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of the Maasai in Loliondo/Tanzania“

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Abstract

In face of the finiteness of the planetary resources, environmentalism is of increasing significance in global politics. However, the preservation of natural resources is problematic in the sense that areas with dense biodiversity are often home to indigenous communities. The forceful eviction of Maasai pastoralists from Loliondo/Tanzania in the name of conservation in August 2017 exemplifies the tension between environmentalist projects and local communities. The main stakeholders in this conflict are, first, the Maasai who claim their right to land, second, the Tanzanian national government which refers to the ecological and economic importance of the disputed land, and third, safari companies that aim to intensify tourism in the area. This thesis examines the (also inherently) conflicting positions as well as the relevant (inter-)national legislative framework before exploring the roots of the conflict: A central part is the contraposition of the dominant conservation ideal that strictly separates humans and nature by demarcating protected areas, and the pastoralist way of life that depends on seasonally flexible movement between different water sources and pastures. The thesis shows how a better understanding of all involved positions might contribute to a holistically participative environmental discourse.

Angesichts der Begrenztheit der planetaren Ressourcen ist Umweltschutz in der internationalen Politik von zunehmender Bedeutung. Jedoch ist die Bewahrung natürlicher Ressourcen insofern problematisch, als dass Gebiete mit hoher Biodiversität oft zugleich die Heimat indigener Bevölkerungsgruppen sind. Die Zwangsumsiedlung von Massai-Hirten aus einem Naturschutzgebiet in Loliondo/Tansania im August 2017 steht beispielhaft für die Spannung zwischen Umweltschutz und lokalen Gemeinschaften. Die Hauptakteure im Konflikt sind erstens die Massai, die ihre Landrechte einfordern, zweitens die tansanische Nationalregierung, die sich in ihrer Argumentation auf die ökologische und ökonomische Relevanz des umkämpften Gebietes bezieht, und drittens Safariunternehmen, die darauf abzielen, den Tourismus in Loliondo voranzutreiben. Diese Masterarbeit untersucht die sich (z.T. auch in sich selbst) widerstrebenden Konfliktpositionen sowie den (inter-)nationalen rechtlichen Rahmen, um anschließend die Wurzeln des Konflikts zu ergründen: Der Fokus liegt dabei auf einer Gegenüberstellung des dominanten Umweltschutzideals, das Mensch und Natur durch die Errichtung menschenleerer Schutzgebiete voneinander trennt, und der pastoralen Lebensweise, die auf saisonal flexibler Migration zwischen verschiedenen Wasserquellen und Weidegründen basiert. Die Masterarbeit zeigt, wie ein besseres Verständnis aller involvierter Positionen zu einem holistisch partizipativen Umweltschutzdiskurs beitragen kann.

Contents

List of abbreviations.....	1
1 Introduction.....	1
2 The Loliondo conflict.....	6
3 Stakeholders and their positions	12
3.1 Tanzanian government.....	12
3.2 Maasai.....	17
3.4 Investors.....	20
4 Legal framework	24
4.1 Conservation law in Tanzania	24
4.2 The legal status of different types of protected areas	27
4.2.1 Game Controlled Areas	28
4.2.2 Game Reserves	28
4.2.3 Wildlife Management Areas	29
4.3 Rights violated by conservation law	30
4.3.1 National level.....	31
4.3.2 International level: The indigenous rights movement.....	32
4.4 Indigeneity in Africa	39
5 Background to the legal debate: Terra Nullius.....	43
5.1 Post-colonial Tanzania	46
5.2 Conservation and Green Grabbing	47
6 Opposing perspectives on nature	50
6.1 The cultural production of nature.....	50
6.2 The emergence of Western environmentalism	51
6.3 The traditional meaning of land for the Maasai	55
7 Maasai society today: Diversification	59
8 Methods and challenges in the research process	66
9 Outlook: Solutions?	68
9.1 Income growth through economic integration	69
9.2 Real participation	72

10 Conclusion	78
11 Literature.....	82
12 Appendix.....	87
12.1 Relevant legislation.....	87
12.2 Interview 1 2018: Adams (East Africa Regional Manager AndBeyond).....	88
12.3 Interview 2 2018: Ndoinyo (Ololosokwan Ward Councillor and Member of Ngorongoro District Council)	98

List of abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ACWGIP	African Commission's Working Group on Indigenous Populations
CBNRM	Community Based Natural Resource Management
EACJ	East African Court of Justice
GCA	Game Controlled Area
GIZ	Gesellschaft für Internationale Zusammenarbeit
GSE	Greater Serengeti Ecosystem
IWGIA	International Work Group for Indigenous Affairs
ILO	International Labour Organisation
LGCA	Loliondo Game Controlled Area
NCA	Ngorongoro Conservation Area
NCAA	Ngorongoro Conservation Area Authority
OBC	Ortello Business Corporation
PWC	Pastoral Women's Council
SENAPA	Serengeti National Park Authority
SNP	Serengeti National Park
TANAPA	Tanzania National Parks Authority
TAWA	Tanzania Wildlife Authority
TAWIRI	Tanzania Wildlife Research Institute
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNWGIP	United Nations Working Group on Indigenous People
WMA	Wildlife Management Area
WWF	World Wide Fund for Nature

1 Introduction

In Kenya and Tanzania, the establishment of National Parks has caused tremendous land alienation and eviction and restriction of local communities from resources that were critical for their survival. This has affected many pastoralists, not least the Maasai. The creation of all the National Parks [...] has led to the eviction of indigenous Maasai from their ancestral land without compensation, supposedly in the national interest (African Commission on Human and Peoples' Rights 2005: 24).

The conflict between protected areas and local communities in East Africa reached new heights when the Maasai of Loliondo were forcefully evicted from their homes in August 2017. The official justification for the relocation was that human presence and activity are a threat to the region's biodiversity. Loliondo is an area in Northern Tanzania bordering the Serengeti National Park (SNP), a conservation hotspot world-famous for its wide plains, beautiful scenery and high density of large mammals. Correspondingly, it is of central importance to the Tanzanian tourism sector (McVeigh 2017). The Loliondo conflict between wildlife conservation interests and existential local needs began when the Serengeti was declared a protected area by the British colonial government in 1929 (Neumann 1998: 129). Ever since, state authorities, safari companies and environmental NGOs have argued that the presence of people in protected areas is irreconcilable with conservation objectives (ibid.: 3):

The region has a long history of conservation and the creation of a network of national protected areas that have gradually eroded customary land-use practices and rights (Gardner 2016: 38).

This particularly affects the local Maasai who traditionally live as semi-nomadic pastoralists and strongly depend on grazing land for their cattle (Minahan 2002: 1122). Therefore, their stated goal is to reclaim land rights and to be included in the decision-making process concerning the future of Loliondo (Ndoinyo, Interview 2 2018: 164 ff). They reject the other stakeholders' allegations and argue that it is not their presence in Loliondo but rather tourist activities such as game hunting that pose a major threat to local wildlife (Neumann 1998: 138).

The opposing positions in the Loliondo conflict are representative of the debates surrounding conservation-related local resource disputes around the world (Stevens 2014: 23).

According to geographer Stan Stevens (2014), the concept of biodiversity conservation has become increasingly popular over the past 25 years. This has given rise to the emergence of environmental organisations such as the World Wide Fund for Nature (WWF). The conservation of nature is often promoted as the solution to the planet's ecological problems, making it an important part of national and international environmental policies (ibid.: 22). A contentious point is that "intact ecosystems" (ibid.: 23) are traditionally imagined as uninhabited (Neumann 1998: 11). This conception proves to be wrong given that biodiversity hotspots often overlap with or are equivalent to local (indigenous) communities' ancestral lands: "Indigenous peoples and 'traditional peoples' inhabit 95 percent of the 238 ecoregions [...] that the WWF considers critical for global conservation" (Stevens 2014: 23). As local communities depend on the use of resources such as grazing land, soil or water, the increasing number and size of protected areas, where such use is typically prohibited in the name of conservation, poses a threat to their livelihoods (ibid.).

The recent expansion of protected areas can also be observed in the case of Tanzania: "According to the Tanzanian government, around 36 percent of the country's total area was protected in various ways in 2007" (Benjaminsen, Bryceson 2012: 336). An important aspect that needs to be considered when examining local resource conflicts resulting from apparently environmental concerns is the fact that protected areas attract a high number of tourists and therefore present an important source of revenue to the national economy. Local communities are perceived as obstacles to the complete valorisation of natural resources. The interconnection of economic and ecological spheres makes it hard to distinguish between conservation and monetary interests (ibid.).

This thesis analyses the Loliondo conflict as an example of green resource conflicts and of increasing tensions between local livelihoods and

environmentalism. It explores the (colonial) roots of the conflict and questions the widely practised environmentalist mainstream that separates humans and nature (Neumann 1998). This research interest leads to the main question: How can conservation objectives and local modes of living be reconciled?

To this end, it is important to analyse the emergence of Tanzania's current conservation strategy and to assess how the establishment of protected areas affects the pastoral way of life. Furthermore, it is crucial to investigate how different perspectives on land constitute different positions in the conflict and how these are manifested in the legal framework.

The thesis consists of two main sections: First, an examination of the Loliondo conflict that unfolds on multiple levels and therefore serves as a basis for the structure of the second section, the historical and theoretical background of local resource conflicts resulting from wildlife conservation.

In Chapter 2, background information on the Loliondo conflict is provided before the most recent events and the current situation are discussed. In the following Chapter, the discourse between the different stakeholders involved is examined. The focus lies on three groups of stakeholders that represent the distinct stances in the conflict: The Maasai who live in Loliondo, investors that operate safari tourism in the area, and the national government that claims the importance of Loliondo both for conservation and economic development in Tanzania (Regional Commissioner Arusha 2017). Due to their immediate connection to Loliondo, each of these stakeholders will be directly affected by any decision concerning the future of the area. Since all parties refer to law as a means of reinforcing their position, the legal framework of the conflict is analysed in Chapter 4. The examination of law at this point does not aim to find out who is legally right. Instead, it illustrates that law is not objective but an expression of power relations. In this sense, an important first step before analysing specific legislation is to briefly introduce the history of conservation law in Tanzania, originating from the colonial period (Neumann 1998). Following the historical overview, the most relevant conservation law in Tanzania today, the *Wildlife Conservation Act* of 2009, will be assessed. This law is important

because it defines the different types of protected areas that are now discussed in the context of Loliondo. Some options are more restrictive, banning permanent human presence completely, while others allow for community based solutions.

The next argumentative step looks at how the, sometimes forceful, implementation of the *Wildlife Conservation Act* contravenes other national and international legislation. On the national level, there are laws, such as the *Village Land Act* of 1999, according to which the Maasai hold an official land title and should consequently be consulted before any relocation, or at least compensated. On the international level, some of the most important legislation that is violated in Loliondo is, firstly, the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP), and, secondly, the International Labour Organisation's (ILO) *Indigenous and Tribal Peoples Convention No. 169*. Since both refer explicitly to indigenous populations, Chapter 4 explores in how far the Maasai can be considered as indigenous and therefore build their land claims on the international indigenous rights movement (Ndahinda 2011).

In Chapter 5, the argument that the ideas of possession and land tenure that shape Tanzanian state law lead back to the colonial idea of *Terra Nullius* is discussed, thereby serving as a transition to a more theoretical debate on resource conflicts. The colonial powers took over the uncultivated and therefore supposedly empty land they found in the colonies which highlights that, just like today, certain ways of seeing and using the land rule out others (Gilbert 2017). As proof of the persistent relevance of *Terra Nullius*, the explanation of the theoretical concept is followed by a historical overview of landgrabs from colonialism to the present day that can all be interpreted as ontological conflicts between different ways of life. In the specific case of Loliondo, there is a conflict between pastoralist, conservationist and neoliberal aspirations. It will be shown that the conservationist and the neoliberal perspective are strongly interconnected in that national parks are often an important source of national revenue. The most obvious example of the interconnection of conservation and

neoliberalism is *Green Grabbing*, that is land grabbing for environmentalist ends (Benjaminsen, Bryceson 2012).

In order to confirm the hypothesis that resource conflicts often derive from conflicting ontologies, Chapter 6 takes a closer look at the differences between the stakeholders' perspectives on nature. First, it is explained that culture and nature mutually constitute each other (Robbins 2004). Then, to give an example of a culturally produced understanding of nature, the environmentalist idea of intact nature as uninhabited is analysed in the light of its colonial roots and compared with the traditional meaning of land for the pastoralist Maasai (Bender Shetler 2007). However, the following part shows that the contrast is not as black and white as one might assume. While different ways of life are of significance when examining the Loliondo conflict, it needs to be emphasised that there is no homogenous Maasai society. As opposed to traditional semi-nomadic pastoralism, many Maasai today strive for economic integration which changes the framing of the entire conflict as it dissolves the separating line between the different stakeholders' positions. After an examination of the research methods, two possible scenarios for the future of Loliondo are depicted in Chapter 9: While the first presents economic integration of the Maasai as the solution to the conflict (Slootweg 2017), the second discusses the possibility of a *real* participative approach, meaning that local society-nature relations would be renegotiated. The outlook is followed by a conclusion.

In this thesis, the opposing positions' (theoretical) backgrounds are contrasted and investigated in order to enable a deeper understanding of the conflict between community rights and conservation. This contributes to solutions that are suitable for all involved parties. My main assumption is that in the case of Loliondo and many other resource conflicts, conservation rhetoric serves as an instrument for stakeholders to enforce their respective interests. Furthermore, I presume that resource conflicts derive from different perspectives on nature, turning supposedly objective debates on conservation into conflicts of power between different modes of knowledge.

2 The Loliondo conflict

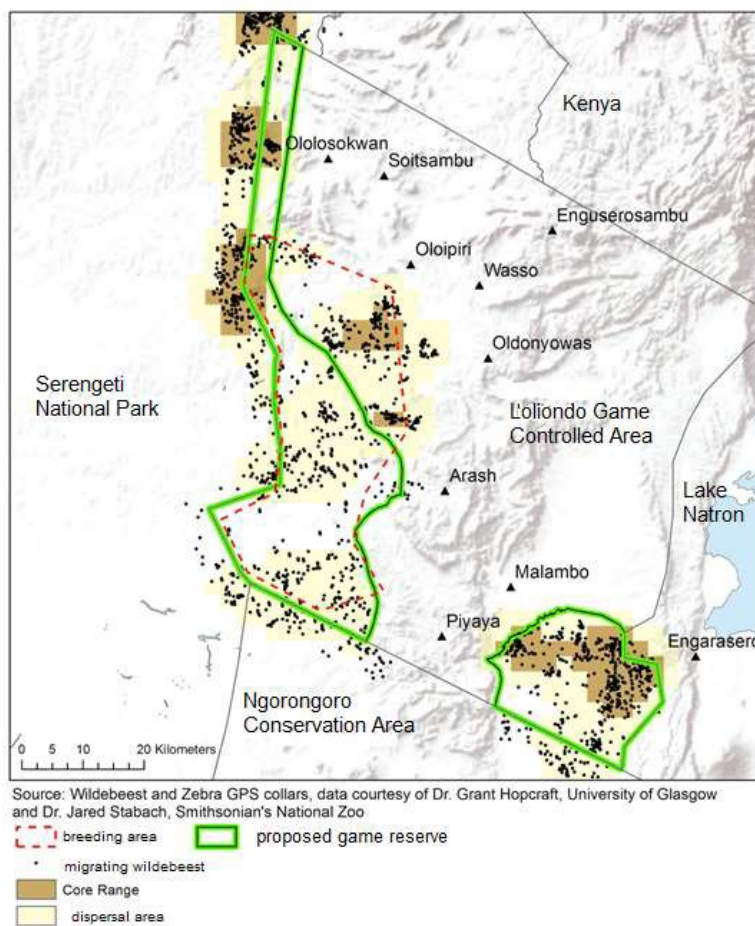
According to the International Work Group for Indigenous Affairs (IWGIA), around 185 *bomas* (Maasai homesteads) were burned down in Loliondo by Serengeti National Park (SENAPA) and Ngorongoro Conservation Area Authority (NCAA) rangers in mid-August 2017, rendering approximately 6,800 Maasai homeless and resulting in a lack of food, water and shelter, separations of families, psychological trauma and huge loss of livestock¹ (IWGIA 2017b: 1). The Maasai traditionally live as semi-nomadic pastoralists and move according to seasonal environmental changes in search of grazing land for their herds of cattle. Therefore, they are essentially dependent on natural resources (Minahan 2002: 1122 ff.). At the time of August 2017's evictions, the Maasai were already suffering from a severe drought that led to a significant decline in livestock. The restriction on mobility and adaptation strategies due to the violent evictions reinforced the negative impact because it prevented them from migrating to better grazing land and intact water sources.

Loliondo, the disputed area, is the administrative centre of the Ngorongoro District in the Arusha Region in Northern Tanzania. Ngorongoro District comprises an area of 14,036 km² and a population of 200,000 people of which 80% are Maasai. Loliondo, bordering the Serengeti National Park (SNP) to the West and Ngorongoro Conservation Area (NCA) to the South (IWGIA 2017b: 2) is part of the Greater Serengeti Eco System (GSE) which covers the Loliondo Game Controlled Area (LGCA), the NCA as well as the Maasai Mara National Reserve in Kenya and is "home to the greatest abundance of terrestrial wildlife² on earth" (TAWIRI 2011: 13). The Maasai were evicted from the SNP at the

¹ Livestock refers to "cattle, sheep, goats, pigs, horses, mules, donkeys and all other domesticated animals and their eggs and young" (Wildlife Conservation Act 2009: 13 [Part I, Section 3]).

² Wildlife is defined as "any wild and indigenous animals and plants, and their constituent habitats and ecosystems found on and, or in land or water, as well as exotic species that have been introduced in Tanzania and established in the wild, and includes wild animals on transit, temporarily maintained in captivity or have become established in the wild" (Wildlife Conservation Act 2009: 16 [Part I, Section 3]).

time of its establishment in 1958, when all human activity in the area was declared illegal, and consequently migrated to Ngorongoro in search of grazing land and water. As a reaction to the drought in 2017 which threatened their livelihoods, some Maasai moved back to the SNP and were consequently heavily fined by park rangers. This illustrates the contradiction between the demarcation of protected areas and the Maasai way of life that depends on free movement (IWGIA 2017b: 2).



Map 1: Loliondo Game Controlled Area and Proposed Game Reserve Boundaries (Slootweg 2017: 2)

Ngorongoro District consists of an 8,292 km² Conservation Area in the South where pastoralist activity and settlement are permitted, and the 4,000 km² LGCA in the North (GIZ 2017: 3). Although Loliondo was declared a Game Controlled Area (GCA) in 1968 (GIZ 2017: 6), its legal status has been

contested by local residents ever since. The area in which the government would now like to implement stricter rules and prohibit human settlements, possibly by declaring it a Game Reserve, consists of 1,500 km² and serves as a buffer zone to the SNP.

The legal twist of the disputed area is that the 1,500 km² have also been officially registered as village land (Ololosokwan, Kirtalo, Oloipiri and Oloirien villages, where the evictions have taken place) under the 1999 *Village Land Act no. 5* by village governments that have administrative power according to the 1982 *Local Government Act no. 7* (IWGIA 2017a: 513). Moreover, the *Land Ordinance No. 3* of 1923 declared all Tanzanian land public land, making the respective governor a central stakeholder in land questions (The Oakland Institute 2018a: 25): “The government says that the land has to be taken away for conservation and tourism, so that has always been an issue between [...] the people and the government”, says Yannick Ndoinyo, a member of the Maasai community and the Ngorongoro District Council as well as Ward Councillor of Ololosokwan village (Interview 2 2018: 15 ff.).

Given the ambivalent status of Loliondo, it is crucial to consider the *Wildlife Conservation Acts* of 1974 and 2009 that define the legal status of GCAs when analysing the juridical dimension of the conflict: While the 1974 Act allowed hunting, human activities and settlement in GCAs, the 2009 Act declared any human activity except tourism illegal. Despite this tightening of the law, settlements, livestock herding and agriculture have generally been tolerated (GIZ 2017: 6 ff.). Regardless of whether one considers the disputed land to be village land or a GCA, forced evictions present a violation of national law: The *Village Land Act no. 5* of 1999 prescribes information of and consultation with the Village Council and the 1967 *Land Acquisition Act no. 47* ensures full, fair and prompt compensation in case evictions are considered necessary by the national government, both of which has not been accomplished in the Loliondo conflict (IWGIA 2017b: 4).

An aspect that further complicates the Loliondo case is the presence of the Ortello Business Corporation (OBC), a luxury safari company from the United

Arab Emirates that has held a hunting concession for the entire 4,000 km² of Loliondo, including the conflict area of 1,500 km², since 1992 and has repeatedly asked the government to turn the legal status of the land from village land into a protected area. In order to satisfy the investor's interests, there have been several attempts by the Tanzanian government to determine the land's legal status as a GCA while denying the village land title, aimed at increasing control over and restriction of local resource use (ibid.: 3): The violent evictions from the disputed 1,500 km² in 2009 presented the last severe escalation of the conflict before August 2017 and made Loliondo world-renowned due to an international NGO declaration speaking out for Maasai rights (GIZ 2017: 8). However, there are also investors that highlight their contribution to local community development, an aspect that should not be neglected (Adams, Interview 1 2018: 106 ff.).

