Realisation of the Right to Self-determined Development and the Protection of Indigenous Women against Discrimination in Tanzania

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Abstract

The UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, marking the culmination of thorough negotiations, lobbying and advocacy involving indigenous peoples' representatives as key actors. Among other rights, the UNDRIP affirms the right to self-determination for indigenous peoples. Also referred to as the right to self-determined development, the right to self-determination, as stated in the UNDRIP, encompasses indigenous communities' rights to determine their development trajectories. To indigenous peoples, the significance of the right to self-determination includes the promotion of cultural distinctiveness, which is central to their survival as communities. However, women's rights scholars and activists are skeptical about the emancipatory potential of realising the right to self-determination for indigenous women. In contrast, exercising this right might also entail the perpetuation of gender-based violence and other forms of discrimination, thus heightening women's fragility and subordination among indigenous communities and beyond. Using UNDRIP and other relevant international and regional human-rights instruments as vantage points, this paper seeks to juxtapose the implementation of the right to self-determination and the realisation of indigenous women's rights in Tanzania. The article posits that the protection of indigenous women's rights should form the central pillar of the enjoyment of the right to self-determination. This is because the cultural survival, vitality and continuity of indigenous peoples' distinctiveness largely hinges on respect for the rights of indigenous women.

Keywords: discrimination; human rights; indigenous women; land; UNDRIP; self-determined development

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Introduction

Indigenous peoples' rights more broadly have been a matter of great interest to scholars and human-rights activists from various disciplinary domains. The discussion reached its apex following the UN General Assembly's adoption of the Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, which marked the culmination of thorough negotiations, lobbying and advocacy involving indigenous peoples' representatives as key actors (Claire and Rodolfo 2009). Among other rights, the UNDRIP affirms the right to self-determination for indigenous peoples (UN General Assembly 2007, Art 3; Tauli 2010). Also referred to as the right to self-determined development, the right to self-determination, as stated in the UNDRIP, encompasses indigenous communities' rights to their distinctive culture (UN General Assembly 2007, Art 34) and their right to determine their development trajectories and resolve matters that affect their communities with greater autonomy.

To indigenous peoples, the significance of the right to self-determination includes the promotion of cultural distinctiveness, which should be in line with the UN Charter (Working Group on Indigenous Populations/Communities 2007, Art 46), and is central to their survival as communities (UN General Assembly 2007). However, some women's rights scholars and activists have been critical of and skeptical about the emancipatory potential of realising the right to self-determination for indigenous women (Gunn 2014). This article seeks to answer the questions of how exercising the right to self-determination might involve the perpetuation of gender-based violence and subordination, hence heightening women's fragility within indigenous communities and beyond. Additionally, this article illuminates the extent to which some dominant paradigms play various roles in marginalising and/or realising indigenous women's rights in Tanzania.

Using UNDRIP and other relevant national legislation as vantage points, this article seeks to examine implementation of the right to self-determination and the realisation of indigenous women's rights in Tanzania. The article posits that the protection of indigenous women's rights should form the central pillar of the enjoyment of the right to the self-determined development of indigenous communities, since women occupy a significant position within the collective. This is because, in addition, the cultural survival, vitality and continuity of indigenous womens' distinctiveness largely hinges on respect for the rights of indigenous women. In this article, the term "indigenous women" does not focus on the context of aboriginality but uses indigeneity as a term of international human-rights law as contextualised by the African Commission Working Group of Experts on Indigenous Populations (African Commission on Human and Peoples' Rights (ACHPR) 2005, 86–89). It does not place emphasis on who is aboriginal to the African continent. Indigeneity in this context is based on their connection to land, on cultural distinctiveness and on being on the verge of extinction, to mention few (ACHPR 2005, 89).

Furthermore, owing to the elusiveness of the concept "right to self-determination", this article focuses on self-determined development for indigenous communities within nation states. To many, an understanding of the principle of self-determination is centred on external decolonisation, which is in line with independence from other dominant nations or the secession of a group of people from one state to form their own state (*Katangese Peoples' Congress v Zaire* 1995 ACmHPR Comm 75/92). In contrast, the right to self-determined development affords indigenous peoples some level of autonomy in their groups, which is central to their identity and continued existence as a collective. It entails recognition of a different way of life: collectivity, the determination of culture, development and internal management with autonomy. While focusing in-depth on the legal scholarship, the article takes a multi-disciplinary approach to understanding the issues that constitute the specific circumstances facing indigenous women in Tanzania.

