

# **LEGAL PLURALITIES AND INTERLEGALITY IN TANZANIA**

## **Maasai Women's Property Rights**

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The photograph on the FrontPage represents a Maasai family at their homestead who were about to take their cattle out to the grazing areas. The authors of this thesis took the photograph in June 2013.

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Map of United Republic of Tanzania



Figure 1: Map of United Republic of Tanzania  
 (<http://www.nationsonline.org/oneworld/map/tanzania-administrative-map.htm>)

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Our first contact with the Maasai community was when we stayed in Arusha in the months May till July 2013. In these months we worked together with Inherit Your Rights (IYR), a human rights NGO, founded in 2011 by Jana Hardy and Katie Windridge. They aim to empower individuals to claim their property and inheritance rights, thereby strengthening their families and communities. Our former experience in this field inspired and motivated us to dedicate our bachelor thesis to Maasai women's property rights. We are thankful for the opportunity IYR gave us to come back in February 2014. Again, IYR has been of great value.

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## INTRODUCTION

The Maasai form one of Tanzania's many different tribal groups, who live together in a country composed of many other ethnic, religious and tribal groups; a country in which many different legal orders are intertwined in most complex ways. The history of Tanzania's legal pluralities goes back to pre-colonial times, where different ethnic groups formulated diverse customary legal arrangements. During times of colonialism European laws coexisted with indigenous systems of customary and religious laws, creating new hybrid legal orders (Bourdon 2013:181; Merry 1992:357). Tanzania's adoption of international human rights law in the post-colonial period, and additional arising of women's rights NGOs, created an environment where local, national and international economic and socio-political domains continually interact, merge and change, thereby producing many different legal orders. The coexistence of multiple legal orders, concerning customary, regional, national, religious and international laws, continually overlap, cross and influence each other (Berman 2009:226). In order to understand the rights and laws within a situation of multiple legal orders, one must take into account and look at how rights are always in question, subject to alternative and sometimes-competing interpretations. Legal anthropology studies law and rights from such a cross-cultural comparative perspective, and aims to identify these normative regulations of society (Donovan 2008:vii). We should not approach the existence of multiple normative orders as separate entities in the same social field, but as de Sousa Santos (2002:437) argues as *'different legal spaces superimposed, interpenetrated and mixed in our minds, as much as in our actions [...] Our legal life is constituted by an intersection of different legal orders, that is, by 'interlegality.'* In this thesis we want to argue in agreement with Hoekema (2004) that that interlegality cannot be seen as a one-way process, where different normative orders only cross the minds and lives of disputants, but that different normative orders also cross the minds and lives of those actors and institutions that stand closer to and have more control of the regulation of these normative orders, such as judges. This means that elements of customary law can get accepted and incorporated into the national legal order. Hoekema (2004:6) has called this 'reversed interlegality' where *'the blending of different world views, principles, perceptions, definitions and norms might work the other way round as well.'*

Secondly, it is important to look beyond the domain of legal institutions, exploring how rights are expressed in cultural ideas, ideologies, and philosophies; thereby understanding that rights are manifested in many forms, which cannot be understood without the context of culture (Meinzen-Dick & Pradhan 2002:2; Hodgson 2011:2). People are

bearers of culture *and* of rights, which constantly influence each other. Concepts of rights are therefore in itself a cultural phenomenon. We approach the tension between culture and rights as a dynamic process, rather than static opposites. At the same time we must be aware that we do not limit the fluidity of rights to the conception of one certain culture. By tracing the cultural life of rights we want to make visible how rights and laws are questioned, changed, and (re)shaped as they circulate through multiple and specific institutions on different scales.

We have explored how Maasai women's property rights are expressed in different levels of social organisation; cultural ideologies, legal institutions and social relationships. The aim of our thesis is to provide an understanding of the process of interlegality where property right relationships concerning Maasai women in Arusha, Tanzania are formed, defined and reformed. By following Maasai internal disputes processes, we explored how disputes are settled in a place where multiple legal orders exist, and how this influences the construction and definition of Maasai women's property rights. For this purpose we formulated the following research question:

*How are the processes of interlegality and the conceptions of property rights reflected in property dispute settlements of multiple local legal institutions, and what does this mean for Maasai women's property rights in Arusha, Tanzania?*

Through a dedicated literature study and an intensive fieldwork period in the months February till April 2014 we have tried to answer this research question. Fieldwork is an indispensable method when describing and understanding the process of changing law and rights as cultural phenomena. Fieldwork, according to Bradburd (1998:11) '*remains the best way, and probably the only way, to achieve some significant understanding of another culture.*' When entering the field, especially a field where everyone is 'different' and sees you as 'different', you need time to adapt and integrate in the lives of people you want to study. That we were different was constantly visible, where our skin colour provoked many stereotypes, which disadvantaged our degree of participation. We walked too fast, we did not speak the language properly, we ate different food, and we wore different clothes, which all was connected to stereotypes of *wazungu*, (white persons). However much we participated in the lives of people, we always would be 'outsiders' on many levels. And as in many anthropological writings, the scope and content of our findings in this thesis are therefore determined by our identity we ascribed to ourselves as well as ascribed by the people in the field (Boeije

2010:174-176; DeWalt & DeWalt 2011:94-101). Perceptions on aspects as gender, age, and origin influenced our position in the field, which determined how we gathered our data, and came to our findings. The limitations and benefits attached to our identity in the field simultaneously provided us to a deeper understanding of prevailing ideas about gender and age in lives of the Maasai.

In order to negotiate our identity and role as researcher in a way that would benefit our research purposes, we emphasized certain identity parts over others. We found ourselves in a constant process of representation and impression management, where we tried to adapt to the situations and persons in the field. In some occasions, when speaking to Maasai elderly for example, we put less attention on our involvement with many legal women's rights organizations, because some people felt insulted or attacked when immediately discussing gender discriminative subjects. When a trustful relationship was built, these subjects became more accessible to discuss. In contrast, when we contacted and interviewed lawyers and NGO representatives, we emphasised our involvement in the empowerment of women's rights. We always represented ourselves as anthropologists, which in almost every situation had a great advantage. Because we studied the legal domain of the Maasai at the level of customary and national law and the objectives and activities of NGOs interacting with these laws, our position as anthropologists opened many gates.

Our findings are based on a combination of different ethnographic fieldwork methods.<sup>1</sup> We talked to, interviewed, and participated in the lives of a wide range of people, from a wide variety of backgrounds and positions, such as both female and male members of the Maasai community, their leaders, local authorities, government officials, pastors, lawyers, and NGO representatives. We discussed closely related issues such as family relations, politics, economic organization, property control and distribution, gender discrimination, empowerment, Maasai customary law, religious law, national law, international law, and their interactions and dispute settlements. In addition, we participated in, and observed legal trainings, empowerment projects, Church services, and land transactions. We analyzed Maasai women's property rights by observing and participating in property disputes hearings and settlements at different formal and informal legal institutions. Dispute processing served here as a methodological approach to understand legal phenomena but is also concerned with meaning and power (Merry 1992:360). The multiple experiences of the actors involved illustrated that property, gender, and rights are perceived differently by different people, and

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<sup>1</sup>We used the information of informal conversations, individual interviews, observations, focus groups, and document analysis, in order to understand what property, rights and interlegality meant to people.

do not have the same meaning for everyone. It also showed that the terms of the category women, property and rights are always in question, subject to alternative and sometimes competing interpretations. By tracing the social life of these concepts as they have circulated through different spaces and times, we wanted to make visible how gender, culture and power have shaped their meanings.

Because we were simultaneously involved with women's and human rights NGOs, and Maasai communities searching for their definition and meaning of concepts as property, gender and justice, we often found ourselves caught in the debate between cultural relativist, universalistic and feminist perspectives,<sup>2</sup> often arguing in favour of customary laws on the one hand, and promoting (and sometimes representing) human rights laws on the other hand. We had the chance to see, listen to, and discuss multiple and diverse perspectives about the rules and conceptions underlying Maasai women's property rights, and how these perspectives meet and mix with each other. These diverse and multiple perspectives about women's property rights speak to central issues in the current scholarly and policy debates about gender, culture and rights. Right-based approaches to development generally assume that the strengthening of respect for human rights, involving a range of legislative and institutional reforms, education and training will combat gendered forms of discrimination and contribute to greater gender justice and equity.<sup>3</sup> However, a growing number of scholars, policy makers and activists have become increasingly wary of the dominant right-based approaches to social justice and increasingly, development.<sup>4</sup> The connections between law, rights and gender relations are often oversimplified and the legal, political and social context where human rights and development initiatives are promoted, inadequately understood. One issue that deserves more consideration in literature concerned with gender justice and women's rights is that of legal pluralities (Hodgson 2011:1; Sieder & McNeish 2013:1). Multiple overlapping and sometimes competing legal orders characterize many countries, yet development theory and practice has only recently begun to consider the impact of legal pluralities on the life prospects of marginalized sectors and populations, such as women. Despite the general agreement on the importance of legal pluralities in determining women's livelihood options in many developing countries, there is little combined research examining

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<sup>2</sup> See Abu Lughod (1993); An-Na'im (2011); Okin (1999); Nussbaum (2000); Wilson (1997) for debates on relativism universalism, and feminism

<sup>3</sup> CEDAW puts women's rights in a normative framework of equality and non-discrimination. It defines discrimination against women systematically as any distinction made on the basis of sex that impairs women's equal human rights in any sphere (see Article 1).

<sup>4</sup> For example, McNeish & Sieder (2013); Hodgson (2011); Hellum (2007); Benda-Beckmann (2006)

the relationship between legal pluralities and the prospects of greater gender justice (Sieder & McNeish 2013:1). The plurality of international, national and local norms and actors at work in Tanzania makes it an ideal case to explore how gender struggles are mediated in the context of globalized lawmaking and governance structures. We hope by studying Maasai women's property rights in a situation of multiple coexisting legal orders, we can generate more or even new knowledge about dynamics at play between contemporary contexts of legal pluralities and the struggles for gender justice.

The following chapter contains a theoretical framework, where we will discuss the concepts of multiple legal orders and interlegality. This will form the framework from where we will discuss the concepts of rights, property, culture, gender, and power. In a contextual chapter we included an overview of the main laws relevant to gender and property rights in Tanzania, and how these are shaped and reshaped throughout history.

The empirical chapters focus on the different factors that create and recreate multiple laws and orders, and how Maasai women face, move between, and experience these multiple legal orders. Through observations of dispute processes within and through various informal and formal legal institutions, we discuss the interaction within and between (legal) institutions and actors and deliberate on the changing nature of women's actual property rights, thereby showing how processes of interlegality are fused with cultural notions of gender. In order to avoid the often-static language that rules, laws and rights discussed in the theoretical chapters we included several life histories and dispute experiences of various women. We experienced that customary law, and other laws only came to life and gained meaning through the personal experiences people shared with us. The rules became flexible, fluent, bound to space and time when people told us their life histories. This made the legal domain borderless and multidimensional, where different ideas, institutions, and actors took part in the definition and formation of Maasai women's property rights.

The first chapter will discuss Maasai customary law and property relations and how they are expressed in different layers of social organization: cultural ideologies, legal institutions and social relationships. This chapter will pay special attention to Maasai property rights at customary institutions of the family and clan, where we especially focus on marriage and inheritance practices. In addition, this chapter will show how conceptions and relations construct customary laws, and how these are negotiated by different conceptions and ideologies captured in kinship structures, village authorities, the Church and by education. It

will be illustrated that when women try to claim their property rights they challenge concepts of family, gender and property relations. The first empirical chapter argues therefore to pay attention to the whole complex world of interlegality, which does not start with the interaction with and between multiple legal institutions, but already begins with the presence of multiple cultural ideologies, conceptions, and social relations.

The second chapter will show how the existence of multiple legal orders may enhance Maasai women's access to justice, showing how Maasai women resort to other legal authorities when they have failed to claim their property rights at the customary legal orders of the family or clan. This chapter will focus on how gender and property relations, and the interaction with and between multiple legalities come to expression during Maasai women's property dispute settlement at the Ward Tribunal, and how this constructs Maasai women's property rights and influences these women's access to justice. It will be shown that in this daily practice of legal pluralism, different legal orders—such as customary law, national law and international law—and their additional conceptions of women's property rights, cannot be seen or treated as *separate entities*. Instead, it will be demonstrate that these legal orders overlap cross and influence each other, showing that Maasai women's legal lives are constituted by 'interlegality.' However, this chapter will illustrate that the Maasai hierarchical gender and property relations often cause difficulties in Maasai women's ability to claim their property rights, even at those legal orders that maintain principles of gender equality. However, it will be illustrated how human rights NGOs work to positively influence Maasai women's legal consciousness and help them to claim their rights, thereby showing how NGOs also take part in processes of interlegality that construct of Maasai women's property rights and influences Maasai women's access to justice

In the conclusion we will elaborate on how property rights relationships are formed, defined and reformed in the course of the dispute, and explore and compare the ways in which these women made resort to legal and quasi-legal norms, instruments, processes and discourses in order to obtain access justice. Different rights may be invoked, but the extent to which they are reasonable depends on multiple factors, including complex historical legacies and power relations. It is therefore important to analyze how different women are able to negotiate to protect and promote their interest within legally plural settings, and what this means for gender equality (Sieder and McNeish 2013:2).

## THEORETICAL FRAMEWORK

### 1. Multiple legal orders and ‘interlegality’<sup>5</sup>

Today, we live in a world subject to processes of globalization; a world in which economic, political, social, cultural, religious and legal dimensions are intertwined in most complex ways. The state and interstate system are complex social fields in which state and non-state, local and global socio-political relations continually interact, merge and change. These socio-political relations produce many different normative orders, such as customary law, national law, regional law, and international law, which overlap, cross and influence each other (Berman 2009:226; de Sousa Santos 2002: 94). Since the last few decades, a legal distinction within the transnational normative order of international law and natural law has gained importance, “*in which ideas of human rights and rights of states and other collectivities are created and negotiated*” (Benda-Beckmann 1997:5). This provides a context in which nation-states are increasingly intertwined in international economic, business, political, and legal agreements, which in turn affect local places. Scholars argue that in this context, ideas of human rights are no longer rooted in the ‘West’. Instead, these ideas spread along the globe, where representatives and activists from many countries adopt the ideas and language of the human rights discourse, and in turn, translate these on a local level (Benda-Beckmann 2006; Merry 2006). The translation of human rights into local terms, where human rights ideas get situated within local contexts of meaning and power, are important if one wants human rights to be effective. ‘Intermediaries’ or ‘translators’, like local NGOs, are important in these processes of interaction between normative orders, where they work at different levels “*to negotiate between local, regional, national, and global systems of meaning*” (Merry 2006:39). Thus, the international and national context are very important in the development of understandings of local situations, especially when looking at how national and international laws penetrate and (re)shape local socio-political arenas, and how in turn these local situations (re)shape national and international laws (Merry 1992:357). Therefore, Berman (2009:232) argues that a ‘top-down’ conception of law, in which international laws are imposed on nation-states or local societies or communities, does not tell us anything about how law operates globally; how law operates in the minds and lives of ordinary people. Instead, normative orders, such as local law, national law, and international law, continually merge, intertwine and are subject to change.

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<sup>5</sup> Written by Lise van Ingen

State organization is thus not the only source of normative constructions. Instead individuals, groups, and communities at different sub-state levels may create, maintain and un-make their own membership categories and rights. According to Benda-Beckmann (1997:4), “*these can be re-interpreted versions of state law categories, but they may also be based in different normative orders such as those known as folk, customary or religious legal systems.*” Customary law, according to Thomas (2013:26), can generally be understood to mean “*a set of unwritten, flexible, local and obligatory norms and practices of a particular group of people, which change over time.*” Moore (1986:xv) defines customary law as a cultural construct with political implications, a set of ideas embedded in relationships that are historically shifting. Customary law can thus be seen as highly dynamic and flexible, where it can even get contested internally: *within* a given community, where people ascribe different meanings to customary law’s norms and practices (Sieder & Sierra 2010:4). Therefore, Odinkalu (2006:144) argues that expressions such as ‘customary’ or ‘indigenous’ law “*are only convenient labels for what is in fact a very complex set of rules that, in particular localities, have with time acquired the force of habit, backed by mechanisms of social coercion and, in past-colonial Africa, state power.*” Sieder and Sierra (2010:4) argue here that this refers to changes and tensions within those communities following customary law, but that it also refers to their relationships with the dominant society, and other normative orders.

