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THE CONFLICT BETWEEN CONSERVATION, TOURISM
AND INDIGENOUS LAND RIGHTS: THE CASE OF THE
MAASAI IN KENYA AND TANZANIA

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ABSTRACT

In recent decades, the conflict between conservation, tourism, and indigenous land rights has been a critical issue at the core of the international agenda for the protection of indigenous rights. Conservation and tourism efforts in Africa often coincide with land grabbing, rooted in colonial legacy and modern globalization. The intersection between these phenomenon impact indigenous land and natural resource rights, while having severe socio-cultural effects on such communities.

The Maasai community's historical presence in Kenya and Tanzania and their cultural ties to their ancestral land face challenges due to displacement from conservation and tourism development. Land laws in both countries play a crucial role in affecting Maasai land rights and in favouring the creation of national parks and reserves over indigenous fundamental rights.

This thesis aims at observing how has tourism and conservation contributed to the phenomenon of land grabbing and how this affected the traditional way of life and cultural practices of the Maasai community. Moreover, it calls for alternative conservation and tourism models that prioritize indigenous community inclusion and sustainable and equitable practices that respect indigenous peoples' rights.

INTRODUCTION

In the last decades, the intersection between conservation and tourism has become a fundamental part of modern economy and environmental management, particularly in the African continent. This is mainly owing to the region's unique opportunities to visit areas of rich biodiversity and diverse wildlife, where the conservation of natural habitats is at the centre of tourism strategies. Countries such as Kenya and Tanzania have developed strategic ecotourism models that aim to reconcile the gains of tourism with the need for conservation. Such strategies are mainly centred within the establishment of protected areas and national parks, which are designed to ensure the conservation of the unique flora and fauna of Africa, as well as generating income streams from tourism.

Nevertheless, a dramatic growth of these sectors has been accompanied by severe and often disastrous consequences for indigenous people who have traditionally occupied these territories and long lived harmoniously with nature. One of the most vivid examples of such conflict is the one faced by the Maasai, an indigenous group living in southern Kenya and northern Tanzania. The Maasai, for instance, have followed a nomadic and pastoralism way of life for centuries; essentially being inseparable from the land they inhabit. Cultural and social structure of these people have always been closely connected with their ancestral territories, which they can regard not only as a mere asset but as a spiritual and organic component of their existence.

The thesis focuses on the Maasai, as they are one of most well-known and documented indigenous groups in Africa, because of their strong cultural identity, nomadic lifestyle and rich indigenous heritage. Moreover, they inhabit regions in Kenya and Tanzania, both home to some of Africa's most famous and splendid reserves and national parks, which are key destinations of tourism and conservation pressures. Therefore, they are a clear example of the direct impact of conservation and tourism policies on indigenous peoples in Africa. For instance, despite the strong and long-standing connection of the Maasai people to their land and their centuries-old presence in these regions, they have not received adequate protection for their fundamental rights. Although the establishment of nature reserves, national parks and tourism industries aims to protect the natural environment, it affects the Maasai and their lands in several ways, mainly through forced displacement and restriction of access to natural resources. This has caused serious social,

economic and cultural imbalances in Maasai society over the years, as they are forced to live and fight for their survival in a hostile environment where their rights and traditional customs are too often disregarded. In this thesis, even though the issue of land rights is a common problem for most of indigenous groups, the Maasai people have been used as a reference example of how indigenous individuals must be included in conservation processes that fully respect their rights and position them as rightful users of natural resources.

This thesis central aim is to analyse the complex connection between conservation efforts, tourism, and indigenous peoples' fundamental rights. The study is organized into three main chapters, each intended to progress from one another to offer a comprehensive understanding of this important issue. The structure reflects a transition from the historical and legal background to current concerns and potential solutions for sustainable development that respects indigenous people rights.

The first chapter of the thesis explores the historical evolution of conservation and tourism in Africa and examines how their expansion has contributed to the ongoing phenomenon of land grabbing and the marginalization of indigenous communities.

This chapter firstly goes into detail of how the rise of conservation and tourism in Africa has affected indigenous peoples' cultural and social rights, as well as their access to land and natural resources.

Conservation efforts, which began during the colonial era, led to the establishment of protected areas (PAs), such as national parks and game reserves, in the whole African continent. While these initiatives were aimed at preserving biodiversity, they were generally recognized as part of the practice of "fortress conservation". This section explains how this particular approach to conservation has often come at the expense of indigenous fundamental rights, as it also historically intersected with the phenomenon of land grabbing, meaning the large-scale acquisition of indigenous lands for conservation and tourism purposes.

The development of tourism, especially ecotourism, has also added to these difficulties for indigenous peoples. Although tourism generates significant economic benefits for national governments and private operators, this section highlights how its development

repeatedly marginalises indigenous groups, who receive little share of this wealth and face both cultural commodification and exclusion from decision-making processes.

Secondly, the chapter examines the measures established under international and African law for the protection of indigenous fundamental rights in order to analyse the effectiveness of the existing legal frameworks in the defence of indigenous land rights. Globally, the guiding instruments are the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the ILO Convention No. 169, both advocating for the protection of indigenous peoples' rights and the principle of Free, Prior, and Informed Consent. In Africa, the African Charter on Human and Peoples' Rights and the Working Group on Indigenous Populations are the most useful instruments to address land and cultural rights of indigenous communities.

The second chapter of the thesis focuses more deeply on the Maasai people of Kenya and Tanzania, as it offers a detailed analysis of how conservation and tourism strategies have impacted on their rights to land, culture and resources. It presents the historical background of the loss of land suffered by the Maasai, the contemporary challenges they face and an overview of the legal framework related to land use and ownership in both countries.

The chapter begins with a historical introduction to the Maasai people, presenting them as nomadic pastoralists from East Africa and describing their cultural and economic practices and their fundamental and deep connection to the land and the natural surroundings. It then outlines the colonial history of the Maasai, emphasizing the severe loss of their lands to British and German colonial rule in Kenya and Tanzania, especially the infamous Maasai moves of 1904 and 1911.

This section then goes on by analysing how these policies were brought on also after the decolonization period by newly independent governments. In particular, it overviews the failure by both Kenyan and Tanzanian land rights protection frameworks in safeguarding Maasai communal land and it analyses how these brought persistent limitations on the Maasai's access to their lands for grazing and pastoralism.

The priority given to conservation and tourism at the expense of Maasai's land rights can be best illustrated by the vast establishment of national parks and reserves in Kenya and Tanzania. The chapter provides a detailed analysis of the creation of national parks and

reserves such as the Maasai Mara, Amboseli, Serengeti, and Ngorongoro, in particular regarding the negative effects they had on Maasai traditional way of life. It examines the impact of these practices on Maasai livelihood, their cultural heritage and their rights to their ancestral lands. This section also covers the rapid growth of the tourism industry in these protected areas, which transformed Maasailand into lucrative tourist destinations while impeding Maasai people from benefiting economically and engaging meaningfully with this sector.

Although the majority of the thesis addresses the difficulties of Maasai people in the face of tourism and conservation pressures, the third chapter explores what are the potential solutions and strategies for achieving a sustainable and equitable approach while respecting indigenous land rights. The thesis underlines the need for conservation strategies that take into consideration the fundamental role of indigenous people in environmental strategies and how important it is to respect their rights to their ancestral lands. To this end, this chapter presents international and local conservation initiatives that uphold indigenous peoples' rights while promoting conservation and sustainable tourism development.

The first section of the chapter provides an overview of some of the international initiatives established to protect the rights of indigenous peoples where tourism and conservation are involved. It explores programs such as the Indigenous Navigator, the Green Climate Fund, and the ICCA Consortium, and demonstrate how they build frameworks that not only safeguard indigenous peoples' fundamental rights to land and resources, but also ensure that such groups are actively integrated in the decision-making process for conservation and environmental projects. Furthermore, this section discusses the important role of free, prior, and informed consent in the formulation and implementation of conservation and tourism initiatives on indigenous lands.

The chapter then discusses more adequate models of tourism and conservation that consider the involvement of indigenous people and the recognition of their rights. Firstly, it examines how sustainable tourism, particularly indigenous-led ecotourism, can empower and include indigenous communities while preserving cultural heritage and access to land. This section also explores the potential for cultural heritage tourism, making reference to the UNESCO World Heritage Sites and how they can strengthen

indigenous communities through better planning and cultural recognition. The chapter proceeds discussing a rights-based approach to conservation and community-based conservation frameworks and how these acknowledge indigenous peoples as fundamental caretakers of biocultural diversity, and how they support indigenous leadership in conservation strategies.

The chapter concludes with a discussion of successful Maasai-led initiatives, examining the ways indigenous knowledge and practices could be used to address environmental and other relevant issues, while at the same time empowering the communities. The following case studies provide valuable insights on how indigenous people can manage conservation and tourism for the promotion of sustainability and cultural legitimacy.

The overall scope of this thesis is to contribute to the emerging body of literature on the interrelation between tourism, conservation, and indigenous peoples' rights. It aims to contribute to a potential approach for future conservation and tourism initiatives, which actively engage with indigenous knowledge systems and respect the rights of communities such as the Maasai to their land and cultural heritage.

CHAPTER 1 - UNDERSTANDING THE INTERSECTION OF CONSERVATION, TOURISM, LAND GRABBING, AND INDIGENOUS RIGHTS IN AFRICA

The first chapter of this thesis delves into the complex interplay between conservation efforts, tourism development, land grabbing, and indigenous rights in Africa.

The first paragraph explores the rise of conservation efforts and tourism in the African continent, contextualizing them within the broader framework of land grabbing. Moving forward, it sheds light on how conservation initiatives and tourism development often intersect with the exploitation of indigenous communities' lands and resources.

The second paragraph examines the existing international agreements aimed at protecting the rights of indigenous peoples and biodiversity conservation. In particular at the international level, it focuses on the United Nations Declaration on the Rights of Indigenous Peoples. It will then explore the African framework, particularly the African Commission on Human and Peoples' Rights and the Working Group on Indigenous Communities/Populations.

1.1 THE RISE OF CONSERVATION AND TOURISM AND THEIR EFFECTS ON INDIGENOUS PEOPLES IN AFRICA

Africa's vast and diverse natural landscapes have long been the focus of conservation efforts aimed at preserving biodiversity. From the establishment of protected areas to the promotion of ecotourism, initiatives have sought to balance conservation objectives with the protection of indigenous peoples' rights.

Protected areas, ranging from national parks to wildlife reserves, have been instrumental in safeguarding Africa's natural heritage and ecosystem. Yet, the creation and management of protected areas have often come at the expense of indigenous communities, whose land rights have been disregarded or forcibly revoked. Moreover, the intersection of conservation efforts and tourism development has further complicated this landscape. While ecotourism holds promise as a sustainable alternative to traditional tourism, its implementation without the full participation of indigenous peoples has sometimes perpetuated inequalities and exacerbated land grabbing. Historically rooted in colonialism and perpetuated by contemporary globalization, land grabbing often exploits vulnerable populations and disregards their rights to land and resources. As this first paragraph examines the historical evolution of these interconnected phenomena, it

addresses the challenges posed by land grabbing and its underlying drivers and impacts on indigenous communities.

1.1.1 The Expansion of Conservation in Africa and its Intersection with Land Grabbing

African wildlife and natural landscapes hold significant importance in global initiatives for preserving biodiversity and adapting to climate change. To gain insight into the increasing focus on conservation in Africa, the notable growth of designated protected areas in recent decades should be examined. The International Union for Conservation of Nature (IUCN) officially defines a protected area as “a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values”¹. As protected areas continue to expand globally, a significant portion of this expansion is notably taking place across the African continent².

Despite this recent expansion of protected areas in Africa and worldwide, their history is much older. The first types of national parks were established in the United States in the last part of the 19th century, and they were consequently followed globally during the subsequent decades. For instance, after World War II there was a significant increase in the number of national parks on African soil, where a ‘conservation boom’ happened³. Consequently, in 1958, the International Union for Conservation of Nature (IUCN) formed a Provisional Committee on National Parks, which later evolved into the present-day World Commission on Protected Areas (PAs). Four years later, in 1962, the United Nations General Assembly endorsed a “World List of National Parks and Equivalent Reserves”, which encompasses six distinct categories: I.A Strict natural reserve, I.B Wilderness area, II National Park, III Natural monument, IV Habitat/Species management area, V Protected Landscape/Seascape, VI Protected area with sustainable use of natural resources⁴.

¹ IUCN, *Definition*, 2008, <https://www.iucn.org/our-work/topic/effective-protected-areas>

² M. Bollig, *Twenty first century conservation in Africa: Contemporary Dilemma, Future Challenges*, in *African Futures*, p. 111-124, Brill, 2022

³ R. Neumann, *The postwar conservation boom in British colonial Africa*, in *Environmental History* 7, p. 22-47, 2002

⁴ IUCN, *Protected Area categories*, 2020, <https://www.iucn.org/content/protected-area-categories>

From the 1970s onward, the creation of new terrestrial protected areas occurred at a consistently notable pace. According to the World Database on Protected Areas, the most comprehensive global repository on terrestrial and marine protected areas, there are now almost 276 thousand terrestrial and inland waters protected areas worldwide, which covers 21.72 million square kilometres of land, that refers to a percentage coverage of 16.1% of earth. Regarding the marine protected areas, they cover 8% of the whole ocean area, with more than 18 thousand PAs⁵. For what concern the African continent, since early 20th century, PAs have been the most fundamental factor of international conservation strategies⁶. As of the year 2024, there are 4.3 million square kilometres or 14.4% of the continent's entire dry land that had been legally safeguarded towards conservation, with more than 8000 PAs on the whole Continent⁷.

For the purpose of this thesis, the area of Eastern Africa is of particular importance. According to the African Union, the East African region includes 14 countries: Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Mauritius, Rwanda, Seychelles, Somalia, South Sudan, Sudan, Tanzania and Uganda⁸. According to statistics for the region from WDPA, there are 2504 PAs in East Africa. The overwhelming majority (2301) of these PAs are located in five countries: Ethiopia, Kenya, Madagascar, Tanzania and Uganda⁹.

The large-scale creation of PAs on African territory and the expansion of conservation initiatives throughout the continent inevitably have social, cultural and economic effects on the livelihood of local and indigenous communities. The creation of protected areas reflects a conceptual separation between nature and human society deeply ingrained in Western ideology and colonialism¹⁰. This division is rooted in historical contexts, particularly within the broader political framework of colonial societies and the expansion of capitalism into undeveloped countries¹¹. Such conception is identified in the dominant

⁵ UNEP-WCMC, *Protected Area Profile for Africa from the World Database on Protected Areas*, May 2024, www.protectedplanet.net

⁶ W. Adams, *Against Extinction: The Story of Conservation*, Earthscan, London, 2004

⁷ UNEP-WCMC, *op. cit*

⁸ African Union, *Member States*, https://au.int/en/member_states/countryprofiles2

⁹ UNEP-WCMC, *op. cit*.

¹⁰ R. Neumann, *Nature-state-territory: Towards a critical theorization of conservation enclosures*, in *Liberation ecologies: environment, development, social movements*, pp. 195-217, Routledge, London, 2004

¹¹ W. Adams and J. Hutton, *People, Parks and Poverty: Political Ecology and Biodiversity Conservation*, in *Conservation & Society*, Vol. 5 No. 2, pp. 147-183, 2007, <https://www.jstor.org/stable/26392879>

conservation model during the 20th century: the so-called fortress conservation. This notion was built upon the belief that nature existed in a pristine state, distinct and separate from human-altered landscapes and that conservation objectives, including the creation of PAs, could not coexist with the presence of indigenous peoples and their rights being respected¹². As a consequence, local communities and the environment they created were largely disregarded as legitimate subjects of conservation concern. For instance, the idea of wilderness in Africa as an “unspoiled Eden” deeply influenced the colonial conception of what national parks on the continent represent nowadays. In Africa, national parks were largely developed to serve as tourist attractions, leading to the production of infrastructure facilities like roads, lodges, and campgrounds, carefully designed for visitor consumption¹³. These constructions still enhanced the model of fortress conservation, leading to further displacement and the removal of entire communities from their lands.

Land grabbing is the primary instrument that conservation strategies and tourism organizations utilize for their goals and it is one of the most devastating causes of population displacement. The concept of land grabbing appeared in worldwide discourse in the wake of the 2007-2008 economy crisis and surge in food prices. Despite the global reach of land grabbing, there is no clear or institutional definition. The explanation provided by the association Eco Ruralis, comprehend diverse concepts explaining land grabbing as “being the control (whether through ownership, lease, concession, contracts, quotas, or general power) of larger than locally-typical amounts of land by any person or entity (public or private, foreign or domestic) via any means (legal or illegal) for purposes of speculation, extraction, resource control or commodification at the expense of peasant farmers, agroecology, land stewardship, food sovereignty and human rights”¹⁴.

Land grabbing must be understood in light of the influence of global and national capital and its drive for profit, which supersedes locally based meanings, uses, and management systems¹⁵. Despite being generally recognized as a global issue, land grabbing is more

¹² E.I. Laltaika and K. Askew, *Modes of Dispossession of Indigenous Lands and Territories in Africa*, NY, USA, 2018

¹³ D. Brockington, R. Duffy, J. Igoe, *Nature Unbound: Conservation, Capitalism and the Future of Protected Areas*, Routledge, 2008, <https://doi.org/10.4324/9781849772075>

¹⁴ Eco Ruralis, *What is Land Grabbing? A Critical Review of existing definitions*, 2016, https://www.farmlandgrab.org/uploads/attachment/EcoRuralis_WhatIsLandGrabbing_2016.pdf

¹⁵ Transnational Institute (TNI), *The Global Land Grab A primer*, 11 October 2012, <https://www.tni.org/en/publication/the-global-land-grab>

common in Africa due to the continent's advantageous biophysical resources and drought of large-scale, industrialized plantations and agriculture in comparison to other regions of the world¹⁶. Even though some land grabs have environmental goals in mind, such as reserving area for the preservation of biodiversity, their consequences and impacts are often directed towards local communities in need of serious protection¹⁷.

Demand for land in Africa is influenced by a variety of parameters, which can be categorized as either domestic or foreign. In most African nations, there has been a significant domestic push to promote foreign direct investment as a viable development approach. Foreign direct investment represents a significant appeal that provides opportunities for several international investors in agriculture. Weak land policy and administration is another internal concern. In Africa, laws recognizing land rights differ from nation to nation and, in those that do exist, they are typically out of date and out of phase with modern realities. Very few local people can obtain land since the process of registering and titling it is very expensive and time-consuming. Due to this circumstance, investors believe that millions of hectares of arable land remain uncultivated throughout Africa, which for them means a significant concentration of agricultural production gaps. However, indigenous groups typically occupy this land, even when they do not make use of it for production purposes¹⁸.

Regarding the external factors, the 2008-09 global food crisis was a major driver in the rise of land grabbing, as the growing costs of food encouraged resource-poor but wealthy nations to acquire farmland in developing countries as a way to ensure food security for their own populations. Moreover, since they see benefits in attracting foreign capital to create infrastructure and industrialize agricultural operations, governments in developing countries often seem to be willing participants in the land grabbing problem¹⁹. Thus,

¹⁶ L. Cotula et al., *Testing claims about large land deals in Africa: Findings from a multi-country study*, in *Journal of Development Studies*, Vol. 50 n. 70, p. 903-925, 2014

¹⁷ T. Blomey, D. Roe, F. Nelson and F. Flintan, '*Land grabbing*': is conservation part of the problem or the solution?, 2013, <https://www.iied.org/17166iied>

¹⁸ A. Odusola, *Land Grab in Africa: A Review Of Emerging Issues and Implications For Policy Options*, SSRN Electronic Journal, 2014

¹⁹ GRAIN, *Seized! The 2008 land grab for food and financial security*, in *Grain Briefing*, October 2008, <https://grain.org/en/article/93-seized-the-2008-landgrab-for-food-and-financial-security>

fertile lands emerged as a new strategic asset for target countries' businesses seeking safe havens for their investment as well as cash-rich governments wanting food security²⁰.

An increasing tendency towards land grabbing is also seen in developed nations looking to purchase property in developing countries in order to produce agrofuels. Agrofuels have replaced fossil fuels in recent years, creating an outstanding artificial demand for cash crops²¹. The demand for "agro energy crops", such as corn or sugarcane, from industrialized nations has made them enormously profitable on an industrial scale.

Lastly, there has been an increasing 'financialization' of agriculture. The projected high rate of return from agriculture globally, where demand has outstripped supply, has created a safe haven for several fiscal firms after the global financial crisis of 2008-2009. It has increased the attractiveness of land as an investment option not only for agribusiness and energy companies interested in direct production but also for financial operators interested in increasing returns and lowering risks for their portfolios²².

These drivers, both internal and external, have extended the worldwide land rush in the African Continent. Land Grabbing has also shed light on the issue of declining land supply for economic purposes and the challenges to conserve biodiversity without implicating the dispossession of indigenous territories²³. Unfortunately, the fortress conservation model is still the dominant approach used in several African countries for the establishment of PAs and for conservation initiatives. This conception, accompanied by the global land rush of recent years, often leads to the displacement of Indigenous Peoples from their ancestral lands and to several violations of their fundamental rights.

1.1.2 Impacts of Conservation Strategies on Indigenous Land and Natural Resources Rights

It is estimated that 476 million indigenous peoples currently populate the world. They comprise only 6% of the world's population, yet they represent roughly 19% of the

²⁰ J. L. Kaloustian, *Land Grabbing for Food and Fuel Out-sourcing. A Rising Threat to the Right to Food*, California, Human Rights Advocates, 2010, <https://www.humanrightsadvocates.org/wp-content/uploads/2010/05/Right-to-Food.pdf>

²¹ L. Cotula, N. Dyer, and S. Vermeulen, *Fuelling Exclusion? The Biofuels Boom and Poor People's Access to Land*, London, International Institute for Environment and Development (IIED), 2008

²² FAO, IFAD, UNCTAD and World Bank, *Principles for Responsible Agricultural Investment that Protect Rights, Livelihoods and Resources*, Discussion Note, Rome, 2010

²³ FIAN, *Land Grabbing in Kenya and Mozambique. A report on two research missions and a human rights analysis of land grabbing*, Germany, FIAN, April 2010

extremely poor. Even though they make up around 22% of the planet's land area, indigenous lands are home to 80% of its biological variety²⁴. The territories of indigenous peoples currently contain a large portion of the world's non-commercially exploited territory as well as many of its remaining mineral and forest resources, important rivers, fossil fuels, and sources of renewable energy²⁵.

According to the UN Permanent Forum on Indigenous Issues, 60 million indigenous peoples reside in Africa. These people, who are mostly pastoralists and hunter-gatherers, all have a strong connection to the land and unique cultural customs²⁶. Since the start of colonialism, the destructive effects of logging, mining, and other extractive industries, alongside the widespread use of land grabbing, have had a negative impact on the cultural and physical survival of African indigenous peoples throughout the continent.

Similarly, in recent decades conservation efforts in the form of national parks or protected areas have been linked to eviction and dispossession of indigenous communities. For instance, following the fortress conservation approach, it is believed that conservation conflicts with the existence of indigenous peoples and their customary land tenure²⁷. Emblematic is that approximately 50% of the protected areas established throughout the 20th century were situated on land that was either frequently used or occupied by indigenous peoples. Moreover, it is estimated that out of the legally recognized protected areas globally less than 5% of are currently governed by indigenous peoples²⁸. To make it worse, four of the six categories of PAs defined by the IUCN are deemed "strict" protected areas, indicating that local residents are subject to severe limitations of their ability to access and utilize the resource base²⁹. Due to the lack of classification criteria provided by all 246 thousand protected areas registered with the WDPA, it is challenging to register the exact number of strict protected areas, which increases the likelihood of

²⁴ V. Tauli-Corpuz, *Report of the Special Rapporteur on the Human Rights Council on the Rights of Indigenous Peoples*, in UN Doc. A/71/229, UN General Assembly, 29 July 2016

²⁵ C. Doyle and J. Gilbert, *Indigenous peoples and globalization: from 'development aggression' to 'self-determined development'*, in *European Yearbook of Minority Issues*, vol. 8, No. 1, p. 221, 2011

²⁶ D. Mamo, *The Indigenous World 2020*, Copenhagen, Denmark, IWGIA, April 2020

²⁷ United Nations Department of Economic and Social Affairs, *State of the World's Indigenous Peoples: Rights to Lands, Territories and Resources*, March 2021, <https://doi.org/10.18356/9789210054881>

²⁸ D. Juffe-Bignoli et. al., *Protected Planet Report 2014: Tracking Progress towards Global Targets for Protected Areas*, UNEP-WCMC, Cambridge, UK, 4 September 2014, <https://www.unep.org/resources/report/protected-planet-report-2014-tracking-progress-towards-global-targets-protected>

²⁹ IUCN, *op. cit.*

indigenous local communities being forced to leave their lands when they overlap with the protected area³⁰.

The removal of indigenous peoples from their territories directly affects their means of subsistence. As a matter of fact, the majority of the African cases involving conservation and the creation of protected areas leads to the uprooting of indigenous populations from their ancestral lands and the denial of access to essential natural resources, such as grazing areas, permanent water sources, and forest products, that are vital to their survival³¹. Moreover, indigenous peoples' traditional knowledge systems and their cultural, spiritual, social, and political identities are rooted in their ancestral territories, and their displacement from these areas constitutes a grave violation of their human rights³². Indigenous peoples' expulsion, relocation, or removal from their territory results in a several issues that violate a number of interconnected human rights, including but not limited to, the right to property, the right to culture, the right to food security and water resources, the right to health, and the right to economic, social and cultural development³³.

Several NGOs and civil society organizations are focused on defending the collective land rights of indigenous people in opposition to land grabbing, which often results in the extensive conversion of land to commercial usage or conservation programs. Nevertheless, within the framework of PAs, one of the main issues with the recognition of land rights of indigenous communities is that land ownership is frequently customary, communal, and unregistered, due to the weak governance and soft land laws that characterises most African nations. Because allocated property doesn't have any indications of agricultural or permanent settlements, it's frequently seen as empty or unoccupied. However, local communities actually make use of this land for subsistence hunting, seasonal or shifting agriculture, livestock grazing, and harvesting forest goods³⁴.

³⁰ V. Tauli-Corpuz, J. Alcorn, A. Molnar, *Cornered by PAs: Adopting rights-based approaches to enable cost-effective conservation and climate action*, in World Development, Volume 130, 2020

³¹ ACHPR, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, ACHPR & IWGIA, 2005

³² M. Colchester, *Conservation policy and indigenous peoples*, in Environmental Science & Policy, Vol. 7 n. 3, Pages 145-153, 2004

³³ W. M. Adams and J. Hutton, *op. cit.*

³⁴ L. Cotula, E. Polack, *The global land rush: what the evidence reveals about scale and geography*, IIED, London, 2012 <http://pubs.iied.org/17124IIED>

Since their customary laws and norms are often not recognized or upheld, and since national legislation frequently does not allow for collective land titling, the targeted pastoralist and hunter-gatherer tribes have only extremely limited legal titles to their property³⁵. Due to the legal systems that were passed down from colonial powers, national parks and other protected areas have grown rapidly, creating irreversible harm by refusing to acknowledge indigenous title based on customary rules. Furthermore, conservation consciously chooses to overlook the mounting body of evidence that indicates that the removal of indigenous peoples from their ancestral lands damages the environment. Recognizing legal titles to their lands would create indigenous-governed protected areas which would be equally or even more effective than State-controlled ones at promoting biodiversity and halting deforestation and degradation³⁶.

Another main issue regarding violation of fundamental rights of indigenous peoples is that conservation efforts are frequently carried out with the use of force, treating indigenous peoples just like objects that needs to be removed than legal beings. Coercion has frequently been used in state policies pertaining to the protection of nature, especially when it involves evicting indigenous peoples from protected areas. Indigenous populations, displaced and marginalized by colonial conservation practices that deny them their rights, are sometimes driven to desperate survival actions denounced as ‘criminal’ by conservationists³⁷. Frequently, this results in a general hostility against indigenous groups, who are portrayed as lawbreakers, hunters, and invaders on territories they have customarily and sustainably inhabited for centuries, if not more³⁸. They are presented to the outside world as environment violators, frequently without providing any proof of the environmental harm they are alleged to have caused.

The use of force and military operations to displace indigenous peoples for conservation initiatives raises significant ethical and human rights concerns. Such actions further

³⁵ ACHPR, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, *op. cit.*

³⁶ L. Dominguez, C. Luoma, *Decolonising Conservation Policy: How Colonial Land and Conservation Ideologies Persist and Perpetuate Indigenous Injustices at the Expense of the Environment*, in *Land* vol. 9 n. 3, 2020

³⁷ M. Dowie, *Conservation Refugees: The Hundred-Year Conflict Between Global Conservation and Native Peoples*, Cambridge, UK, The MIT Press, 2009

³⁸ A. Murphy, *Conservation's Biggest Challenge? The Legacy of Colonialism*, in *Live Science*, 20 may 2019, <https://www.livescience.com/65507-conservation-colonialism-legacy.html>

disregard the rights and traditional knowledge of indigenous communities, leading to loss of cultural heritage and livelihoods.

The consequences of uprooting indigenous peoples for conservation purposes are apparent in the multiple examples of ongoing expropriation of indigenous territories across the African Continent and in the pervasive refusal to provide indigenous peoples with any significant role in the administration of protected areas established on their territories³⁹.

For instance, throughout the last ten years, about 1,500 San people had been forced to leave Botswana's Central Kalahari Game Reserve. The case demonstrates Botswana's government's unwillingness to acknowledge the local population's ancestral rights to the land. Rather, they have been "encouraged" to depart by the State, which has stopped providing basic and necessary services to individuals who refuse to relocate to two villages outside the Reserve. The intention behind the move is to allow the State to provide development in the shape of clinics, schools, and other facilities. Alternative development models that could draw on or make use of the San people's traditional knowledge systems within the Reserve seem foreign or unacceptable to the Botswana government⁴⁰.

The Batwa community is another important example. Among all the minorities in the Great Lakes region, the indigenous ethnic group known as the Batwa is among the most marginalized. They are a traditional forest-dwelling community known as "Pygmies" that have coexisted harmoniously with the Kahuzi-Biega Forest in the South Kivu region of the Democratic Republic of Congo for ages⁴¹. A national park named Parc National Kahuzi-Biega (PNKB) was established by statute in 1970. When the government increased the PNKB area from 60,000 to 600,000 hectares in 1975, 3,000-6,000 Batwa people were forced to leave their ancestral lands and had their access to it restricted without any sort of compensation⁴². The Batwa were not given assistance with relocation,

³⁹ E. Porokwa, "Tanzania", in *The Indigenous World 2019*, International Group for Indigenous Affairs, 2019

⁴⁰ ACHPR, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, *op. cit.*

⁴¹ J. Lewis, *The Batwa Pygmies of the Great Lakes Region*, Minority Rights Group International, London, UK, 2000

⁴² A. K. Barume, *Heading Towards Extinction?: Indigenous Rights in Africa : The Case of the Twa of the Kahuzi-Biega National Park, Democratic Republic of Congo*; Forest Peoples Programme & International Work Group for Indigenous Affairs, 2000

have not been paid, and have been living in abject poverty as squatters in several rural locations surrounding the PNKB ever since. The Batwa people have experienced displacement and forced relocation among non-Batwa populations that discriminate against them based on their ethnicity on a regular basis. Additionally, they suffered an unjustifiable denial of access to natural resources situated on their traditional territories and they lack access to the most fundamental social services, such as healthcare and education⁴³. The Batwa and the PNKB officials started a dialogue process in September 2014, but the conversation has broken down because the park management have consistently violated their word⁴⁴.

The second chapter will go into greater detail about how conservation affects indigenous communities, in particular the Maasai people of Tanzania and Kenya.

Despite the growing recognition of the significance of the role of Indigenous Peoples in biodiversity conservation and its increasing representation in the policies of conservation organizations and the international commitments of States, little effort is being made to recognize these non-consensually acquired indigenous territories and give indigenous peoples back control and management of their ancestral lands⁴⁵.

1.1.3 The Growth of the Tourism Industry and of Ecotourism

Africa is the second largest continent and one of the world's great natural landscapes, hence, it is extremely varied in its tourism appeal and levels of development. Some African states have thriving tourism industries, such as South Africa, Botswana, Lesotho, Kenya, Tanzania, Seychelles, Mauritius, whereas others struggle to attract visitors or maintain even rudimentary levels of international visitation⁴⁶.

Africa's share of world tourism, though still small, is growing. From a small base of just ca. 10 million visitors in 1990, Africa attracted 50 million visitors in 2010. Prior to Covid-19 the African continent saw its peak of tourist's arrival at 69 million in 2019. 66 million foreign visitors arrived on the in Africa in 2023, a forty percent increase from 2022,

⁴³ ACHPR, *Report of the African Commission's Working Group on Indigenous Populations/Communities: Research and information visit to the Democratic Republic of Congo*, African Commission on Human and Peoples' Rights & International Work Group for Indigenous Affairs, 2011

⁴⁴ L. Dominguez, C. Luoma, *op. cit*

⁴⁵ E.I. Laltaika and K. Askew, *op. cit*.

⁴⁶ D. J. Timothy, *Chapter 1: Africa's Heritage and Tourism in Cultural Heritage and Tourism in Africa*, Routledge, New York, 2023

representing the rebound of the African tourism industry after the pandemic⁴⁷. Therefore, the economic sector of tourism has increased drastically in recent years and it has led to a boost in Africa's economy, representing the 4.5% of the total GDP in 2019 and providing employment to 25 million people around the whole continent, equating to 5.6% of all the jobs in the region. Furthermore, the WTTC estimates that the African travel and tourism industry can boost the continent's GDP by US\$168BN and generate over 18 million new employments⁴⁸.

The tourism sector is fundamentally intertwined with conservation efforts and the establishment of protected areas on the African continent. As a matter of fact, conservation strategies in recent years have shifted significantly as a result of tourism and they are now being frequently framed in terms of transforming nature into a profitable resource⁴⁹. Despite the economic advantages of tourism development seen above, such transformation has led to the sector of tourism often representing a threat to the environment and to biodiversity on the continent, although mainly it has serious impacts on indigenous and local communities, who face reduction in their cultural, social and religious rights⁵⁰. Representing a growing sector in Africa, how to expand tourism development without harming the environment and the local populations is one of the main challenges faced by conservation initiatives, tourism organizations and national governments.

One of the main solutions found by tourism agencies and conservationists is the spread of ecotourism as a sub-category of nature-based tourism. The terms "ecotourism" and "nature-based tourism" are not interchangeable: nature-based tourism refers to travel that employs nature as the primary attraction; ecotourism, on the other hand, is based on the notion that certain locations and cultures remain pure, untainted, and unaffected by industrialization, westernization, and even mass tourism⁵¹.

⁴⁷ UNWTO, *Global and regional tourism performance*, <https://www.unwto.org/tourism-data/global-and-regional-tourism-performance>

⁴⁸ World Travel & Tourism Council, *New Report Shows How Travel & Tourism in Africa Could Boost Continent's Economy by US\$168BN Over the Next 10 Years*, 2 November 2023, <https://wttc.org/news-article/new-report-shows-how-travel-and-tourism-in-africa-could-boost-continent-economy-by-usd168bn-over-the-next-10-years>

⁴⁹ D. Brockington, R. Duffy, J. Igoe, *op. cit.*

⁵⁰ World Travel & Tourism Council, *Coping with Success: Managing Overcrowding in Tourism Destinations*, McKinsey and Company and World Travel and Tourism Council, December 2017,

⁵¹ R. Sharpley, *Ecotourism: A consumption perspective*, in *Journal of Ecotourism*, Vol. 5, p. 7-22, 2006

The International Ecotourism Society (TIES) defines ecotourism as “responsible travel to natural areas that conserves the environment and improves the wellbeing of local people”. This is a practical compromise that strikes a sustainable balance between conservation goals and human development⁵². This type of tourism has the potential to have significant effects on the environment, society, culture, and economy; how best to exploit this potential will determine whether positive or negative outcomes result. When applied properly and equally, it gives conservationists an alternative approach to harsh protectionism by allowing the mostly non-consumptive use of irreplaceable natural resources.⁵³ Therefore, generally speaking, ecotourism should meet development and conservation goals. As a matter of fact, the ideal definition of ecotourism should include the following three objectives: first, all natural resources must be preserved; second, visitors and tour operators must behave ethically; and third, local populations must benefit without overwhelming their social and economic systems. An ecotourism endeavour can only qualify as a sustainable development strategy if it is limited in scale and has a minimal negative impact on the environment and society⁵⁴.

Regretfully, proponents of ecotourism have been using the argument that anything that is “good” is genuine ecotourism and anything that is “bad” is traditional tourism in recent years. Such arguments frequently fail to acknowledge that all forms of tourism have costs and benefits, there is no fictitious “win-win” situation⁵⁵. In actuality, ecotourism shares many disadvantages with other forms of tourism, despite the fact that it is often presented as being completely distinct from commercial travel.

Numerous studies on the effects of tourism in the African continent indicate that, despite the industry’s best efforts and guiding principles, local populations that coexist with wildlife suffer from inadequate integration and additional payments (such as crop damage and prohibitions on subsistence hunting)⁵⁶. There isn’t much of a connection between local industries and tourism, especially when it comes to large-scale travel. Cultural

⁵² The International Ecotourism Society, *What is Ecotourism?*, <https://ecotourism.org/what-is-ecotourism/>

⁵³ J. S. Brooks, K.A. Waylen, M.B. Mulder, *How national context, project design, and local community characteristics influence success in community-based conservation projects*, 2012

⁵⁴ C. P. Dawson, *Ecotourism and nature-based tourism: one end of the tourism opportunity spectrum?*, in *Tourism, Recreation and Sustainability: linking culture and the environment* CAB International, UK, 2001

⁵⁵ B. Bramwell, B. Lane, *From niche to general relevance? Sustainable tourism research and the role of tourism journals*, in *The Journal of Tourism Studies* vol. 16 n. 2, p. 52-62, 2005

⁵⁶ D. Brockington, R. Duffy, J. Igoe, *op. cit.*

customs are taken and turned into commodities, and land and natural resources are regularly and often illegally stolen⁵⁷.

