

# RE-INDIGENIZING FOOD SOVEREIGNTY IN THE NGORONGORO CONSERVATION AREA

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A National Park must remain a primordial wilderness to be effective. No men, not even native ones, should live inside its borders.<sup>1</sup>

We conserve nature because we live in it, because it is our life.<sup>2</sup>

## INTRODUCTION

The establishment of Tanzania's protected areas, some of which date back to colonial times, has raised ongoing debates about the implications and desirability of conservation laws. This article examines the conflict between wildlife conservation objectives and the protection of the livelihoods of Indigenous people, particularly those negatively impacted by these laws in Tanzania. It also explores the consequences of the country's extensive network of protected lands on the Maasai people.

About 43.7% of Tanzania's landmass is protected or conserved.<sup>3</sup> Although these protections have contributed to the preservation of various wildlife species, they have also imposed significant burdens on the Indigenous people who are displaced or whose traditional activities are restricted by the protection designation. Individuals or communities occupying land under traditional customs are considered to hold a "Right of Occupancy," though ultimate ownership remains vested in the President, who holds it in trust for the benefit of all citizens of Tanzania.<sup>4</sup> Under this legal framework, the Maasai people hold a "customary/deemed right of occupancy" to their land, which includes areas now designated as the Ngorongoro Conservation Area (NCA).<sup>5</sup> Despite the existence of this customary right of occupancy, the day-to-day management of their land is, to a great extent, heavily regulated by the Ngorongoro Conservation Area

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1. MARK DOWIE, CONSERVATION REFUGEES: THE HUNDRED-YEAR CONFLICT BETWEEN GLOBAL CONSERVATION AND NATIVE PEOPLE 23 (2009) (quoting Bernhard Grzimek, Frankfurt Zoo veterinarian).

2. *Id.* (quoting a Maasai elder).

3. *United Republic of Tanzania—Country Profile*, CONVENTION ON BIOLOGICAL DIVERSITY, <https://www.cbd.int/countries/profile?country=tz> (last visited Apr. 24, 2025).

4. The Land Act, 1999, Cap. 113, ss 24–52 (Tanz.).

5. *Id.*

Authority (NCAA).<sup>6</sup> The NCAA's regulations are focused on promoting tourism and conservation objectives in the NCA.<sup>7</sup> Tourism and conservation provide the Maasai people, at best, with limited economic benefits.<sup>8</sup> At worst, government agencies and conservation organizations, in pursuit of tourism and conservation goals, displace the Maasai and prevent them from accessing the resources essential for their livelihoods.<sup>9</sup>

This article argues that Tanzania violates the fundamental right to food of the Indigenous Maasai by prohibiting subsistence cultivation and denying access to resources in the NCA that are essential to Maasai livelihoods. This article explores how both conservation efforts and Indigenous livelihoods can be safeguarded by examining experiences from protected areas in the United States, jurisprudence from the Organization of American States, and cases from Sweden and Thailand.

This article proceeds as follows: Part I introduces the Maasai people and explores their connection to Tanzania's key natural areas. It also provides historical context on the environmental injustices they have endured, including their displacement from the Serengeti, and it examines the ongoing tensions between conservation efforts in the NCA and the Maasai's ability to sustain their livelihoods. Part II delves into the concept of "fortress conservation," both in general and as applied to the Maasai in Tanzania. Part III discusses the emergence of food sovereignty as an alternative to food security in the international context and examines how recognizing the Maasai people's right to food sovereignty can serve as a tool for securing resource access. Part IV analyzes contemporary challenges that threaten the Maasai's food sovereignty in the NCA. Part V reviews global approaches that acknowledge Indigenous resource access as a means of supporting livelihoods. Finally, Parts VI and VII explore potential remedies, propose recommendations for reform, and provide a concluding analysis.

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6. Juliana Nnoko-Mewanu & Oryem Nyeko, *It's Like Killing Our Culture: Human Rights Impacts of Relocating Tanzania's Maasai*, HUM. RTS. WATCH (July 31, 2024), <https://www.hrw.org/report/2024/07/31/its-killing-culture/human-rights-impacts-relocating-tanzanias-maasai>.

7. Robert Williams, *Kicking Native People Off Their Land Is a Horrible Way to Save the Planet*, N.Y. TIMES (Feb. 20, 2024), <https://www.nytimes.com/2024/02/20/opinion/indigenous-peoples-biodiversity-climate.html>.

8. Dev Kumar Sunuwar, *Maasai Fight for Survival: Land Grabs, Evictions, and the Struggle for Cultural Identity in Tanzania*, CULTURAL SURVIVAL (Mar. 6, 2025), <https://www.culturalsurvival.org/news/maasai-fight-survival-land-grabs-evictions-and-struggle-cultural-identity-tanzania>.

9. Christine Ro, *7 Myths Harming The Maasai People In Tanzania*, FORBES (Sep. 9, 2024), <https://www.forbes.com/sites/christinero/2024/09/09/7-myths-harming-the-maasai-people-in-tanzania/>.

## I. THE MAASAI PEOPLE AND TANZANIA'S SIGNIFICANT NATURAL AREAS

Tanzania has one of the most spectacular natural environments in the world, containing a rich biodiversity. Tanzania has taken strong affirmative steps to protect its natural resources. About 43.7% of Tanzania's landmass is protected or conserved.<sup>10</sup> Indeed, Tanzania contains more than 800 protected areas,<sup>11</sup> seven of which are designated as World Heritage sites by the United Nations Educational, Scientific and Cultural Organization (UNESCO):

- (1) NCA (Mixed Cultural and Natural Heritage),
- (2) Serengeti National Park (Natural),
- (3) Ruins of Kilwa and Ruins of Songo Mnara (Cultural),
- (4) Selous Game Reserve (Natural),
- (5) Kilimanjaro National Park (Natural),
- (6) Stone Town of Zanzibar (Cultural),
- (7) Kondoa Rock-Art Sites (Cultural).<sup>12</sup>

These conservation measures have contributed to an increase in tourism, with Tanzania becoming an increasingly popular tourist destination in recent years. In 2021, there were 922,692 tourist arrivals, and the tourism sector generated \$1.4 billion USD in revenue.<sup>13</sup> By July 2023, tourist arrivals rose by 37.2%, reaching a record high of 1,658,043 visitors and generating \$2.99 billion USD.<sup>14</sup> The Tanzanian government believes it can attract five million tourists by 2025, bringing in \$6 billion USD in revenue.<sup>15</sup>

The Serengeti National Park (SNP) and NCA are two of the most famous tourist destinations in Tanzania. Before they were partitioned, they formed a united ecosystem. The Maasai people referred to the entire Serengeti-Ngorongoro ecosystem as "Ramat," which means caretaker of all (animals and people).<sup>16</sup> Today, the SNP remains one of the unaltered animal migrations locations in the world, where over one million wildebeest plus other animals partake in a 1,000 km (621 miles) annual circular trek in

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10. *United Republic of Tanzania—Country Profile*, *supra* note 3.

11. INT'L UNION FOR CONSERVATION OF NATURE, STATE OF PROTECTED & CONSERVED AREAS IN EASTERN & SOUTHERN AFRICA 131–32 (Mark Hockings et al. eds., 2020).

12. *United Republic of Tanzania*, UNESCO WORLD HERITAGE CONVENTION, <https://whc.unesco.org/en/statesparties/tz> (last visited May 14, 2025).

13. *Tourism*, TANZANIAINVEST, <https://www.tanzaniainvest.com/tourism> (last visited April 6, 2024).

14. Victor Oluwole, *Tanzania's Tourism Industry Bounces Back With 37.2% Increase in Tourist Arrivals*, BUS. INSIDER AFRICA (Sept. 11, 2023, 2:44 PM) <https://africa.businessinsider.com/local/markets/tanzanias-tourism-industry-bounces-back-with-372-increase-in-tourist-arrivals/z042j6h>.

15. Williams, *supra* note 7.

16. Geoff Taylor & Lars Johansson, *Our Voices, Our Words and Our Pictures*, FAO, <https://www.fao.org/4/x0271e/x0271e06.htm> (last visited Apr. 6, 2025).

Tanzania and Kenya.<sup>17</sup> The entire Serengeti ecosystem includes “Maswa Game Reserve (2,200km<sup>2</sup>) in the south, Grumeti and Ikorongo Game Reserves in the east, Maasai Mara National Reserve in Kenya (1,672km<sup>2</sup>) to the north, and Loliondo Game Controlled Area in the west.”<sup>18</sup> It supports an immense variety of wildlife, including two million wildebeests, 900,000 Thomson’s gazelles, and 300,000 zebras as the dominant herds.<sup>19</sup> Other herbivores include 7,000 elands, 27,000 topis, 18,000 hartebeests, 70,000 buffalos, 4,000 giraffes, 15,000 warthogs, 3,000 waterbucks, 2,700 elephants, 500 hippopotamuses, 200 black rhinoceroses, 10 species of antelope, and 10 species of primate.<sup>20</sup> Major predators include 4,000 lions, 1,000 leopards, 225 cheetahs, 3,500 spotted hyenas, and 300 wild dogs.<sup>21</sup>

The NCA, which borders the SNP, spans 8,100km<sup>2</sup> brimming with rich wildlife and awe-inspiring landscapes. It is the world’s largest caldera,<sup>22</sup> with a spectacular concentration of wildlife, including the big five (elephant, lion, leopard, buffalo, and rhino).<sup>23</sup> It was declared a world heritage site in 1979,<sup>24</sup> and it was first created as a conservation area in 1959 to provide for conservation, tourism, and the interests of the Indigenous Maasai.<sup>25</sup>

The SNP was once the homelands of the Maasai people, an Indigenous group of semi-nomadic pastoralists who depended on access to agricultural foods, exchange of livestock, and pastoral products for grain.<sup>26</sup> Throughout the area’s history, the Maasai people implemented a healthy landscape-based food system. The hooves of their cattle mix the soil and help regenerate new grassland that is essential for native wildebeest to thrive.<sup>27</sup> Additionally, the deposition of livestock dung and urine in times of mobility enhances soil fertility and aids in the growth of certain plant species.<sup>28</sup>

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17. *Serengeti National Park*, UNESCO, <https://whc.unesco.org/en/list/156/> (last visited Apr. 25, 2025).

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Ngorongoro Conservation Area*, UNESCO, <https://whc.unesco.org/en/list/39> (last visited Apr. 6, 2025).

23. *Ngorongoro Conservation Area*, NGORONGORO CONSERVATION AREA AUTHORITY, <https://www.ncaa.go.tz/> (last visited Apr. 25, 2025).

24. *Ngorongoro Conservation Area*, UNESCO, <https://whc.unesco.org/en/list/39> (last visited Apr. 6, 2025).

25. Ngorongoro Conservation Area Authority Act, 1959, Cap. 284, ss 4–20 (Tanz.).

26. KAJ ÅRHEM, PASTORAL MAN IN THE GARDEN OF EDEN: THE MAASAI OF THE NGORONGORO CONSERVATION AREA, TANZANIA 15, 17 (Univ. of Uppsala, Dept. of Cultural Anthropology 1985), <http://www.diva-portal.se/smash/get/diva2:277704/FULLTEXT01.pdf>.