In making sense of the existence of the many different normative orders in our highly complex world, ‘legal pluralism’<sup>6</sup> has long been a popular concept used in legal anthropology, but also in the sociology of law and legal theory, where legal pluralism is generally defined as a situation in which two or more legal systems coexist in the same social field (Griffiths 1986; Merry 1988; Moore 1986; Pospisil 1973). De Sousa Santos (2002:97) argues that in accordance with this definition, for example, customary law and national law can be treated as *separate* entities. However, he has argued that such a definition of legal pluralism does not tell us anything about the content of legal pluralism: what legal pluralism does in practice, in the reality of everyday life. This is where de Sousa Santos is *exactly* interested in, and therefore, he asks questions that refer to the impact of legal pluralism on the thoughts, perceptions and experiences of those people who live in this legal pluralistic world (de Sousa Santos 2002:97). Since we are interested in what the existence of many different normative orders means in the worlds and minds of Maasai women in Arusha, when looking at

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<sup>6</sup> Debate and study on ‘legal pluralism’ already started before the 1980s, and many different definitions and notions of the concept have been created and contested. For debate see Gilissen (1971); Griffiths (1986); Hooker (1975); Merry (1988); Moore (1986), (1978); Pospisil (1973); Sieder (1997); Vanderlinden (1971); Woodman (1998).



conceptions of property rights in relation to conceptions of gender, we want to ask these same questions. Therefore, we agree with Benda-Beckmann's (1997:8) plea to an analytical approach to law, where 'law' cannot be more than an *“abstract cover term' for a large variety of social phenomena of legal character.”* For that reason, we want to use a concept of law, *“which does not incorporate as constitutive defining elements specific, time and space bound features of empirical normative orders, and therefore can serve as a basis for intercultural and inter-temporal comparative analysis of similarities and differences in the features of empirical normative orders”* (Benda-Beckmann 1997:7). We find that de Sousa Santos' (2002) concept of 'interlegality' proves to be helpful here. With this concept, de Sousa Santos has tried to deal with the problem of how legal pluralism is defined, and that this definition does not tell us anything about what it means and does in practice. De Sousa Santos argues that we should not embrace legal pluralism, as defined by legal anthropologists, in which different legal orders, such as customary law and national law, can be seen and treated as separate entities in the same social field. Rather, de Sousa Santos argues that we should have the conception that our legal life is constituted by 'interlegality': *“different legal spaces superimposed, interpenetrated and mixed in our minds, as much as in our action, either on occasions of qualitative leaps or sweeping crises in our life trajectories, or in the dull routine of eventless everyday life...We live in a time of porous legality or of legal porosity, multiple networks of legal orders forcing us to constant transitions and trespassing”* (de Sousa Santos 2002:437). We find Hoekema's (2004: 11) notion of interlegality important as well, especially when looking at his idea that interlegality can be defined as both a process and an outcome: *“a process of adoption of elements of a dominant legal order, both national and international, and of the frames of meaning that constitute these orders, into the practices of a local legal order and/or the other way round; or as the outcome of such process, a hybrid new legal order.”*

We thus do not live in a world in which communities and the worlds of people are hermetically sealed off from each other. Instead, we live in a highly complex world in which many different normative orders overlap, cross and influence each other. In this complex world, symbols, ideologies, organizational forms and normative orders, generated in one locality, merge with those of other localities, which produces new, hybrid normative orders (Hoekema 2004; Merry 2006:46). Therefore, we agree with Hoekema (2004:6) who argues that interlegality cannot be seen as a one-way process, where different normative orders only cross the minds and lives of disputants, where only minority cultures, such as that of the

Maasai, appropriate concepts of the dominant legal order and build these into their own legal order of customary law. Instead, different normative orders also cross the minds and lives of those actors and institutions that stand closer to and have more control of the regulation of these normative orders, such as local leaders, national judges, and other officials. This means that elements of Maasai customary law can get accepted and incorporated into the legal order of national law, thereby creating new hybrid orders (Hoekema 2004:19). Hoekema (2004:6) has called this ‘reversed interlegality’ where “*the blending of different world views, principles, perceptions, definitions and norms might work the other way round as well.*” A well-known example of reversed interlegality is that politicians and legal professionals of the dominant legal order, such as national judges, copy and use procedures of a legal order of a minority that are geared towards non-western ideas of reconciliation and mediation. This shows that the existence and resilience of minority cultures, like the existence and resilience of Maasai culture, has an impact on the dominant legal order and the whole society as well. This means that the dominant legal order and society learn to appreciate distinct normative ideas (Hoekema 2004:14). Thus, we can argue that in our complex world, in which many different normative orders overlap, cross and influence each other, the legal order of the family is shaped by the state, the legal order of the state is shaped by the international community, and vice versa.

## 2. Multiple legal orders, Property Rights and Gender<sup>7</sup>

As discussed earlier, contemporary states contain a plurality of ideologies and legal institutions, often rooted in different sources of legitimacy, including customary and local authorities, the official legal system of the state, international law, and religious legal orders (Benda Beckmann et al 2006:3). The area that is most often managed by multiple legal orders is family law, which covers matters such as marriage, divorce, inheritance and property. Family matters are mostly grouped under the domain of customary law, but (plural) norms of family and related property matters are also included in national laws (Chiongson et al 2011:28). Many state *and* non-state authorities control resources and distribute property along identity lines (Ribot & Peluso 2003:171). Most international laws that are involved with family law are concerned with gender equality (Chiongson et al 2011; Hodgson 2011; Sieder & McNeish 2013). Gender is regularly an important determinant of how rights, duties, and resources are distributed within families, communities, classes and states (Meinzen-Dick et al 1997:2). The interaction of these multiple scales and discourses of different legal orders concerned with family law, set the stage in which we will analyze the intersections between property, rights, gender, culture, and power.

### 2.1 *Property rights, Culture, and Gender*

Many people think of property rights as the entitlement to objects. But in a more defined description, one sees that property rights do not represent a relation between a person and an object, but define relationships between people. Property rights “*are relationships between social actors with regard to objects of value*” (Benda-Beckmann et al 2006:3). A right is a claim that corresponds with a duty. A claim is a right that can be held against another person who owes a duty to the rights holder. Every right is therefore relational in that it specifies an obligation owed by one person to another (Rodin 2003:18). Powers, liabilities, disabilities, and immunities concern the legal ability and disability to actualize (property) rights (Rodin 2003:20-21). Claims, liberties, powers, and immunities present a normative advantage to property right holders (Rodin 2003:22). The term property right can refer to each of these normative relations, but also to the combination of such relations. The ‘bundle of rights’ can describe such combinations. Each liberty, claim, power or immunity is one stick in the bundle that represents a type of property right (Ik Dahl 2010:56). This means that a property right

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<sup>7</sup> Written by Lotte Peeters

holder for example, has the *liberty* to dispose of one's possession as one pleases, the *claim* against others that they not do the same, the *power* to transform ownership and restrict or permit use by third parties, and an *immunity* against others exercising such powers against the property holder (Rodin 2003:22).

These normative relations regulate behaviour between individuals and groups and determine their use and control of a concerning object. Benda-Beckmann et al (2006:16) call property relations at this legal level categorical. Legal-institutional categories lay down the concrete rules and procedures for these normative relations. It must be noted that many legal orders treat property categories as one aspect of many relationships, including kinship ties, family, marital, and property relations and relations of political authority (Benda-Beckmann 2006:17). The bundle of rights is useful to reveal this wide variation within and between specific categories of property relations (Benda-Beckmann 2006:18).

Within a situation of multiple legal orders the categorical property relations can be diverse (Benda-Beckmann 2006:19). In spite of its possible diversity, the concept of property rights is still often founded in ideas of formality and legality, which presupposes a state authority that defines the reach and content of property rights (Ikdahl 2010:61). But the meaning of a concept such as informal property, for example, is hard to analyze and to define from a state perspective when definitions are based on unspoken assumptions. Also, in certain circumstances the state may not be the main source of support for claims to resources (Meinzen-Dick & Pradhan 2002:4-5). A legal anthropological perspective can analyse the complexity and dynamics of property rights without overlooking the covered places produced by state-centrism (Meinzen-Dick & Pradhan 2002:2). The conceptual analysis of multiple legal orders we employ in our analysis of property rights acknowledges both that a legal system may recognize more than one system of law and that there are normative systems other than the formal law that affect and control people's lives (Hellum & Steward 1998:41).

A legal anthropologist perspective also recognizes that property rights not only exist at the level of different legal systems, but also in other layers of social organization. Normative relations regulate behaviour between individuals and groups and determine their use and control of a concerning property object. But interrelated social practices of property rights also influence normative relations and reveal that property rights are also shaped by social relationships (Meinzen-Dick & Pradhan 2002:2). This forms the opening for our analysis of property rights within a wider field of social organisation. Franz and Keebet von Benda-Beckmann and Melanie Wiber (2006) offer a comprehensible framework in which property

relations are not solely analyzed at the level of legal institutions, but also at the level of cultural ideologies and actual social relationships. The level of cultural ideologies analyzes how property relations are expressed in general cultural ideologies. The diverse ideological expressions find correspondence in the legal institutions, in the way that general concepts are set down in formal property categories and relations (Benda-Beckman et al 2006:23). Concepts of property are essential when negotiations reach beyond specific legal systems. A particular concept of property can promote or obstruct a clear analysis, and influence which aspects, interests, and arguments are seen as relevant and irrelevant, which means they also affect concrete dispute settlements (Ikdahl 2010:51).

Singer's (1988) comparison of the social relation approach with the approach of the 'free market model' can serve to illustrate why it is important to look at cultural ideologies and the meaning of property when analyzing property rights. In short, he illustrates the different analysis of the two approaches by means of a story about a wife, husband, their home, and the bank. In the case of the free market model, the focus will be on the moment when the autonomous individual (the husband) was registered as owner, and on when he carried out the transaction with the bank. The situation and contribution of the wife will mostly be invisible in the analysis as are the long-term family ties. It describes the family sphere from the public domain, and thereby privatizes and hides the political power of property. *"The analysis benefits contractual relations over family ties, the public over the private, and one-off events over long term processes"* (Ikdahl 2010:58). The social relation approach on the other hand recognizes that property relations are created in long-term family relations, as well as by one-off events in the market. They are produced through contributions over time, through non-financial means, and often in the private sphere. By widening its analysis to the private sphere, it also questions the social relations, which can explain why the wife was not registered as owner in the first place (Ikdahl 2010:58). The social relation approach provides a critical insight in such concepts of property rights and its effect on property law. By exposing preferences of some types of relationships over others, property concepts can serve to contest or embed biases, hierarchies and inequalities (Ikdahl 2010:60).

Patriarchy is a clear example of an ideology that shapes and determines property relations. According to Kalabamu (2006:239) patriarchy is an ideology that shapes gender relationships and property rights in a society. He defines patriarchy as a gender power system: *"a network of social, political and economic relationships through which men dominate and control female labour, reproduction and sexuality as well as define women's status, privileges*

*and rights in a society*” (Kalabamu 2006:237). Analyzing property rights without involving gender in rights, obligations, and access to resources leads to an incomplete understanding of property relations (Meinzen-Dick et al 1997:32). As is also evident in Singer’s illustration of the social relation approach to property, any analysis of gender and property rights must look beyond who holds legal registration and must reveal the ideologies that influence and shape property relations (Meinzen-Dick et al. 1997:13).

Although many presume that laws are the result of practice or that practice is directly based on rules, property laws do not always reveal the actual practice of property rights relations. Next to the integration of cultural ideologies in an analysis of gender and property rights, it is necessary to differentiate between *de jure* and *de facto* property relations (Spiertz et al 1997:226). Here, Benda-Beckmann et al (2006:19) distinguish categorical property relations (*de jure*) from concretised relations (*de facto*), which find expression at actual social relationships. Concretised relations refer to the specific rights that an individual can advantage in specific contexts. At this level property rights between actual property holders are connected with concrete property. These actual property relations can confirm categorical rights, but are not always the same (Benda-Beckmann et al 2006:20). It is especially at the level of concretized social relationships concerning property that other types of rights and social relationships (e.g. marriage law or marital relations) become important (Meinzen-Dick & Pradhan 2002:8).

## 2.2. Power, Access and Rights

Looking at actual property relations allows us to examine the ways in which a single property holder can collect rights that form interacting sets. This can also explore the relationship between actual property rights and economic, social and political power (Benda-Beckmann et al 2006:21). Power relationships are important for the actualization of rights. The actual rights between parties depend on specific contexts that are controlled by particular political, economic and cultural frames in which access to resources is sought (Meinzen-Dick & Pradhan 2002:8). Property right holders can claim their rights with associated enforcement mechanisms to control access. People without such rights must approach property right holders to acquire access (Ribot & Peluso 2003:162). Right holders carry thus an amount of social power (Ribot & Peluso 2003:156), because rights defined by law, custom, and convention are mechanisms that shape who controls and who maintains access. In addition, laws and customs are often formulated in a way that transfers of powers are subject to the

approval of a leader or administrator. These laws leave property users in the position of having to invest in relations with these agents in order to secure access (Ribot & Peluso 2003:163). The legitimate authority to control, distribute, and use property is one of the most salient elements of power through which people can be subordinated at all levels of socio-political organization (Benda-Beckmann 1995:311).

The actual character of the coexistence of multiple legal orders can vary from relatively peaceful, to clashing, or to the combination into hybrid forms, which in some cases may become institutionalised (Meinzen-Dick & Pradhan 2002:4-5). The character of their coexistence influences the way people experience justice in their lives. For women in particular, the intersection of state legal systems, customary laws, and local power dynamics may create processes that affect their ability to access their rights (Chiongson et al 2011:26). As argued before, it is important to recognize that legal institutions are socially embedded. This means that individuals can shape institutions by challenging common understandings that draw from shared social practice. The interaction with different legal orders may develop a new legal consciousness (Chiongson et al 2011:29; Hodgson 2011:141). This may lead to new hybrid legal forms, which share elements of both state and customary systems that are recognized by the state and integrated in the formal legal system, which may enhance women's access to justice (Benda-Beckmann et al 2006:19; Ribot & Peluso 2003:163).

On the other hand, different legal systems may reinforce each other to entrench particular gender-power relations. In this case the state may include normative practices of customary orders in national property laws. Recent studies imply that this formalization of property rights reinforces patrilineal property and inheritance systems (Bourdon 2013; Chiongson et al 2011; Menzies & Taylor 2012). This was also the case in Tanzania, where colonial forces formalized Maasai customary law, granting private ownership rights to men (Bourdon 2103; Hodgson 2005). While customary systems often provide informal spaces for women's participation, "*national law limits rights to those who have formal title to property, without respecting pre-existing arrangements tied to a communal ownership structure*" (Chiongson et al 2011:27). Even where national law may guarantee principles of gender equality, actual practices show that many women are still subject to different, potentially discriminatory norms. The state may for example accept normative practices of customary law and their associated legal forums, next to the national legal order (Bourdon 2013:184; Chiongson et al 2011:27). While the national laws hold principles of gender equality, when the state excludes discriminating customary legal orders from these laws, it legitimizes

discriminating practices (Chiongson et al 2011:28). Contemporary reforms to focus on greater gender equity, by prohibiting discriminatory customary laws (Sieder & McNeish 2013:6; Ikdhahl 2008). However, it is argued that these initiatives overestimate the potential of national law as a tool for empowerment, and underestimate the role customary norms play in livelihood, security and identity (Hellum 2013:43).



## CONTEXT<sup>8</sup>

### 3. Historical overview of Maasai women's property rights

Customary norms are probably the oldest ways through which property is regulated in East Africa— including Tanzania. Prior to the colonization of Tanzania, property and in particular land was perceived as communal belonging, people could hold different rights to the same area of land: the right to occupy, the right to graze livestock, the right to access, and the right to perform rituals in certain areas, etc. Property rights among the Maasai were essentially based on social relationships, which organized property as a legal subfield (Meinzen-Dick & Mwangi 2008:40). The Maasai social relations that structured property rights were united and divided by principles of social organization. The society was divided in patrilineal decent groups containing moieties<sup>9</sup>, which are further divided in clans and sub-clans. These kinship systems shaped the rules of marriage, decent, inheritance, and conflict resolution and compensation (Hodgson 2005:7). Kinship organizations were crosscut by male age-sets that united men of similar ages into a common uniquely named group based on the period they were circumcised. As a group these men moved through a cycle of age-grades, from *ilmurran*, to junior elders, elders, senior elders and venerable elders. Age sets shaped the rules of the timing of marriage, procreation, and male rights and responsibilities (Hodgson 2005: Coast 2001:32; Spencer 1988:5; Llewelly-Davies 1979:116). Although, socio-political relations were based on age sets, Maasai women in pre-colonial communities were actively involved in pastoral activities and had great influence on decision-making processes on domestic as well as pastoral livelihood practices (Bourdon 2103; Hodgson 2005). Gender and age organized the daily activities necessary to pastoralist production and the security and prosperity of the household and homestead. Women and men shared responsibilities for livestock and had both individual and communal property rights, depending on the circumstances in which property was acquired, and consulted with each other about decisions concerning their property (Hodgson 2005:8).