The article has benefited from both empirical study (field interviews) and the desk review. Since the qualitative study employed a descriptive research design, the author conducted unstructured interviews targeting women and non-government organisation (NGO) workers. In addition, it is the standpoint of this writer that women are not inherently vulnerable: their vulnerability, particularly that of indigenous women, so to say, is centred on male hegemonic powers and a stereotype that do not provide leeway for women to exercise their autonomy. To illustrate this point, this article focuses on women's land rights as a tool for analysis. This is why land exclusion and deprivation is a lifetime cost that intersects with violence against women at the community and state levels (UNDP Indonesia 2017). Since land is regarded as the source of life, and most indigenous women do not have land ownership, land dispossession that results from evictions and changes in land use has caused inexplicable violations of indigenous women's rights of survival.

The article commences by providing a snapshot of UNDRIP; it then proceeds to examines the ambit of indigeneity in Tanzania. That is then followed by argumentation about whether indigenous women's rights have any priority in the country. The third part discusses the land rights of indigenous peoples in Tanzania, followed by an explanation of the link between indigenous women and land claims. In connection with land rights, the author examines other layers of direct and indirect marginalisation of indigenous women in Tanzania at the state level through both the law and policies and the condonation of acts that results in the triple marginalisation of indigenous women. The author concludes that it is in the interests of the community and the nation that indigenous women be included in various processes of development and decision-making, since they play key roles in preserving the land that the government benefits from. The author further posits that the right to self-determination is a corollary to other fundamental human rights of women.

UNDRIP: A Hotbed in the Marginalisation of Indigenous Women?

The UN Declaration on the Rights of Indigenous Peoples is an instrument specific to indigenous peoples (soft law) that provides extensively for minimum standards for the treatment of indigenous peoples in the private and the public spheres. It is the key instrument that recognises the collective rights of indigenous peoples, a document that resulted from collaborative engagement between indigenous peoples, their representatives, states and the UN. Specifically, UNDRIP is a significant instrument for countries to apply during peace time, since it is during such times that states exercise direct autonomy and tailor laws and policies that affect men and women at both the micro and the macro levels. A cursory look at the implementation of other human rights such as civil and political rights or economic, social and cultural rights, enablers one to discern sharp differences between developing countries and their developed counterparts (Freedom House 2016). Specifically, developed countries seem to consistently score highly in their implementation of human rights, whereas less-developed states score low. The main paradox is that when it comes to indigenous women's rights, such a distinction is minimal or almost non-existent (Amnesty International 2007).

UNDRIP consists of 46 articles which address key issues of concern to indigenous peoples, including the right to self-determination as provided under Articles 3 and 4 of the Declaration (UN General Assembly 2007). Those two specific articles are explicitly devoted to the right to self-determination of indigenous peoples. Of the 46 articles, the Declaration contains two specific articles that directly mention indigenous women. Article 21(2) (UN General Assembly 2007) calls for effective measures to ensure their improvement of economic and social conditions. Specifically, sub-article (2) clusters women together with other people, some of whom might be inherently vulnerable due to their status. Importantly, indigenous women are not inherently vulnerable; however, their vulnerability is determined by some social norms, legislation and policies which do not necessarily address the agenda of indigenous women or protect them against marginalisation. Article 22(1) reiterates most of the wording of Article 21; however, it connects the implementation of the right to self-determination to UNDRIP (UN General Assembly, 2007). Moreover, Article 22(2) directly tackles the matter of violence against women by accentuating the collaborative role that states and indigenous communities have to play in protecting indigenous women. Since the Declaration touched on passing issues relating to indigenous women, it is essential to question the extent to which self-determination may entail men's self-determination and how that could perpetuate gender-based violence and other forms of marginalisation. Furthermore, although the UNDRIP has attempted to cover issues pertaining to the rights of indigenous peoples, it has never run short of critics, just like any other international instrument – specifically, declarations. The most common critique is levelled against its binding nature, followed by the absence of a strong voice unambiguously and extensively addressing matters touching indigenous people who are likely to be marginalised within and out of the

community. Since the list of indigenous peoples with "special needs" is not exhaustive, this article, as stated earlier, focuses on indigenous women only.