Regarding the tourism sector, such impacts on indigenous and local communities are often seen as consequences of the concept of “ecotourist bubble”. From within this bubble, ecotourists view the environment through a narrow lens that is primarily social, historical, and ecological, obscuring the socio-ecological ramifications of the international infrastructure and commercial linkages that first enable the growth of this sector⁵⁸. For example, tourism is heavily dependent on air-travel, which is strongly linked to climate change; locals are paradoxically perceived as a threat to the environment, while tourists are seen as its protectors; additionally, environments in protected areas may actually come under threat from the very people who visit them. The ecotourist bubble insulates travellers from the more significant cultural, social, and ecological ramifications of their actions. Most of the time, this is also because visitors are only exposed to interactions that live up to their idealized conceptions of these kinds of connections, since tourism in all its forms change the behaviours of local communities, as it will be deepened in the next paragraph. For the kinds of social and ecological ethics it advocates, this is problematic for the livelihoods and the cultural heritage of local communities that encounter with foreign visitors⁵⁹.

In conclusion, the development of tourism in Africa has frequently intersected with conservation initiatives. On the surface, sustainable alternatives such as ecotourism seems to contribute to the preservation of natural habitats and wildlife and to generating income for local communities. Nevertheless, there are often negative consequences for indigenous populations. These communities may face displacement from their ancestral lands, loss of traditional livelihoods and erosion of cultural heritage and fundamental rights. Therefore, there is a need for sustainable tourism initiatives that actively involves indigenous communities in decision-making processes, respects their traditional knowledge and land rights, and ensure that they have a fair share of the economic benefits

⁵⁷ M. Hitchcock, K. Teague, *Souvenirs, The Material Culture of Tourism*, Aldershot, Ashgate, 2000

⁵⁸ J. G. Carrier, D. V. L. Macleod, *Bursting the bubble: The socio-cultural context of eco-tourism*, in *Journal of the Royal Anthropological Institute* vol. 11, p. 315-334, 2005

⁵⁹ P. West, J. G. Carrier, *Ecotourism and authenticity. Getting away from it all?*, in *Current Anthropology* vol. 45 n. 4, p. 483-498, 2004

derived from tourism activities. As we see in the next paragraph, it is fairly complex to see this happen on the African soil.

1.1.4 Effects of Tourism Development on Indigenous Cultural and Social Rights

The growth of the tourism industry presents significant obstacles for indigenous peoples and has often coincided with the establishment of protected areas in many nations. As a result of conservation efforts in the 1980s and 1990s, indigenous peoples were frequently forced to leave their lands, and now they have to contend with increased tourism activity within their borders⁶⁰.

It has been claimed that increased employment and financial prospects are a direct result of tourism. Nevertheless, several factors preclude indigenous peoples to the enjoyment of tourism opportunities. Indigenous people have fewer access to national health systems, education, and quality medical care in the majority of African nations. In comparison to non-indigenous people, they are significantly less likely to live in quality housing and may experience dietary issues. Other significant factors are land dispossession and climate change, which has resulted in diminished water availability and food insecurity⁶¹. Furthermore, it is alleged that the industry enriches nearby villages that are prepared to make investments to draw tourists. However, a gap exists between the growth of the industry and the socio-economic development: although the industry has expanded, its impact on development has been modest. Income that may help local economies is sent abroad to boost economies in other nations⁶². In fact, there is a clear disparity between the assets that foreigners get via the exploitation of resources and territories and the destitution of the indigenous populations whose lands contain those resources. Foreign takeover contracts out a great deal of supply and managerial knowledge, which results in income being lost to places outside of the intended objective⁶³. As a result, indigenous peoples earn very little in recompense for the harm that tourism create and receive very little gain from these projects, while firms and foreign actors in Africa receive the largest

⁶⁰ United Nations Department of Economic and Social Affairs, *State of the World's Indigenous Peoples: Rights to Lands, Territories and Resources*, *op. cit*

⁶¹ K. Melubo, *Chapter 3: Indigenous Tourism in Africa in Cultural Heritage and Tourism in Africa*, Routledge, New York, 2023

⁶² I. Robert, *Consuming Africa: The Impact of Tourism on Local African Economies*, Africa Policy Research Institute, 19 June 2023, <https://afripoli.org/consuming-africa-the-impact-of-tourism-on-local-african-economies>

⁶³ K. Melubo, *op. cit.*

proportion of the revenues from tourism⁶⁴. Because non-natives actors predominate this sector, indigenous sovereignty over resources is diminished and they are usually excluded from decisions about resource usage and forced to surrender ancestral land resources in order to meet the needs of foreigners⁶⁵.

In the conservation sector, evicted indigenous peoples live in poverty while national parks and wildlife reserves frequently bring in substantial sums of income from tourists. Indigenous African societies rely on these ecosystems for social, cultural, and spiritual sustenance as well as for physical survival. Unfortunately, for indigenous groups, there are more drawbacks than advantages to living in protected regions that cater to tourism. Water sources, ideal grazing pastures, and spiritual locations, which are essential to their livelihoods are no longer available. For instance, due to the conservation and cultural importance of these sites, the Maasai people of Tanzania have lost the Tarangire and portions of the Ngorongoro, Mkomazi, Arusha, and Serengeti. In Kenya, Lake Bogoria, Lake Nakuru, and Lake Elementatia have been lost by the Endorois⁶⁶. A significant portion of the Batwa region in Rwanda is currently occupied by Gishwati, Nyungwe and Volcanoes national parks. Each of these parks brings to local governments a sizable sum of money from visitors. On the other hand, displaced from their ancestral territories that provided their means of subsistence, the Batwa are currently coping with acute poverty, diseases and inadequate housing⁶⁷. Some of these regions are becoming popular tourist destinations due to their remarkable diversity of wild animals and picturesque scenery, earning them the designation of World Heritage Sites. Nevertheless, the displacement of indigenous communities equals a loss of history, memory, culture and local representation that devalues the World Heritage Sites themselves⁶⁸. Government organizations have established and managed protected areas in a top-down manner without the approval or significant involvement of indigenous groups. For there to be true participation, indigenous people must be acknowledged as the legitimate owners of protected areas and

⁶⁴ R. Hitchcock, J. Frost, "Botswana", in *The Indigenous World 2019*, International Group for Indigenous Affairs, 2019

⁶⁵ J. E. Mbaiwa, *Enclave tourism and its socio-economic impacts in the Okavango Delta, Botswana*, in *Tourism Management*, Vol. 26 n. 2, p. 157-172, 2005

⁶⁶ D. Brockington, *Conservation displacement and livelihoods: The effects of eviction on pastoralists moved from the Mkomazi Game Reserve, Tanzania*, in *Nomadic Peoples*, vol. 3, p. 74-96, 1999

⁶⁷ A. Kamanzi, "Rwanda", in *The Indigenous World 2019*, International Group for Indigenous Affairs, 2019

⁶⁸ K. Melubo, *Chapter 3: Indigenous Tourism in Africa in Cultural Heritage and Tourism in Africa op. cit*

treated as equal partners in their management. Policies and agendas must also take into account their values, ethics, and attitudes toward the environment⁶⁹.

Another major effect of tourism, in addition to the lack of employment for locals and the resultant loss of land and natural resources, is the need for extensive infrastructure development, including the construction of roads, railroads, ports, pipelines, and airports, to support tourism initiatives. These developments are often at odds with the agendas of indigenous peoples and can lead to numerous disadvantages for them. For instance, cross-border infrastructure was seen as a facilitator of ambitious development goals in the Lamu Port South Sudan - Ethiopia Transport in East Africa Regional Development Plan (LAPSSET). The cumulative effects of the various LAPSSET project aspects in Kenya, however, “will spell the end of Aweer culture”, according to the African Commission on Human and Peoples’ Rights and representatives of affected communities. These effects will also have a significant impact on many other pastoralist and hunter-gatherer communities in Kenya and Tanzania⁷⁰.

The devaluation of the social capital of indigenous communities is another detrimental effect of tourism. One specific type of human rights violation that indigenous peoples experience is the infringement of their cultural rights. The loss of important productive resources has had an adverse impact on the cultures of indigenous peoples, depriving them of the ability to continue living the way they choose and to preserve and advance their cultural identities and traditions as they see proper. For instance, the widespread appropriation of land for tourism in East Africa has had a harmful impact on the cultures of numerous pastoralist groups, including the Maasai. Many religious rites are no longer performed because animals, which are required for these rites to be performed, have migrated elsewhere⁷¹. Also, tourism growth due to creation of national parks has led to diverse sacred sites for indigenous peoples to be subject to over tourism, and therefore, to not be available anymore for spiritual rites.

⁶⁹ D. J. Timothy, *Empowerment and stakeholder participation in tourism destination communities*, in *Tourism, power and space*, pp. 199-216, London, Routledge, 2007

⁷⁰ ACHPR, *Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities*, *op. cit.*

⁷¹ *Ibid.*

Governments and the tourism industry aggressively commercialize aspects of indigenous cultures, including customs, artwork, religious ceremonies, and cultural performances. Likewise, indigenous groups themselves have joined the drive to exchange their traditions for profit as a result of discovering the financial benefits of selling cultural artifacts⁷². The tourism industry has modified the idea of monetization, or commercialization, of every item of their culture over time. Local communities consequently come to believe incorrectly that tourists are the source of wealth⁷³. As a result, in order to meet the expectations of visitors, religious ceremonies, customary ethnic ceremonies, and festivals may be streamlined and sterilized, resulting in what has been called “reconstructed ethnicity”. Once a location is promoted as a travel destination and tourists’ desires for souvenirs, artwork, entertainment, and other items begin to have an economic impact, basic shifts in human values may occur⁷⁴. Cultural commercialization causes value to shift from sacred to profane and from genuine to fake. Culture becomes a commodity to be exploited financially and seen as a product to be purchased, sold, and performed for money⁷⁵. While visiting, the tourist maintains an othering relationship with the locals by consuming nature and culture. On the other hand, indigenous communities are commodities, like consumable nature and culture, there to be watched and served, showing that indigenous peoples rights are often exploited to make profit and to satisfy foreign tourists⁷⁶.

One of the consequences of the growing tourism-induced commercialization of indigenous peoples’ cultures is seen not only in spiritual and abstract ways but also in more tangible ways, such as the shift in the creation and sale of authentic artifacts to visitors. African indigenous peoples have been compelled to sell their priceless artwork for extremely low prices, which has led to the removal of indigenous artwork from their communities and into trade centres: curio shops, museums, and other tourist destinations,

⁷² K. Melubo, K., A. Carr, *Developing Indigenous tourism in the bomas: Critiquing issues from within the Maasai community in Tanzania*, in *Journal of Heritage Tourism*, vol. 14 n. 3, p. 219-232, 2019

⁷³ G.A. Alamineh, L. W. Hussein, Y. E. Mulu, B. Taddesse, *The negative cultural impact of tourism and its implication on sustainable development in Amhara Regional State*, in *Cogent Arts & Humanities*, 2023

⁷⁴ G. Tamakloe, *The Impact of tourism on the socio-cultural setting of rural communities in Ghana’s case study of Boabeg-Fiema in the Brong Ahafo region*, KDI School 2011

⁷⁵ M. Shahzalal, *Positive and negative impacts of tourism on culture: A critical review of examples from the contemporary literature*, in *Journal of Tourism, Hospitality and Sports*, Vol. 20, p. 30-35, 2016

⁷⁶ S. Cole, *Beyond authenticity and commodification*, in *Annals of Tourism Research*, Vol. 34 n. 4, 943-960, 2007

to which ironically indigenous peoples are not allowed entry⁷⁷. The locals started creating various artifacts for sale in response to the influx of tourists and to satisfy their lust. Indigenous people have been creating a wide range of artifacts to symbolize their political, social, and religious identities and accomplishments. The original objects or cultural assets that can be generated by cultural professionals are no longer enough to pique the curiosity of tourists as their numbers grow over time⁷⁸. The majority of the meanings, forms, and purposes of tribal heritage have changed as a result of culture being produced for the consumption of visitors. For instance, anthropological research indicates that carved masks, which are marketed as genuine African art in Kenya and Tanzania, are not indigenous to the area⁷⁹. Certain cultural artworks and performances are now mass-produced in Africa due to the tendency of tourists to overspend and their need for inexpensive souvenirs. To accommodate the demand for these artifacts from tourists, non-professionals or regular people have started to get engaged in their manufacturing. Such a production of cultural material does not reflect the political, religious, and sociocultural values of indigenous peoples⁸⁰.

There are claims that local cultures, traditional ways of life, and indigenous cultures are disappearing from many places due to the rise of foreign travel and the overwhelming demand for commodities related to tourism. Scholars have examined the ways in which tourism has impacted hospitality, identity, performance, photography, and crafts, devaluing culture by turning it into a commodity that is packaged and marketed to tourists⁸¹. These out-of-date, tourism-driven stereotypes about indigenous Africans were mostly created by their European colonizers and are now used by the travel industry to uphold the romanticized ideas of native populations. Such an idealized view merely serves to satisfy the preconceptions and fantasies of the visitors about what the indigenous people ought to look like.

⁷⁷ ACHPR *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, *op. cit.*

⁷⁸ G.A. Alamineh, L. W. Hussein, Y. E. Mulu & B. Tadesse, *op. cit.*

⁷⁹ D. J. Timothy, *Heritage and tourism: Alternative perspectives from South Asia*, in *South Asian Journal of Tourism and Hospitality*, Vol. 1 n. 1, p. 35-57, 2021

⁸⁰ G.A. Alamineh, L. W. Hussein, Y. E. Mulu & B. Tadesse, *op. cit.*

⁸¹ S. P. Hanna, A. E. Potter, E. A. Modlin, P. Carter, D. L. Butler, *Social memory and heritage tourism methodologies*, Routledge, 2017

Indigenous African communities' ownership and management of cultural resources is by no means adequate and worsened by tourism and conservation initiatives. The majority of indigenous peoples are unable to exert sovereignty over their traditional homelands and resources, even though some of them may legally possess them, and this has drastically affected their cultural and social life. Due to their lack of sovereignty over land or cultural assets they have been disempowered and mainly prevented from benefiting economically from the cultural tourist industry, which influences their legacy as its principal source of income⁸².

In conclusion, the African Commission on Human and Peoples' Rights has emphasized the need to strictly adhere to the proportionality criteria when it comes to the development of protected areas and tourism-related projects. This calls for protections including just and equitable benefit-sharing, free prior consent that is informed, and participatory impact assessments. The United Nations Special Rapporteur on the Rights of Indigenous Peoples has called on conservation organizations to ensure increased openness, improved monitoring, and compliance with the rights of indigenous peoples. As part of their due diligence in upholding indigenous human rights, such organizations should engage in regular project assessment and consistent reporting, given the impact that protected areas have on indigenous peoples⁸³. In doing so, conservation efforts and tourism initiatives should be bound to the recent international and continental framework for the protection of indigenous rights, which will be further explained in the next paragraph.

1.2 INTERNATIONAL AND AFRICAN FRAMEWORK FOR THE PROTECTION OF INDIGENOUS RIGHTS

For a long time, defining indigenous peoples has been complex, creating obstacles in the fields of academia and policymaking. A strong international indigenous movement committed to the acknowledgement and defence of their rights has emerged as a result of this definitional ambiguity. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which sets forth global guidelines and standards for the treatment of

⁸² K. Melubo, *op. cit*

⁸³ Special Rapporteur on the rights of Indigenous Peoples, UN. Doc. A/71/229: *Conservation and indigenous peoples' rights*, para. 23, UN General Assembly, 21 July 2016

indigenous communities, is essential to this movement. To address the distinct situations and needs of its indigenous peoples, Africa has concurrently built its own frameworks and instruments, such as the African Commission on Human and Peoples' Rights (ACHPR) and the Working Group on Indigenous Populations/Communities. Understanding these frameworks is crucial for comprehending their efficacy in protecting the rights and livelihoods of African indigenous groups from the impacts of conservation and tourism initiatives.

1.2.1 The Evolving Recognition of Indigenous Peoples and the Complexity of their Definition

The decolonization phase and a broader expansion in non-governmental organizations provided impetus for the establishment of a large number of indigenous peoples' groups at the national and international levels in the 1960s and 1970s. The movement was spurred by a number of issues, including land loss and broken treaties, as well as marginalization, war, and grave breaches of human rights⁸⁴.

Human rights violations against indigenous peoples started to surface in various reports during the 1970s and 1980s. Thus, in 1970 the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities suggested conducting a thorough investigation into the issues of indigenous peoples, and in 1971 it designated José Martínez Cobo as Special Rapporteur to carry out the task. Nearly 200 indigenous representatives from all over the world travelled to Geneva in 1977 to attend an NGOs' meeting on discrimination against indigenous people⁸⁵. Many of them were first denied entrance because they did not fall under any of the pre-existing organizational categories. The United Nations promptly created special provisions to accommodate them, and those same procedures are still in place today⁸⁶.

Following the fall of the Soviet Union in the late 1980s, the worldwide Indigenous Peoples' Movement began to take shape and gain momentum at the same time as these discursive and institutional changes happened. Alongside these discourses, a rise in

⁸⁴ United Nations Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, 2009

⁸⁵ UNPFII, *Indigenous Peoples, Indigenous Voices*, United Nations Department of Public Information, May 2007 https://www.un.org/esa/socdev/unpfii/documents/unpfiibrochure_en07.pdf

⁸⁶ UNPFII, *op. cit.*

“global indigenism” happened, a nascent global ideology based on the experiences of the “first peoples” of the world, those who have a strong connection to the “last wild places” of the planet and a claim to have survived on their land through the disruptions of colonialism and corporate exploitation⁸⁷. Indeed, colonization and European expansion are the sources of the transnational frameworks of indigenous activity⁸⁸.

Martinez Cobo’s 1981-1984 ‘Study of the problem of discrimination against indigenous populations’ is a cornerstone in the indigenous movement since it made a strong call for the world community to take immediate action on behalf of indigenous peoples. Simultaneously, the Sub-Commission’s subsidiary body, the Working Group on Indigenous Populations (WGIP), was created by ECOSOC in 1982 with the responsibility of examining advancements related to the defence and advancement of indigenous populations’ fundamental freedoms and human rights⁸⁹. The Working Group made the ground-breaking decision in 1983 to permit participation of representatives of indigenous peoples and their organizations⁹⁰.

The United Nations General Assembly formally declared in 1994 that 1995-2004 would be the International Decade of the World’s Indigenous People. This was a critical step toward the recognition of indigenous peoples’ fundamental rights⁹¹. The First Decade contributed to raising awareness and securing indigenous concerns on the UN and some UN agencies’ agendas. Indigenous peoples themselves also made the most of the Decade, reporting on and recording abuses of human rights and establishing a place for themselves in a number of international fora⁹². The Decade saw a rise in interest in concerns pertaining to Indigenous People, as demonstrated by significant occasions like the founding of the UN Permanent Forum on Indigenous Issues (UNPFII) in 2000 and the appointment of a UN Special Rapporteur on the Rights of Indigenous Peoples in 2001⁹³. The United Nations Declaration on the Rights of Indigenous Peoples was finally adopted by the General Assembly on September 13, 2007, marking a significant turning point in

⁸⁷ R. Niezen, *The Origins of Indigenism: Human Rights and the Politics of Identity*. Berkeley, California: University of California Press, 2003

⁸⁸ J. Igoe, *Global indigenism and spaceship Earth: Convergence, space, and re-entry friction*, in *nature unbound*, 2008

⁸⁹ UNPFII, *op. cit.*

⁹⁰ UN Department of Economic and Social Affairs, *State of the World’s Indigenous Peoples*, *op. cit.*

⁹¹ UNPFII, *op. cit.*

⁹² UN Department of Economic and Social Affairs, *State of the World’s Indigenous Peoples*, *op. cit.*

⁹³ African Development Bank Group’s, *Development and Indigenous Peoples in Africa*, in *Safeguards and Sustainability Series*, Vol. 1 Is. 1, August 2016

the organization's work and the fight for the promotion and protection of indigenous peoples' rights.⁹⁴

The definition of indigenous peoples was a topic of controversy among the many UN organizations and international institutions involved in this process over the course of many years. Despite these several cornerstones in the protection of indigenous human rights, there is still no universally accepted definition of Indigenous Peoples. Indigenous activists, policy leaders, and anthropologists have battled to define what it means to be indigenous in a way that is both meaningfully narrow and inclusive of people from a wide range of backgrounds⁹⁵. Three viewpoints can be used to briefly understand the concept of "indigenous peoples": historical, relational, and normative. When indigenous is used in an historical sense, it refers to the first residents, if not autochthones. When the term is used in a relational context, it connotes a status of poverty and marginalization within national societies. In a normative sense, it covers people who feel anchored in their environment, have a custodial sense of their territory and resources, are primarily connected together by moral ties, and have a feeling of reciprocity and mutuality towards each other⁹⁶.

The original definitions outlined indigenous peoples as the native inhabitants of a territory, from which they have been displaced by colonial forces or other invaders and are now marginalized⁹⁷. In reality, the most referenced definition comes from José Martínez Cobo, the former Special Rapporteur for the UN who asserted in his 1982 'Study of the problem of discrimination against indigenous populations': "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their

⁹⁴ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, A/RES/61/295*, 2 October 2007

⁹⁵ D. Brockington, R. Duffy, J. Igoe, *op. cit.*

⁹⁶ B. K. Roy Burman, *Indigenous and Tribal Peoples in World System Perspective*, vol. 1 (1) Stud. Tribes Tribals 7,8-9, 2003

⁹⁷ ACHPR, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, *op. cit.*

ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems”⁹⁸.

Critics of this definition and previous efforts have argued that self-identification and modern circumstances are not given enough weight, and that aboriginality should not be the primary determining criterion. Since this definition is strongly biased towards pre-colonial societies and might not be applicable to a wider perspective that includes marginalized societies beyond the post-colonial age, it might be viewed as having limited context⁹⁹. For instance, the Cobo definition reflects a Eurocentric bias, since, by redefining invasion and colonization as contingent facts for the purpose of determining indigeneity, the definition excludes ‘indigenous peoples’ of Europe. This would limit the scope of the indigenous people’s issue to all regions outside of Europe. According to the Washington based Centre for World Indigenous Studies, however, 120 communities in Europe are being considered as indigenous peoples, including the Skanians in Sweden, the Comish in Wales, the Shetlanders in the United Kingdom, and others.¹⁰⁰

Moreover, when considering the Americas, Russia, the Arctic, and many regions of the Pacific, these previous definitions of indigenesness make sense. This concept, however, is less applicable in the majority of Asia and Africa, where entire populations of people were not displaced by colonial powers and replaced by European settlers. White settlers and colonialists have not been the only ones to practice indigenous people’s displacement and domination; in many parts of Africa and Asia, local dominant groups have suppressed marginalized groups, and the indigenous movement in these areas has responded to this both to this experience and to the colonial one¹⁰¹.

There are others who contend that all Africans are native to the continent and that dividing the continent’s population into indigenous and non-indigenous tribes results in the creation of distinct classes of citizens with distinct rights. In many regions of Asia, the same argument is made, or, on the other hand, it is said that since there hasn’t been widespread Western settler colonialism, there can’t be any indigenous peoples within a

⁹⁸ UN Economic and Social Council, Commission on Human Rights, *Final Report by Special Rapporteur, Mr. Jose R. Martinez Cobo*, in Study of the Problem of Discrimination against indigenous populations, 5 august 1983, https://www.un.org/esa/socdev/unpfii/documents/MCS_intro_1983_en.pdf

⁹⁹ African Development Bank Group’s, *op. cit.*

¹⁰⁰ R. Shrinkal, *Problems in Defining Indigenous Peoples under International Law*, in Chotanagpur Law Journal, Vol. 7, No. 7, 2014, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2425557

¹⁰¹ UN Department of Economic and Social Affairs, *State of the World’s Indigenous Peoples*, *op. cit.*

specific nation and, thus, no way to distinguish between the native population and immigrants. In the context of European colonization, it is unquestionably true that Asians are indigenous to Asia and Africans are indigenous to Africa. However, European colonization has not been the only factor in shaping indigenous identity¹⁰².

Other than these contentious issues, one of the difficulties in defining indigenous peoples is the distinction of these from other social or ethnic groups. The difference that indigenous peoples have from minorities is a significant matter that needs to be considered while categorizing them. “Minorities” and “indigenous peoples” are frequently defined and identified in similar ways. Commonalities stem from the fact that indigenous peoples are frequently categorized as minorities, weak, and marginalized, and that many of their demands align with those of other minorities¹⁰³. However, despite the fact that indigenous peoples and other minorities share many concerns, there are still significant discrepancies between the two groups. The distinction between minorities and indigenous peoples can be understood in this way, according to the research of Asbjorn and Erica-Irene Daes: (a) minorities seek institutional integration, whereas indigenous peoples seek to maintain some degree of institutional separateness; (b) minorities seek to exercise individual rights, whereas indigenous peoples seek to exercise collective rights; (c) minorities seek non-discrimination, while indigenous peoples seek self-government¹⁰⁴.

Another fundamental distinction of indigenous groups from other groups is enshrined in the 1989 ILO Convention 169 Convention Concerning Indigenous and Tribal Peoples in Independent Countries. It states that the convention applies to:

- A. “Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

¹⁰² Ibid.

¹⁰³ R. Shrinkal, *op. cit.*

¹⁰⁴ UN Economic and Social Council, *Prevention of discrimination against and the protection of minorities: Working paper on the relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples*, E/CN.4/Sub.2/2000/10, UN Sub-Commission on the Promotion and Protection of Human Rights, 19 July 2000

B. Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions”¹⁰⁵.

The ILO Convention 169 Convention Concerning Indigenous and Tribal Peoples in Independent Countries represents a cornerstone in the definition of indigenous rights also for another reason. The convention in article 1(2) claims that “Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this concept of this Convention apply”¹⁰⁶. One of the major turning points in indigenous groups’ engagement in international forums was the idea of self-identification. For example, the World Council of Indigenous Peoples was founded in 1974 by indigenous leaders from Australia, Latin America, and North America. It was the first of 11 indigenous NGOs to be granted official UN consultative status.¹⁰⁷ Not until the ILO Convention of 1989, however, were self-identifying indigenous peoples of Africa and Asia allowed to participate in international discussions and standard-setting. As a result, the movement of indigenous peoples grew increasingly worldwide¹⁰⁸.

After all these debates over the several issues surrounding the definition of indigenous peoples, observers representing indigenous organizations came to a consensus during the extended deliberations at the Working Group on Indigenous Populations (WGIP), and rejected the notion of a legal definition that would be accepted by States. In a similar vein, governmental delegates stated that they did not think it was necessary or desirable to define indigenous peoples globally. The Working Group ultimately came to the conclusion during its sixteenth session in 1997 that the adoption of the Declaration on the Rights of Indigenous Peoples could not, and would not, depend on a global definition of

¹⁰⁵ International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, C169, 27 June 1989

¹⁰⁶ *Ibid.*

¹⁰⁷ D. Sanders, *Background Information on the World Council of Indigenous Peoples*, Lethbridge, Alberta: Fourth World Documentation Project, 1980

¹⁰⁸ R. Niezen, *The Origins of Indigenism: Human Rights and the Politics of Identity*, *op. cit*

indigenous peoples at that time¹⁰⁹. As a matter of fact, Article 33 of the United Nations Declaration on the Rights of Indigenous Peoples emphasizes the significance of self-identification, whereby indigenous peoples determine their own identity as indigenous, rather than providing a definition: “Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live”¹¹⁰.

In conclusion, when it comes to the concept of “indigenous peoples,” the prevailing view today is that no formal universal definition of the term is necessary. This perspective arises from the understanding that any single definition will inevitably be either over-inclusive or under-inclusive. In other words, a definition that works well in one societal context may not be applicable or appropriate in another, due to the vast diversity and unique characteristics of indigenous communities around the world. Therefore, rather than striving for a rigid, universal definition, it is more common for international institutions to rely on the self-identification principle for indigenous communities or on the commonly accepted understanding provided in the Martínez Cobo study mentioned above.

1.2.2 Safeguarding Indigenous Rights within the International Legal Framework

Over the past three decades, the movement led by indigenous peoples included also civil society, international mechanisms, and States at the national, regional, and global levels. It has made the rights of indigenous peoples a significant part of international law and policy. The rights of indigenous peoples have developed from pre-existing international law, such as human rights treaties, to address their priorities and the unique situations they face, including the right to their lands, territories, and resources as well as the right to self-determination¹¹¹.

The first international instrument to directly address indigenous rights was ILO Convention No. 107 Concerning the Protection and Integration of Indigenous and other

¹⁰⁹ R. J. Martínez Cobo, *Study of the problem of discrimination against indigenous populations*. Volume 5, Conclusions, proposals and recommendations / by José R. Martínez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, paras. 379-382, march 1987

¹¹⁰ UN General Assembly, *op. cit.*

¹¹¹ UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 9, Rev. 2, Indigenous Peoples and the United Nations Human Rights System*, No. 9, Rev. 2, August 2013

Tribal and Semi-Tribal Populations in Independent Countries, adopted in 1957¹¹². Even though this was the first international treaty pertaining to indigenous peoples, the approach was incorrect and continued to lean toward colonial theories. In truth, the 1957 document justifies the progressive extinction of indigenous peoples as a group by promoting the assimilation of indigenous people into national societies and economies¹¹³. Furthermore, the Convention assumes total governmental authority over indigenous peoples' issues. Naturally, indigenous peoples have vehemently condemned the ILO for being "paternalistic" in its attitude to "protect these groups"¹¹⁴.

The revised ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries was adopted on June 1989 and came into force in 1991¹¹⁵. It approaches indigenous peoples' problems entirely differently. By establishing guidelines and safeguards for the environment, development, and the direct involvement of indigenous peoples in decisions that impact their rights, lives, and territories, it validates and upholds the rights of indigenous peoples¹¹⁶.

The only legally enforceable international agreements that address indigenous rights directly are Conventions Nos. 107 and 169. These agreements also offer a process for appeal known as the Committee of Experts on the Application of Conventions and Review of Recommendations. Just 24 nations have ratified the convention as of right now, despite its significance and status as one of the pioneering institutional tools that resulted in the protection of indigenous peoples' fundamental rights. Only the Central African Republic ratified on the African continent¹¹⁷.

There have been multiple meetings between international organizations and indigenous groups in the years preceding and following this treaty to enable their involvement in a more inclusive legal framework. For example, the 1992 Rio Earth Summit was significant because it resulted in the 1992 Convention on Biological Diversity, one of the most

¹¹² International Labour Organization (ILO), *Indigenous and Tribal Populations Convention*, C107, 26 June 1957

¹¹³ UN Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, *op. cit.*

¹¹⁴ L. Swepston, *Latin American Approaches to the Indian Problem*, in *International Labor Review*, Vol. 117, No. 2, March-April 1978

¹¹⁵ International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention*, *op. cit.*

¹¹⁶ UN Department of Economic and Social Affairs, *State of the World's Indigenous People*, *op. cit.*

¹¹⁷ Ratifications of C169 - Indigenous and Tribal Convention, 1989, <https://normlex.ilo.org/dyn/normlex/en/>

significant environmental accords with numerous references to indigenous people¹¹⁸. In order to safeguard indigenous peoples' rights to their traditional knowledge and practices in the fields of environmental management and conservation, the convention recognises the special relationship that these peoples have with their ancestral lands and establishes international legal standards¹¹⁹.

The Convention acknowledges in its preamble that many indigenous and local communities that uphold traditional lifestyles have a deep and long-standing dependency on biological resources. Furthermore, in Article 8 on In-situ Conservation, which focuses primarily on creating a network of protected areas or places where greater attention is required to preserve biological diversity, paragraph (j) recommends that "a Party shall, subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices"¹²⁰. With 191 Parties, the CBD is one of the most widely adopted international agreements in history.

The Convention's goals on biodiversity and traditional knowledge must be implemented with both financial and political assistance. The majority of indigenous peoples rely heavily on the states in which they reside. Nonetheless, they hardly experience enough national legislative backing or any level of self-governance, which are essential for preserving their biodiversity-related customs and expertise as well as for guaranteeing the effective execution of Article 8(j)¹²¹. Additionally, they encounter difficulties while attempting to implement customary rules pertaining to the preservation, sustainable management, and use of natural resources, ancestral territories, and biological variety. The Convention is frequently implemented unfairly when protected area expansion is prioritized over equity and indigenous community engagement. This is because social,

¹¹⁸ United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992, <https://www.un.org/en/conferences/environment/rio1992>

¹¹⁹ UN Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, op. cit.

¹²⁰ Convention on Biological Diversity, Rio de Janeiro, 5 June 1992 https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-8&chapter=27

¹²¹ International Institute for Sustainable Development, *CBD Working Group on Article 8(j)*, 8-19 October 2007, <https://enb.iisd.org/events/5th-meetings-cbd-working-groups-access-and-benefit-sharing-and-article-8j>

cultural, and justice aspects of the Convention are often ignored in favour of quantitative targets¹²².

During the International Indigenous Peoples Summit on Sustainable Development, indigenous groups around the world voiced their dissatisfaction with these early institutional advances and their scarce practical implementation. The Indigenous Peoples' International Summit on Sustainable Development that took place in Kimberley, South Africa, from August 20-24, 2002 brought together approximately 300 leaders and organizations of indigenous peoples from around the globe¹²³. The Kimberley Political Declaration and the Plan of Implementation on Sustainable Development were the two documents that were approved at the summit. The latter emphasizes that governments and businesses cannot achieve global sustainability if they continue to disregard the rights and special abilities of indigenous communities. It also lays out commitments and visions regarding the future role of indigenous peoples in pursuing a sustainable future¹²⁴. The Political Declaration emphasized that the lack of political will prevented the implementation of the promises made to indigenous peoples, including their full and effective participation in decision-making. It also reaffirms the indigenous rights that needs to be implemented: "As peoples, we reaffirm our rights to self-determination and to own, control and manage our ancestral lands and territories, waters and other resources. Our lands and territories are at the core of our existence [...] our lands and territories are inextricably linked to our survival and to the preservation and further development of our knowledge systems and cultures, conservation and sustainable use of biodiversity and ecosystem management. We demand that free, prior and informed consent must be the principle of approving or rejecting any project or activity affecting our lands, territories and other resources¹²⁵". Therefore, even while indigenous peoples' fundamental rights have been more widely acknowledged since 2002, their views are much too frequently

¹²² UN Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, *op. cit.*

¹²³ United Nations Secretariat, *International Indigenous Peoples Summit on Sustainable Development*, Kimberley, South Africa, 2002, <https://digitallibrary.un.org/record/499219?ln=en&v=pdf>

¹²⁴ *Indigenous Peoples Plan of Implementation on Sustainable Development*, Johannesburg, South Africa, 2002

¹²⁵ *The Kimberley Declaration: International Indigenous Peoples Summit on Sustainable Development*, Khoi-San Territory, Kimberley, South Africa, 20-23 August 2002, http://www.ipcb.org/resolutions/htmls/kim_dec.html

ignored, if they are heard at all, and several international rulings are not always honoured or carried out.

The Kimberly political statement had a significant impact on the international forum, and on September 13, 2007, the general assembly of the United Nations finally adopted the United Nations Declaration on the Rights of Indigenous Peoples, following decades of negotiations and conflict between institutions, states, and indigenous peoples. With 144 votes in favour, 11 abstentions, and four states opposed (Australia, Canada, New Zealand, and the United States of America), the declaration was approved. These four states have now joined the convention as signatories¹²⁶. The Declaration, as a resolution of the GA, is not a legally binding instrument. Nevertheless, as a near unanimous resolution of the GA, the Declaration provides compelling evidence of the anticipated advancement of customary international law and facilitates that advancement¹²⁷.

First, the right to all human rights is expressed in Articles 1 and 2 of the Declaration for Indigenous Peoples, both individually and collectively. Indigenous peoples and persons are entitled to the following: freedom from discrimination of any type in the enjoyment of their rights, especially those based on their indigenous origin or identity; and equality and freedom from all other peoples and individuals.¹²⁸

The right of indigenous peoples to self-determination is one of the fundamental rights enumerated in the Declaration, and it is the source of a number of additional rights. At article 3 it states: “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. In light of this clause, article 4 asserts that, when they exercise their right to self-determination, indigenous peoples have the right to autonomy or self-government over matters pertaining to their internal and local affairs, as well as the means by which they may fund these functions.¹²⁹

¹²⁶ United Nations, *United Nations Declaration on the Rights of Indigenous Peoples* <https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>

¹²⁷ R. Davis, *Summary of the Un Declaration on the Rights of Indigenous Peoples*, University of Technology Sydney, November 2007 https://www.uts.edu.au/sites/default/files/JIHLBP8_11_07_0.pdf

¹²⁸ UN General Assembly, *op. cit.*

¹²⁹ *Ibid.*

The right to self-determination has been granted to indigenous communities whereas after decades of heated discussion and consideration international law has finally decided that indigenous communities are “peoples”. However, the extent of autonomy of the right to self-determination is still up for debate in many situations. What needs to be determined in particular is what occurs when the State’s and/or the majority population’s aspirations for resource management clash with those of indigenous peoples¹³⁰. Here lies the source of ambiguities and differing viewpoints. One may argue that the autonomous right of indigenous peoples is really a right to consultation. An indigenous people would, through consultation, have to persuade the State and/or majority population to accept its position after determining its priorities for resource management within the group as a distinct autonomous polity; if this were not the case, the State’s/majority’s position would take precedence. With this knowledge of the right to self-determination of indigenous peoples, it is clear that the right is always subject to acceptance by the State or a majority¹³¹.