Colonialism disrupted these socio-political and economic systems. Governing officials introduced formal legal structures and private land ownership. Colonial officials believed that every Tanzanian belonged to a specific tribe, each with distinct cultural practices as well as established customary laws (Bourdon 2013:182). Petty crimes and ‘family disputes’ where

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<sup>9</sup> The two moieties are the *Orokiteng*’ meaning ‘the black cattle’ and *Odomong*’i meaning ‘the red cattle’ (Hodgson 1999:7).

relegated to customary courts while criminal cases were heard in the civil courts (Bourdon 2013:183). Both the Germans and the British declared all land to be public property, granting the customary owners nothing more than a permissive right of occupancy. The British system recognized men as the ‘users’ of the land and saw the right of tenancy as a legal relationship existing with the male inhabitants of the land. These British patriarchal ideas overlapped and reinforced Maasai patriarchal tendencies, which excluded women from the emerging male-dominated domains of politics and economy (Bourdon 2013; Hodgson 2005). The current formalized rules of property resulting out of the colonial interventions into the political, economic, and social life of the Maasai, had produced significant changes in Maasai gender relations. Maasai men took advantage of their new status as livestock owners and experts to disfranchise women from their former overlapping rights in cattle, even as women continued to perform their essential roles in livestock production. The male oriented interventions led to a division of men and women in activities, resulting in women’s duties restricted around their homestead, marginalising their role and authority (Hodgson 2005:13).

Upon attaining independence in 1961, Tanzania’s first president, Nyerere, took the choice to maintain a system of legal pluralism, but went a step further and codified customary laws for Tanzania’s 120 different ethnic groups in a piece of legislation called the Local Customary Declaration Order, Government Notice No. 279 (amended GN 436) of 1963. The Local Customary Law is the main body of customary law regulating the guardianship of children, inheritance laws and laws of wills. With respect to inheritance it clearly states in the second schedule, paragraph one, ‘Inheritance follows the male lineage.’ The language of the Local Customary Law presumes that all property, even acquired during marriage belongs to the husband. It goes on to articulate different scenarios for inheritance, the majority of which awards property to the deceased male children and/or heirs on the paternal side (Bourdon 2013:183). According to the Maasai customary law, women cannot hold ownership rights to land. Women’s access to land can mainly be defined in terms of use-rights, which often have to be mediated through fathers, husbands, and sons (Coast 2001:36; Meinzen-Dick et al 2008:41).

In the post-colonial period, in the context of global adoption of human rights law by countries, Tanzania adopted different international and regional human rights instruments<sup>10</sup>

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<sup>10</sup> Such as the Universal Declaration of Human Rights (1948), the United Nations Convention on the Elimination of All forms of Discrimination Against Women (1981), and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003).

that plead for gender equality in every respect.<sup>11</sup> Following this line of equality before the law, these instruments plead for equal property rights between men and women, where the Universal Declaration of Human Rights (UDHR), states under Article 17 (1) that “Everyone has the right to own property alone as well as in association with others.” These human rights instruments and global norms of gender equality pressured Tanzania to declare those customs of customary laws void, which infringe human rights, such as those customs that deny women the right to own property.<sup>12</sup> These human rights norms were incorporated in The Constitution of the United Republic of Tanzania, which came into being in 1977, stating under Section 13 (1) that: “All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.” In this context, the Constitution has also included the norm of equal property rights for men and women, stating under Section 24 (1) “Every person is entitled to own property, and has a right to the protection of his property held in accordance with the law.” There are other laws in Tanzania that also plead for gender equality concerning property rights, such as the Village Land Act (1999), and Land Act (1999). Both land laws state under Section 3(2) that it is “the right of every adult woman to acquire, hold, use, and deal with land shall to the same extent and subject to the same restrictions be treated as a right of any man.” These land laws also include that those (non-discriminatory) customs which exist at the local level should be taken into consideration during court proceedings, where judgment will be reached by combining Tanzanian national law and customary laws.<sup>13</sup>

In addition, with the emergence of the human rights discourse, NGOs started to translate and situate human rights ideas within local contexts of meaning and power. During our fieldwork we worked with and observed several of such NGOs, such as, Inherit Your Rights (IYR), the Legal and Human Rights Centre (LHRC), Tanzania Women Lawyers Association (TAWLA), and Maasai Women Development Organisation (MWEDO). These NGOs work on gender equality by educating the Maasai community and community leaders about their rights, providing legal aid, or providing legal education to government officials.<sup>14</sup>

Despite the effort of NGOs and countries’ embracement of human rights ideas, Meitzen-Dick and Pradhan (2002:4-5) argue that people at a local level may have more

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<sup>11</sup> Universal Declaration of Human Rights 1948 s 7; Convention on the Elimination of All Forms of Discrimination Against Women 1981 ss 2 (a) (b) (c), 5 (a), 15 (1), 16 (1) (h), the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa 2003 ss 2-1 (a)

<sup>12</sup> Semi-structured interview Lengai (Lawyer, LHRC), Arusha, February 12, 2014

<sup>13</sup> The Village Land Act Cap 114 1999; The Land Act Cap 113 2002

<sup>14</sup> Semi-structured interview Lengai (Lawyer, LHRC), Arusha region, February 12, 2014; Semi-structured interview Ismael (Lawyer, TAWLA), Arusha region, April 4, 2014; Lectures International Women’s Day , Arusha region, March 10, 2014; Informal conversation Pastor Elia, Loiborsoit, Arusha region, February 14, 2014

knowledge of customary law, which can have a stronger legitimacy than state law. In this context, many informants have argued that even though formal law may guarantee principles of gender equality, actual practices show that many Maasai women are still subject to different, potentially discriminatory norms.<sup>15</sup> Agness Mollel, a Maasai woman who works at the District Land and Housing Tribunal in Babati, argues that one of the reasons which make it difficult for Maasai women to acquire ownership rights to property is the existing contradictions within Tanzania's judicial system. Such a contradiction can be found when looking at the Customary Law Order of 1963, which states that inheritance follows the patrilineal side, but simultaneously contradicts Tanzania's Constitutional norm of equal property rights for men and women. The codification of Tanzania's customary laws thus reinforces patrilineal property and inheritance systems, thereby discriminating women (Bourdon 2013; Menzies & Taylor 2012).

The contradiction between this discriminatory property law and the principle of non-discrimination has been challenged in the cases of *Pastory vs Ephrahim*,<sup>16</sup> and *Elizabeth Mtawa vs. Hassan Mfaume Risasi*.<sup>17</sup> The plaintiffs in these cases, both women who were fighting for their land rights, were caught in a long trial process. The reason for this was that the defendants kept on pointing to the discriminatory Customary Law Order of 1963, causing that the women lost their cases at the lower courts. However, both women did not give up and appealed to the High Court of Tanzania. At this court, the judges disregarded the applicable local customary laws and emphasized the principle of non-discrimination as embedded in the Constitution, CEDAW and the African Charter on Human and Peoples' Rights. In addition, the judges that made these judgments argued that all laws, whether statutory or customary, must be interpreted so as not to violate the principle of non-discrimination (Ik Dahl et al 2005: 37). These trials provided Tanzania's judicial system with new ideas for challenging and dismantling those laws that perpetuate inequality, and therefore served as a landmark after which those customary laws that prohibit the woman to own property, should for once and for all be disregarded.<sup>18</sup>

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<sup>15</sup> For example, Semi-structured interview Lengai (lawyer, LHRC), Arusha region, February 12, 2014; Semi-structured interview Agness, Arusha region, March 31, 2014

<sup>16</sup> *Ephrahim v Pastory*, High Court (PC) Civil Application No. 70/89, (unreported) delivered on February, 22, 1990

<sup>17</sup> *Elizabeth Mtawa v. Hassan Mfaume Risasi*, High Court of Tanzania at Dodoma, (PC) Civil Appeal No. 12 of 2001

<sup>18</sup> Semi-structured Interview Lengai (lawyer, Legal and Human Rights Centre), Arusha region, February 12, 2014

## EMPIRICAL CHAPTERS

### 4. Maasai Customary Law and Women's Cattle<sup>19</sup>

*“There was a time, very long ago, where women owned cattle. But one day the women in the village told their children to stay home and eat the kidney, instead of send them of to herd the cattle. In the mean time all the cattle walked away into the bush, and when the children tried to bring the cattle back, it was to late, they saw that all the animals became wild. All the cattle were lost, because the women cared so much for their children. The men saw that the women lost all the cattle and took over their control and started to make the important decisions. That is why all cattle belong to men.”*

– Maasai myth

Ndinini, director of MWEDO,<sup>20</sup> told me this myth when I asked her what the reasons could be why Maasai women, according to customary practices, do not have the same property rights as men. Ndinini explained “women loved their children so much, which made them unable to take care of the cattle unless they had taken care of their children first. That is why men started to control the cattle because they could control their emotions better, necessary to keep the common good in mind.”<sup>21</sup> I had many discussions trying to find out why the rules are the way they are. Like a toddler running through her ‘why-phase’ I tried to make sense of the complex world of property rights and gender difference. My aim was to understand the concepts of gender and property structuring the current rules and regulations of Maasai women’s property rights.

Legends of ancient female power, or ‘the myth of matriarchy’ can be found in various cultures and they all repeat that women did not know how to handle power when they had it (Nenola 1999:26). Ndinini told me that “it is just a story, we have many stories that tell you why things are the way they are. I love these stories, because they tell you so much about why things did or did not change.” The myth does not function as real evidence for ancient female power, as it is only true in the myth’s conclusion: political power is located with men. It reflects gender concepts of its time and can be examined as one of many examples part of a

<sup>19</sup> Written by Lotte Peeters

<sup>20</sup> MWEDO Director Ndinini served against early marriages and gender based violence. Under her leadership, MWEDO represents and serves the needs and aspirations of women to become empowered, rise to their full potential, and attain the capacity to greatly contribute to the development of their communities.

<sup>21</sup> Semi-structured interview Ndinini (Director, MWEDO), Arusha region, March 18, 2014

symbolic system, which justifies general roles and relations between men and women (Nenola 1999:21). However, it is not the myth itself that organizes and controls relations, but the reinforcement of the myth in concrete, formal and informal rules. This myth expresses cultural ideologies, which find correspondence in different layers of social organization. Ideological expressions of patriarchy and patrilineality are translated in normative and social relations, corresponding with socio-political, economic and legal institutions (Benda-Beckman et al 2006:23). The other way around, social relations are often based on political and economic conditions, rationalized by culture, reinforced by myths (Benda-Beckman et al 2006:23; Nenola 1999:24).

The point to make is to show how both expressions of cultural ideologies and formal and informal rules construct the regulations of gender and property. The patrilineal system can be perceived as an ideological system, which socializes both its powerful and less powerful members in their roles, but it is simultaneously a socio-political and economic relationship in which the means of organization are coercive ones (Nenola 1999:21). The present socio-political and economic systems that govern property within the Maasai community determine the rights and obligations between people within and between families. The practices and beliefs that are vital and intrinsic to these systems are established as legal requirements or obligatory rules of conduct. In other words the customs concerning property are treated as laws, customary laws. Maasai women's property rights are present in various political, economic and social domains, expressed in local, national and international scales, and interact on all levels of social organization. My argument in this chapter is to pay attention to the whole complex world of interlegality, which does not only start with the interaction in and between multiple legal institutions, but already begins with the presence of multiple cultural ideologies, conceptions, and social relations. These cannot be perceived as separate entities, but are integrated through all aspects of Maasai women's daily lives. This chapter aims to show how current gender and property relations come to existence in different layers of social organization, and how they shape Maasai women's property rights. In order to understand Maasai women's rights and obligations it is important to consider how different women are positioned in multiple complex chains of property relationships, but most interesting in this part is how women, in groups and as individuals position *themselves* and mediate their access to property through a complex web of social, political and economic relationships. I will try to explain the logic of the system and the way moral values and the social imperatives of patrilineality work together. In addition, I will argue that disputes

concerning Maasai women's property rights and the interaction with different ideologies, conceptions, and actors, are cultural contestations concerning gender, family, marriage, and property relations, and more generally about the variety of different visions of identity present in the Maasai society. The construction of Maasai women's property rights eventually take place in a setting where multiple ideas about right and wrong constantly are negotiated and challenged, which all take part in the world of interlegality.

#### 4.1. *Normative relations*

Within the Maasai customary law, the right to property is nested in a bundle of rights and obligations among family members from past, present and future generations. Many practices and traditions vary among families and clans, but general customs that relate to the management of property can be drawn. During the time I conducted fieldwork most people defined and referred to property as physical property, such as a piece of land, a house, cows and goats, which are perceived and understood as belonging to the family or clan, where members have access to this communal property. The responsibilities and rights individuals and groups have to each other concerning a property are structured along kinship organizations. Men and women, the young and the elderly have very differentiated positions within these kinship systems, accompanied with different rights and obligations that organize the access to property. As described in the contextual chapter, Maasai men's property rights are often defined as ownership rights, and Maasai women's property rights as use-rights. A man is generally considered to be the rightful heir to the property and its accompanied rights that belonged to the forefathers of the clan. The head of the family and clan hold rights to the management, exclusion and alienation of property and the use of its products. Women hold rights to access family property, meaning they can cultivate and harvest a land, but they cannot control its dispossession.<sup>22</sup> Women's access to family property is mediated by their

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<sup>22</sup> Based on multiple interviews, informal conversations, focus groups, and participant observations. For example;

Informal conversations Ngeeyan (Legal fellow, IYR), Arusha region, 2014; Informal conversations Eliasante (Community outreach director and Project manager, IYR), Arusha region, 2014; Informal conversations Winnefrida (Paralegal, IYR), Arusha region, 2014; Participant observation, IYR trainings on women's property rights to several Maasai women's groups, Arusha region, February, March, April, 2014; Semi-structured interview, Elia (Pastor, Lutheran Church), Simanjiro, February 14, 2014; Semi-structured interview, Shinini (Village Chairman), Simanjiro region, February 15, 2014; Semi-structured interview, Brenda (Member, Ward Tribunal), Arusha region, February 27, 2014; Focus group, Maasai women (Maasai leaders group Che), Arusha region, March 5, April 2, 2014; Semi-structured interview, Eva (Maasai widow), Arusha region, March 6, 2014; Semi-structured interview, Yohana (Maasai widow), Arusha region, March 21, 2014; Semi-structured interview Ndinini (Director, MWEDO), Arusha, March 18, 2014; Semi-structured interview Scola (Employee, MWEDO), Arusha, March 18, 2014; And more.

relationship with men, where most women referred to their fathers, husbands, or sons as property owners. For example, an unmarried woman holds a claim against her father, who has the duty to give her access to family property. When she marries, she will hold a claim against her husband, who has the corresponding duty to give her access to his family property. A married woman loses use-rights to family property and obtains use-rights to the property of her family in-law.<sup>23</sup> Marriage is one of the main areas where access to property is obtained, constructing the channels by which rights over property, loyalty and services will flow among groups and is therefore traditionally arranged through parents, particularly by the head of the family.<sup>24</sup> The following paragraphs will illustrate how Maasai women's property rights, not only concern normative relations described above, but are essentially about social relationships. Actual social relationships concerning property show how other types of rights and social relationships such as marriage and inheritance law or marital and intergenerational relations are important for the determination and actualization of property rights (Meinzen-Dick & Pradhan 2002:8). Several life histories and dispute cases, in the next paragraph function to present the various affiliational ties that are often raised and which form the foundation of property contestations. These gender and property relations will form the groundwork for the next chapter where these will be analyzed in the light of interlegality and Maasai women's access to justice.

