away from their area of residence. For example, the District Land and Housing Tribunal which is vested with jurisdiction to address disputes arises in Loliondo District is located in Arusha town, which is quite far (500 Kilometers which takes about 9 hours by bus due to the bad conditions of the road

since there is no tarmac road due to the area being a habitat to the wild animals and tarmacking the road will endanger their lives). In Tanzania there are only 42 District Land and Housing Tribunals, hence, very few districts in Tanzania have a DLHT. This makes it costlier for some villagers to access these tribunals. They have to travel long distances and incur travel, shelter and food costs[128]. The same case is with the High Court of Tanzania (Land Division) and the Court of Appeal of Tanzania, where, the Courts premises are located in Arusha town which is approximately 500 kilometers from Loliondo District. Thus, should an indigenous be victimized by the unjust eviction from his or her land, he or she has to travel to Arusha town in order to file his case which, as discussed in the next paragraph, is not for free.

F. Filing Fees

Likewise, filing cases and pleadings are expensive. This is another hurdle in realization of the constitutional right to accessing justice. In August 2012 the Minister responsible for land published amendments to the fees applicable in Land Dispute Courts. The fees are absurd and unaffordable as they are too high to be afforded by most of the local communities including the indigenous people from Loliondo, the majority of whom are poor thanks to the Government. Below is a table showing some of the old and new fees:

NO	ITEM	OLD FEE (IN TANZANIAN SHILLINNGS AND IN EUROS)	NEW FEE (IN TANZANIAN SH ILLINGS AND EUROS)
1	On Obtaining Application form	Tshs.500/= 0.20 Euros	Tshs. 4,000/= 1.60 Euros
2	On Filing an application where the subject matter does not exceed ten million	Tshs. 5,000/= 2.00 Euros	Tshs. 40,000/= 16.00 Euros

[128] For instance, a villager from Tanganyika Masagati village in Kilombero District can travel a distance of 270 km by bus for 5 to 7 hours to Ifakara where the nearest DLHT is located. And a villager from Makelele village in Kilindi District can travel a distance of 280 km by bus for 6 to 8 hours to Korogwe where the nearest DLHT is located.

3	On filing an application, where the subject matter exceeds ten Million	Tshs. 15,000/= 6.00 Euros	Tshs. 120,000/= 48.00 Euros
4	On filling written statement of defense	Tshs. 2500/= 1.00 Euros	Tshs. 20,000/= 8.00 Euros
5	On filling chamber application	Tshs. 5,000/= 2.00 Euros	Tshs. 40,000/= 16.00 Euros
6	On filling an affidavit	Tshs. 1,500/= 0.60 Euros	Tshs. 12,000/= 4.80 Euros
7	On filing petition to the Land Division of the High Court	As may be applicable to the High Court (Land Division)	As may be applicable to the High Court (Land Division)
8	On a reply to petition to the Land Division of the High Court	As may be applicable to the High Court (Land Division)	As may be applicable to the High Court (Land Division)
9	On filling annexure(s) to the pleadings, each document	Tshs.500/= 0.20 Euros	Tshs. 4,000/= 1.60 Euros
10	On filling memorandum of appeals arising from the ward tribunal	Tshs. 2,000/= 0.80 Euros	Tshs. 16,000/= 6.40 Euros
11	On issuing witness summons or notice	Tshs.500/= 0.20 Euros	Tshs. 4,000/= 1.60 Euros
12	On filling bill of costs	Tshs. 5,000/= 2.00 Euros	Tshs. 40,000/= 16.00 Euros
13	On filling application for execution	Tshs. 2,000/= 0.80 Euros	Tshs. 16,000/= 6.40 Euros

Considering that 33% of the population in Tanzania live below 1 USD a day and out of the 12.9 million people who live in poverty 83% resides in rural areas [129], it will be impossible for them to access District Land and Housing Tribunals, where the majority of the cases lies. This is also one of the factors which bars the indigenous people from exercising their right to access justice. The entire survival of the Maasai depend on herding cattle and their income is generally low because most of them are small scale pastoralists, hence, expecting them to pay 120,000/= Tanzania Shillings to file an application before the Tribunal for unfair eviction from their land is a mere illusion than reality. Based on the situation on the ground, one can question the mechanism used by the Ministry to arrive to the new fees.

G. Discrimination

The system of land dispute settlement under the land laws is still a myth to the indigenous community. In areas occupied by the indigenous people this system is not yet established and when established it happens not to be practical. In the previous chapters, it has been stated how the Maasais being the most popular indigenous community in Tanzania are perceived by the majority. The Maasai have been for a long time perceived as a rudimentary society and have been a subject of ridicule. This perception extends to the Government machineries which treats them differently, whenever their land is acquired either legally or illegally by the Government machineries or private companies aided by the Government. One may rule that even the land dispute mechanisms established in Tanzania to address land issues have not put into consideration the Maasais or the indigenous communities as a whole.

