

**CHILD-WIDOWS SILENCED AND UNHEARD:
A NEGLECTED HUMAN RIGHTS AGENDA IN TANZANIA**

BY

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DECLARATION

I hereby declare that this thesis has been composed by me and, apart from due acknowledgments, it is entirely my own work. The material in this thesis has not been submitted for any other degree or professional qualification at this or any other University.

DEDICATION

For my husband James and my children Simon-Gwabo, Juliana-Minza, Esther-Misoji and Jessica-Magoke

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ABSTRACT

It is commonly assumed that widows are adult women; hence, there has been a lack of research on violations of child-widows' inheritance rights. This study explores the circumstances under which the girl-child encounters early marriage and is then widowed under a plural legal system; and searches for solutions. It examines legal pluralism in Tanzania and its relevancy in this study and applies a qualitative grounded approach in analysing the interplay between the law and the realities of child-widows' lives.

Child-widowhood is one of the worst repercussions of child marriage in a variety of situations and contexts due to their age, gender and immaturity. The study reveals that most customary laws of inheritance and customs discriminate against child-widows. They face profound violations of their human rights in coping with widowhood problems. Access to courts is difficult, so their problems are mainly solved at clan level. Ironically, customary norms, such as the care of widows have been manipulated; widows are often left with no inheritance. The harm inflicted by customary law includes impoverishment, violence, the lack of education and the risk of HIV infection.

The study identifies features for and against the favourable realisation of gender equality for child-widows through local norms and practices. Although there are significant obstacles, local norms are still central in facilitating or constraining people's abilities to claim or exercise whatever rights are available to them. Thus, the study suggests possibilities of mediating customary norms through the international human rights law, using the principles of gender equality and non-discrimination. The prerequisites for this include political will and the legislative framework.

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LIST OF ABBREVIATIONS AND ACRONYMS

ACHPR	The African Charter on Peoples' Rights (The Banjul Charter)
ACRWC	African Charter on Rights and Welfare of the Child
AU	African Union
AIDS	Acquired Immune Deficiency Syndrome
Cap.	Chapter of the Laws
CBO	Community Based Organisation
CDP	Child Development Policy
CEDAW	Committee on the Elimination of All Forms of Discrimination Against Women
CHOGM	Commonwealth Head of Government Meeting
CRC	Convention on the Rights of the Child
DUP	Dar es Salaam University Press
DSM	Dar es Salaam
EWD	Empowering Widows in Development
FES	Friedrich Ebert Stiftung [Foundation]
FAWE	Forum for African Women Educationalists.
FGM	Female Genital Mutilation
GN	Government Notice
HCD	High Court Digest
HIV	Human Immunodeficiency Virus
ICECSR	International Covenant on Economic Cultural and Social Rights
ICCPR	International Covenant on Civil and Political Rights
JALO	Judicature and Application of Law Ordinance.
KPC	Kizumbi Primary Court
LHRC	Legal and Human Rights Centre.
LMA	Law of Marriage Act
LRC	Law Reports of Commonwealth
LRT	Law Report of Tanzania
MPC	Mvomero Primary Court
NGO	Non Governmental Organisation
SOSPA	Sexual Offences Special Provision Act
SUWATA	<i>Shirika la Uchumi la Wanawake Tanzania</i> (Women's Union Economic Wing)
TAMWA	Tanzania Media Women's Association

TUPC	Tarime Urban Primary Court
TAWLA	Tanzania Women Lawyers Association
TGNP.	Tanzania Gender Networking Programme
UMATI	<i>Uzazi wa Mpango na Malezi Tanzania.</i> [Family Planning and Child Spacing Unit]
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNGA	United Nations General Assembly
UNICEF	United Nations International Children’s Emergency Fund
UNIFEM	United Nations Development Fund for Women
UWT	<i>Umoja wa Wanawake wa Tanzania.</i> [Union of Tanzanian Women]
VEO	Village Education Officer
WHO	World Health Organisation
WiLDAF	Women in Law and Development in Africa
WLAC	Women’s Legal Aid Centre
WLSA	Women and Law in Southern Africa

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CHAPTER ONE

INTRODUCTION: WHY A STUDY ABOUT CHILD-WIDOWS IN TANZANIA?

We wish to draw the attention of governments to one vast category of women, struggling to survive across regions and cultures, who have been utterly neglected.... They are the poorest of the poor, the most oppressed, violated and invisible and their voices are the most unheard. We are speaking of widows.... Millions of widows are young mothers, some still children, all subject to extreme discriminatory practices and victims of neglect by governments. The gross human rights violations they experience ... have implications for the whole of society and development in general which cannot be ignored. Their poverty, often due to lack of inheritance and land rights or social support systems aggravate their vulnerability to violence.¹

Despite the 'true' model of reality and campaigns on widows' rights generally (as noted above) the child-widows' agenda is neglected. There is a misconception that widows are adults or elderly women (Owen 1996). As a result there is lack of research on the plight of child-widows in Tanzania.² This work presents a human rights discourse on the plight of child-widows. This matter is highly significant as due to their age, gender and immaturity, child-widows face multiple difficulties in coping with gross human rights violations.

Widows generally in Tanzania, as in many parts globally, are faced with discrimination on a regular basis. Most widows suffer a *prima facie* discrimination under customary laws of inheritance. The Local Customary Law (Declaration No.4) Order, 1963, (Government Notice No.436) completely bars widows from inheriting land from their deceased husbands³ whereas the law condones 'widow-

¹ Statement on Widowhood presented to the UN General Assembly by Owen and Longwe (Women Action 2000).

² Also, there is limited information elsewhere.

³ Theoretically, widows have the right to land until they re-marry or die; in practice, widows are often chased away from the land. Yet, land as a resource is the major means of production; approximately 98% of rural women classified as economically active are engaged in agriculture for their survival within families. Women in Tanzania produce 70 percent of the food crops. Notwithstanding this, their access to land is severely limited by social and traditional factors (FAO 1995; The National Poverty Eradication Strategy 1998:5). Most women generally do not have the

inheritance' by the deceased's male relatives (Mhoja 1997). The consequences of such discrimination against widows are severe and constitute infringements of their human rights. The harm inflicted by gender-biased customary laws and customs includes impoverishment, violence, ill-health, sexual abuse, ostracism and psychological damage. The discriminatory consequences have become magnified as the scourge of AIDS (see Appendix:1) has greatly increased the number of widows in Tanzania (ibid), including child-widows. Indeed, some child-widows⁴ have died of the disease.

Furthermore, child marriage as a human rights issue is currently of concern to scholars and activists worldwide as it affects millions of girls globally.⁵ In response, the United Nations Children's Fund (UNICEF) initiated a global campaign in 2001 to counteract the widespread phenomenon of child marriage. They were concerned about violations of human rights and the severe repercussions on millions of girls globally (UNICEF 2001a).⁶ These can be quite traumatic particularly when girls become child-widows. Their situation is worse if they have their own children while they themselves are still children and immature (Owen 1996; UNICEF 2005). Indeed, one of the worst repercussions of child marriage is child-widows.

Unfortunately, even the UNICEF campaign has neglected the phenomenon of child-widowhood. Yet, because child-widows are children their problems should have a central place in all children's rights' strategies.

means to buy land; this is why inheritance is one of the alternative avenues for acquiring land (Benschop 2002).

⁴ It is difficult to obtain the number of widows who have died with AIDS as most 'die in their home villages unrecorded; do not test for HIV; or common infections which are related to HIV diseases are not recognized by doctors' (<http://www.ded-tanzania.de/hiv aids/page5.html>).

⁵ It is pervasive in parts of South Asia and Africa; normally, early marriages are forced or arranged (Owen 1996; Bunting 1999; UNICEF 2001a).

⁶ Unfortunately, there has been virtually no attempt to examine child marriage as a human rights violation in and of itself (UNICEF 2001a).

MOTIVATION FOR THE STUDY

Multiple factors including child-widows' vulnerability and being at risk as children in this gendered world prompted the author to investigate the matter. Specifically, three events aroused the author's interests in the child-widows' human rights problem.

First, in the 1990s, the motivation had been instigated by my extensive experience of working at the Women's Legal Aid Centre (WLAC).⁷ During numerous legal counselling sessions with clients I was touched by widows' problems. One of the many harmful myths frequently alluded to by widows at the Centre is that 'a widow is thought to be responsible for her husband's death'. Some of my clients were young widows and during our interactions I noticed their uncertainty in deciding what was to be done. However, many succeeded in the pursuit of their claims with the Centre's assistance.

A remarkable example is that of Flora Humbo whom I represented at the Kisutu Resident Magistrate's Court in Dar es Salaam (DSM):

Flora's testimony: Some of my in-laws accused me of bewitching their son/brother. I was very sad and cried all night, requesting that I go back to DSM with my children. My father-in-law insisted on staying with the children and didn't allow me to take my children. It was very painful to be deprived of my right to custody of them; I was isolated, frustrated and depressed. But when I arrived in DSM I found that my father-in-law had locked the house so that I could have no access to it. It was a terrible day. I cried, as I was empty handed, insecure and powerless. I was advised by some people to visit the WLAC. Through WLAC's legal representation in court I was able to take back my children, some of the property and the unfinished house (WLAC 1998:5).

Further, as a trainer, I developed an interest in inheritance laws and human rights. In the course of preparing a manual for training, we faced problems related to the availability of information on different theories of widows' rights due to societal

⁷ The then SUWATA Legal Aid Scheme for Women, established in 1989.

changes. Research on widows' status was conducted in 1994 in collaboration with the Friedrich Ebert Foundation (FES). This revealed that widows are among the most disadvantaged groups in Tanzania because of discriminatory customs, as well as anachronistic customary and religious inheritance laws (Mhoja 1995). However, the survey lacked adequate evidence because of limited time and funding. Intense discussions with widows in workshops planted the first seed of my interest in young widows' rights.

Second, 'A World of Widows', a book by Margaret Owen (1996), inspired me further to investigate child-widows and strengthened perception of the importance of this topic.

I attended the first International Widows' Conference (London)⁸ in January 2001, which established the great need for basic research on child-widows, as their problems are hidden. I shared the child-widows' topic with activists in my organisation, although the majority indicated that it was not a priority because the number of child-widows was not alarming, I was applauded for my interest.

Third, my interest intensified when I discussed the matter with Dr. Mukoyogo⁹, who revealed during his consultancy work on HIV/AIDS policy that because of early marriage (in relation to the scourge of HIV/AIDS), the existence of child-widows is inevitable. Subsequently, my interest was further consolidated when colleagues who visited Mvuha¹⁰ teased me: 'We have seen Monica's child-widows at Mvuha'. Since the voices of these children are unheard, it is my aim to bridge this gap; society must hear this unvoiced cry.

The **objective** of this study is to describe circumstances under which female children encounter early marriage and are then widowed under a plural legal

⁸ Owen was the core organiser.

⁹ He was then Dean of the Faculty of Law at the Open University of Tanzania, DSM.

¹⁰ WLAC advocates helped in a follow-up mission on three girls who were forcefully mutilated at Sangasanga-Morogoro (WLAC 2001:7).

system¹¹; and to search for solutions to these problems at local, national and international levels. The specific research objectives are to:

1. Provide a framework on how girl-children's rights to participation during early-marriage and inheritance processes work in complex relationships in different socio-cultural contexts and at different levels of law and other normative orders.

2. Examine the legal rights of inheritance available to child-widows in terms of coexisting statutory, Islamic, customary laws and normative orders, and the ways by which the laws diminish or protect child-widows.

3. Gain insight into the social, economic and cultural conditions which child-widows experience under the given legal framework and how their inheritance problems can be solved under these circumstances.

4. Contribute to the value of social fields in our legal system through investigation of the impact of out-of-court forums on the status of child-widows in inheritance matters.

5. Examine the human rights applicable to child-widows and the role they may play in alleviating the situation using the principles of equality and non-discrimination.

JUSTIFICATION FOR THE STUDY

The main justification for this research is the neglected human rights of child-widows. Although there are a number of child-widows, the number is not yet alarming. The fact that the number of child-widows is not as large as in other categories, such as orphans, does not lessen the need to investigate its causes and solutions. The gravity of the problem must be judged by the social injury caused to

¹¹ Tanzania has plural systems of law that are composed of imported English substantive and procedural law, as well as religious and customary laws.

girl-children, rather than by its frequency. Child-widows' rights are frequently violated within the most treasured institution of society – the family or the clan. These are compelling reasons for analysing the plight of child-widows.

It is the goal of every society to protect children irrespective of race, gender or social class, for children by their very nature are vulnerable, inexperienced, easily exploited and abused (Kijo-Bisimba 1994; Rwezaura 2000). Children are generally less able to attract attention to violations of their rights because they are disenfranchised and may lack the verbal skills or necessary 'networks' to make their protests heard (Bueren 1995). They are unable to protect themselves from the superior power of adults or from socio-economic, political and other conditions over which they have limited or no control. The abuses, neglect and grave injustices suffered by children have led to an international movement to define and protect their rights under the United Nations Convention on the Rights of the Child (UNCRC) (John 1996).¹²

Although the status of children's rights globally is still not impressive, especially in developing countries, there is a growing awareness of its importance (Franklin 2002). Unfortunately, the UNCRC does not acknowledge the specific problems of girls when they become child-wives or child-widows, as, once a child gets married, she ceases to be categorized as a child. So, even during the 2001 Children's Summit, the problem of child-widows was not on the agenda.¹³ Consequently, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, does not adequately address widows' rights (EWD 2001:13:16). Likewise, the African Charter on the Rights and Welfare of the Child, 1991, (ACRWC), which is supposed to analyse children's rights in an African context, does not mention or address child-widows.

¹² The UNCRC has met with a high level of support; all nations (except Somalia and the USA), have ratified it. State Parties are now, with varying degrees of vigour, monitoring the implementation of UNCRC. It has, therefore, served to put childhood issues on many agendas globally (John 1996:10).

¹³ The issue of child-widows has not yet appeared on the UN agenda, highlighting the need for critical analysis at international level.

Further, on the policy level, the Child Development Policy (CDP 1996) does not mention or acknowledge the status of child-widows. The CDP only highlights the problem of early marriage and gender discrimination against female children. Subsequently, there is neither a policy nor a programme targeting child-widows. My research therefore, will be an important contribution to policy makers and law reform.

The second justification is that the law governing inheritance matters is diverse and inadequate with regard to the protection of widows. Also, the existence of child-widows is contributed to by laws which permit child marriages. Importantly, the study investigates to what extent Tanzanian law and legal institutions are sensitive to the needs of child-widows, and whether they relegate them to an inferior socio-economic status and thereby make them more vulnerable.

Third, there is no literature on the plight of child widowhood. A study of this neglected category of widows and solutions to the problem is needed, as early marriage is still the practice. Therefore, my work could become an important original empirical study in the field of child-widows' human rights in Tanzania.

Although international human rights treaties do not adequately address the issue of child-widows they do provide principles of gender equality and non-discrimination. The prohibitions of discrimination under the CEDAW (Article 1), for instance, do proscribe all distinctions, exclusions or restrictions made on the basis of sex, which are disproportionate and unjustifiable and thus impair women's enjoyment of their human rights.

Because the customary law of inheritance makes distinctions that impair child-widows' rights in many ways, they constitute a clear violation of the principles. Thus, Tanzania has an obligation based on international and regional commitments

to guarantee child-widows' equality in all aspects of life. Much cynicism about the Conventions exists, especially as they have not been incorporated into domestic legislation (Mhoja 1997). But the study shows some examples of the use of the Conventions in spite of this, e.g., court judgements on the basis of the principle of non-discrimination. However, the challenge facing the human rights paradigm is how to ensure that child-widows enjoy the same rights within their societies, 'while respecting the cultural autonomy of African communities' (An-Na'im 2002:1).

This study involves a discussion of the lives of specific child-wives and child-widows and I have, through their own voices (see Appendix 14), set out detailed accounts of their human rights violations. In addition, access to justice and the impact of the out-of-court forums¹⁴ on the status of child-widows is investigated as their problems are mainly solved at clan level.

The study reveals that most customary laws of inheritance and local norms discriminate against child-widows. They face profound violations of their human rights in coping with widowhood problems. In this regard, the role of the international human rights law in mediating the problem is explored.¹⁵

Significantly, the main thesis is primarily about the human rights discourse on the dreadful plight of child-widows and how their rights should be promoted and protected under the plural legal system. The major argument is that under local norms there are features for and against the favourable realisation of gender equality for child-widows through local norms and practices. Although there are significant obstacles, local norms are still central in facilitating or constraining people's abilities to claim or exercise whatever rights are available to them. Thus, the study provides multiple recommendations; these include the

¹⁴The forums that were investigated include clan *baraza* (council) and social welfare offices.

¹⁵The study reveals that expanding the scope of human rights practice to include other informal forums that it has not conventionally targeted (such as the clan *baraza*, whose work plays a fundamental role in articulating cultural norms which impact on child-widows directly at the grassroots level) is vital.

possibility of mediating customary norms through the international human rights law, by using the principles of gender equality and non-discrimination.

DEFINITION AND SCOPE

Who is a widow?

A major problem for researchers in Africa is how to define widowhood. 'The way in which a woman who has lost a partner views herself and how she is viewed by her community has a bearing on whether she is a widow or not' (Owen 1996:3). A widow, despite considering herself to be the formal wife of a deceased husband, could be disowned by her in-laws. Various situations painful to a bereaved woman can arise: for example, it is common for a widow attending her husband's funeral to find that other women are present with their children - of whom she had no previous knowledge - claiming that they are the real widows and that she has no rights (Ibid). Such confrontations are distressing and difficult to resolve, especially when the deceased's relatives support the other claimant(s). Confusion can arise when co-widows each compete for a greater share of the deceased man's property. In fact, these problems are often solved on an individual basis, from case to case. However, in many cases, widows are often reduced to poverty as a result of being evicted from their homes and having their property squandered (Rwebangira 1996; Mhoja 1995).

Reggy-Mamo (1999:4) remarks that the term 'widow' is a harsh-sounding and hurtful word. For instance, the Hebrew word for 'widow' -*almanah*- has its root in the word *alem* meaning 'unable to speak'. *Almanah* was used to refer to a widow as helpless, or exposed to oppression and harsh treatment. The word for 'widowhood' - *almenuth*- meant 'silence' and the term expressed in poetic form shows exactly the legal status of the widow in the ancient world: she was not spoken for. The Greek word for 'widow' (*chera*) comes from the Indo-European root; the '*che*' means forsaken or left empty. Consequently, the English word

'widow' is also descended from this root (Ibid).

However, in common English usage, a 'widow' is a woman whose husband has died and who has not remarried. The term 'widow', as defined in common English usage, is also understood in the same way in contemporary Tanzania and is similarly applicable in this study.

Who is a Child-wife or a Child-widow? The Definitional Problem

One of the prime tasks for this study is to define what is meant by the term 'a child' and then set forth its operational limiting parameters. The Tanzanian plural legal system consists of different sources of law, with varying definitions of the child. Under customary and Islamic laws, the age of majority is determined on the basis of attaining puberty (Omari and Mbilinyi 1997).¹⁶

The Child as a Person in Law

Under the statutory scheme of Tanzania the definition of the child is contextual. This means the definition of the child relates to the particular purpose and context of each legislative scheme.

A 'child' is a person who has not attained the apparent 'age of majority,' that is eighteen years, as defined by the Interpretation of Laws and General Clauses Act, (1972); the Age of Majority Ordinance, (Cap. 413); the Age of Majority (Citizenship Laws) Act, 1970; and the Births and Deaths Registration Ordinance, (Cap. 108).

Paradoxically, sect. 2 (1) of the Law of Marriage Act, (LMA, 1971) defines 'an infant child' to mean a child who has not attained the age of eighteen years but sets the minimum age of marriage at fifteen years. Also, for special reasons, an early marriage can be celebrated under leave of court where a girl child has reached at

¹⁶The concept of childhood is attached to human biological changes, the period of puberty being conceptualised as a status of change from childhood to adulthood. In African societies, the distinction between being a child and an adult is a cultural phenomenon. People go through certain stages in their life cycle, which involves some rituals. In anthropology, the process is called an initiation rite; childhood is a process and cannot be fixed arbitrarily at a certain age.

least the age of 14 years (Sect. 13(1) (2)). Similarly, the Sexual Offences Special Provisions Act (SOSPA, 1998) defines a girl to mean a female person less than eighteen years of age. But, sect. 5 of SOSPA allows the marriage of a girl at 15 years. The outcome of SOSPA was a campaign by activists and other stakeholders. However, the activists campaigned¹⁷ for the marriageable age to be fixed at 18 years,¹⁸ but the legislature structured it as in the LMA, 1971. It is worth noting that the legislature in making this decision attempted to strike a balance with existing cultural norms.

In contrast, sect. 2 (1) of the Adoption Ordinance (Cap 335) defines 'a child' to mean a person of less than 21 years of age, but does not include a person who is, or has been, married. The law eliminates the childhood of a girl because she is married; which means that she is not considered to be a child for the purpose of adoption.

From the above discussion, it is clear that there are competing definitions in the definition of the 'child'. The laws in Tanzania specify various age groups of persons for particular purposes. Looked at in the context of giving rights to persons within the age limits indicated, it might be argued that the element of inconsistency creates a practical problem in the application of the relevant legal provisions. A person may be considered a child in one context, and not in another. For instance, under sect. 13 of the Law of Contract Ordinance (Cap 433), a child cannot enter into a contract, but the LMA, 1971 permits a female child of 14 years to enter into marriage, which is a contract with heavy duties and obligations. Moreover, a married girl who is under the age of 18 is not allowed to vote (Kijo-Bisimba 1994:142).

¹⁷ The struggles of activists in Tanzania for reform and change still have to contend with resilient patriarchal structures. In addition, aspects of religious revivalism have tended to reinforce such structures.

¹⁸ SOSPA repealed sect. 130 of the Penal Code (Cap. 16), which excluded the offence of rape in the case of a man who married a girl aged 12 and over.

In the context of international human rights law, Article 1 of the UNCRC adopts a more generic term by recognising every human below the age of 18 as being a child, unless national laws recognise the age of majority earlier.¹⁹ Since marriage confers upon a woman the age of majority, the provisions of the UNCRC are not applicable to married girls and thus to child-widows (Bunting 1999:691).²⁰ The underlying basic reason is the social construction of the childhood conception that, once a child gets married she has passed from childhood to adulthood and ceases to be categorized as a child (Omari and Mbilinyi 1997; Rwezaura 1998b).²¹

The language in the ACRWC is more absolute; Article 2 provides that, 'a child means every human being below the age of eighteen years'. The ACRWC has also dealt with child marriage and the betrothal of girls and boys, specifying the minimum age of marriage to be 18 years and making the registration of all marriages in an official registry compulsory (Art. XXI (2)). It is important to note that this law was necessary due to the prevalence of child marriage in Africa (Kijobisimba 1994). Additionally, the Draft African Platform of Action (leading up to the Fourth Women's Conference in Beijing, 1995) aimed to 'review policies and legislation to ensure the promotion of girls in matters pertaining to education, health and early marriage' (Paragraph 123 (c)). These are an indication of the official regional consensus that early marriage is contrary to the rights of children (Bunting 1999:693).

¹⁹ Although the UNCRC defines a child as a person below the age of 18 years, there are differences between societies as to how the duration of childhood can be measured, while factors such as the ability to perform certain acts or the capacity to perform particular functions are the more important considerations in some communities (Bueren 1995:36). However, the impacts of early marriage documented in this study are strong factors for the eradication of child marriage.

²⁰ For instance, the Committee on the UNCRC has asked the government of Madagascar to amend its marriage laws for this reason, as the legal marriage age denies girls the benefits of the UNCRC itself (U.N. Doc. UNCRC/C/15/Add.26 (1994)). Paragraph 9 states: 'The Committee...is concerned that the national legislation establishes a different minimum age for marriage between boys and girls and that it authorizes the marriages of girls as young as 14 years of age who have obtained parental consent...Such situations may raise the question of compatibility with the principles of non-discrimination and the best interests of the child, in particular as these children will be considered as adults and therefore no longer eligible for the protection afforded by the Convention'.

²¹ This conceptualisation is questionable. How, for instance, can a 14 year-old-girl be identified as an adult, simply because she is married? Some married female infants, (as in the case of the Maasai in Tanzania), are not aware of the fact that they are married.

On the national front, the Child Development Policy (CDP 1996:1) defines a child as a person below the age of eighteen and states that the definition is in accordance with the UNCRC and the Constitution. The purpose of defining the child is to protect the rights and interests of the child, particularly with regard to employment and marriage contracts and protection against abuse, punishment and care by parents or guardians. The Policy (1996:2) covers all children; policy drafters were aware of girls' early marriages, their intention being to protect them. Thus, the ACRWC, the CDP and other national laws, such as the Constitution and the Age of Majority Ordinance, see the status of childhood as being determined by the age of the person in question. For the purpose of this study, 'a child, child-wife or child-widow' refers to a female person who is below the age of eighteen years.

Marriage

The LMA, 1971, recognises as valid various kinds of union. It defines marriage as 'the voluntary union of a man and a woman, intended to last for the duration of their joint lives' (Sect. 2). Marriage shall be of two kinds, monogamous and polygamous (or potentially polygamous). Further, the LMA recognises marriages contracted in a civil form; or in a civil form in accordance with the rites of religion to which both parties belong. It also recognises marriages contracted under customary law, where both parties belong to a community that follows customary law (Sections 9 (1) & 10).

However, many people cohabit without undergoing any formalities. The law has recognised such kinds of relationship and specifically provides criteria for the presumption of marriage²² under sect. 160 (1): 'where it is proved that a man and a woman have lived together for two years and upwards, in such circumstances as to

²² The aim was to protect women who live with men without being legally married.

have acquired the reputation of being husband and wife,²³ there shall be a rebuttable presumption that they were duly married.'

Under Rule 66 (A) of the Customary Law of Inheritance, 1963, there is a type of marriage, created through the 'widow-inheritance' practice (leviratic marriage)²⁴. In this a widow becomes the legal wife of a deceased husband's close relative. For the purposes of the study, I will also consider as 'married' any two people who regard themselves as married under the concepts of presumption of marriage and 'widow-inheritance'.

Polygamy

In Tanzania, legal polygamy can only exist if a man marries the various women under either customary or Islamic law. Some men, however, enter into legal monogamous marriages, and then secretly cohabit with another woman. This is prohibited under sect.15 of the LMA, 1971, which provides that 'no man, while married by monogamous marriage, shall contract another marriage; no man, while married by polygamous marriage, shall contract a marriage in any monogamous form with any woman'. A woman who is secretly married as a second wife to a married man (in a monogamous marriage) could be charged with bigamy. The concerned parties are, however, usually oblivious to the invalidity of their marriage and thus consider themselves as husband and wife. In many instances, the man's relatives condone such a relationship.

For the purposes of the study, the term polygamy is used to refer to situations in which a man treats two or more women as his wives. It will include instances in which the man lives with all the wives under the same roof/in the same homestead (patrilocality), as well as instances in which each wife has a separate home and the

²³ And are considered by other members of society to be husband and wife.

²⁴The leviratic marriage has been called a variety of names, namely 'widow-inheritance', 'leviratic' and 'leviratic marriage'. This is the cohabitation of a widow with her brother-in-law, where the brother-in-law relates to the widow as a substitute for her deceased husband (Kirwen 1979:3).

man rotates from one home to the other (Tibatemwa-Ekirikubinza 1999:12).

Inheritance

The concept of inheritance has been described by Cole (1938) in Vol. 7 of the Encyclopaedia of the Social Sciences as 'the entry of living persons into possession of the dead person's property'. According to Bouvier's Law Dictionary (1993:504), the word inheritance means *inter alia*, 'a perpetuity in lands to a man and his heirs, the right to succeed to the estate of a person who dies intestate'. The term 'inheritance' includes not only land and tenements which have been acquired by descent but every fee simple or fee tail which a person has acquired by purchase and may be said to be an inheritance, as the purchaser's heirs may inherit. However, inheritance has come to mean anything received from the estate of a person who has died, whether by the inheritance laws or as a beneficiary of a will or trust (Garner 1999:787).

Significantly, Mukoyogo (1995:4) aptly explains that inheritance exists where the institution of private property is recognised as a basis of the social and economic system. It changes in form as there are changes in the economic and social organisation of the community in question. Thus, laws or customs which govern inheritance are part of the general structure of property relationships and the use of property.

Further, to reconceptualise 'inheritance' in a typical African way, we have to look not just at property 'ownership' in the Western sense (as defined by the law dictionary above), but at 'the right to use property, the control of property, the obligations towards people and property and status'²⁵ (Armstrong 2000:90). These

²⁵ In the traditional setting, a widow retained the same rights to use property that she'd had before her husband's death. The use of inherited property was restricted by the requirement that it be used to support the family members of the deceased. I agree with Armstrong (2000:90) that 'although it may be accurate to say that women did not inherit in the sense of acquiring full ownership rights over property, it is also necessary to say that men did not 'inherit' in that sense either, since neither received unrestricted rights over property'. Using the term 'inheritance' masks the true position of

four aspects of inheritance bring out the true position of widows, which depended on and were configured with the extended family, and at the same time protected and secured their rights (ibid). Unfortunately, the extended family network that supported the African way of inheritance is dissipating in Tanzania and a plurality of norms exists (see Chapter 2).

In this study the term 'inheritance' means 'the passage not only of the property of the deceased but also the obligations to which he was subject and the status that he held in society' (Kameri-Mbote 2001:3).

The Concept of Gender

'Gender is a dynamic social phenomenon which defines social rules, rights and responsibilities based on sex and status' (Martin 2000:77). Indeed, gender relations are an integral part of our existence as female and male human beings. We all live, interrelate and interact in a variety of ways as females and males in society. Sometimes, such relations between a man and a woman are based on sexuality, while at other times they are at group or societal levels. Gender relations can be observed among people of the same age or of different age groups (Mbilinyi and Omari 1996:16). As Mannathoko (1992:72) contended, gender is a relational concept that denotes the manner in which women and men (or women and women) are differentiated and ordered in a given socio-cultural context. So, the concept of gender refers to the social relations between, and among, women and men (Mbilinyi 1992:72).

Thus, the concept of gender is used in this study to refer to the fact that, in Tanzania, different rights and privileges, duties and obligations, and roles are attributed to both female and male by virtue of their sex, age and status.

women in customary law and ignores another aspect of custom after the death of a man; that is, obligation towards people.

FORMAT OF THE THESIS

This work is presented in nine chapters. **Chapter Two** examines legal pluralism during the colonial and postcolonial era in Tanzania. It examines legal pluralism in Tanzania and its relevancy in this study and applies a qualitative grounded approach in analysing the interplay between the law and the realities of child-widows' lives. Key questions are also highlighted.

Chapter Three provides academic narratives on the rights of participation to girl-children, as provided in the UNCRC. Here, the right to participation concept is examined to unveil the girl-child's 'voice' on matters that affect her life, such as the process of entering marriage. The concepts of families, marriage and gender relations are also explored.

Chapter Four draws on research data regarding the early marriage practices among the Kurya, Maasai and Sukuma in Tanzania. It begins by highlighting the interwoven common causes of child marriage and further explores the impact of child marriage, highlighting child-widowhood as one of its traumatic repercussions. Although child-wives are vulnerable and insecure, the work demonstrates some instances of resistance. It explores how the status of a girl-child could affect her space and voice to claim her legitimate rights at both social and legal levels.

Chapter Five expounds the inheritance laws available to child-widows who are the outcome of child marriage, whereas **Chapter Six** examines the discriminatory customary law of inheritance and customs, and how these could be mediated to protect child-widows' rights through a human rights based approach.

Chapter Seven draws on research data from the experiences of unheard child-widows who give their personal life stories. It provides an in-depth analysis of the

experiences of child-widows in the context of their households. It is submitted that discriminatory customary law and customs are major contributory factors in the violation of child-widows' inheritance rights. It further discusses the impact of widowhood on the girls' own lives in relation to human rights.

Chapter Eight draws mainly from the practices of out-of-court forums at the local level and also identifies features that are favourable to the realisation of gender equality and features that impede such realisation for child-widows.

Chapter Nine provides a general conclusion by drawing together all the theories highlighted in the previous chapters and identifies areas for further research. Subsequently, it presents recommendations, divided into nine frameworks namely: advocacy at community level; engaging the public in facilitating changes; law reform; judicial intervention; economic empowerment; the incorporation of CEDAW and ACWRC; enforcement through human rights bodies; strategic research and lobbying for changes in the UNCRC to incorporate child-widows under the age of 18. This would lead to the enhanced protection of child-widows' rights.

CHAPTER TWO

LEGAL PLURALISM AND RESEARCH METHODOLOGY

This Chapter highlights the concept of legal pluralism during the colonial and postcolonial eras in Tanzania and its relevancy in this study. This had implications for the selection of the research methodology. It addresses the qualitative methodology used in collecting the data and highlights the key questions. The Chapter further outlines how the data is analysed and presented while maintaining the validity, reliability and generalisability of the research findings.

LEGAL PLURALISM

Legal pluralism²⁶ encompasses a variety of topics; these include the content of contemporary laws, their emergence and their effect in terms of social control functions; their change over time and their relation to other social factors; and their interaction with other laws (Allott and Woodman 1985). Chanock (1985:4) argues, in his study of colonization in Central Africa, that law represented the 'cutting edge of colonialism' in its efforts to control and rule the people while bringing about their transformation and that of their communities. Its role subsequently continued to have a powerful presence during the postcolonial era of the independent states. In juristic legal pluralism, which was common in colonial and post-colonial Africa, state law is the ultimate authority and it dominates other pluralistic legal orders (Kameri-Mbote 2002). This is well exemplified in Tanzania, which turned to law as a form of social-engineering within the nation.

²⁶ The legal pluralism concept is, however, of recent origin, a collection of papers published by Gillissen (1971) namely *Le Pluralisme Juridique*, being attributed as the source. Thereafter, Griffiths (1986) facilitated discussions around what he views as two diverse approaches to legal pluralism; one concerns 'juristic' pluralism (referring to lawyers' views on the concept) and the other engages with 'new' pluralism, (referring to a social science view of law) (for further discussion see Griffiths 2002:290)

This raises critical questions about the manner in which the law operates in Tanzania and how vulnerable people such as girl-children, have access to the law and its uses, and what its impact on society is.

The term legal pluralism and the concepts it comprises, cover varied and often contested perspectives on law, 'ranging from the recognition of differing legal orders within the nation-state, to a more far reaching and open-ended concept of law that does not necessarily depend on state recognition for its validity' (Griffiths 2002:289).²⁷ The two concepts range along a continuum that differs according to the degree of centrality that is accorded to state law (*ibid*). First, state law defines and delineates the conditions where legal pluralism is said to exist; customary law is also delineated. Second, the centrality of state law is displaced, not as a sole power but as being among a number of elements that give rise to a situation of legal pluralism. Thus, customary law does not necessarily depend on state law for validity.

Tanzania falls within the ambit of the first perspective. For example, the patrilineal customary law is codified and recognised under the national legal system, demonstrating that marriage and inheritance customs and traditions could be accommodated within the demarcations of the state law paradigm. The laws and practices comprise a plurality of norms drawn from statutes (largely from English law), religious (mainly Islamic) and customary laws.

However, legal pluralists accurately observe that men and women draw from a variety of normative orders in a plural society as it suits their situation (Hellebrunn 1999; Nyamu-Musembi 2002:138), regardless of codification of their customary norms or not. For instance, within the pluralist framework *i.e.*, multiple systems of

²⁷ Griffiths (2002:289) rightly elucidates 'whatever the purpose, legal pluralism raises crucial questions about the relationship of law and power; – Where is it located? How is it constituted? What form does it take? – in ways that promote a more finely tuned and sophisticated analysis of continuity, transformation, and change in society'.

family law based on statute, customs and Islam, people rarely confine their actions to one system only; they are strategically able to choose from formal law and from custom or religious positive elements that benefit them (Moore 1978a; Rwezaura 1995). However, in practice, the ability to 'shop for forums' may vary on the basis of factors such as age, class and gender. In villages, for example, girls are often not aware of the national legal system paradigm; they resort to whatever is within their means. Importantly, one's position within the relevant social network also matters (Griffiths 1997), as will be demonstrated in Chapter 8.

Significantly, legal pluralism²⁸ is highly relevant in this work, as understanding the position of girls in law and society in contemporary Tanzania is a complex exercise because of the multiplicity of customs and plural systems of law. Consequently, legal pluralism is critical to this study as there is a common characteristic of legal centralist scholars in Tanzania, who take the norms that are applied by state courts as a starting point for legal analysis. For them, 'legal norms are set apart from, and are privileged over social norms'; they are applied to decide or solve problems where conflicts occur (Roberts 1979:25; Galanter 1981:20; Griffiths 1997:29).

Legal Pluralism: A Colonial Legacy

A legacy common to the developing world has been the introduction of changes in the institutions and the norms governing local people. Colonialism brought fundamental change and the application of norms that were external to society. For instance, the main component of the then Tanganyika(n) legal system was the general law, in terms of the imported German laws and later British laws. Likewise, Hellum (1999:60) asserts that in Zimbabwe the legal doctrine's definition

²⁸Ironically, referring to my study of child-widows' rights, legal pluralism makes the implementation of children's rights more complex when one traverses the intersections and interfaces of the various normative legal orders applicable in Tanzania. The complexities are exacerbated by the fact that 'much of what is claimed under the African culture argument is often neither African, nor cultural' (Ncube 1998:9). Consequently, scholars correctly contend that legal centralism and legal pluralism are analytical frameworks which provide different understandings of the position of women and girls in the context of multicultural societies and plural systems of law (Bentzon et al 1998:30; Himonga 1998).

of legal pluralism was brought about by the colonial legal powers. This applied to a number of African countries including Tanzania.

Colonial governments were set up and given power to achieve various purposes e.g., cheap labour and a source of raw materials. Thus, a legal system that was to be dominated by a labyrinthine bureaucracy and highly coercive machinery was put in place. It was in pursuance of this move that the institutions relating to police, courts, prisons, legislative and executive functions were instituted in the country (Mchome 2002:38). All these institutions were alien, meaning they were not part of the customary regimes that were prevalent in the country before colonisation.

In some arenas, including family life, colonialists observed Western law as inappropriate. While leaving indigenous people to apply their customary rules in family issues, they took initiatives to research the rules. However, customary rules were viewed as different from Western law, as a separate and distinct form of law. Western law was viewed as superior (Hooker 1975; Hellum 1999). For instance, Germans considered the colonised natives as an uncultured species not to be treated under civilised laws (Mchome 2002). Whether under direct or indirect rule, regulation took the form of law to control and govern the then Tanganyika (ibid). However, the general law was made up of the imported common law of the European colonizers and the statutory law operating side - by - side and interactively with the customary laws (Bentzon et al 1998:30).²⁹ In Tanzania, it is

²⁹ In Eastern Africa, women's law was introduced in the context of plural systems of law, which reflected on the one hand, an increasingly gender-neutral general law, and on the other, the gender-specific customary laws.

the general law, the Judicature and Application of Law Ordinance 'JALO, 1961,'³⁰ that controls the application of the customary law by the courts (Rutinwa 1996).³¹

However, there was a legal segregation in the area of family and related matters. The transformation of customary laws was shaped by the interaction between the colonial administration and the various African political and social systems. A Tanzanian scholar, Rwezaura, (1985:13) has portrayed this as a process in which:

...custom and tradition became a means by which the local rulers and family heads bargained with the colonial state for retaining a part of their political power in their communities while individuals, especially women and young people, appealed to the colonial state to lighten some of their burdens under tradition through the deployment of liberal values such as natural justice and equity.

For many girls and women, the fact that they are trapped within the colonial state's interpretation of the construction of families, and its assumptions about the status of girls and women in customary law has been a stumbling block to advancement, even when the broader areas of the law have been reformed for the benefit of girls and women (Makaramba 1998:53; Bentzon et al 1998:32).

A Legal Centralist Model

Legal centralism denotes a unified system of rules which are enforced through state machinery. In its general form, a legal centralist model, also identified as weak, juristic or classic legal pluralism, 'promotes a uniform view of law and its relationship with the State' (Griffiths 1986:3). Roberts 1979 and Galanter 1981 aptly assert that 'it is a view which locates law at the core of the social universe and

³⁰ The JALO, 1961, is a successor to the JALO, 1920. The British colonial government in 1920 enacted the latter statute. This was less than a year after Britain had formally taken over Tanganyika from the Germans under the League of Nations Trusteeship System. The purpose of passing that was to set up the court system in Tanganyika and to provide for the laws which those courts would apply (Rutinwa 1996: 95-96).

³¹ Section 9 of JALO, 1961, as amended, provides that customary law shall be applicable to, and courts shall exercise jurisdiction in accordance therewith, matters of a civil nature, relating to any matter of status or succession to a person who is or was a member of a community, in which rules of customary law relevant to the matter are established and accepted.

which approves normative prescriptions for interpreting society' (Griffiths 1997:29). Griffiths (2002:290) explains further that:

Much of the earlier work associated with the weak, juristic or classic legal pluralism deals with indigenous law represented as a counterpoint to European or Western law. An interest in this subject developed out of a combination of intellectual and pragmatic pursuits. Out of the enlightenment came an interest in tracing the evolution of human development in which law played a key role because it was viewed as representing rationality over forms of order, created, for example, out of self-interest or force...Both lawyers and anthropologists rose to the challenge - none more than Sir Henry Maine, credited as the key exemplar and impetus behind this universal search for law.

However, in this search for law, the main contestation question which has caused profound discussion is 'what to call law, other than state law'? (Allott and Woodman 1985:13-20).

The plural legal system is exemplified by Hooker (1975:1) who surveyed countries within Africa. He defines legal pluralism as 'circumstances in the contemporary world which have resulted from the transfer of whole legal systems across cultural boundaries'. This legal pluralism recognises plural legal orders as per Hooker (1975), but it does not quite apply to the position of girls in Tanzania because of its legal centralist model.

Significantly, the legal centralist begins with the proposition that, 'law is the most important normative order thus all other norm creating and enforcing social fields, institutions and mechanisms are either illegal, insignificant or irrelevant' (Bentzon et al 1998:31). An inherent ideology of these approaches is that they denigrate legal pluralism; 'law is and should be the law of State, uniform for all persons, exclusive of all other laws, and administered by a single set of institutions' (Griffiths 1986:3). In this model, 'legal norms are set apart from, and privileged over, social norms. Thus, law removed from the domain of social life represents an autonomous field with immunity from the kind of considerations that permeate everyday existence' (Griffiths 2001:104).

Many scholars (Abel 1973; Galanter 1981; Benda-Beckmann 1989; Collier and Starr 1989; Fitzparick 1992; Griffiths 2002) have criticized this theory because it reflects a legal centralist model of law. One of the criticisms expounded by Griffiths (1997:2) is that:

One of the classic problems addressed in the anthropology of law and study of legal discourse concerns the ways in which law is characterized, especially in a colonial and postcolonial context, where a clear distinction is drawn between a Western form of a law associated with Europeans and indigenous legal practices referred to under the rubric of where the focus is limited to particular written sources and institutions. Such a focus, drawn from a legal centralist model, upholds a division between Western and customary law which is marked in institutional terms by the application of separate court systems and procedures.

The point raised above replicates the situation in Tanzania. The most notable feature of the system of administration of justice during the British colonial period was the duality of the court system. The British administration established the High Court and subordinate courts that were charged primarily with the administration of justice according to English law. Side - by - side with these courts, there were native courts with general jurisdiction over matters where both parties were natives (Rutinwa1996:1). British colonialism has left as part of its legacy a centralist model of law that continues to dominate the legal discourse.

This has led other magistrates to disregard customary law, as Abrahams (1981), observed in the Nyamwezi community. He argues that different forms of marriage occur with different customary implications for rights over children and their residence, and the situation is further complicated by the system of magistrates' courts. Magistrates tend to have relatively little knowledge of the people who appear before them, which can easily cause them 'to misjudge the guile or the experience of some litigants and witnesses' (Ibid:40). Secondly, the local courts no longer administer genuinely customary law and custom. The corpus of applicable statutory law has increased substantially in recent years, and in the case of

marriage law, for example, it is by no means always convergent with the premises of local custom which concern most villagers (Ibid: 41).

Consequently, the postcolonial legal doctrine has often been of centralist orientation, and scholars (Mukoyogo 1995; Maina 1997; Makaramba 1998) have been interpreting customary laws³² that evolved in colonial courts in the light of contemporary legislation and 'Court of Appeal of Tanzania' practice. For instance, Maina (1997) has critically analysed the discrimination of women with a little practical touch; he asserts: '...as it is known, the development of law under the common law system is both through the statutes and precedent'. These scholars are not concerned with understanding the contemporary social contexts, despite the fact that women's and girls' customs and practices continue to evolve outside the framework of a courtroom.

Another illuminating argument is offered by Anne Griffiths (1997:36). When examining Kwena ethnography she noted that 'the social contexts within which law is embedded shouldn't be ignored, for they are crucial to an understanding of who has access to law and under what conditions the law is assessed'. The centralist normally focuses on the formal legal rules that govern the situation and draw deductions from this information alone. In considering this issue it is insufficient to rely *per se* on the formal rules.³³

Further, 'law and legal institutions now cross local, regional and national boundaries. The local institutions are embedded and shaped by regional, national and international networks of power and information' (Griffiths 2002:299; Nyamu-

³² Customary law, means any rule or body of rules whereby rights and duties are acquired or imposed, established by usage in any Tanganyikan African community and accepted by such community as having the force of law... This includes any declaration or modification of customary law, made or deemed to have been made, under section 9A of the JALO, 1961 (Section 3 of the Interpretation and General Clause Ordinance, 1972).

³³ Griffiths (1997:36) observed that 'among Bakwena, social considerations operate to control access to a legal hearing; for instance, officials may refuse a person access to a legal forum if they consider that s/he has not yet exhausted the appropriate social channels for dealing with the matter, such as family consultations'.

Musembi 2002). In the area of gender, human rights' groups in Tanzania have managed to mobilise around international conventions such as CEDAW, in order to challenge state laws that had an adverse impact on women and children. A landmark example is the CEDAW Task Force (Chapter 6). Ironically, nation states can no longer be 'treated as discrete legal entities' that can be studied in isolation (Merry 1988; Griffiths 2002: 299).

Furthermore, scholars have had to explore women's and girls' experiences with law, in its pluralities, beyond the borders of legal centralism (Hellum 1999; Stewart 2000; Griffiths 2001). Indeed, research based on the sources of law *per se* has been proved insufficient through the studies conducted in Eastern and Southern Africa (Molokomme 1991; Armstrong et al 1993; WLSA Zimbabwe 1994; Griffiths 1997; Maboreke 2000; Nyamu-Musembi 2000). Scholars have revealed the inadequacies of legal centralist and positivist approaches in studying the reality of a woman's position under state laws. Thus, although juristic pluralism is relevant to my study, it cannot provide an appropriate perspective on child-wives' and widows' everyday lives.

Strong Legal Pluralism

Strong legal pluralism, or alternatively, deep or new legal pluralism, maintains that legal pluralism exists in all societies. This school of thought posits that there are multiple forms of ordering that pertain to members of society that are not necessarily dependent upon the State for recognition of their authority (Galanter 1981; Griffiths 1986; Merry 1988; Griffiths 2002). Some scholars like Smith, (1969), who focused on corporations, and Posipil (1971), recognised different legal levels, which are associated with developing new legal pluralism (Griffiths 2002).

Thus, strong legal pluralism takes on a new meaning, that is of recognizing that there are regulatory or normative systems other than the formal law that affect and control people's lives (Bentzon et al. 1998:40-41). As a means of overcoming the

dichotomous division between rules and process and general and customary law, Moore (1978) has turned her attention towards the rule-upholding and rule-generating processes that take place through human interaction in different social groups, organisations and institutions. She employs the concept of the semi-autonomous social field to draw a boundary around social entities, which are characterized by an ability to generate rules and enforce rules within or between a recognizable group of people, the actors. Moore (1973:720) defined the semi-autonomous social field as one which:

can generate rules and customs and symbols internally, but that...is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded. The semi-autonomous field has rule-making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instances.

It is further argued that legal pluralism is a social factor that is not characteristic of a specific type of society or of a given social field. These fields are not unaffected by State regulation, but neither are they fully subjected to it (Griffiths 2002). In other words, new legal pluralism arises where a group has its own rules regulating social behaviour, whose operation is neither sanctioned nor emanates from state law (Kameri-Mbote 2002). The fact that they are semi-autonomous (Moore 1978a) undermines the hegemonic claim to universal validity and dominance of state law, as the law is acted upon by other normative orders. Because of these factors, semi-autonomous social fields highlight the gap between State assertions of legality and empirical reality (Ibid).

Along this same line, Bentzon et al (1998) contend that the concept of the semi-autonomous social field is a tool that assists in examining the rule generating and upholding processes that affect the position of girls and gender relations in conditions where a plurality of normative structures inform human interaction. It allows a researcher to identify those arenas where actions and decisions are taken which, in reality, affect the position of girls.

However, as already mentioned, the question of what we should call or term law, other than state law, has generated critical discussions (Allott and Woodman 1985:13-20; Griffiths 2002:291). For instance, the focus on issues of folk law, (Allott 1985; Galanter 1985; Moore 1973) whose synonyms may be local, customary, informal, people's and indigenous laws, (Allott and Woodman 1985) have all been critically debated. Further, the inclusion of 'unofficial courts' suggests another important assertion within legal pluralism scholarship. This relates to the non-monopoly of state law over legal phenomena (Allott and Woodman 1985). Thus, it may be submitted that there is no characterisation which consistently follows any supposed distinction between State and local law (Benda-Beckmann 1988; Griffiths 2002: 291).

In the African context the Superior Courts have tended to rely heavily on the decisions of the colonial appeal courts and codifications in their determinations in cases concerning customary law (Stewart 1998; Hellum 1999).³⁴ Thus, the study of strong legal pluralism is important, as my research on the plight of child-widows will provide me with an opportunity to analyse the consequences of legal pluralism in terms of coexisting international, national and local norms and values from the girls' perspectives.³⁵

Out-of-Court Forums

Although there are official courts in Tanzania, the use of this paradigm is vital as a number of people are using other forums to solve their legal problems. However, in most literature it is only the courts and recognised formal dispute settlements

³⁴ Nonetheless, within the growing body of African women's law research, a use-oriented, as opposed to a precedence-oriented, customary law approach is in the making (WLSA Zimbabwe 1994; Stewart 1997; Bentzon et al 1998; Hellum 1999:64).

³⁵ This is well demonstrated by other scholars like Griffiths (1997:36), Hellum (1999) and Himonga (1998) in that 'the social contexts within which law is embedded cannot be ignored, for they are crucial to an understanding of who can access the law and under what conditions this can take place'. Thus, it is inadequate to focus on the formal legal rules that govern the situation, as juristic legal pluralism would do, and to only draw deductions from this information alone.

that are given extensive consideration, the emphasis being placed on precedents and traditional sources of law. Galanter (1981:2) also revealed that a large portion of disputes are resolved by negotiation between the parties, or by resort to out-of-court forums, as they are part of the social setting within which the disputes arise. Courts resolve only a small fraction of all disputes that are brought to their attention. Ehrlich (1962:495) correctly remarked:

Only a tiny bit of life is brought before the courts and other tribunals; and much is excluded from litigation either on principle or as a matter of fact. Moreover the legal relation which is being litigated shows distorted features which are quite different from, and foreign to, the same relation when it is in repose....

Further, research into issues affecting women's legal status in Eastern and Southern Africa has shown that women's problems are to a large extent resolved at the administrative level, at the lower court level, or in out-of-court arrangements (Bentzon et al 1998). For example, in Tanzania, most women file cases at primary magistrates' courts, which are the lower courts and are administered by non-lawyers. Additionally, the majority of women who are poor solve their problems out-of-court.³⁶ Other factors explaining why people use out-of-court forums include the fact that procedures are complicated and that due to bureaucracy or corruption most courts are too slow to act (LHRC 2003). Even where girls have access to law, they may opt not to take legal action, not because they are ignorant of the law, but because of other factors that come into play such as obedience to patriarchal cultural values.³⁷ Also, most girls do not know their rights. Even those who are well informed often have no means or resources to pursue their rights, as employing a lawyer can prove to be very expensive (Magoke-Mhoja 2005).

Most women and girls within the African context are, in legal disputes within the family, likely to be situated in the intersection between different systems of law.

³⁶ WLAC Annual Reports 1998 - 2001.

³⁷ Feminists have challenged the centralist paradigm, as it excludes women who face many social constraints. Such constraints arise from the gendered nature of the world in which they live; there is a division between the private and the public (Griffiths 1997).

They are facing a plethora of normative orders that influence the choices they can make and the decisions that are reached about their life by others (Bentzon et al 1998:40). However, it has been argued further that the legal centralist method has either failed to recognise some women's problems or provide solutions. This is because of the complexity of power dynamics and the way in which gender relations interact (Griffiths 2002). Thus, legal pluralism takes on a new meaning, that is, of recognizing that there are regulatory or normative systems other than the formal law that affect and control people's lives (Ibid).

Furthermore, Moore's (1978) concept of the semi-autonomous social field constitutes a descriptive, not a normative approach. It is a helpful analytical tool to describe the way in which the position of women and girls is defined, and gender boundaries drawn, through the normative interplay taking place in different social fields (Bentzon et al 1998:70). This is a conceptual framework that helps one to study the process whereby legislated law interacts with other norms and customs in different contexts and settings (Hellum 1999:61). In my view, its focus on human agencies offers a dynamic perspective with the potential to analyse the human rights of girls in context.

Tumbo-Masabo and Liljestrom (1994) indicate that these external bodies draw from a multiplicity of regulatory sources in responding to girls' problems. WLAC (2000), for instance, posits that paralegal units normally conduct reconciliation for clients and reach an agreement for the maintenance of a baby born out of wedlock to about 15,000/= Tanzanian shillings (currently, the equivalent of ten (10) pounds sterling) per month, instead of the stipulated 100/= (equivalent to four (4) pence), as stipulated by the Affiliation Ordinance, Cap 278.³⁸ This indicates that a wider range of normative orders (such as human rights' norms and humanism) than the formal law come into play to shape girls' legal and social positions. A paralegal

³⁸ This law entitles a child to only a limited amount of money from his putative father after the procedures of establishing fatherhood.

unit constitutes an out-of-court forum where the securing of the welfare of the child is pursued outside statutory law.

It is significant to note that there is a problem in studying girls' rights in Tanzania, as 'analysing law from a gender perspective is complex within postcolonial states' as much legal analysis is based on the legal centralist model of law (Bentzon et al 1998; Stewart 2000:10). There is, therefore, a concomitant need to study the plight of child-widows in relation to gender-biased customary law and the interaction and interplay between the different normative orders, such as human rights. Further, in order to measure compliance with international human rights, it is necessary 'to examine the relationship between the plural legal systems that coexist within the official body of law' (Hellum 1999:132). In Tanzania, the customary law is part of the official body of law. The big problem, however, is that it is difficult to trace the problems of child-widows in formal courts because most of the problems are solved at out-of-court forums.

Thus, the following section uses girls' experiences as a starting point in analysing the interplay between the law and the realities of child-wives and child-widows' lives.

QUALITATIVE METHODOLOGY

Research Purpose and Approach

The purpose of this study is to gather data and develop solutions to the neglected problem of the plight of child-widows in Tanzania. A qualitative approach was employed in this study as it was clearly noted that qualitative researchers deploy a wide range of interconnected methods, endeavouring always to obtain a clear perception of the subject matter (Denzin and Lincoln 1994:2). Qualitative research involves the use and collection of a variety of empirical materials including interviews and observation. They identify quotidian practices and meanings in individuals' lives. Qualitative methods focus primarily on what people tell the

researcher they do, enabling the researcher to understand what is going on. Their great strength is that they can illuminate issues and suggest possible explanations. The process is essentially a search for meaning (Gillham 2000:10).

In establishing the purpose of this study, proper selection of field techniques was made. The study is based on in-depth interviews of child-wives and child-widows;³⁹ supplemented by participant observation of forums and court records. Additionally, information was collected from the children's parents, neighbours, in-laws, relatives, clan members, religious and village leaders. Concurrently, audio or video records were taken; focus group discussions and workshops were conducted in order to obtain the collective views of informants.⁴⁰ In all, 163 (51 child-wives and child-widows (see Appendix 13) and 112 other informants) people were interviewed; 27 focus group discussions (127 participants) and 5 workshops (170 participants) were conducted.

The data gathering technique aimed at maximising the possibility of discovering all relevant phenomena (Becker and Geer:1982). To facilitate this five **key questions** were formulated:

1. What are the socio-economic circumstances and cultural norms which lead to child marriages and contribute to the vulnerability of child-widows?
2. What are the human rights violations inflicted on child-widows that are condoned by national laws and customary laws and which subject them to continuing discrimination and poverty and increasing vulnerability?
3. To what extent do international human rights laws and United Nations' agencies

³⁹I took into consideration key ethical issues such as informed consent; confidentiality; transparency of processes; access to children; and making sure research was fun and that girl-children had the choice to opt out (Kay et al 2003).

⁴⁰ I visited the Sukuma-Museum in Bujora at Mwanza to learn more about Sukuma traditions and the notion of early marriage practice.

work to protect and promote child-widows?

4. What are the human rights violations resulting from out-of-court decision forums which affect the position of child-widows?

5. To what extent does the law contribute to the existence and plight of child-widows, and does it give them any rights? Can it be changed to help prevent child widowhood and protect existing child-widows?

Primary and Secondary Sources

In order to explore the research questions and to elicit in-depth information on the plight of child-widows this study is informed by primary and secondary sources, which have been collected by a combination of conventional legal methods and an empirical study. Investigative methods included desk research using secondary sources such as a library, by reading texts, journals, theses and through the use of the Internet.

Primary literature sources included Acts of Parliament, official accounts, court proceedings and records. Additionally, primary data were gathered through interviews, observations and group discussions using a grounded approach, as discussed below.

Primary Field Sources: The Grounded Approach Method

Field research was conducted in Tanzania using a grounded approach. Importantly, grounded theory starts with data generated from research questions. The objective is to discover and develop theory grounded in what is central to the data (Punch 1999:218). This involves a wider range of sources than those consulted by researchers who operate within the legal centralist paradigm.

Basic to this research was an approach that is not only concerned with establishing the legal position of girls, but also with identifying determinants such as the political, economic, social and ideological realities which child-wives and child-widows experience. The approach is appropriate, especially because:

Grounded theory is an interactive process in which data and theory, lived reality and perceptions about norms are constantly engaged with each other to help the researcher decide what data to collect and how to interpret it. The interaction between developing theories and methodology is constant, as preliminary assumptions direct the data collection and then the collected data when analysed, indicates new directions and new sources (Bentzon at el 1998:18).

The grounded approach method is suited to collecting different types and items of information at various stages of the research. This generated empirical knowledge about people's experiences and local practices (Glaser & Strauss 1967).

Research Location

This study aimed at focusing on three selected districts and ethnic groups; the Maasai in Mvomero;⁴¹ the Sukuma in Shinyanga; and the Kurya in Tarime (see map: Appendix 2) - to ensure a diversity of socio-economic and cultural practices⁴² within patrilineal societies.⁴³

The selection of locations was informed by written sources on the child marriage practice in those districts (Mabara and Kamazima 1995; Omari and Mbilinyi 1996; Rwebangira and Liljestrom 1998). Thus, I worked on the assumption that where

⁴¹Ethnographically, Tanzania is highly complex; it is a large country with more than 120 tribes, of about 34 million people (Census 2002) who share similar customs; 80% is patrilineal and 20% matrilineal. However, within the tribes there are peculiar attitudes influenced by other normative orders.

⁴²Cultural differences also play a role in these areas. Maasai (Nilotic-speakers) are mainly pastoralists, whereas the Sukuma (the largest ethnic group) and Kurya are Bantu-speaking agro-pastoralists. However, the Sukuma originally followed a matrilineal pattern, which has gradually been supplanted by bridewealth payment, permitting the father to control the descent of the children (Kirwen 1979).

⁴³ Matrilineal societies are excluded from the population sample because there is a relative lack of research material to inform the author on the background situation. Additionally, there was limited funds and time to conduct a wider research.

early marriage is still the practice, the child-widow's existence is inevitable, as most girls are married to old men, and the scourge of HIV/AIDS exacerbates the situation.

Data collected from the three districts aimed to gather the views of the population sample being interviewed. An in-depth study of a particular district, i.e. in a pastoralists' area or poor peasants' community provided information that is likely to apply in other similar settings in Tanzania. Paradoxically, the sample selected from 3 ethnicities might not be generalized to all other tribes, or even to all people within the same tribe, as factors like religion, education and internal migration, have had an impact on cultural change in some families. However, it could be generalized to most tribes that share similar customs and that are situated in a similar socio-economic situation.

Data Collection

The data was collected over a period of six months, with the help of three research assistants (paralegals), one per district. They assisted in locating key informants, conducting preliminary appointments, organizing workshops and by recording comments or in facilitating. They also assisted in video recording and still photography. This section outlines the eclectic triangulation and qualitative methods applied in this study. However, it first highlights the researcher's period of reflexivity.

Period of Reflexivity

The influence of my own perspectives and ability to remain unbiased had to be consciously regulated. I made considerable efforts, including frequent reflexivity, to overcome these. I share O'Brien's (1998) views that the principle of reflexivity ensures researchers reflect on issues and processes and make explicit the interpretations, biases, assumptions and concerns upon which judgments are made.

In this way, practical accounts can spawn theoretical considerations.

It took some time to interrogate my own bias and belief of other cultures, so that I had an open mind when undertaking the fieldwork and analysing the results. It was also important to examine my cultural and epistemological stance, and how I, as the observer, might be influencing both the field under observation and the observations themselves (Hammersley & Atkinson 1995:16). Reflexivity helped me to become open-minded and not to take anything for granted throughout my research analysis.

Triangulation for Validity

Utilising the methodological eclecticism of triangulation (Cormack 1996), which involves theoretical and methodological triangulation (Denzin 1970) to promote more complex research designs (Fielding and Schreier 2001), was vital. Silverman (1993) explains triangulation as a method of evaluating empirical data in the social sciences. This means trying to address the same research question using more than one source. Additionally, Stake (1994) demonstrates that triangulation has been generally considered a process of using multiple perceptions to clarify meaning, verifying the repeatability of an observation or interpretation. But by acknowledging that no observations or interpretations are perfectly repeatable, triangulation serves to clarify meaning by identifying differing perceptions of the same phenomenon (Ibid: 241).

Thus, the researcher adopted a triangulation method by utilising various qualitative methods such as interviews and observation. By doing so, the researcher gained benefits from the application of more than one perspective. For instance, interviews were used to gather information about child marriages and child-widows' violations of inheritance rights from the following:

1. Nine child-widows from Shinyanga and eight child-widows from Tarime and Mvomero districts, respectively (i.e. 25).
2. Eight child-wives from Mvomero and nine child-wives from Tarime and Shinyanga districts respectively (i.e. 26).⁴⁴
3. Nineteen other informants per district (i.e. 57). (Thirty informants were clan *baraza* members).
4. Four magistrates per district (12).
5. Three social welfare officers per district (9).
6. One respondent at each relevant international organisation (i.e. 3).
7. One respondent at each NGO dealing with children (i.e. 12).
8. Two health workers per district (6).
9. One teacher per district and 2 education officers in Shinyanga and Tarime (i.e. 5).
10. One or two respondents at each relevant ministry or institution (i.e. 8).⁴⁵

In order to verify the information, the data of child-wives and child-widows is triangulated from other informants' versions (numbers 3-10), depending on the connection, such as parents or neighbours, who observed them in their daily lives. The data was also triangulated through collective views during group discussions and workshops. The forums were also used to check some of the information from the key informants.

This has presented well-triangulated data that informs us about the findings of the whole study. The variation of methods with different potential participants and sources revealed the differences, and worked as a triangulation for validity purposes and the justification of a paradigm. Importantly, using multiple methods as a form of triangulation increases the validity and reliability of the study (Marshall and Rossman 1989).

⁴⁴ An extra child-wife was interviewed as the researcher found two child-wives in a polygamous marriage and was curious to hear and compare their stories.

⁴⁵ By interviewing a limited number of people, issues were considered in detail and points that emerged were followed up.

Research Methods

Interviews

The aim of qualitative interviews is to know all possible ways in which respondents view or experience phenomena. An open-ended question method was selected as it provided the opportunity for the researcher to uncover new clues, to open up new dimensions of a problem and to secure vivid descriptions and memories, as well as eliciting accurate and inclusive accounts based on the informants' personal experiences (Palmer 1928). It also facilitated the exploration of specific topics or events. It helped to elicit personal histories in examining social, economic and political phenomena (Rubin and Rubin 1995: 3). The researcher progressively accumulated perspectives and experiences until a broad understanding of the phenomenon was obtained (Parahoo 1997: 290).

However, the open-ended interview method has its challenges. It proved to be time-consuming, as the researcher is required to record all answers verbatim; this limits the number of questions that can be asked. Similarly, the analysis of such an instrument is also considered cumbersome. To solve these challenges, in some instances the interviews were either tape-recorded or video-recorded to avoid missing any details. The whole process was explained to respondents before the researcher commenced the interviews.

Since the interviews involved both children and adults, different approaches to negotiating were utilised, recognising the vulnerability of the children.

Sampling and Negotiating with the Child-wives and Child-widows

At the household and community levels, the 'dung beetle method' of sampling was used: paralegals and village leaders identified child-wives and child-widows in their respective areas. Whenever child-wives and child-widows were selected, an

arrangement to meet them was made.⁴⁶

Greeting people in a household was a most important element in establishing a good rapport. Playing with, and smiling at babies of family members created a good impression. I inquired into the health of the babies and mothers and showed concern as appropriate. These little gestures proved that the researcher was “one of them” and set the tone for the participants to talk freely. However, involving child-wives and child-widows was often only possible after negotiation with the head of households.

Interviewee Briefing

Prior to all interviews, each girl-child was told the purpose of the research, of the importance of their views and the voluntary nature of participation. Issues relating to promises of confidentiality and anonymity were also discussed; and permission to tape or video record the session was requested. Their choice of participation was central to the study with regard to respecting their rights. The explanations enabled them to decide whether they wanted to participate in the study or not.

The respondents were encouraged to take part in deciding the arrangements for the research meeting; also, on where the research interview or meeting would take place and when, and who should be there. After agreeing to be interviewed and confirming her age status, the major question then was: ‘can you tell me your life story?’⁴⁷ While there was a structured question guide for the interview (see Appendix 3), there was flexibility in the phrasing and order of the questions following their responses.

In order to depict the social, economic and cultural conditions which the child experiences, she was encouraged to articulate her life situation before and during marriage, as well as to give her own perception/definition of widows’ human rights

⁴⁶ In most cases, the administrative requirements of a governmental hierarchy mean that officials must be visited before entering any community in their jurisdiction. Once in the community, local officials or leaders were the first stop.

⁴⁷ In Swahili, the statement is not intimidating.

violations using her own understanding of local words like 'utu' (dignity), and her recommendations for change.

Methods' Variation

Through Children's Eyes

In Tarime and Shinyanga districts, all 32 girl-children, with the exception of one child-wife in Tarime, agreed to be interviewed. The option I used with her was to ask her to use a camera to photograph scenes of what she liked or disliked in her daily life as a child-wife. The aim was essentially concerned with allowing her to control a process that creatively presented her experiences in a way that was not mediated by the researcher's physical presence and voice. She later narrated her story when I visited her household, by explaining what she meant by the pictures she photographed (see Figure:1). In this way, I brought out her story.



Figure 1: *A Photograph of a Child's Grave – (taken by participant to illustrate violence inflicted by her husband, which contributed to the death of her child).*

Informal Extended Discussions

The **greatest variation** was in Maasai⁴⁸ locations. Most child-wives and child-widows' reluctance to talk was the major obstacle I faced when they were in the presence of their co-wives or co-widows; they feared that information would be leaked to the head of the household. For instance, a child-widow agreed to be interviewed, but kept silent. She didn't want to speak in front of her senior widow who insisted on being around. She was isolated inside her inherited husband's household, and talking to her there was likely to make her feel constrained and fearful of the consequences of upsetting her leviratic husband or in-laws.

It was decided to use other **techniques** such as **informal discussions** on a regular basis. When I stayed longer in the village and became personally involved in the family, that problem was solved. This supported what Blagbrough (1998) postulated; that in depth interviews with children in difficult situations should be conducted in a different setting, preferably in a place where the child feels safe and comfortable. Thus, interviewing Maasai children in- depth was best done over a period of time in a relatively unstructured and informal way.

Ethical Dilemma

One of the important dimensions of research with children is ethics. In researching on such sensitive topics (such as widowhood rituals and child-widow abuse), I found myself conflicted by the competing requirements of confidentiality and openness, protection and autonomy. My biggest dilemma was when a child disclosed abuse, such as the fact that she had been mutilated a few months earlier; or when raped by her brother-in-laws. These acts are criminal offences in Tanzania. Thus, my study illuminated dilemmas which could not be resolved simply by constructing better protocols.

⁴⁸ Maasai community politics are embedded in age-grade systems, where the young pay profound respect to the old. Documenting voices from children depended largely on the adult networks in control; this was mainly because of age deference and their status as junior wives or widows.

Ethical concerns have always been problematic. Those are predicaments the researcher has to deal with, however unpleasant they are (Dr. Luoga (of the University of DSM, (UDSM)) e-mailed (22-11-03). He insisted:

*It is true that you cannot report heinous crimes without the consent of the victim. In fact you may imperil their lives if the communities of the victims learn that they disclosed such information. However, you can publish the findings whilst not disclosing the names and locations for safety and confidentiality purposes. But in the meantime, you can share your findings with human rights activists without identity disclosures. What you will be saying is that you have discovered the existence of a problem that demands further investigation and redress measures.*⁴⁹

The UDSM does have guidelines on ethical issues but the gist is that confidentiality must be maintained, although the truth must be told if it is firmly supported by proof. The balance is very delicate, just as it is everywhere else. Subsequently, in two abuse cases I contacted paralegal centres for further investigation and action.

Environment

Most researchers have in their minds the kind of suitable environment that they would like to have for conducting an interview with the child. However, in rural areas it was difficult to have places similar to the ones recommended by Thomas and Beckford (1999). They suggested a place that is warm but not too hot, light and airy with outside views, quiet without interruptions, child-centred and containing appropriately - sized, comfortable chairs, a box of toys, posters or drawings by children and relevant information leaflets/magazines written for children.