#### 4.2 *Marriage*

Marriage is conceived as a relationship between a husband and a wife or wives, as well as between families. Parents think about marriage when their children are very young, in some occasions when they are not even born yet.<sup>25</sup> Izaack told me that families often arrange marriages for their children; in order to secure they will marry someone of a good family, since a daughter will live and belong to her husband's family, and a daughter in-law will move and belong to theirs.<sup>26</sup> When I met Izaack I asked her if she wanted tell me her life history. She told me that when she was a child she I lived with her grandmother, where she

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Based on multiple interviews and informal conversations for example:

Informal conversations Eliasante (Community outreach director and Project manager, IYR), Arusha region, 2014; Semi-structured interview, Jessica (Maasai women), Simanjiro, February 15, 2014; Semi-structured interview, Shinini (Village Chairman), Simanjiro region, February 15, 2014; Focus group, Maasai women (Maasai leaders group Che), Arusha region, March 5, 2014; Semi-structured interview Ndinini (Director, MWEDO), Arusha, March 18, 2014; Semi-structured interview Scola (Employee, MWEDO), Arusha, March 18, 2014; Semi-structured interview, Agness (Employee, District Land and Housing Tribunal), Arusha region, March 28, 2014; And more.

<sup>26</sup> Semi-structured interview, Izaack, (Maasai widow), Arusha region, March 6, 2014



worked a lot on the farm. “I wanted to go to school, but my grandmother would not let me, because I needed to take care of the farm and the cows. I decided to run away to Moshi, where I found work at the Church and as a housekeeper. After five years I went back home, and my whole family slaughtered a goat for me to celebrate. One year later a boy came to my parents with sugar and jewelry and asked them if he could marry me. That was the first time I saw my husband. It was not my choice to marry him, but my mother said to me that he was from a good family, and that she trusted him. So I was fine with it. He paid drinks, jewelry and two cows to my parents when we got married. After the wedding we got a piece of land from my father-in-law, on which we grew coffee and maize.”<sup>27</sup>

For the Maasai it is very important to pay a dowry, next that a dowry serves as a conformation of marriage, it has other functional and symbolic meanings. In a focus group with several women’s leaders women told me “it serves as a thanksgiving for the parents for taking care of their child when she was young, which made her a good girl to marry.” “It shows she belongs to a family, and that you did not meet her on the streets in town. Because a boy has to go to the girl’s parents to ask if he can marry her, they know how you know each other, and the parents can prevent you marry someone bad.” “It shows how important you are as a girl, that someone cannot just marry her.”<sup>28</sup>

“In our tradition we mostly use cows, my husband paid six cows,” said Jessica to me when describing her wedding day. Pastor Elia added “when you have a lot of daughters you are rich, if you have sons you will loose.” “Yes, you are right,” said Jessica, “but I still prefer boys, because they will stay with me, and when they marry I will have daughters too!”<sup>29</sup> I visited Jessica together with Elia, a pastor practicing at a Lutheran Church nearby, where Jessica met her husband. Jessica told me that her parents at first did not like her husband. “My grandfather was very rich; he had a lot of things. But the problem was that he got a lot of wives too, he had nine wives and many children. After his dead, everyone just got a very little part. My father hoped that I would marry someone rich so he could ask a big dowry. Normally a girl is not allowed to select a husband, the parents will decide. In our culture the girls have just a little right for speaking, it is very difficult for them to get the chance to give their ideas or feelings. This caused some problems, because I told my father that I did not want anyone else. I told him: ‘If you not allow me to marry this man, then I will never marry

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<sup>27</sup> *ibid.*

<sup>28</sup> Focus group, Maasai women (Maasai leaders group Che), Arusha region, March 5, 2014;

<sup>29</sup> Semi-structured interview, Jessica (Maasai women), Simanjiro, February 15, 2014;

and stay at home forever!’ Eventually my grandmothers convinced my father, and I married the man I wanted.”<sup>30</sup>

However, the degree in which a girl can choose a husband herself depends on the family, and how early they start to arrange a marriage for their children. Most women and men expressed that girls do not have the opportunity to choose for themselves. Yohana was around twelve years old, and did not finish primary school yet when her father told her to marry a man.<sup>31</sup> “A man had asked my father if he could marry me, my parents knew him for a very long time. My father agreed and received the first part of the dowry; drinks and two cows. When my father told me to marry this man, I cried because I did not want to marry him. But my father said I had to, and told me if I did not stop crying I had to go immediately. Because my parents suggested it and part of the dowry was already paid I could not say no.” When I asked Yohana why she did not want to marry him, she explained to me that she wanted to finish school first, which was impossible if she got married. She told me she loved the man but that the time to marry was not right. When the dowry of two cows was paid, Yohana went to live with her mother-in-law for one week. After that week her parents-in-law gave her and her husband a small piece of land where they moved into their own house. They cultivated the land and through this income they obtained cows, one by one.

As discussed before, interlegality does not only take place at the level of legal institutions, but also in cultural ideologies and social relations that construct Maasai customary law. For the purpose of this chapter I made a small selection of social actors and practices that influence conceptions and relations of gender and property within the Maasai community. One among them is the Lutheran Church, which plays an important role in the lives of Maasai women I met. One of the areas where the Church is visible is at the level of family formation through marriage.

After Jessica’s father approved that she could marry the man she wanted, she and her husband married at the Church. “When you get married according to the Maasai customs you are not allowed to stay in your own house as a wife. Your mother in law is going to take care of you like a child and you stay in that family as a child, not as a wife. In the Church it is not the same way. After the wedding you are the wife, the pastor gives you the house key, which means it is *your* house, you must take care of *your* house.”<sup>32</sup> Agness is also a member of the Lutheran Church and addressed that some rules concerning marriage are changing because

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<sup>30</sup> *ibid.*

<sup>31</sup> Semi-structured interview, Yohana, (Maasai widow), Arusha region, March 12, 2014;

<sup>32</sup> Semi-structured interview, Jessica (Maasai women), Simanjiro, February 15, 2014;

many people marry according to the customs of the Church. “When you marry in Church you do not have to pay a big dowry, because the Church speaks about love between a husband and a wife, with less emphasize on both families. You cannot marry more than one person and you cannot divorce.” The interaction between Maasai customs and customs of the Church is of course not a one-way process. The Church adapts in several ways to its members, visible in the practices of Sunday services,<sup>33</sup> but also in the construction of (often moral) rules concerning marriage. Agness told me for example that the Church forbids polygamy, “but when a man converts to Christianity and he has five wives, he is still welcome because that happened before he joined the Church. The Church will recognize the five wives if the man confessed, but does not allow him to marry more. Otherwise it is very difficult for the Maasai to go to Church if the issue is the matter of marriage.”<sup>34</sup>

However, many Maasai who marry in Church also marry according to the customary practices. In addition, Elia and others told me that more women go to Church than men, because “Maasai men want to hold on to the traditional Maasai customs. The Church speaks against certain customary practices, and some think if you go there you will change, or you neglect the culture.”<sup>35</sup> Agness thinks, “More women go to Church because their hearts are broken, and they pray for change. But the men what do men face? Why should they pray? They are the head of the family why should they let anyone else tell them what to do?”<sup>36</sup> In this way it seems that the Church, or attendance to the Church, may be perceived as a protest against cultural conceptions of customary gender relations.

#### 4.3. *Inheritance*

Inheritance is also one of the areas where access to property is obtained and contested. Inheritance manifest marital as well as intergenerational relations and can therefore tell us a lot about the way people understand and construct property within the family setting (Hacker 2010:323). The transfer of property through inheritance is distributed along kinship ties and structures the continuity of family lines. People explained to me that inheritance matters

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<sup>33</sup> For example, it occurred regularly that the service was conducted in Maa. Participant observation, Sunday service Sewandeti Church, Arusha region, March 9,16,23, April 6, 13, 2014

<sup>34</sup> Semi-structured interview, Agness (Employee, District Land and Housing Tribunal), Arusha region, March 31, 2014

<sup>35</sup> Informal conversation, Elia (Pastor, Lutheran Church), Arusha region, March 3, 2014

<sup>36</sup> Semi-structured interview, Agness, (Employee ,District Land and Housing Tribunal) Arusha region, March 31, 2014

might be arranged on forehand, where the father of the family will divide his property before his death.<sup>37</sup>

Before Izaack's husband died he was very sick, "but he did not get any support of his family, no one came, no brothers, or any family leaders, no one helped him, I took care of everything. Before my husband died he told me: 'When I die no one of my brothers should inherit anything, because when they did not help me when I was alive, they will not help my family after I am dead.'"<sup>38</sup> Izaack stayed with her children in the same house and her husband left all the property to her. She told me that she has to distribute it between her children, because it is important to give them land in order for them to make a living. "You have to think about your family." She will distribute the family property among her *married* sons. Currently Izaack is the administrator of the whole land, and her married son is the owner of the part she gave to him. Ownership must be understood as ownership of the *family* property. The family property is the concern of the whole family, which means, although she is the administrator she has to reach consensus with the future owners, and current 'users,' meaning her sons and *unmarried* daughters, when she, for example wants to sell the land. This situation would be different when the father of the family would be alive. Then he would be the one who decides what will happen with the family property. As a Maasai widow, and matriarch of the family, Izaack's rights and duties within the family changed when she became a widow. She is the one who will distribute the property among her married sons, she is the one who will approve a marriage, and she is the one who paid the dowry to the family of her daughter in-law.<sup>39</sup>

However, many variations occur, when property is given to the wives they are not aloud to sell, because they need to keep it in custody for their sons. The wife/wives will inherit use-rights to property; the sons will inherit ownership rights. However, in many cases the older brother of the deceased husband was appointed as the administrator of the deceased's property and his family. In these situations a woman may have the opportunity to stay in the house where she lived with her former husband, with her husband's oldest brother as administrator of the property, as was the case when Yohana's husband died. Because both parents of Yohana's husband died, and she had no adult sons, the oldest brother of her

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<sup>37</sup> For example: Informal conversations Eliasante (Community outreach director and Project manager, IYR), Arusha region, February, March, 2014; Semi-structured interview, Shinini (Village Chairman), Simanjiro region, February 15, 2014; Semi-structured interview, Izaack (Maasai widow), Arusha region, March 6, 2014; Semi-structured interview Ndinini (Director, MWEDO), Arusha, March 18, 2014; Semi-structured interview Scola (Employee, MWEDO), Arusha, March 18, 2014;

<sup>38</sup> Semi-structured interview, Izaack, (Maasai widow), Arusha region, March 6, 2014

<sup>39</sup> *ibid.*

husband had the right and responsibility to take care of all the property that was left.<sup>40</sup> Yohana told me that the older brother of her deceased husband had a duty to take care of her family, or at least her children. But she did not see any help from her brother-in-law. Despite he cannot meet his obligations; his position within the family determined him as the administrator of the property. Yohana's children are still young, and she told me they could be the owners of the property "when they are married, then they will own the land I will give to them. This is only for my sons, when my daughters are going to marry they to move to their husband's family, so they do not need property from me. Only when their husband is very, very poor I can give them a piece of land to cultivate, but not to live on, it was the same for me."<sup>41</sup> The period between a husband's death and the time when a son is able to take over the responsibility for the property can be very insecure, especially when no agreements of inheritance were made.

#### 4.4. *Marriage and inheritance disputes*

The actual outcomes for a widow depend for a large degree on her personal situation, and her family-in-law. Most women inherit only use-rights to property. However, in practice this is often not the case. "When a husband or his brother takes responsibility for his wife and family, the system works," is what I heard several times.<sup>42</sup> But this is not always the case, and it is not always what women want. Many widows experienced their brothers-in-law trying to take control of their deceased husband's property, or to put it from another perspective, brothers-in-law claiming their family property, meaning not only denying widows' ownership rights but also use-rights, as Margaret experienced.

Margaret was 16 years old when she married and moved to her husband's family.<sup>43</sup> They received a small piece of land where they built their house. She lived with her family-in-law in the same area, but her husband was not on good terms with his siblings. "One day he had an argument with them and left," leaving behind Margaret and their two-year-old son. "After my husband abandoned me, my father-in-law took care of me, but when he passed away no one helped me in that family, I did not have anything to eat. So I decided to go back to my parent's home, because I could not take care of my son and myself." Women may leave their husband, or in Margaret's case their husband's family temporary or permanently when they are unhappy with how they are treated. Temporary separations within a marriage, a

<sup>40</sup> Semi-structured interview, Yohana, (Maasai widow), Arusha region, March 29, 2014

<sup>41</sup> *ibid.*

<sup>42</sup> For example: Semi-structured interview, Shinini (Village Chairman), Simanjiro region, February 15, 2014

<sup>43</sup> Interview Margaret (Maasai widow) Arusha region, April 9, 2014

woman returning to her parents' home, occurred in many lives of my informants. Lack of material support and domestic violence were returning reasons. Although permanent separation occurs, it is not common. Divorce is generally perceived as something bad, mostly referring to burden the wife's parents with paying back the dowry, and the consequences for affinal relationships.<sup>44</sup>

When Margaret's son got married 40 years later, he and his wife decided to look for his father and found him. He was very sick and Margaret's son brought him to the hospital. Margaret went to the hospital, but when she arrived he already passed away. She told me that even though she did not see her husband for 40 years they were still married, because Margaret's family received the dowry and her husband never claimed the dowry back. Her family-in-law recognized this, as they invited her to the funeral and after the funeral the clan members told her she should stay and live with the clan, so they could approve her as a widow of the family. Even though her husband was not present at his land for 40 years, the land still belonged to her husband, which was under supervision of his oldest brother.<sup>45</sup> When no inheritance agreements are made there may be a clan meeting where the family members will discuss who will be the administrator of the property. Traditionally, the property must be held in custody for a minimum of 40 days after the funeral took place. Margaret lived in the house of the oldest brother, but after four days she found out that they build a telecom tower on the land, while the 40 days after the funeral did not even pass. "I was not happy with this because they never discussed it with me, and I could not stay in my old house."<sup>46</sup> According to the customary practices, Margaret's brother-in-law had no right to sell, because the 40 days did not pass.<sup>47</sup> Yet, the clan already made a decision on who should inherit the property, without Margaret's or her son's consent. If someone of the clan wants to sell clan land one of the requirements is that he needs permission from other members, but because Margaret and her son were excluded from the beginning, the other members of the clan allowed the oldest

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<sup>44</sup> Informal conversations Ngeeyan (Legal fellow, IYR), Arusha region, 2014; Informal conversations Eliasante (Community outreach director and Project manager, IYR), Arusha region, 2014; Semi-structured interview, Mashogi (Divorced Maasai women), Arusha region, March 1, 2014; Focus group, Maasai women (Maasai leaders group Che), Arusha region, March 5, April 2, 2014; Semi-structured interview, Izaack (Maasai widow), Arusha region, March 6, 2014; Participant observation, IYR training on women's property rights to Maasai group Eekenye Che, Arusha region, April 1, 2014; Semi-structured interview, Agness, (Employee, District Land and Housing Tribunal), Arusha region, March 28, 2014

<sup>45</sup> Interview Margaret (Maasai widow) Arusha region, April 9, 2014

<sup>46</sup> *ibid.*

<sup>47</sup> Interview Margaret (Maasai widow) Arusha, April 9, 2014; Informal conversation Winnefrida (Paralegal, IYR), Arusha region, April 9, 2014; Informal conversations Ngeeyan (Legal fellow, IYR), Arusha region, 2014; Informal conversations Eliasante (Community outreach director and Project manager, IYR), Arusha region, 2014

brother to sell the land, because they recognized the property as his and therefore he only had to agree with his direct family; his sons.

Several people expressed to me that Maasai women often face difficulties when claiming their rights within the family or clan.<sup>48</sup> While women are generally not allowed to join clan meetings, they have the right to take an issue to the clan, and influence the actions and decisions made in a clan meeting. However, according to many women and men, if a woman wants to solve a dispute she has to ask her husband, brother, adult son, or cousin to represent her, as Brenda did. Brenda had four children, one of whom she was still breast-feeding, when her husband passed away. Her brother-in-law tried to claim her husband's property by forcing Brenda to marry him. As his wife he could inherit all of her late husband's property. Brenda explained to me that it often happens when a widow is still young they organize a clan meeting, where "you have to choose, which man will marry you and will take care of you, you have to choose among the relatives of your husband."<sup>49</sup> Levirate practices are one of the more oppressive practices that happen in some Maasai families. It also a side effect of the codified customary law, which on top of denying women's ownership rights to customary land, creates a method by which the family of the deceased may inherit the widow herself. In practice, this means the widow may be taken as a (subsidiary) wife of the male inheritor of her deceased husband property.<sup>50</sup>

Brenda was humiliated when the clan told her to marry some one else. "They told me that it was my decision, I had to choose." The codified customary law states that "if the widow agrees to be inherited,"<sup>51</sup> but in practice a widow is given a superficial choice as to whether she is inherited in this way. It is very difficult for a widow to refuse such an offer, as refusal could result in no inheritance and dependency on her relatives.<sup>52</sup> "When they ask you a question like that you have to be strong, you have to say: 'I do not want it.' But it is not

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<sup>48</sup> Participant observation, IYR training on women's property rights to multiple Maasai women's groups, Arusha region, February, March, April 2014; Semi-structured interview, Jessica (Maasai women), Simanjiro, February 15, 2014; Semi-structured interview, Brenda (Member, Ward Tribunal), Arusha region, February 27, 2014; Semi-structured interview, Eva (Maasai widow), Arusha region, March 6, 2014; Unstructured interview, Yohana and Fausta (Maasai widows), Arusha region, April 08, 2014; Semi-structured interview, Wilfred (Pastor, Lutheran Church), Arusha region, March 7, 2014; Semi-structured interview, Agness (Employee, District Land and Housing Tribuna), Arusha region, March 28, 2014; And more.