27. Emma Hutchinson, *The Maasai, Wildbeest, and a Warming Serengeti*, EARTH ISLAND J. (Jan. 10, 2017), [https://www.earthisland.org/journal/index.php/articles/entry/maasai\\_wildebeest\\_and\\_warmin\\_g\\_serengeti/](https://www.earthisland.org/journal/index.php/articles/entry/maasai_wildebeest_and_warmin_g_serengeti/).

28. *Enhancing biodiversity through livestock keeping*, PASTRES, <https://pastres.files.wordpress.com/2022/09/en-infosheet-3of6.pdf>.

The Maasai use land as common resource, and their main livelihood depends on livestock-keeping (cattle economy) to provide for their basic needs: food, clothing, and shelter.<sup>29</sup> The primary, traditional diet of the Maasai includes milk and dairy products, lean beef, cattle fat, and blood.<sup>30</sup> Crop cultivation also constitutes a crucial part of the Maasai people's diet, especially at times of severe food shortages. To provide themselves with these basic needs, the Maasai people practice seasonal migration of their livestock as an adaptive strategy in search of pasture, water, and saltlicks.<sup>31</sup> This process, known as "transhumance," requires mobility because it uses the seasonal movement of livestock to suitable grazing grounds to allow the land to regenerate.<sup>32</sup> Notably, the transhumance practice, based on a communal land management system, allows for a sustainable use of resources under normal conditions; for example, where there are reserve pastures and adequate rainfall.<sup>33</sup>

The formal protection of wildlife in the SNP dates to 1940 when the British colonial government enacted a Game Ordinance.<sup>34</sup> While the ordinance imposed restrictions on human settlement, it granted exemptions for existing grazing and water rights, allowing certain residents to remain.<sup>35</sup> The Maasai were not the only inhabitants; groups such as the Ndorobo and Sukuma also lived in the park, engaging in hunting and cultivation.<sup>36</sup> This conservation effort aimed to safeguard the Serengeti's unique ecosystems and wildlife, which faced growing threats from human activities, particularly the rise of trophy hunting and exploration by white hunters.<sup>37</sup> The trophy hunting culture, which celebrated the indiscriminate killing of animals, had a devastating effect on wildlife populations.<sup>38</sup> In response, the colonial

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29. Nat'l Geographic Soc'y, *The Cattle Economy of the Maasai*, NAT'L GEOGRAPHIC, <https://education.nationalgeographic.org/resource/cattle-economy-maasai> (last updated Oct. 19, 2023).

30. *Id.*

31. *Pastoralism of the Maasai*, U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, <https://www4.unfccc.int/sites/NWPStaging/Pages/item.aspx?ListItemId=23410&ListUrl> (last visited Apr. 25, 2025).

32. Teagan Wolter, *Transhumance*, BRITANNICA, <https://www.britannica.com/topic/transhumance>, (Apr. 11, 2025).

33. *Maasai Land and Livestock Management: Sustainable Practices and Challenges Faced by the Maasai in Modern Times*, 100 HUMANITARIANS INT'L, <https://100humanitarians.org/maasai-land> (last visited May 14, 2025).

34. Ylenia Gostoli, *Maasai Plight in Tanzania Shows 'Colonial' Roots of Conservation*, TRTWORLD (2022), <https://www.trtworld.com/magazine/maasai-plight-in-tanzania-shows-colonial-roots-of-conservation-58472>.

35. RODERICK NEUMANN, *The Production of Nature: Colonial Recasting of the African Landscape in the Serengeti National Park*, in POLITICAL ECOLOGY: AN INTEGRATIVE APPROACH TO GEOGRAPHY AND ENVIRONMENT-DEVELOPMENT STUDIES 246 (Karl S. Zimmerer & Thomas J. Bassett, eds., 2003).

36. *Id.* at 249.

37. *History of Serengeti National Park*, SERENGETI, <https://serengetipark.org/serengeti-national-park-history/> (last visited Apr. 6, 2025).

38. *Id.*

administration implemented game reserves and introduced early conservation laws, such as the Game Preservation Ordinance of 1921, to regulate hunting and protect endangered species from overexploitation.<sup>39</sup>

When Bernhard Grzimek, veterinary surgeon and Adolph Hitler's director of the Frankfurt Zoo, first saw the Serengeti in 1954,<sup>40</sup> he declared the Serengeti a "primordial wilderness" and said that no one, "not even natives," should live within its borders.<sup>41</sup> Grzimek was of the view that the pastoral Indigenous Maasai, who had co-existed and lived in harmony with nature, would eventually destroy the ecosystem. Grzimek wrote, "We Europeans must teach our black brothers to value their own possession . . . because we do not want them to repeat our mistakes and our sins."<sup>42</sup> But what Grzimek failed to consider was that the Indigenous Maasai had lived sustainably and were original stewards of the land—thriving on the same transhumance practices since time immemorial.

To colonial preservationists, the Maasai people were regarded as part of the colonial landscape, to be preserved "as part of our fauna."<sup>43</sup> When these European stereotypes were not met, efforts were made to enforce conformity. In the same year, the colonial administration imposed a prohibition on agriculture, prompting the Maasai and local farmers to form an alliance to defend their subsistence livelihoods against restrictive conservation policies.<sup>44</sup> For the Maasai people, agriculture became a form of risk insurance, offering a safety net for their vulnerable pastoral economy.<sup>45</sup> However, colonial agricultural prohibitions and land restrictions profoundly impacted the Maasai residents of the Serengeti, disrupting their traditional practices, limiting their ability to supplement their food supply, and causing environmental challenges due to the reduced availability of grazing land.<sup>46</sup>

By 1957, a proposal was put forth by a British-led "Committee of Enquiry" to partition the SNP into two, so as to preserve the area's valuable biodiversity.<sup>47</sup> The first area would become the SNP, where habitation and related human activities would be prohibited, including those of the Indigenous Maasai, who inhabited the area of the SNP long before the

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39. *History of Serengeti National Park*, *supra* note 37.

40. DOWIE, *supra* note 1, at 24.

41. *Id.*

42. BERNHARD GRZIMEK & MICHAEL GRZIMEK, SERENGETI SHALL NOT DIE 136–37 (1969).

43. *Serengeti National Park Board of Management meeting minutes*, TNA Secretariat File 40851 (July 7, 1953) (Barclay Leechman, Chairman of the Serengeti National Park Board of Management).

44. ÅRHEM, *supra* note 26, at 70.

45. *Id.*

46. ANURADHA MITTAL & ELIZABETH FRASER, LOSING THE SERENGETI: THE MAASAI LAND THAT WAS TO RUN FOREVER 7 (Heather Blackie ed., The Oakland Inst. 2018).

47. *Id.* at 22.

establishment of the park.<sup>48</sup> The second area would be the NCA with three management objectives: conserving natural resources, protecting the interests of Indigenous pastoralists (Maasai), and promoting tourism.<sup>49</sup>

The British colonial administration successfully persuaded the Maasai people to vacate the SNP.<sup>50</sup> They promised, among other things, to provide the Maasai with better water resources, access to grazing areas, and opportunities for crop cultivation in the NCA, all of which are very essential for the Maasai's cultural survival and livelihoods.<sup>51</sup> The Indigenous Maasai people ultimately agreed to vacate the newly formed park based on these promises.<sup>52</sup> However, those promises were repeatedly broken, starting immediately after Tanzania's independence in 1961.<sup>53</sup>

Upon arrival to the NCA, the Maasai who had been evicted from the SNP merged with the existing Maasai community that had already occupied the NCA before its creation. Under Tanzania's land laws, the Maasai people possess a deemed right of occupancy in the NCA, established through historical and continual use over an extended period.<sup>54</sup> There is no legal provision explicitly revoking these rights. However, the NCAA holds extensive statutory powers over the management of the area, including the authority to regulate the Maasai people's daily interactions with the land and its resources.<sup>55</sup>

Bernhard Grzimek's campaign to displace the Maasai people continued in the NCA through the Frankfurt Zoological Society, which had sponsored Grzimek's forays to the Serengeti.<sup>56</sup> Some post-independence administrations, stemming from Tanzania's colonial history, perpetuated this practice through continuing colonial-era education and ideological frameworks, legal systems, and converting large areas of land into protected zones across the country to enhance tourism revenues.<sup>57</sup> To accomplish this goal, government agencies and campaigns systematically excluded local communities while promoting the vested interests of powerful European elites.<sup>58</sup>

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48. Peter J. Rogers, *International Conservation Governance and the Early History of the Ngorongoro Conservation Area, Tanzania*, 4 GLOB. ENV'T 78, 88 (2009).

49. UNESCO, *supra* note 22.

50. DOWIE, *supra* note 1, at 26.

51. *Id.*

52. *Id.*

53. *Id.* at 29–30.

54. ISSA SHIVJI & WILBERT KAPINGA, MAASAI RIGHTS IN NGORONGORO, TANZANIA 40 (Margaret Cornell et al., eds., 1998).

55. Ngorongoro Conservation Area Authority Act, 1959, Cap. 284, ss 4–20 (Tanz.).

56. DOWIE, *supra* note 1, at 29–30.

57. Abdallah R. Mkumbukwa, *The Evolution of Wildlife Conservation Policies in Tanzania During The Colonial and Post-Independence Periods*, 25 DEV. OF S. AFRICA 589, 593–94 (2008).

58. *Id.*

For generations, the Maasai of the NCA lived in harmony with the land, practicing a delicate balance between pastoralism and small-scale cultivation. Agriculture was once permitted in select areas—Enduleni, Kakesio, and Empakaai—allowing the Maasai to supplement their diet with maize, beans, and potatoes, particularly during times of drought.<sup>59</sup> However, the growing influence of conservationist lobbying groups cast their traditional practices under scrutiny, and by 1975, cultivation was banned entirely.<sup>60</sup>

The Maasai had long asserted that they were not purely pastoralists. While cattle remained central to their way of life, subsistence farming had always been a necessary safeguard against unpredictable droughts and disease outbreaks.<sup>61</sup> Yet, conservation authorities argued that Maasai farming contributed to soil erosion.<sup>62</sup> Ironically, the very policies meant to protect the environment led to overgrazing and land degradation as the Maasai were pushed into smaller areas.<sup>63</sup> Conservation efforts, rather than preserving a balanced ecosystem, forced the Maasai into increasingly unsustainable conditions.

A key justification for the cultivation ban was the fear that farming would expand uncontrollably. Government officials claimed that preventing extensive agriculture was only possible by prohibiting it altogether.<sup>64</sup> But in reality, the Maasai had never engaged in extensive farming. Their small plots—typically no more than two acres—stood in stark contrast to the larger fields cultivated by non-Indigenous residents of Ngorongoro, including hospital workers, teachers, shopkeepers, and government officials.<sup>65</sup> These outsiders, whose farmlands were often twice the size of Maasai plots, were mistakenly associated with the Maasai, ultimately resulting in a complete ban on subsistence cultivation.

At the heart of these policies lay a persistent misconception: the belief that the Maasai were, and had always been, purely pastoralists.<sup>66</sup> Yet, historical records suggest otherwise. As early as the 1890s, the Maasai had integrated cultivation into their way of life, relying on small harvests when cattle alone could not sustain them.<sup>67</sup> Far from being a modern adaptation, farming had been a deeply ingrained part of their survival strategy.