Nevertheless, according to Article 3 of the Declaration, indigenous peoples are specifically entitled to the right to self-determination, which is different from the right to consultation. Since the beginning of the indigenous rights discourse, the central question has been whether and to what extent the right to self-determination extends to indigenous peoples. There is little advice on what constitutes such right in the existing international legal sources. Nonetheless, some inferences should be possible from the premise that the right to self-determination of indigenous peoples differs from and exceeds the right to consultation¹³². This logically implies that, unlike under the right to consultation, the State/majority perspective does not necessarily win out when an indigenous people and the State/majority population cannot agree on objectives for land and resource management. Instead, there are situations where the rights of the indigenous people come first. When such circumstances occur, they are difficult to handle using the legal resources that are now in place¹³³.

¹³⁰ United Nations Department of Economic and Social Affairs, *State of the World’s Indigenous Peoples, Rights to Lands, Territories, and Resources*, *op. cit.*

¹³¹ *Ibid.*

¹³² United Nations Department of Economic and Social Affairs, *State of the World’s Indigenous Peoples, Rights to Lands, Territories, and Resources*, *op. cit.*

¹³³ G. Yash, *Ethnicity and autonomy: a framework for analysis*, in *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-Ethnic States*, United Kingdom, Cambridge University Press, 2000,

Closely related to the right to self-determination, the Declaration includes several clauses that guard against discrimination and unfavourable treatment based on cultural or religious beliefs, which reflect the right to cultural equality¹³⁴.

Since many indigenous peoples identify primarily through their culture, the Declaration acknowledges in article 9 that indigenous people have the right to belong to an indigenous community or nation in accordance with the traditions and customs of that community or nation, and in article 8 that they have the right to be free from assimilation or the destruction of their culture. The declaration then contains a number of clauses protecting indigenous peoples' rights to their culture and spirituality: Article 11 grants them the freedom to practice and preserve their cultural traditions and customs; Article 12 grants them the right to create and oversee their educational system; and Article 13 grants them the freedom to manifest, practice, develop, and teach their spiritual and religious traditions, customs, and ceremonies¹³⁵. Almost every one of these articles is accompanied by positive measures that states shall take to support indigenous peoples' cultures and religious freedom.

Strictly linked to cultural and spiritual rights are indigenous peoples' rights to their lands and natural resources that, as seen above, are of fundamental importance for their whole livelihood. The Declaration's recognizes indigenous peoples' rights to their lands, territories, and resources, including those that they have historically owned but are now legally and factually under the jurisdiction of others. The way that many indigenous peoples relate to their lands, territories, and resources is one of their distinguishing characteristics and is often referred by diverse institutional instruments¹³⁶. The Inter-American Court of Human Rights has stressed that it is important to acknowledge and comprehend that indigenous people's strong connections to the land provide the cornerstone of their traditions, spirituality, integrity, and ability to survive economically. Indigenous communities view their relationship to the land as a tangible and spiritual component that they must fully enjoy in order to maintain their cultural inheritance and pass it on to future generations. It is not only a matter of possession and production¹³⁷.

¹³⁴ OHCHR, *op. cit.*

¹³⁵ UN General Assembly, *op. cit.*

¹³⁶ OHCHR, *op. cit.*

¹³⁷ Inter-American Court of Human Rights, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Series C, No. 79, para. 149, Judgement of 31 August 2001,

In the protection of land rights of indigenous people's article 26 represent a cornerstone:

- "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
- Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
- States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned."¹³⁸

Additionally, according to article 29, indigenous peoples have a right to the preservation and protection of the environment, as well as the ability to use their lands, territories, and resources for productive purposes. States must create and carry out programs of support for indigenous peoples in order to ensure their conservation and protection, without discrimination. In relation to this, the Declaration's Article 10 states that Indigenous peoples cannot be driven from their lands or territories by force. No relocation may occur without indigenous peoples involved being given their free, prior, and informed permission; when a just and equitable compensation agreement has been reached; and, whenever feasible, with the possibility of return¹³⁹. Even though there are many provisions protecting indigenous peoples' land rights and the conservation and protection of their territories, many conservation initiatives involve land grabbing, disregard for the significance of ancestral lands for indigenous peoples, and frequently result in the eviction of their populations and the confiscation of their territories. Furthermore, conservation efforts and other forms of land incursion frequently overlook the requirement of free, prior, and informed consent in these situations. Indigenous peoples' permission is rarely sought, and their involvement in decision-making is hardly put into practice¹⁴⁰. Regretfully, indigenous peoples are currently making more efforts to exercise authority over their natural resources, as well as over their political and economic lives.

¹³⁸ UN General Assembly, *op. cit.*

¹³⁹ *Ibid.*

¹⁴⁰ United Nations Department on Economic and Social Affairs, *State of the World's Indigenous Peoples*, *op. cit.*

They are well aware of the costs these initiatives place on people and their ecosystems, as well as the environmental harm that most development programs bring with them¹⁴¹. As the upcoming chapter delves deeper, one of the primary issues facing indigenous groups today is the infringement of their rights in the creation of protected areas and conservation projects.

The United Nations Declaration on the Rights of Indigenous Peoples has certainly been a cornerstone in the framework of the protection of Indigenous Rights. Nevertheless, there is still several work to do in the practical field, since indigenous peoples still suffer from diverse violations of these rights. The Declaration has drawn inspirations by other numerous national and regional instruments for the protection of the rights of indigenous communities. For the purpose of this thesis, the African framework needs to be explained in order to better comprehend the continental issues regarding indigenous peoples.

1.2.3 The African Framework for the Protection of Indigenous Rights

The primary tool for the defence of human rights on the Continent is, first and foremost, the African Charter on Human and Peoples' Rights. The Assembly of Heads of State and Governments of the former Organization of African Unity (OAU) adopted the African Charter on Human and Peoples' Rights in Nairobi, Kenya, and it came into effect on October 21, 1986. After the OAU was dissolved in July 2002, the African Union (AU) took its place¹⁴². Unfortunately, the Charter lacks any sections specifically addressing the protection of indigenous people, despite its significance to all African peoples. However, numerous bodies, including the African Commission on Human and Peoples Rights and the ACHPR Working Group on Indigenous Populations/Communities, have interpreted the charter's provisions as safeguarding indigenous rights in the years that have passed. In line with Article 30 of the African Charter on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights (ACHPR) was founded with the goal of advancing and defending these rights throughout the African continent. Established on

¹⁴¹ D. Barkin, *Incorporating indigenous epistemologies into the construction of alternative strategies to globalization to promote sustainable regional resource management: The struggle for local autonomy in a multiethnic society*, Michigan State University, 13 April, 2005, <http://www.ma.caudillweb.com/documents/bridging/papers/Barkin.david.pdf>

¹⁴² A. K. Barume, *Land Rights of Indigenous Peoples in Africa, With Special Focus on Central, Eastern and Southern Africa*, IWGIA Document series no. 115, Copenhagen, Denmark, IWGIA, 2010

November 2, 1987, it is the principal human rights oversight organization within the African Union (AU)¹⁴³. Its duties include interpreting the African Charter and promoting and defending human and peoples' rights throughout the continent. The Commission's primary focus is on promotional activities, which include fact-finding missions, raising awareness, and documenting and gathering data about human and peoples' rights in Africa through working groups and Special Rapporteurs, among other mechanisms, within particular areas of concern¹⁴⁴. In addition, the African Commission on Human and Peoples' Rights examines State reports, conducts investigations in response to claims of widespread and grave human rights abuses, and accepts communications regarding claims of such violations - so long as local remedies have been used first¹⁴⁵.

The African charter protects several distinct collective rights. At article 19 it asserts that "All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another"¹⁴⁶. Article 20 of the Charter, however, addresses one of the most significant and contentious rights: the right to self-determination. This right is essential to safeguarding indigenous peoples' rights to land, autonomy, self-governance, and control over resources. As previously said, the right to self-determination has presented a number of difficulties for the international community, as evidenced by the United Nations Declaration on the Rights of Indigenous Peoples, which was far from being ratified at the time the African Charter came into effect. Article 20 of the African Charter states:

- "All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self- determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
- Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community"¹⁴⁷.

¹⁴³ International Work Group for Indigenous Affairs, *The Indigenous World 2024*, Copenhagen Denmark, IWGIA, 2024

¹⁴⁴ A. K. Barume, *Land Rights of Indigenous Peoples in Africa, With Special Focus on Central, Eastern and Southern Africa*, *op. cit*

¹⁴⁵ OHCHR, *op. cit*.

¹⁴⁶ Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981

¹⁴⁷ *Ibid*.

In a legal Advisory Opinion of 2007 on the United Nations Declaration on the Rights of Indigenous Peoples, the African Commission on Human and Peoples' Rights made it clear that the concept of self-determination has changed as a result of the growing international recognition of the claims made by indigenous populations, whose right to self-determination is exercised in a way that respects the boundaries of the nation states to which they belong¹⁴⁸. Peoples' right to self-determination must therefore be practiced inside the state's untouchable borders while keeping the nation-state's sovereignty in mind. Naturally, this presents some challenges for native populations because national loyalties are divided and indigenous communities are intersected by nation-state borders.

As seen on multiple occasions in the preceding paragraphs, land rights are another crucial concern when it comes to indigenous rights. The African Charter's Articles 21 and 22 guarantee peoples' freedom to use their natural resources and riches as well as their right to economic, social, and cultural development¹⁴⁹. Regarding Article 21 of the Charter, the African Commission noted in its 2007 Advisory Opinion on the United Nations Declaration on the Rights of Indigenous Peoples that comparable clauses are found in other documents ratified by the African Union, such as the African Convention on the Conservation of Nature and Natural Resources, which is meant to "preserve the traditional rights and property of local communities and request the prior consent of the communities concerned in respect of all that concerns their access to and use of traditional knowledge"¹⁵⁰. Even though these rules only specifically apply to local communities rather than indigenous peoples, the African Commission on Human and Peoples' Rights has used them to strengthen the protection of indigenous peoples' rights to lands. As a matter of fact, the ACHPR stated clearly that regarding the protection of rights to land and natural resources, which is fundamental for the survival of indigenous communities in Africa, their protection only relates to Articles 20, 21, 22, and 24 of the African Charter.¹⁵¹ Nevertheless, indigenous peoples find it difficult to acquire land rights and

¹⁴⁸ ACHPR, *Advisory Opinion on the United Nations Declaration on Rights of Indigenous Peoples*, para. 22, p. 6, 2007

¹⁴⁹ UN Department on Economic and Social Affairs, *State of the World's Indigenous Peoples*, *op. cit.*

¹⁵⁰ Organisation of African Unity (OAU), African Convention on the Conservation of Nature and Natural Resources, CAB/LEG/24.1, September 15 1968

¹⁵¹ ACHPR & IWGIA, *Indigenous Peoples in Africa: the Forgotten Peoples? The African Commission's work on Indigenous Peoples in Africa*, IWGIA, 2006

natural resources when these issues are not addressed specifically to them, but to all Peoples of Africa¹⁵².

The African Commission on Human and Peoples' Rights took nearly fifteen years to take the problem of the rights of indigenous peoples seriously. The African Commission on Human and Peoples' Rights formed the Working Group on Indigenous Populations/Communities in Africa in 2000 during its 28th Ordinary Session in Benin. Three ACHPR Commissioners, three specialists from African indigenous communities, and one impartial expert on indigenous matters constitute this group¹⁵³. The Working Group holds that certain segments of the population within nation states, such as indigenous people and communities, should have access to collective rights since the African Charter acknowledges these rights as the rights of "peoples"¹⁵⁴. It is involved in several different activities, such as awareness-raising, publishing jurisprudence on indigenous peoples' rights in Africa, and visiting countries to examine concerns pertaining to indigenous peoples¹⁵⁵. The Working Group collaborates and exchanges information on the issues that African indigenous groups face with state parties, national human rights organizations, civil society organizations, international organizations, and other relevant entities¹⁵⁶. In particular, it has the mandate to:

- Examine the concept of indigenous peoples and communities in Africa
- Study the implications of the African Charter on the human rights and well-being of indigenous communities especially with regard to: the right to equality (Article 2 and 3), the right to dignity (Article 5), the protection against domination (Article 19), the right to self-determination (Article 20) and the promotion of cultural development and identity (Article 22)

¹⁵² A. K. Barume, *Land Rights of Indigenous Peoples in Africa, With Special Focus on Central, Eastern and Southern Africa*, *op. cit*

¹⁵³ International Justice Resource Center, *Working Group on indigenous Populations/Communities in Africa*, <https://ijrcenter.org/regional/african/working-group-on-indigenous-populations-communities-in-africa/>

¹⁵⁴ ACHPR, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, *op. cit*.

¹⁵⁵ OHCHR, *op. cit*.

¹⁵⁶ African Development Bank Group's, *op. cit*.

- Consider appropriate recommendations for the monitoring and protection of the rights of indigenous communities¹⁵⁷.

Despite the significant advancements made in both international and African law, as well as the crucial role played by the Working Group on Indigenous People in Africa, there remain disagreements over how best to implement these laws throughout the continent. At first, the African Commission itself was not overly enthusiastic about the idea of indigenous peoples in Africa. In fact, civil society had to force the African Commission to take the rights of the continent's indigenous peoples seriously. This was due to the African Commission's initial opinion that the term "indigenous peoples" was not appropriate for the situation in Africa. There was a contention that all Africans are native to the continent and that no individual or group could legitimately claim indigenous status¹⁵⁸. The African Commission did not reach a unanimous consensus even when it decided to form the Working Group. Within the African Commission, the term indigenous had long been controversial. Perhaps the prevailing sentiments of African states regarding the matter are reflected in the ambiguity within the African Commission¹⁵⁹. Native populations are not formally acknowledged by most African governments, whose primary worry is that the term "Indigenous People" could imply special rights or privileges for some groups, or it could prevent the state from undertaking national development projects that affect the indigenous peoples' rights to their land and resources. Naturally, as these communities transcend national borders, African governments are also silently concerned about the potential issue of post-colonial boundaries between African nations in the event that Indigenous Peoples of Africa are recognized¹⁶⁰.

The African Commission's Working Group was aware of the dispute surrounding the notion of indigenous peoples in Africa when it examined the idea in question. It was especially aware of the widely held belief that all Africans are native to the continent. According to this reasoning, "indigenous" and "aboriginality" are interchangeable

¹⁵⁷ International Work Group for Indigenous Affairs, *The Indigenous World 2001-2002*, Copenhagen, IWGIA, 2002

¹⁵⁸ International Work Group for Indigenous Affairs, *The Indigenous World 2001-2002*, *op. cit*

¹⁵⁹ K. N. Bojosi, G. M. Wachira, *Protecting indigenous peoples in Africa: An analysis of the approach of the African Commission on Human and Peoples' Rights*, in *African Human Rights Law Journal*, 2006

¹⁶⁰ African Development Bank Group's, *op. cit*.

concepts¹⁶¹. The ACHPR Working Group on Indigenous Peoples released a fundamental report in 2003 which states that it was ‘not necessary or desirable to provide a strict definition of Indigenous Peoples, as such a definition could be exclusive and affect certain groups’¹⁶². Nevertheless, it is noteworthy that the African Commission’s Working Group, in a move that is obviously designed to separate itself from the identification of indigenous with aboriginality, stated that the term “Indigenous peoples” now carries far broader meanings than the age-old debate over “who came first”. It is a term and a global movement that advocates for the rights and justice of specific groups that have been marginalized by development and are viewed negatively by dominant mainstream development paradigms; these groups' cultures and ways of life are discriminated against and treated with contempt, and their very existence is in danger of going extinct¹⁶³.

From the aforementioned, the African Commission’s Working Group’s report can be summarized as having the following traits, which set indigenous peoples apart from other African communities. Marginalization, discrimination, and exclusion from developmental processes constitute the first attribute. Differentiation in culture is the second. Self-identification constitutes the third quality. The African Commission Working Group considers this third attribute to be essential and condemns other methods for disregarding it¹⁶⁴. In this sense, the Working Group supports the WGIP’s methodology. Since the UNDRIP was not yet adopted, the Working Group also makes use of ILO Convention 169 in defining such criteria. Regrettably, only one state in Africa and 24 states globally have ratified ILO Convention 169 as of today¹⁶⁵.

The ACHPR adopted the report in 2003, and the AU later approved it in 2005. As a result, the study reflects the official ACHPR and African Union stances on the idea and rights of Indigenous Peoples in Africa. The 2003 report forms the foundation for positive interactions between the ACHPR and other entities both within and outside of the

¹⁶¹ K. Lehman, *Aboriginal title, indigenous rights and the right to culture*, South African Journal on Human Rights 86 91, 2004

¹⁶² ACHPR & IWGIA, *Indigenous Peoples in Africa: the Forgotten Peoples?*, *op. cit.*

¹⁶³ ACHPR, *Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities*, *op. cit.*

¹⁶⁴ K. N. Bojosi, G. M. Wachira, *op. cit.*

¹⁶⁵ Ratifications of C169 - Indigenous and Tribal Convention, 1989, <https://normlex.ilo.org/dyn/normlex/en/>

continent, such as states, national human rights organizations, NGOs, and Indigenous groups and their organizations¹⁶⁶.

This essential engagement and dialogue have been ensured and sustained for many years by the participation of Indigenous Peoples' representatives in the ACHPR sessions as well as in the various WGIP activities, such as sensitization seminars, country visits, information activities, and research. The WGIP was renamed as the "Working Group on Indigenous Populations/Communities and Minorities in Africa" (WGIPM) in 2020 during the 66th Ordinary Session of the ACHPR to reflect the expansion of its scope to encompass minority rights. Unfortunately, the WGIPM reports on the state of African indigenous peoples continue to list numerous abuses of their rights. Several African nations continue to receive frequent reports of acts of violence, threats, property destruction and expropriation, and forcible eviction from ancestral territories that belong to them¹⁶⁷.

Although there have been significant advances in the domestic, international and regional legal frameworks for indigenous peoples' rights, there is still much to be done. This ongoing effort is important to guarantee that these legal achievements are not only recognized but also adequately enforced in practice. Indigenous communities around the world face a variety of challenges, including issues of violence and brutality, ongoing assimilation policies, marginalization, land dispossession, forced removal or relocation, the effects of large-scale development and abuses by military forces and armed conflict. The way their rights are being implemented is far from ideal. Indigenous peoples still experience grave violations of their human rights on a daily basis, in spite of all the good advancements in international human rights standards-setting¹⁶⁸.

The following chapter will go into further detail about the numerous human rights violations that indigenous African populations continue to face today, particularly those of the Maasai people who live in Tanzania and Kenya. It will also discuss how these populations struggle to find clarity and efficacy in the international and continental laws that currently safeguard their fundamental rights.

¹⁶⁶ International Work Group for Indigenous Affairs, *The Indigenous World 2024*, op. cit.

¹⁶⁷ International Work Group for Indigenous Affairs, *The Indigenous World 2024*, op. cit.

¹⁶⁸ OHCHR, op. cit.

CHAPTER 2 - THE MAASAI PEOPLE AS A FOCUS STUDY ON CONSERVATION AND LAND GRABBING

This chapter will examine the Maasai community's struggles with land grabbing, conservation, and tourism. It will specifically address the Maasai community's historical existence, their displacement as a result of wildlife reserves, and the social and cultural ramifications that follow. An overview of the Maasai people's history and culture, as well as their extended presence in Kenya and Tanzania, will be covered in the first paragraph. This part will look at the impacts of colonialism and decolonization on the Maasai people, showing how these events impacted their traditional ways of life and interfered with their access to ancestral territory.

The second paragraph will examine how conservation efforts started in Maasailand and how this led to evictions and violations of fundamental rights towards Maasai people. Moreover, it analyses how the eviction of Maasai from their ancestral land has been facilitated by land laws that continuously undermined Maasai people's fundamental rights in both Kenya and Tanzania.

The third paragraph will go into how the Maasai people were forced to leave their ancestral lands as a result of the establishment of national parks and private and public game reserves. This section will go into the details of conservation initiatives, showing how the creation of protected areas limited Maasai access to essential grazing grounds and interfered with their social and cultural life.

2.1 HISTORY OF MAASAI THROUGH COLONIALISM AND DECOLONISATION

Widely recognized for their unique pastoralist way of life and rich cultural legacy, the Maasai people have lived for generations in the expansive savannas and rangelands of Tanzania and Kenya. Cattle herding has been the foundation of this nomadic society's economy and culture for millennia, allowing them to flourish in the East African environment. For the Maasai, however, the advent of European colonial powers in the 19th and 20th centuries was a dramatic turning point. Maasai land use and ownership were severely restricted by colonial land regulations, that were motivated by the desire for territorial control and economic exploitation. Their heritage, social structure, and

territorial integrity were all severely damaged by this disruption, which is still having a lasting impact on land rights and cultural preservation today.

2.1.1 Introduction to the Maasai People

The Maasai are an indigenous population, comprising of 500,000 individuals living in southern Kenya and northern Tanzania. They inhabit semi-arid and dry plains along the Great Rift Valley in a region known as Maasailand, which spans 160,000 square kilometres¹⁶⁹. Several stories exist regarding the origins of the Maasai people and their journey to their current location. The majority of academics think that between the fourteenth and sixteenth centuries, they originated in the modern-day Sudan's Nile Valley. They say this in part since the Maasai speak a language, the Maa, that belongs to the Nilotic language family. In the seventeenth or eighteenth century, they moved into the Great Rift Valley and arrived in their current location¹⁷⁰.



*Map of Maasai territory as of today
Maasai Association, <https://maasai-association.org/maasai.html>*

The Maasai lead a seminomadic lifestyle as pastoralists. Their livestock are therefore essential to their existence and means of subsistence. Of all the Maasai livestock, cattle are the most valued and are a symbol of rank and prosperity in their community. Warriors, who are mostly young men and boys, are in charge of herding the cattle to pasture land and water supplies while also keeping them safe from predators. Historically, the Maasai have relied on their cattle to provide for all of their basic requirements, including clothes, food, and shelter¹⁷¹. Their traditional diet is primarily composed of calf fat, milk and dairy products, lean beef and other meats, and blood, which serves as their primary source of salt. Additionally, the primary form of capital in traditional Maasai civilization is

¹⁶⁹ Maasai Association, *The Maasai People*, <https://maasai-association.org/maasai.html>

¹⁷⁰ J. Filke, *Maasai - Introduction*, 2003 <http://www.bluegecko.org/kenya/tribes/maasai/history.htm>

¹⁷¹ National Geographic, *The Cattle Economy of the Maasai*, 2023, <https://education.nationalgeographic.org/resource/cattle-economy-maasai/>

represented by cattle. They are traded for and sold in a variety of products and service-related transactions. Since there is no central government among the Maasai, it is usual for livestock to be traded as a means of fostering diplomatic ties between clans¹⁷².

The importance of land to the Maasai is demonstrated by the value of cattle and the need to move it freely through the rangelands. Ancestral land is essential to each and every indigenous person's sense of self and the Maasai people possess a deep sense of identity and a profound spiritual bond with their ancestral territories¹⁷³. They regard land as a shared resource that should be used sustainably and shared equally, but with careful control. For thousands of years, they have engaged in sustainable interactions with the environment by migrating to provide way for the regrowth of grass. For instance, during extreme droughts, grazing may be expanded into marginal areas that are rarely used ordinarily¹⁷⁴.

Given the close relationship that exists between land, sustainability and cattle it is obvious that land alienation has a direct impact on their capacity to grow cattle and make a precarious livelihood. Land grabbing harms the resource basis necessary for the Maasai's profitable practice of intensive animal husbandry, jeopardizes the long-term financial security of individual households, and threatens the indigenous culture's ability to survive¹⁷⁵. Furthermore, the most productive places for cattle to graze are typically the ones from which they have been forced to leave and can no longer reach. Additionally, they lack access to vital plants and water supplies that are needed to make traditional medicines and cure illnesses¹⁷⁶.

Many circumstances have caused Maasai to lose a significant portion of their ancestral land. First of all, colonialism severely hampered the Maasai people's access to their native territory in Kenya and Tanzania, as will be discussed in more detail in the following section. A significant portion of Maasai land were taken for settlement agriculture, wildlife reserves, and infrastructure projects by European powers, notably the British and

¹⁷² Maasai Association, op. cit

¹⁷³ Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2016 - Case study: Tanzania's Maasai and their loss of land, culture and heritage*, 12 July 2016

¹⁷⁴ Maasai Association, op. cit

¹⁷⁵ J. G. Munei Kimpei Ole, *Maasai Land, Law and Dispossession*, March 26 2010 <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/maasai-land-law-and-dispossession>

¹⁷⁶ Minority Rights Group International, op. cit

Germans. However, the greatest loss of land has been to national parks and reserves, created by colonial forces and pulled by the newly independent States¹⁷⁷. The Maasai people's current battles in Kenya and Tanzania for resources, land, and power are only understandable in the larger context of colonialism and conservation initiatives. These two elements have led to numerous social-economic and political difficulties for the formerly proud and self-sufficient Maasai people, as well as abuses of their fundamental rights, mainly access to land and natural resources.

2.1.2 Early Colonial History of the Maasai

At the start of the 20th century, Kenya and Tanzania were ruled respectively by Britain and Germany. The Maasai, who were already living in these areas, were directly impacted by a number of long-term problems resulting from the approach of colonial powers towards the indigenous tribes of Africa.

Kenya was only ever intended to serve as a route to Uganda, the source of the Nile, and was never included in the grand plan of imperial Britain. The imperial logic behind the race to acquire the Nile headwaters stemmed from the belief that whomever did so would dominate Egypt, Suez, and eventually India. In 1895, the British established a Protectorate over East Africa. The cost of construction of the railway that would cross Kenya and ultimately reach Uganda continued to increase overtime. Therefore, the Protectorate made the decision to develop and utilize the hinterland of East Africa in order to recover the cost¹⁷⁸. The Maasai were the issue. Their image had preceded them, having been developed along the imperial, ethnographic lines of the day (the African as “savage” and “primitive”). Exaggerated accounts of a fierce, bloodthirsty tribe were told by explorers in the late nineteenth century, like Joseph Thomson, the first European to penetrate Kenyan Maasailand¹⁷⁹.

In order for British colonization of Kenya to occur, it was necessary to face the Maasai. They held over a huge area that extended from northern Tanzania into central and southern Kenya. Interestingly, they lived just next to the areas that were best suited for

¹⁷⁷ A. K. Barume, *Land Rights of Indigenous Peoples in Africa, With Special Focus on Central, Eastern and Southern Africa*, IWGIA Document series no. 115, Copenhagen, Denmark, IWGIA, 2010

¹⁷⁸ M. P. K. Sorrenson, *Origins of European Settlement in Kenya*, Oxford University Press, 1968

¹⁷⁹ P. Kantai, *In the Grip of the Vampire State: Maasai Land Struggles in Kenyan Politics*, *Journal of Eastern African Studies*, 1:1, 2007, p. 107-122

European colonization: the areas that would eventually be called the White Highlands¹⁸⁰. The Maasai were drastically outnumbered in the start of the twentieth century due to a confluence of factors including drought, human and cattle illnesses, and civil warfare. The Maasai, therefore, offered less of a barrier to British penetration than the latter had expected. During their punitive expeditions upcountry, the British discovered that, contrary to their expectations, they could employ these Maasai armed units as auxiliary. With stock payments, the Maasai were able to progressively repopulate their herds¹⁸¹. Unfortunately, this “consensual” relationship abruptly shifted as a result of the 1904 and 1911 Anglo-Maasai accords, sometimes referred to as the Maasai Moves.

In Nairobi, the modern-day capital of Kenya, the British colonial government and the Maasai signed the first agreement on August 15, 1904. Sir Donald Stewart, the governor, signed on behalf of the British, and Chief Lybon Olonana represented the Maasai people. The agreement claims that the Maasai voluntarily gave up their area in the central Rift Valley in accordance with the conditions of the first agreement. Approximately 11,200 Maasai were relocated to two reserves: one in Laikipia, north of the recently built Kenya-Uganda railway, and the other near the Tanzanian border with German East Africa¹⁸². In this first agreement, the Maasai were guaranteed that its provisions would last “as long as the Maasai shall exist as a race”¹⁸³. A new chapter in Anglo-Maasai relations began with the signing of this first Anglo-Maasai Agreement. Crucially, this shift in the dynamics that allowed European colonization in the central Rift Valley signified the official beginning of the British colonial administrative endeavour in Kenya¹⁸⁴.

The agreement’s primary point of contention is that Olonana, the Kenyan signing party, was not authorized to sign over Maasai territory. He did not lead or represent the Maasai people. Given these facts, the alleged Anglo-Maasai land pact was a massive fraudulent scheme that did not bind the Maasai, the Republic of Kenyan government, or anybody

¹⁸⁰ L. Hughes, *'Beautiful beasts' and brave warriors: the longevity of a Maasai stereotype*, in *Ethnic Identity: Problems and Prospects for the Twenty-First Century*, USA: AltaMira Press, 2006, pp. 264-294.

¹⁸¹ P. Kantai, op. cit.

¹⁸² A. K. Barume, *Land Rights of Indigenous Peoples in Africa, With Special Focus on Central, Eastern and Southern Africa*, op. cit.

¹⁸³ Web site of Coalition for Constitutional Reforms (CCR) – Kenya: <http://www.ccr-kenya.com/Resources/53.html>

¹⁸⁴ P. Kantai, op.cit.

else¹⁸⁵. Nonetheless, the agreement was considered binding for the Maasai, who were brutally removed from part of their land.

Although both parties had agreed in 1904 that the original agreement would last as long as the Masai people as a race existed, the British colonial authorities managed to break their commitment and establish another treaty in 1911, just a few years later. The “northern” Maasai were once more forcibly relocated from Laikipia to an expanded Southern Maasai Reserve as a result of this new agreement. Between 1911 and 1913, at least 2.5 million animals and up to 20,000 people were relocated¹⁸⁶. As a result of the arrangement, the Maasai were denied access to high potential areas that were ultimately divided up among individual British settlers. For instance, the region of Laikipia was crucial to the original agreement of 1904 and was indeed granted to the Maasai in that occasion. However, through this second agreement, the two-million-acre area of the previous northern Maasai Reserve was now under British authority. As a result of these forced relocations the Maasai suffered from limited movement and decreased opportunities for social connection in addition to losing their land¹⁸⁷.

The Maasai responded promptly to this second agreement. A group of Maasai filed a case in 1912 against the Kenyan High Court, arguing that they were still entitled to Laikipia since they were obligated by the 1904 treaty and had not signed the 1911 treaty. Moreover, the plaintiffs argued that the signed instruments from 1904 and 1911 were only agreements rather than treaties. They added that this second agreement was reached with people who did not speak for the Maasai tribe as a whole¹⁸⁸.

The colonial Government maintained that, since the Maasai people could be considered as a nation, the agreements were in fact treaties or “acts of States” and therefore they could not be disputed in Protectorate Courts. The High Court judge dismissed the claims on procedural grounds, ruling in the colonial government’s favour. The Eastern African Court of Appeal (E.A.C.A.) upheld the High Court’s ruling in an appeal. This court held

¹⁸⁵ N. ole Ndaskoi, *The Roots Causes of Maasai Predicament*, Aboriginal Policy Research Consortium International (APRCi), 2005

¹⁸⁶ L. Hughes, *Rough Time in Paradise: Claims, Blames and Memory Making Around Some Protected Areas in Kenya*, in *Conservation and Society* 5, no. 3, 2007, pp. 307–330

¹⁸⁷ L. Hughes, *Malice in Maasailand: The Historical Roots of Current Political Struggles*, in *African Affairs*, Vol. 104, No. 415, Apr. 2005, pp. 207-224

¹⁸⁸ A. K. Barume, *Land Rights of Indigenous Peoples in Africa, With Special Focus on Central, Eastern and Southern Africa*, op. cit.

that the protectorate was in fact a foreign nation, that the Maasai tribe constituted a nation with which treaties could be signed, and that since the Maasai remained strangers to the colonial state, it was in fact a treaty between two nations¹⁸⁹.

Sadly, over the course of the last century, the Maasai have made three unsuccessful attempts to contest the loss of their ancestral lands: the court case in 1913, a petition to the Kenya Land Commission in 1933-34, and a plea made on the eve of Kenya's independence in 1962 at the Kenya Constitutional Conference all failed miserably¹⁹⁰.

In terms of German colonialism, the German Empire followed a British-style approach in Tanganyika, modern-day Tanzania (excluding the island of Zanzibar). In 1885, it created the German East African Protectorate. German attempts in Tanganyika, comparable to Kenyan efforts by the British, sought to place the Maasai in a reserve on the dry Masai steppe south of the Arusha-Moshi Road, so reserving the finer fields of the northern half of Tanganyikan Maasailand for white settlers¹⁹¹. Many academics believe that in the 1890s, the German takeover, along with *emutai*, led to the removal of several Masai communities from their ancestral territories¹⁹². *Emutai* is the Maasai word for the “complete destruction” that faced the pastoralist communities of the crater highlands in this period of time. It refers to the combined effects of smallpox, rinderpest, bovine pleuropneumonia, and the war of colonial conquest, which virtually destroyed the Maasai pastoralism's economic foundation¹⁹³. In actuality, the Germans were able to seize land in the Ngorongoro Crater at the start of the 20th century and reserve the region of Serengeti for sheep farming. Although German officials recognized the particular cultural and spiritual significance of the Ngorongoro crater for the Maasai, they forcibly relocated

¹⁸⁹ N. ole Ndaskoi, op. cit

¹⁹⁰ L. Hughes, *Malice in Maasailand: The Historical Roots of Current Political Struggles*, op. cit.

¹⁹¹ K. Århem, *The Maasai and the State, The Impact of Rural Development Policies on a Pastoral People in Tanzania*, IWGIA Document 52, Copenhagen, March 1985

¹⁹² It is significant to remind that under German colonial rule, several thousand indigenous people living in modern-day Namibia were forced out of their land and murdered by German Military forces. Between 1904 and 1907 German forces carried out a genocide that saw the massacre of approximately 50-65 thousand Herero and 10 thousand Nama. They were both indigenous groups that, prior to colonization, lived freely on their ancestral land. From this atrocious event, it is clear which “strategy” was used by Germany in its colonies in Africa and how they encountered with indigenous people, including the Maasai. <https://www.theholocaustexplained.org/what-was-the-holocaust/what-was-genocide/the-herero-and-namaqua-genocide/>

¹⁹³ R. Waller, *Emutai: Crisis and Response in Maasailand 1883–1902*, in *The Ecology of Survival. Case Studies from Northeast African History*, London, 1988, pp. 73–112.

them to the recently constructed Maasai reserve south of Kilimanjaro¹⁹⁴. Therefore, during German control, agricultural encroachment and piecemeal land alienation for agricultural advances reached significant proportions in Tanganyikan Maasailand. White farmers and immigrants quickly took over the lush territory surrounding Mount Kilimanjaro and Mount Meru from the Tanganyikan Maasai¹⁹⁵.

As a result of their defeat in the First World War, the Versailles Treaty mandated that the Germans relinquish their overseas possessions. This is how Britain gained control of Tanganyika in the early 1920s, and they continued with operations of land grabbing and forcible relocations as they had done in Kenya¹⁹⁶.

During this initial phase of colonisation, the British and the Germans deprived the Maasai of between fifty and seventy percent of the area they had previously occupied¹⁹⁷. There is strong evidence that the British and German governments committed serious injustices toward the Maasai population with long-lasting effects still evident today. Many thousands of Maasai were forcibly relocated under colonialism, and they still endure grave human rights violations. Since then, a number of causes, including the Moves and colonial activity in general, have resulted in soil degradation, the destruction of subsistence livelihoods, and heightened susceptibility to drought¹⁹⁸. The process of land alienation that started under colonization is typically blamed for the Maasai people's current state of extreme pressure on their land and people, as well as their increasing poverty and marginalization.

2.1.3 Decolonisation and Independence of Kenya and Tanzania

After the breakup of the German empire as a result of The First World War, Tanganyika came under British rule. The Great War encouraged African independence movements as well. Africans who fought in the war returned home with greater military hardware and

¹⁹⁴ B. Gissibl, *The nature of german imperialism: Conservation and the Politics of Wildlife in Colonial East Africa*, in *The Environment in History: International Perspectives*, Vol. 9, 2016

¹⁹⁵ K. Århem, *op. cit.*

¹⁹⁶ N. ole Ndaskoi, *op. cit.*

¹⁹⁷ L. Hughes, *Moving the Maasai: A Colonial Misadventure*, Palgrave Macmillan, London, 2006

¹⁹⁸ L. Hughes, *Malice in Maasailand: The Historical Roots of Current Political Struggles*, *op. cit.*

expertise, and the armed resistance to British control began to permeate nationalist and anti-colonial movements throughout the continent¹⁹⁹.

The Second World War's aftermath served as a turning point for colonialism in the African Continent. Following World War II, European nations largely lacked the resources and political backing required to put down distant uprisings. Moreover, they encountered hostility from the two new superpowers, the U.S. and the Soviet Union, that had already positioned against colonialism. As a result, during the Cold War, from the middle of the 1950s to 1975, colonial powers gave way to newly sovereign states across the entire African continent. This process became known as decolonization²⁰⁰.