During the fieldwork, some interviews were conducted in a pleasant welfare office; some interviews were conducted in a far from ideal setting because of the nature of the place. For example, some interviews were not conducted in the social welfare

⁴⁹ Prof. Rwezaura also e-mailed on 25-11-03 with similar ideas. Apart from reading the UDSM guidelines on ethics, I contacted Prof. Rwezaura and Dr. Luoga – who had the necessary expertise to advise me on ethics. Prof. Rwezaura is also a distinguished scholar internationally in the area of family law and children's rights.

office, but in an adult-centred venue that had a noisy corridor. Some girls were interviewed in their small bedrooms, in corridors, in sitting rooms or under a tree outside a house. However, in some noisy settings they were quite at ease, as they were used to that environment.⁵⁰ Nonetheless, the issue of an ideal environment was taken into consideration as Kay et al (2003:16) articulate that the setting for the interview has the potential for producing a series of complex effects on the interaction between the informants in the interview in the short term and in the long term, both in practical terms and in relation to the potential for theory building.

I have found it necessary to reproduce large parts of the stories of some child-wives and child-widows in order to illustrate clearly the interface between a particular variable and the violation of human rights in which a particular child was involved. In choosing the stories, I was guided by the ability of a respondent to articulately describe her life situation. The stories are told in Kiswahili and have been translated into English by me. In presenting their personal accounts, I have used fictitious names in order to protect their identities.

Other Key Informants

I searched for the histories of child-wives and child-widows from 57 other key informants, including their families (See Appendix 4: Question Guide). The 'dung beetle method' of sampling was employed. Child-wives and child-widows were the main source in identifying their families. Some informants mentioned other informants during the interviews. It involved the inclusion of new geographical areas, new concepts, and new areas of the law or customs, as new issues arise through the research process (Bentzon et al 1998: 186). Ethics and confidentiality were also observed. The insights from the interviews indicated that child-wives

⁵⁰ Ironically, one interview of a child-widow in Tarime was conducted outside a house in a corridor with fresh air. However, sometimes neighbours passed by and asked her what she was doing. In the follow-up interview she suggested that we conduct the interview in the sitting room; she also asked not to be video - recorded within that compound.

and child-widows face different human rights' violations, depending on their circumstances.

Participant Observation

Out-of-Court Forums: Personal Observations and Participation

Interviews alone are not sufficient, as Beattie (1964:87) explains: 'unless the anthropologist 'takes part' in the culture... he can never really hope to see it as its members see it.' Only by at least some participation in community life can researchers extensively understand peoples' real perceptions.

Observations were conducted using a combination of non-participant observation, (as an uninvolved observer), and interaction with events and those being observed, as a participant observer. Appropriately, Gillham (2000:45) explains that observation has three main elements; watching what people do; listening to what they say and sometimes asking them clarifying questions. In participant observation, the researcher is an interactive observer of the subjects being studied. The observer is in a face-to-face relationship with the observed, and, by participating with them in their natural setting, s/he gathers data (Becker 1971).

Significantly, a further characteristic feature of observation is that it provides first-hand reports of events and actions and a much fuller coverage of an organisation's activities, giving direct knowledge of matters that, from interviewing, could only be known by hearsay (Becker and Geer 1957). Parahoo (1997) aptly comments that one of the strengths of the ethnographic approach is that observation and interviews go hand-in-hand with each other. This allows for a more complete understanding of what is being studied. Thus, the researcher can ask why people behave the way they do and clarify inconsistencies that arise between what people

say and what they do.⁵¹ At various times, the research activities of out-of-court forums, observations and interviews were interchanged.

Participant observation in social welfare offices was carried out in order to develop a more qualitative account of dynamics from social welfare rooms on girls' matters. This approach allowed me to gather much valuable recorded information on the plight of child-wives and child-widows, thus complementing the interviews from key informants. Through that method, I obtained data that uncovers the practices of people as they live them in everyday situations, and the types of claims that girls pursue with respect to their male partners.

Primary Courts: Court Records and Observation

Observation and interviews were complemented by an analysis of court records, mainly of primary court magistrates and on matters dealing with early marriage and inheritance. The strategy of research involved two processes. The first entailed the use of official records in order to carry out a qualitative analysis of cases. This approach was successful in all districts. The second was by the use of direct courtroom observation. This approach was only successful in Tarime, as there were no child-wives or child-widows' cases registered for the whole time I was in other districts.

Court Records

A documentary analysis of court records was carried out, as it is an important indicator of events and processes, as well as a source of basic court information. I collected data in six primary courts (2 courts per district),⁵² covering a period of six years. I went through the yearly register and recorded all civil cases according to

⁵¹ But, there are some weaknesses; observing people is slower and time consuming. The data is also difficult to collate and analyse.

⁵²The Primary courts' jurisdiction covered villages where I chose to interview girl-children.

gender and marked inheritance and matrimonial matters. Then I requested the case files to check for age and to read the summary of some cases of adult women, and to read in detail all child-wives' and child-widows' cases.

To identify cases concerning child-wives or child-widows was a time-consuming process, and tedious. This involved having to read through a vast number of cases in order to select those dealing with child-wives or child-widows. It was only in Mvomero Primary Court, where the ages of plaintiffs and defendants were recorded in a register, that it was easy to identify child-wives' cases. No primary courts visited had adequate places to keep their files (see Appendix 11); some of the files were missing.

By comparing the primary court cases with written sources of statutory and customary law, I have been able to formulate some grounded suppositions about the interplay between the laws and customary sanctioned norms in the primary courts.

Court Observation

Because written court records present only one perspective on the court encounter, scholars stress the importance of observation in court as well (Okumu-Wengi 1995; Hellum 1999). I observed two cases of child-wives. Information about the background of magistrates and the assessors, as well the parties in the cases, were obtained from interviews with key informants. The information illustrates various assumptions about the factors and forces that influence the interplay.

Observation of participants in court was an important aspect of data collection, as Lindlof (1995:134) aptly remarked: 'observing is indispensable to the research styles of ethnography...Only the human investigator situated in a scene is able to register the subtle, processual actions of other human beings'. For example, observation was critical in understanding the capability of participants to articulate facts during

the court proceedings. During one session, a child-wife (aged 16) explained many unnecessary facts during her presentation of the case. She reacted by showing her ignorance of the proceedings, and wanted to explain the relevant facts when her husband was answering questions posed by the magistrate. Her reaction and comments would not have shown up on any court transcript and could only have been reported through direct observation.

The two cases I observed indicated the difficulties faced by girl-children when presenting their cases. They needed legal representation for justice to be done. Court observation greatly enriched the data on access to justice.

Focus Group Discussions

Basically, when the goal of the research is to generate theories, focus groups are among the most appropriate tools (Morgan 1993). Morgan (1988:12) pertinently notes that 'the hallmark of the focus group is the explicit use of the group interaction to produce data and insights that would be less accessible without the interaction found in a group'. Thus, well-moderated group interaction can assist in bringing to the surface aspects of a situation which might not otherwise be exposed (Punch 1999:177).

In the field FGD gave insights into what participants 'think, and why they think it' (ibid). Participants revealed both a consensus and diversity of experiences, preferences and assumptions. FGD further allowed group interaction so that the participants were able to build on each other's ideas and comments to provide an in-depth view not attainable from individual questioning. Hence, unexpected comments and new perspectives were commonly explored.⁵³

⁵³ However, the disadvantage the researcher experienced is that she generated a large amount of qualitative data that consumed more time to analyse. It also requires great skill to ensure that the discussions were flexible but focused. Having training experience in the method, I applied it in order to elicit effective information

Key steps in conducting FGD were adhered to: I planned the FGD; I developed a checklist of questions (Appendix 5); I provisionally decided what types of groups were needed (see Appendix 6), pre-tested the instruments and modified them accordingly.

Workshops

In order to solicit further evidence from the public, five workshops using an animation method⁵⁴ were conducted (see Appendix 7). Through the animation method, experiential systems of learning enabled participants to create theories and suggest the way forward. Most of the discussions, active listening and critical thinking in workshops took place in small groups and focused on key issues. Participants were able to brainstorm and debate one another's ideas, analyse issues in depth, and present concrete statements in a relatively short time (TGNP: 1993) (see Appendix 8: Workshop Guidelines).

For instance, a day's workshop in Shinyanga involved 16 child-wives and child-widows. The purpose was to hear more of the life stories. I also invited 5 girls whom I had previously interviewed, so that I could better understand their perspectives. Lead-in methods such as jokes and getting to know each other (names, people's interests) were utilised at the beginning of the workshop to put participants at their ease.

I used role-play as an 'ice-breaker' strategy when working with girls, as most girls are socialized not to speak up in front of adults. The facilitation skills used, namely, commending participants for their answers, applauding them, and showing them respect made girls much more confident in voicing their concerns. Group work, testimonies and drawing sessions were used to encourage them to talk. For example, during the drawing session where participants drew pictures describing

⁵⁴ A facilitator uses participatory approaches; validates the experience and knowledge of participants; brings conflicting ideas and relationships out into the open; increases solidarity, self-esteem and self-confidence; produces creative ideas; inspires and energises (TGNP 1993:23).

what had been the most shocking issue that they had faced in their marriage or widowhood, three of them narrated some new incidents that were not pointed out during the interview (Interview (6/02/04)).

One explained that the major problem she faced during her marriage was frequent sexual activity with her aged husband that caused her severe pain. That 'dyspareunia' (pain on sexual intercourse) was caused by immaturity of the girl's genitalia and the requirement of 'dry sex' by the husband (Figure 2a).



Figure 2a: *A child-wife's (15) drawing illustrates sexual abuse*

Another narrated the hassle of early pregnancy (Figure2c), and another mentioned the staggering amount of habitual physical violence (Figure2b).

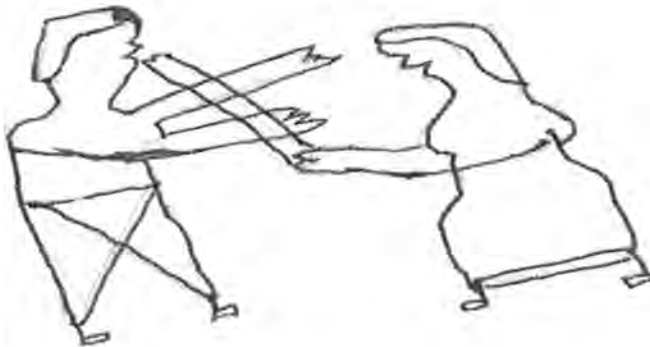


Figure: 2b *A child-wife's (14) drawing illustrates physical violence*

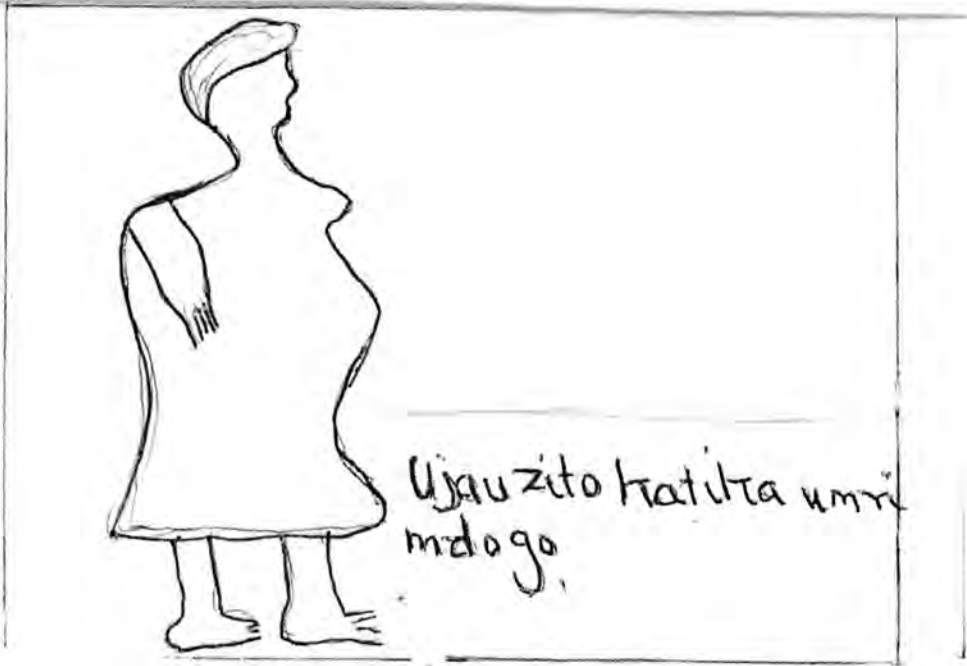


Figure 2c: A child-widow's (15) drawing illustrates her struggles on early pregnancy at a tender age



Figure 2d: A child-wife's (16) drawing demonstrates her problems while pregnant; the Swahili words means 'I'm pregnant but I have not eaten since morning; I'm going to sell cassava to get my basic needs'.

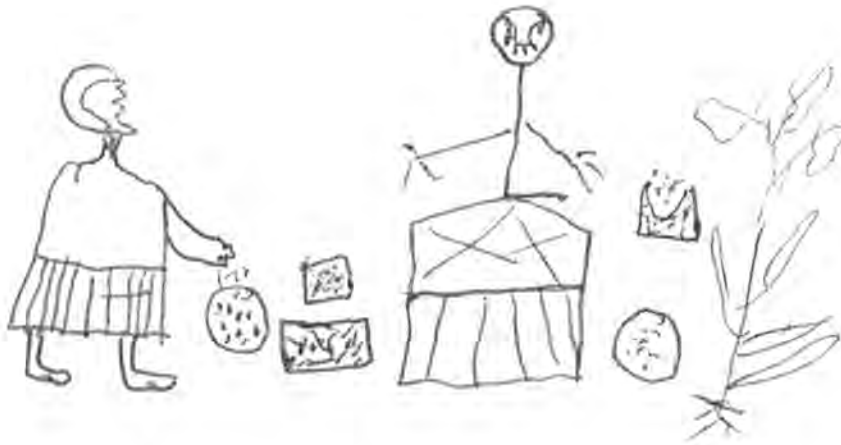


Figure 2e: *A child-widow (16) illustration of being blamed as a witch*

Transcripts of Video or Audio-recordings and Photographs

Audio or video recordings are an important part of qualitative research. Transcripts of such recordings, based on standardised conversations, provide an excellent record of 'naturally occurring' interaction. Compared to field notes of observational data, recordings and transcripts can offer a highly reliable record to which researchers can return as they develop new theories (Silverman 1993). The possibility of capturing aspects of the audible and visual elements of *in situ* human conduct as it arises within its natural habitats, provides researchers with unprecedented access to social actions and activities (Silverman 1998:198). Listening to, and where possible, recording stories or group discussions, allied with the taking of photographs, informs and completes the process of the interaction.

Data Analysis

This section summarises the data analysis from the beginning of data collection to the final data analysis. The process used to analyse the data was grounded theory. Analysis in the whole research process employed six tools, as suggested by Glaser and Strauss (1967).

First, I employed an *open-minded* approach (without a rigidly imposed theory) towards the fieldwork; that is, being aware of 'basic assumptions and the basis for them, as well as not taking anything for granted' (Bentzon et al 1998:179).

Second, is the *next question* technique, which means writing what you have interviewed or observed, then asking oneself 'what is next'?

Third, the 'dung beetle method' of sampling was used.

Fourth, the *concept-building* tool - I did a regular build-up, during the research, of the data and observations and comments on the data (Bentzon et al 1998). By using the concept building skill, preliminary classifications were developed in the field and the implications of the developed ideas and theories were worked out.

Fifth, the *constant comparative method* - the researcher compared data as it is collected and utilised. Indeed, coding was a central process which this study applied in sorting out data from emerging theories. 'Coding is simply a process of categorizing and sorting data, while codes are described as serving to summarise, synthesise, and sort many observations made out of data' (Bryman and Burgess 1994:5).⁵⁵

⁵⁵ I followed Straus and Corbin's (1990) framework of four stages to inform the analysis: First, open coding; that is, the analytic process by which concepts from the field were identified and developed in terms of their properties and dimensions. Second, axial coding; that is, the process of relating subcategories to a category by making comparisons and asking questions in a more focused way and

Sixth, the 'limitations on theory building' tool, whose purpose is aptly elaborated by Bentzon et al (1998:185) as 'to use the finding of similarities and disparities between data collected from different areas in the ongoing reviewing of the original plans. Each comparison reveals new properties and characteristics of the subjects under investigation as well as an insight into the fields and areas in which they function'. The theories were ready for presentation.

Additionally, with regard to FGD and workshops, transcripts were coded by a given code for each individual participant mentioned, while each group discussion also contained a given code. The interaction between participants contributed as a resource for analysis and interpretation.

One approach the researcher used was to trace issues and/or participants through each transcript from beginning to end. For example, she identified the arguments relating to a particular issue (i.e. *mahari* as a source of early marriage) that stimulates others to rethink their position, including arguments that may be discounted or challenged. The arguments were coded on a range of dimensions, including strength of response provoked, type and range of emotions evoked.

However, critics of grounded theory have suggested that the 'authors remain vague on how verification is accomplished and question the status of data and the actors' perspective within the theory. Others have commented on the perceived tendency of researchers to impose their own order on empirical materials' (Denzin and Lincoln 1994:205). The researcher in this study felt it was important to defend the findings, explanations and analysis of the data. Evidence to support the conclusions is provided.

relating categories in terms of the paradigm model i.e., '(a) causal condition → (b) phenomenon → (c) context → (d) intervening conditions → (e) action/interactions strategies → (f) consequences' (ibid: 99). Third, selective coding; that is, a process of integration of data, 'which is similar to axial coding but it is done at a higher, more abstract level of analysis'. Fourth, the process of generating theory, which is a linking of action/interaction sequences as they develop gradually over time during research (ibid:157).

Conclusion

The Tanzanian legal system is characterised by legal pluralism, which, in its widest meaning, when contrasted with legal centralism, involves the recognition of the notion that not only is state law derived from multiple sources but also that there are important sources outside of state law which generate and enforce norms which often work in contradiction to state law.

Recognising that state law has no monopoly or hegemony on legal and social regulation means that it becomes essential to explore people's lives beyond the confines of state law and various customary recognised normative orders. Only by doing this is one able to explore the reality of people's lives and thereby acquire a holistic view or perspective of the reality of the lives of child-wives and widows.

Thus, a grounded approach method is used in this study. However, in the field there was evidence of the realities of the strengths and challenges of the qualitative methodology as portrayed in literature. Thus it appears that the application of qualitative research in some places, such as the Maasai area, is particularly problematic because of cultural practices. As a result, a number of ethical issues arose particularly with regard to sensitive issues such as 'widow-inheritance'. However, the researcher was able to acquire valuable data and analyse their implications, as examined in the following Chapters.

CHAPTER THREE

ACADEMIC NARRATIVES: FEMALE CHILDREN'S PARTICIPATION

This Chapter examines the extent to which female children as social actors have the space to give their opinions during the marriage process within families in Tanzania. Indeed, giving an opinion is a part of the right to participation as provided under Article 12 (1) of the UNCRC.⁵⁶ The study highlights how individual girls are situated in networks of kinship at household level and demonstrates features that affect their position in society and in law during the early marriage practice.

Female children's age, gender, culture, locations (i.e., urban or rural) and families' (economic and education) status play a key role in constructing different forms of space and power which affect their ability to negotiate with adults, such as parents, and the types of discourse they employ. Such power informs the limitations of claims that female children can make in both social and legal terms. Given the gendered nature of the world from which such power derives, this creates challenges for girls (Griffiths 1997; Ncube 1998; Stewart 2000) which extend to their use of customary, Islamic and statutory laws. Griffiths (1997) characterised this situation as one which repudiates any remnant of the old model of legal pluralism based on distinctions drawn between customary and colonial law, and which forms part of the wider feminist critique of law.

Thus, the narratives included in this Chapter present two interrelated themes. One underlines the right to participation and its value to girl-children. The other highlights the interconnections of family, marriage and gender relations between girl-children and adults. The narration demonstrates that the right to participate is

⁵⁶Tanzania ratified UNCRC in June 11, 1991.

shaped by the gendered world, which has an impact on how girls are treated in early marriage processes in society and in law.

THE PARTICIPATION RIGHTS OF THE CHILD: AN OVERVIEW

Children's participation can be defined as children engaging in and influencing processes, decisions and activities. It is fundamentally the exercise of power (Rajani 2001:11).⁵⁷ Although participation varies according to one's evolving capacities, all children, regardless of gender, can participate in various ways from the earliest age.

In the past, scholars revealed that children were largely invisible in social science investigations (Alderson 1995; Morrow and Richards 1996). An underlying belief that prevails is that of adults' abilities to explain on behalf of children (John 1996). To a certain extent, this has reflected the views adults commonly hold of children. Robert Chambers asserts that: 'They are seen as ignorant – to be taught; irresponsible – to be disciplined; immature – to be brought up; incapable – to be protected; a nuisance – to be seen and not heard; or a resource – to be made use of' (Johnson et al 1998:xvi). Children have been subdued and their voices silenced.

However, in 1990, the UNCRC became part of international law. There has been considerable interest in children's participation, largely due to the widespread ratification of the UNCRC (Johnson et al 1998; Rajani 2001; UNICEF 2002).⁵⁸ Children are to be given greater opportunities for participating in and exercising responsibility over decisions affecting their lives (Asquith and Hill 1994; Himonga 1998).

It was during the same decade that Africa, at the Regional level, also united in declaring its determination to promote and protect children's rights. Children's rights are set out in the African Charter on the Rights and Welfare of the Child

⁵⁷ Additionally, participation rights, including the necessity to be informed about the UNCRC (Art.42), are key to the future improvement of children's rights (Wyse 2004).

⁵⁸ According to the Vienna Convention on the Law of Treaties, 1969, if a treaty has been ratified by a state, the state is under an obligation to comply with it and give it full effect in domestic legal orders.

(ACRWC).⁵⁹ It re-affirms an adherence to the United Nations' instruments and, in particular, to the UNCRC. The ACRWC provides rights, as well as responsibilities for children; it also states the right of freedom of expression and freedom of association (Art.8). Apparently, it does not specifically state the right to express an opinion and to have that opinion taken into consideration (as stated in the UNCRC). The underlying reason for this could be because of the community values that exist in most African societies. The right to give an opinion is left to an adult network within the community who have responsibility for bringing up the children (Omari and Mbilinyi 1996). Notwithstanding that exclusion, according to Article 8, the duty of State Parties is to assure the right to freedom of expression in 'all matters affecting the child' and, as a result, places duties on the state in relation to matters traditionally relegated to the private sphere, such as early marriage (Bueren 1995).

Nonetheless, it is significant that the ACRWC affirms adherence to the UNCRC; thus, the right to give an opinion should be adhered to by member States. Importantly at national level, Tanzania has ratified regional and international treaties on children's rights and has even enshrined children's rights in the National Children Development Policy (1996). It is instructive to examine the UNCRC in relation to the right to participation.

The Right to Participation

The United Nations has laid the foundations for an international children's law of human rights⁶⁰ that transcends the borders of national, religious and customary laws. On the basis of a non-discriminatory approach the UNCRC sets out to ensure the right to participation of every child, regardless of gender. The UNCRC enshrines participation as a fundamental right of all children. Articles 2, 3, 4, 12-

⁵⁹ Adopted by the Assembly of Heads of State Government of the African Union in Monrovia, Liberia in 1979. Tanzania signed in May 1991.

⁶⁰ The term, 'human rights' means 'the conditions of life which men have the right to expect by virtue of being a human being' (Nherere 1996:2-3)

15⁶¹ place an obligation on ratifying countries to respect, protect and fulfil the right to participation in their laws, policies and practices. Articles 2 and 4 of the UNCRC impose two key obligations upon State Parties. The first is to ensure that all children within their jurisdiction enjoy the rights contained in the UNCRC without any discrimination. Second, States shall undertake all appropriate legislative, administrative and other measures with regard to the implementation of the UNCRC. Significantly, Article 12 (1) of the UNCRC requires that:

The State Parties...shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child....

This aims at enabling children to play an active role in the society and to have a say in their own lives. They should not be considered as mere objects of socialisation or control (Asquith and Hill 1994). However, it is important to note that the UNCRC does not propose giving children a total range of decision making powers; some criteria should be taken into consideration, such as the age of a child, level of maturity, culture, family situation and different developmental circumstances within a society. The age of a child and maturity are reflected in the basic 'concerns for the evolving capacities' and 'the best interests' of the child.⁶² For example, teenagers are regarded as being more mature and thus accorded more responsibilities in most countries.⁶³ The extent of participation- that is, the rights to express opinions, to have these opinions considered, to play some role in decision-making and to make individual decisions – must, in the best interests of the child,

⁶¹ Art. 2: Non-discrimination; Art. 3: Best interests of the child; Art. 4: Implementation of rights; Art. 13: Freedom of expression; Art 14: Freedom of thought and religion; Art 15: Freedom of association

⁶² The criteria of 'age' and 'maturity' are of equal importance, as a young-child can be mature beyond his/her years (Bueren 1995).

⁶³ This is exemplified by sect. 6 (1) of the Children (Scotland) Act, 1995, that reflects the UNCRC by requiring parents to consult their children over any major decision involving their upbringing and presumes that 'a child of 12 years of age or more is of sufficient age and maturity to form a view' (Roche 2002). Possibly, good parenting involves getting the balance right between authority and freedom; this is perhaps the most difficult part.

be balanced with rights of protection and development (Flekkoy and Kaufman 1998:60).

The 'Value of Children's Rights to Participation'

Children's voices in the global arena are one of the most important features of the UNCRC, alongside the traditional existing concerns of the protection and the provision for children. The UNCRC stresses this third element – children's participation, because of its value to children. My analysis on the value of participation will employ 'eight values' (Rajani 2001).

First, 'participation is a human right and an end in itself' (Ibid:10). Every human being has a right to dignity, to respect, to be treated fairly, to have a voice and to take part in influencing and shaping the world. So, forcing a girl-child into marriage without her say is violating her human right, as being able to participate is central to being human.

Children can no longer be perceived as 'not – yet' persons, waiting in the lobby of life to become mature (Pais 1999: 2). Children hold the key to the development of a human rights culture. If they do not experience what it means to be a holder of rights and see adults taking their human rights seriously, or if human rights are not built into their early development and education, and into government and services for them, then there can be no serious prospect of developing a human rights culture for our future (Newell 2000:10).

Second, 'participation is critical to self-development'; girl-children cannot develop if they are shackled and unable to meaningfully co-determine the course of their lives (Rajani 2001:9). They gain confidence by analysing their situation, identifying problems and solutions, prioritising these and then taking action. Girls do not develop by being passive during the marriage process or by simply observing, as it is through participation that children develop skills, build competencies, form

aspirations, gain confidence and attain valuable resources. Thereafter, they become more assertive in advocating their rights and in articulating their issues to the rest of the community (Mukasa and Grift 1998:279). In addition, children's participation experience contributes to their psychological well being by giving them a sense of control (Cappelaere and de Winter 1998:3). Maturity and growth are ongoing processes achieved through participation.

Third, 'participation builds effectiveness and sustainability' (Rajani 2001). When children participate in creating and managing a family project, for instance, they contribute valuable ideas and see themselves as associates of the project.

Fourth, children can make a valuable contribution to societies in many ways, including helping in domestic chores, in taking care of elders and by assisting in nurturing and taking care of siblings (Omari and Mbilinyi 1996). In most African traditions, participation is recognized in the context of performing housework; this engagement gives children both a stake and an important first - hand perspective on a range of life issues that should be considered in decision-making. Unfortunately, girls perform more domestic work than boys (CDP 1996:8), as separate roles are ascribed to female and male children, and as children they are expected to obey without questioning.

Fifth, 'many children worldwide want to participate', to feel involved and to have the opportunity to make a difference (Woollcombe 1998). During the United Nations Special Session on Children, the children remarked: 'We are children whose voices are not being heard: It is time we are taken into account'. This shows that, even during this 21st century, most children globally are still not given the space to give their opinion, and they are asking for the chance to participate.

Sixth, 'participation fosters learning, builds life skills and enables self-protection' (Rajani 2001:11). Children who have things happen to them, without having the

opportunity to defend themselves or to shape outcomes, are more likely to become passive (ibid). Early marriage is among the instances where girl-children are denied the opportunity to participate in decision-making processes. This may be detrimental to the child, as well as to the society at large (Bueren 1995). Hence, girls who are forced into arranged marriages without having space to voice their opinions are more likely to become passive.

Seventh, participation is integral to the democratic ethos (Rajani 2001). Everyday participation provides children with an informal education in a democratic way. A child cannot experience life in an autocratic milieu for 18 years and then suddenly begin to act democratically in adult life (Johnson 1998).

Finally, children's participation builds civil society. It is asserted that children's participation in groups, clubs, teams, committees, NGOs and other types of associations, can strengthen civil society (Kuleana 1999; Rajani 2001). Studies have shown that women who marry young tend also to have lower self-esteem and hence are less likely to participate in any meaningful decision-making at any level (Rwebangira 1996). The challenge is how State Parties such as in Tanzania implement the right to participation in practice.

Children's Participation in Tanzania

The primary object of Article 12 is to promote the best interests of the child by enabling that child to participate in a meaningful way in all decisions that affect her life (Rwezaura 1998). Paradoxically, the Child Development Policy (CDP 1996:10) in Tanzania includes the right to participation but just states that children between the ages of 14-18 years need to participate, but there is no comprehensive structure for implementation; as a result, it is ignored in various institutions such as in the courts. Rwezaura (1998:297) observed in Tanzania that magistrates rarely consult children in crucial decisions involving their custody, residence arrangements and

adoption. Such reluctance to consult children is not necessarily a result of the absence of legal provision; it ensues from traditional attitudes.

Obdam (1998:212) asserts further that most families in Tanzania and some institutions, in particular, some school systems, give the appearance to children that their opinions are irrelevant. They are socialised to do as they are told without questioning. When a child fails to follow the instructions, s/he is punished and is often beaten. The belief inculcated into children's minds is that they are not worth being listened to. So, they find it hard later to formulate their opinions.

Nevertheless, some schools constitute a positive medium for children, in terms of exposure to decision-making and in airing their views. This is particularly prominent when there are NGO programmes in the school (Ibid: 213). To a large extent, children's active participation depends on the level of their exposure to the world around them (Obeng 1998). For instance, children in urban areas speak their minds more easily than their counterparts in rural settings and do so without fear of reprimand. This is because urban dwellers have access to modern technology (television and the internet) and good schools with well-informed teachers (Ibid). Faraja, a girl-child from Tanzania, supports Obeng's assertion:

I have been actively involved as a youth participant in several national and international meetings on child rights. This experience has enabled me to write this article on children's participation...children's participation is the involvement in decision making, about going to school, or getting married at a young age. It means having children at the forefront and speaking for themselves, speaking as children for the benefit of all. Children's participation is very important.... As young as they are, the pains and burdens they carry force them to abandon their childhood for adulthood. But still they are not being given opportunities to speak. When they are given a chance, nobody listens.... Children's participation is not only about giving children an opportunity to speak, but to listen to them (UNICEF 2001b:73).

Girls in Tanzania are now appealing for an opportunity to give their opinions and to have them taken seriously, even on marriage concerns.⁶⁴ Notably, one of the

⁶⁴ However, participation should not be manipulated or tokenism indulged in to suit the adults' ideas (Hart 1992).

areas where girls are excluded in giving their opinions is on the marriage process. If any opportunity is given, they are socialised to agree with their parents' decisions.

Although the child's right to participate in decisions within families is often overlooked in Tanzania, this right is central to the whole children's rights agenda. Unfortunately, this principle of participation has not gained general acceptance in Africa generally, either at the family or state level. In most African customs, the child's obligation is to obey instructions from adults; as a result s/he often has a limited chance to express an opinion (Mukasa and Grift 1998:278).

In most countries (North and South), it seems the child's right to participation is a new concept. In the words of Martha Minow (1987:1868-9): 'Children's rights make adults uncomfortable because they represent new ideas... and signal that adults and existing practices have to change'. The issue of children's participation rights requires significant changes in social attitudes in most countries, including Tanzania.

The following section explores how the girl-child is given space to participate during the marriage process in families and how gender impacts on the girl-child's status.

FAMILIES, MARRIAGE AND GENDER RELATIONS

Families and Early Marriage

Legal and social studies have emphasised the significance of marriage in Tanzania and have examined the sociology of the family in marriage relations in empirical terms (Wilson 1959; Klima 1969; Swantz 1985; Sivalon 2000). Other scholars have examined girls' legal rights in marriage and inheritance from an ideological perspective (Rwebangira 1996; Mhoja 1997; Makaramba 1998). Additionally, the

girl-child's early marriage problems and the role of customs are expounded by several studies (Tumbo-Masabo and Liljestrom 1994; Omari and Mbilinyi 1996; Rwebangira and Liljestrom 1998; UNICEF 2001a). These works, however, focused on the early-marriage practice and some of its impact on girls, but not on the participation rights of the girl-child in matters that affect her life during an early marriage.

The ideological power of marriage is noted as a key issue in societies where marriage is an honour within families (Abrahams 1981:90). According to customary norms, a marriage involves a social and cultural relationship that is meaningful yet profoundly complex. It is not a relationship between a man and a woman, but an alliance between the family of the bride and that of the bridegroom (Mbiti 1991).

Studies have shown that in Tanzania, the extended family is still the dominant pattern of family organisation, as in most other African societies. 'Family' refers to a primary group, directly linked through marriage or kinship that is responsible for the care of children (Rwebangira and Liljestrom 1998; Ncube 1998; Sivalon 2000). The whole extended family group is a social and economic unit and networks are formulated within these kinship groups (Sivalon 2000).

However, Sivalon (2000) gives another insight indicating that the nuclear family is becoming more and more important in terms of the regulation of sex, economic co-operation, reproduction and socialisation. Most men and women want more freedom to pursue their individual interests. He asserted that the major economic and social transformation⁶⁵ factors for change are poverty, capitalism, cultural imperialism, religious influence, globalization and urbanisation (ibid).

⁶⁵ The Kurya, Maasai and Sukuma have a tradition of owning cattle as a sign of wealth and prestige (up to 4,000 cattle per household). Their pride in owning many cattle has made them prefer early marriage, particularly for girls (FGD in Shinyanga on 14-2-04). However, there has been a shortage of land for pastoralism and farming. This is noted by their shifting tendencies. The Sukuma (from

In recent years extended family networks have had to face additional challenges arising from the HIV/AIDS pandemic. The most important determinant of a family's response to the effect of the HIV/AIDS epidemic is its economic status. In this regard, campaigners for the prevention of HIV/AIDS challenge traditional African family beliefs (especially on polygamy), and promote the Western style of marriage institution, which is characterised by monogamy and strong partner bonds (Hunter et al 1997:114). Clearly, contemporary economic and social transformations and the impact of the HIV/AIDS pandemic contribute to the lessening of the traditional support of the extended family and to the move towards the nuclear family.

However, many recall the past in nostalgic tones and fear what the future will bring. Some describe the social and economic transformations that have occurred within families in terms of an increasing lack of respect between spouses, parents and their children (Hodgson 2004:273). As a result, through fear of social change and economic constraints, some families had been arranging early marriages without the girls having influence in the matter. Yet, the changes differ from kinship to kinship, depending on how each is affected by the transformations and outward normative orders.

The Early Marriage Practice

A girl-child is a social actor but a passive one from an adult's perspective. The law provides that other actors, especially the father, will be the active actor on her behalf (see the next section). A number of traditional beliefs circumscribe participation by children in decision-making concerning specific subjects, for

Shinyanga) have moved as far as the Coastal regions. The great fluctuations in economic policies experienced since the 1980s (Wangwe 1994) have increased the dependence on wage labour and the migration to mines i.e., the Nyarugusu gold mines in Shinyanga. Some Maasai men have also opted to secure jobs in towns as security guards or by pleating hair as they have limited job opportunities, given the low level of their education.

example, marriage. In arranged marriages, a male suitor's choice of a girl is conducted mainly through the extended family network.

Sivalon (2000) examined traditional early marriages of girls. He referred to some tribes as examples of variation in custom; he started with Sonjo, Maasai and Barabaig (who are mainly pastoralists). Sonjo girls marry soon after initiation; on the other hand, boys do not marry until about the age of 24-31. However, this is not now an absolute rule. Barabaig girls marry at the age of 10-14, after breast development; Maasai girls marry at puberty while Maasai boys wait until they are in their twenties; yet, discussion of marriage can sometimes be introduced when the children are quite young; the Parakuyo Maasai do so with young boys, and arrangements can be discussed for female infants. However, discrepancies in age at marriage are not confined to pastoralist tribes but also exist in agriculturalist tribes in rural areas where early marriage is common (Sivalon 2000).

According to customary norms the father has the final decision on the girl-child's marriage. If the father agrees that the girl may marry, the girl herself, or her mother, have very limited powers of intervention (ibid). Sivalon (2000) portrays an example of the Parakuyo Maasai. The father alone has the right to decide on his daughter's marriage, although in practice he will discuss the matter with his wife and elders (men). The authority of the elders' network is important in marriage, especially since kin networks will have to be relied upon during *mahari* (bridewealth) transactions. It is thus observed that girls in rural areas tend to marry at an earlier age, while those in urban areas, especially the educated and employed, marry later (Swantz 1985; Rwebangira and Liljestrom 1998).

Every ethnic group had its own customary rules and marriage processes. However, what is accepted as common ground is that a family as a social unit used to be constituted through marriage, where some form of transaction took place from a husband's to a wife's family. In most patrilineal societies, *mahari* is a

necessary element in the marriage process because it is regarded as a highly symbolic action of alliance between the bride's and groom's kin group (Kirwen 1979)⁶⁶ and is also a means of acquiring a part of the wealth circulating within clans. In practical terms, in some societies like the Sukuma and Kurya, *mahari* constitutes a circulating pool of resources, as it goes to the bride's male kin (brothers) in order that they can use *mahari* to pay for their brides.⁶⁷ This circulation tends to reinforce the authority of the father and emphasises the ties with the sister.⁶⁸ As a result, the girl is valued for the *mahari* her father can fetch on her marriage. However, this is more valued in patrilineal societies than in matrilineal societies, where '*mahari*' is small (Rwebangira and Liljestrom 1998).

Scholars have examined several types of marriages, but have categorised only two main classes - marriages with and without *mahari*. However, marriage with *mahari* was more honoured than the other forms of marriage. For instance, in the case of adultery, no compensation was awarded to a husband who had not paid *mahari*. When couples stay together without fulfilling that obligation, several customary rights are withheld. Also, unless redemption payments have been made, the children of a non-*mahari* marriage belong to the wife's kin, who are entitled to take custody of them. Such children also have no rights of inheriting any property left by their father, and the father of such children has no right to receive the *mahari* from his daughters' marriages and no obligation to pay *mahari* for his son (Kirwen 1979; Abrahams 1981).

⁶⁶ The transfer of *mahari* traditionally took different forms and for some families it took the form of labour. In these circumstances, among the Sukuma, a newly married husband would stay with his in-laws for a year or two doing farm work if his family had not paid the required *mahari*. But other communities used cattle or goods for a marriage transaction (Rwebangira and Liljestrom 1998).

⁶⁷ Among the Sukuma, a paternal aunt's daughters had been given special respect. They are called *Sengi wa Kabili* by her brother's offspring, meaning 'junior aunt', instead of the usual cousins' relations in the sense that it is through the sister's *mahari* that the brother paid *mahari* for his bride.

⁶⁸ However, there is a diminishing importance in the collective aspect of marriage. Emphasis is shifting to the individual aspect of marriage as a relationship between two persons. It very often happens that a middle class man who has the ability to provide the necessary *mahari* out of his own earnings becomes fully independent of his family networks (Discussions with elders in Shinyanga on 13/2/04).

The purpose of early-marriage can sometimes be seen as one of economic gain because of the issue of *mahari* (Chapter 4). However, Kirwen (1979) provides another perspective in Tarime-Tanzania. The phenomenon of paying *mahari* to the father of the girl is a very involved one and a complicated part of the social structure:

For instance, the Luo describe it in terms of 'payment', 'a gift', a sign of real marriage which establishes the security and identity of children. It is intimately bound up with the creation of alliances between lineages and assures the paternal inheritance. He emphasised that one must be careful not to interpret the 'payment' of mahari as a purely economic transaction, a real 'buying'- in a Western economic sense - of the bride. For it is also a highly symbolic action, perhaps akin to the Western custom of giving an engagement ring or expensive gifts to one's prospective bride (Ibid: 35).

Thus, in most ethnic groups, *mahari* is a necessary element in the marriage process. Similarly, some respondents⁶⁹ argued that *mahari*⁷⁰ indicates the value of a woman and had been used to buy household utensils for the bride. Instead of pocketing the money, they used it to benefit the girl. Part of the *mahari* had been used for buying food/drinks during the wedding ceremony. For such families, *mahari* remains as part of a cultural heritage and identity to help bring together two families, whether they are poor or not. It also affirms that the groom values the bride.

Recently, the giving of *mahari* has been seen as an 'exorbitant bride price', since parents imbued with economic values have begun to calculate the worth of their daughters in monetary terms. Its social utility has changed and it has outlived its usefulness (Male and Onyango 1984; Olaogun 1996) sometimes causing many moral and legal problems in society.⁷¹

⁶⁹ A discussion on 12/2/2004 held with Chamaguha Ward Tribunal members in Shinyanga.

⁷⁰ *Mahari* has allowed control over girls' reproductive and productive functions, but it also indicates the high value that was placed on these functions (Armstrong 2000).

⁷¹ A number of cases concerning the refund of *mahari* are filed in court. For instance, at Tarime Urban Court, in 1998, out of 55 matrimonial cases, 8 cases were specifically for refund of *mahari*; 44 were divorce cases, where husbands stated that they wanted the refund of *mahari*. Normally, a husband would file a case after the divorce, should the *mahari* not be refunded by his ex-wife's family.

Notwithstanding Kirwen's (1979) observations and other findings, where *mahari* is substantial, the marriage of girls tends to be early (Tumbo-Masabo and Liljestrom 1994). Polygamy is a practice habitually used by rich older men who can offer a high bride price. In Mara region, social welfare offices registered a number of cases of girls married to old men in polygamy (Katapa 1998:84-87). Further, the *Tanzania Knowledge, Attitudes and Practices Survey* of 1994 indicates that 'half of the women of Tanzania get married before the age of eighteen' and that '27 percent of currently married women are in polygynous union' (Rwebangira and Liljestrom 1998:19). Omari (1989) estimates that about 30 per cent of marriages in Tanzania are polygamous, but does not give the percentage of early marriages. Other sources indicate that approximately 22.5% of girls between the ages of 15 and 19 are married and it is evident that a significant number of currently married girls are in polygamous marriages, i.e., 17% (Tumbo-Masabo and Liljestrom 1994). These statistics are indicators that there is often a problem of child marriage in polygamy. (Yet, what matters here is not the quantity, but the quality of the problem).

In Tanzania a number of girls in rural areas are often withdrawn from school to be married. They are not given the opportunity to be heard, and parents habitually force them to accept arranged marriages (Omari and Mbilinyi 1996). In most cases, girls are victims of arranged marriages as they may be married to older men whom they did not choose, but whom their parents did (Ibid). The practice is one of the factors that contributes to the creation of unequal power relations within families. It is also the case that marriage to an older man sets up imbalances between a husband and wife in terms of experience, authority and economic autonomy (UNIFEM 2001). Kabeberi-Macharia (1998) aptly asserts that by marrying young, such girls attain the state of adulthood before they can understand and exercise their new rights.

A number of contemporary studies in Tanzania (Tumbo-Masabo and Liljestrom 1994; Omari and Mbilinyi 1996) also explain that initiation ceremonies are combined with marriage instruction in many societies from the Coast, Central and

Lake zones. Much of the impetus behind the initiation ceremony practice lies in the traditional societal expectations of pubescent girls as an indication of adult status. For example, Gogo girls are initiated at age 8-11 and become immediately marriageable (ibid). The inadequate education of some parents or guardians, especially those in rural areas, results in a failure to understand the impact of initiation rites on girls' education.

The initiation ceremony rites, such as sex education, namely *Jando* and *Unyago*, are very common.⁷² While *Jando* is the institution for the boys, *Unyago* is for girls, yet, the teachings are carried out according to a division of labour, based on sex. The initiation ceremony centres on viewing the girl as a grown up woman and ready for marriage, and she is thus trained to be submissive; for boys, the training is very different. The boys' teachings have very little to do with marriage; they centre on the empowering language of patriotism and heroism.

Even in Tanzania, (as Roberts 1977; Comaroff and Roberts 1981 explain in Tswana society) marriage played a central role in the construction of male and female linkages, which came to be invested with symbolic attributes. These attributes are gendered in the sense that networks constructed through men were characterized in terms of agnation, as hostile, assertive, and competitive relations embodied in the public sphere. In contrast, networks constructed through women, in terms of matrilinearity, were characterized as nurturing, supportive, and non-aggressive sets of relations that operated in the private domain. Consequently, most teachings are geared toward the preparation of girls so that they become obedient and effective mothers (Lumbo-Masabo and Liljestrom 1994; Omari and Mbilinyi 1996).

This account of social relations depicts a male-centred universe where a woman's only purpose is to create links in a set of relations that are primarily formulated

⁷² Women who are facilitators in *Unyago* are very influential and no man can interfere in *Unyago* activities (Lwanda 2002).

around men and around male access to power (Griffiths 1997). This kind of analysis is vehemently criticised by Griffiths 1997 and other feminists, because it underlines the separation between public and private, as well as between male and female domains. But while reality undermines any separation between public and private spheres, such a division, with all its gendered attributes, continues to have power as an ideological construct in Tanzania, as in Botswana (Ibid: 16).

Clearly, it becomes more problematic when the actors are children. Their powers of negotiation are very limited or almost non-existent. In this context, a girl-child is placed in a disadvantageous position should she wish to present her claims, if, for example, she does not agree to an arranged marriage (Chapter 4).

The Role of Gender Relations

It has been argued that the role of a girl-child is that of reproduction and production.⁷³ In Tanzania it is allied to patriarchal⁷⁴ domination of social norms in gender relations that reflect the subordination of females (Nyerere 1968). The gender-gap in terms of perceptions, obligations, and expectations starts quite early. Parents and other family networks socialise a pubescent girl to be submissive, to stay at home, to help parents, and not to socialize with boys before marriage. Boys are socialised to be aggressive and dominant (Rwebangira and Liljestrom 1998). It is common to find that sons are given a superior position in their families. Among certain communities the opinions of boys are given more weight than those of girls, with the result that most girls are not assertive and are unable to give their opinions openly in matters that affect them (Kabeberi-Macharia 1998:49). Many

⁷³ Reproduction and production were highly valued in traditional settings and women and girls were taken care of (Armstrong 2000:95). Unfortunately, traditional values are eroding, so, women's roles are often undermined.

⁷⁴ Although the term patriarchy is ambiguous in that it can name a range of context-specific gendered power relations, I use it here to refer to situations where men dominate women politically and economically. Such control is relational, never thorough; often contradictory and inconsistent; and maintained through extended negotiations and struggles (Hodgson 2004).

patrilineal families illustrate how much power men have; for instance, wife battering as a way of instilling discipline in a wife still persists in most patriarchal societies. A Maasai or Kurya husband can assault his wife;⁷⁵ only excessive wife-beating is negatively sanctioned within the kinship group.

As girls grow up, they are socialised to accept unequal gender roles through words, songs and hidden messages.⁷⁶ When children and adults are constantly exposed to gender biased talks and songs, prejudice against women and stereotyped images of women are inculcated (Omari 1994; Mhoja 1997; Wyse 2004). Thus, the issue of power relations in a family is observed from early childhood. A boy-child is prepared to inherit 'social power' from his father. Thus, elements of gender role relationships and issues of power are already prevalent. The power of male networks is a fundamental element in the threat to girls in the voicing of their opinions (Johnson 1998:58) during the marriage process. They are socialised to respect parents and elders to such an extent that they fear them and do not question them (Kabeberi-Macharia 1998).

However, girls cannot negotiate marriage processes nor are they consulted about whether or not *mahari*⁷⁷ should be paid in respect of their marriages, or with regard to the amount of such *mahari*. The reasons given for this by most of the respondents and parents interviewed were based on tradition and on the immaturity of these female children. This supports Himonga's (1998) observations

⁷⁵ Assault is a criminal offence, but most women suffer in silence, even when they report the assault to police; sometimes they are told it is a family affair and are encouraged to refer the matter to the family *baraza*.

⁷⁶ According to Gross, (2000:576) toys play a part in helping children to develop socially influenced roles such as attitudes, values and beliefs, which a particular society considers appropriate to males or females on the basis of sex.

⁷⁷ During the *mahari* negotiation, women have specific traditional roles to perform, such as cooking and are directed to sing or to do ululation while the formal request and the answer is given by a father or by male network members (Olaogun 1996:219). However, Christianity and Western education have influenced quite a few of these customs. Some urban women may attend to the *mahari* negotiation process and even in marriage meetings are given key roles.

in Zambia that children are not consulted in matters such as marriage and *mahari* negotiation, which from generation to generation have been the reserve of adults.⁷⁸

Continued biases in favour of the male-child have made untold millions of girls virtually invisible within their homes and communities (UNICEF 2001a). In daily life, some social taboos often prevent women and girls from participating equally in public. When they do participate, many are silent, especially when men are present. Although girls participate actively in domestic work, their contribution to the family is often underplayed under the ideology of childhood,⁷⁹ which generally undervalues the significance of their contribution (Rwezaura 1998:22). Empirical studies show that within their families, girls do not participate in the decision-making processes during the marriage. Thus, the networks into which a girl is placed contribute significantly to her subordinate gender position. These networks include parents and other adult members of society. Within this situation, the participation of girls is inevitably affected. Studies have also revealed the resilience of the family and its capacity to construct a buffer around itself, thereby resisting and opting out of statutory law interventions intended to open it up for the protection of its weaker members, such as children (Rwezaura 1995; Ncube 1998). It is, therefore, submitted that a great deal of discrimination against girls occurs at household level.

Another example of inequality in gender relations (that is condoned by law and affects female children) is polygamy. Some men try to increase labour power

⁷⁸Some traditions are positive, notably forms of hospitality, solidarity and respecting elders. Nonetheless, if the respect system is gender-biased (i.e., Sukuma women must kneel before their brothers when they greet each other, even where boys are younger than them), such a type of socialisation may destroy the initiative of the girl-child, who is afraid to confront traditional norms and is thus unable to speak her mind easily and hence is socialized to accept rites of passage, such as arranged marriages.

⁷⁹ Of more importance in the conceptualisation of childhood is the notion that children require special protection and rights specifically designed for them because of their immaturity and lack of experience in the ways of the world (Ncube 1998:15).

through polygamy (Sivalon 2000).⁸⁰ However, Hunter et al (1997) succinctly observe that most people cease to practise polygamy because it has become too expensive to maintain. The ramification of gender relations in polygamy is also portrayed in the media. Most men take for granted that women are inferior, as Balisidya (1982:9) portrays: '...the dominant power over the act of sex belongs to the man, who in fact chooses the girl and controls her'. Further, women have been portrayed as men's possessions; a man can own more than one woman at a time.

Like literature in any society, songs contribute in educating the public to norms, and are effective learning tools in instituting behavioural changes in individuals, as they can influence attitudes (Bendera and Mboya 1999). Kiswahili poems and traditional songs of coastal music such as '*taarab*' indicate that some women have accepted an inferior status in marriage and depend on male networks (Mlacha 1996:213). This is illustrated in a song called '*Uke-Wenza*' [co-wives], where a husband asks his wife to accept a co-wife as it brings comfort to both sides. He emphasizes that Islamic law allows him to marry four wives. In another song of the same title, composed by a woman, she accepts that she does not fear sharing a husband. That is how she has been taught and that is what the law says (Ibid). This suggests that some women have accepted this form of inequality as a way of life. Mwalimu Nyerere, (the then President), aptly argued that if *mahari*, as well as polygamy⁸¹ are sustained, women's inferiority will continue. He underlined both as significant obstacles to women's equality (Rweyemamu 1996). In 1975, Mwalimu even suggested publicly that it might be time to give up polygamy for social and moral, rather than religious, reasons (Abrahams 1981:119). Mwalimu did not want to interfere with religious beliefs but he meant that polygamy has outlived its usefulness.

⁸⁰ In Botswana, elites ceased to practise polygamy because it no longer represented the best means of acquiring power and resources that could be accumulated through other means (Kuper 1987:138; Comaroff and Roberts 1981; Griffiths 1997).

⁸¹ Socio-cultural practices such as polygamy are evidence of the hierarchy and power relations within the family. They represent male domination in a patriarchal society (Griffiths 2001).

Nonetheless, it is men who mainly dominate the marriage institution. Marriage is perceived by many ethnographers as operating in favour of the interest of male goals (Sivalon 2000:251). For instance, the Kurya and Maasai norm of obedience applies to a woman's behaviour towards her husband and not the other way round. Socio-cultural practices, such as polygamy, are evidence of the hierarchy and power relations within the family. They represent male domination in a socialized patriarchal society. But at the same time there still exists the expectation of marital unity and happiness (Hodgson 2004).

Hodgson (2000) offers an explanation of androcentric assumptions and accounts of gender relations. For instance, most descriptions of African pastoralists presume that men dominate,⁸² and have always dominated, virtually every domain of life, including economic resources, political decision-making, and cultural production (ibid). On the notion that some women perceived themselves, and were perceived, as 'property' to be bought and sold by men with *mahari*, Hodgson (2004) asks: how do women come to be thought of as 'property' or as 'possessions' that are owned and controlled by men? Contemporary gender relations among, for instance, pastoralists, which many scholars, (myself included), have described as 'patriarchal' because of men's political and economic domination of women, are not inherent to the pastoralism mode of production or to an ideology, but are the result of a particular historical constellation of interactions involving both British and Maasai ideas and practices. Specifically, it was during the colonial period of state formation that the parameters of male Maasai power expanded to embrace new modes of control and authority, becoming something that might be called 'patriarchal' (ibid).

Hodgson (2004:271) succinctly notes that the Maasai (as a society) have collectively been disenfranchised; however, these same interventions by both colonial and post

⁸² Schneider (1979:82) contended that among East African pastoralists, men's control of livestock gave them control of women, who were usually thoroughly subordinated to men and thus unable to establish an independent identity as a production force.

colonial states have reinforced and expanded the political and economic power of the Maasai over women. A similar situation existed in Kurya and Sukuma ethnicities (Kirwen 1979).

I also share Hodgson's (2004:27) constructions on his findings on the Maasai; that wives should not be seen simply as passive. Women achieved varying degrees of respect and authority according to their position in the order of wives (a first wife having authority over other wives), and in their ability to manage their household property and affairs. Yet, improper behaviour of a wife to her husband could elicit wife battering. However, child-wives and child-widows do not often have the opportunity to participate as senior wives do. Although senior wives receive special respect, inequalities still exist between women and men.

These inequalities are a result of the gendered structure of social economic and political life which continue to undermine girls in the legal sphere (Griffiths 2001). The inequality is premised on family and marriage institutions, and then impacts on other institutions like schools and courts. Likewise, Koda (1994) asserts that the life of a girl-child is faced with many inhibitions associated with the attitudes of parents, teachers and employers. Most family, religious, government and legal institutions are infused with patriarchal impurities that favour male supremacy and the subordination of women. Thus, gender relations force women and girls to have less ownership, access and control over the most basic resources and limit their rights to participation (TGNP 1993).

Nevertheless, children are highly prized in most African cultures as the future bearers of community values and as social insurers for the older generation (Rwebangira and Liljestrom 1998; Rwezaura 1999). They are also a symbol of high social status and future security (Rwezaura 1999). Despite the apparent importance of children both to the family and the society, the young have a subservient position and are expected to be humble and respectful of their parents or guardians

and there is an underlying belief in adults' abilities to make decisions on behalf of children. Thus, it is society that limits children's participation in giving opinions on matters that affect their lives. Girls themselves, having been heavily socialized into obedience and respect, are unlikely to see their stage of childhood as a period during which they can vigorously assert their rights in the marriage process (Ncube 1998). The next section highlights how marriages are treated in law and how it affects girls.

LEGAL EXPLORATIONS

Under the domestic legal system of Tanzania, individuals have the choice of marrying according to religious, civil or customary ceremony. However, the LMA, 1971, has not given any space for children to state their opinions during the early marriage process.

Further, sect. 25 of the LMA legally recognizes polygamy as a part of customary norms.⁸³ Although polygamy could play an important role in protecting some women's interests, such as childlessness in old age (Hellum 1999), this is clearly a most serious *de jure* discrimination against girls;⁸⁴ here, the law explicitly treats men and women differently because of their sex. However, the inclusion of polygamy was not accidental. The LMA took on board mixed normative orders and promoted some customary norms, as well as relying on British common law and international norms (Law Reform Commission 1986). For Tanzanians, like many other Africans, most people combine the processes; they would start with a customary ceremony and end with a civil or religious ceremony. It is also mandatory for all marriages to be registered (sect. 43); the registration of marriages raises a rebuttable presumption that such a marriage is a valid one. However, a number of early

⁸³ Polygamy provisions do not apply to any marriage contracted under the auspices of a Christian marriage.

⁸⁴ In order to endorse equal rights for women during marriage and upon divorce, CEDAW favours registration and the abolition of polygamy. The CEDAW committee in 1998 recommended that the government of Tanzania should outlaw polygamy.

marriages are conducted under customary norms in villages and are not registered (Omari and Mbilinyi 1996; Katapa 1998).

The Registrar of Marriages deals with registration. Failure to register is an offence under sect.157. Research has revealed that most customary law marriages are celebrated at village level, where the presence of a Division Secretary may not be possible (Law Reform Commission 1986). My research shows that a significant number of girl-children's marriages were conducted under customary ceremony alone. Very little data exists on the marriage of girls under the age of 18 and even less about those below the age of 15.⁸⁵ Among the 51 child-wives and child-widows interviewed, only 3 (5.9 %) of the marriages were part of a religious ceremony and were registered. This indicates that child marriage is more prevalent and at the low median age than the data of the country would indicate.

Further, the LMA stipulates that 'free consent' is one of the significant criteria for marriage. Nevertheless, a number of female children are forced into marriage without being able to give their opinion. They are excluded from the opportunity to provide their concerns on the matter. In most instances, the father gives his daughter away to a person of his choice, without either consulting her or obtaining her consent. Section 17 of LMA gives the father priority in providing consent in the case of a girl-child who has not attained eighteen years. It takes only the father's consent to override the legal requirement. If the girl-child's father is dead, then the consent of her mother will be required. After the father (as a 'strong net', within the network) consents and the girl-child is married, this girl may have many challenges to face. Among these are marriages to older men and/ or in polygamy. Thus the patriarchal male network power (which is condoned by various laws) represents a key element in the consideration of a girl's right to participation. She

⁸⁵ Besides, once girls are married younger than the legal age limit their status as children is totally untenable in the eyes of the society (UNICEF 2001a).

is denied the opportunity to give her opinion on matters affecting her own future life.

It is, however, argued that with marriages between the ages of 10 and 14, 'consent' cannot be said to have been given, since at such an early age, a child is not expected to understand the ultimate implications of accepting a lifetime partner (UNICEF 2001a). During interviews, the majority of people commented that it is difficult for most teenagers to understand the implications of early marriage, but suggested that at least those girls at age 16 should be given the opportunity to consent. Yet, it could be further argued that even older children cannot be said to have given their informed consent to such a potentially damaging practice as early marriage. Beyond the issues of maturity and non-discrimination, any argument regarding a child's ability to consent to marriage is further undermined by the potential risks that such a marriage poses to her well-being (ibid).

Furthermore, the LMA, 1971, does not provide *mahari* as a condition of entering into marriage, but it allows customary marriages under which *mahari* is the commonest adjunct to the marriage contract. The First Schedule of the Customary Law, 1963, defines and provides procedures for *mahari* payments (Rules 26-36). Rule 5 gives the option that a marriage could be contracted without payment of *mahari*; it allows other forms of marriages, i.e. cohabitation. Rule one specifically states that '*mahari* is a payment or transaction in the form of cattle or other goods, made by the groom to the bride's father or his representatives'. Therefore, it is the father who is legally entitled to receive *mahari*.

The LMA attempted to change the institution of marriage from being a contract, of the handing over of a wife, to an institution, where a husband and wife are equals, i.e., by legalising marriages without the payment of *mahari*. The anomaly is that the customary law was not abolished and the majority of rural kinship networks fall within the ambit of customary norms (Rwebangira and Liljestrom 1998).

However, the challenge is that customary laws were collected by a Western man with his own bias, and put into law by a group of African men with their own interests in maintaining the patriarchal powers. It is questionable whether what is called 'marriage customary law' is a living customary law of Tanzanian people, given the changing social and legal norms (Cotran 1965:120).

On the issue of participation, apart from the Children's Policy, there is no law stating that children's views should be taken seriously. Scholars have critically discussed the right to participation, as explored below.

Critiques on the Right to Participation

Notwithstanding the value of children's participation, the general theory of children's participation up to now is in conflict with some African values. Tanzanian scholars within the family rights arena provide critical comments about the Eurocentric character of the UNCRC (Omari and Mbilinyi 1996; Makaramba 1998; Rwezaura 1998b; Rajani 2001). Rajani (2001) cautions that imposing children's participation from above, simply because the UNCRC requires it, can elicit anger and resistance. Without a compelling understanding of these issues, participation runs the risk of being perceived as a Western imposition.

Omari and Mbilinyi (1996) argue further that most African values were built around the community-based values system and these were rights which no individual could claim without family or community sanctions (Omari and Mbilinyi 1996), although this system is greatly diminishing. Children's rights, such as the right to be heard and the right to participate in the decision-making process were viewed as family or community matters. Associated family or community values contribute to difficulties in implementing the UNCRC.

They argue further by giving the example of, '*Jando* and *Unyago*', which is a common type of education given to children as their right in African societies. As far as gender inequality is concerned, much of the training is orientated to women's subordination. However, they contend that this type of conformity to community values may have some problems in fulfilling the participation rights of the girl-child, as outlined in the UNCRC (ibid). Along with this argument, Makaramba (1998) asserts that the idea of a child's freedom to voice opinions may make some people uneasy, and certainly it introduces a new element to be taken into account. Article 12 of the UNCRC may be a new concept in Tanzanian society, but it should be given priority.

However, Rwezaura 1998; Letuka 1998 and Himonga 1998, have given a number of underlying reasons why the child's right to participate in decision-making is not viewed as a priority in Africa. One reason mentioned is family poverty.⁸⁶ This may account for parental readiness to force a girl into a marriage, even when the child does not wish to be separated from her family. In other contexts, it may be a matter of economic hardship, or simply a matter of a family deciding to allocate guardians to children whose parents have died or divorced. There are, therefore, diverse factors operating that undermine the child's right to participate in decision making. However, despite the diversity of the circumstances under which a child's participation rights are denied, it is clear that local culture and economic imperatives provide a more general explanation of the general reluctance to recognize the child's right to participate in the decision making process (Rwezaura 1998).

⁸⁶According to the Child Development Policy (1996: 5), it is estimated that 85 percent of the total population live below the poverty line and that each household has an average of 6 children. Most parents have been left on their own to promote their children's welfare at a time when traditional institutions of support have ceased to operate properly. Thus, poverty is the most widely felt constraints within the extended family in matters relating to the care of children and their participation rights.

Interestingly, Ncube (1998:8-9) provides another perspective on Africa. African culture values the integrity and dignity of children and hence is at one with the principal values of participation enshrined in the UNCRC. He emphasises that 'the philosophy underlying children's rights is as much Western as it is African'. Significantly, the empirical consideration of decision-making has shown that children might have participated in decision-making in traditional society but it is limited in contemporary society (Himonga 1998:126).

However, the methods and processes used to secure the rights of children may vary considerably from one culture to another. Ncube (1998) also raised important issues on localization and the application of the UNCRC in Africa. He noted that it raised difficulties and problems in translating these normative standards to specific social and cultural contexts. Hence, a sensitive approach to the understanding of children's participation rights within the context of legal pluralism, cultural relativism and customary law is important (ibid).

I share Makaramba's (1998) challenge to African nations not to be static with regard to the tradition of deciding for children without taking their views into consideration, as maturity results from participation. Thus, the UNCRC should be strategically implemented. The UNCRC committee has provided meaningful recommendations for Tanzania to adopt:

*The State Party should develop a systematic approach to increasing public awareness of the participatory rights of children, particularly at the local level and in traditional communities, and encourage respect for the views of the child in families, schools and the care and judicial systems.*⁸⁷

⁸⁷U.N.Doc.UNCRC/C/15/Add.156 (2001).

Conclusion

The right to participate is a basic human right for girl-children; the extent of participation must be in the best interests of the child. The principle has theoretically been accepted in Tanzania, but in practice it has not gained general acceptance because of cultural norms and poverty. Empirical studies have documented that most child marriages are arranged or forced; girls are excluded from decisions on marriage, which is one of the major matters that affect their life. Girl-children are socialised to accept unequal gender roles through words, songs and hidden messages. Besides, they are socialised to be submissive without questioning, hence their powers of negotiation are very limited or almost non-existent. These inequalities are a result of the gendered structure of social, economic and political life which continues to undermine girls in the legal sphere (Griffiths 2001). Subsequently, both statutory and customary law give her father authority on the decision without her say. Notwithstanding criticism of the Eurocentric nature of the UNCRC, the right to participation is vital. Certainly, participation has great practical potential in 'improving the protection' of the rights of the girl-child and to involve children in all matters which affect them. A dialogue with communities including female children on the 'value of child participation' and how to promote such a concept effectively, will be essential (REPOA 2000; Rajani 2001).

CHAPTER FOUR

CHILD-WIVES IN LIMBO - VULNERABLE AND INSECURE: Are they Passive and Unheard?

It has been shown that the practice of child marriage is common in Tanzania; its prevalence being mainly in villages and amongst poor urban people (Mabara and Kamazima 1995; Rwebangira and Liljestrom 1998). Kurya, Maasai and Sukuma girls are married in their early teens, often aged between 13 and 17 years, and some are as young as 10 or 12. Empirical studies have produced evidence of cases of betrothal of girls aged between 4 and 9 years in Kambala (Mvomero) and Kewanja (Tarime) villages. The child marriage practice is a complex dichotomy played out in different dimensions. It is part of the culture within Maasai society; yet, Sukuma and Kurya explained it as a recent phenomenon (UNICEF 1994). For Sukuma and Kurya, marriage was conducted for young women estimated at between 18 and 25 years of age.⁸⁸ This has decreased significantly; early marriage is preferred before anything bad happens (ibid). The fact that parents have turned to early marriage, despite knowing, according to the traditions, that a girl is neither physically nor mentally prepared enough for marriage, raises questions about the contemporary causes of early marriage. The child-wives' situation is eloquently expressed by Black (2001:1):

At the beginning of the 21st century being a child-wife, even if it's legal, puts you in limbo. You are invisible as either a child or woman, because you have married. What a man does to you once, if you are underage and single, is statutory rape. What he does to you night after night, if you are underage and married, is fine.

However, both national and international NGOs in Tanzania are concerned with the injustice caused by child-marriages. For instance, the Tanzania Media

⁸⁸A guide at the Bujora Sukuma museum (27/8/03) emphasised that the child-marriage practice is a recent phenomenon, which came about with the introduction of cattle as the chief form of property.

Women's Association (TAMWA) and UNICEF have identified the problem of child marriage as being an important issue in their campaign to address the needs of the girl-child (UNICEF 2002). TAMWA declare this in coalition with other organisations. They have also initiated a campaign to stop female genital mutilation (FGM), which contributes to the prevalence of child-marriage (TAMWA 2003). Nonetheless, the basic problem in assessing the prevalence of early marriages is that so many of the marriages are unregistered and unofficial (as discussed in Chapter 3).

This Chapter draws on empirical data regarding the practice of early marriage among the Kurya, Maasai and Sukuma. Connections are also made between legal and social identities. 'These derive from an analysis of power which is not limited to the study of formal legal institutions or disputes but which employs the grounded approach in daily life' (Griffiths 1997: 12; Bentzon et al 1998). This kind of analysis not only demonstrates the circumstances under which child-wives do, or do not have access to legal forums, but also accounts more generally for the conditions under which child-wives themselves are silenced or unable to negotiate with adults on matters that affect their life. Further, 'such an analysis also provides for diverse accounts of power relations, not only between and within, sexes' (Griffiths 1997: 12); but which is also affected by the age (childhood) of a child-wife.

The Chapter begins by highlighting various configured factors contributing to early marriage which are complicated and sometimes contradictory, namely: traditional and religious justification; the value of having children; the lack of value in education; and economic and social forces. It provides an analysis of the link between the child-marriage practice and poverty, and on customs such as *mahari* and polygamy and delineates their legal framework. It further explores the impact of early marriage. Although child-wives are vulnerable and insecure, the work demonstrates some instances of resistance by girl-children to arranged or forced marriage.

MULTIPLE FACTORS CONFIGURING FEMALE CHILD MARRIAGE

We like them when they have sharp breasts and pointed nipples,' Mwita remarked. When the girl reaches 18, she is becoming old. Mwita's friends laughed and nodded. 'How could you marry an adult woman when you're not sure if she could give you children, at least with a young woman the hopes are higher.'⁸⁹

Magabi (19) eloped with thirteen-year-old Nyangi. He had just completed 'primary 7' and was staying with his divorced mother. Thereafter, their marriage was traditionally celebrated. Nyangi was 16 at the time of my field research and had a child; she was frustrated; Nyangi, had never attended any formal school. I met Magabi outside the Tarime Urban Court during their divorce case; he gave similar comments on breasts: 'Her breasts have grown larger and long; I don't fancy her because of that and other reasons'. This section explores the multiple factors configuring the marriage of girl-children.

Traditional and Religious Justification

The cultural norms that construct girl-children solely in a familial role as producers and reproducers helps to promote the early-marriage practice as girls are considered ready to marry at puberty (Omari and Mbilinyi 1996; Kabebiri-Macharia 1998; Bunting 1999). The girl-child is regarded as somebody who is 'just in transit through the home'; hence, the family invests less in her care and development (UNICEF 2002). Sometimes, strong religious messages also enforce the view that marrying once menstruation begins is best if a girl is not schooling.⁹⁰ In addition to that the empirical study evidenced that female genital mutilation (FGM),⁹¹ *mahari* and polygamy are exacerbating factors in the phenomenon of early marriage.

⁸⁹ Conducted discussion at Tarime, on 17/01/2004.

⁹⁰ This was noted in the Coastal zone among Muslims.

⁹¹ FGM comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural, religious or other non-therapeutic reasons (WHO: 2000).

