**Challenges and good practices of obtaining a right to demarcation, including self-demarcation by indigenous peoples, and titling.**

**Elifuraha Laltaika,**

**University of Pretoria, South Africa**

**September 30th, 2019**

1. **Framing the discussion: Elements of traditional/Collective resource management**
2. Access to land resources is obtained through community membership, not the free market.
3. Access rights are trans-generational hence carry an obligation of stewardship for the benefit of present and future members of the community.
4. Holistic approach towards managing and utilizing the various products and services which nature provide. Highly dependent on the environment, hence the local environment is not seen as dispensable.
5. By combining these various elements, indigenous peoples have developed rules, beliefs and practices, which achieve sustainable resources use within fragile environments, responsive to community values and processes.
6. This landholding system has been dubbed customary tenure or traditional occupancy.
7. **The pigeonhole of western legal thought: whatever doesn’t fit the western legal description is not legal.**
8. Customary tenure rights were made residual and less important compared to rights granted by the state as symbolized by the issuance of a paper.
9. Strongly held to be merely a stage in the evolution, with a belief that holders would transition to a less “savage” system.
10. Suppression of customary tenure had its roots in the supremacist ideology in which the entire colonial edifice was built. Most Independent African governments perpetuated this attitude and backed it up with the law.
11. Re: patronizing attitude “saving pastoralists from themselves for their own good.” This is clearly reflected in documents such as the SPILL (Strategic plan for the implementation of land laws-Tanzania).
12. In the course of pigeonholing, Dual frameworks created: formal legislative and informal customary norms and practices.
13. Formal legislative: created landless pastoralists and Restricted women’s access to natural resources important for family welfare, such as medicinal plants, fuel wood and water points.
14. **Demarcation, including self-demarcation by indigenous peoples, and titling**
15. Why demarcating?
16. Formalization?
17. What about the elements of collective resource management?
18. Approaches: Community land (Kenya) and Village Land (Tanzania), **Reservation system that Dean Stacy Leeds talked about**
19. **Indigenous peoples’ autonomy and self-governance systems are submerged within local government systems.**
20. In Tanzania: the Village land system implies a legal notion of “common property”. In effect, it represents private property for a group of co-owners or members.
21. Luckily (ideally?) co-owners have a right to exclude non-members (non-members have a duty to abide).
22. Challenge: (a) who defines the village? Community? It is a legal entity/administrative unit that has no connection with the traditions. It is about the number of people and boundaries or beacons. (b) it is expensive (c) potentially opens up the land for grabs (d) it is a recipe for individualization and collapsing of the communal system. Re: Village land certificate and certificate of customary right of occupancy (CCRO)
23. Best practice: the Hadzabe hunter-gatherers of Tanzania, though its administrative exigency not rooted in the law such as amending the definition of a village.
24. **Beyond demarcation: are the rights protectable?**
25. Access to court systems that have traditionally emphasized the “sanctity of private property”
26. Presided over by magistrates (chairpersons) and judges who are not influenced by traditional assumptions of structural equality and local harmony
27. Individuals interested in individualized tenure are able to seek out favorable interpretations of provisions which best suit their interests
28. **Conclusion and recommendations**
29. To be in line with the UN Declaration’s article 27, best practices are replete with the move towards recognizing and respecting indigenous peoples laws and traditions, what remains unchanged in most African countries relate to traditional institutions. They are still merged within the local and central government institutions.