In this period of time, the nationalist, anti-colonial Mau Mau movement in Kenya developed into a full-fledged conflict, known as the Mau Mau War (1952-1966). It advocated violent resistance to British domination in Kenya²⁰¹. In addition to ca. 100 Europeans and 2,000 African loyalists, the war claimed the lives of over 11,000 African warriors by the end of 1956. More than twenty thousand Africans were placed in detention facilities. The British could see in the meantime that they would never be able to overcome the Mau Mau fighters. That's when they gave in to conversation, that is, the 1962 Lancaster Constitution talks²⁰².

The British were able to guarantee that the African leaders who assumed power would uphold British interests during the Constitutional Talks. Among others, Legislative Council members represented the Maasai at the constitutional negotiations in London²⁰³. The Maasai reached Kenya's independence in 1963 and Tanzania's independence in 1961 under nearly identical circumstances as they began the twentieth century. Once more, they were rendered weaker by a catastrophic drought that had destroyed two-thirds of their cattle and forced many to seek hunger assistance. Furthermore, they had started to recognize the patterns in their past with greater clarity: it was no accident that the Maasai groups who had been driven from Laikipia suffered the most.²⁰⁴ According to a memorandum that Maasai presented during the constitutional negotiations, the recent

¹⁹⁹ N. ole Ndaskoi, op. cit.

²⁰⁰ *Decolonisation*, <https://www.britannica.com/topic/decolonization>

²⁰¹ W. O. Maloba, *Mau Mau and Kenya*, Indiana: University of Indiana Press, 1998

²⁰² N. ole Ndaskoi, op. cit.

²⁰³ L. Hughes, *Malice in Maasailand: The Historical Roots of Current Political Struggles*, op. cit.

²⁰⁴ P. Kantai, op. cit.

famine in Maasailand, which followed drought and floods, was allegedly caused by the Maasai being forced to abandon their most productive and well-watered lands. The Maasai thought that their survival was now in jeopardy. Anger over being among the last villages to get aid for starvation following the 1960-1961 drought served as the backdrop. Furthermore, they requested in the memorandum that the land given up in 1904 and 1911 be acknowledged as Maasai territory and given back to its original owners after European immigrants had left. The Maasai demanded guarantees that, upon independence, they would maintain security of tenure in their reserved region, arguing that portions of the reserves had been appropriated in violation of the accords²⁰⁵.

When they looked to Britain, the departing power, for such a guarantee that their current lands would be protected and their lost ones recovered through the new constitution, they encountered blatant indifference. Of the White Highlands, the best land in central Kenya, 70% were claimed by the Maasai²⁰⁶. The British government secured an agreement on these fertile areas during constitutional talks, but they regrettably said that only certain Africans would be allowed to purchase portion of the land there using funds lent to them from the British Government in London. The Maasai did not receive any land back²⁰⁷. The British acknowledged the Maasai only insofar as they maintained the validity of the agreements made in 1904 and 1911, but they refuted any legal binding nature. Consequently, the Maasai had no legal claim to the territories they had surrendered by treaty in the eyes of the leaving colonial rule and the Kenyan government that assumed power from them²⁰⁸.

Like other nations of Africa, Kenya's independence was only intended to be a slow process of Africanization of the colonial government. The Maasai lost their land when the British left, as the more numerous and powerful tribes took control of it. As a result, the Maasai were ostracized and forced to the margins. Due to differences over the land issue, they declined to sign the constitutional provisions at the Lancaster House Conference in the 1960s. The issue is still unresolved²⁰⁹.

²⁰⁵ L. Hughes, *Malice in Maasailand: The Historical Roots of Current Political Struggles*, op. cit.

²⁰⁶ D. M. Anderson, *Yours in Struggle for Majimbo, Nationalism and the Party Politics of Decolonization in Kenya, 1955-64*, in *Journal of Contemporary History*, 40(3), 2005, pp. 547-564.

²⁰⁷ S. B. O. Gutto, *Law, Rangelands, the Peasantry, and Social Classes in Kenya*, in *Review of African Political Economy*, 20, 1981, pp. 41-56.

²⁰⁸ P. Kantai, op. cit.

²⁰⁹ ACHPR, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, ACHPR & IWGIA, 2005

Finally, on December 12, 1963, Kenya gained its independence. Under the Kenya African National Union, or KANU as it is now more well known, Jomo Kenyatta was elected as Kenya's first president. Kenya was dominated by KANU for almost 40 years. The political space necessary for the Maasai to regain their claim to the "lost lands" was denied to them under the administrations of Kenyatta and the KANU, as it happened before with colonial powers²¹⁰.

Following World War I, the Tanganyikan Maasai experienced a comparatively peaceful and prosperous time when the British seized control of the territory from the Germans. Nevertheless, a series of extensive land alienations occurred in the centre of Tanganyikan Maasailand starting in the late 1930s and continuing through the 1940s and 1950s. In the 1940s, the Maasai people in Tanganyika were uprooted from most of the rich highlands close to Ngorongoro and the fertile regions between Mount Meru and Mount Kilimanjaro²¹¹. The Maasai were forced out of the Sanya corridor in 1947. Large areas of ground in Lolioro and Lepurko Essimigor were divided up among settlers for the production of wheat and maize at the beginning of the 1950s. Originally drawn to protect Maasai rights to grazing land, the boundaries of the Maasai District have since been altered to enable cultivators to incorporate pastoral holdings in the Kisongo and Longido regions²¹².

During the post-war era of decolonization and Tanganyika's independence, the overall aim of the colonial land policy persisted. As a matter of fact, after several decades, on December 9, 1961, Tanganyika became a Republic after gaining its independence from Britain. Subsequently, the United Republic of Tanzania was formed in 1964 by the union of Tanganyika and Zanzibar.²¹³ As we have seen in Kenya, the new government persisted in marginalizing Maasai groups for its own purposes even after colonial powers left. In the Sinya plains, the Monduli mountains, the Loliondo highlands, and the Kujungu-Kibaya region of southern Maasailand, for example, agriculturalists remain persistent in their incursion.

²¹⁰ N. ole Ndaskoi, op. cit.

²¹¹ *Maasai History and Culture*, Base Camp Explorer, <https://basecampexplorer.com/foundation/project/the-basecamp-maasai-brand/>

²¹² K. Århem, op. cit.

²¹³ Tanzania celebrates 50 years independence, Thomson Safaris, <https://www.thomsontreks.com/blog/tanzania-celebrates-50-years-independence/>

Following independence, Tanzanian and Kenyan Maasailand have experienced various sorts of state intervention and land dispossession for development goals.

Operation Imparnati, which translates to “permanent habitations” in Maasai, was the name of the villagization program that was started in Maasailand in 1974-1975 with the intention of resettling the pastoral Maasai in livestock development villages. Regrettably, the Maasai were deeply concerned about the villagization effort²¹⁴. They perceived villagization as yet another move in the government’s plan to enslave them and take over their territory. Given their unique culture and the circumstances of their pastoral lifestyle, it is possible to understand the Maasai people’s responses to the villagization program and, earlier, the Masai Range Project. These political initiatives were merely the most recent examples of state involvement in Maasailand. As a result, they were assessed in light of past colonial experiences and evaluated according to Maasai cultural norms²¹⁵. Furthermore, villagization was a step toward imposing a new settlement and pattern of land usage, as well as imposing a new power structure on the current community. It would have been challenging to reconcile all of these changes with Maasai pastoral ideals. The Maasai saw restrictions on individual livestock holdings as an intrusion on their autonomy and a decrease in their ability to survive. The Maasai’s aspirations and fears in response to the villagization drive were all reflections of their fundamental worries, such as political autonomy and economic security. Regrettably, these concerns stemmed from the struggles and injustices that imperialist forces placed upon them during the previous years²¹⁶.

A different type of governmental intervention that occurred in the post-colonial era was land adjudication in high and medium potential areas. This quickly led to the establishment of the Maasailand land policy in both Kenya and Tanzania following independence. The purpose of these demarcations was to give people access to small-scale properties (30-200 acres) so they could grow crops for food and market. Immediately after demarcating high potential areas, the government proceeded to demarcate medium potential zones, where acreage ranged between 500 and 10,000 acres

²¹⁴ K. Århem, *The Maasai and the State, The Impact of Rural Development Policies on a Pastoral People in Tanzania*, IWGIA Document 52, Copenhagen, March 1985

²¹⁵ Ibid.

²¹⁶ Ibid.

per person. The government distributed land based on social rank; the higher you were in the social ladder, the more land you were given²¹⁷.

As a result, the adjudication process's altered land-use policy has cost the Maasai people their dry season grazing lands. Their only remaining land was the still communally owned arid and semi-arid lands (ASAL). Both the natural environment and human situations rapidly deteriorated in these locations. The decline can be linked to the following: a rise in the number of indigenous people; immigration from high-potential regions that were first occupied by British settlers and then by other populations; and the establishment of National Parks and Game Reserves²¹⁸.

The Maasai began to realize that the State became more concerned with the wildlife and conservation industry rather than with the protection of indigenous ancestral lands. Additionally, the best portions of their rangeland (medium potential), characterized with permanently running rivers and streams, together with the areas that were known to be utilized for dry-season grazing, salt licks, and swampy and marshy places, were set aside for National Parks and Game Reserves. As a matter of fact, in Kenya and Tanzania, national development plans have placed a greater emphasis on the establishment and growth of wildlife reserves throughout the last three decades. Throughout the entire decolonization era and in the 1950s, a significant number of these national parks and game reserves were created²¹⁹.

The creation of national parks in Kenya and Tanzania has severely alienated indigenous populations from their land, forced them to leave, and restricted their access to resources that were vital to their survival. The Maasai are not the only pastoralists who have been impacted by this. The establishment of various national parks, such as Manyara, Tarangire, Ngorongoro Conservation Area, Serengeti, Mkomazi in Tanzania, and Amboseli, Nairobi, Samburu, Tsavo, and Maasai Mara, among others in Kenya, has resulted in the forced relocation of native Maasai people from their ancestral land without any form of compensation, purportedly for the economic benefit of the country²²⁰.

²¹⁷ S. H. Davis, *Indigenous Views on Land and Environment*, in World Bank Discussion Papers n. 188, The World Bank, Washington, 1993

²¹⁸ *Ibid.*

²¹⁹ K. Århem, *op. cit.*

²²⁰ ACHPR, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, *op. cit.*

Decolonization and independence during the post-colonial era in Kenya and Tanzania seemed at first to portend a new era of progress and self-determination for all citizens, including the Maasai. On the surface, the fall of the colonial powers meant the end of the oppressive structures that had kept indigenous people on the margins. On closer inspection, however, it becomes clear that the new national governments continued to impose land laws that prioritized economic interests over indigenous rights and frequently supported the same colonial interests that had previously exploited the Maasai. The limitations placed on their access to land and resources, as well as the continued discrimination and violations of their rights that occurred during the colonial and post-colonial periods, remains an ongoing struggle for the Maasai and other indigenous groups throughout the whole African continent.

2.2 CONSERVATION AND TOURISM EFFORTS ON MAASAILAND AND THE ISSUE OF LAND RIGHTS

For the Maasai people in East Africa, conservation initiatives have had a significant impact that combines environmental protection with socioeconomic and cultural issues. Traditional Maasai territory is becoming more and more designated as protected areas as national and international efforts to preserve biodiversity and natural environments gain traction. Since the Maasai, who have traditionally depended on these lands for their pastoralist way of life, are currently experiencing significant constraints on access and usage, this transformation has resulted in considerable conflicts over land ownership. The customary land rights of indigenous groups are frequently ignored by land policies and legal frameworks in Kenya and Tanzania, leading to widespread marginalization. In addition to interfering with the Maasai's economic activities, the relocation and restricted access to land have put their social structures and cultural customs in jeopardy. The fact that many conservation programs are exclusive has also made these conflicts worse, resulting in a challenging scenario where the rights of indigenous people and environmental preservation objectives are frequently at odds.

2.2.1 Conservation Initiatives and Tourism Development

One of the most effective strategies for combating the climate and biodiversity issues is conservation as a whole. In the past, settler colonial governments have used the adoption of conservation and preservation measures as a means of driving indigenous people off their lands²²¹. As was shown in the previous paragraph, colonialism was a major factor in conservation reaching its current levels of land alienation. Fortress conservation was viewed by colonialism as the answer to environmental preservation and a healthy living environment. It alludes to the notion that conserved places ought to be shielded from global human development. Even after colonies gained their independence and decolonization, such an idea persisted²²².

Since Yellowstone National Park was established as the first national park in 1872, the concept of fortress conservation has really been the most widely applied method in conservation activities. Since then, there has been an increasing movement among environmentalists to declare substantial portions of the planet national parks or reserves²²³. This global movement, which gained traction due to worries over the loss of species and landscapes, swiftly extended to Africa as a result of the continent's breathtaking and untamed landscapes. Sadly, though, the global conservation movement hasn't done much to look into how park development affects native populations. It is estimated that up to 14 million people have been relocated by the creation of protected and conserved areas worldwide. In fact, even after several decades, the concept of fortress conservation is still the most popular approach used in the development of national parks and other conservation efforts worldwide²²⁴. Indigenous people who have been forcibly uprooted from their ancestral homelands, which have sustained them for thousands of years, make up the majority of these conservation refugees. Indigenous people frequently already reside on land that has been designated for conservation. For indigenous people

²²¹ Q. Luthy, *How Conservation Contributes to the Displacement of Indigenous People*, Earth.org, 8 March 2023, <https://earth.org/conservation-indigenous-people/>

²²² D. Brockington, *Fortress Conservation: The Preservation of the Mkomazi Game Reserve, Tanzania*, in *African Issues*, James Currey Publishers, 2002

²²³ D. Colin, *Wildlife and the Maasai*, in *9-1 Parks and People*, 17 February 2010, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/wildlife-and-maasai>

²²⁴ M. Dowie, *Conservation Refugees: When conservation means kicking people out*, 25 January 2006, Grain, <https://grain.org/en/article/545-conservation-refugees-when-conservation-means-kicking-people-out>

who have established mutually beneficial, environmentally sound ties with the land they live on, this creates a vicious cycle²²⁵.

For thousands of years, indigenous peoples in East Africa, including the Maasai, coexisted peacefully with wildlife. When Western Europeans first arrived in East Africa, they saw the region as desolate “wilderness”. However, as local people inhabited the majority of the places they labelled “wild”, wilderness was essentially a construct of Western thought. For example, wildlife biologists are only now realizing how significant the Maasai people were to the ecosystems of East Africa over the 100,000 years that they lived there. Since pastoralism has been in East Africa for a millennium or longer, the majority of the flora that is currently flourishing did not arise from a “unspoiled wilderness” as believed by European colonialism, but rather as a result of earlier human intervention.²²⁶

Maasai people have played a significant role in safeguarding the ecology and wildlife, but they have been left out of conservation efforts for a number of decades. The Maasai people have been marginalized historically, economically, and politically. Despite having enormous potential, their pastoral economy has not been completely integrated into the national economy, and they have experienced severe land loss and abuse since the beginning of colonization in East Africa²²⁷. In actuality, a number of national parks and reserves were declared across Maasailand starting in the 1950s. Maasai were typically kept out of these areas, which increased pressure on the overcrowded savannahs. In Kenya, the creation of Nairobi National Park (created in 1946) and the reserves at Maasai Mara and Amboseli (formed in 1961 and 1974, respectively) has driven out the Maasai people from their original land²²⁸. At the same time, they were dislocated from Tanzania’s national parks, including the 1951-established Serengeti and the 1960-established Lake Manyara, as well as the Ngorongoro Conservation Area, where Maasai people have recently been forcibly evicted. The Maasai tribe in East Africa have been impacted by

²²⁵ Q. Luthy, op. cit.

²²⁶ D. Colin, op. cit.

²²⁷ B. O. Koissaba, *Legitimization crisis: Laws, policies and decrees as tools for Maasai land appropriation*, 26 November 2014, <https://www.farmlandgrab.org/post/24274-legitimization-crisis-laws-policies-and-decrees-as-tools-for-maasai-land-appropriation>

²²⁸ Tanzania National Parks, <https://www.tanzaniaparks.go.tz/pages/history>

more parks than any other group due to their enormous population and expansive surface of land²²⁹.

The majority of the aforementioned parks were situated in a dry season watering area with a high concentration of wildlife, which interfered with the Maasai people's custom of pastoralism. The Maasai are a seminomadic tribe who rely heavily on their cattle herds for their livelihood, as was previously observed. The Maasai's ability to herd cattle and, thus, support themselves depended heavily on the regions that were taken from them in order to create national parks. These days, cattle have to spend the entire year in the drier savannah areas. Many fields with little rainfall are quickly overgrazed while under such constant stress. Therefore, a major contributing element to the demise of pastoralism has been the creation of protected areas²³⁰. Only a limited number of species are, at most, protected by the parks from constantly approaching development. As a result, the growing division between humans and wildlife is starting to have detrimental effects on both. The loss of land threatens Maasai culture, which is centred on herding cattle. The population of Maasai has been left landless or reduced to squatter status as a result of the ongoing loss of land. On the one hand, the Maasai people have sold off their ancestral land without giving any thought to the effects such sales may have on their way of life. However, there are also areas of land that the government has seized as trust land, game reserves, forest reserves, or national parks, as well as areas that have been unlawfully and dishonestly given to non-residents²³¹.

The preservation of the environment and ecosystems need to be the primary motivation behind the creation of national parks and wildlife reserves. Nevertheless, these structures have a variety of reasons, with the growth of tourism typically being one of the primary ones. Conserved areas in former colonies were places reserved for the visitation of wealthy people from the imperial core. Nowadays, travellers to Africa for safaris or big-game hunting do so on territory that has been appropriated from indigenous residents²³².

²²⁹ D. Colin, op. cit.

²³⁰ Ibid.

²³¹ B. O. Koissaba, *Legitimization crisis: Laws, policies and decrees as tools for Maasai land appropriation*, op. cit.

²³² Q. Luthy, op. cit.

One of the main sources of tourism in Tanzania and Kenya is the practice of big-game hunting, which involves taking down large game animals that are frequently identified by the IUCN Red List as threatened species. A common misconception is that the establishment of national parks and conservation areas was done so to keep hunters away from the local animals²³³. In reality, protected zones that permit big-game hunting prevent locals from cultivating their land, residing there, or engaging in sustainable hunting while simultaneously providing wealthy visitors with the opportunity to hunt endangered animals. For hundreds of thousands of years, indigenous communities such as the Maasai in Tanzania have coexisted peacefully with large game populations without posing a threat to those species. However, far too frequently, the governments of Tanzania and Kenya have supported colonial trophy hunters, who provide large sums of money in exchange for the right to hunt endangered species, frequently found on stolen land²³⁴. Indigenous peoples are forced off their own land by this tourism-driven conservation strategy so that affluent foreigners might profit from it. In Africa, proponents of conservation tourism frequently point to the utilization of land and the creation of jobs as positive outcomes for the local population. Actually, the Maasai may be able to benefit economically from tourists. Regretfully, statistics reveal that, for instance, safari tour operators in Tanzania's Serengeti National Park receive an average salary of US\$80 per month, while employees at resorts make about \$200. The people living in the vicinity of Serengeti National Park do not receive an equitable share of the revenue generated by the park. Furthermore, a lot of locals are unable to even pay the park's admission costs²³⁵. Because more and more Maasai people are commercializing their culture for travel, tourism is also diluting of Maasai culture. The land accessible for grazing has decreased due to the establishment of national parks and game reserves for tourism, leaving the Maasai with no alternative but to adjust to the Western influences that have progressively crept into daily Maasai life²³⁶. However, the indigenous community may lose some of the original meaning and relevance of a tradition as a result of its commercialization, which reduces it to a tourist attraction and undermines its value as a source of identity and

²³³ J. McAdams, *The Big List of Where to Hunt in Africa*, 12 January 2019, <https://www.wideopenspaces.com/the-big-list-of-where-to-hunt-in-africa/>

²³⁴ Q. Luthy, op. cit.

²³⁵ M. Theys, *African Safari Guide Salary – South Africa*, Tanzania, Kenya & more, <https://africafreak.com/safari-guide-salary/>

²³⁶ P. G. Veit and C. Benson, *When Parks and People Collide*, Carnegie Council, 1 April 2004

identification. Traditional rituals, mementos, artwork, and religious events have all been combined by tour operators, lodging establishments, and other tourism-related businesses so that visitors can experience the local way of life without realizing its importance²³⁷. Researchers have determined that improper cultural borrowing results in four negative effects for indigenous people:

1. Cultural deterioration and the resulting loss of cultural variety;
2. Cultural items being removed from their original setting and therefore altering or losing their meaning;
3. Giving economic advantages to foreigners;
4. Not acknowledging sovereign claims ²³⁸

Sadly, the Maasai have endured all of these consequences throughout the years of being exploited for their land and culture.

Those in the front of the conservation movement can no longer subscribe to the fortress conservationist viewpoint, which treats human needs and wildlife needs as somehow apart. The understanding of local importance held by indigenous peoples must be included into the conservationists' way of thinking. The link between wildlife and humans can be better understood by taking a close look at the traditional patterns of Maasai pastoralism. This connection will only be mutually beneficial if both the Maasai and their neighbours have an understanding of the current requirements in order to maintain their pastoralist way of life. A new protected areas development plan must be put into place in order to prevent Maasailand from going extinct²³⁹.

The Maasai people have made several attempts to recover their stolen ancestral lands from national governments, settlers, and land grabbers. Regrettably, it is difficult to pursue legal action in East Africa for land seizures, evictions, and human rights abuses. Due to the lack of laws protecting the original occupants, the high expense of submitting replies, long distances from the tribunals, the lack of knowledge, and the corrupt systems

²³⁷ N. L. Leleto, *Maasai Resistance To Cultural Appropriation In Tourism*, in *The Indigenous Peoples' Journal of Law, Culture, & Resistance*, vol. 5, 2019, pp. 21–34

²³⁸ B. Ziff & P. V. Rao, *Borrowed Power: Essays on Cultural Appropriation*, Rutgers University Press, 1997

²³⁹ D. Colin, *op. cit.*

of justice, the land predators have used court processes to decide the cases. As a result, the Maasai have consistently lost almost all of the cases involving their ancestral lands²⁴⁰. The argument over whose rights the state should recognize has dominated land politics and policy in Africa, giving rise to several conflicts resulting from the methods the state has employed to distribute land. Governments use legal and policy tools to regulate land ownership, but these tools, when improperly passed and put into practice, have led to disputes, prejudice, inequality, and poverty. One of the main causes of Maasai peoples' ongoing marginalization and land appropriation has been recognized as the absence of inclusive legislative and policy-making processes²⁴¹. The next paragraph will look at the past and present land regulations in Kenya and Tanzania before the last section analyses the various instances of Maasai marginalization and eviction as a consequence of the establishment of protected areas.

2.2.2 Land Rights in Kenya

Following World War II, Britain's economic and imperial dominance was significantly weakened, which made it clear that the African "subjects" had to be integrated into the colonial economy. The idea of land tenure reforms gradually replaced the belief that African farmers should not be able to compete with the Europeans²⁴². Furthermore, it was clear from the Mau Mau rebellion that the land issue could not be disregarded any longer. The Swynnerton Plan provided evidence of this in 1955. It was anticipated that this strategy, which was developed in part in response to the Mau Mau crisis, would produce a stable class of comparatively prosperous farmers who would aid in the stabilization of society. That aspiration totally eclipsed any consideration for the fair allocation of resources among African farmers²⁴³. The Plan stated: "in the past, the Government policy has been to maintain the tribal system of tenure so that all peoples have had bits of land. In the future former Government policy will be reversed and energetic or rich Africans

²⁴⁰ B. O. Koissaba, *Legitimization crisis: Laws, policies and decrees as tools for Maasai land appropriation*, op. cit.

²⁴¹ Ibid.

²⁴² D. B. Freeman, *A City of Farmers: Informal Urban Agriculture in the Open Spaces of Nairobi, Kenya*, McGill-Queen's University Press, 1991

²⁴³ A. K. Barume, *Land Rights of Indigenous Peoples in Africa, With Special Focus on Central, Eastern and Southern Africa*, op. cit.

will be able to acquire more land and bad or poor farmers less, creating a landed and a landless class. This is a normal step in the evolution of a country”²⁴⁴.

The Swynnerton Plan placed forth two strategies: better agricultural production through extension services and individualization of tenure through land consolidation and registration. In pastoral zones, the Swynnerton Plan also encouraged broad communal grazing. It established diverse requirements for the wise and fruitful use of rangelands: keeping resident stock populations within the land’s carrying capacity; guaranteeing a sufficient permanent water supply system; and regulating and managing grazing at a productive level. These circumstances, which showed little care for Maasai original territories, foreshadowed in many respects some of the presumptions on which group ranches would eventually be established²⁴⁵.

The Registered Land Act of 1963 was among the final legislation enacted prior to independence. This Act provides for the legal ramifications of land registration, agricultural tenancy lease registration, and land registration. However, the demand for land restoration made by the Maasai and other indigenous communities during Constitutional Talks persisted despite all of these actions²⁴⁶.

As a result, the Kenyan government worked to Africanize its land policy after gaining independence in 1963. Approximately 1.2 million hectares of land in high-potential locations had been assigned to African farmers by 1970. This number needs to be compared to only 200 thousand he in the range areas, which include individual farms, ranches, and group ranches. Nevertheless, land was granted to African farmers who were jobless and landless, which, while honourable, did not restore any land to the indigenous populations who had historically inhabited the area²⁴⁷. For example, the Maasai colonial land losses were never recovered. However, things in Maasailand were dreadful. Prior to colonization, their land region covered 155,000 square kilometres; by 1913, however, it had only risen to 40,000 square kilometres. More property, including significant dry-season grazing areas, was taken from the Maasai in the ensuing decades and awarded to

²⁴⁴ R. J. M. Swynnerton, *A Plan to Intensify the Development of African Agriculture in Kenya*, Nairobi: Government Printer, 1955

²⁴⁵ B. E. Grandin, *The Maasai: Socio Socio-Historical Context and Group Ranches*, in *Maasai Herding: An analysis of the Livestock Production System of Maasai Pastoralists in Eastern Kajiado District, Kenya*, ILCA Systems Study 4, 1991

²⁴⁶ Kenya Law Reports, *The Registered Lands Act*, CAP 300, September 1963

²⁴⁷ B. E. Grandin, *op. cit.*

farmers, particularly Kikuyus, who had themselves been driven from their ancestral lands by European colonists. This continued until the 1950s. The Nairobi National Park and Tsavo National Park, two territories that bordered the district, were also closed to the Maasai under the National Parks Ordinance of 1945. Additionally, this ordinance created game conservation areas at Kitengela and West Chyulu, as well as a game reserve in Amboseli, with restrictions on Maasai use of these areas²⁴⁸.

The Lawrence Mission on Land Consolidation and Registration was established in 1965 to examine the issue of landlessness that numerous regions were dealing with. Eventually, this resulted in the passing of two laws that had a significant impact on the Maasai people of Kenya. One was the Land Adjudication Act of 1968, which made it easier to establish group ranches on Trust Lands in situations where individual ownership was inappropriate due to the pastoralist communities' nature and the surrounding environment.²⁴⁹ The Land (Group Representatives) Act of 1968 was the other, which dealt with group ranch management and governance²⁵⁰.

A group ranch is characterized as an industry or system for producing livestock in which a number of people acquire freehold title to property jointly, maintain predetermined stocking levels, and herd their individually owned cattle as a group. Members of a specific group ranch are chosen based on customary land rights and affinity²⁵¹.

The government saw group ranching as a means of bringing the Maasai into the modern era by commercializing their herds and offering an evolutionary strategy of transformation rooted in their customs. Nonetheless, the majority of academics concur that many aspects of the group ranch were not understood or accepted by the Maasai. Consequently, their justifications for ultimately agreeing to the concept of group ranches differed from the government's. Group ranching was essentially seen by them as a means of protecting their territory against future encroachments by either the national government or non-Maasai cultivators. Another factor was the belief that by providing

²⁴⁸ A. K. Barume, *Land Rights of Indigenous Peoples in Africa, With Special Focus on Central, Eastern and Southern Africa*, op. cit.

²⁴⁹ The Republic of Kenya, *Land Adjudication Act*, CAP 284, 1968

²⁵⁰ The Republic of Kenya, *Land (Group Representatives) Act*, CAP 287, 1970

²⁵¹ J. C. Ng'ethe, *Group ranch concept and practice in Kenya with special emphasis on Kajiado District*, University of Nairobi, 1992

water infrastructure, disease control, and dips financed by supporting projects, they might increase their traditional wealth base and the number of animals²⁵².

Group ranching was quickly shown to be ineffective. The government's intended goals were not fulfilled. Environmental deterioration resulted from livestock numbers growing above the land's carrying capacity, and the Maasai were not especially focused on the market²⁵³.

Kenya's president led the growing push among various parties to divide the group ranches by the early 1980s. Furthermore, the sudden demand for wheat and barley by Kenya's emerging middle class spurred investments in Green Revolution technologies and resulted in the conversion of land long thought to be too dry into agricultural use. By the mid-1980s, Narok District was Kenya's top producer of both wheat and barley²⁵⁴. The Maasai, who realised that group ranching had drastically changed their traditional system of land administration and land usage patterns, were becoming more disenchanted with these developments at the same time. By severely curtailing the nomadic nature of pastoral tribes, their land use was changed without first enhancing their capacity to adjust to semi-sedentary living. Specifically, insufficient actions were done to lessen the population's reliance on the varying seasons for water and livestock feed²⁵⁵.

As a result, many group ranches started choosing to use the legal option of subdividing into separate plots by the early 1980s. By the year 2000, 104 group ranches in Kenya had undergone subdivision, and 109 more were in the process of doing so. The bulk of these group ranches, or 321 in total, were located in the two Maasai-populated districts of Kajiado and Narok. The collapse of group ranches has had a variety of effects. Poverty has forced some households to sell their once-individually owned lands in an attempt to survive. Furthermore, as multiple investigations have demonstrated, most people who have access to group ranch properties after subdivision is finished are not Maasai, and include wealthy politicians, corporations, public workers, and businesspeople²⁵⁶.

²⁵² E. Mwangi, *The Transformation of Property Rights in Kenya's Maasailand: Triggers and Motivations*, CAPRI Working Paper, Washington D.C.: International Food Policy Research Institute, 2005

²⁵³ A. K. Barume, *Land Rights of Indigenous Peoples in Africa, With Special Focus on Central, Eastern and Southern Africa*, op. cit.

²⁵⁴ T. Cheeseman, *Conservation and the Maasai in Kenya. Tradeoff or Lost Mutualism?*, October 2000

²⁵⁵ H. W. O Okoth-Ogendo, *The Perils of Land Tenure Reform: The Case of Kenya*, In *Land Policy and Agriculture in Eastern and Southern Africa*, United Nations University Press, 1982

²⁵⁶ M. Rutten, *Selling Wealth to Buy Poverty – The Process of the Individualization of Landownership Among the Maasai Pastoralists of Kajiado District Kenya, 1890-1990*, Vol.10, Nijmegen Studies in Development and Cultural Change, 1992

Nowadays, the 2010 Kenyan Constitution is one of the main pillars of land law and protection in the country. The constitution has come under fire for its expansive definition of indigenous peoples, which has been criticized for not doing enough to safeguard them. In relation to land matters, the Constitution recognizes community land as a form of land and specifies what community land includes in Article 63²⁵⁷. The acknowledgement of communal land rights, which indigenous people are entitled to, is complemented by the recognition of community. Community land is defined as ancestral land and land that has historically been used by hunters and gatherers, like the Maasai. In addition, Article 67 established the National Land Commission to address past land dispossessions and begin restitution²⁵⁸. This demonstrates the attempts to acknowledge communal land rights as opposed to the constitution that was repealed and called for county governments to hold trust lands²⁵⁹.

The Community Land Act is the other most recent land preservation measure, which came into effect in September 2016. Its goal is to implement Article 63(5) of the Constitution, which deals with communal land rights' acknowledgment, preservation, and registration. Customary land is recognized by the Act and may be recorded for registration purposes. In terms of law, customary land rights are just as valid as freehold or leasehold rights that are obtained by allocation, registration, or transfer. Additionally, this Act makes it possible for communities to register their land more quickly and effectively. In response to past injustices involving the seizure of community land after independence, the Act governs the conversion of land and the distribution of individual rights²⁶⁰.

Even with significant improvements over the last ten years, Kenyan land laws continue to fall short of adequately safeguarding indigenous communities' rights to their ancestral lands and making it easier for them to reclaim them. These rules' application contradicts their intended purpose, as evidenced by the numerous cases in which they have, ironically, been invoked to defend the expulsion of Maasai people from their ancestral lands. The incongruity that exists between the goals of the legislation and how they are actually

²⁵⁷ Kenya: *The Constitution of Kenya*, article 63, 27 August 2010

²⁵⁸ K. S. Abraham, *Kenya at 50: unrealized rights of minorities and indigenous peoples*, Minority Rights Group International, January 2012

²⁵⁹ N. I. S. Omondi, *The recognition of indigenous people's land rights in Kenya and the failures in the enforcement*, Strathmore University, February 2018

²⁶⁰ Ibid.

implemented underscores the continued difficulties and demands stronger safeguards in order to guarantee the actual preservation and restoration of indigenous land rights.

2.2.3 Land Rights in Tanzania

Tanzania attempted to Africanize its land laws in 1967 by introducing Ujamaa, after gaining independence. The Swahili term for this strategy was Ujamaa Vijijini, which means “socialism within villages” or “villagization”. People were “translocated” in groups to Ujamaa villages, where they were expected to labour on communal fields alongside people to whom they had no cultural ties or bonds. These people could come from various cultural backgrounds, lineages, or clans. Ninety percent or more of Tanzanians resided in 7,300 communities by 1977²⁶¹.

The strategy was developed with the premise that the four prerequisites of development were land, people, sound policies, and competent leadership. Consequently, the State “retained the sole right to allocate land for cultivation and housing through allotment” and private land ownership was forbidden. People were relocated to Ujamaa communities in one way or another and they were expected to labour on community lands²⁶².

Indigenous communities land rights were significantly impacted by the ujamaa policy. Regrettably, it did not protect indigenous tribes’ customary rights that exist on other designated lands as well as within conservation areas. In order to ensure that everything would collapse once the basis was gone, the Ujamaa decision makers first chose to dismantle the institutional framework or the sociological pillars upon which the customary land tenure was founded. Second, the lawmaker devised a plan that included driving out the local population from areas where they shared cultural ties²⁶³.

Tanzania’s economy was deemed to be struggling by 1980. Due to a confluence of circumstances, Tanzania gave in to pressure from global financial organizations and abandoned its socialist system. Rather, the nation took a turn toward capitalism. Effective

²⁶¹ R. Yeager and N. Miller, *Wildlife, Wild Death: Land Use and Survival in Eastern Africa*. Albany: State University of New York Press, 1986

²⁶² D. O. Kerner, *Land Scarcity and Rights of Control in the Development of Commercial Farming in Northeast Tanzania*, in *Land and Society in Contemporary Africa*, Hanover, NH: University Press of New England, 1988

²⁶³ A. K. Barume, *Land Rights of Indigenous Peoples in Africa, With Special Focus on Central, Eastern and Southern Africa*, op. cit.

land management and a strengthened private sector were anticipated to be crucial to achieving the ultimate goal of adequate food supply and foreign exchange, with the agricultural sector serving as the main pillar²⁶⁴.

In order to increase agricultural output, the Tanzanian government adopted a National Agricultural Policy in 1983. The development of privately held land parcels within the Ujamaa settlements was suggested under this policy. In addition to being a significant source of revenue, the lands held by the Maasai and other indigenous peoples served as a symbol of their cultural existence. The new policy did little, if anything, to restore these territories to them. Quite the reverse, by adopting the recommendations of the World Bank and the donor community in favour of land titling, the administration “encouraged the development of a class of big farmers” at the expense of the impoverished peasant vast majority²⁶⁵.

Nonetheless, among other things, the persistently strong desire for and claims made by communities to their customary land rights led to the creation of the Presidential Commission of Inquiry into Land Matters. This Commission filed its findings, which is widely known as “the Shivji Report”, published in late 1992.²⁶⁶

The Shivji Report, which focused on the already existing common land holding by communities, came to the conclusion that Tanzanian customary ownership of land in the 1980s was comparable to pre-colonial understandings, in which traditional authorities had actual authority over lands. Consequently, the Shivji Report suggested that there be two categories of lands: “national lands”, which would be overseen by a National Lands Commission, and “village lands”, which would be handled by assemblies made up of all of the adult residents of the village. The National Environment Management Council redirected the discussion toward creating the framework for a market-oriented resources management system, notwithstanding the significant findings of the Shivji Report that supported communities’ traditional land rights²⁶⁷. Moreover, Tanzania had embraced a new conservation policy that aims to boost the agricultural industry’s revenue from 2 to

²⁶⁴ C. S. L. Chachage, *Land Issues and Tanzania’s Political Economy*, in *Agrarian Economy, State and Society in Contemporary Tanzania*, Aldershot, UK: Ashgate Publishing Co., 1999

²⁶⁵ R. Tenga, *Legislating for Pastoral Land Tenure in Tanzania: The Draft Land Bill*, 1998

²⁶⁶ United Republic of Tanzania, *Report of the Presidential Commission Inquiry into Land Matters* (Shivji Report). Vols. 1 & II, Nordiska Afrika Institutet, 1994

²⁶⁷ A. K. Barume, *Land Rights of Indigenous Peoples in Africa, With Special Focus on Central, Eastern and Southern Africa*, op. cit.