Generally, the Sukuma, Kurya and Maasai families socialise their girl-children to run a household by the age of ten and inculcate in them the importance of marriage. Subsequently, the Maasai and Kurya practise FGM to 'validate a girl's body for marriage and procreation' (FORUM 2000). It is during the period of seclusion that they are taught traditional values and appropriate manners acceptable to their ethnic communities (Kabeberi-Macharia 1998).

The empirical study also revealed that FGM is part of the traditional faith, and blood is a sacrifice for their ancestors (Gods).⁹² Traditional leaders are responsible for identifying a yearly rota for Kurya clans to conduct FGM.⁹³ They insisted that FGM is necessary '*tunawakata kidogo tu! Ki CCM kwa sababu serikali imekataa*' (but we just cut them a little bit because the Government banned it; the process is nicknamed 'CCM', the initials of the ruling party). Unlike Mvomero,⁹⁴ FGM ceremonies were done publicly. Out of 17 interviewed child-wives in Tarime and Mvomero, only 2 were uncircumcised.

During the group discussions⁹⁵ in Mangahe village (Mvomero), respondents gave different views on FGM. Naro justified FGM as being their identity and insisted that it helped mothers to control girls' bodies; it further increased marriage opportunities for girls. Conversely, another participant commented that she had suffered traumatic experiences from the unbearable pain and her cousin had died; so FGM is harmful to girls. What I observed during this discussion is as Nyasera (1994) supposed: that FGM is masked by misconceptions about women's sexuality, which also determine the identity and status of women in the community.

Consequently, different terms are used to refer to pre-adolescent girls and initiated girls. Accompanying these terms are certain privileges accorded to the girl of each

⁹² Discussions with elders in Tarime on 28-2-04.

⁹³ For 2003 it was for the month of November, with the Watimbaru clan in Tarime.

⁹⁴ Campaigns against FGM have educated some families to stop the practice, although it has now gone underground because of SOSPA, 1998, which criminalized the practice.

⁹⁵ FGD conducted on 9-8-2003.

age group, which has the effect of making girl-children aspire to be mutilated. For instance, an uncircumcised Kurya girl is called *msagani*. Theoretically, girls will not be eligible for marriage if they are uncircumcised because of the belief that FGM is necessary to ensure acceptance and respect in their communities. It also bestows high status on their families. There is a strong link between FGM and the early marriage practice as it is a necessary precondition for marriage.

Polygamy is another custom which also carries some religious justification, which also contributes to child marriage. This connects with the value of having children in a marriage.

The Gendered Value of Children

The dynamics of power that operate to sustain the early marriage practice at the household level is connected to the importance for every family to have children. A certain value is typically attached to a boy-child. Some men may be tempted to have another wife or a concubine if they don't have a boy-child in a marriage. Son-preference is linked to his gendered value as the one who will bear the name of the family, become a controller and preserve the family cultural heritage. Additionally, girls marry into another family, whilst, traditionally, boys remain to support their parents in old age (Rwezaura 1998).

Various means are utilised to ensure that the family has children because of the value ascribed to them. Polygamy is one of the alternatives; normally, girl-children are married as additional wives for their potential value of reproduction.

Within Maasai and Kurya ethnicities, more drastic action can be taken based on the custom of *mahari* which grants the right to ownership of children. If a wife fails to produce children, often a brother-in-law could assist in making her pregnant (Mitzlaff 1994; Mabara and Kamazima 1995). Activists perceive this as a gender-specific example of sexual abuse. However, it is a respected customary norm that could bring happiness to that family. In these dynamics of power, which operate to

sustain the belief that every family should have children, girl-children are often victims.

Further, the Kurya have a traditional marriage, namely *nyumba-ntobu*.⁹⁶ There, they have a saying that *inyumba etana moona wi kirisia ne ntobu*, (a sonless house is a poor house) (Chacha 2002). The primary purpose is to have boys in a family for a sonless wife, in order to validate her place in the household and ensure prosperity. *Nyumba-ntobu* is performed in the same way as a conventional marriage, being preceded by transactions of *mahari* made by the female-husband to the bride's father.

Participants narrated different forms of *nyumba-ntobu*. Firstly, if a wife gives birth only to girls, the *mahari* from her daughters is used by one of the sons of a co-wife to get married. The female-husband's wife is known as *mkamwana* (daughter-in-law). Secondly, if a wife has no children but has property, she can decide to use that property to choose a wife for any man of her choice. Thirdly, a rich childless woman or widow can take a girl to live with her. The girl's children belong to the female-husband. Additionally, the Kurya economic pastoral life with a polygamous household provides a sufficient incentive for the occurrence of the *nyumba-ntobu* (Rwezaura 1995; Chacha 2002).

However, the *nyumba-ntobu* tradition shows the flexibility of the Kurya gender construction; it means that gender is separate from biological sex. Women could become female-husbands to wives; this does not imply that women should be seen as being like men (Amadiume 1987:15; Chacha 2002). An insight into this distinctive gender system is essential to the understanding and appreciation of the political status women have in most Kurya societies. Female-husbands have been benefiting from the accumulation of wives, the house property system, cheap labour and access to social security in old age in the same way as men do.

⁹⁶While *nyumba-ntobu* is an unfamiliar subject to most people, woman-to-woman marriage is a predominantly an African institution (Evans-Prichard 1945; Gluckman 1970; Amadiume 1987; Rwezaura 1995; Chacha 2002).

Although a number of female-husbands' wives had been showing resistance to the practice, empirical evidence in Tarime indicates that the *nyumba-ntobu* tradition is still very common and valued by the Kurya community.

Nonetheless, whilst female-husbands raise their social status in the community,⁹⁷ alarmingly, girls have been victims of *nyumba-ntobu*, as demonstrated by Chochoga's (15) story:

When my father died, my mother arranged that I would stay with the female-husband until I reached puberty. At that time I was aged 4. When I reached 13-years-old, a male-consort (umtwari) was appointed to enter my hut and I now have one baby. However, the female-husband uses me as a labourer; I had been doing all the housework and farm work with my baby on my back. I developed some abdominal pains during childbirth and that is the source of my long illness. She beats me regularly and doesn't care about my illness; what she wants is only to see the work done. She had been persuading me to look for any man who would buy my basic necessities; even the dress I am wearing is borrowed from a neighbour. That's why I came late to the meeting.

Since most female-husbands allow girls to be free to choose many lovers, it raises concerns regarding the risk of the HIV/AIDS epidemic. Some nurses from the Save the Children in Tarime Association (SACHITA) lamented that 'it is a form of prostitution condoned by parents who marry off their girls; it contributes to the spread of sexually transmitted diseases including HIV/AIDS'. Although *nyumba-ntobu* protects the culture of these ethnicities by ensuring lineage continuity (Rwezaura 1998), it operates to place girls in vulnerable situations that are not in their best interests. There were also economic reasons that also contributed to Chochoga's betrothal in *nyumba-ntobu*.

Economic Reasons: Poverty and Mahari

The economics of raising children motivates high rates of child marriages in Tanzania, as in many other countries (Bunting 1999). Many child marriages in

⁹⁷ She is no longer called a barren as she had 'resurrected her house'. 'She is empowered by the society to make decisions regarding her 'house,' ... and she would raise her own herd of cattle.' She would be the women's mediator when she got into old age (Chacha 2002:4).

Shinyanga were created as a result of famine. For many families a girl-child was simply an extra mouth to feed. The severity of the situation is illustrated by the story of Juliana, from a large family at Ndala-Shinyanga:

Juliana (13) and her sister Paulina (15) were forced into marriages after their father's search for gold in Nyarugusu mines aborted whilst rain failure resulted in a widespread famine. He came home to support the extended family he had while feeling devastated. He viewed the girls as extra mouths to feed, thus arranged marriages for both of them. Juliana was not registered for a primary school because of a lack of registration fees and her sister was married off immediately after primary seven.

Further, poverty and famine prompts parents to marry off girls and sometimes the situation is exacerbated by the practice of *mahari*. The *mahari* sometimes envisaged as an economic gain tends to fuel the desire of parents or guardians to marry off girls. Even when the girls had eloped with men, parents are primarily concerned with the negotiation of *mahari*, rather than with advising their daughters to return home.⁹⁸ Kulwa's grandma remarked: 'It was not my wish to marry Kulwa off at the age of 11, but as there was a potential male suitor who wanted to pay *mahari*, I agreed'.⁹⁹

In Tarime, out of 17 informants, eleven (64.7%) mentioned poverty as the main factor, although at times it was exacerbated by *mahari*. Indeed, when poverty is acute, a girl may be regarded as an economic burden and thus her marriage to a much older – sometimes even elderly – man is arranged. This is well exemplified in Robi's story, who, at the age of 14, was married as a third wife to a man even older than her father. For her brother, who had arranged the marriage, the *mahari* (15 cattle) was a strategy to accumulate wealth and boost his 'wood business.' Similarly, in Chausiku's case, poverty-stricken parents were compelled to marry off the child at the age of 12. They received *mahari*, which paid her brother's debt.

⁹⁸However, children from families that are poor, single-handed or abusive, such as when a step-parent is involved, might cause a child to agree on an arranged marriage or to be eloped.

⁹⁹The research was done during a period of famine in Shinyanga. This could have contributed more to the practice of girls' elopement. Elopement was not found in the Maasai area and only 2 (22.2%) cases were reported in Tarime.

Another distressing story comes from Mvomero, where Naini was forced into marriage. The negotiations of the *mahari* were conducted at a 'pombe shop' (local pub). Naini's father was poor and wanted cattle for his own benefit so that he could take another wife. Her mother was only informed that Musa would marry Naini for 15 cattle as '*mahari*.' She was married at the age of 14; she faced the ordeal of a forced marriage to an old man as a third wife.

Additionally, poverty forces some parents into agreeing that their girls be married to female-husbands. A few extreme cases on the betrothal of the girls were documented. Martha and Selina, both aged 15, gave testimonies that they were entered into *nyumba-ntobu* relationships when they were 2 and 5 years old respectively. The whereabouts of both their parents is a mystery. Martha and Selina are passive social actors and are not heard; it was the first time they had aired their views that they had been married off at tender age mainly because of poverty and to acquire *mahari*.

This is further illustrated in court cases. Sometimes fathers are sued because they had received *mahari* from more than one suitor. In one such case (*Maria v Paul* (TUPC 1998)), a father was sued for the refund of ten cows as the child-bride had stayed in the marriage for only one week and then the father subsequently took her to another suitor. In this case, the father used his daughter as a resource. This supports other scholars' observations that the early-marriage practice is driven by a desire for economic benefit (Omari and Mbilinyi 1996; Rwezaura 1998). Some families demand payment, even before consenting to the marriage of their daughters, because they need the cash to meet their recurrent domestic expenditure (Rwezaura 1998). It has also been argued that in some instances, the early marriage practice is prompted by the desire to have caretakers and benefactors for the family (Mukoyogo 2000:113).

The empirical study also revealed a number of cases of child-marriages configured for social reasons.

Social Forces: Sexuality and HIV/AIDS

One important impetus for girls marrying at an early age is that it helps prevent premarital sex. Parents frequently mentioned fear of early pregnancy. They talked about the dishonour and humiliation that would be brought on to a household should a girl become pregnant out of wedlock.

The honour of girl-children is very important, hence there is a strong link between arranged marriage and the social goal of maintaining the reputation of their daughters. Virginity is a necessary prerequisite to marriage; and this can manifest itself in a number of practices designed to protect a girl from unsanctioned sexual activity. In effect, they amount to strict controls imposed upon girls. For example, they may be excluded from social interaction outside the family (UNICEF 2001a). Within the Kurya and Maasai communities, control may also include the practice of FGM – to restrict sexual pleasure and temptation. It is believed that a mutilated girl will not be promiscuous and therefore will be faithful to her husband.

Some elders said that the child marriage practice was one way of ensuring that a wife is protected or placed under her husband's control. It is also regarded as a form of social control in that the girl is obliged to marry as early as possible in order to protect the family's status and investment (UNICEF 1994: 58). Consequently, her offspring are legitimate and not stigmatised.

Further, a new trend has recently emerged – the marrying of girl-children to avoid contracting HIV/AIDS; this is a growing phenomenon in Shinyanga and Tarime. During group discussions, participants spoke about the stress of HIV as a contributing factor to early marriage. Some men commented that most girl-children are virgins, hence they are HIV/AIDS negative and so are potentially suitable partners for marriage. Normally, the husbands are not virgins and the girls are therefore at a higher risk of contracting a sexually transmitted disease (STDs) or HIV/AIDS (ibid).

The situation is demonstrated by the story of Liku (in Shinyanga) who was married off when she was 14 through a marriage arranged by her widowed mother. Liku's mother explained that she feared that her girl would become pregnant or contract HIV/AIDS and, as a widow, the situation would be difficult to maintain. Apart from the shame, the baby would be an extra burden to care for and it would lessen Liku's marriage opportunities. However, the shame of pregnancy out of wedlock appears to be the most compelling reason.

Parents are anxious about the danger to their pubescent daughters. Understandably, parents see pubescence as a major contributing factor to early pregnancy and maturity. Hence, any early opportunity for marriage is seized upon. Coincidentally, few parents make the effort to teach their daughters about their reproductive rights. This is supported by Bunting's (1999) findings that in most parts of Africa elders and religious leaders commonly promote early marriage for girls rather than confront teenage sexuality or encourage safe, protected sex.

Representing pubescence *per se* as a manifestation of maturity has been challenged because it takes into account only the child's physical form. The girl's reasoning and psychological maturity are not considered. The girl's emotions and her level of education are also ignored. Sometimes, girls may be married simply because they appear to be sexually attractive as their bodies develop quickly due to hormonal changes at puberty. Others are sexually active without having received any advice on what to do with their bodies (Bunting 1999:678; UNICEF 2002).

At times, prepubescent girls, without any knowledge of sex education, are married to impatient husbands and therefore subject to non-consensual sex in marriage. At Uzogore in Shinyanga, for instance, a 60-year-old man raped Geni (13) during the night and the matter was only sorted out by settling the payment of *mahari*. The practice of giving a rape victim to her violator derives its logic from the fact that a rape victim is unlikely to find a suitable husband and, even if one is found, the amount of *mahari* payable will be drastically reduced (Rwezaura 1998:34). The man

was then delighted to marry a prepubescent girl as he was assured that she was free of the HIV/AIDS infection. However, the major complaint of Geni to the village chairperson was that 'he sexually abuses me every night'. All 26 child-wives interviewed said they had never been educated on sexual and reproductive rights.

Ironically, the fear of pregnancy further encourages the parents to regulate their daughters sexually by restricting their movements. Some parents withdraw their daughters from school as soon as they begin to menstruate, fearing that exposure to male pupils or teachers or even other men when going to and from school puts them at risk (Rwezaura 1998; Sicard 1999); a girl is thus deprived of her right to education or to a voice in her personal life preferences (UNICEF 2001a).

The Ministry of Education also revealed that early pregnancies are a major issue with regard to girls dropping out of school (Olekambaine 2003). Additionally, some leaders at community and national levels view early pregnancy as a dishonour to the nation. For example, the Honourable Mungai (MP), Minister of Education, equated prostitution with the pregnancy of girls and that is why many are expelled from secondary schools in Tanzania (Majira 2004). The expulsion of pregnant schoolgirls is a violation of a girl's fundamental right to education, to her future prospects and well - being and forces her into early marriage.¹⁰⁰ Moreover, some parents marry off their daughters because they do not value education, as explained below.

Attitudes to Education

Since girls are viewed as potential wives and mothers, different forms of social control like FGM are in place. As a result, it gives rise to the attitude especially among the rural community, that early marriage for their girls is preferable to

¹⁰⁰ States Parties are required to ensure that girls who become pregnant before completing their education have an opportunity to continue with their education on the basis of their individual ability (ACRWC: Article 11 (6)).

sending them to school or encouraging them to continue in further education. Interestingly, most regions in Tanzania record more school dropouts of boys than girls, because of child-labour. However, the Coastal zone and parts of the Lake zone, such as Tarime and Bariadi (Shinyanga), are believed to be gender-insensitive areas. Education there is not considered to be a priority, so the dropping-out of girls from school is common (ADEA 2001:16). Early marriage is one of the causes of dropping-out.

The Country Action Plan for Girls' Education 2000/2001-2003/2004, listed early marriage and *mahari* as factors that cause a gender gap in education. However, gender imbalances in education are rooted in both colonial and traditional legacies which create a gap between men and women. Traditionally, women were not expected to go to formal school (Msulwa 2003).¹⁰¹ The gender stereotyping in our society had been so strong that the achievements, aspirations and interests of girls are conditioned by the gendered world and how society views men's and women's activities (Ibid). Hence, a number of families within the Kurya, Maasai and Sukuma do not value education as they take the view that the essential women's roles are mothering and being housewives.

Significantly, they value cattle as a source of wealth and prestige (Rwezaura 1995; Chacha 2002; Hodgson 2004). Thus, they opt to arrange marriages for girls in order to acquire more cattle. Some of these people are not poor, but girls' education is not taken seriously (Sicard 1999). Some parents feel there is no need to invest in girls' education, as they will gain little benefit from girl-children after they are married off (see Pili's case in Chapter 7)

Nonetheless, the law also contributes to the creation of the said conditions, as discussed in the following section.

¹⁰¹ The school system of the colonial period allowed only a few girls to enrol in schools, and the few who enrolled were from the families of chiefs, of the wealthy, or of religious leaders.

LAWS ON EARLY MARRIAGE(S)

National Laws

In Tanzania, the system of law contains loopholes that create ambiguity on the issue of child marriage. On the one hand, it purports to raise the age of marriage, while on the other it allows parents to give their consent to and direct the marriage process. The disparity between the ages at which women and men marry is reflected in the LMA, 1971 (see Chapter 1). It sets the minimum age of marriage for girls at 15, given the parents' consent. Additionally, the court may grant leave for marriage when a girl is aged 14 if the court is satisfied that there are special circumstances which make the proposed marriage desirable (sect. 13(2)).¹⁰²

The prohibition of the marriage of girls under the age of 15, unless by court leave, may not be known to many people. All 51 girls interviewed showed an ignorance of the law, indicating that legal awareness is still limited and the law rarely invoked even when there is a basic legal awareness. In some instances, families simply falsify girls' ages. One woman told me of her sister who was aged 13 when she was married. However, her father told the church she was 18. Some girls themselves falsify their age, e.g. Kwangu in Shinyanga was married when she was 12. At the age of 15 she encountered matrimonial problems, and so reported to the social welfare office that she was 18. Subsequently, the empirical data documented a number of children who were married at the age of 14, but no case had been filed in court for permission.

Indeed, the age of marriage issue recently captured the attention of the national press after the marriage of Hassan, a young man aged 19, and a 12 year-old 'child-bride' named Rehema was foiled at the last minute when police received a tip-off.¹⁰³

¹⁰² On the issue of customs like *mahari*, it is not an offence to give or receive *mahari* in consideration of or on the occasion of such a marriage (Penal Code, Cap.16 sect. 138(6). The law is situated in the ambit of traditions.

¹⁰³ Rehema's neighbours reported the issue to TAMWA who sought assistance from the police (Majira 2004).

Hassan claimed that the bride was aged 15. The saga initiated a debate on the child marriage custom, and on the legality and the ambiguity of the issue. Comments on the issue differed as activists, religious leaders, lawyers and the public made their views known.

Among lawyers, some argued that for a child-bride aged 12, court permission is required. There was no indication that the family sought judicial permission to marry her off as a minor. What they did was attempt to misrepresent her age. The groom and parents were therefore in clear violation of the law (Majira 2004). Conversely, other lawyers argued that since the marriage was foiled before a Muslim cleric tied the knot, then no one had violated the law, as sect. 130 of the Penal Code, Cap 16 (as amended by sect. 5 of the SOSPA, 1998) allows for the betrothal of a girl. However, the husband is not allowed to have sexual intercourse with his new wife until she is aged 15 (ibid). The prosecutors hesitated to charge the suspected lawbreakers because of the conflicting laws. This sent a message to the community that the law is not clear on the issue of child marriage.

Further, criminal laws may also be inoperable in early marriage as penal provisions exempt husbands from responsibility in their rape of their wives, including their child-wives. The SOSPA, 1998, has a marital rape exemption, but it requires that the wife has to have attained the age of 15. Unfortunately, in all the court records researched, neither cases of rape of child-wives interviewed were filed. However, one case was reported to the Morogoro police station by a paralegal:¹⁰⁴

Babu, aged 52, was married for few years and had no child. Babu returned to his father-in-law requesting for a refund of mahari or to be given another wife instead. The father decided to marry off Chema (12) who was a younger sister of Babu's wife. Morogoro paralegals reported the incident to the Morogoro police. Later, rumours spread that Babu had already corrupted the police, who then decided that the issue should be deliberated on within the family, according to Maasai customary law. Babu

¹⁰⁴ This was an interview on 14/4/2004 but it did not involve the 26 child-wives involved in this study.

took Chema and said he would stay with her until her menarche. However, he had raped her and the child-wife cried endlessly at night, seeking help from neighbours. Babu was a rich pastoralist and he boasted that nothing would happen to him. Another concerned paralegal in Mvuha wrote a letter to the Morogoro District Commissioner, accusing Babu of the daily systematic rape of the child-wife. The Commissioner referred him to the Chief of Police, who later told the Paralegal that Babu had disappeared from the village and there was nothing the police could do.

Subsequently, no effort was made to search for Babu. The way the problem had been handled was very discouraging for the paralegals as it meant that the child-wife had continued to be sexually abused.

Although the statutory minimum age of marriage is set in Tanzania, there is a conflict of laws with sect. 38 of the Penal Code that allows the betrothal of child-girls below the marriageable age.¹⁰⁵ The law was constructed based on traditional norms associated with the gendered value of child-girls. It has legitimacy, especially for patriarchal communities; consequently, the law provides a supportive framework for male networks. Men have commonly corrupted the custom and have raped their child-wives, as in the case of Babu. Thus, some scholars like Dr. Luoga, critically remarked: 'Section 38 of the Penal Code is completely repugnant; it's absurd, very offensive to the right of the child. This is because the law exposes them to moral corruption'.¹⁰⁶

Importantly, the SOSPA, 1998, provides that a husband engaging in sex with a wife under 15 can be prosecuted for rape, and sentenced up to life imprisonment. This is the law under which Babu might be prosecuted if arrested. Some men, because of fear of such a sentence, negotiate marriage with girls without reporting it. It may later be reported when the girl is abandoned. For instance, Salome, who was 13 years old, became pregnant when she was in primary 6. The man promised to stay with her and take care of her and the baby until she reached a marriageable

¹⁰⁵ The Penal Code (sect. 136) recognises several offences relating to unlawful sexual intercourse with minors. It is however, a sufficient defence against a charge of felony if the accused had reason to believe, and did in fact believe, that the girl was 14 years old or older. However, this section is not applicable in a case in which the accused is married to the girl (sect. 136(2)(3)).

¹⁰⁶ When interviewed on 5/03/04.

age. Salome was an orphan and was supported by the Faraja Trust Fund (in Morogoro). The organisation was faced with a social dilemma as the child was an orphan and had no support. The Faraja agreed to the proposed arrangement as they thought if the man was jailed, Salome would have no one to support her. The Faraja officer argued that the arrangement would guarantee her protection and that there would be a degree of emotional support. This situation should cause lawyers, social workers, policy makers and other stakeholders to re-examine the ethics and legality of encouraging girls to enter marriage with the father of their child. As Bunting (1999:667) indicates, a further complication in cases of early marriage is that some girl-children themselves may not describe the relationship as exploitative or non-consensual. For instance, in this case, Salome loved the man and the arrangement was for her own welfare, at least in the short term.

However, activists criticised this kind of arrangement as a short-term solution to the problem. Adult men are experts at manipulating naïve girls looking for the love they have never received at home (Hammel 1996). Actually, men may opt out of such an arrangement and thereafter not marry the girls with whom they've had a child. This was the case with Salome; when she was pregnant with her second child, she was abandoned and the man married another woman.

International Laws

At a global level, the international community has also been concerned with the issue of child marriage (UNICEF 1994; Bunting 1999). Various human rights' instruments provide norms to be applied to marriage including issues of age, consent and equality within marriage. Specifically, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1965) initially paved the way in condemning early marriage and included the right to give free and full consent to marriage. Other conventions that contain the right to consent include the Universal Declaration of Human Rights (Article 16); the ICCPR (Article

23(3)); the Covenant on Economic, Social and Cultural Rights (Article 10)¹⁰⁷ and CEDAW (Article 16).¹⁰⁸ Significantly, CEDAW states in Article 16(2) that the betrothal and marriage of a child shall have no legal effect, and all necessary action shall be taken to specify a minimum age for marriage. Similarly, under the African conventions the ACWRC prohibits child marriage (Article XXI (2)). Subsequently, the Committee on CEDAW, in General Recommendation No.21, commented on this article:

The Committee considers that the minimum age for marriage should be 18 years for both man and woman. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act....

Furthermore, the Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children was adopted by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in its resolution 1994/30 of 26/08/1994. Governments are urged to adopt legislative measures fixing a minimum age of marriage for boys and girls. As recommended by the World Health Organisation, the minimum age for girls should be 18 years. Such legislative measures should be reinforced with the necessary mechanisms for its implementation.

However, at the national level, the international conventions on the early marriage problem are yet to be implemented effectively. The betrothal of girls is allowed under the Penal Code. Such measures contravene the CEDAW and ACWRC, and also the girl's right to freely choose her partner; they contribute to the insecurity of the girl-child in various arenas, such as in education and health, as explored below.

¹⁰⁷ Additionally, the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institution and Practices Similar to Slavery (1956): Article 1 (C) (1): Prohibition of any institutions or practice whereby a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents...or another person.

¹⁰⁸ Under the UNCRC, although no particular mention is given to early marriage, some articles could refer to it: the right to participation; the abolition of traditional practices prejudicial to the health of children (Article 24); the right to education (Article 28). If a child is accorded those rights, early marriage could be prevented.

IMPACTS OF FEMALE CHILD MARRIAGE

'Facilitating your girl into an early marriage is like declaring her dead while she is still alive. I regard it as manslaughter,' she emphasized.¹⁰⁹

Behind their childish beauty lie an immense number of problems that these girls have experienced from a tender age. Child-wives' stories are shocking. They have suffered agonies of both body and mind. They also indicate flagrant violations of their rights by people close to them such as parents and husbands. Child marriage has many repercussions; some of these are traumatic. For example, more than 2.5% of all married girls between fifteen and nineteen years have experienced divorce, separation, or the death of a spouse (Rwezaura 1998b).

This section highlights the major impacts of child marriage uncovered in the investigation in Tarime, Mvomero and Shinyanga. However, the intention in this work is to analyse child widowhood in particular. Other impacts, although highly significant, will be dealt with only briefly here.

The Denial of Education

Empirical evidence indicates that where child marriage is a significant phenomenon, girls' education is shortened; their opportunities beyond marriage and childbearing are limited, and their ability to participate is seriously curtailed' (Bunting 1999:683). Child marriage contributes to girls' non-registration in primary education, to dropouts in primary schools and to the failure in continuing with secondary education (BEST 2003).¹¹⁰ This study shows that in villages where early marriage is common, very few girls have a formal education. For example, in

¹⁰⁹ This was an interview with Anita (WiLDAF member) on 22/8/03

¹¹⁰ Statistics show an inverse relationship between education and marriage in some countries. Exemplarily, Senegal and Yemen, where the median age of marriage ranges between 15.1 and 16.2 respectively, the percentage of women with no education is very high, between 73 % in Senegal and 89% in Yemen (Bunting 1999:683).

Shinyanga, the education officer who dealt with Girls' Secondary Education Support (GSES) remarked that very few families had made girls' education a priority. The education support programme in Mara, Mwanza and Shinyanga regions, had proved to be a failure in Shinyanga because too many girls had dropped out, one of the reasons being early marriage.¹¹¹

Statistics also show an inverse relationship between education and FGM practice (which contributes to the prevalence of child-marriage). According to the 1996 Demographic Health Survey, Tanzania's prevalence of FGM was 17.9%. Rural women had a higher percentage (20.3%) than the ones living in urban areas (10.0%). Women who had no education had a higher prevalence (22.9%) than those who had a primary school education (16.7%) and a secondary or higher education (6.8%).

Further, the research documented accounts of dropout among primary school girls, not because of a lack of school fees or uniforms, but because of early marriage. This study shows similar results to those elicited by Omari and Shaidi (1991); UNICEF (1998); Kuleana (1999). Parents in Maasai and Kurya said that they wanted to retain the decision-making authority over their daughters. For most girls, marriage becomes the primary object ingrained at an early age, and so inevitably denies children of school age their right to education. Female-children need an education for their personal development and for their effective contribution to the future well being of their family and society (UNICEF 2001a:9).

Child-wives are often unable to access good quality formal education; they are disadvantaged in acquiring the skills to enable them to participate in a developing society. This results from coercion into the marriage institution when they are very vulnerable to all forms of exploitation, as they are immature and have no, or little, education. Lack of education generates few opportunities beyond the role of wife

¹¹¹ When interviewed on 17/02/04.

and mother. This also prevents them from acquiring skills for productive employment (Omari 1994; Bunting 1999; UNICEF 2001a).

According to sect. 35 (2) of the National Education Act, 1978, it is a criminal offence to withdraw a child from school; however, because of the influence of patriarchal norms, some teachers view it as a private affair (Kuleana 1999). This was observed in Mogabiri village where during a FGD with child-wives, a number of child-girls between the ages of 8-13 were in the general area. They were not in school, having been withdrawn after being mutilated in preparation for marriage.

Largely due to inadequate education, child-wives lack the empowerment to voice their opinion. This causes them to be very insecure in participating in formal work, accessing justice and tackling health problems, as Sen (2003:6) eloquently writes:

The most basic issue relates to the elementary fact that illiteracy and innumeracy are forms of insecurity in themselves. The extreme case of insecurity is the certainty of deprivation, and the absence of any chance of avoiding the fate... Not being able to read or write is a significant barrier for underprivileged women, since this can lead to their failure to make use even of the rather limited rights they may legally have.

This study clearly illustrates how society should be aware of the real consequences of girl-children's marriage. There is overwhelming evidence to attest that girls are withdrawn from school or denied a secondary education in order to be married. Because of the contemporary lack of effective monitoring mechanisms on primary school dropouts, some parents take advantage by marrying off their daughters immediately after completing primary school. In Rongoti village (Tarime), for instance, 7 girls passed to join secondary school in 2003, yet five of them were already married.¹¹² Unfortunately, some parents discourage their daughters from doing their best in primary examinations as the *mahari* had already been received.¹¹³ Significantly, the study registered no case of a child-wife who continued with education.

¹¹² Interview with the Rongoti village Chairperson on 22/02/2004.

¹¹³ Discussion with Community Development Officers on 27/02/2004.

Emotional and Psychological Abuse

The narratives of child-wives demonstrate clearly that the debilitating psychological and emotional impact of early marriage derives from a number of factors, such as violence, discrimination, lack of support and their curtailed rights to participation.

Naini (16) remarked that she met her husband on the day of the marriage ceremony:

I have experienced abuse throughout my marriage life. I have never fallen in love with my husband; I haven't experienced happiness in my marriage. I have been beaten regularly for committing minor mistakes. I returned home for help but there was no help. My father insisted that I go back to my husband as they have eaten the cattle which had been paid for the mahari.

She claimed that the constant unhappiness has had a bad psychological effect on her life. Pili also had a similar story; her nose had been sliced with a knife leaving a scar. Her husband was as old as her grandfather, but very violent. She said the daily battering she received also caused her emotional trauma. Whenever she went to her father for support she was told to go back. She cried almost every day, felt neglected and had suicidal tendencies. Empirical information indicates that many parents are reluctant to support their daughters' wishes to divorce, because it means that they would have to return the *mahari*. However, the parental directives in forcing girls into an early marriage have often ended in exposure to physical violence, overwork, a lack of participation and harassment and clearly proved to be emotionally and psychologically distressing in the extreme.

Accessing courts or out-of-court-forums was also emotional. Ghati (16) said:

I couldn't sleep at night when I thought about appearing in court for my divorce case. I was worried about what the outcome of the case would be. During the first ward tribunal, they ruled in my favour that my mother-in-law had caused our matrimonial problems. But later, my husband sold some cattle and bribed the village chairperson. During the second session, I was told that the case should be brought to this court. According to the rumours circulating in the village, he had already bribed the primary magistrate. My father had no cattle to refund and he had been complaining. I am nervous about expressing myself in court. I'm disturbed by this case.

Bhokenyangi had a similar story at the social welfare office, lamenting how she could not do anything because of the time wasted in shuttling back and fore to the office, as her husband constantly missed the appointments. She had been in a horrendous situation.

Child-wives stated discrimination had been encountered in their homes in a variety of forms. For example, Constansia and Pendo said they had been prevented from attending ceremonies because they had not undergone FGM and this discriminated against them. Constansia's husband often told her that his friends were laughing at him for marrying the *msigane*. Delayed pregnancy was another reason for some child-wives to be treated differently.

Forced sexual relations, the daily violence, late pregnancy, discrimination and the denial of freedom and personal development attendant on early marriage have profound psychosocial and emotional consequences. These contribute to the poor reproductive health of child-wives.

Child-wives' Reproductive Health

The notion of good reproductive health covers all aspects of the reproduction process – including the satisfying and safe experience of sexual relations and the freedom to decide if and when to bear a child (Mertens 1995). Significantly, pregnancy and childbearing at an early age have serious health consequences for girls and are violations of their reproductive rights (Belsey 1976; UNICEF 2005). A woman's risk of reproductive ill-health and death associated with pregnancy increases dramatically under the age of eighteen (Schwab and Kirangu 1998). Consequently, maternal mortality rates in this age group are extremely high (Harrison et al 1985). Once married, most child-wives rapidly become pregnant with attendant potential risks for the survival and future health of both mother and child (UMATI 1999; UNICEF 2001a). Their health is affected because their bodies are too immature to give birth; the risk is increased if they have been circumcised.

Girls' early marriages mean that women are also infected by HIV at a younger age than men, often up to ten years earlier and normally in their early childbearing years. Most girls become infected in their teens (UNIFEM 2001). Cases of HIV infection in fifteen and sixteen-year-old girls have already been documented which means that they were infected a few years earlier.

Most child-wives become pregnant in the first year after marriage. If a child-wife naturally delays a pregnancy, it is often a cause for separation and later divorce (*Magreth Ghati v. Juma Matayo* 2000; *Kibure Nyaruhanga v. Kichele Mwita* 1998). Kibure testified that she was married at the age of 16 and after one year she was chased away and rebuked for being barren. The husband demanded the *mahari* back. BhokeNyangi (15) was married when aged eleven. After almost one year her husband began to badger her to go home for medication to cure her infertility.

If procreation is a necessity for brides, the issue of using contraception is virtually inconceivable for child-wives. In fact, as UMATI (1999) noted, very few child-wives in Tanzania have access to contraception. None in this study had access to contraception. Delaying pregnancy for a number of years would be unacceptable to the majority of husbands and in-laws. The purpose of brides is to have children. Further, there is a common belief that when contraception is used it can lead to a promiscuous lifestyle. The child-wives' rights to say when and if they should become pregnant is unacknowledged, and so the chances of an early pregnancy within the marriage are also high. Indeed, in these societies, as in many countries such as Mali and Nigeria (Barbara et al 1998), child bearing soon after marriage is integral to a woman's social status.¹¹⁴

Additionally, the research noted few cases of betrothal, the normal understanding between families. According to customary norms, there can be no sexual relations

¹¹⁴ Yet, there is a young generational sense of difference on this notion, mainly in urban areas.

until the menarche. However, cases of forced sexual relations by much older and more physically developed husbands with child-wives as young as nine, have been reported in Tarime and Mvomero (e.g., Pili (9) and BhokeNyangi (11)). In most cases, parents are not helpful in protecting their daughters. Child-wives who run home to their parents may be beaten and sent back to their husbands; distress is frequently endured in silence. Unfortunately, these traumas are regarded as a part of life (UNICEF 2001a:9).

Child-wives also face harassment when they become pregnant, as illustrated by the evidence of child-wives interviewed at social welfare institutions. One case, Rahel (*Raheli Wankuru v. Mourice Chacha* (2003)) stated that:

I got married and became pregnant at the age of 16. Whenever I made a trivial mistake he regularly battered me. One day he beat me and asked me to pack my belongings and leave; he evicted me from the house and suggested he would escort me to my parents. On our way home he had second thoughts. I asked him why he had changed his mind. He battered me again and the police arrested him.

When BhokeNyangi became pregnant, her father-in-law continued to hector her, claiming that she was lazy, did not know how to cook and had been snoring at night. On those grounds she was beaten regularly and he sent her home. When she reached full-term at home, her father escorted her back to her husband. They walked to the husband's village (Korutambe) from Magena B village (approximately 25 kilometres). When they arrived in Korutambe the father-in-law refused to accept her and the husband supported him. BhokeNyangi and her father walked back to their village. At midnight on the same day, she experienced severe labour pains and gave birth to a baby-boy, who died shortly afterwards (see Figure:1). After the episode, she became very weak and anaemic, due to prolonged bleeding.

It is worth noting that the risks of early pregnancy and childbirth include: a high infant mortality rate, a high rate of premature labour, complications during

delivery and a low birth-weight. These are the concerns of the child-wives, as demonstrated by BhokeNyangi.

There is also epidemiological evidence to suggest that adolescent childbearing contributes to a woman's risk of experiencing complications in labour and birth (Law Reform Commission 1995; Judith 1995). Significantly, SACHITA midwives in Tarime observed that girls who become pregnant at, or soon after puberty, are particularly susceptible to vesico-vaginae fistula (VVF), a malformation between the bladder and the vagina that results in continuous, involuntary leakage of urine through the vagina. This observation is confirmed in the Women's Dignity Project report (2003:20-21) in Tanzania. Significantly, while adolescent childbearing is not the sole cause of VVF, it is strongly related to the immaturity of a young woman's pelvic bones. Thus, early marriage is a very prominent factor in the causation of VVF. Further, Waaldijk (1989:1) aptly postulated that VVF, if not repaired, has a profound impact on a girl's life: she can no longer have children, she is preoccupied with keeping herself clean and by washing her urine-soaked clothes and is often abandoned by her husband.

FGM is another health hazard to girls. It is carried out by women 'ngariba' (circumcisers), using a knife or razor blade, often not hygienically maintained. Additionally, there is a risk of HIV infection through contamination (Gachukia 1992:4).¹¹⁵ Scar tissue that develops as a result of the healing process in FGM and childbirth can increase the risk of laceration with consequent susceptibility to contamination by STD and/or HIV. Butogwa, a midwife at Tarime government hospital, recounted the story of a child-wife who had complications during childbirth because of FGM scars. She was operated on and due to further complications, her baby died.¹¹⁶

¹¹⁵ The effects of FGM include haemorrhage, obstructed labour, trauma, urine and menstrual blood retention and infertility (Dorkenoo and Elworthy 1994:140).

¹¹⁶ This was an interview on 21/8/03

Risk of Violence

Various forms of violence against child-wives were manifested in almost all aspects of their married life. Their stories demonstrate their clearly disadvantaged position as women and children in negotiating their rights regarding the violence perpetrated against them. Significantly, a wider age difference between husband and wife reinforces gender stereotypes of wifely dependency and powerlessness (UNFPA 1997). When greatly dependent on her husband and his family, a girl lacks the external support systems needed, or the knowledge of where to seek assistance, should she be assaulted or raped. The gendered value she had been socialized to accept cements the situation of focusing upon the husband as protector and provider. These social norms reflect the subordination of women and the male's privileged claims to social and material opportunities (Kabeer, 1994:15).

On the other hand, scholars like Sohoni (1992) postulate that 'the greater malleability of the younger girl to adapt herself to the ways of her husband and his family is an advantage of early marriage.' Sohoni's proposition cannot be rebutted entirely; a few child-wives indicated that early marriage was beneficial to them.

While living in a compound with her mother-in-law, Teresa (17), a Maasai child-wife in a polygamous marriage, benefited from the group of wives and extended family as the women supported her when she was giving birth and they had taken care of her two children when she was sick. She followed the habitual commands of the husband or senior wife without question, as it is part of the Maasai culture (wife beating was prevalent). These girls' immaturity and flexibility made them adapt to the situation; however, with most of the urban respondents I interviewed, such violations would be unacceptable.¹¹⁷

¹¹⁷These answers reflect what Solberg (1990:135) says regarding child labour - namely, that some children feel it is for their benefit. 'If this picture looks unfamiliar, it is because most of us are unfamiliar with the world'.

The child-girl is bound by traditional cultural prescriptions that are reflective of two main principles: the segregation of the sexes and the dependence of females on men (Khair 2000). With poverty and the lack of education for most women being endemic in villages, these two principles basically proceed from the dominant traditional and social cultural norms that revere men and their inherent authority and relegate women to an inferior and subordinate position.

While living in a compound environment can provide strong female support for some girls, the environment is often dominated by the senior wife or mother-in-law and, therefore, is not necessarily helpful for child-wives. Sadly, for various reasons the child-wife's parents may compel her to stay in just such an abusive marriage with unsupportive co-wives. The case of Naini, 16, (a Maasai), is a graphic example:

I felt that I was not loved. There was no time to sit down chatting to him as 'husband and wife'. He always called me with a very strict and serious tone of disrespect 'wee mbwa' (you dog!) do this or that.' He has been very cruel; saying that he purchased me; and I must be obedient and stop questioning what he was doing. I have been regularly brutally beaten and sustained a broken rib. My co-wives stared at me and gossiped about me because they didn't want him to marry another wife.

Naini did not receive any support from her co-wives; they thought she deserved the punishment. The justification for wife battering is a reflection of the gender power relations within most patrilineal societies.

Most stories indicate dependency and powerlessness. For instance, at the age of 13 Pendo's parents arranged her marriage to a young man because his family was rich. She suffered systematic sexual abuse. After giving birth to her first baby, her husband acquired a concubine and developed a habit of battering Pendo when he came home at night, saying that she had been late in opening the door. One day he struck Pendo with a *rungu* (a big iron bar) on the head and she bled a lot. Pendo is now divorced; her father declared that she had been severely assaulted and was now partially disabled.

Although wife battering is now a criminal offence, thus superseding the customary laws, most child-wives do not report the abuse to police or even to the clan *baraza*. This is a reflection of the fact that the opinions and ideals of the dominant sector in society become the ideals of the dominated sector in society.

The few court cases filed by girls indicate that physical abuse is also common. In the study, all 12 divorce cases filed at the Tarime Urban Primary Court involved domestic violence (see Table one). In some clans, a wife is taken to be married to a whole family and therefore she must respect all the family. When it comes to discipline therefore, it would not only be the husband who chastised the wife, but other members of the family too. In *Verediana Butunga v. George Kyenche* (2001), a young wife who was neglected by her husband complained that he had failed to maintain the baby. Her mother-in-law and a brother-in-law jointly conspired to beat her. The circumstances are similar to the pattern reported by Mushanga (1976:65), who found condonation of the use of physical abuse as a means of obtaining conformity in Western Uganda.

Additionally, in the social welfare institutions, violence against wives was recorded as the most common case, irrespective of age. The following three cases from Tarime social welfare office illustrate the situation.

On several occasions Veronica's (17) husband used a bar to hit her on her legs and knees; she was hospitalised. He always threatened to chop her breasts off or to kill her unless she did as he asked. Whenever she was returned to her parents, they forced her to go back to her husband.

Apart from wife beating and marital rape, other forms of harassment are common. Another graphic example is Nyangi (14) (an orphan), who dropped out of school when she was in primary 5 at the age of 12 because of an arranged marriage. On several occasions she had been chased away from the matrimonial home at

midnight. Her husband often threw her clothes out after her and used strong words to chastise her.

Some child-wives associated their violence with their status within polygamous marriages. Happiness, (17), attested that her husband beat her while pregnant and that she was abandoned at a hospital. She insisted that it was because of her co-wife that she was often beaten and then evicted from the matrimonial home during her pregnancy. In Tarime it was revealed that whenever problems occurred, a wife accuses her co-wife as a cause of the maltreatment. Thus, a polygamous marriage has its own problems and creates situations in which strain and dispute can easily ensue (Mushanga 1974:87).

However, there was an exception in some parts of Maasai society,¹¹⁸ where many wives are in polygamous marriages and seemed to live happily; they registered fewer complaints compared to other tribes such as the Kurya. Nevertheless, I was continually told that the level of conflict between co-wives and a husband today is much higher than it was before.

Heavy Domestic Work: Child-wives as Child Labourers

The consequences of early marriage also include an excess of heavy domestic work. Child-wives not only face the constraints of lack of economic opportunity and unsought motherhood, but they also have to contend with their role as wives (Griffiths 1997:224). Most children have extensive responsibilities in the community as they participate extensively in daily work. Child-wives have more limited opportunities, as mothers and caretakers are supposed to be at home. This is much in keeping with the traditions and customs surrounding women and girls. Housework is an area of concern for child-wives as they are placed in a most vulnerable situation, where they could face abuse while caring for very large extended families.

¹¹⁸Maasai women said they have relationships outside marriage which is allowed within Maasai culture. This made their life easier and meant that they did not need to be jealous of a man who was their husband, but whom sometimes they did not really love.

In fact, rural women are confronted on a daily basis with numerous duties. The workload is almost a continuous cycle. A typical example is Naini. She wakes at around 4:00 (as her co-wives do, but they are adult women) and does the following: Cow milking, cleaning the mud huts, lighting the fire, cooking, separating cows from their calves, washing clothes, hewing wood and drawing water, herding the cattle into the compound, collecting fuel wood and fetching water for domestic use. Other duties are: maize grinding, cleaning the animal shed and collecting cow dung and heaping it at a place for later use as rain proofing for the huts. When the husband came back from his activities, she had to be there to welcome and save his meal, whether it was during the day or during the night. Any small mistake could end with her being harshly beaten. Some respondents claimed this was a slave-like life, especially for a girl-child, who is inexperienced and immature.

It is evident through comments given by most informants during group discussions, that their main concern was the immaturity of child-wives in managing the daily housework. As Chausiku observed, 'It is really a hard work; looking after two babies, it really tires you out. You can't see your mother you once used to see around. Every morning you get up to do the heavy routine work again and again'.

My concern is: how could a young girl cope adequately with all these duties? These are intense tasks even for an adult woman. How these child-wives manage to cope with such a heavy domestic workload is beyond comprehension. Their stories however, had different perspectives; Khadija said she was no stranger to such hardships. Just a year ago, when she was five months' pregnant, her husband neglected her and she became a full-time domestic servant. At the age of 13, she was left without any hope of securing an education, or of improving her chances of a better future, and there she was, destined for life as a domestic labourer. According to her grandmother she cried every time they met. You would think such monotony would wear the child-wives down. Unable to escape from the

daily drudgery that may last well into adulthood, it would not be surprising if these children had forgotten how to have fun, like normal children. They do not have the opportunity to play because they have acquired the status of wives. Indeed, some child-wives bear scars from their labours. The perils of working in houses are well known to adults, thus it is even more urgent when it is the children who are doing the hard toil. Some get infections and back troubles from holding heavy babies or burdens or receive cuts and bruises from clutching sharp kitchen knives that slip so easily from a child's small, inexperienced fingers.

The child-wives or other household females perform the household chores exclusively. The average male still considers these daily chores to be beneath his dignity. The duties become more strenuous during the crop-growing seasons when the peasant wife has to combine her daily household chores with work in the farms. At these times, she barely has enough time to sleep or engage in other income-generating activities. However, this is not to imply that rural men have no responsibilities at all, but, in general, I have seen that there are many activities within the family setting in which men are not involved, but which put a heavy burden on women. This is a sad illustration of the workload borne daily by women, but nonetheless represents what the society has always known - that unequal gender relations persist and child-wives are offered no form of assistance.

Various informants cited the hard graft a child-wife does as having a hazardous effect on the child's mental and physical development. Some children are trapped into early marriage as cheap labourers, so that they can easily be manipulated and controlled under the cover of being a wife. At least two informants said that they married child-wives to support their senior-wives in doing domestic work.

Child-wives' work may affect their nutritional status, health and other aspects of their lives (Kuleana 1999; UNICEF 2001a). The effects are further compounded by the existing discrimination against women in food and work allocation, where the nutritional status of overworked women will be compromised.

Divorce or Abandonment

Girls are more likely to be divorced or separated from their husbands if they marry at a young age. This is mainly the case when a girl has little or no education or training, and this can sometimes lead to child labour or prostitution (Bunting 1999:687). The repercussions of early marriage can be quite traumatic; a child-wife for example, could experience the death of a spouse as will be expounded in Chapters 6-8.

Of the 26 child-wives interviewed, 16 were either divorced or abandoned. Violent behaviour towards child-wives, including coercive sex and domestic violence, plays a major role in marital breakdown. Further, a number of divorce cases filed by young wives indicated that they were abandoned during their teens.¹¹⁹ In *Waisahi-Marwa v. Moganga-Nyamatende* (2003), Moganga was married at the age of 10 and abandoned at the age of 13. She had stayed with her in-laws until the age of 17 when her husband decided to petition for divorce. In other words, sometimes it is the feelings of the husband that matter when it comes to the survival or dissolution of a marriage (Tibatemwa-Ekirikubinza 1999).

A number of stories were recounted by child-wives who are divorced and who became prostitutes; Chausiku, who was married at the age of 13, separated from her husband and started to work at a bar selling her body for a living. Kwetu Counselling Centre also mentioned the case of a child-wife who had been a prostitute and who is now studying. This supports Belsey (1997) who noted that marital discord is also more common among those who marry at a younger age, often with the consequence of the child-wife running away and having no means of supporting herself, other than that of prostitution.

For some girls, the impact of early marriage can be overwhelming. Some are abandoned when they are pregnant (Figure. 2a). Paulina (15) narrated that:

¹¹⁹ *Tabu v. Ryoba* (2000) TUPC; *Shoma v. Emmanuel* (2003) TUPC.

When my pregnancy was six months old, my husband told me to go home to my parents and he would send some money and would come to take me home after my delivery. I have never heard from him or seen him since. I last saw him about a year ago.

Liku married at the age of 15 and became pregnant immediately. She and her husband moved to DSM where her husband changed his attitude. He became an alcoholic and started to hit Liku, who decided to return to her mother in Shinyanga. The husband has never sent her any money; she sold tomatoes along the junction road until she gave birth to her child.

For some girls, the consequences of early marriage are partial disability, as in the case of Naini, 16. Naini lamented that:

In the last beating that led to my separation I sustained a fractured rib. I requested him not to sell the cows that I was given during the wedding. That day he beat me while I was carrying my son on my back. I begged him not to batter me, as he would also injure our son. He said even the son belonged to him. I collapsed after receiving heavy blows and when I woke up I treated myself with hot salted water and decided to walk away from him during the night.

Naini and her child are now totally dependent on her mother; she is living in poverty. This ties in with what Katapa (1994) and Rwezaura (1998b) observe; that divorce or abandonment often plunges women into poverty as the woman usually assumes sole responsibility for dependent children. If she marries young, is under-educated and has few income-generating skills, her poverty may be acute and this may limit her ability to be heard. The gross human rights violations child-wives experience have implications for the whole of society and development in general and cannot be ignored.

CHILD-WIVES' RESISTANCE

Most girls are forced into marriage and are silenced in the name of tradition. Yet, in some instances they have shown resistance. Girls' ability to show resistance varies. Those most able to shift the terms of discourse are those supported by their natal families or other networks. The disputes dealing with divorce or domestic violence provide a clear illustration of this. When child-wives can be supported,

they stand a greater chance of being heard and of establishing their claims against violence or divorce. However, in courts, the situation depends on the assessors' or magistrates' awareness of the problem.

Occasionally, when girls show resistance by not agreeing with their parents' decisions, especially regarding marriages with elderly men, the consequences can be particularly distressing. The following excerpts from newspaper reports illustrate the situation. 'In Musoma, an eighty-six year old man committed suicide by hanging himself when he suspected that his sixteen-year-old wife was involving herself in extra marital sex with a young man ...'. A young secondary school girl also 'committed suicide to protest against a forced marriage' (Katapa 1994: 77).

Further, by showing resistance, girls sometimes suffer social stigma, face acts of violence and miss out on the right of staying with their parents. Maria, (12), ran away from a forced marriage. She walked on bare feet for three days from Kondoa to Balagdalalu, fleeing a marriage to an old man as a second wife. *Mahari* had already been paid and the parents were waiting for the celebration day. At night, she slept on a tree and watched people who were following her passing under the tree.¹²⁰ Interestingly, the Balagdalalu primary school became her supporting network and accepted her despite her parents' opposition; she now stays at the school, even during holidays. Her educated brother inspired her to emulate him. Maria's voice has been heard and emulated by other girls.

Nonetheless, the most common resistance reported by child-wives is to return to their natal families, while a few have accessed justice in various forums through their family network support. In some cases, child-wives are aware that the issues they raise, for example, that of divorcing their husband, will not be brought to a satisfactory conclusion. However, reporting a dispute to forums exposes a man's behaviour to public scrutiny and causes him to be vulnerable to public humiliation (Griffiths 1997: 227). Nevertheless, many child-wives claimed that family and clan

¹²⁰This was an interview on 29/7/2003.

baraza often display gender and age bias, thus it is seen as being better sometimes to keep silent.¹²¹ Their reactions give credence to Armstrong's (2000:96) view that it is not enough to ask decisions of the family when the position of the woman in the family has been eroded. The empirical data documents that most child-wives approach their families for help in solving the disputes, rather than the court (or other forums) for a variety of reasons, such as ignorance of the system. They find the court system intimidating and fear that they would be alienated and socially stigmatised.

Most girls' access to justice depends on the way in which individuals form part of networks which shape their world and channel their access to resources. Such resources include the power to negotiate (Griffiths 1997:38), which is limited for most child-wives.

The empirical work at household level included a number of reported cases of Kurya girls in both courts and other forums, whilst noting a lower number of Sukuma child-wives' resistance in the same manner. There was however no example of a case involving a Maasai child-wife in forums other than the family. It is worth noting that within the Kurya, Maasai and Sukuma ethnicities, cultural values compel a wife to remain and endure life in her husband's house, even when she faces marital problems. However, in Sukuma and Kurya, social and economic changes (Rwezaura 1989) have had more impact than on the Maasai.

The Maasai still maintain the nature and structure of the marriage system and the degree of socio-psychological attachment of women to their honour and that of the family. Empirical work at household level demonstrated that a number of child-wives encounter severe marital problems. They often show their resistance by returning to their natal homestead to complain and wait for male networks to negotiate reconciliation, as in the case of Naini. Some frustrated women, however,

¹²¹The discussions with child-wives in Mogabiri revealed that they were socialised not to complain, unless it was a severe marital problem, as the husband could become violent towards a wife for causing shame to him.

choose a permanent separation from their husband (Hodgson 2004), but child-wives rarely do this. They lack network support from their natal family and are too immature to choose other options. As established in previous chapters young Maasai women are more strictly socialised in respecting their culture and are secluded within a household. Thus it is more difficult for child-wives to show resistance.

Recourse Through Ward Tribunal(s) and Social Welfare Avenue(s)

At various times the Government have created or appropriated informal dispute resolution forums that draw from local norms and practice, such as the Ward Tribunals established under the Ward Tribunal Act (1985). However, empirical investigation shows that some tribunals do not work effectively due to the failure of District Councils to pay remuneration to the members, as is required under the Act. Thus the ward secretary steps in occasionally to deal with disputes that must be attended to, even though he has no statutory authority to do so (Nyamu-Musembi 2003:15).

Few child-wives report their marital conflicts to formal out-of-court forums. Among 26 child-wives interviewed, only 4 child-wives reported their problems to social welfare offices and one to the ward tribunal, these being brought through the support of their natal networks. However, at the Tarime social welfare office, out of 150 files (from January 2003 to February 2004), child-wives who had experienced matrimonial conflicts, such as domestic violence, harassment, delayed pregnancy and the lack of maintenance had filed 13 cases.

Chausiku (16) filed her case at the Tarime ward tribunal with the intention of divorcing her husband; she said the chairperson of the Tribunal was related to her husband and thus she was told to return to her husband. Some members commented that she was a prostitute and employed in a bar. She failed to file the

matter in court as she had not received a letter from the Tribunal. The Tribunal forced Chausiku to remain married to her abuser. By denying her the letter required under the LMA, 1971, the Tribunal had failed to reconcile the couple and hence she could petition for divorce based on matrimonial violence. The Tribunal did not even bother to investigate the history of her marriage and so they did not know that she was forced into marriage at the age of eleven and had endured abuse. She could have filed a petition without the letter but she did not know how and so her situation was not resolved.

Some child-wives wish to show resistance, but they are faced with a dilemma. At the office I asked Happiness, (17), about her rationale for reporting the matter. She was somewhat confused. Initially, she thought divorce was a practicable solution, but her parents were against the idea. It is important to acknowledge that even when child-wives try to show resistance, the assessments and decisions they make take form in specific contexts and are shaped by the resources, as well as the social controls, within the context. In deciding to divorce, they faced several interrelated socio-cultural, economic and legal barriers. These child-wives realised that society could not protect them.

My interview with child-wives revealed that divorce is not readily acceptable as a solution for broken marriages.¹²² Even child-wives like Happiness, who admitted intense difficulty in, for instance, having to endure co-wifeship and its socio-economic consequences, didn't see divorce as a realistic option. Most of them had often deserted their husbands and had gone back to their parents, only to be reminded of their place in society – namely, marriage (Ncube 1998; Tibatemwa-Ekirikubinza 1999).

However, evidence encountered at the social welfare institution in Tarime registered milestone changes. Tumbo-Masabo and Liljestrom (1994) assert that in

¹²²However, divorces are happening more often now compared to the past. For example, at the Tarime Urban Primary Court, about one third of civil cases filed in 2001 were divorce cases.

Nyamwanga ward, many elderly fathers married off their daughters to their fellow old men. However, after some time, some of these unions ended prematurely as some child-wives were not happy with such marriages. Some of the child-wives eloped with younger men, thus the husbands went to demand the return of their *mahari*. Girls, as social actors, were creating some space within the patriarchal system. Interestingly, it is not the old men, but the girls, who took the initiative to break the marriage by eloping. This kind of manoeuvring is not expected from girls who are socialised to be submissive to male networks, either as fathers, husbands or brothers.

Customary marriages are normally dissolved when *mahari* is refunded. The courts have taken cognisance of this custom and it is codified under the customary law, 1963 (Rules 37-46), that the refund of *mahari* depends on who was at fault. The process of determination involves a combination of customary norms aimed at determining the question of guilt, the number of years of married life and the number of children (*Nyamu v. Mahere* (1971)), as well as the practical tactics aimed at establishing and determining who refused to continue the marriage. In cases of eloping young wives, *mahari* was refunded. Another avenue utilised by child-wives is the court.

Recourse to Primary Courts

The courts provide an avenue for resistance, but most people are fearful of appearing in court; there is a belief that a person who takes you to court is your enemy. However, most child-wives are socialised not to show any kind of resistance. Their social value is through their husbands and hence they are silent. They are denied the ability to define themselves and to determine their own destiny. Their personal identities are suppressed (Tibatemwa-Ekirikubinza 1999) and their right to participate is curtailed. That is why some commit suicide to demonstrate their resistance to such oppression.

It is regrettable that what emerges clearly from the approach of the child-wives and their support network in the resolution of justiciable disputes is that very limited use is made of formal legal proceedings (Table:1). Problems with the highest rate of judicial determination are divorce and separation problems, neglect and domestic violence.

Difficulties that wives encounter in pursuing their resistance to violent husbands are exacerbated by their experiences in court. This is because those forums continue to uphold the social basis upon which child-wives' partnerships with men are constructed and interpreted (Griffiths 1997:183). In *Teresia Maginga v. Marwa Mwita* (2001), the wife petitioned for divorce because of routine domestic violence. The defendant insisted that he still loved her and wanted to maintain the marriage. The court ordered that the couple should stay together, according to section 107 (1) (a) of the LMA, 1971.

The simplified account of the outcome of justiciable problems obscures the complexity of factors that influence choices of whether to show resistance, what kind of resistance, how much to persevere and when to give up. Sometimes, parents are terrified of being jailed because they married off their daughters who had dropped out of school. That fear hinders them in taking the matter to court. This means that a child-wife could remain in a violent marriage until she is mature enough to fight for her rights, as in the case of *Magreth-Ghati v. Juma-Matavo* (2000), Magreth was married at the age of 9; she stayed in an abusive marriage until she was aged 18, then petitioned for divorce. Similarly, Nyangibhoke (15), (in Tarime) was advised at the social welfare office to file a case in court, but her father hesitated to support her as he did not have the confidence to pursue those rights and remedies. Also, he feared being jailed as he had married off Nyangibhoke at the age of eleven. Some child-wives who had no network support commented that they felt they could not handle the matter alone; they did not know the procedures and did not have the money to pay court fees. They made comments about the

corruption in court (LHRC 2003) and the trauma involved in bringing the law to bear in defence of their rights. Few child-wives (just over 4%) therefore seek restitution in the court of law (Table 1).

Table 1: Divorce Cases: Tarime Urban Primary Court (TUPC) 1998- 2003

Year	Total (n)	Total cases filed by women (n)	Total cases filed by child-wives below the age of 18 (n)
1998	58	28	2
1999	56	44	1
2000	62	44	1
2001	56	36	6
2002	26	18	1
2003	29	25	1
Total	287	195	12

Source: TUPC Files 2004

Moreover, in a patriarchal society like the Sukuma, the socio-economic order makes girls dependent on men and marriage. One of its effects is that a child-wife's successes in society are inextricably linked to marriage and motherhood. Girls are socialised to recognise the absolute necessity of holding on to a man. Knowing this, child-wives' supporters exercise care in the way they handle disputes. Given that a husband represents economic security, establishing the credibility of a case for grievance requires evidence and building on a series of family *baraza* reconciliations (Griffiths 1997; Tibatemwa-Ekirikubinza 1999). The child-wives' disputes in all districts demonstrate this point. In Kizumbi primary court – Shinyanga, in a period covering six years, only one child-wife showed resistance through a divorce petition (Table 2), namely *Joyce Juma v. Emmanuel Masanja* (2002). Other disputes ended with family consultations and hearings or at conciliatory boards,¹²³ as a requirement of the LMA, 1971.

¹²³ In every ward there is a conciliatory board established by the Minister for Legal Affairs.

Table 2: Divorce Cases: Kizumbi Primary Court (KPC) 1998-2003

Year	Total (n)	Total cases filed by child-wives below the age of 18 (n)
1998	32	
1999	29	
2000	32	
2001	26	
2002	17	1
2003	20	
Total	156	1

Source: KPC Divorce Files 2004

The case of Joyce, (17), illustrates how unusual it is for girls to show their resistance through the courts in Shinyanga. She celebrated a customary marriage at the age of 14. She lived happily for about one year, but then her husband developed the habit of assaulting her. She tolerated this for some time but the man continued to abuse her, so she returned to stay with her parents. Her parents forced her to return to her husband but it became very difficult because of his cruelty. She reported the conflict to the village chairperson, who warned the husband. However, the husband continued his barbaric behaviour. A series of family meetings was convened in an effort to reconcile the couple, but failed. Joyce later remained at her parents' residence but her husband followed her there and assaulted her on several occasions.

Joyce's story is that of a girl who had endured repeated violence until she eventually retaliated by reporting the matter through a variety of forums. However, Joyce went further than other girls in a similar situation by filing a case. It subsequently shows that girls in similar situations can display different forms of resistance, depending on the circumstances. In this case, Joyce's mother was the principal witness who testified in court and a divorce was granted. Unfortunately, without such networks child-wives often suffer the violations of their human rights as discussed in previous sections.

This kind of resistance surprised some of the Sukuma magistrates; one remarked that it was untraditional to use forums other than the family network. Nonetheless,

without the support of the natal family it would have been very difficult for the child-wife to win the case, particularly as the neighbours were reluctant to give evidence as the husband maintained that he loved his wife and that he did not want a divorce.

In Joyce's case, as in most child-wives' disputes, the right to property issue was not discussed. For example, in both *Robert v Pendo* (2002) and *Bhoke v Chacha* (2003), both cases raised by a child-wife, it was argued that the couples lived together for an insufficient length of time to enable them to acquire matrimonial property jointly. This argument conflicts with section 114 of the LMA, 1971, which recognises as a partnership of *jural* equals those who toil in a joint undertaking, and hence are entitled to equality of ownership (Rwebangira 1996). Clearly, social and cultural norms are obstacles for girls. Their vulnerability is exploited. Patriarchal norms commonly validate the male's absolute control of family wealth and so deny child-wives any say in the property they helped to acquire, even if only over a short period. These inequalities result from the gendered structure of social, economic and political life, which continue to undermine girls in the legal sphere (Griffiths 2001).

Some child-wives also face difficulties in protracted cases. Difficulties that wives encounter in pursuing the dissolution of abusive marriages are aggravated by their experiences in courts and in the legal system in general. These forums continue to underwrite the unequal power relations that exist between the sexes within the household (Griffiths 1997:183). This is intensified by the immaturity of the child-wives. However, the availability of networks continues to influence both the customary and legal processes. In view of this, the centralist model of pluralism cannot be sustained (*ibid*) as the State and its institutions are not the only avenues where rules are dictated or uniformly applied. There are other rules generated from informal forums i.e., moral and religious rules, which may be drawn from the Kurya, Maasai or Sukuma societies or Christian, Muslim or traditional beliefs that

determine outcomes of discussions or disputes. As Griffiths (1997), Hellum (1999) and Nyamu-Musembi (2002) demonstrate in Botswana, Zimbabwe and Kenya respectively, 'the social context within which law is embedded cannot be ignored, for they are crucial to an understanding of who has access to law and under what conditions' (Griffiths 1997:36). Among Maasai, for example, it is clear that social considerations and age status operate to control access to a clan *baraza*.

Further evidence of resistance is exemplified from female husbands' wives. Although *nyumba-ntobu* is still a respected norm within Kurya society, the younger generation is resisting this tradition by using the courts. The *Nyirabu Selemani v. Wankuru Mniko* (2003) case illustrates this point clearly:

When my father passed away, I was 13 and my brother became the head of the house. He arranged my marriage as he had a loss in his timber business... I was taken to the female-husband who told me that I was free to choose any man as my lover. I was a virgin and I was forced to sleep with men. When I remember that, I feel dreadful. My sister, who is now working in town, had an awareness of marriage requirements and human rights' issues and advised me to file this case.

Nyirabu prayed for a divorce order as at the time her marriage had been contracted she was a child; she had not given her consent and thus no marriage legally existed. Fortunately, both assessors supported her. Wankuru raised concern about how the court had violated Kurya custom. She was actually saying that her reputation as a female-husband had been diminished. She demanded the return of her *mahari* (15 cattle) and the two children. The magistrate ruled that the law guides the court; where the law is silent then customs are applied. Although *nyumba-ntobu* is a Kurya customary norm, it is void under the LMA, 1971. Accordingly, there was no woman-to-woman marriage, thus the children belonged to Nyirabu. The female-husband could claim her *mahari* in a different suit. Frustration showed on Wankuru's face, as what the court had ruled was interfering with Kurya tradition. However, the judgement sent a message to society that *nyumba-ntobu* is illegal.

Conversely, assessors at the Nyamwanga Primary Court (a rural area) were adamant in protecting the *nyumba-ntobu* culture. Most cases filed there regarding divorce from *nyumba-ntobu* failed. Both the assessors I interviewed blamed the semi-urban assessors who disparaged the custom. From a legal centralist perspective, the expectation is that a matrimonial problem will be dealt with according to the LMA, 1971. The *nyumba-ntobu* disputes demonstrate that the centralist model of pluralism cannot be sustained. Further, it illustrates that rules do not behave in this way (Benda-Beckmann 1983); or, to a certain extent, those applying them 'do not confine their application of rules to the system which gave rise to them or to the institutional setting in which they are being applied' (Griffiths 1997:231).

Conclusion

Analysis of the early marriage phenomenon demonstrates complicated configured factors that contribute to the child marriage practice. Traditional practices such as *mahari*, FGM and polygamy are deeply embedded within communities and have multiple dimensions that perpetuate the conditions in which the early marriage of girls occurs.

Child-wives are in a limbo-like and vulnerable situation. However, the roots of child-wives' violations are found in the power structure of society in general, and in the family as a socio-economic institution, in particular. This structure places girls in a subservient position and allows men to subject them to various forms of oppression. Those who enter marriage are prisoners of their childhood. They have no opportunity to use their childhood to live as children. They are forced into situations with immense responsibilities that are too onerous for their level of ability (Kabeberi-Macharia 1998).

Disregarding basic human rights injustices such as violence, overwork, lack of education and health problems, supporters of child marriage argue that delaying

marriage until adolescence increases the risk of unmarried teenage girls becoming sexually active and thus contracting HIV/AIDS or having early pregnancies. However, this argument hides the failure of education and health systems in not relaying adequate information to girl-children about preventing diseases and pregnancy. Critics maintain that early marriage undermines the self-confidence and self-identity of the young girls (FORUM 2000), and exposes them to violence and to emotional and psychological problems.

Gender inequalities derived from gender roles within the family relegate child-wives to a less powerful position which limits options in negotiating their status with men, within the family sphere and in the social world at large. This includes access to sympathetic informal and formal legal forums (Griffiths 1997:211). In line with that many aspects of law relating to children's rights sanction female subordination. However, although in most cases their voices are ignored the empirical study evidences some categories of child-wives who are active actors - especially those who have enlisted their natal family as a supporting network. Child-wives have sometimes reported incidences to courts or out-of-court-forums, and some have eloped to avoid the marriages that kept them subjugated. It is through such resistance that these voices have been heard.

The analysis of the early marriage phenomenon and its repercussions in this study supports scholars' suggestions that 'the solution to the problem of child marriage lies not only in laws but also in a complex web of programmes to deal with its underlying configured causes' (Bunting 1999:690) (Chapter 9). The forthcoming Chapter is an analysis of the laws of inheritance available to child-widows and is seen, in turn, as one of the traumatic results of early marriage.

CHAPTER FIVE

LAWS OF INHERITANCE RELATING TO CHILD-WIDOWS

The previous Chapter noted child widowhood as one of the traumatic impacts of child marriage. The aim of this chapter is to explore aspects of the customary law¹²⁴ and the plurality of norms in inheritance matters before examining the child-widow's experiences. It then delineates how the multiplicity of laws of inheritance leaves gaps that permit the courts and self-styled traditionalists, who often include unscrupulous relatives of the deceased, to choose customary laws that are the most detrimental to widows. Further, it examines the primary court,¹²⁵ which is mandated with the duty of adjudicating upon cases in accordance with Islamic and customary laws (Section 18(1)(a): The Magistrates' Courts Act, 1984). The Chapter consequently sets the scene for a more detailed examination of international human rights law that concerns the child-widow in relation to customary laws of inheritance.