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59. ÅRHEM, *supra* note 26, at 35–36.

60. SHIVJI & KAPINGA, *supra* note 54, at 41.

61. *Id.*

62. *Id.* at 39.

63. *Id.*

64. Randall Boone et al., *Cultivation and Conservation in Ngorongoro Conservation Area, Tanzania*, 34 HUM. ECOLOGY 1, 809–28 (2006).

65. SHIVJI & KAPINGA, *supra* note 54, at 40.

66. *Id.*

67. *Id.*

Over the years, restrictions on the Maasai's traditional transhumance practices—moving livestock in search of pasture—have intensified. Conservation laws and tourism-driven policies have systematically reduced their grazing lands and displaced them from their ancestral territories.<sup>68</sup> The internationally-recognized conservation and tourism status of their homeland has come at a direct cost to the Maasai, contributing to widespread food insecurity.<sup>69</sup> Many East African governments, including Tanzania, hold the view that ranches with rotational grazing, regulated stocking levels, high-performance cattle breeds, and improved veterinary care produce more beef of superior quality compared to pastoralist systems.<sup>70</sup> However, this viewpoint overlooks a substantial body of research showing that pastoralism makes significant economic contributions to national and regional economies and can be far more productive per hectare than commercial ranching in comparable environments. Climate change has only exacerbated these hardships, making it increasingly difficult to endure prolonged droughts.<sup>71</sup> Despite this, pastoralism presents a promising solution.

Research shows that pastoralist landscapes can maintain a neutral or even positive carbon balance. Grazing livestock stimulates plant growth, which helps store carbon in the soil, and mobile herding systems contribute to carbon cycling through the natural distribution of manure and urine.<sup>72</sup> The United Nations Development Programme (UNDP) has also emphasized the importance of Maasai Indigenous knowledge in enhancing climate resilience, noting that the Maasai play a “vital role in preventing land degradation and conserving ecosystems” through practices rooted in harmony with nature.<sup>73</sup> However, ongoing droughts across the pasturelands of Kenya and Tanzania pose a serious threat to their way of life.<sup>74</sup>

The prohibition on subsistence farming in the NCA remains a deeply contentious issue under Tanzanian law. Opponents of cultivation argue that

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68. Dev Kumar Sunuwar, *Maasai Fight for Survival: Land Grabs, Evictions, and the Struggle for Cultural Identity in Tanzania*, CULTURAL SURVIVAL (Mar. 6, 2025), <https://www.culturalsurvival.org/news/maasai-fight-survival-land-grabs-evictions-and-struggle-cultural-identity-tanzania>.

69. Ngorongoro Conservation Area, UNESCO WORLD HERITAGE CONVENTION, <https://whc.unesco.org/en/list/39/> (last visited Apr. 19, 2025).

70. Joseph Ole Simel, *Pastoralism And The Challenges Of Climate Change*, in INDIGENOUS AFFAIRS (2009) [https://iwgia.org/images/publications/IA\\_3-09.pdf](https://iwgia.org/images/publications/IA_3-09.pdf).

71. CECILIA M. LEWERI ET AL., RAINFALL VARIABILITY AND SOCIO-ECONOMIC CONSTRAINTS ON LIVESTOCK PRODUCTION IN THE NGORONGORO CONSERVATION AREA, TANZANIA pt. 5 (Discover Applied Sci., 2021).

72. *The Benefits of Pastoralism for Biodiversity and Climate*, PASTRES PROGRAMME (2022), <https://pastres.org/wp-content/uploads/2022/09/en-infosheet-1of6.pdf>.

73. *Maasai Communities Harness the Resilience of Native Plants to Restore Grasslands in Tanzania*, U.N. DEV. PROGRAMME (Sept. 23, 2024), <https://climatepromise.undp.org/news-and-stories/maasai-communities-harness-resilience-native-plants-restore-grasslands-tanzania>.

74. *Id.*

permitting farming would lead to widespread agricultural expansion; that the Maasai have only recently begun farming; and that those who wish to cultivate should leave the NCA.<sup>75</sup> However, these arguments fail to acknowledge the Maasai people's right to determine their own food systems and traditional livelihoods. To this day, no alternative solutions have been provided, and food insecurity among the Maasai people has worsened.

Against this backdrop of dispossession and broken promises, the right to food sovereignty must be re-centered. The Maasai people deserve to self-determine their own food sources, preserve their cultural food traditions, and sustain their way of life in the land they have called home for centuries.

## II. FORTRESS CONSERVATION AND ITS DEFICIENCIES

The conquest of the earth, which mostly means the taking it away from those who have a different complexion or slightly flatter noses than ourselves, is not a pretty thing when you look into it too much. What redeems it is the idea only. An idea at the back of it; not a sentimental pretence but an idea; and an unselfish belief in the idea—something you can set up, and bow down before, and offer a sacrifice to.<sup>76</sup>

In the 20th century, conservationists and environmentalists sought to protect wildlife and biodiversity by establishing protected areas free from human disturbance.<sup>77</sup> This strategy, now widely known as the “fortress conservation model,” has been implemented across the globe.<sup>78</sup> Supporters of this approach argue that conservation should take precedence in certain ecologically significant areas, particularly where species or ecosystems are fragile or rare.<sup>79</sup> They further contend that restricting economically productive activities—such as logging, grazing, and cultivation—within these areas is essential to preserving biodiversity.<sup>80</sup>

However, the fortress conservation model has faced widespread criticism for its role in displacing and marginalizing Indigenous communities in creating protected areas. By restricting access to lands and resources that

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75. SHIVJI & KAPINGA, *supra* note 54.

76. Joseph Conrad, *The Heart of Darkness*, 165 BLACKWOOD'S EDINBURGH MAG. 193, 196 (1899).

77. Karl Jacoby et al., *Fortress Conservation*, OUTSIDE/IN (Nov. 5, 2020) <https://outsideinradio.org/shows/fortressconservation>.

78. *Id.*

79. Peter Clark, *Fortress Conservation and Community-Based Conservation: both have advantages and disadvantages*, NAT'L PARKS OF PARA. (Dec. 23, 2021) <https://parquesnacionalesdelparaguay.blogspot.com/2021/12/fortress-conservation-and-community.html>.

80. *Id.*

local populations have traditionally depended on,<sup>81</sup> this approach fosters deep distrust and socioeconomic hardship. It is rooted in the assumption that human communities and conservation are inherently in conflict, often leading to policies that exclude local voices and limit meaningful community participation. As a result, the model not only disrupts traditional livelihoods, but it also undermines the potential for collaborative conservation efforts that recognize and integrate Indigenous knowledge and stewardship.

In the case of the Maasai people in the Ngorongoro Conservation Area (NCA), the fortress conservation model continues to reinforce and perpetuate racist and colonial attitudes, prioritizing discriminatory viewpoints over sound resource-management principles.<sup>82</sup> A stark example of this is the suppression of traditional Maasai fire-management practices, which historically played a vital role in maintaining pasturelands. Fire was strategically used to control disease-bearing ticks, rejuvenate grasslands, and create forest glades with high-quality forage.<sup>83</sup> Infested pastures would be temporarily abandoned and burned, effectively eliminating disease threats before livestock returned.<sup>84</sup> However, conservation policies have disregarded these time-tested Indigenous practices, undermining both ecological balance and pastoral livelihoods.

Beyond restricting traditional land management, the fortress model also dismisses the stewardship values of the Maasai and their potential contributions to biodiversity conservation. Instead of fostering cooperation, it remains regulation-heavy and penalty-rich.<sup>85</sup> The Ngorongoro Conservation Area Authority (NCAA) exercises broad control over entry into the NCA, dictates grazing access, and frequently imposes hefty fines on those it deems violators.<sup>86</sup> Moreover, the fortress model has led to the continued displacement of the Maasai from their ancestral lands without meaningful consultation, participation, or adequate compensation.<sup>87</sup> These exclusionary policies have fueled resentment and resistance, ultimately undermining conservation objectives rather than promoting sustainable coexistence.

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81. Clark, *supra* note 79.

82. DOWIE, *supra* note 1, at 30 (2009). Bernhard Grzimek's fortress conservation campaign continued in the NCA through the Frankfurt Zoological Society, which had sponsored Grzimek's forays to the Serengeti.

83. RODERICK NEUMANN, *The Production of Nature: Colonial Recasting of the African Landscape in the Serengeti National Park*, in *POLITICAL ECOLOGY: AN INTEGRATIVE APPROACH TO GEOGRAPHY AND ENVIRONMENT-DEVELOPMENT STUDIES* 248–49 (Karl S. Zimmerer & Thomas J. Bassett, eds., 2003).

84. *Id.*

85. Ngorongoro Conservation Area Authority Act, 1959, Cap. 284, ss 35–39 (Tanz.).

86. *Id.*

87. Anuradha Mittal, *Urgent Alert: Tanzania Government on a Rampage Against Indigenous People*, OAKLAND INST. (Jan. 25, 2024, 11:00 PM PST), <https://www.oaklandinstitute.org/urgent-alert-tanzanian-government-rampage-against-indigenous-people>.

The marginalization of the Maasai people and the erosion of their food sovereignty in the name of conservation stand in stark contrast to the growing global recognition of Indigenous rights in environmental protection. Conservation organizations worldwide increasingly acknowledge that the survival of Indigenous people and the preservation of nature are inherently interconnected and cannot be meaningfully separated.<sup>88</sup> This recognition must extend to the NCA, where conservation strategies should not come at the cost of Indigenous livelihoods. Moving forward, NCA management must ensure the meaningful inclusion of the Maasai in decision-making processes and guarantee their access to critical resources such as pasture, water, and salt licks—resources essential for sustaining their culturally significant food systems and way of life.

### III. THE MAASAI PEOPLES' RIGHT TO FOOD SOVEREIGNTY

#### *A. The Essential Nature of Food Sovereignty*

In the NCA, and indeed across the world, Indigenous people face higher levels of food insecurity. According to one report, “the surveyed communities (in Nainokanoka ward within the NCA) experience anxiety and uncertainty about food supply (77.3% of the households), insufficient quality in terms of variety and preferences (74.1%), and insufficient food intake (55.9%).”<sup>89</sup> More than half of the households are food insecure.<sup>90</sup>

Food security has become a concept widely used by governments and implemented in agricultural policies. According to the Food and Agriculture Organization, food security is achieved when everyone consistently has both physical and financial access to adequate, safe, and nutritious food that meets their dietary needs and preferences, enabling them to maintain a healthy and active lifestyle.<sup>91</sup> This definition reflects the multidimensional nature of food security: the availability of food, access to food, utilization, and stability.<sup>92</sup> Though noble in its intent to end hunger and food shortage, the means used in the production of food appear to be less significant to the concept. A lack of self-determination is linked to food insecurity. A more holistic effort to address hunger, especially for Indigenous people, would not just be about the

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88. Janis B. Alcorn, *Indigenous People and Conservation*, 7 CONSERVATION BIO. 424, 425 (1993).

89. J. Safari et al., *Food Insecurity in Pastoral Communities of Ngorongoro Conservation Area*, 11 AGRIC. & FOOD SEC. 36 (2022).

90. *Id.*

91. *Fact Sheet No. 34: The Right to Adequate Food*, U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS. (2010), <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf> (last visited Apr. 19, 2025).