After the most recent evictions from the same area, the Ministry of Natural Resources and Tourism released a statement saying that the intention was to remove livestock and settlement from the SNP and boundary areas which serve as an important water catchment area and buffer zone for the Serengeti (GIZ 2017: 8). This illustrates that the government acts in compliance with the supposedly main financial supporter of the evictions, OBC, which demands exclusive occupancy of the area. The evictions came as a surprise insofar as Prime Minister Kassim Majaliwa had just set up a multi-stakeholder commission in order to include the concerned village people in the decision-making process to find a solution (IWGIA 2017a: 515 f.). The commission consisted of representatives of the government, local residents, NGOs and investors, and was led by Arusha Regional Commissioner Mrisho Gambo. The cooperation proved difficult given the governmental actors' intention to manifest the land's status as a GCA and the community's preference to establish a Wildlife Management Area (WMA) that would grant more rights to local residents. Given the continued discrepancies, the government fears that the conflict might result in an impoverishment of local residents due to population growth and a lack of resources, leading to further protests that in turn pose a threat to biodiversity,

tourism and the Tanzanian economy (GIZ 2017: 13). Detailed results of the report will be analysed in Chapter 3.1 (IWGIA 2017b: 3).

The essential role of OBC is emphasised by the fact that they financed the establishment of a Land Use Plan in 2010 which suggested the reduction of the existing GCA, where human activity is legally prohibited, to the 1,500 km² that are actually used for hunting tourism by OBC. As a consequence, the implementation of the *Wildlife Conservation Act no. 5* of 2009 would have been enforced within the newly demarcated and tightened GCA boundaries, finalising the criminalisation of human settlement in the area. The plan was rejected by the Ngorongoro District Council as it would pose a major constraint on local livelihoods (GIZ 2017: 8).

As shown above, the Loliondo land conflict has unfolded on multiple levels: First, there is the land's conservation value as claimed by the government and environmental organisations. Second, there is the economic value deriving from safari tourism, making the land attractive for investors and an important revenue source for the Tanzanian economy. These means of utilisation stand in contrast with the Maasai's position, to whom the land is essential for physical and cultural survival (Bender Shetler 2007: 101). What is more, the discourse is influenced by different political preferences and mindsets: While in 2013 Prime Minister Misengo Kayanda Peter Pinda promised that the contested 1,500 km² of Loliondo would remain village land, the Ministry of Natural Resources and Tourism (MNRT) stated that the land should be taken away from the villagers in January 2017. This illustrates that the current government position is highly dependent on the respective politicians in power. The political discourse is also influenced by different NGOs of which some defend Maasai interests in the name of human rights (IWGIA 2017a: 515), while more environmentally focussed organisations argue in line with the Tanzanian government and investors by putting conservation first (Stevens 2014: 23). In addition, the conflict has heightened tensions in local conflicts, for example between pastoralists and farmers, due to a scarcity of fundamental resources such as water (TAWIRI 2011: 4).

In the most recent development in the conflict, the village councils from Ololosokwan, Kirtalo, Oloipiri and Arashi filed a case against the Attorney General of the United Republic of Tanzania with the East African Court of Justice (EACJ) in September 2017. After an unsuccessful case filed by Tanzanian civil society organisations against OBC at the High Court of Tanzania in 2010, this takes the conflict to the next legal level (The Oakland Institute 2018: 20). The central claim in the current case is that the evictions took place on officially registered village land and were therefore illegal (EACJ 2018: 2). In the following, this case will be referred to as *Application No. 15 of 2017*. The Tanzanian government reacted by raising a notice of preliminary objection on November 15th of 2017, stating that “the Applicants do not have requisite Authority to institute this Application in Court” (ibid.: 4). By the end of January 2018, the Court decided that, according to the 1982 *Local Government Act* (ibid.: 10), the “Village Councils in question have the legal capacity to institute a case before this Court and therefore the Notice of preliminary objection raised by the respondent is dismissed” (ibid.: 13). According to the Oakland Institute, a Californian policy think tank with the aim to reveal the injustices taking place in Loliondo, the first hearing of *Application No. 15* was held at the East African Court of Justice on June 7 of 2018 (The Oakland Institute 2018b).

In the meantime, Hamisi Kigwangalla, the Minister of Natural Resources and Tourism, announced that the government had withdrawn OBC the hunting license after 25 years of cooperation in November 2017 and promised that the company would be gone by January 2018. However, OBC was still present in Loliondo in March 2018 (Lang 2018). At the same time, Prime Minister Majaliwa directed the MNRT to create a “special authority” that will be charged with the management of the Loliondo area, with the aim of “making peace and achieving sustainability” (Government Official Blog 2017). It has not yet been specified which actors will be represented in this special authority.

3 Stakeholders and their positions

As shown above, central stakeholders in the conflict are the Maasai people, the Tanzanian government and investors whose positions are going to be examined in more detail in the next Chapter. Given the fact that the conflict has now lasted for decades and a solution that satisfies the needs of all parties does not seem to be in sight, it is essential to closely examine all involved stakeholders and their positions.

3.1 Tanzanian government

The Tanzanian government's position can be depicted by discussing two reports commissioned by the government to analyse the situation in Loliondo as well as press statements concerning the most recent developments of the conflict. While the first report is an evaluation of Loliondo's status as a GCA conducted by the Tanzania Wildlife Research Institute (TAWIRI) in 2011, the second one was accomplished in 2017 by the multi-stakeholder *Committee for Resolving Loliondo Game Conservation Authority Land Dispute* under the direction of Arusha's Regional Commissioner (Regional Commissioner Arusha 2017).

A central factor from the government's perspective is Loliondo's value as a tourist destination based on its exceptional biodiversity that is seen as being threatened by the Maasai land use. Likewise, the 2009 *Wildlife Conservation Act no. 5* postulates that the status of all Tanzanian GCAs is to be reassessed on a regular basis so as to ensure that GCA standards are met (TAWIRI 2011: 4). The aim of the TAWIRI study (2011) was therefore to identify the original and the current size of legally declared GCAs, the extent of degrading land use practices as well as population sizes and wildlife numbers, thereby ensuring wildlife conservation and improving local livelihoods (ibid.: 6). The research institute's assumption is that the "disappearance of GCAs leads to national parks and game reserves becoming biodiversity islands, causing gene erosion, local extinction of species and human-wildlife conflict as a result of the cutting off of migration routes" (TAWIRI 2011: 2).

The study identifies several problems that supposedly pose a threat to the status of Loliondo as a well-functioning GCA: poaching, unsustainable land use, human wildlife conflicts, blockages of wildlife migratory routes and human settlement (ibid.: 22). The 2009 *Wildlife Conservation Act* defines migratory routes as “an area of a strip or zone of land used by herds of wild animals during their migratory cycles or seasonal movements”, making them crucial to the survival of these species (Wildlife Conservation Act 2009: 13 [Part I, Section 3]). As most of these problems are connected to human presence in the GCA, it is important to note that the LGCA has both a higher population growth rate (5,3%) and a higher population density (7,5 persons/km²) than the neighbouring NCA (ibid.: 15). With regard to this development, the German Development Cooperation (*Gesellschaft für Internationale Zusammenarbeit/GIZ*) notes that the Maasai way of life is becoming increasingly unsustainable due to an overexploitation of resources such as water, grazing land and forests, and the fact that the Maasai have started to engage in farming and other activities besides pastoralism due to a relative decrease in Livestock Units (LUs) available per person. Given the estimation that a household needs 4 LUs per member in order to sustain itself, pastoralism has been unable to support the local population since the 1990s because the available LUs per person decreased to 3,3 during that period and to 2,2 in 2016 (see Table 1) (GIZ 2017: 11 ff.).

	Ngorongoro	LU/p
year	population	430,000
1960	20,000	21.5
1978	47,000	9.1
1988	69,000	6.2
2002	129,000	3.3
2012	174,000	2.5
2016	196,000	2.2
2036	356,000	1.2

Table 1: Population growth in Ngorongoro and Livestock Units (LU) per person (GIZ 2017: 12)

According to the government and the GIZ, the consequence of these findings is that a diversification of economic activities in the district is required to halt the ongoing process of impoverishment and ecological degradation (ibid.: 13). The TAWIRI report therefore concludes that a Land Use Plan is needed in order to demarcate village boundaries and separate human settlement and wildlife habitats. It also states that the best way to maintain sustainable wildlife

conservation would be to demonstrate the benefits of conservation to local communities in order to ensure their compliance with conservation standards (TAWIRI 2011: 24). According to Benjaminsen and Bryceson (2012), the argument that human activity harms conservation objectives is a typical way to justify restrictions on local resource use (Benjaminsen, Bryceson 2012: 350).

Before moving on to the second report, it is important to emphasise that the Tanzanian political discourse on conservation is very inconsistent. The position does not only vary between different parties and politicians, but also between national, regional, district, ward and village level, all of which have administrative power in Tanzania. Furthermore, the national government's position cannot be viewed as isolated from investor interests given that the influential OBC has repeatedly asked the government to remove settlements from Loliondo and was most likely the main financial supporter of the evictions in August 2017 (IWGIA 2017b: 2 ff.).

In a move criticised harshly by an (inter-)national opposition of non-governmental actors the MNRT renewed its demand for a clearance of the disputed area in 2016. Since then, it seems that there has been a tendency toward participatory strategies that integrate the concerned villagers (IWGIA 2017: 509): In December 2016, Prime Minister Kassim Majaliwa asked Arusha Regional Commissioner Mrisho Gambo to solve the conflict by setting up a multi-stakeholder commission. This consisted of representatives of the MNRT, the Ministry for Lands and Human Settlements, Tanzania National Parks Authority (TANAPA), Tanzania Wildlife Authority (TAWA), the Regional Commissioner's Office, the National Security Committee, conservation organisations, four community members, OBC and Thomson Safaris (ibid.: 515): "I was [...] on the commission that was formed by the Prime Minister and the Arusha Regional Commissioner. So, we made some proposals and we presented to the Prime Minister last year and then we met with him in December", says Maasai leader Yannick Ndoinyo (Interview 2 2018: 66 ff.). In contrast to earlier reports, the commission's report published in April 2017 aims to include the opinions of the government, of local residents and of investors,

outlining points of agreement and differences between them. However, the report agrees with the study conducted by TAWIRI insofar that human activity is viewed as a major threat to conservation, considering additional livestock rearing activities as “hazardous to the ecosystem” of Ngorongoro. Livestock are currently held by 60% of the residents, but it is considered unprofitable due to the poor quality of grazing lands and a lack of veterinary services. According to the government, this proves the urgency of a diversification of economic activity in the region (Regional Commissioner Arusha 2017: 10).

The fact that animals and natural phenomena such as flamingos or waterfalls are termed *attractions* that deliver 80% of the district’s revenues illustrates the economic bias of the government’s position. In this context, it is also stated that existing airstrips should be improved to attract a higher number of visitors and increase national income (ibid.: 13 ff.). Furthermore, the commission’s report emphasises that the revenues generated through tourism contribute significantly to community development. In how far this is the case will be discussed in Chapter 9. The government continues to highlight the relevance of an investor-friendly economic environment and, just as stated in the TAWIRI report, blames increasing dimensions of settlement and livestock to be responsible for ecological degradation and the withdrawal of investors from LGCA because the *attractions* (the wildlife) are scared away (ibid.: 10). The Maasai are therefore considered a threat to both the GSE and the national economy (ibid.: 15). Nevertheless, the commission’s report also recognises the contradiction between Tanzanian conservation law and land law such as the *Village Land Act no. 5* of 1999 (see Chapter 4). The absence of infrastructure, making it difficult for the Maasai to leave the area in search of other economic activities, and the challenge that climate change poses to the semi-arid ecosystem are also considered (ibid.: 24). Although the commission’s report provides a more nuanced analysis of the situation than previous examinations, the basic position of the government hasn’t changed much over the years: The most favourable option remains the establishment and subsequent

implementation of a protected area in which human settlement is prohibited (ibid.: 34 ff.).

Despite the claimed tendency toward community participation (IWGIA 2017a: 517), there is still almost no direct involvement of the Maasai who instead continue to be threatened and intimidated by the national government (The Oakland Institute 2018b: 2): According to Ndoinyo, “there was nothing really that was agreed on and so far, we are only waiting for the Minister to come up with the government’s proposal” (Interview 2 2018: 95 f.). After all, the main reason for the government to preserve the area’s nature and wildlife is its economic value in terms of investment and tourism. Another reason is the aim to achieve the SDGs through natural resource management (TAWIRI 2011: 3). In this sense, the SDGs contribute to a dominance of conservation objectives in the national policy discourse leading to a marginalisation of local interests:

A constantly increasing urge for conservation and investment on the part of the government continues to override the interests of the people. We continue to see indigenous peoples’ issues waved aside by political leaders who believe they know what indigenous peoples want - despite indigenous peoples’ attempts to tell those leaders what their issues, demands and visions are (IWGIA 2017a: 517).

In December 2017, a press statement by the government was released saying that the Loliondo crisis had come to an end. Prime Minister Kassim Majaliwa reacted to the commission’s report by announcing that the government would propose a “special tool that will manage the Loliondo area to assist the ecosystems of the Serengeti Park and to protect the environment” (Government Official Blog 2017) as well as to ensure that local and economic needs are satisfied. He explained that the area needed special legislation due to the diversity of interests involved. An important aspect of Majaliwa’s announcement was the fact that the local community should be represented in the special entity tasked with the management of Loliondo in order to integrate all stakeholders in the decision-making process. It was not further specified

how this entity would work in practice, although a draft defining the special authority's functions was planned to be finished by March 2018 (ibid.).

3.2 Maasai

The Maasai of Loliondo have experienced a long history of dispute around their land, starting with the establishment of the SNP in 1951 (Regional Commissioner Arusha 2017: 16):

The formation of Serengeti involved entering into an agreement between the British colonial government and the Maasai who owned the Serengeti. So, they entered into a voluntary agreement that would give them ownership of the area outside Serengeti, so, in a way Loliondo was given as a compensation to the people of Serengeti who moved, so that the National Park can be created (Ndoinyo, Interview 2 2018: 117 ff.).

Decades later, the Maasai community faces renewed human rights violations in the form of forceful evictions although community members claim that their ancestors were promised they would never have to relocate again.

The Maasai argue that the disputed land of 1,500km² is the only remaining area with enough suitable grazing land for their cattle, which are crucial to their livelihoods. The area is particularly important as a grazing land refuge during the dry season: According to the Maasai, land is already too scarce to feed all their cattle, leading to a high level of uncertainty about what will happen to the 50,000 people and 700,000 livestock residing in Loliondo after a possible relocation (Regional Commissioner Arusha 2017: 27). The Maasai indicate that relocation will aggravate a situation that is already severe due to a long-lasting drought in 2016 and 2017 during which they lost a significant number of livestock. Further restrictions on mobility would make pastoralist livelihoods impossible in Loliondo. Consequently, the Maasai would be forced to evade to the SNP in search of grazing land and water sources, which in turn would cause new land conflicts (IWGIA 2017a: 512). Furthermore, the Maasai claim that the dispute does not only affect their traditional way of life: The contested 1,500km² also present their only chance to establish collaborations with investors and to develop economically (ibid.: 26 f.).

In contrast to the government that sees unsustainable resource use and increasing population growth as a threat to the region's relevance as a tourist destination and national income source (GIZ 2017: 11 f.), the Maasai consider themselves to be experienced conservationists thanks to their history and customs. Their traditional way of life is based on keeping livestock and migrating according to seasonal grazing land availability, giving all land the opportunity to regenerate and thereby preventing overexploitation. The Maasai also emphasise that they do not hunt wildlife. In their opinion, the fact that wild animals roam near Maasai bomas without fear can be interpreted as proof of the animals' trust. Also, there are norms and beliefs in their culture that prescribe a respectful attitude toward nature and punish non-compliance with these principles (Regional Commissioner Arusha 2017: 11). Further, the Maasai argue that the loss of investors in the area is the consequence of OBC claiming they are the only company permitted to operate within the entire 4,000 km². Ndoinyo also criticises OBC's relation with local residents and claims that they initiated the evictions of August 2017:

OBC has a very poorly structured community relationship, benefits are there when they are happy, when they are not, then we know what happens [...]. They bring the government to burn peoples' villages, homes, to evict people [...]. It's difficult to show that evidence but being here and knowing the politics, it is obviously them (Ndoinyo, Interview 2 2018: 211 ff.).

However, OBC is not the only investor that has a negative impact on the Maasai community. According to The Oakland Institute (2018a), the company Thomson Safaris cooperates with the national police in order to evoke a "climate of fear" in Loliondo. The police intimidates and threatens the Maasai and journalists by using teargas and guns (The Oakland Institute 2018a: 16): "We sometimes have no hope of seeing the next day. But we say 'Come what may'" (Ndoinyo, Interview 3: 226 ff.). This statement emphasises the despair of the Loliondo villagers in the face of the current political situation. .

On the other hand, some Maasai claim that investors provide important financial support for local communities as they fund social services such as education,

health services, employment or water service (Regional Commissioner Arusha 2017: 26 f.). At this point, it is important to notice that some villagers get employed or bribed by companies while others do not receive any financial benefit. This weakens resistance toward investors as it contributes to a division of the Maasai society and creates an atmosphere of mistrust among the villagers (The Oakland Institute 2018a: 17).

Considering the national government's behaviour throughout the conflict, the Maasai complain that the MNRT ignores Loliondo's history given that the Maasai were already in the area before the enactment of any conservation laws and are consequently not illegal settlers. They also refer to the fact that the evictions in August 2017 took place on registered village land and state that the land's legal status should have been considered before the establishment of the LGCA (see Chapter 4.3.1 for more detailed information on the legal basis of the argumentation).

After all, the Maasai want the government to support them in engaging in conservation and tourism activities and make sure that local communities benefit from tourism instead of denying them the possibility to develop: So far, "tourism is focused in Ngorongoro on high-end, short-stay tourists. The inhabitants do not profit from this, at best they are object of curiosity" (Slootweg 2017: 1). The Maasai therefore demand that the government promote local participation. In this context, they also refer to UNESCO stating that community participation is a precondition for the GSE to maintain its status as a World Natural Heritage site (ibid.: 28).

According to the Pastoral Women's Council (PWC), a Maasai NGO that aims to empower women and achieve gender equality within Maasai society, there has been moderate progress toward participation during the past two years. In 2016, local NGOs were for the first time able to participate in the discussion as part of the multi-stakeholder committee (PWC 2016: 3 f.): "We feel that the government has realised that our rights are paramount" (Ndoyinyo, Interview 2 2018: 180 f.). In the same context, the director of the PWC, Maanda Ngoitiko,

thanked the Government for involving local representatives in finding a solution to the conflict:

In the past, we were only given orders, the government has decided that, the United States has said so, but in this phase, we have been able to call on various sessions and even give feedback (Government Official Blog 2017).

Although the involvement of community members in the committee represents an improvement compared to earlier attempts at solving the conflict, the Maasai are still not part of the team that formulates the guidelines for the establishment of the “special authority” (Government Official Blog 2017). As a result, they are excluded from the most crucial part of the decision-making process (Ndoinyo, Interview 2 2018: 74 f.).

Communication between different stakeholders is not the only challenge in Loliondo: There is also rivalry and inequality between different clans within the Maasai community, further complicating the discourse (GIZ 2017: 11). However, it can be summarised that the Maasai in general view neither the government nor investors as enemies. The most important thing to them is to be active participants in the discussions on the future of the area and to receive a share of the revenues generated through tourism. This can be illustrated by their request to try a participative conservation approach for a three-year-period, showing that there is willingness to cooperate as long as they remain the legal owners of the land (Regional Commissioner Arusha 2017: 28):

Our position is clear: This is villagers’ land, and we are not ready to compromise unless it remains owned by the village and then the land uses can be discussed, on tourism, conservation, grazing, yes. [...] But they cannot take the land away from us and ask us to cooperate (Ndoinyo, Interview 2 2018: 164 ff.).

3.4 Investors

The most influential investor in the LGCA is OBC, a United Arab Emirates based game hunting company with its headquarter in Arusha (Regional Commissioner Arusha 2017: 30), which received the hunting concession for the entire 4,000 km² in 1992. However, the currently contested Serengeti buffer zone of 1,500 km² is the most important area for OBC’s hunting activities. OBC

has therefore repeatedly urged the Tanzanian government to restrict resource use and human settlement in the area, fearing that increasing numbers of livestock and humans might negatively affect their hunting business (GIZ 2017: 8). Their intention to discredit the legal status of Loliondo as registered village land and implement a strict form of protected area is highlighted by the fact that OBC funded a Land Use Plan in 2010 corresponding to their vision of the land: The LGCA would have been reduced to the disputed 1,500 km² (containing eight registered villages) with the condition that all human activity would from then on be prohibited within the area. This Land Use Plan was rejected by the Ngorongoro District Council and criticised by international human rights organisations as it would have violated the rights of local residents (IWGIA 2017b).

An important aspect to consider is that OBC contributes to social services and provides employment for about one hundred locals. Furthermore, tourism is very important to the Tanzanian economy: “The district council of Ngorongoro has been depending on Natural resources and tourism for its income by more than 80%” (Regional Commissioner Arusha 2017: 13 ff.).

Due to its economic relevance, OBC has quite a powerful stand in the conflict and was also a member of the multi-stakeholder commission set up by the government to find a solution to the conflict (IWGIA 2017b: 3). In addition, OBC’s status can be explained by the diplomatic importance of the relation between Tanzania and the United Arab Emirates: Mr. Adams³, East Africa Regional Manager of *AndBeyond*, another company offering luxury safaris in Loliondo, states that OBC’s “relationship with the government is not that hunting block, their relationship with the government is so much bigger than that, from a political point of view, [...] on lots of levels”. He emphasises the fact that Tanzania depends on financial assistance from the United Arab Emirates which clarifies the company’s status in the conflict (Interview 1 2018: 207 ff.).

³ Name changed by the author.