Indigeneity in Tanzania

The concept of indigeneity in Tanzania, as in other countries in Africa, is highly contested (Ndahinda 2011). In the view of the government of Tanzania, specifically of the Ministry of Justice and Constitutional Affairs, every Tanzanian national of African descent is indigenous (UPR-Tanzania 2011). The government's position can therefore be described as indicating either that everybody is indigenous or that there are no indigenous peoples in Tanzania. The government's claim for the "collective identity" is akin to the colonial standpoint, save for the connotations. During the period of colonial administration, colonialists interchangeably used the terms "natives" and "indigenous" to describe the habitants of African descent (Joelson 1921). Both terms had connotations of backwardness and savagery, and they were used to justify colonialists' conquest and invasion to save and civilise the savages (Williams 2005). For the colonial government it was therefore necessary to use the indigeneity or nativeness in connection with savagery as a narrative for justifying land dispossession (Tauli-Corpuz 2010, 2). A celebrated African novelist, Chinua Achebe (Achebe 2000), puts this assertion in context:

> Man is a story-making animal. He rarely passes up an opportunity to accompany his works and his experiences with matching stories. The heavy task of dispossessing others calls for such a story and, of course, its makers: oral historian or griots in the pasts; mere writers today … So, he hires a storyteller with a lot of imagination to make up more appropriate story, which might say, for example, that the land in question could not be mine because I had shown no aptitude to cultivate it properly for maximum productivity and profitability.

However, Tanzania's position, shared by many African countries, falls short of appreciating the work of the African Commission Working Group of Experts on Indigenous Populations/Communities (hereafter the Working Group) of the African Commission on Human and Peoples' Rights (the Commission). The Commission created the Working Group with the main task of examining the applicability of the indigenous rubric in Africa. In tandem, some African communities had self-identified as indigenous peoples and started attending international meetings in that capacity. Specifically, the African Commission entrusted the Working Group with the following mandate:

> To examine the concept of indigenous people and communities in Africa, to study the implications of the African Charter on Human Rights and wellbeing of indigenous communities especially with regard to; the right to equality (OAU/African Union, 1981: 2–3), dignity, protection against domination (OAU/African Union 1981, art 19), self-determination, and the promotion of cultural development and identity (OAU/African Union, 1981: 22),and, to consider appropriate recommendations for the monitoring and

> protection of the rights of indigenous communities, and to submit the findings report to the African Commission at the 30th Ordinary Session (The African Commission on Human and Peoples' Rights, 2000).

Based on in-depth research and wide-ranging consultations with communities, governments, CSOs and other stakeholders in different parts of Africa, the Working Group submitted its report to the Commission. The often-quoted report, which has been dubbed a "canonical source" (Ndahinda 2011) of indigeneity in Africa, found affirmatively that there *are* indigenous communities in Africa. Briefly, the report noted that compounding massive human-rights violations that face different communities in different parts of Africa, some groups in the margins – notably groups of pastoralists and hunter-gatherers – suffer more than the mainstream society (Barume 2014). Such disproportional sufferings are triggered by exclusion, "dominant development paradigms" and victimisation (Barume 2014).

Often, mainstream governments bring into being "development" programmes which have negative and devastating impacts on these communities living on the margin (Tauli-Corpuz 2010; Barume 2014). Furthermore, derogatory terms and other stereotypical labels such as "anti-development" or "backward" have been applied to describe these communities. Not only that, but other common challenges facing the communities under discussion include access to social services and infrastructure which prevent them from having meaningful participation in their own development. Consequently, all those factors and many more have placed some groups of hunter-gatherers, in particular, at the verge of extinction (ACHPR 2005). In the case of Tanzania, the report mentions the Hadzabe and Akiye hunter-gatherers as well as Maasai and Barbaig pastoralists. Martinez Cobo (1983) – with a focus on aboriginality – would fit the situation of only a handful of communities such as the Khoisan and Pygmies (ACHPR 2005, 92). To fit the realities in Africa, the Working Group posits that debates on aboriginality are unnecessary and not required. To address the concern above, the Working Group provides as follows:

> A closely related misconception is that the term indigenous is not applicable in Africa as "all African are indigenous." There is no question that all African are indigenous to Africa in the sense that they were there before the European colonialists arrived and that they have been subject to subordination during colonialism. When some particular marginalized groups use the term indigenous to describe their situation, they use the modern analytical form of concept (which does not merely focus on aboriginality) in an attempt to draw attention to and alleviate the particular form of discrimination they suffer from … (ACHPR 2005, 88).

The report brought new discussions and expanded the indigenous peoples' rubric in the world in the context of the realities obtained in Africa.

Indigenous Women's Rights in Tanzania: An Antagonistic Priority?

Explaining why women's rights were not considered human rights at the time of her writing, Charlotte Bunch mentions one of the preconceptions put forward: "sex discrimination is too trivial, or not as important, or will come after larger issues of survival that require more serious attention" (Bunch 1990). While such a debate may not be pertinent now with regard to women's rights more broadly, it is still topical when it comes to indigenous women. Particularly in Tanzania, a strong concern remains that initiating a discussion on intersection and layered complexities faced by indigenous women may derail the urgently needed focus on the realisation of collective-community rights such as the right to land, right to self-determination, the right to free prior and informed consent (FPIC), among others (Rauna 2012). More tellingly, the indigenous movement in Tanzania, which is primarily dominated by men, seems very unwelcoming of indigenous women's rights. Since more elites in the indigenous community in Tanzania were men, they were the early crusaders of the movement in Tanzania. The same group of people is the one primarily responsible for setting the agenda of what is essential in the indigenous movement in the country. This author heard responses from some indigenous male leaders such as "our agenda for now is survival as peoples and not trying to address trivial issues like women's rights"; "issues touching on minor sections within the indigenous groups will only dissuade us from the main agenda"; and "when we succeed in the main agenda of survival and existence, those issues will take care of themselves" (Maasai Elder 2016). Accordingly, the dominant narrative in the indigenous movement in Tanzania is that indigenous women's rights are antagonistic priorities. This is despite having gender and children's sections in their organisations. Given the importance of a country's constitution, no examples can better corroborate the assertion above than an examination of indigenous peoples in Tanzania's engagement with the stalement CONSTITUTIONAL review process, as explained below.

In 2011, the government of Tanzania succumbed to persistent pressures from the public demanding a new constitution. When the processes eventually started with the enactment of the Constitutional Review Act of 2011, various groups organised themselves to ensure the inclusion of their priorities in the would-be supreme law of the land. Indigenous peoples groups took advantage of the rare opportunity aimed at influencing stakeholders so that they could earn formal constitutional recognition. Organisations working on the rights of communities self-identifying as indigenous peoples as well as community members and elites such as academics came together to form the *Katiba* Initiative (KAI), and a steering committee comprising a small executive group (KAI) was constituted. KAI's mandate was to consult indigenous peoples in the country, in order to come up with recommendations on the key issues indigenous peoples needed to be included in the proposed new constitution. Slowly, KAI gained in popularity and was recognised countrywide as a representative body of indigenous peoples. The donor community also expressed their approval by working with it, which gave KAI international visibility and recognition. Paradoxically, KAI traded along the

same lines of male hegemony: few women's organisations were members and not a single woman was a member of the steering committee that made most of the decisions for approval in the bigger body. The negative effects of gender blindness became more apparent in two ways: first, the final document that was submitted to the Constitutional Review Commission did not contain any issue regarding indigenous women's rights (Hodgson 2017). This signified that, despite their importance, women's issues were relegated to the lowest priority of concerns.

