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## Commentary on *The Emerging Constitutional Indigenous Peoples Land Rights in Tanzania*

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Kennedy Gastorn, *The Emerging Constitutional Indigenous Peoples Land Rights in Tanzania*, 2 J. L. PROP. & SOC'Y 181 (2016), <http://www.alps.syr.edu/journal/2016/11/JLPS-2016-11-Gastorn.pdf>.

This commentary is in a series on the Indigenous Peoples Movement. See the introduction to this series and links to its other articles: <http://www.alps.syr.edu/journal/2016/11/JLPS-2016-11-HardinAskew.pdf>.

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# Commentary on *The Emerging Constitutional Indigenous Peoples Land Rights in Tanzania\**

Kelly Askew\*\*

*Drawing on nearly three decades of experience in Tanzania, Professor Askew addressed current contestations over “indigeneity,” contestations over land, and threats to pastoralist and hunter-gatherer lifestyles.*

**A**t the time of independence in Tanzania mainland (1961), there was one national park, the world famous Serengeti. Today, there are sixteen national parks and numerous forest reserves, game reserves, wildlife conservation areas, wildlife management areas, and more. As a result, the landmass of the country has shrunk considerably in terms of where people can reside, cultivate, and forge a living.

Additionally, Tanzania mainland had a population of 9 million people in 1961 while there are now an estimated 47 million people – a five-fold increase. So a problem clearly exists arising from expansion of conservation areas coupled with exponential population growth. Whereas in 2008, reserve land constituted about 28% of Tanzania’s total 945,000 sq. km., official estimates place that figure at over 40%, and “Village Lands,” which can be occupied, managed, and used by Tanzanian citizens, has decreased correspondingly.

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\* Kennedy Gastorn, *The Emerging Constitutional Indigenous Peoples Land Rights in Tanzania*, 2 J. L. PROP. & SOC’Y 181 (2016), <http://www.alps.syr.edu/journal/2016/11/JLPS-2016-11-Gastorn.pdf>.

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<http://www.alps.syr.edu/journal/2016/11/JLPS-2016-11-Askew.pdf>.

This is necessary background for understanding the two battlefronts that Gastorn deals with in his paper: one concerning indigenous representation in politics, and the other concerning the natural resource base in Tanzania. The history of indigenous mobilization in East Africa has seen similar transformations to those that Professor Dahl describes in his contribution to this issue: people began as “natives,” then were allowed to be identified by ethnicity as defined by language, culture, livelihood, and land. Since the 1990s, the identifier “indigenous” has come into popular usage among certain marginalized communities. However, Tanzanian and other African governments have strongly denied the existence of indigenous populations in their nations. This government opposition to the emergence of an “indigenous space” (Dahl) in Tanzania has led to a strategic retreat by local groups to revise their self-presentation along the lines of livelihood: as “pastoralists” and as “hunter-gathers.”

As Professor Gastorn indicates, Tanzania is a post-socialist nation famous for building a nation out of 120+ ethnic groups and for being an island of peace within a region marked by violence and genocide. (Rwanda, Burundi, Uganda, Kenya, and Democratic Republic of Congo are conflict-ridden neighboring states). The socialist period (mid-1960s through mid-1980s) established a national disinclination to politicize ethnicity that continues into the post-socialist present. The state has strictly enforced policy measures that ban organizations founded on the basis of race or ethnicity. And by not collecting population data by ethnicity on the national census, the government seeks to further undermine its significance. The official position is that since public services and goods are not distributed on the basis of ethnicity, it is irrelevant. Hence alliances forged between indigenous groups in Tanzania and international indigenous rights groups get cast by the government as unpatriotic attempts to foment tribal-

ism and undermine the longstanding peace of the nation. This becomes another rhetorical tool it deploys in suppressing political mobilization among indigenous groups.