Nevertheless, the commission's report found that OBC does not preserve the nature in the leased area up to conservation standards (Regional Commissioner Arusha 2017: 28 ff.).

As already mentioned, *AndBeyond* is another economic stakeholder in the region. On their homepage, they claim "Care of the Land, Care of the Wildlife, and Care of the People" to be their core ethic and describe their universal approach as the main reason for their success (AndBeyond 2018). *AndBeyond* is involved in multiple projects for the protection of endangered species and community development. In this context, Adams highlights his company's agreement with Ololosokwan, one of the Loliondo villages:

We pay them 112,000 Dollars a year [...], so, you know, one can argue that Ololosokwan is extremely lucky [...] and I have been told on numerous occasions that they're probably the wealthiest village in the entire country (Adams, Interview 1 2018: 106 ff.).

He repeatedly points to the advantages of *AndBeyond*'s presence for Loliondo residents due to the financial support they provide to Ololosokwan village. However, *AndBeyond* wants the money to be spent according to their vision of development: "We've always tried to say to them 'Look, we're giving you 112,000 Dollars a year but what you should be doing is dedicating a portion of it to health care, another portion to [...] livestock management, another portion to education'" (ibid.: 153 ff.).

Adams also says that, in contrast to OBC, which in his opinion takes advantage of its "prominent" status in the interaction with villagers (ibid.: 240 ff.), *AndBeyond* has largely always "sided with the villagers", which sometimes complicates their relationship with the government (ibid.: 177 ff.). This shows that the stakeholder group of investors is very heterogeneous and that the interaction with the government and with local communities can vary significantly.

The events of the past few years have led to a decline in the number of investors in the LGCA from twelve to four: The only investors currently operating in the area are OBC, *AndBeyond*, Buffalo Luxury Camp and Thomson

Safaris. According to the commission's report, it is therefore crucial to provide a secure investing environment in order to attract new foreign direct investment (Regional Commissioner Arusha 2017: 15). This attitude highlights the profitability of conservation and the interconnectedness of the political and the economic sphere in the conflict.

All investors expect the Tanzanian government as well as local communities to provide support to guarantee the success of tourism and declare that increasing numbers of livestock present a challenge to their business. They claim that agriculture and settlement should be prevented for the sake of nature conservation. Although this line of argument creates the impression of idealist conservationists, it should not be forgotten that biodiversity and wildlife are the basis of their profit. The investors also highlight their commitment to community development in the form of donations (Regional Commissioner Arusha 2017: 28 ff.).

Summing up, it needs to be emphasised that none of the participating stakeholders can be understood as a homogenous group: The government experiences contradictions between village, district, regional and national level as well as between different politicians and parties (IWGIA 2017b: 2 ff.), the Maasai are divided by an unequal distribution of wealth and power between men and women but also between different clans and economic preferences (GIZ 2017: 11), and also investors have opposing visions regarding Loliondo's future.

Despite all the discrepancies, there are some aspects that most involved actors agree on: Conservation in the disputed area is necessary and requires the establishment of a strategy that takes all interests into consideration. Furthermore, everyone sees the relevance of the area as a source of revenue from tourism. While the government receives income through leasing the area to investors, villagers benefit through council incomes and private deals. Moreover, the stakeholders agree that a major source of conflict is the contradiction between different Tanzanian laws that apply to the Loliondo area. This is why an outline of the legal framework is crucial to a deeper

understanding of the situation and possible solutions (Regional Commissioner Arusha 2017: 29).

4 Legal framework

The legislative basis of the conflict is complex since it comprises national and international law. An examination of relevant legislation is not only necessary in order to find a legally based answer to the conflict but also in the sense that “both the idea and the possibility of local exclusion, and means for enacting it, were laid down in the legislation on land, parks and tree tenure, and in the powers and practices of the militarised agents who implemented it” (Fairhead, Leach, Scoones 2012: 249). This makes the legal debate a valuable foundation for further theoretical investigation.

4.1 Conservation law in Tanzania

“The bureaucracies, laws, reserve boundaries and ideology of conservation have their origins in the era of European colonialism” (Neumann 1998: 123).

Tanzania was under German colonial rule from 1886 to 1918 and under British administration from 1919 to 1961 (Mbogoni 2013: 3). The history of Tanzanian national parks began with the foundation of the British Society for the Preservation of the Fauna of the Empire (SPFE) in the early 20th century, an association of influential English landowners, some of whom were members of Parliament. This shows that the conservation discourse has been ruled by politically and economically powerful actors ever since its emergence. At first, the Society’s main intention was to “protect aristocratic interests in African hunting” before conservation became the official objective (ibid.: 127).

The SPFE argued that a separation of humans and valuable landscape through the establishment of wildlife sanctuaries was crucial in the light of increasing population growth, thereby promoting the Western understanding of unpeopled *wilderness* and the *national park ideal* (Neumann 1998: 11). This ignored African history in the sense that farmers and pastoralists had been part of the

landscape before the arrival of Europeans (see Chapter 6.2 for a more detailed discussion). They claimed that protected areas would serve not only the purpose of conservation, but also local communities as their crops and livestock would no longer be destroyed by wild animals and they could benefit from tourism. Above all, they emphasised the moral obligation for humans to conserve nature (ibid.: 125). The view that national parks were the only way to save Tanzanian wildlife was also strongly influenced by the German zoologist Bernhard Grzimek whose popular film “Serengeti Shall Not Die” (1959) shapes the conservation discourse to this day (Bender Shetler 2007: 2):

The belief that African pastoralism is an open-access grazing system that inevitably destroys rangelands contributed to the justifications for conservation lobbyists and state officials to appropriate vast pastoralist territories to create national parks and conservation areas (Gardner 2016: 101).

In order to achieve their goal, the SPFE put pressure on the colonial government to work towards an international agreement to protect African wildlife and establish national parks in Tanzania (Neumann 1998: 124). At first, the colonial government saw a restriction of customary land use as a threat to political stability and economic growth and therefore hesitated to implement the SPFE’s recommendations (Gardner 2016: 39). However, due to increasing international pressure from the side of economically and politically influential conservation organisations, an international agreement for the establishment of national parks was passed in 1933. The first national park areas to be demarcated in Tanzania were the Serengeti and the Ngorongoro crater in 1937. In contrast to South Africa or the United States, where human settlement or activity was strictly prohibited in National Parks, the colonial government in Tanzania initially accepted human presence in protected areas in exceptional cases (Neumann 1998: 124). What could be seen as an act of tolerance can also be interpreted as an illustration of discriminatory behaviour by the British towards alternative ways of life. They treated the Maasai as primitive natives not civilised enough to be seen as rational human-beings and aimed to preserve them like wild animals (Bender Shetler 2007: 214). The desire to preserve

“unspoiled nature” and “primitive human society” illustrates how national parks symbolise both a European idea of Africa and a demonstration of colonial power (ibid.: 128 f.).

The British government soon urged the colonial administration to implement stricter park laws in order to meet the requirements of the 1933 convention. As a result, the Game Ordinance of 1940 was passed as a first legal frame for national parks but customary resource use by natives was still tolerated (ibid.: 129), leading to renewed complaints by the SPFE and the enactment of a stricter National Park Ordinance in 1948. Although the National Park Ordinance did not completely prohibit human presence, local resource use was soon significantly affected as it was controlled by park authorities who considered conservation more important than local interests (ibid.: 130).

In 1950, a bill of rights was passed in response to Maasai resistance, securing resource rights for those who were born in the Serengeti or residents at the time of the establishment of the national park. The bill of rights illustrates the one-dimensionality of the Western perspective, ignoring that colonial land law and traditional land use practices are logically incompatible: For a semi-nomadic pastoralist community such as the Maasai, free movement is essential in order to migrate in accordance with the seasonally available water sources and grazing lands, and much more important than categories like place of birth or residence that are spatially fixed and constitutive elements of Western identities (ibid.: 133). The Maasai’s “social identity is connected to ways of making a living by adapting to particular environments” (Bender Shetler 2007: 29). Also, the bill of rights perpetuated the state of economic development of the Maasai as it prescribed what kind of weapons could be used or what type of houses were allowed to be built – everything within national parks had to remain ‘primitive’ in order to comply with the national park logic that distinguished between (‘civilised’) society and nature (Neumann 1998: 133).

In 1951, the Serengeti was officially declared the first national park in British-ruled Africa and in 1954, the clause on the protection of local rights in the National Park Ordinance was declared invalid, finalizing the separation of

humans and nature: The Maasai experienced it as a great paradox and injustice that they were evicted from the Serengeti for the purpose of conservation, whilst the Europeans who presented themselves as the saviours of wildlife were passionate game hunters, and therefore in their opinion the true enemy of wildlife. After Tanzanian independence in 1961, the postcolonial state adopted the strict park laws, supported by international organisations such as the International Union for the Conservation of Nature (IUCN) that was founded after World War II, highlighting that international organisations continued to play a central role in the conservation discourse (ibid.: 138). The Arusha Manifesto of 1961 even “created a specific role for international conservation organisations to provide technical expertise in the planning and management of conservation areas across Africa” (The Oakland Institute 2018a: 23). The IUCN used its increased influence to further promote the separation of humans and protected areas and to reinforce resource use restrictions, thus aggravating the Maasai’s situation (ibid.). The most important Tanzanian law today concerning biodiversity is the *Wildlife Conservation Act*. While the first *Wildlife Conservation Act* enacted in 1974 allowed human activities and settlement in GCAs, the modified 2009 *Wildlife Conservation Act* declares any human activity except tourism illegal (GIZ 2017: 7). Tanzanian conservation law is thus shaped by the colonial idea that humans disturb intact ecosystems.

4.2 The legal status of different types of protected areas

The 2009 *Wildlife Conservation Act* has the stated objective to “protect and conserve wildlife resources and its habitats” and to “enable Tanzania to effectively contribute and benefit from international efforts and measures to protect and enhance global biodiversity” (Wildlife Conservation Act 2009: 17 [Section 1 (a,b)]). It is also the law that defines different types of protected areas. In the case of Loliondo, it is particularly important to understand the implications of a GCA since this has been the legal status of the area since 1974. As both the transformation of the disputed land into a Game Reserve or a

WMA are currently considered possibilities in the discourse, a more detailed discussion of these types of protected areas is also needed (GIZ 2017: 7).

4.2.1 Game Controlled Areas

The *Wildlife Conservation Act* of 2009 prescribes that “the Minister [of Natural Resources and Tourism] may, after consultation with the relevant local authorities, and by order in the Gazette, declare any area of land in Tanzania to be a Game Controlled Area” (Wildlife Conservation Act 2009: 23, Part IV, Section 16 [1]). While this obviously puts the Minister in a very powerful position with regard to the definition of land, it is also stated that “the Minister shall ensure that no land falling under the village land is included in the Game Controlled Areas” (ibid.: [5]). Furthermore, the law emphasises that all discussions on conservation management mechanisms should occur “in consultation with the relevant authorities” (ibid.: [6]). Another part of the law that is relevant when examining the conflict is Section 20 that prohibits crop cultivation (ibid.: 25, Section 20). It is also formulated that no one is allowed to “graze any livestock in any Game Controlled Area”, unless that individual holds a written permission from the responsible GCA Director (ibid.: Section 21 [1]). These two regulations make Maasai existence in GCAs nearly impossible.

According to the TAWIRI report, the conservation purpose of Tanzania’s 44 GCAs, comprising 6% of all land, is threatened by human activity and residence due to the decommissioning of GCA land as village land under the Village Land Act of 1999. The report identifies an increase in human population and activities such as settlement, agriculture, grazing, fishing, mining, fuel wood extraction, logging, poaching, charcoal making as well as climate change as significant threats toward GCAs (TAWIRI 2011: 1).

4.2.2 Game Reserves

Game Reserves are by far the strictest type of protected area defined in the 2009 *Wildlife Conservation Act* in terms of human presence within its boundaries:

Any person other than a person travelling through the reserve along a highway or designated waterway shall not enter a Game Reserve except by and in accordance with the written authority of the Director previously sought and obtained (*Wildlife Conservation Act* 2009: 22, Part IV, Section 15 [1]).

A Game Reserve is thus even stricter than a GCA in its regulations. Not only does it restrict human activity, it even prohibits human presence (without a permit) other than that of a traveller. Following the alleged environmental degradation in Loliondo resulting from human activity, the government wants to remove all residents from the LGCA:

“For the purpose of raising protection status of the area there is an urgent need to upgrade the legal status of LGCA into Game Reserve” (TAWIRI 2011: 24). In a Game Reserve, “only sport-hunting and photo-tourism is allowed” (Slootweg 2017: 2). This highlights the hierarchy between different ways of life that is inherent to the law, as land uses contributing to national GDP are allowed whereas activities central to the pastoralist way of life, such as grazing livestock, are prohibited.

4.2.3 Wildlife Management Areas

WMAs are a further class of protected area, presented as a possible solution to the conflict by the multi-stakeholder commission’s report (Regional Commissioner Arusha 2017: 44f.). In these areas, the aim is to integrate wildlife conservation and community development “through the transfer of the management responsibility of Wildlife Management Areas to local communities and ensure that the local communities obtain substantial tangible benefits from wildlife conservation” (*Wildlife Conservation Act* 2009: 17 Part II, Section 1 (h)). In contrast to the current situation in the LGCA where most villages do not benefit at all from foreign investment (Interview 1 2018: 101 ff.), the declaration of a WMA could present an improvement for the villagers given that the aim of WMAs is to establish community based wildlife conservation. WMAs could also end the contradiction of the LGCA’s legal status, considering that WMAs can be established on existing village land, aiming to combine community development

and biodiversity conservation (Wildlife Conservation Act 2009: 30, Part V, Section 31 [1]). Just like GCAs, WMAs should only be established after proper consultation with concerned villagers (ibid.: [4]). There is an overall emphasis on the relevance of active participation of the respective village council in the process of the declaration of a WMA. Yet, there are Hunting Block Allocation Advisory Board Committees in all protected areas that make decisions about the allocation of hunting concessions. As the village community is not represented in these committees and therefore excluded from the decision-making process, the premise of participation is not accomplished (ibid.: 33, Part VII, Section 38 [3]). A lack of communication about the establishment of hunting areas can be an essential factor in the emergence of land conflicts. The exclusion of the villagers from the discourse also illustrates that legislative theory and practice are not identical which confirms Adams' finding:

One, the government [...] haven't really enforced what they thought was law, two, the actual law itself is, you know, there are a lot of holes in it that sort of open themselves up to this whole mess (Interview 1 2018: 127 ff.).

Although the discourse around the emergence of WMAs as a new type of protected area was originally shaped by the argument that local participation is crucial to conservation, it is instrumentalised for further dispossessions as the participation narrative facilitates an expansion of protected areas to official village land: Villagers are asked to give up land for the purpose of conservation and promised to receive a share of the generated revenue in return. The neoliberal framework within which this conservation strategy operates remains largely unquestioned. This emphasises that community-based approaches often conceal rather than empower local voices since the presumption that economic growth is of universal interest does not give room to alternative interpretations of conservation and development (Benjaminsen, Bryceson 2012: 338).

4.3 Rights violated by conservation law

There are multiple ways in which Tanzanian conservation law causes conflict. First, it is internally inconsistent (Wildlife Conservation Act 2009: 33, Part VII,

Section 38 [3]).). Second, its regulations contradict other Tanzanian legislation such as the *Village Land Act* of 1999 and third, it is incompatible with various international rights (such as the ILO *Indigenous and Tribal Peoples Convention No. 169* of 1989 and the *United Nations Declaration on the Rights of Indigenous Peoples* [UNDRIP]). These findings are discussed in the following.

4.3.1 National level

Although the 2009 *Wildlife Conservation Act* emphasises the economic relevance of creating an “enabling environment for the private sector to invest in different forms of wildlife utilisation and conservation”, it also highlights the need to “encourage, promote and facilitate active involvement and participation of local and traditional communities in the sustainable management, use and conservation of wildlife resources in and outside wildlife protected areas network” (Wildlife Conservation Act 2009: 18, Part II, Section 1 [g, l]). This has so far not been implemented (Adams, Interview 1 2018: 246 ff.).

Another point that supports the juridical argumentation of the Maasai is the fact that the disputed area was registered as village land under the *Village Land Act* (1999) which means that the respective Minister of Natural Resources and Tourism was obliged to take local residents’ property rights into consideration when implementing the 2009 *Wildlife Conservation Act*. According to this law, he has the power to declare any Tanzanian land to be a Game Reserve or GCA, but Section 16 (5) prescribes that existing village land must be respected. Furthermore, it requires the Minister of Natural Resources and Tourism to consult local government authorities such as the village council before the declaration of a Game Reserve or GCA. None of the two conditions have been met in the case of Loliondo.

Another legal basis that the Maasai refer to is the Constitution of Tanzania which “recognises that life is a fundamental right of the people, and you can only have life if you have resources to support it. So, taking away land means [...] the people of Loliondo cannot live” (Ndoinyo, Interview 2 2018: 127 ff.).

Furthermore, the *Wildlife Conservation Act* (2009) states that “any person who has a right in any land within an area declared to be a Game Reserve shall be entitled to adequate compensation as per the provisions of the Land Acquisition Act and Land Act” (Wildlife Conservation Act: 19, Part II, Section 2). The *Land Acquisition Act* (1967) prescribes “full, fair and prompt compensation of any person whose right of occupancy or recognised long-standing occupation or customary use of land is revoked or otherwise interfered with”. The *Land Act* (1999) lists factors such as the market value of an area as well as the “loss of profit and accommodation” due to a transfer of land from village to reserved land as criteria in order to determine the nature of compensation payable to communities (Rwegasira 2012: 313). In the case of Loliondo, there were forceful evictions instead of consultation and compensation (Ndoinyo, Interview 2 2018: 95 f.), illustrating that there is a noticeable gap between theory and practice in national law (ibid.: 314). Considering Loliondo’s role as an example of the general conflict between local communities and protected areas, a perspective that goes beyond the Tanzanian context and an examination of relevant international legislation is required.

4.3.2 International level: The indigenous rights movement

As already explained in Chapter 2, conservation projects often negatively affect local residents such as hunter-gatherers or pastoralists whose livelihoods depend directly on natural resources. The struggle of marginalised communities around the world is mainly based on the construct of indigeneity and the international legislation applying to this status (Ndahinda 2011: 480). Before giving an overview over relevant international indigenous rights relevant to the Loliondo case, it needs to be discussed in how far the Maasai can be defined as indigenous.

According to Dorothy L. Hodgson (2014), a historical anthropologist who has conducted extensive research on Maasai culture, two different approaches to indigeneity can be distinguished. While the essentialist understanding defines indigenous people as individuals who are aboriginal to the land, the

constructivist definition emphasises self-identification and the collective experience of suppression resulting from alternative ways of living. Given that the Maasai migrated to Tanzania from the North, they are not “first peoples” (Hodgson 2014: 60) and would consequently not qualify as indigenous under the first definition. However, they are discriminated against because of their semi-nomadic way of life and joined the international indigenous movement in the 1990s, thereby meeting the criterion of self-identification and qualifying as indigenous according to the constructivist definition (ibid.: 60 ff.). In addition, the Maasai community is “numerically smaller in number when compared with the rest of the population of the state” (Rwegasira 2012: 299) which makes them a minority entitled to legal protection.

Due to the fact that the Maasai are not aboriginal to Northern Tanzania, some indigenous activists from other communities around the world view them as “political opportunists” (Hodgson 2014: 60 ff.) and accuse them of striving for economic integration and access to social services rather than promoting cultural survival (Ndahinda 2011: 495).

In general, African minority groups joined the international indigenous rights movement later than those of other continents and indeed, their engagement could be interpreted as an “expression of a successful domestication of global dynamics” (ibid.: 500) and of the hope for a better bargaining position as participants of a huge international movement:

Since indigeneity presently appears to be the sole international legal regime somewhat comprehensively accommodating group rights, many marginal groups, including from the African continent, have little choice than to endorse the indigenous flag in seeking national and international protection of their collective identity (ibid.).

While the indigenous movement facilitates legal emancipation of marginalised groups around the world, the relatively easy accessibility of the movement due to a lack of objective identification criteria sometimes causes problems: Although the aspect of anteriority is not a relevant characteristic according to the constructivist definition of indigeneity, it cannot be ignored when different

indigenous groups claim the same area as their ancestral land. The issue is particularly complicated in the case of pastoralist communities who represent the majority of groups identifying themselves as indigenous in Africa. The fact that pastoralists, such as the Maasai, typically have a long and dynamic history of migration makes it difficult to geographically locate their homeland. This is also the reason why the Tanzanian state will not recognise them as indigenous to the GSE (Rwegasira 2012: 300). Another controversial aspect of the African indigeneity discourse is the heterogeneity of minority groups identifying as indigenous: Pastoralists and hunter-gatherer communities collectively claim their indigenous rights in opposition to the government – an ironic alliance considering that the Maasai once used to be widely feared warriors that themselves suppressed other minority groups, such as hunter-gatherers. It is also argued that pastoralists have never been as excluded from the political discourse as other minorities. This assumption is confirmed by the fact that the first African to join the UN Working Group on Indigenous People (UNWGIP) in 1989 was a Maasai (Ndahinda 2011: 486).