A BRIEF BACKGROUND TO THE GENDER-BIASED CUSTOMARY LAW OF INHERITANCE

The specific historical background of child-widows is 'un-captured' but is covered in widows' inheritance rights generally.

It is argued that the customary law of inheritance requires an appreciation of the past in order to adequately discuss the present (Marwick 1970; Camara-Laye 1980). Such a review would inform the formulation of a strategy for revision of the system. Significantly, the dynamic of plural legal cultures in Tanzania must be

¹²⁴ Which is part of the legal centralist model in Tanzania.

¹²⁵ The primary court is the common court for common people.

analysed in the context of social realities and not in isolation (Mehdi 2001).

Historically, Tanzania, formerly Tanganyika, was a communal society in which the tribe was the basic governing unit and was seen as 'transcending the separate existence of its members', and having 'the exclusive right of use and control' of property (Mukoyogo 1995:21). The notion of property carried a distinct meaning, namely: the 'object' and the 'web of social relations' that establish a limiting and definite relationship between the object and the person. This limiting relationship meant the exclusive right of use and control. Consequently, inheritance was the transference of status (the right of use and control) from a dead person to a successor. The property of a communal group was never transferred; most property (including land) was communal and thus non-heritable (ibid).¹²⁶

During this era, family or clan members supported widows and children on the death of a husband or a father. Clan tradition obliged the successor, whether a first son or brother-in-law, to protect the widow and children (Swantz 1985:68; Mhoja 1997:6). In some parts of Tanzania, such as the Nyamwezi societies, a woman was sometimes chosen to be a new chief if there was no suitable man available (Roberts 1968:119). It seems that during inheritance, she would then have the status of a son (a male daughter),¹²⁷ and be able to inherit her father's property. Additionally, in most patrilineal societies there were available options for the care of widows such as: (1) a leviratic union or widow-inheritance; (2) a widow could return to her father's home and be remarried (Kirwen 1979). However, both leviratic union and widow-inheritance have gender inequality elements, although they served their purpose.

¹²⁶ Even where individuals had the right to use a particular piece of land, their rights were not conceived of as absolute in terms of current private property rights' regimes. No single source controlled the resources and access to them was limited to an identifiable community with set rules on the way those resources were to be managed (Chacha 2002).

¹²⁷ This is similar to the Nhobis in Nigeria. In rare cases, women owned land as 'male daughters' when they had been accorded full male status in the absence of a son in order to safeguard their father's line of descent and the property associated with it (Amadiume 1987: 34).

According to Mukoyogo (1995), new relationships between people and property developed when cattle were introduced and became the chief form of property. The domestication of livestock led to the development of private property and the emergence of its inheritance as a social practice. This exaggerated male social dominance, because, as a custom, only males owned livestock and almost without exception inheritance followed the androgenital line (Ibid: 21). Each tribe developed its own system of customary norms for dealing with property and inheritance. In most ethnic groups, land was communal property and was not to be transferred (Mukoyogo 1995).

Additionally, a large Islamic population emerged in Tanzania through immigration and trade with India and the Middle East from as early as the 14th century (Swantz 1995: 7-9). Some of the Islamic population followed the Islamic law on inheritance, whereby widows gained a share of inheritance. However, that share was much smaller than the share granted to men.

Colonial Legacy in Tanzania

A legal consequence of colonial rule common to African countries was the introduction of changes in the institutions and norms governing the local people. Colonialism brought changes and the application of norms that were alien to African society (Snyder 1981; Chanock 1985; Nabudere 2000:20; Mchome 2002). It may be said that the law was the 'cutting edge of colonialism', an instrument of the power of an alien state and part of the process of coercion (Chanock 1985:4). It also came to be a new way of conceptualising relationships and powers and became a weapon within those African communities that were facing economic changes (Ibid).

Many scholars have observed that the creation of customary law came to represent the official customs, which consisted of rigid rules embedded in bye-laws, judicial decisions, administrative orders, and statutes which, in time, lost the traditional

characteristics of dynamism and adaptability which distinguished African pre-colonial customs (Chanock 1985; Manuh 1994; Nabudere 2000). It was 'operatively at the forefront' of colonial rule and provided the means by which this rule was made law, resulting in a 'customary world' that matched the operations of the colonial administration in conforming to the demands of imperialism (Nabudere 2000:7).

Similarly, the establishment of the colonial dominance over Tanganyikans was a gradual process and took many years to be accomplished. Shaidi (1992) has divided this process into three phases; namely, the early period, which was characterised by wars of conquest, land grabbing and people's resistance; the middle phase, which was characterised by the institution of law and order; the last phase, immediately before independence, was characterised by the consolidation of the colonial legal system. The Germans mainly dominated the early period of colonial establishment and the British dominated the last two phases (Ibid).

The German colonial state was known for its brutality, as it ruled Tanganyika through the policy of 'frightfulness' (*sera ya kutisha*). In wars of conquest and by quelling resistance,¹²⁸ it massacred thousands of natives, while in the home and in the work places, the German administrators applied the '*kiboko*' (the whip) (Mchome 2002). Compulsory labour had also dominated the German period on the pretext that 'without some compulsion the labour force could not be organised to play its part in the opening up of the country's economy' (Eberlie 1960:193).

However, information on how the Germans treated the widows of thousands of massacred natives is lacking. The Germans were interested in the cheapest options, cheap labour, external markets and investment, but not in the family matters of Tanganyikans; what mattered most was the acquisition of profit.

¹²⁸ The *Maji-maji* (water-water) resistance of 1905-1907, for instance, had a death toll of about 120,000 natives in a country that had a population of about 7 million people. This was a war by natives against the Germans who believed that the Germans' bullets would change into water.

After World War 2 (1939-1945),¹²⁹ Tanganyika became a UN trust territory under the British. During the British era there was a gradual shift from the policy of 'frightfulness' practised by the Germans to a process where power was gradually centralised and monopolised by the State.

A colonial government was set up and given powers to determine how control might be achieved. A legal system that was to be dominated by bureaucracy and by a highly coercive machinery was put in place. It was by virtue of this move that the institutions relating to police, courts, prisons and legislative and executive functions were instituted in the country. As already mentioned, these institutions were alien; that is, they were not part of the communal regimes that were prevalent in the country before colonialism (Nabudere 2000; Mchome 2002).

During the pre-capitalist social eras, women were protected from explicit exploitative, oppressive and discriminatory social relations. However, with patriarchy in operation, female discrimination was already evident, even in Tanzania, as mentioned in the custom of leviratic marriage. On the other hand, with capitalism and the cash economy introduced by colonialism (1895-1960), new forms of exploitation and discrimination were widely experienced (Koda 1998:42). The introduction of cash crops, for instance, led to competition over land and labour, to the extent that much land previously used by women for food production was appropriated for cash crop production. Cash labour and tax structures were introduced to ensure that colonial industries were adequately supplied with raw materials. A combination of these factors resulted in male migration into towns and plantations, leaving women behind to manage the household affairs (ibid). Although women did engage in migrant labour, it was not at the same rate as that of men (Ngaiza and Koda 1991).

The introduction of a market economy radically altered the nature of property,

¹²⁹ After the Allies defeated the Germans in World War 1 (1914-1919), the former German colony of Tanganyika was handed to Britain.

changing the way Tanzanians viewed property rights (Mukoyogo 1995:21). Colonisation changed the basic mode of production, as communal ownership of land was contrary to the capitalist mode of production. Above all, knowing that land is the source of wealth, all land occupied or not was declared to be crown land; Germany did this through the Imperial Decree (Regarding Creation, Acquisition and Conveyance of Lands), 1895, while the British used the Land Ordinance Cap. 113. As a consequence, land became a commodity and the security of many women was consequently eroded. Men were seen in the eyes of Western males as breadwinners because they entered the labour force to earn money. Thus, the introduction of the private ownership of land and the money economy helped to ensure male domination of the economic, social and political spheres and this led to a further deterioration in women's economic and social status. Thus, colonialists promulgated their own gender stereotype, thereby consolidating women's financial dependence on men. This gender stereotype thus encouraged the attitudes towards women (including widows) already existing in some indigenous communities (Mhoja 1997:8).

Further, the colonial legacy resulted in the creation of surrogate native governments, and the domination and weakening of traditional authorities through the system of treaties, courts¹³⁰ and the civil service. It led to the resocialisation of the entire native population, to the acceptance of the authority of these institutions, as well as to the authority of the colonial and native bureaucrats. Chieftaincy was hereditary and governance inhered in them without an independent judiciary.¹³¹ It aimed at eliminating traditional and local group identities in order to promote individualistic identification with the goals and lifestyle of the colonial state (Tshosa 2001; Nabudere 2000). Most importantly, the colonial legal legacy weakened indigenous authority and radically altered the normative content of legal areas of the local communities and cemented gender inequalities (Koda 1998:

¹³⁰ Native Courts were first established by virtue of the Courts Ordinance, 1920, which constituted them as courts subordinate to the High Court.

¹³¹ This fusion of power was a typical feature of British rule in dealing with natives in their colonies (Tshosa 2001).

Tshosa 2001; Nabudere 2000).¹³²

Under African customs, relations such as inheritance had been the concern of kinship groups and clan baraza subject to negotiation and compromise. However, under the codified 'customary law' they were transformed and their fluidity and flexibility was lost, as they now became matters to be heard by Native Courts (Rutinwa 1996; Nabudere 2000:8). Hence, new 'customs' were invented to create new norms (Manuh 1994-1995:214).

Most significantly, the English common law was 'received' in Tanzania by virtue of article 17 of the Tanganyika Order-in-Council in 1920 ('the reception clause'). This marked an important watershed in the legal system of Tanganyika. Article 24 of the Order stipulated that native law was to be applicable only if it was not repugnant to justice and morality.¹³³ These provisions were reiterated by section 9 (2) of the Judicature and Application of Laws Ordinance (JALO), 1920, which also enjoined courts to be:

guided by African customary law in civil cases in which one or more of the parties is subject to it or affected by it in so far as it is applicable and is not repugnant to justice and morality or inconsistent with any written law and shall decide all such cases according to substantial justice...

Accordingly, in order to regularise the area of inheritance, the colonialists imported the gender-neutral law, namely, the Indian Succession Act, (1865), and the Non-Christian Asiatic (Succession) Ordinance, Cap. 112. The Indian Succession Act is a form of codified English common law. It favours more egalitarian principles of distribution among the survivors without distinction on the basis of gender. However, this Act was mainly for Europeans, while other customary and Islamic laws were applicable to indigenous and Muslim communities respectively, as adjudicated in *Sebastian Kakilo v. Mwami Musikule* (1953). Within this context, legal

¹³² However, in some situations both women and men tried to exploit the effects of colonial legacy to their advantage. For instance, women gained access to new spaces and realised new rights that traditional society did not recognise e.g. in filing divorce cases (Chanock 1995; Nabudere 2000).

¹³³ The repugnant clause was a typical feature of British rule in her colonies.

pluralism was conceived and applied to the colonial world, where the division of the colonizer and colonized was upheld (Griffiths 1997:33).

Under the customary law of inheritance, widows were not allowed to inherit land but were to be maintained. Men did inherit land. This law contained an implicit gender bias in that women were not independent from men. Thus, customary law denied women their former traditional right to the land and control of the domestic economy (Nabudere 2000:16). Because of discrimination, some widows and daughters in Kagera (Lake Zone) went to urban areas and made a living through illicit beer brewing or prostitution (Swantz 1985). One of the causes that forced women to go and live in towns was the fact that widows were denied the right to inherit family or clan land. Concerns over prostitution arose from complaints that men found their wives departing from their homes in villages for the neighbouring towns and there were no legal powers to prevent this (Hyden 1969: 109-110). This problem was one of the factors that led the African Association (the first local political organisation) to write a letter to the Council of Chiefs in 1933, urging the equal rights of inheritance for women (Ibid).

Concurrently, education and job opportunities in towns, estates, government offices and business created an opportunity for the generation of other forms of immovable property ownership, away from the clan or communal tenure. Such ownership subsequently came to be vested in the hands of both women and men, even if it was in unequal proportions (Mukoyogo 1995:23). In recognition of the new position of women towards land ownership other than the clan land in Bukoba, the Bahaya Council promulgated Rules of Inheritance in 1944 which gave recognition to the right of women to inherit self-acquired land, the rules becoming operative in September, 1945 (Swantz 1985; Mukoyogo 1995). But this was only applicable to Kagera region.

On the other hand, African Christian Churches were in constant confrontation with

both African marriage customs and Christian marriage norms enforced by Western missionaries. One of these 'conflicts of culture' stemmed from the custom of wife inheritance. Many Christian Churches prohibited this custom as a practice incompatible with the Christian way of life (Kirwen 1979:11). There was resistance to this prohibition from Africans; some widows left the church as there was no other acceptable way for them to live, other than in leviratic union (Ibid: 9). Other women used this resistance as an excuse to opt out of unions they found disagreeable; they were allowed by the church to live in mission compounds, where they built their houses and received land for growing food (Ibid: 12).

During the colonial era, child marriages were prevalent in most parts of Tanganyika (Swantz 1995:32-36; Katapa 1998: 47-50). However, the issue of child-widows was not explored; it was hidden in the shadow of adult lives. Essentially, the issue of widows in general was neglected and did not attract colonial attention; it only attracted the missionaries' attention when local customs were at variance with Western Christian ideals.

Post-colonial Era

The practice of customary law in post-colonial Africa persisted as an African 'self-assertion', in the sense that an attempt was made to make it part of the creation of African legal systems suited to African independence (Chanock 1985). However, this 'self-assertion' remained within the imagination of colonial conceptions of law and its institutions. For this reason, it has continued to be an arena of struggle for different social forces in the advancement of their claims and counter claims (Nabudere 2000: 22-23).

However, in Tanzania, state law defines the conditions under which legal pluralism is said to exist, and includes the recognition of customary law of inheritance. The JALO of 1961 retained the essentials of Section 9 (2) of the preceding Ordinance, but, significantly, dropped the entire 'repugnancy clause'.

The new section 9 established customary law, including Islamic law, as part of the common law of the indigenous people (Rutinwa 1996). Despite the removal of the 'repugnancy clause' from the statute book, the post-independence judiciary has continued to refuse to apply certain established customary laws on grounds akin to those found in the 'repugnancy clause' (*Idi Juda Omari vs Abdalla* 1965).

In 1963, customary laws were codified. However, the customary laws were collected by a Western man¹³⁴ with his own bias and put into law by a group of elite African men for their own interests in order to maintain the patriarchal values and powers. It is questionable whether what is called the 'customary law of inheritance' is the real traditional customary law of Tanzanian people, given the changing social and legal norms (Cotran 1965:120). This was also the case in other African countries such as Malawi and Zambia (Chanock 1985).¹³⁵ The perceptions of the dominant African groups, who were mostly old men, came out clearly in the way 'customary law' was crafted to deal with issues of gender relations and age. Besides that, a male bias has also been reported. For example, the customary law of inheritance (1963; 3rd schedule) deals almost exclusively with what can be done should a man die intestate, while the case of a woman is not considered.

This, then, is essentially, as Currie (1994) asserted, a 'corrupted' version – the product of a long history of collaboration between colonial administrators and indigenous elites - and is not the lived 'folk' law it claimed to be. Likewise, Chanock (1991), remarks that these laws not only embodied a view of a dominant portion of African societies as to what the operative norms were, but it also became

¹³⁴ The German anthropologist, Cory, researched the Customary Law content. In 1963 it had been given the status of Government Notice by the Government. This did not indicate a new democratic law, but in the words of Cotran, '*an amalgam of different customary laws*', setting new rules as a product of a political and consensus seeking operation, rather than a legal one supported by the consent of the people subject to customary law (Cotran 1965:27).

¹³⁵ Another criticism is directed at the very process of restating customary law – can one actually write down customary law without inevitably altering its original nature? Many objections could be made to this way of law making; the ethnic groups elected were primarily patrilineal, their representatives all elderly men, and the questionnaires used were biased and insufficient (Verhelst 1994).

'when transformed into enforceable rules of positive law' increasingly less 'customary in the face of economic and social transformation'.

The following section expounds the legal rights available to child-widows and how the customary law of inheritance is applicable.

THE MULTIPLICITY OF INHERITANCE LAW SYSTEMS

My intention here is to unravel the problem of inheritance as compounded by the multiplicity of inheritance laws (Mukoyogo 1995; Magoke-Mhoja 2005) that operate conjunctively with each other: namely, statutory law, religious law and customary law. A person's ethnicity, religious affinity, or race determines which of these regimes apply.

Statutory law

The major statutory law is the Indian Succession Act, 1865, which was made applicable to Tanzania under the Indian Acts (Application) Ordinance (Cap.2). It applies to Christian or secular African widows whose mode of life no longer conforms to customary practices. It also applies to Europeans and some other communities of Asian origin, who are not Hindu or Muslim. The Act is basically codified English common law.

It seeks to protect the welfare of the deceased's immediate family members. It embodies egalitarian principles in the distribution of property to children, regardless of gender. Section 27 of the Act designates a two-third share to daughters and sons and a one-third share to widows/widowers. Section 43 of the Act states that widowers shall have the same rights as widows, the Act making no distinction between them. If there are no children, a widow or widower receives half and the deceased's other relatives receive the other half of the estate.

The total population of Tanzania mainland is 33,461,849.¹³⁶ Approximately 35% of the population are Christians, who are probably eligible to seek application of the Act. However, in practice this law is rarely used, particularly among Africans (Mhoja 1997). This is because native Tanzanian affairs are presumed to be governed by customary law, except where there is an expressed indication that another law ought to apply, as stated in *Abdalla Shamte v. Mussa* (1972). *Re Innocent Mbilinyi* (1971) is the seminal case of an urban Christian woman who criticised the customary law of inheritance. The court stated that the deceased had abandoned the customary way of life in favour of a Christian and non-traditional way. Therefore the court applied the statutory law.

In this case, the widow (an urban, educated African Christian woman) as an active social actor challenged the patriarchal structure by using the formal system; she did not use the informal system, as she knew the male network would decide against her. Her voice in this case was very powerful and is a precedent for other widows. However, it is problematic for an ordinary widow in a rural area to use the statutory law. The majority of women in rural areas are ignorant of the laws, but even for the few who are aware, they remain poor and depend on the family network to enable them to conduct most activities after a husband's death.

Islamic law

Islamic law is a set of binding norms derived mainly from the *Qur'an* and the *Sunna* practice of the Prophet Mohammed and from analogy (*Quivas*) and consensus (*Ijma*), the latter two being a result of the specialised juridical and logical systematisation of principles developed to deal with problems not envisaged in the *Qur'an* or the *Sunna* (Rutinwa 1996:115).

Section 9(1)(c) of the JALO (1961), provides for the application of Islamic law in Tanzania. It empowers the courts to apply the rules of Islamic law to members of

¹³⁶Tanzania Population and Housing Census Report (2002).

the African community who follow Islamic law, including Muslim widows.¹³⁷ The law creates fixed and unfixed shares of inheritance, which are gender-biased; while daughters are entitled to a portion, sons would receive double. But an illegitimate child cannot inherit, as there is no *nasab*¹³⁸ relationship, which is the basis of the designated heir. S/he is allowed to inherit from his/her mother (Ali 1925). Widows are entitled to one-eighth of the total estate if the deceased has children; if there are no children, widows are entitled to a quarter (Mukoyogo 1995:17).

About 35%¹³⁹ of the population are Muslims, all of whom are probably eligible to apply the Islamic law. The rule under the Islamic law of intestate succession at least provides for fixed shares for females, but, in practice, the inheritance rights of the female are not as protected and enforced as Islam requires, as customary law is normally applied. Significantly, there are qualifications as to the applicability of Islamic law. The Administration (Small Estate) Ordinance (Cap.30) Section 19 (1)(a) provides that:

Unless the deceased at any time professed the Mohamedan religion and the court exercising jurisdiction over his estate is satisfied from the written or oral declarations of the deceased or his acts or manner of life that the deceased intended his estate to be administered, either wholly or in part, according to Mohamedan law, in which case the estate shall be administered, either wholly or in part, as the case may be, according to that law.

This is well exemplified in *Hussein Mbwana v. Chongwe* (1963); the court held that Islamic law is applicable only if a member of a native tribe shows that at the time of his death, the deceased intended that the Islamic law should apply. Thus, the

¹³⁷A number of sectarian enactments have been made in Tanzania which, apply to all Muslims, irrespective of their sectoral alignment in specified personal status matters such as marriage, guardianship and inheritance. These laws include, in addition to the already mentioned section 9(1)(c) of the JALO, section 19 of the Administration (Small Estates (Amendment)) Ordinance, Cap 30; section 18 and the 5th Schedule of the Magistrates' Courts Act, 1984; the LMA, 1971; the Islamic Law (Restatement) Act, 1964, G.N. No 222/67.

¹³⁸In Islamic law, genealogy, parentage or lineage (*nasab*) usually refers to the biological descent of a child from its father. However, it is also applied sometimes to descent from the mother, particularly in the case of an illegitimate child (Sujimon 1997:2).

¹³⁹THE WORLD ALMANAC AND BOOK OF FACTS 1977 824 (1996).

customary law applies to the estates of many Muslims.¹⁴⁰ Similarly, for child-widows who are Muslims, the law may apply, following the above circumstances.

Customary Law of Inheritance

This law is the most discriminatory against widows and the most commonly applied. An attempt was made to codify customary laws through the passage of the Local Customary Law (Declaration) Order (No. 4), GN 436, 1963 (hereafter, the Rules), which regulate intestate succession. It is estimated that this law applies to approximately 80% of patrilineal communities in Tanzania, but not to matrilineal communities (Mukoyogo 1995:21).¹⁴¹ The context of legal pluralism was conceived and applied to the colonial world, and was also upheld during post independence. It took the form of drawing a distinction between other laws and the customary law, as is the case in many countries in Africa (Griffiths 1997; Stewart 2000).

Customary law was defined under section 53A(4)(b) of the Tanganyika Local Government Ordinance, Cap 299, as 'any rule or body of rules whereby rights and duties are acquired or imposed, established by usage in any Tanganyika African Community and accepted by such community as having the force of the law...'¹⁴²

The Scope of the Rules: Property that falls within the scope of the rules forms three categories: clan land, family land and self-acquired land/property (James and Fimbo 1973; Mhoja 1997). Certain rights and obligations pass to individuals based on this categorization; widows' rights under these concepts are also affected. Under the regime of inheritance, if the deceased leaves children, male and/or

¹⁴⁰A significant number of Tanzanians are both Muslims (bound by Islamic law) and members of communities governed by customary laws. This situation creates the possibility of a conflict of laws where Islamic law and customary law provide for different positions on a given matter (Rutinwa 1996).

¹⁴¹ Very little is known in relation to the customary law of inheritance of matrilineal communities (Mukoyogo 1995).

¹⁴² Including any declaration or modification of customary law made under section 9A of the JALO, 1961 and reference to native law or native law and custom shall be similarly construed. (Section 3 of the Interpretation and General Clause Ordinance, 1972.)

female, they shall inherit all his self-acquired property exclusively (Rule 26:2nd schedule). However, the rules discriminate on a gender basis.

Under the Rules (1963, 2nd schedule) inheritance is classified in three degrees. The deceased's eldest son by his most senior wife inherits in the first degree (Rule 19), a status that assures him a bigger share than any other heir. All other sons inherit in the second degree. Those in the second degree will each get larger shares than the daughters (Rule 23). According to Rule 25, all daughters inherit in the third degree. This means that if a child-widow inherits from her father, (as a daughter), she will be classified in the third degree.

Rule 30 establishes the mode of distribution of property in the second and third degrees, according to the children's ages and gender (see Appendix 10). Under the regime, males always receive more than females and age only comes into play to determine who receives more property if there is a case of multiple male or multiple female heirs. In other words, gender always precedes age, with males inheriting more than females, regardless of age. In this regard, a child-widow, as a daughter, inherits in the third degree and according to her age she may receive very little property, if any at all.

Family and Clan Land: Family land reflects the status of a family as a unit of production and ownership. To begin with, the unit of production and ownership was the 'tribe'. With the emergence of private property and increasing individualism, the unit became smaller and was classified as the 'clan' (Gondwe 1990:31). Under the rules, identical formulae are prescribed for the succession to both family or clan land. Residence within the localised patrilineal clan is still desirable, and clan or family land is valued. Ancestors are usually buried in the clan land (especially for the Kurya and Sukuma) and their presence is still felt by their descendants. 'Population increase and land shortage in some fertile places have also meant that the localised lineages in fertile land are under constant pressure to accommodate an ever-increasing number of agnatic descendants on the

same amount of land when they cannot, or do not want to move away' (Moore 1986: 222). People fight for land and this is a source of many disputes within both clan *baraza* in Shinyanga and Tarime.

On the inheritance of family or clan land, the rights of women as daughters or widows are limited. There is a prevalent discrimination against women and girls, both in law and in the practices of families and societies. According to Rule 20, daughters shall inherit clan land to use for their entire lifespan only; they have no disposal rights. No such restrictions apply to men. This rule was authoritatively confirmed in *Kagabo v. Dandila* (1967), where the court stated that while other male clan members survive, the most that women can receive from the deceased's portion of clan land is in *usufruct*. The holder of a *usufruct* cannot dispose of the land by transfer or through inheritance; at the maximum, her interest in the land is limited to occupational use.

This rule received criticism from scholars. Rwebangira (1996) explains that it is feared that women will transfer land outside the clan or family through marriage. Ironically, sons had the practice of selling family or clan land to outsiders (Shivji 1992). Thus the need to protect the clan land has been unfairly applied to the prejudice of women heirs. A few women have also been active actors in fighting for land inheritance when men, as brothers, fathers, husbands or in-laws expel them from land to which they have contributed by developing or purchasing (WLAC 2000). However, the new land laws, 1999, provide for the equal access to and use of land for both men and women.¹⁴³ Women also can buy land, but because of poverty,¹⁴⁴ the predominant means of acquiring land is through inheritance (Rwebangira 1996:32).

The problem is further exaggerated by the practice of the administrators of the estate, who are invariably men. Rule 5 totally excludes the right of widows and daughters to act as administrators of estates. Administrators tend to squander the

¹⁴³ Sect. 3 (2) of both the Land Act (No.4) and Village Land Act (N0. 5) establish the 'right of every woman to acquire, hold, use and deal with land' as equal to the right held by men.

¹⁴⁴ Poverty is exacerbated by other social-cultural factors.

entire estate and leave female heirs empty-handed. Complaints about the administrators of estates are very common in Tanzania today (Magoke-Mhoja 2005).

Rule 5 demonstrates how drafters of the Rules relegated widows' status to a passive position by giving them no opportunity to be administrators or participate in the administration of a deceased husband's estate. Thus, child-widows are economically and emotionally damaged.

In defence, the customary law of inheritance came into being during a time when family or clan members supported widows and children upon the death of a husband. However, these traditions are diminishing in Tanzania as a result of migration, urbanization, the influx of different cultures, the influence of religious groups and the increased access to education (Rwezaura 1985; Mhoja 1997; Mukoyogo 2000). The dissipation of traditional ways makes customary law regulating inheritance problematic, because child-widows and their children are often left with little or no means of support.

Widows are extremely vulnerable. Under Rule 27 "the widow has no share of the inheritance, if the deceased left a relative of his clan, her share is to be cared for by her children, just as she cared for them".¹⁴⁵ They have no inheritance rights of their own; they must depend on the goodwill of their children or other heirs. Disinheritance of widows is often connected to the fear that the property could be transferred to another family (Law Reform Commission 1995). The law thus ties a widow's rights to those of the children or the other deceased relative's heirs. This problem is illustrated in the *Scholastica Benedict v. Martin Benedict* (1988) case. The appellant was a widow claiming inheritance and residency in a house of the

¹⁴⁵Rule 77 of the Rules (GN. No 279), 1963, specifically rules on inheritance for barren widows. All moveable and immoveable property acquired during the life of the marriage shall be divided into two equal parts after the debts of the deceased have been paid. The widow receives one-twentieth of one-half of every year's movable property from the day of their marriage. She shall be allowed to live in the matrimonial house and have the right to use the farm for cultivation until she either remarries or dies.

deceased. The court applied the Rules literally and denied the widow any inheritance rights. It held that, under the Rules, she ought to be supported by the children in the house they had inherited.

As this case illustrates, the Rules are discriminatory to widows. This unfairness is perhaps most clear in the context of marital property. Upon inheritance, courts applying the Rules do not consider the question of whether the property in dispute was a matrimonial property obtained by joint efforts (as provided under section 114 of the LMA, 1971), which recognises marriage as a partnership. Thus a property acquired during the existence of the marriage would be matrimonial property. Therefore, in theory, at the time of the divorce each spouse would be entitled to at least 50% of the property,¹⁴⁶ but, given the widow's inability to inherit under the Rules, her property rights would appear to perish with her husband. Such mistreatment of widows is counterproductive, as Rwebangira (1995:34) has poignantly remarked: 'How can wives give the best of themselves in their family if they are apprehensive about being robbed of the fruition of their labour, should their husband(s) die before them? It simply does not make sense for a divorced wife to expect a division of up to 50% and a widow to leave with nothing'.¹⁴⁷

Choice of Law Issues

It is clear that the multiplicity of inheritance laws has created a serious problem regarding the choice of law that acts to exacerbate discrimination against widows. The commonly applied solution favours customary law first, which is inimical to widows (Mukoyogo 1995; Magoke-Mhoja 2005).

There are two tests for determining which law applies to the distribution of a

¹⁴⁶ In practice, working urban women assisted by lawyers could usually get the 50%.

¹⁴⁷ The gender-biased Customary Law of Inheritance (1963) prompted activists to establish a coalition, namely the NGO Inheritance Task Force under the coordination of Women in Law and Development in Africa (WiLDAF –Tanzania), which had been lobbying on the law of inheritance reform. A gender-sensitive draft of an Intestate Succession Act, (an NGO perspective) was initially drafted by WLAC, other stakeholders then added inputs and the document was submitted to the Minister of Justice in December 2004 for consideration. However, child-widows were not targeted, as there was no data for reference.

particular estate. Firstly, under the "mode of life test", customary law is applicable to indigenous people, except where it is apparent from his manner of life that the person has abandoned customs and tradition (section 9(1)(b) of JALO, 1961). Secondly, "the intention of the deceased's test," is to be applied when an African is also a Muslim and where there is a question of whether customary law or Islamic law should be applied. To apply this test, a court will examine the intentions of the deceased by reviewing either written or oral declarations and the acts of the deceased.¹⁴⁸

The law that is applied can have a significant impact on the distribution of an estate. Although statutory law is more pro women than customary or religious laws there is a legal presumption that for an African Tanzanian, the law applicable to the administration of his estate is the customary law. For example, customary law stipulates that a widow may not obtain a share of her late husband's estate. By contrast, section 27 of the Indian Succession Act, 1895, gives a widow one third of the property. It is extremely difficult for an ordinary woman, especially a rural widow, to prove that the customary law did not regulate her husband's mode of life, thereby rebutting the presumption. This is because, in villages, men may attend traditional ceremonies even if they do not follow the traditions in their daily lives. They do it simply to enhance their standing in public and in the community. As a result, however, society considers them to be traditional men (Mhoja 1997). Also, most women do not know their rights. Even those who are well informed often do not have the means and resources to pursue their rights, as will be demonstrated in chapter 8.

RECOURSE TO PRIMARY COURTS

In legally plural environments the role of courts in creating systems of meaning takes on particular importance (Merry 1994). In all districts, I researched the cases handled from 1998 to 2003. Thirteen child-wives had filed cases in primary courts

¹⁴⁸ The mode of law test is also applied in other jurisdictions colonised by the British.

(Chapter 5), but only one case of a child-widow, (which was in Tarime district), reached the court. However, she failed to file because of a lack of court fees; indeed, it was a question of poverty, as the fees amounted to 3,000/= Tanzania shillings (equivalent to 2 pounds sterling).

The magistrates in Shinyanga and Mvomero noted that it was not generally expected for widows to petition as administrators of estates; this was because customary law directs male relatives to be selected as administrators. However, society had been changing because of inter-marriage, urbanization, access to education and religious influences. Some women are now employed and hence a number of widows have been filing cases in order to lodge a caveat against their in-laws. Subsequently, because of some families' exposure, the *baraza* had been selecting widows as administrators of estates. As yet there had been no cases of child-widows in primary courts, although a number of adult widows had filed inheritance cases (see Appendix 9: Tables Nos. 4-7). Most petitions were for the administration of estates and there were a few on caveat (under Probate and Administration of Deceased Estate Ordinance, sect.58, Cap.445). Even though Rule 5, 1963, excludes widows from being administrators, courts had granted them letters of administration. By such decisions, courts become a mechanism for introducing a new cultural system to a community with distinctive values and rules (Merry 1994:40).

Nonetheless, it is impossible for a child-widow to be selected because of her age. In Tarime, some widows filed for a certificate of widowhood. A variation was noted in Mvomero district, where the Maasai women, generally, were not in the habit of accessing justice through formal systems as it was regarded as a taboo. No case of contest of inheritance filed by the Maasai was revealed.

Of the 25 child-widows, only one, Pili, had accessed the primary court with the intention of obtaining the certificate of widowhood. She had been advised by the social welfare office.

Miscar's Case: A Young-widow who was originally a Child-widow

At the Tarime primary court, over a six-year period, only one case of a young-widow who was originally a child-widow was found (see Table;3).

Table 3: Tarime Inheritance Related Cases 1998-2003.

Years	Total (n)	Total cases Filed by Adult widows (n)	Total cases filed by Young-widows (originally Child-widows) (n)
1998	55	15	
1999	47	11	
2000	50	14	
2001	51	10	
2002	37	11	1
2003	40	11	
Total	280	72	1

Source: Tarime Urban Primary Court, 2004

A young-widow, (21), *Miscar Gatora* (2002), petitioned against widow-inheritance¹⁴⁹. She testified that:

After the death of my husband I continued to stay with the in-laws. However, after some time, because I was still a child, I returned to my natal family as I was being neglected and no basic necessities were provided for me. I have been staying with my parents and I have decided to petition for a certificate of widowhood so that I can be free from the customs and traditions of widow inheritance. Personally, I am not ready to be inherited by any of my brothers-in-law.

Assessor: Why did you return to your natal family?

Miscar: Because they ordered me to be inherited. It is now almost seven years since I returned to my natal family.

First witness: '...I am the father of the widow. I have been supporting my daughter since her husband's death. Personally, I am against the rationale of the tradition of 'widow-inheritance'. She should be given the freedom of choice to re-marry because she is still young.

¹⁴⁹ At a discursive level, the language of the Rules (1963) privileged the narratives of male relatives on issues of widow-inheritance.

She was granted the certificate of widowhood. The widow's testimony indicated another perspective on widows' rights regarding the issue of inheritance. The court agreed with Miscal's view, while the alternative view – that male relatives are justified in inheriting widows – is losing ground. These formulations of decisions have had an impact on the 'widow-inheritance concept'. This narrative is distinctive of the situation of child-widows who are silenced, who have had no opportunity to visit formal forums, but complained of their helplessness.

Granting the widowhood certificate was codified under customary law, but did not represent a cultural paradigm. Instead, the government resorted to the Western concept of granting a divorce certificate. The forms used are those used for divorce, with the word 'divorce' deleted. Thus, court actions are one way of expanding the hegemony of the law and can thus help to create a paradigm shift in some customs (Merry 1994). Concepts are articulated and superimposed on everyday life in the presence of relatives, neighbours, clan members, custodians of tradition and friends. Further, disputes are typically rephrased and reformulated into some kind of a public discourse (Mather and Yngvesson 1980/81: 777). Magistrates have an important function in rephrasing disputes, as these are endowed with legitimacy by the law (Magistrates' Courts Act, 1984). When the law rules that a widow may or may not be inherited, it imposes changes on how people perceive a particular concept. Hearing cases of 'widow-inheritance' provides one instance of the cultural dynamic of the courts (*Ellimelinda d/o Phillip* (2001)).¹⁵⁰ Moreover, primary courts signal how they view a specific norm by deciding for or against it. The judgements of courts over a period of time send messages to the

¹⁵⁰ The widow had three children; she refused to be inherited and decided to join her natal family. The deceased's relatives were following and harassing her. The *baraza* selected her brother-in-law to be the administrator of the estate and to inherit the widow. He sold all the matrimonial property. The widow requested that the court provide her with a 'widowhood certificate' to confirm that she was a widow. The court granted her the certificate as it was found that the administrator had squandered the property.

communities where parties reside that may eventually reshape legal consciousness and redefine social rules and norms (Merry 1994).

Of course, as Merry (1990) noted, members of different groups frequently receive this kind of cultural message but may have different reactions to it. The Tarime ward tribunal members said that people in villages deeply believe that even if a widow has received a widowhood certificate, she is still the 'wife of the grave'; they emphasised that a paper document would never change the thinking of staunch believers in the custom. Nonetheless, for some widows in towns, or for those who have moved to another place, the widowhood certificate is vital.

Consequently, the cases of *Miscar* and *Ellimelinda* indicate that the court hearings serve as critical pathways for the creation and imposition of cultural meanings (Merry 1994:36). Primary courts tackle social problems and conflicts on a daily basis, analysing them in terms of a particular 'legal sensibility' enshrined in the judicial forum (Geertz 1983; Merry 1994). For instance, they produce cultural meanings by interpreting the widow-inheritance concept. As the problem is named, discussed, and settled, a new cultural meaning is imposed.

Incapacity to Access Courts: The Child-widow's Voice

Child-widows have been disinherited, harassed and discriminated against by in-laws, yet they seldom or never access primary courts. The narratives of the child-widows and their relatives provide the following reasons.

First, failure to file emanates from various barriers in traditionally structured patrilineal communities, particularly where widows are not allowed to inherit property.

Second, a common grievance was that 'there was no justice in most primary courts as corruption is rampant'. This is consistent with the findings of Maina (1997) and LHRC (2002). Robi's Aunt remarked that 'it is quite futile filing a case as a strategy for helping the child-widow to fight for her rights as primary courts are corrupt'.

Third, there are insufficient police posts and courts in villages to deal with cases which arise. Most people, then, often resort to customary dispute resolution. When police offices were available, there were hindrances on issues such as property grabbing. Widows who report property grabbing issues are rarely helped (Mhoja 1997). This is for a number of reasons. Property grabbing for example is regarded as a family matter. In addition, many police officers do not consider that property grabbing is a serious problem. Police officers' individual preferences determine to what extent the police should be involved. There is no law criminalizing property grabbing, although it can be punished under the Penal Code, Cap 16.

Fourth, poverty was usually stated as being a factor; there was inadequate money for legal expenses, such as filing fees. This is well illustrated in Pili's case. She failed to file the case to get a 'certificate of widowhood', as she had no money to pay for filing fees.¹⁵¹ The certificate is important as it confirms that she is a widow and hence she should face no encumbrances.

Fifth, inadequate public transportation to courts was also seen as a hindrance. It is very difficult for a widow from Nyamongo village to access the Nyamwaga court as it is ten miles away. The system becomes inappropriate for such poor communities in most rural areas when they find courts are located so far away that it requires much time and expense to access them.

Sixth, some were not comfortable about filing cases as their parents or guardians told them it was against their tradition or because of the religious belief that it was perceived as a sin.

Seventh, the lack of legal aid services in most districts and villages exacerbated the situation, as some said they didn't know their legal rights and what the procedures were and that they had no lawyers to represent them. Most child-widows worry

¹⁵¹ At the same time, the pressure of poverty, structural adjustment programmes and foreign debt have drastically affected the poor widow's access to essential services (Kaijage 1996; Mhoja 1997).

about accessing primary courts that are characterized by most key informants as being strict, corrupt and unpredictable. Generally, both the manner in which language is used, and how the laws and procedures are practised in courts are incomprehensible to people in most poor communities, including child-widows, and therefore in many ways are irrelevant to their needs.

Eighth, some child-widows thought that going through the court would erode connections with their in-laws, which could be a problem if those connections were needed in future. 'The disadvantage of filing a complaint to court is that the parties often remain as enemies', Eva commented. It is also presumed that if a widow files a case against her in-laws she excludes herself from them.¹⁵²

Significantly, an amalgamation of norms, laws and courts have proved to be formidable obstacles to the pursuit of women's inheritance rights and these are major factors in the degradation of the socio-economic and legal status of child-widows. There is a need for empirical studies on the processes and mechanisms for the effective enforcement and defence of child-wives' and child-widows' rights. Traditional methods and mechanisms have to be revisited and re-evaluated with a view to 'dusting' and re-energizing them so that more effective utilization of these methods can help child-widows achieve gender equality (Ncube 1998:5).

Conclusion

In this Chapter I have given a brief account of the background of the customary law of inheritance. What has emerged is a fitful summary of the more salient issues regarding widows. While this summary may not be comprehensive, it sets out the essence of the origin of the customary law of inheritance. The Rules favour men and do not adequately protect the interests of child-widows.

However, over the course of its history, Tanzania has changed from a region

¹⁵² This was at an interview in Tarime on 15/1/04.

comprising autonomous ethnic groups into a European colony and then to an independent state. These transformations have significantly affected the development of Tanzanian laws, giving rise to a complicated multiplicity of laws. This, in turn, has led to difficulties in enforcement and confusion about the law's application (Mukoyogo 1995:16). Such difficulties are particularly pervasive in the area of inheritance.

Comments have been made about the Rules that discriminate against widows. Rwezaura (1989:155) observed the dilemma that customary law presents:

After conducting field research in Mara and other regions of Tanzania I am ...convinced that social and economic change has transformed our respective societies to such an extent that it is no longer safe for any court to apply any rule of customary law without first checking whether or not its application promotes justice.

It is unjust today to deny widows the right to inherit property using customary laws when reciprocal systems of care by the community often do not exist. The customary laws were founded in a communal economy based on communal ownership and values that have now been mixed with a capitalist cash economy, built around individualism (Rwezaura 1989; Rweyemamu 1996; Mhoja 1997).

Further, child-widows have failed to access primary courts. The problem in Tanzania is that judicial processes are often expensive, unresponsive, protracted, corrupt and, therefore, inaccessible and unaffordable for the majority of people. This often amounts to a denial of justice when the people are expected to operate in a judicial system that is inaccessible and inappropriate to their needs in their social settings (Nabudere 2000). Apart from what the law states and the situation in courts, it is vital to analyse the international treaties that enshrine minimum standards of human rights below which no member of the community of nations should fall (Stevens 1998:15). This is explored in the following Chapter.

CHAPTER SIX

EXPLORING HUMAN RIGHTS AS A MEDIATING TOOL: INTERNATIONAL LAW AND CONSTITUTIONAL PROVISIONS

Gender equality and non-discrimination principles are universally recognised human rights, and as such are protected in various United Nations human rights instruments.¹⁵³ However, in Tanzania conflict commonly exists between the local norms and practices (founded on Sukuma, Kurya and Maasai ethnicities¹⁵⁴) and on those based on human rights norms, such as the non-discrimination principle. This chapter explores the international and regional instruments, and the Constitution of the United Republic of Tanzania (1984) ('Constitution') that provide protections for child-widows, specifically on their violations of inheritance rights.

The operating premise of this chapter is that seeking mediation through human rights' claims may provide some assistance in the pursuance of child-widows' rights (An-Na'im 1994; Butegwa 2002). As An-Na'im (2002:3) eloquently explained:

A human rights' paradigm is necessary for mediating the processes of the social construction of rights by supporting the creation of political and social space for more inclusive and equitable processes of change. It can also guide those processes and their outcome into greater conformity with internationally recognized human rights norms, as locally specified and legitimated....

¹⁵³ International human rights law exists chiefly as conventional law such as in the form of international legal instruments (conventions, treaties, etc). These provide the key source of international human rights law; some aspects of human rights law find their origin in customary international law (Starke 1936).

¹⁵⁴ African customary law is unlikely to wither away in the foreseeable future; its resilient system stems from a myriad of factors, first of which is its command of the majority following in Tanzania. The majority (about 80%) of women reside in the rural areas (World Bank 1993). These are largely areas of low economic productivity and people mainly sustain their livelihoods by subsistence farming, fishing and/or pastoralism. The rural population has been suffering from poor infrastructure and inadequate hospitals, schools and courts. Therefore, particularly in rural communities, (but also in some urban communities), traditional beliefs and customs prevail and they retain enough significance and power to regulate societal life, including the lives of child-widows (Juma 2000:79).

This is also important as every human being's dignity should be protected, including the dignity of child-widows as 'human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments' (Vienna Declaration 1993). Since the adoption of the UDHR (1948), member states of the United Nations have, on numerous occasions, made pronouncements on the universal nature and superiority of human rights standards and the consequent need for customary and religious normative systems to be mediated and transformed in case of conflict (Butegwa 2002).

However, the human rights' paradigm has been widely debated regarding its aims to universally promote people's rights, because its origins stem from Western liberal ideas (Mutua 2002; An-Na'im 2002). Specifically, contesters of the human rights' paradigm generally try to undermine its high moral, political and legal standing by dismissing it as a product of Western philosophical and political developments' (An-Na'im and Hammond 2002:17). However, it is vital to note that despite the Western origins of present human rights' formulations, there is also strong philosophical and ideological opposition to at least some of these rights (Leary 1990:15-30). Thus, scholars such as Marasinghe (1984:43) and Mutua (2002:70) assert the African notion of human rights that existed prior to colonization, but which differs from the contemporary Eurocentric articulation of human rights.¹⁵⁵

Nonetheless, as Mamdani (1990:359, 360) suggested, (and I share his views) part of the way to address this issue is 'for human rights to be seen as the present articulation of an extended history of struggle for social justice and resistance to oppression in all human societies'. This does not mean that all human societies

¹⁵⁵ Baxi (2002:27) correctly says 'it is indubitable that these non-European traditions, in confrontation with colonialism and imperialism, which enlightened thought sustained for so long, innovated much of Western human rights' discursivity...and de-traditionalised the Eurocentric traditions of the rights'.

have, in fact, expressed and utilised human rights norms in the modern sense of the term. Importantly, An-Na'im and Hammod (2002) concur with the suggestion and articulately state that the meaning here is to widen the historical basis of the modern concept of human rights by viewing it as a specific manifestation of common experiences of all the global people in seeking solutions to their own political and social problems. They further argue that this notion of the common heritage of human rights in that basic sense is likely to encourage a feeling of 'ownership' and importance of these rights by human societies in both the North and South as they mirror their own history, current practice(s) and aspirations. Significantly, all human rights 'are designed to help people to ensure that the centralized powers and economic resources of the state are used in full accord with their human dignity and for the satisfaction of their basic needs' (ibid:19).

However, the criticisms of universality and the ongoing debate on the cultural relativism of human rights (Cook 1994; Baxi 2002; Benda-Beckmann 2004) are not the focus of this thesis. This chapter confines itself to the practical realities of human rights' norms and to those that have proved to be workable in areas of concern for girl-children.

HUMAN RIGHTS INSTRUMENTS AS A SOURCE OF GENDER EQUALITY

In so far as there exists a de jure or de facto significant difference...in any country, and that difference is based purely on whether one is a man or woman, there is discrimination. Such discrimination violates international human rights law if it is unable to pass the international standards of "objective and reasonable justification" or of reasonable relationship of proportionality between the means and the aim sought' (Butegwa 1994:495).

The international and regional human rights instruments are generally treaties dealing with human rights' issues, ranging from social to political and cultural issues. When a state ratifies a treaty it is obliged to provide political support and the enabling environment for its implementation. In Tanzania, there is both *de jure*

and *de facto* discrimination against child-widows in inheritance matters. This state of affairs cannot pass the human rights standards that have a bearing on gender equality and non-discrimination principles. Indeed, the principle of non-discrimination is *jus cogens*, an established legal concept in international law (Brownlie 1995; Vierdag 1973). Freedom from all kinds of discrimination is a central theme in customary international law, as provided under Article 3 of the UDHR (1948).

It is significant to note that after independence, the government ratified several treaties dealing with equality between men and women which prohibit sex discrimination. These include the United Nations Charter (Article 1(3)),¹⁵⁶ which promotes human rights for all, without distinction of sex; the UDHR, 1948, (Article 2); Article 26 of both the International Covenant on Civil and Political Rights, 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR);¹⁵⁷ and the African Charter on Human and Peoples' Rights, 1981 (the Banjul Charter).¹⁵⁸ Article 2 makes it clear that the rights are applicable without sex-based discrimination. Further, specialised treaties compliment these instruments; a treaty specifically with regard to women is the Convention on the CEDAW.¹⁵⁹ The above instruments constitute the main sources and are a cornerstone of non-discrimination at international, regional and specialised levels (Tshosa 2001). Significantly, the principles of gender equality and non-discrimination are also enshrined in several clauses of the Constitution, as will be discussed later.

¹⁵⁶ Tanzania is a member of the United Nations.

¹⁵⁷ Tanzania ratified both the ICCPR and ICESCR on 11/06/1976.

¹⁵⁸ The Charter was adopted by the African Union (AU) on 28/06/1981 and entered into force on 21/10/1986. It binds its member States to adhere to it and to give effect to it in national law.

¹⁵⁹ On the soft laws in 1993, the final declaration of the U.N. World Conference on Human Rights confirmed that women's rights are 'inalienable, integral and indivisible part of universal human rights', and called for 'the eradication of all forms of discrimination against women, both hidden and overt' (The Vienna Declaration 1993), a stance reaffirmed in 1995 at the Fourth World Women's Conference. Platform for Action: Action for Equality, Development and Peace (4 -15/09/1995).

Further, the important point to note is that at the inter-governmental level, Tanzania is an active member of the Commonwealth and that the fundamental political values underpinning the Commonwealth include respect for human rights and gender equality under the principle of non-discrimination (Harare Declaration 1991). The Commonwealth is a significant organisation if lobbied and properly utilised in the advocacy of child-widows' rights at the regional and international level. Significantly, the Commonwealth Heads of Government Meeting (CHOGM) can be used as a platform through which to advocate change in the Commonwealth countries where early marriage is still a practice, as is the case in Tanzania.¹⁶⁰ The CHOGM is an appropriate avenue to try to advance widows' rights. Any long-term strategies to promote children's rights must include child-widows' rights. A special declaration on eliminating early marriage is vital and the Declaration should include the rights of child-widows within its framework. The Declaration will be morally binding on governments and could ensure future protection of child-widows' rights.

Furthermore, the Commonwealth Secretariat (which is the main Commonwealth organisation) has observer status at the UN General Assembly and it has a powerful voice in international forums. Thus, if the issue of child-widows is promoted by the Secretariat and presented at the UN, it can exert great influence and put the issue on the agenda at an international level and so advocate for change.

This section, however, explores the possibility of using regional and international human rights' documents to secure child-widows' human rights in the area of inheritance rights. The CEDAW, and the African Charter on the Rights and Welfare of the Child (ACRWC), are used as examples to mediate between human rights principles and discriminatory Rules and customs based on multiple approaches at local, national and international level. Emphasis is, however, put on the mediation process in the experiences of the people, as mediation based on the

¹⁶⁰ Of course, advocacy at the national level is crucial in influencing policy at Commonwealth level, and thus it is useful to engage early, at least six months before a CHOGM (Shah 2003).

supremacy and coercive measures of the government are not likely to lead to sustainable changes (Butegwa 2002). Conversely, other instruments will be quoted when emphasising a point. It is worth noting that as child-widows are children, the UNCRC could have been utilized as the best example for the protection of child-widows, in collaboration with CEDAW. However, in its definition of a child, married children are excluded.¹⁶¹

International Instrument: CEDAW

A special focus of this section is to include an analysis of widows' human rights as recognized by CEDAW. Significantly, on 20th August 1995, Tanzania ratified CEDAW without any reservations. This was the first comprehensive set of international standards dealing specifically with the elimination of all forms of discrimination against women. At the normative level, the wide-ranging set of international standards dealing with women, the CEDAW, appears to offer some hope in the move towards the elimination of all forms of discrimination against child-widows. It explains human rights that are specific to women and calls upon states to ensure that all affronts to women are removed from the laws and practices (Preamble: Paragraph 5). Importantly, Article 1 defines the term 'discrimination against women' to mean any distinction, exclusion or restriction made on the basis of their sex which has the effect of impairing the recognition, enjoyment or exercise by women of their rights. It affirms that discrimination against women is a violation of the fundamental rights and freedoms of human beings and impairs their enjoyment of these rights and freedoms. Thus, all the Rules that make distinction on the basis of gender or that exclude widows from inheritance constitute discrimination as they have the effect of impairing a child-widow's opportunity to enjoy her human rights.

Further, Article 2 calls for the abolition of existing laws, customs and practices that discriminate against women. Specifically, 'States Parties...undertake to take all

¹⁶¹ The exclusion of child-widows and child-wives (which includes a number of children, especially in developing countries) in the UNCRC is the great lacuna that needs correction.

appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women...' (Article 2(f)).

Following this, Article 3 places an obligation on governments to take all appropriate measures, including legislation in all fields, to implement the provisions outlined in Article 2 and to guarantee women basic human rights and fundamental freedoms on the basis of equality with men.

Although CEDAW systematically and substantively addresses the needs of women, it does not however adequately address widows' rights. Nevertheless, CEDAW imposes significant positive cultural and social duties on State Parties in Article 5 (a), which covers inheritance customs on the stereotyped roles of widows:

*To modify the social and **cultural** patterns of the conduct of men and women, with a view to achieving the elimination of prejudices and **customary** and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.*

This vigorous protection (positive social) requirement imposed on states is essential for the elimination of historical prejudicial practices against widows. Harmful widowhood rites such as 'widow cleansing'¹⁶², for instance, should be modified under this Article. The assumption here is that even as we try to eliminate harmful practices through legislation, success will only be guaranteed if the harmful socialization, which results in women being regarded as inferior, is also eliminated by increased awareness and education (Magoke-Mhoja 2005). Significantly, the issue of inheritance can be analysed as a matter connected with the family in that inheritance issues arise at the dissolution of the family through death (Article 16(1)(a)-(c)).

¹⁶² 'Widow-cleansing' refers the act of sexual intercourse by a widow with either a hired man (a stranger) or with one of the deceased's male relatives.

Article 10 provides the right to education, which is essential to girls because 'it helps realise their full potential' (Bueren 1995:232). Women and girls shall not be discriminated against and shall have equal opportunities with men in the field of education. Unfortunately, the early marriage practice contributes to the minimising of opportunities for child-widows to access education.

Furthermore, the special protection of rural women, as provided in Article 14 (1) of CEDAW, requires that States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families. This includes their work in non-monetized sectors of the economy, and involves taking appropriate measures to ensure the application of the provisions of CEDAW to women in rural areas. Thus, rural child-widows' problems should be taken into account, as the majority of them are illiterate homemakers helping in cultivation, yet their inheritance rights are profoundly disregarded. The *baraza* ignores their contribution to the family and accords little recognition of their particular widowhood needs.

The challenge is to confront the government that condones traditional principles that justify the oppressive ways in which widows are treated under the discriminatory Rules and customs. Tanzania must show political commitment through national legislation and other means to ensure that child-widows enjoy full human rights and fundamental freedoms. The ratifications should not be 'promises of lies' that endow the State with the power to tell more lies (Baxi 2002). The challenge is to consider how child-widows can be protected within the context of the existing traditions.

Additionally, in July 2004, Tanzania signed the African Women's Protocol, which is the most recent innovation in the African Human Rights' regime to address the rights of women and girls. Despite the presence of CEDAW and its application to Africa, African women felt the necessity for a specific human rights document, one that would more directly address their human rights needs (Vanessa 2004). Significantly, the protocol has made provisions for rights ranging from protection

from discrimination, the right to dignity, family rights, access to justice, economic, cultural, health and reproductive rights, all of which are relevant in the fight against harmful socio-cultural practices.¹⁶³

Enforcement Machinery of the CEDAW

Due to the fundamental institutional and enforcement problems in the regime, translating the normative prescriptions of CEDAW into practical realities for widows will present a formidable challenge. Under all major UN human rights treaties, a system of reporting by State Parties is provided for. Article 18(1) provides that State Parties undertake to: 'Submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention.' The Committee is expected only to 'make suggestions and general recommendations based on the examination of reports and information received from the State Parties'.¹⁶⁴

This is despite the views of some scholars (Byrnes 1989; Vanessa 2004) who argue that translating CEDAW into practical realities is very difficult if the Committee is used. Byrnes (1994), however, postulates that the examination can provide an occasion for exerting international pressure on the State, particularly if the proceedings receive publicity internationally or nationally. Significantly, the Committee receives information informally from NGOs, which they may use in their questioning of states. Clearly, the Committee's recommendations have had some impact in Tanzania. For instance, the Task Force on CEDAW matters in

¹⁶³Some of the rights are introduced in the African regime for the first time, coming as an elaboration of CEDAW, and also by expanding existing rights in the Charter, especially Articles 2 and 18. This makes the Protocol 'truly African' and its provisions more gender responsive (Vanessa 2004:98).

¹⁶⁴ However, what is less obvious is how to ensure that these rights are respected so that the situation of widows improves. Human rights instruments define the relationship between the individual and the state. Attempts to bring human rights from the public into the private sphere, where they are most pertinent to widows, have had little success. There is hope that the new CEDAW optional protocol allowing individual complaints will provide the mandate necessary to take action (Vanessa 2004:47).

Tanzania is a testament to what can be achieved when NGOs utilise the Committee for the advancement of women. In 1998, the Task Force prepared a shadow report and submitted it to the Committee who used the information to question the Government. The NGO's facts and statistics provided valuable information to the Committee members to help them understand the status and concerns of women in Tanzania, which had been inadequately presented in the Government report. Thereafter, the Task Force informed the public of the recommendations. Despite the Government not providing formal feedback on the shadow report, a member of parliament leaked information to the Task Force coordinator saying that some government members thought it was unfortunate that the issues should be reported to the UN while they themselves had the power to do something about it. It was a silent contribution to the reform of some of the laws, such as the inclusion of the word 'gender' into the Constitution and the gender sensitive land laws (1999).

Certainly, the implementation and enforcement of human rights laws are largely dependent on voluntary compliance, moral pressures and other forms of influence, as demonstrated by the Task Force (Cook 1994). Thus, the CEDAW framework can be a tremendously useful tool in working for the necessary legal and policy changes concerning child-widows (Landsberg-lewis 1998).

Regional Instrument: ACRWC

In addition to larger-scale international human rights instruments, regional organisations have been established to address human rights standards in specific regions. In many respects, resorting to regional mechanisms of enforcement may well provide a much more effective route for action (Byrnes 1994). Thus, in Africa, the introduction of the Banjul Charter tallies well with the expansion of regional initiatives globally. Article 18(3) of the Charter (although not exhaustive) imposes a legal obligation on Tanzania, as a State Party, to eliminate every discriminatory

practice against women (including child-widows), and also to ensure their protection as stipulated in international declarations and Conventions.

Interestingly, after the adoption of the UNCRC, the African states decided that there was a need for a charter on the rights of the African child. It was argued that Africa's cultural backgrounds, its traditions and aspirations, its economic hardships, the changing of political conditions and other circumstances that gave rise to critical variables were bound to affect the implementation of any norm of a social character (Kijo-Bisimba 1994). Nonetheless, the peculiar characteristics of the ACRWC and the essence of its contribution is to present a comprehensive body of law governing the rights and welfare of the child, which is realistically attuned to the practical conditions in Africa (ibid), such as Article 11(6) on child-mothers and Article 31 on a child's obligations. However, a number of Articles initially appearing in the UNCRC were incorporated in the ACRWC.

The African Union adopted the ACRWC¹⁶⁵ on 11th July 1990 and it entered into force on 29th November 1999.¹⁶⁶ The ACRWC considers the rights and freedoms of every child as paramount. It also affirms the child's right to survival and development, a right to freely express opinions, a right to freedom of association, freedom of conscience and religion and the right to education and health.

The first paragraph of the Preamble proclaimed and agreed that everyone is entitled to all their rights and freedoms, without distinction of any kind. Furthermore, it noted with concern that the situation of most African children remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances; and that, because of children's physical and mental immaturity, they need special safeguards and care (Paragraph 3). It recognizes that the child occupies a unique and privileged position in African society and has the right to a full and harmonious development of his/her

¹⁶⁵ Africa is the first to have specific regional instruments dealing specifically with children.

¹⁶⁶ Although Tanzania signed the ACRWC in May, 1991, it did not ratify it until 16th March 2003.

personality. The child should grow up in a family environment in an atmosphere of happiness, love and understanding (Paragraph 5). It is unfortunate that many child-widows grow up at the mercy of husbands and in-laws and suffer a violent life from a tender age. Likewise, the situations of child-widows are critical due to their socio-economic status, to traditions and to difficulties in accessing justice, as demonstrated in Chapters 5 and 7.

The ACWRC, in Article 1(3), includes specific undertakings by state parties that 'any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged'. Further, Article 3 emphasises with regard to the non-discrimination principle that 'every child shall be entitled to enjoy the rights and freedoms recognised and guaranteed in this Charter...'. This section absolutely prohibits differential treatment based on sex.

It is worth noting that safeguarding the best interests of the child is fully entrenched in the ACRWC. Significantly, Article 4 (1) of the ACRWC provides that in all actions undertaken by any person or authority concerning a child, the best interests of the child shall be the primary consideration. 'Best interests of the child' means that any treatment of a child (including child-widows) should be for the betterment of the child. Ideally, this would require that when considering any aspect in relation to a child (even in inheritance matters) paramount consideration has to be given to the child's best interests. However, most inheritance Rules and customs are not concerned with the best interests of the child.

For the well-being of the child, the ACWRC calls for the protection of children from all forms of economic exploitation, and from performing hazardous work, or from actions that interfere with the child's education, or are harmful to the child's health or to the child's physical, mental, spiritual, moral or social development (Article 15(1)). Thus, Tanzania has an obligation to guarantee child-widows' equality in all

aspects of life, and to eliminate laws and cultural practices that act as a barrier to the principle of non-discrimination.

Enforcement Machinery in the ACRWC

It has been said that in many aspects, the ACRWC is a pioneering treaty and is the most progressive of the treaties with regard to the rights of the child. Undoubtedly, one of its most advanced features is its system of implementation (Bueren 1995:402). Eleven independent experts are selected to sit on the Committee (Article 45). The Committee is entrusted with the specific task of monitoring the implementation of the ACRWC. In this regard, the Committee is given broad powers to interpret the provisions of the ACRWC, not only at the request of State Parties and institutions of the African Union, but also to any 'other person or institution' recognised by the African Union (Article 42). For instance, NGOs with observer status can submit disputed human rights violations for interpretation.

Moreover, the Committee is given unfettered powers of investigation and can use 'any appropriate method' and can request 'any information relevant' to the implementation of the ACRWC. Similar to the CEDAW, State Parties are under obligation to make their own reports widely available to the public (Article 45(4)). Tanzania has recently ratified the ACWRC and is supposed to submit an initial report within two years. Therefore, activists should press the Government to adhere to its responsibilities and assist by submitting information and data.

CONSTITUTIONAL PROTECTION OF GENDER EQUALITY IN TANZANIA

It may be argued that at the political and legal levels, human rights exist universally. However, at a practical level, as for example in Tanzania, not all citizens are aware of human rights as enshrined in the Constitution. Nonetheless, most people interviewed commented on what they believed to be their human

rights.¹⁶⁷ Even child-widows narrated rhetorical examples of what was 'unfair' to them as human beings e.g., the scenario of being violently chased away from the matrimonial shelter. Conversely, human rights are not recognised in customary law as articulated under human rights instruments. Yet, there are some local norms, which are equivalent to human rights norms, such as the right of children to be cared for.

Clearly, in the course of the past century the concept of international human rights is the legal notion that has been successfully globalised (Held et al. 1999). Globally, countries have shown political commitment in implementing human rights and Tanzania has not been left behind. Tanzania's commitment to abide by human rights is underlined by the fact that it has ratified treaties abolishing discrimination and has enshrined the Bill of Rights in the Constitution.

Historical Background of the Bill of Rights

Rights have never been absolute and universally applicable. At best they have been declarations and aspirations of ideals. The promulgation of Bills of Rights...can be seen as an attempt to institute a new order. The new order is built on the old order; there is never a vacuum... "Constitutionalism" has failed in most parts of Africa because written constitutions have not operated according to their texts (Ilumoka 1994:320-321).

Like many African countries, Tanzania promulgated a Bill of Rights. However, in the Independence Constitution of 1961 and the Constitution of 1977 (as amended), the Bill of Rights existed only in the Preamble. This meant that the rights were not justiciable. As Ilumuko (1994) aptly postulated, it failed to operate according to its texts. The political view then was that the incorporation of the Bill of Rights into

¹⁶⁷ Respondents during group discussions in Shinyanga and Tarime argued that some forms of human rights within their communities had been in existence since time immemorial but have been explained differently in different ethnic groups. Thus, not all human rights principles take their origins from the West, as claimed by many scholars. Some women's and children's rights are also alien to Western countries and are struggling to implement them at a practical level (Baxi 2002). Another factor in the differential awareness of human rights is that those formulated in the West were documented, whereas in other places, notably Africa, oral transmission was common

the Constitution could 'invite unnecessary conflicts between the judiciary and other organs of the State' (Mwaikasu 1991).

In 1984, the legislature addressed the question of equality by including the Bill of Rights as an amendment to the Constitution, making it fully enforceable in the Tanzanian courts. The amendment was a significant step forward for the human rights' situation, because the Bill of Rights is a blueprint against discrimination of any kind. This amendment was then followed by the Constitution (Consequential Transitional and Temporary Provisions)(CCTT). Section 5 (1) of the CCTT empowered the courts to construe existing laws with such modifications, adaptations, qualifications and exceptions as may be necessary to bring these into conformity with the Bill of Rights. Through this section, the legislature intended that existing laws, which were inconsistent with the Bill of Rights, were to be regarded as modified by the Bill of Rights (*Ephraim v. Holaria & Gervas* (1989)).

Constitutional Support for Gender Equality and Non-discrimination

This section demonstrates how the Constitution, which is the supreme law of the land, should be understood in order to render the discriminatory Rules and customs invalid. The Constitution contains provisions that support the principles of gender equality and non-discrimination. Articles 9, 12, and 13 of the Constitution support the equal treatment of men and women and cover a wide range of issues. The basic important provisions assert that: 'All human beings are born free, and are equal. *Every person* is entitled to recognition and respect for his dignity' (Articles 12 (1)(2)). Subsequently, the principle of non-discrimination is laid out in Article 13 (5), which lays down gender as a specific base upon which laws may not discriminate against. Accordingly, article 13 guarantees that: '*All persons* are equal before the law and are entitled, without any discrimination, to equal opportunity before and protection of the law. No legislative authority shall make any provision in any law that is discriminatory either in itself or in its effect. *No person* shall be treated in a discriminatory manner by any person acting by virtue of any law or in

the discharge of the functions of any state office or the party, and its organ'. These clauses correspond to international and regional instruments, such as Articles 2 and 7 of the UDHR, Articles 14(1) and 26 of both the ICCPR and ICESCR, and Articles 2 and 3 of the Banjul Charter.

Further, in its *Fundamental Objectives and Directives of State Policy* section, the Constitution demands state organs and all persons or bodies with executive, legislative and judicial powers to take cognisance of, to observe and to apply Article 9 in the execution of their functions.¹⁶⁸ Article 9 (g) calls upon the government and its organs to give equal opportunity to all citizens, men and women alike. Interestingly, Article 9 (f) incorporated the UDHR and calls upon the state and its organs to uphold the dignity of man through full compliance with the Declaration. Further, Article 9 (h) requires the State and its organs to eradicate all forms of injustice, discrimination, oppression or favouritism. These provisions specify that discrimination based on sex is a denial of equal opportunity and protection, which is prohibited under the Constitution (Rweyemamu 1996; Mhoja 1997). Moreover, every person in Tanzania has an inherent right not to be discriminated against. Theoretically, these clauses internally incorporate non-discrimination norms encapsulated in, and which are prohibited by, these treaties. The form and content of this right correspond to international human rights standards (Tshosa 2001). Therefore, according to the Constitution, child-widows should not be discriminated against on the basis of their gender.

The Derogative or Claw-back Article

Although the Bill of Rights carried many people's hopes, it has also been argued that it is not an absolute guarantee of basic rights (Makaramba1998). Article 30 (2) states that: "...no provision contained in this Part of this Constitution, which stipulates the basic human rights, freedoms and duties, shall be construed as

¹⁶⁸ Article 7(1). The Fundamental Objectives section is not, however, enforceable in the courts and it remains to be seen what weight courts will give its provisions when interpreting the judicially enforceable provisions of the Constitution.

invalidating any existing law or prohibiting the enactment of any law or the doing of any lawful act under such law....” The derogative nature of this Article may, therefore, be easily used to justify virtually any breach of fundamental rights.

This is because there is an entire system of customary laws, which discriminate against women in areas such as the inheritance of land. It is essential, however, to reiterate that the discriminatory Local Customary Law, 1963 (‘the Rules’) are in conflict with the principles of gender equality and non-discrimination enshrined in the Constitution, which does not permit discrimination on the basis of sex.

Unfortunately, the proviso of section 30 (2) of the Constitution, which recognises customary law as law, in so far as it concerns members of the communities to which it applies, makes matters worse and demonstrates the limitations child-widows may face in the pursuit of their human rights. Again, the Constitutional recognition of customary laws under the Constitution could be described as a ‘carte blanche’ for discrimination. In reality, it appears that the whole exercise symbolises an uncommitted affair, with one provision giving equality unconditionally, and the other recognising that customary laws of inheritance can deny such equal opportunities.

However, there has already been some judicial activism in the promotion of the principles of gender equality and non-discrimination. Some discriminatory Rules have been tested in Tanzanian courts, the ruling being that they are not in line with international human rights norms following the adoption of the Bill of Rights. This will be discussed later.

APPLICATION OF INTERNATIONAL AND REGIONAL STANDARDS

This part of the chapter briefly examines the status of the international human rights instruments discussed above, which protect the child-widows’ inheritance rights. Significantly, Tanzania’s ratification of international treaties without reservation is not a mere formality. By becoming a member of CEDAW and

ACRWC, Tanzania is obligated to condemn discrimination in all its forms. However, the question to be considered is: how can Tanzania effectively fulfil its obligations?