In the processes and negotiations that Gastorn explores in his rich paper, the discursive field of constitutional reform in Tanzania today has evoked another shift in the terms of representation. Denuding further any resonances of ethnicity that “pastoralists” and “hunter-gathers” still evoke, and minimizing (indeed erasing) the difference that indigenous peoples embrace and highlight, the new phrase of the day in the Tanzanian context is “minority groups.” We see these semantic changes everywhere – Bruce Mannheim mentions that the Bolivian government completely got rid of “indigenous” and declared instead that people were “peasants”; in India, we hear from Virginius Xaxa, everyone embraces “tribe”, and in Tanzania we now have “minority group.” As Gastorn states, minorities seek equality with a majority population and require no communal self-identification nor any particular relationship to a territory, nor claim to priority in time. Indigenous groups in Tanzania reject classification in these terms for the implicit refusal to recognize their cultural distinctiveness and, I would add, the lack of acknowledgment of the threats and outright persecution they face as peoples intent on pursuing their traditional ways of life.

As Professor Gastorn indicates, during the constitutional reform process (now temporarily on hold), provisions for minorities were watered down via an added derogative clause which states that minority rights are to be protected subject to “present government resources and ability.” This would seem to be an abrogation of any moral compunction to abide by international agreements concerning human rights, let alone indigenous rights. “Rights” that exist only

when government coffers allow, that are subject to budgetary convenience, seem to my non-lawyerly mind an inversion of what constitutes a “right.”

Pastoralist and hunter-gatherer claims to land in Tanzania are viewed largely as illegitimate by government authorities and by those (be they local farmers or foreign investors or conservationists) desirous of that land for a number of reasons.

1. Viewed derisively as “nomads,” they are wrongly cast as foreign immigrants with no rightful claim to citizenship.
2. Viewed as nomads, they are said to have no place of residence.
3. By not “using” land in the highly visible ways that farmers do (with row upon row of cultivated crops) but by foraging or rotational grazing, their land gets defined as being “unused” and thus open to government appropriation.
4. By not being valued as the high contributor to the agricultural GDP that traditional pastoralism actually is (contributing certainly 40% via dairy and meat products), they are labeled as “unproductive” and accused of misusing land that could be assigned to enterprises deemed more productive, like agro-industry or “modern” cattle ranches.
5. And as Professor Gastorn describes, “nomadism” is associated wrongly with land degradation, conflicts with farmers, spread of animal diseases, and lack of proper management of land. All these become justification for evicting pastoralists from their lands despite there being little to no scientific data confirming such claims.

Thus indigeneity here in Tanzania as elsewhere becomes at heart not a political debate over cultural inclusion and exclusion from the nation, but a battle over natural resources, land and water foremost. Pastoralists are welcomed, indeed embraced, in distilled cultural form evidenced by images of Maasai on billboards advertising cell

phones and tourist hotels and Tanzania as a safari destination. However, it is their claims to territory and unrelenting fight to retain it, that lead to the official rejection of indigenous claims. Gastorn shows us how the judiciary offers some redress for indigenous communities. Perhaps the combination of international alliances and local judicial activism against the predations of conservationists, foreign investors, and local (elite and non-elite) land-grabbers, will pose a more hopeful future for Tanzanian pastoralists. But at the moment the situation is bleak.

My three questions to Gastorn are: You mention that there is a contradiction between acceptance of World Bank funds for reducing poverty in indigenous communities and the government's official position that Tanzania has no indigenous peoples. But what is not flagged is the government acceptance that their indigenous people need the support. They affirm that these groups, whether termed "indigenous" or "minority," are highly vulnerable and that it would therefore be wrong to reject the World Bank funds. It follows therefore that acceptance that Tanzanian indigenous peoples as marginalized and vulnerable raises attendant questions of why and how were Tanzanian indigenous groups reduced to such an impoverished state? Secondly, what possibility exists for indigenous groups to protest the derogative clause in the constitution? Is there any hope of stripping that clause so that rights are independent of budgetary concerns? And lastly, how does one fight against the growing number of laws that have been passed that effectively render pastoralism impossible (e.g., by prohibiting mobility of herds in the name of "preventing disease")? Your other work has shown how such laws effectively undermine the viability of pastoralism as a mode of livelihood. What can one do in that context?

Thank you very much.