In spite of the discussed challenges it entails in the African context, the African Commission's Working Group on Indigenous Populations (ACWGIP) supports the constructivist definition of indigeneity and states that aboriginality is not a requirement. Rather than examining historical relations between different groups, they emphasise the current severity of marginalisation, claiming that a community can be identified as indigenous when:

One, their cultures and ways of life differ considerably from the dominant society and their cultures are under threat in some cases to the extent of extinction; two, in most cases, the survival of their particular way of life depends on access and rights to their traditional land and natural resources therein; three, they suffer from discrimination as they are being regarded as less developed and less advanced than other more dominant sectors of society; four, they often live in inaccessible regions, often geographically isolated, and suffer from various forms of marginalisation, both politically and socially, and; fifth, they are subjected to domination and exploitation within national, political

and economic structures that are commonly designed to reflect the interests and activities of the national majority (Rwegasira 2012: 294).

Since all of these factors apply to the situation of the Maasai and given that the indigenous movement currently is the only form of globally organised, collective protest for minority rights (Ndahinda 2011: 500), the international legal framework around indigeneity is relevant to the Loliondo conflict: Indigenous rights used to be a national issue up to the emergence of the international indigenous rights movement in the mid-20th century, a time when human rights in general became a widely discussed political issue. For the first time, universal indigenous rights were articulated and defended by newly created institutions such as the UNWGIP (Rwegasira 2012: 285). Two fundamental laws that the international indigenous movement bases its claims on are the UNDRIP and the *Indigenous and Tribal Peoples Convention No. 169*.

The *Indigenous and Tribal Populations Convention No. 107* of 1957 was the first international law to address and frame indigenous rights. On the one hand, the convention was an important step toward indigenous emancipation because it questioned the prevalent understanding of aboriginality as the main criterion to define indigeneity. At the same time, it established self-identification as an equally fundamental determinant under Article 1, thereby enabling legally marginalised communities to base their claims on the convention. On the other hand, the convention was criticised for its modernisationist perspective as it described indigenous peoples as less advanced and aimed to integrate them in the “developed” dominant society (Hodgson 2002: 1038 ff.). In 1989, it was therefore replaced by the *Indigenous and Tribal Peoples Convention No. 167*, which is an important aspect of the legal basis of the indigenous movement today and the “only current legally binding international law” in this respect. In contrast to the old convention, this one is characterised by its “respect of the distinct ways of life of indigenous peoples” (Sentongo Kafeero 2013: 44). The renewed version of the convention contains multiple Articles that can be seen as relevant to the situation in Loliondo.

Article 2 is essential in the sense that it highlights the need to promote the well-being of all people, whether indigenous or not, “in a manner compatible with their aspirations and ways of life” and without discrimination. In addition, Article 3 prohibits all forms of “force or coercion”, a premise that has clearly been abandoned with the violent evictions in Loliondo. Article 6 discusses the relevance of consultation, postulating that people should be consulted “whenever consideration is being given to legislative or administrative measures which may affect them directly”. It is then specified that consultation should be carried out with the “objective of achieving agreement or consent”. Concerning this point, Jude Sentongo Kafeero, who has done extensive research on the contentious relation between biodiversity conservation and indigenous rights, explains that the convention asks the government to *seek* but not to *obtain* consent. As a result, consultation is not defined in a way that legally ensures the participation of indigenous peoples in government decisions (ibid.). This in turn contradicts Article 7, which prescribes that “the peoples concerned shall have the right to decide their own priorities for the process of development” and Article 8 stressing that customary law has to be taken into consideration when national law is applied. All the same, it should be noted that Article 9 declares that customary practices should only be realised “to the extent compatible with the national legal system”. The latter phrase establishes a clear hierarchy between customary and national law.

Part II of the convention is the most important section with regard to the Loliondo conflict as it focuses particularly on land rights: Article 13 declares that “governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands⁴ or territories”. This can be perceived as an improvement compared with former legislation in that the convention recognises the fact that land can have different

⁴ “The use of the term *lands* [...] shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use” (ILO Indigenous and Tribal Peoples Convention No. 169 1989: Article 13 [2]).

meanings in different cultures. In the case of the Maasai, Article 14 is of particular relevance as it claims that “measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect”. In contrast with the *Indigenous and Tribal Populations Convention No. 107* that understood ownership in the individualist sense of John Locke’s property theory (see Chapter 5), *Indigenous and Tribal Peoples Convention No. 169* opens up to alternative and wider understandings of possession and collective land tenure systems. The reference to traditional access as a characteristic of communities’ right to land could potentially create an opportunity for indigenous people to claim their rights to land without having to prove their ownership in the form of written documents. However, the fact that land is immediately connected to ownership, either individual or collective, reveals that the convention remains within a Western framework considering that many indigenous cultures do not deal with land issues on the basis of property rights (Sentongo Kafeero 2013: 47).

Another section relevant to the situation in Loliondo is Article 15, according to which indigenous people should be included in the “management and conservation” of natural resources. Although Maasai representatives have participated in the multi-stakeholder commission discussing the conflict, they have been excluded from the final and crucial part of the decision-making process (Ndoinyo, Interview 2 2018: 74 ff.), that is the formulation of guidelines for a “special authority” operating in the area (Government Official Blog 2017).

Article 16 specifies that people living on land that is subject to exploration, exploitation or conservation “shall not be removed from the lands which they occupy”. In the exceptional case⁵ that relocation is unavoidable, it “shall take

⁵ Potential cases of exception are not specified.

place only with their free and informed consent”. However, this progressive sounding statement is relativised in the next sentence, stating that consent is not a necessary condition of relocation as long as the concerned people are effectively represented in the decision-making process. Relocated people “shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development”. Consequently, the Maasai should be provided with land that is suitable for the purpose of grazing their cattle so that they can maintain their traditional way of life (Regional Commissioner Arusha 2017: 27).

Supported by the international indigenous movement and after twenty years of negotiation between indigenous, state, UN and institutional representatives, another fundamental piece of legislation on indigenous rights was adopted in 2007: The UNDRIP was celebrated as “more comprehensive in substance and more extensive in scope than any other existing international instrument specifically dedicated to indigenous issues” (Stephen, Xanthaki 2011: 1). It was the first time that indigenous peoples were directly involved in the negotiations in preparation of a declaration or convention. In general, the UNDRIP reaffirms and expands many rights already claimed by the *Indigenous and Tribal Peoples Convention No. 169* (ibid.: 2): It recognises that indigenous peoples’ are entitled to human rights (Article 1), to self-determination (Article 3), to maintain their “distinct political, legal, economic, social and cultural institutions” and at the same time to “participate fully, if they so choose, in the political, economic, social and cultural life of the State” (Article 5) and prohibits “forced population transfer” and “forced assimilation or integration” (Article 8). It is further specified that relocations may only take place with the “free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return” (Article 10). In contrast to *Convention No. 169*, the UNDRIP provides a more progressive definition of consultation and asks states to actually *obtain* indigenous people’s consent (Article 32). Article 26 is particularly relevant to the situation of the

Maasai as it gives indigenous peoples the right to “the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” and points out that states shall respect traditional land tenure systems.

Another important aspect is the declaration’s emphasis on collective rights (e.g. Article 1) since international law was until then mainly focused on individual rights (Stavenhagen 2011: 415). However, just like the *Convention No. 169*, the UNDRIP subjugates all announced indigenous rights to state sovereignty and national law, thereby relativising the declaration’s outreach and utility for the indigenous rights movement’s claims. Despite its expansion of indigenous peoples’ rights in comparison with earlier conventions and declarations, it should also be noticed that the UNDRIP, other than the *Convention No. 169*, is not legally binding (Sentongo Kafeero 2013: 62 ff.).

4.4 Indigeneity in Africa

In the case of Loliondo, it is important to discuss the particularities of the debate on indigenous rights in the African context. IWGIA, one of the oldest and largest non-indigenous NGOs defending indigenous rights internationally, played an important role in the emergence of African indigenous activism: In 1993, the organisation hosted a conference on the “Question of Indigenous Peoples in Africa” and promoted the inclusion of specific indigenous rights in the different participating countries’ national legislations in order to protect marginalised groups such as pastoralists (Ndahinda 2011: 481).

Nevertheless, many African governments still hesitate to constitutionally recognise specific indigenous rights due to a lack of objective criteria to define indigeneity (ibid.: 495). According to the African Commission, indigeneity is not at all relevant to the African context as all inhabitants of the continent can consider themselves aboriginal to the land (Rösch 2017: 248): Indigeneity is perceived as a concept that only applies to places where white settlers outnumber the native population, such as Australia, the Americas and New Zealand. In addition, the idea of a binary society, distinguishing between

colonisers and natives to whom different laws apply, was established during colonialism (Gilbert 2017: 658) which explains the fear that an application of indigenous rights to the African context might reinforce “colonial stereotypes” (Rösch 2017: 245). Another factor complicating the discourse is that the African continent contains the “most complex and diverse ethno-cultural and/or linguistic composition of national populations on the planet”. This diversity and the complexity of African identities make it ethically difficult to legally protect certain groups without neglecting others in their struggle for self-determination (Ndahinda 2011: 504).

While internationally, the concept of indigeneity has increasingly been defined in a constructivist way based on self-identification in recent years, the issue is still highly sensitive and controversial in Sub-Saharan Africa (Gilbert 2017: 658). As a consequence, there is barely any legal protection for indigenous peoples in many African countries. Many communities have therefore used litigation as a way to gain recognition: Claiming their rights as indigenous peoples referring to the international movement helps them “to be recognised as citizens of the State with equal rights, but also with special entitlements against discrimination in order to fight the embedded forms of racism they usually face” (ibid.: 660).

An important case in the history of indigenous rights in Africa concerns the residents of the Central Kalahari Game Reserve in Botswana in 2002: The San and the Bakalagadi, who had been removed from their ancestral land, filed a case against the national government appealing to their status as indigenous that, according to international law, provided them with special rights. However, the court at first focused primarily on national land legislation and refused to treat the plaintiffs differently than other Botswanan citizens. The main argument used to justify the removal from the Game Reserve was that it happened in the residents’ best interest as it would enable them to ‘modernise’. This illustrates the government’s assumption that economic integration presents a universal solution to land disputes, thereby ignoring alternative ways of living. The emergence of the international indigenous rights movement at the time therefore had a significant impact on the outcome of the case: In the end, the

court recognised the residents' special right to the disputed land due to their status as indigenous people (ibid.: 661 ff.).

Another milestone in the recognition of indigenous and collective rights in Africa is the decision in the Ogiek case that was announced in May 2017: The Ogiek are a hunter-gatherer community that resides in the Mau forest in Kenya and has had land struggles since the 1960s (Rösch 2017: 242). Following an escalation of the conflict in the 2000s, the Ogiek filed a case with the African Court on Human and Peoples' Rights (African Court) in reaction to a "30-days eviction note from the government for forest conservation reasons": While the Kenyan government justified the eviction plans based on national land legislation, "the African Court found violations of the right to non-discrimination (Art. 2), the right to practice religion (Art. 8), the right to property (Art. 14), the right to culture (Art. 17(2) and (3)), the right to development (Art. 22) and the right to natural resources (Art. 23)" according to the *African Charter on Human and Peoples Rights* of 1986 (ibid.: 245). A central aspect of this case was the focus on collective rights, thereby challenging the traditionally individualist interpretation of human rights. Furthermore, rather than emphasizing the "link between culture and land", the African Court referred to the right to property. It was argued that the Kenyan government had to respect communal land tenure systems since "formal title is no precondition for the right to land" (ibid.: 252 f.). Also, the African Court considered the right to natural resources declared in Article 21 of the African Charter on Human Rights. In contrast to earlier litigations, the Court referred to food as a natural resource that the concerned community would be deprived of as a result of their eviction (ibid.: 254). Although the decision is revolutionary in the African context as it establishes new lines of argumentation for future collective rights claims, it is problematic in the sense that it is primarily based on the definition of the Ogiek as indigenous according to criteria such as self-identification but also "presence of priority in time" and other "outdated characteristics" (ibid.: 257). The essentialist understanding of indigeneity in this context does not help to reduce the tension between the transnational indigenous movement shaped mainly by non-African

actors, and the land struggles of African minorities because many communities would not qualify as indigenous according to the essentialist understanding. Nevertheless, the Ogiek case is of high relevance for the claim of collective rights in that it focuses on the rights to property and natural resources instead of volatile, disputable constructs such as culture and religion. However, the truly pivotal and contentious aspect remains the above discussed definition of indigeneity in the African context (ibid.: 243).

Just like the Central Kalahari Game Reserve residents and the Ogiek, the Maasai filed a court case against the government in reaction to the evictions that took place in August 2017 (EACJ 2018: 2). It should be noted that the Maasai's argumentation in the Loliondo discourse is not primarily based on their status as indigenous peoples but on their status as Tanzanian citizens: First and foremost, they present themselves as villagers, not as indigenous people, and refer to national legislation such as the *Village Land Act* (1999) or the Tanzanian constitution in order to claim their right to land (Ndoinyo, Interview 2 2018: 127 ff.). The fact that the Maasai enjoy the "general rights of citizenship" is emphasised in Article 4 of the *Indigenous and Tribal Peoples Convention No. 169*.

The connection between the Loliondo dispute and the international indigenous rights movement is more often made by international NGOs such as IWGIA than by the Maasai themselves (IWGIA 2017a: 517). This could possibly be explained by the fact that, although the Tanzanian government voted in favour of the UNDRIP in 2007, it does not recognise the existence of indigenous peoples in its constitution, making it difficult for the Maasai to claim their indigenous rights according to national law (ibid.: 508). At this point, it should be noted that the African Court may refer to the UNDRIP or the *Convention No. 169* in its decisions even though the concerned member state has not voted in favour of the two conventions or implemented corresponding national law (Rösch 2017: 247).

By identifying themselves as Tanzanian citizens instead of pointing to their indigenous identity in their claim for rights, the Maasai accept the established

legal framework built around the idea of individual citizenship without questioning the underlying power structures. In this sense, it could also be concluded that they are more concerned with socio-economic and political than cultural empowerment (Ndahinda 2011: 510). After all, one should not forget that all relevant legislation “resides in the [...] profoundly Western notion of international law” (Glenn 2011: 171).

5 Background to the legal debate: Terra Nullius

Notwithstanding the question of indigeneity, reasoning in the Loliondo debate as well as in previous Tanzanian land conflicts has mostly been based on national law (Rwegasira 2012: 503). Consequently, customary law and the genuinely distinctive nature of pre-colonial land use systems are ignored in the current discourse:

Land in Tanzania during the pre-colonial days was a communal property belonging to the whole community, clan or tribe whereby all members of the community had equal access and right of use. The rights were usufructuary, i.e. they were valid as long as the land held was utilised. The powers to allocate community land were vested into the Chiefs, Heads of the tribe or head of the clan (Mundeme 1999: 9).

In contrast to this communal understanding of land tenure, the history of private land tenure in Tanzania is associated with the beginning of colonial administration in the late 19th century. During German colonial rule (1885-1914) all land that was not individually or tribally possessed was declared Crown land. However, all land titles had to be documented and registered under the *Land Registration Ordinance* of 1903. This condition clearly favoured private colonial land owners considering that indigenous communities were unlikely to hold documents as proof of their ownership (Rwegasira 2012: 53 f.). The lack of formality in the traditional land tenure system meant that many local residents lost their land (Gilbert 2017: 666). In consequence, “about 1,300,000 acres of land [about 0.5% of total landmass] on the coast and in the northern highlands were in the hands of the settlers” following the period of German administration

(Rwegasira 2012: 53 f.). British colonial rule (1919-1961) manifested and reinforced the hierarchy between registered private ownership and customary land use that the German *Land Registration Act* (1903) had established: First, all existing land titles were recognised and second, the *Land Ordinance No. 3* (1923) declared all remaining land, whether occupied or unoccupied, public land that was from then on managed and administered by the colonial governor. This facilitated further alienation of land from native communities (ibid.: 56 f.). This brief history demonstrates the impact of “colonisation and its attached doctrines of land dispossession and the imposition of formalistic legal systems that ignored indigenous peoples’ ancestral possession” (Gilbert 2017: 667).

It is essential to understand that colonial rule in general and land law in particular were based on the notion of *Terra Nullius*, according to which land inhabited by indigenous people was “land which belonged to no one” (ibid.: 289). This can be explained by the fact that indigenous peoples were not perceived as equal human beings but as primitives that needed to be civilised (Bender Shetler 2007: 214). Along these lines, colonisation was described as a blessing because it brought civilisation to the natives in the form of “education, Christianisation, and the suppression of slavery” (Alden Wily 2011: 2). This was considered sufficient compensation for the land dispossessions that took place (ibid.: 2).

According to Alden Wily (2011), early international law such as the *General Act of the Berlin Conference on Western Africa* of 1885 served as a legal basis for the implementation of the idea of *Terra Nullius* through subordination of customary rights in the colonies. In general, the Act can be seen as the formal foundation for the division of Africa between the European powers in the context of the so called *Scramble for Africa*. An essential part of the Act was the introduction of the *right of discovery* which claimed that there could only be one sovereign and consequently replaced the “territorial sovereignty of African kings, chiefs, and emirs with that of the conquering nation” (ibid.). This political takeover included a transfer of land rights to the colonising governments (ibid.). The fact that the aim of all colonial strategies was the exploitation of the

colonies' labour force and resources for the sake of European economies explains why the colonisers had an interest in legally making the land their own. In contrast to Europe, where land had already been commodified and turned into a privately owned resource that could be sold on the market, land in Africa was largely in the possession of communities. However, communal possession was not recognised as a form of legal ownership by the colonisers as it did not correspond to European law. As a result, the native population was degraded from land owners to mere "occupants and users", serving as a justification for the appropriation of the alleged *Terra Nullius* (ibid.: 3).

John Locke's property theory is crucial to understanding the subordination of customary land rights and the legal dispossession of native communities. This played an important role in the emergence of the Western notion of private ownership, a constitutive element of European law (Rwegasira 2012: 3 ff.). Locke assumes that the world and its resources were given to "all men in common" and claims that each person merely possesses the "property in his own person" (Locke 1690: 18). From this, it follows that common property can be transformed into private property through labour as it adds a private component to the previously commonly owned good:

The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property (ibid.).

It follows that land is commonly owned as long as it is not transformed through human labour. Locke argues further that God's intention was for the world to be cultivated by the "industrious and rational" (Locke 1690: 18 ff.). Locke's considerations pose a threat to alternative ways of life based on different conceptions of property (Haddad 2003: 21) in the sense that they fundamentally contributed to the perception of non-cultivated lands, such as "forests, rangelands, marshlands, and other landscapes", as "wastelands" that don't belong to anyone (Alden Wily 2011: 3).

The colonially imported socio-economic structures based on the idea of *Terra Nullius* and Locke's understanding of the transformation of common into private property through labour thus reinforced the dominance of the "productive" agricultural way of life. Consequently, hunter-gatherer and pastoralist communities, who traditionally do not cultivate land, are the most marginalised today (Ndahinda 2011: 481).

5.1 Post-colonial Tanzania

However, the Tanzanian history of land conflict and dispossession continued after the country gained independence in 1961: "The formal subordination of customary land rights in Africa began but did not end with colonialism" (Alden Wily 2011: 1). The post-colonial government under Julius K. Nyerere adopted the colonial land tenure system and all land continued to belong to the public in the newly established socialist regime, with the president as its trustee (ibid.: 45). According to Nyerere, independence from foreign capital through increased food crops production was crucial for Tanzania's development. He argued that this could be achieved by a centralisation of production in "agrarian collectives" controlled by the state. These collectives, or villages, would not only make production more efficient but also enable the state to provide social services and education to the population. Furthermore, Nyerere hoped that the villagisation would revive old African values that in his opinion were vital to the establishment of a Tanzanian *Ujamaa*⁶ society based on a sense of community. In contrast to this idealist vision, the implementation of the *Ujamaa* programme presented a brutal disruption to many livelihoods as numerous forced evictions took place in rural areas in order to "concentrate populations" (Gardner 2016: 45 f.). A central process in this context was *Operation Vijiji*⁷ which refers to:

[T]he settlement and resettlement of people in villages commenced or carried out during and at any time between the first day of January, 1970 for or in

⁶ *Ujamaa* is a Swahili expression for sense of community or family and is today often used with reference to the African socialist movement (Gardner 2016: 45)

⁷ *Vijiji* is the Swahili word for villages

connection with the purpose of implementing the policy of villagisation, and includes the resettlement of people within the same village, from one part of the village land to another part of that village land or from one part of land claimed by any such person as land which he held by virtue of customary law to another part of the same land, and the expropriation of it in connection with Operation Vijiji so defined (Village Land Act 1999: 6, Part I, Section 2).

The Maasai were able to resist the villagisation of their territory until *Ujamaa* became mandatory in 1974 (Gardner 2016: 48). Although the forcible relocations affected many people all over Tanzania, the villagisation clearly favoured agricultural communities and presented a bigger challenge to the Maasai as it was “incompatible with pastoralist production” that depended on “dispersed population centres to maximise unpredictably and unevenly distributed resources like grass, salt and water for their livestock” (ibid.: 45).

Nyerere’s *Ujamaa* illustrates that the history of dispossession and land conflict continued in post-colonial Tanzania, although the ideological background had changed. While colonial dispossession served the interests of the German and then British administration, post-colonial land conflicts resulted from the new government’s aim to economically develop the country. However, all dispossessions derived from a discrimination of the pastoralist way of life (Neumann 1998: 133 ff.):

Adherence by the postcolonial state to development models giving preference to settled (agricultural) lifestyle over pastoralism or hunting-gathering culminated in progressive impoverishment of groups living by the latter modes of production (Ndahinda 2011: 513).

According to Human Rights Law Professor Jérémie Gilbert (2017), most removals and evictions today are connected to conservation, development and tourism (Gilbert 2017: 672) and occur in the process of Green Grabbing (Fairhead, Leach, Scoones 2012: 252 f.).