Unlike civil law countries, where ratified international treaties form a direct part of its municipal law,¹⁶⁹ countries in the common law tradition, like Tanzania, require further incorporation of these international documents into their domestic law through legislation. Tanzania has not domesticated CEDAW or the ACRWC. Thus, these treaties do not form part of the law of Tanzania. Subsequently, the implementation machinery of both CEDAW and ACRWC lacks the teeth to enforce its provisions.¹⁷⁰ Although this is a handicap, the reporting system has contributed towards some policy and legal changes regarding the actualisation of the human rights of women. Therefore, the monitoring of the Committees play an important part.

Judicial Interventions

Judicial interventions have played a vital role in promoting women's rights. A court operating under a dualist system may rely on ratified instruments in order to fulfil the international obligations of the State. Numerous studies (Rwebangira 1996; Rweyemamu 1996; Mhoja 1997) show that one of the most formidable barriers to women's equality is a gender bias in the courts. Courts can play an active role in enforcing human rights' standards. Interestingly, there is an emerging judicial trend of relying on and drawing inspiration from the Constitution and international human rights laws in protecting the rights of daughters and widows. The judicial system has a significant impact on gender equality in inheritance issues

¹⁶⁹ The relationship between municipal law and international law is reflected in the opposing theories namely monism and dualism. Under Monist theory, the international legal order and the municipal legal orders of different states belong to a single universal system in which the municipal legal orders occupy a subordinate position. National courts are therefore obliged to apply international law directly. Conversely, the dualistic theory maintains that international law and municipal law are separate systems of law; thus, international law is not applied directly (Tshosa 2001).

¹⁷⁰ There is no international sanction, such as a court, provided under the CEDAW and ACWRC, by which a government can be arraigned; but there looms the possible embarrassment of being publicly shown up in the international arena through having failed to fulfil a legal duty (Owen 1996).

by interpreting the Rules consistent with notions of gender equality and non-discrimination.

In fact, in 1968, Judge Saidi, had paved the way forward by declaring in *Ndewawiosia v. Immanuel* (1968) that the customary law that barred daughters from inheritance had no place in contemporary Tanzania, as it was discriminatory. Others have followed suit, as exemplified in *Peter v. Pastory* (1986); here, Judge Munyera, declared a customary law that barred women from disposing of clan land as being discriminatory and in violation of the Constitution. In *Gabriel v. Birungi* (1988), a similar declaration was made.

Other Court judges take a more conservative view, and would not question the justice of the Rules once their existence is proved (*Verdiana v. Gregory* (1968)). This was embraced by the Court of Appeal of Tanzania in *Deocras v. Deus* (1981); while agreeing that the customary law of inheritance was discriminatory and that it was causing hardship to women members of the Bahaya society, the court decided to do nothing and wait for the legislature to effect the relevant changes. The court argued that customary law is based on customs and usages and, as a result, it should develop and evolve as the needs of local communities change. Over the years in Tanzania, however, the application of customary law by the courts has resulted in a systematic codification of the Rules. The courts have been cautious in the development of customary law. They argue that such developments should take place by means of legislation.

The situation changed dramatically following the promulgation of the Bill of Rights in May 1988 (Maina 1997). This is well exemplified in the landmark case of *Ephrahim v. Holaria & Gervas* (1989), in which the court shifted the limits of the Rules in favour of the greater protection of women's rights. This marks a vital developmental stage in the equalization of inheritance rights between men and women. In that case, the Appellant (a man) was a nephew of the first Respondent (a woman). He challenged her right to sell the clan land that she had inherited

from her father's Will. She sold the land to the second Respondent, whereupon the Appellant sought a declaration that the sale was void, because under customary law the power to sell clan land was vested in men, not women. Judge Mwalusanya, began his ruling with an introductory reading: 'This appeal is about women's rights under our Bill of Rights. Women's liberation is high on the agenda in this appeal. Women do not want to be discriminated against on account of their sex...' He also quoted Judge Saidi:

Now it is abundantly clear that this custom, which bars daughters from inheriting clan land...has left a loophole for undeserving clansmen to flourish within the tribe. Lazy clan members anxiously await the death of their prosperous clansmen who happen to have no male issue and as soon as death occurs they immediately grab the estate and mercilessly mess up things in the dead man's household, putting the widow and the daughters into terrible confusion, fear, and misery...It is clear that this custom has outlived its usefulness...(Ndewawiosia v. Immanuel 1980).

Judge Mwalusanya, further critically observed that the Rule in question had not been changed to this day and that women were still suffering at the hands of selfish clan members. He held Rule 20, which excluded female clan members from inheriting clan land and thus barred them from disposing of land, to be discriminatory and inconsistent with Article 13 (4) of the Constitution that forbids discrimination against any person and was, hence, null and void.¹⁷¹ Consequently, he relied on the fact that the Tanzanian Government had ratified CEDAW and other international conventions to find that women were protected from discrimination. The court, by employing constitutional provisions and human rights instruments on fundamental rights regarding the equal treatment of men

¹⁷¹ Other parts of Africa have similar developments e.g. in the famous case of *Bhe* (2003) in South Africa, the Court stated that: The exclusion of women from heirship and consequently from being able to inherit property was in keeping with a system dominated by a deeply embedded patriarchy which reserved for women a position of subservience and subordination and in which they were regarded as perpetual minors under the tutelage of the fathers, husbands, or the head of the extended family'.

and women before the law, indicated that human rights norms provide a powerful tool in facilitating some changes.¹⁷²

The above cases represent examples of gender positive judicial interpretations in the context of women's inheritance rights. They also indicate possible strategies for future reform of the Rules. However, since the High Court is not the Court of Appeal, these decisions are not the ultimate law. Therefore, although High Court decisions are binding on all lower courts, the conflicting decisions made by different High Court judges mean that the lower courts may follow whichever decision they choose. Thus, the High Court presents divergent views on the interpretation of the Rules to lower courts.

Paradoxically, because of that divergent position on the principle of non-discrimination and customary laws that discriminate against women, cases with similar facts are decided differently. This is well illustrated in the cases of two widows faced with the problem of burying their husbands in 2003. One case involved a Luo widow; she lost her case, because the magistrate followed customs similar to the case of *Otieno* (1986) in Kenya. However, another widow (*Marandu* 2003) won, as a combination of statutory law, the Constitution and human rights norms were applied. In this case, the question concerned was: who had the final say over the disposition of the body of the late Marandu? The deceased was a Chagga; his mother and clan kinsmen claimed the right to bury him on ancestral land, in accordance with the Chagga customary law. The deceased's mother had called off all funeral arrangements, saying that according to tribal rites, Marandu was supposed to be laid to rest at his ancestral homeland in Rombo District, as, during his lifetime, he had keenly practised his clan traditions. Other claims centred on beliefs that if Marandu were to be buried outside his ancestral home, a calamity would befall the family. The widow was also a Chagga, but from a different village; she wished to bury her late husband within the matrimonial

¹⁷² However, it is not expected that socio-cultural daily behaviour will immediately alter once an aspect of customary law is declared unconstitutional by a court. Law proves rather inadequate in changing culturally engrained patterns of behaviour; yet it is a step forward.

homestead. The widow testified that she and the deceased had led a Christian life during the entire period of their marriage and her late husband had left a Will. The legal struggle took on customary norms, statutory law, and women's rights' dimensions.

In ruling in favour of the widow, the Magistrate said the court was satisfied with the defendant's submission that before his death the deceased had written a Will, directing that upon his death he should be buried at his homestead, located in Moshi Municipality. The magistrate contended also that Chagga norms were discriminative and did not take into consideration the issue of equality, as provided for by the Constitution. 'Society should change; law cannot remain static while the world is changing' (The Guardian 2003).

Although the Marandu widow won the case, it was in fact, a missed opportunity. In an effort to portray Chagga customs as repugnant, the widow's lawyer failed to challenge the inapplicability of some of the traditional reconstructions of customs put forth by the clan (Juma 2000). There was ample evidence that the nature of Chagga customary norms has changed considerably. The strength of her case should have rested, not in denying the Chagga customary law, but on asserting that those customs could allow for burial in places other than one's ancestral home. She could have shown that the requirement of the establishment of a home had been met (ibid). The deceased, like many Africans who move to another place, had built a house and stayed in that place for some time, then saw that place as home and wished to be buried there. This could have clearly demonstrated the future of the law in the face of current developments, which fits both with women's rights and the customary law. As previously noted, local norms can be mediated through human rights' norms and justified using customary norms while still protecting widows' rights.

Consequently, the cases of *Holaria* (1989) and *Marandu* (2003), just as in the cases of *Miscar* and *Ellimilinda* (expounded in Chapter 5) indicate that the court hearings

serve as critical paths for the creation and imposition of cultural meanings (Merry 1994:36) as well as for the promotion of human rights norms. Nonetheless, while the *Holaria* case represents an important movement in securing the rights of women, future efforts should be geared toward litigating cases all the way to the Courts of Appeal in order to make the law binding on all lower courts. The Rules and the decision in *Holaria* have not been tested in the Court of Appeal since the incorporation of the Bill of Rights. However, there is an indication that the Court would uphold decisions that find the Rules to be discriminatory (Kabudi 1991). Laws can be declared void as being unconstitutional by filing a petition in the High Court, under Article 30 (3) of the Constitution. International human rights norms play a pivotal role in the protection of women's rights. The principles articulated in the *Holaria* case could lead to a similar result when applied to discriminatory Rules, such as those on widow-inheritance and degrees of inheritance, all of which violate the CEDAW, ACWRC and the Constitution, as explored hereunder.

Degree of Inheritance Rule: Following the death of a father, a child-widow as a daughter is placed in the third degree (the lowest grade); daughters cannot be the primary heirs unless there are no male offspring. Therefore, they inherit the most unsuitable land (if any) and little property. The Rules are gender-based; the child-widow is not equally protected by the Rules when compared to her male counterparts, as sons or widowers.¹⁷³ Although it is true that under local norms, equality is not necessarily a 'fifty-fifty split' (strict identical treatment (Kimber 1996:267)),¹⁷⁴ it can still be based on a particular badge of differentiation, encroaching upon a particular interest based on objective justification (Butegwa 1994; Arnardottir 2003).

¹⁷³ Inheritance rights for widows do not reflect the principles of equal ownership of property acquired during the marriage.

¹⁷⁴ This is known as the 'equality formal approach'- Sometimes this approach is also referred to as the symmetrical or sameness model, which is built upon the equality maxim that equals should be treated equally, but focuses on rendering certain distinctions, such as those based on gender, completely irrelevant (Kimber 1996:267). It is not the objective of this study to analyse different kinds of equality.

For example, although traditional norms allow the first son to be given a larger share, he still has obligations;¹⁷⁵ the rationale for giving the first son a larger share was that he would be responsible for his young siblings, should problems occur. In other words, the extra share would apply for the benefit of the wider family.¹⁷⁶ For instance, the first son is expected to welcome and assist his sister who may be a widow and has decided to return to her natal family. Unfortunately, this is rarely implemented; as brothers generally do not welcome widows. Socio-economic changes have caused brothers not to help their siblings if problems arise (Kajjage 1996; Mhoja 1997; Nzioki 2002); however, very isolated cases indicate that brothers could offer that kind of support.

If a husband has died, the child-widow is often totally excluded; she has to depend on the goodwill of the heirs. Conflicts are inevitable and so are economic problems, such as the lack of shelter, food, clothing and social support. The case of Robi in chapter 7 is illustrative of the scenario where a child-widow is chased away from the deceased's family household; her brother abandoned her and she was not welcome to stay and cultivate the family land, as her brother had been using it with his wife. He also feared that he would have to refund the *mahari*. Robi ended up by being a domestic servant, as she had nowhere else to go. This is the result of giving child-widows less of a share on the ground of their gender and age; the impact of this on their daily lives amounts to discrimination (CEDAW Article 1).¹⁷⁷

The Rule operated well in the communal era (see kinship structure in chapter 3). However, today the practice of excluding widows from inheritance and giving

¹⁷⁵ This is known as the principle of male primogeniture (the eldest son or the eldest male descendant in the male lineage succeeds the deceased), which is one of the most contentious issues in the inheritance laws in most parts of Africa (Rautenback and Plessis 2004).

¹⁷⁶ In modern societies, the problems associated with widowhood and being orphaned generally fall within the social welfare underwritten by the state. However, under traditional society, these problems are generally the concern of members of the clan, (Marasinghe 1984) and the coordinator within the siblings is the first son; that is why he had been designated a larger share.

¹⁷⁷ Any real solutions to eliminating violence against women (including child-widows) 'must derive from a concerted attack on its origins -- deeply rooted, historical patterns of discrimination against women and systemic gender inequalities ...' (UNIFEM 2004:1).

daughters less property is the epitome of gender discrimination (Mhoja 1997), and is contrary to Article 2(f) of CEDAW and against the principle of non-discrimination. Certainly, the law does not offer equal protection, as per Article 3 of ACRWC and, so, subsequently, it is not in the best interests of child-widows.

Child-widows' Exclusion from Inheriting Clan Land: Rule 27 of the Local Customary Law, 1963 (G.N 436) provides that the widow has no right to a share of the inheritance, should the deceased have left relatives of his clan: her share is to be cared for by her children, just as she cared for them. (The share of a childless widow is mentioned in Rule 77,¹⁷⁸ the share not being counted as part of her husband's inheritance). This Rule discriminates against widows, contrary to the principle of non-discrimination.

Paradoxically, under the Rules, there is one such facially neutral provision that has discriminatory effects, as neither widows nor widowers equally inherit a share of the deceased spouse's property.¹⁷⁹ However, while the widow is prevented outright from inheriting, the widower does inherit, as there is a myth that all matrimonial properties belong to a husband. Normally, when a wife dies, the matrimonial properties continue to be the property of the husband and there is no distribution of inheritance until the father dies. There are isolated cases in urban areas where the working widow's relatives have demanded properties from the husband. As a result of the myth, a dual discrimination is created against child-widows: first, in the notion that a wife's property becomes her husband's upon marriage; and second, the rule expressly prohibits a child-widow from inheriting the property of her deceased spouse (Law Reform Commission 1995:10).

Ironically, child-widows, as widows or daughters, are excluded from inheriting or disposing of, family or clan land (Rule 20). The Rule violates Article 16(1)(c) of CEDAW that confers equal rights in matters connected with property in the family;

¹⁷⁸ Supra no 145.

¹⁷⁹ A husband shall not inherit the property of his wife in the inheritance if a Will was not left – except if the wife had no children and had left no relatives in her clan (Rule 28).

the same rights and responsibilities apply during marriage and dissolution. Although respondents during research accepted that there are reasonable justifications for widows to be excluded from inheriting clan land (e.g. as it belongs to the deceased's clan), the Rule does, in fact, contravene the equal right to exercise legal capacity because it prohibits child-widows, as daughters, from selling clan land, a restriction that does not apply to male relatives. Theoretically, this obstructs child-widows' access to liquidity. They are thus less able to convert land into cash, should the urgent need for cash arise (Vanessa 2004:73). Evidence indicates, however, that the family system on which the concomitant duty to support is based, has, to a large extent, deteriorated. Due to the migration system, the population of rural areas consists predominantly of females. Further, male relatives in need of cash had been selling clan land (Shivji 1992). A great proportion of these females are illiterate and are in many cases not aware of their rights and that they have the right to make choices. Likewise, the Beijing Declaration and Platform for Action (1995) states that legal and customary barriers to ownership of, or access to, land contribute to impeding the economic progress of women.

In addition, Article 13 of CEDAW obligates Tanzania to 'eliminate discrimination against women in other areas of economic and social life.' The Rule violates this provision because child-widows, as daughters, receive a smaller share than similarly situated sons. As this Rule further determines access to land on the basis of gender, a child-widow, as a daughter, theoretically receives a smallest share of the land (if any). Furthermore, women who are major producers in rural areas do not have equal access to economic resources. It is pertinent to note that most women who face these problems are rural women (including rural child-widows). This situation constitutes an injustice to child-widows contrary to Article 14 (1) of CEDAW, which states that special protection be given to rural women.¹⁸⁰ The situation also discourages their agricultural productivity and prevents them from effective participation in economic development (Mhoja 1997). Again, the Rule

¹⁸⁰ Consequently, the right to property is firmly protected by Article 14 of the Banjul Charter and Article 17 (1) of the UDHR.

creates an obstacle that prevents child-widows from fully developing their potential in the service of their countries and humanity.

It is true that because of gender socialization, some widows who have the opportunity to inherit or sell land are not ready to do so as they would prefer to maintain their relationship with their brothers or sons. However, that is not a reasonable justification for not repealing the discriminatory Rules, taking into consideration their harmful impact.¹⁸¹

Interestingly, Article 5(a) of CEDAW, in a unique provision not found in other human rights treaties, attempts to eliminate sex discrimination at its roots. Pursuant to Article 5 of CEDAW and Article one of ACWRC, Tanzania must take measures to modify the traditional 'prejudices and customary practices' to give effect to the provisions of the Conventions.

Widow-inheritance Rule: Child-widows who are unable to achieve economic independence, as discussed above, are more vulnerable to widow-inheritance, a practice that purports to protect widows, but which in fact, deprives them of their liberty and often subjects them to the greater possibility of domestic violence and marital rape (Mhoja 1997). Apart from the value of this custom (see Chapter 3), Mhoja's study provides evidence that a widow may often be isolated within her brother-in-law's household and so become a victim of exploitation. None of the child-widows interviewed in the present study were given an opportunity to be heard on entering a leviratic marriage. The Rule creates a slave-like practice, contrary to Article 5 of CEDAW, and also perpetuates forced marriage, contrary to Article 16(1)(b) of CEDAW. A woman's right to enter freely into marriage is central to her life, to her dignity and equality as a human being.

Clearly, Article 16 of CEDAW is one of the most pertinent provisions against widow-inheritance. It could offer child-widows protection from this form of

¹⁸¹ Article 15 of CEDAW demands that governments ensure that women have equality before the law and are treated equally in all stages of tribunals or courts. However, the police serve widows poorly as they often do not respond to widows' complaints (Owen 1996; Magoke-Mhoja 2005).

personal violence. Being forced to bear children in the name of the husband through impregnation by a brother-in-law against the child-widow's will, is a practice that governments have a duty to eliminate by all possible means (Owen 1996). There is a growing resentment against widow-inheritance as it is one of the factors that contributes to the spread of HIV/AIDS and is a practice that is contrary to human rights.

The phenomenon of widow-inheritance is complicated and sensitive. Therefore, in mediating this conflict, in order to shift the paradigm to the protection of child-widows, the right to health language on risk of contracting HIV/AIDS should be emphasised. The Rule is not in the best interests of child-widows and it poses a challenge to the Government and other stakeholders to discourage the practice (ACWRC: Article 1(3)).

Mahari

The *mahari* phenomenon has been manipulated as a form of investment and has forced a number of girls into early marriage. The payment of *mahari* is not a necessary requirement for establishing a marriage. However, in practice in the Kurya, Maasai and Sukuma societies, it is a necessary requirement. Relatives who receive any part of the bridewealth have responsibility for repaying it, should the marriage break up or the refund of the bridewealth become necessary (Rule 36:GN 279). Despite Rule 62 stipulating that if a widow refuses to be inherited then the bridewealth is not refunded, the Kurya folk law of inheritance puts emphasis on the refund of *mahari*.

Apart from the positive elements of *mahari*, as discussed in chap.3, the practice has changed; often it is a manifestation of the stereotype of women as property to be bought and of the notion that a girl's primary role in society is to get married, rather than to enter the work force and become financially independent (Vanessa 2004). These stereotypes imposed on girls through the practice of *mahari* lead to women's economic dependence on men. This dependence continues even after a

spouse's death. In some ethnic groups, such as the Kurya, should a child-widow refuse to be inherited her parents have to refund the *mahari*. The empirical study demonstrated that *mahari* is a catalyst for the disinheriting of child-widows; in Pili's and Bhokena's cases, the *baraza* insisted that they should be inherited because of the *mahari*. They are often trapped in a type of servitude or slavery, defined and condemned by international law. So, the customary practice of widow-inheritance, which is fuelled by the Rules depriving child-widows of economic independence, and the closely associated practice of *mahari*, which fosters the assumption of women as property, infringe upon the child-widows' rights to respect, dignity and freedom from slave-like institutions (Banjul Charter: Article 5). Significantly, both *mahari* and widow-inheritance are included in the definition of slavery set forth in Article one of the Convention on Slavery.

The manipulation of the custom and a shift of the *mahari* paradigm from 'the value of women's roles' to 'the value of consideration' (for the so-called buyers' rights) have put child-widows into a more vulnerable situation. As previously mentioned, child-widows have been discriminated against as they are forced to be inherited. Thus, it is impossible to isolate *mahari* and widow-inheritance from the disinheriting of child-widows, which contributes to the risk of HIV/AIDS. Inevitably, *mahari* leads to gender inequality and contributes to the formation of a complex cycle of discrimination (Vanessa 2004). Tanzania has an obligation to eradicate any law that leads to the enslavement of child-widows.

However, the concept of *mahari* is firmly-rooted, even within cities, as people practise it as part of their cultural heritage. Many respondents suggested that it would be very difficult to outlaw *mahari*, as people do not visibly see its contemporary impact.¹⁸² Nonetheless, we must allow the African culture to become

¹⁸² In Zimbabwe, Tichanga (1995:29-33) states that: '...women are unaware of what lobola payments signify in terms of control over their productive and reproductive abilities. It brings about gender inequality in the household...' Unfortunately, there is no mention of *mahari* in the Women's Protocol, yet, it is a cultural institution practised across Africa that has cemented the subordinate position of women in the family (Vanessa 2004:98). Significant omissions in the Protocol itself have weakened its impact.

responsive and remain dynamic. For example, some families have been giving a small *mahari*, just as a symbolic gesture.

For real change to take place, gender consciousness-raising must be rooted in a retrieval of the value-systems of our traditional societies. Scrutiny of these systems would reveal their historical context and previous validity. In the process, we may find the courage and integrity as Africans to become constructively engaged in an ongoing assessment of our traditions in order to progressively discard those practices which have become redundant (Oyengun 1997), or to modify them to suit the situation. Thus, society should be reminded that, traditionally, women were not regarded as property and the exchange of *mahari* did not transfer any absolute rights to the husband and his family. If a family did not treat a wife well or failed to support her, she was at liberty to return to her parents (Luutu 2000:51). Awareness creation on the consequences of *mahari* is vital. Although traditionally *mahari* had value, today it often reinforces both the commodification of women and the patterns of patriarchy which, in turn, cooperate to undermine child-wives' and child-widows' autonomy and their rights to self determination (Tichanga 1995). Further, condoning the refund of *mahari* through the court has promoted the violation of child-widows, as parents often force their daughters into 'widow-inheritance'. Undoubtedly, Tanzania must take the necessary steps to prevent girls being used as investments and to outlaw the 'refund of *mahari*' through the courts.

Appointment of an Administrator Rule: Rule 5 deals with an administrator of the deceased's property; it lists categories of people who could be administrators, but excludes widows and daughters in this hierarchy. This system allows for the retention of property by a senior male in the clan, or a son. However, the empirical study provided evidence that often administrators squander property that disproportionately harms child-widows. The study demonstrates the devastating effects on child-widows, as in the case Bhokena, (see Chapter 7) where the administrators' squandering of property forced Bhokena into widow-inheritance.

The practice of administrators always being men, without consideration of competence, violates the principle of equality and non-discrimination and has caused much harm. Further exacerbating the problem is the false notion that if a person is selected as an administrator, he is also an heir. Administrators tend to squander the entire estate and leave child-widows empty-handed. It would be in her best interests if a child-widow was given the opportunity to select a guardian to administer on her behalf until she reached the age of majority. Any person could be given the guardianship, regardless of gender, but that person should have proven competence and a good reputation for treating children well.

Conclusion

This Chapter has explored the contiguity of discriminatory Rules and customs linked with the mediation through the human rights law. It has also analysed debatable issues such as the principle of gender equality. Under local norms, equality is not necessarily split equally, but it can be based on a particular badge of differentiation, encroaching upon a particular interest based on objective justification (Arnardottir 2003). The Chapter has thus highlighted some complexities of the implementation and enforcement mechanisms of the human rights of child-widows, as granted by the Constitution, CEDAW and ACRWC. Few justifications based on gender and age that discriminate against widows and female children in the inheriting of property, such as land, pass the international standards of “objective and reasonable justification”, or of a reasonable relationship of proportionality between the means and the aim sought (Butegwa 1994).

We therefore need more than ever to re-evaluate all the received versions of our histories, as many carry distortions and mystifications (Luutu 2000). The Rules should be repealed, as there is misrepresentation of what is real customary law. Additionally, codification makes them inflexible, as customs are not static. Apart from what the laws state and the situation in courts, it is vital to analyse the reality of the daily lives of child-widows, as explored in the following Chapter.

CHAPTER SEVEN

THE PLIGHT OF CHILD-WIDOWS IN THE SHADOW OF ADULT LIVES

This Chapter focuses on the mistreatment of child-widows and is based on the accounts of the daily lives of 25 child-widows. It demonstrates that the customary law of inheritance (as expounded in Chapter 6) is not the sole factor contributing to the plight of child-widows; the situation is exacerbated by multiple configured social-economic factors. The Chapter further shows that most privations of child-widowhood are violations of their human rights.

MULTIPLE FACTORS CONFIGURING THE PLIGHT OF CHILD WIDOWHOOD

I was married when I was about 13 years old; it was through an arranged marriage by my father. I stayed with my husband for 3 years and then I experienced the trauma and grief of his death. I cared for my bedridden husband for some months and no relatives helped. After the death of my husband, my brother-in-law evicted me from the matrimonial home and squandered all the matrimonial property. I moved to my father's hut with my two children. We slept on the floor. I begged from neighbours for my daily food and one child was often sick. I encountered emotional distress. Kunese (16).

This girl faces horrendous hardship after her husband died from HIV/AIDS. Her baby is also sick but they haven't visited a hospital because she doesn't have money to pay. She has suffered many problems, said Kunese's neighbour.

Kunese had to readjust her entire life after the demise of her husband. She found herself in severe poverty as well as having to struggle to support herself and her baby. However, under customary law the assumption is that the welfare of widows and their children is the responsibility of the deceased's children or other heirs. This empirical study demonstrates that in practice, there are child-widows who do not have adult children to maintain them as the law supposes. Frequently child-widows lose their matrimonial home through the actions of dishonest relatives whose duty under traditional custom, should be to care for these widows.

Like Kunese, many child-widows suffer under the discriminatory customary law of inheritance that is exacerbated by other factors such as widow inheritance, *mahari*, polygamy, widowhood rituals, witchcraft accusations, property grabbing and the stigma of HIV/AIDS. This work however will focus specifically on how each of these factors complicates the plight of the child-widows.

Leviratic Marriage

A husband's death does not automatically terminate a marriage within some ethnic groups in Tanzania; hence, avenues are provided for continuing a marriage. Widow-inheritance is one of the most frequent options for the care of widows (Kirwen 1979; Mukoyogo 2000)¹⁸³ and was the accepted norm within Kurya, Maasai and Sukuma ethnicities. This practice continues to be widely practised within the Kurya and Maasai. However, it is diminishing among the Sukuma and has become merely symbolic. For example, a brother-in-law would be selected as a contact person between the deceased family and the widow in times of problems or ceremonies.

Of the 25 child-widows who were interviewed, 13 (52%) were inherited. All 8 Maasai child-widows were inherited and 5 (62%) of the 8 Kurya child-widows were inherited. Nonetheless, in all districts, the practice has lost its attractiveness within some Christian communities and within other families because of the fear of HIV/AIDS. For instance, Eva's (17) in-laws from Tarime, who are Seventh-Day Adventists (SDA), did not ask for her to be inherited. The two other child-widows were not inherited because of the fear of HIV/AIDS related diseases. However, none of the 9 Sukuma child-widows from Shinyanga were inherited. One child-widow refused to be inherited because of her Christian faith.

¹⁸³ The practice is common in most African societies (Ncube and Stewart 1995; Reggy-Mamo 1999).

In Tanzania, the government recognized and codified 'widow-inheritance' among other customs in 1963. Rule 62 specifically provides that the deceased's relatives may ask a widow whether she wishes to be inherited. If she agrees, she can remain there as a wife. If she refuses, the *mahari* is not refunded and she is free to leave and reside with her natal family.

The Rule outwardly indicates that the widow has been given the opportunity to air her views. However, except for the few who have a very close network support against the custom, fear of HIV/AIDS or on religious grounds, child-widows find themselves silenced or unable to negotiate with others because of their age and immaturity, and hence are forced to say little on the matter. The analysis below illustrates several factors that combine to pressurise child-widows in succumbing to 'widow-inheritance'.

Firstly, poverty, configured with the need for social security, forces some widows to be inherited (Bhokena's case). Secondly, some child-widows agree to be inherited, as their families of origin are not able to refund the *mahari*, (as in Pili's case). Thirdly, child-widows are pressurised by customary law and deeply embedded custom (as in Naikuso's and Amina's cases). In some cases, by belonging to the deceased's family as a result of socio-economic and legal factors, child-widows are pressed into succumbing to widow-inheritance.

Child-widows find themselves influenced by their poor social-economic life, thus they agree to be inherited. This is well demonstrated in Bhokena's case (a Kurya from Nyamwanga):

I was forced into marriage at the age of 13 to a man whom my family had failed to repay a debt to. I became a widow at the age of 16. However, my married life was not very bad. I had two children and my husband died. I was supposed to be inherited but my grandmother advised me not to be inherited. My brother-in-law chased me away from the matrimonial house as it was within the clan compound and belonged to him.... Life became profoundly horrible through lack of food. They grabbed all my properties and as my grandmother was very poor, I agreed to be inherited by one of my

brother-in-laws. However, life has been terrible, because the man is busy with his wife and his children. His support is inadequate. I have no education, which could help me to look for some jobs. My grandmother, who is now very old, is also supporting me in taking care of my children. However, sometimes I have to work in the Nyamongo mines in order to get some money to help my children. Actually, I conceived one of my sons there, when I was working in the mine. But according to Kurya custom, he belongs to my dead husband.

Bhokena was asked whether she would like to be inherited; she opted not to be inherited. However, her grandmother was very poor and couldn't afford to maintain her and the children, so she was forced thereafter to succumb to the deceased relatives' wishes. It seems to me that the process of asking was a symbolic gesture, as the family *baraza* (council) had already made up its mind that she should be inherited, but just asked her to fulfil the customary law. Their true intentions were revealed later as they took possession of all the movable property. This action was prompted by the myth that a woman and all that she owns belongs to her husband.

However, this is the 'inversion of the custom', as Nyamwanga village leaders in Tarime stated that Kurya inheritance rules recognize three legal options for a widow. Firstly, a widow can return to her father's home and be remarried, but part of the *mahari* should be refunded.¹⁸⁴ Secondly, a widow can cohabit with her brother-in-law in a leviratic union. Thirdly, a widow can be inherited in a leviratic union by her brother-in-law, but can choose to live alone and not to cohabit with him. The widow is allowed to remain in the marital home and be supported by kin and can continue to contribute to the family group (Kirwen1979:58). It is evident that the last option would be possible for an adult widow who has adult sons. Thus, only the first two options were available to Bhokena.

In Bhokena's case, although she did not, as in most clans, acquire control of the land, cattle, fields and other property, she was entitled to access to this property to

¹⁸⁴ There is a conflict of codified customary law and Kurya customary rules on this matter as Rule 62 provides that *mahari* should not be refunded.

provide for herself and her children. As it is a sin to harass the 'wife of the grave', a person who abuses her, also abuses the spirit of the dead man, which is traditionally not permissible.¹⁸⁵ Hence, Bhokena's harassment was contrary to the Kurya customary law.

Significantly, it was further argued that the widow's procreative needs are as important as her needs for food and shelter, for it is only through her continuing fertility that she can maintain the integrity and continuity of the family that the deceased husband began. Even if a child-widow had children with other men, as was the case in Bhokena's situation, the children still belong to the dead man. However, at this stage of child-widowhood, she finds herself a victim of abuse by her deceased husband's family. She is exposed to oppression and violence (sexual and non-sexual) within this leviratic marriage, but has a limited voice with which to protect herself.

Shamefully, some child-widows' opinions on whether they should be inherited or not, were not sought. The procedure was prearranged, as illustrated in Pili's case (a Kurya from Tarime):

My parents didn't ask me for any opinion. What I remember is that I was married when I was a child. I was forcefully taken away. After my husband's death I was told to remain with my in-laws and raise my baby.... My brother-in-law was selected to inherit me, but because he did not want me to share the same compound with his wife and children, he constructed a hut within the compound of my mother-in-law. I was told to assist my mother-in-law in her daily duties and work for my child and myself. I did not satisfy my mother-in-law who harassed me every day; life was awful. My brother-in-law did not support me with any basic necessities. I had another baby and life became miserable; I want to be free from this relationship. In reality, I am just living like a slave. I went back to my parents and I was told that 'you are married forever; we do not have cattle to refund'. One day when I came home, I found that my mother-in-law and sister-in-law had demolished my hut and had stolen my few immovable properties...I think if I re-marry I can get a shelter and try another life.

Both Pili's and Bhokena's stories illustrate that widow inheritance does not offer the same level of companionship and support as marriage does; child-widows

¹⁸⁵This was a FGD on 22-8-2003.

often take on an even bigger role in their families' welfare after the deaths of their spouses. Their stories signify that the new partnership between a child-widow and her inheritor is not completely equivalent to marriage, as when compared to wives and husbands, neither party maintains rights and obligations. How Pili and Bhokena's inheritors treated them supports Potash's (1986) and Kirwen's (1979) observations that the inheritor's primary responsibility is to his own wives and children, and he does not support the widow economically to the same extent as a wife. But Potash (1986) also postulated that inheritors may help the widow with ploughing or paying for food, but this is not a formal duty and appears to depend more on individual relations between the couple. One of the only obligations of an inheritor is to build a house for the widow if she does not have her own. This is what Pili's inheritor did.

Further, Pili's case demonstrates that Kurya traditions that view women solely in a familial role contribute to the phenomenon of early marriage, and then to widow-inheritance or re-marriage. Their opportunities beyond the role of wife and mother are severely limited. Pili was married on the wishes of her parents; she did not know that the marriage had taken place until she had stayed for some time in the matrimonial home. In her own words she thought she was being taken by force and raped by that man. She wasn't even sure of how old she was at the time of her marriage; it was her maternal uncle who said she was about ten years old. Her opportunity for individual development and growth was stifled, and her potential to become an autonomous, informed and empowered adult was compromised. Access to legal justice promises to be a very long journey for her. At present, she is not thinking about fighting for her property rights, but she wants the freedom to re-marry.

Her situation fits what Miller (1981) postulated; the lessons of gender-based entitlements follow girls well into their adulthood and form a central aspect of their lives, whereby they learn about their respective places in the family and society.

Pili is further subordinated as she has her identity embedded in a 'multitude of familial relationships' (Kakar 1981:62) at various stages of her life. She is relegated to a situation where she cannot be independent because she has to rely on a male protector. She was a 'daughter' to her parents then she was married as a minor at the age of ten (a 'child-wife' to her husband); when her husband died she was forced to be inherited (a 'wife of the grave' to a leviratic husband); since the leviratic marriage has also failed she now wants to re-marry. As with many child-widows, her subordinate position is compounded by the fact that she 'realistically lacks the prerequisite resources (education/employability) to assume any but the traditional role, even if she desired to perform other roles' (Youssef 1978:80).

Furthermore, in Mvomero district, within the Maasai ethnicity, the cases of Naikuso and Amina demonstrate how child-widows are pressurised by the practice of widow-inheritance. The practice contributes to the creation of passive child-widows, as they are silenced; their right to participate is curtailed. During my several visits the child-widows always reminded me that the custom is embedded within the Maasai ethnicity custom and that there is no escape route; even adult widows were inherited. However, they communicated that they face harassments; they have limited freedom to attend social gatherings or even attend adult education classes.

Their neighbours 'Koko' (an adult widow) and the Rev. Nuhu asserted that Amina and Naikuso were inherited and since then they had been living as if in a prison. The inheritor had already sold a number of cows that belonged to the child-widows. Gender inequities manifested in almost all aspects of these child-widows' daily lives. For example, they couldn't speak to visitors without the permission of either the senior wife or the inheritor. They had very limited freedom of movement because they had not been allowed to even visit their neighbours or to attend social gatherings such as church services, as they had formerly done. Their inheritor was afraid that they would be brainwashed and hence resort to resistance. They had

been experiencing a horrible life, as the inheritor had been a violent person who always quarrelled with his wives. Amina and Naikuso had been performing all the house chores with other wives, but if they made a mistake they were beaten like the other co-wives. Koko said wife battering was a frequent Maasai practice; it will take time to change. She then proudly said 'When a widow is an old person with sons, she has more freedom. I have constructed this house with the help of my son. My brothers-in-law now respect me very much.'

Furthermore, the Rev. Nuhu explained the Maasai customary inheritance rules. His interpretation concurred with Mitzlaff (1994:148) that when a man dies, one of his brothers takes the role of the husband.¹⁸⁶ As widows need sons to support them in old age, some widows are particularly interested in bearing sons with inheritors, if they have not already done so with their husbands. If one of the widow's sons has already been circumcised, the widow will not be inherited but she will instead find a household of her own with her son. All her subsequent offspring will be seen as descendants of the deceased. Similarly, like the Kurya and Sukuma, a Maasai widow has the option of re-marrying. If a widow re-marries, the children who were conceived before this marriage will stay with one of the deceased husband's brothers. Her father should receive the *mahari*.

However, the study revealed that the Kurya and Maasai widows rarely remarry formally.¹⁸⁷ The Minister of the Mennonite Church in Tarime remarked that his church had never celebrated any widow's marriage. Although some Kurya are Christians, most of them respect their traditions;¹⁸⁸ the church had been teaching widows that they are free to re-marry, but society to a greater extent views them as

¹⁸⁶ When he was still alive, the brothers would always have been legitimate sexual partners of his wife without age-class men playing a role. Maasai regard a relationship between a woman and a man of her husband's age-set as a legitimate one. If a man spends the night in the house of the wife of an age-mate, her husband may not object (Fosbrooke 1948:44).

¹⁸⁷ Interviewed on 1-03-04.

¹⁸⁸ Most Christians and Muslims interviewed commented that they believe in their religious doctrines as being well enshrined in their innermost minds, as is their unflinching loyalty to their traditional customs.

'wives of the grave' If a man marries a widow, people regard him as not yet married.

Conversely, an Assemblies of God leader informed me that he had officiated at the wedding of one young-widow in his church. A secretary of the Tarime Muslim council also said that a few Muslim widows had re-married in Tarime, but he was unsure of their ethnicity group. Both agreed, however, that it was a contentious issue within the Kurya area.

I was aware of a few cases of Maasai elderly widows who were not inherited and had not re-married. They also insisted that if a Maasai widow has adult sons, her in-laws would not harass her for fear of her sons. Surprisingly, I met a single young-widow (Almasi) in her mid-twenties who was 'a born again Christian'. She said her potential inheritor was a Reverend. She was given a piece of land within that *ekang* and owned a two-bedroom house. The widow has also attended various human rights' workshops. As noted, the inheritor is the designated sexual partner of a widow. This has caused some Christian denominations to ban the practice.¹⁸⁹ The Reverend rejected the leviratic custom as a practice incompatible with the Christian way of life; he viewed it as being an immoral sexual union and a form of polygamy. He had been vehemently opposing it by preaching to other Maasai Christians to stop the practice.

However, this was criticised by other elder Maasai respondents and interpreted as following the Christian Western religion and misinterpreting the custom, which protects widows. Both elders in Tarime and Mvomero had similar arguments to Kirwen (1979) who said that most missionaries misinterpreted the custom. Kirwen supports the African custom of leviratic¹⁹⁰ marriage and argues that African

¹⁸⁹ Pentecostal churches had banned the practice of some widowhood rites as being against God's will; I was given a copy of the minutes that listed the banned customs, dated 21-02-93.

¹⁹⁰ Similarly, Shorter (1973) calls it a way of catering for unsupported women in ensuring the continuation of the line. Leclercq (1942: 62) writes that this custom is inspired by the desire to

societies that practise the custom offer a better alternative to the problem of the care of widows than those of Western societies based on the nuclear family unit. The former readily provides the widow with a position in society where she can continue her marriage and raise her family in security and stability, whereas the latter leave the widow to struggle alone, dependent on government agencies for assistance. It is not the aim of this section to pursue the comparative study of the two systems. It is however acknowledged that a system to care for the widows has been in place, and that there was a form of security and stability.

Yet, this custom also faces the criticism from scholars and activists that it is discriminatory and violates human dignity (Rwebangira 1996; Mhoja 1997; Mukoyogo 2000). Tibatemwa-Ekirikubinza (1999:156) postulates that in the eyes of a patriarchal society, women have no value as individuals. They are denied the possibility of being independent of men.

This analysis can be said to misrepresent the purpose of the tradition as a way of protecting widows and maintaining the family connection; however, most key informants interviewed were not in favour of widow-inheritance. Some commented that the motivation behind the tradition is changing and child-widows' rights are often violated. My views on widow inheritance are coloured by the child-widows' stories.

Mahari

Mahari involves the transaction of property at marriage (as discussed in Chapter 3). Goody (1973) argues that whatever 'symbolic' aspects mark *mahari* transactions, they also have economic functions as a way of redistributing property. Viewed in this way, different kinds of transactions have to be linked with other aspects of social organization and, in particular, with the economy. Further, *mahari* functions

fulfill the primary purpose of marriage, but the error in this custom is that a man is too attached to the more material aspects of posterity.

in order to transfer the authority over women from the father to the husband, which has some significance regarding gender-based entitlements and men's conjugal rights over women (Goody 1973; Mehdi 2001). Indeed, the relative size of payment is linked with the quantum of rights transferred.¹⁹¹

The Nyamwaga village leaders¹⁹² explained that Kurya people observe patrilineal rules of inheritance and descent, hence the payment of *mahari* is a key factor in tying a woman to a husband and leads to the leviratic custom of the care of widows. As illustrated in Pili's case, if a husband dies, the widow remains with the in-laws. Otherwise, if parents want to take their daughter, they must refund the *mahari*. Likewise, Schneider (1973) sees social organization in East Africa as having been influenced in the direction of paternal filiations by the increasing accumulation of *mahari*. With the appearance of such *mahari*, came the virilocal marriage and, subsequently, on the death of a husband, the widow obligatorily became inherited because of the importance attributed to the continuity of the family.

Additionally, *mahari* is a catalyst for the disinheriting of widows. The cattle given as *mahari* during marriage were mentioned in both Pili's and Bhokena's cases as being a reason why matrimonial property was confiscated by the deceased's relatives. Thus, it exacerbated the exclusion of the child-widows from inheriting. Indeed, the family *baraza* referred to *mahari* as an authoritative element in deciding the 'widow-inheritance' issue.

Thus, the practice of *mahari* is an exacerbating and complicating factor in the discrimination against child-widows in several ways. Firstly, because of its

¹⁹¹ In systems of matrilineal groups where the rights of a woman's procreative powers remain in the hands of her natal lineage, the amounts are comparatively less than in other societies (Aberle 1961) and women have more autonomy.

¹⁹² Interviewed on 22-8-2003.

returnability¹⁹³ of payments in the event of the dissolution of the marriage, either by divorce or by death, it reaffirms the stereotypes of women; this perception denies the child-widows' humanity and justifies other discriminatory practices such as widow-inheritance.¹⁹⁴ Secondly, this idea leads some inheritors to treat the child-widows as servants (as in Pili's case). In societies like the Kurya, it reaffirms the notion that wives have been purchased. This idea leads some deceased's relatives to mistreat child-widows.

Thirdly, the issue of *mahari* becomes an obstacle to the rights of widows to give opinions during the inheritance process. Child-widows are not allowed to participate in the negotiations that take place among family members concerning their leviratic marriage as there is a conviction that *mahari* eroded their authority. Thus, child-widows are not allowed to have a say in some of the most fundamental issues affecting their lives.

Polygamy

A number of girls, (as discussed in Chapter 4), are forced to enter into polygamous marriages. Traditionally, in the researched areas a married woman has a high status regardless of whether she is in a monogamous or polygamous marriage. One consequence is that Maasai senior wives have wide powers and authority over junior wives; hence, they condone the practice. The junior wives also provide considerable support in terms of housework.¹⁹⁵ However, it has been argued that polygamy exacerbates the impoverishment of women by limiting their access to

¹⁹³ Returnability is linked to their use (it goes to the bride's male kin as a circulating pool; see Chapter 3) and hence to their size (amount or quantity) and content (livestock, cash or other goods). The refusal to be inherited means payments usually have to be repaid; since repayment would disrupt the economy of the woman's natal household, she is often persuaded to rejoin her husband or enter into a new marriage (Goody 1973).

¹⁹⁴ Some widows agree to be inherited out of fear that their family of origin will be required to refund the *mahari*; the obligation to refund the *mahari* is inherited by the next generation, as decided in *Mugesu Nyitonyi v. Mangazeni Ndege* (1977). High returnable payments of *mahari* lead to pressure on a woman to be inherited.

¹⁹⁵ Interviews conducted with senior wives at Sokoine village 13-7-2003.

financial resources during marriage and upon divorce, or on the death of a husband.¹⁹⁶

In Shinyanga and Tarime, most senior wives complained about the attitude of their husbands in neglecting them when they marry young wives. However, the picture of a caring husband does not last long; sometimes it takes months or a few years before a child-wife begins dancing to the same tune of harassment as the senior wife has already done. However, favouring one wife over another can create hatred among the co-wives and more problems are created when a man dies. This is well demonstrated in Robi's case.

She was married off to an old man at the age of 14. She was an orphan; her brother decided to make an arranged marriage so that he could acquire some cows, as the family was living in a very poor situation. Her husband owned many cows and some acres of land. She narrated that during her married life each wife owned personal domestic utensils in the small household. She did daily house chores and on some days worked in the field. She stayed with her husband for about two years and had a baby-boy. [One cow was given for the purpose of feeding milk to the baby]. Her husband was not a violent person; however, there was much conflict between her and her stepsons, who did not approve of her inclusion in the family. It also seemed that she was the most loved wife. The mistreatment started immediately following the death of her husband. She was discriminated against in food provision and her baby was not supplied with milk, which until then he had drunk every day.¹⁹⁷ The stepsons started harassing her and threatened to kill her if she continued staying at the matrimonial home. Robi sadly narrated her story:

After the death of my husband the threats continued and there was no help from clan members. I expected some support from the senior widow, but she teamed up with my stepsons. My baby was also too ill and looked awful; the child and I had insufficient

¹⁹⁶ Polygamous marriage contravenes a woman's right to equality with a man, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited (CEDAW; Thirteen session, 1992).

¹⁹⁷ Women who served food were related to the senior wife.

food but no one bothered. My maternal aunt was the only comfort in the neighbourhood. I complained to her about my troubles. She was the one who advised me to come to Tarime town to look for a job. I thank my employer who is helping me to stay with my baby. However, I am in a confused state as my child is still too ill and I am supposed to work. It is very difficult, as I have not yet received my salary to take him to hospital. I suffer emotionally every day when I look at him.

Thus, polygamy has a detrimental effect on child-widows and their children. When a man has more than one wife, he can have a very large number of children in a short period. Conflict often erupts among families because of the large number of children having to leave in order to reduce competition for resources. This is well illustrated in Robi's case; her stepsons were older than she was and chased her and her baby away from the matrimonial home. The stepsons grabbed all her domestic utensils; she left the matrimonial house with only a few items of clothing. The senior widow condoned the stepsons' actions and remained in her household without any harassment from them.¹⁹⁸ It was Robi's aunt who came to her rescue and brought her to Tarime town to look for domestic work.

According to customary law, Robi was supposed to stay at the matrimonial home and continue with her normal life, using the field to cultivate and harvest, and to be supported by the heirs. Her immaturity and gender, as well as her situation in a polygamous marriage, are contributing factors that place her in a profound vulnerable situation.

On the other hand, Robi's story illustrates the role of a woman's natal relatives. In this case, her maternal aunt was very supportive in helping the child-widow to look for an alternative life. This supports Bledsoe's (1980: 184) argument that a close relationship with strong elements of solidarity and reliability is said to exist between a woman and her natal family. It can be assumed that the close relationship of Robi and her aunt contributed positively to Robi's limited ability to create space for herself away from her abusive stepsons and a jealous co-wife. It is

¹⁹⁸ The other co-wife (the stepson's mother) also died a few months before she was married.

unfortunate that the space she has created in becoming a domestic servant is not fruitful; she has many limitations, such as a lack of education, the sick baby, her immaturity, and the child widowhood stigma. Robi faces a vicious circle of privation.

Moreover, a number of husbands have manipulated the polygyny situation and hence exploited the widows. Naikuso and Amina had 3 other co-widows; the inheritor had two wives, making a total of 7 women under one husband. Although they experienced harassments, they were in competition to impress the husband who, in the meantime, manipulated the situation by selling the widows' cattle for his personal spending. Polygyny, therefore, reinforces stereotypes of male dominance and female submissiveness in some families and so perpetuates the harassment of widows.

Witchcraft

The belief in witchcraft can exacerbate the already existing discrimination against widows. Many widows claim their in-laws accuse them of causing the deaths of their husband (Owen 1996; Reggy-Mamo 1996; Mhoja 1997). This phenomenon is fuelled by the pervasive belief that a widow is an outsider with questionable loyalties; this is currently compounded by misunderstandings surrounding HIV/AIDS. Whatever the cause, accusations of witchcraft have a grave impact on child-widows' lives. It may lead to a widow being expelled from her home, and the loss of her right to any property she may stand to inherit or use.

The belief in witchcraft is very common in Shinyanga villages and some Tarime areas. The two child-widows identified in Uzogore (Shinyanga) were accused of bewitching their husbands. This is illustrated by Sundi's, (17), case from Ikulilo village; her in-laws neglected her as they thought she had bewitched their son. It was a depressing situation, as were her encounters with her in-laws. Indeed, some

child-widows are afraid of being accused of witchcraft and so are not willing to pursue their claims to property.

Sundi was not alone in her predicament; another graphic example is Pili's case (Tarime). Her sister-in-law and mother-in-law thought that she was practising witchcraft and so demolished her hut. After staying in a leviratic marriage for about three years, she was stripped of all her husband's property and a variety of allegations were levelled against her. Similarly, Robi (Tarime) was also accused of being a witch while her husband was bedridden. Her co-wife and stepsons combined to harass the child-widow. She lamented: 'The stepsons were shouting, using abusive language, accusing me of being a witch and telling me to leave the compound; the pain was terrible.'

As illustrated in this section, an accusation of witchcraft has a grievous impact on child-widows' lives. It may lead to a widow's ejection from her home, and the total loss of her property rights. Child-widows face both the trauma of losing a husband and the stigma of being labelled as a witch.

Widowhood Rites

The death of a husband lays a widow open to a variety of arduous and dehumanising rites of varying intensity, depending on the ethnic group's customs. However, a major similarity is the way the rituals tend to be gendered, with widows having obligations to observe these rituals, rather than widowers (Owen 1996).

Again, in relation to the Rules which debar widows from inheriting land, it is true to say that while a child-widow is mourning the death of her husband, she is, similarly, mourning the dehumanising and degrading treatments that await her. The right to benefit from the deceased person's estate is also significantly

influenced by the beneficiary's observation of certain cultural mourning rituals and ceremonies, particularly by the widow. Otherwise, the widow may be accused of bewitching the deceased and is thus very happy with what has occurred; this could be a source of potential conflict and could create hatred from the deceased's relatives and so she may lose her rights. Sometimes there are sanctions that are enforced in order to ensure her compliance. Mourning rituals are common in most African countries (Dow and Kidd 1994; Ncube and Stewart 1995; Owen 1996).

Mourning rituals include the tradition of requiring widows to refrain from washing their body for several months which is obviously unhygienic; they must dress in specific ways; their hair is totally shaved from their head; they must stay in solitary confinement and are restricted to certain types of food. Widows are expected to look unattractive, dirty and unkempt. Some of these customs could cause health hazards. All widows interviewed were told to dress in specific ways, such as by wearing black clothes or by covering themselves with *kanga*,¹⁹⁹ however, all were socialised to accept that widows had to dress differently, hence they said it was acceptable.

The major problem that widows complained of was sexual 'widow cleansing,' as it could cause an unwanted pregnancy or could even infect them with HIV/AIDS. Among 25 child-widows interviewed, 6 (25%), experienced a form of '**widow cleansing**'.

In Coastal and Lake zones, especially within the Kerewe, Maasai and Luo, there is much emphasis placed on widows' sexual cleansing. According to the Kerewe, sexual cleansing is usually linked to freeing the widow of the deceased's spirit and ensuring a peaceful repose of the spirit. As observed by Mbiti (1969), most Africans believe that death does not separate the living from the dead (Dow and Kidd 1994; Ncube and Stewart 1995; Owen 1996). The case of sexual cleansing is

¹⁹⁹ This is a printed piece of cloth used as a wrap.

well illustrated by the stories of Salome²⁰⁰ and Nanoi. Shockingly, Salome, (16), (Tarime), said that she was forced to have sex with a stranger who was a strongly built man, dirty and smelly: 'I cried and have never felt so humiliated in my life!' she exclaimed.

Similarly, Elisi²⁰¹ a health worker, explained the lifestyle of a child-widow at Kambara village, (Mvomero), after she was inherited.

Nanoi was about 13 years old. She was married at the age of 10. After the death of her husband, the child-widow went through a widow cleansing ritual; she had sex with one of her brothers-in-law to cleanse the bad spirit caused by the death of the deceased. She had no rights to any of the property left by her husband although the deceased had owned a number of cattle. She was not given the opportunity to choose if she wanted to be inherited or not. She had no voice within that family. She is required to follow instructions without question. If she fails to do any household chores, she is battered. She is governed by the head of the family and is under the authority of the senior wife. She makes no decisions on household matters.

Child-widows, as children, have a limited capability to express and defend themselves. Both Salome, 16, and Nanoi, 13, were forced to have sex against their will; this is rape, but those communities do not see it in that way.

In addition, child-widows within the Maasai, and occasionally within the Kurya, face another unhealthy custom; any brother-in-law can have sex with a widow. Although they say that a widow should agree to this practice, it is difficult for a child-widow to resist. Normally a brother-in-law would visit a widow on a day when her levirate husband was with another wife. That would normally be at night when most of the Maasai women do not wear underpants. According to Elisi, who had been working with these women for a long time, this was very offensive to them, especially to the child-widows, as brothers would exchange nights to spend time with these young girls. Thus, child-widows find themselves vulnerable to rape by the deceased's male relatives. Amina said, 'You cannot dare to disagree if a

²⁰⁰ Salome is a Kurya girl who had been married to a Kerewe in Tarime.

²⁰¹ Interviewed on 8/3/04.

brother-in-law suggests sex. You could be assaulted and no one would support you, as brothers-in-law are potential husbands’.

Widow cleansing is important to those groups who practice it in support of their belief in chasing away aggrieved spirits. Given the embedded customary norms, their immaturity and the poverty that surrounds most child-widows, as well as the lack of education that could potentially empower them to think critically, creatively and act, they have, in fact, no voice in this matter.

HIV/AIDS

The HIV/AIDS epidemic in Tanzania has added to the many existing problems for widows. Factors such as poverty, unemployment, immaturity and poor access to education, health services and information, make girls more vulnerable to infection than men (IFAD 2002).

Widows are not only more vulnerable to infections; they are also the targets of harassment. The family of the deceased husband may hold the widow responsible for his death, and retaliate by taking her property or evicting her from the matrimonial home, as evidenced by the case of Sundi (in Shinyanga); she was neglected by her in-laws because they thought she was a witch and that she had an HIV/AIDS-related disease. She was thin, weak and looked ill. A good Samaritan in her village gave her a small hut (which had been constructed for a *shamba* guard). From her narration, she was very sick when her husband died and she had limited support from her parents. She had voluntarily entered into marriage and now she had an unknown disease. She started to live alone with her baby and was working to earn some money for basic necessities. The ‘peer advocacy officer’ said people in that village are still not very sensitised to HIV/AIDS.

Similarly, Kunese was harassed and evicted from the matrimonial house because her husband had died of an HIV/AIDS-related disease. The deceased’s brother

thought she was not going to live for much longer, hence she was thought unworthy to remain within the property.

The results of the present empirical study are in agreement with Mhoja's (1997) and Mukoyogo's (2000) findings in Tanzania, whereby, following the death of a husband, the deceased husband's relatives who believe that the widow is responsible for the death and who therefore can no longer tolerate living with her, often seriously harass her. This belief may be rooted in superstitions that the widow had bewitched the deceased, or on the stigmatisation of HIV/AIDS. If it was thought that she had contracted the disease, this could lead to harassment and property grabbing.

In contrast, there are some isolated families who are either sensitive, or are staunch believers in human rights or in their religions, who follow the custom of caring for widows, as per the customary law. This is demonstrated in Suzana's (18) case²⁰² where the clan *baraza* decided that she should remain in her matrimonial house and rent two rooms there in order to maintain her basic necessities. Unfortunately, Suzana had been feeling weak, as her old husband had died of HIV/AIDS. This was an atypical case as regards young widows, but a few similar incidences were narrated in cases of adult widows. Some neighbours feel that this attitude could have stemmed from the deceased relatives' staunch belief in Christianity.

This story illustrates the differing treatments of child-widows. It also depicts the ways in which different normative orders shape the relatives' attitudes and their actions. But it is true to say that most widows had been discriminated against and harassed because of the HIV/AIDS stigma, as Sundi's, Kobi's and Kunese's narratives discussed earlier demonstrate.

²⁰² She was married at 15 and her husband died when she was 17.

Property Grabbing

Another prevalent problem is property grabbing on the death of a husband. This is not the specific custom of any ethnic group in Tanzania but it is a 'corruption of customs'. The empirical study evidenced instances of property grabbing in Coastal and Lake Zones. This supports the findings of other scholars (Mukoyogo 1995; Rwebangira 1996; Mhoja 1997) and the Law Reform Commission (1995), who found instances of property grabbing in all the regions visited in Tanzania. Greedy and unjust relatives of the deceased grab properties immediately upon death.

Many child-widows have been mistreated; their property are grabbed and so they live in the 'inauspicious' state of child widowhood. In both Bhokena's (Tarime) and Kunese's (Shinyanga) cases, the deceased's relatives grabbed household items, including even the kitchen utensils and mattress on the pretext of safekeeping. Subsequently, the girls were ejected from the matrimonial home. Kunese's in-laws sold some of the matrimonial property and she moved to her father's mud hut (with a leaking grass roof) with her two children. Her in-laws neglected her and stopped any contact. Because of this, her life was horrible; she was an orphan and depended on begging from different neighbours for food.

Similarly, Bhokena's in-laws grabbed all her matrimonial property after she had refused to be inherited; she complained:

I remained empty handed. I moved into a hut that was in a terrible condition. Almost every day I found and killed snakes; the place for sleeping was on the floor. Most of the time I went to steal leftovers from my neighbours. I was stealing bananas from other people's farms to feed my 2 children; I was eating once per day. Some days I gave the food to my children and so I couldn't eat. They took all my property and made me depend on them. (She broke down in tears).

Kunese's and Bhokena's stories mirror the experiences of other child-widows who have had similar inadequate support. They had been forced into severe poverty and to a change in their behaviour, such as begging or stealing from neighbours. Child-widows and their children suffer malnutrition and lack proper health care.

Significantly, the protection of property rights is important to a family's well being, because widows who retain their property can continue to plant food, keep livestock and feed their children (Hunter et al 1997). Carrying out these activities is still a big task for a child-widow but at least they can reduce the burden. These child-widows have no education or training to provide the means to support themselves in a rapidly changing socio-economic environment (Owen 1996).

Shockingly, the grabbing phenomenon can be accompanied by verbal abuse and even physical violence, especially if a child-widow or her support network show any kind of resistance. This may occur during the process of administration or even before a husband dies, if death seems imminent.²⁰³ Robi, a child-widow in Tarime, desolately explained:

My problems actually started even before the death of my husband. He had tuberculosis and was too ill for several months. My stepsons started harassing and insulting me as 'a little prostitute who fancied old men'; they shouted at me that I must leave the place as soon as my husband had died. I was very shocked, as I had nowhere to go. Yet I hoped that my husband would recover from the illness.

Robi's power to demand her property rights was virtually non-existent; she had no powers of negotiation, not even for her personal belongings. Her immaturity and gender contributed to forcing her into a doubly vulnerable situation.

Property grabbing causes child-widows to lose property that is rightfully theirs. Customary law excludes widows from inheriting and that is exacerbated by the discriminatory habit of the grabbing of widows' property. This subsequently contributes to the exploitation of child-widows' rights, particularly the right to inherit property.

Though most of the incidences of property grabbing, are in fact, theft, police have been reluctant to intervene (Mhoja 1997). The administrators of estates, who are often men, defend themselves on the pretext of safekeeping the properties, as in the

²⁰³ Interview with the Nyamwanga Primary magistrate on 23-8-03.

case of Kunese. Again, Rule 5 empowers male relatives and excludes widows from being administrators of the estates. Additionally, the public-versus-private distinction is used as a cover to prevent police involvement in such situations. This threatens lives and the welfare of child-widows (Bunch 1995).

Additionally, the plurality of laws, cultures and beliefs are configured and, in many instances, were held as detrimental to child-widows because of their immaturity and limited ability to negotiate and to confront the discourse. Tatu, of Shinyanga, was not given any property because she had had a customary marriage and the administration of the estate was conducted under Islamic law. Thus, the application of Islamic law also has pernicious effects on the welfare of child-widows who have contracted customary marriages. If the marriage had been contracted under Islamic law, the child-widow would at least have received one-eighth of the estate, as she had a child. Tatu was totally disinherited as she was regarded as a concubine. As a result, she was deprived of property and a place to live. Like other child-widows, she was unable to gain economic independence, and so entered a cycle of poverty, dependence and subordination.

Further, it is problematic that particular roles prevent women themselves from addressing this injustice. As widows, they condemn the customary practices; however, in their roles as sister or mother-in-law they support the practices, as in the case of Pili. Thus, some women are upholders of patriarchal norms by helping to maintain discriminatory practices that subordinate them. Significantly, Pili's female in-laws were victims of a 'divide and conquer' strategy that caused them to participate in their own denigration, as they were also potential widows.

However, a variation was noted within the Maasai ethnicity on the kind of property that in-laws usually seize. Amina's and Naikuso's levirate husband had been squandering the child-widows' cows by systematically selling them; the cows were given as gifts during their weddings. However, as they had succumbed to

wife inheritance, the women retained their few household items and had the right to sell milk and retain the money. In a few instances, a leviratic husband could demand this money. However, Amina and Naikuso had no authority over the use of their cattle; their major complaint was based on their husband's intention to sell the cows for his personal use so that he could drink alcohol. They fear that when their children grow up, the cattle *kraal* will be empty and that they will be very poor.

Out of 8 child-widows in Mvomero, 6 (75%), narrated similar stories of their cattle being squandered. Two complained angrily that their husbands were selling cattle and womanising and wasting money on Swahili women in Morogoro town. Only 2 (25%), child-widows made no complaint about the squandering of cattle. They were entitled to the homes of their husbands for the rest of their lives and to being custodians of a share of the inheritance of their sons, at least until the sons took over their property. However, they had been experiencing other violations, such as wife battering, overwork, harassment and being treated in an abysmal manner. It is worth noting that although widows have limited access to rights under the customary law, in reality child-widows within patrilineal societies are treated differently, even within the same ethnic groups, (as evidenced by the above stories.)

From Female-Husbands: Unidentified Child-widows

Ironically, in many instances when I enquired about child-widows in Nyamwanga village, (Tarime), the names of widows originating from *nyumba-ntobu* were among the list. The community viewed them as widows and they believed themselves to be widows and complained bitterly about their vulnerable situation.

The widow has to have a son to remain in the deceased female-husband's homestead so as to raise her son who bears the name of the female-husband. This is well exemplified in Watiro's and Lina's cases. Lina, (17), had one boy-child and

she remained in the homestead but the female-husband's widower occasionally wanted to rape her, claiming that he had the right to do so as he had paid the *mahari*. She had been living in fear for her safety.

According to Watiro, she was taken by a female-husband, when she was aged 13. The female-husband died when she was pregnant; Watiro gave birth to a baby boy via a major caesarean operation. She suffered severely as there was no responsible person to care for her. Sometimes she had no food to eat; she was still not fully healed from the operation but had been surviving on the proceeds of a small business. However, she was afraid to leave the deceased's mother, believing that the spirit of the deceased would haunt her.

Legally, Watiro and Lina are not recognised as widows; but a number of such *nyumba-ntobu* widows do exist in Tarime and according to Kurya customs they are recognised as being widows. However, they had been enduring added suffering, as the law does not accept the custom that qualifies them as being married. There is also mixed public opinion on the *nyumba-ntobu* custom, as some people view it as unacceptable and accord it derogatory terms such as 'backward'. However, these child-widows are victims of circumstance as the law fails to address their real life experiences.

Unfortunately, there is no proper structure in place to maintain these widows. The empirical study evidenced unsympathetic aftermaths of these widows; much depended on the families; if the female-husband was a married woman, the widow could remain at that homestead. However, some, widowers later sexually harassed the *nyumba-ntobu* widows.

Significantly, discriminating against widows²⁰⁴ from inheriting, so that they could only be maintained by their sons, has contributed to the continuity of *nyumba-*

²⁰⁴ Inheritance procedures tended to complicate the rights of sonless widows.

ntobu. It is not the intention of this thesis to critically analyse the *nyumba-ntobu* practice, but the findings indicate that a detailed research on the matter is needed.

CONFIGURED HUMAN RIGHTS' CONSEQUENCES

As the result of the discriminatory Rules and customs, child-widows sustain psychological and physical harm; economic impoverishment and a lack of education after a husband's death, all of which deprive them of their basic human rights. Tanzania has an obligation based on international law to guarantee equality to child-widows in all aspects of life; and, to eliminate laws and cultural practices that act as legal barriers to that equality (African Women's Protocol: Article 5).

Economic Impoverishment

Although the Rules at least provide that widows should be cared for, most child-widows, including Robi, Tatu and Pili had been impoverished and had no economic power to move on with their normal lives; they endured property deprivation. Economically, they suffered as a result of continuing discrimination. Notwithstanding their minor contribution to their deceased husband's estates, they were left homeless and destitute. All child-widows interviewed had been facing a degree of impoverishment that led them to feel more vulnerable and to experience an inadequate standard of living.²⁰⁵

As noted, even where child-widows do stand to inherit some moveable property, they were often subjected to property grabbing by relatives or administrators. Furthermore, impoverishment affects the living standards of both child-widows

²⁰⁵ As Moser et al (2001) postulated, vulnerability is closely linked to asset ownership. The means of resistance are the assets and entitlements that individuals or households can mobilise and manage in the face of hardship. The more assets people have, the less vulnerable they are. As portrayed in Bhookena's case, she became more vulnerable when all her matrimonial assets were confiscated.

and their children and subsequently deprives them of medical services, food and clothing.²⁰⁶

Very importantly, the CEDAW committee, disturbed by the regular disinheritance of women remarked that any law or custom that grants men a right to a greater share of property on the death of a relative, is discriminatory and will have a serious impact on a woman's practical ability to support herself and her family and on her right to live in dignity as an independent person (CEDAW: Recommendation 21). The Committee recognised the link between property rights and living standards and stated that the right to own, manage, enjoy and dispose of property in many countries is critical to a woman's ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.

At national level, the discriminatory Rules and customs is one of the factors that hinders the eradication of poverty and forces a great number of women, including child-widows, into penury. The Government should take note of this factor. Consequently, at local level, the deprivation of the right to inherited property is revealed to contribute to other problems, such as prostitution (Swantz 1985; Mhoja 1997) and to the continuation of practices such as *nyumba-ntobu* in Tarime. The Government has generally neglected the problem of property grabbing but the consequences of impoverishment and the risk of violence, discussed below, show why such neglect can no longer be justified.

Risk of Violence

Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights ...In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture (Beijing Declaration and Platform for Action, Paragraph 112).

²⁰⁶Indeed, every child-widow has the right to a standard of living adequate for the health and well-being of herself and her family, including the supply of food, clothing and housing; she should have the right to security in the event of widowhood (UDHR: Article 25).

Psychological Abuse and Other Forms of Violence

My analysis on psychological abuse starts with the narration of my friend, Jamila.²⁰⁷ During our informal discussion, I enquired about the whereabouts of her young cousin and if she had joined a secondary school. She sadly responded: 'She got married through an arranged marriage, despite the fact that she wanted to continue with her schooling'. She further lamented: 'The husband died after only a year of their marriage, and then the child-widow became very sick and after some time she also died!' It was following the man's death that it became apparent that he was HIV positive. Thus, the failure to give girls a voice may lead them into unsatisfactory marriages, and, then, ultimately, to their own sad demise.

Child-widows interviewed spoke of the different forms of maltreatment they suffered in their daily lives. Apart from bereavement, isolation, ostracism and loneliness, child-widows also suffer other forms of violence. Some are overt, while others are covert, such as physical battering, sexual abuse, verbal tirades (attacks on personal dignity), food/sleep deprivation and emotional abuse.²⁰⁸ Notably, the empirical study evidenced that Robi wanted to stay at the matrimonial home when her husband died, because she had no place to go. Her stepsons threatened to kill her and chased her away. The customary law was manipulated in this scenario as her right to stay with her child in the matrimonial home without being inherited, as per Rule 66, was violated, but she did not know enough about the laws or institutions to report the matter. Even when she was informed about primary courts; she did not have the confidence to report the problem to the court. In any event her Aunt said it would be a waste of time to go there as there is so much

²⁰⁷ Jamila is a businesswoman who comes from Shinyanga.

²⁰⁸ Their exploitation as domestic servants sometimes caused them physical violence as they were beaten by their employers (see Chapter 4 on child-wives, similar violence faces child-widows as domestic servants).

corruption. Robi, Sundi and Pili were accused of being witches. Indeed, all verbal and other actions they faced caused trauma and emotional violence.

As has been demonstrated, a child-widow sometimes encounters implicit trauma in organised widowhood rites; for example, sexual abuse during widow cleansing gives rise to emotional and psychological abuse. Also, she is subjected to emotional and psychological abuse which is inflicted to ensure that the widow remains ensnared and does not reveal to anyone what is happening, (given the seriousness of the taboo). Child-widows have given many accounts of the psychological pressures they endured after being subjected to sexual abuse within a ritualistic context. Some widowhood rituals are primarily mentally injurious to child-widows.

Widow cleansing and related customs are clear examples of shameful child abuse and a flagrant violation of human rights that child-widows because of their immaturity and the strong attachment to tradition,²⁰⁹ are not able to negotiate against.