<sup>49</sup> Semi-structured interview, Brenda (Member, Ward Tribunal), Arusha region, February 27, 2014

<sup>50</sup> Participant observation, IYR training on women's property rights to multiple Maasai women's groups, Arusha region, February, March, April 2014; Informal conversations Eliasante (Community outreach director and Project manager at IYR), Arusha region, 2014; And more.

<sup>51</sup> Local Customary Law (Declaration) (No. 4) Order 1963 Schedule 1 Rule 7

<sup>52</sup> Informal conversation Winnefrida (Paralegal, IYR), Arusha region, April 9, 2014; Semi-structured interview, Brenda (Member, Ward Tribunal), Arusha region, February 27, 2014

easy.<sup>53</sup> In my case they took me to another house, where they tried to convince me, but I did not listen to them. Even when they wanted to curse me or cried, I refused. Even when they said they wanted to take care of my kids, I told them they are free, but they do not have the right to control my live. They used even my brother, my own brother! The clan leader told him: ‘you have to talk to your sister, it seems that she is going insane, probably because her husband passed away.’ But when my brother came to the chambers where they kept me, he said: ‘you have to say no! Do not accept.’” Brenda refused, yet her brother-in-law asserted claim over her husband’s property. Brenda complained to the clan council; while a clan member told Brenda’s brother-in-law that he could not marry her, Brenda’s brother-in-law threatened her and damaged the property in question, where upon Brenda physically attacked her brother-in-law. This resulted in another clan meeting, where Brenda’s five brothers represented her. The clan elders ordered Brenda’s brother-in-law to stay away from Brenda, her children and her late husband’s property.

While Brenda’s case resulted in a positive outcome for her, yet this necessitated her engagement in dangerous conduct and reliance on her brothers. Both cases demonstrate the limited direct political influence Maasai women have at the clan level and the ways in which their agency can be exercised. However, education starts to give women a better negotiating position within the family. Several women and men addressed that educated girls have a different position within the family and clan, one that enhances their ability to join in decision-making processes. Jessica told me “before, women were not allowed in clan meetings or to stand up and give ideas, but I see some changes, I see that girls who went to school speak up and tell what they want.”<sup>54</sup> Agness experienced that her clan treats her differently compared to other Maasai women, because she went to school. “Sometimes I even advise them what to do. But when I was a student they saw me as a child, I just upheld what they said was right and wrong, because if you refuse they say you misbehave, that is a big matter in our culture for a women to speak against a man.”<sup>55</sup> When women ‘speak up’ and claim ownership rights they challenge conceptions of gender and property relations.

Margaret failed to get her right within the clan and decided to go to the ten-cell leader, who referred her to the Ward tribunal.<sup>56</sup> A ten-cell leader is a leader of a village neighborhood and a member of the Village Council. The Village Council and the Ward Tribunal are two

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<sup>53</sup> Semi-structured interview, Brenda (Member, Ward Tribunal), Arusha region, February 27, 2014

<sup>54</sup> Semi-structured interview, Jessica (Maasai women) Simanjiro, February 15, 2014

<sup>55</sup> Semi-structured interview, Agness (Employee, District Land and Housing Tribunal), Arusha region, March 31, 2014

<sup>56</sup> Margaret’s dispute at the Ward Tribunal is discussed in the next chapter.



state authorities that both use customary laws, with exemption to discriminatory practices.<sup>57</sup> Agness told me a story about her sister, which illustrates how different conceptions of gender and property interact and mix at the village level. Agness' sister fell in love with a boy she met at school, but her father already selected a husband for her. It was a friend of her father. "When your mother is pregnant, a friend of your father can say 'if it is a girl I will marry her, if it is a boy he will be my friend.' My sister had to marry him, because my father already paid the dowry. A month after she married him she ran away." Agness' sister went to the head of her clan and told she was a victim of forced marriage. He referred her to the village chairman, who called her father. The village chairman asked her father why he forced his daughter to marry this old man, because it is not allowed. Her father asked for forgiveness, and had to pay back the dowry to his friend. After the pay back of the dowry the dispute was solved. In addition, Agness' father later acknowledged that it is a bad practice, and he allowed his daughter to marry the boy she met at school.<sup>58</sup> The interaction with the Village Council influences customary attitudes and beliefs about marriage, family, and gender, and illustrates that disputes are not solely about women's rights and gender justice, but are cultural contestations to gender relations, family, marriage, and property, and illustrate the variety in perceptions present in the Maasai society. In addition, this example demonstrates that issues are often handled by more authorities at a time, and are combined in a hybrid way, where concepts of gender equality secured at the village level, together with the customary practice of dissolution of marriage determine the settlement of the dispute. These processes of interlegality will be discussed in the following chapter, where the conceptions of property and gender relations are analyzed in the light of Maasai women's access to justice.

This chapter aimed to illustrate a small part of the different gender and property conceptions and relations in the lives of Maasai women, and how they are expressed in different layers of social organization. In addition this chapter showed how these conceptions and relations, are negotiated by kinship structures, the Church, property disputes, village authorities, and briefly discussed by education. Concepts of women's property rights embraced by different social actors and legal authorities cannot be discussed as separate entities that work together. They are mixed, influence each other and are attached to many social, political and economic domains. When women fail to claim their right at the family or clan, they can resort to other

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<sup>57</sup> Semi-structured interview, Shinini (Village Chairman), Simanjiro region, February 15, 2014; Semi-structured interview, Lobolu, (Village Chairman), Arusha region, March 7, 2014; And more.

<sup>58</sup> *ibid.*

legal orders, like Margaret did. The next chapter illustrates how Margaret's dispute is handled at the Ward Tribunal, and how gender and property relations influence disputes settlements at this legal institution. The processes of Maasai women's property dispute settlement at the Ward Tribunal will demonstrate that interlegality cannot be seen separately from gender and property relations, and are essential to take in account when looking at Maasai women's access to justice. In addition, the next chapter explores how interlegality could enhance Maasai women's access to justice.

## 5. Hybrid legal orders and access to justice<sup>59</sup>

“How many times have you been summoned to come to this Tribunal?” asks the Secretary of the Ward Tribunal to the defendant named Richard. Richard, an older man who is wearing black trousers, a grey and dusty jacket, and who has big holes in his earlobes answers: “three times.” “And why have you not shown up?” continues the Secretary. Richard turns his head down for a moment, raises his head again and replies: “I was sick”. The Chairman starts speaking with a calm but clear voice: “You have to respect this Tribunal. We are here to help people and to reconcile, but people have to respect us.” Richard looks at the Chairman and the Secretary, opens his mouth as if he is about to say something, but closes his mouth again and does not respond to what the Chairman just said. For a few moments there is complete silence in the courtroom of the Ward Tribunal. The only audible sounds are the tapping rain on the tin roof, and every now and then the sound of a chirping bird. A soft breeze flows through the windows, which are always open as they do not carry glass. It is a cloudy and rainy day, which causes that not much light shines through the windows, and because there is no electricity in the building, it is quite dark in the courtroom. A little bit of light shines on the table behind which the Chairman and Secretary are seated, and on which a pile of files, papers, some books and a newspaper are placed. Three wooden benches are lined up in front of the table. Richard and the plaintiff, his wife Helena, are seated on the front bench, and the benches behind them are filled with people. The members of the Ward Tribunal are seated on two wooden benches, left and right of table of the Chairman and Secretary, and all look in the direction of Richard. After a while, the silence is broken when the Secretary asks Helena if she can explain her complaint. Helena, who is wearing a purple and black chequered fabric around her shoulders, and who has big holes in her earlobes, stands up, slowly walks to the table, and hands a paper over to the Secretary, who starts reading out loud: “I was married with my husband for fifty years. We loved each other and we were blessed with children. Now, I do not know why my husband does not want me anymore. I have four pieces of land and built myself two houses, but my husband, together with a big group of men, violently chased me of my land, destroyed my houses, and now my husband wants to sell the land. I want a divorce and I want my property back. The problem is that I only have girl children and my husband wants to give the land to the son of his first wife.” After reading the letter of complaint, the Secretary asks Richard if he wants to respond to this. “I will not speak here! I will only speak at Primary Court! This Tribunal does not have the power to handle this

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<sup>59</sup> Written by Lise van Ingen

case!” says Richard with an angry look upon his face. The Secretary replies with a firm voice: “The hearing at Primary Court is to hear the criminal offence. This Tribunal is allowed to hear the marriage issue as it is related to a land issue! If you will go to Primary Court, they will send you back since you always have to try to reconcile before you can appeal to a higher court.”

This vignette describes a hearing at a Ward Tribunal, where a Maasai woman named Helena is in dispute with her husband, concerning issues of marriage, criminal offences and property.<sup>60</sup> This vignette serves as a good illustration of the complex legal lives of Maasai women who try to claim their property rights outside the legal order of Maasai customary law; where certain conflicts, dependent on the conflict’s characteristics, have to be handled by certain courts within Tanzania’s complex judicial system.

The previous chapter has shown that when studying Maasai customary law, and its norms and practices, it is important to include the family as one of the legal orders in which disputes can be settled. This chapter will illustrate, however, how the existence of multiple legal orders can enhance Maasai women’s access to justice (Ribot & Peluso 2003:163). This means that when women fail to claim their right at the customary legal orders of the family or clan, they may resort to other legal authorities, where the previous chapter has already illustrated how Margaret and Agness’ sister resorted to the Village Council. This chapter will further illustrate that Maasai women can also resort to other legal authorities, such as Ward Tribunals, Primary Courts, and District Land and Housing Tribunals. Throughout this chapter, the trials of Helena and Margaret—both Maasai women who failed to claim their right at the customary legal orders of the family or clan—will serve to illustrate how Maasai women’s property disputes move through multiple legal orders, and what this means for the construction of women’s property rights. The aim of this chapter is to demonstrate that in this daily practice of legal pluralism, different legal orders—such as customary law, national law and international law—and their additional conceptions of women’s property rights, cannot be seen or treated as *separate entities*. Instead, I will demonstrate that these legal orders overlap cross and influence each other, thereby creating new hybrid legal orders (Hoekema 2004); showing that Maasai women’s legal lives are constituted by ‘interlegality’ (de Sousa Santos 2002).

I will mainly focus on these processes of interlegality during dispute processes at the Ward Tribunal, where I will try to provide an understanding of what these processes mean for

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<sup>60</sup> Participant observation, hearings Ward Tribunal, Arusha region, February 25, 2014

Maasai women's property dispute settlement at this legal order. It will be demonstrated that interlegality cannot be seen as a one-way process, where different normative orders only cross the minds and lives of Maasai women who are in a dispute, and where the legal order of Maasai customary law only appropriates concepts of other legal orders; as been addressed in the previous chapter. Instead, it will be demonstrated that Maasai women's property dispute settlement at the Ward Tribunal concerns 'reversed interlegality' (Hoekema 2004:6), meaning that different legal orders also cross the minds and lives of those actors and institutions that stand closer to and have more control of the regulation of these legal orders. Here it will be shown that Ward Tribunal members use their knowledge of Maasai customary law and its ways of reconciliation, and combine this with international and national law's norm of equal property rights for men and women, thereby contesting Maasai gender and property relations and conceptions. The previous chapter briefly discussed that when women start to claim their property rights within the family, they already contest these relations and conceptions, and therefore Maasai women's property disputes are in itself part of the construction of Maasai women's property rights. However, in this chapter I will focus on how conceptions and relations of gender and property, and the interaction between multiple legalities come to expression during property dispute settlement at the Ward Tribunal, and how this constructs Maasai women's property rights and influences Maasai women's access to justice.

The second paragraph of this chapter will demonstrate that although in theory Maasai women's rights to property could increase at legal orders that maintain principles of gender equality, in practice the hierarchical Maasai gender and property relations are still present in the lives of Maasai women, causing that these women often face difficulties when claiming their property rights. It will be illustrated how these relations influence the dispute processes at these legal orders, and how Maasai women's access to justice can get obstructed, which shows that the gender relations amongst the Maasai cannot be seen separately from processes of interlegality. This chapter will conclude by demonstrating how human rights NGOs are also part of these processes of interlegality, where they construct Maasai women's property rights and positively influence Maasai women's access to justice, for example, by providing these women with legal aid and education.

### 5.1 'Reversed interlegality': Ward Tribunals

“Ward Tribunals<sup>61</sup> were established in Tanzania in 1985 to unburden the overburdened Primary Courts, promoting dispute settlement on a local level”<sup>62</sup> explains Simon, who is Chairman at a Ward Tribunal, and is a respectable Maasai man in his Ward where he functioned as village leader for many years before he became Chairman. The Chairman, the Secretary and not less than four nor more than eight members, are the ones who try to observe this function of local dispute settlement at Ward Tribunals. The Chairman is an important figure here, being the leader of the members, and the one who receives complaints and guides the hearings.<sup>63</sup> While we were sitting in Simon’s garden, under a small tree, trying to avoid midday sun’s rays, Simon talked about his function as Chairman: “The first thing which is important as the Chairman of a Ward Tribunal is that I have to make sure that there is discipline among the members during the hearings, to make sure that they are operating in the right way and follow the rules of the Ward Tribunal.” The Secretary also fulfils important tasks: he receives the complaints, schedules the hearings, records evidence during hearings and issues summons that require the parties in dispute to appear before the Ward Tribunal.<sup>64</sup>

Ward Tribunals’ function of local dispute settlement is incorporated in the Ward Tribunals Act Chapter 206 of 2002, stating under Section 8 (1) that “The primary function of Ward Tribunals is to to secure peace and harmony in the area for which it is established by mediating and endeavouring to obtain just and amicable settlement of disputes.” I interviewed David, who is Secretary at a Ward Tribunal, and who is Maasai just like his fellow members, about this function of Ward Tribunals. David invited me to his house, located right across the street from the Ward Tribunal where he works, and where his wife welcomed me with thee, saying that “according to Maasai tradition, you always have to provide something for your guests.” During the interview David explained to me that “dispute settlement at Ward Tribunals is not just about punishing the offender. Instead, reconciliation is the main goal of Ward Tribunals. We make use of our wisdom and our knowledge about the customs and customary laws in the community, in order to make sure that there is peace within the community.”<sup>65</sup> The importance of reconciliation became clear to me during the many hearings

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<sup>61</sup> Ward Tribunals were established in all Wards in Tanzania, where each Ward consists of a few villages (The Ward Tribunals Act Cap 206 2002)

<sup>62</sup> Semi-structured interview, Simon (Chairman, Ward Tribunal), Arusha region, February 26, 2014

<sup>63</sup> Semi-structured interview, Simon (Chairman, Ward Tribunal), Arusha region, February 26, 2014; The Ward Tribunals Act Cap 206 2002 ss 1,2, 11 (1)

<sup>64</sup> Semi-structured interview, David (Secretary, Ward Tribunal), Arusha region, February 20, 2014; The Ward Tribunals Act Cap 206 2002 s 4 (2), 11(1)(4), 12, 24 (2)

<sup>65</sup> Semi-structured interview, David (Secretary, Ward Tribunal), Arusha region, February 20, 2014

that I attended, where the members always told the parties in dispute that they should try their bests to reconcile.<sup>66</sup> I was told by the members of the Ward Tribunal that because reconciliation is so important, everybody is always given the chance to speak. In addition, because reconciliation is so important, Simon explained to me that the members have to live in the same Ward as the Ward Tribunal where they work, because then they will have knowledge about the customs and traditions within that area: “It is not good when someone from one area hears a case of someone from a different area, because that person will not understand the community in which the dispute arose.”<sup>67</sup> Because this knowledge of customs is important, informants have told me that the Ward Tribunal members cannot have a legal background, and the parties in dispute cannot be represented by a lawyer.<sup>68</sup> Lengai, a Maasai man who is lawyer at the Legal and Human Rights Centre,<sup>69</sup> explained this to me during an interview: “Someone does not need to go to law school in order to solve a dispute in a customary way. Instead, someone is needed who knows a lot about that custom. The problem with lawyers is that not every lawyer knows the custom of a certain place, and a lawyer will complicate proceedings, by bringing in legal technicalities. We do not want technicalities for customary issues: we want customs to be followed.”