92. *Food Security*, FOOD & AGRIC. ORG. OF THE U.N. (2006), [https://www.fao.org/fileadmin/templates/faaitaly/documents/pdf/pdf\\_Food\\_Security\\_Coept\\_Note.pdf](https://www.fao.org/fileadmin/templates/faaitaly/documents/pdf/pdf_Food_Security_Coept_Note.pdf).

lack of access to food. It should also encompass the political economy of environmental change and the importance of cultural and spiritual dimensions of Indigenous and ecologically-grounded foodways.<sup>93</sup>

Food sovereignty, on the other hand, as a critical alternative to the concept of food security, is broadly defined as the right of local people to define their own food systems, food cultures, production modes, and markets.<sup>94</sup> The two terms are related but differ in their approaches and results: food security focuses on the supply of food to communities, whereas food sovereignty takes into account the inherent power in food systems.<sup>95</sup> Food sovereignty recognizes both the people and the power inherent in food systems and aims to link production to consumption.<sup>96</sup>

First proposed in 1996 by “La Via Campesina” in its manifesto, *Food Sovereignty: A Manifesto for the Future of Our Planet*,<sup>97</sup> “food sovereignty” aimed to go beyond food security to address the challenges that confront oppressed people in Latin America and the world. As defined by Masioli and Nicholson, food sovereignty is:

[T]he right of peoples to decide and produce their own food. It is a political right to organize ourselves, to decide what to plant, to have control of seeds. Food sovereignty is a very broad concept that includes the right of access to seeds, the right to produce, to trade, to consume one’s own foods . . . it is a concept that is linked to the autonomy and sovereignty of peoples.<sup>98</sup>

The concept of food sovereignty has since evolved into a global social movement, influencing national policies and even constitutional frameworks. Countries such as Ecuador,<sup>99</sup> Bolivia,<sup>100</sup> Venezuela,<sup>101</sup> and Nepal<sup>102</sup> have

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93. Lucy Jarosz, *Considering Sovereignty, Care Ethics and Policy in Food Politics*, 4 DIALOGUES IN HUM. GEOGRAPHY 229, 330–31 (2014).

94. Karlah Rae Rudolph & Stephane McLachlan, *Seeking Indigenous Food Sovereignty: Origins of Responses to the Food Crisis in Northern Manitoba, Canada*, 18 LOC. ENV’T: INT’L J. OF JUST. & SUSTAINABILITY 1079, 1080–81 (2013).

95. *Id.*

96. Hannah Wittman et al., *The Origins & Potential of Food Sovereignty*, FOOD SOVEREIGNTY: RECONNECTING FOOD, NATURE AND COMTY., Jan. 2010, at 1, 2.

97. *Food Sovereignty: A Manifesto for the Future of Our Planet*, LA VIA CAMPESINA (Oct. 13, 2021), <https://viacampesina.org/en/food-sovereignty-a-manifesto-for-the-future-of-our-planet-la-via-campesina/>.

98. Tabitha Martens et al., *Understanding Food Sovereignty Through an Indigenous Research Paradigm*, 5 J. OF INDIGENOUS SOC. DEV. 18, 20 (2016).

99. CONSTITUCION REPUBLICA DE LA ECUADOR CONSTITUCION DE 2008 Oct. 20, 2008, tit. VI, ch. III, art. 281–82 (Ecuador).

100. CONSTITUCION POLITICA DEL ESTADO 2009 Feb. 7, 2009, tit. VII ch., I art. 255 (Bol.).

101. CONSTITUCION DE LA REPUBLICA BOLIVARIANA DE VENEZUELA 1999, Dec. 20, 1999, tit. VI, ch. I, art. 305 (Venez.).

102. CONSTITUTION OF NEPAL 2015, art. 36 (3).

enshrined food sovereignty in their constitutions as a means of ensuring food needs for their populations. Meanwhile, nations like Mali and Senegal have adopted food sovereignty policies,<sup>103</sup> with grassroots movements playing a crucial role in shaping and implementing these initiatives at both national and international levels.<sup>104</sup> In line with this, the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas was adopted by the United Nations General Assembly in 2018.<sup>105</sup> Article 15.2 recognizes this right as both an individual and collective one, enabling each peasant or rural worker to fully exercise it in a manner that is intrinsically connected to their human dignity.<sup>106</sup> This right can also be asserted collectively by specific social groups or communities, which is especially important when addressing the right to adequate food and nutrition.<sup>107</sup>

For Indigenous communities, food sovereignty holds particular significance because historical food policies have often been tied to discrimination and cultural erasure. The loss of bison in the Canadian prairies, for instance, not only disrupted the livelihoods of First Nations, but it also eroded their cultural and traditional identity, altering the balance of power in favor of the Canadian state.<sup>108</sup> Similarly, in the NCA, the prohibition of cultivation stripped the Maasai of their ability to grow food as a supplement during times of scarcity.<sup>109</sup> Restrictions on land access have further disrupted the Maasai's transhumance practices, eroding Indigenous foodways and increasing dependence on government aid.<sup>110</sup> This shift has exacerbated food insecurity and public health crises, both physical and emotional.<sup>111</sup> Reclaiming the power inherent in food systems is therefore essential for Indigenous self-determination and cultural survival.

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103. Tina D. Beuchelt & Detlef Virchow, *Food Sovereignty or the Human Right to Adequate Food: Which Concept Serves Better as International Development Policy for Global Hunger and Poverty Reduction?*, 29 AGRIC. & HUM. VALUES 259, 263 (2012).

104. See Priscilla Claeys, *From Food Sovereignty to Peasants' Rights: An Overview of La Via Campesina's Rights-Based Claims over the Last 20 Years*, in FOOD SOVEREIGNTY: A CRITICAL DIALOGUE, Conference Paper No. 24, at 4 (Sept. 2013).

105. G.A. Res. 73/165, at 1 (Dec. 17, 2018).

106. *Id.* at 11.

107. *Id.*

108. See JAMES DASCHUK, *CLEARING THE PLAINS: DISEASE, POLITICS OF STARVATION, AND THE LOSS OF ABORIGINAL LIFE* 96–114 (Univ. of Regina Press, 2013) (2013) (discussing the destruction of bison populations in Canada and the ensuing starvation of First Nations peoples, forcing them to sign treaties with the Canadian state to survive).

109. Ngorongoro Conservation Area Authority Act, 1959, Cap. 284, s 25 (Tanz.).

110. Christine Ro, *7 Myths Harming the Maasai People in Tanzania*, FORBES (Sept. 9, 2024, 7:49 AM), <https://www.forbes.com/sites/christinero/2024/09/09/7-myths-harming-the-maasai-people-in-tanzania/>.

111. John G. Safari et al., *Food Insecurity in Pastoral Communities of Ngorongoro Conservation Area, Tanzania*, 11 AGRIC. & FOOD SEC. ART. 36 (2022), <https://agricultureandfoodsecurity.biomedcentral.com/articles/10.1186/s40066-022-00374-5>.

Indigenous food sovereignty is more than just a concept—it is a movement that seeks to restore the deep spiritual and cultural connections between Indigenous people and their traditional food systems. It challenges the existing power structures that have historically displaced Indigenous communities from their lands and disrupted their ways of producing and consuming food. At its core, Indigenous food sovereignty acknowledges that food is not merely a commodity but a sacred gift that sustains both body and spirit.

Recognizing the importance of these issues, the Indigenous Food Systems Network has established a set of guiding principles aimed at restoring and protecting Indigenous food systems.<sup>112</sup> The first principle declares that food is sacred and must be treated with respect,<sup>113</sup> ensuring that traditional practices are honored and upheld. Second, participation in land-based food activities is also essential<sup>114</sup>—reconnecting with traditional harvesting, farming, and hunting practices fosters self-sufficiency and cultural resilience. Third, self-determination is a cornerstone of Indigenous food sovereignty,<sup>115</sup> affirming that Indigenous communities must have the authority to govern their own food systems without external interference. Lastly, legislative and policy reforms are necessary to secure lasting protections for Indigenous foodways,<sup>116</sup> ensuring that future generations can continue to cultivate and consume food in a way that aligns with their cultural traditions.

The significance of food sovereignty extends beyond just access to food—it is deeply connected to the ability of Indigenous people to control and improve access to resources essential for survival. While the Tanzanian Constitution does not explicitly enshrine food sovereignty as a right, legal arguments can be made that it is embedded within existing provisions. For example, Article 14 guarantees the right to life, which can be interpreted to include the right to secure basic necessities.<sup>117</sup> This provision can serve as a legal foundation for the Maasai people to demand access to essential resources such as grazing land, water, and seasonal migratory routes for their

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112. INDIGENOUS FOOD SYSTEM NETWORK, <https://www.indigenousfoodsystems.org/> (last visited Apr. 24, 2025). The Indigenous Food Systems Network (IFSN) is an initiative developed by the Working Group on Indigenous Food Sovereignty (WGIFS) to facilitate networking and information sharing among individuals and groups engaged in Indigenous food-related actions, research, and policy reform. Its mission is to support the revitalization and preservation of Indigenous land and food systems by fostering relationships and understanding among diverse stakeholders, including traditional harvesters, farmers, community members, academics, and civil society organizations.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. The Constitution of the United Republic of Tanzania, Art. 14.

livestock. It also supports their right to engage in supplemental cultivation during periods of food scarcity.

Similarly, food sovereignty aligns with the right to own property under Article 24, which should extend to subsistence cultivation, even when land is used as a common resource under customary rights of occupancy.<sup>118</sup> However, Tanzanian courts have often invoked technical legal reasoning to reject Indigenous peoples' claims to collective land rights.<sup>119</sup> The country's legal framework has historically prioritized individual rights over collective claims, creating significant barriers for Indigenous groups seeking to assert their rights to land and livelihoods.<sup>120</sup> Substantive laws have primarily emphasized individual rights, often neglecting claims rooted in a livelihoods-based protection framework grounded in collective rights.<sup>121</sup>

This legal orientation has particularly disadvantaged communities like the Maasai, who rely on communal land tenure for grazing, resource access, and cultural preservation. The Tanzanian Constitution does not explicitly recognize collective rights concerning land, culture, or self-determination, further weakening legal protections for Indigenous groups. While the Village Land Act of 1999 acknowledges customary land tenure systems, it does not provide robust protections for collective ownership, leaving communities vulnerable to land dispossession and tenure insecurity.<sup>122</sup>

Beyond domestic law, international human rights instruments also provide legal grounds for Indigenous food sovereignty. Tanzania, as a state party to the African Charter on Human and Peoples' Rights, falls under the jurisdiction of the African Court on Human and Peoples' Rights regarding disputes over its interpretation.<sup>123</sup>

In the landmark case of *SERAC v. Nigeria*, the African Commission affirmed the right to food as a fundamental aspect of human dignity,<sup>124</sup> intrinsically linked to other fundamental rights such as health, education, and work.<sup>125</sup> The ruling established that governments must not only ensure food

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118. The Constitution of the United Republic of Tanzania, Art. 14.

119. Chris Maina Peter, *Human Rights of Indigenous Minorities in Tanzania and the Courts of Law*, 14 INT'L J. ON MINORITY & GRP. RTS. 1, 19–38 (2007).