Indeed, violence against child-widows can be said to have a political dimension, in that it arguably serves as a form of social control by reinforcing their subjugation (Roth 1994). Articles 2 and 3 of CEDAW require, in essence, that whatever efforts a State makes, it must therefore, proceed in a non-discriminatory way. Under the soft law, the World Conference on Human Rights in 1993 expanded the scope of the international programme on human rights, emphasising that gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice, are incompatible with the dignity and worth of the human person, and, therefore, must be eliminated.

²⁰⁹ The child-widow's submissiveness and silence makes her an easy target, whilst the dominant patriarchal structure also makes sexual exploitation much easier to achieve.

Risk of HIV/AIDS

Some of the social reasons for the links between HIV and child widowhood are the widowhood rites based on gender inequalities. Practices of polygamy, widow cleansing, wife substitution and widow-inheritance expose them to the risk of HIV/AIDS. These customary norms put limits on the equality of women with men. This is a double tragedy for child-widows, because the children are poor and powerless in this particular pecking order.

Wife substitution is a practice common in Tarime, especially among the Luo, yet the practice is diminishing.²¹⁰ However, because of intermarriage with some Kurya, the empirical study evidenced isolated instances where cases of girls of mixed ethnicity were substituted, as exemplified by the case of Joyce (17). She was given as a substitute after her sister had died in Tarime. A number of people knew that her sister had died from HIV, but her relatives believed that she was bewitched because her husband was rich. The man was a polygamist and the young girl was substituted as a third wife. The man lived for few months then died, leaving three widows, including Joyce. She had not tested for HIV, but she had an AIDS-related complex.

Coercive sex acts are often part of violence and may expose a child-widow to HIV; widows are raped under the veil of traditional norms, such as the practice of 'widow cleansing'. Accordingly, Dr. Brundtland, Director-General of WHO, said, 'violence against women is an important contributor to HIV spread. We will not achieve progress against HIV until women gain control of their sexuality' (Vanessa 2004). Indeed, during child-widowhood such a culture has proved to be a condemning instrument. It has acted against these female children as people. The only reason that Pili, at the age of 13, was inherited was because her culture called for it; she did

²¹⁰ The practice was common within Sukuma in the 19th Century, but no such case was found during the fieldwork.

not want to be inherited, but she was forced into it. Pili obeyed the call of culture, and this obedience led to her abuse.

Joyce was also called by culture to be a substitute wife in place of her sister, in order to take care of her sister's children; this obedience led to her contracting HIV/AIDS. However, despite her unwillingness, she accepted the sharing of a man with her sister because the culture called for it. A decision by Joyce not to be married to her brother-in-law could have been a 'lifesaver' for her. However, her parents forced her to marry her sister's husband. This was done because it was the correct thing culturally; the result of such obedience was that she contracted HIV/AIDS.

Another factor is that, customary norms rob child-widows of their right to health by depriving them of their only means of support, by interfering with their standard of living, and by forcing them into abusive and dangerous situations. In addition, degrading and harmful mourning rites can further damage child-widows' health, especially their reproductive and sexual health. In the context of HIV/AIDS, some practices pose the gravest health risks for child-widows and their children. For instance, the prevalence of widow-inheritance in the Kurya and Maasai put child-widows at great risk, as they have no say in the matter. Increasingly, the ACWRC provides for the right of everyone to enjoy the highest attainable standard of physical and mental health (Article 14(1)). Besides its traditional positive purposes, it is a critical time for it to take into consideration the risks involved through the scourge of HIV/AIDS. This practice is not only a risk to widows, but also to potential inheritors (Mukoyogo 2000).

In the light of those problems, UN member States, in the 2001 UN Declaration of Commitment on HIV/AIDS, agreed that by 2005 they would implement national strategies that would empower women to make decisions relating to their sexuality, and to ensure women's access to HIV prevention, AIDS care and related

services, including those related to sexual and reproductive health. The widowhood rites condoned by the Government through the Rules or clan *baraza* are contrary to the said Commitment.²¹¹ Sexual violence directly conflicts with universal standards on the right to integrity of the body. These are infringements on the human rights of these child-widows, contrary to Articles 5 (a) of CEDAW and 21(1) of the ACRWC, which attempt to eliminate harmful practices. Fortunately, the fear of HIV/AIDS has caused the custom of widow-inheritance to be less attractive to some relatives. In Robi's case in Tarime, there was speculation that Robi's husband had died from HIV/AIDS and that was the main reason why no brother-in-law wanted to inherit her. Unfortunately, it is still practised in most Kurya and Maasai communities; often, child-widows' reproductive rights are jeopardised.

Diminishing Opportunity for Education

The right to education is a basic human right (ACRWC Art. 11; CEDAW Art. 10); it also constitutes one of the main basic rights in international law.²¹² This right is specific to the child because of its special importance with regard to the growth of the child into eventual responsible adulthood (Kijo-Bisimba 1995). Education is said to be a consumption good and an investment in the process of human development. Education changes people from being the 'subject' of natural events affecting human history to 'subjects' who create and mould their own history (Mbwani 1990). Lack of education in childhood e.g. in early marriage (Chapter 4) means that child-widows are often unable to support themselves or the children they might have (Owen 1996:133). Child-widows have been denied the chance to attend school and enjoy life as do other children of their age. They are becoming

²¹¹ Challenging negative gender roles is critical to the global AIDS response. The UNGASS Declaration of Commitment on HIV/AIDS (2001 resolution 55/13) recognised that gender inequality is fuelling the epidemic. In the Declaration, governments (including Tanzania) pledged to create multisectoral strategies to reduce girls' and women's vulnerabilities. Articles 61-62 specifically state that their aim is to eliminate discrimination against women, including violence against women, harmful traditional practices and sexual exploitation. Young people's reproductive and sexual health education is a key strategy of the 2001 Commitment. Tanzania has a campaign of educating young people on HIV/AIDS; however, the strategies exclude child-wives and child-widows, who have no access to school and who are living in remote areas.

²¹² Article 17(1) of the African Charter, Articles 26 and 13 of the UDHR and the ICESR, guarantee every individual the right to education.

mothers and widows and are controlled by traditions such as the 'wife of the grave', while their colleagues are still considered to be babies by their parents.

Their rights to education were violated when their parents decided not to register them at school or allowed them to drop out and opt for early marriage. This situation of dependency leaves child-widows vulnerable to exploitation in any envisaged new relationship, because they have no experience of how to live more independently. They are less able to draw attention to violations of their inheritance rights because they are disenfranchised and may lack the verbal skills or necessary contacts to make their protests heard (Bueren 1995:xx). During clan meetings they were often silent as there are no established accessible and effective channels of communication for children (ibid). Lack of education often exacerbates the situation.

The Ministry of Education is charged with the responsibility of providing education for all, from primary to secondary education level.²¹³ As such, child-widows fall within its scope of functions. There is no particular Directorate within the Ministry to cater for children per se. Nevertheless, the Ministry has Directorates such as the Directorate of Primary Education, which is charged with the function of implementing the right to education. The National Education Act, 1978, presupposes that the government shall provide schools and teachers for the education of Tanzanian children. It is therefore the duty of the government to provide all children with a relevant education. It further provides that it is the responsibility of the Minister for Education to promote the education of the people and the progressive development of institutions devoted to that purpose (section

²¹³ Indeed, universal access to education is essential for national development, and has been entrenched in the goals of the 1990 Education for All Declaration and the 2000 Millennium Declaration. Both include a call for universal primary education by 2015 (United Nations, 2001). However, attaining this goal is under threat. The UN Educational, Scientific and Cultural Organisation (UNESCO) estimates that 55 of the world's poorest nations are unlikely to reach universal primary enrolment by 2015 (UNESCO 2002). There is a provision for the development of different forms of secondary and vocational education. These should also be made available and accessible to every child. The offer of financial assistance in cases of need for child-widows should be actively encouraged.

4(1)). Section 35 proclaims that it shall be compulsory for every child who attains the age of seven years, but who has not yet attained the age of 13 years, to be enrolled in primary education. Parents are assigned the duty of ensuring that the child regularly attends the primary school at which s/he is enrolled until s/he completes primary education.²¹⁴

However, the implementation of this Act, especially in rural areas, is in question, as a number of girls in the researched districts were victims of early marriage so they hadn't attended school at all, or were dropouts. This is caused by contradictions arising from the poor economic situation (Kuleana 1999) and by traditional practices, such as FGM or early marriage. Out of 25 child-widows, 12 (48%) had never seen the doors of a school; 4(16%) were dropouts; 9(36%) completed primary seven, but there was no encouragement to continue to secondary education or to pursue vocational studies because of poverty or the fallacy that the place of women was 'in the kitchen' (one, however, dropped out in form two because of a lack of school fees). Further, because of the Education system's weakness in implementation, which leads, in turn, to dropouts and early marriage, these failings later exclude child-widows who want to acquire a basic education.

It is important to particularise education to the child-widows, as it is an essential component in their growth. By excluding child-widows, the government violates Article 11 (3)(b) of the ACRWC, (similar to Article 13(2) of ICESCR), which provides access to education. It calls for state parties to take all appropriate measures to encourage the development of secondary education in its different forms and to progressively make it free and accessible to all. Tanzania is enjoined to make primary and secondary education accessible to every child, including child-widows. Further, it is supposed to take all appropriate measures (such as workable monitoring and

²¹⁴ The minister has published rules made under section 35(4) of the Act for the better implementation of the purposes of this section. Rule 4 makes it an offence for a parent or any other person who fails to take reasonable steps to ensure that a child is enrolled and to regularly attend school until the completion of primary education. A person found guilty of such an offence shall be liable on conviction to a fine or imprisonment, or both (G.N. 129: 179).

evaluation strategies from the village level) to encourage regular attendance at schools and to reduce the dropout rate of girls, as that is a contributory factor to early marriage and then to child-widowhood.

Unfortunately, the early marriage practice, which often causes school dropout and then leads to the eventual non-access to education of child-widows, also potentiates the state's failure to ensure equal access to education. Female children, because of their level of maturity, need the special care and assistance necessary for their total development into adulthood. Society has an obligation to satisfy the fundamental needs of female children and to provide assistance for the development of the child's personality, talents and abilities (Manyau 1997). UNICEF (2001a) now addresses child marriage as part of its broader approach to gender discrimination, which undermines the rights of women and children. UNICEF's Global Girls' Education Programme operates in more than 60 countries to ensure that girls have an equal opportunity in education, which is key in postponing marriage and for the overall development of girls.

Thus, the Tanzanian government is required to eliminate early marriage and to provide: equal access to education and to non-discrimination in the social services that support girls' reproductive and productive roles; equal responsibility with men in family life and care; access to women-centred programmes; equal legal representation; the integration of child-wives and child-widows in the development process; and the eradication of traditional practices that are harmful to child-widows.

Significantly, both ACRWC and CEDAW, stipulate that the education of a child shall be directed by a respect for human rights and fundamental freedoms. Specifically, the ACRWC stipulates that the education of a child shall be directed to: the development of the child's personality, talents and mental and physical abilities to their fullest potential; and to the preparation of the child for a

responsible life in a free society in the spirit of understanding, tolerance and friendship among all people.

However, Tanzania has a long way to go before it can be characterized by its curriculum and learning milieu with regard to these principles (Kuleana 1999). Nonetheless, the basic commitment to provide universal and free education for all should be extended to 'invisible' children, such as child-widows. Educational opportunity is fundamental to Tanzania's basic development and the effective functioning of its citizens, including child-widows. Child-widows are among excluded groups, which are part of society, but who often play important roles in communities and, therefore, have a right to an education which meets their specific needs. The system needs to adapt to the excluded. There should be no compromise in ensuring that the rights of all children to education are met and that the Government should honour the international instruments it ratified.

Conclusively, the purpose of the CEDAW is explicitly declared to be the 'elimination of all forms of discrimination against women,' an obligation the state specifically takes on when it ratifies the convention (CEDAW Article 2(f)).²¹⁵ Thus, Tanzania must eliminate all forms of discrimination against child-widows. By setting standards based on the equality of both men and women in exercising human rights, CEDAW and ACRWC, signify international and regional acceptance of principles designed to alter the imbalance of power relations between men and women, and to eliminate stereotypical attitudes prejudicial to women (Magoke-Mhoja 2005). This means that whatever their nature, the cultural values in the Rules must neither discriminate against widows, nor impair their enjoyment of human rights on an equal basis with men.

²¹⁵The right to equal protection of the law without sex discrimination is a human rights norm that extends to individuals at the regional level and around the world. For example, in *Ameruddy-Cziffra and other Mauritian Women v. Mauritius*, the U.N. Human Rights' Committee (1981) found a violation of Article 26 where Mauritian law permitted the spouses of Mauritian women to be deported more easily than the foreign spouses of Mauritian men, thus favouring Mauritian men over Mauritian women.

Because the Rules make distinctions that impair child-widows' rights in many ways, they constitute clear violations of both CEDAW and ACRWC. The complexities behind the violations of child-widows' rights provide the international human rights law with a great challenge - that of transforming the rhetoric into reality (Save the Children 2000).

Conclusion

It is contended that child widowhood is one of the worst repercussions of early marriage and various voices of child-widows demonstrate the situation. Multiple configured factors such as *mahari*, witchcraft, polygamy, widowhood rites, property grabbing and the stigma of HIV/AIDS contribute to the exploitation of child-widows' rights, particularly their right to inherit property. Widow cleansing and related customs are clear examples of shameful child abuse and a flagrant violation of human rights that child-widows are not able to negotiate against, because of their immaturity and the strong attachment to tradition.

The experiences of child-widows range from disinheritance and forceful deprivation of property to the mandatory observance of deleterious rituals. More significantly, the life stories of child-widows illustrate that the dynamic is not simple, but complex. They are more disadvantaged both because of their gender and their age. Nonetheless, complicating factors such as widow inheritance are now being challenged in the light of changing socio-economic conditions and the scourge of HIV/AIDS. It should be said that, given the dynamic of customary norms to accommodate changing situations, there are favourable signs of increasing gender equality in local norms and practices, as will be expounded in Chapter 8.

CHAPTER EIGHT

OPPORTUNITIES AND OBSTACLES FACING CHILD-WIDOWS IN SEARCHING FOR JUSTICE THROUGH LOCAL NORMS AND PRACTICES

This Chapter explores the opportunities and obstacles facing child-widows in their search for justice. It identifies features for and against the favourable realisation of gender equality for child-widows through local norms²¹⁶ and practices. Indeed, exploring local norms and practices forms a vital part of the process of cultural transformation²¹⁷ and cross-cultural discourses suggested by scholars as being important for the legitimisation of human rights principles in all cultures (An-Na'im 1994; Nyamu-Musembi 2002).

This work is focused on out-of-court forums, as that is where girls have at least some access when searching for justice. In rural areas, in most African countries, however, one recourse is to the use of a community-based arrangement, which applies local norms (WLSA 1999; Nabudere 2000; Nyamu-Musembi 2002). The challenge facing my analysis on local norms is that in this era of globalisation, the world has become like a village, so that in most instances, national and international perspectives can easily influence the local norms. It is, thus, imprecise to explore the local norms and practices as if they were in isolation and insulated from the national or international context. 'These are seen as being inextricably linked with one another' (Merry 1997:45). However, in this chapter, 'local norms and practices' means:

²¹⁶ However, legal norms and institutions such as courts are not the exceptions in violating girl-children's rights. The difference between the formal and informal forums concerning the equal treatment of women should be seen as a matter of degree (Stevens 2000:2).

²¹⁷ The term 'cultural transformation' refers to 'the dynamics of change as internal process of societal adaptation by a variety of actors responding to a wide range of stimuli at different levels, rather than simply the product of internal hegemony or external imposition' (An-Na'im and Hammond 2002:13)

Intra-family, government institutions at local level and community-based processes for regulating interpersonal relationships, as represented in informal process for resolving family disputes. It is from these micro-level relations that abstract ideas of rights and justice are given meaning and content and translated into different outcomes for different people' (Nyamu-Musembi 2002:128).

Local norms and practices are central in facilitating or constraining people's abilities to claim or exercise whatever rights are available to them under local normative orders, national laws or international human rights' principles. The empirical studies conducted in Africa by scholars such as Griffiths (1997); Hellum (1999) and Nyamu (2000) revealed the importance of this focus on the household-level process by exploring the role of such local disputing processes in shaping gender relations in specific African contexts (ibid).

Further, the operation of local norms and practices in Tanzania may be described as being in a relationship of semi-autonomy within the larger social matrix of formal law as analysed by Moore (1978) (see Chapter 2). Although local norms and practices are far from being autonomous entities, 'they still demonstrate the symbiotic relationship between local and formal legal norms. Subsequently, they influence and complement each other and are also in tension with each other' (Nyamu-Musembi 2002:129).

This Chapter, however, focuses on only the forums used by child-widows. The most common forum is the '*baraza la ukoo*' (clan council). Typically, from the *baraza*, a dispute may also be reported to local government institutions, such as a village office or a social welfare office and occasionally may be filed in a primary court.²¹⁸ As already indicated the study also reveals that the child-widows' gender, age and immaturity operate to undermine their dealings with their relatives, in-laws and officials. Thus, an examination of power is crucial to the understanding of the available forums in order to determine whether they are accessible, affordable and appropriate in dispensing justice to child-widows.

²¹⁸ In some instances, disputes are reported to religious institutions or NGOs.

RECOURSE TO OUT-OF-COURT FORUMS: LOCAL FORUMS ACCESSED BY CHILD-WIDOWS

This section briefly discusses the local forums used by child-widows; it delineates the value system they reflect and their functioning. A summary of the institutions involved in articulating local norms in the Tanzania(n) context offers us a glance into the interrelationship among legal and customary, formal and informal, and local and national systems (Nyamu-Musembi 2002). The examples I use are from three institutions: the village office, the social welfare office and the clan *baraza*.

Village Government Offices²¹⁹

A Village Executive Officer (VEO) works under the direction of the district council in order to discharge his executive duties. The village office constitutes the lowest office of the administration machinery, which is coordinated under the auspices of the Minister of State in the President's Office of Regional Administration and Local Government.²²⁰ The VEO has a mandate to maintain law and order within a village. In most villages, however, there is lack of alternative formal systems for solving disputes, other than the *baraza*. Also, most Ward Tribunals are either inaccessible to village people or are simply inefficient (as explained in Chapter 4). As a result, the VEO normally resolves family disputes informally. The village office is a manifestation of formal law enforcement at the grassroots' level; in family matters, local norms interwoven with other normative norms are interpreted, depending on the exposure and cognitive level of the VEO. I observed

²¹⁹ Communities are divided into jurisdictions of different sizes that are overseen in ascending order. Within the village, there is an administrative set-up in place, led by 'ten-house' leaders, village leaders, ward counsellors and district executives.

²²⁰ Local Government Authorities are classified into two categories - Urban authorities and Rural Authorities, commonly known as District Councils; all Local Government Authorities are mandated to carry out two main functions of administration: law and order; and economic and development planning in their respective areas of jurisdiction.

(at Sokoine village in Mvomero and Uzogore village in Shinyanga districts) that these local administrators could also be traditional leaders. The VEO's involvement in 'social life at the grassroots level further collapses the official (formal) against the unofficial (informal) sphere, and the image of the latter as the only sphere in which custom is made' (Nyamu-Musembi 2002:131). In practice, clan elders always work closely with the VEO and rely on each other's support to boost their respective authority at the grassroots' level. Sometimes the officers are also leaders of clans or hail from the clans. At work, the VEO represents the government, while at home s/he is a kinsman (Moore 1986). Through VEO administration and interaction, and by mediating in intra-family matters, s/he participates in the making of custom.

Social Welfare Offices

The Ministry of Labour, Youth Development and Sports consists of four sectors, including the social welfare department. The department has three divisions; one deals with services for families, children's welfare and childcare centre. Almost every district has a social welfare office which caters for villages within the district. The department is specifically mandated to conduct reconciliation procedures for marriages in dispute. However, in some instances, social welfare offices have been solving family inheritance disputes. So, it is an alternative forum for realising gender equality.

A few child-widows submitted their problems to the social welfare institution, as the welfare institution had no mandate to deal generally with widowhood legal problems, apart from the welfare of families and children. So, the Morogoro and Shinyanga district welfare offices agreed to receive widows' cases. Then, it directed widows to lodge complaints to the court or informally advised them on the matter. Conversely, the Tarime district welfare office had conceptualised inheritance as a matter for families' welfare and had generally been giving advice and conducting reconciliations with widows before referring them to court. In

Tarime, the social welfare office instigated tangible new opportunities for excluded groups, such as child-widows, to file claims and participate in the whole negotiation process. The Tarime District Magistrate however, challenged that position as '*ultra vires*'.

Nonetheless, the Tarime office had been doing a commendable job in promoting widows' justice. This is a challenge to the government as to how they can mainstream the social welfare institution in assisting widows, as it is more popular, accessible and more appropriate for poorer women and girls. Although initially, some of the disputes were reported directly to the office, it was the *baraza* or religious/village leaders who usually handled them. The indication from people's views was that the welfare office is an intermediate institution, which deals with cases that have been unsatisfactorily handled at family level, before they proceed to court.

At the Tarime office, I checked through files covering the period from January 2001 to February 2004. However, I also thoroughly scrutinised the files from January 2003 to February 2004 because of the unavailability of most of the past files; a total of 150 files were studied. The proceedings at the welfare office are conducted, and its summary recorded, in Kiswahili. Of these, child-widows filed 4 cases; a *nyumba-ntobu* child-widow filed one. Disputes dealing with 'widow-inheritance' and property grabbing were commonly reported.

The procedures followed require that an aggrieved person who reports a dispute should clarify it, so that the officers are in a position to understand the matter. Since there are no files, a client is requested to buy an exercise book for use as a file. The officer dispatches a summons letter to the other party. Sixty percent (6) of the disputants involved in this study (child-wives and child-widows clients of the Tarime welfare office) expressed satisfaction with the available procedures. However, 40% (4) complained that the actual settlement of disputes often took an

unreasonable time. The welfare officers countered that the delay was generally caused by factors beyond their control; the accused person would often ignore a summons from the office, although several reminders may have been given.

As to whether or not enough opportunities are provided to individual disputants for self-explanation, all informants affirmed that they were given ample time to participate and narrate their stories and to question the other party for clarification of points. Some felt that sometimes there were interruptions caused by officers who insisted on certain points, to the extent that they constrained self-explanation and proper clarification of the facts of the case. The officer concerned with a case normally requests evidence from any other forum that had presided prior to a client submitting the matter to the office. Clan *baraza* members or VEO usually attend the summons from the social welfare office when there is an intra-family dispute. The format used for listening to both parties by clan elders or the VEO is through facilitating or mediation. The keeping of records contributes actively in the making of custom, adding an air of authority to it (Nyamu-Musembi 2002). The social welfare offices also serve as an enforcement mechanism, as people know they are government offices that take cases to court.

All the child-widows who filed their cases at the welfare office had the support of adults during the hearing sessions. However, general observation indicates that most respondents are adults or young people. One conclusion from this picture is that age is a factor that contributes to the limitation of numbers of child-widows who pursue disputes.

Furthermore, the gender and age of child-widows puts them in a vulnerable position when trying to negotiate their claims. Personal observation of social welfare sessions confirmed the limited power of negotiating possessed by girls, including child-widows. This was observed through the reconciliation procedure; it was noted that the procedure typically began with a short presentation of the

dispute as it was registered. This is done by the welfare officer and is followed by the complainant's presentation to clarify issues; facts are either confirmed or refuted, or new facts are presented, depending on the situation in each individual case. The interchange and counter-statements made by parties in disputes often provide an opportunity for the accused party to pose a question or complaint to the aggrieved party, if it is thought to be necessary. These questions are meant to help officers discover inconsistencies or deceptions underlying the statements. Both parties can bring in witnesses and they can be called to the offices to narrate what they know about the dispute. The witnesses are then asked to leave the room to allow the officer to mediate on the matter. The observed sessions revealed that decisions are normally based either on the statutory laws, customary law or/and human rights' norms, depending on the problem at hand.

Although the welfare offices had been trying to promote justice to children, I observed that there was inadequate staff to manage the affairs. In Tarime, a member of staff who was employed as a messenger had received in-house training and was conducting reconciliation without having proper qualifications. This has its consequences for clients, as they receive poor counselling and guidance services and, sometimes, biased traditional gender norms are applied. Instead of being agents for change within the societies, they promote the gender role instead. Moreover, there was no follow-up system to evaluate the sustainability of the life situation of girls after attending the social welfare office. Nonetheless, apart from these shortcomings, the welfare office had been trying to promote child-widows' rights and it is a vital forum for cultural transformations.

The Clan System

Generally, the *baraza* commands the respect of most people within clans. A clan may be defined as 'a sub-group or section of a larger ethnic community, whose members profess a common identity by virtue of a shared ancestry' (Nyamu-

Musembi 2002:129). The clan is viewed as the typical traditional institution with an old system of self-governance which had been adjudicating on family disputes for centuries. The composition of the *baraza* is based on the lineage system. In some villages it is a permanent institution, while in others it is formed every time a dispute occurs; usually, male clan elders²²¹ are members of the *baraza*. It has the authority to make conclusive statements on custom and to pronounce detailed rules for its members.

However, the *baraza* is primarily an avenue for solving local disputes through conciliation in accordance with local values. Decisions are normally the result of open discussion and are subjected to scrutiny in the *baraza*. The process of arriving at decisions involves 'general dialogue in which there may be disagreement expressed or unexpressed' (Moore 1986: 217). Usually, a senior male elder of the clan takes the role of a mediator or a conciliator. In all ethnic groups the overriding consideration had traditionally been the preservation of the family and the clan. As Moore (ibid) aptly states 'the appearance of acquiescence is part of the continuous testing of political alignments in a small social field'. A clan member must think of the future as s/he handles herself or himself and the obligations s/he has in the community or within intra-families. Good relations matter most, as there is no social security and extended families do offer support in celebrations and bereavement. Importantly, all possible methods are utilised to ensure harmony, even if this would seem to be at the expense of one party. Women, in most instances, are the most disadvantaged (Kijo-Bisimba 2000), as are child-widows, in particular, in this study. The clan as a force in shaping daily social interaction is felt more in the rural areas than in urban areas, especially when the clan intervenes in matters such as the division of property in inheritance disputes.

The empirical study illustrated vividly that the Kurya, Maasai and Sukuma ethnicities relied on the local informal institution of the *baraza*, as the role of the

²²¹ But they also incorporate middle-aged men who have time to attend to clan business.

clan is relatively strong, and people identify strongly with the clans they belong to. Nonetheless, their effectiveness and power vary, so that some clans are more tightly controlled than others; some people from cities report their family disputes to the *baraza* in their villages, rather than make a complaint to the court. In **Mvomero**, the Maasai communities have an Elder who is known as '*Laibon*,' the equivalent of a chief. This elder is also a traditional healer. His assistants are known as '*Laigwenan*', who are heads of age groupings (*rika*); they have the prestige of lineage seniority.²²² They hold councils at family, village, regional and national level, and the appeals lodged usually follow that hierarchal structure.

Conversely, the Kurya and Sukuma had no age related system of appeal, but alternative complaints systems did exist.²²³ Before the abolition of the chiefdoms by the Chiefs (Abolition of Offices – Consequential Provisions) Act, Cap 535, appeals were lodged to their chiefs. Chiefs commanded respect and obedience from their people in many ways (Mchome 2002).²²⁴ With changes in the economic and social structure of the society, the *baraza* institution has taken different forms in different clans. Some clans are separated, but even when only part of the family convenes, they regard it as a clan *baraza*.

In **Tarime**, at Mogabiri village, for example, an extensive interview was conducted with 'Abahili-mwisabi's (Mwisabi clan)²²⁵ secretary, who related that inheritance disputes were often adjudicated prior to members resorting to other forums. Customarily, the *baraza* initially adjudicate on inheritance disputes by helping aggrieved parties to reconcile. Some clans have been influenced by other current

²²² If a person in the age group erred, the age-mates would warn him. If the age-mates failed to deal with the problem, then elders from a higher age grouping would intervene, normally imposing a fine in the form of cows. A disobedient person was normally cursed (Kijo-Bisimba 2000).

²²³ Elders at Chamaguha-Ward Shinyanga (on 16-2-04) said that if the *baraza* failed to solve a dispute, the conflict could be reported to the *Ng'wanangwa's* (ruler) council. Kinship groups have lost the political role they had before colonialism, especially after chiefdoms were abolished. But, internally, the localised lineage remains an agency of social control and a settler of disputes in kinship daily life (Moore 1986).

²²⁴ This has caused a low level of legitimacy among the chiefs in Tanzania.

²²⁵ This is one of the permanent forms of *baraza*.

societies; it sometimes occurs that an individual's wealth or education or prominent standing in the public arena affects internal lineage procedures (Moore 1986). Some Abahili-mwisabi individuals have facilitated or influenced the *baraza*, so that a clan constitution has been drawn up.²²⁶ Traditionally, all procedures were conducted orally; there was no recording of minutes. In recent years, minutes have been taken and kept for reference. However, the only sanctions the *baraza* can impose are fines. I was given copies of some of the minutes and the constitution of the Abahili-mwisabi (See Appendix 12).

Significantly, the institution of *baraza* gained statutory recognition under the Rules, 1963, which designates the role of the *baraza*. Rule 5 (GN 436: First Schedule) specifically provides that the *baraza* has a duty to select the administrators of estates. Consequently, the *baraza* appoint a guardian of the deceased's minor children (Ibid: Rule 2) and inform him of his responsibilities. Additionally, the *baraza* should determine probate matters, but if a clan member is not satisfied, s/he can complain to the court (GN 279:Rule 39).

It is worth noting that in a study of the court files, almost all of the cases filed in court that dealt with the administration of estates were initially determined by the *baraza*. The courts recognise that a person who is present and fails to make a claim on the *baraza* day is virtually precluded from doing so later on (Local Courts Civil Appeal 1965).²²⁷ Significantly, it had been the practice of the courts to take into consideration the decision of the *baraza* when confirming an administrator, or when deciding on the distribution of properties.

It is unfortunate that a widow should have to present her problems outside the clan forum. Yet, in some instances there has been resistance to that norm. When child-widows can be supported, they stand a greater chance of being heard, and of establishing their claims in other forums. However, it depends on which forums

²²⁶ Similar changes are happening in some other clan *baraza*.

²²⁷ Reprinted in James and Fimbo (1973:345-48).

they present their disputes to, and on the applicable normative orders. In fact, the working of the *baraza*, village offices and social welfare offices are places where the intra-family inheritance dynamic of bargaining power and disagreement can be defined through recourse to local norms.

The study also reveals some major favourable attributes for the realization of gender equality, as well as identifying attributes that lessen the possibility of realising gender equality through local norms and practices as will be examined in the following section. The following section deals with both the *baraza* and village offices, as they are usually integrated within a village,²²⁸ as well as the social welfare office. The latter usually depends on the cooperation of village people and leaders in resolving disputes originating in the communities.

OPPORTUNITIES FOR THE REALIZATION OF GENDER EQUALITY THROUGH LOCAL NORMS AND PRACTICES

Affordability and Accessibility

Most inheritance disputes are adjudicated on and finalised at the *baraza*. It is well documented in this study that in all the child-widows' cases, the clan *baraza* convened with only one exception. The position of child-widows and the distribution of their matrimonial assets were always discussed. This discovery supports what has been analysed by Bentzon et al (1998) that the processes and outcomes of the individual cases handled within social fields, such as organisations within the community, normally provide an insight into people's customs and practices.

Child-widows' networkers, like Robi's aunt, told of the opportunity offered by the *baraza*, as it is usually easily accessible and affordable, especially to child-widows. It is a custom of most African communities to gather during bereavement and clan

²²⁸At the clan *baraza*, village leaders are sometimes invited to clarify validation of the *baraza's* decisions.

members from the maternal and paternal side assist in burial ceremonies. *Matanga* (a final burial ceremony) is a day when clan members usually meet to conduct either a formal or informal meeting on the position of a widow and the distribution of property to the heirs. Some meet after a week, others after a month; it differs from clan to clan. There are no fees to pay or forms to fill; all that is necessary is the appearance of the child-widow.

In rural areas, courts are often not easily accessible; the law also initially gives mandate to clan *baraza* to discuss inheritance issues and submit the outcomes to court. Indeed, poverty has caused a number of people to be powerless and vulnerable, not just in material terms but also in making the process of recognising and claiming rights complex (Moser et al 2001). Very few inheritance matters reach the courts unless there is a registered land issue or if the deceased was an employee or had access to a bank account. Only an administrator appointed by the court could access for example pension benefits from the employer for distribution to the heirs.²²⁹

Thus, the *baraza*, by employing a mixture of customary norms and varied localised understanding of statutory law, offer the forum of first resort for a vindication of rights claim (Nyamu-Musembi 2002).

Flexibility and Adaptability

Scholars have aptly argued that there are great possibilities for the realization of gender equality through the local norms and practices, because of their flexibility, as the norms are in a state of constant change. Cases determined at the clan *baraza*, village offices and social welfare institutions demonstrated the flexibility that all parties attach to 'customary law'. Despite the fact that the Rules, 1963, had been rigidified and ossified, the different interests were able to deploy them or contest them in order to back up their claims and counter-claims, thus modifying the

²²⁹ Interview with Primary Court Magistrates in all districts.

'custom' (Nabudere 2000:12). Indeed, all the child-widows' plural disputing struggles established norms of resistance to some discriminatory cultures; without a strategic intention of wanting to make cultural transformation(s).

Customary norms also represent both ideology and daily social practice; and subsequently there is potential in the adaptability of customary norms (Rwezaura 1995; Juma 2000; Nyamu-Musembi 2002). Nyamu-Musembi (2002:132) rightly explains that 'local practices are varied, and people's daily interactions are more revealing of the 'living' cultural norms'. Actually, the ideology contained in assertions of culture will often fail to capture all aspects of social reality. As a result, what is said about the Sukuma, Kurya and Maasai customs, or the codified customary law in Tanzania, is often only the partial truth; completeness can only be observed or experienced in actual social interaction within society.

The Rules, 1963, present cultural norms in a rigid manner, as immutable and inflexible, but applicable in all situations. Moore (1978b: 39-40) correctly argued against such statements; 'a social life is difficult to fix' because the production of local custom is a dynamic process and is in constant motion. I observed situational variations in cases involving individual child-widows. Take the example of the 'wife-inheritance' practice. The Rules codified the practice and states that if the widow, by her persistence, lives with a man who is not her deceased husband's relative, the *baraza* has the right to warn her, and if this is not heeded, the *baraza* may send her back to her father's family and take the children from her (GN 279: Paras 64, 66-70).

My observation during the field study was different. In the living cultural interactions in Tarime, I met an elder clan member who said his daughter-in-law was living with an outsider (not a Kurya) and, to him, it was right for the widow to live with the man she loves. The *baraza* has never decided on the matter, or taken the children away from the mother. The elder men insisted that if the *baraza* did that, he would go to court as he was also a widower and had no means to cater for

the grandchildren. He also said that nowadays everybody is so busy that most people have no time to look after the grandchildren. He thought that was why the *baraza* had not taken action. I also observed a similar case at the social welfare office. Thus, widows could stay with outsiders who are not from the clan and still have custody of their children, especially if poverty was prevalent within the clan. It is on the basis of these varied practices that interpretation of custom that accommodate human rights principles (such as non discrimination on inheritance matters) can be arrived at (Nyamu-Musembi 2002).

Further, on the issue of wife-inheritance generally, the *baraza* can, according to the Rules, approve a leviratic husband. My interviews from the three districts and the clan *baraza* elders elicited a wide range of responses on what the Maasai, Sukuma and Kurya customs on wife-inheritance are. Some people in Tarime think a child-widow should be inherited, as it is a custom and that she should be secluded within the household. Significantly, the *mahari* paid for the widow meant that she would be the wife forever. Yet, other respondents believe that it is better and wiser to have a symbolic husband who represents the paternal male clan. One remarked that he did not force his son's widow to be inherited; she is living in Tarime town, but visits them regularly. However, others were concerned that there is now no leviratic marriage as once traditionally there had been. Times have changed and people have adopted different perspectives. There seemed to be no justification for applying a dying culture. An Assemblies' of God Minister in Tarime remarked that:

People here will tell you different stories but the truth is that the wife-inheritance culture is changing and is conducted in different forms. Some of the men in my congregation tell me they couldn't practise it because is against religious norms, but some actually backslide only to inherit widows as part of Kurya culture. Some men just say publicly that this is our culture but they would not dare inherit a widow. It is a mixture of many things which led to this, such as a person's faith, laws etc.,. However, some of the Christians just take care of the widows but they don't inherit them.²³⁰

²³⁰ This was at an interview on 2/2/04.

Actually, this tallies with what Moore (1978b:39) noted: 'For every situation that a person thinks or says, "that cannot be done, it is against the rules, or violates the categories", there is another occasion when the same individual says, "that rules or categories do not (or should not) apply to this situation"'.

In both Tarime and Mvomero, where widow inheritance is widely practised, various forms were observed. For example, Pili was inherited by her brother-in-law who later abandoned her, as he wanted to stay with his nuclear family; his wife also didn't approve of her. In Sokoine village, Amina and Naikuso were inherited whilst Almasi, a young-widow, was not inherited but remained in the locality taking care of her children and cattle. This illustrates that local norms are flexible and are changing in some localities. Conversely, Pilina was not inherited for fear of HIV/AIDS; this shows that some people are positively changing their views on inheritance for health reasons.

Nonetheless, the situations of most child-widows differ from most adult widows because of their immaturity. They are often manipulated for selfish reasons by some male relatives, either for sexual satisfaction or material benefit. The *baraza* have, in some cases, recognised the practical wisdom of keeping customary law as flexible as possible. Thus, some respondents, such as the District Magistrate of Tarime, commended the *baraza* as being the proper channel for family matters that forms part of a traditional reconciliation system respected for helping to keep the peace within families. However, he noted that the problem of how to deal with child-widows was the real challenge.

Furthermore, in spite of this prevailing notion that daughters are not entitled to inherit as codified under the Rules, I found similar outcomes to those observed in Southern Africa by WLSA (1994) and in Kenya by Nyamu-Musembi (2002). These

daughters do inherit in some families. This is a common finding in Shinyanga district. It is more likely to happen to adult daughters who are contributing to the welfare of the family. However, the Rules have tended to be rigid and violate child-widows' rights. Thus, the government, activists and other stakeholders who are working towards cultural transformation should assume the task of making the complex and varied contemporary practices of custom more visible in official forums (Nyamu-Musembi 2002). This is to ensure meaningful representation in achieving gender equality.

Variability of Cultural Norms

Even if cultural norms may define the broad parameters within which people may act, they do not dictate behaviour in a predictable way (ibid). This is because 'people are agents of cultural transformation' (An-Na'im and Hammond 2002: 13) as culture is dynamic and is constantly changing. There is no blueprint to tell people how to live their lives. This work demonstrates examples from the empirical study of people who are practising against cultural norms; some people now have different perceptions or have changed their perceptions on the position of women in society that explicitly contradict what they and others understand or recognize to be the expected cultural practice.

I use the example of the norms and practices concerning inheritance in the administration of estate. Most clan elders I spoke to agreed with a comment given by one elder that '*Ngoko nkema etahelaga*' (a hen can't crow; meaning a woman couldn't be a head). It was totally untraditional for a widow to administer an estate. For instance, the *baraza* will invariably choose any male relative over a female one, simply because that is the tradition. There seem to be a pervasive belief at the local level that men are more qualified to act as administrators (Mhoja 1997). The Rules also exclude widows and daughters as administrators.

Some stories in Tarime and Shinyanga suggest that this practice is changing towards what people perceive to be a fairer balance between women and men, depending on the capability of the person. In Shinyanga, for instance, the *bahilya-Isana baraza* selected a young-widow to be the administrator of an estate, contrary to the codified Rules and local norms. Some records I encountered in the court files of all districts demonstrate that there is now some cultural transformation on the issue of the administration of the estate (see Appendix 9; Tables 4-9). Some *baraza* minutes indicate that occasionally, all members who had attended the *baraza* had selected a daughter or a widow unanimously as administrator of an estate. This shows that a departure from the usual interpretation of cultural norms, which are against human rights norms, is possible.

On the issue of right to property, interestingly, in a case where five widows were inherited, unlike Naikuso's and Amina's (child-widows) passive actions, their co-widow, Jeni, the second senior widow, informed her uncle that the inheritor was selling their cattle. Jeni's uncle said that it was theoretically not within the Maasai culture to do so without the widow's consent. The *baraza* determined the issue and gave her several options: first, to live with the leviratic husband and have a sexual relationship; secondly, to stay with him to raise her children without a conjugal relationship; or thirdly to return to her natal family. Jeni decided to go back to her natal family. The third option was criticised by her parents as being against the Maasai culture; however, the real reason was that her children (all of them male) were the true heirs and it would be very wrong for them to be raised outside the household.

Jeni was trying to shift the discourse of a culture of being inherited and obedient to the leviratic husband, as narrated by other respondents. This was not predicted in this Maasai family. However, she did that through the support of a male relative. Her uncle said that although the *baraza* gave her an option, the Maasai system is very structured. Jeni later had need of her in-laws, as her parents were not very

supportive in taking care of her cattle. They encouraged her to return to her leviratic husband, and so she did. She needed the support of her paternal natal family in order to remain in her natal homestead but it became impossible to sustain the changes. However, it showed how culture is not deterministic; the *baraza* had narrated options as part of culture, but the parents insisted on particular cultural norms.

After her parents failed to support her, Jeni's maternal uncle advised her to report the matter to the Village Executive Officer (VEO). The VEO summoned the leviratic husband and told him to make a list of all the cattle that belonged to the widow; they then signed a document agreeing that he would not sell them.²³¹ Some elderly Maasai commented that 'modern girls' like Jeni have their own culture of solving disputes which did not operate in previous years. The leviratic husband, however, has been challenged by the resistance of Jeni and now fears any guest who knocks at his door, thinking that the government is following-up the matter. He perceived the VEO's decision as interference in the Maasai culture.

In Shinyanga, in the case of Raheli, (17), who was widowed at 16, the *baraza* decided that her mother-in-law should take the matrimonial property. Surprisingly, the child-widow had already moved the property to her relatives, as she had no rent to pay. Traditionally, she should have contacted her in-laws before moving. As a result, her mother-in-law harassed her and demanded the return of the property. Raheli, supported by her relatives, reported the incident to the VEO, who decided that the matrimonial property should remain with the child-widow. He remarked that this was the practice for a number of adult widows in Shinyanga town, unless there was court ruling against her. The VEO refused to follow the *baraza* decision as it violated the child-widow's rights.²³² In this case, however,

²³¹ The uncle challenged the NGOs based in cities and which fail to help widows in villages, such as Jeni.

²³² However, the VEO would rarely take such a position in the villages. This was in Ndala-Shinyanga, a semi-urban area. Raheli was also a member of a Pentecostal church that took responsibility for looking after her.

there was a tension in human rights' standards generally and culturally. Raheli's mother-in-law was an elderly widow who was also the deceased's dependant; there were therefore two vulnerable women and no social security in place. The elderly widow faced the problem of property grabbing in the name of custom. She also genuinely thought it was also her right now to receive property from her son. This problem illustrates the life cycle of most women in this society. Indeed, every individual gave a different story (of what was narrated as culture) when the matrimonial property was either given or taken from her.

The child-widow in Shinyanga who had taken all the matrimonial property said it was her right to retain such property and received support from her natal family and the VEO in doing so. This scenario suggests that excluding widows from inheriting could be altered if widows and their families perceive it as a violation of their rights. We see the same argument raised by Jane's uncle in Mvomero, despite Jane's parents encouraging her to return to her leviratic husband and stay. They were not going against her right to own the cattle. They culturally viewed it as being more appropriate to her to remain with her property within the deceased's family and raise her children.

Another graphic example (on how cultural norms are not predictable) was the dispute over widow-inheritance made by Pili (full story in Chapter 7). She was advised by her maternal uncle to present her claims at the social welfare office. At the welfare office, I obtained a summary of her story. Not surprisingly, there were dissimilarities between the contents of the summaries and Pili's version of her story with regard to her abusive situation. Additionally, I discovered that eleven cows had been paid as *mahari*. The welfare officer explained that he had sent a summons and reminders to the deceased's relatives, but they had not responded, and so he had advised Pili to go to court to file for a certificate of widowhood. This is according to Rule 63, 1963, (G.N. 279) which states that the widow shall be given a certificate confirming her widowhood status, decreeing that she is completely separated from the family of her deceased's husband.

However, according to the Kurya tradition, her parents had to refund the *mahari* (Kirwen 1979). The fear of refunding *mahari* impinged on Pili's parents and limited their ability to support their daughter. However, Pili desperately wanted some changes in the wife-inheritance cultural practice. The resistance to child-widows and support from her maternal uncle and guidance from the social welfare office is also a good indication that even child-widows are now searching for alternatives to cultural transformation through various forums. It is important for the social welfare office to be given a stronger mandate in investigating child-widows' matters and so provide evidence in court to protect child-widows' rights.

Nonetheless, on the other issue of wife-inheritance in Tarime, in the case of Pilina and Robi, the relevant clan *baraza* both decided that the child-widows should not be inherited, for fear of HIV/AIDS related diseases. In addition, they allowed the child-widows to take some matrimonial property. This decision supports their human rights and the dignity of girls. It indicates some changes in this area in that clan members are aware of the scourge of HIV/AIDS and that the sources of change can be local. This shows also that 'people have the agencies that enable them to act against established cultural expectations and therefore opens up the possibility of a departure from interpretations of a culture that goes against human rights standards' (Nyamu-Musembi 2002: 135).

OBSTACLES THAT IMPEDE THE REALISATION OF GENDER EQUALITY THROUGH LOCAL NORMS AND PRACTICES

Lack of Participation

The culture of socialising girls to be passive and submissive before men is a hindrance to child-widows as such a practice is used to keep them silent during the clan *baraza*. There is great value in meaningful participation, as previously discussed in Chapter 3. During my fieldwork in 2003-2004, the institutions of the

baraza were functioning actively but were perceived as a male institution. This is well exemplified by the Abahili-mwisabi's *baraza* in Tarime; the *baraza* panel consists of men only. The secretary stated that this is because of the patriarchal framework of the Kurya society. 'Since a man is the head of the household, subsequently men hold offices within the *baraza*, although there are some charismatic women in the clan who have the capability of holding leadership positions. However, nobody has questioned this gender anomaly', he remarked. However, things have been changing and now a few women preside over clan *baraza* within the Sukuma and Kurya tribes, but these are not young women.

Similarly, in Mangahe village (Mvomero), I witnessed a *baraza* that was attended only by men. Normally, it is also a man who can instigate an issue for elders of the *baraza* to convene. They usually assemble under a big tree when there is a dispute to determine. Most Maasai respondents felt strongly that women generally are given limited space in which to voice their opinions within the *baraza*. This provides another dimension of the domination of the decision-making process by men, and the disapproval of women's participation in the process. For example, in Naikuso and Amina's case (as narrated in Chapter 7), the *baraza* selected the senior brother to inherit five widows (one adult widow, two young widows and two child-widows). The widows were not given the opportunity to participate during the *baraza* or to give their opinion on whether they agreed to be inherited. Further, they had limited negotiation powers in comparison to adult members of the clan in trying to gain support during the *baraza* or when trying to take further action. Women, in general, had been socialized to be passive actors in this custom; even the two wives of the inheritor were not asked if they were ready to accept the proposed 5 widows. The difficulty stems from the ambiguity of Maasai norms regarding the configuration of masculine attributes – being nomads, pastoralists and 'once intrepid warriors' (Hodgson 2004). The findings support Sampson's (IRIN 2003) observation in Northern Zone, within the Maasai community, that women are not being given an opportunity to state their views, even on the

HIV/AIDS campaign. Participation in this movement has been slow and there has been some resistance, but after several meetings, women are speaking more openly and are demanding to be heard.

In Shinyanga, all the child-widows were invited to attend the *baraza*, but they had no influence on the decisions. Unlike the situation in Mvomero and Tarime, no child-widow was inherited, apart from a request to inherit Beti. The *baraza* process was quicker, but child-widows were not given the right to participate, but instead were just ordered to implement the *baraza* decisions. The decisions were often discriminatory towards them; yet, no opportunity was given to them to give their views on the distribution of matrimonial property. One of the *baraza* members remarked that Beti was still 'just a child (**age**) and a mere girl (**gender**)' and should not be given the opportunity to contribute. However, in some cases, their natal relatives were given the chance to participate in supporting the child-widows, as illustrated in the cases of Beti and Raheli. In Beti's case, unfortunately her relative's belief in witchcraft made them withdraw from supporting Beti's claim for her property. Actually, there are diverse reasons that cause networkers to be more or less supportive. For some, like Beti's mother the reasons were cultural and economic as it lessened the natal family's responsibility by not having to take care of a child-widow. In Naikuso's case, her parents said that a widow must remain within the household of her in-laws, as it is part of the Maasai culture. Conversely, Raheli was supported because of her parent's Christian beliefs in helping one another.

Nonetheless, the cultural and social economic contexts in which clan decisions (concerning child-widows) are made illustrate vividly that the *baraza* has limitations in providing a space for girls to voice their views and in creating avenues for them to pursue their claims. It is true that a child-widow's supporter represents her during the *baraza*, yet, that supporter will often narrate what they think is right for the widow, without necessarily caring what the child-widow's

views are or what her best interests are. These are factors that impinge upon child-widows' human rights to participate, as well as upon other rights. Another cultural context revealed is the notion of respect towards adults (this includes husbands and in-laws) and the norm of keeping silent. Almost all decisions were made on behalf of the child-widows. They agreed on the decisions, but they were not satisfied; yet they kept quiet.

It must be emphasized that in the context of rural Tanzania, where class divisions are not as yet clearly manifested, age and sex identities play a greater role in social interactions than is generally recognized (Lawi 2000). The Kurya, Maasai and Sukuma rural communities are still predominantly patriarchal, in the sense that it is largely the interests of the male elders that dominate, even if women are in attendance. One should stress, however, that while these findings confirm the doubts expressed above concerning the composition of the *baraza* and that of leadership, they do not provide any grounds for suggesting that they have in 'all cases' not been dispensing justice to members of the social groups that are not so well represented in them (ibid). It is manifestly the case that although every *baraza* has internal norms, they are, also, assumed to be affected by external norms such as statutory law (Moore 1978a: 56), religious laws and human rights norms. For example, the Abahili-mwisabi *baraza* has a written constitution; this shows how modern and traditional norms have interplayed. Additionally, the secretary is a retired civil servant who said that sometimes he suggested ideas by referring to human rights norms during the *baraza*. In a single case, certain matters may be dealt with under state law, while others are dealt with under customary law. For instance, the secretary gave an example of a widow who was given an extra acre of a farm after complaining to the *baraza*. Nonetheless, the age and gender of child-widows contribute to their limitation in participating in these local forums. They are excluded from participation in the decisions that affect their lives. The space for child-widows to participate in decision-making during the *baraza* is very important, as this is the forum where most of their matters are resolved.

Significantly, they could also play a role in transforming cultural norms. Essentially, the *baraza* should be child-friendly so as to facilitate a greater input from child-widows.

Problem of Enforcement

The dynamism reflected in the variation and flexibility in daily social practice indicates that custom is not rigid. The study also reveals some positive elements where the *baraza* interpreted the local norms that protect child-widows' rights. Unfortunately, in some incidences, the *baraza* decisions are not implemented for a variety of reasons, including lack of legal enforcement. The following stories of Pilina and Robi illustrate the situation. The Abahili-Mwihula *baraza* decided that Pilina, (15), should leave, as no male relatives were interested in a leviratic union because of the fear of an HIV/AIDS-related disease, and on the grounds of each having a large family to care for. However, the *baraza* ordered Pilina to take some movable matrimonial items. The *baraza* did that as part of their culture in order to assist her in her new life. However, she left empty-handed as her in-laws confiscated all the property, except for her personal clothes. Although the roles of the *baraza* are codified, their decisions are not recognised until confirmed by the courts, thus the police do not help to implement a decision. Pilina's grandmother complained that it was difficult to follow up the problem regarding Pilina's property.

In the case of Robi, (16), the *baraza* distributed the property to inheritors (all children); her baby-boy was given one radio cassette and a piece of land in a remote forest, very far from the village. That piece of land was just referred to; she was not shown it or directed to it. A male guardian was chosen to take care of that piece of land until the baby grew up. Robi was not given any property and was not sure if her co-widow had been given any property. Conversely, the *baraza* ordered each widow to remain in the matrimonial homestead, as per Kurya customary law.

However, Robi was evicted from the matrimonial home by her stepsons whilst the *baraza* members watched, although they made no attempt to protect her.

Significantly, both stories exemplified the problem of enforcement in the *baraza's* decision. This lack of enforcement of clan *baraza* is common and is an obstacle in the realization of gender equality. Indeed, the *baraza* members failed both Pilina and Robi; they eventually became domestic servants, but were unhappy at having to do so.

Differences in Power, Age, Knowledge and Lack of Network Support

It was observed in all three districts that, in general, people draw from a variety of normative orders in a plural society as suits their situation (Moore 1978a; Rwezaura 1995; Hellum 1999; Nyamu-Musembi 2002). There is a possibility of 'forum shopping' (Benda-Beckmann 1981) in which some clan members could use both the *baraza* and formal forums.²³³ Widows for example, could, in theory, utilise positive elements of all custom, legislative and other institutions (such as the social welfare office) that could give them a voice in solving inheritance problems. In practice, however, the ability to do this may vary on the basis of factors such as age and gender. The systems are not accessible to all people equally. One's position within the relevant social network also matters (Griffiths 1997). Unfortunately, 'forum shopping' is normally not possible for child-widows unless their networkers decide to support them, as there may be overwhelming normative constraints exacerbated by their immaturity and their lack of legal capacity to file cases as administrators of estate.

On the first clan *baraza* after the *matanga*, most child-widows readily accessed the *baraza* as previously noted. However, after implementation of the decisions fail or

²³³ For example, in the Abahili-mwisabi *baraza*, regarding the case of a widow, the administrator was nominated by the *baraza* and used the *baraza* minutes to request the court to grant him the letter as the administrator of the estate, whilst the widow brought the land distribution dispute within the *baraza*.

when a child-widow was not satisfied with the decision, not all child-widows were able to access the *baraza* and government officers equally or easily. Child-widows were often constrained and met with obstacles in their ability to use this local mechanism to their advantage. Bhokena was afraid to approach the clan *baraza* after having been mistreated by her father-in-law who was the chairperson of the *baraza*. All the child-widows who had no natal relatives to support them during the *baraza* were unfairly treated.

The *baraza* largely condoned the disinheriting of a child-widow, as narrated by Kunese, (16), in Shinyanga. She was an orphan who had been widowed at 15; no natal relative of hers was invited to the *baraza*. It was decided that all matrimonial assets would remain with her brother-in-law. She was not satisfied with that decision but she was afraid and did not have the confidence to question it. She had been affected by an HIV/AIDS related infection, but had to fend for her children on her own. The brother-in-law abandoned her while the *baraza* members looked on helplessly. In a different way, Suzan (16), was also powerless, as she was the only one who attended the clan *baraza* from her natal family, her husband having moved to Kigoma (he was half Sukuma and half Ha). She was asked to list the deceased's property but was then told that the matrimonial house now belonged to her brother-in-law, as he had been the one who had financed the deceased. Like Kunese, Suzan also feared her in-laws. She just kept quiet, powerless to negotiate her claim, but she knew what she had been told was untrue. Suzan had a good claim to secure a share; she participated in cooking and fetching water for the builders and watered the bricks (*Bi Hawa* case, 1983). The husband had many properties, but the *baraza* only gave her a sewing machine. She was already pregnant and had never received any support from the deceased's relatives.

Stories such as Suzan's and Kunese's illustrate the fact that in patriarchal societies, local practices determine the outcome of inheritance disputes which in turn, leave child-widows without property. It seemed that the *baraza* and administrators often

manipulated a child-widow's lack of negotiating power, brought about by her age, gender and immaturity. Although child-widows do access the baraza after *matanga*, the configured factors of age, power, gender and inadequate support network force them into being passive social actors. Suzan, for instance, kept silent, although she knew her brother-in-law was lying, and the property was confiscated. Similarly, Amina, Naikuso and Robi became silent observers when they were being harassed. Robi's aunt hesitated to approach the baraza on behalf of Robi because she was originally not from that village. She was also a divorced woman: 'The baraza would accuse me of teaching Robi bad habits,' she said.

Further, I encountered different cases in the records of the social welfare office; Maria and Nyangi, both aged 16, complained that the deceased's relatives had grabbed their matrimonial property. In Maria's case, a summons letter was sent, but on the day of hearing neither the deceased's relatives nor the child-widow attended. It was not clear what had happened. Nyangi attended twice, but she did not attend a third time. It was not known why they had not returned to the office for advice on the matter. Importantly, Maria and Nyangi's cases graphically illustrate how much of a problem property grabbing has become for child-widows and how some child-widows attempt to vindicate their claims. Additionally, social welfare officers revealed the obstacles child-widows face, including their limited power and immaturity, which adversely affect their motivation to advance their claims.

Another major constraint is the lack of knowledge about existing options. For instance, among the 25 child-widows and 50 relatives who were interviewed, none had knowledge of the multiplicity of laws of inheritance and how one could utilise alternative laws according to different circumstances. A typical example is the case I found at the social welfare office where a *nyumba-ntobu* child-widow asserted the claim that, after her female-husband's death, the widower insisted on having sexual relations with her. She was also being heavily overworked. The man

objected to these complaints. The child-widow then requested that the widower should allow her to return to her parents, as the female-husband who had paid the *mahari* was dead. The man refused and insisted she must remain with him unless the *mahari* was refunded. Eventually, the widower and the child-widow were reconciled and the child-widow agreed to remain within the widower's household, but only if he would stop his sexual harassment. She did not know that *nyumba-ntobu* was not a legal marriage and that she could have just walked away from the 'marriage'.

Knowledge also empowers a person to argue for alternative rights in inheritance matters. For example, a Christian child-widow could challenge a discriminatory customary law that jeopardises her interests. In Beti's case, (as narrated in the previous section), she did not know her legal rights and her mother was ignorant on the procedures to be taken. When I asked them whether they had taken any action to claim Beti's property, her maternal uncle answered that they were scared of being bewitched.²³⁴

In Naikuso's and Amina's cases (see chapter 7), the brother-in-law had squandered cattle by selling them for his own benefit. However, access to formal justice is almost impossible as a widow's right to access justice through formal law revolves around the links that exist between issues of gender, the Maasai culture and age and power relations at the household level. On the issue of culture, the Maasai are socialized not to refer family conflicts to formal institution or courts (it is a taboo). The age of child-widows also contributes to their vulnerability, as most old widows are respected and are usually not inherited or harassed. The cultural norms of 'widow-inheritance' and the total respect given to the husband, and the fact that the child widow is under the control of the senior wife, all contribute further to the vulnerability of the child-widows.

²³⁴ Interview with Beti's maternal uncle and mother on 4-3-04.

Though the structure of the Tanzanian government at the local level allows for considerable access to community leaders, as the case of Raheli demonstrated, the majority of child-widows who face inheritance problems, however, do not often receive the help they need. Although in Raheli's and Jeni's case the VEO had promoted widows' rights, many respondents said that many problems still exist. First, community leaders are not trained to handle legal issues such as the multiplicity of inheritance laws. They are familiar with the local customs on inheritance matters only. Second, they are not trained in gender issues, and lack sensitivity to problems which are exclusive to women, including those problems faced by child-widows.

Failing to Provide Protection in Accordance with Customary Norms

Although there are variations from clan to clan, customary law, importantly, has had great influence in regulating the lives of child-widows in all the researched districts. Subsequently, the common forum, the *baraza*, has often failed the child-widows. Ironically, customary norms, such as the care of widows have been manipulated; widows are often left with no inheritance. Most deceased relatives had grabbed the property, without taking care of child-widows or their children. The protection of widows was the basic customary norm, in that a widow and her children should be cared for. Some cultural aspects, such as wife-inheritance are seen as severe violations in the eyes of human rights' activists (Mhoja 1997). However, other scholars have argued on the positive side (Kirwen 1979). Nonetheless, in the era of HIV/AIDS, most activists argue for the abolition of this culture. In practice, the clan members have been manipulating culture to their advantage without really following the culture, but by becoming selfish and violating child-widows' rights in the process. The cultural norms, which were supposed to provide succour to child-widows, were not fulfilled. Thus, even some of the positive elements, which could lead to a semblance of equality, are not being implemented.

For instance, in the cases of the 8 child-widows I interviewed in **Tarime**, the *baraza* had sadly failed the widows by not affording them protection in accordance with customary law. Invariably, what was stressed was the way that people had corrupted the custom of protecting widows, while a number of widows had been complaining to various forums for solutions. However, the hurdles that almost all child-widows would have to leap are so difficult that they eventually abandon their rightful claims, and thus forfeit their property to the deceased's relatives. The common ruling by the *baraza* was that a child-widow should be inherited; or, that she should return to her natal family while her property were confiscated.

Paradoxically, those who were inherited according to the culture were abused and harassed, against the cultural norms. In the case of Pili, (13), the *baraza* initially selected a senior brother to inherit her who then later abandoned her. Often, if a child-widow challenges the deceased's relative's actions she attracts more violence, including beating and expulsion from her deceased husband's family. This happened to Pili when she reacted and reported the harassments to her parents. Deplorably, the *baraza* members silently witnessed the situation but no action was taken against the culprit. Actually, some of the *baraza* members (i.e. her mother-in-law) also participated in harassing her. Pili was powerless to influence the *baraza* to review and discuss the situation again. In Bhokena's (16) case, when she refused to be inherited the *baraza* condoned property grabbing and so she later succumbed to widow-inheritance, despite her reluctance to do so.

Some in-laws were against widow-inheritance, although, they still wanted to control the child-widow's life. In the case of Eva, (17), the *baraza* ordered her, at the request of her father-in-law, to move to Dar es Salaam with her mother-in-law. She vehemently objected and since that time, she has been abandoned. The senior father-in-law, who was also the chairperson of the *baraza*, grabbed all the property and sold the matrimonial car. Her widowed mother complained that the in-laws

had told Eva '*atajijua*' [she should take care of her own], and had not helped her and had eventually left her with nothing. In this situation she was powerless and could only hope for a miracle from God. One of the friends of Eva's father-in-law blamed the child-widow for her failure to report the matter; if the *baraza* had been re-informed on what had happened they could have re-ordered the in-laws to help her. On that issue, Eva said it seemed impossible for the *baraza* to decide differently, as the father-in-law was the head of the clan, and was perceived as an eminent and rich person within the clan, whose suggestions were well respected.

Traditionally, widows were supposed to be cared for and they had a number of options as discussed in Chapter 7; however, what happened to Pili, Bhokena and Eva was against the cultural norms. Clan heads were supposed to lead by fairness and not through grabbing a widow's property, which is against tradition.

Similarly, in **Shinyanga**, child-widows related their different situations in different contexts as to how the *baraza* handled their cases and failed to protect them.

Unlike the Kurya and the Maasai, the *baraza* in Shinyanga would, in a few cases, request a child-widow to be inherited, as illustrated in Beti's, (16), story. The brother-in-law was selected to inherit her. Beti's mother and both maternal and paternal uncles strongly objected on the basis that, according to their faith as Baptist Christians, their daughter should not be inherited. Indeed, *mahari* was the key reference to the claim that Beti should either be inherited or that the *mahari* should be refunded. However, her uncle refused to comply on the grounds that it was against Sukuma customary law and the death had occurred by the will of God. After much deliberation, the deceased's family agreed that the child-widow should remain with her mother-in-law until she gave birth, and the brother-in-law agreed to maintain Beti.²³⁵

²³⁵Similarly, Cory (1957) and Kirwen (1979:116) explained the Sukuma widow's options: 'A widow must choose the man who is to inherit her from among the deceased's brothers. A widow with children can either agree or refuse to be inherited. She can choose to remain with her children,

Beti stayed with her in-laws for about two years, but she experienced a miserable life. This seemed to be because she had refused to be inherited; the erstwhile cordial relationship between Beti and her brother-in-law grew sour. This finding is consistent with that of Kirwen (1979:123) that it is difficult to care for a woman with whom a man is not sharing the same bed. It is anomalous that although Beti's brother-in-law neglected her and she started to sell local beer the clan *baraza* remained silent. Nonetheless, Beti stayed with her in-laws for a longer period of time than she had anticipated. Her main concern was that her child should belong to the deceased relatives' family.

Thus, belonging to the family is one of the child-widow's important motivations in giving up her rights (Stewart 2000), even though the custom states otherwise. It was not until Beti's mother visited her and advised her to stay as a single woman at the natal family home that Beti thought of another option. However, the brother-in-law told her that, according to the Sukuma custom, she should wait until the *baraza* deliberated on the matter. The *baraza* was never conducted, and so she left with only her baby and her clothes. After a few days, the brother-in-law followed her and accused her of leaving without the *baraza*'s permission. She explained to him that she and her baby would die of hunger. The matter was settled, but she was refused any of the matrimonial property, such as a bed, mattress and other household goods. However, her mother-in-law donated some baby's clothes to her.

On the issue of matrimonial property, Beti's brother-in-law emphasised that if a widow refused to be inherited she had no right to take any of the matrimonial property, but if she was inherited then she had 'use rights.' To him, that was the proper Sukuma culture. The brother-in-law was not necessarily a greedy person,

living within her deceased husband's family. If she remains with her husband's family, she is not free to choose lovers. If she has lovers, the family has the right to object and, if the widow does not obey, the *baraza* can return her to her family, but without her children'.

but he thought that is what should have been done. On the other hand, other Sukuma viewed it as property grabbing and a negation of custom.²³⁶

Beti's strongest networks were her mother and her uncles. They supported her in refusing to be inherited, but agreed on the other option, as the two families in the *baraza* wanted to remain connected. However, this worked to the child-widow's detriment, as life was miserable. She was mistreated and neglected.²³⁷ Although Beti became a child-labourer, the family *baraza* failed to convene and deliberate on her situation. The failure of local institutions, such as the *baraza*, to protect and care for widows, as tradition called for has become a significant obstacle to the realization of gender equality, as demonstrated by this and other child-widows' stories.

Embedded Ideas about Authority and Gender Roles

The socialisation process of patriarchal impurities on gender roles and male superiority also contribute to constrain open deliberation of the facts, and 'dictate a resort to idealized statements of custom that necessitate a particular outcome' (Nyamu-Musembi 2002:139). In daily social interaction, different forms of authority are seen as legitimately belonging to a woman or man (Schlegel 1997). Hence, there are assumed boundaries of authority and gender roles,²³⁸ which influence the decision makers even within the *baraza* or government offices. Even the *baraza* composition indicates it is men who have authority. The composition of the clan *baraza* clearly reproduces the dominant social power relations in the rural society.

²³⁶ Group discussion with Chamaguha Ward Tribunal members on 24-2-04.

²³⁷ Nonetheless, Beti, as a single widow staying with her mother, demonstrates that the Sukuma have a novel custom which gives the widow a social status as an unmarriageable single woman and enables her to draw on both her own and her husband's lineage for maintenance and support (Kirwen 1979). Although this did not work well for Beti, it was voiced as a common phenomenon by a number of widows in Shinyanga.

²³⁸ Most burial ceremonies are organised by the deceased husband's male relatives. It is normally impossible for a child-widow without a network of support to detach herself from the system when her husband dies, as this is the time when she needs them most.

In practice, the demarcations of authority and gender roles are not so rigidly defined, but the power of ideal statements persists in maintaining the perception that they are (Amadiume 1997; Nyamu-Musembi 2002). The following example drawn from an inheritance dispute helps to clarify this argument.

Eva, of Tarime, was given a car and other household property as wedding gifts, but when her husband died, these were taken from her on the pretext of safekeeping. The in-laws sold the car without consulting her, claiming that the property belonged to the deceased. The clan *baraza* could not allocate her any of the matrimonial property; in fact the chairperson said the property should remain with the deceased's relatives, but that she should be cared for. They did not deny that the property was given to the bride and groom but the ideology adopted in this case seems to be that property belongs to the husband as he is the head of the house.

The impression one gets from this case is that of obstacles of customary ideology erected in the face of attempts by women to present factual evidence in support of their case. Similar cases of taking matrimonial property were common; 'the attitudes they expose cast doubt on the ability of local forums to contribute to a transformative agenda in the era of gender relations within the family' (Nyamu-Musembi 2002:141).

Legal Barriers Under the Rules

The child-widow's failure to achieve gender equality is more a function of socio-cultural values attached to the institution of marriage, *mahari*, and child-widows' economic dependence during marriage which impact on widowhood, than the law per se. It is worth noting that the Rules exemplify the discriminatory character of the customary laws in Tanzania. The Rules treat the sexes differently, which has an

impact on women and girls. For instance, Rule 5 excludes widows and daughters from administering estates. Further, if all the heirs are absent, the *baraza* shall appoint a guardian from the clan to manage all the inheritance property. If the widow agrees to be inherited by one of the deceased's brothers and the *baraza* accepts him, he shall be the guardian of the deceased's children (Ibid: Rule 6). The Rule indicates clearly that the guardians selected are usually men. The codified Rules thereby sanction inequality between men and women.

Although the amendment of the Rules to legitimise discrimination against widows would not alone remove the social structures that relegate widows to the lower position, it is vital to formalise legal equality at the very least, and consequently to provide a legal platform from which widows can transform customs and practices that discriminate against them (Tibatemwa-Ekirikumbinza 1999)

The fact that inheritance problems cannot be accommodated through family or clan *baraza* channels reflects shame on a family. But sometimes the shame is unavoidable, as people resort to other forums when the *baraza* has failed to solve disputes amicably. Consequently, some child-widows have approached the courts, as examined in Chapter 5. Of the three ethnic groups, the Maasai still abide more closely to traditional norms, particularly with regard to family disputes. The empirical study evidenced a few family cases that involved the Maasai in other forums apart from the clan *baraza*. This is the greatest variation noted in the three districts.

Conclusion

Given the perspectives developed in this Chapter, features for and against the favourable realisation of gender equality for child-widows through local norms and practices may be seen as intriguing. The empirical study demonstrates that child-widows' problems are to a large extent resolved at the family level, but the

baraza environment is not child friendly. Nonetheless, this means that a wider range of normative orders than the formal law come into play in shaping the child-widow's legal and social position. Although inheritance norms' interests present themselves ideologically as the interests of the entire community, in practice it is often clear that they contradict and suppress the interests of women and in this study, of child-widows.