However, although the customs and traditions of the local community are important during the processes of dispute settlement at Ward Tribunals, informants emphasized that only those customs which are non-discriminatory will be respected during dispute settlement at Ward Tribunals.<sup>70</sup> This means that during processes of Maasai women’s property dispute settlement at Ward Tribunals, the Maasai hierarchical gender and property relations, that deny ownership rights to women, and structure Maasai customary law, will not be respected. Brenda, one of the two female members at a Ward Tribunal, a Maasai woman whose dispute

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<sup>66</sup> Participant observation, hearings Ward Tribunal, Arusha region, February, March, April, 2014

<sup>67</sup> Semi-structured interview, Simon (Chairman, Ward Tribunal Kiranyi), Arusha region, February 26, 2014

<sup>68</sup> Semi-structured interview, Lengai (Lawyer, LHRC), Arusha region, February 12, 2014; Semi-structured interview, David (Secretary, Ward Tribunal Kiranyi), Arusha region, February 20, 2014; Semi-structured interview, Simon (Chairman, Ward Tribunal Kiranyi), Arusha region, February 26, 2014; Informal conversation, Ngeeyan (Legal fellow, IYR), Arusha region, February 28, 2014; The Ward Tribunals Act Cap 206 2002 s 5 (1) (d); The Courts (Land Disputes Settlements) Act No. 2 2002 s 18 (1)

<sup>69</sup> The Legal and Human Rights Centre is an NGO striving to empower the public, promote, reinforce and safeguard human rights and good governance in Tanzania through legal and civic education and information; sound legal research and advise; monitoring and follow up of human rights violations; and advocacy for reforms of policies, laws and practices to conform to international human rights standards (<http://www.humanrights.or.tz/about-us/mission-vision-objectives>).

<sup>70</sup> Semi-structured interview, Lengai (Lawyer, LHRC), Arusha region, February 12, 2014; Semi-structured interview, David (Secretary, Ward Tribunal Kiranyi), Arusha region, February 20, 2014; Semi-structured interview, Simon (Chairman, Ward Tribunal Kiranyi), Arusha region, February 26, 2014; Semi-structured interview, Brenda (Member Ward Tribunal), Arusha, March 13, 2014; Semi-structured interview, Ischmael (lawyer, TAWLA), Arusha region, April 4, 2014

has been described in the previous chapter, explains here that “in Maasai society, women do not have the right to own property, but if they come to the Ward Tribunal, women *do* have the right to own property. We reconcile the dispute with that idea in mind.”<sup>71</sup> Julia, a woman with a strong and confident appearance, who is the Chairman of the District Land and Housing Tribunal in Arusha, explained to me during an interview that took place in her office that this movement towards the promotion of women’s property rights at Ward Tribunals went together with the establishment of the land laws of 1999.<sup>72</sup> These land laws paved the way for the creation of new land dispute machineries in Tanzania, meaning that disputes or complaints concerning land shall be instituted in the Court having jurisdiction to determine land disputes in a given area.<sup>73</sup> District Land and Housing Tribunals and Ward Tribunals on land matters are examples of such special land courts. Julia explains that before the establishment of these land laws and land courts, legal institutions were mainly male-dominated, but that after this establishment rules were created to strengthen women’s participation at a local level, and women’s property rights. The former rules are incorporated in the Courts (Land Disputes Settlements) Act of 2002, stating under section 11 that “Each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women.” The latter rules are incorporated in both land laws of 1999 under Section 3(2), stating that it is “The right of every adult woman to acquire, hold, use, and deal with land shall to the same extent and subject to the same restrictions be treated as a right of any man.” Thus the norm of equal property rights for men and women—as incorporated in the land laws, Tanzania’s Constitution, and human rights instruments— is followed during processes of Maasai women’s property dispute settlement at Ward Tribunals. Simon explains here that that “although customs are used during reconciliation, the members talk about the law to make people understand that even if they do not want to take care of the matter here at the Ward Tribunal, this is what will happen when you will appeal, because this is the law.”<sup>74</sup>

Because Ward Tribunal members have to apply laws, while they cannot have a legal background, Simon and David explained to me that the government is supposed to give them training about the laws they have to apply. In practice, however, many Ward Tribunals do not

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<sup>71</sup> Semi-structured interview, Brenda (Member Ward council Kiranyi), Arusha region, March 13, 2014

<sup>72</sup> Semi-structured interview, Julia (Chairman, District Land and Housing Tribunal), Arusha region, April 8, 2014; The Village Land Act Cap 114 1999; The Land Act Cap 113 2002

<sup>73</sup> The Courts (Land Disputes Settlements) Act of 2002, the Ward Tribunals Act Cap 206 of 2002, The Village Land Act Cap 114 1999, and The Land Act Cap 113 2002 are the laws that are part of the jurisdiction of Ward Tribunals. Ward Tribunals have the jurisdiction to hear cases in which the disputed land or property does not exceed a value of three million Tanzanian shillings (The Courts (Land Disputes Settlements) Act No. 2 2002 s 15)

<sup>74</sup> Semi-structured interview, Simon (Chairman, Ward Tribunal Kiranyi), Arusha region, February 26, 2014



receive this training because the government lacks resources.<sup>75</sup> Therefore, Simon explained to be happy with IYR that *does* give legal training to him and his fellow members: “We do not have a legal background, but we do have legal experience. Because we get legal training, we can combine the two things together during reconciliation: legal experience and legal knowledge. This combination will guide us to the perfect decision during dispute settlement.” Ismael, lawyer at TAWLA, explains here that NGOs try to compensate the government’s inability by providing legal training to Ward Tribunals. NGOs’ goal of these trainings is to improve dispute settlement at a local level, thereby promoting human rights such as women’s property rights.<sup>76</sup>

These processes of Maasai women’s property dispute settlement at Ward Tribunals illustrate processes of ‘reversed interlegality’ (Hoekema 2004:6), where Ward Tribunal members use their knowledge of Maasai customary law and its ways of reconciliation, and combine this with international and national law’s norm of equal property rights for men and women. This demonstrates that the legal orders of customary law, national law, and international law cannot be seen and treated as separate entities in the legal lives of those Maasai women who try to claim their property rights at the Ward Tribunal. Instead, it has been demonstrated that these legal orders are interrelated, where this interrelation shows how the Maasai gender and property relations that deny ownership rights to women get contested at the Ward Tribunal, and therefore construct Maasai women’s property rights and influence Maasai women’s access to justice.

The following paragraph will demonstrate, however, that although legal orders exist that contest the Maasai discriminatory property relations, and maintain that women should have ownerships rights, in practice Maasai women still experience several difficulties when claiming these rights. It will be illustrated how the hierarchical gender and property relations at the customary level, can still be present in the lives of Maasai women when they resort to other legal orders, and how these relations may obstruct these women’s access to justice. This will further demonstrate that processes of interlegality cannot be seen separately from gender and property relations. I will conclude this chapter by illustrating that human rights NGOs are also part of these processes of interlegality, where they take part in the construction of Maasai women’s property rights and these women’s access to justice, for example provide legal aid and education to Maasai women.

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<sup>75</sup> Semi-structured interview, David (Secretary, Ward Tribunal Kiranyi), Arusha region, February 20, 2014; Semi-structured interview Simon, (Chairman, Ward Tribunal Kiranyi), Arusha region, February 26, 2014

<sup>76</sup> Semi-structured interview, Ismael (Lawyer, TAWLA), Arusha region, April 4, 2014

### 5.2. *Interlegality' and access to justice: Gender and NGOs*

The previous chapter has addressed how education starts to influence Maasai women's positions in the decision-making processes. However, it has been noted that most Maasai women obtained less education than men. According to Brenda, this lack of education often causes that Maasai women do not have enough knowledge about Tanzania's judicial system, and sometimes even causes that they do not know what their own rights to property are, which decreases these women's access to justice.<sup>77</sup> However, when Maasai women *do* have knowledge about their rights, they still often experience difficulties because of the hierarchical gender relations within their communities, where the previous chapter has shown that many women feel inferior to men, who have the power in decision-making processes. Brenda explained here that many Maasai women who are in dispute do not go to a Ward Tribunal or other court, because they are afraid to be isolated, punished or cursed.

This paragraph will demonstrate that when Maasai women *do* decide to take their dispute to court, the gender relations within the family and clan still often make it hard for these women to claim their property rights. Here it will be shown how male family/clan members often try to obstruct women's access to justice, for example, by corrupting the court, punish the woman when she takes the dispute outside of the family, or by pressuring the woman to withdraw her complaint and settle the dispute within the family. The latter was the case with Margaret, whose dispute has been described in the previous chapter, and who filed a case at a Ward Tribunal in order to claim inheritance rights to the property of her deceased husband. The vignette that follows, describes a hearing of Margaret's dispute at the Ward Tribunal, where the clan of her deceased husband managed to move the dispute back to the clan.<sup>78</sup>

Margaret and John are sitting next to each other on the front bench, both looking at the Chairman and Secretary, waiting till the hearing will start. The courtroom is filled with people: many men and just a few women. There is not enough space on the benches, causing that people are standing. The Secretary holds a paper in his hands, and is looking at it. A few moments later he looks into the courtroom, and says that he will start with reading Margaret's letter of complaint out loud: "I am a widow and I am in a dispute with John, the brother of my deceased husband. He has taken the land which belongs to me and my

<sup>77</sup> Semi-structured interview, Brenda (Member, Ward Tribunal), Arusha region, April 11, 2014

<sup>78</sup> Participant observation, hearings Ward Tribunal, Arusha region, February 25, 2014

husband; destroyed my house; and has sold the land to a telecom company, which is now constructing a telecom tower on the land. I am here because I want my land back.” The Secretary asks John if this complaint is true, who answers: “No”. Then the Chairman starts to explain what will have to happen next: “We will send a summons and a stop order to the telecom company, in order to let them stop constructing immediately, until we have come to a judgment.” Suddenly, an older man in a suit, who is sitting on one of the benches in the courtroom, stands up and raises his hand. The Chairman nods his head where after the man starts talking in a calm and polite way: “I am the clan leader and I would like to request if you could give our clan the chance to reconcile this dispute within our family, before it will be heard by this Tribunal.” The Secretary responds fiercely, using heavy gestures: “The plaintiff has the right to bring this case to this Tribunal!” Then the members start discussing with each other. After a few minutes, the Chairman looks in Margaret’s direction and asks her if she agrees with the request of the clan leader. A soft voice sounds through the courtroom: “Yes.”

During an interview that took place after this hearing, Brenda explained that she was not happy that Margaret’s case was moved back to the clan: “I was not happy because Maasai customary law will be followed during dispute settlement at the clan, which will mean that Margaret probably will not get her right to property.”<sup>79</sup> Simon explained, however, that they could not say ‘no’ to the request of clan: “If we would have said no, the clan members and other people in the village would have wondered why we did not want to give the clan the chance to reconcile. The only thing that we could do is to let the parties return to the Ward Tribunal when they had come to an agreement.”<sup>80</sup> A few weeks later this happened, and the clan explained to the Ward Tribunal that they had come to the agreement to compensate Margaret with a piece of land. However, Margaret did not agree and wrote a letter to the Ward Tribunal, which the Secretary read out loud during the hearing: “I got punished by the clan because I took the case to the Ward Tribunal. In addition, the agreement is not fair, because the land that the clan wants to give to me is a really small piece of the land in dispute, right next to where the telecom tower is being built. However, I got forced to sign the agreement.”<sup>81</sup> During an interview, Margaret talked about how the clan punished her and about how she was forced to sign the agreement: “As a punishment I was asked to buy a goat and give the clan 120.000 TZS. I was not happy with the agreement made during the clan

<sup>79</sup> Semi-structured interview, Brenda (Member, Ward Tribunal), Arusha region, April 11, 2014

<sup>80</sup> Semi-structured interview, Simon (Chairman, Ward Tribunal), Arusha region, February 26, 2014

<sup>81</sup> Hearings Ward Tribunal, Arusha, March 25, 2014; Interview Margaret, Arusha region, April 9, 2014

meeting, but I was forced to sign it. They said to me that if I would not sign, I would be punished again. So I decided to sign, while knowing that this would not give me my right.”<sup>82</sup>

Another reason why the hierarchical Maasai gender and property relations can obstruct Maasai women’s access to justice can be found in men and women’s unequal access to financial resources. The previous chapter has shown that the Maasai structure access to property along kinship relations, where women have to mediate access to property through their relationship with their father, husband or son, who hold the ownership rights. It has been illustrated here that Maasai women often only have ‘use rights, which causes that they have less access to financial resources than men. Therefore, Maasai women who want to claim their right to property outside the legal order of the family often cannot to pay the court expenses, meaning that they often do not have access to justice. However, when women *do* manage to pay these expenses, it still does not have to mean that they have access to justice. A reason for this is that men, who have more financial resources than women, often corrupt the courts in their favor. This was the case with Helena, who filed a case at Primary Court<sup>83</sup> for the destruction of her property. However, different informants suspected Helena’s husband of corrupting the court clerk, causing that the hearing got adjourned three times.<sup>84</sup> During the second hearing, I witnessed Helena corrupting the court clerk herself, where she told me that she was trying to make sure that her case would be heard that day. However, the act of corruption was not successful and the hearing got adjourned again.<sup>85</sup> Different informants have told me that there was a big chance that Helena’s husband corrupted the court clerk with a higher amount of money, causing the adjournment.<sup>86</sup> Agness Mollel argues here: “If you can bribe, then you can win the case, if you are not able to bribe, then you will lose.”<sup>87</sup>

I thus was a witness of corruption; a problem within Tanzania’s judicial system where I had heard so much about. Informants had told me that corruption is especially at the lower courts, such as Ward Tribunals and Primary Courts.<sup>88</sup> Winnefrida and Julia said that a reason

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<sup>82</sup> Semi-structured interview, Margaret (Maasai widow), Arusha region, April 9, 2014

<sup>83</sup> The vignette in the beginning of this chapter has illustrated that Primary Court has the jurisdiction to hear conflicts concerning property, when the conflict is related to a criminal offence, such as the destruction of property. In addition, Primary Court has the jurisdiction to hear probate and matrimonial issues (The Magistrates’ Courts Act Cap 11 2002 ss 18, 19).

<sup>84</sup> Informal conversation, Shirima (Volunteer, IYR) Arusha region, March 26, 2014; Informal conversation, Winnefrida (Paralegal, IYR) Arusha region, March 27, 2014.

<sup>85</sup> Participant observation, hearings Primary Court, Arusha region, March 26, 2014

<sup>86</sup> Informal conversation, Shirima (Volunteer, IYR) Arusha region, March 26, 2014; Informal conversation Winnefrida (Paralegal, IYR), Arusha region, March 27, 2014.