120. Edward Loure & Edward Lekaita, *Securing Collective Land Tenure for Hunter-Gatherers in Tanzania*, NAMATI (Feb. 12, 2016), <https://namati.org/news-stories/ucrt-case-study/>.

121. Peter, *supra* note 119, at 18.

122. The Village Land Act No. 5 of 1999, Cap. 114, ss 7–59 (Tanz.).

123. *State Parties to the African Charter*, AFR. COM. ON HUM. AND PEOPLES' RTS., <https://achpr.au.int/en/states> (last visited Apr. 20, 2025).

124. Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria, Communication 155/96, African Commission on Human and People's Rights [Afr. Comm'n H.P.R.], ¶ 65 (Oct. 27, 2001), [https://leap.unep.org/sites/default/files/court-case/achpr30\\_155\\_96\\_eng.pdf](https://leap.unep.org/sites/default/files/court-case/achpr30_155_96_eng.pdf).

125. *Id.*

security but also refrain from actions that destroy or limit access to food sources.<sup>126</sup>

Similarly, in the case of *Batwa of Kahuzi-Biega National Park v. Democratic Republic of Congo* (DRC), the African Commission on Human and Peoples' Rights ruled that the DRC government had violated the Batwa's land and other rights by establishing the Kahuzi-Biega National Park.<sup>127</sup> The decision rejected the fortress conservation model as ineffective for biodiversity protection, emphasizing that Indigenous people are the best stewards of nature.<sup>128</sup> The Commission found the DRC in violation of 11 articles of the African Charter, including the Batwa's rights to life, property, natural resources, development, health, religion, and culture.<sup>129</sup> It called on the government to legally recognize and protect Batwa lands and resources, ensuring their access and use in accordance with their traditions.<sup>130</sup>

Applying these principles to Tanzania, the government should take concrete steps to guarantee the Maasai permanent and unrestricted access to grazing land, water, and other essential resources. Additionally, the ban on subsistence cultivation in the NCA should be repealed to uphold Maasai food sovereignty and fundamental rights.

Further guidance can be drawn from the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which offers strong moral and legal considerations for Tanzanian courts and NCA authorities. UNDRIP affirms that states must (1) consult and cooperate in good faith with Indigenous people to obtain their free, prior, and informed consent;<sup>131</sup> (2) ensure that Indigenous people secure their own means of subsistence;<sup>132</sup> and (3) that "Indigenous people have the right to own, use, develop and control the lands, territories and resources they possess by reason of traditional ownership or other traditional occupation or use."<sup>133</sup>

To fulfill these obligations, NCA authorities must engage in meaningful and good faith consultation with the Maasai people, ensuring their full

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126. Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria, Communication 155/96, African Commission on Human and People's Rights [Afr. Comm'n H.P.R.], ¶ 65 (Oct. 27, 2001), [https://leap.unep.org/sites/default/files/court-case/achpr30\\_155\\_96\\_eng.pdf](https://leap.unep.org/sites/default/files/court-case/achpr30_155_96_eng.pdf).

127. Minority Rights Group International and Environmental Resources Naturelles et Developpement (on behalf of the Batwa of Kahuzi-Biega National Park, DRC) v. Democratic Republic of Congo (DRC), Communication 588/15, African Commission on Human and People's Rights [Afr. Comm'n H.P.R.], ¶ 227-28 (May 13, 2022), <https://minorityrights.org/app/uploads/2024/07/communication-588-002-decision--english-version.pdf>.

128. *Id.* at ¶ 230.

129. *Id.* at ¶ 227.

130. *Id.* at ¶ 233.

131. G.A. Res. 61/295, annex, United Nations Declaration on the Rights of Indigenous Peoples, Article 19 (Sept. 13, 2007).

132. *Id.* at Article 20.

133. *Id.* at Article 26(2).

participation in decisions that affect their livelihoods. Consultation is a matter of justice and human rights. The Maasai people have an ancestral claim in the NCA and must be treated as active stakeholders in its governance. Their exclusion from decision-making has resulted in policies that have disrupted their traditional practices, restricted their access to critical resources, and even led to forced evictions. By engaging in meaningful community participation, NCA authorities can uphold the fundamental rights of the Maasai and prevent the injustices that arise from unilateral decision-making.

Furthermore, effective conservation cannot be achieved through coercion or exclusion. Attempts to remove or limit the presence of Indigenous communities often lead to resistance, conflict, and even greater environmental harm. Collaborative conservation models, where Indigenous scientific knowledge and modern science work together, have proven successful in various parts of the world.<sup>134</sup> The NCA should be no exception. Consultation with the Maasai is not only a legal and ethical obligation but also a pragmatic approach to sustainable conservation. Recognizing the Maasai as equal partners rather than obstacles will lead to policies that respect human rights, integrate traditional scientific knowledge, and promote a more inclusive and effective conservation strategy. If the NCA is to be a model for conservation, it must also be a model for justice, equity, and collaboration.

*B. Contemporary Issues that Threaten and Impede Indigenous Food Sovereignty in the Ngorongoro Conservation Area*

Under the Ngorongoro Conservation Area Authority Act (NCAAA), the Ngorongoro Conservation Area Authority (NCAA), a body corporate<sup>135</sup> with perpetual succession, is tasked with three management objectives: conserving land,<sup>136</sup> promoting tourism,<sup>137</sup> and safeguarding and promoting the interests of the Maasai people.<sup>138</sup> Despite the clear mandate to safeguard and promote the interest of the Indigenous Maasai, conservation and tourism revenues have been the dominant force in shaping laws to constrain

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134. See, e.g., *Co-Management of National Parks with Traditional Owners*, GOV'T OF S. AUSTRALIA, <https://www.environment.sa.gov.au/topics/park-management/co-management-of-parks> (last visited Apr. 20, 2025).

135. The NCAAA creates a board that consists of a chair, who shall be appointed by the President; a conservator, who shall be secretary of the board; and no less than six, but no more than eleven, members appointed by the minister to performing functions regarding the national interest. However, the NCAAA does not recognize or mandate the appointment of Maasai leaders as board members. Ngorongoro Conservation Area Authority Act, 1959, Cap. 284, s 5 (Tanz.).

136. *Id.* at s 6(a).

137. *Id.* s 6 (b).

138. *Id.* s 6 (c).

livelihoods in the NCA. For example, in the 2022 to 2023 fiscal year, the NCA saw an influx of 752,232 TZS (Tanzanian shillings), up from 191,614 TZS in 2020 to 2021.<sup>139</sup> By September 2023, tourism revenues in the NCA reached 176 billion TZS (approximately \$70 million USD).<sup>140</sup> Additionally, in 2019, the tourism sector contributed 10.3% to Tanzania's gross domestic product,<sup>141</sup> generating over \$2.6 billion in revenue.<sup>142</sup>

As a highly regulated area, the expansion of conservation areas and the enforcement of grazing restrictions have severely limited the Maasai people's access to essential resources, making it increasingly difficult for the Maasai people to sustain their traditional adaptive strategies.<sup>143</sup> Grazing livestock in critical areas, such as the Ngorongoro Crater and other ecologically sensitive zones, is strictly prohibited.<sup>144</sup> Seasonal grazing, which was once allowed, is now subject to growing restrictions, further reducing the available pastureland for cattle.<sup>145</sup>

Since 2009, the Maasai people have been completely banned from cultivating land within the NCA, despite their historical reliance on small-scale farming for subsistence.<sup>146</sup> This ban has exacerbated food insecurity, increasing hunger and vulnerability.<sup>147</sup> Furthermore, forced evictions and relocations—justified by the purported benefits of environmental conservation and tourism development—have displaced some Maasai communities or limited their access to land.<sup>148</sup>

These restrictions, particularly the prohibition of livestock from grazing in many areas of Ngorongoro, have inflicted profound hardship on Maasai

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139. Giza Mdoe, *Ngorongoro Crater: A Driving Force in Tanzania's Tourism Recovery*, THE EXCHANGE, <https://theexchange.africa/countries/tanzania-ngorongoro-crater/> (last visited Apr. 24, 2025).

140. Zephania Ubwani, *Ngorongoro's Tourism Earnings Soar to Record Sh176 Billion in One Year*, THE CITIZEN (Sept. 28, 2023), <https://www.thecitizen.co.tz/tanzania/news/business/ngorongoro-s-tourism-earnings-soar-to-record-sh176-billion-in-one-year-4382922>.

141. World Travel & Tourism Council, Tanzania 2020 Annual Research: *Key Highlights*, WORLD TRAVEL & TOURISM COUNCIL, <https://wtcc.org/research/economic-impact/moduleid/704/> (last visited Apr. 24, 2025).

142. *Tourism*, TANZANIAINVEST, <https://www.tanzaniainvest.com/tourism> (last visited Apr. 24, 2025).

143. ANDY CURRIER AND ANURADHA MITTAL, *THE LOOMING THREAT OF EVICTION: THE CONTINUED DISPLACEMENT OF THE MAASAI UNDER THE GUISE OF CONSERVATION IN NGORONGORO CONSERVATION AREA 10* (The Oakland Inst., 2021).

144. *Id.* at 5.

145. *Id.* at 10.

146. *Biodiversity: Ngorongoro Conservation Area*, UNITED REPUBLIC OF TANZ. BIODIVERSITY, <https://tz.chm-cbd.net/en/protected-areas/ngorongoro-conservation-area> (last visited Apr. 24, 2025).

147. John G. Safari et al., *Food Insecurity in Pastoral Communities of Ngorongoro Conservation Area, Tanzania*, 11 AGRIC. & FOOD SEC. ART. 36 (2022), <https://agricultureandfoodsecurity.biomedcentral.com/articles/10.1186/s40066-022-00374-5>.

148. *Tanzania Tour Risks Whitewashing Maasai Forced Evictions*, HUM. RTS. WATCH, <https://www.hrw.org/news/2023/12/01/tanzania-tour-risks-whitewashing-maasai-forced-evictions> (last visited Apr. 20, 2025).

families, leaving them traumatized, demoralized, and struggling to sustain their way of life.<sup>149</sup> As an NCA Maasai resident explains:

The government prohibited livestock from accessing pastures in many places in Ngorongoro. Livestock without food, water and saltlicks are like sacks of skeletons. They cannot produce milk. If slaughtered, they are unpalatable. Selling them is not an option since they would not fetch good prices. So many people have lost their livestock over the decades.<sup>150</sup>

Another detrimental restriction imposed by the NCAAA is the ban on subsistence cultivation within the NCA.<sup>151</sup> This prohibition has made it increasingly difficult for the Maasai to diversify their food production, supplement their diets, and use cultivation as a safety net during extreme droughts or food shortages.<sup>152</sup> The resulting hunger, malnutrition, and even death have led many to question the deliberate denial of resources critical to their survival. As recounted by a Nainokanoka resident: “If we can break the ground to lower a body, why can’t we break it for cultivation?”<sup>153</sup>

The Maasai people’s situation is further complicated by the climate in the NCA. The NCA’s annual precipitation receives less than 500mm on the dry western plains to as much as 1,700mm on the forested eastern slopes, with precipitation increasing at higher altitudes.<sup>154</sup> Between 1967 and 2018,<sup>155</sup> rainfall patterns in the region declined, and variability in rainfall has led to higher rates of livestock mortality, threatening food security for Maasai households.<sup>156</sup> To adapt to these climatic changes, the Maasai have adopted various strategies, including diversifying their livelihoods. These adaptations

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149. NAVAYA JAMES NDASKOI, REPORT OF THE FACT-FINDING MISSION CONDUCTED IN NGORONGORO CONSERVATION AREA 13–14 (Apr. 3, 2021).