The impression one forms from the child-widows' cases is that of convenient obstacles of customary ideology created to avert attempts by women to present factual evidence. It casts doubt on the ability of local forums to contribute to a transformative agenda in the area of gender relations within the family.

However, obstacles such as age, gender roles, lack of participation and the codified Rules, as analysed in this Chapter, seriously impede the realization of gender equality for child-widows. Indeed, the Rules have proved to be rigid and have failed to offer justice. They are not flexible enough to adapt to new situations, and customs themselves are not static. This casts doubt on the ability of these forums to play a transformative role in some aspects of child-widows' human rights. Significantly, our discussion on the constant change and adaptability of local norms shows that culture is not a monolith, and that change can be achieved within a social group. These are some of the features then, that can achieve the realization of gender equality. However, any potential gains through the engaging of local norms and practices in the struggle for child-widow's human rights may be rendered ineffective.

Certainly, knowledge about the overarching sphere of formal legality contributes in shaping interactions in the local sphere and in influencing the choices that people make in specific situations, when based on their understanding of the totality of options available to them (Nyamu-Musembi 2002). Such knowledge could be used as an opportunity to go beyond those obstacles erected that preserve gender

hierarchy and exclude girl-children.

Further, the welfare and village officers should be mandated to assist child-widows, as the empirical study has shown. All this should be done while respecting the position of the clan *baraza*.²³⁹ As Nyamu-Musembi (2002:143-144) eloquently argued:

As long as the reality of poor access to formal judicial institutions due to cost and inadequate decentralization of institutions persists, people will need some kind of fora [sic] to resort to when interpersonal negotiations fail. For now, the semi-formal disputes resolution fora facilitated by local administrators and the clan-based practices offered by these fora...are widely acknowledged...There are normative reasons as well as practical reasons why local norms and practices should not be ignored. The normative reason is that it is primarily from their immediate cultural or religious milieu the people draw norms to regulate their interpersonal relationships...As a practical matter, working towards the incorporations of formal guarantees of rights in legislation could be self-defeating if it fails to contend with the force of local institutions whose norms and practise have the potential to complement or contradict the intended goals. This is particularly true of attempts to introduce reforms in the sphere of family relations.

The major challenge is to ensure that these customary practices are taken into account in a meaningful way, and not simply as rigid official interpretations of 'custom' (ibid). Acting on empirical evidence from child-widows' stories, it is vital not only to repeal the codified Rules, but also to present evidence of practice to the contrary. The discriminatory character of the Rules and the child widows' subsequent limitations in making claims for their inheritance rights represent aspects of the human rights' discourse as discussed in the previous chapter. It is worth noting that some traditional systems of helping one another are very beneficial. Strategies that are recommended in the next section need to be implemented without destroying the system of respect and helping one another. But child-widows' inheritance rights' discourses should also exploit these systems

²³⁹ One important reform that clan *baraza* should carry out is to ensure that child-widows are represented on every *baraza* so that their voices are heard. A move in this direction would be in keeping with the overall intention of CEDAW to integrate women into the political process at all levels.

by causing the clan to own the process by informing them of the severe consequences of harmful cultural practices.

Therefore, regardless of the obstacles discussed, local norms are pertinent. This is because most people are poor and find it difficult to access formal judicial institutions, because of costs and the inadequate decentralization of the institutions. As a result, people will need some kind of forum to solve their intra-family problems. For the moment, the community-based institutions, such as the clan *baraza*, are still generally acknowledged.

There are good reasons to consider local norms and practices; not least because of their direct effect on gender relations in society and the fact that they are also expressions of the cultural background of the people. To ignore them in the quest for legislated rights may frustrate or impede the achievement of the desired goals, (Armstrong 2000; Nyamu-Musembi 2002) particularly in the reform of inheritance matters. This challenge is taken into consideration when giving the recommendations in the following Chapter, which provides some general conclusions and a number of recommendations on the way forward.

CHAPTER NINE

GENERAL CONCLUSION AND RECOMMENDATIONS

The central objective of this work has been to examine the plight of child-widows and search for legal and human rights solutions. In the preceding chapters, a number of observations and conclusions have already been made. It is not the intention to repeat them here but some salient theories may be reiterated and stressed. The study emanated from the observation that the plight of child-widows is a neglected human rights' issue in Tanzania. There is a misconception that widows are adult women; however, the empirical study at the household level showed that there are a number of child-widows living in miserable situations. The study demonstrates that legal and other factors contribute to child-widows' human rights violations and these must be addressed. However, the assurance of human rights in Tanzania is an onerous task. It requires collective commitment and political will. We need to rally all possible support from international and regional bodies; state organs; activists and individuals in their own rights.

The work outlines the situation of girl-children at the household level and the way gender affects how they are treated in society and in law before marriage, during the marriage process, as a child-wife, and then on how the early marriage impacts on her. Child-widowhood is explored as one of the traumatic factors linked with child marriage. This study does not attempt to provide comprehensive narratives of child-widows in Tanzania. However their circumstances exemplify the general situation of child-widows in similar contexts.

In analyzing the narratives, the study examines legal pluralism during the colonial and postcolonial eras in Tanzania and how it has been applied in this study. It shows that in juristic legal pluralism, which was common in colonial and post-colonial Africa, state law is the ultimate authority and dominates other plural legal orders. Indeed, law represented the 'cutting edge of colonialism' in its efforts to

control and rule the people while bringing about their transformation and that of their communities (Chanock 1985:4). However, it has been argued that the legal centralist method has failed to reveal a number of girls' problems and solutions. This is because of the complexity of power relations and the way in which gender relations interact (Griffiths 2002).

Recognising that state law has no monopoly in legal and social regulation means that it becomes essential to explore people's lives beyond the confines of state law and the customary recognised normative orders. The study required research techniques, which transcend those employed in conventional legal studies. Thus, the researcher used a qualitative methodology, employing a grounded theory approach.

In analysing the girls' situation during the marriage process, the work discussed a girl's right to participate before marriage, according to Article 12(1) of the UNCRC. The right to participate is a basic human right of girl-children; the extent of participation must be in the best interests of the child. The right to participate principle has theoretically been accepted in Tanzania, but in practice it has not gained general recognition, because of cultural norms and poverty. The empirical consideration of participation has shown that in some tribes, such as the Sukuma, a girl may have participated in deciding if she wanted to get married or not, in the setting of a traditional society. In reality, however, girls' participation is considerably limited in contemporary society due to changes internal to the decision-making process itself, and to cultural and socio-economic factors. Thus, empirical studies have concluded that most child marriages are arranged or forced; girls are excluded from making decisions on marriage, which is one of the major events that affect their lives. Girl-children are socialised to be submissive without questioning, hence their powers of negotiation are almost non-existent. These inequalities are a result of the gendered structure of social, economic and political life, which continues to undermine girls in the legal sphere (Griffiths 2001).

There are a number of configured factors contributing to early marriage, which are complicated and sometimes contradictory, namely: traditional and religious justification; the value of having children; the lack of value in education for girls as well as economic and social reasons. Consequently, the occurrence of early marriage within a patriarchal society indicates gender inequality affecting girls in their daily lives. The study also explores how the status of a girl-child, (as a woman and a child), could affect her participation when pursuing her claims to rights in negotiation with her male counterparts, as well as her parents, in the marriage process. These claims operate at both social and legal levels (Griffiths 1997; Nyamu-Musembi 2002). In line with this, many aspects of law relating to children's rights', sanction female subordination. Statutory and customary laws are infused with patriarchal impurities; they condone child marriages and give the father a leading role. This is a problem that requires serious attention in order to comply with the UNCRC.

After entering early marriage, the study found child-wives to be passive social actors dependent upon families for their support. However, the roots of child-wives' violations are found in the power structure of society, in general, and of the family as a socio-economic institution, in particular. This structure places girls in a subservient position and allows men to subject them to various forms of oppression and victimisation. Child-wives' stories also indicate flagrant violations of children's rights by people or relatives close to them such as parents and husbands. Significantly, during marriage child-wives face many human rights' violations, such as violence, overwork, lack of education and health problems. Most girls are silenced in the name of tradition; but it is not only the local norms that restrain them; there are other normative orders which can influence a girl's resistance. A girl's ability to show resistance varies according to different situations and contexts. Those most able to shift the terms of discourse are those supported by their natal families or other networks.

It is clear that early marriage undermines the self-confidence and self-identity of the girls (FORUM 2000), exposes them to violence, to emotional and psychological problems, and possibly to child-widowhood. This can be hugely traumatic; their situation is degraded by coping with widowhood while they are still children and immature.

As child-widows, they often have to face the discriminatory customary law of inheritance (Rules) and customs. The Rules favour men and do not adequately protect the interests of widows. They bar widows from inheriting land from their deceased husbands and subject themselves to being inherited. The critical issue of inheritance rights and its compounding of widows' inequality in the ownership of property, is further complicated in Tanzania by multiplicity of laws (statutory, customary and Islamic law), the uncertainty and confusion of which compounds existing customary practices regarding inheritance matters. All these, in turn, expose child-widows to further and continuing discrimination and poverty that makes them even more vulnerable. Indeed, the Rules violate a woman's right to have all sex discrimination eliminated under the CEDAW and ACWRC.

Furthermore, other configured factors, such as *mahari*, witchcraft, polygamy, widowhood rites, property grabbing and the stigma of HIV/AIDS contribute to the exploitation of child-widows' inheritance rights. The consequences of such discrimination against child-widows are severe and constitute infringements of their human rights. The harm inflicted by the discriminatory Rules and customs includes economic impoverishment, violence, the contracting of HIV/AIDS and the lack of educational opportunities. Indeed, the difference in age puts a child-widow who is immature and inexperienced into a more vulnerable position when trying to negotiate her claims on inheritance matters.

However, legal pluralists accurately observe that men and women draw from a variety of normative orders in a plural society as suits their situation (Nyamu-Musembi 2002:138). Yet, in practice, the ability to 'shop for forums' may vary on the basis of factors such as age, class, gender and knowledge. In villages, for

example, child-widows are often not aware of the national legal system paradigm; they access whatever is within their means. Importantly, one's position within the relevant social network also matters (Griffiths 1997).

Essentially, child-widows are powerless, although traditional systems, such as the clan *baraza*, have advantages in that they are more accessible and have uncomplicated procedures; the major weakness of the *baraza* is that the compromise reached may reflect the unequal bargaining strengths of the weaker parties, such as the child-widows. Existing social attitudes have reinforced inequalities on the basis of the social status of child-widows. The study however, reveals a few of them to be social actors, actively seeking assistance from their natal families, thus helping them to formulate strategies; and in some situations they have sought advice from other forums, such as the social welfare office.

Within the legal framework, courts are arenas where the communities are expected to access justice. However, child-widows have failed to access primary courts. The problem in Tanzania is that the judicial processes are often expensive and/or corrupt and, therefore, inaccessible and unaffordable to the majority of people.

Nonetheless, the study reveals some major favourable attributes for the realization of gender equality namely the affordability and accessibility; flexibility and the unpredictability of local norms. But, as indicated in this work, the legal barriers established by the Rules and many forms of cultural autonomy in these communities seem to work contrary to the principles of equality and non-discrimination required in CEDAW and ACWRC. They are often utilised to legitimise many forms of violence against child-widows. However, no culture is immune to external stimuli. Certainly, people are products of their cultures, but they are also active participants in shaping these cultures (UNFPA 2004). Although the features that lessen the possibility of realising gender equality remain overwhelming, local norms and practices are central in facilitating or constraining

people's abilities to claim or exercise whatever rights are available to them under local normative orders, national laws or international human rights' principles.

The study further examines the cultural transformation of inheritance norms, through human rights' mediation, in protecting child-widows' rights. Findings indicate that, on the international and regional fronts, substantial efforts have been made in giving legal backing to the rights of women and children. However, in no treaty are child-widows identified, although, in general, their protection is derived from provisions that include women and children. Unfortunately, the main lacuna is in the UNCRC, which excludes child-widows because of their marital status, regardless of their age. Pernicious widowhood rites and practices deprive child-widows of their rights to dignity and equality. The outcome is that flagrant inequalities persist and dominate the society.

General lessons for the way forward

The human rights of children (including child-widows) generate duties and responsibilities that must be honoured. The primary obligation lies with the state and its representatives so that they provide the services and create the conditions that are necessary for the fulfilment of rights. But, duties also lie at all levels of society, from the individual to the international level (UNICEF 2001a:2). Perhaps the most important is at the community level, where child-widows live, and where most rights are fulfilled or violated. Thus, engaging with communities in creating widows' human rights and being able to recognise, respect, fulfil and promote rights is vital. This includes strengthening the capacity of both rights'-holders to articulate, organise and claim their rights, and of duty-bearers to listen and to act (ibid).

However, there are challenges related to social forces antagonistic to human rights and to their respective spaces of contestation. For human rights to be grounded in grassroots communities, they must be holistically anchored in the cultural realities

of those communities (Luutu 2000:52). This section highlights some of the lessons we can draw from the Government and other stakeholders on mediating the international human rights standards, before suggesting a way forward.

First, the Government of Tanzania has expressed a clear commitment to respect and uphold the legal rights of the girl-child (UNICEF 2001b). Tanzania has ratified a number of the human rights instruments, and has gone a step further by translating some of the treaties into national laws (i.e., the gender sensitive Land Law (1999)),²⁴⁰ indicating its commitment. Unfortunately, it is in the area of the law of inheritance where the Government has hesitated to make equal protection under the law, without sex discrimination. It is a fact that the Government does not want to collide with Muslims (Sivalon 2000:310-311).²⁴¹ However, Tanzania can learn from other countries, such as Somalia, which has a number of Muslims and still has effected changes e.g., the inheritance law treats men and women equally in all matters of intestate succession (Vanessa 2004). In theory, numerous African nations have intestate succession regimes that provide equal rights to women and men (ibid).²⁴² Although they face challenges in implementation, they at least have taken steps to enact that kind of reform.

Other nations like Zimbabwe, Zambia and Ghana have adopted measures to combat inequable inheritance. The NGO Inheritance Task Force in Tanzania (mentioned in Chapter 5) benefited from examining those measures and incorporated some of these countries' solutions in the NGO draft bill, while also ensuring that its legislation addressed Tanzania's specific problems on inheritance.²⁴³ For example, on widowhood rites, the Ghana Criminal Code (Amendment) Law 1984, section 88A(1) states: whoever compels a bereaved spouse

²⁴⁰ Despite the steps taken by the government, tradition continues to pose a serious problem, as the practice of equality within the larger society is still tainted with patriarchy and the need to maintain discriminatory traditional norms.

²⁴¹ The chief Sheikh of Tanzania threatened 'jihad' (holy war) if the government enacts a new inheritance law, which recognises concepts against Islamic law.

²⁴² Ethiopia, Ghana, Mozambique, Zambia, Burkina Faso, Chad, South Africa and Cote d'voire all provide widows with a significant amount of property.

²⁴³ The draft bill was submitted to the Ministry of Justice and some Members of Parliament in 2004.

or a relative of such spouse to undergo any custom or practice that is cruel in nature shall be guilty of a misdemeanour. Further, the Intestate (Amendment) Succession Law, 1991, sect.16, criminalizes the eviction of a surviving spouse or child from the matrimonial home before the distribution of the dead person's estate.

Tanzania must repeal the Rules and eliminate harmful practices that violate the human rights and fundamental freedoms of child-widows in line with its obligations under international law. Repealing the Rules does not mean the outright abolition of customs, but all non-contentious local norms that are not inconsistent with human rights' norms should be incorporated under the new Inheritance Law (as the current LMA, 1971) and the new Children's Law. In particular, in order to conform to the requirements of CEDAW and ACRWC, specific provisions should be included in the new Children's Bill to protect the rights and welfare of child-widows until they reach the age of majority. Carefully constructed legislation can assure child-widows of the right to opt out of those customs and norms which they, as individuals, find intolerable (Lwanda 2002).

Nevertheless, when there is a contentious customary issue that is not covered under statutory laws, the deliberation should be left to the judges to mediate and decide on according to the evidence presented, as is currently the situation when a person from a matrilineal ethnic group submits a case. However, the judges should take into consideration the principles of gender equality and non-discrimination when dealing with contentious issues; as no culture is immune to external influence (UNFPA 2004). What the court should follow is the living local law, not the rigid codified Rules, because, Tanzanian traditional rites and customs that are codified impede natural and gradual change. This is an important way of protecting child-widows who are more vulnerable. It is also a way of involving the community in contentious gender sensitive issues and involves people in the process of cultural transformation. The above approach seems to be fairer and more progressive, especially with regard to female children. Subsequently, judges can mediate on

local norms through the human rights law, which will require more awareness training for law enforcers.²⁴⁴

In many instances, the judges' literal application of the Rules results in women being left destitute. This is because the male heir appointed in terms of applying the customary law no longer adheres to his customary duty of maintenance towards the other family members. A society where family members work together and respect and maintain each other no longer exists in the urban areas and sometimes not even in the rural areas. The rule of primogeniture is based on the premise that the heir succeeds the deceased and assumes all his responsibilities and duties (Rautenbach and Plessis 2004). If the current society does not reflect the values that customary law is based on, should a rule be allowed to continue such a policy or should provision for differentiation be made? If the maintenance rule is no longer applied in customary law, then the application of the Rules no longer has a place in Tanzania - the law should reflect reality.

Second, through educational measures, the Government and other stakeholders have been engaged in promoting widows' and children's rights; yet, child-widows have still to be included in their agendas. Conversely, scholars (Nabudere 2000; Luutu 2000) have shared their pessimistic assessment of the capacity of a culturally alienated civil society to carry out the task of refocusing human rights' initiatives in a post-traditional direction. This is a challenge in that activists should have the space for reflexivity in their understanding of the manipulated customs in order to promote the genuine values of our customs and discard the other elements which violate human rights.

²⁴⁴ Currently, a number of national and international organizations have been providing human rights' training to magistrates and judges e.g., the UNDP and International Association of Women Judges.

Third, judicial activism as demonstrated in *Horalia* case is important.²⁴⁵ Further, another challenge to judges in Tanzania is to use international law as an aid in the interpretation of domestic law,²⁴⁶ as the Commonwealth judges in Bangalore agreed, (although this decision is not binding). Applying international equality norms in domestic courts is one of the most effective mechanisms for protecting widows' rights in inheritance issues. As Hannan, Director, Division for the Advancement of Women succinctly emphasised:²⁴⁷

Courts and judicial officers have pivotal roles in ensuring that the legal framework is applied fully, justly...and benefits all individuals equally. Proper application of the legal framework can only be achieved where decision makers are aware of, or sensitive to, the realities of the lives of those who seek the protections and remedies.... Judicial decisions can be based upon a restrictive interpretation of the domestic law or be approached in a creative way that will truly provide justice to women. International human rights law can provide the background and framework for such judicial decision-making.

Interestingly, in many common law jurisdictions, judges have taken the view that where gaps or ambiguities exist in the domestic law, then courts are to interpret existing law so as to comply with the State's obligations under international law (Rwezaura 1998).

Fourth, activists in Tanzania have been operating as vehicles for facilitating legal and social reform. Gender sensitisation and lobbying for effective law reform have resulted in changes in laws and a reduction in the influence of discriminatory traditions.²⁴⁸

²⁴⁵ Some of the gender sensitive judges, for example Mwalusanya, were influenced by involvement in human rights' activities.

²⁴⁶ As noted by the Judicial Colloquium in Bangalore, India that, although in common law systems treaties are not directly enforceable in domestic law, there was a 'growing tendency for national courts to have regard to these international norms for the purposes of deciding cases where the domestic law - whether constitutional, statute or common law - is uncertain or incomplete' (Commonwealth Secretariat 1988).

²⁴⁷ Africa region Judicial Colloquium held in Arusha (9-11/9/2003).

²⁴⁸ Some women's institutions, such as TAMWA, TAWLA and WLAC, put pressure on governments' compliance with international standards.

Why is Activism Important? Since the late 1980s, activists in Tanzania have been struggling to advocate the adoption of women's human rights. However, their efforts were less adequately coordinated as they are now in the new millennia. Unfortunately, widespread discrimination against women, (including child-widows) based on culture and religion, is still widespread. Various factors are hindering the success of the Bill of Rights and of international documents.

First, the Rules are discriminatory and have not changed. Thus, activism is important now because the process of changing the law of inheritance through the legislative process has taken too long since its beginnings in 1968. Also, it is not clear if widows' issues will be taken seriously (in Parliament), as women are in a minority in Parliament and not all MPs are gender-sensitive.²⁴⁹

Second, the High Court presents divergent views on the interpretation of the Rules. Most judges are not gender sensitive, so they intently uphold the rigid Rules.

Third, most women and girls are not aware of their rights under other laws and so are suffering severely under the Rules.

Fourth, court decisions and the legislature are supportive tools in easing change, yet it is clear that the most viable way of changing the Rules is by transforming popular beliefs and attitudes (Mhoja 1997; Rwezaura 1999). It is clear that, 'existing frameworks for mediating conflict between human rights standards and customary norms based on the supremacy and coercive measures of the Government, are not likely to lead to the transformation of popular beliefs and attitudes' (Butegwa 2002:108). Thus, emphasis should be put on advocating gender equality at the

²⁴⁹ By this comment I do not intend to suggest that women's participation in the parliament 'will automatically guarantee change in the absence of a substantive agenda for change towards gender equality' (Nyamu-Munsebi 2002:141). It is true that a large number of women MPs does not necessarily mean that policy will be changed, but their influence could make a great impact, especially if they are sensitised on gender issues.

community-level, while, of course, combining this with multiple approaches at other levels.

This study, therefore, calls attention to areas where changes are required. Strategies to address child marriage and child-widows' violations are as multifaceted and diverse as the cultures in which the practices exist. The choice of strategy is thus of paramount importance; activists and institutions can choose from several strategies and means, depending on their resources, objectives and political opportunities (Welch 1995; Mhoja 1997).

Importantly, the application of human rights has become a weapon which can be used to legitimise political and economic claims by vulnerable people (Woodiwiss 1998). In this regard, several recommendations are in order, taking into consideration Armstrong's (2000:99) suggestions:

[I]t is necessary to act on two fronts. We need to rediscover and use the aspects of custom...that valued women and their role in society, and at the same time we need to reject the aspects of custom...which allowed men to control women and resources, remembering all the time that there are different women with different needs and expectations. It is important to recognise the contradictions for women in custom and tradition, to analyse both the good and bad, to embrace the former and reject the latter.

RECOMMENDATIONS

The complexities behind the violation of child-widows' rights provide the international human rights' law with a great challenge - that of transforming the rhetoric into reality (Save the Children 2000) in Tanzania. To be effective, the international human rights law cannot be used in isolation. In particular, the implementation of the principle of equality and non-discrimination in the social, economic and cultural spheres is directly related to the availability of resources (Buerne 1995). Thus, the interventions to address child-widows' violations should not only be in the legal arena, but there should also be a consideration of the social, cultural and economic forces that have impacted on child-widows' rights.

However, this study focuses only on legal and human rights' interventions that are specifically connected to child-widows' inheritance rights from the empirical study. The overall goal is to eliminate early marriage in Tanzania, which is the precursor of child-widowhood. The immediate goal is for each child-widow in Tanzania to be able to enjoy all her inheritance rights and other human rights, such as the right to education.

In this regard, the following recommendations are suggested to the government, NGOs, Community Based Organisations (CBOs) and private institutions (at the local level). At regional and international levels, the institutions include the following: the U.N and its agencies, such as UNICEF and UNIFEM; inter-governmental organisations, such as the Commonwealth Secretariat; and international organisations, such as Widows' Rights International, Action Aid and the donor community. Additionally, individual activists dealing with women and/or children's rights at local and international levels are also targeted. The importance of investment in the childhood of child-widows at a critical period in their lives must be recognised at local, national and international level; it must be followed through with strategic and comprehensive action. Without a clear strategy, early marriage and its consequences on child-widows who face multiple violations will continue.

It is not possible to change the socio-economic base of Tanzania in the short-term. However, this thesis has identified some arenas that need to be changed if the violation of child-widows in inheritance matters is to be eliminated. The foregoing findings, clearly lend support for the establishment of a firm foundation for the operation of human rights' standards by Tanzanian and other stakeholders. Partnerships need to be established at all levels. These partnerships need to be founded on the principle of parity of esteem of the partners. Clear roles and

responsibilities of partnership need to be spelt out and then be agreed to and be assumed by partners.²⁵⁰

First and foremost, the government and other stakeholders at all levels should use education as the main long-term strategy; education as a basic human right classically plays a key role in promoting change. Through educational measures, Tanzania is bound to adopt legislative or other measures to give effect to the treaties (CEDAW Article 2). Education can be formal or informal, or both, depending on the situation and type of community involved. For instance, the move from primary to secondary education for girls is key in postponing marriage and vital for their overall development. Activists could embrace an active role in educating the public on their human rights of inheritance, including information on the inadequacies of LMA, 1971, as well as on the age of marriage and of the Rules and their harmful effect on child-wives and child-widows. Significantly, education can play a crucial role in causing a societal change of values in inheritance matters. Without such a societal change of values, the efforts of social action end up being isolated and issue-oriented and do not cause structural transformations. Importantly, the education process should be gender sensitive.

The following recommendations which are inter-related and complement each other are divided into nine frameworks, namely: (1) advocacy at community level; (2) engaging the public in facilitating changes; (3) law reform; (4) judicial intervention; (5) economic empowerment; (6) incorporation of CEDAW and ACWRC; (7) enforcement through human rights' bodies; (8) strategic research and (9) lobbying for changes in the UNCRC.

²⁵⁰ A strong coalition, including government and donor community; traditional leaders and campaigners using multiple strategies involving the community, could make a great impact. They would be responsible for the planning, implementation and monitoring of these activities. A combination of lawyers, anthropologists, social workers and health workers could successfully analyse the consequences for their professions.

1. A Framework for the Community-based Advocacy of Human Rights, using Gender Equality and Non-discrimination Principles

The overall objective is to enable communities - including clan *baraza* members, VEOs, CBOs, traditional leaders, elders, parents, in-laws and female-children - to transform the discriminatory customary norms using human rights laws in intra-family, governmental institutions and community-based processes, so that family inheritance disputes can be resolved.

The main aim of this framework is to allow changes to be made at the community level.²⁵¹ A start can be made with a three-year pilot study of the researched districts in Tarime, Mvomero and Shinyanga. Documentation of successes and challenges will be of use in national policy formulation. This is seen as the most effective engine through which community-based forums can be improved so that child-widows can be empowered to advocate their own best interests. Evaluation can be done annually, and the lessons learnt from the three districts can be shared and documented.

Seven key factors should be considered in the effort to mediate any conflict between local norms and the human rights principles of equality and non-discrimination.

First, there must be agitation for change towards equality and non-discrimination, and 'the agitation must come from within the culture concerned' (Butegwa 2002). For example, there were cases of some child-widows who had shown resistance against widow-inheritance by reporting instances to the social welfare offices. They recruited the help of relatives, who supported such a move; such agitation should encourage others to follow the same course. Campaigns for change directed from the outside do not work; normally, governments and people tend to resist such

²⁵¹ Organisations responsible for the provision of mediation and legal aid services to disadvantaged groups (under traditional and other methods), should be extended to villages. This will enable child-widows to have choices that may increase their negotiation power, and may assist in transforming social attitudes. Social welfare offices or other NGOs could hold sessions for rehabilitation.

changes, as people will usually say the changes come from the 'West' (ibid). Thus, a greater awareness within the whole community about the culture of children's rights has to be created (Rwezaura 1998:267). This should specifically create an awareness of the rights of child-widows and of the impact of the early marriage practice. All key stakeholders should be actively involved, using participatory approaches to take explicit steps to enable child-widows to give their views.

Second, is the cultural aspect; the more that people call for change in the norms or practices of their own culture, the stronger the case for change becomes (Butegwa 2002). It is vital for campaigners to involve as many people within the community as they can to participate in challenging the inheritance system. Diversity may also be important, as it would indicate that the demands within the community are widespread and cut across gender, individual, or sectarian issues within the culture (Ibid).

Third, it is also important to carry out an analysis of the centrality of the overall culture of the particular norm or practice that conflicts with the equality principle (ibid). If a cultural norm is to preserve its value within the ethnic group, it may be possible to explore other ways of maintaining that value.

Further, a positive engagement with indigenous practices is one that recognises that while one may, or may not, in the short-term, completely change customs, one can make them safer. In fact, education is the major effective agent in behavioural communication change. Another challenging task for the government and activists is to create awareness of the consequences of some existing enduring customs, such as widow-inheritance; this requires an understanding of its complexities, while acknowledging that the solutions to it are complicated. When I was interviewing the Maasai and Kurya elders, I observed that, for the Maasai and Kurya, the value of *mahari* has a strong connection with the concept of widow-inheritance, and cannot be easily dismantled. Even if a widow leaves her inheritor, the belief of the community, as well as of most women, is that she is married forever. This differs

from the Sukuma, who are invariably positive that a widow can re-marry. Thus, the government and activists' interventions should be directed at building the trust of the people by using the 'force of argument' (complemented by using the 'force of law'), while at the same time, acting with discretion and sensitivity.

Nonetheless, the precept of not abolishing our customs in totality should be taken into consideration as 'an abolitionist approach does not encourage a holistic understanding of the contexts in which these cultural practices are embedded' (Nyamu-Musembi 2002:127). Significantly, paying attention to customary norms and practices is part of the process of internal discourse and cross-cultural dialogue that can lead to the legitimization of human rights principles in all cultures (An-Na'im 1994:174). Thus, the empirical evidence, as generated in this study, of applying alternative local cultural practices to counteract the negative ideological statements of culture that entrenches gender hierarchy and age discrimination should be adopted. For example, instead of inheriting a widow, there should be a symbolic 'leviratic husband', as applied within some communities in Sukuma; the man would have no authority, but would act as a bridge between the two families.

Alternatively, on the issue of widow-inheritance, (as a short-term strategy), each localized practice should be tackled separately. For example, if a widow consented (of her own free will to a leviratic marriage) both partners should first be HIV-tested. This practice would continue to reduce the risk of HIV (Lwanda 2002). Child-widows would be given ample time, while representatives such as paralegals or social welfare officers, could talk to them. It is recommended that leviratic marriage should be applied in a symbolic manner until the child reaches the age of 18, at which point she can decide to regularise the marriage or not. Traditional gatekeepers of culture, such as Laigwenan, should be at the planning table, helping to facilitate and generate consensus. People should know and believe that their cultures are respected, but that some practices have severe consequences on the community and particularly on girls who become child-widows.

Fourth, it is important to analyse the relevance of the specific cultural practice or norm, given the current socio-economic environment in which it occurs. This process would involve identifying the basis for this norm and examining its continued validity (Butegwa 2002: 120-121). A good example is the practice of denying female children the right to inherit clan land. This was justifiable at the time because it applied to most women, in the respect that they would be looked after by someone throughout their lives. Male relatives, such as fathers and brothers within patrilineal societies, did discharge their obligation in this respect. The analysis would involve an investigation into the continued legitimacy of this assumption in communities.

Fifth, it is vital to assess how desirable the status quo, or the proposed change, is for the community, given its broader development and survival interests. Skills in managing change should be encouraged (ibid). Sometimes, a society retains archaic rites like widow cleansing because they have utilised it for a long time and they have no information on the need to change or on the impact of that culture, while sometimes they know of no other way to act. They may fear losing their identity and have no peer communities to observe and so cannot appreciate how change can work for the benefit of the community.

In some settings, the arguments founded in international human rights are essential to this strategy, while in other cultural contexts the international law remains in the background. For instance, in societies where child-marriage is an alien norm, that argument can be used to appeal to the communities to rediscover those aspects of good tradition. These arguments could be applicable to the Sukuma and Kurya societies. Various means may be used to change attitudes, such as showing films, and performing role-plays, traditional dances and songs. Another dimension is to cultivate the habit of reading or/ and listening to radio or television, or to participate in meetings.

Sixth, separate training for different categories of people are important.

a) The training of custodian of tradition is vital. For example, with regard to high-risk cultural practices such as widow cleansing, omitting those aspects of widowhood rite ceremonies that are hazardous to a child-widow's health would be a major advance. This is more likely to succeed if it is done without diluting the traditional gatekeeper's cohesive role in society. They are part of the local cultural power dynamic that maintains communal order, behaviour and solidarity (Lwanda 2002). When traditional gatekeepers and leaders retain their power and are involved, and the advocated development is accepted as part of the customary change over time - then a successful outcome is possible. A case study of the Forum for African Women Educationalists (FAWE),²⁵² which deals with the education of girls within Maasai in Kajiando District, Kenya, can be replicated in Tanzania. The Maasai leaders²⁵³ had been sensitised and involved in planning, implementing and monitoring the registration and attendance of girls at primary schools. A variety of activities were designed to engender effective participation of girls in education and development, including guidance and counselling for traumatized girls rescued from marriage (FAWE 2002).

b) Importantly, child-wives and child-widows should be given separate training. Given the nature of their age and their immaturity, education campaigns should involve strategies such as drama, music and peer education. Role-plays and music may attract many and, hence, the girls will be able to receive the messages that accompany those strategies. It is also important that the education process is enjoyable and that educational materials should involve pictures, so as to attract the attention of many participants (Amury 2004). By helping child-widows become better informed, activists may instil in them a sense of self-confidence and an ability to use the avenues available to them and so confirm their rights. Donor agencies should work to encourage health providers to design, in consultation with

²⁵² The focus of FAWE's inputs was to assist the community in caring for the increasing number of girls rescued from, or threatened by, early forced marriage and other cultural practices (FAWE 2002).

²⁵³ Chiefs in Kajiando District are powerful opinion leaders who serve as effective intermediaries in communicating with the Maasai at the grassroots levels on various aspects of girls' education (Ibid).

child-widows and widows' groups, appropriate, accessible and innovative health services for all widows (Vanessa 2004).

c) Specifically, women should be empowered to act as agents for change by providing them with education on gender issues within the family (to ensure the eradication of gender-biased discrimination). Women, as mothers, are primary agents in the socialization process.²⁵⁴ They should spearhead the change of attitudes, so that existing cultural beliefs are slowly superseded by more egalitarian ideologies, especially in view of the changes in the country's economic and social set-up. Empowerment entails the deliberate mobilization of the community in general and widows in particular, as well as that of their supporters, so that the status quo on gender-based inheritance laws is challenged. To advance common goals, widows need to organise to empower each other. To oppose inheritance discrimination based on gender, widows generally must collaborate in local struggles through sharing their experiences and other resources (Welch 1995; Mhoja 1997).

d) Basic education and vocational training for child-widows is required. This initiative is a short-term strategy and can be promoted by the government, NGOs and international organisations, such as World Vision and Save the Children Fund. Their aim is to help and sponsor child-widows who want to rejoin school. These organisations can provide uniforms and other educational materials so that child-widows will be able to continue going to primary or secondary school, or could even be offered vocational training, such as carpentry, cookery and sewing, so that they may be able to engage in their own income-generating activities. If possible, the NGOs should create job opportunities for child-widows after completion of their vocational training. Amury (2004) further suggests that in order for children to participate, the vocational training should be cheap or free, conveniently located and practical-skill focused; it should incorporate play, social or leisure activities and should have a flexible schedule, so as to motivate children (WHO 2000).

²⁵⁴ Given the poverty they experience one would question how many would take the activists challenge or prefer to go with status quo; however, this should not be a reason not to involve in the programme.

Seventh, is the strengthening of forums such as social welfare offices and courts. The social welfare department, has great significance in relation to the rights of the child. A number of child-wives and child-widows at the community level visit the department at district levels for counselling and advice. Special protection through the social welfare offices should be established to safeguard the best interests of child-widows. It is recommended that the social welfare officers be given a mandate to represent child-wives and child-widows in primary courts and clan *baraza*. This is in accordance with Article 16 of the ACRWC, which provides that State Parties shall take specific legislative, administrative, social and educational measures to protect the child from all forms of inhuman or degrading treatment, and especially from physical or mental injury, or abuse, or neglect, or maltreatment, including sexual abuse. Child-widows have been mistreated by some *baraza* and have submitted unwillingly to widow-inheritance or widow cleansing. Thus, they need supporters during *baraza* disputes. As the department has inadequate staff, the village leaders could be requested to assist and then act in instances of a child-widow's abuse or neglect. They could then report to the social welfare offices to help with any further follow-up services, or with conciliation.

Greater procedural flexibility in the Primary Magistrates' courts should be considered to allow more informal and relaxed processes which are child-friendly. This can be worked out in collaboration with the Ministry of Justice and the Ministry of Labour, so that child-wives and child-widows obtain representation when pursuing their disputes in dispute forums.

Further, expanding the scope of human rights' practice (on the principles of equality and non-discrimination) to include out-of-court forums that are not traditionally targeted, should be undertaken e.g., this would include the clan *baraza*, whose work plays a fundamental role in articulating cultural norms which impact on people directly at grassroots level.

2. A Framework for a Human Rights' Public Engagement Programme

The general objective is to contribute towards creating and sustaining a national movement for social and legal changes in the customary law of inheritance, by stimulating a process of broad public engagement, information sharing, dialogue and networking throughout Tanzania.

a) A possible long-term strategy geared at sensitising the public could be created by the mobilization of a massive information and communication campaign, or a grassroots' popular education programme on the effects of early marriage. Citizens who are involved and well informed serve as the major foundation stones of a human rights' platform.

Activists could lend weight to their arguments with community and religious leaders by citing the international human rights norms or by using the rights to health and education in their awareness campaigns on both the repercussions of child marriage, (Bunting 1999) and on the risk of contracting HIV/AIDS through widow cleansing and widow-inheritance.

However, activists in Tanzania have paid only limited attention to cultural variables and approaches in order to create an enabling environment for the promotion of international human rights on gender and equality. The study identified the need for cultural norms to be mediated by the human rights law through the involvement of all actors at the local level. This, hopefully, will contribute to ownership of the changes. Adopting culturally-sensitive norms and practices in various programmes does not entail making positive or negative value judgments on any culture, ethnicity or religion. In essence, using the "culture lens" in programmes enables policy makers and practitioners to understand the context in which programmes are implemented (UNFPA 2004). Culturally-sensitive approaches promote understanding of social practices that are harmful to people and hinder their enjoyment of their human rights. The culture lens is an analytical

tool that helps policy makers and practitioners to contextualize reform approaches to fit the diversified national and local milieux in which programmes are being implemented, without losing sight of the human rights they are promoting (ibid). Thus, these approaches should facilitate an enabling environment for promoting human rights as an integral part of the cultural-transformation framework. Evidence of what works and what does not work at the national level is the most crucial input for developing more effective and holistic cultural-transformation approaches.

b) Popular publications, which challenge readers to think about the impact of early marriage and child-widowhood, are vital. 'These texts could be juxtaposed with provocative cartoons' (Haki Elimu 2002:12). Posters with messages in full colour, as well as informative calendars, are a popular and valued medium for communicating ideas in Tanzania (ibid). These tools would be geared to stimulate leaders and others to discuss gender equality issues on child-widows and on the impact of child marriage. Relevant stakeholders could also be contacted for more information.

c) Another method is to expose the plight and magnitude of the child-widows' legal and human rights' violations to policy makers, Members of Parliament and social providers in the context of the Tanzanian struggle with HIV/AIDS, poverty reduction and sustainable development.

There is also a need to eradicate discriminatory inheritance practices through educating the judiciary and law enforcers, such as police officers and the public about their rights and duties under the treaties (Mhoja 1997). The lack of sufficient information, education and communication are among the many formidable obstacles to establishing child-widows' inheritance rights.

d) Use of strategic media approaches can create public awareness, and educate widows, their families and the community about widows' legal rights. Local films

focusing on themes of child-widows' rights can not only prove to be good entertainment but can also be an effective educational tool if shown in schools, seminars and to village groups. Widows' organisations and paralegals might consider constructing their own stories for videos, so that a widow's story aptly reflects local attitudes and customs (Owen 1996). 'Media bang²⁵⁵ style' (TAMWA 2003) could be used in parallel with awareness campaigns and advocacy for law reform strategies, just as TAMWA did during the SOSPA, 1998, NGO campaigns. The media should be mobilized to raise public awareness on the consequences of child marriage and other such practices and the need to combat them. Government and women's activists groups could monitor the role of the mass media in this regard (FORUM 2000).

e) Networking: At the local level, formal and informal associations of widows should report to the village leaders and district commissioners. The National Widows Association should be strengthened and encouraged to include child-widows; also, a database of child-widows' stories should be documented. Coalitions dealing with widows' rights and widows' groups at the local, regional and international levels should be able to network with similar groups worldwide, thus improving and adding to information already held. Policy-makers and legislators at all levels would be informed by these coalition groups.

As a way of exposing the problem of child-widows, a National Campaign to dedicate a day for child-widows should be established; during this, volunteer widows, including child-widows, could attest their stories and be heard. To facilitate this, they should organise the first African Regional child-widows' conference and expose child-widowhood for the violence perpetrated against children at the hands of near relatives which is condoned by the inaction of governments. They should expose the

²⁵⁵ A variety of media such as radio, television and newspapers could be targeted strategically to report on the issue for several months. The Bang style is the strategy's skeleton for achieving successful implementation. It relies upon the dissemination of newsworthy stories to various reputable local media institutions – print, radio and television, all at the same time. The value in using the time sensitive approach is simple. Multiple media outlets often report the news simultaneously; this process reaches a greater number of people (TAMWA 2003:1).

fact that the HIV/AIDS pandemic is a threat to children in marriage and widowhood. The neglect of child-widows has irrevocable long-term implications for the future well-being and sustainable development of our nations. Human rights' education should be linked with inclusive education and with the educational dimensions of HIV/AIDS.

e) The violation of child-widows' human rights also implicates the state's failure to ensure equal access to education (CEDAW 10). A public campaign on the right to education is important, one arena targeted for action being the Ministry of Education; while influence over the school curricula is central. Child-wives and child-widows should be given opportunities to access primary education through the MEMKWA programme.²⁵⁶ The Ministry should emphasise that education needs have priority in resource allocation and political agendas.

Further, innovations and special efforts are required to ensure that girls remain in school and that the learning environment becomes more conducive to their education. Gender biases, differential treatment, and the harassment of girls must be eliminated, while learning must be encouraged through the use of positive role models. Pregnant schoolgirls must be supported in their right to continue their education. Furthermore, there is a need to publicise, promote and encourage the right of pregnant schoolgirls to continue with schooling. This includes the creation of simple procedures for the return of schoolgirls after the birth of their child, to the same school or to an alternative school (Kuleana1999: 60-61).

Health issues relating to sex and family life education should be included in school curricula to promote responsible and harmonious parenthood and to create awareness among young people about the harmful effects of early marriage and unprotected sex. There is also a need for education about sexually transmitted diseases, especially AIDS. To discourage the early marriage of girls, the

²⁵⁶ Mpango wa Elimu kwa Watoto Waliokosa (MEMKWA) [The Plan of Complementary Primary Education].

Government should make provision to increase vocational training, retraining and apprenticeship programmes for girls to empower them economically. A specific percentage of the places in existing training institutions should be reserved for child-widows.

3. Law Reform

Manifestly a number of factors affect the implementation of human rights, such as the level and quality of political commitment to the implementation of administrative, educational and other policies, allocation of economic resources, and civil society activism. Nonetheless, legal protection is particularly important in the judicial enforcement of these rights as legal entitlements. This sustains the efficacy and credibility of all other mechanisms and processes, 'the development and application of operational definitions of each human right and the mediation of competing claims of rights' (An-Na'im 2002:18).

Thus, in the light of empirical evidence from child-widows' stories, it is vital to repeal the codified Rules in order to internally effectuate the principles of equality and non-discrimination, and also to present evidence of practice to the contrary.

Although the amendment of laws that legitimatise discrimination against girls would not, on their own, remove the social structures that render girls second-class citizens, it is important to formalise legal equality in order to provide a juridical platform from which child-widows can challenge customs and traditions that discriminate against them and put them at risk. It is true that girls and their supporters or networkers are in diverse situations and do not think in the same ways. However, it is important to promote and protect the rights of vulnerable girl-children, such as child-widows, and to create a positive environment in which they can claim their rights, and allow their supporters to protect these rights. The law can serve as a mode of cultural transformation, but its capacity to do so depends on the political will and on its ability to mobilize local support, 'based on the implicit

categories of class and gender through which people and events are interpreted' (Merry 1994:53).

It should be further understood that Tanzanian society is a diversified one with more than 120 tribes, each with its own customs; and that there is intermarriage between them. Efforts were made to unify the patrilineal customary rules; nevertheless, the Rules did not solve the social element of the diversity of customary rules of inheritance (Law Reform Commission 1995). The social development of the members of different societies i.e., education, the capacity to acquire property, intermarriage and religious influence has reduced the usefulness of the Rules. Scholars such as Rwezaura (1985) and Mukoyogo (1995) have questioned the validity of the Rules adhered to and applied without possibility of further investigation. It is also correctly argued that 'flexibility in practice, which contrasts with the rigidity of ideology, allows for responsiveness to the justice of a specific situation rather than a mechanical or rigid application of 'the custom' to all situations' (Nyamu-Musembi 2002:127) as currently codified in Tanzania. Currently, local norms are continually changing, as they adapt to new situations.

To achieve concrete legal reform, changes must be made in all areas of the law, starting with the Constitution. It is important that the Constitution clearly addresses the continuing tension between protected rights and preserved cultures, and indicates which is to have priority in the event of a conflict. The Constitution of the Republic of Uganda, 1995, may serve as a useful guide in this respect. The Constitution declares as part of the national objectives and directive principles of state policy that 'cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy, and with the Constitution may be developed and incorporated in aspects of Ugandan life'.²⁵⁷ Currently, it seems there is the political will to change discriminatory laws against women, as shown in the new Land Laws, yet, on inheritance matters, the Government hesitates for fear of colliding with

²⁵⁷National Objectives and Directive Principles of State Policy, Art. XXIV, Constitution of the Republic of Uganda, 1995.

fundamentalist Muslims. This is why I would recommend having a new Inheritance Law for the time being but would leave the Islamic law for adult Muslims who want to apply it according to their faith. However, religious laws, as highlighted in Chapter 5, are not the particular concern of this work, but as a strategy to win Muslim support for the time being, it is vital for the new inheritance law to have special provisions. These would recognise evidence which confirms that it is the wish of the parties to apply religious laws, except in the case of child-widows, whose best interests would be looked after by the courts.

Tanzania should repeal the Rules, which adhere to the principle of male primogeniture and enact a new inheritance law that incorporates the principle of non-discrimination so as to improve the welfare of child-widows and achieve the equality of both men and women. When there is confusion, it is harder still for widows to make their claim. It is time to have a uniform law of inheritance, incorporating positive aspects of customary law, and to repeal those that are in conflict with other laws and treaties, so that gender discrimination is prohibited. The uniform law should comply with the provisions of the LMA, 1971, with regard to the ownership and distribution of property between spouses. The law should be in conformity with the Constitution and human rights norms.

Specific provisions that should be included in the new law are equal protection under the property laws of inheritance; for example, this could be legislation requiring the inheritance of equal shares for daughters and sons, and widows and widowers. By giving a widow a share of her deceased husband's estate, this provision ensures that widows maintain an adequate standard of living after their husbands' deaths and are less vulnerable to being coerced into widow-inheritance. In addition, where the clan land is still firm, the widower, widow(s), sons and daughters should all be entrusted with the land in '*usufruct right*.' The law should also eradicate gender as a basis for the selection of an administrator.

Tanzania should also criminalize property grabbing and the act of evicting a surviving spouse(s) or child from the matrimonial home. The legislation must also take account of polygamous marriages. Law enforcers such as the police, should be disciplined subsequently if they fail to take action under the penal law, when relatives evict, rob or assault a widow. However, in some African countries reform has been difficult because of the presumption that it would encourage wives to murder their husbands for financial gain. In Malawi, in February 1998, the Bill to amend the Wills and Inheritance Act so that property grabbing and 'chasing-off' became a criminal offence was rejected for the third time (Vanessa 2004). Activists should create awareness of this misconception as recommended by some respondents.

It should be understood that the recommendation of repealing the Rules does not envisage abolition of all customary norms. Rather it should be used to shape the statutory law, while other issues can be explored to help the realization of women's human rights in local practice and custom. In other words, the good elements of the Rules should be included in the new inheritance law; this means that non-discriminatory local norms should be included in the new law.²⁵⁸ It also means that local norms should play a part in shaping the legal arena at the national level. Magistrates should deliberate on contentious issues whilst a system for defending child-widows' rights through the efforts of social welfare officers or paralegals from CBOs or NGOs should be put in place at primary courts. In other words, religious and customary laws would be applied through the production of evidence and each case determined accordingly, while the court would mediate using human rights norms. The local norms should be left flexible so they can be considered on submission of a contentious issue. With regard to the customary law on contentious issues such as clan land, the court will decide on the matter by applying a local norm, which has to be proved as a living customary law. Whatever form is applied, a protection system for child-widows should be provided, so that they are not manipulated.

²⁵⁸ Law reform, by raising the status of girls, is an important part of AIDS prevention.

Already, a significant number of governments in Africa, including many in the Commonwealth countries, have enacted a comprehensive law of inheritance that provides equal rights to women and men. Tanzania is procrastinating in its enactment of laws of inheritance that treat women and men equally. The progressive laws in other countries treat male and female children equally and usually provide a share of the deceased's estate for the surviving spouse. Activists should thus bear in mind that treaties offer architectural rights, but the realization of treaty goals requires further construction (Cook 1994).

Simultaneously, activists should lobby for law reform on the minimum age of marriage to be included in all relevant statutes and in the new proposed Children's Bill. The minimum age of marriage should be 18 years²⁵⁹ for both boys and girls, irrespective of customs or religion, as per the ACRWC. Legal requirements are vital with respect to the minimum marriageable age of 18. There is a preponderance of evidence to support the severe impact of early marriage on child-wives and child-widows, as a result of which they are denied basic human rights such as education and health, and so are exposed to the greater risk of HIV. CEDAW (Art. 2(f)) specifically requires states to undertake all appropriate measures, including legislation, to modify or abolish existing laws, customs and practices which constitute discrimination against women. Article 21 (1)(a)(b) of ACRWC, requires State Parties to take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity and development of the child and, in particular, those customs and practices discriminatory to the child on the grounds of sex or other status.

Further, not only must the state intervene to prevent early marriage and violations of abuse on child-widows, but it must also create avenues whereby children can

²⁵⁹ I recognize that fixing the minimum age of marriage is not enough, but, when combined with an awareness campaign on the law and education, may help to change peoples' mindsets. Without legal requirements with respect to a minimum marriageable age, supporters have inadequate power to campaign against early marriage.

articulate their concerns and defend themselves. Ensuring this happens meaningfully on a daily basis in key institutions such as the household, school and in the community is the main challenge to the Government, UNICEF and partners. Child-widows will have much to gain if officials, administrators, lawyers and judges take on board the human rights' dimension of sex discrimination, so that all actions taken are monitored within that framework.

4 Judicial Interventions

Judicial interventions are vital; a court operating under a dualist system may rely on ratified instruments in order to fulfil the international obligations of the State. Courts can continue to play an active role in enforcing human rights standards by interpreting the Rules in line with human rights standards.

Another effective way of facilitating change is through strategic litigation. The role of the activists is to help the courts to reach the conclusion that there is a yawning gap between the law in books and the reality in the field (Rweyamamu 1996). Courts should play a major role in injecting international human rights standards into customary laws. The judges should be more proactive, as Judge Mwalusanya was in the *Holaria* case, by extensively relying upon and drawing inspiration from international human rights law. Importantly, they should also use these sources to outlaw practices such as widow-inheritance, which infringe upon and undermine human rights standards. These norms should form the basis for the protection of child-widows.

Activists must bring test cases to challenge the Rules and so argue in court that the Rules violate the Constitution and international treaties. Good cases and good lawyers can be carefully selected to challenge the courts for the best results. The objectives should include: the undertaking of test cases which will set new legal precedents to establish and protect widows' human rights; the stimulation of public interest which will bring widespread benefit to members of the public and, by so

doing, may change the attitudes of the public; the promotion of a human rights' culture in the judiciary, the legal profession and the Tanzanian public in relation to widows. Activists should ask themselves questions such as: Who would be the ideal plaintiff(s)? defendant(s)? What international norms would they invoke? What kind of relief would activists be seeking?

In picking an appropriate plaintiff or defendant, litigators need to consider the parties' circumstances. Facts that will demonstrate the injustice of the Rules in the most glaring manner are most likely to result in a positive outcome. For example, in the *Holaria* case, the fact that the deceased left a Will but the Rules would have prevented the girl, the only heir, from selling the clan land, while male heirs continued to sell their land, must have helped the court to arrive at its progressive decision.

For a case challenging the wife-inheritance Rule, an ideal party might be a child-widow who has been forced into a family marriage after her husband's death. In addition, the case of a widow with an HIV/AIDS-related disease would possibly show the injustice of the Rule in the most glaring manner.

In cases challenging the degree of inheritance rules, an ideal party might be a daughter who is senior to the other children and who has demonstrably worked hard to help acquire the family property.

Activists must proceed cautiously and strategically to ensure that they represent widows effectively. The activists' greatest task is to articulate to the court the injustice of the Rules. Perhaps the best way to do this is to use the Constitution and treaties in court to persuade judges to make progressive decisions, as was implemented in the *Holaria* case. They can persuade the court by articulating the Rules in light of human rights standards and by showing the harm the Rules can inflict upon widows. A nobly-worded Constitution and some international documents alone cannot ensure the adequate protection of widows' human rights. Activists remain essential; even the most far-reaching document can remain a dead letter if there is a reluctance to test its meaning in court or to challenge the status quo.

Consequently, the task for activists is to contest the constitutionality of the Rules in order to advance interpretations that promote justice based on basic human rights. Activists can challenge the constitutionality of the Rules by filing a petition in the High Court, under Article 30(3) of the Constitution. Since activists have never challenged the Rules, the first time would result in a test case. The litigators would be asking the Court to declare the Rules unconstitutional.

All outcomes should be publicised. Lost actions and the failure of the judiciary to apply human rights standards also need publicity in order to shame governments into reform. It is also vital to report circumstances where child-widows have been unable to access the justice system because of cultural barriers, threats of violence, lack of money and lack of free legal aid.

5. Economic Empowerment

Article 13 of CEDAW obligates Tanzania to 'eliminate discrimination against women in other areas of economic and social life'. The Rules violate this provision because child-widows as potential heirs are either ignored or receive a smaller ownership interest in a deceased relative's estate than similarly situated males. It is necessary to take cognisance of the important role that poverty plays in the plight of child-widows and in the stigma of HIV/AIDS. Alleviating the impoverished situation of child-widows would empower families economically and politically. International organisations could contribute by conducting needs' assessments, in partnership with NGOs and/or the Government. Law reform and judicial intervention alone will not make any difference to the illiterate and impoverished child-widows who are subject to the 'living practice' determined by male patriarchy, but if there are multiple approaches, including economic empowerment, then progress can be made.

6. Incorporation of the Conventions

Another initiative is to lobby for state compliance with international legal standards; Tanzania should incorporate the international human rights laws (ACWRC and CEDAW) into her national legal system (Mhoja 1997). It should assign them an explicit and categorical place and preserve them in the national law. This would serve as a clear demonstration to the Government that it needed to implement the obligations it had undertaken under the relevant international human rights' treaties (Tshosa 2001). There are varieties of ways of incorporating the International human rights law; however, this work recommends that it can be incorporated into national law by a constitutional mechanism. A clause in the Constitution is a preferable mode of incorporation, as it commands the universal respect of people and may not be easily changed (ibid).

The Ministry of Community Development, Gender and Children's Affairs can be a vital institution in helping to promote and protect child-widows' rights. After the government had ratified CEDAW, it established the Ministry to carry out the mandates of CEDAW. This Ministry should strengthen its commitment to CEDAW by improving child-widows' rights to inheritance and by facilitating the elimination of early marriages.

First, this could be achieved by submitting bills and opinions to the government, using the treaties' provisions for enhancing the general welfare of female children. Government officials in Tanzania must be reminded that the international human rights' norms of these treaties are guidelines for legislative and policy action and that ratification is the beginning, not the end, of local responsibility (Freeman 1996; Mhoja 1997). Second, a national machinery for promoting and protecting the new image of childhood and children's rights, including those of child-widows, should be established.

7. Enforcement through Regional/International or Intergovernmental Bodies

Another method is enforcement through regional/international supervisory bodies or inter-governmental institutions in order to press the Government to translate Constitutional provisions or treaty commitments to protect child-widows' inheritance rights. Recourse to international procedures may provide some additional leverage to a campaign at the national level (Byrnes 1992:192). Regional initiatives to combat harmful socio-cultural practices through the use of legal instruments in Africa have been very slow and indecisive (Vanessa (2004). However, women and human rights' activists must 'wake the committees up' (Butegwa 1994). Both the committees on ACWRC and CEDAW, should be persuaded by grounded reports and facts, as in this study, to characterize the experiences of child-widows, as a serious violation of human rights, so that it can be placed on their agenda to question countries that condone the early marriage practice and require them to address child-widows' violations.

8. Strategic Research

Activists' research conducted in other districts in Tanzania will help to raise awareness and understanding of the problems that child-widows in Tanzania encounter. Documenting the plight of victims and pressing the government for corrective action are crucial tasks.

At the policy level, network organisations, like WiLDAF (T), can conduct research, analyse and document fact-finding researches, and participate effectively in policy making on the inheritance rights of child-widows. At this level, three major components will be exploited. Firstly, a database will be developed. Findings can be communicated through a flagship Annual Report e.g. 'The state of child-widows in Tanzania.' Findings can also be communicated through policy position papers. Secondly, promoting the involvement of a wider set of actors in national policy formulation and monitoring has to be undertaken. This will involve enabling the representation of views from the public and the grassroots in key processes, and asking a new array of questions not presently asked in these processes. Thirdly, a creative and concerted advocacy programme for social change in child-widows'

rights in Tanzania must be initiated. This will focus on building strategic alliances with NGOs, research organisations, committed governments, community leaders, media organisations and other key actors, and will include the creation of on-going programmes, such as human rights' campaigns. This component would also link with selected international campaigns, such as those concerned with widows' or children' rights. Attention will often be focused on informing Members of Parliament and other elected officials. A mechanism will also be established to respond to the emergence of flagrant child-widows' violation issues, as well as utilising other opportunities that arise. The establishment of a website where information on child-widows can be inserted and where interested stakeholders can obtain information is also vital.

Through this mechanism, the creation of policy critique from community to policy level can enable the marginalized and poor to speak on their own behalf and could result in positive outcomes, in a rapid and effective manner.

9. The UNCRC: Definition of a Child

The UNCRC definition of a child discriminates against child-wives and child-widows on the basis of the status of their marriage. The Convention is contradicting itself on its great value in promoting and protecting children without any kind of discrimination. It is, therefore, recommended that the UNCRC language on the specific definition of the child should be as specific as that of the ACWRC. However, justification should be given to countries that allow the marriage of girl-children at the age of 16 (under the age of 18, but not below 16).²⁶⁰ Nonetheless, registration should be kept. Importantly, until they attain the age of majority, child-wives and child-widows should enjoy the same rights as other

²⁶⁰ In the context of countries like Scotland, a married girl of 16 is regarded as an adult; however, most developing countries have no social security system that could help girls when they encounter problems, as Scotland has had. Moreover, most developed countries have facilities and advanced technology that are not accessible to children in developing countries. Thus, girls under 18, under whatever status, should be protected by international law on the rights of the child.

children. Husbands or relatives of these girls should know that they have married children, who require special care and protection just as unmarried children do.

The UNCRC should specifically acknowledge child-wives and child-widows who are under the age of 18 as children to be included under the Convention. They should be categorised as children in need of special care because of their multiple roles. A failure to perceive child-wives and child-widows as children has contributed to significant breaches of their rights. Their inclusion will help to give them a voice globally; the time is long overdue for the world to start listening to these girl-children. The aim, therefore, is to inform international forums of an African contribution that entwines the protection of young married girls in a society; this was formerly carried out by the girl's mother-in-law, but that practice is now less common. This form of inclusion should also be embodied in national legislation.

In relation to early marriage, three conventions are particularly important. These are the CEDAW, ACWRC and UNCRC; however, the UNCRC, as illustrated in this study, does not contain any provisions for children who are forced to marry, and although their rights may be protected by other Articles, there are no specific references to early marriage being prohibited. Ouattara, Sen and Thomson (1998) argue that 'the absence of proper legal and policy action frameworks to deal with women's and girls' rights, coupled with the lack of sanctions against these abuses, amount to state complicity and neglect of duty under international law to these citizens'.

Specific Areas for Further Research and 'Immediate Action'

The study findings suggest the need for micro-level studies to assess the efficacy of initiated law reform in improving the position of the child-widows within matrilineal societies, and in patrilineal communities in different life situations, contexts and settings. Further, one of the areas which the empirical study

highlighted, is of a child-widow's failure to access justice; most of her problems being solved at the clan level. There is an urgent need for empirical studies into traditional and informal processes and mechanisms on the effective enforcement and defence of child widows' rights operating in Tanzania and on how child-widows and children in similar situations are affected. This will help people to understand their position through statistics, which, in turn, may help implement strategies to reduce their vulnerability.

Undeniably, gender discrimination is a cultural product; the culture itself must be changed if we are to achieve a society based on equality and non-discrimination. There is a challenge lying ahead to change the mind-set in these communities. In practice, this will be no easy task. But it could initiate a long-term campaign to rescue girls from customs such as widow-inheritance, from the risk of HIV/AIDS and from other violence. International donor communities, including multilateral financial organisations, can be encouraged to extend financial and technical support to Tanzania and her stakeholders in order to promote and eliminate the inherent vulnerability of child-widows.

Yet, all the foregoing requires a considerable coalition of activism, political will and leadership. Without this, effort will remain fragmented and a significant part of the population will be by-passed. Most importantly, immediate action is needed. The government and all stakeholders should halt the current neglect and should take action 'now,' before the impact of HIV/AIDS reaches the point of disintegration of the society. The plight of child-widowhood could degenerate into a full scale disaster where the number of child-widows suffering human rights' violations will greatly increase.

However, it is possible for the voices of child-widows to be heard locally, regionally and internationally, and the issues surrounding them can be placed firmly at the top of the agenda, so that their problems can be treated fairly, according to the principles of gender equality and non-discrimination.

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2. Adoption Ordinance, Cap. 335/1955.
3. Age and Majority (Citizenship Laws) (Act No.24/1970).
4. Age of Majority Ordinance, Cap. 413/1960.
5. Basic Rights and Duties Enforcement, 1994, (Act No. 33 of 1994).
6. Births and Deaths Registration Ordinance, Cap. 108/1920.
7. Chiefs (Abolition of Office Consequential Provisions) Act, 1963 (Act No. 53 of 1963).
8. Civil Procedure Code, 1966 (Act No. 49 of 1966).
9. Constitution (Consequential Transitional and Temporary Provisions) Act, 1984, (Act No.53 of 1984).
10. Constitution of the Republic of Tanzania, 1977 (As amended Subsequently).
11. Criminal Procedure Act, 1985, (Act No.9 of 1985).
12. Education Act, 1978, (Act No. 25 of 1978).
13. Elections Act, 1985, (Act No. 1 of 1985).
14. Imperial Decree (Regarding Creation, Acquisition and Conveyance of Lands), 1895.
15. Indian Acts (Application) Ordinance, Cap. 2.
16. Interpretation of Laws and General Clauses Act, (1972).
17. Judicature and Application of Laws Ordinance,(JALO), 1920.
18. Judicature and Application of Laws Ordinance, 1961(Act No. 57 of 1961).
19. Land Acquisition Act, 1967 (Act No.47 of 1967).
20. Law of Contract Ordinance, Cap 433/1928.
21. Law of Marriage Act, 1971, (Act No. 5 of 1971).
22. Land Act, 1999, (Act No. 4 of 1999).
23. Land Ordinance, Cap 113/1923.
24. Magistrate's Court Act, 1984, (Act No.2 of 1984).
25. Penal Code, Cap 16/1945.
26. Prevention of Corruption Act, 1971 (Act No. 16 of 1971).
27. Probate and Administration of Deceased Estate Ordinance, Cap. 445.
28. Sexual Offences (Special Provision) Act, 1998.
29. The Indian Succession Act, 1865.
30. The Administration (Small Estates (Amendment) Ordinance, Cap.30.
31. The Interpretation and General Clause Ordinance, 1972.
32. The Tanganyika Local Government Ordinance, Cap.299.
33. Non Christian Asiatic (Succession) Ordinance, Cap. 112/1923.
34. Village Land Act, 1999. (Act No. 5 of 1999).
35. Ward Tribunal Act, 1985 (Act No. 7 of 1985).

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36. Court of Appeal of Tanzanian Rules, 1979 (Government Notice No.74 of 1979).
37. Extinction of Customary Land Right Order, 1987 (Government Notice No. 88 of 13th February, 1987).
38. Local Customary Law (Declaration) Order, 1963 (Government Notice No. 279 of 28th June, 1963).
39. Local Customary Law (Declaration) Order, 1963 (Government Notice No. 436 of 20th September 1963).
40. Rules Governing Inheritance of Female Heirs, (1944).
41. Statements of Islamic Law Order No. 121 of 1962 (Government Notice No.222).

(B) Legislation from Other Jurisdictions

1. Children (Scotland) Act, 1995.
2. Ghana Criminal Code (Amendment) Law 1984.
3. Ghana Intestate (Amendment) Succession Law, 1991.
4. The Constitution of the Republic of Uganda, 1995.

(D) INTERNATIONAL INSTRUMENTS

1. Beijing Platform for Action (Beijing-China), 1995.
2. Convention of Vienna on the Treaties, 1969.
3. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979.
4. Declaration on the Rights of the Child, 1959.
5. International Covenant on Economic, Social and Cultural Rights (ICECSR), 1966.
6. International Covenant on Civil and Political Rights, (ICCPR) 1966.
7. United Nations (Supplimentary) Convention on Abolition of Slavery, the Slave Trade, and Institution and Practices Similar to Slavery, 1956.
8. United Nations Convention on the Rights of the Child (UNCRC), 1989.
9. Universal Declaration of Human Rights (UDHR), 1948.
10. Vienna Convention on the Law of Treaties, 1969.
11. Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993.

(E) REGIONAL INSTUMENTS.

12. African Charter on the Rights and Welfare of the Child (ACRWC), 1990.
13. African Charter on Human and People's Rights (ACHPR), 1981.
14. Charter of the Organisation of African Unity, (OAU) 1963.

APPENDIX 1: Country HIV/AIDS Estimates, end 2003

Adult (15-49) HIV prevalence rate	8.8% (range: 6.4%-11.9%)
Adults (15-49) living with HIV	1 500 000 (range: 1 100 000-2 000 000)
Adults and children (0-49) living with HIV	1 600 000 (range: 1 200 000-23 000 000)
Women (15-49) living with HIV	840 000 (range: 610 000-1 100 000)
AIDS deaths (adults and children) in 2003	160 000 (range: 110 000-230 000)

Source: Report on the global AIDS epidemic 2004

Tanzania's National AIDS Control Programme (NACP) estimates that only 1 out of 5 AIDS cases is reported due to the under-utilization of health services, under-diagnosis, under-reporting and delays in reporting (LHRC 2003:60-61).

Appendix 2a : Map of Tanzania Showing Researched Areas

The shaded areas show the Regions where the selected research districts are located:

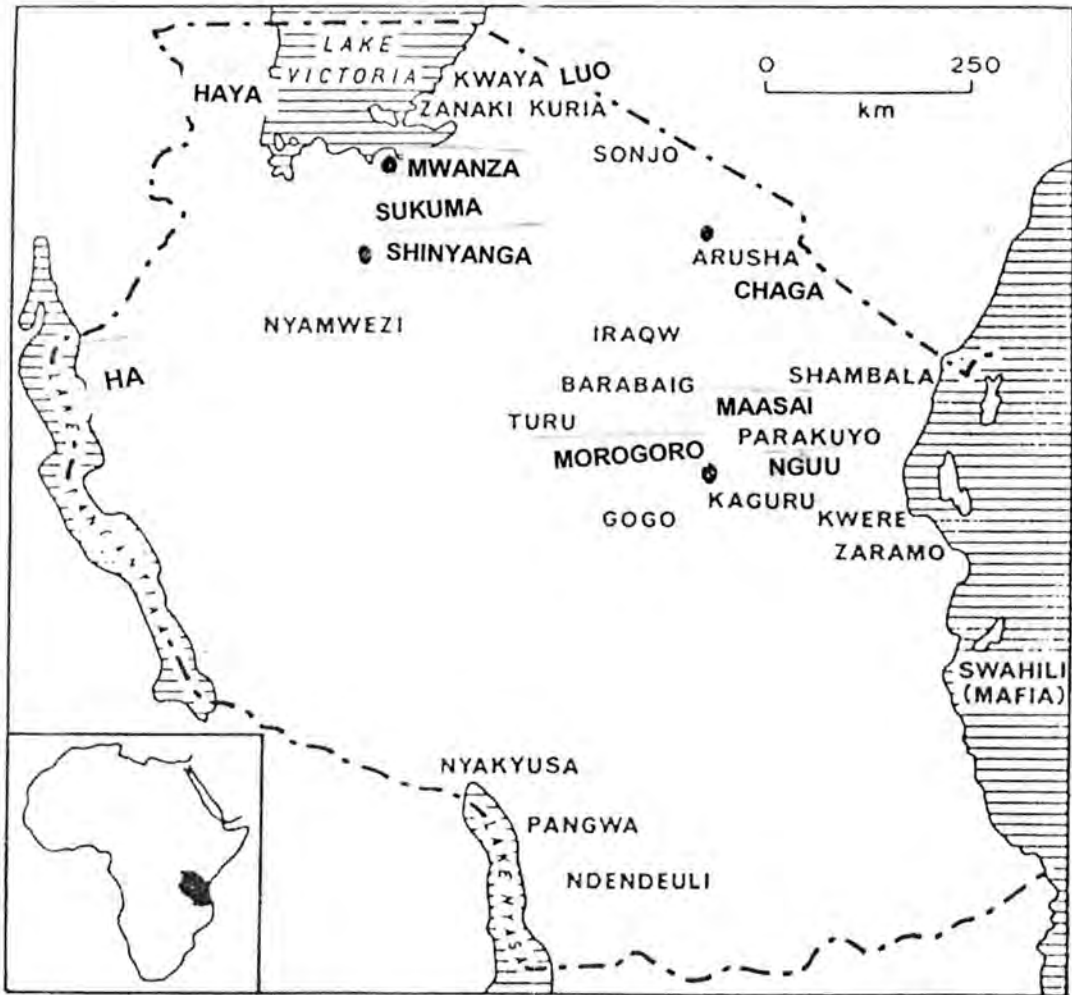
Shinyanga – Shinyanga Rural District

Morogoro Region – Mvomero District

Mara Region – Tarime District



Appendix 2b: Location of People Mentioned in Chapters 2-8



Source: Modified from Sivalon (2000)

APPENDIX 3: Individual Interviews with Child-wives and Child-widows

Interview Guide Notes

General Introduction: Thank you for agreeing to spare the time to see me. I am studying human rights and specifically on the participation rights of girls before marriage; the early marriage practice, as well as the plight of child-widows. For this reason, I need to get your views on a number of issues. There are no right and wrong answers. I am only interested in your views.