<sup>87</sup> Semi-structured interview, Agness (Employee, District Land and Housing Tribunal), Arusha region, March 31, 2014

<sup>88</sup> Informal conversation, Winnefrida (Paralegal, IYR) Arusha region, March 23, 2014; Informal conversation, Shirima (Volunteer, IYR) Arusha, March 25, 2014; Semi-structured interview, Julia (Chairman, District Land

for this is that at these courts, members and judges are not getting paid (enough), making them vulnerable to accept bribes in order to earn more income. Another reason is that at these courts, the parties in dispute are not allowed to be represented by lawyers who can point to the law, meaning that judges and members have the space to accept bribes and make judgments that are not fair. I also talked about these problems of corruption with David, who explained that “Other Ward Tribunals use their power to be corrupted. Those who work at Ward Tribunals do not get paid anything, so they violate the laws.”<sup>89</sup> Brenda argued, however, that corruption also exists at the Ward Tribunal where David and Brenda work, and provided me with an example where one man tried to corrupt her: “I refused the bribe but found out that two other members accepted it because they asked me: ‘did you get tea?’ which means: ‘did you accept the bribe?’ In addition, Brenda explained that she sometimes knows that when the evidence is strong and one party is in his or her right, and when members are trying not to avoid and cover the right laws, corruption might be used: “This disfavors one party while that party might be in its right, which often makes it hard for Maasai women to claim their right to property.”<sup>90</sup>

However, during my time in Arusha I came to the understanding that the presence of Human rights NGOs and researchers like myself during hearings, can positively influence Maasai women’s legal consciousness and their access to justice. During one of the many conversations I had with Winnefrida, while we were sitting on the little square in front the Ward Tribunal, waiting till the hearings of that day would begin, Winnefrida told me that “the presence of a human rights NGO and that of a researcher reduces the chance that members will be effectively corrupted, and thus heighten the chance on a fair judgment.”<sup>91</sup> The first time that I attended the hearings together with employees of IYR, David explained us the same: “Your presence will be good for the Ward Tribunal, because then people will hopefully think that cases will be treated fairly and people do not have to be afraid for corruption.”<sup>92</sup> Brenda argued here that: “Sometimes the Secretary is afraid, because he knows that when you come with IYR, who are lawyers, the Tribunal needs to be careful with corruption and needs to be just.”<sup>93</sup> In addition, Human rights NGOs positively influence Maasai women’s legal

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and Housing Tribunal Arusha), Arusha region, April 8, 2014; Informal conversation, Ngeeyan (Legal fellow, IYR), Arusha region, April 11, 2014

<sup>89</sup> Semi-structured interview, David (Secretary, Ward Tribunal), Arusha region, February 20, 2014; Semi-structured interview, Brenda (Member, Ward Tribunal), Arusha region, March 13, 2014;

<sup>90</sup> Semi-structured interview, Brenda (Member, Ward Tribunal), Arusha region, April 11, 2014

<sup>91</sup> Informal conversation, Winnefrida (Paralegal, Inherit Your Rights), March 18, 2014

<sup>92</sup> Participant observation, hearings Ward Tribunal, Arusha region, February 7, 2014

<sup>93</sup> Semi-structured interview, Brenda (Member, Ward Tribunal), Arusha region, April 11, 2014

consciousness and their access to justice, because they work on gender equality in the society by educating Maasai women about their (human) rights—such as their right to property—and provide them with legal aid. This was the case with Margaret, Helena and Brenda, who came into contact with IYR during hearings at the Ward Tribunal. IYR wanted to help these women and therefore introduced them to TAWLA<sup>94</sup>, who provided these women with legal aid, helping them to claim their right to property. For example, Ismael advised Margaret that because reconciliation at the Ward Tribunal had not been successful, and because the land in dispute is worth more than 3.000.000 TZS, he would help her to appeal to the District Land and Housing Tribunal who have the jurisdiction to hear this case,<sup>95</sup> and where Ismael will represent Margaret free of charge.<sup>96</sup> Julia explained to me that Maasai women have a better chance to successfully claim their property rights at higher courts, such as the District Land and Housing Tribunal and the High Court, because there is less corruption at these courts: “Legal experts who get paid well work at these courts, and the parties in dispute can be represented by a lawyer who can point to the law. This causes that the judges who work at these courts are more likely to give a fair judgment, which means that that Maasai women often can successfully claim their right to property.”<sup>97</sup>

This chapter has shown that the existence of multiple legal orders may enhance Maasai women’s access to justice, meaning that when women fail to claim their property rights at the customary legal orders of the family or clan, they can resort to other legal institutions, such as Ward Tribunals, Primary Courts and District Land and Housing Tribunals. Throughout this chapter, Helena’s and Margaret’s trials have illustrated how Maasai women’s property disputes move through these multiple legal orders, where Maasai women try to claim their property rights. This chapter has focused on Maasai women’s property dispute settlement at the hybrid legal order of the Ward Tribunal, where it has been shown how Ward Tribunal members use their knowledge of Maasai customary law and its ways of reconciliation, and combine this with national and international law’s norm of equal property rights for men and women. This illustrates that customary law, national law, and international law—and their

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<sup>94</sup> TAWLA is a human rights NGO that envisages a society that respects and upholds human rights. This NGO especially promotes women’s and children’s rights, such as land rights. This NGO does this by providing legal aid services, campaigning for good governance, and undertaking policy and legislative research and advocacy.

<sup>95</sup> The Courts (Land Disputes Settlements) Act No. 2 2002 s 33 (2)

<sup>96</sup> Participant observation, Meeting TAWLA, IYR, and Margaret, Brenda, and Helena, Arusha region, April 3, 2014; Semi-structured interview, Ngeeyan (Legal-fellow, IYR), Arusha region, April 3, 2014; Semi-structured interview, Ismael (Lawyer, TAWLA), Arusha region, April 4, 2014

<sup>97</sup> Semi-structured interview, Julia (Chairman, District Land and Housing Tribunal Arusha), Arusha region, April 8, 2014

additional conceptions of women's property rights—cannot be seen or treated as separate entities in the legal lives of Maasai women. Instead property dispute settlement at the Ward Tribunal has demonstrated processes of 'reversed interlegality' (Hoekema 2004:6). These processes have shown how the Maasai gender and property relations, where women do not have the right to own property, get contested at the Ward Tribunal, and therefore construct Maasai women's property rights and enhance Maasai women's access to justice; showing that processes of interlegality cannot be seen separately from cultural notions of gender. It has thus been illustrated that in theory Maasai women's rights to property could increase at legal orders that maintain principles of gender equality. However, Helena's and Margaret's trials have illustrated that in practice the hierarchical Maasai gender and property relations are always present in Maasai women's lives and thus during these processes of interlegality. These relations can obstruct these women's access to justice; even at those courts that maintain principles of gender equality. This demonstrates that power relationships are important for the determination and actualization of rights (Meinzen-Dick & Pradhan 2002:8). It has been illustrated, for example, how Maasai gender and property relations cause that women have less access to financial resources than men, which in Helena's case caused that her husband could corrupt Primary Court's court clerk in his favor. In addition, it has been illustrated how Maasai women's access to justice can be obstructed when women feel inferior to men and when women are punished by men. This was illustrated by Margaret's case, where the clan of her deceased husband punished her for filing the case at the Ward Tribunal, and pressured her to move the dispute from the Ward Tribunal to the clan, where she did not get her right to property. Helena's and Margaret's cases thus illustrate that when one studies how processes of interlegality and conceptions of property rights are reflected in property dispute settlements, property laws (*de jure*) do not always reveal the actual practice of property rights relations (*de facto*) (Benda-Beckmann et al 2006:19). This chapter has shown how human rights NGOs are also intertwined in these processes of interlegality, where they function as 'intermediaries' or 'translators' (Merry 2006:39); trying to enforce *de jure* property rights by providing Maasai women with legal aid and education, thereby enhancing Maasai women's legal consciousness and these women's access to justice. This chapter thus illustrates how the intersection of international law, national law, customary laws, and local power dynamics may create processes that affect women's ability to access their rights (Chiongson et al 2011:26).

## CONCLUSION

### 6. Interlegality and Gender justice

For Maasai women who live in Arusha the coexistence of multiple legal orders and processes of interlegality are a social fact. Different legal discourses circulate and have been engaged, appropriated, challenged and reworked in the Maasai community, and took, and still take part in the construction of Maasai women's property rights. The conceptual analysis of multiple legal orders we employed in our analysis of property rights acknowledges both that a legal system may recognize more than one system of law, and that there are normative systems other than the formal law that affect and control people's lives. In addition, because we are interested in what the impact of multiple legal orders is on the thoughts, perceptions and experiences of Maasai women who live in this pluralistic world, we argue that multiple legal orders in the lives of Maasai women cannot be discussed as separate entities that coexist. Instead, we have demonstrated that we should have the conception that Maasai women's legal lives are constituted by 'interlegality', meaning that different legal orders constantly mix and influence each other, and are attached to many social, political and economic domains.

Interlegality is tightly connected with issues of gender equality in the Tanzanian context. The actual character of interlegality influences the way people experience justice in their lives. For Maasai women in particular, the intersection of state legal systems, customary laws, and local power dynamics create processes that affect their ability to access their rights. Multiple legal orders may, for example, reinforce structures of gender inequality. Colonial officials believed that every Tanzanian belonged to a specific tribe, each with distinct cultural practices as well as established customary laws. Colonial forces formalized Maasai customary law, granting private ownership rights to men, and reinforced patrilineal property and inheritance systems. The formalized rules of property had produced significant changes in Maasai gender relations, and marginalized women's authority within and beyond the community (Bourdon 2013; Chiongson et al 2011; Menzies & Taylor 2012). Tanzania's first president, Nyerere, went a step further and codified customary laws for Tanzania's 120 different ethnic groups in a piece of legislation called the Local Customary Declaration Order, Government Notice No. 279 (amended GN 436) of 1963. The Local Customary Law presumes that all property, even acquired during marriage belongs to the husband, and articulates different scenarios for inheritance, the majority of which awards property to the deceased male children and/or heirs on the paternal side. However, Human rights instruments



and global norms of gender equality pressured Tanzania to declare those discriminatory customs of customary laws void, like those customs that deny women the right to own property. Contemporary reforms of codified customary law tend to focus on greater gender equity, by prohibiting discriminatory customary laws (Sieder & McNeish 2013:6; Ikdahl 2008). After the establishment of the land laws in 1999, rules were created to strengthen women's property rights, where both land laws state under Section 3(2), that it is "The right of every adult woman to acquire, hold, use, and deal with land shall to the same extent and subject to the same restrictions be treated as a right of any man."

Empirically, Maasai women's property rights find expression in a wide variety of social phenomena, in cultural ideologies, legal institutions, in concrete relationships and social practises. Studying the influence of interlegality on Maasai women's property rights requires to include an analysis which pays attention to the whole complex world interlegality, which does not only start with the interaction in and between multiple legal institutions, but already begins with the presence of multiple cultural ideologies, conceptions, and social relations. These cannot be perceived as separate entities, but are integrated through all aspects of Maasai women's daily lives. By tracing the cultural life of Maasai women's property rights we saw how rights and laws are questioned, changed, and (re)shaped as they circulate through multiple and specific institutions on different scales. The bodies of law, ideological representations and concepts concerning 'the rules of property' are images of 'how it ought to be.' Despite some assume that these rules are the result of practice, or that practice is directly based on these rules, we experienced how property laws often not reveal the actual practice of property rights relations. In practice, Maasai women's property rights relations are not as organized, clean and clear as the rules of the systems imply to be, but are messy, fluent, insecure, constantly contested and differ among women. We experienced that customary, national and international law, only came to life and gained meaning through the personal experiences people shared with us. The rules became flexible, fluent, bound to space and time when people told us their life histories. Therefore, we differentiated between the *de jure* relationships expressed in laws and the *de facto* relationships, which find expression at the level of actual social relationships and refer to the specific rights that an individual can advantage in specific contexts. The emphases on *de facto* relationships made the legal domain borderless and multidimensional, where different ideas, institutions, and actors took part in the definition and formation of Maasai women's property rights.

The present socio-political and economic systems that govern property within the Maasai community determine the rights and obligations between people within and between families. The practices and beliefs that are vital and intrinsic to these systems are established as legal requirements or obligatory rules of conduct. In other words the customs concerning property are treated as laws, customary laws. The responsibilities and rights individuals and groups have to each other concerning property are structured along kinship organizations, who further distribute property rights according to age and gender. Men and women, the young and the elderly have very differentiated positions within these kinship systems, accompanied with different rights and obligations that organize the access to property. Maasai men's property rights are often defined as ownership rights, and Maasai women's property rights as 'use-rights.' Women's access to family property is mediated by their relationship with their fathers, husbands, or sons as property owners.

Maasai women's property rights do not only concern normative relations, but are essentially about social relationships. When looking at Maasai actual property relationships we explored how other types of rights and social relationships such as marriage and inheritance law or marital and intergenerational relations are important for the determination and actualization of Maasai women's property rights at the customary level. Marriage and inheritance are two areas where access to property is obtained. Through life histories we illustrated how marriage and inheritance construct the channels by which rights over property, loyalty and services will flow among groups, and are therefore often arranged by the head of the family or clan. These life events determine how property and rights are distributed, and are also the areas where Maasai women's access to property rights are (and can be) contested.

The Lutheran Church plays an important role in many areas in the lives' of Maasai women, and is one of several actors who start to influence (and contest) the conceptions and rules concerning family and marriage, and takes part in the construction of Maasai women's property rights. Interlegality therefore not only takes place in legal institutions, but also at level of cultural ideologies and social relations that construct Maasai customary law.

Through experiences of marriage and inheritance disputes of Maria and Beatrice, we explored the political influence Maasai women have at the clan level and the ways in which their agency can be exercised. While women are generally not allowed to join clan meetings, they have the right to take an issue to the clan leader, and have the opportunity to influence the actions and decisions made in a clan meeting. However, according to many women and men, if a woman wants to solve a dispute she has to ask her husband, brother, adult son or

cousin to represent her, as Beatrice did. However, education starts to give women a better negotiating position within the customary systems itself. Several women and men addressed that when girls are educated they ‘speak up’. In addition, girls with education are also ascribed with a different position within the family and clan, which gives them more influence in decision-making processes. However, women have often obtained less education, in contrast with men. Yohana, for example, expressed that when her father decided for to marry, she did not get the opportunity to finish school. This shows how lack in decision-making in all domains, causes an accumulation of disadvantages that influences the construction and actualization of Maasai women’s property rights.

When women claim their property rights, they contest concepts of gender and property relations. This means that Maasai women’s property disputes are in itself part of the construction of Maasai women’s property rights. The disputes and stories of Agness’ sister, Margaret and Helena have illustrated that when Maasai women fail to claim property rights at customary legal orders of the family or clan, they can resort to other legal institutions, such as Village Councils, Ward Tribunals, Primary Courts, and District Land and Housing Tribunals. We paid special attention to Maasai women’s property dispute settlement at the Ward Tribunal, which is a hybrid legal order that shares elements of both state and non-state systems that are formally recognized by the state and integrated in the formal legal system. Here it has been illustrated how Ward Tribunal members use their knowledge of Maasai customary law and the local community, and combine this with national law’s and international law’s norm of equal property rights for men and women. This shows how cultural ideologies and practices of the Maasai in Tanzania made a way into Tanzania’s formal judicial system. This provided evidence how Tanzania’s judicial system, that had the power to define what is legitimately acceptable, can be open for difference, which shows interlegality is a two-way street. These processes of reversed interlegality have shown that customary, national, and international law are interrelated and thus cannot be seen or treated as separate entities, where gender and property relations and conceptions cannot be seen separately from these processes of interlegality. These processes have shown how the Maasai hierarchical gender and property relations get contested at the Ward Tribunal, and take part in the construction of Maasai women’s property rights.

However, while in theory one may expect that women’s access to property rights would increase when she will claim her rights at one of the legal orders that maintain gender equal laws, practices show how this is not a logical sequence. Property laws do not always reveal

the actual practice of property rights, and customary norms may have a stronger legitimacy than state law. Hierarchical gender and property relations often cause that Maasai women experience difficulties claiming their right to property. Women's lack in customary decision-making processes is present in all social, political and economic domains that govern property, and causes an accumulation of factors that weakens women's position not only within the family or clan, but also beyond. Maasai women's lack of education often causes that they do not have enough knowledge about Tanzania's judicial system, and sometimes do not know their own rights. When Maasai women *do* have this knowledge, it often takes a lot of courage to go to a court, since women often are afraid to be punished, isolated, cursed, or feel inferior to men. Helena's and Margaret's trials have illustrated that even when Maasai women step outside the customary legal orders of the family and clan, and resort to legal orders that contests the hierarchical Maasai gender and property relations and maintain that women should have ownership rights, in practice the hierarchical gender and property relations cause that Maasai women still experience difficulties when claiming their rights. Margaret's dispute illustrated how the clan of her deceased husband punished her when she filed a case at a Ward Tribunal and how she was pressured to agree to settle the dispute within the family where she did not get her right to property. Helena's dispute illustrated that Maasai women's access to justice is often obstructed because of men and women's unequal access to resources, where Helena's husband who had more financial resources than her, corrupted the court clerk in his favour.

In addition, Maasai women's access to justice can be obstructed due to lack of knowledge of many local judges. Ward Tribunal members often lack legal knowledge, causing that they often do not know which laws they have to apply and how to educate people about their right to appeal. The former causes that judgments might be reached that are not 'fair'. The latter causes that Maasai women do not always know that when they fail to claim their right at lower courts, that they can appeal to a higher court, where they have an additional chance to successfully claim their rights. However, because women have limited access financial resources, access to higher courts is often not reachable. Even though property laws are gender equal, the actual practice of property rights relations shows how women have less ability and powers in order to access justice. Gendered power relationships play an essential part in the determination and actualization of rights. Any approach to justice therefore needs to take into consideration how gender comes into play that is, how women's everyday experience of law and justice simultaneously shapes patterns of social, political and

economic and legal endowments. Both women and men often face similar challenges in accessing justice such as geographic distance, poor infrastructure, and financial recourses. However, women often experience additional challenges.