H. Multiplicity of the laws or overlapping laws.

It has been explored that, Wildlife Conservation Act[130] is in conflict with the Village Land Act[131] and Local Government District Authorities Act[132] when it comes to

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[129] URT. Poverty and Human Development Report 2009. MKUKUTA & MFCA. Dar Es Salaam. pp 11 13.http://planipolis.iiep.unesco.org/upload/Tanzania%20UR/Tanzania-PHDR-2009.pdf;Interestingly 89% of the population in Tanzania lives in acute poverty

[130] 2009

[131] Supra

[132] Supra

the administration of village land[133]. Village Councils upon being incorporated have been vested with the powers to manage village lands for and on behalf of villagers. According to the Local Government District Authorities Act, one of the functions of the Village Council is to 'initiate and undertake any tasks, venture or enterprise designed to ensure the welfare and well-being of the residents of the village and participate by way of partnership or any other way, in economic enterprises with other Village Councils[134]. The Village Land Act has placed village land under the administration of Village Councils

The Wildlife Conservation Act has on the other hand placed powers of control and administration of wildlife under the Director of Wildlife. The Director has sweeping powers in issuing hunting licenses. Game Controlled Areas (GCA's) is one category of protected areas where the Director has sweeping powers over, at the same time happens to be village lands. The Director has powers to give wildlife hunting licenses in village lands. Hunters are not required to get the consent of Village Councils. This outright result to contradict with the powers vested on the Village Councils under the provisions of the Local Government District Authorities Act[135].

In other words, Game Controlled Areas are created by the Wildlife Conservation Act[136] and according to the Land Act[137] these areas are included in the definition of reserved lands. At the same time, Game Controlled Areas in northern Tanzania overlap with demarcated and registered village lands and are therefore included under the Village Land Act's definition of village lands. The fact that the same land is under the category of both reserved and village lands, it is a contradiction and a flaw in the laws.

The multi-legal situation in Tanzania in land and resources property has accommodated notions of private, common/collective or granted rights in land ownership. The Wildlife Conservation Act does not define a Game Controlled Area, and its provisions thereon are not very illuminating with regards to the status of persons living within these areas. The Act merely provides that the Minister may, by order in the Gazette declare any area of Mainland Tanzania to be Game Controlled Area, and then places certain restrictions aimed at ensuring that animals are not trapped, wounded or

[133] Ojalammi, S. (2005), Contested Land Disputes in Semi-Arid Parts of Northern Tanzania, pp 90-10 see also, Olengurumwa, P (2009)," Resource based conflict in Northern Tanzania; The case of Maasai and Sonjo of Ngorongoro 53.

[134] Section 142(2) of the Village Land Act, supra

[135] Ole Nasha, W. (2006), **"**Reforming Land Tenure in Tanzania: For Whose Benefit?" p 31

[136] Supra

[137] Supra

killed. This ambiguity is what contributed to the eviction of many Maasais from their land parcels.

On the other hand, villagers in the area applied for and obtained certificates of village land under the Village Land Act, nevertheless, the multiple policies, legal and institutional mandates of the Land Act, the Village Land Act and the Wildlife Conservation Act combined with the government's aggressive pursuit of foreign investments in the wildlife sector add to the sense of insecurity and uncertainty that surrounds indigenous people's land rights in Tanzania, and this is one of the key factors engendering resources related conflicts in the area. Recently, Serengeti National Parks Authority (SENAPA) in collaboration with land surveyors from the Ministry of Lands mercilessly grabbed the richest part of Ololosokwan Village pretending that they are adjusting parks borders. While the village land certificate of ownership from the same Ministry shows those areas belongs to the villagers.

The National Land Policy does not 'recognize, clarify, and secure in law' customary land Rights against the wildlife conservation strategy predicated on the state's allocation of customary lands. On the contrary, it enables further dispossession of rural communities' lands. For example, the Land Policy recognizes overlapping and sometimes conflicting land uses, including wildlife use, in many districts such as Kiteto, Monduli and Ngorongoro. Some of the game controlled areas are critical habitats for wildlife and also form wildlife migration routes. Those areas have serious land use conflicts and dispute.

Therefore, land conflict and eviction of the indigenous people especially the Maasais residing in Loliondo District is also contributed by the existence of numerous pieces of legislation controlling different land resources. Apart from contradicting each other, such laws often clash with indigenous property management system, hence, resulting into insecurity of land tenure leading to unsustainable land use practices

I. Representation and Legislation

Another general setback to indigenous peoples and communities is that their representation in the legislative assemblies and other political structures of their respective states tends to be very weak, hence issues that concern them are not adequately addressed. This is indirectly a violation of Article 13(1) of the African Charter, which guarantees all citizens the right to participate in the government of their own country.

Very few African countries recognise the existence of indigenous peoples in their countries. Even fewer do so in their national constitutions or legislation. Lack of legislative and constitutional recognition of their existence is thus a major concern for indigenous peoples. Tanzania is not an exception to this. Thus the indigenous people need to be recognized and be represented in the legislative assemblies and political structure.

J. Unfair compensation

In Tanzania in order to determine the value of land, the power is vested with the Chief Government Valuer who is the employee of the Government who conducts valuation on the basis of principles and criteria best known to him and the officials working under his directives. If the Valuation is conducted by a Private Valuers, then it is mandatory for their Report to be certified by the Chief Government Valuer. The certification here implies that, the Chief Government Valuer must assess the report to determine its correctness before allowing it to be recognized as an official report. In simple words, an uncertified report by a Private Valuers in Tanzania is as good as there is no report.