5 percent of GDP by 2017. This is in along with the political commitment to make agricultural lands the engine of the country's new free market economic orientation. Another business that was noted as being significant to Tanzania was the tourism sector. As seen in previous paragraphs, these two sectors significantly impact Maasai people and other indigenous communities, resulting in multiple human rights breaches²⁶⁸. As a matter of fact, the Maasai people's land rights were impacted by this move towards a greater role for conservation and wildlife protection. This is due to the fact that both Tanzanian and Kenyan wildlife heavily depends on grazing grounds outside of protected zones, where Maasai cattle herds and wildlife compete for the same resources. This legal and socioeconomic context served as the foundation for the creation of Tanzania's new land laws²⁶⁹.

The twin Land Acts, the Village Land Act and the Land Act, were crafted in 1999 with two main motivations: the conservation sector was becoming more and more important to Tanzania's economy, and the agricultural sector needed to be reformed in order to be in line with free-market economic principles. Three categories of lands are covered by these two Acts: "general land", "reserved land", and "village land". The Village Land Act states that all public land, which is not reserved or village land, including vacant and underutilized village land, is referred to as "the reserved land". Reserved lands also include game reserves, forest reserves, national parks, marine parks, and public recreation parks²⁷⁰. According to the 1999 Tanzanian Land Act, that all lands is "public land vested in the President as trustee for and on behalf of all citizens of Tanzania". Consequently, the enjoyment and exercise of the right of occupation and use of lands is limited to communities, people, and other right holders²⁷¹. The villagers are the owners of the "right of occupancy", as defined under the Village Land Act. Tanzania is home to an estimated 9,000 villages, the most of which are remnants of the Ujamaa program. The Village Land Act amply demonstrates that it does not understand the term villagers as indigenous

²⁶⁸ D. Bourn and R. Blench, *Can Livestock and Wildlife Co-Exist: An Inter Disciplinary Approach*, London: Overseas Development Institute and the Environmental Research Group Oxford, 1999

²⁶⁹ H. Woien and L. Lama, *Market Commerce as Wildlife Protector? Commercial Initiatives in Community Conservation in Tanzania's Northern Rangelands*, London: International Institute for Environment and Development (IIED), 1999

²⁷⁰ United Republic of Tanzania, *Village Land Act 1999*, section 2, Faolex, 15 May 1999

²⁷¹ United Republic of Tanzania, *Land Act 1999*, section 4, Faolex, 15 May 1999

people with cultural ties to a particular land or as people sharing shared principles that they wish to safeguard and maintain through collective ownership and management of their traditional land by legitimizing the artificial categories created during the Ujamaa period²⁷². The Act instead defines villages as simple associations formed by the conscious and voluntary efforts of their constituents. For the Maasai, this might have major consequences, since they are not recognized as villagers in the Act and indigenous people are not made reference to. Furthermore, without the need to inform the affected villages, the government may turn village land into general public land.²⁷³.

According to Section 14 of the previously mentioned Village Land Act of 1999, individuals whose primary place of residence is within conservation areas are entitled to maintain their rights under prior legislation. This legislation grants a special right of entry and residence within conservation areas for the advantage of populations whose primary place of residence is within these areas²⁷⁴. However, the property rights accorded to towns and villages appear to be sparsely based and far from being equivalent to rights to possess land. For example, anybody, even foreigners, may be granted the right of occupation on restricted property by the president of the Republic of Tanzania at any time, as long as they have an investment certificate from the Investment Promotion Center. On the other hand, Maasai people do not have the right to possess land. For instance, the Maasai people's capacity to enjoy their land rights in the Ngorongoro Conservation Area is diminished by the Ngorongoro Conservation Area Authority's (NCAA) statutory jurisdiction to control land and its uses²⁷⁵. It is noteworthy that Tanzanian land laws now in effect provide populations residing in conservation zones with no more protection than did previous regulations.

Indigenous peoples' land rights are significantly impacted by other land-related policy processes. The updated Wildlife Conservation Act No. 9, which came into effect on February 3, 2009, serves as an example. The Act imposes many limitations on

²⁷² A. Madsen, *The Hadzabe of Tanzania: Land and Human Rights for a Hunter-Gatherer Community*, IWGIA Document No. 98, Copenhagen: IWGIA, 2000

²⁷³ A. K. Barume, *Land Rights of Indigenous Peoples in Africa, With Special Focus on Central, Eastern and Southern Africa*, op. cit.

²⁷⁴ United Republic of Tanzania, *Wildlife Conservation Act (no. 12 of 1974)*, Faolex, 30 July 1974

²⁷⁵ I. G. Shivji and B. L. Kapunga, *Maasai Rights in Ngorongoro, Tanzania*, Dar es Salaam: Hakiardhi, The Land Rights and Resources Institute, 1998

pastoralists' access to grazing lands and imposes further limits on certain kinds of usage. In addition, it contains provisions for severe penalties for violating the Act's requirements²⁷⁶. Thus, in addition to pastoralists, the Act also had negative impact on poor agricultural groups and hunter-gatherers whose livelihoods depend on having access to these areas. For instance, the Maasai population suffered immensely from the Act in numerous ways, mainly their access to grazing lands. In Tanzania, the situation has been worse over the past 20 years for pastoralists and indigenous people. The land rights of the Maasai and other indigenous groups have been undermined by policies and regulations, and in recent decades, the regions they depend on for their livelihood have been progressively decreased²⁷⁷.

In conclusion, instead of successfully defending indigenous land rights, Kenyan and Tanzanian land laws have persisted in reflecting European colonial principles even after their independence. The continued existence of Western legal systems that were not tailored to the distinct cultural and socioeconomic circumstances of African people has had a negative impact on the preservation of indigenous territories. As a result, these rules have not been able to protect the rights of native groups like the Maasai, who continue to be forcibly removed from their ancestral lands. The ongoing eviction and marginalization of these communities serve as a stark reminder of the shortcomings of the current legal frameworks and the necessity of enacting land laws that actually uphold the rights and customs of indigenous people.

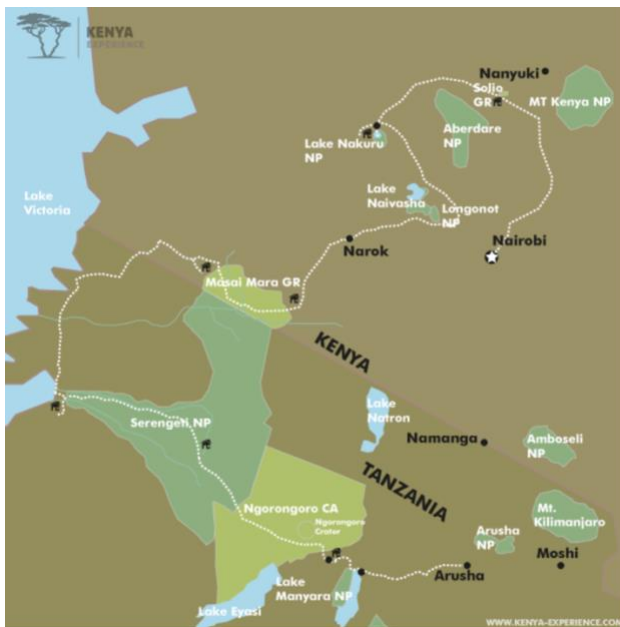
2.3 THE IMPACT OF NATIONAL PARKS AND CONSERVATION AREAS ON MAASAI PEOPLE

The Maasai people, who have historically lived in Kenya and Tanzania, have been significantly impacted by the creation and growth of national parks and conservation zones in these countries. This paragraph will explore the complex and diverse effects of

²⁷⁶ United Republic of Tanzania, *Draft Wildlife Act of 2008*, Dar es Salaam: Ministry of Natural Resources, 2008

²⁷⁷ R. Tenga et al., *Current Policy, Legal and Economic Issues*, in *A Study on Options for Pastoralists to Secure their Livelihoods*, Vol. 1 (Main report), Arusha, Tanzania: IIED, 2008

well-known reserves, like the Ngorongoro Conservation Area, the Maasai Mara National Reserve, the Amboseli National Park, and the Serengeti National Park. The Maasai People were forced to relocate outside of these protected areas and this has significantly changed their pastoralist and nomadic way of life and restricted their traditional land usage and grazing rights. The emergence of tourism along with conservation has presented the Maasai tribes with a range of opportunities and challenges. This paragraph seeks to highlight the significance of creating sustainable conservation strategies and tourism initiatives that respect and take into account the rights, customs, and well-being of the Maasai people.



Map of Great National Parks in Kenya and Tanzania, Kenya Experience, <https://www.kenya-experience.com/safaris/lodge/kenya-tanzania-east-africas-great-national-parks>

2.3.1 Maasai Mara National Reserve

The Maasai Mara National Reserve (MMNR) is a federally protected area in southwest Kenya that shares a border with Tanzania’s Serengeti National Park. The northern Serengeti-Mara ecosystem is comprised of the MMNR and surrounding group ranch land, which together occupy an area of over 6000 km². About half of all visitors to Kenya are

drawn to the MMNR overall²⁷⁸. Kenya established the MMNR as one of its first protected areas. It was initially established in 1948 as a Wildlife Sanctuary, then, through the Wildlife (Conservation and Management) Act of 1976, it was established as Maasai Mara National Reserve (MMNR) after authority was transferred to the Narok County Council (NCC) in 1961. The Trans Mara County Council (TMCC) was then established in 1995 and given jurisdiction over the Mara Triangle, the reserves westernmost component. The MMNR's authority was effectively divided along this district-level boundary, with the NCC and TMCC overseeing respective parts of the reserve²⁷⁹.

Similar to other regions of Maasailand, the pastoral land pertaining to Maasai people in the Mara region was lost and alienated as a result of policies regarding livestock development and privatization. As a matter of fact, the policies following independence of Kenya in 1963 persisted in promoting the commercialization and privatization of pastoral areas of Maasailand. In particular, the Maasai living in the Mara region were mostly affected by the creation of group ranches, which led to the dislocation of the population outside the MMNR.

The “Land Group Representatives and Land Adjudication Act” of 1968 made it possible to divide land into group ranches, which were governed by an elected committee and owned by a registered group of members under private ownership²⁸⁰. The primary land uses on the group ranches that border the MMNR are agriculture, agro-pastoralism, pastoralism, and wildlife tourism. Maasai pastoralists, their cattle, and wildlife have been excluded from the rangelands inside the National Reserve, which were all vital grazing areas. In fact, cattle grazing is prohibited and official land use in the MMNR is limited to wildlife tourism, which strongly struck Maasai survival²⁸¹. Group ranches were not successful in strengthening cattle production systems, and they did not achieve the majority of the government-mandated goals. In addition, the public lost faith in the ranch

²⁷⁸ M. Bhandari, *Is Tourism Always Beneficial? A Case Study from the Masai Mara National Reserve, Narok, Kenya*, in *The Pacific Journal of Science and Technology*, pp. 458-483, 2014

²⁷⁹ M. J. Walpole, G.G. Karanja, N.W. Sitati & N. Leader-Williams, *Wildlife and People: Conflict and Conservation in Masai Mara, Kenya*, Wildlife and Development Series No.14, International Institute for Environment and Development, London, 2003

²⁸⁰ J. G. Galaty, *This Land Is Yours: Social and Economic factors in the privatization, subdivision and sale of Maasai ranches*, in *Nomadica Peoples* n. 30, pp. 26-40, 1992

²⁸¹ B. Butt, *Coping with uncertainty and variability: the influence of protected areas on pastoral herding strategies in East Africa*, in *Human Ecology*, n. 39, 2011

committees because of their poor management and upkeep of the infrastructure for animals and their favouritism of friends, family, and oneself. The fact that local elites and dishonest group ranch committees kept a disproportionate share of tourism and agricultural earnings infuriated people as well²⁸². Members who were dissatisfied with management committee inequalities and inefficiencies started to put pressure on subdivision group ranches. Therefore, a process of subdivision of land began in Kenya. The group ranch subdivision in the Mara region was advocated mostly because tenure security was desired. The Kenya Wildlife Service (KWS), NCC, and the conservation community were worried about agricultural encroachment by indigenous people, which would pose a substantial threat for the MMNR extension farther south. In the 1970s, group ranch subdivision and individual title registration started in Maasailand's more commercially valuable and well-watered regions. Afterward, these practices progressively extended to the region's more isolated and desert regions.²⁸³ The group ranch was divided into smaller sections during a protracted and tense period of time, from the mid-1980s to the late 1990s²⁸⁴.

There is ample evidence of corrupt practices in the subdivision process, including instances of unlawful activity and land titling manipulation. The affluent and influential group ranch committees, who mostly looked out for their own interests, benefited even more from subdivision²⁸⁵.

Large portions of land ended up in the hands of non-Maasai people as a result of subdivision. Plots have frequently been sold to non-Maasai parties, and as non-Maasai groups have gradually taken over Maasai territory, Maasai have permanently lost their rights of access to their ancestral land²⁸⁶. The Mara ecosystem's group ranch subdivisions have led to an increase in farming on formerly pastoral territory because of the higher potential land being used for agriculture. This has taken away important supplies for

²⁸² M. Thompson, K. Homewood, *Elites, entrepreneurs and exclusion in Maasailand*, in *Human Ecology*, 30(1), 107-138, 2002

²⁸³ M. Rutten, op. cit.

²⁸⁴ M. Thompson, S. Serneels, D. Kaelo, and P.C. Trench, *Maasai Mara - Land privatization and wildlife decline: can conservation pay its way?*, in *Staying Maasai? Livelihood, conservation and development in East African rangelands*, pp. 77-114. New York: Springer, 2009

²⁸⁵ E. Mwangi, *Subdividing the commons: distributional conflict in the transition from collective to individual property*, in *World Development*, n. 35 vol. 5, 2007

²⁸⁶ J. G. Galaty, *Grounding pastoralists: law, politics and dispossession in East Africa*, in *Nomadic Peoples*, n. 3 vol. 2, 1999

grazing and water, forcing the Maasai into more marginal locations and restricting their resources for survival²⁸⁷. Furthermore, when Maasai communities are uprooted from protected zones and their subsistence activities are disrupted, it can have a cascading effect on neighbouring un-conserved regions due to resource demand or human impacts²⁸⁸. This is also frequently referred to as “leakage” or spill-over effect. Under such circumstances, conservation may lessen human impacts and result in favourable biological effects within a preserved region, but it may also have unfavourable effects on places outside or adjacent to the preserve. So, spill-overs may provide the impression that limits are lessening their effects while, in reality, they may only be shifting in different directions over time or space. This may ultimately reduce the efficacy of conservation, while increasing its negative effects on indigenous populations²⁸⁹.

Pastoral land has been gradually lost by the Maasai as a result of the subdivision, dispersion, and sale of the once-group ranch land. This has also resulted in the irreversible, permanent loss of access rights to their former land. Regarding the entirety of Maasailand, it has been widely documented that there was a great deal of strife, injustice, and land grabbing during the privatization process. Elites were able to control the subdivision process in order to gain ownership of the best property for farming, tourism, or grazing. Subdivision is typically a practice that conflicts with the preservation of wildlife. The mobility of wildlife is necessarily hindered as subdivisions move forward, and human-wildlife conflict rises²⁹⁰.

In actuality, another cause began to have its greatest effects on Maasai in the 1980s, following the destructive effects of group ranch subdivision. The Maasai people’s traditional customs and ways of life were starting to shift significantly as tourism was developing quickly. Pastoralism, or the practice of raising animals, was Maasai people’s traditional means of subsistence. The Maasai were entirely dependent on their livestock during their nomadic past. The Maasai people derived all their nutritional needs from their

²⁸⁷ K. Kimani and J. Pickard, *Recent trends and implications of group ranch sub-division and fragmentation in Kajiado District*, in *Geographical Journal*, 164(2), pp. 202-213, 1998

²⁸⁸ P. R. Armsworth, G.C. Daily, P. Kareiva, and J. N. Sanchirico, *Land market feedbacks can undermine biodiversity conservation*, *PNAS*, 103, 2006

²⁸⁹ R. Ewers, and A. Rodrigues, *Estimates of reserve effectiveness are confounded by leakage*, in *Trends in Ecology & Evolution*, 23, pp.113-116, 2008

²⁹⁰ K. Homewood, E. Coast, M. Thompson, *In-migration and exclusion in East African rangelands: access, tenure and conflict*, in *Africa*, 74(4), 2004

animals, which they consumed for their flesh, blood, and milk. Together with the women and children, they went from one place to another with the entire village or family. After the MMNR and other conservancies in Kenya were established, the Maasai people ceased to live as nomads. The Maasai were forced to find alternative forms of income when conservation initiatives were established. The Maasai may choose to work in agriculture, tourism, wage labour, or the trade of cattle depending of the chances for livelihood that are accessible to them²⁹¹.

Previous studies have shown that indigenous peoples can benefit from tourism since it allows them to start making money that they can then use to invest back into their communities. On the other hand, reality may differ within the social order and at smaller sizes. Maasai came into contact with visitors when they began to visit the MMNR and neighbouring conservancies. Due to their strong interest in the traditional customs, tourists began to frequent the villages. The introduction of money by tourism has a significant impact on the Maasai population in the area, as they discovered that they could make money by bringing tourists to their village to learn about Maasai culture and to be entertained by dances. They could also sell handicrafts like woodcarvings and beads to tourists²⁹².

Numerous elements play a part in the community's transformation. Since they are no longer able to rely on their cattle, the Maasai rely on tourists for their income. There are fewer grazing grounds, thus the cattle produce less. For this reason, they commodify their culture in order to raise money. However, the majority of those that profit from Maasai culture are large tourism lodges, tour guides, and other travel industry players. The Maasai have persisted in receiving less money from dance and carving sales than from holding a large portion of tourism and cultural advantages²⁹³.

Another problem related to tourism development in the Maasai Mara National Reserve and adjacent conservancies is that, in contrast to the present dynamics of their society, Maasai are portrayed and expected to stay "original" for the tourists, posing for pictures

²⁹¹ R. Goodman, *Pastoral Livelihoods in Tanzania: Can the Maasai Benefit from Conservation?*, *Current Issues in Tourism*, 5:3-4, pp. 280-286, 2002

²⁹² M. Honey, *Community Conservation and Early Ecotourism Experiments in Kenya*, in *Environment*, 51:1, pp. 46-56, 2009

²⁹³ J.S. Akama, *Marginalization of the Maasai in Kenya*. *Annals of Tourism Research*, 26:3, pp. 716-71, 1999

and narrating “old stories” about how they once lived in the area²⁹⁴. Due to a lack of well-planned methods for utilizing their culture as a part of tourism, false stereotypes about their way of life have been exploited and promoted. For instance, Maasai can only profit from tours of their villages if they continue to live in traditional houses (emanyatta); otherwise, visitors will find the villages to be uninteresting. The perception that tourists have of Maasai culture is not reflected in modern architecture. It appears that having an authentic experience is crucial if you want to keep the traveller happy. The marketing and promotion of tourism locations as well as other media sources contribute to the creation of tourists’ genuine perceptions. The Maasai are unable to undergo change because of the establishment of a particular cultural image that they need to preserve in order to have at least the small portion of income that belong to them²⁹⁵.

Maasai people, having been displaced from their traditional grazing lands in the MMNR due to the subdivision of group ranches, now find themselves heavily reliant on tourism for their livelihood. Unfortunately, the income generated from tourism is minimal and insufficient to meet their needs, leaving the community economically vulnerable and struggling to preserve their cultural heritage amidst these challenges.

2.3.2 Amboseli Ecosystem and Amboseli National Park

The Amboseli Ecosystem in southern Kenya spans 5975 km² in eastern Kajiado County, between the Amboseli, Chyulu Hills, Tsavo, and Kilimanjaro National Parks. Amboseli National Park (ANP), the centre of a UNESCO Man and the Biosphere Reserve that safeguards 392 km² (about 5% of the total wildlife dispersal area), lies at the centre of the ecosystem. In addition to Amboseli National Park (ANP), the Amboseli Ecosystem include up to eight group ranches managed collectively by Maasai pastoralists and agro-pastoralists, as well as multiple animal sanctuaries. These ranches were founded in the early 1970s in an effort to prevent more Maasai pastoral grounds from being lost²⁹⁶. These group ranches include one of the largest surviving blocks of animal conservation in Kenya

²⁹⁴ E. M. Bruner, *Maasai on the lawn: Tourist realism in the East Africa*, in *Cultural Anthropology*, 9(2), pp. 435–470, 1994

²⁹⁵ S. Williams, *Tourism Geography A New Synthesis*, London: Routledge, 2009

²⁹⁶ L. Hazzah, S. Dolrenry, D. Kaplan, L. Frank, *The influence of park access during drought on attitudes toward wildlife and lion killing behaviour in Maasailand, Kenya*, in *Environmental Conservation*, 40(3), pp. 266–276, 2013

and are situated in a dispersal area between the national parks of Tsavo and Chyulu, Amboseli, and Private and Community animal Sanctuaries.

During colonialism in the first part of 1900s, the British Government created a game reserve in southern Kenya, encompassing the Amboseli Ecosystem, between Nairobi and the German East African border. The creation of this reserve was an attempt to keep the wandering Maasai people in an area that European settlers had little interest in. It was effectively forbidden to hunt wildlife in such reserves. Nonetheless, white colonists frequently went sports hunting in the region. The Maasai found it incomprehensible that while white people were allowed to use firearms to kill wildlife in some parts of their own country, their warriors faced severe consequences if they used the same tactics to safeguard their herds during dry spells or as part of their rites of passage²⁹⁷. The injustice of colonial rules favouring wild animals and Europeans over the Maasai infuriated them, as it did many other Indigenous people in most of East Africa and it influences the current land and wildlife conflicts²⁹⁸.

With an area of 3260 km², Amboseli was declared a National Reserve in 1948, with an emphasis on the wildlife while respecting the rights of Maasai pastoralists to graze and irrigate their cattle in this significant wetland. “National Reserve” was a term used to describe a preservation area where the legitimate demands of the local population should be taken into consideration. In spite of this concept, the common perception that Maasai people were a barrier to conservation persisted during the years. Claiming that Maasai livestock overgrazed the wetlands, a number of state officials, reserve managers, and scientists began to divide and reorganize the lands of Amboseli. This marked a clear boundary between humans and wildlife, a notion that was at the time foreign to the Maasai culture²⁹⁹. For example, a modest 30-acre sanctuary was created to safeguard a section of the Amboseli wetlands that were off-limits to Maasai people. Similar to this, in July 1950, the Royal National Parks reserved 50 acres of land so they could host all safari activities

²⁹⁷ A. Fernández-Llamazares, D. Western, K. A. Galvin, P. McElwee, M. Cabeza, *Historical shifts in local attitudes towards wildlife by Maasai pastoralists of the Amboseli Ecosystem (Kenya): Insights from three conservation psychology theories*, in *Journal for Nature Conservation*, N. 23, 2020

²⁹⁸ E. I. Steinhart, *Black poachers, white hunters: A social history of hunting in Colonial Kenya*, Athens, Ohio, Ohio University Press, 2006

²⁹⁹ A. E. Lewis, *Amboseli landscapes: Maasai pastoralism, wildlife conservation and natural resource management in Kenya, 1944-Present*, East Lansing, Michigan State University, 2015

that came through the area. By the end of the year, the National Parks had constructed a semi-permanent tourist camp on the property. The Maasai's continuous marginalization was another factor in the growing dislike towards conservation³⁰⁰.

Following Kenya's independence, the Maasai people came under fire from the wider Kenyan public for not managing their livestock numbers in a way that adhered to rigorous husbandry techniques, hence endangering the Amboseli wildlife's future³⁰¹. International organizations dedicated to animal conservation accused the Maasai of converting Amboseli into a dustbowl through their overabundance of cattle, depriving wildlife of water and grazing grounds. The government promoted sedentarisation under the pretence that the nomadic pastoralists were mismanaging and overstocking the rangelands because, at the time, they believed the rangelands would be better utilized for more productive land uses³⁰².

There was a wave of pressure on the Kenyan government to turn Amboseli into a national park as the Maasai grew more antagonistic toward conservation. The local Maasai diligently lobbied for land tenure security that would guarantee their rights to the entire region, including Amboseli's swamps, partly to protect themselves from a new wave of agricultural encroachment into Maasailand after independence and partly to prevent the growing prospects of the creation of a national park. The Maasai were worried since their lands were being widely taken for conservation purposes throughout Maasailand in both Kenya and Tanzania. For instance, by 1961 up to 26,000 square kilometres of Maasai territory had been taken over for the protection of biodiversity³⁰³.

Unfortunately, as the Maasai had predicted, the 400 square kilometres area surrounding the Amboseli wetlands was officially designated a National Park in 1974, officially excluding the Maasai and their cattle. This move was motivated by the growing popularity of the "fortress conservation" approach in post-independence Kenya, which demonstrated that protecting wildlife was of utmost importance. On the contrary, Maasai people

³⁰⁰ A. Fernández-Llamazares, D. Western, K. A. Galvin, P. McElwee, M. Cabeza, *op. cit.*

³⁰¹ D. Lovatt Smith, *Amboseli. A miracle too far?*, Herstmonceux, Mawenzi Books, 2008

³⁰² J. G. Galaty, *The collapsing platform for pastoralism: Land sales and land loss in Kajiado County, Kenya*, in *Nomadic Peoples*, 17(2), 20–39, 2013

³⁰³ E. Mwangi, *The puzzle of group ranch subdivision in Kenya's Maasailand*, in *Development and Change*, 38(5), pp. 889–910, 2007

believed that their arguments and opinions had been disregarded during the process that resulted in the designation of Amboseli as a National Park. The Maasai people viewed the establishment of the National Park as an unlawful limitation on their right to personal freedom, with the majority of their customary activities being ignored, outlawed, or otherwise prohibited³⁰⁴. As a result, in June 1977, the Maasai people were forced to relocate to prearranged group ranches outside the park. This solution remains at the basis of most of current difficulties and struggles of Maasai people. The group ranches were quickly deemed as unsuccessful and from the 1980s till the present, the Maasai collectively owned group ranches have been subjected to a process of land subdivision and privatization. Before land subdivision, Maasai villages in Amboseli were largely sedentary, yet they continued to relocate to avoid droughts³⁰⁵. On the other hand, due to land privatization and subdivision, they can no longer travel the great distances as they used to. Their traditional nomadic lifestyle has undergone significant alterations as a result of these circumstances. Given the previously described obstacles, Maasai customs and cultural practices are evolving. In the long run, these modifications to customs and culture will have an impact on future attempts to conserve the local fauna³⁰⁶.

Amboseli had 137,495 people living there as of 2009, according to the most recent National Population Census Report (KNBS, 2010). Over 80% of the Maasai people, who have inhabited this region for hundreds of years, depend on herding livestock for a living, which occupies the majority of the land. But, as a consequence of the loss of rangelands and wetlands to conservation initiatives, Maasai can no longer rely mainly on cattle. Therefore, tourism and arable farming have grown to be important land use activities³⁰⁷.

The rapid growth of tourism following the 1980s has presented another significant issue for conservation. Owing to the area's abundant biological diversity, breath-taking scenery, and the attraction of Mount Kilimanjaro, Amboseli has grown to be a popular travel

³⁰⁴ G. Holmes, *Protection, politics and protest: Understanding resistance to conservation*, in *Conservation and Society*, 5(2), pp. 184–201, 2007

³⁰⁵ P. Tyrell, S. Russell, D. Western, D. *Seasonal movements of wildlife and livestock in a heterogeneous pastoral landscape: Implications for coexistence and community-based conservation*, in *Global Ecology and Conservation*, 12, pp. 59–72, 2017

³⁰⁶ Z. Ahmed, L. Booth, L. Njagi, E. Stephanou, *The Warrior's Dilemma: Can Maasai Culture Persist in a Changing World?*, In *Consilience* n. 13, pp. 300–310, 2015

³⁰⁷ T. G. Ondicho, *Indigenous Ecotourism as a Poverty Eradication Strategy: A Case Study of the Maasai People in the Amboseli Region of Kenya*, in *African study monographsm Supplementary issue* n. 56, pp. 87-109, 2018

destination for visitors from across the world. The main forms of tourism in the area are game safaris and wildlife viewing in the park and other ecotourism destinations³⁰⁸. As a result, the Maasai started to view wildlife as a resource from which they might make income. Communities near Amboseli National Park often displayed a strong fall in traditional wildlife values and an increase in economic valuation. These communities were more exposed to tourism development than others elsewhere³⁰⁹.

The indigenous Maasai people are the ones that gain the least from this development process, even though foreign tourism to the Amboseli National Park generates a substantial amount of revenue for the park's wildlife tourist industry³¹⁰. Human-wildlife conflicts outside national parks, the alienation of native lands to build national parks, and the exclusion of landowners from using vital natural resources in the parks all contribute to the marginalization and poverty of rural populations³¹¹. Maasai communities in and around Amboseli National Park are turning to indigenous ecotourism as a way to improve their standard of living and generate money in response to these problems. Ecotourism is publicized as an innovative and promising means of raising funds for local biodiversity conservation and economic development initiatives in tourist locations. In its literal sense, indigenous ecotourism refers to travel that is organized, managed, and experienced by native populations on their ancestral territories. This idea differs significantly from wildlife ecotourism in that it seeks to fairly compensate the locals whose labour, land, expertise, and culture are utilized in the tourism process³¹².

The Maasai bear the burden of wildlife-related damages despite the high costs of permitting animals on their communal grounds. The government forbade them from receiving compensation in 1977, even though, in the meantime, parks in Maasai backyards continue to generate significant amounts of foreign revenue for the government and tourism companies. The areas of these national parks were traditionally used by the Maasai for grazing, and they were seized from them without their consent or payment.

³⁰⁸ S. Mwale, *Changing relationships: The history and future of wildlife conservation in Kenya*, in Swara, 22(4), pp. 11–17, 2000

³⁰⁹ D. Western, D. L. Manzollilo Nightingale, V. N. Mose, J. Ole Sipitiek, J., and K. Kimiti, *Variability and change in Maasai views of wildlife and the implications for conservation*, in Human Ecology, 2019

³¹⁰ T. G. Ondicho, *Tourism, Power and Politics: The Challenges of Maasai Involvement in Tourism Development*, Massey University, Palmerston North, New Zealand, 2010

³¹¹ W. Adams and J. Hutton, *People, Parks and Poverty: Political Ecology and Biodiversity Conservation*, in Conservation & Society, Vol. 5 No. 2, pp. 147-183, 2007, <https://www.jstor.org/stable/26392879>

³¹² T.G. Ondicho, *Local communities and ecotourism development in Kimana, Kenya*, in Journal of Tourism, 13(1), pp. 41–60, 2012

All the Maasai can do for meagre pay is sell carvings, sing traditional songs, and dance as foreign tourists come and go from their former lands³¹³.

The shift from nomadic pastoralism to sedentary lifestyles has increased human-wildlife conflict, which has been made worse by contemporary conservation programs that have diminished Maasai traditional beliefs and practices and increased antipathy to conservation³¹⁴. Nearly two thirds of Kenya's animal populations have disappeared in the last 40 years due to a general scepticism among the Maasai and other pastoral tribes regarding conservation efforts in Amboseli. The condition of the Maasai and their antipathy towards conservation initiatives is only a result of the historical legacy of colonial and post-independence government policies against them³¹⁵. The Amboseli case is only one of several that highlight the necessity for tourism projects and sustainable conservation plans that respect the rights of access of Maasai people to their ancestral land.

2.3.3 Tanzania: Serengeti National Park and Ngorongoro Conservation Area

Large portions of the Maasai people's ancestral land, including what is now Serengeti National Park, were taken away from them beginning in the mid-1900s by a succession of land and wildlife legislation intended to conserve wildlife in Northern Tanzania. At first, the Maasai were given concessions, such as moving to the nearby Loliondo region and the Ngorongoro Conservation Area. However, even in these areas, they have been repeatedly evicted over the past 50 years, and new rules have restricted their ability to raise subsistence crops and graze livestock, which has resulted in an extensive hunger crisis in the last decades³¹⁶.

³¹³ M.M. Okello, S. K. Ole Seno and R. W. Nthiga, *Reconciling people's livelihoods and environmental conservation in the rural landscapes in Kenya: Opportunities and challenges in the Amboseli landscapes*, in *Natural Resources Forum*, n. 33, pp. 123-133, 2009

³¹⁴ M. Dowie, *Conservation Refugees: The Hundred-Year Conflict Between Global Conservation and Native Peoples*, Cambridge, UK, The MIT Press, 2009

³¹⁵ J. O. Ogutu, H. P. Piepho, M. Y. Said, G. O. Ojwang, L. W. Njino, et al., *Extreme wildlife declines and concurrent increase in livestock numbers in Kenya: What are the causes?*, in *PloS One*, 11(9), 2016

³¹⁶ A. Mittal, E. Fraser, *Losing the Serengeti: The Maasai Land That Was To Run Forever*, The Oakland Institute, 2018

The colonial administration established game reserves and national parks, including the Serengeti National Park (SNP), in 1940 with the passage of Game Ordinance, Cap. 159, which also placed the first limitations on habitation and exploitation of this pristine area³¹⁷.

To protect the scenic beauty of the region, a British-led “community of enquiry” proposed in 1957 that SNP be divided into two parts. One area would become the current Serengeti National Park, where it would be forbidden for anyone to live, including Maasai people³¹⁸. The second area would eventually be referred to as the Ngorongoro Conservation Area (NCA), which spans 829,200 hectares and includes the 26,000-hectare Ngorongoro Crater, a wildlife-rich crater that is three million years old and enclosed by walls that rise to a height of 600 meters. It was suggested that the NCA be a multipurpose region with three main uses: preserving the environment, defending the rights of native populations, and boosting tourism³¹⁹.

The colonial administration had to convince the Maasai, who had lived in SNP for millennia, to leave in order to carry out the plans. They were promised greater water resources, a say in managing the conservation area, and other benefits in return for their departure from the plains. They were also assured they could live in the newly established NCA. The Maasai made a written commitment to depart on these conditions and guaranteed it. The colonial government’s verbal pledges remained unwritten, which led to a discrepancy between the Maasai’s and the colonial authorities’ promises³²⁰.

The National Parks Act and the Ngorongoro Conservation Area Ordinance, which were passed in 1959, formalized the Maasai people’s commitments. The Maasai left the Serengeti and settled in the NCA in the vicinity of Loliondo. The majority of the Maasai Indigenous people who currently reside in the Ngorongoro divisions, Loliondo and Ngorongoro, were actually forcibly removed from the Serengeti region when the Serengeti National Park was created in 1959³²¹.

³¹⁷ I. G. Shivji and B. L. Kapinga, op. cit.

³¹⁸ P.J. Rogers, *International Conservation Governance and the Early History of the Ngorongoro Conservation Area, Tanzania*, in *Global Environment*, 4, p. 88, 1009

³¹⁹ Ngorongoro Conservation Area Authority, *Welcome to the Ngorongoro Conservation Authority*, <http://www.ngorongorocrater.org/welcome>

³²⁰ A. Mittal, E. Fraser, op. cit.

³²¹ E. Laltaika, *Pastoralists’ Right to Land and Natural Resources in Tanzania*, University of Oregon School of Law, p. 48, 14 May 2014

The limits and conditions of SNP were established by the 1959 National Parks Act, which also granted the Governor the power to designate any area in Tanzania as a national park. It stipulated in law that upon the creation of a national park, “all rights, titles, interests, franchises, claims, privileges, exemptions or immunities of any person other than the Governor in, over, under, or in respect of any land within such area shall, from the date upon which such proclamation comes into operation, cease, determine, and be forever extinguished.”³²² This effectively ended the Maasai People’s customary rights to the region and to their lands.

Conversely, the Ngorongoro Conservation Area Ordinance included significant clauses. It mentioned the Maasai people in particular as having the right to reside in the area. These rights were orally confirmed by officials in the early days of the NCA. Nonetheless, the Ngorongoro Conservation Area Authority (NCAA), which oversees the NCA, was given the authority to forbid, restrict, or regulate a number of significant activities that take place in the area, such as agriculture, cattle grazing, gathering honey and forest products, and building settlements and homes³²³. Consequently, the creation of the NCAA gave the government authorities considerable influence over the 4,000 km² of land that the Maasai had been living on since the 1950s³²⁴.

Significant changes occurred in the field of conservation in the years preceding the 1970s. African conservation regulations have been influenced by international institutions such as the International Union for Conservation of Nature (IUCN). These organizations campaigned for tighter regulations on grazing, cultivation, and travel inside the NCA. Enforcement of these regulations, which included jail time, fines, and the seizure of Maasai property, grew during the 1970s³²⁵.