Human rights NGOs recognized these invisible powers embedded in customary norms, and challenge these gendered power relations in order to create greater gender justice. Thus, Human rights NGOs take also part in these processes of interlegality, where they function as 'intermediaries' or 'translators' between human right norms, state law and customary law, where they are reaching for solutions that enhance gender equality. NGOs are important actors, who directly take part in the construction of Maasai women's property rights. They do this by the promotion of human rights, and by working to create a society where gender equality is the norm; a society where Maasai women have the actual right to own property. In order to achieve this NGOs give education and legal trainings to Maasai women, the whole Maasai community, and also to legal institutions and actors, such as Village and Ward Tribunal members. This creates legal knowledge for all these individuals, groups, institutions and actors. It has been illustrated, for example, that Ward Tribunal members get trained about the laws they have to apply, thereby improving local dispute settlement, increasing the chance that fair judgments are delivered. Education is by many perceived as an effective tool, not only to increase women's intellectual property, but also physical property. Education increases legal consciousness, which provides women knowledge how to actualize their rights at different legal orders. In addition, NGOs provide legal aid to women, which enhance their access to justice. It has been illustrated, for example, how TAWLA provided legal aid to Margaret by helping her to appeal to the District Land and Housing Tribunal, and by representing her at this court, thereby helping her to claim her right to property, and therefore, enhancing Margaret's access to justice.

We experienced that disputes concerning Maasai women's property rights and the interaction with different ideologies, conceptions, and actors, are cultural contestations concerning gender, family, marriage, and property relations, and more generally about the variety of different visions of identity present in the Maasai society. Gender ideologies, social relations and different levels of Maasai women's legal consciousness are intrinsically part of access to justice. The construction of Maasai women's property rights eventually take place in a setting where multiple ideas about right and wrong constantly are negotiated and challenged, which all take part in the world of interlegality. We hope by studying Maasai women's property rights we generated more knowledge about dynamics at play between

contemporary contexts of multiple legal orders, interlegality and the struggles for gender justice.

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## APPENDIX I: Summaries

### A. Summary in English

#### *Legal Pluralities and Interlegality in Tanzania: Maasai Women's Property Rights*

This thesis concerns an ethnographic research on Maasai women's property rights in Arusha, Tanzania. The Maasai form one of Tanzania's many different tribal groups, who live together in a country composed of many other ethnic, religious and tribal groups; in which many different legal orders are intertwined in most complex ways. For Maasai women the coexistence of multiple legal orders is a social fact. Different legal discourses circulate and have been engaged, appropriated, challenged and reworked in the Maasai community, and took, and still take part in the construction of Maasai women's property rights. Within the Maasai customary law, the right to property is nested in a bundle of rights and obligations among family members from past, present and future generations. Property is perceived and understood as belonging to the family or clan, where members have access to family property. The responsibilities and rights individuals and groups have to each other concerning property are structured along kinship organizations. Men and women, the young and the elderly have very differentiated positions within these kinship systems, accompanied with different rights and obligations that organize the access to property. Women hold use-rights to family property, which are mediated by their father, husband, or sons, identified as property owners.

The conceptual analysis of multiple legal orders we employed in our analysis of Maasai women's property rights acknowledges both that a legal system recognizes more than one system of law and that there are normative systems other than the formal law that affect and control Maasai women's lives. This thesis demonstrates that multiple legal orders, concerning customary, regional, national, and international laws, continually overlap, cross and influence each other, and that property rights are always in to question, subject to alternative and sometimes-competing interpretations. De Sousa Santos' (2002) conception of 'interlegality' illustrates how different legal orders and different conceptions of gender and property cannot be seen as separate entities, but continually interact, merge and change, thereby creating new hybrid legal orders, which continually cross the minds and lives of Maasai women. Interlegality is a useful concept to focus on how Maasai customary law as a result of assimilatory pressures had taken up legal philosophies and practices of national laws.

In addition, this thesis also applies the concept on reversed interlegality; how cultural ideologies and practices of the Maasai in Tanzania made a way into the formal Tanzanian legal system. This provided evidence how Tanzania's state legal system, that had the power to define what is legitimately acceptable, can be open for difference, which shows that interlegality is a two-way street.

The co-existence of multiple legal orders is tightly connected with issues of gender equality in the Tanzanian context. The actual character of the coexistence of multiple legal orders influences the way people experience justice in their lives. For women in particular, the intersection of state legal systems, customary laws, and local power dynamics create processes that affect their ability to access their rights. Multiple legal orders may, for example, reinforce structures of gender inequality, as happened when colonial forces and later Tanzania's first president codified Maasai customary law. These events reinforced patrilineal property and inheritance systems, and marginalized Maasai women's authority within and outside the community. Contemporary reforms of codified customary law tend to focus on greater gender equity, by prohibiting discriminatory customary laws. In a situation of multiple legal orders alternative procedural opportunities to pursue claims may be available, and some actors may be able to claim their rights at legal forums, which increases the chance for a positive outcome.

In this thesis, the disputes and stories of Maasai women, illustrate that when Maasai women fail to claim property rights at customary legal orders of the family or clan, they can resort to other legal institutions, such as Village Councils, Ward Tribunals, Primary Courts, and District Land and Housing Tribunals. We focussed on how Maasai women's property rights relationships are formed, defined and reformed in the course of the dispute, and explore and compare the ways in which Maasai women made resort to legal and quasi-legal norms, instruments, processes and discourses in order to obtain justice. We paid special attention to Maasai women's property dispute settlement at the Ward Tribunal, which is a hybrid legal order that shares elements of both state and non-state systems that are formally recognized by the state and integrated in the formal legal system. Ward Tribunal members use both their knowledge of Maasai customary law and the local community, and combine this with national law's and international law's norm of equal property rights for men and women, thereby contesting discriminatory Maasai gender and property relations and influencing Maasai women's access to justice.

However, this thesis argued that initiatives towards gender equity overestimate the potential of national law as a tool for empowerment, and underestimate the role customary norms play in livelihood, security and identity. While the national laws hold principles of gender equality, plurality of available norms decreases the power of national law. Many informants have argued that even though formal law may guarantee principles of gender equality, women are still subject to various potentially discriminatory norms that pose difficulties for Maasai women in claiming their rights to property. Analyzing property rights without involving gender in rights, obligations, and access to resources leads to an incomplete understanding of property relations.

Empirical evidence on the construction of Maasai women's property rights in this setting of interlegality showed that it is important to look beyond the domain of legal institutions, and recognize that rights are expressed in cultural ideologies, and philosophies; thereby understanding that rights are manifested in many forms, which cannot be understood without the context of culture. People are bearers of culture *and* of rights, which constantly influence each other. By tracing the cultural life of rights we made visible how Maasai women's property rights are questioned, changed, and (re)shaped as they circulate through multiple and specific institutions on different scales. Empirically, Maasai women's property rights find expression in a wide variety of social phenomena, in cultural ideologies, legal institutions, in concrete relationships and social practises.

We argued that disputes concerning Maasai women's property rights and the interaction with different ideologies, conceptions, and actors, are cultural contestations concerning gender, family, marriage, and property relations, and more generally about the variety of different visions of identity present in the Maasai society. The construction of Maasai women's property rights eventually take place in a setting where multiple ideas about right and wrong constantly are negotiated and challenged, which all take part in the world of interlegality.

## B. Summary in Kiswahili

Translated by Ngeeyan

### *Sheria nyingi na Uhalali wake Tanzania: Haki za kumiliki Mali kwa Wanawake wa kimasai*

Andiko hili inahusisha utafiti wa watu juu ya haki ya kumiliki mali kwa wanawake wa Kimasai huko Arusha, Tanzania. Wamasai ni moja ya makundi ya makabila mbalimbali ya Watanzani ambao wanaishi pamoja katika nchi inayojumuisha makabila mengi yenye tofauti pia kidini; ambayo maagizo mengi yenye tofauti za kisheria hutolewa kwa njia nyingi tata. Kwa Wamasai wengi mshikamano wa amri nyingi za kisheria ni kweli sehemu ya jamii. Sheria mbalimbali zipo katika jamii na zinatumika na zimesambaa katika kwa wanaohusika inapotokea changamoto na kufanyiwa kazi katika jamii ya kimasai, na bado zinafanya kazi kwa swala zima la haki ya kumiliki mali kwa wanawake wa kimasai. Ndani ya sheria za kimilaa kimasai, haki ya kumiliki mali ni sehemu ya haki na wajibu kati wa familia kutoka kizazi cha zamani, kizazi cha sasa na cha siku zijazo. Mali hueleweka kama inamilikiwa na familia au ukoo, ambapo wajumbe wote wana haki na mali ya familia. Wajibu na haki za watu binafsi na makundi kila mmoja wanawajibika kwa wengine, kuhusu mali ni umililiki ujamaa kwa ushirika. Wanaume na wanawake, vijana na wazee wana nafasi tofauti sana ndani ya mifumo ya ujamaa, ikifuatana na haki mbalimbali na wajibu ambayo unaweka wazi upatikanaji wa mali. Wanawake wana haki ya kutumia mali ya familia.

Uchambuzi wa dhana ya amri nyingi za kisheria katika uchambuzi wetu wa haki za kumiliki mali kwa wanawake ambapo inatambua kwamba mifumo ya kisheria inatambua mfumo zaidi ya moja ya sheria na kuwa kuna mifumo inayozidi kuongezeka tofauti na sheria rasmi inayoathiri na kudhibiti maisha ya wanawake wa kimasai. Andiko hili inaonyesha kwamba amri nyingi za kisheria, kimila za kitaifa, na na sheria za kimataifa daima huingiliana, na mara nyingi zinakuwa na uhusiano flani flani kwa kila mmoja, na kwamba haki za mali mara zinakuwa na maswali mengi juu ya tafsiri mbadala na tafsiri ya ushindani. De Sousa Santos '(2002) Mtazamo wa wingi wa sheria unavyoeleza jinsi gani amri mbalimbali ya kisheria na dhana tofauti ya jinsia Na mali haiwezi kuonekana kama tofauti, ila daima kiutendaji, kuunganisha na kubadilika, na hivyo kujenga amri mpya ya mseto kisheria, ambayo daima kuvuka akili na maisha ya wanawake wa Kimasai. Mwingiliano wa kisheria ni dhana muhimu kwa kuzingatia jinsi sheria za kimila za kimasai kama matokeo ya ufanano shinikizo walishachukuwa falsafa ya kisheria na utumiaji wa sheria hizo kitaifa. Andiko hili

pia inatumia dhana ya kuachwa kwa mwingiliano wa kisheria; jinsi itikadi ya utamaduni na desturi za wa Kimasai Tanzania ilivyotengeneza njia katika mifumo rasimi ya kisheria Tanzania. Hii itashuhudia jinsi hali ya mifumo ya kisheria Tanzania ambapo inauwezo wa kufafanua uhalali wa kukubaliwa na inafungua utofauti ambapo inaonyesha kwamba mwingiliano wa kisheria ni njia mbili tofauti.

Ushirikiano wa amri nyingi za kisheria ina uhusiano mkubwa na na masuala ya usawa ya jinsia na usawa katika mazingira ya Tanzania. Hali halisi ya mshikamano wa amri nyingi za kisheria hushawishi njia ya watu wavyozoea haki katika maisha yao. Kwamfano wanawake mwingiliano wa mifumo ya hali ya kisheria, sheria za kimila, na mahusiano ya kimamlaka ndani hujenga taratibu ambazo huathiri uwezo wa kupata haki zao. Amri nyingi za ya kisheria kwamfano huamrisha miundo ya usawa wa kijinsia, kama ilivyotokea wakati ukoloni na baadaye Tanzania iliramisha sheria zote za kimila ikwepo zile za kimasai. na hizo zilishinikiza mifumo ya umiliki wa mali kwa upande wa baba na urithi wa mali, na unyanyasaji wa wanawake wa kimaasi ndani na nje ya jamii. Mageuzi ya kisasa ya sheria zilizorasimisha mila huwa na lengo zaidi la kuweka usawa wa jinsia, na kuzuia sheria za kibaguzi. Katika hali ya amri za kisheria njia mbadala ya kisheria ya kuweza kudai madai hutokea kupatikana na baadhi ya watu wanaweza kudai haki zao katika mfumo rasim wa kisheria. Ambapo imeongeza nafasi ya ushindi na matokea mazuri.

Katika andiko hili, migogoro na hadithi za wanawake wa Kimasai huonyesha kwamba kama wanawake wa Kimasai wakishindwa kudai haki zao za kumiliki mali kwa sheria za kimila katika familia au ukoo, wanaweza wakaenda katika taasisi nyingine za kisheria, kama vile Halmashauri za Vijiji, mabaraza ya Kata, mahakama za mwanzo , Mabaraza ya Ardhi na nyumba ya Wilaya. Tunalenga katika jinsi gani uhusiano haki za kumiliki mali kwa wanawake wa kimasai inavyoelezwa na marekebisho katika suala la mwenendo wa mgogoro, na kuchunguza na kulinganisha njia ambazo wanawake wa Kimasai wavyopitia njia mbalimbali za kishiria na njia za usuluhishi, vyombo vinavyohusika na taratibu za kupata haki. Tutaweka msisitizo maalum katika sehemu ya kutatua migogoro kwa wanawake wa kimasai katika ngazi ya mabaraza ya Kata, ambayo utaratibu mseto wa kisheria kwakutumia mifumo rasmi na mifumo isiyo rasimi ambayo hutambuliwa kisheria. Wajumbe wa baraza la Kata wanatumia maarifa yao wenyewe ya sheria za kimila na ya jamii, na kuchanganya hili na sheria za kitaifa na sheria za kimataifa zinazohusu haki ya kumiliki mali sawa kwa wanaume na wanawake, na hivyo kuzuia baadhi ya mila gandamizi za kimasai na ushawishi upatikanaji wa haki za wanawake wa Kimaasai .

Hata hivyo andiko hii inasema kuwa mipango kuelekea kwenye usawa wa kijinsia unakadiriwa kuwa uwezo wa sheria za kitaifa kama vyombo vya uwezesaji, na inadidimiza jukumu la sheria za kimila katika maisha, usalama na utambulisho. Wakati sheria za kitaifa inasisitiza kanuni za usawa wa kijinsia, wingi wa kanuni inapunguza nguvu ya sheria za nchi. Habari nyingi ziamesema kuwa hata kama sheria rasmi inaweza kuhakikisha kanuni za usawa wa kijinsia, wanawake bado wako chini ya kanuni mbalimbali zenye uwezekano wa kuwa za kibaguzi ambazo zinasababisha matatizo kwa wanawake wa Kimasai katika kudai haki zao za kumiliki mali. Kwa kuchambua haki za mali bila kuwashirikisha jinsia katika haki, majukumu, na upatikanaji wa rasilimali inaongza kutofahamu wa masuala ya mali.

Ushahidi wa kisayansi juu ya ujenzi wa haki za kumiliki mali kwa wanawake wa kimasai mali katika mazingira ya hii ya mwingiliano wa kisheria inaonyesha kuwa ni muhimu kwa kuangalia zaidi uwanja wa taasisi za sheria, na kutambua kwamba haki imeelezwa katika itikadi za kitamaduni, na falsafa; hivyo kuelewa kuwa haki hizo zimewekwa katika aina mbalimbali ambayo hayawezi kueleweka bila ya mazingira ya utamaduni. Watu viongozi wa utamaduni na haki, ambayo mara kwa mara hushawishi kila mmoja. Na kufuatilia maisha ya utamaduni na haki tulifanya kuonyesha jinsi haki za mali kwa wanawake wa Kimasai inavyoleta maswali, badilisho na kuichonga kupeleka mwonekano mwingine kwa kusambaa kupitia taasisi nyingi maalum. Kisayansi haki za mali za wanawake wa kimasai inapata maelezo katika aina mbalimbali ya matukio ya kijamii, katika itikadi za kitamaduni, taasisi za kisheria, katika mahusiano halisi na mazoea ya kijamii.

Tulisema kuwa migogoro kuhusu haki za kumiliki mali za wanawake wa kimasai na mwingiliano na itikadi mbalimbali, mawazo na kiutendaji, ni uhusiano wa tamaduni kuhusu mahusiano ya jinsia, familia, ndoa, na mali, na kwa ujumla zaidi juu ya aina ya maono mbalimbali ya utambulisho a kisasa katika jamii ya Wamasai. Ujenzi wa haki za kumiliki mali kwa wanawake wa kimasai mara nyingi inafanyika hatimaye kuchukua nafasi katika mazingira ambapo mawazo kuhusu haki na makosa mara kwa mara ni mazungumzo na changamoto, ambayo yote kuchukua sehemu katika ulimwengu wa mwingiliano wa kisheria.