Furthermore, during the Constitutional Review Process each group was entitled to nominate at least three representatives to be considered for appointment to the Constituent Assembly (a body charged with receiving the draft constitution and approving it for being subjected to a referendum). The president of Tanzania would appoint one person from the list submitted. True to male hegemony and the perpetuation of the domination of women, KAI proposed three males for consideration. This was despite having female members of the communities self-identifying as indigenous peoples who have been involved in the advocacy of indigenous peoples' rights at the national and international levels for decades. When this researcher asked one of KAI's architects why KAI did not nominate any indigenous woman representative, the respondent noted that male representatives nominated through a "democratic" process were stronger and were expected to articulate matters affecting indigenous women as well (Interview with KAI leader 2018). This segment of the article argues that the representation of women by women is indispensable in its own right (meaning that women should not wait for someone to speak for them). Professor Rebecca Tsosie puts this in broader perspective in the context of indigenous peoples that "in order to have life, it is necessary to have both male and female elements; one does not exist without the other, and therefore gender is complementary and not dichotomous or hierarchical" (Tsosie 2010). Consequently, it turned out that indigenous women relied on KAI to air their constitutional rights demands. This is firm evidence of indigenous women's triple marginality. Paradoxically, indigenous women's agitation for their rights in Tanzania has a fairly long history, having led to the attainment of political independence. Although pre-independence struggles mainly touched on needs for inclusion at the tribal decision-making table, the same needs have now expanded significantly to include representation in political leadership and respect for indigenous women's rights more broadly. Indigenous women in Tanzania are demanding that both the state and their tribes reflect on how to include them meaningfully in private and public issues pertinent to their survival.

"*Mama-yeyo*": The Effects of Intersectionality, Gender and Identity Politics on Indigenous Women in Tanzania

The preceding section established the intersection of indigenous women's marginality in Tanzania. By virtue of being women, they are subjected to discrimination and the disregard of their fundamental rights just like other mainstream women. In addition, and particularly because women's issues are not monolithic, the preceding section also

demonstrated that indigenous women face another layer of penalisation because of their indigenous identity compounded by a racial or sociopolitical construct. Specifically, while this article does not aim to downplay the experiences of discrimination and subjugation that have characterised women as a class, indigenous women's experiences, identities, class and other social, customary and religious constructs uniquely shape their interactions with their communities even before the struggles assume a national or an international dimension. The appreciation of the uniqueness of the situations women face is in harmony with the reminder not to reduce women to "a set of common denominators":

> First, the combination of a person's gender and other characteristics such as race, class, or ethnicity may mask the existence of discrimination based only on any single characteristic or the way those characteristics work together to create a different discriminatory dynamic. Second, speaking of women as if they were all the same tends to 'essentialize' women, or reduce them to a set of common denominators .... (Bartlett, Deborah and Grossman 2016).

In view of the above, it is fair to state that even in the self-identifying groups of indigenous peoples in the country, the experiences of indigenous women differ according to their overlapping identities and other factors. When discussing indigenous women in Tanzania, it is therefore important not to essentialise their experiences but to understand the power dynamics in terms of their social structures and how these enable them to realise their rights or subject them to oppression with other group members and the outside world. It is through critical reflection of issues that face indigenous women in Tanzania today that people will be able to reconstruct and develop strategies for realising indigenous women's rights meaningfully in Tanzania (Kipuri 2008). Using the UNDRIP and an intersectional approach as an analytical tool, the following segment of the article examines the rights of indigenous women in Tanzania and women's struggles to assert them, with a focus on the right to land. The selection of land rights is based on its perceived centrality in the empowerment of indigenous women.

Land Rights

Indigenous Peoples' Land Relations and Value

To indigenous peoples, land is life itself, and a prerequisite for their survival as peoples (Århem 1985, 17). Because of its significance, it is common knowledge that whoever controls land controls the lives of the people who dwell on it, including generations yet to come. Indigenous people's relationship to land is also founded on their unique connection to it since time immemorial. Most of the indigenous people's representatives in Tanzania whom this researcher interviewed believe that land is a valuable gift that they have from their creator and that it has no price tag. To the Maasai, as documented above, land has social and cultural meaning (Århem 1985). Apart from dwelling on the land and conducting cultural rituals in specified areas, land produces grass, which is the

staple food for livestock. Natural grass is also significant in religious and other cultural ceremonies. A number of trees have medicinal value, from dental to general health.