5.2 Conservation and Green Grabbing

Green Grabbing is a “combination of dispossession of previous users and capital accumulation” (Benjaminsen, Bryceson 2012: 350) and describes the

appropriation of land for environmental means by powerful actors in order to generate profit, e.g. through the production of bio fuels, eco tourism or the protection of the local flora and fauna in order to attract tourists (Sentongo Kafeero 2014: 199). It conforms to the logic of the Green Economy, aiming to combine economic growth with environmentalism through the valorisation of natural resources (Hackfort 2016: 37). A central characteristic of the process of Green Grabbing is that it turns ecosystems into environmental services that can be traded on the market, thereby establishing new investment opportunities. The commodification of nature deconstructs its integrity “both materially and symbolically” by determining the value of an ecosystem as the sum of services it provides (Fairhead, Leach, Scoones 2012: 253). As in this context, the incentive to protect the environment is of economic rather than ecological nature, only profitable landscapes are conserved and non-monetary values are discounted (Gardner 2016: 135). In light of the global capitalist economy’s reliance on permanent accumulation, the steadily expanding valorisation of new, previously uncommodified spheres, such as nature, is crucial to prevent investment crises and maintain the system (Fairhead, Leach, Scoones 2012: 238): “Things green have become big business and an integral part of the mainstream growth economy” (ibid.: 240).

In this sense, Green Grabbing can be perceived as a new form of the Marxian concept of “primitive accumulation” which refers to the “commodification and privatisation of land, the conversion of communal property to private property and the suppression of rights to the commons” (Benjaminsen, Bryceson 2012: 336). However, in contrast to examples from other countries where Green Grabbing is typically accompanied by an increasing privatisation of land, it takes place on land that formally belongs to villages or to the state in Tanzania while only the financial benefits are privatised. In any case, a general characteristic of Green Grabbing is that local residents are excluded from the revenues raised through the new form of land usage (ibid.: 335). Changes of the existing structures of use, control and property typically present a threat to indigenous

communities such as the Maasai whose way of life depends directly on natural resources (Sentongo Kafeero 2014: 199).

While Land Grabbing projects that aim to exploit a country's resources for economic benefit without any claim to sustainability are often criticised in the public discourse, Green Grabbing is generally perceived as more legitimate due to its alleged intention to preserve the planet's biodiversity. Therefore, it causes less international protest than other, more obviously repressive and profit-oriented forms of Land Grabbing, consequently posing an even bigger threat to local communities (Sentongo Kafeero 2014: 199).

Green Grabbing proves the persistent relevance of the colonial idea of *Terra Nullius* for the modern conservation discourse as evictions of local residents are often justified by the argument that indigenous peoples have no official right to land (ibid.). The fact that indigenous peoples largely have to rely on "oral testimony and community members' evidence of usage and possession of the land" makes it hard to legally defend their ownership as courts mostly refer to internationally established legal norms and demand written documentation of land titles (Gilbert 2017: 678).

Protected areas established without the consent of local communities represent a typical example of Green Grabbing in the sense that they are supposed to serve as both biodiversity reserves and sources of economic profit, thereby ignoring local interests. This dynamic can be illustrated with the case of Loliondo: The contested land presents a unique opportunity for the Tanzanian government to attract investors while simultaneously it is claimed that safari tourism and game hunting serve environmental objectives since wildlife populations are regulated and money for further conservation measures is generated (McVeigh 2017). Moreover, Loliondo illustrates that Green Grabbing always has a profound impact on "livelihoods and landscapes", either through forceful evictions or through restrictions on land use (Fairhead, Leach, Scoones 2012: 252 f.).

Fairhead, Leach and Scoones (2012) show that the new strategy aiming to make conservation profitable leads to the formation of surprising alliances

between “businesses and NGOs, conservationists and mining industries, or ecotourism companies and the military” (Fairhead, Leach, Scoones 2012: 239), all of which have an interest in the appropriation of nature in order to implement their distinct guiding principles. The creation of these new networks contributes to a significant increase in the number of stakeholders involved in the conservation discourse and the emergence of specific society-nature relations that in turn influence the debate (ibid.): Scientists warning us about the consequences of the “contradiction between the global economy and the global environment” or about the consequences of global warming significantly shape the conservation narrative calling for the protection of nature by means of its valorisation, for example through carbon trading or the establishment of national parks (ibid.: 241).

6 Opposing perspectives on nature

Ideas, values and practices involving nature and ecology are being reconfigured, co-produced by science in this unfolding economic and policy order, and institutionalised by powerful organisations, whether the World Bank, international conservation NGOs or the Convention on Biodiversity (Fairhead, Leach, Scoones 2012: 244).

Considering the emergence of Green Grabbing as a result of specific society-nature relations constructed by a variety of stakeholders (ibid.), it is important to note that the Loliondo conflict is shaped by two fundamentally different perceptions of nature: While the Maasai have lived in and with the local environment for centuries, the Western environmentalist perspective strictly separates humans and nature. This requires a theoretical investigation of the concept of *environmentalism* (Neumann 1998) as well as of the traditional meaning of land for the Maasai (Bender Shetler 2007).

6.1 The cultural production of nature

As the example of Loliondo illustrates, the dominant conservation discourse is coined by a dualistic framing of nature and society and the opinion that wildlife

and biodiversity need to be regulated technologically (McVeigh 2017). According to the political ecology approach such a binary view is problematic as nature and society constantly influence and constitute each other and can therefore never be analysed separately (Robbins 2004: 8 ff.): “Environment is as social and political as it is ecological” (Gardner 2016: 155). Consequently, nature cannot be treated as an enclosed system and ecological crises cannot be solved through purely technocratic approaches since they present political problems just as much as natural problems. Robbins (2004) emphasises that societies are shaped by their attitudes towards nature and that nature is socially and culturally produced (Robbins 2004: 8 ff.). However, the argument of interconnectedness should not be misunderstood in a way that denies the existence of natural processes; despite the fact that our view on landscape is culturally produced, biological, chemical and physical rules apply to events in the natural sphere (Neumann 1998: 25 ff.). Rather than advocating a constructivist view of nature, the intention of the concept of interconnectedness of nature and society is to emphasise the importance of holistic approaches when it comes to the examination of ecological problems. In order to understand land conflicts such as that in Loliondo, it is important to analyse the involved society-nature relations and the conflict potential between them.

6.2 The emergence of Western environmentalism

In order to understand what role society-nature relations play in the Loliondo conflict, it is important to be aware of the ideological origin of Western perspectives on nature and the emergence of environmentalism. According to Roderick Neumann (1998), the Western ideal of nature is a cultural production of Anglo-American origin that can be traced back to the 18th century: Influenced by painters such as Claude Lorrain, the ideal of well-designed pastoral nature emerged and subsequently inspired the creation of English gardens that became symbols of human domination over nature. The relevance of art for the constitution of society-nature relations highlights the fact that the way people perceive nature is deeply influenced by their social and cultural environment.

With European and American romanticism in the 19th century, the concept of *wilderness* replaced the previous idea of nature as harmonious and picturesque. Whether the ideal was pastoral or sublime landscape, aesthetics have played an essential role in the definitory division of nature and society: The “observer is placed safely outside of the landscape” (Neumann 1998: 17). The binary view distinguished between a romanticised wilderness and a civilised metropolis, contributing to a colonial view on Africa as an “earthly Eden” and the native population as “Others”. Local communities were seen as uncivilised savages that were “remnants of the natural state of humanity” and therefore needed to be preserved just like nature (ibid.: 18). During this time, the seemingly “realistic” landscape painting emerged. Despite its claim to represent reality the way it was, it consciously ignored changes in landscapes resulting from human labour and further shaped an understanding of nature as a sphere without human influence. Paintings that portrayed nature as silent and harmonious obscured the destructive impact of industrialisation on nature as well as the socio-economic transformation the European society went through during the 19th century, and thus secured political stability and legitimacy (ibid.: 19). The society-nature relation resulting from this was shaped by the travellers’ perspective while on journey *through* the landscape and ignored that of people living or working *in* the landscape “for whom the aesthetics were not central to their relationship with nature”. This emphasises that views of landscapes differ according to the defining person’s socialisation (Bender Shetler 2007: 1). It also shows that socio-economically privileged members of society shape the dominant society-nature relations which in turn reinforce their privileged status (Neumann 1998: 20). This is also the case in Loliondo where the government’s aim to conserve nature for the sake of the economy dominates the discourse (Regional Commissioner Arusha 2017: 13 ff.).

A decisive moment for Western society-nature relations was the beginning of the era of industrial capitalism in the 19th century as it evoked the discursive division of landscape into productive and consumptive resources. While the first was the kind of landscape needed for practical purposes such as farming or

other forms of labour, the latter represented an unused, wild nature without human intervention. This spatial separation of production and consumption was then transferred to the social sphere, constituting a logic of using time efficiently. The worker's life was from then on divided into productive working time and leisure time, where he was supposed to consume and thereby stimulate the economy. Simultaneously, nature gained more and more symbolic importance for the definition of classes: The ability to appreciate nature was seen as a mark of an upper class status and of knowing how to spend one's leisure time well (ibid.: 21). The mutual constitution of the spatial and the social sphere reflects the interconnectedness of society and nature.

Stereotypical imaginations of African nature have significantly shaped the conservation discourse ever since colonialism: "This is the way Africa should look", said a "British expatriate ecologist serving as an official of an influential international conservation organisation", while driving through the wide plains of Northern Tanzania (Neumann 1998: 1). First, this statement reinforces the constitutive relevance of aesthetics for the colonial view on nature. Second, it shows the pretentious attitude of Europeans in Africa considering themselves as legitimate authorities who have the right to rule over nature and third, it reveals the persistent relevance of the colonially constructed ideal of African landscape as untouched and empty (ibid.: 3).

Recent environmentalism is deeply enrooted in the *national park ideal* which is a result of culturally produced society-nature relations. An important factor in the emergence of the *national park ideal* was the increasing relevance of leisure and consumption for the working class that was introduced with industrial capitalism:

The social history of landscape and its role in social constructions of nature are critical to understanding the development of the national park concept. [...] National parks are historically and culturally contingent representations of a particular nature aesthetic. Parks are landscapes of consumption, upon which are projected ideas of culture and nature and of where (literally) to draw the boundary between them (ibid.: 11).

The *national park ideal* emerged in the mid 19th century and was inspired by the concept of *wilderness* promoted in paintings and poems. In 1872, the Yellowstone National Park in the United States was established and from then on served as a model for national parks around the world.

A crucial characteristic of the Yellowstone National Park still visible in today's national park legislation in many countries is the "prohibition of human settlement and activities", emphasizing the division between observer and object of observation, between labour and nature as well as between production and consumption. Furthermore, the division of humans and nature that was manifested by park law is the source of many conflicts about land and resources given that many areas considered as unpeopled *wilderness* are in fact inhabited by indigenous peoples: Also the Serengeti National Park was "founded on a view of the landscape that presents a sharp contrast to local ways of seeing" (Bender Shetler 2007: 1).

In this sense, "the colonial creation of forest reserves and parks in Africa [...] have [...] involved removing local inhabitants, or drastically curtailing their land and resource use rights and practices, in the interests of a greater national or global good" (Fairhead, Leach, Scoones 2012: 249). Just like today, removals and restrictions were justified by a discourse that made local land use practices responsible for environmental degradation (ibid.). Then as now, the cultural and social identity of local communities has been subject to ascriptions from the outside, often constructing them as "backward" and primitives that live in harmony with nature (ibid.: 251).

While the prevalent reason for the creation of national parks used to be the protection of aesthetic nature for leisure and the production of the appreciation of nature as a new symbolic criterion for the demonstration of a high socioeconomic status, the importance of the ecological dimension to conservation seems to have increased in times of deforestation, extinction of species and climate change. However, the Anglo-American origin of the *national park ideal* remains relevant as it unveils the society-nature relations that constituted it (Neumann 1998: 24 f.). Although notions of community

development and participation are increasingly emphasised, the underlying logic deriving from colonialism still seems to dominate the conservation discourse:

Western environmentalism continues to be based on the “notion that ‘nature’ can be ‘preserved’ from the effects of human agency by legislatively creating a bounded space for nature controlled by a centralised bureaucratic authority” (ibid.: 9). As a result, the integrity of ecosystems and the way humans “live with and shape these” are denied (Fairhead, Leach, Scoones 2012: 253). The intention to preserve a specific state of nature is not only paradox in the sense that the act of creating a national park presents a significant human intervention in itself but also because nature is dynamic and thus exemplifies the opposite of a static condition that can be preserved. Also, the allegedly unspoiled nature has in fact been *produced* by native inhabitants over the centuries. It is the interaction between humans and their environment that has shaped most of the landscapes we know today since humans are, just like any other organism, part of the ecosystem. Therefore, the desire to preserve nature in its state of origin is an illusion (Robbins 2004: xv ff.).

6.3 The traditional meaning of land for the Maasai

The fact that East Africa, and Northern Tanzania in particular, is considered the “heartland where humans first developed and then spread out around the world” highlights the long history of human presence in the region. Humans and wildlife have developed “side by side” on the plains and human activity has contributed to the creation of the landscape we perceive as pristine today. For example, early inhabitants of the Serengeti area used fires in order to increase the nutritional value and the general productivity of plants or to control diseases spread by ticks and tsetse flies. This practice significantly shaped the local ecosystem, which is characterised by a mix of woodland and grassland and a remarkably high diversity of mammals (Bender Shetler 2007: 33 ff.).

In general, “the strong correspondence between biological diversity, relatively intact ecosystems, and Indigenous Peoples’ territories is not likely to be a

coincidence. They may remain ecologically rich in large part because of the way that Indigenous Peoples have lived in them” (Stevens 2014: 23). In contrast to the denial of human agency in Western *environmentalism*, the traditional semi-nomadic way of life of the Maasai produces a much wider perspective on land than the Western notion that is fixed to individual ownership titles:

Traditionally, [...] the term land [...] includes the surface of the land (soil) and all other things on the soil which are considered to be part of the land by nature, such as rivers, streams, lakes, lagoons, creeks, mines and minerals, trees like palm trees, or by being artificially fixed to it like houses, buildings and any other structures whatsoever. It also includes any estate, interest or right in, to, or over the land or even any other things which the land denotes, for example, the right to collect herbs or to hunt. By this definition, a person may claim interest(s) in a piece of land without physically owning it (Rwegasira 2012: 44).

This shows that land is perceived as a “communal territory” that contains resources and not as a resource itself. The fact that ownership is not a precondition to the use of resources, such as water or grazing land, highlights the need of pastoral communities to flexibly adapt to seasonal changes (Sankan 1993: 258). The traditional dynamic view on and use of land opposes the dominant concept of private ownership that requires spatially fixed land titles (Ndahinda 2011: 485). In addition, many indigenous people perceive land as “belonging to God” and only “in the temporal hands of communities”. This perspective contradicts the European legal system where land titles are permanently fixed to a specific person unless sold to another (Alden Wily 2011: 3). Traditionally, the Maasai land tenure system is shaped by a “practice of sharing the resources of Maasai territory” (Campbell 1993: 263). It is not based on land titles but structured according to clan membership and in times of peace, there are no fixed boundaries between the territories of different groups. The fluidity of boundaries is crucial to a pastoral way of life and is contradicted by the concept of demarcation of land (Gardner 2016: 53).

The Maasai came to Northern Tanzania from Southern Sudan during the 18th century (Bender Shetler 2007: 135). Their southward expansion in search of new pastures was stopped by European arrival and control of the land during

the 1880s. Maasailand was of high geopolitical interest to the colonial authorities who competed in the *Scramble for Africa* as it was located “between the coast and the major highway of commerce” (Sankan 1971: xix). As a result, an imposed “fake” treaty was adopted in 1904 (African Commission on Human and Peoples’ Rights 2005: 24), leading to the relocation of Maasai into reserves. When the Maasai refused to accept a further expansion of colonial settlements in 1910, they were forcefully evicted from the area. The result was a loss of trust on the side of the Maasai who would subsequently “adopt an attitude of passive resistance to all innovations unless they considered that they were beneficial to them” (Sankan 1971.: xxvii). The early evictions of the Maasai from their ancestral lands are not only crucial to understanding the emergence of a hostile relationship between local communities and European settlers; they also symbolise the establishment of Western ideas of land and possession, defining land as an individually owned resource instead of a communal territory (Campbell 1993: 263):

From the onset of the colonial period to the present, policies have been implemented which have come to undermine the assumption of land as a common resource. Increasingly, land has come to be individually owned and the cattle economy which depended on access to pasture and water has had to adjust to differential control of resources (Campbell 1993: 269).

In this sense, colonialism marks the beginning of an era of land alienations that made the pastoral mode of living impossible and changed the local meaning of land. Land, transforming into a popular speculation target due to its resource and conservation value, became the dominant way to acquire wealth, thereby replacing cattle as the central Maasai status symbol (ibid.: 266). The individualisation of Maasai society was reinforced through the *National Parks Ordinance* of 1945 that further restricted resource use in protected areas. This process forced the Maasai to accept title deeds if they wanted to perpetuate their access to land or to diversify their modes of production in compliance with the dominant capitalist paradigm due to a lack of grazing land (ibid.: 265 ff.). Adjusting to the monetary economy, some powerful Maasai negotiated with

state officials and became individual land owners. The result was a division of Maasai society between a few influential land owners and a landless majority that saw the economic basis for their herding system “in jeopardy” (ibid.: 259); between those who began to construct their identity around Kenyan or Tanzanian citizenship and those who continued to identify themselves as pastoralist Maasai (ibid.: 269).

At this point, it can be summarised that the roots of the Loliondo conflict partly derive from an opposition between the dominant perspective on land as an economic resource and the local perspective on land as territory. While the government perceives customary resource use as a threat to biodiversity and economic growth (TAWIRI 2011: 22), the Maasai associate conservation with their eviction from ancestral lands and restrictions on access to livelihood resources that are of substantial and cultural relevance to them (Neumann 1998: 2). From this point of view, conservation policies represent violations of the local moral economy, and national park law violations in form of the “theft” of fuel wood can be understood as a way to reclaim resources that, according to customary law, belong to the Maasai (ibid.: 13). After all, the conflicting perspectives illustrate the opposition of two profoundly different understandings of landscape that are manifested in national law and customary law. However, this opposition is deeply hierarchised, as the national government’s economic interests in combination with the agenda of international conservation organisations and investors form a powerful alliance. As the Loliondo case illustrates, the argument that customary land use is damaging to the soil is often used as a justification for evictions in the interest of foreign investors, such as hunting companies (Gardner 2016: 5).

The inequality of power relations within national parks leads to the dominance of state law as compared to customary law and to a criminalisation of local communities. In this context, *Green Grabbing*, like in Loliondo, can be interpreted as a modern form of colonially enrooted land alienation as it is based on the same dualistic way of seeing land and people that fails to understand “the rationale of the Maasai economy” (Campbell 1993: 262).

7 Maasai society today: Diversification

However, it should also be noted that a clear categorisation of rural people into hunter-gatherers, pastoralists or farmers does not comply with the Tanzanian reality any longer: Although a classification of people according to these categories is helpful in understanding the historical formation and segmentation of Tanzanian society, most livelihoods today are more diverse and consist of different economic activities of both pastoralist and market-oriented nature (Ndahinda 2011: 481). An example for the Maasai participating in the neoliberal order is the increasing number of joint ventures since the 1980s: These alliances between Maasai communities and safari companies present a “radical departure from how the Maasai had previously understood and related to their territory” (Gardner 2016: 129).

In this context, Adams, *AndBeyond*’s Regional Manager, states that “the Maasai themselves are not angels” (Interview 1 2018: 185 f.) and criticises the fact that they demand a solution that allows them to both benefit financially from deals with investors and maintain their traditional lifestyle: “I think if they could have it their way they would want tourism and benefit, just to have their own land, but obviously they can’t have their cake and eat it” (ibid.: 144 ff.). He further accuses the Maasai of instrumentalising the conflict in their own economic interest: “It works in their favour to make sure there’s conflict because where there’s conflict you can raise money from NGOs that are fighting land issues. So, if there’s no conflict, it’s really difficult for them to raise the cash. [...] If you look at just that area, the Loliondo area, there are so many more NGOs that have sprung up versus if you look in other areas of the country, and it’s all related to this land conflict” (ibid.: 186 ff.). It is clear that the Maasai need money to pay for litigation processes (Gilbert 2017: 679). Yet, it is debatable whether they view the conflict itself as an easy source of income, given that, according to the non-governmental think tank The Oakland Institute, it severely complicates and endangers their livelihoods (The Oakland Institute 2018a: 16). The contested economic integration of the Maasai as well as the high (internal) variety of stakeholders involved in the conservation discourse described in

Chapter 5.2 turns the Loliondo conflict into a more complex issue than the mere opposition of two contrasting society-nature relations. The different potential alliances between the stakeholders allow for different possible outcomes in the conflict (Fairhead, Leach, Scoones 2012: 239). As shown in Chapter 5.1, the villagisation under Nyerere posed a major threat to Maasai livelihoods as it significantly restricted the flexibility the pastoralist lifestyle is based on. Nevertheless, the *Ujamaa* programme also had a positive impact on the Maasai's position in the land rights discourse in that it established a political system that reaches down to the village level (Gardner 2016: 47). The fact that the registration of villages made the Maasai official land owners enables them to negotiate directly with investors and overcome restrictive state structures through joint ventures (ibid.: 125). The legal empowerment of the Maasai as a result of *Ujamaa* can be described with the example of Loliondo: The negotiations between the Loliondo Maasai and the ecotourism operator Dorobo Safaris during the 1980s resulted in the first joint venture between a village government and a company in 1991. Unlike other rural communities, the Maasai had a formally structured society and clearly defined land rights which made the establishment of land deals easier:

Legally incorporated villages with democratically elected village councils were ideal partners for the company in its mission to promote the conservation of wildlife habitats and to sustain pastoralist [...] livelihoods (Gardner 2016: 127).