The state’s establishment of the Wildlife Conservation Act (No. 12 of 1974), which has since been abrogated by the Wildlife Conservation Act (No. 5 of 2009), represented a major triumph for the conservation lobby in terms of unifying and amending environmental regulations. At that point, the Maasai people’s livelihood and way of life

³²² Legislature of Tanganyika, *National Parks Ordinance, No. 12, 1959*, June 26, 1959

³²³ Tanganyika, *Ngorongoro Conservation Area Ordinance, CAP. 413-Supp. 59, 1959*, Dar Es Salaam, 1960

³²⁴ Amnesty International, “*We have lost everything*” *Forced Eviction Of The Maasai In Loliondo*, Tanzania, London, Amnesty International Ltd, AFR56/6841/2023, 2023

³²⁵ I. G. Shivji and B. L. Kapinga, *op. cit.*

were in danger when Government Notice No. 269 announced that 4,000 km² in the Loliondo area of the Arusha Region will be designated as Loliondo Game Controlled Area, created only for the preservation of wildlife³²⁶. In addition, the NCA Ordinance Amendment was passed in 1975. Section 9A inflicted a severe blow to the Maasai people by outlawing any kind of cultivation inside the NCA³²⁷. Although the Maasai are often categorized as pastoralists who travel, they have historically relied on the cultivation of subsistence crops in times when the health of their livestock or their access to grasslands was threatened. The Maasai people's survival was already threatened by the prohibition on cultivation and it was worsened by limitations on livestock movement and grazing³²⁸. The process of revising Tanzania's land laws continued during the 1990s. As a result, two laws were passed in 2001: the Village Land Act of 1999 and the Land Act of 1999. The Acts have received praise for a number of reasons, including the fact that they enable women to own land, acknowledge customary rights to land, and grant village authorities' permission to manage their own land³²⁹. They also made way for a number of problems. Tanzanian land is divided into three categories: general land, village land, and reserved land. This division forms the basis of both statutes. The two acts' disparate definitions of general land are the source of the issue. All land not classified as reserved or village land is referred to as general land under the Village Land Act. Nonetheless, general land is defined in the Land Act as "all public land which is not reserved land or village land and includes unoccupied or unused village land."³³⁰ There is no definition provided for vacant or underutilized land. This was used to swiftly seize Maasai Peoples Lands by treating them as vacant or underutilized. In accordance with the Village Land Act, the President can additionally transform village land into reserved or general property as long as it serves the "public interest". Then, "investments of national interest" are included in the definition of "public interest".³³¹

³²⁶ K. Kagasheki, Minister of Natural Resources and Tourism, *Government clarifies on decision to provide huge tracks of land to Loliondo residents*, 7 April 2013,

³²⁷ United Republic of Tanzania, *An Act to amend the National Parks Ordinance and the Ngorongoro Conservation Ordinance, No. 14, 1975*, August 12, 1975

³²⁸ A. Mittal, E. Fraser, op. cit.

³²⁹ R. Palmer, *The Tanzania Land Acts, 1999, Analysis of the Analyses*, Oxfam GB, March 1999

³³⁰ United Republic of Tanzania, *Land Act, section 4, 1999*, Faolex, 15 May 1999

³³¹ United Republic of Tanzania. *Village Land Act, section 5, 1999*, Faolex, 15 May 1999

The Wildlife Conservation Act was changed in 2009, which made issues even more complicated. The act forbids growing crops in game reserves, wetlands reserves, or game-controlled regions. It also imposes severe fines and potential jail terms on those who allow their animals to graze in game-controlled areas³³². From a practical standpoint, these modifications essentially deprive the Maasai inhabitants of the Loliondo Game Controlled Area (LGCA) and other game-controlled regions of their cultural legacy, which is essential to their survival. The Loliondo division shares boundaries with Kenya to the north, the Ngorongoro Conservation Area (NCA) to the south, and the Serengeti National Park to the west. Loliondo is valued for its biodiversity and it spans more than 4,000 km².³³³ Following the creation of Serengeti National Park, Loliondo was one of the primary areas where Maasai were evacuated. The Act's restriction on Maasai access to grazing grounds has naturally led to an increase in land conflicts between the Maasai, investors, and the government, breaking the agreements established when the Maasai were relocated from the Serengeti plains in 1959³³⁴. The government has been forcibly evicting thousands of people from Loliondo to make way for tourism, trophy hunting, and conservation since at least 2009.³³⁵

In 2009, 2013, and 2017, members of the community were forcefully removed from four villages, Ololosokwan, Oloirien, Kirtalo, and Arash, by security forces using severe force, including setting fire to homes, beating people, shooting rubber and live bullets, and releasing tear gas on them. They were escorted by representatives of a commercial enterprise authorized to conduct tourism operations and possessing a hunting concession in Loliondo.³³⁶

During the forced relocation in August 2017, Maasai people residing on 1,500 km² of their own land in the Loliondo Game Controlled Area had their homes and belongings burned and destroyed by security personnel, including Tanzanian armed forces. This took place following letters from the state telling the locals to get their villages and animals

³³² United Republic of Tanzania. *Wildlife Conservation Act, No. 5, 2009*, March 12, 2009

³³³ United Nations Educational, Scientific and Cultural Organization (UNESCO), *Ngorongoro Conservation Area*, 2022, www.unesco.org/en/list/39/

³³⁴ A. Mittal, E. Fraser, *op. cit.*

³³⁵ European Parliament, *Maasai evictions in Tanzania*, Question E-4714/2009, 24 September 2009 https://www.europarl.europa.eu/doceo/document/E-7-2009-4714_EN.html?redirect

³³⁶ UNHRC, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people*, cases examined by the Special Rapporteur, June 2009 - July 2010

out of the Serengeti National Park. The letters' receivers had not moved their villages or cattle off the land as the Maasai lived in locations that were not part of the Serengeti National Park. The Maasai people were obliged to rebuild their homesteads after the security forces destroyed them, as they had done in every prior forced eviction campaign³³⁷.

Tanzania's Ministry of Natural Resources and Tourism declared on June 3, 2022, that it will reserve 1,500 km² of the Loliondo region for conservation and utilize the remaining area for human occupancy. This approximates 40% of Loliondo's entire land area. The Maasai people refer to the area they have marked off as "Osero" and use it as a grazing area for their sheep, goats, and cows. Due to the area's demarcation, the remaining 70,000 Maasai residents of Loliondo division, Ngorongoro district, who were primarily pastoralists, would have to be evicted. Additionally, the community would not be able to graze their cattle there or even get into the region to find water for agricultural and domestic use³³⁸. According to Tanzanian officials, the Maasai community has been ruining the area and their rising population is invading wildlife habitats. In addition, the public declaration was made without the Maasai's prior, explicit, and given consent. This was against what is expressed in the Wildlife Conservation Act, which mandates sufficient engagement with the Maasai community, the legitimate landowners, or with community governments³³⁹. The state has delineated the disputed 1,500 km² as a Pololeti Game Controlled Area, with accompanying limitations pertaining to the cultivation of crops and the grazing of livestock³⁴⁰.

To carry out the authorities' intentions, several state security troops landed in Loliondo division on June 7, 2022. To mark the planned game reserve, dozens of law enforcement officers, military men, and game rangers came in Loliondo. The security forces shot protestors and passers-by with rubber bullets and tear gas over the course of many days, wounding at least thirty individuals, including women, children, and elderly people. They also unjustly detained and imprisoned ten community leaders³⁴¹. Up to 2,000 people from

³³⁷ Amnesty International, op. cit.

³³⁸ Amnesty International, op. cit.

³³⁹ United Republic of Tanzania. *Wildlife Conservation Act, No. 5, 2009*, Cap. 284 R.E, section 16(5), 2022

³⁴⁰ K. Kagasheki, op. cit.

³⁴¹ Human Rights Watch, Tanzania: Maasai Forcibly Displaced for Game Reserve, 27 April 2023, <https://www.hrw.org/news/2023/04/27/tanzania-maasai-forcibly-displaced-game-reserve#>

different communities in Loliondo left to seek safety and medical attention in Kenya, a neighbouring country. Since then, Loliondo inhabitants have been subjected to abuses by security personnel; victims and witnesses have reported many cases of sexual assault, including rape, as well as periodic searches and house shootings³⁴². Furthermore, severe cuts to essential public services, particularly essential health care, have been implemented by the Tanzanian government. The main hospital serving 60,000 Maasai in the NCA, Endulen Church Hospital, has been reduced to a clinic, and urgent and ambulance transportation have been halted³⁴³.

The inhabitants of the villages of Loliondo were forcibly removed by the authorities without any legal justification. The Ministry of Natural Resources and Tourism's proposal came into effect when the state released the Wildlife Conservation (Declaration) Order, 2022 (GN 421 of 2022), which designated the region to be the Pololeti Game Reserve. However, this was only completed on June 17, 2022, even though the Maasai people had been being forcibly relocated from their lands for weeks prior³⁴⁴.

Security officials deliberately suppressed media outlets' and non-governmental organizations' ability to independently report on the forced evictions that occurred in June 2022 by barring them from entering the affected districts of Loliondo. Speaking to the media, security agency spokespeople denied using undue force during the evictions, asserting that the Maasai community was moving freely and that the move had been done with their consultation³⁴⁵.

Human Rights Watch was able to determine the location of the government-designated off-limits region by examining high-resolution satellite photos. This boundary was traced beginning in the north on June 20, 2022, and ending on July 28, 2022. Through an examination of satellite footage, Human Rights Watch was able to determine that between July 2 and July 30, about 90 homesteads and livestock enclosures inside the defined area were destroyed by fire. Human Rights Watch discovered that communities' access to land,

³⁴² J. Mutura, Misery of broken families as evicted Maasai take cover, *The Standard*, 2023 <https://www.standardmedia.co.ke/national/article/2001455426>

³⁴³ M. Mwenda, Tanzania Sides with Trophy Hunters and Tourists evicting the Maasai, *Lifegate*, 15 august 2023, <https://www.lifegate.com/tanzania-evicting-maasai>

³⁴⁴ Amnesty International, op. cit.

³⁴⁵ Ibid.

water, livelihood, and culture had all been negatively impacted by the land delineation and the violence that followed³⁴⁶.

In Loliondo, around 70,000 Maasai people were forced to relocate and gave the state ownership of 1,500 km² for conservation. Unfortunately, the Tanzanian government's need for money is what has intentionally led the Maasai to be evicted. The potential financial gains from the tourism and trophy hunting industries are substantial, but they are contingent upon the Maasai people being uprooted from their ancestral lands³⁴⁷.

In the meantime, the Maasai people who make up the Ngorongoro community filed a lawsuit in the East African Court of Justice (EACJ) to compel Tanzania's government to uphold their rights to life, livelihood, cultural, and spiritual freedom, as well as access to their "ancestral land" in Ngorongoro. However, the government defended the relocation effort by stating that it is predicated on the theory that heightened pastoral and human activity within Ngorongoro might jeopardize the area's designation as a UNESCO World Heritage Site. It also said that the only way to stop such from happening was to relocate the inhabitants of the disputed area. After rendering a decision, the court rejected the Maasai case³⁴⁸.

In addition, the African Commission expressed concerns during its visit to the Ngorongoro area in January 2023 on the inadequate engagement and involvement of local people in the demarcation process, as well as the use of force and intimidation against community members who were protesting.³⁴⁹ The rights of people and communities, including those with traditional land tenure, to property and land are safeguarded under international and African human rights agreements. Forced evictions are forbidden under international and regional law, particularly the African Charter on Human and Peoples' Rights and the International Covenant on Economic, Social, and Cultural Rights.³⁵⁰

³⁴⁶ Human Rights Watch, op. cit.

³⁴⁷ M. Mwenda, op. cit.

³⁴⁸ M. Mwenda, op. cit.

³⁴⁹ ACHPR, Press Statement at the Conclusion of the Promotion Mission of the African Commission on Human and Peoples' Rights to the United Republic of Tanzania, 23-28 January 2023, 24 February 2023 <https://achpr.au.int/en>

³⁵⁰ Human Rights Watch, op. cit.

2.4 CONCLUDING REMARKS

Maasai people have been significantly impacted by the creation of national parks and conservancies in Kenya and Tanzania - notably in areas like the Maasai Mara, Amboseli, Serengeti, and Ngorongoro. The establishment of these protected areas resulted in significant land loss, restricted access to necessary resources, and the forcible displacement and eviction of the Maasai from their ancestral territories. Furthermore, by reducing the amount of grazing ground accessible for their livestock, conservation activities and land subdivision have negatively impacted the Maasai people's capacity to maintain their traditional pastoral lifestyle.

Although the growth of tourism in these national parks has brought about economic possibilities, the Maasai have not enjoyed the full benefits. The Maasai people's cultural integrity is being further undermined by the frequent commodification of their traditional legacy in an attempt to attract tourists, while the community receives inadequate revenue from tourism.

These problems highlight the urgent need for Maasai participation in tourism and sustainable conservation initiatives. Developing strategies that guarantee equitable financial gains, safeguard the cultural heritage, and engage the Maasai in decision-making is essential. The necessity of sustainable and inclusive methods will be discussed in more detail in the upcoming chapter.

CHAPTER 3 – SUSTAINABLE INDIGENOUS-LED SOLUTIONS IN CONSERVATION AND TOURISM

As a result of increasing awareness of the historical and ongoing injustices faced by indigenous communities, there has been a concerted effort to provide sustainable solutions that not only protect the environment but also honor and respect the rights of indigenous peoples.

The first paragraph examines the global efforts to preserve indigenous rights in a sustainable and efficient manner. The frameworks and organizations mentioned in this part lay the groundwork for a deeper understanding of how international initiatives are in line with the values of environmental stewardship and indigenous sovereignty.

The second section shifts focus to the tourism industry, where ecotourism led by indigenous people and sustainable tourism practices based on cultural heritage have become effective means of promoting conservation and empowering local communities. These strategies provide a pathway to economic growth that respects and protect cultural and natural heritage.

The third paragraph examines conservation tactics that put indigenous rights first, especially through community-based conservation and a rights-based perspective. These methods stress how crucial it is to include indigenous peoples in decision-making procedures in order to make sure that their rights and means of subsistence are not jeopardized by conservation initiatives.

Finally, the chapter concludes with specific examples from the Maasai people in Kenya and Tanzania. By drawing on the experiences of the Maasai, this section not only shows the practical applications of the solutions presented but highlights the significance of context-specific methods that are sensitive to the particular needs and aspirations of indigenous groups.

3.1 INTERNATIONAL INITIATIVES FOR THE SUSTAINABLE AND EFFECTIVE PROTECTION OF INDIGENOUS RIGHTS

In recent years, a variety of international initiatives have emerged as a consequence of frameworks such as the United Nations Declaration on the Rights of Indigenous peoples (UNDRIP) and the International Labour Organization (ILO) Convention 169, aimed at protecting the rights of indigenous peoples, particularly their land rights. Programs such

as the Indigenous Navigator, the Green Climate Fund, and the ICCA Consortium, along with efforts by international institutions like the FAO and IFAD, outlined hereinafter, play an essential role in this endeavour. These initiatives are intricately interrelated with the efforts of local governments, non-governmental organizations (NGOs), and other international bodies. When combined, they create an extensive network devoted to protecting the rights of indigenous peoples and guaranteeing adherence to international norms. They aim to guarantee that indigenous communities are not only protected but also actively involved in and benefit from tourism-related and conservation efforts taking place on their ancestral lands by supporting sustainable land management and conservation techniques. This comprehensive strategy emphasizes how crucial it is to address indigenous peoples' rights when dealing with environmental and human rights issues on a global scale.

3.1.1 Indigenous Navigator

The Indigenous Navigator is a joint endeavour established and overseen by a global partnership that includes IWGIA, Tebtebba, AIPP, Forest Peoples Programme and the Danish Institute for Human Rights, together with the support of the European Union. It is a framework from which users can get access to a collection of resources created by and for indigenous peoples. Through the use of the IN, indigenous communities and organizations, duty bearers, non-governmental organizations, and journalists may obtain tools and resources based on up-to-date community-generated data to support their rights and methodically track the extent to which these rights are acknowledged and put into practice. Indigenous peoples may improve their access to justice and development and contribute to the documentation of their conditions worldwide by recording and reporting their own circumstances³⁵¹.

The UN Declaration on the Rights of Indigenous peoples (UNDRIP), ILO Convention 169 (ILO169), and other pertinent human rights instruments enshrine key aspects of the fundamental rights and freedoms of indigenous peoples. The IN framework includes over 150 structure, process, and outcome indicators to track these rights³⁵².

³⁵¹ International Work Group for Indigenous Affairs, *The Indigenous World 2024*, Copenhagen Denmark, IWGIA, 2024

³⁵² Ibid.

The IN greatly broadened its geographic scope in 2023, working at the national level creating 11 new partnerships and providing monitoring in more than 100 diverse Indigenous communities. Community surveys and IN tools are still being used to track the rights of over 300,000 Indigenous people in over 320 communities. Publicly available data from 179 community surveys and 18 UN Member States are accessible on the global portal³⁵³.

Rights violations against indigenous peoples are frequently unreported or underreported. There are still gaps in the knowledge on the social and economic circumstances of indigenous peoples. Indigenous communities' and the IN's data attest to the difficulties in obtaining disaggregated census data for native communities, which is sometimes lacking or non-existent. Because of this ongoing absence of acknowledgement and disaggregation, indigenous peoples are statistically invisible. Furthermore, it leaves a lot of individuals without a thorough understanding of their circumstances, and it leaves responsibility bearers ignorant of and lacking sufficient information about the needs and worries of indigenous peoples. Therefore, the IN persisted in emphasizing the value of Indigenous-led Community-Based Monitoring and Information Systems (CBMIS) in resolving global crises and defending the rights of indigenous peoples³⁵⁴.

As a good practice example, Cambodian indigenous people currently make use of the Indigenous Navigator. The Cambodia Indigenous Peoples Organization (CIPO) is in charge of organizing the Indigenous Navigator in this country. CIPO was able to compile data from community surveys at the national level utilizing the tool and data analytic abilities, and the resulting reports could be utilized for evidence-based lobbying at local, state, and federal levels. It is significant to remember that the communities utilize such information to advocate for themselves at the village level in response to needs or requests they have, and they share it with all relevant parties, such as local NGOs and government organizations³⁵⁵.

³⁵³ Indigenous Navigator, *Indigenous Navigator Survey, Data and Index Modules*, Indigenous Navigator. <https://indigenoustravel.org/indigenous-data/indigenous-navigator-survey-data-and-index-modules>

³⁵⁴ International Work Group for Indigenous Affairs, *The Indigenous World 2024*, op. cit.

³⁵⁵ Indigenous Navigator, *Implementing the Indigenous Navigator: Experiences Around the Globe*, IWGIA, September 2020, https://www.iwgia.org/images/publications/new-publications/2020/IndigenousNavigator/Implementing_the_indigenous_navigator.pdf

Moreover, the tool gives them the authority to hold responsibility bearers accountable. The documents and experience gained by implementing the Indigenous Navigator have strengthened CIPO's relationship with the Ministry of Rural Development, as well as the communities they serve on a daily basis. The coordinator states that they have advocated for and demanded the creation of the Technical Working Group for Development and Conservation of Intellectual Property (IPs) through the usage of the Indigenous Navigator. Additionally, CIPO produced the first National Report on Demographic and Socio-Economic status of Indigenous peoples in Cambodia with the Ministry of Planning, using the data of the IN as a cornerstone in their activism and claims for their rights³⁵⁶.

3.1.2 Green Climate Fund

The UN Framework Convention on Climate Change (UNFCCC) created the Green Climate Fund (GCF) in 2010 with the goals of helping developing nations fulfil their Nationally Determined Contributions (NDCs) and increasing aspiration for low-emission and climate-resilient solutions. Running since 2015, as of July 2024, totalling USD 58.7 billion of approved projects under management, it is the largest climate fund in the world³⁵⁷.

The GCF features a stand-alone Indigenous Peoples Policy as well as an Indigenous Peoples Advisory Group (IPAG), which became active in 2022. The Indigenous Peoples Policy acknowledges that these peoples' financial, social, and legal position usually restricts their ability to defend their interests in and rights to ancestral land and natural and social resources. It can also limit their ability to take part in and benefit from development projects and efforts to combat climate change. They are frequently not given fair access to project benefits, which can also be not developed or provided in a way that is culturally appropriate. Moreover, they are frequently not given enough consideration when decisions are being made that will have a significant impact on their communities or way of life. While pursuing the objectives of climate change adaptation and mitigation,

³⁵⁶ Indigenous Navigator, *Implementing the Indigenous Navigator: Experiences Around the Globe*, IWGIA, September 2020

³⁵⁷ Green Climate Fund, *Overview: About GCF*, [https:// www.greenclimate.fund/about](https://www.greenclimate.fund/about)

this policy will help GCF take indigenous peoples' concerns into account when making decisions³⁵⁸.

Overall, the welfare, safety, and survival of indigenous peoples and their communities, also depend on maintaining their human rights and fundamental freedoms at the centre of the climate change fight³⁵⁹.

For instance, in Peru the GCF has funded a fundamental project in favour of the survival of the high Andean populations. In the previous 60 years, in the area there has been a 56% melting of glaciers, longer droughts, and more severe frosts, all of which have an impact on ecosystems and water supplies. In addition to having an effect on agricultural output, this has made communities residing in both the upper and lower portions of the watersheds more vulnerable. The GCF has encouraged the restoration and protection of ecosystems above 3500 m.a.s.l. through the project "Resilient Puna: Ecosystem-based adaptation for sustainable high Andean communities and landscapes in Peru". Additionally, it will contribute to ensuring that more than 2 million people in the lower regions of the beneficiary watersheds have access to water for both human and agricultural purposes³⁶⁰.

The Green Climate Fund's (GCF) Board of Directors authorized the financing of the Resilient Puna project in Kigali, Rwanda, on March 5, 2024, for a total of EUR 40.79 million. The Peruvian government is also contributing more than EUR 29 million to the project. As a result, in the districts of Apurímac, Arequipa, Cusco, Lima (Yauyos), and Puno that are highly vulnerable to climate change, capacities will be developed in conjunction with the farming communities in order to restore and conserve approximately 24,000 hectares of Puna ecosystems. As a result, their livelihoods will be more resilient to climate change³⁶¹.

³⁵⁸ Green Climate Fund, *Overview: Indigenous People*
<https://www.greenclimate.fund/projects/sustainability-inclusion/ip>

³⁵⁹ International Work Group for Indigenous Affairs, *The Indigenous World 2024*, op. cit.

³⁶⁰ Green Climate Fund, *Resilient Puna: Ecosystem based Adaptation for sustainable High Andean communities and ecosystems in Peru*, <https://www.greenclimate.fund/project/fp226>

³⁶¹ Profonanpe Committed by Nature, *Green Climate Fund approved funding for Resilient Puna Project*, Profenanpe News, March 2024 <https://profonanpe.org.pe/en/green-climate-fund-approved-funding-for-resilient-puna-project/>

3.1.3 ICCA Consortium

ICCAs (Indigenous and Community Conserved Areas) are defined as “territories and areas conserved by indigenous peoples and local communities” or “territories of life”. The ICCA Consortium was legally formed as a non-profit membership-based association in 2010 and it supports the worldwide campaign for these territories of life. As stewards of their jointly protected territories and regions, indigenous peoples and local communities set their own priorities in the relationship with the Consortium. The organization assists indigenous people in obtaining the proper acknowledgement and backing, fully acknowledging their many rights, obligations, roles, and accomplishments³⁶².

The ICCA Consortium implements the UN Declaration on the Rights of Indigenous Peoples by putting its fundamental rights at the core of their organization, such as self-determination, full respect for cultural diversity, and individual and collective rights and responsibilities. These goals, along with the preservation of biodiversity and ecological functions, are the overarching goals of the work done by the ICCA Consortium.

In order to achieve the long-term vision and manifesto for territories of life and to contribute to the broad changes in the acknowledgment of indigenous people, the ICCA Consortium put forwards four interconnected aims. Goals 1 through 4 each have a distinct focus: self-determination (Goal 1), recognition (Goal 2), influence (Goal 3), and the organization itself. These goals create a web of interconnected paths for collective action and change and direct the group’s efforts to create a world that is more peaceful and just towards indigenous peoples.

The first goal centres itself on territory specific proceedings and self-determination of indigenous communities. For the welfare of their territories, indigenous peoples and local communities sustain their own priorities and self-strengthening processes through a variety of forms of solidarity and assistance from the organization³⁶³. The Consortium intends to promote the self-strengthening of custodians who can preserve and protect their territories and advocate for their self-determined priorities in order to achieve this aim in every location. The main goal is towards a global membership of robust, well-equipped,

³⁶² The ICCA Consortium, *2024-2028 Strategic Plan Final Working Version*, December 2023

³⁶³ Ibid.

and better supported environmental indigenous protectors in all regions where the Consortium work but also where the Consortium does not currently have a strong or any membership base.³⁶⁴

Goal two works towards the respect of indigenous rights, in particular the recognition of their ancestral territories. The organization confronts the major external dangers noted in the situational analysis, such as extractive capitalism and threats to communities' power and agency from governmental constraints. In order to help indigenous peoples and local communities in advocating for their self-determined goals in pertinent policy and legal processes that influence their land's rights, it is necessary to establish the evidentiary foundation, use effective communication techniques, and provide support.

The third objective centres on enlisting alliances and networks to impact the behaviours of outside parties and their interaction with the territories of indigenous peoples. The main goal is to promote improved standards and practices among environmental and conservation groups, the commercial sector, and donors, as well as openness and accountability. Apart from exemplifying best practices inside the ICCA Consortium, the organization will fortify alliances with supporters pushing for more comprehensive and revolutionary shifts³⁶⁵.

The last goal focuses on internal organizational issues in order for the organization to be the most effective in pursuing the previous objectives.

Physical action (such as the imposition of extraction-based, intrusive, and contaminating uses of land, water, and coastal environments) and cultural action (such as the imposing of new principles, foreign to the challenges and competence of the original local cultures) are two threats to ICCAs throughout Africa. The outcome is that young people see migration and metropolitan areas as their sole means of securing a future, which leads to a lack of regard for traditional indigenous knowledge and institutions - even to their disappearance within communities³⁶⁶. The communities in charge of ICCAs have responded in a variety of ways despite the severity of these threats. Despite their differences, they all work toward the same goal of igniting a new consciousness and capabilities for protecting the environment while claiming the collective rights and

³⁶⁴ Ibid.

³⁶⁵ The ICCA Consortium, *2024-2028 Strategic Plan Final Working Version*, December 2023

³⁶⁶ The ICCA Consortium, *Africa: strategies and responses*, <https://www.iccaconsortium.org/africa-en/>

obligations of the community for certain areas and resources. To provide financial stability for the local livelihoods that the ICCAs can sustain, it is imperative to demand legal and social recognition for those that remain or can be successfully restored. Together with its African members, the Consortium works to recognize and promote the importance of ICCAs, fortify their governing bodies, and assist them in creating and upholding their own community standards for biodiversity. Additionally, they help the ICCA communities achieve “critical mass” and prominence in order to advocate nationally. It is possible to point to some development, but there is still a great need³⁶⁷.

3.1.4 FAO: the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests

As seen in previous chapters, the self-driven development and livelihood of indigenous peoples depends critically on their having safe access to lands, territories, and natural resources. The link that indigenous peoples have to their ancestral territory and related resources, which are the foundation of their livelihoods and are frequently governed by intricate customary rules and governance systems, is central to their identity.

Expanding and bolstering the rights of indigenous peoples over their lands, territories, and natural resources is now essential to attaining the goals of environmental sustainability, poverty alleviation, and the preservation of indigenous traditional value systems³⁶⁸.

The FAO now works with indigenous peoples in a more comprehensive and sustainable manner. In addition to the FAO Inter-departmental Working Group on the Rights of Indigenous Peoples, which brings together over 120 technical experts, the specialized unit that directs FAO’s work with Indigenous peoples has been coordinating a network of more than 40 national and regional focal points on indigenous peoples across FAO offices worldwide since 2019³⁶⁹.

The Committee on World Food Security approved the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of

³⁶⁷ Ibid.

³⁶⁸ International Work Group for Indigenous Affairs, *Land grabbing, investments & indigenous peoples’ rights to land and natural resources. Case studies and legal analysis*, Copenhagen, IWGIA, 2017

³⁶⁹ International Work Group for Indigenous Affairs, *The Indigenous World 2024*, op. cit.

National Food Security (VGGT) in 2012. The VGGT outlined guidelines, best practices, and technical suggestions for enhancing land, fishery, and forest tenure governance. This important document is one of the first important global tools in the field of land governance. It fervently advocates for an inclusive and participatory strategy that ensures endorsement and engagement with all relevant parties, especially indigenous peoples³⁷⁰. On the occasion of the Voluntary Guidelines tenth anniversary in 2022, the VGGT were updated to conform to current FAO criteria³⁷¹.

According to the guidelines in the section titled “Indigenous peoples and other communities with customary tenure systems”, state and non-state actors must first recognize the historical, social to cultural, spiritual, financial, ecological, and political significance that land, fisheries, and forests have for indigenous peoples and other communities with customary tenure systems.

Through their local or traditional institutions, especially in the case of collective tenure systems, all members of indigenous communities should be effectively encouraged to participate in choices affecting their tenure systems. Communities should get assistance as needed to enable their members to fully engage in the governance and decision-making of their tenure systems³⁷². Moreover, States ought to acknowledge and defend the legal tenure rights that native peoples and other groups with customary tenure systems have over the ancestral lands they inhabit, in particular in cases of forcible evictions and replacement.

Most importantly, prior to commencing any project or approving and putting into effect any legislative or administrative measures that may have an impact on the resources to which the communities are entitled, states and other relevant parties shall engage in effective consultation with indigenous peoples. In accordance with the United Nations Declaration of Rights of Indigenous Peoples, such initiatives should be founded on an efficient and meaningful consultation process with indigenous peoples, through their own representative institutions, in order to gain their free, prior, and informed consent³⁷³.

³⁷⁰ International Land Coalition (ILC), *Multi-Stakeholder Platforms as a tool for people-centred land governance*, Rome, ILC, 2017

³⁷¹ IFAD, *Indigenous peoples' collective rights to lands, territories and natural resources – Lessons from IFAD supported projects*, April 2018

³⁷² UN Food and Agriculture Organization (FAO), *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, 2012

³⁷³ Ibid.

As an example of application of the Voluntary Guidelines, the FAO's Indigenous Peoples' team and the Land Tenure team, in recent years in collaboration with the Asia Indigenous peoples Pact (AIPP), have developed a one-year capacity-building program that is centred around the most prevalent issues that indigenous peoples encounter. Its objective is to investigate how they may support their land tenure rights by utilizing the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests. For North East and Central India, the first two subnational workshops were held in November 2015 in Assam and Odisha, respectively. Over the course of three days, 25 participants from each area were brought together. A nationwide training program was launched in New Delhi in August 2016³⁷⁴.

To carry out this capacity building initiative in Central America, FAO is collaborating with the Centro para la Autonomía y Desarrollo de los Pueblos Indígenas (CADPI). Beginning in 2016, the workshop brought together specialists and representatives of 25 indigenous peoples from Costa Rica, Guatemala, El Salvador, Panama, Nicaragua, and Honduras in Ciudad de Panama to learn about and have discussions about the useful applications of the Voluntary Guidelines. Additionally, as part of its agreement with FAO, CADPI will translate the Guidelines into Q'eqchi and Miskitu, two indigenous languages, so that future trainings can use them and distribute them more broadly³⁷⁵.

3.1.5 IFAD: Policy on Engagement with Indigenous Peoples

The International Fund for Agricultural Development (IFAD) created the Indigenous Peoples' Forum in 2011 as an institutionalized forum for consultation and dialogue with indigenous peoples. The forum, a special procedure inside the UN system, seeks to increase IFAD's effectiveness in development and its accountability towards indigenous people³⁷⁶.

The IFAD Executive Board gave its approval to the Policy on Engagement with Indigenous Peoples in the year 2009. The Indigenous peoples' Forum, the Indigenous Peoples Assistance Facility (IPAF), a number of strategic partnerships and alliances aimed at boosting international advocacy and country policy engagement to support

³⁷⁴ FAO, *Indigenous peoples - Supporting the recognition of indigenous peoples' tenure rights* <https://www.fao.org/index.php?id=71845>

³⁷⁵ Ibid.

³⁷⁶ International Work Group for Indigenous Affairs, *The Indigenous World 2024*, op. cit.

indigenous peoples in securing their rights, and country strategic opportunities programs are just a few of the instruments used to operationalize the Policy. Within this context, by enhancing their ability to manage their territories and resources sustainably, IFAD supports indigenous peoples' fair access to lands, territories, and resources as well as the security of their tenure³⁷⁷.

The Executive Board of IFAD adopted the amended Policy on Engagement with Indigenous Peoples in December 2022, and it went into effect in 2023. The revised policy further expands on the fund's comparative advantage in climate change-related interventions by offering current data on the status of Indigenous Peoples and solutions to their persistent and recently developing concerns through IFAD's instruments³⁷⁸.

According to the revised policy, IFAD will now collaborate with Indigenous peoples as equal partners, allowing them to co-create strategies and plan and oversee investments that would improve their lives according to their own viewpoints.

The updated policy includes a new principle (number x) on food sovereignty, food security, and nutrition in addition to the nine already-existing principles of engagement: (i) acknowledging cultural heritage and identity as assets; (ii) free, prior, and informed consent; (iii) community-driven development; (iv) land, territories, and resources; (v) Indigenous peoples' knowledge; (vi) environmental issues and climate change; (vii) access to markets; (viii) empowerment; and (ix) gender equality.³⁷⁹

Specifically, FPIC, or free, prior, and informed consent, is a fundamental tenet of dealing with indigenous peoples and needs to be obtained prior to taking any action in places where indigenous peoples reside. In order to establish trust with the communities, their organizations, and the institutions of government, FPIC is maintained through an ongoing, inclusive process of consultation and engagement. Since asking indigenous people for their FPIC cannot be reduced to a checklist that is "ticked" when it is completed, IFAD approach is one of inclusion and involvement which often take the shape of co-management, when leaders and communities jointly set priorities using a

³⁷⁷ IFAD, *Indigenous peoples' collective rights to lands, territories and natural resources – Lessons from IFAD supported projects*, op. cit.

³⁷⁸ IFAD, *IFAD Policy on Engagement with Indigenous peoples: 2022 update*, December 2022. <https://www.ifad.org/en/-/document/ifad-policy-on-engagement-with-indigenous-peoples>

³⁷⁹ Ibid.

demand-driven methodology. IFAD was the first global financial organization to adopt FPIC as an operative principle in its policy documents³⁸⁰.

In order to overcome rural poverty, it is imperative that people have access to land that is designated for farming, wetlands, pastures, and forests. This is especially addressed in the IFAD Policy on Improving Access to Land and Tenure Security (2008). In the context of sometimes scarce, erratic, and seasonal rural labour markets, the Policy acknowledges that access to land and tenure security are among the primary variables determining the livelihood potential of impoverished rural people. Within this framework, the Fund acknowledges the unique land tenure regimes of indigenous peoples, predicated on their collective rights to lands, territories, and resources, as well as their requirement to secure FPIC³⁸¹. Some of these techniques have shown to be quite effective in supporting indigenous peoples in gaining legal recognition for their customary land rights, enabling them to manage natural resources collectively, and promoting communication and decision-making processes.

A noteworthy example of best practices is the comprehensive FPIC Implementation Plan created in 2016 as part of the Hinterland Environmentally Sustainable Agriculture Development Project, a new IFAD initiative in Guyana. Among the topics covered by the Plan were guidelines for incorporating and implementing FPIC continuously, a communication plan to promote project activities through local channels in the native languages and encourage dialogue with the indigenous communities and an assessment of risks and the corresponding mitigating actions. In order to create future territorial development plans with the indigenous people, the FPIC Implementation Plan also included a conceptual framework for land tenure assessment and a review of the land tenure and land titling status in the project area³⁸².

Furthermore, participatory mapping has been widely used in IFAD-funded projects to support resource decision-making, identify community spaces by demarcating ancestral domains and identifying traditional lands and resources, and secure tenure. Participatory

³⁸⁰ IFAD, *How to do. Seeking Free, Prior and Informed Consent in IFAD investment projects*, Rome, IFAD, 2015

³⁸¹ IFAD, *Indigenous peoples' collective rights to lands, territories and natural resources – Lessons from IFAD supported projects*, op. cit.

³⁸² Ibid.

mapping techniques have aided groups of indigenous peoples, pastoralists, and forest inhabitants in their efforts to get customary land rights recognized by law.³⁸³

As an example, in the case of Bolivian indigenous peoples, science and traditional community knowledge have been combined to create georeferenced “talking maps”, a visual and inclusive method of mapping natural resources that can highlight important challenges, adaption strategies, and priorities.

The rural population in the project region is made up of Aymara, Quechua, and campesino homes, all of whom exhibit extreme poverty and malnourishment.³⁸⁴ The participatory mappings initiatives resulted in an inventory of financial choices and the resolution of a number of community issues: funds were distributed through a concursus system of local competitions.

Involving communities in the sustainable management of ecosystems and the basis of natural resources has proven to be beneficial. The project’s tenure security initiatives include quehannas, an Aymara water gathering method that was expanded to address water scarcity brought on by climate change. In order to create revenue and ensure food security and nutrition, the initiative encouraged households to cultivate home gardens using common seed banks and native horticultural and medicinal plant species³⁸⁵.

In summary, participatory mapping revealed problems and opportunities related to land and natural resource access, while concursos gave communities the ability to take action on mutually determined priorities to tackle climate change.

IFAD has assisted Bolivia’s indigenous peoples in reorganizing their groups and involving themselves in the land reform process. Obtaining collective claims to ancestral lands and territories required first bringing about the legal recognition of indigenous populations. Approximately 1.3 million hectares were demarcated and named as a consequence of the initiative, benefiting around 15,500 men and women in 157 indigenous villages. Using the talking maps approach, historical maps illustrate the management of natural resources, while contemporary maps emphasize issues that people experience, such as resource scarcity, conflict, and poverty³⁸⁶.

³⁸³ IFAD, *Good practices in participatory mapping*, Rome, IFAD, 2009

³⁸⁴ IFAD, *The Land Tenure Security Advantage, A catalytic asset for sustainable and inclusive rural transformation*, IFAD, 2020

³⁸⁵ Ibid.

³⁸⁶ Ibid.

3.1.6 Concluding Remarks

These worldwide projects have revealed positive outcomes, demonstrating that with concerted effort, the protection of indigenous rights, particularly land rights, is achievable. Nonetheless, a great deal of work still has to be done, and continuous development and assistance are crucial to completely fulfil the needs of indigenous populations. Sustaining these projects is especially difficult in context of conservation and tourism development, where forced relocation is common and indigenous peoples' land rights are often inadequately implemented. Even with these challenges, these projects are but a small portion of the many that are devoted to defending the rights of indigenous peoples. For indigenous communities around the world to experience long-lasting benefits, it is imperative that these initiatives continue to grow and expand to conservation efforts and tourism activities. Only through such international and regional initiatives can indigenous people implement their rights and fully benefit from conservation and tourism initiatives based on their territories.