What distinguishes indigenous peoples from mainstream communities is that to the former land is owned communally. To mainstream society, on the other hand, land is owned individually and can be exchanged in the market like any other commodity. To corroborate the significance of collective land ownership for the Maasai community, a number of sayings have been passed down from one generation to the next: for instance, "*Memiri engop te nginyang'a amu eng'oki*", which means "land shall not be sold; doing so is a curse". The phrase is also restated in the Holy Bible (New International Version 1984, Leviticus 25: 23), where it is stated that "The land must not be sold permanently, because the land is mine and you reside in my land as foreigners and strangers". More importantly, land value is tied to the identity of the peoples as a collective entity:

> '*Era ntokitin are nemeishooronyu t'loosho aekata, olayioni, amu sinkanisho tenikirik olayoni lelikae osho t-enkop inyi. O'enkop, amu eukulupuoni eiputieki olosho*' meaning; There are two things that cannot be compromised ever: a son, because it is slavery to be represented by a son from a different community in your land; the soil (land) because it upholds collective identity (Nasieku 2004, 202–203).

It is in that special connection to the land that indigenous peoples use specific areas of land such as shrines and mountains for their prayers and other traditional rituals. For instance, one of the most culturally significant places for the Kisongo Maasai of Tanzania is Ol Molog (Århem 1985, 20), whereas the Barbaig use shrines for their traditional rituals (Lane 2017). Knowing that land is for them to use and to leave for future generations, indigenous peoples have been key custodians of their territories, managing the available natural resources and the whole ecosystem through traditional knowledge. It is through such custodianship that the traders, missionaries and colonisers who came to Africa found indigenous territories with abundant wild animals and other natural resources. This natural richness largely remains to date, but, unfortunately, it is used as a pretext for evicting indigenous peoples from their land rather than acknowledging the role they have played for generations as custodians. In the next section, the author gives a snapshot of how colonial and post-colonial governments in Tanzania changed the paradigm of land use and management and of how the laws and policies contributed towards shaping indigenous women's recent land claims. One of the questions to be tackled is this: "Since there is no individual ownership of land, how can indigenous women bring forward land claims?"

Bringing Indigenous Women's Land Claims into the Picture

Grabbing indigenous peoples' land in Tanzania has a long history. For example, the British colonial government created Serengeti National Park (Igoe 2006) by dispossessing the Maasai of their traditional home and strategic grazing sites during the wet season, a few years prior to the expiry of their imperial dominance. During the creation of the Serengeti, the Maasai were pushed to other nearby areas and the colonial

government promised them that they would not be disturbed again by any person. When Tanzania gained its independence, however, land grabs disguised as "development" and the creation or expansion of existing national parks and game reserves continued. Today, Tanzania boasts having set aside around 39 per cent of its land mass as protected areas ranging from national parks and game reserves to game-controlled areas (EarthTrends 2003, 1). The government has accomplished this at enormous cost to indigenous communities, who have faced forceful eviction and consequent internal displacement. The government justifies the appropriation of indigenous peoples' land on the pretext that such land is either unused or improperly used. Another justification springs from a need to integrate indigenous peoples into the mainstream society for the purpose of bringing them "development". To achieve this "development" mission, the government initiated ruthless operations such as "operation imparnati", meaning permanent settlements, which unfairly targeted and was discriminatory against indigenous peoples (Ndagala 1982).

Apart from the Maasai, the Barbaig have also continued to face evictions from their ancestral lands to make room for agricultural foreign investment (Ndahinda 2011). The best-known event is that of eviction to allow a Canadian company in collaboration with the National Food Corporation (NAFCO) to grow wheat (*Lohay Akonaay v The Attorney General*, HC Tz 1993). Indigenous peoples challenged the eviction in courts of law but in vain, and when the project failed for other reasons, the land was abandoned and indigenous peoples began to return to their ancestral lands. The government then decided to return the land to its rightful owners. However, the returning process was clouded in multiple violations of the rights of indigenous peoples, including preferential allocation to non-indigenous peoples who wanted to continue with farming. Indigenous peoples who belong to that area contested and, as a result, more massive violations of personal rights occurred. Women were physically assaulted by the police and they were placed in custody together with their young children (Hodgson 2017). The main message was that women were tired of waiting for someone to take up their rights to survival.