Both actors perceived the land deal as a win-win-situation: Dorobo Safaris gained exclusive access to the land at a low price and the Maasai were safe from disputes with bordering neighbours and investors with an interest in exploiting local resources in an unsustainable way. Investors also benefited from the Maasai's understanding of the landscape and hired them as rangers (ibid.: 136). The contract agreed upon by the two parties reconfigured the relations between the involved stakeholders and resulted in a fundamental shift of power as it legally turned village land into company owned land. Although the Maasai were no longer allowed to construct permanent structures on the land, they were still able to conduct all activities required for their pastoralist way of

life, e.g. moving to new grazing land according to the seasons. This exemplifies how joint ventures presented a unique opportunity for the Maasai to “generate profit” and “defend land rights” for the maintenance of their traditional lifestyle at the same time (ibid.: 128 ff.). The innovative alliance between investor and villagers proves that nature conservation is reconcilable with human presence (ibid.: 141).

However, since all Tanzanian wildlife is property of the state, the government soon devised a way to regain control and work around the communities by taking fees from investors beginning in 2007. In order to circumvent a double burden, many companies subsequently stopped their payments to communities. Despite the re-expansion of state control in recent years, the experience of directly negotiating with investors has shaped Maasai ideas of development: “The Maasai transformed the village from a state-led development and encompassment to a local territorial claim to land and belonging” (ibid.: 145).

Although neoliberal processes typically follow a logic that favours the interests of economically powerful actors while dispossessing and disempowering indigenous people (see Chapter 5.2), they may also constitute a chance for local communities “to reassert rights over land and resources in alliance with external investors, and in opposition to a retreating state” (Fairhead, Leach, Scoones 2012: 248). As shown above, some local communities have actually made profits and gained financial independence through direct collaborations with investors, a form of empowerment that the state has hitherto denied them (ibid.: 253).

However, the emergence of alliances between Maasai and investors requires theoretical investigation as it implies an alteration of the Maasai’s traditional attitude toward land tenure and possession, in the sense that land used to be viewed as communal territory and not as an individually owned economic resource (Campbell 1993: 265 ff.). An examination of Alejandro Quijano’s (2007) discussion of *coloniality* provides one possible explanation for this ontological transformation: Quijano states that colonially established structures of repression subsist in the form of “Western imperialism” or *coloniality*. This

means that colonialism persists following a transition from formal discrimination in the colonies to discrimination based on colonially codified categories such as race and ethnicity, as well as discrimination resulting from an unequal distribution of resources and power (Quijano 2007: 168).

Quijano's argument that material exploitation was not the only way for the rulers to generate and manifest power during colonialism is of particular interest in the case of Loliondo: Just as important was the "colonisation of the imagination of the dominated [...]. The repression fell, above all, over the modes of knowing, of producing knowledge, of producing perspectives, images and systems of images, symbols, modes of signification, over the resources, patterns, and instruments of formalised and objectivised expression, intellectual or visual. It was followed by the imposition of the use of the rulers' own patterns of expression, and of their beliefs and images" (ibid.: 169). This means that local communities were not only physically destroyed or repressed and controlled through obvious, military and political force but also deprived of their specific traditional knowledge. According to Quijano, repression and substitution of entire knowledge systems and cultural practices is a subtle but highly efficient tool to gain persistent control over people. The incentive for locals to give up on their respective customs and to comply with the Western idea of development and mode of producing knowledge was the prospect of becoming a member of the powerful elite. This might explain why Tanzanian government officials side with foreign investors, thereby following development aims of the socio-economic mainstream.

I argue that a similar process can be observed in Loliondo today: The commodification of nature through alliances with investors presents an opportunity for the Maasai to regain control over their territory by using the symbolic patterns of the dominators, i.e. investors. The land that used to be of substantial and cultural value for the semi-nomadic pastoralist way of life receives a monetary value and becomes the centre of economic attention. The pastoralists' perspective on nature seems to be redefined in the attempt to reclaim their land. The predominance of the neoliberal capitalist economic

system that extinguishes alternative modes of life and knowledge for the sake of financial benefit can be viewed as an expression of *coloniality*. A concrete expression of a colonial attitude in community-investor-alliances is the safari company *AndBeyond*'s aspiration to decide how the community uses the money from their land deal. This illustrates the colonial knowledge hierarchy and the supremacy of the unidirectional understanding of development (Adams, Interview 1 2018: 153 ff.).

That said, the argument that the Maasai strive for economic integration, presumably with the aim of claiming their land rights, cannot be generalised: Maasai leader Yannick Ndoinyo clarifies that the villagers' expectations and hopes are very diverse, stating that "what the people really want is to maintain the ownership of the land, that land can remain theirs, but they are also ready to enter an arrangement that will allow them to benefit from tourism and benefit from grazing" (Ndoinyo, Interview 2 2018: 107 ff.). He emphasises that "the Maasai probably want a lot of different things right now. But there's no way of knowing until you ask them. [...] And unfortunately many people have not asked the Maasai right now, especially going through the cases: 'What do you really want?'. [...] Some organisations and even government departments feel what they want is what the Maasai really want" (ibid.: 263 ff.).

The fact that Maasai voices often remain unheard in the discourse is evidence of unbalanced power relations. This can be analysed through Gayatri Chakravorty Spivak's concept of *subalternity*: Western intellectual discourse tends to patronise and victimise underprivileged actors, while issues of inequality are discussed without including the point of view of those who are affected by discriminating structures. In the case of resource conflicts related to conservation, this would often be local communities. Spivak calls these underprivileged and underrepresented groups the *subaltern* because they have no active voice in the discourse. In addition, she criticises the discursive construction of groups through the process of "subject-production" (Spivak 2010: 24) according to Western ideologies by powerful stakeholders. The diversity within the group of the discriminated individuals is thereby ignored

(ibid.). The predominant position of powerful stakeholders is not only problematic in terms of democracy and equal participation of all involved parties, but also because it leads to a debate that remains within the predefined boundaries of these stakeholders' categories of thinking. As a consequence, the ruling ideology is reproduced and not challenged (Spivak 2010: 26). In the case of Loliondo, this dominant ideology is the colonially enrooted concept of neoliberal environmentalism that shapes both the national government's and the investors' positions (as explained in Chapter 6.2).

The *subalternity* of the Maasai can be illustrated by the fact that they have been excluded from the most important part of the decision-making process and must passively await the solution determined by the government: "We don't know what kind of arrangement it is going to be, how it is going to be structured. We don't know yet" (Ndoinyo, Interview 2 2018: 55 f.). The non-transparency of the final discussions on what will happen in Loliondo might lead to an outcome that contravenes Article 4 of the *Indigenous and Tribal Peoples Convention No. 169*, which prescribes that "special measures shall not be contrary to the freely-expressed wishes of the peoples concerned". However, one should bear in mind that Article 6 relativises the extent to which indigenous people must be included in the decision-making process: The call upon governments to *seek* consent instead of actually *obtaining* consent emphasises the persistent position of *subalternity* of indigenous people in international law (see Chapter 4.3.2).

Yet the patronising behaviour of other stakeholders and the exclusion from the debate are not the only factors that contribute to the *subalternisation* of the Maasai. Another important aspect is that the Maasai seemingly have to make suggestions that comply with Western knowledge systems in order to participate because non-capitalist alternatives are not considered an option: Hence, although the Maasai are partly integrated in the discourse today (Ndoinyo, Interview 2 2018, 66 ff.), their traditional knowledge concerning the land is not respected. The only way to be heard is to adjust to the Western model of economic development as alternative, non-capitalist solutions are not

discussed. On the one hand, the one-sidedness of the discourse demonstrates contemporary power relations and the government's economic interests. On the other hand and from a broader perspective, it can be interpreted as the result of the colonial suppression of entire knowledge systems that has led to the dominance of Western classification systems and ways to see the world today (Quijano 2007: 169).

The *subalternisation* of alternative knowledge systems can also be illustrated by the fact that President Nyerere highlighted the relevance of “modern knowledge and techniques” for Tanzania's development and considered pastoralism an “outdated cultural system of production” (Gardner 2016: 45 f.).

Further proof of the predominance of the Western knowledge system is that the idea of monetary compensation (Rwegasira 2012: 313) presupposes a capitalist mode of thinking and living, thereby denying the existence of ways of life that do not reduce the definition of value to the monetary sphere.

The hierarchy of different knowledge and classification systems can also be observed in law cases, such as the Botswanan example discussed in Chapter 5.4, that promote a Western idea of progress and development (Gilbert 2017: 661 ff.): The fact that most litigations require an argumentation based on written documents as proof of ownership illustrates the *subalternity* of alternative knowledge systems that often largely rely on oral testimony. In addition, due to their marginalised economic position in society, many indigenous communities do not have enough money to pay for the often lengthy litigation processes unless they receive funding from NGOs. The lack of financial means can be a factor that silences the indigenous and thereby contributes to their position as *subaltern* (Gilbert 2017: 678 ff.).

In this context, it should be noted that the involvement of international NGOs can have various implications: On the one hand, the financial support as well as the legal knowledge that such organisations provide enable indigenous communities to articulate their needs and demands. On the other hand, the dominant role of international actors tends to push local residents into the position of mere spectators in their own cases, sometimes even preventing the

emergence of a local movement. As a result, the powerful stance of international organisations and lawyers in land conflicts can (unintentionally) suppress indigenous knowledge systems and obscure what local communities really want (ibid.: 681).

8 Methods and challenges in the research process

The thesis applies a mixed-method approach: While the case study is based on government papers, NGO reports, newspaper articles and law texts, the theoretical background relies mainly on secondary literature. In addition, two interviews were conducted via Skype to supplement my theoretical findings.

The first interview was with Adams, the East African Regional Manager of the safari company *AndBeyond* that operates in Ololosokwan village in Loliondo. In contrast to the company OBC mentioned above, *AndBeyond* highlights the need for holistic approaches that combine social and ecological purposes. In this context, one should keep in mind that the role of investors in the conflict depends completely on their guiding principles. However, operating a successful business is the primary goal common to all safari companies. The economic rationale was confirmed during my conversation with Adams when he spoke about participation in a purely monetary sense (Adams, Interview 1 2018: 106 ff.). The interview with Maasai leader and Ngorongoro District Council member Yannick Ndoinyo makes clear that the stakeholders debate on different argumentative levels as he repeatedly emphasises that the value of the disputed land goes beyond its monetary value (164 ff.). This statement confirms my theoretical findings that the root of the conflict at least partly lies in contradictory conceptions of land.

I used the approach of qualitative content analysis according to Philipp Mayring (2000) to analyse the interviews. The idea behind this method is to “preserve the advantages of quantitative content analysis as developed within communication science and to transfer and further develop them to qualitative-interpretative steps of analysis” (Mayring 2000: 2). A central part of the

analysing process is the hermeneutic development of inductive categories from the interview transcript. In this sense, I identified quotes that contained relevant information with regard to my research interest, which I then allocated to different, more general categories. This enabled a better overview of the interview content and facilitated comparison of the two interviewees' statements regarding similar topics. The process of structuring an interview by establishing abstract categories based on concrete quotes is similar to the Grounded Theory approach. However, the aim of qualitative content analysis is not to develop a theory "grounded" solely on interviews but to use a systematic approach to combine the information generated through interviews with information from other sources (e.g. secondary literature) and facilitate a hermeneutic research process (Mayring 2000: 5).

I faced several challenges while conducting my research: First, the omnipresent power relations between the involved stakeholders made it difficult to cover each position equally in the analysis. I focussed on a closer analysis of the Maasai's perspective in my theoretical investigation in order to counterbalance their presumed *subalternity* in the discourse (see Chapter 7). Further evidence of the level of tension in the current situation is the fact that the Tanzanian national government did not reply to any of my interview requests. As a result, the description of the government position relies solely on officially published government papers. In response to the Oakland institute report aiming to empower the Maasai's position in the conflict, the national government reacted by denying all accusations, discrediting the report's findings and threatening the publishers (The Oakland Institute 2018b: 1). This hostile attitude toward any research conducted by outside investigators reveals its fear of losing control over the framing power in the discourse.

An additional challenge is to differentiate between what actors say in the public discourse and what they actually think or do, as well as the difference between law theory and practice. As a result, a major part of my work consisted of a close examination of the mismatch between theory and practice. This can briefly be summarised as follows: While the government pretends to act in the

name of conservation, the politicians really seem to follow economic interests. Similarly, investors, such as the safari company *AndBeyond*, emphasise the importance of local participation for conservation. This can most likely be explained by their interest in avoiding conflicts with communities that might jeopardise their businesses. The Maasai on their part construct their position around their traditional way of life as pastoralists and their customary right to land, although many seem to be primarily interested in a stable income and economic benefit. In many cases, nature conservation seems to be used as an instrument to realise different objectives. Regarding the legislative context, I consulted law texts and compared my theoretical findings to what had actually been implemented in Loliondo.

Furthermore, the geographic distance between myself and the area of interest was both a challenge and limitation to my research. I had initially intended to conduct research on site during an internship. However, this was cancelled due to the aggravation of the situation, making it harder to get an overview of the conflict.

During my research, it was occasionally difficult to circumvent a binary depiction of the different involved positions that would have painted the conflict black and white. In awareness of this, the focus lay on showing the inherent multifacetedness of each stakeholder's position as well as to highlight that there is no clear distinction between the investors', the national government's and the Maasai's demands and perceptions.

9 Outlook: Solutions?

In consideration of the challenges presented above, two different scenarios for Loliondo's future are presented in the following Chapter, prior to drawing a conclusion.

9.1 Income growth through economic integration

Jozef Sloomweg (2018a) from the GIZ claims that tourism and income growth are the answers to local resource conflicts in the Ngorongoro District. His suggestions conform to the predominant perspective on the situation in Loliondo, which is shaped by the neoliberal argument that a separation of humans and nature as well as an economic integration of local communities is the only possible solution. The neoliberal discourse is based on the pessimistic assumption that environmental degradation in the region is the result of the unfortunate synergy of climate change and population growth. Although Sloomweg concedes that pastoralism is the most productive means of supplying food to communities in dryland areas, such as the GSE, he states that the rise of the resident number “from 20,000 to 200,000 in the last 55 years” makes a diversification of economic activities inevitable (Sloomweg 2018: 1ff.). A central problem in this context is the fact the livestock numbers have remained almost constant, as the “carrying capacity of the area is limited and does not allow a proportional growth of the livestock population” (ibid.: 3). The disparity between human and livestock growth leads to increasing impoverishment because of the decreasing number of Livestock Units available per person: “There is no doubt that with the outlined increasing human population, pastoralism can no longer be practised as it is today” (ibid.: 6). The uneven distribution of wealth, measured in Livestock Units, makes the situation particularly critical for the less powerful community members. As a result, there is a general tendency towards a diversification of the local resource use: Agro-pastoralism, agriculture, tourism and exploitive activities such as logging and mining play an increasingly important role for local livelihoods (ibid.: 4 ff.).

According to Sloomweg, the villagers’ unsustainable resource use makes a diversification of economic activities necessary. In his opinion, they should reside “outside the protected areas” to conserve nature and realise income growth (ibid.: 8). This binary idea, strictly differentiating between society and nature, corresponds to the logic of the *national park ideal* (see Chapter 6.2).

Slootweg further develops his argumentation by stating that a diversification of the tourist activities offered in the region is needed for a locally profitable transformation of the tourism industry. He criticises that the profits generated by an industry focussed on “high-end-short-stay” tourists primarily go to (often European or American) travel organisers and touring companies, hotels, the service sector and the Tanzanian state in the form of park fees.

In contrast, the local Maasai community is treated as “cultural ornament and not as owner of development” (ibid.: 12), with the only opportunities to generate an income so far being cultural services and low-paid jobs as guards (Slootweg 2017: 8). Slootweg states that the Maasai should either receive training to become competent service providers or invest in the region themselves so as to strengthen their independence and financial autonomy (Slootweg 2018: 11).

In addition, he argues that the region’s potential for “long-stay-mid-range” tourists should be realised as this would create valuable job opportunities in different sectors (ibid.: 14). In order to explain this idea, he refers to the history of tourism and differentiates between religiously motivated tourism, tourism for health reasons, for leisure and out of curiosity. According to Slootweg, these objectives need to be considered when redefining the tourism sector:

Ngorongoro needs to offer savannah walks; mountain climbs; birds watching; swimming at waterfalls; picnic areas; hot water bathing; salt water and mineral healing bathing and massage; forest walks; archeologic sites; cultural sites and museums; and abundant modern and traditional music (Slootweg 2017: 10 ff.).

Slootweg also highlights the need to establish reliable infrastructure in the region, connecting the Ngorongoro district with big cities and airports and facilitating access for tourists.

Even though Slootweg criticises the current exclusion of the Maasai from the tourism business, his suggestion to empower them by turning them into investors contains an ideological component in itself, in that it presupposes the local residents’ wish to participate in the capitalist economic system; an assumption that might be true for many, but not all (Ndoinyo, Interview 2 2018: 107 ff.).

At present, many villagers neither benefit from tourism nor do they receive land to maintain their traditional lifestyle. This goes against Articles 15 and 16 of the *Indigenous and Tribal Peoples Convention No. 169*, which declare that communities shall first, benefit from activities taking place on their land and second, receive compensation with land qualitatively and legally equal to that from which they have been removed. A potential problem is that the *Convention No. 169*, one of the most fundamental international conventions on indigenous rights, still seems to be more “pro-state than pro-indigenous” (Sentongo Kafeero 2013: 51). As a result, legal theory is not always translated into practice. Another issue is the actual implementation of compensation: Even though it is firmly established as a mandatory substitution measure by national legislation, e.g. through the *Land Acquisition Act* (1967) or the *Land Act* (1999), processes of assessing the compensation value of a specific area are often obscure and complaints over inadequate compensation are rarely successful (Rwegasira 2012: 314). Also, as already mentioned, the idea of monetary compensation only works within a capitalist society.

Nevertheless, considering the dominance of the capitalist system and the relevance of the GSE for the Tanzanian economy, one can argue that the integration of the Maasai into the tourism sector seems like the only reasonable solution: “I think it’s really important that the villagers get something out of whatever happens in that area ‘cause I think for the conflict to go away and for everything to be sustainable there [...] it’s important that they benefit” (Adams, Interview 1 2018: 246 ff.).

In this context, it should however be noticed that neoliberal integration carries the risk of reinforcing the inequity of local power relations, as in many contexts village chiefs negotiate with business agents without prior consultation of community members. This leads to an accumulation of profits within the village elite and a manifestation of the already uneven wealth distribution (Slootweg 2018: 6). With this patronizing way of generating profit from land transfers, less powerful community members, mostly young people and women, are in some cases forced to leave their ancestral land and search for work in the city,

making it even easier for investors and politicians to claim land as empty and unused (Fairhead, Leach, Scoones 2012: 252). Nonetheless, a transformation of land transaction regulations toward increased transparency and benefit sharing might be a chance to overcome the patriarchal structures that dominate many rural areas in Africa because previously subordinated community members would be able to gain financial independence and autonomy:

In a lot of cases, [...] specifically in the more rural villages, the men sort of dominate the situation [...] and largely take advantage of the rest of the community. [...] If there was a system where this, you know, financially could benefit everybody from the top down in that village, then I think that'd be for it (Adams, Interview 1 2018: 162 ff.).

Considering the complexity of inter-community relations, “the rapidly changing environment of rural societies in Africa” in general (Slootweg 2018: 3) and the challenges of redistributing economic and political power within villages, it is difficult to conclusively define whether neoliberal dynamics pose a threat or an opportunity to local communities.

9.2 Real participation

In any case, a purely monetary solution will not satisfy the Maasai. They want to “profit from tourism, but monetary benefits alone cannot compete with the value of the land for supporting livelihoods” (Gardner 2016: 156). The meaning of land for the Maasai goes beyond the economic value as it is also of cultural significance to the Loliondo villagers. Maasai leader Yannick Ndoinyo confirms that “if land is going to be taken away from them, they [the Maasai] will never agree, at least not peacefully” (Ndoinyo, Interview 2 2018: 111 f.). This shows that a solution to the Loliondo conflict needs to take the cultural significance of the land into consideration to be sustainably successful. An approach that solely considers economic interests, such as Slootweg’s suggestion (see Chapter 9.1), will not reconcile the different stakeholders’ interests. Consequently, a participative approach is needed to include local interests in the solution-finding process. One such approach is the concept of Community Based Natural Resource Management (CBNRM): Ever since its establishment in the 1990s,

CBNRM has been promoted as a strategy to represent communities and their needs and to create “new respect for local rights, knowledge and culture” (Brosius, Tsing, Zerner 2012: 158). It relies on the assumptions that social development and conservation are interconnected because local people who depend directly on natural resources have an interest in preserving nature, that traditional forms of managing resources are sustainable, and that there is a link between “environmental degradation and social inequity” (ibid.). In the best case, CBNRM shall link “social justice and rights” to “saving trees and biodiversity” (ibid.: 164). In defiance of the promise to empower local communities, the integrity of the CBNRM approach can be scrutinised in multiple ways: CBNRM guidelines have been enacted by international institutions, such as the United Nations, and the implementation process itself is also often controlled by powerful stakeholders, e.g. governments, who thereby define the discursive framework within which the solution to a conflict must lie. This top-down dynamic creates doubt whether there is room for alternative perspectives that contradict the economic and political status quo. It should further be questioned in how far powerful actors actually aim to incorporate the local perspective in the management of natural resources and in how far they only use the rhetoric of community and participation to legitimise the implementation of their own interests (ibid.: 162 ff.). Another point of criticism is that some successful CBNRM projects have been used as models and transferred to completely different geographic, political and cultural contexts as if they were universally applicable (ibid.: 161). It is also problematic that minority cultures are forced to construct their identities around the concepts of *community*, *territory*, *indigeneity* and *tradition* in order to participate in CBNRM projects. These terms are typically associated with the notion of “intrinsically sustainable resource management regimes” (ibid.: 165). However, the assumption that all minority groups behave in an environmentally friendly way is as misleading as the widespread accusation that local livelihoods are the cause of environmental degradation. Just like any other community, indigenous communities are neither completely good nor bad, as they consist of individuals

and their land use practices differ significantly. What is more, CBNRM might reignite local ethnic conflicts as some communities get the chance to participate in decision-making processes, thereby receiving preferential treatment compared to others (ibid.: 164 ff.).