3.2 EMPOWERING INDIGENOUS PEOPLES THROUGH SUSTAINABLE AND CULTURAL HERITAGE TOURISM

Following the World Indigenous Tourism Alliance's (WINTA) adoption of the Larrakia Declaration in Darwin, Australia in 2012, the tourism industry was among the first corporate sectors to acknowledge the significance of the United Nations Declaration on the Rights of Indigenous Peoples. The Larrakia Declaration has since been referred to by UNWTO as a declaration promoting the empowerment of indigenous peoples through tourism. The Larrakia Declaration advocates for more equitable collaborations between the tourism industry and indigenous people to advance individual livelihoods as well as community well-being.

The Larrakia Declaration is in accordance with the fundamental tenets of the Global Code of Ethics for Tourism, which was endorsed by the UN in 2001 and approved by the UNWTO General Assembly in 1999. The Code, which acts as a guide for the sustainable and responsible development of tourism, mentions the part that tourism stakeholders play

in defending and upholding indigenous peoples' cultures, rights, and traditional customs³⁸⁷.

Guided by such frameworks, in recent years, the tourism industry has increasingly recognized the importance of including indigenous communities and respecting their rights. These declarations have spurred numerous countries, non-governmental organizations (NGOs), and other stakeholders to seek sustainable solutions that integrate indigenous peoples into tourism initiatives. By prioritizing the preservation of cultural heritage and ensuring equitable economic benefits, these efforts aim to develop a tourism industry that not only respects but also empowers indigenous populations. This inclusive approach is crucial for fostering a more just and sustainable tourism sector worldwide.

3.2.1 Indigenous-led Ecotourism and Sustainable Indigenous Tourism

All tourism-related enterprises that are primarily owned, run, and/or controlled by indigenous peoples and that can show a bond with and obligation to the indigenous population and traditional area where the operation is located are considered to be part of the indigenous tourism industry³⁸⁸. The following objectives can be achieved by indigenous tourism when it is managed ethically and sustainably:

- Inspiring pride, belonging, and self-actualization in participation of indigenous communities;
- Encouraging variety in producing goods and tourist experiences;
- Creating employment;
- Promoting and enhancing community economies and value chains;
- Decreasing poverty;
- Reversing the exodus from rural areas;
- Empowering women and young people³⁸⁹.

However, there are also social and ethical issues regarding indigenous tourism. Indigenous peoples have endured prejudice, forced relocation, cultural appropriation, and

³⁸⁷ UNWTO, *Recommendations on sustainable development of indigenous tourism, world committee on tourism ethics*, Adopted by the Resolution A/RES/723(XXIII) of the General Assembly of UNWTO, 2019

³⁸⁸ Indigenous Tourism Association of Canada, *Indigenous Cultural Experiences National Guidelines*, 2017 <https://indigenoustourism.ca/wp-content/uploads/2017/11/ITAC-Indigenous-Cultural-Experiences-Guide-web.pdf>

³⁸⁹ UNWTO & WINTA, *Compendium of Good Practices in Indigenous Tourism, Regional Focus On The Americas*, UNWTO, March 2023

the depletion of their life-giving resources for generations. In light of this, strategies for developing the tourism industry that ignore fundamental issues of inequality and human rights may end up doing more harm than good to indigenous populations.

As seen in the previous chapter, the Maasai community in Kenya and Tanzania has regrettably suffered throughout the last few decades due to a sharp increase in tourism in both the nations. One of the primary problems with tourism in these countries, for example, is that the majority of the advantages that come from it go to travel companies and other intermediaries rather than the local populations. In a similar vein, the trend goes wrong when tourists refuse to engage in authentic cultural exchanges with the native hosts or refuse to pay them reasonable rates for lodging or handicrafts because they lack knowledge or awareness³⁹⁰. As a result, over time, culture has become more and more commercialized, which has caused the Maasai people's bond to their traditional ways of life to decrease dramatically.

Despite these possible drawbacks, tourism has long been acknowledged as a means of fostering harmony and cross-cultural communication, as well as contact and understanding amongst peoples from diverse backgrounds. In this way, after centuries of miscommunication and hostilities, tourism can be a useful tool for fostering peace between the native and non-native populations. Tourism continues to play a significant role in the development of indigenous communities to the degree that authentic cultural engagement is promoted between communities and tourists, based on respect for traditional values and the rights of indigenous peoples³⁹¹.

Responsible travel is becoming more and more popular among foreign visitors. Many tourists want to engage with indigenous communities and have a genuine sense of their culture. This interest must be restrained by standards for ethical tourism behaviour, inclusive methods to tourism management, and equitable benefit distribution. Indigenous tourism encompasses a wide range of activities, events, leisure pursuits, and entertainment of all kinds. It also refers to any tourism-related endeavour in which indigenous peoples are actively involved, whether through whole control or by sharing it

³⁹⁰ UNWTO & WINTA, *Compendium of Good Practices in Indigenous Tourism, Regional Focus On The America*, op. cit.

³⁹¹ Ibid.

as the primary part³⁹². As environmental, cultural, and artistic components are inextricably linked on many indigenous lands, models of ecotourism and cultural tourism together constitute the foundation of many tourism initiatives.

Ecotourism has emerged as a major subcategory of responsible travel, particularly in nations like Tanzania and Kenya where tourism is primarily driven by the stunning natural scenery and abundant wildlife. Ecotourism is defined by the International Ecotourism Society (TIES) as “responsible travel to natural areas that conserves the environment and improves the wellbeing of local people”³⁹³. Ecotourism is promoted as a novel and exciting way to generate income for local biodiversity preservation and tourism-related economic development projects³⁹⁴.

Ecotourism led by indigenous peoples has the potential to have positive, long-lasting effects on the community. Any ecotourism projects that are owned, run, and managed by indigenous people on their ancestral lands are collectively referred to as “Indigenous-led ecotourism” initiatives. When an organization or corporation run the tourism project, at least 51% of the board members are indigenous in order for it to be defined as indigenous tourism. Beyond this narrow definition, there are models where non-indigenous people’s initial investment is encouraged but their involvement is specifically planned to decrease over time as an operation ensures financial viability³⁹⁵. Ecotourism led by indigenous peoples broadens public understanding of indigenous culture, values, and way of life while optimizing benefits to the community. Initiatives provide indigenous experiences derived from a process of community involvement that is participatory in nature. Indigenous groups decide which narratives, locations, events, and experiences to offer guests. An ecotourism program also contributes to the preservation and welfare of the surrounding area, water, and land and it adheres to a stewardship philosophy whereby tourism aims to reduce its adverse effects on the environment³⁹⁶. Indigenous-led ecotourism is non-consumptive, with the exception of harvesting, fishing, and hunting

³⁹² R. Butler & T. Hinch, *Tourism and indigenous peoples: issues and implications*, Butterworth-Heinemann, Oxford, 2007

³⁹³ The International Ecotourism Society, *What is Ecotourism?*, <https://ecotourism.org/what-is-ecotourism/>

³⁹⁴ T.G. Ondicho, *Local communities and ecotourism development in Kimana, Kenya*, in *Journal of Tourism*, 13(1), pp. 41–60, 2012

³⁹⁵ Tides Canada, *Indigenous-Led Ecotourism: A source for positive community impacts A summative report of the indigenous ecotourism summit*, November 2018, https://coastfunds.ca/wp-content/uploads/2019/01/Indigenous-Led-Ecotourism_Summit_Report.pdf

³⁹⁶ Ibid.

that is done for the community's consumption (i.e., banning recreational fishing and hunting by visitors). Therefore, indigenous led ecotourism can be an effective strategy for tackling a variety of economic, social, and environmental challenges, as it may be able to leverage support from a range of industries and fields. Furthermore, Indigenous-led ecotourism can be a source of cooperation, innovation, and widespread support for thriving indigenous communities if market demand is high and programs are feasible³⁹⁷. Sustainable management and development of tourism practices in protected areas or in situations of exceptional cultural significance can be challenging. This has been the case of Tanzanian and Kenyan national parks and reserves, where Maasai people have faced discrimination and eviction in order to make way for the establishment of protected areas. It is imperative for governments to maintain an ongoing conversation and openness with these people since, frequently, disputes emerge regarding the ownership or usage of land possessed by indigenous communities. In these instances of conflict, tourism models work most effectively when all parties interested in administering the protected areas, their resources, and the cultural interpretation of the traditions and values of indigenous peoples living on ancestral lands come together for dialogue³⁹⁸.

It is obvious that the situation of discrimination and dispossession regarding Maasai community needs to change, as they have a significant need for participation in tourism-related activities, recognition of the value of their culture and financial gain from the usage of their ancestral lands. A series of suggestions was created by the World Tourism Organization of the United Nations for the sustainable growth of indigenous tourism. This was accomplished through a multi-stakeholder consultative process that included a significant amount indigenous association³⁹⁹.

First and foremost, in order for sustainable indigenous tourism to be successful, there are five main conditions included in the suggestions:

- Respect: show consideration for indigenous communities' cultural capital, traditional territories, and relationships to them on a physical, spiritual, and cultural level.

³⁹⁷ Tides Canada, op. cit.

³⁹⁸ UNWTO & WINTA, *Compendium of Good Practices in Indigenous Tourism, Regional Focus On The America*, op. cit.

³⁹⁹ UNWTO, *Recommendations on sustainable development of indigenous tourism, world committee on tourism ethics*, op. cit.

- Consultation: plan, create, and oversee the administration of tourism-related projects, goods, and services through an extensive, open, and ongoing consultation process.
- Empowerment: by using organizational structures and governance models, assist indigenous communities in developing their abilities and becoming more independent.
- Fair Partnerships: encourage fair indigenous and sustainable business methods that guarantee increased economic gain while also assisting in the preservation of natural and cultural resources, as well as intellectual property.
- Protection: guarantee that tourism growth produces beneficial results and that negative effects on the environment, cultural heritage, and local way of life are promptly detected, mitigated, or eradicated⁴⁰⁰.

The document continues by making specific mention to tour operators, travel agencies, tour guides, local communities, and visitors. It primarily focuses on how benefits are distributed to indigenous communities, emphasizing the necessity for stakeholders to support these people in preserving their natural and cultural environments, which is essential to their well-being and can also yield resources for tourism experiences. They must also collaborate with indigenous community organizations, leaders, and local government to set up an open and responsible system for allocating tourism-related income. To ensure advantages to indigenous communities, authenticity, and enhancement of the tourist experience, tour guides should collaborate with local indigenous guides and cultural custodians in co-guiding tours.

Visitors are asked to acknowledge that the land they are visiting is fundamentally important for the survival and livelihood of indigenous communities and to treat everything surrounding them with respect, including the environment, their artifacts, spiritual rituals, and customs. On the other hand, indigenous communities ought to promote and aid in the establishment of locally based tourism businesses linked to the territorial organizations. They should also control the influx of tourists, since they can easily surpass acceptable thresholds and place significant strain on the community's resources, infrastructure, and residents⁴⁰¹.

⁴⁰⁰ UNWTO, *Recommendations on sustainable development of indigenous tourism, world committee on tourism ethics*, op. cit.

⁴⁰¹ Ibid.

The adoption of these recommendations show how important sustainable indigenous tourism is both for an authentic tourism experience, but mostly for indigenous people and the respect of their land, resources and fundamental rights. The adoption of ecotourism and sustainable tourism practices presents a viable pathway for the economic advantages of tourism to be shared with indigenous people, like the Maasai. Indigenous tourism efforts are flourishing in several nations, including Australia, New Zealand, and Canada, where recommendations from organizations such as the UNWTO have shown to be beneficial. Still, more work has to be done in Kenya and Tanzania in order to take full advantage of these benefits. By embracing these recommendations and enhancing collaboration with indigenous communities, these nations can ensure that sustainable tourism not only preserves their rich cultural heritage but also fosters economic growth and social inclusion for the Maasai. The future of indigenous tourism lies in a balanced approach that respects traditional knowledge and promotes environmental stewardship.

3.2.2 Cultural Heritage Tourism and UNESCO World Heritage Sites

The terms “cultural tourism” and “indigenous tourism” are highly similar and compatible. Indigenous tourism is merely a subset of cultural tourism founded on indigenous control and ownership of resources, as in accordance with the definition of the World Tourism Organization⁴⁰². According to Akama, cultural indigenous tourism is a subtype of cultural tourism in which indigenous people are actively participating, either by exercising control over the tourism experience or by having their culture function as the primary attraction⁴⁰³. Cultural identity, authority over a particular tourism program, and the location of control over traditional ways of life and land resources are current crucial issues to indigenous tourism⁴⁰⁴.

Unfortunately, misappropriation and tourism have caused harm to indigenous peoples all over the world, as they are continuously fighting to preserve their way of life and cultural property. In actuality, most African nations have been inactive to recognize and include

⁴⁰² J. Saarinen, *Cultural tourism in southern African: The role of local cultures and ethnicity in tourism development*, in *Cultural tourism in southern Africa*, pp. 145-164. Bristol: Channel View Publications, 2016

⁴⁰³ J. Akama, *The creation of the Maasai image and tourism development in Kenya*, in *Cultural tourism in Africa: strategies for the new millennium*, p.43-54, Netherlands, Association for Tourism and Leisure Education, 2002

⁴⁰⁴ K. Melubo, *Chapter 3: Indigenous Tourism in Africa*, in *Cultural Heritage and Tourism in Africa*, Routledge, New York, 2023

indigenous cultures into their overarching tourism development plans, in spite of their rich cultural diversity. In many ways, it seems that tourism in Africa has more detrimental effects on indigenous communities than beneficial ones⁴⁰⁵. As was seen in the paragraph before, tourism frequently causes indigenous culture to become more commercialized. The problem is that cultural items that are commoditized are likely to lose their significance and become meaningless. History around the world demonstrates that treating a local culture like a tourist attraction typically results in its destruction or alteration. Furthermore, local culture can be expropriated and the local population exploited because it can be commercialized by anybody without the participants' agreement. The authenticity of regional cultural items is often destroyed by commercialization, resulting in staged authenticity⁴⁰⁶. Other detrimental effects that tourism has on native communities include the loss of valuable native lands, the erosion of human dignity, the decline in traditional values, and the sterilization of cultural resources for use by tourists⁴⁰⁷.

Furthermore, in many African countries, efforts to safeguard cultural and natural assets have been undertaken without taking participatory processes into account. Western methods overseen by non-local decision-makers have supplanted traditional methods and approaches to manage local surroundings⁴⁰⁸. A serious violation of indigenous rights is seen in the forcible eviction of thousands of Maasai people from their ancestral grounds in Tanzania in May and June of 2022, with the stated goal of preventing abuse of the region. In an attempt to “protect” the area’s history and to make trophy hunting and safari tourism easier, the government has rejected the group’s claim to its own legacy and refused them entrance. Notwithstanding such unilateral actions by the government, heritage tourism has the ability to strengthen communities via better participatory

⁴⁰⁵ Ibid.

⁴⁰⁶ E. Irandu, & P. Shah, *Development of Cultural Heritage Tourism in Kenya: A Strategy for Diversification of Tourism Products*, in *Conservation of Natural and Cultural Heritage in Kenya: A Cross-Disciplinary Approach*, pp. 154-71, UCL Press, 2016

⁴⁰⁷ J. E. Mbaiwa, *The commodification of World Heritage Sites: The case study of Tsodilo Hills in Botswana*, in *Cultural tourism in Southern Africa*, pp. 101-120, Bristol, Channel View Publications, 2016

⁴⁰⁸ W. Ndoro, *Traditional and customary heritage systems: Nostalgia or reality? The implications of managing heritage sites in Africa*, in *Linking universal and local values: Managing a sustainable future for World Heritage*, pp. 81-84, Paris, UNESCO, 2004

planning, especially when tourist development initiatives are supported by indigenous knowledge, indigenous rights, and grassroots leadership⁴⁰⁹.

Several tactics must be used in Kenya and Tanzania to ensure that cultural heritage tourism is both environmentally friendly and supportive to Maasai culture. The preservation of the nation's cultural and historic treasures, cooperation among stakeholders, and the marketing of alluring goods for cultural heritage tourism are only some of these strategies. Cultural heritage tourism necessitates successful relationships by its very nature. Therefore, to establish strong and sustainable cultural heritage tourism that can both improve a community's quality of life and draw tourists, local communities, NGOs, the federal government, and development partners must collaborate closely⁴¹⁰.

Due to their breath-taking natural settings, protected areas across the world are popular destinations for cultural heritage tourism. However, as has been observed, the creation and administration of protected areas around the globe has frequently led to the eviction and alienation of indigenous peoples from their customary lands and resources. Unfortunately, many of the protected locations listed on the World Heritage List share these violations, which continues to cause suffering for the Maasai people of Kenya and Tanzania as well as other indigenous groups⁴¹¹. When a place is inducted into the World Heritage List, the intensity of the visitor influx increases by 6.7% to 10%, which may negatively impact the local indigenous population⁴¹². In many instances, the designation of these places as World Heritage sites has made indigenous peoples' loss of sovereignty over their lands and resources worse or more pronounced. It has also resulted in further limitations on their traditional land-use practices, thus undermining their means of subsistence. Numerous of the World Heritage procedures have directly led to several human rights crimes against indigenous peoples⁴¹³.

⁴⁰⁹ E. C. Chauma & C. Ngwira, *Managing a World Heritage Site in Malawi: Do residents' sentiments matter?*, in *Journal of Heritage Tourism*, 17(2), pp. 142-157, 2022

⁴¹⁰ E. Irandu, & P. Shah, *op. cit.*

⁴¹¹ S. Disko, H. Tugendhat, and L. García-Alix, *World Heritage Sites and Indigenous peoples Rights - An Introduction*, IWGIA, Forest Peoples Programme and Gundjeihmi Aboriginal Corporation, pp. 3-37, 2014

⁴¹² Y. Gao, *Big Data – The Impact of World Heritage Sites on tourism*, *The Academic*, March 2023, <https://theacademic.com/impact-of-world-heritage-sites-on-tourism/>

⁴¹³ IWGIA, IIPFWH, IPACC, *Indigenous Peoples' Rights and UNESCO World Heritage Sites*, Submission to the UN Special Rapporteur on the Rights of Indigenous peoples for his report to the 77th session of the UN General Assembly, IWGIA, March 2022

The designation and listing of World Heritage sites without significant involvement and free, prior, and informed consent (FPIC) of the indigenous peoples on whose land they occupy is a persistent, major issue. The nomination documents and reasons for inscription adopted by the World Heritage Committee (“Statements of Outstanding Universal Value”) do not adequately or at all take into account the property and resource rights, livelihoods, cultural heritage, and values of indigenous peoples. This has important implications for conservation strategies and site management⁴¹⁴.

In the Ngorongoro Conservation Area (NCA), for example, UNESCO, the Committee, and the Advisory Bodies have long recognized the farming practices and increasing population of the Maasai in the NCA as significant dangers to the site’s “Outstanding Universal Value” and have constantly urged Tanzania to support the “voluntary relocation” of the indigenous communities to areas outside the NCA⁴¹⁵. The Tanzanian government has implemented certain limitations on cattle grazing and a total prohibition on agriculture (including home gardens) in the NCA in response to their suggestions and demands. This allows the region to be entirely devoted to tourism and conservation. These restrictions, which are a component of the plan to support their voluntary relocation, have caused severe food instability, malnutrition, and starvation among the Maasai people of the NCA⁴¹⁶.

Indigenous peoples’ rights are routinely violated in many World Heritage sites, and they are excluded from nomination, administration, tracking, and evaluation procedures. This is due in part to the Committee’s troubling understanding and execution of the concepts of “heritage” and “outstanding universal value”, which disregards indigenous peoples’ holistic worldview that is inextricably linked to the values of heritage. Additionally, there is an absence of rules and regulations, mechanisms, and political momentum to guarantee that indigenous peoples participate meaningfully in World Heritage conservation and adopt a human-rights-based approach to tourism initiatives strictly related to the World Heritage Sites.

⁴¹⁴ S. Disko and M. Ooft, *The World Heritage and Sustainable Development Policy - a turning point for indigenous peoples?*, Milton Park, Routledge, pp- 101-119, 2018

⁴¹⁵ W. Olenasha, *A World Heritage Site in the Ngorongoro Conservation Area: Whose World? Whose Heritage?*, in *World Heritage Sites and Indigenous peoples’ Rights*, pp. 189-223, 2014

⁴¹⁶ N.J. Ndaskoi, *Report of the Fact Finding Mission Conducted in Ngorongoro Conservation Area*, Arusha, PINGOS Forum, 2021

Moreover, it is extremely challenging for the Committee to establish a difference between “natural” and “cultural” World legacy sites when it comes to the territory and legacy of indigenous peoples.⁴¹⁷ Although sites can be designated as mixed cultural/natural sites, States Parties may be dissuaded from doing so due to the substantial cost and practical ramifications. In order to nominate a site as a mixed site, two submissions are requested - one for natural criteria and the other for cultural one. These nominations are assessed independently by IUCN and ICOMOS respectively, and can be accepted independently of one another. Furthermore, even though indigenous peoples’ relationships with their lands and territories, including spiritual associations, may be recognized as having OUV under the current Operational Guidelines, the Committee requires that these relationships or associations be “unique” or “exceptional”, a standard that is frequently difficult to meet⁴¹⁸. UNESCO has faced criticism in the past for its Western emphasis on a “unique” legacy of universal value, which typically ignores the common heritage of the vast majority of indigenous people on the planet⁴¹⁹.

Fortunately, though, during the past thirty years, the agency has undergone adjustments that have recognized the global worth of indigenous cultural legacy and the need to preserve it. In order to incorporate cultural significance onto the World Heritage List, UNESCO changed its legal instruments in 1992 and formally acknowledged the value of these places. As a next step in recognizing, defending, and promoting the world’s alive and intangible cultural assets, UNESCO ratified the Convention for the Safeguarding of the Intangible Cultural Heritage in 2003⁴²⁰. The World Heritage Convention defines cultural heritage as both material and immaterial resources, including places, structures, groups of buildings, monuments (such as archaeological finds, large-scale paintings and sculptures), music, dance, theatre, and memory⁴²¹. The most used definition of cultural heritage is “the practices, representations, expressions, knowledge, skills – as well as the

⁴¹⁷ EMRIP, *Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage*, UN Doc. A/HRC/30/53, p. 20, 2015

⁴¹⁸ IWGIA, IIPFWH, IPACC, op. cit.

⁴¹⁹ H. Tucker, & E. Carnegie, *World Heritage and the contradictions of ‘universal value’*, in *Annals of Tourism Research*, 47, pp. 63-76, 2014

⁴²⁰ D. J. Timothy, *Chapter 18 Heritage tourism in Africa, where do we go from here?*, in *Cultural Heritage and Tourism in Africa*, Routledge, New York, 2023

⁴²¹ UNESCO, *Report of the sub-regional meeting in the Pacific on the convention for the safeguarding of the intangible cultural heritage from 12–14 December*, Nadi, Fiji, 2007

instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals, recognize as part of their cultural heritage”⁴²². Giving communities a feeling of identity and continuity, intangible cultural legacy is passed down from generation to generation and continuously constructed by them in reaction to their surroundings, their interactions with nature, and their past.

It is impossible to overestimate the significance of indigenous cultures and intangible heritage. Since so many areas of Africa lack physical reminders of the past, intangible living heritage plays a crucial role in both promoting tourism and safeguarding the region’s remarkable cultural history⁴²³. In order to preserve the past and make decisions for the future, local expertise and customary methods of appreciating cultural legacies are essential. To comprehend the linkages between cultural assets and the interests of tourists and local social traditions, a more comprehensive evaluation of cultural assets is required. Careful planning and Free, Prior and Informed Consent are also required to include indigenous people in decision making processes and protect their heritage while attaining tourism economic development goals⁴²⁴.

In conclusion, by guaranteeing the active involvement of indigenous people in tourism and enabling them to gain both economically and socially, cultural heritage tourism offers important potential for empowering indigenous communities. This method, together with indigenous led ecotourism, offer sustainable substitutes for conventional tourist models that frequently exclude or exploit these communities, in addition to help in the preservation of the rich cultural legacy of indigenous peoples. Nevertheless, despite their promise, these solutions are not yet widely used. There remains a critical need for broader implementation across diverse regions, as well as stronger support from international bodies like UNESCO to fully recognize and protect indigenous heritage sites.

Given how closely related tourism and conservation are, it is crucial to understand that conservation policies must also be based on the participation and benefit-sharing ideals shared by these new tourist practices. Conservation initiatives will be most successful and

⁴²² UNESCO, *Convention for the Safeguarding of Intangible Cultural Heritage*, Paris, UNESCO, 2003

⁴²³ N. G. Ololo & P. U. C. Dicke, *Change and continuity in event tourism development in Nigeria: Examples from Ekpe Cultural Festival in Abia State*, in *Tourism Review International*, 26(1), pp. 57-71, 2022

⁴²⁴ D. J. Timothy, *Chapter 18: Heritage tourism in Africa, where do we go from here?*, op. cit.

just when they are planned in partnership with indigenous groups, guaranteeing that their rights, knowledge, and relationships to the land are completely recognized and incorporated.

3.3 THE ROLE OF INDIGENOUS PEOPLES IN A NEW CONSERVATION APPROACH

To acknowledge the role of indigenous people and local communities in conservation, several steps have been taken within the global framework of the protection of indigenous rights. These include the advancement of rights-based approaches, the integration of social and ecological objectives, the creation of standards and evaluation instruments for conservation governance and social impacts, and the inclusion of local governance initiatives or “other effective conservation measures” within the global network of conserved areas. However, there is still a gap between policy and practice since these principles have not had as much of an influence on site-level governance⁴²⁵.

Across locations, habitats, and intervention types, a number of recent studies have demonstrated a favourable correlation between indigenous peoples’ level of participation in conservation initiatives and the accomplishment of ecological and social benefits⁴²⁶. The development of new conservation programs that successfully and meaningfully see the full participation of indigenous people has to be strengthened by these kinds of beneficial outcomes.

3.3.1 Community-based Conservation and the Inclusive Conservation Initiative

In spite of the fact that just 21% of the land on Earth is inhabited and managed by indigenous people, a report published by the Indigenous and Community Conserved Areas (ICCA) Consortium asserts that 80% of the planet’s surviving biodiversity is found on these grounds. This is due to the fact that indigenous people all around the world

⁴²⁵ N. Dawson, et. al, *The role of Indigenous peoples and local communities in effective and equitable conservation*, in *Ecology and Society* 26 (3):19, May 2021

⁴²⁶ E. Mcleod, et. al, *Lessons from the Pacific Islands: adapting to climate change by supporting social and ecological resilience*, in *Frontiers in Marine Science* 6, 2019

engage in a unique form of engagement with nature and the wilderness known as stewardship, which controls and promotes biodiversity in their ecologies⁴²⁷.

Since stewardship does not see human civilization and nature as distinct entities, it challenges prevailing conservationist conceptions of nature. Rather, it advocates for methods of engaging with nature that are advantageous to both parties. The societies of the majority of indigenous tribes worldwide are closely linked to the landscapes they live in. In terms of conservation, leaders in the public and private sectors should prioritize protecting indigenous populations' rights to biodiversity. It is significantly more successful to defend indigenous people's rights and return ancestral lands to stewardship than to create "traditional" conservation zones⁴²⁸.

Since they have been taking care of their habitats for hundreds of thousands of years, indigenous people need to be leading the global conservation movement. This idea is embodied in the community-based conservation approach, which emphasizes the need for local communities and indigenous people to actively and fully participate in conservation initiatives.

In addition to preserving biodiversity and supporting livelihoods, community-based conservation helps strengthen indigenous and local institutions, values, and traditions. This may be a significant aid in addressing global issues that reach across many sectors, including poverty, food security, conservation, and climate change. Therefore, defining and carrying out global goals requires a grasp of trends in community-based conservation. In order to maximize benefits for both people and the environment, community-based conservation aims to combine socioeconomic growth that is sensitive to cultural differences with conservation efforts. It seeks to promote, support, and elevate regional government structures and cooperative management techniques in order to promote stewardship of local ecosystems and biodiversity⁴²⁹. Community-based conservation can be carried out through grassroots initiatives or top-down strategies, such as financing

⁴²⁷ M. Painter, D. Wilkie, J. Watson, *Indigenous stewardship is critical to success of protected areas (commentary)*, in Mongabay, 25 July 2018, <https://news.mongabay.com/2018/07/indigenous-stewardship-is-critical-to-success-of-protected-areas-commentary/>

⁴²⁸ Q. Luthy, *How Conservation Contributes to the Displacement of Indigenous People*, in Earth.org, 8 March 2023, <https://earth.org/conservation-indigenous-people/>

⁴²⁹ A. Charles, *Communities, conservation and livelihoods: IUCN and Halifax*, Canada: Community Conservation Research Network, IUCN and Community Conservation Research Network, 2021

institution policies or government mandates. Nevertheless, whatever the strategy of conservation may be, delivery methods, community traits, the larger socioeconomic and political environment, and proactive adaptation are all necessary for effective implementation⁴³⁰.

In many areas, community rights are still restricted; nonetheless, community-based conservation has shown to be adaptable, creative, and widely popular. Over 25% of the planet's surface area is covered by territories under indigenous guardianship, either officially or informally. These territories include several hotspots for biodiversity and biologically intact ecosystems⁴³¹. Therefore, community-based conservation can have an impact on law and policy changes regarding two interconnected and increasingly dire global issues: biodiversity loss and climate change⁴³².

The US\$1.7 billion promise for tenure rights at the 2021 UNFCCC is an example of the increasing focus on Indigenous, traditional, and community rights in worldwide environmental legislation, which aims to correct historical injustices and acknowledge the importance of indigenous peoples' knowledge and practices in conservation⁴³³. Given the greater mapping of indigenous peoples' rights, this is likely to further affect financing, legislation, and national policies, thereby fostering enhanced environmental and conservation justice. This ought to raise awareness of and support for neighborhood-based conservation initiatives⁴³⁴.

Increased awareness of persistent, historically based injustices across the world provides impetus to address power disparities at the local, national, and international levels as well as misaligned objectives in conservation collaborations. The anticipated development of underrepresented voices in decision-making fuels the optimism of an equitable, transparent, and inclusive governance that would promote socially just and culturally

⁴³⁰ S. L. Mahajan et al., *A theory-based framework for understanding the establishment, persistence, and diffusion of community-based conservation*, in *Conservation Science and Practice* 3, e299, 2021

⁴³¹ V. Tauli-Corpuz, J. Alcorn, A. Molnar, *Cornered by PAs: Adopting rights-based approaches to enable cost-effective conservation and climate action*, in *World Development*, Volume 130, 2020

⁴³² N. Esmail et. al., *What's on the horizon for community-based conservation? Emerging threats and opportunities*, in *Trend in Ecology & Evolution*, Vol. 38 no. 7, Elsevier Ltd, July 2023

⁴³³ UN Climate Change Conference UK, *COP26 IPLC Forest Tenure Joint Donors Statement*, UK Government and United Nations Climate Change, 2021

⁴³⁴ L. A. Wily, *Collective land ownership in the 21st century: overview of global trends*, in *Land* 7, 68, 2018

sensitive conservation practices, including community-based conservation, that prevent elite capture of the benefits that follow⁴³⁵.

Community-based conservation recognizes that society, the economy, and the environment are nested domains rather than overlapping ones, and it pursues both biodiversity protection and human well-being from this perspective. The environment is essential to society, and social connections are reflected in the economy⁴³⁶. Because of this viewpoint, community-based conservation has the potential to be a very effective strategy for resolving the interrelated, contemporary global challenges for indigenous peoples.

There is enormous potential, particularly if certain prerequisites are met. For example, rights-based viewpoints must continue to permeate conservation from high-level policy discourse all the way down to grassroots implementation, and community-led initiatives must receive immediate funding rather than limited funds with high transaction and intermediary expenses⁴³⁷.

As an alternative to fortress conservation, a growing number of initiatives and organizations have shifted their support in recent decades toward community-based conservation as the primary strategy for including indigenous people in conservation activities. The Inclusive Conservation Initiative serves as a significant illustration of this novel methodology in these initiatives.

The Global Environment Facility (GEF) made the decision in 2019 to launch a new pilot program that will give indigenous and local community organizations more access to funding in order to conserve biodiversity, provide multiple global environmental benefits (GEBs), and support initiatives pertaining to cultural and economic development.

The Inclusive Conservation Initiative (ICI), a component of the GEF-7 Programming Directions Strategy's Biodiversity focal area, was approved in January 2022 and is based on the idea that inclusive conservation necessitates that indigenous peoples and local

⁴³⁵ Y. T. Tegegne et al, *REDD+ and equity outcomes: two cases from Cameroon*, in *Environ. Sci. Policy* 124, 324–335, 2021

⁴³⁶ B. Giddings et al., *Environment, economy and society: fitting them together into sustainable development*, in *Sustain. Dev.* 10, 187–196, 2002

⁴³⁷ E. Holland et al, *Money where it Matters for People, Nature and Climate: Driving Change through Support for Local Level Decision Making over Resources and Finance*, IIED, 2022

communities (IPs and LCs) be the primary authors and implementers⁴³⁸. The body of data and evidence supporting the usefulness of IPs and LCs in preserving biodiversity and producing a range of advantages for both humans and the environment is constantly expanding. The foundation of the Inclusive Conservation Initiative (ICI) is the idea that inclusive conservation demands the governance and guidance of indigenous and local communities, who define inclusive conservation concepts on their own and serve as the primary creators and implementers of investments in conservation finance⁴³⁹.

ICI is specially created and run by IPs and LCs in a cooperative effort with Conservation International (CI) and the International Union for Conservation of Nature (IUCN) as GEF Project Agencies. The Global Environmental Facility (GEF) has contributed over US\$ 22.5 million toward project finance.

As a pilot program, ICI offers tools, builds capabilities, and encourages “hands-on” practical learning to help IPs and LCs become recognized and empowered as fundamental players in conservation and decision-makers. To achieve these goals, ICI strategy is split up into four parts:

1. Improvement of environmental outcomes driven by indigenous people: directly fund ten Indigenous-led projects that yield GEBs.
2. Building institutional capacity: assist IPs and LCs in intensifying and expanding their influence in the direction of better land, water, and resource management, as well as greater accessibility to long-term sustainable public funding sources.
3. Greater influence on international policy: with focused IP and LC involvement in international environmental policy and pertinent international venues, create a bridge from local action to global effect.
4. Putting knowledge into action: by producing and sharing ICI learning and outcomes, this initiative broadens support for and advances the field of indigenous peoples- led conservation.⁴⁴⁰

With regard to protecting and improving their stewardship over an estimated 7.6 million hectares of landscapes and seascapes with significant biodiversity and unique ecosystems,

⁴³⁸ Inclusive Conservation Initiative, *Spearheading Inclusive Conservation, Phase One Report*, ICI, Washington DC, USA, 2023

⁴³⁹ Ibid.

⁴⁴⁰ Inclusive Conservation Initiative, *Spearheading Inclusive Conservation*, op. cit.

ICI represents a significant step forward for the fundamental rights of indigenous people. An indigenous-led effort is collaborating with partners in nine regions across 12 countries to manage high biodiversity land areas under traditional governance systems run by IPs and LCs (which may or may not have formal legal status). In Africa, Central and South America, Asia and the Pacific, ICI is directly funding ten locally driven and indigenous projects⁴⁴¹.

The Indigenous Movement for Peace Advancement and Conflict Transformation (IMPACT), for example, collaborates with Kenyan indigenous communities to document and advocate for the Upper Ewaso Territory River Basin's recognition as a Territory of Life. IMPACT focuses on the Maasai people of Kenya and Tanzania. In ten counties, the region is home to around 3.5 million people, the bulk of whom are pastoralist Indigenous cultures like the Maasai. Indigenous knowledge and customs, as well as traditional government structures, are all intended to be protected and preserved through IMPACT. Additionally, Indigenous languages are to be safeguarded and holy places and totems reinstated. Gender inclusiveness and intergenerational conversations constitute other goals of the project⁴⁴².

With a globally significant natural system of rangelands extending south and east of the Greater Serengeti-Ngorongoro and supporting a vast diversity of people and animals, northern Tanzania is the area that the Ujamaa Community Resource Team (UCRT) works in. The objectives of UCRT are to: create village councils and natural resource committees to manage rangelands and forest resources sustainably through Indigenous governing structures; legally safeguard communal village lands for Indigenous communities in three important biodiverse landscapes through hands-on land use planning and land tenure instruments; and create ecological natural resource-based activities that generate income⁴⁴³.

⁴⁴¹ Ibid.

⁴⁴² Inclusive Conservation Initiative, *Ewaso Ngiro River Basin*, <https://inclusiveconservationinitiative.org/geography/ewaso-ngiro-river-basin/>

⁴⁴³ Inclusive Conservation Initiative, *Northern Tanzania*, <https://inclusiveconservationinitiative.org/geography/northern-tanzania/>

3.3.2 A Rights-based Approach to Conservation

A human right-based approach, as it relates to conservation, sustainable use, and benefit-sharing, indicates that human rights are respected in the design and implementation of biodiversity policies, governance, and management, and that those responsible for putting such policies into practice actively seek out opportunities to support and advance human rights. In order to halt biodiversity loss and degradation in an equitable and long-lasting way, legal instruments and best practices alike view a human rights-based approach to biodiversity conservation and sustainable use as essential. It is a necessary prerequisite for health, the robustness of biological systems, and the utilization, preservation, and restoration of natural resources⁴⁴⁴.