The "New" Land Laws, 1999

Until 1999, Tanzania was using a land law inherited from the British era. The country then adopted "new" land laws, namely, the Village Land Act of the United Republic of Tanzania (Village Land Act, Cap 114, 1999) which is applicable to the land within the village boundaries, and any other land provided under section 7 of the Act (Village Land Act Cap 114, 1999, 7) and the Land Act, which administers general land or land not provided for under the Village Land Act – except reserved land. These twin laws are applauded for having widened women's access to land (common section 3[2]), an opportunity which the Land Ordinance inherited from the British colonial administration did not provide for. A high level of lobbying for specific rights by various NGOs as well as religious institutions preceded the adoption of the two Land Acts. Indigenous peoples were represented by several organisations namely the Pastoralists'

Indigenous NGOs Forum (PINGOs), KIPOC-Barbaig, Inyuat-e-Maa, Aigwanak Trust, and Ilaramatak Lorkonerei, which were part of the larger lobbying coalition – the National Land Forum (NALAF) (Dancer 2015, 51). One of the agendas, from NALAF, was the inclusion of women in matters affecting land through their participation in different land rights bodies (Dancer 2015).

Final drafts of the legislation included provisions that increased protection to women in matters affecting landownership at the time of land disposition. The land requires spousal consent at the time of disposition as per section 85 of the Land Act, and section 112 requires spousal consent in mortgage transactions that touch on matrimonial land. Prior to the enactment of those provisions, it was easy for male spouses to dispose of the land without the consent of their partners. With the enactment of the law, incidences have decreased to a certain level, even though when the law was new there were incidences of forgery until the law was amended to include due diligence on the part of the buyer or mortgagee to ensure that the signature and consent of the spouse is authentic.

Section 30 of the Village Land Act provides that any land assignment in village land should not deprive of her ownership any woman who has a customary right of occupancy (Village Land Act 114 of 1999). Apart from including the customary rights of women, which are also applicable to indigenous women, the Village Land Act has strengthened the customary right of occupancy to the villagers as private and collective land ownership. This was a revolutionary idea that could ideally reduce the dispossession of some groups of indigenous peoples' land rights in Tanzania (Village Land Act, Article 30[1]). The law provides for the right to compensation in the event that any person has taken the land unlawfully or irregularly. However, the experiences on the ground stand in contrast to this, specifically when vulnerable members of the community are involved. Most often, the land is taken away from indigenous peoples and others who live at the periphery without their FPIC or without the payment of adequate compensation. To mainstream society, development entails mainly financial gains measured in terms of GDP and industrialisation to mention but two. Understanding the phenomena, indigenous peoples demand respect for their rights and having an opportunity to develop at their own pace (Tauli-Corpuz 2010).

While the provisions of the law are crystal clear, the practice on the ground is in most cases contrary to the law. Owing to the gap between desired legal goals and practice, it is commonplace to see indigenous women at the forefront of seeking justice by initiating court cases before the courts of law and tribunals or using traditional justice mechanisms to vocalise their discontent. In most cases, indigenous women are afraid of taking cases to the courts of law for fear of retaliation from community members. This is a product of their mode of life, based as it is on extended families which live close to each other. Indigenous women who lodge cases at times have ended up losing their properties due to legal technicalities and the non-availability of legal aid (Dancer 2015, 87). In the preliminary tribunals, where the law does not allow representation by attorneys, they

are at a particular disadvantage because they lack the required legal knowledge to take up matters themselves (Magistrate Courts Act Cap 11, 33[1]). It is important to note, however, that if there is any area where there is a need for attorney representation, it is at the initial stages of land matters in the lower tribunals or courts; the same is true also in other cases originating from primary courts, because it is during those stages that the facts and crucial evidence from both parties are adduced. For instance, it has been noted that

> women claimants would often sit some distance away with their heads covered waiting for their cases to be called, whilst male parties and witnesses tended to wait much closer to the tribunal building. … women claimants and witnesses we observed often struggled in the way they gave evidence and asked questions (Dancer 2015, 112).

Facts and issues framed in lower tribunals are then appealed against in the higher tribunals. Although the higher tribunals and courts have revision jurisdiction, the powers are not often exercised; therefore, it is easy for the appellate body to miss the gist of the matter, leading to a miscarriage of justice.