The above-mentioned risks and challenges highlight that CBNRM does not necessarily translate to profoundly democratic decision-making processes: In any case, participative approaches need to go beyond the mere sharing of financial benefit to overcome Western neoliberal bias and provide a sustainable solution. In this context, it makes sense to compare the situation in Loliondo with the Endorois case in Kenya to demonstrate the compatibility of cultural survival and economic development: After years of negotiations and conflict, the national government removed the Endorois, a pastoralist community living in Kenya's Rift Valley, from their ancestral land to establish a Game Reserve. The government's main argument for the relocation of local residents was "that tourism and the exploitation of natural resources [...] would bring significant resources to the region" (Gilbert 2017: 673). Just like in Loliondo (Slootweg 2018: 1), the Endorois did not generally contest the government's intention to promote conservation and development but criticised the assumption that this aim and their presence on the land were considered "mutually exclusive" (ibid.: 674). In this context, the Endorois referred to their right to develop according to the *African Charter on Human and Peoples' Rights* (1986):

All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind (Article 22).

The ACHPR argued that the government's aim to encourage development did not rule out the survival of Endorois culture and that a balanced solution should be found. Considering that the aim of development is often used as justification for removals, this reasoning is of high relevance for many land conflicts (Gilbert 2017: 675). In the case of Loliondo, the Tanzanian government follows the same reasoning as the Kenyan government, claiming that all residents must leave the area for the sake of tourism, economic growth and development

(Regional Commissioner Arusha 2017: 13 ff.) while the Maasai, just like the Endorois in Kenya, explain that they are willing to cooperate as long as their culture and way of life are respected (Ndoinyo, Interview 2 2018: 164 ff.). The demand for a solution that facilitates a reconciliation of poverty reduction and the maintenance of the traditional Maasai lifestyle (see Chapter 7) can be juridically reinforced by Article 2 (c) of the *Indigenous and Tribal Peoples Convention No. 169* which calls upon the government to assist “the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life”. However, the legislative call for a reconciliation of traditional and ‘modern’ ways of life still evokes questions concerning its implementation:

But how do you get an income [...], what do you do to have that income? Is it to maintain your traditional lifestyle? Is it to be integrated into the global or national economy? (Ndoinyo, Interview 2 2018: 276 ff.)

An important factor regarding Loliondo’s future is the contradiction between customary and state law. In some litigation processes, the ruling has gone in favour of customary law due to the fact that state law is often based on principles that contravene human rights:

The fiction by which the rights and interests of the indigenous inhabitants in land were treated as non-existent was justified by a policy which has no place in the contemporary law of the country, and that whatever the justification advanced in earlier days for refusing to recognise the rights and interests in land of the indigenous inhabitants of settled colonies, an unjust and discriminatory doctrine of the kind could no longer be accepted (Rwesagira 2012: 289).

Many local resource conflicts are the result of a lack of recognition of indigeneity in national legislation. Legal recognition of their exceptional societal status would enable communities to claim their rights according to national law (Gilbert 2017: 661 ff.). It should be noted that “historically, law and legal institutions have played a significant role in the alienation and marginalisation of indigenous peoples. Indigenous peoples are asking the very system that has contributed to that prejudice to determine whether or not the prejudice is justified” (Gilbert

2017: 685). This illustrates the paradox of litigation processes as a way for indigenous peoples to achieve recognition. The central role of courts in (post-) colonial land alienation and dispossession might explain why “most communities have unsuccessfully gone to court to claim rights in land, and that there is little prospect, or none at all, for any community to claim land rights successfully in the future” (Rwesagira 2012: 300). In this context, it is important to note that the Inter-American Court of Human Rights is currently working on a way to enshrine customary systems of land tenure in international law (Gilbert 2017: 666).

Due to their influential position in the international discourse, NGOs can play an important role in the empowerment of indigenous peoples and the promotion of their way of seeing the world. However, an overreliance of the Maasai on the engagement of external actors, such as international NGOs, can lead to a lack of control over the discourse and therefore poses a potential threat toward a sustainable solution in Lolindo: NGOs that operate in the area often provide short-term support rather than a long-term litigation strategy that would be needed. It should also be considered that NGOs partly “constitute the entities whose interests they claim to represent” (Brosius, Tsing, Zerner 2012: 165). Such patronising behaviour might result in the suppression of indigenous knowledge systems and thereby reinforce the marginalisation of indigenous peoples. Instead of assuming they already know what is needed, international NGOs should listen to the specific needs of local residents and use their funds and power to promote these. Listening and ensuring participation and consultation could contribute to an empowerment of local communities and their knowledge systems in the international discourse, thereby challenging existing power relations. The case of the Endorois in Kenya shows that a strong local civil society is also necessary to guarantee the implementation of court rulings that may be unpopular among government officials. A locally organised land rights movement is thus essential to challenge the government’s vision of development and conservation (Gilbert 2017: 685).

Although not all litigation processes result in a direct improvement of the plaintiffs' situation, they are important in the sense that they contribute to an empowerment of local communities through their political organisation and the recognition of indigenous rights. An empowerment of indigenous communities and knowledge systems is crucial in the process of establishing alternative development paradigms and society-nature relations (Gilbert 2017: 681 ff.). A simpler tool in the emancipation of local communities can be the creation of alternative maps that "redescribe social and natural communities in forests, coasts, and seas as a means of asserting local community control over natural resources" (Brosius, Tsing, Zerner 2012: 162). Maps are of particular interest in the Loliondo case considering that Maasailand, today covering Southern Kenya and Northern Tanzania was separated by colonially established borders. Using maps that depict the land from Maasai perspective would clarify its meaning to them in the sense that new categories would come to the fore: Instead of cities and national borders, seasonal grazing land areas or water sources would probably be the demarcating features, as those are factors on which the pastoral way of life is based (Minahan 2002: 1123 f.). This shows that maps implicitly mirror the societal structures of the land they describe (Brosius, Tsing, Zerner 2012: 162).

In order to make community-based approaches work, the relation between (inter-)national and customary law needs to be renegotiated as current conventions still subordinate the latter to the first. Property needs to be redefined in a way that gives room to alternative interpretations. Including local knowledge in political or juridical decision-making processes probably presents an even bigger challenge than the integration of people considering that it implies a different way of thinking and seeing the world. Yet, in order to avoid romanticising local perspectives on nature, it should be noted that "alternative ontologies [...] are themselves entwined with local cultural politics, identities and material struggles; they are not part of a naturalised, timeless community harmony" (Fairhead, Leach, Scoones 2012: 253).

10 Conclusion

For the future of Loliondo, it remains to be seen whether the contested area becomes a Game Reserve or a Wildlife Management Area. A Game Reserve would result in a complete exclusion of human activity from the protected area and the economic integration of the Maasai (Slootweg 2018: 8), while a properly implemented Wildlife Management Area could present the participative solution that the villagers hope for. In any case, the future of Loliondo and the Maasai depends strongly on how the “special authority” that the government aims to task with the management of the area is constituted (Government Official Blog 2017). The authority might either reinforce the top-down approach that is currently practised or present an opportunity to make decisions in a community based bottom-up manner.

Despite the criticism of Community Based Natural Resource Management in Chapter 9.2, the approach has the potential to contribute to a broad transformation of political culture toward true democracy which recognises the importance of “grassroots effects” (Brosius, Tsing, Zerner 2012: 164). This would not only be a success for the Maasai but could also supersede the *national park ideal* as the dominant conservation strategy that complies with a dualist society-nature conception. In this respect, it should be noted that there are or at least have been completely distinct ways of defining nature that have been *subalternised* in the process of the expansion of global capitalism. These ontologies are still partly present in the argumentation of the Loliondo Maasai and other local populations affected by resource conflicts: Many point to their traditional right to land and the fact that the coexistence of humans and nature in the same place is possible.

A participative approach might allow the Maasai to show that pastoralism can be a sustainable form of land use when there is enough land to migrate to, so that all pastures have enough time to recover. The accusation that overgrazing is responsible for environmental degradation could be refuted in the sense that this is only the case because the Maasai have to stick to (colonially)

demarcated areas which are too small to sustain this way of life and prohibit the flexible movement according to the seasons (Campbell 1993: 262).

Although the different positions in the conflict can no longer be clearly ascribed to specific ways of life and perspectives on nature, the imbalance of power between the stakeholders in the discourse can be interpreted as a colonial legacy. As a result, even though all actors might strive for economic benefit today, a central root of the land conflict is the discrepancy between different ways of life and modes of knowledge, manifested in the hierarchy of state and customary law. Therefore, the fact that many processes of Green Grabbing are legal according to state law does not make them less objectionable. In fact, the logic that the relevant legislation is founded on is itself part of the problem. Local communities should not be forced to subordinate themselves to Western constructions present in law that undermine their aim to establish alternative ways of thinking (Lenn 2011: 171). It is not easy to determine who the land genuinely belongs to as the concept of property that was coined by John Locke's understanding of productive land use as the predominant criterion of ownership is biased in itself (Locke 1690: 18). In this sense, a solution would favour different actors depending on the classification system that is applied in the attempt to solve the conflict. While the dominant knowledge system would focus on written documentation, alternative perspectives might emphasise cultural belonging.

In this context, indigenous rights are of high relevance as they question the predominance of law that is shaped by the premise of individual ownership and the understanding of land as an economic resource. Their attempt to integrate alternative ways of life into the legal debate contributes to an empowerment of indigenous knowledge in face of the knowledge mainstream and gives formerly suppressed peoples the opportunity to implement their ideas of development and conservation. The only problem is that the relevant conventions are constructed entirely around the concept of indigeneity: Although there is a general tendency to define indigeneity in a constructivist rather than an essentialist way, the concept of indigeneity as a whole is contested in the

African context. Nevertheless, there is no doubt that the “root causes of marginality and disempowerment of claimant communities” need to be addressed (Ndahinda 2011: 514). In this sense, the term ‘indigenous’ should be replaced by a wider term such as ‘minority’, with the categories of numerical inferiority as compared to the dominant society and discrimination as the main determinants of a community’s status. Also, such legislation needs to be legally binding in order to diminish the predominance of national law that typically excludes alternative perspectives on land and development. A “truly pluri-national society that fully recognises and respects indigenous peoples’ cultural difference and integrity, territorial ownership or stewardship, and self-determination” is needed (Stevens 2014: 22).

However, it is uncertain how the Maasai would use their right to participation if the land were declared a Wildlife Management Area. Many Maasai wish for economic integration and in this sense correspond to the ideals of the development mainstream. In this sense, the Maasai should neither be viewed as the reason for environmental degradation (TAWIRI 2011: 4) nor as the ones that can solve the problem (Brosius, Tsing, Zerner 2012: 165): Communities consist of individuals with different needs and interests, which is highlighted by the fact that the Maasai’s wishes for the future range from economic to cultural empowerment. The most recent events in Loliondo point to a reinforcement of the existing hierarchy between the involved stakeholders: Prior to the hearing at the East African Court of Justice on June 7 of 2018, the national government intensified its measures of intimidation and threat in order to prevent the plaintiffs from attending their own case. In this context, several villagers were arrested, for example for “holding a community meeting without permission from the government” (The Oakland Institute 2018b: 1).

Whatever the outcome of the Loliondo conflict, this thesis shows that the environmentalist mainstream is built on colonially enrooted binary ideas of nature and human, of primitive *wilderness* and civilisation. As a result, local communities and their knowledge systems have often been disqualified as irrational and backward by investors and governments while the truly irrational

part of the conservation discourse is that 'green growth' is promoted as a solution to a problem that has largely been caused by the resource intensive accumulation needed for economic growth: "Non-equilibrium ecologies do not obey the formulae of equilibrium economics" (Fairhead, Leach, Scoones 2012: 254). In this sense, it is ironic that pastoralist communities are accused of unsustainable resource use by industrial nations responsible for major ecological degradation. The Maasai should neither be constructed as 'primitives' nor forced to join the capitalist economy. Instead, the conservation discourse should open up to innovative, alternative approaches, recognise human agency in the production of nature and let go the idea of the preservation of a static status of nature. The strict separation of humans and nature needs to be overcome in order to reach genuinely sustainable outcomes, both ecologically and socially.

11 Literature

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12 Appendix

12.1 Relevant legislation

African Charter on Human and Peoples' Rights (1986)
General Act of the Berlin Conference on Western Africa (1885)
ILO Convention No. 169 (1989)
Land Registration Act (1903)
Land Ordinance No. 3 (1923)
Land Acquisition Act no. 47 (1967)
Local Government Act (1982)
United Nations Declaration on the Rights of Indigenous Peoples (2008)
Village Land Act (Cap. 114, 1999)
Wildlife Conservation Act No. 5 (2009)

12.2 Interview 1 2018: Adams (East Africa Regional Manager AndBeyond)

W: The first thing I would like to know is what the situation is like in Loliondo at the moment because it's kind of difficult to find any reliable information on that in Tanzanian newspapers. And just in general what the conflict is like at the moment. I read that there has been this, that some villages filed a case with the East African Court of Justice. So, what is the outcome, if there is anything so far?

A: Sure! Sorry, just, what is your, I mean, what is your involvements in the area, how long have you been sort of studying it, and yeah, what is your paper on?

W: Oh yeah, sorry, I, ehm, so the idea was just, so, I travelled in Tanzania two years ago for a couple of months, and then, that was the first time I heard about the conflict 'cause I went to the Serengeti and went on safari there, just like a normal tourist, and, ehm, I study International Development, so, ehm, that's kind of about inequality and, ehm, yeah, how local communities can benefit from tourism and environmental projects and stuff like that, so I thought it would be a good project or a good idea to write about that. So, ehm, my initial plan was to go to Tanzania with an internship again, with the GIZ, I don't know if you know that?

A: Yeah.

W: And, yeah, so that was the plan but then they cancelled it after the evictions last year.

A: Okay.

W: And said it was too dangerous to go there now. So I couldn't go but they gave me some of the contacts and, yeah, so, that's why I try to do everything on Skype now and I've read some papers from GIZ people on the topic and some, I studied, like, the legislation, like the Village Land Act and the Wildlife Conservation Law and all that and some of the government papers that try to evaluate the situation and find a solution to the conflict. So now I just want to find out what all the stakeholders think. What do the Maasai want, what does

30 the government think is the best solution, what do you as a tourism stakeholder think would be the best thing to do?

A: Mhm, yeah, well it's, I mean, look, so we, ehm, our stance in the whole Loliondo sort of land thing, started many years ago and the history behind that was that we bought titles of 25,000 hectare from an Indian, sorry, an Italian
35 operator.

W: Mhm.

A: And, ehm, soon after we bought the title we were taken to court by the villagers saying that, yeah, we don't have the legal right to own that land.

W: Mhm.

40 A: And our stance at that, at the time was that we fully agree that to, well, we didn't necessarily agree with the villagers that time but our stance was that, you know, we weren't investing in Tanzania to be landowners, we were investing in Tanzania to be, for tourism purposes and we didn't have to own land in order to conduct with our business. Ehm, so we agreed to revoke our title but on the
45 prerequisite that we would get a long term lease agreement over the land, obviously, you know, we were investing a lot of money.

W: Yeah, sure.

A: And we needed to have a certain amount of time in order to be able to repute that. So we got into a fifteen years lease agreement with Ololosokwan village
50 and it was, yeah, actually that whole agreement was initiated by the government, we got a letter from the government stating that we should revoke our title and get into the agreement which we agreed to. So that's how we got into, then we, ehm, about five, four years ago, I think five years ago, can't remember, the lease came to an end and we had the first rough refusal
55 obviously with, yeah, in regard to renegotiating the contract which we successfully did with Ololosokwan Village and, ehm, and we got another fifteen years lease over that.

W: Okay.

A: And I think at that stage it sparked a lot of questions because, ehm, you
60 know, if you look at the history over the area. It was gazetted a Game

Controlled Area before the person that we bought the title from seemed to have got his title gazetted. So, it was questionable how he obtained the title. Ehm, but at that stage we had no idea of any of that because it was never challenged.

W: Yeah.

65 A: Ehm, and, you know, if you go according to what the government say, ehm, and if, yeah, there are records or acts in terms of when everything they say was gazetted, you know, they've got a very strong argument in terms of, you know, what that area should be, and I mean it seems that it should be a Game
70 Controlled Area, but then a couple of years ago the Minister of Natural Resources and Tourism was supposed to revoke all the Game Controlled Areas and, ehm, and get back into, and then I think the villagers were supposed to negotiate directly with the investors.

W: Mhm, yeah.

A: And, on the photographic side they changed it to become Wildlife
75 Management Area and on the hunting side they would remain sort of Game Controlled Areas, so it's hell of a complicated in that respect and, ehm, you know it's difficult to, it's really difficult to put a final sort of answer, say 'Hey, this is exactly what it is' because, everybody's got their different opinion as to what's right and what's wrong in that area and the law unfortunately is so perforated so
80 to speak, because it doesn't make it, it doesn't help, you know, everybody's argument because it leaves a lot to be desired in terms of trying to find the perfect answer.

W: Yeah.

A: So, to what that does is, it sort of leaves everybody in a position where they
85 think they, and probably rightly or wrongly, I don't know, you know, ehm, have a sort of say in terms of what happens there.

W: Yeah, sure.

A: Yeah, so, ehm, so that's kind of where we are right now with the whole thing, ehm, and, ehm, yeah, I mean it's, look, I think, yeah, the government's
90 obviously wanted to take over, they wanna put that [...] in for the Maasai, and that is, you know that's an interesting sort of take on the whole situation

because you know, legally, is that right? I mean, is that taking land away from the people? Ehm, whatever the case may be, so, yeah, so, I mean the [...] is gonna be put in place and that's essentially what the government thinks they're gonna do, my understanding is that that's probably gonna go ahead. But they have had quite a lot of consideration for the villages that is sort of spread down that area, and ehm, yeah, and I understand that the villagers are gonna get quite a lot out of it. Ehm, you know, that, look, I haven't been party to sort of final discussions on any of this thing but from what I understand is that the villagers for instance, well, for our lease agreement with Ololosokwan village will no longer be valid, ehm, but Ololosokwan village, well Ololosokwan village is the only village that is really actually getting anything out of any deal at the moment.

W: Ok, mhm, yeah, I see.

A: Ehm, and, I mean, if the sort of research that we've done is correct Ololosokwan village is, you know, we pay them 112,000 Dollars a year which a lot of other photographic operators, you know, can't do just because, you know, they don't have the sort of, the financial reach to be able to go into any similar agreement, so, you know, one can argue that Ololosokwan is extremely lucky and, ehm, and I have been told on numerous occasions that they're probably the wealthiest village in the entire country. ehm so yeah, it's kind of, while we think it's probably a good thing it has to be at everyone's view in terms of what is possible in that area because now obviously every village believes that they are worth 112,000 Dollars a year which, there are no other operators that would be prepared to pay that sort of money to each of the, I think there are six villages down the side of that, down the side of the Serengeti, ehm, but you know that's not to say that you know, I'm sure there are other investors that would pay, you know, a little bit less than that to have a stake on that area but you know, I haven't come across anyone. so and you know at the end of the day, well I think the Game Controlled Area, that's the, the contract signed in that area was in 1990 at least as far as I'm aware, and we were right in the middle I mean, we, we, as complicated as everyone in there, essentially we shouldn't be

there if that did sign in 1990 at least way back when, because you know Game Controlled Area excludes all photographic tourism, well, how, my question's
125 always been, well, how've we been operating in that area for the last seventeen years if it's a Game Controlled Area. And that's where it goes back to my argument as to, you know, the law is, well I think, one, the government haven't, from the beginning haven't really enforced what they thought was law, two, the actual law itself is, you know, there are a lot of holes in it that sort of open
130 themselves up to this whole mess. And then, if you look from the village side, I mean, the villagers essentially had title but they now asked to revoke their title so, I don't know, it's complicated, but look, going forward I think that the [...] is gonna be put in place, apparently parliament is happening in April, if I'm not mistaking, ehm, and that's all the villages, my understanding is that the, is that
135 all villages are going to benefit financially from this whole deal that the governments are gonna do.

W: Okay, and do you think that...?

A: Sorry, let me just, just to say that, you know, Ololosokwan was the only village that was benefiting and now, it seems that all villages will benefit.

140 W: Mhm, okay, and do you think that financial benefit is what they want or do some also think that tourism in general is bad and that they just want to maintain their traditional way of life, or do you think they all agree that it's good for them to benefit financially?

A: Oh, good question, I think, ehm, I think if they could have it their way they
145 would want tourism and benefit, just to have their own land, but obviously they can't have the cake and eat it. So, I think it's probably a split actually, I think if you speak to certain people in each village they would argue different things. You know, it's, I mean, I don't know how familiar you are with sort of like the hierarchal system of the Maasai village but, ehm, in a lot of cases the men, you
150 know, specifically in the more rural villages, the men sort of dominate the situation.