150. *Id.* at 8.

151. Ngorongoro Conservation Area Authority Act, 1959, Cap. 284, s 25 (Tanz.).

152. Chris Lang, *Fortress Conservation Threatens Maasai Pastoralists in the Ngorongoro Conservation Area: “The Government Is Systematically Starving Us.”*, REDD (June 18, 2021) <https://redd-monitor.org/2021/06/18/fortress-conservation-threatens-maasai-pastoralists-in-the-ngorongoro-conservation-area-the-government-is-systematically-starving-us/>.

153. For more on the restrictions and subsequent hunger facing the Maasai living in the NCA, see MITTAL & FRASER, *supra* note 46, at 28.

154. *Ngorongoro Conservation Area*, WORLD HERITAGE DATASHEET (May 2011), <http://world-heritage-datasheets.unep-wcmc.org/datasheet/output/site/ngorongoro-conservation-area/>.

155. CECILIA M. LEWERI ET AL., RAINFALL VARIABILITY AND SOCIO-ECONOMIC CONSTRAINTS ON LIVESTOCK PRODUCTION IN THE NGORONGORO CONSERVATION AREA, TANZANIA pt. 3.1 (Discover Applied Sci., 2021).

156. *Id.*

involve migrating for wage labor, selling milk, and participating in small-scale trade.<sup>157</sup>

Severe climatic events like drought have a profound impact on water and pasture availability, leading to significant socio-economic consequences.<sup>158</sup> For example, the 2017 drought in the NCA caused the loss of 77,389 heads of cattle, 72,881 heads of goats, and 78,490 heads of sheep,<sup>159</sup> which accounted for approximately 70% loss compared to the livestock numbers in 2016.<sup>160</sup> While the total livestock in the Ngorongoro District has remained around 430,000 livestock unit (LU), the per capita share has dropped significantly—from over 20 LU in the 1960s to just over 2 LU in 2016—well below the 4 LU per person required to meet basic needs such as housing, food, clothing, education, and healthcare.<sup>161</sup> Projections indicate a further decline to 1.2 LU by 2037 and just 0.3 LU by the end of the century.<sup>162</sup> For this reason, subsistence cultivation becomes crucial for those whose livestock holdings fall below the threshold,<sup>163</sup> as it helps provide sufficient food, particularly during periods of drought.

To secure a just and sustainable future for the Maasai, policies must balance conservation efforts with the rights and livelihoods of Indigenous communities. Genuine and meaningful engagement, along with policy reforms that recognize their traditional land use and adaptive strategies, is crucial for their continued survival within the NCA. Overcoming these challenges requires a more inclusive approach—one that respects the Maasai's cultural heritage while supporting their coexistence with conservation and tourism efforts.

#### V. CONTEMPORARY EXAMPLES OF INDIGENIZING RESOURCE MANAGEMENT IN SELECTED JURISDICTIONS

Historically, the creation of protected areas and national parks largely disregarded the presence and rights of Indigenous communities inhabiting

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157. J. Terrence McCabe et al., *Adopting Cultivation to Remain Pastoralists: The Diversification of Maasai Livelihoods in Northern Tanzania*, 38 HUM. ECOLOGY 312, 314 (2010).

158. Bekele Megersa et al., *Impacts of Climate Change and Variability on Cattle Production in Southern Ethiopia: Perceptions and Empirical Evidence*, 130 AGRIC. SYS. 23, 24 (2014).

159. CECILIA M. LEWERI ET AL., RAINFALL VARIABILITY AND SOCIO-ECONOMIC CONSTRAINTS ON LIVESTOCK PRODUCTION IN THE NGORONGORO CONSERVATION AREA, TANZANIA pt. 4.2 (Discover Applied Sci., 2021).

160. TANZ. WILDLIFE RSCH. INST., STATUS AND DISTRIBUTION OF WILDLIFE, LIVESTOCK AND BOMAS IN AND AROUND SERENGETI ECOSYSTEM, TANZANIA 15 (2016).

161. SEF SLOOTWEG, *Climate Change and Population Growth in Pastoral Communities of Ngorongoro District, Tanzania*, in HANDBOOK OF CLIMATE CHANGE RESILIENCE 1, 17 (Walter Leal Filho ed., 2018).

162. *Id.*

163. David Nkedianye et al., *Livestock-Wealth Inequalities and Uptake of Crop Cultivation Among the Maasai of Kenya and Tanzania*, 14 WORLD DEV. PERSP. 1, 2 (2019).

their lands. Indigenous people were excluded from the management of parks, denied access to resources, and restricted from practicing their traditions and way of life within these areas. However, exclusionary conservation models are increasingly being replaced by approaches that recognize the rights of Indigenous people and local communities.<sup>164</sup> This shift is further reinforced by emerging jurisprudence from regional human rights systems, such as the Organization of American States, which uphold Indigenous land rights.

More inclusive management strategies—such as co-management and co-stewardship—are being implemented in protected areas across various regions. These approaches emphasize consultation and collaboration with Indigenous communities in decision-making and planning. Applying such models to the governance of the NCA could help shape more equitable and sustainable conservation policies that respect Indigenous rights while achieving conservation goals.

*A. Bears Ears National Monument and the Bears Ears Inter-Tribal Commission*

Under the Obama Administration, President Obama signed a proclamation that established the 1.35-million-acre Bears Ears National Monument.<sup>165</sup> The protection of the area was motivated by environmental and cultural preservation rather than wildlife. Most importantly, the Bears Ears Proclamations established a commission responsible for the management of the National Monument.<sup>166</sup> The commission is comprised of the Secretary of Interior, the Secretary of Agriculture, and one representative from each of the five tribes<sup>167</sup> making up the so-called Inter-Tribal Coalition.<sup>168</sup> The provision provides that the Secretaries of Interior and Agriculture: “shall meaningfully engage the commission” and “shall carefully and fully consider integrating the traditional and historical knowledge and special expertise of the Commission . . . .”<sup>169</sup> A written

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164. Neil Dawson, *Journeys to More Equitable and Effective Conservation: The Central Role of Indigenous Peoples and Local Communities*, IUCN (Aug. 22, 2023) <https://www.iucn.org/news/202308/journeys-more-equitable-and-effective-conservation-central-role-indigenous-peoples-and>.

165. Establishment of the Bears Ears National Monument, 82 Fed. Reg. 1139, 1143 (Dec. 28, 2016).

166. *The Bears Ears Commission*, BEARS EARS INTER-TRIBAL COAL., <https://www.bearscoalition.org/the-bears-ears-commission/> (last visited Apr. 20, 2025).

167. The Tribes include Hopi Nation, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe of the Uintah Ouray, and Zuni Tribe. Establishment of the Bears Ears National Monument, 82 Fed. Reg. 1139, 1143 (Dec. 28, 2016).

168. See *Who We Are*, BEARS EARS INTER-TRIBAL COAL., <https://www.bearscoalition.org/about-the-coalition/> (last visited May 14, 2025) (explaining that the Bears Ears Inter-Tribal Coalition was founded by the leaders of the Hopi Tribe, Navajo Nation, Ute Mountain Ute Tribe, Pueblo of Zuni, and Ute Indian Tribe).

169. Establishment of the Bears Ears National Monument, 82 Fed. Reg. at 1144.

explanation should be provided if the Secretary chooses not adopt the tribal recommendation.<sup>170</sup> This collaborative model, though not yet fully implemented, offers a path forward in direct tribal management in land planning and cultural resource preservation on public lands.<sup>171</sup>

### *B. Alaska Native Co-Management of Marine Mammals*

Federal and state authorities in Alaska aim to ensure a sustainable take of marine mammals for food and handicrafts by Alaskan natives<sup>172</sup> through self-regulation.<sup>173</sup> Since 2000, Executive Order 13175 has provided a framework for meaningful consultation and collaboration between Federal and Tribal Governments in the development of federal policies, legislation, regulations, and programs that may affect Tribal Governments and their members.<sup>174</sup>

Additionally, Section 119 of the Marine Mammal Protection Act allows the National Marine Fisheries Service or the U.S. Fish and Wildlife Service to establish agreements with Alaska Native Organizations.<sup>175</sup> These agreements support the development of marine mammal co-management structures and processes with Federal and State agencies; monitor the harvest of marine mammals for subsistence use; participation in marine mammal research; and the collection and analysis of data in marine mammal populations.<sup>176</sup> The agreements also “encourage the exchange of information regarding conservation, management, and utilization of marine mammals in” the waters of the United States in Alaska.<sup>177</sup> To the extent permitted by law, decisions in the co-management of marine mammals are based on the best available scientific information, “as well as traditional and contemporary Alaska Native knowledge and wisdom.”<sup>178</sup>

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170. Establishment of the Bears Ears National Monument, 82 Fed. Reg. at 1144.

171. Daniel Cordalis & Amy Cordalis, *Civilizing Public Land Management in the Colorado River Basin*, in VISION & PLACE 242, 244 (Jason Robinson et al. eds. 2020)

172. “As a general rule, an . . . Alaskan Native person is someone who has blood degree from and is recognized as such by a federally recognized tribe or village (as an enrolled tribal member) and/or the United States. . . . Other factors include: a person’s knowledge of his or her tribe’s culture, history, language, religion, familial kinships, and how strongly a person identifies himself or herself as . . . [an] Alaskan Native.” Indian Affs., *Who is an American Indian or Alaska Native?*, U.S. DEP’T OF THE INTERIOR (Aug. 19, 2017, 2:54 PM), <https://www.bia.gov/faqs/who-american-indian-or-alaska-native>.

173. *Consultations: Tribal Engagements & Consultations*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/topic/consultations/tribal-engagements-and-consultations> (last visited Apr. 20, 2025).

174. Exec. Order No. 13175, 65 Fed. Reg. 67,249 (Nov. 6, 2000); *Id.*

175. 16 U.S.C. § 1388 (1972).

176. *Co-Management of Marine Mammals in Alaska*, NOAA FISHERIES <https://www.fisheries.noaa.gov/alaska/marine-mammal-protection/co-management-marine-mammals-alaska> (last visited May 14, 2025).