At this point it is opportune to reiterate the question posed earlier about why indigenous women have found themselves in the forefront when it comes to fighting for communities' land rights. Interviews conducted in Arusha and Manyara regions, as well as the preceding discussion, unmask the following three reasons. First, the presence of educated indigenous women running NGOs has enabled women's issues to come to the forefront. This comes at a time when incidences of land grabs have seen communities losing large tracts of land due to either conservation projects or the expansion of agriculture. Secondly, women have had to witness the influx of men to towns to work as night guards and hairdressers arising from the high level of poverty that has resulted from the loss of livestock due to climate change, leaving women to struggle with their children. The migration of indigenous men to urban centres has sent a message that should the land be appropriated, men would have somewhere to go, so women must stand their ground in defending the remaining land. Thirdly, land acquisition in recent times has been mostly by way of purchase. Knowing that they do not have the financial capacity to buy land due to their social positions, women have resolved to protect the remaining tracts. Below is a case study about involving women in Loliondo in the Ngorongoro District of Northern Tanzania.

A Snapshot: Stay Away! This is Women's Battle: A Case Study of Loliondo Game Controlled Area

In 1992, the government of Tanzania allowed a company from the United Arab Emirates to conduct trophy hunting on lands belonging to indigenous pastoralists in Loliondo, Northern Tanzania (Maina and Helen 2005). Since the inception of the deal, indigenous peoples were not consulted, so they opposed it through demonstrations and resorting to justice institutions at the national, regional and international levels. Notwithstanding the indigenous people's position, the government on several occasions forcefully evicted

indigenous communities and burnt their properties (Edward 2009). One such event occurred in 2009, causing international condemnation and an online petition to the President of Tanzania that garnered more than two million signatures. The issue resurfaced when, in 2017, the government expressed its intentions of annexing 1500 square kilometres and handing it over to the investor in an effort bring the decade long conflict to an end. Unfortunately, the same land comprises water sources for livestock and strategic grazing areas during acute drought. Indigenous peoples, as could be expected, opposed the deal and, in a departure from the usual practice, women took over the battle for themselves. To indigenous women, this is a normal traditional technique that was invoked prior to colonialism to demand their rights and condemn oppression. The demonstration was fruitful because when the women demonstrated in their hundreds at the office of the District Commissioner, it attracted the attention of the media, which forced the government to suspend the plan. Educated indigenous women formed part of the demonstrators, indicating the indispensable importance of education. Recently, the President of Tanzania announced the prohibition of evictions of communities living in protected areas, for whatever reason, be it investment, conservation or any other development project. To indigenous peoples, the president's pronouncement is like "manna from heaven", because the struggles to remain in those protected areas which are their ancestral lands had become a new normal way of life. As highlighted above, indigenous women have been disproportionally affected, therefore the pronouncement is a major relief.

Conclusion

Indigenous women are central to the realisation of indigenous peoples' right to self-determination. However, this article has shown that gender-based violence and discrimination are prevalent in indigenous communities under the pretext of self-determination and other forms of marginalisation from within the community. These happenings send a message that, without checks and balances, self-determination is synonymous with indigenous men's right to self-determination. Consequently, this article has unveiled the reality that the UNDRIP has reaffirmed the power of indigenous peoples to pursue matters affecting their communities. The author has further demonstrated the marginalisation of indigenous women that has resulted from government policies that dispossess them of their ancestral lands on the pretext of conservation and other development projects. It is argued, therefore, that it is in the interests of everyone to preserve the land and the livelihoods of the indigenous peoples in Tanzania, whose custodianship with the environment is in line with international conservation efforts. Conservation, economic development and better land use should not imply taking away the land of indigenous peoples under the pretext of conserving it, and so perpetuating the marginalisation of indigenous women in the country while allowing others to impair or compromise the environment. Although economic development in the country aims to improve the situation of citizens, it is necessary for Tanzania to consider the means it uses to develop its people without discriminating against or undermining the rights of indigenous women. Development projects in

indigenous people's territories should therefore never subscribe to the notion that "the end justifies the means" (Sen 1999).

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