W: Yeah, I read about it.

A: And largely take advantage of the rest of the community, and, and, I mean, even in our agreement with Ololosokwan who are, we would say, probably quite
155 an advanced village, ehm, yeah, we've always tried to say to them 'Look, we're giving you 112,000 Dollars a year but what you should be doing is dedicating a portion of it to health care, another portion to, you know, wildlife, I mean, sorry, livestock management, another portion to education' etcetera etcetera. But we've never managed to get that right and, and, what's resulted from that is that
160 a lot of people in Ololosokwan village don't see any direct benefit from our agreement, so they will bring their livestock onto our concession. So, I mean, yeah, if there was a system where this, you know, financially could benefit everybody from the top down in that village then I think that'd be for it but I think at the same time they feel that they're getting squeezed out of their land so to
165 speak.

W: Yeah, mh, but do you think, because you said that men have a lot of power in the villages, do you think money could help make the Maasai society or, like the villages, more equal? So that maybe women get more independent and, because they can get education for example?

A: Yeah, I mean, I think there's certainly cases in Kenya that that's happened, yeah, I think the big question is: Are they willing to forego their land for the financial benefit? That for me is the most pertinent question. Because, you know, land is anything to someone who has livestock.

W: Mhm, yeah, sure. And does the conflict have any direct impact on your
175 tourism business?

A: Look, I think, I mean, we, we are in a very fortunate position, well fortunate or unfortunate, in that, you know, we've largely always sided with the village and, ehm, that has not necessarily made us any friends in the government, ehm, because they've always seen us as kind of like the enemy because, you know,
180 we're giving Ololosokwan village or the villagers sort of money to fight the government so to speak.

W: Oh, yeah, mhm.

A: Ehm, so, we've always been seen as sort of the bad investor, well, not bad but I mean they've always sort of seen us as a thorn in the government's sight.

185 So, ehm, but I mean, also, and I'll be quite frankly to you in that, you know, the Maasai themselves are not angels, eh, I mean, it works in their favour to make sure there's conflict because where there's conflict you can raise money from NGO's that are fighting land issues. So, if there's no conflict it's really difficult for them to raise the cash.

190 W: Ah, yeah, that makes sense.

A: So, that's why, you know, there's a lot of, if you look at just that area, the Loliondo area, there are so many more NGO's that have sprung up versus if you look in other areas of the country, and it's all related to this land conflict.

W: Ah, okay, so the conflict is beneficial itself.

195 A: To a minority.

W: Yeah, sure, not to everyone.

A: Yeah.

W: That's interesting, and I read a lot about OBC, this game hunting company, it's in every article you read about Loliondo conflict, so, what is your opinion on
200 them or do you have, I don't know, have you ever talked to them or how do you perceive them?

A: I mean, I don't really have an opinion on them but what I can say to you is that they are heavily invested, ehm, I mean they've got you know that OBC is essentially the royal family of Dubai.

205 W: Mhm, yeah.

A: And the hunting lease is in the name of the brigadier who's essentially the Minister of Defense for the UAE⁸. And, you know, their relationship with the government is not that hunting block, their relationship with the government is so much bigger than that, from a political point of view, from a, you know, on
210 lots of levels.

⁸ United Arab Emirates

A: Yeah.

W: Ehm, so, and, you know, it's, I mean, there are two ways of looking at it, you know, the Tanzanian governments are quite reliant on the UAE assistance like they are reliant on the German government for certain things and like they are
215 reliant from the American government for things, etcetera, ehm, you know, all sort of developing countries will be reliant on someone who can help them financially or with whatever it might be, ehm, so, so you can look at it like, from that side or you can look at it you know, from a different angle, but, I mean, I don't know enough of all of that to comment, you know, with facts and say, you
220 know, this is it, but once again, if you look at it from the other side it's very easy to, I mean, it's very easy to say, you know, if you're an NGO, to turn around and say, well, you know, there's a hunting company, which immediately has a stigma around it, a negative stigma around it, ehm, that is stealing land from Maasai but you know they've had a lease with the government for years and
225 years and years, so, you know, if you look at it from that angle, it's, I mean, it could be, you know, I don't know, I mean it's, look, I think there are, there is probably an argument that they haven't fulfilled a lot of what they are meant to fulfil in that area but at the same time I think they have been badly, a lot of the press stuff that you read about them is not necessarily true and is used as a
230 way to generate funds for certain NGOs in the area.

W: Yeah, of course, I mean, in the media it's always very simple, black and white, like it's an easy solution to the conflict and I'm sure it's not, so, yeah, I just wanted to know what you think about them because it's the investor that's always mentioned in every kind of article, so.

235 A: Yeah, look, I mean it's, and I mean, you know, I guess no investor is sort of, you know, you can say, is, I don't know doing a hundred percent what they're supposed to be doing, or what they can be doing, so it's always, I mean, I'm pretty sure there's, you know, there are holes in our operation that people could pick if they looked at it, ehm, so, yeah, I mean, I don't know, I can't really
240 comment on it, I don't know enough about it. I think some of the people on the ground for OBC, it's ehm, ehm, kind of fleece the relationship because I think

they take advantage of, you know, having such sort of prominent investors behind them, ehm, but other than that I really don't know anything.

W: Yeah, okay, alright, well, you kind of already said that but what would be the
245 perfect solution in your opinion?

A: Look, I think it's really important that the villagers get something out of whatever happens in that area 'cause I think for the conflict to go away and for everything to be sustainable there, you know, it's important that they benefit, and unfortunately they're the ones that are probably gonna lose the most if they
250 don't benefit, just because they are from the other side of the spectrum, you know, they're not investing in that area, they're not, they can't bring a lot to the party other than land, but the land's not really theirs because all land in Tanzania belongs to the government anyway.

W: Yeah, mh, it's really complicated because, I mean, the land belongs to the
255 government but the villagers also have the right to land because of this Village Land Act and then there's the Conservation Act which gives you the right to be there.

A: Yeah, but the villagers revoked that, I mean they happily gave back their title to the government.

260 W: Yeah, ok, hm, ok.

A: Yeah, so it's not just quite as easy as saying that the Village Land Act sort of supports them 'cause actually it doesn't 'cause they revoked their title on it.

W: Yeah.

A: And there's a whole lot of things that the villagers were supposed to do, they
265 were supposed to put in, you know, Land Management Plans and they were supposed to allocate certain things for different things and, which they never did, you know, so, I mean it's, you know, to be honest I think you're entering quite a deep topic, ehm, and, you know, it's, there's no easy answer to this whole thing.

270 W: Yeah, I know.

A: I mean, I would love to see that the villagers benefit from it going forward 'cause I think that's the fairest way of doing it, ehm, but at the same time the

villagers need to be prepared to sort of give back something in order to get to what I'm saying.

275 W: Yeah, but, so you don't think that it would be necessary to evict the people from the contested area? Because there are also opinions saying that it would be easier if these disputed 1,500 km² would be without people because then it would be better for the environment and...?

A: But the villagers already agreed to move out of those areas.

280 W: But only out of the 1,500 km², right?

A: Yes, only out of the 1,500 km².

W: And then they can stay in the rest of the 4,000 km² area?

A: Yes, they can, exactly, they can stay in the rest of the area, yeah.

W: Ok, yeah.

285 A: But they, I mean they've agreed to move out of the 1,500 km².

W: Okay, in April, as you said?

A: No, I don't know if it's in April, April's when the plan, well, supposedly the plan, the government plan is gonna be, ehm, spoken about and possibly gazetted at parliament.

290 W: Ok.

A: Yeah, I mean the government haven't even passed the bill or discussed it yet, so, I mean, yeah, that's the other thing, we don't even know if the plan we're talking about is actually the plan that is gonna happen.

W: Yeah, sure.

295 A: Okay, sorry, I need to go, but look, I'm quite happy to chat to you more in the coming days but I got a commitment now.

W: Yeah, no problem, thank you for taking the time now!

A: If you have any questions just send me a mail and then we can chat more!

12.3 Interview 2 2018: Ndoinyo (Ololosokwan Ward Councillor and Member of Ngorongoro District Council)

W: Just to check if my information is right: You are the Ward Councillor of Ololosokwan Village, right? And also in the District Council in Ngorongoro?

5 N: Yes.

W: Okay, so maybe, could you just tell me what the situation is like at the moment? Because the last thing, what I read a lot about in the newspaper is the evictions last August. So what happened after that?

10 N: Actually, ehm, even before the evictions, what has always been the main conflict is that of, the fight between the community and the government over the ownership of the land.

W: Okay, mhm.

N: The villagers claim that they have right to the land according to the law.

W: Mhm.

15 N: But the government says that the land has to be taken away for conservation and tourism, so that has always been an issue between, or a conflict between the people and the government.

W: Yeah.

20 N: In august of 2017 the Minister for Tourism and Natural Resources brought in an operation that evicted the people of their land and homes, villages, many people evicted. And the eviction continued for almost two months.

W: Okay, mhm.

N: Mh, but on October 8, the 8th of October, the President fired the Minister for Natural Resources and brought a new Minister.

25 W: Mhm.

N: But actually, in the cabinet reshuffle it was not reappointed, so it was not really a firing but it was destruct.

W: Okay, mhm.

N: And the minister came to Loliondo and then stopped the operation.

30 W: Okay, the evictions?

N: The evictions, and then, but then it was finished, everybody went away, eh, to put up with the neighbours and friends, and, so he said 'The evictions shall stop, you have to stay peacefully on the land' as long as the government is considering the issue, the recommendations from the committee that was
35 formed in December of last year, December of 2016.

W: Yeah, mhm.

N: So he said, until the recommendations of that committee have been discussed, the government, the Prime Minister and the other government officers, 'You stay peacefully, raise your cows, let them get water until the
40 government has come up with a decision'.

W: Okay, mhm.

N: So, actually, since the end of last year until today everything has been peaceful, except that the hunting company which we thought was going to go away never went away, they're still there.

45 W: Mhm, you mean OBC? Is that right?

N: Yes.

W: Yeah, okay.

W: They are still there and they are now, actually, as we speak, the King of Dubai is going to come on Wednesday which means a hunting safari is there
50 and it is always the most disturbing time for us because it means people will be moved again, cows will be moved, restrictions...

W: Mhm, I understand.

N: So, when the government eventually deliberated our issue, they said, they proposed to develop a special arrangement for the management of the land.
55 We don't know what kind of arrangement it is going to be, how it is going to be structured. We don't know yet.

W: Yeah, so they haven't made any concrete plan on that so far?

N: No, no concrete plans.

W: Mhm.

60 N: We are waiting for any plans erected and then we will be able to say what it is, but now we can't.

W: Yeah, but are you not part of the discussions, I mean, you are part of the District Council, so you should be able to participate in the discussion on what is going to happen, or do you just kind of have to wait for the government to tell you what to do?

N: Ehm, I was in the, on the commission that was formed by the Prime Minister and the Arusha Regional Commissioner. So, we made some proposals and we presented to the prime minister last year and then we met with him in December. During that meeting when he said 'We'll come up with a special arrangement'.

W: Yeah.

N: Special authority, something like that.

W: Yeah.

N: So, the team that was formed to develop the guidelines for that special arrangement, we are not part of that.

W: Okay, mh.

N: So, we will have to wait until they have done their job to develop this guideline, bring to the village, we debate, we take to the District Council, decide on the best option, and then it will be taken up again to the parliament.

W: Okay.

N: Yeah.

W: But so far, the villagers are still in Loliondo? They haven't moved from the area, right?

N: Mh, yes, no, they have moved from the area, but the area has not been taken away from village land so far.

W: Okay, you mean, legally, but they have moved.

N: Legally, they have moved, the area that is under conflict, people left.

W: Okay, so, has there been any official agreement on that or is that still a consequence of the evictions, or was there any agreement that the villagers said 'Okay, we move from this disputed area if we also benefit from tourism', or was it forced that people had to leave?

N: That is not a consequence of any agreement, it is a result of that forceful eviction by the Minister of Natural Resources.

W: Okay, mhm, okay, I see.

95 N: There was nothing really that was agreed on and so far we are only waiting for the Minister to come up with the government's proposal.

W: Okay, and do you hope to go back to that area or do you think that's not possible at all?

100 N: This is what the people want, they wish to be able to graze, to continue with their tourism ventures but what I can really see is that that is not going to be possible. It's not going to be possible.

W: Mhm, yeah. And what do you think, what do the people say if, for example, the government suggests 'Okay, you have to stay out of this area but you can benefit from tourism, so you get money, you get paid'. Would they be okay with
105 that or is what they want really go back and just have their grazing land back and live the way they lived before as well?

N: What the people really want is to maintain the ownership of the land, that land can remain theirs, but they are also ready to enter an arrangement that will allow them to benefit from tourism and benefit from grazing.

110 W: Yeah, ok.

N: So, but if land is going to be taken away from them they will never agree, at least not peacefully.

W: Yeah, I understand. I read that according to the Village Land Act from 1999 the land really belongs to the villagers. Is that the legal basis that you refer to or
115 is there any other law?

N: Yes, that is the legal basis, one of the most fundamental, but the other one is the, you know, the formation of Serengeti involved entering into an agreement between the British colonial government and the Maasai who owned the Serengeti.

120 W: Yeah.

N: So, they entered into a voluntary agreement that would give them ownership of the area outside Serengeti, so in a way Loliondo was given as a

compensation to the people of Serengeti who moved, so that the national park can be created. So, that is the second basis that we are putting all our arguments on.

W: Yeah, sure.

N: But the other is the Constitution of Tanzania that recognizes that life is a fundamental right of the people, and you can only have life if you have resources to support it. So, taking away land means you cannot, the people of Loliondo cannot live. So, these are the three basic legal arguments

[...]

N: I was saying we base our argument on the Constitution of Tanzania, the Serengeti agreement and the Land Act, the Land Act but also the Local Government and the Regional Registration Act that legally establishes villages as entities and registers villages as legal entities.

W: Yeah, the reason I asked this is that I also talked to someone from *AndBeyond*, this tourist company, do you know that?

N: Yes.

W: Yeah, and he told me, well he wasn't sure about it but he said something like, the villagers have agreed to revoke their title to land in Loliondo and I was really confused because what I had read so far in books and newspaper articles was what you just said, that the villagers really want to keep their land title. But he said they had revoked their title. So, I don't know. That's not true, is it?

N: No, it's not true at all.

W: Yeah, I was really confused, because I was asking him too why he was thinking that but, yeah, he just, he said that there had been an agreement between the villagers and the government that they would move out of the area and benefit from tourism. And that this was the kind of agreement that was going to happen but so far I had never heard about that before and no one else had told me this.

N: It was agreed there will not be a forceful eviction in the first place, so, no one has agreed. In fact, we have constituted a court case with the East African

Court of Justice against the government to strongly explain that the operation that was done was illegal and taking away our land that way is also illegal.

155 W: Yeah.

N: So, there is no way that anyone from Loliondo would revoke their land rights.

W: Yeah, and has the court made any decision on this yet?

N: No, the, I mean, we are coming again for hearing maybe in April or May.

160 W: Okay, mhm, alright, okay, mh, and yeah, I don't know, what do you think, are you optimistic that there will be a good solution to the conflict, or pessimistic?

N: No, I don't really think that a decision that will be suitable for us will be reached.

W: Mhm.

165 N: Our position is clear: This is villagers' land, and we are not ready to compromise unless it remains owned by the village and then the land uses can be discussed, on tourism, conservation, grazing, yes.

W: Okay, yeah, so, as long as you keep the land title you would be willing to cooperate with investors and the government?

170 N: On conservation and tourism and grazing, we are ready, yeah, but they cannot take the land away from us and ask us to cooperate.

W: Yeah, no, I understand that, no, that's not a good deal for you.

N: No, it's not.

175 W: And how do you feel about the communication with the national government and investors? Do you feel like you are accepted as equal stakeholders in the discussion?

N: Ehm, what I would say is that the government has come to understand and realize that what we have been saying on land rights and land ownership is true.

W: Mhm.

180 N: The operation that has been set against us was incorrect. And for the first time, we feel that the government has realized that our rights are paramount, but we also feel that they have made some commitment to the investors and they have to keep some commitments they have reached.

W: Mhm, yeah.

185 N: So, as citizens of this country we feel that our rights are now known but what we don't know is why the government cannot declare openly that this is our land. This is because, also, we are feeling that they have made some commitment to the investors, they wish to keep that.

W: Yeah, so, you feel like the investors' role in the discussion is quite powerful,
190 for example OBC?

N: It is very strong, they are very powerful. They have secured this discussion because of their power.

W: Yeah, but, so, OBC, are they the only investor that really wants you to move out of this area, what about the other investors? Do they all agree on that? Or
195 are there also investors that say 'Okay, you can stay'. Or you could keep your title? Are they the only ones that pressure the government in this direction?

N: Yes, they have been that openly only so far themselves but I can only imagine that other investors will be happy if the Maasai move out of the area.

W: Mhm, okay.

200 N: They may not all say so that openly but I have the feeling that they wish to have exclusive land for themselves, they are in the way of doing that. You know, they may be joining, supporting OBC's move because, or silently or underground, it is difficult to say that they have been doing that, they won't act openly, but knowing these investors, they wish to have exclusive access for
205 themselves on the land, without the Maasai.

W: Mh, and do the investors offer you any benefit in exchange for the fact that they can use your land?

N: Yes, *AndBeyond* has a lease agreement with Ololosokwan village, a fifteen year lease, and they pay 100,000 US Dollars a year.

210 W: Okay.

N: Eh, OBC has a very poorly structured community relationship, benefits are there when they are happy, when they are not, then we know what happens...

W: So, what happens?

215 N: What happens is they bring the government to burn peoples' villages, homes, to evict people.

W: Okay, so that was initiated by OBC, the evictions?

N: Yeah, it's difficult to show that evidence but being here and knowing the politics, it is obviously them.

W: Mhm, because they are so powerful, yeah, I see.

220 N: Yeah, so powerful, and they have access.

W: Wow, that's a difficult situation.

N: Very difficult.

W: But how does it, does it affect your daily life? I mean, obviously you're involved in politics and deal with this issue every day but I mean, now, in your

225 everyday life, do you have to, is there any danger for you or anything like that?

N: Ehm, sure, very bad, very bad, yeah, we sometimes have no hope of seeing the next day.

W: Really?

N: Or peace completely. But we say 'Come what may'. This situation is so

230 insecure, very unpeaceful and so, fear of intimidation and difficulty to represent the people. If you are a leader and you have no answers for the people, is also very frustrating. People look up to you for answers to their problems. And when you ask is when you have, what I have said, you are intimidated, you have fear of life.

235 W: Mhm.

N: And so, we are in a very bad situation.

W: Yeah, well, I really hope that there will be a solution that's good for all of the villagers. Just one last thing: You said that the king of Dubai is coming?

N: He is coming on Wednesday.

240 W: And will you be able to talk to him or what is he doing in the area? Just visiting to hunt?

N: Yeah, you know, this is his luxury resort. So, he's coming to rest, have a vacation and the security around him is so tight, is so strong. No one will be

able to talk to him. Because the Tanzanian security plus the Dubai security, it is
245 just impossible to penetrate.

W: Yeah, mhm. And do you feel that there are many international NGOs that
support you in the struggle or the claim for land rights?

N: Yes, there are. But most have been doing advocacy, campaigning,
sometimes humanitarian support. Very few really try to force for the security,
250 they all want the land to remain community, Maasai land but very few really are
doing the practical work to secure the land by meaning of titling, registration for
those who have not, villages that are not registered, proper land use planning,
system that will assure stronger security. So, yes, partly they are doing their job,
but there's a lot to be done. A lot, yeah.

W: Mhm, yeah. And my impression is that for example the GIZ who, this
German development cooperation who gave me your contact details, that
everybody wants to work toward economic integration of the Maasai. But I was
wondering, is that really what the people want? I mean, some of them probably
do want that but some might want to maintain their traditional lifestyles. Is that
260 right? Because I felt like, how do you, how does the GIZ for example know that
everybody wants to get integrated in the global economy and the tourism
business. You know what I mean?

N: Yeah, I know. The Maasai probably want a lot of different things right now.
But there's no way of knowing until you ask them.

W: Yeah.

N: And unfortunately many people have not asked the Maasai right now,
especially going through the cases, 'What do you really want?'

W: Yeah, that's it.

N: So, some organisations and even government departments feel what they
want is what the Maasai really want, not true. So, even myself, I'm not able to
270 say really what the Maasai want, I mean, I say what I feel like is needed, but if
you go talk to the people themselves they may say different things. What I know
for sure is that right now anybody everywhere would want to have a stable
income.

275 W: Yeah, ok.

N: So, even the Maasai would wish to have a stable income. But how do you get an income if you, what do you do to have that income? Is it to maintain your traditional lifestyle? Is it to be integrated into the global or national economy?

W: Yeah, that's the question.

280 N: By asking them is when you know what is really their need.

W: Yeah, so it's probably very diverse, everybody wants something else but you do think that everybody wants a stable income?

N: I'm sure of that. The Maasai also are dynamic and the change has come into their lives, change is always ahead, but we don't know what they should do, I

285 mean, in the end of last year my friends and myself formed an organisation to try to answer the last question you just asked: What do the people really want? And how to get that. So we are trying to answer that question: How can you protect the traditions, how can you protect the land the way it has been? How can you not get struggled up by challenges and changes of the modern time?

290 Even ourselves cannot answer that question until we ask the people.

W: Yeah, it's really difficult.

N: Yeah.