In order to stop or even reduce the tidal wave of environmental destruction sweeping the earth, as well as to preserve local communities and the rights of indigenous people who live there, accelerated attempts to extend protected areas with the objective of conservation protection have proven insufficient. The defense of biodiversity and the implementation of emission-reduction plans will surely continue to depend heavily on protected areas and other limited land-use regimes. However, an over-reliance on centrally planned methods would be detrimental to local and indigenous cultures, the environment, and their economy. Traditional protected-area policies frequently create more issues than they solve, as they undermine the rights of Indigenous peoples and local people and destroy their long-lasting institutions that have preserved environmental services and ancestral lands over extremely long periods of time. For this reason, it is imperative that the idea of fortress conservation be abandoned in favor of a rights-based conservation strategy⁴⁴⁵.

In addition to being required by international law, upholding and defending human rights - particularly those of indigenous peoples and other rural rightsholders - is a practical, fair, and economical conservation approach that need to be included into all initiatives aimed at preserving the environment. Indigenous peoples and other local communities

⁴⁴⁴ Forest Peoples Programme, *Implementing a human rights-based approach*, in Human Rights in Biodiversity Working Group: Paper 3, 13 March 2022

⁴⁴⁵ V. Tauli-Corpuz, J. Alcorn, A. Molnar, *Cornered by Protected Areas – Replacing Fortress Conservation with Rights-based Approaches Helps Bring Justice for Indigenous peoples and Local Communities, Reduces Conflict and Enables Cost-Effective Conservation and Climate Action*, in Rights and Resources Initiative, June 2018

are particularly vulnerable to the negative effects of biodiversity loss, climate change, and human rights abuses resulting from “fortress conservation”, which refers to exclusionary practices meant to protect biodiversity. This is because of their strong, direct dependence on natural resources and lands⁴⁴⁶.

Apart from being ethically and legally mandated, human rights-based conservation is the most egalitarian, productive, and successful way to protect the environment. Growing research demonstrates that, in areas where their rights are acknowledged, upheld, and supported, indigenous peoples and other local rightsholders have the skills and knowledge required to successfully manage and conserve biodiverse ecosystems more cost-effectively and efficiently than governments⁴⁴⁷.

The Kunming-Montreal Global Biodiversity Framework was released by the Convention on Biological Diversity in December 2022⁴⁴⁸. The Framework, which states that implementation must be rights-based, represents a major advance in intergovernmental biodiversity accords by taking a far stronger stance on human rights in conservation than earlier agreements. The rights of Indigenous peoples and local communities are explicitly recognized in seven of the Framework’s twenty-three targets. These include rights related to territories, customary sustainable use, collective actions, traditional knowledge, innovations, practices, and technologies, as well as access to justice and biodiversity-related information⁴⁴⁹.

Several steps must be taken in order for these international resolutions to properly convert into rights-based conservation. First and first, international law on rights should be embraced by all parties working in the conservation sector. A rights-based approach is characterized by respecting rights as outlined in international law; nonetheless, rights breaches in the field of conservation persist. Thankfully, these injustices are no longer accepted or overlooked and are frequently brought before the courts⁴⁵⁰. In this regard, the UNDRIP need to play a key role in all initiatives pertaining to climate change and

⁴⁴⁶ D. Boyd and S. Keene, *Human Rights-Based Approaches to Conserving Biodiversity: Equitable, Effective and Imperative, A Policy Brief from the Un Special Rapporteur on Human Rights and the Environment*, August 2021

⁴⁴⁷ Ibid.

⁴⁴⁸ CBD (Convention On Biological Diversity), *Decision adopted by the Conference of the Parties to the Convention on Biological Diversity: 15.4. CBD*, Montreal, Canada, 2022

⁴⁴⁹ H. Newing et. al., *How can we advance equitable, rights-based conservation?*, 57(3), pp. 273-274, Cambridge University Press, 2023

⁴⁵⁰ Ibid.

biodiversity preservation. Despite being only a declaration, UNDRIP alludes to a corpus of international law that member parties are required to abide by. Complete commitment to the UNDRIP's tenets would assist nations in paving the way for justice for local communities and Indigenous peoples⁴⁵¹.

Prioritizing and expediting the legal recognition of the tenure rights, associated titles, and other rights held by indigenous peoples and local communities, including to land, forest, and freshwater, is crucial for upholding a rights-based approach to conservation. The acknowledgement of land rights enables people whose livelihoods and cultural identities directly depend on the natural world to participate in long-term, sustainable biodiversity conservation and use practices grounded in customary laws, traditional knowledge, and the establishment of local stewardship systems⁴⁵².

In second place, a grievance and monitoring system for conservation is highly necessary. Human rights violations in the context of conservation activities should be addressed via an impartial, open, worldwide grievance and monitoring system for conservation, which would also increase the accountability of managers of protected areas. Among other things, such a system would provide a performance-based monitoring system to make sure that conservation efforts do not negatively impact local communities and indigenous peoples. It would also accurately and impartially document the advancement made toward the acknowledgment of community rights⁴⁵³. In addition, this ought to offer prompt, reasonable, fair, and equitable compensation for prior rights violations by conservationists against indigenous peoples concerning the establishment and/or administration of protected areas, including the return of local rightsholders' lands, territories, and related resource rights⁴⁵⁴.

As suggested by the UN Special Rapporteur on the Rights of Indigenous peoples, national accountability and reparation mechanisms for violations of the rights of Indigenous peoples and local communities in the context of conservation could supplement the work

⁴⁵¹ V. Tauli-Corpuz, J. Alcorn, A. Molnar, *Cornered by Protected Areas – Replacing Fortress Conservation with Rights-based Approaches Helps Bring Justice for Indigenous peoples and Local Communities, Reduces Conflict and Enables Cost-Effective Conservation and Climate Action*, op. cit.

⁴⁵² D. Boyd and S. Keene, op. cit.

⁴⁵³ V. Tauli-Corpuz, J. Alcorn, A. Molnar, *Cornered by Protected Areas – Replacing Fortress Conservation with Rights-based Approaches Helps Bring Justice for Indigenous peoples and Local Communities, Reduces Conflict and Enables Cost-Effective Conservation and Climate Action*, op. cit.

⁴⁵⁴ D. Boyd and S. Keene, op. cit.

of the global conservation monitoring and grievance mechanism. These kinds of programs would promote discussion on the harm that results from forced relocations. For many years, local peoples have advocated for the restoration of community lands within protected areas; yet, there are few examples of this actually happening. Reparations procedures and accountability would aid in addressing this challenging issue⁴⁵⁵.

Furthermore, gaining trust is a task that must be met by all conservation actors. Therefore, it is imperative that institutions and officials involved in conservation make sure that written promises are followed through and become part of institutional memory. This entails delving into more complex matters, such as how to address long-standing historical rights breaches. More importantly, environmentalists must abandon the conventional approach of entering a region for their own purposes and instead assist locals in addressing their conservation concerns⁴⁵⁶. As the new Biodiversity Framework states, conservationists must also play a significant role in gaining confidence of indigenous peoples and local communities by encouraging contributions based on indigenous knowledge in addition to scientific knowledge and by more widely adopting participatory methodologies and co-enquiry⁴⁵⁷.

The primary objective of bolstering and advancing rights-based approaches to conservation may be summed up as follows: these essential steps represent just a small portion of what is required to properly preserve the rights of indigenous peoples and local communities. The vital role that Indigenous peoples and local communities play in conservation efforts and in maintaining biodiversity reservoirs has to be acknowledged, reinforced, and endorsed on a global scale. They are the principal custodians of the majority of the world's surviving tropical forests and biodiversity hotspots. By utilizing a growing range of strategies like co-management, protected areas managed by indigenous people, and indigenous territorial governance, community-led conservation efforts can be applied to direct additional funding for conservation towards traditional

⁴⁵⁵ UN Secretary-General, *Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples*, Victoria Tauli-Corpuz, 71st session of the UN General Assembly, A/71/229, 16 July 2016

⁴⁵⁶ H. Newing et. al., op. cit.

⁴⁵⁷ CBD (Convention On Biological Diversity) *Decision adopted by the Conference of the Parties to the Convention on Biological Diversity: 15.4. CBD*, Montreal, Canada, 2022

custodians, enhancing their oversight and improve conservation results⁴⁵⁸. The prioritization of Indigenous peoples, local communities, women and youth from rural areas is imperative for the identification, designation, and management of new and existing areas that are significant for biological and cultural diversity. These areas include territories of life, sacred sites, indigenous protected and conserved areas, and other area-based conservation measures⁴⁵⁹.

Respecting indigenous peoples' rights, values, knowledge, and goals in their ancestral lands will improve conservation efforts and contribute to the development of a more just and resilient global community.

3.4. GOOD PRACTICES AMONG THE MAASAI

As discussed in previous chapters, the Maasai people of Kenya and Tanzania have faced a long history of discrimination, from the impacts of colonialism to the development of protected areas that have forcibly ejected them from their ancestral lands in the name of conservation and tourism. Despite these challenges, the Maasai people of Kenya and Tanzania have persisted in their efforts to reclaim control over their territories and have developed innovative, indigenous-led initiatives that exemplify the potential for sustainable, long-term solutions in both conservation and tourism. These initiatives not only aim to preserve biodiversity but also to respect and uphold their rights, demonstrating a resilient commitment to creating sustainable models that integrate their cultural values and livelihoods. These tactics may fall into three categories: those where Maasai communities fully establish, manage, and control the conservation efforts; those that see Maasai peoples working in partnership with outside organizations like NGOs or foundations; and finally, those in which Maasai peoples play a significant role but are only a part of a larger conservation framework.

⁴⁵⁸ V. Tauli-Corpuz, J. Alcorn, A. Molnar, *Cornered by Protected Areas – Replacing Fortress Conservation with Rights-based Approaches Helps Bring Justice for Indigenous peoples and Local Communities, Reduces Conflict and Enables Cost-Effective Conservation and Climate Action*, op. cit.

⁴⁵⁹ D. Boyd and S. Keene, op. cit.

3.4.1 Partnership-based Conservation Initiatives

Collaborative activities between Maasai tribes and outside groups like NGOs, tour companies, or foundations define these conservation programs. The success of these initiatives depends on the joint knowledge, resources, and shared management duties of the Maasai and their partners, even though the Maasai have a great deal of decision-making authority and gain a great deal from these relationships.

The Mara Naboisho Conservancy was established in 2010 by the Basecamp Explorer Group (Basecamp Explorer in conjunction with Basecamp Explorer Foundation), and it currently safeguards 20,000 hectares of unspoiled wildlife in the Maasai Mara region. The Maasai make use of the word Naboisho with the meaning of “coming together” in the face of an existential threat. Based on an innovative partnership model that gives Maasai landowners equitable decision rights and income sharing to ecotourism operators, Naboisho is the premier private reserve in Kenya. Naboisho was named the Responsible Tourism Africa Awards’ overall winner in 2016, setting an example for other conservancies in Kenya and around the world⁴⁶⁰.

Based on an innovative paradigm, the Mara Naboisho Conservancy has a governance framework that ensures a fair and long-lasting collaboration between Maasai landowners, tourism operators, and conservation interests. The Maasai of Naboisho pay Basecamp a monthly rent in exchange for leasing the land. Not only that, but because the labour is totally local, they are also provided with jobs and training. A new generation of Maasai guides is even being trained at a newly established school.

By leveraging tourism as the main economic driver, Naboisho’s strategy seeks to generate cash and create jobs for the local population while protecting and preserving the socio-cultural legacy and biodiversity of the Maasai Mara. Because Naboisho permits controlled grazing within the conservancy during dry spells, it helps the Maasai to carry on with their traditional way of life. This prevents overgrazing and preserves cattle farming, which is a fundamental part of Maasai culture. Earned land-lease payments and additional revenue from jobs held by the conservancy can boost landowners’ income by up to three times. More than 300 jobs and a steady income are provided by Naboisho to

⁴⁶⁰ Basecamp Explorer, *Mara Naboisho Conservancy*, <https://basecampexplorer.com/foundation/project/mara-naboisho/>

over 600 Maasai landowner households, thereby benefiting over 10,000 local residents. Additionally, by promoting coexistence between local populations and wildlife, Naboisho's concept lessens confrontations between humans and wildlife. There has been a significant surge in wildlife since the conservancy was established in 2010. For example, Naboisho is thought to have one of the greatest lion concentrations in Africa and is home to over 320 different bird species⁴⁶¹.

The breadth and depth of the benefits for the community are remarkable, but what really sets this apart - and hopefully makes it sustainable in the long run - is the residents' involvement and dedication. This is revolutionary for a tribe like the Masai, who never benefited from all the years of parks and safaris designed in the colonial style⁴⁶².

Another example of partnership-based conservation is the Il Ngwesi Group Ranch. Il Ngwesi was established in 1996 and it continues to be the only upscale resort owned and operated by the community, supporting both wildlife and residents.

In the mid-1990s, Il Ngwesi was the first Maasai Group Ranch in Laikipia to join Ian Craig of the neighbouring Lewa Wildlife Conservancy on a conservation and community development adventure with a goal that extended far beyond its boundaries. Elders in the Maasai community decided to reserve 8,675 hectares of their grazing area for conservation, and the excellent Il Ngwesi Eco-Lodge was constructed in 1996. Ten men were chosen to receive training to manage the lodge and welcome guests out of the eighty who laboured for ten months to construct it. At Lewa, a group of rangers, now numbering sixteen, was also trained to manage security, safeguard, and defend both humans and wildlife⁴⁶³.

The lodge's earnings, well-wishers' donations, and alliances with regional and global NGOs together guarantee that the environment is managed responsibly while also funding a variety of community initiatives. The strategy supports the development of communities that respect animals and find meaning in their role as land caretakers. Importantly, Il Ngwesi is one of 33 conservancies totalling 440,000 square kilometres that are backed by the Northern Rangelands Trust (NRT). The NRT helps towns grow and profit from

⁴⁶¹ Mara Naboisho Conservancy, <https://naboisho.com>

⁴⁶² K. Rushby, *Bright new start: how the Maasai are finally profiting from tourism*, 29 Jan 2011, <https://www.theguardian.com/travel/2011/jan/29/kenya-masai-mara-safari-conservation>

⁴⁶³ Il Ngwesi, People of Wildlife, <http://ilngwesi.com/content/visit/>

tourism in addition to provide a sizable and safe space for wildlife populations to reside in and migrate to and from. The preservation of endangered animals like the African Lion, African Wild Dog, and African Elephant as well as certain species that are unique to northern Kenya, like the Grevy Zebra, depends greatly on this regulated land mass.

Il Ngwesi Group Ranch is home to six Maasai settlements, each with a history of pastoralist living. Since the mid-1990s, the community has been able to purchase more land to reduce grazing pressure thanks to generous donations from visitors and well-wishers, as well as profits from the lodge that have gone toward secondary and university school fees, local school buildings, health personnel, and buildings⁴⁶⁴.

3.4.2 Sub-categories of Broader Conservation Efforts

In this group, the Maasai contribute significantly, albeit in part, to broader frameworks for conservation that are frequently shaped by international organizations or national laws. The success of these projects depends on the Maasai's active engagement, but larger organizational or governmental ambitions have an impact on the management style and strategic direction. As important participants in these initiatives, the Maasai support the adoption of conservation strategies that complement their way of life and customs.

The Maasai Wilderness Conservation Trust (MWCT) promotes conservation that directly affects Maasai communities in order to preserve East Africa's remarkable biodiversity and renowned environments. The world-renowned Amboseli-Tsavo Ecosystem includes the Maasai people and landscapes of Kenya's Chyulu Hills, which are the focus of MWCT's work. By providing funding and running initiatives that provide long-term financial gains from protecting this ecosystem, MWCT is establishing a cutting-edge example of effective community-based conservation⁴⁶⁵.

Camp ya Kanzi and Chyulu Wilderness Camp are the two lodges owned by Maasai Wilderness Conservation Trust. The Maasai Wilderness Conservation Trust receives all proceeds from the operation of the lodge. Travelers can participate in true regenerative tourism and experience cultural heritage tourism by selecting these camps, which benefits the indigenous population. Additionally, the conservation charge goes toward funding

⁴⁶⁴ Il Ngwesi, People of Wildlife, <http://ilngwesi.com/content/visit/>

⁴⁶⁵ Maasai Wilderness Conservation Trust, <http://maasaiwilderness.org>

Wildlife Pays, a tourism-related ecosystem service payment that reimburses the Maasai community for cattle lost to wildlife predation. This is a fantastic tool to improve harmony with wildlife and resolve human-wildlife conflict in a constructive way. Moreover, more than 95% of their employees, including those in senior roles, are native to the area. Conservation initiatives consist of indigenous territories conservancies, ecotourism collaboration with Camp Ya Kanzi, predator safeguarding through an efficient repayment system called Wildlife Pays, lion surveillance and tracking led by a team comprised of young Maasai combatants called Simba Scouts, and ecosystems investigation and safeguard with over 100 Rangers employed to tackle poaching and illicit activities⁴⁶⁶.

In this category, the Makame Wildlife Management Area is another great example. Spread across community grounds belonging to five Maasai communities, Makame is a huge wilderness region located southeast of Tarangire National Park in northern Tanzania. Because the terrain is difficult to traverse, poachers are discouraged by the area's dense acacia scrub cover.

There was a considerable lapse in knowledge regarding wildlife activities in the region. However, according to recent camera-trapping studies conducted by the Wildlife Conservation Society (WCS), Tanzania's national parks have higher wildlife densities and variety than those of elephant, lion, wild dog, leopard, oryx, and aardwolf combined. This region comprises the southern boundary of the Maasai Steppe, which extends north to the Kenyan border, and reaches from Tarangire in the west to the Pangani River in the east. The Maasai Steppe is encircled by severely deteriorated terrain because to irresponsible agricultural methods and deforestation, especially in the south toward central Tanzania and Dodoma. However, wildlife still exists in Makame, an area that has seldom had any official conservation management for decades. Several hundred elephants still dwell in Makame WMA thanks to the Maasai people's contribution to the preservation of the area's natural flora, which also supports a variety of range-restricted antelope species, including oryx, gerenuk, and lesser and greater kudu⁴⁶⁷.

⁴⁶⁶ Ibid.

⁴⁶⁷ F. Nelson, C. Schouten, J. Davie, *Conservation through collaboration on Tanzania's Maasai Steppe, Northern Tanzania Rangelands Initiative*, Swara, October-December 2018, <https://www.ntri.co.tz/wp-content/uploads/2019/12/Conservation-through-collaboration-Tanzania-Maasai-Steppe-Oct2018-1.pdf>

In Tanzania, areas designated under wildlife management, like Makame, have existed for almost 20 years. They were initially demanded in the historic 1998 wildlife policy, which emphasized the need of community-based conservation for the survival of the country's wildlife. However, it has proven to be a long-term problem to get them to really work well and, more significantly, to help the local community or animals. Most importantly, WMAs still lack financial viability. They pay high taxes, and the national and local governments get the gross proceeds from their tourist and hunting businesses. In exchange, indigenous peoples receive relatively little investment or institutional or infrastructure assistance.

Increased cooperation between national and international conservation organizations has been essential to development. Ten organizations united under the special collaboration platform offered by the Northern Tanzania Rangelands Initiative (NTRI) to pursue a common goal of rangeland management and community-based conservation.

The Ujamaa Community Resource Team is an important NTRI employee located in Makame (UCRT). It is widely known that UCRT is the top grassroots organization in northern Tanzania that works to protect the land rights of hunter-gatherer and pastoralist groups. In Makame, UCRT has a significant role in helping the WMA establish its governance structures. One such example is the local UCRT staff member who sits on the WMA board and provides legal support to the organization⁴⁶⁸.

Lastly, the territory of life Lake Natron in Tanzania shows another instance of this category. This breath-taking territory of life, which is mostly inhabited by the Indigenous Maasai People, is next to Oldonyo-Lengai, also known as the Mountain of God, one of the nation's active volcanic mountains. Since the Lake is the most dependable wetland location in the vast arid environment, the Maasai people rely on its broader catchment area for their livelihoods. Over the years, the area has provided water and pasture for animals as well as wildlife. At the moment, the Maasai customs and international and national frameworks pertaining to globally and nationally significant natural resources coexist to manage and control this land. The territory of life is managed by the community-based Engaresero Eramatare Community Development Initiative (EECDI),

⁴⁶⁸ F. Nelson, C. Schouten, J. Davie, *Conservation through collaboration on Tanzania's Maasai Steppe, Northern Tanzania Rangelands Initiative*, op. cit.

which was established by the general assembly of 12,000 residents of Engaresero village. The purpose of the EECDI is to promote integrated conservation and livelihood development by means of cultural restoration and tourist projects⁴⁶⁹.

The Ujamaa Community Resource Team (UCRT) has assisted EECDI in enhancing community ability to manage, own, and profit from land and other natural resources, including wildlife, for many years. In order to establish and maintain cultural heritage sites in the area, indigenous knowledge and cultural values are encouraged. Based on the two legal regimes, the area now has its own zoning and land use planning maps. Except for specific townships and homesteads, the whole region is owned by the community. It helps many people's livelihoods in the area in addition to environmental and conservation goals.

In addition to being a vital habitat for almost endangered species like the lesser flamingo, the Maasai rely heavily on this land for their livelihood since it offers them places to live, grazing grounds, water sources, salt licks, planted and native trees, and significant spiritual locations⁴⁷⁰.

Tourists are drawn to the nearby locations, which include Kilimanjaro National Park, Oldonyo-Lengai, and the Ngorongoro Crater. In the settlement, tent camps have been set up on common property, providing a source of revenue for the local residents. Visitors stay there for the night while taking part in walking safaris and hiking Oldonyo-Lengai to see the active volcanic crater. The tourist industry's earnings in the region assist local communities in their efforts to enhance social services including building hospitals, teaching in schools, and providing water to locals.

The foundational elements of EECDI's growth are tenure security and ownership. By formally establishing collective land tenure security, vulnerable indigenous peoples are supported in maintaining their standard of living and exercising their civil, social, cultural, political, and economic rights - all of which promote local, national, and international sustainable development⁴⁷¹.

On these grounds, the people get security of land and other resources through the Customary Certificate of Rights of Occupancy (CCRO) and Certificate of Village Land

⁴⁶⁹ ICCA Consortium, *Territories of Life: 2021 Report*, ICCA Consortium, pp. 61-68, 2021, report.territoriesoflife.org

⁴⁷⁰ Ibid.

⁴⁷¹ ICCA Consortium, *Territories of Life: 2021 Report*, op. cit.

(CVL), which are legal instruments for safeguarding common areas and animal habitats. An integrated approach to both conservation and livelihoods as a long-term solution for biodiversity conservation in the Northern Tanzania rangelands has so far been increased by the legal preservation of communal rangeland and the empowerment of the Indigenous Maasai population in the Lake Natron region.

3.4.3 Complete control by the Maasai

Under this category, the Maasai people themselves are entirely responsible for the creation, management, and oversight of the conservation efforts. The Maasai people have an innate connection to the land and its ecosystems, which is reflected in these programs that are firmly anchored in their traditional knowledge, cultural traditions, and communal values. Every facet of these initiatives is overseen by the Maasai, who make sure that the gains directly benefit their communities and uphold their way of life.

The Nashulai Conservancy was launched on July 14, 2016, and it is situated in Kenya's Maasai Mara. Significantly, it is the first Maasai conservancy in the Maasai Mara established, run, and maintained by the people whose ancestors have lived here for centuries, know this land well, and have supported themselves and their herds in balance with the ecosystem's natural life. The Maasai people established the Conservancy and now lead and oversee it. The Conservancy, which is home to 3,000 people, is a 1,214-hectare triangle that connects the Mara and Serengeti habitats, two internationally significant migration corridors for species. The Conservancy has protected the Sekenani River via clean-ups activities and tree planting, established mixed-use commons where people and animals may coexist, and inspired the establishment of two other community-run conservancies in under four years. For Maasai households, they have also heralded in the resurgence of livelihood options and cultural survival. In addition to combating gender discrimination and practices like early marriage and female genital mutilation, Nashulai strives to advance gender equality in leadership and education⁴⁷².

The Nashulai Maasai Conservancy envisioned a new paradigm that would restore the harmony between human life, wildlife, and pastoralism - all of which are essential to the

⁴⁷² Nashulai Maasai Conservancy, <https://www.nashulai.com>

Maasai way of life - rather than forcing tribes off their land. The Conservancy has shown that indigenous communities can set the example and that people and animals can coexist peacefully by bringing back indigenous knowledge and fusing it with modern technologies.

In 2016, residents of Nashulai's villages came together to deliberate, settle on, and codify conditions for their hybrid community-based conservancy. The landowner's agreement called for the removal of fences that separate migratory areas and the reintroduction of smaller herds, local cattle, and seasonal rotational grazing. Following the establishment of their agreements, the landowners of Nashulai dismantled 25 kilometers of fence that had cut off animal corridors. This brought back the possibility of coexisting wildlife and cattle on mixed-use commons. After a year, the grasslands reappeared, bringing with them around 10,000 zebra and wildebeest that moved into Nashulai territory. The International Union for Conservation of Nature's Red List of Threatened Species has designated the African savanna elephant (*Loxodonta africana*) as an endangered species. The elephant has now made a comeback to its ancient natal grounds in Nashulai⁴⁷³.

Community members are collaborating on community development thanks to enhanced organization and communication throughout communities. In the midst of the COVID-19 pandemic's economic troubles, they oversaw a Community Feeding Program that fed 28,520 people throughout the Mara area, constructed two schools, bought a school bus, and provided clean water access for all villages. Collectively, the Nashulai villages have established women's empowerment organizations, agricultural cooperatives, river restoration initiatives, and the Nashulai Cultural Training Institute.

Moreover, the goals of Nashulai's Ranger Patrol Program are to conserve wildlife, alleviate poverty, and maintain culture. The initiative transforms former poachers into rangers by employing locals, giving them economic prospects and even a chance to start over. The ranger program's financial advantages encourage locals to safeguard their natural riches. In order to begin this program, the Nashulai Maasai Conservancy created the Ranger Fund. This fund is made up of donations from people all over the globe who

⁴⁷³ UNDP Equator Initiative, *Nashulai Maasai Conservancy- Republic of Kenya, in Equator Initiative Case Studies - Local sustainable development solutions for people, nature, and resilient communities*, Equator Initiative, 2021

wish to help pay rangers a liveable income and give them training, necessary equipment, and conservation technologies⁴⁷⁴.

In the twenty-first century, the Nashulai Maasai rangers have come to represent a new generation of Maasai warriors. Rangers, who have long been pastoralists and land guardians, are still recognizable because they frequently wear traditional Maasai shukas, which are red checked fabrics, and they rely on pastoral sticks. These days, rangers also work in animal conservation.

The Nashulai Maasai Conservancy has reverted to pastoralism's ancient ways, which include seasonal grazing patterns and smaller animal herd management. By preventing overgrazing and increasing the amount of carbon sequestered by the soil, these pastoral methods lessen the negative effects of cattle on the environment and help to mitigate the effects of climate change⁴⁷⁵.

The efforts of the Nashulai Maasai Conservancy are impacting both local and national policy. For instance, the Conservancy is an official delegate of the Maasai-led White Mountain Conservation Initiative on Climate Change, a regional partnership with the goal of influencing climate policy at the federal level. This program, which has the backing of the Cabinet Secretary for Environment and Forestry in Kenya, brings together 120 representatives from various government departments, educational institutions, tourism corporations, conservation groups, and Maasai villages. In Narok and Kajiado counties, it seeks to organize solutions to climate change, including as the restoration of Mount Kilimanjaro's glaciers. The 2030 Agenda for Sustainable Development, the United Nations Framework Convention on Climate Change (UNFCCC), and the Convention on Biological Diversity (CBD) are just a few of the international accords that Nashulai Maasai Conservancy is in favour of being implemented globally⁴⁷⁶.

3.4.4 Concluding Remarks

The Maasai people of Kenya and Tanzania have shown that methods that guarantee not only the preservation of biodiversity but also their equal participation and benefit-sharing

⁴⁷⁴ Nashulai Maasai Conservancy, <https://www.nashulai.com>

⁴⁷⁵ UNDP Equator Initiative, *op. cit.*

⁴⁷⁶ UNDP Equator Initiative, *op. cit.*

may be developed through the establishment of conservancies, community funds, and collaborative management of protected areas. These programs demonstrate how closely tourism and conservation are related and how, with the appropriate strategy, both may flourish alongside the rights and livelihoods of indigenous people. However, the combined efforts of all stakeholders - governments, national parks, protected areas, and indigenous people alike - are necessary for the success and growth of these projects. Even if there are many obstacles to overcome, the Maasai people's achievements provide a glimmer of hope by demonstrating that it is feasible to create inclusive and profitable tourist and conservation programs. These initiatives should be expanded and reproduced with sustained cooperation, dedication, and support, putting indigenous groups like the Maasai at the forefront of sustainable development in their regions.

CONCLUSIONS

Throughout this thesis I studied the historical evolution and rise of conservation efforts and the tourism sector in Africa and, more specifically, how these two phenomena conflict with indigenous peoples' rights. Through this research, I arrived at the conclusion that, while conservation ought to be a constructive strategy for preserving the environment to future generations, too frequently it has a detrimental impact on the means of subsistence and livelihoods for the people who, historically, have been the best environmental stewards: indigenous peoples. Furthermore, I concluded that, despite being beneficial to the African economy and to external players, the expansion of the tourism industry has not only brought no significant benefit to indigenous communities, but has rather intensified the pressure on their lands and resources even more.

To arrive at these conclusions, I first examined the historical development of conservation and tourism in Africa and their roots in colonialism. This opened the door to a focus study of the Maasai population in Kenya and Tanzania, who live in areas that are now home to some of the continent's most well-known national parks and wildlife reserves, namely the Ngorongoro Crater, the Serengeti, and Maasai Mara. As a result, they have experienced first-hand the effects of conservation policies that prioritize tourism development and wildlife protection over their rights. Lastly, I draw my conclusions after considering positive potential solutions and strategies for achieving sustainable development while respecting indigenous land rights in the face of conservation and tourism pressures in Africa.

The Maasai people have been negatively affected by fortress conservation, tourism development and the establishment of national parks and game reserves in Kenya and Tanzania. As described in the thesis, national parks and reserves in both countries were created on former lands inhabited by the Maasai. This kind of expansion has locked out the Maasai from their ancestral land and resources which they highly depended on. This has been further exacerbated by conservation organizations that advocate for annihilation of human beings from ecosystems in order to have an effective conservation process, especially in areas inhabited by indigenous people who had lived symbiotically with nature for thousands of years. That is why one of the conclusions I draw was how interconnected conservation is to the phenomenon of land grabbing, meaning the control

of large amounts of land by any person or entity via any means, legal or illegal, for purposes of extraction, resource control or commodification at the expense of peasant farmers, indigenous peoples, land stewardship and human rights. As a matter of fact, the removal of indigenous peoples from their territories directly affects their means of subsistence. The creation of protected areas in Kenya and Tanzania too often has led to the uprooting of Maasai people from their ancestral lands, also using forceful methods, leading to the denial of access to essential natural resources, such as grazing areas, permanent water sources, and forest products.

Deeply linked to conservation is the growth of tourism in both countries and national parks being the primary reason for travelling there. The utilisation of land and the generation of jobs are often cited by proponents of conservation tourism as beneficial results for the local community. Unfortunately, the thesis reveals that, despite visitors travelling to national parks for the purpose of watching wildlife as well as getting a closer view of Maasai culture, most of the economic benefits go to state, private players, and conservancy organizations, with insufficient profit going to the Maasai people. Indigenous peoples are left out of the decision-making process and practically receive meagre gains from the development of tourism. Also, it is clear that Maasai people cultural identity has been commercialized for tourism purposes leading to a loss in traditions, rituals and experiences. Due to commodification, and profit seeking by tourist players, which turns culture into a tourist attraction and diminishes its value as a source of identity and identification, indigenous communities lose part of its original significance and meaning.

The conclusion drawn from my research is that conservation efforts and tourism development in Africa has detrimental effects on indigenous people's livelihoods, leading to their expulsion, relocation, or removal from their territory. This results in several violations of interconnected fundamental human rights, including but not limited to, the right to property, the right to culture, the right to food security and water resources, the right to health, and the right to economic, social and cultural development.

These rights are all recognized by the United Nations Declaration on the Rights of Indigenous Peoples of 2007. This has certainly been a cornerstone in the framework of the protection of Indigenous Rights. Nevertheless, the way their rights are being

implemented is far from ideal, since indigenous peoples still experience grave violations of their human rights on a daily basis. In spite of this important achievement in international human rights framework, the thesis concludes that one of the reasons why indigenous people still suffer from severe brutalities, is because of poor implementation of international laws, in particular the recognition of land rights of indigenous communities. As a matter of fact, I analysed the past and current land laws in both Kenya and Tanzania and if they are sufficient for the protection of the rights of indigenous peoples, in particular the Maasai. I came to the conclusion that even after both nations gained independence, their land laws continued to be influenced by European colonial ideals and indigenous peoples have been negatively impacted by the persistence of Western legal systems that were not adapted to their unique cultural and social situation. Consequently, post-colonial government have not been able to pass land laws that genuinely protect the fundamental rights of indigenous peoples. The ongoing expulsion and marginalisation of the Maasai from their ancestral lands demonstrates the inadequacies of the existing legal frameworks pertaining to the protection of indigenous rights.

Fortunately, in recent years, the ongoing injustices and severe challenges faced by indigenous communities have been subject of increasing awareness by international organizations, NGOs and civil society. Therefore, there has been a solid effort to offer sustainable solutions that uphold and respect indigenous peoples' rights while simultaneously protecting and preserving the environment.

In recent years there have been worldwide initiatives that revealed positive outcomes, such as the ICCA Consortium or the efforts from organizations such as IFAD or FAO. The thesis determines that sustainable solutions for conservation and tourism strategies that uphold indigenous peoples' rights are achievable, through the active participation of indigenous groups in decision-making processes that regards their lands, the implementation of a Free, Prior and Informed Consent approach and through the effective listening of indigenous voices, concerns and legacy. It has been demonstrated that inclusion of indigenous peoples in conservation efforts on their territories has proven to be effective and efficient for the protection of the natural environment.

Concerning tourism initiatives, the thesis shows that by guaranteeing the active involvement of indigenous people in this industry and enabling them to gain economically and socially, both approaches of ecotourism and cultural heritage tourism offers important potential for empowering indigenous communities. These strategies are sustainable substitutes for conventional tourist models that frequently exclude or exploit these communities, in addition to help in the preservation of the rich cultural legacy of indigenous peoples. Nonetheless, there is still a pressing need for greater implementation of such projects across a vast range of geographical regions, as well as more support from international organisations like UNESCO to properly recognise and safeguard indigenous heritage sites.

As a matter of fact, both in tourism and conservation *the* vital role that indigenous peoples and local communities play in maintaining biodiversity and natural environment has to be acknowledged, reinforced, and endorsed on a global scale. Regarding the preservation of the environment, the thesis concludes that a rights-based approach and community-led conservation initiatives need to be applied to conservation efforts in order for indigenous peoples to finally see their rights actively respected and endorsed. This has to be done by first and foremost, a strong implementation of international law on indigenous rights, in particular recognizing land rights, secondly the establishment of a grievance and monitoring system for human rights violations due to conservation efforts and, at last, by abandoning the conventional approach of fortress conservation and embracing a more equitable and sustainable one.

The thesis concludes that potential solutions of sustainable conservation and tourism development while respecting indigenous land rights in Africa are feasible, provided the goal of economic exploitation is shifted to that of common well-being. Respecting indigenous peoples' rights, values, knowledge, and goals in their ancestral lands is fundamental in order to make conservation more sustainable and just. I conclude my thesis by presenting examples of new conservation initiatives in Kenya and Tanzania, in which Maasai play a significant and fundamental role as stewards of their land and environment. These programmes not only aim to preserve biodiversity but also to respect and uphold their rights, exhibit a resilient dedication to developing sustainable models

that incorporate the cultural values and livelihoods of the affected indigenous communities.

Unfortunately, it is hard to find activities in which the Maasai community fully establish, manage, and control conservation efforts, but there are models that come close and represent a path in the right direction. The thesis describes projects where Maasai people collaborate with non-governmental organisations or foundations, as well as those where Maasai people are heavily involved yet only form a small portion of a wider conservation framework. The one initiative I found in which every phase is overseen by the Maasai, who make sure that the gains directly benefit their communities and uphold their way of life, is the Nashulai Conservancy. The Nashulai Maasai Conservancy pictured a new paradigm that would re-establish the equilibrium between human life, wildlife, and pastoralism, all of which are vital to Maasai traditional livelihood. It advocates for a full inclusion of Maasai customs, livelihood, cultural heritage and traditional knowledge into conservation and tourism strategies, leading the way for a new approach to the preservation of the natural environment while protecting indigenous rights.

This latest approach demonstrates that the interconnection between conservation, tourism and indigenous rights can be beneficial. It has the potential to empower indigenous people, by granting them the benefits that are rightfully theirs and it can, at last, return to them the fundamental role as environmental stewards, as they've done for centuries before colonialism. Through keen cooperation of all stakeholders and with high respect for international human rights law, these initiatives should be expanded worldwide in order to put indigenous groups like the Maasai at the forefront of sustainable development in their territories.

In conclusion, I believe that, given the right approach, tourism and conservation can coexist peacefully with the rights and means of subsistence of indigenous people. A glimmer of hope is offered by the accomplishments, resiliency, and legacy of the Maasai people, which show that it is possible to develop inclusive, equitable, and sustainable conservation and tourism initiatives that simultaneously safeguard the natural environment and the fundamental rights of indigenous peoples.

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