177. *Id.*

178. *Id.*

*C. Tribal Co-Management and Co-Stewardship of Federal Lands and Waters*

The Biden Administration took significant “steps to strengthen the nation-to-nation relationship with Tribal Nations” by employing new procedures to “increase Tribal co-stewardship of lands and waters, incorporate Indigenous Knowledge into the Department’s work, and preserve and protect sacred sites around the country.”<sup>179</sup> Joint Secretary’s Order 3403 (S.O.3403),<sup>180</sup> signed by Secretary of the Interior Deborah Haaland and Secretary of Agriculture Tom Vilsack, made a commitment to Tribal and federal co-stewardship of federal lands, waters, and wildlife through collaborative and cooperative agreements.<sup>181</sup> As of 2023, three Departments have signed almost 200 new co-stewardship agreements with Tribes, Alaska Native Corporations, and consortiums.<sup>182</sup>

*D. Organization of American States*

1. Mary and Carrie Dann v. United States<sup>183</sup>

Carrie Dann and her sister Mary led a decades-long resistance against the U.S. federal government’s grazing permit system, which restricted their access to traditional Western Shoshone lands.<sup>184</sup> They argued that the system violated their treaty rights and Indigenous sovereignty, as it prevented them from grazing livestock without permits.<sup>185</sup> Their struggle highlighted broader injustices, including the U.S. government’s denial of Western Shoshone land rights while enabling corporate exploitation through mining, nuclear waste disposal, and other harmful activities.<sup>186</sup> Despite their efforts, the U.S. Supreme Court ruled against them, declaring their land rights “extinguished” under domestic law.<sup>187</sup> Refusing to accept this outcome, Carrie Dann took

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179. *Biden-Harris Administration Takes Steps to Increase Co-Stewardship Opportunities, Incorporate Indigenous Knowledge, Protect Sacred Sites*, U.S. DEPT. OF INTERIOR (Dec. 6, 2023) <https://www.doi.gov/pressreleases/biden-harris-administration-takes-steps-increase-co-stewardship-opportunities>.

180. U.S. DEP’T OF AGRIC., U.S. DEP’T OF INTERIOR, U.S. DEP’T OF COMMERCE, S.O. NO. 3403, AMEND. NO. 1, JOINT SECRETARIAL ORDER ON FULFILLING THE TRUST RESPONSIBILITY TO INDIAN TRIBES IN THE STEWARDSHIP OF FEDERAL LANDS AND WATERS (2022).

181. *Id.*

182. *Biden-Harris Administration Takes Steps to Increase Co-Stewardship Opportunities, Incorporate Indigenous Knowledge, Protect Sacred Sites*, *supra* note 179.

183. *Mary and Carrie Dann v. United States*, Case 11.140, Inter-Am. Comm’n H.R., Report No. 75/02, doc. 5 (2002).

184. *Western Shoshone*, JAMES E. ROGERS COLL. OF L., <https://law.arizona.edu/western-shoshone> (last visited April 20, 2025).

185. *Id.*

186. *Id.*

187. *Id.*

the case to the Inter-American Commission on Human Rights, which condemned the U.S. for violating their rights and criticized the lack of due process and just compensation in the government's land seizure practices.<sup>188</sup>

## 2. Saramaka People v. Suriname

*Saramaka People v. Suriname* involved a long-standing dispute over land rights for the Saramaka, a group descended from African slaves who gained freedom and settled in Suriname in the 1700s.<sup>189</sup> While not officially recognized as Indigenous, the Saramaka people maintain a deep cultural, spiritual, and economic connection to their land, which they use for fishing, hunting, and craftsmanship.<sup>190</sup>

In 1986, Suriname's constitution declared that all land without formal titles, including that of the Saramaka, was state-owned.<sup>191</sup> In the 1990s, the Surinamese government authorized mining and logging activities within the Saramaka's ancestral lands without consulting them or obtaining their consent.<sup>192</sup> This prompted the Saramaka people to file a complaint with the Inter-American Commission on Human Rights in 2000, asserting that they had a right to their land for cultural and subsistence purposes, even if they did not have formal land titles.<sup>193</sup>

By 2006, the case had moved to the Inter-American Court of Human Rights.<sup>194</sup> The Court ruled that, despite the Saramaka's non-Indigenous status, their relationship to the land bore strong similarities to that of Indigenous communities and thus warranted similar protections.<sup>195</sup> The Court stated that their long-standing occupation and use of the land was sufficient to establish ownership, even without formal title.<sup>196</sup>

The Court concluded that Suriname had violated several provisions of the American Convention on Human Rights, particularly the rights to property and judicial protection (Article 21 and 25).<sup>197</sup> The ruling required Suriname to officially demarcate and grant collective title to the Saramaka's land in accordance with their customary laws, while ensuring they were fully

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188. *Western Shoshone*, JAMES E. ROGERS COLL. OF L., <https://law.arizona.edu/western-shoshone> (last visited April 20, 2025).

189. *Case of the Saramake People v. Suriname*, ESCR-NET (April 2, 2014) <https://www.escri-net.org/caselaw/2014/case-saramaka-people-v-suriname/>.

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Case of the Saramake People v. Suriname*, ESCR-NET (April 2, 2014) <https://www.escri-net.org/caselaw/2014/case-saramaka-people-v-suriname/>.

196. *Id.*

197. Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; *Id.*

consulted before any land-related decisions were made.<sup>198</sup> Suriname was also instructed to halt any activities, such as mining or logging, that could affect the land and to review any existing concessions granted within Saramaka territory.<sup>199</sup>

Moreover, the Court ordered Suriname to adopt laws that would ensure better protection of the Saramaka's property rights, create mechanisms for meaningful consultation, and offer legal remedies for any violations.<sup>200</sup> The government was also directed to compensate the Saramaka people and to make the judgment publicly available in a way that could be understood by the community.<sup>201</sup>

### *E. Laponia World Heritage in Sweden*

The Laponian Area, recognized as a World Heritage Site in 1996, is celebrated for both its exceptional natural beauty and its cultural significance to the Indigenous Sami people. This vast area encompasses pristine landscapes, including forests, lakes, and rivers, and is one of the best-preserved examples of a transhumance grazing system.<sup>202</sup> For centuries, large reindeer herds have been central to the Sami way of life, alongside practices such as fishing and hunting.<sup>203</sup>

After 15 years of unsuccessful negotiations, the Sami community's persistent advocacy led to the establishment of Laponiatjuottjudus in 2012, a management organization aimed at ensuring the Sami people's involvement in managing their ancestral lands.<sup>204</sup> Central to Sami's demands was the right to self-determination, with a call for direct control over land management.<sup>205</sup> The Sami refused to participate in management discussions until the Swedish government addressed issues of proper representation and power distribution.<sup>206</sup>

The statutes of Laponiatjuottjudus and its management plan now reflect a comprehensive approach that integrates cultural and natural conservation. The organization, which is primarily composed of Sami representatives,

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198. *Case of the Saramake People v. Suriname*, ESCR-NET (April 2, 2014) <https://www.escri-net.org/caselaw/2014/case-saramaka-people-v-suriname/>.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Laponian Area*, UNESCO WORLD HERITAGE CONVENTION, <https://whc.unesco.org/en/list/774/> (last visited Apr. 25, 2025).

203. Elsa Reimerson, *Traditional Knowledge and the Management of the Laponia World Heritage Site*, CURRENT CONSERVATION (Mar. 2, 2013), <https://www.currentconservation.org/traditional-knowledge-and-the-management-of-the-laponia-world-heritage-site-2/>.

204. *Id.*

205. *Id.*

206. *Id.*

operates on a consensus-based decision-making process.<sup>207</sup> This structure ensures that Indigenous governance and perspectives are central to the protection and preservation of the Laponian Area.<sup>208</sup>

#### F. Canada

In *Haida Nation v. British Columbia (Minister of Forests)*,<sup>209</sup> the government of British Columbia (the Crown) issued a Tree Farm License (TFL) to a forestry company, permitting them to harvest trees on land that the Haida Nation claimed as their own.<sup>210</sup> Later, the TFL was transferred to Weyerhaeuser, another forestry company, giving it exclusive rights to harvest timber on nearly a quarter of the Haida Nation's claimed territory.<sup>211</sup> Despite objections from the Haida Nation regarding the environmental impacts, the rate of logging, and the methods used, no changes were made. In response, the Haida Nation filed a lawsuit, arguing that the government had issued and transferred the TFL without their consent and in defiance of their objections.<sup>212</sup>

The Supreme Court of Canada ruled that the Crown has an obligation to consult with Indigenous people when making decisions that may affect their rights or land, even if those rights have not yet been legally recognized.<sup>213</sup> In this case, the Court found that the Haida Nation had a strong case for their claims to the land and their Aboriginal right to harvest red cedar, and that these claims were relevant to the land in question. The Court held that the duty to consult the Haida Nation was triggered when the TFL was replaced, as the province was aware that this decision could impact the Haida's potential rights.<sup>214</sup>

The Court emphasized that TFL decisions play a central role in the strategic planning of natural resources and have significant implications for Aboriginal rights. Therefore, the Crown is required to engage in meaningful consultation with Indigenous communities at the stage of granting or renewing TFLs.<sup>215</sup> Given the strength of the Haida Nation's claims and the serious impact of such strategic decisions on their interests, the Crown's duty

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207. Reimerson, *supra* note 203.

208. U.N EDUC. SCI. & CULTURAL ORG. & LAPONIA UPPTOGS PÅ VÄRLDSARVSLISTAN 1996, TJUOTTJUDUSPLÅNA MANAGEMENT PLAN (2014), [https://laponia.nu/wp-content/uploads/2014/08/Laponia-forvaltningsplan-eng-web-150327\\_2.pdf](https://laponia.nu/wp-content/uploads/2014/08/Laponia-forvaltningsplan-eng-web-150327_2.pdf).

209. *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511 (Can.).

210. *Id.* at 512.

211. *Id.*

212. *Id.* at 513.

213. *Id.* at 514.

214. *Id.*

215. *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511 (Can.).

may require substantial accommodation to protect Indigenous rights, even while their title claims remain unresolved.<sup>216</sup>

The Court further explained that the duty to consult and accommodate Indigenous people stems from the principle of the honor of the Crown.<sup>217</sup> This principle obligates the Crown to engage with Indigenous people in good faith, even before formal claims are resolved.<sup>218</sup> Although unproven Aboriginal rights do not create a fiduciary duty, the Crown must not disregard Indigenous interests when those interests are actively being pursued in legal processes or treaty negotiations.<sup>219</sup> The Court's decision reinforces that the duty to consult and accommodate is part of a broader framework for fair dealing and reconciliation, which starts with the assertion of Crown sovereignty but extends to protecting Indigenous rights throughout the legal process. This duty arises when the Crown has knowledge of a potential Aboriginal right or title and considers actions that could harm those rights.<sup>220</sup> The Court affirmed that requiring consultation and accommodation before final claims resolution is essential to respect Indigenous interests and ensure a just reconciliation process.<sup>221</sup>

### *G. The Teen Tok Village, Thailand*

The Teen Tok village, located in Kanchanaburi Province, Thailand,<sup>222</sup> has been home to its residents for approximately 250–300 years.<sup>223</sup> The villagers primarily rely on subsistence farming, with rain-fed rice cultivation forming the foundation of their diet. In addition to rice, around 80% of the community grows maize as their main cash crop, along with other vegetables and fruits for sale.<sup>224</sup>

In 1961, Thailand passed the National Park Act,<sup>225</sup> aiming to conserve the country's forests in their natural state.<sup>226</sup> This led to the creation of Sri Nakarín National Park and the Charlem Rattanakosin Forest Reserve in 1980

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216. *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511 (Can.).

217. *Id.* at 513.

218. *Id.*

219. *Id.* at 523.

220. *Id.* at 529.

221. *Id.* at 530–31.

222. Rawee Thaworn et al., *Can Biodiversity Conservation Go Hand in Hand with Local Livelihoods? A Case of Conflict Resolution in Thailand*, 61 UNASYLVA 28, 30 (2010).