In that regard, if the government has acquired or appropriated land owned by individuals and it has been decided that such person has to be compensated, then the basis of compensation is the valuation made by the Government itself. The consequence of this is unfair compensation to the majority of the victims because the Valuation by the Government is normally made in its favour. For a long time, the entire compensation scheme has been questionable.

K. Complexity of invoking the jurisdiction of the International Human Rights Organs

We have seen in chapter eight that, Tanzania has ratified various international human rights instruments and authorized on its soil to be established various international and domestic human rights institutions and organizations. Not only that but it also incorporated in its constitution the Bill of rights and enacted numerous laws to enforce the same. We saw that, among other countries, Tanzania has also ratified the protocol on Establishment of Courts on Human and Peoples Rights.

However, the problem is in the manner of invoking the jurisdiction of such human rights organs to enforce one's rights. The procedure and prerequisites of invoking jurisdiction of such organs have proved to be very cocreational for most of the people

including advocates. Taking African Court on Human and Peoples' Rights (The Court) as an example, the mandatory procedures in order to institute the matter before the Court are very difficult and elaborated. We may observe under Article 56 of the African Charter on Human and peoples' Rights[138] and the Interim Rules of Procedure on the prerequisites for referring your dispute before the Court.

As per my views, the procedure makes it very difficult for a lay person who lacks means and knowledge to invoke jurisdiction of this organs, thus, they remain to be an arena of a few. And to go further even the recommendations by the African commission and the Court in the country proves difficult since they don't have a binding force.

[138] Supra

X. CONCLUSION

It can be generalized from the findings that, the continuous eviction of the Maasai from their Ancestral land in Loliondo District is a sum total of ineffective justice system and legal framework existing in Tanzania which to a large extent fails to protect the interest of a few marginalized communities. This is witnessed in this study where there are several inherent weaknesses in the said justice system and legal framework that makes its accessibility difficult.

Basically, the state has a legal monopoly over the land through enactments. In principle, law should provide tools for administration and judicial procedure to protect land rights for all Tanzanians equally regardless of their tribes or mode/state of life. The study shows multiple legal situation in Tanzania, whereby land and resource property has accommodated notions of private, common /collective or granted law in land ownership. State laws also lagged decades behind states policy changes. Land tenure systems must be linked to a number of organizational features (social, political, economic) of pastoral society; on the other hand, land tenure arrangements are also assumed to have evolved in response to the nature of the resources involved.

As time goes on, the question of pastoral land tenure remains to be history. Many land law reforms have been made since colonial time through independence up to the present time without any positive concern to improve pastoral land tenure. The 1990's land laws reforms have been noted to have negative impacts on pastoral land tenure. Pastoralism needs a vast chunk of land to practice rotational grazing. The new land law is silent on the question of pastoral land rights. The pastoral livelihood and lifestyle have been forced to change to meet the requirement of the new land laws. Copping mechanism like migration to cities and economic diversification have been the best options for pastoralist to secure their lives. Pastoralist land has been named as **No man's land** and categorized into group of general land. Encroachment of the pastoral lands to allow huge investment and expansions of the protected areas has been the order of the day rendering the pastoralists internally displaced. The National Land Policy condemns pastoralist as unfriendly to the environment. The given process of certification of the village land by the new land laws to secure their village lands is cumbersome, prohibitive and bureaucratic.

This is seriously threatening the continued existence of indigenous peoples and is rapidly turning them into the most destitute and poverty stricken. This is in serious violation of the African Charter (Article 20, 21 and 22), which states clearly that all

peoples have the right to existence, the right to their natural resources and property and the right to their economic, social and cultural development. The land of indigenous peoples is gradually shrinking, and this makes them vulnerable and unable to cope with environmental uncertainty, threatening their future existence.

Furthermore, any excuse appears to be used by judges and governments to avoid challenging government policies and redressing the historical injustices suffered by indigenous peoples. Many cases are dismissed on various technicalities that judges always tend to find. Against all expectations, Kenyan and Tanzanian post-colonial judges continue on the same path, upholding almost every time the supremacy of written laws over customary tenures and on occasions making rather illogical rulings. In 1984, and after concluding that a defendant occupied unlawfully a disputed land, a Tanzanian High Court found refuge behind the small number of the indigenous plaintiffs to argue that restitution of land lost unlawfully to a Barabaig indigenous community was no longer possible given that only a few individuals had appeared in court. More recently (2000), a Kenyan High Court relied on an assumption that the Ogiek indigenous peoples had lost their ancestral way of life and therefore could no longer claim to have a culture that would not be able to survive outside their directly traditional lands.

All in all, it is high time that the indigenous communities of Tanzania should be recognised and their rights be defined clearly under the Constitution of the United Republic. Instead of being involuntarily evicted from their traditional land, the government should adopt special measures to ensure that their rights to their ancestral land are constitutionally recognised, protected, promoted and granted.

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