223. *Id.*

224. *Id.*

225. See generally National Parks Act, B.E. 2562 (2019) (Thai.) (codifying the National Parks Act in Thailand).

226. Ahmad Dhiaulhaq et al., *Transformative Mediation, A Tool for Maximising the Positives Out of Forest Conflict: A Case Study from Kanchanaburi, Thailand*, in *FOREST UNDER PRESSURE* 285, 286 (Pia Katila et al. eds., Int'l Union of Forest Rsch. Orgs. 2014).

and 1981, respectively.<sup>227</sup> However, these protected areas were established without consulting the local communities, including the villagers of Teen Tok, who had lived in the region for generations.<sup>228</sup> As a result, their traditional methods of maintaining their livelihoods—such as farming, hunting, and rice cultivation—were abruptly prohibited, causing significant tension and hardship.<sup>229</sup>

The conflicts that arose were primarily due to two factors: the government's imposition of protected status over the villagers' ancestral lands without recognizing their customary rights, and the lack of consultation with the community during the decision-making process. Additionally, the park's management plan failed to consider the villagers' essential livelihood needs, further exacerbating the situation.<sup>230</sup>

By the late 1980s and early 1990s, the conflict escalated, leading to arrests, land confiscations, and increasing disputes as villagers fought to reclaim their land.<sup>231</sup> In 1999, although some restrictions on subsistence farming were relaxed, tensions remained high.<sup>232</sup> A temporary agreement was reached, permitting the villagers to engage in swidden farming (slash and burn agriculture) for a five-year period, but a permanent solution still remained elusive.<sup>233</sup>

A shift came in 1997 with the adoption of a new Thai Constitution,<sup>234</sup> which required consultation with local communities before establishing protected areas and recognized their right to participate in sustainable resource management.<sup>235</sup> Following this constitutional change, a 1998 cabinet resolution acknowledged the presence of local communities in protected areas but imposed limitations on settlement expansion.<sup>236</sup>

In 2001, the Thai government launched the Community Participation in National Park Management pilot project, targeting Charlem Rattanakosin National Park and six other protected areas.<sup>237</sup> However, this initiative faltered due to insufficient community involvement, lack of support for demarcating park boundaries, and resistance to the regulations imposed.<sup>238</sup>

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227. Dhiaulhaq et al., *supra* note 226, at 287.

228. *Id.*

229. *Id.*

230. Thaworn et al., *supra* note 222, at 30.

231. *Id.* at 31.

232. *Id.*

233. *Id.*

234. See generally Radthathammanoon (B.E. 2534)–1997 (Thai.) (codifying the Thailand Constitution).

235. *Id.*

236. Dhiaulhaq et al., *supra* note 226, at 287.

237. *Id.*

238. *Id.*

The turning point occurred in 2004, when the Sueb Nakhasathien Foundation and the Danish International Development Agency introduced the Joint Management of Protected Areas Initiative.<sup>239</sup> This collaborative project involved the villagers, the Department of National Parks, Wildlife and Plant Conservation, and the Ministry of Natural Resources and Environment.<sup>240</sup> By 2006, a successful collaboration resulted in the demarcation of village-use zones within the two protected areas.<sup>241</sup>

Under the newly established regulations, villagers were permitted to sustainably harvest forest products such as medicinal plants, leaves, mushrooms, and fruits.<sup>242</sup> National park authorities were also required to notify the village committee before conducting boundary inspections related to swidden farming, with these inspections being carried out jointly by forestry officials and community representatives.<sup>243</sup>

To support conservation efforts, the community developed its own sanctions for those violating the management regulations, including social boycotts of events like weddings and funerals.<sup>244</sup> This approach helped expand the Teen Tok village's Forest Conservation Network, which now includes five neighboring villages. Together, these communities formed the Forest Protection Volunteer Network, with over 150 volunteers working alongside national park officers to protect the forest, monitor its health, and prevent fires.<sup>245</sup>

These cases highlight that conservation and sustainable resource use are not mutually exclusive. Engaging Indigenous communities as active partners in the management of protected areas—through genuine consultation and collaboration—leads to more inclusive and effective conservation efforts. Furthermore, when domestic avenues for justice are exhausted, international human rights mechanisms can serve as important channels for redress in matters concerning Indigenous rights. The next section explores how these approaches can be adapted and implemented in Tanzania.

## VI. PROPOSED SOLUTIONS AND RECOMMENDATIONS

This article highlights how Tanzania's fortress conservation approach, which excludes the Indigenous Maasai people, has resulted in continued displacement and adverse impacts. The NCAA continues to prioritize preservation for conservation and tourism at the expense of the Maasai

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239. Thaworn et al., *supra* note 222, at 31.

240. *Id.*

241. *Id.* at 31–32.

242. *Id.* at 32.

243. *Id.*

244. *Id.*

245. Thaworn et al., *supra* note 222, at 32.

people's rights to land and resources. As a result, the current regulatory framework violates the Maasai people's food sovereignty, a right protected under both Tanzanian and international law. To address these challenges, a co-management framework should be implemented in the NCA, ensuring collaborative decision-making between the NCAA and Maasai representatives. This model would ensure that conservation policies balance environmental protection with the Maasai's livelihoods, including the reinstatement of designated areas for subsistence cultivation to enhance food security during droughts. Additionally, a formal consultation mechanism would provide the Maasai people with a voice in land-use planning, resource distribution, and tourism revenue-sharing. Inspired by Laponiatjuottjudus governance in Sweden's Laponian Area,<sup>246</sup> such a framework would integrate Indigenous scientific knowledge with conservation science, creating a more inclusive and sustainable system for managing the NCA.

The human rights struggle of the Maasai people in Ngorongoro also closely reflects that of Carrie and Mary Dann. Both cases underscore how Indigenous communities confront state-imposed systems that threaten their land, identity, and self-determination. As U.S. grazing permits restricted the Danns' access, Tanzanian conservation policies similarly constrain the Maasai's ability to graze livestock, cultivate crops, and culturally self-determine. In both contexts, the land has been exploited—through mining and waste disposal in the U.S., and through tourism and conservation in Tanzania—while Indigenous rights are marginalized. When U.S. courts failed the Danns, they turned to the Organization of American States, a path the Maasai have similarly pursued through the East African Regional Court (East African Court of Justice), though with limited success.<sup>247</sup>

Given Tanzania's colonial history and the judiciary's reluctance to uphold Indigenous collective rights, domestic courts are unlikely to recognize legal claims rooted in food sovereignty or livelihood protection. Therefore, a legislative remedy is the more viable path forward. The British colonizers, the Tanzanian government, and other responsible entities owe a long-overdue moral debt to the Maasai people. This obligation should be addressed through reparations, including financial compensation, fair employment opportunities, capacity-building programs, and substantial investments in critical social services such as education and healthcare. Only through such structural reforms and reparative justice can the Maasai people's rights and livelihoods be genuinely safeguarded while fostering a more equitable conservation model.

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246. Reimerson, *supra* note 203.

247. Reuters, *Regional court dismisses Maasai eviction case against Tanzania government*, REUTERS (Oct. 1, 2022, 1:50 AM), <https://www.reuters.com/world/africa/regional-court-dismisses-maasai-eviction-case-against-tanzania-government-2022-09-30/>.

To address the harm inflicted on the Indigenous Maasai people by the Tanzanian government, seven key remedies are necessary:

- (1) Recognition of collective land rights: Ensuring broader recognition of collective land rights is crucial for the meaningful restitution and protection of Maasai livelihoods. This includes integrating Maasai livelihoods into the management objectives of the NCA, such as securing access to migratory routes for pasture, water, saltlicks, and amending the Ngorongoro Conservation Area Authority Act to permit subsistence cultivation.
- (2) Land tenure reform: Constitutional and legislative reforms must explicitly strengthen collective land rights, provide legal safeguards that resolve land conflicts, and uphold the Maasai's rights within the NCA. Such reforms would offer greater security and protection against forced evictions and land dispossession.
- (3) Genuine participation in decision-making: The Maasai must be meaningfully involved at all levels of decision-making, with their free, prior, and informed consent required before implementing any restrictions, zoning laws, or changes in land use. Their voices must be central to shaping policies that affect their land and livelihoods.
- (4) Support for Indigenous scientific knowledge and conservation initiatives: Strengthening community-based organizations and Indigenous scientific knowledge will empower the Maasai to develop their own conservation initiatives. This approach fosters collaboration, capacity building, and sustainable resource management. This ensures that conservation efforts respect and integrate traditional practices.
- (5) Reparations: The Maasai community has endured significant socio-economic harm due to forced displacement, loss of traditional livelihoods, and exclusion from decision-making processes. To address these injustices, meaningful reparations should be comprehensive and multifaceted, including financial compensation, land restitution, employment opportunities, sustained investment in social services, and assurances of non-repetition. Compensation must adequately reflect the loss of land, livestock, and economic opportunities that have historically sustained their way of life, ensuring that past harms are redressed, and future livelihoods are secured.
- (6) Fair and meaningful benefit-sharing of tourism revenues: A just and equitable benefit-sharing model should allocate a significant portion of tourism revenue directly to Maasai-led initiatives, including but not limited to education, healthcare, and sustainable livelihood programs. Furthermore, Maasai individuals should have priority

access to employment opportunities in conservation, park management, and tourism sectors. Ultimately, benefit-sharing should not be limited to symbolic compensation, but should function as a sustainable mechanism for economic empowerment and self-determination, aligning conservation goals with the rights and well-being of Indigenous communities.

- (7) The Government of Tanzania should recognize that monetary compensation alone is not always an appropriate or sufficient remedy for property loss, especially in cases involving Indigenous people whose cultural identity, livelihoods, and spiritual well-being are deeply rooted in their lands and natural resources. For Indigenous communities, land is not merely a commodity, but a foundation of their existence.
- (8) Governments, international bodies, and other relevant stakeholders should take concrete and proactive measures to protect and promote the cultural rights of the Maasai people, in alignment with international human rights frameworks, including the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP) and other relevant instruments. Indigenous people must not be subjected to assimilation or cultural suppression that threatens their unique identity. Rather, any efforts to integrate Indigenous communities into national social and political frameworks must ensure the protection of their right to maintain and practice their distinct cultural traditions and ways of life.
- (9) Establishment of an Independent Accountability Body: A neutral and independent body should be created to oversee and implement accountability mechanisms for violations of Maasai livelihoods resulting from conservation and tourism policies in the NCA. This body would ensure that any infringements on Indigenous rights are addressed through transparent and just processes.

Through these remedies, the Tanzanian government can begin to foster an environment where Maasai people in the NCA are empowered to thrive while simultaneously contributing to the conservation and sustainable management of their lands.

## CONCLUSION

Environmental justice necessitates that courts recognize the collective rights of the Massai people, which are uniquely essential not only to their right to food but also to the preservation of their cultural identity and contributions to conservation. While limiting local access to vital resources

may yield short-term conservation gains, such restrictions risk undermining long-term sustainability in the NCA if they exclude the active and meaningful participation of the Maasai people in its management. A just and effective conservation approach must also involve capacity-building and integrating Maasai traditional scientific knowledge into management practices. Promoting self-determination, co-management, and co-stewardship with the Maasai community is not only a matter of rights but a necessary strategy for ensuring the NCA's enduring ecological and cultural integrity.