I will explain the voluntary nature of participation and issues related to promises of confidentiality and anonymity, including its limitation. To reinforce the message that participation is voluntary, I spent time at the beginning of each interview showing the key informants they could terminate the discussion or the recording at any time, by showing me a dry leaf.

SECTION A

A. Interview Guide Notes to: (a) Child-widows and (b) Child-wives.

i). General Profile (Who are these children?)

- Age
- Level of education
- Status of childhood (i.e., orphan, adopted)
- Ethnicity background (matrilineal or patrilineal)
 - District of origin
 - Ethnic group
- Religion
- Occupation
- Rural, semi-urban or urban based
- Type of marriage: Monogamy or polygamy; customary, religious or civil marriage; presumption of marriage; marriage with or without mahari. (Before asking them the type of marriage I will give the interviewee examples of what these marriages entail. Then I will extrapolate out of that what the form was).
- How did you meet your husband? (to establish if it is an arranged or forced marriage).
- Have you got children?

N.B. After confirming her age status, depending on the situation the major question will be: **tell me your life story**. I will be checking on her coverage of the relevant elements by posing follow-up questions depending on how much information she has covered in her story.

ii). Cultural norms and Human rights issues

1. Cultural norms

I will start by giving them various examples of traditions/customs on marriage institution and then extrapolate from them the following:

- Do you know your traditions/customs on marriage institution?
- How are you supposed to behave as a girl in your society?
- If attended initiation ceremonies.
- In whose community compound does the family normally live? Is it the wife's, clan's land or the husband's compound? (i.e., matrilineal or patrilineal). Where is your compound and why?

- What are your **roles** at home? (What tasks do you undertake in the household? Are you ever consulted on a decision concerning your household roles? Do you play any decision role? To what extent are you participating in the household?)

- Who cares for the children?

2. Human rights issues

- What is the meaning of the term 'human rights'?
- What do you think of **marriage**?
- What do you think are the basic human rights within marriage?
- Had you been given space to voice your opinion during the marriage process?
- When you got married what were your expectations?
- What do you think is the best age for anyone to enter into marriage relations and why?
- Do you think girls should be married at an early age? Why?
- What kind of a marriage did you experience? (Happy/unhappy).
- Were you ever consulted on decisions concerning your daily life?
- Did you ever experience any physical, emotional or psychological violence?
- Did you experience any marital problems?
- Did your husband/in-laws ever say or do something that really humiliated you?
- Do you have **any health** problems?
- Do you have an interest in continuing with further **education**?
- Are you participating in formal or informal **employment**?
- What do you know about **HIV/AIDS**?
- What are the ways likely to spread HIV/AIDS to child-wives or child-widows
- Do you think that it can be prevented?
- Suggestions on what should be done to prevent/ control the spread of HIV/AIDS.

(iii) (a) Child-widowhood

1. Tell me your life story after the death of your husband

- What was the situation with your in-laws immediately after the death of your husband?
- If child-widows have space to participate in inheritance matters.

2. Widowhood rites

- What widowhood rituals were conducted during and after the burial ceremonies of your late husband?
- If it is important for widows to perform these widowhood rites.
- Suggestions on what should be done to widowhood rites that violate human rights?

3. Property

- Did you inherit any property? (i.e., land).
- What impact has the property inheritance had on your life?
- Why widows should or should not inherit property?
- Suggestions on what should be done.

4. Wife Inheritance

- Is the practice of wife inheritance still happening in this community?
- Did it happen to you? If it did happen to you, did your in-laws ask if you wanted to be inherited?
- What are your opinions on this custom?

iv). Support systems (such as primary courts, family or clan *baraza*...)

1. Primary motivations for taking or not taking action ²⁶¹(with or without a guardian support)

I will start by explaining to them what are social fields and what I mean by civil justice system.

- What kind of problems have you encountered?
- Where they seek support.
- What effect was the problem having-impact on life/marriage/work/health/in-laws?
- Why did something have to be done?
- Or why was nothing done despite the effect of the problem – was it due to lack of knowledge? Lack of a guardian to represent you? Respecting your customs? Lack of money? Lack of or inadequate support system within your community? Not wanting more trouble? Just too much bother? Other possible reasons
- If no action taken, was there anything that could have been provided that would have assisted you to resolve the problem? (i.e., advice? Information? Legal aid support?)

2. Reasoning behind the approach taken

- How did you formulate the problem?
- What did you think could be done? Why did you think nothing could be done?
- Feelings of blame, anger, injustice? Or not?

3. Goals in taking action

- What were you seeking?
- What did you really want? – Separation or divorce? Portions of inheritance for a widow? Protection of widows' rights against violations? Administration of estate matters?

4. Why did they seek support from social fields?

- What made you think guidance (such as advice, opinion, supervision and directions) from social fields was necessary?

5. Resolving the dispute

- What steps were taken with or without help to resolve the dispute?
- How did it end (if at all)?
- Why did it end in that way?
- Responses to court based resolution processes
- Responses to non-court based conflict resolution processes

6. Evaluations

- Did they achieve their objectives? If not, why not?
- Was the outcome worth the efforts made?
- How should a problem like theirs be dealt with in future?
- Positive and negative aspects of dealing with the problem

7. General attitudes to the civil justice system

- What are the courts for?
- Should child wives or widows be able to use the courts effectively?
- What agencies, organisations, institutions should be made available to help them resolve problems?

8. Law

- Do you think the law has any role to play in solving the problem of early-marriage practice and the plight of child widows?
- Suggestions on law reform (if any).

²⁶¹ See Genn, H. 1999. *Paths to Justice: What People Do and Think About Going to Law* (Oxford – Portland Oregon –Hart Publishing).

APPENDIX: 4 Interview Guide Notes to Other Key Informants

A. Interview Guide Notes to Other Key informants: Parents, relatives, friends, in-laws, senior citizens, community and religious leaders.

1). General Profile

- Name
- Age
- Ethnic group
- District of origin
- Occupation
- Religion
- Marital status
- Education

N.B. The major question will be: **tell me any life story of a child-wife or/and a child-widow you know.** The following guide notes will be used for the individual interviewee depending on how s/he is dealing with women only in this context.

2. Human rights issues

- What is the meaning of the term 'human rights'?
- What do you think of marriage?
- What do you think are basic human rights within marriage?

Cultural norms

- Do you know your traditions/customs on marriage institution?
- How are girls supposed to behave in your society?
- In whose community compound does the family normally live? Is it the wife's, clan's land or the husband's compound? (i.e., matrilineal or patrilineal). Why?
- What are women's **roles** at home? (Such as what tasks do they undertake in the household? Who cares for the children? Do they play any decision role? To what extent are they participating in the household?).

3. Initial motivations for early marriages

- Who is a child?
- How is a girl-child viewed?
- What is your opinion on the minimum age of marriage for girls?
- Why early marriages for girls in contemporary Tanzania?
- What are the major motivations (social, economic or cultural?)
- (For parents and male networks) How much *mahari* did you receive when you married your daughter off?
- (For in-laws) How much *mahari* did you give?
- Did the child attend initiation rites? (Content of what is taught during the initiation).

4. Questions about female children's sexuality in the past

- *How were girls treated in preparation for their roles as adults? Who were their instructors? At what age were girls generally betrothed? What was the marital and age status of their fiancés? How much mahari was generally asked?*
- What other forms of accession to marriage were performed? What did marriage mean to the bride, bridegroom, their clans and communities? What roles were associated

with the wife's rank in a polygamous marriage? Were women allowed to divorce their husbands?

5. Consequences of early marriages and human rights issues

- How does s/he define the term equality in relation to men and women?

I will explain what it means by equality and then ask the following questions:

- What is your opinion on equality between men and women?
- Are girls having space to voice their opinion during marriage and/or inheritance process? Are they ever consulted about decisions concerning their daily life? Why?
- What is your opinion on the issue of girls' rights to participate in the marriage process and in inheritance matters?
- The impact of *mahari*.
- Early-marriage impact.
 - If the child-wife encountered domestic violence
 - If the child-wife encountered health problems
 - If the child-wife encountered any other problems
 - A child-wife becoming a child-widow

6. Child widowhood

i. Laws and customs (the interplay between international human rights norms and domestic laws, tradition and culture)

- What laws are applicable in inheritance matters?
- How is the position of child widows formed at the intersection between laws interplaying with people's customs?

ii. Wife Inheritance

- Is the practice of wife inheritance happening in this community?
- In wife inheritance, does a child-widow have a say? Who in the clan is entitled to inherit her and what criteria are used to select him? If she refused to be inherited, what actions are taken? What is the rationale for wife inheritance?
- What is your opinion on this custom?

iii. Widowhood rites

- What widowhood rituals are conducted during and after burial ceremonies?
- Is it important for widows to perform widowhood rites?
- Are there widowhood taboos in this society? How are those who broke them punished?
- Suggestions on what should be done.

iv. Property

- If widows inherit any property (i.e., land).
- What impact it has on widows?
- Why widows should or should not inherit property?
- Suggestions on what should be done.
- How various factors affect child widows on inheritance?

B. Interview Guide notes to Other key informants from Semi-autonomous social fields: Primary Court Magistrates, Assessors, Baraza members and Social welfare officers

1. General Profile

- Name

- Age
- Ethnic group
- District of origin
- Occupation
- Religion
- Marital status
- Education

2. Opening questions

- How long have you been in this work?
- Any previous experience in this work?

3. Role and Purpose of semi-autonomous social fields

- How do you view your role?
- Do you receive child-wives and child-widows cases?
- Do you feel parties in dispute achieve what they are looking for? If not, why is that?
- What are the procedures?
- Do these procedures present any problems for children during the process?
- What language is used?

4. Understanding and participation of parties

- When you see the children in the court or baraza, do you get the feeling that they do/ do not understand what is going on?
- If yes, can you give examples (on child-wives or child-widows)
- If no, why is that, do you think?
- How about their participation in giving their opinion during the proceedings?

5. Evaluation

- Do you think semi-autonomous social fields are a useful way of dealing with family matters?
- Other suggestions on protecting child-widows.
- Have you suggestions for change in primary courts and semi- autonomous social fields in this community?

6. General attitudes to the civil justice system

- What are the courts for?
- Should child wives or widows be able to use the courts effectively?
- What agencies, organisations, institutions should be made available to help them resolve problems?

7. Law

- Do you think the law has any role to play in solving the problem of early-marriage practice and the plight of child widows?
- Suggestions on law reform (if any).
- Judicial activism

C. Interview Guide Notes to Ministries Officers and International Organisations Staff

1. General Profile

- Name
- Age
- Ethnic group

- Occupation
- Religion
- Marital status
- Education

2. Consequences of early marriages and human rights issues

- Who is a child and why?
- What is the institution doing about promoting and protecting child-wives and child-widows rights?
- Are girls having space to voice their opinion during marriage and/or inheritance process? Why?
- What is your opinion on equality between men and women within marriage life and in inheritance matters?
- What is your opinion on the issue of girls' rights to participate in the marriage process and in inheritance matters?
- The concept of mahari.
- Early-marriage impact.
 - If the child-wife encountered domestic violence.
 - Impact on the girl-child's rights to education.
 - If the child-wife encountered health problems.
 - If the child-wife encountered any other problems.
 - A child-wife becoming a child-widow.

3. Child widowhood

- Her legal rights under various laws
- Her rights under customary norms
- The impact of child widowhood on Tanzanian society.
- The legal rights available to child widows in terms of coexisting statutory, Islamic, customary laws and local norms, and the ways the laws should change.

4. Support Systems

- The role of semi-autonomous social fields in dispute resolutions in inheritance matters
- Widowhood rites and coping strategies in place.
- The role of international agencies
- Recommendations on steps to be taken to promote and protect child widow's status at local, national and international levels.

5. General attitudes to the civil justice system

- What are the courts for?
- Should child wives or widows be able to use the courts effectively?
- What agencies, organisations, institutions should be made available to help them resolve problems?

6. Law: Do you think the law has any role to play in solving the problem of early-marriage practice and the plight of child widows?

- The position of regional and international human rights law in protecting and promoting child-wives and child-widows in Tanzania.
- Suggestions on law reform (if any).

APPENDIX 5: Focus Group Checklist

A. Focus Group Checklist

i). Introduction: Who is a child and what is human right

- "Can anyone tell me who is a child"?
- I can also ask by using hypothetical examples when asking those questions. For example, if a girl is married at a certain age would you think in this situation is a child? If I don't get the response I will give them facts of some live examples without giving proper names.
- "Can anyone tell me what human rights are"
 - "Can we list our human rights"
 - Has any one had her/his rights violated as a child
 - Has anyone seen a female child's rights violated?
 - Are there early marriages in this society
 - What happened/how did it happen
 - Why people practise early marriage
 - What is the impact of early marriages

ii). Child widowhood

- "Can anyone tell me who is a widow"
- "Can anyone tell me who is a child-widow"
- How are widows viewed in this society?
- Has anyone experienced or seen violations of human rights of a child-widow?
- Why people do such things to widows?
- What are the motivations for doing that?
- What our culture says about treatment of widows?
- Do child-widows encounter more problems than adult widows? How?

iii). Follow up to stories

- Could anything have been done to stop that happening?
- What are your views on the plight of child widows and why?

iv). When everyone who wants has told his or her story

- How can we stop such things from happening?
- What are we learning from such violations?
- What are we learning from people who treat widows well?
- What should be done by the society?

v) Support system

- What is the role of social fields?
- What is the role of activists?
- Are courts within the reach of people? Is it easy for widows to access justice through the court?
- Judicial activism

vi). Law

- Suggestions on what should be done. (Through the law reform? Within the society...)
- The position of regional and international human rights law in protecting and promoting child-wives and child-widows in Tanzania.
- Other suggestions?

APPENDIX: 6 A List of Focus Group Discussions

No	Focus Group	Total	F	M	Organiser	Place	District
1	Early married women	8	8	-	Paralegal	Mangahe village	Mvomero
2	Traditional custodians	6	5	1	Paralegal	Mangahe village	Mvomero
3	Neighbours	3	1	2	Paralegal	Sokoine village	Mvomero
4	Wives in polygamy	6	6	-	Paralegal	Sokoine village	Mvomero
5	FARAJA (NGO)	3	1	2	Researcher	Morogoro town	Morogoro
6	University Tutors	6	1	5	Researcher	Mzumbe University	Morogoro
7	Ward Tribunal members	3	-	3	Researcher	Mhonda village	Mvomero
8	Child-wives	4	4	-	Paralegal	Tarime	Tarime
9	Child-wives	6	6	-	Paralegal	Mogabiri village	Tarime
10	Traditional leader & a Reverend	2	-	2	Community Development Officer	Tarime town	Tarime
11	Village leaders	3	-	3	Researcher	Nyamongo village	Tarime
12	Wives of female husbands	7	7	-	Village leader	Nyamongo village	Tarime
13	Sungusungu & a village leader	4	1	3	Paralegal	Sabasaba village	Tarime
14	Primary court staff	5	-	5	Paralegal	Nyamwaga village	Tarime
15	Ward tribunal members	6	-	6	Researcher	Turwa Ward	Tarime
16	Ward tribunal members	7	1	6	Researcher	Tarime Ward	Tarime
17	Community Dev. Officers	2	-	2	Community Development Officer	Tarime village	Tarime
18	WEO & staff	3	1	2	Paralegal	Tarime village	Tarime
19	Ritongo	12	-	12	Village leader	Nyawaga village	Tarime
20	Ward tribunals	5	1	4	Paralegal	Chamaguha	Shinyanga
21	Primary magistrates	2	1	1	Researcher	Shinyanga	Shinyanga
22	Paralegal centre	5	3	2	Paralegal	Kambarage	Shinyanga
23	Paralegal centre	6	5	1	Paralegal	Shinyanga	Shinyanga
24	Law reform lawyers	3	1	2	Researcher	DSM	DSM
25	WLAC	8	6	2	Researcher	DSM	DSM
26	Nola (NGO) Advocates	2	-	2	Researcher	DSM	DSM
27	Paralegal centre	12	12	-	Paralegal	Katesh	Katesh
	Total	127	59	68			

Justification for these FGD²⁶²

Validity in focus group research is achievable if it is applied carefully to a problem that is suitable to focus group inquiry. In this study, focus group discussions consisted of respondents who shared similar experiences or professions. Men, women and young people were included in the discussions so that the discussions were not gender or age biased.

However, because most women and girls have not been socialised to mix or to have discussions with men, the researcher decided to conduct a special FGD that included women and girls only. They were very open about revealing their experiences and assumptions. These discussions were conducted, at times, with similar types of participants to identify trends and patterns of perceptions. On other occasions, different groups were used to search for their perceptions on the phenomenon researched. Actually, in some instances, homogenous groups helped to create a sense of comfort and compatibility among participants.

Focus Group Discussions with Paralegals

The paralegals are local resource persons trained to inform the local community about the 'ABC' of the laws; to advocate important legal reforms; to refer clients to relevant agencies; to provide advice on preliminary procedures to undertake and assist clients on how to lodge complaints at the primary courts (WLAC; 2000). The researcher targeted them so as to provide a link between statutory, religious and customary laws and customs.

I asked them to tell stories about child-wives or child-widows who had consulted them; such consultations were rare. However, they narrated stories of children they knew in such circumstances. Childhood status is more disabling-as wives and widows they become more vulnerable. Most child-widows are more vulnerable because of some widowhood rites; some live in a very poor situation. The implementation of human rights, with regard to the right of girls to participate in decision-making, was mentioned as being very difficult to enforce at household level. However, Christian religious concepts have played a vital role in influencing some positive changes in some households.

Discussion with Primary Court Staff and Magistrates

In order to search for more information on access to justice in the primary courts and the applicable laws, supplementary FGD were arranged. For example, in Nyamwanga, the FGD was made up of a primary magistrate, two assessors, a court clerk and a messenger. The discussion was very informative on the childhood concept within Kurya society; and also, on the importance of *mahari*, the *nyumba-ntobu* concept and on the wife of the grave issue. They explained that judicial activism was difficult to initiate in most primary courts because most assessors who are selected value customary norms. There was also awareness in urban areas where women and young girls access the primary court to access justice, hence the large number of women who file cases in semi-urban courts. This information complemented the courts' records in some jurisdictions where a number of women filed cases.

²⁶² The researcher followed a predetermined guide to direct a discussion between 2 to 12 people (this size group allowed everyone to participate).

Focus group discussion with Ritongo and Sungusungu²⁶³

A population segment chosen that could provide the needed information on out-of-court forums consisted of Sungusungu and Ritongo members. For example, a FGD was conducted with Sungusungu of a Sabasaba village in Tarime to search for more information on the access to justice available, once child-wives or child-widows approach them. The researcher purposefully sampled this group to validate a story of one of the child-wives who narrated that she had reported her case to the Sabasaba Sungusungu after her husband had chased and threatened to kill her. The discussion became very interactive as respondents challenged each other and eventually arrived at some consensus on the diversity of their customs, such as *mahari* and leviratic marriages.

Discussion with University of Mzumbe faculty of law tutors

The researcher deliberately chose to conduct FGD with law tutors rather than individual interviews, on the basis that the interaction of academicians would provide a revealing source of data in respect of their views on how the law functions in more complex arenas. They provided valuable suggestions on policy and law reforms.

Discussion with Child-Wives

The researcher decided to organize a FGD to get a diversity of opinion and experiences on the impact of early marriages. She was optimistic about hearing additional, interesting information. Unexpected comments and new perspectives were explored as to how these children were overworked and sometimes raped within the shadow of marriage. Some respondents also testified that they cultivate land owned by men and that they are controlled in almost everything they do. However, there are child-wives who are able to prevail over the constraints that normally face them in their daily life through the support of their natal families' network.

Early Married Women and in Polygamy

I was looking for the causes of their early marriage and how they participated in that process, as well as looking at their daily lives, during and after their marriage. For instance, respondents commented that Maasai as a whole is a male oriented society where the husband is assumed to be the head of a given household. The household is therefore an arena in which gender roles, relations, and identities are defined and idealised. This would

²⁶³ The Sungusungu (a Sukuma name for 'black safari ants') group was originally started within Sukuma people. It is a traditional system of justice, which is composed of a *Mtemi* (chief) who is the judge or any other respected man in the community who has the power to decide on disputes presented before him (Maina 1997). He is assisted by the chief commander (prosecutor); followed by at least not less than five assessors assisting the *Mtemi*. An expert witness who is always a 'witchdoctor' can assist all these people, while the lowest person in the group is just known as *askari* (soldier). The accused person if found guilty can be fined or punished in terms of strokes of the cane, payment of money or payment of material assets like cows, goats, sheep etc., (Kijo-Bisimba 2002). The Sungusungu groups, though having started in the rich cattle breeding Sukuma areas, have over time developed into a national phenomenon (Maina 1997). For instance, I found the Kurya have Sungusungu groups with minor modifications from the Sukuma.

provide some insight into the questions of men determining how income is spent and of women having to rely on men to make decisions for the family.

During discussions, I nonetheless realised that the women affected are actually disturbed about this type of headship, where they are denied access to the big money earned, while men alone decide what to do with it. They were particularly concerned that most of their men used such money either to satisfy the needs of the flesh by drinking or by paying the bride price of another wife.

The nature of polygamy was addressed, as were changes which may have taken place in the roles of senior wives. Unanticipated comments were exposed quite naturally. They told me about the extramarital relations going on, saying it was a Maasai custom. I learnt of the power of women in various different cultural aspects within polygamous marriages in Maasai societies. Senior wives have the power to control other women in a compound, and they adore this position. Thus, child-wives and widows are in most instances under husbands' or senior wives' control. Child-wives and widows were seen to be in a more vulnerable position.

Traditional gatekeepers

From this group I was searching for the sources and values of customary norms, including the early marriage tradition, *mahari*, polygamy, FGM and leviratic marriages within Maasai and Kurya ethnicities. For instance, one FGD involved two men, one a traditional leader and another a religious reader, (who was also a staunch traditionalist). They had strong views on protecting customary norms while the interplay of Western norms and customary norms were well articulated. They insisted that no widow within Kurya custom could be seriously re-married after the death of her husband, as she is the wife of the grave forever.

Neighbours

The difficulties of exploring detailed information from some child-wives and widows in some Maasai families led the researcher to conduct a FGD with some of their neighbours. I was searching for the stories of child-widows and child-wives within their village. The discussions revealed some of the information that the child-wives and widows were scared to discuss.

Non- Governmental Organisations

The researcher employed FGD with some organisations working with children, such as the Faraja Trust Fund²⁶⁴, the National Organisation on Legal Assistances (nola) and the WLAC, in order to obtain more information on the legal position of child-wives and child-widows. The researcher thought it would be more fruitful to utilise a FGD as it could attract more members to participate, rather than the option of interviewing each person individually. The process saved a lot of time.

²⁶⁴ Faraja was established in 1991 in Morogoro with the goal of decreasing suffering among the poor through health education, HIV/AIDS counselling, and the provision of loans/grants to assist with income generation.

Nola's advocates prepared the draft of the Children's Bill while WLAC prepared the Inheritance bill (NGO perspectives). The researcher noted recent developments in the process of the new law on the Children's Bill and the inheritance Bill. In both documents the issue of child-widows was not addressed. The activists argued on the status of child-wives and widows and came to a consensus that they should be included in the Children's Bill.

Ward Tribunals

Four FGD were conducted with ward tribunal members in all districts. Two FGD were conducted with ward tribunals of Tarime urban and Turwa wards. The researcher met the Tarime Ward Tribunal chairperson and the Turwa Ward secretary at the Tarime Urban Primary Court and made an appointment with them. At Mhonda ward in Mvomero, the researcher visited the tribunal on a reconciliation session day and they agreed to discuss the plight of female children in their location and the types of cases they were handling. They handled a number of cases involving harassed child-wives. One FGD was conducted with Chamaguha ward tribunal members in Shinyanga. However, a diversity of ideas arose on the plight of child-wives and widows, yet many, especially in Tarime, supported adherence to custom, regardless of whether it violated children's rights or not.

Wives of Female Husbands

Because of the common incidences mentioned of early marriage in *nyumba-ntobu* (female husbands), in Nyamongo village, I asked the Kitongoji leader to look for wives of 'female husbands'. Participants stated what they thought and why they should remain in that status. Unexpected comments were provided, such as wife battery, which was also common to them. A fear of being bewitched if they divorced the female husbands was also noted.

Village leaders/ Community Development Officers

Respondents in this category were expected to give an account of how communities in villages were involved in early marriage and inheritance matters. For instance, they were asked about the characteristics of the community in terms of early marriage and the status of child-widows. I also wanted to learn about the actual beliefs and values of religious and community leaders regarding early marriage and its impact. The aim was to get views on how communities in villages and semi-urban or urban areas view the position of the girl-child and her right to participate in important decisions that affect her, such as entering into marriage and dealing with inheritance matters.

APPENDIX 7: Summary of Workshops

Five **workshops** were conducted (in 2004) one in Dar es Salaam (in April); two in Shinyanga (in Feb) and two workshops in Mvomero districts (March).²⁶⁵

In Mvomero district, I facilitated two workshops, at which 80 participants attended. Each workshop took place over 4 days. The workshops were organised by the Morogoro Paralegal Centre. As I had communicated with them about my intentions and methodology of my research, they requested me to facilitate on Human Rights, the Law of Marriage Act, Inheritance laws and the Sexual Offences Provisions Act. I was also given the chance of preparing group questions that were intended to help me answer some of my research questions. These took into consideration the types of participants I had planned for. For example, some of the leaders from the villages I visited were invited. All the designed techniques were utilised. The workshop that was conducted in Mvomero ward was video recorded; the findings are presented in subsequent chapters. During the workshop the District commissioner came to hear what we were doing. We had an informal discussion with the Mvomero District Commissioner and five media people and one of the issues we discussed was early marriage and its impact.

The workshop in Dar es Salaam had 25 participants, made up of journalists from different newspapers, radio and television programmes. They highlighted various myths about widows and inheritance rights, and insisted on using the media to change the attitudes of people towards myths about widows.

I also conducted a one-day workshop that included child-wives and child widows in Shinyanga town. Part of the workshop was video recorded and the facilitation skills used helped female children to be very free in voicing their concerns. Additionally, a workshop with 52 young students was conducted in Shinyanga. The data from group interviews are the records of the group's interaction that are analysed in conjunction with other qualitative techniques. The checklist was adhered to at all time during the focus group discussions to generate theories. The theories are expounded in the thesis.

²⁶⁵ An extra workshop in Balagdalalu-Katesh was organised by the Legal and Human Rights Centre (in July 2003) and I used that opportunity to test the workshop guidelines by facilitating on the early marriage practice and the plight of child widows. The workshop in Balagdalalu had 23 participants (6 women and 17 men) who were village leaders from Balangdalalu ward. I was moderating the group and my research assistant recording; I also noted some important reactions. Thus, well-moderated group interactions did assist in bringing to the surface aspects of a situation, which might not otherwise be exposed. For example, one Barabaig participant disagreed with what was narrated about early marriage within his tribe. He said things had changed and early marriage for children of 10 years was not happening. There was a chorus reply from the group 'sio kweli' (that is not true). I requested one participant to articulate why it was not true; I selected a Barabaig member who was also a counsellor. She gave several examples of child-marriages in her constituency and some of the cases she was involved in to follow up the matter. Another participant from Nyaturu tribe expounded by giving examples of his friends who are Barabaig and he knows they have married off their female children.

APPENDIX 8: Workshop Guidelines

Participants were divided into five groups to discuss the following topics and provide recommendations:

Group 1.

- Childhood concept
- Early-marriage and cultural practices as well as its impact
- Laws and the early-marriage practice
- Polygamy and early marriages
- Suggestions on what should be done.

Group 2.

- How widows are viewed in the society
- Widowhood rites conducted in matrilineal as well as patrilineal societies
- Widowhood and cultural practices and its impact on widows
- Suggestions on what should be done.

Group 3.

- Widowhood and young age (child-widows)
- Inheritance laws and child-widows
- The role of social fields
- Suggestions on what should be done.

Group 4.

- The relevancy of human rights norms on the girls' rights to participation and equality vis a vis culture and tradition's demands.
- The position of regional and international human rights law in protecting and promoting child-wives and child-widows in Tanzania.
- Suggestions on what should be done.

Group 5.

- What are the factors responsible for the evolving changes in family values? Are these changes inevitable given the socio-contextual factors?
- What is *mahari*? Are there any changes in the concept? Impact of *mahari* on child-wives in marriage. Impact of *mahari* on child-widows in inheritance matters
- Suggestions on what should be done.

APPENDIX 9: TABLES 4-7 Selected Primary Courts Cases

Table 4. Shinyanga Urban Inheritance cases

Year	Total Cases (n)	Total cases Filed by-women (n)
1998	55	25
1999	50	19
2000	49	20
2001	49	14
2002	72	25
2003	70	26

Source: Shinyanga Urban Primary Court 2004

Table 5. Shinyanga Rural Inheritance cases

Year	Total cases (n)	Total cases Filed by women (n)
1998	51	20
1999	66	29
2000	50	17
2001	40	22
2002	30	11
2003	32	11

Source: Kizumbi Primary Court 2004

Table 6. Mvomero Inheritance cases

Year	Total cases (n)	Total cases Filed by women (n)
1998	11	-
1999	10	4
2000	5	-
2001	6	1
2002	3	-
2003	3	1

Source: Mvomero Primary Court 2004

Table 7: Nyamwaga Inheritance cases

Year	Total cases (n)	Total cases Filed by women (n)
1998	3	-
1999	3	1
2000	1	-
2001	12	7
2002	9	2
2003	8	5

Source: Nyamwaga Primary Court 2004

Appendix 10: Selected Customary Inheritance Rules

Government Notice No. 436 published on 20/9/63

THE LOCAL GOVERNMENT ORDINANCE (CAP. 333)

ORDER Under section 53A

THE LOCAL CUSTOMARY LAW (DECLARATION) (NO.4) ORDER, 1963

THE SECOND SCHEDULE

Laws of Inheritance

- (1) Inheritance follows the patrilineal side.
- (2) The person who administers a funeral is the deceased's elder brother, or, if there is no brother, any other close male relative.
- (3) If the deceased was a child, the administrator is his father or his guardian.
- (4) Expenses for the funeral and mourning come from the deceased's estate, but if the deceased had no property, then the administrator takes that responsibility.
- (5) The administrator of the deceased's property is the eldest brother of the deceased, or his father, and if there is no brother or father, can be any other male relative chosen with the help of the clan council. If there is no male relative, his sister is the administrator.
- (6) After a mourning period is over, clan members shall convene together to take inventory of the inheritance property and discuss the credits and debts of the deceased.
- (7) The creditors shall be invited to submit their claims.
- (8) The debtors of the deceased shall be announced and also a schedule of payments is laid down.
- (9) After establishing debtors and liabilities, administration for the distribution of the inheritance property is agreed upon.
- (10) If any creditor does not mention his claims while he is at the meeting, his claims shall not be accepted afterwards.
- (11) If inherited property is not sufficient to pay all the debts of the deceased, important debts are paid first and other debts are paid in instalments.
- (12) The heirs shall pay the remaining debts from their own properties.
- (13) Claims and debts of the deceased are inherited.
- (14) After the administration of the estate plan is established, inheritance property is usually distributed immediately.
- (15) If there are no problems, the distribution of property is conducted a few days after the mourning period is over; whatever the circumstances are, the period should not exceed one month.
- (16) If one heir makes a request to obtain his share, then the division of property is done immediately.
- (17) If the heirs are not in haste, the property may not be distributed immediately.
- (18) If some creditors of the deceased are absent or not aware of the mourning period, they should submit their claims to the first son heir, and if the inheritance has already been distributed, the first son heir shall pay them with the help of his fellow heirs, depending on the amount of inheritance share they received.

- (19) The first heir of the deceased is the first male child by his most senior wife. If the deceased did not leave a male child by his senior wife, his first male child from any wife shall be the first heir.
- (20) Women are allowed to inherit, except clan land. They can use clan land without selling it during their lifetime. But if there are no men in that clan, a woman can inherit this land completely.
- (21) Inheritance is in three degrees: first degree, second degree, and third degree.
- (22) The person in the first degree is the first heir and he gets a larger share of inheritance than any other heirs.
- (23) Those in the second degree will each get a bigger share of inheritance than those in the third degree.
- (24) If the deceased, when he was alive, distributed to his heirs some share of his property, this share shall be counted in the distribution of the deceased's estate.
- (25) Usually, the first degree is for the first son, the second degree is for other sons, and the third degree is for daughters.
- (26) If the deceased left male children, or both male and female children, they shall inherit all his property exclusively.
- (27) The widow has no share of the inheritance should the deceased have left relatives of his clan: her share is to be cared for by her children, just as she cared for them. (The share of a childless widow is mentioned in paragraph 77, laws on the Laws of Persons, the share not being counted among her husband's inheritance).
- (28) A husband shall not inherit the property of his wife in the inheritance if a Will was not left – except if the wife had no children and had left no relatives in her clan.
- (29) If there are no sons, an elder daughter from the first house shall be the first heir. Except where there is a male relative who stands as a father, he shall receive the bridewealth of the daughters when they get married.
- (30) The mode of distribution of the inheritance in the second and third degrees is in accordance with their ages – that is, older children receive more than the younger ones and males receive more than females.

AN EXAMPLE –Inheritance that involved 24 cattle only:

First Degree	I	-	Son – age 23 – will receive 9 cattle
Second Degree	II	-	Son – age 20 – will receive 5 cattle
			Son – age 14 – will receive 4 cattle
Third Degree	III	-	Daughter – age 25 – will receive 3 cattle
			Daughter – age 22 – will receive 2 cattle
			Daughter – age 18 – will receive 1 bull/cow

- (31) If a child is the only child, s/he shall inherit all the property – except for a female child, she shall not inherit clan land, although she can use it without selling it during her lifetime. Even though, paragraph 20 must be observed.
- (32) If there are daughters, but there are no sons who are alive or who left children, then there is no second degree.
- (33) If there are sons, but there are no daughters who are alive or who left children, then there is no third degree.
- (34) Grandchildren shall inherit in the second or third degree of their father or mother, in the inheritance of their grandfather, if their father or mother died before their grandfather.

- (35) If the grandchildren are the children of the first son, they shall not inherit in the first degree should their father have left another son from that household.
- (36) If so, the elder son remaining is the one that shall be the first-degree heir, and will receive the largest share in his father's inheritance.
- (37) Those grand children shall inherit in the second degree.
- (38) An illegitimate child (that is, a child who moved to his maternal uncle's home) shall inherit from his mother's inheritance; and if his mother died without leaving legitimate children, and died before his grandfather, then this illegitimate child shall inherit in the degree of his mother in his grandfather's inheritance.
- (39) If the mother of an illegitimate child left other children who are legitimate, the illegitimate child will inherit his mother's property, according to his age and along with the other children.
- (40) If the grandfather of the illegitimate child did not have another child, other than the mother of this child, and if the mother is dead, this illegitimate child shall be a legal heir of his grandfather.
- (41) Children who were legitimized by their parents' marriage are considered as legitimate children, although a child who was legitimized by marriage cannot precede others in inheritance, even though the child was born first, should there be a son in another house whose mother was married to the deceased before he married the mother of the child that was legitimized.
- (42) Children who were legitimized by special payments (mentioned in paragraph 181 on the Laws of Persons) shall inherit after the children born legitimately or legitimized by marriage in the second degree, if he is a man, and in the third degree, if she is a woman.
- (43) Illegitimate children shall not inherit in the patrilineal side unless there is a Will.
- (44) If the deceased did not leave any children or grand children, his brother and sister who share the same father and mother shall inherit – the first brother inherits in the first degree, the other brother in the second degree and the sister inherits in the third degree.
- (45) If the deceased did not leave a brother or sister who shares the same father and mother, then children of his brother or sister who share the same father and mother shall inherit the deceased's property before a brother or sister who shares the same father, but a different mother.
- (46) If there are not any brothers or sisters, then their children shall inherit.
- (47) If the deceased did not leave brothers or sisters and if they did not have children, then his father shall inherit.
- (48) If the deceased's father is already dead, then his uncles and aunts shall inherit.
- (49) If there is neither father, nor aunt, then other relatives on the father's side shall inherit.
- (50) If there are not any relatives, then the husband shall inherit his wife's property and the wife her husband's property.
- (51) The deceased's heir shall have the responsibility of taking care of the widow.
- (52) If there is no heir, then the property of the deceased shall be taken by the Local Government.
- (53) If the leader of the clan dies, the clan council selects a new leader.

Appendix 11: Illustrations from Tarime Urban Primary Court (TUPC) and Mvomero Primary Court (MPC) (Jan. 2004). First photography shows TPUC building; the second photography shows file storage at MPC.



APPENDIX 12: The Clan Constitution of Abahilimwisabi To Govern the Affairs of the Clan baraza at the Inchange Ward:

Aims

1. The purpose of conducting clan baraza is to prohibit all possible events that can contribute to breaking of a country's laws and social norms as well as improving the life of clan members.
2. The management, chairperson and his assistant, the secretary and his assistant and the treasurer shall stay for a three-year term, but in the event of problems the management can be changed at any time.

Clan Members Rights

1. Every clan member, being either a man or a woman, has the right to present his/her problems at the clan baraza, and the baraza has the power to hear and give their verdict, whether the problems are to be handled with law enforcement organs, thereby issuing a letter to be taken to the police or court.
2. Clan baraza shall be conducted twice in a month. In case of emergency the meeting can be convened at any time.
3. Every clan member is obliged to observe all country laws and attend all clan meetings as provided in the Clan Constitution.
4. Clan baraza have powers to appoint sub-committees if need be and the sub-committee discharge its function as directed and shall comprise of a team of ten or more members.
5. Biannually a statement of income and expenditure of the clan members' contribution shall be read.

Rules concerning Clan Proceedings

1. A clan member who is a burglar, thief or a criminal of any kind, will be arrested by a Sungusungu an appointee of the clan and sent to the police.
2. Each clan member is liable to pay a fee of T.sh 2,500/= (about one pound and fifty pence) per year. A member can pay by instalments. If a clan member fails to meet this obligation, he will be forced to pay with an additional penalty of T.sh 1.000/=.

Functional use of the Contribution

1. To assist clan members in problems of sickness, death, education and to run clan meetings.
2. Every clan member bringing false information at the clan meeting that is discovered shall be liable to a fine of T.sh 3,000/= (about 2 pounds).
3. Every clan member is supposed to report to the clan meeting on time.
4. Every clan member who fails to attend the clan baraza without valid reasons shall be liable to a fine of T.sh 500/= (about 50 pence).
5. Every clan member who does not completely attend a clan meeting shall be forced to attend and will be liable to a punishment of 6 strokes and a fine of T.shs 10,000/=(about 7pounds).
6. Every clan member who attends the meeting while drunk and disorderly, or who uses strong language and creates havoc, can be fined T.sh 10,000/=.

These regulations are formulated by clan members of Abahilimwisabi and shall be put to use whenever clan meetings are conducted.

These regulations were composed on 10th April 2003 and have empowered the authority of Abahilimwisabi to use them in that clan exclusively.

Copies of the Clan Constitutions were sent to the Tarime District Commissioner, Tarime District Court, a ward secretary in-charge and a Commanding Officer of Police.

Appendix 13: List of Child-wives and Child-widows Interviewed in Tarime, Shinyanga and Mvomero

List of Child-wives in Tarime

No	Name	Age at marriage	Now	Religion	Type of marriage and status	*Edu.	Circumstances for early marriage
1	Nyangi	13	17	Muslim	Arranged marriage	P.3	Poverty/ Drop-out/ lack of fees/ mistreatment by her step mother/ already mutilated ready for marriage
2	Constasia	15	16	Christian	Eloped- <i>mahari</i> paid	P.6	Drop-out / parent neglect/ her father did not value education
3	Tatu-Mwita	14	16	Traditional	Forced marriage	P.7	Poverty/ <i>mahari</i> ; father wanted to marry another wife/ already mutilated ready for marriage
4	Esta-Chacha	12	16	Christian	Forced marriage	P.4	Poverty/ Family problems/ parents separated
5	Bhoke-Nyangi	11	15	Traditional	Forced marriage	Nil	Poverty/ Family needed money & status/ already mutilated ready for marriage
6	Pendo	15	17	Christian	The child selected	P.5	Drop-out/status/ fear of pregnancy
7	Ghati	13	16	Traditional	Eloped- <i>mahari</i> paid	Nil	She thought it was a good thing/ peer pressure/ no education/poverty
8	Khezia	13	15	Traditional	Arranged marriage, in polygamous marriage	P.6	Parents separated, children experienced problems/ already mutilated ready for marriage
9	Chausiku	12	16	Muslim	Forced marriage	P.3	Poverty /Family problems /living in poverty

* Edu: Education

List of Child-wives in Shinyanga

No	Name	Age at marriage	Now	Religion	Type of marriage & status	Edu.	Circumstances for early marriage
1	Liku	15	17	Christian	Arranged marriage	P.7	Orphan/ poverty/fear of pregnancy/no school fees
2	Amina	14	17	Muslim	Eloped- <i>mchenya</i> and <i>mahari</i> paid	P.7	Her father in polygamous marriage, hence parent neglect/poverty/ no school fees
3	Holo	14	16	Muslim	Arranged marriage, in polygamous marriage	P.6	Poverty/ <i>mahari</i> / parents did not value education
4	Mindi	15	16	Christian	Eloped/ <i>mahari</i> paid	P.7	Family problems/ mother died/ father re-married /neglected
5	Kwangu	12	15	Traditional	Eloped/ <i>mchenya</i> & <i>mahari</i> paid	Nil	Orphan/ Poverty
6	Khadija	12	13	Muslim	Raped <i>mahari</i>	P.3	Poverty/ parents did not value education
7	Paulina	13	15	Traditional	Arranged marriage	Nil	She thought it was a good thing/ peer pressure/ no education/ poverty
8	Kigongo	15	16	Traditional	Selected the husband- Traditional marriage	P.7	Status/ <i>mahari</i> / fear of pregnancy
9	Kulwa	11	17	Christian	Arranged marriage	Nil	Family problems no money/father frustrated and became alcoholic

List of Child-wives in Mvomero

No	Name	Age at marriage	Now	*Religion	Type of marriage & status	*Edu.	Circumstances for early marriage
1	Chalia	14	15	Traditional	Arranged marriage, in polygamous marriage	Nil	Reputation /poverty/education not a priority/ already mutilated/ ready for marriage
2	Jokika	14	16	Traditional	Arranged marriage, in polygamous marriage	P.7	Status/education not a priority/ already mutilated ready for marriage
3	Marika	15	17	Traditional	Arranged marriage	P.7	Poverty /mahari/status/ already mutilated ready for marriage
4	Tekeko	13	15	Traditional	Forced marriage	Nil	Status/ education not valued / already mutilated ready for marriage/ need for more cattle in order to re-marry
5	Faraja	14	16	Christian	Arranged marriage	Nil	Status/ education not valued / father wanted cattle for more prestige
6	Nangai	13	17	Christian	Arranged marriage, in polygamous marriage	Nil	Poverty/ education not valued/ need for more cattle in order to re-marry
7	Naini	15	17	Christian	Forced marriage	Nil	Status/traditional roles of women/ need for more cattle in order to re-marry / already mutilated ready for marriage
8	Yeyoo	13	16	Traditional	Arranged marriage	Nil	Status/ traditional role of women/ already mutilated ready for marriage

List of Child-widows in Tarime

No	Name & the age at marriage	Age at widow-hood	Now	Religion	Type of marriage & status	Edu.	Circums-tances for early marriage	Circums-tances of the deceased' s death
1	Robi-14	15	16	Traditional	Forced marriage, in polygamous marriage	Nil	Poverty/ Orphan/ brother wanted money	HIV related diseases- Not inherited
2	Eva-16	16	17	Christian	Selected the husband/ Christian marriage	Form 2	Drop out lack of fees/ poverty	Car accident- Not inherited
3	Pili-10	13	16	Traditional	Forced marriage	Nil	Poverty /High bride price	Sudden death/ unknown- Inherited
4	Pilina-14	15	16	Traditional	Arranged marriage, in polygamous marriage	P.7	Status/fear of pregnancy	HIV related diseases- Not inherited
5	Salome-12	15	16	Christian	Arranged marriage	Nil	Poverty/ Status	Sickness- Inherited
6	Joyce-14	15	16	Traditional	Arranged substitute marriage, in polygamous marriage	Nil	Custom/ Poverty/ Status	HIV related diseases Inherited
7	Bhokena-14	16	17	Traditional	Arranged marriage	P.7	Orphan/poverty	Car accident- Inherited
8	Mumuriba-13	15	16	Traditional	Arranged marriage, in polygamous marriage	P.7	Status/fear of pregnancy/ education not a priority	HIV related diseases- Not inherited

List of Child-widows in Shinyanga

No	Name & age at marriage	Age at widow-hood	Now	Religion	Type of marriage & status	Edu.	Circumstances for early marriage	Circumstances for the deceased's death
1	Tatu -15	16	17	Muslim	Arranged marriage	P.7	Orphan /poverty	Accident- Not inherited
2	Marina-14	16	16	Christian	Arranged marriage	P.6	Poverty/ lack of school fees/status	Accident- Not inherited
3	Beti-14	15	16	Christian	Arranged marriage	P.4	Poverty /High bride price/ education not valued	Sickness- Not inherited
4	Suzan-12	15	16	Christian	Arranged marriage	P.3	Poverty/ status/ education not valued/ <i>mahari</i>	Sickness due to old age- Not inherited
5	Lena-14	16	17	Christian	Eloped / <i>mchenya</i> & <i>mahari</i> paid	Nil	Orphan /Poverty	Sickness - Not inherited
6	Someke-13	15	17	Christian	Arranged marriage	P.7	Poverty/ status/ <i>mahari</i> / education not a priority	HIV related disease- Not inherited
7	Raheli-15	16	17	Christian	Arranged marriage	P.7	Poverty/ traditional roles of women	Sickness due to old age- Not inherited
8	Kunese-13	15	16	Traditional	Arranged marriage	P.7	Poverty/ <i>mahari</i> / education not a priority	HIV related disease- Not inherited
9	Sundi-13	15	17	Traditional	Arranged marriage	Nil	Poverty/ education not valued/ <i>Mahari</i>	HIV related disease- Not inherited

List of Child-widows in Mvomero

No	Name & age at marriage	Age at widow-hood	Now	Religion	Type of marriage	Ed	Circumstances for early marriage	Circumstances for the deceased's death
1	Merina-12	15	17	Muslim	Arranged marriage	Nil	Poverty/ status/ education not valued	Sickness due to old age- Inherited
2	Anika- 13	14	16	Christian	Arranged marriage	Nil	Status/ education not valued	Sickness due to old age- Inherited
3	Amina-12	16	17	Christian	Arranged marriage	Nil	Status /traditional role of women as wives	Unknown sudden death- Inherited
4	Naikuso-12	14	17	Christian	Arranged marriage	Nil	Status/ education not valued / father wanted cattle for more prestige	Unknown sudden death- Inherited
5	Rehema-11	13	17	Christian	Arranged marriage	Nil	Poverty/ status/ education not valued	Sickness- Inherited
6	Asiaye-13	15	17	Traditional	Arranged marriage	Nil	Traditional role of women as wives/fear of pregnancy	HIV-related disease- Inherited
7	Tuache-14	13	16	Traditional	Forced marriage	P.7	Status/fear of pregnancy	Sickness- Inherited
8	Christina-14	15	17	Christian	Arranged marriage	P.7	Poverty/ Need for more cattle in order to re-marry	T.B. Inherited

Appendix 14: Summary of Interviews (voices) of Child-wives and Child-widows in Tarime and Shinyanga

CHILD-WIVES IN TARIME

1. **Ghati (16) said:** I eloped at the age of 13, then *mahari* was paid. I thought it was a good thing as a number of girls in my village were also married. I'm the first-born child and my parents didn't send me to school. I helped out with farming at home. My husband was a young man and I loved him, but after I had a child and became fat, he started harassing me and told me that I looked old and I had become lazy; he also accused me of having an affair, hence he wanted another woman. I was surprised as I was the one who was doing all the house chores and farm work... My husband asked my father to refund the cattle. He filed a divorce case; I couldn't sleep at night when I thought about appearing in court for my divorce case. I was worried about what the outcome of the case would be. During the first ward tribunal, they ruled in my favour.... But later, my husband sold some cattle and bribed the village chairperson. During the second session, I was told that the case should be brought to this court. According to the rumours circulating in the village, he had already bribed the primary magistrate. My father had no cattle to refund and he had been complaining. I am nervous about expressing myself in court. I'm disturbed by this case...
2. **Chausiku (16) complained:** This marriage has forced me to work in a bar and people now think I'm a prostitute. I was forced into marriage at the age of 12; I dropped out from my primary three class at school. My father has two wives and we had been living in poverty. My brother was accused of stealing money from his friend and was sentenced to go to jail or pay a fine and refund the debt. My father had already discussed the issue with one of our neighbours who said he was prepared to marry me. My parents received *mahari*, which paid for my brother's debt. I remember staying for a few days with my mother-in-law; one day my husband came and forced me to have sex. It was painful. This happened before I started the menarche.... Both my mother and mother-in-law encouraged me to tolerate the situation. Now I have two children and do all the house chores. It is really hard work; having to look after two babies really tires me out. I can't see my mother like I used to. Every morning you get up to do the heavy routine of work again and again... He has developed a habit of drinking too much and beating me without good reason. In addition to that he is not giving me any money for the children; he says I'm a goalkeeper (housewife) so I should learn to work for money. I have decided to report the abuses to the Social Welfare Office....
3. **Nyangi (16) said:** I was forced into marriage at the age of 15. My father married another wife who had a small baby. I dropped out from school at primary three. My father complained that he could not afford to pay for my school contributions. He told me that life was very expensive because my stepmother had a small baby. Eventually, I became the babysitter. My stepmother was very rude to me, as I didn't handle the baby very well. Thereafter, my father arranged a forced marriage to get some cattle, which would help the family. My marriage life was

horrendous as my husband was a drunkard and very cruel. I was working very hard in doing the house chores but he would always find a mistake and beat me with big sticks or whatever item he could find near him...One day he assaulted our neighbour and it was claimed that he also stole some money. He is now serving a three-year sentence. I struggle to provide my daily meal. However, my mother-in-law occasionally helps me with food

4. **Constasia (16) whispered:** I eloped at the age of 15. My father didn't take care of the family, so we had to fend for ourselves. I therefore couldn't continue schooling at the primary six level. After the strength of father's follow-up the groom's relatives paid him *mahari*. I was harassed and discriminated against by my in-laws because I didn't undergo female circumcision because of my parents' Christian beliefs. My husband didn't take the issue seriously at the beginning, but some of his relatives mocked him by saying that he was married to the *msigane*. I remained at loggerheads with my in-laws for refusing to succumb to FGM; in some ceremonies my husband didn't want me to accompany him on visits to his relatives. I became pregnant and he advised me that I should be mutilated during delivery, but I refused; he used to beat me while I was pregnant for just minor mistakes. Unfortunately, I gave birth to a baby who died after a few days. I encountered complications during delivery and I received a number of stitches as well as suffering from severe lower abdominal pains. We are now separated and I wish I could go back to school.
5. **Tatu-Mwita (16) said:** I was forced into marriage at the age of 14 because my father wanted to marry another wife. I had just completed primary 7. Only a few months of my marriage were happy days... I was regularly beaten for cooking food, which he claimed, was not appetizing. I did all the house chores, even when I was terminally pregnant. He would pick up anything near him and throw it at me. The last time he threw a small hoe at me, which injured my back (she showed me a big scar). After this, I ran away to my sister's place to be rescued. I'm told that the in-laws are now claiming for the refund of their *mahari*. My father wants me to go back to my husband. I'm confused about what to do as my father insists that I should go back as they have no cattle to refund. My sister told my father that it is dangerous to go back to that man, as my health is poor. I'm still staying with my sister; she is very considerate as she has faced similar problems.
6. **Esta-Chacha (16) lamented:** I was forced into marriage at the age of 12 after dropping out of school at primary four level. My parents separated and I remained with my mother. My family was in severe poverty. My husband was arrogant and hostile. I had two miscarriages and he blamed me, saying I was a barren woman. My mother-in-law was good to me but my father-in-law supported his son in his claim that his cattle had purchased a barren woman and that they wanted children. I also couldn't handle the heavy daily chores and banana farm, which exacerbated the situation. One day my husband threatened to kill me as I hadn't gone to the banana farm. I ran away from him and reported the matter at the Sungusungu's office. I told him I wasn't feeling well but my husband disagreed and said I was a lazy wife. I'm now back at my mother's

house.... It is better to struggle for survival rather than face such abuse and harassments.

7. **Khezia (15) said:** I was forced into marriage at the age of 13 after dropping out of school at primary six level; my father received 10 cattle as *mahari*. My parents didn't ask me for my opinion on the marriage. My family is poor and they wanted cattle for the family in order to pay *mahari* for my brother so that he could marry a wife. That is good for my brother and I'm happy for him; however, my parents didn't consider my education. However, I'm now encountering a lot of problems in this marriage. I have been experiencing pain while having sex almost every night. Also, after I delivered my first-born I developed a problem when passing urine; my husband complains that I'm dirty. Although my husband is a businessman, he's been giving me inadequate money for the basics of daily life; he's also been spending a lot of money with other women in town. In addition, he points the finger at me for not budgeting on 2,000/= (Tanzanian shillings) per week (the equivalent to one pound sterling); he regularly beats me for not using the money properly. However, my mother-in-law is a supportive person and always tells my husband not to harass me. My mother-in-law said I should remain with them as my husband has contributed to the problem.
8. **Pendo (17) said:** My parents arranged my marriage (at the age of 15) to a young man because his family was rich. They didn't value my education very much as I was a girl; marriage was very important for them as in our traditional it promotes status within a family. My marriage started peacefully at first as my husband was a loving and caring person. However, after a year he started to change his habits. He wanted me to be mutilated as his friends were laughing at him, saying that I was the *msigane*. My father said it was not possible for me to be mutilated as it is against the Seventh Adventist Church beliefs; my father is an elder at our church.... After giving birth to my first baby, my husband acquired a concubine and developed the habit of beating me when he came home at night, saying, for example, that I had been late in opening the door. He used to beat me with big sticks; I have a lot of scars; I couldn't report this to anyone and I blamed myself. One day he struck me with a *rungu* (a big iron bar) on the head and I bled a lot. I ran away and reported the matter to my parents. My father decided to report the matter to the police station in Tarime town. My husband disappeared from the village when he heard about that. However, after few days he came back and he filed a court case that I had run away and neglected my baby who was staying with his parents. ... I have attended a number of these cases...I'm now divorced.
9. **BhokeNyangi²⁶⁵ (15) whispered:** I was married at age eleven. After almost one year my husband began to badger me to go home for medication to cure my infertility, as I had not become pregnant. I went back home and my mother took me to a traditional doctor who gave me some liquid medicine to drink... My husband and my father-in-law harassed me, claiming that I had wasted the *mahari*.... When I became pregnant, my father-in-law continued to hector me,

²⁶⁵ She narrated her story by explaining what she meant by the pictures she photographed (see Figure:1).

claiming that I was lazy, a bad cook and that I had been snoring at night. On those grounds I was beaten regularly and sent home. When I reached full-term at home, my father escorted me back to my husband. We walked to my husband's village (Korutambe) from Magena B village, a distance of approximately 25 kilometres. When we arrived in Korutambe my father-in-law refused to accept me and my husband supported him. My father and myself walked back to our village. At midnight on the same day, I experienced severe labour pains and gave birth to a baby-boy, who died shortly afterwards. After the episode, I became very weak and anaemic due to prolonged bleeding.... I have never attended school; I wish I could be given that chance...Other problems I encountered were when I reported the matter at the Social Welfare Office, I couldn't do anything because of the time wasted in shuttling back and fore to the office, as my husband constantly missed the appointments.

CHILD-WIDOWS – TARIME

1. Bhokena (17) whispered: I was forced into marriage at the age of 13 to a man whom my family had failed to repay a debt to. I became a widow at the age of 16. However, my married life wasn't too bad. I had two children and then my husband died. I was supposed to be inherited but my grandmother advised me not to. My brother-in-law chased me away from the matrimonial house as it was within the clan compound and belonged to him.... Life became increasingly difficult because of a shortage of food. I remained empty handed. I moved into a hut that was in a terrible condition. Almost every day I found and killed snakes; the place for sleeping was on the floor. Most of the time I went to steal leftovers from my neighbours. I was stealing bananas from other people's farms to feed my 2 children; I was eating once per day. Some days I gave the food to my children and so I couldn't eat. They took all my property and made me depend on them. (She broke down in tears)....They grabbed all my property and as my grandmother was very poor, I agreed to be inherited by one of my brother-in-laws. However, life has been terrible, because this man is busy with his wife and his children. His support is inadequate. I have no education, which could help me to look for some jobs. My grandmother, who is now very old, is also supporting me in taking care of my children. However, I sometimes have to work in the Nyamongo mines in order to get some money to help my children. Actually, I conceived one of my sons there, when I was working in the mine. But according to Kurya custom, he belongs to my dead husband.

2. Pili (16) lamented: My parents didn't ask me for my opinion. What I remember is that I was married when I was a child. I was forcefully taken away. After my husband's death I was told to remain with my in-laws and raise my baby.... My brother-in-law was selected to inherit me, but because he did not want me to share the same compound with his wife and children, he constructed a hut within the compound of my mother-in-law. I was told to assist my mother-in-law in her daily duties and work for my child and myself. I did not satisfy my mother-in-law who harassed me every day; life was awful. My brother-in-law

did not support me with any basic necessities. I had another baby and life became miserable; I wanted to be free from this relationship. In reality, I am just living like a slave at present. I went back to my parents and I was told that 'you are married forever; we do not have any cattle to refund'. One day when I came home, I found that my mother-in-law and sister-in-law had demolished my hut and had stolen my few immovable properties...I think if I re-marry I can get a shelter and try another life.

3. **Eva (17) lamented:** I completed primary school and I passed to join form one; I wanted to be an educated woman and help my parents. Unfortunately, my father died when I had just finished form one. My mother was very sad as she couldn't afford to pay the school fees. She lamented that I could be faced with the same problems she had encountered on getting married at the tender age of 12, in that she received no education. As I realised that the situation was becoming worse at home and that poverty was severe, I agreed to be married to a businessman who had been interested in me for some time. However, I didn't want to be married, I wanted to go to school... I told him that as I was not studying then I was ready for marriage. During our wedding day, we were given, among other things a car and other household property as wedding gifts, but when my husband died, these were taken away from me, the claim being that it was for safekeeping. The in-laws sold the matrimonial car without consulting me, claiming that the property belonged to the deceased. The clan baraza could not allocate me any of the matrimonial property; in fact, the chairperson said the property should remain with the deceased's relatives, but that I should be cared for.

4. **Salome (16) said:** My parents arranged my marriage at the age of 14. I remember my mother telling me several times that 'your father has found a husband for you. I advise you to behave in your house. You must respect your in-laws. I assure you that although the person is an old man, he is a good person; you will find other co-wives there; you should also respect them'. It is true the old man was not aggressive and the senior wives appreciated me as I listened to their orders. He occasionally did beat me when I made some mistakes, although it was not his regular habit. People used to say that my husband was not like other Kurya men who normally beat their wives. However, the house chores were too much for me; sometimes I slept and cried at night as I thought this was not fair... I woke at around 5:00 and carried out the following duties: cleaning the house, lighting the fire, cooking, washing clothes, hewing wood and drawing water, collecting wood for fuel and fetching water for domestic use. Other duties were: cassava and maize grinding and taking care of my baby, as well as doing any other activity ordered by my senior co-wives... My shocking experiences occurred after the death of my elderly husband. Although his father was a Kurya, his mother was a Kerewe and had been raised by his mother as he was born out of wedlock. His stepfather was a Kerewe. The Kerewe have a tradition of widow-cleansing, thus I was forced to have sex with a stranger who was a strongly-built man, and who was dirty and smelly. 'I cried and have never felt so humiliated in my life!' she exclaimed.

5. Robi (16) narrated her story: I'm an orphan and was married at the age of 14 as the third wife of a man even older than my father. My brother proposed an arranged marriage so that he could acquire some cattle, as the family was living in a very poor situation. The *mahari* (15 cattle), however, was intended to boost his wood business. My husband owned many cows and some acres of land. During my married life each wife owned some personal domestic utensils in the small household. I did daily house chores and on some days worked in the field. I stayed with my husband for about two years and had a baby boy. [One cow was given for the purpose of feeding milk to the baby].... My senior wife claimed I was loved the most. The mistreatment started immediately following the death of my husband. I was discriminated against in food provision and my baby was not supplied with milk, which until then he had drunk every day. The women who served food were related to my senior wife. The stepsons started harassing me and threatened to kill me if I continued staying at the matrimonial home. After the death of my husband the threats continued and there was no help from clan members. I was chased away from the deceased's family household; my brother abandoned me and I was not welcome to stay and cultivate the family land, as my brother had been using it with his wife. He also feared that he would have to refund the *mahari*.... I expected some support from the senior widow, but she teamed up with my stepsons. My baby was also too ill and looked awful; the child and I had insufficient food but no one cared. My maternal aunt was the only comfort in the neighbourhood. I complained to her about my troubles. She was the one who advised me to come to Tarime town to look for a job. I thank my employer who is now helping me to stay with my baby. However, I am in a confused state as my child is still too ill and I am supposed to work. It is very difficult, as I have not yet received my salary so that I can take him to hospital. I suffer emotionally every day when I look at him.

6. Pilina (15) said: I was married at the age of 14. My father proposed an arranged marriage so that he could acquire some cattle as the family was living in a very poor situation at the time. I was told there was nothing I could do but to accept the situation. However, I believed that my father shouldn't be able to decide on such matters; however, it was the tradition that women are supposed to be married. My marriage was not too bad, apart from too many house chores, some verbal abuse and occasional beatings when I made a mistake; whenever I told my mother she advised me to be calm and tolerate the situation as it is common to every marriage. My marriage didn't last long. My husband died and I was left with a two-month old baby. My life has been terrible, I am scared to walk outside and meet people; my aunt told my grandmother that people had been gossiping that my husband had wanted a virgin girl like me to cure his virus. He hadn't been very sick but for the last two months he had been seriously ill. I don't think my father knew that.... When my husband died the clan baraza decided that I should not be inherited, for fear of *ugonjwa wa kisasa* ('the current disease') – an HIV/AIDS-related disease. I'm worried about how long I'm going to live; I'm telling you this because people gossip about me... The clan baraza has also allowed me to take some matrimonial property. They said it is *Kurya* custom to take care of widows. During the clan baraza I felt very good as I knew

that at least I would be able to sell some items and start a small business. However, I left empty-handed as my in-laws had confiscated all the property, except for my personal clothes.

7. **Joyce (16) said:** I was a substitute wife in place of my sister (at the age of 14), so that I could take care of my sister's children. My parents forced me to marry my sister's husband. Despite my unwillingness, I accepted the sharing of a man with my sister because I was told it was our culture and because I had no education. I didn't enjoy my one year marriage life in a polygamous marriage as my husband often travelled and for about three months he was bedridden. I had one child and then my husband died. I became a widow at the age of 15. I was supposed to be inherited but my father advised me not to be. The deceased relatives grabbed all my property except the few clothes I had. Unfortunately, my father also died two months later.... Life became awful through lack of food and lack of other basic necessities. As my brother neglected me, I agreed to be inherited by one of my brother-in-laws. However, life has been terrible, because the man is busy with his wife. His support is inadequate. My brother told me that my husband died of an HIV-related disease. I sometimes go to my brother to ask for help with food; although he helps me, he complains that life is difficult and he also has a family to care for. He insists that my brother-in-law is obliged to take care of me as he was the one who grabbed the property. I wish I could die instead of living in poverty. I don't even have the assurance of what I'm going to eat tomorrow.

8. **Mumuriba (16) said:** I'm an orphan and was married at the age of 13 as a second wife to an elderly man. My father decided to conduct an arranged marriage so that he could acquire some cattle, as the family was living in a very poor situation. My husband was a rich man with many cattle. During my married life each wife owned personal domestic utensils. I did daily house chores and also worked in the field. Although I worked very hard the senior wife was very jealous and always harassed me; her 3 sons teamed with her and called me a 'little witch'. I didn't tell my husband as they threatened to harm me if I informed him. However, my husband was not a violent person, although there was a lot of conflict between myself and my co-wife and stepsons, who did not approve of my inclusion in the family. After the death of my husband the threats continued and there was no help from clan members. The clan *baraza* decided that I should not be inherited, because of the fear of HIV/AIDS related diseases. In fact, the mistreatment started immediately after the death of my husband. The stepsons told me to live the compound as they believed I was a witch. When the *baraza* pronounced their decision, the stepsons chased me away from the deceased's family household; I am now working as a domestic servant while staying with my maternal aunt. The salary is very low but at least I have a shelter. I experience emotional distress when I think about how long I'm going to have to suffer, as well as wondering if my baby will survive in this situation.

CHILD-WIVES IN SHINYANGA

1. Paulina (15) narrated that: I was forced into marriage at the age of 13 immediately after primary seven. This was after my father's search for gold in the Nyarugusu mines was aborted, while at the same time rain failure resulted in a widespread famine. He came home to support the extended family, but he felt devastated. He considered my young sister and myself as a burden and thus arranged marriages for both of us. When my pregnancy was six months old, my husband told me to go home to my parents and he would send some money and would come to take me home after my delivery. I have never heard from him or seen him since. I last saw him about a year ago. Life here is a nightmare. My father hoped that marriage for my sister and myself would help, as he would be able to remain with our mother. Normally we would eat once per day. My daddy complained that he was not only taking care of me, but my baby as well. He insisted that I should look for a job. Now I fetch water for people who don't have domestic workers and I get paid a small amount of money. I don't know how we are going to survive.

2. Kwangu (15) said: I eloped with a man when I was 12, after which he paid *mchenya* (fine) and *mahari*. I was staying with my paternal uncle after my father deserted my mother and then my mother died. My daily life was uncertain; my paternal uncle's wife couldn't accept me staying there. She wanted me to go to my grandmother. She was always complaining that I was a burden and she was not the one who was responsible for taking care of me. However, my husband was working as a domestic servant and his employer was happy to have another helper. However, when I had a baby, the employer told my husband to move from the house as she couldn't afford the upkeep of three people.... We used to argue a lot on small matters as we had little money. Sometimes my husband would beat me and I would run back to my father who would send me back. My husband then chased me away so that he could retain his job. I went to my paternal uncle who also chased me back to my husband. I reported my case to the social welfare office and my husband was told to maintain the child. He always promises to give some money but he never fulfils his promise. He has only given me 20 kilograms of maize during the last six months. I'm in an awful situation as I now have no permanent place to stay...

3. Khadija (13) said: A 60-year-old man raped me at night and the matter was sorted out by settling the payment of *mahari*. He asked my grandmother if I could help him to prepare food during the month of Ramadan. My grandmother negotiated for *mahari* as she was very poor and thought that if I reported the man to the police I would suffer the stigma of being a raped girl. I became pregnant and have gone through many hardships. However, I'm no stranger to the hardships that women have to face. Just a year ago, when I was five months' pregnant, my husband neglected me and I became a full-time domestic servant. I haven't had the opportunity to play like other girls of my age because I was married. I have some scars from the hard toil. Sometimes I get infections and back troubles from carrying heavy weights or receive cuts and bruises from clutching sharp kitchen knives that slip easily from my fingers. My husband left

me without any hope of a better life; I have never attended school and have thus ended up as a domestic labourer.

4. Mindi (16) said: I eloped with a man who later paid *mahari* when I was 15 years old. This was immediately after finishing primary seven.... After the death of my mother, my father married a young wife and subsequently neglected us. Then I thought a good alternative would be to agree to live with a man. However, when I became pregnant, my husband said that he wasn't sure if the pregnancy was his as he suspected that I had been with other men. He abandoned my baby and me and left us in a rented room. After one month I decided to return to my father's house. I have no communication with my husband; my father is maintaining my baby and myself. I'm currently searching for a job or for a place in a technical school.

5. Amina (17) said: I eloped with a young man who later paid *mchenya* and *mahari* when I was 14 years old and had just completed primary 7. This happened because my father had neglected us as he had several wives and children. In addition, his business failed and he had inadequate money to maintain such a big family. There was also no money for school fees... My husband was staying with his parents; I became sick and they took me to a traditional doctor. My mother-in-law advised that I should be returned home, as I was possessed with evil spirits. I'm back at home now and I don't know when I will go back. My daily life is a struggle.

6. Liku (17) whispered: I was married off at the age of 14 through a marriage arranged by my widow-mother. This was after I had completed primary 7. My mother feared that I would be impregnated outside wedlock, which would have been shameful for her and seen as a big burden. I moved to Dar es Salaam (a big city) with my husband. He was a good person but he changed when he acquired a concubine. He occasionally told me that I was a village girl who didn't know enough about love techniques. He developed the habit of beating me and finally sent me home when I was pregnant. I had been struggling to sell tomatoes on the highway while pregnant and finally I gave birth to this baby. You can see that I don't have clothes for my baby. I just use old *khangas*.

7. Kulwa (17) said: I eloped at the age of 13 then *mahari* was paid. I thought it was a good thing as a number of girls in my village were married. During the first two years life was good as my mother-in-law treated me as her daughter. She was a polite woman and told my husband that I was still a child so he should not harass me. However, when my mother-in-law died, I was the only woman remaining in the household with my brother-in-laws. I was supposed to do all the house chores, fetch water and cook and it was very hard for me. I was beaten regularly for committing minor mistakes. I returned home for help but none was given. My father insisted that I go back to my husband as they had eaten the cattle which had been paid for the *mahari*. I then decided to come here and stay with my grandfather.

8. **Kigongo (16) said:** I was married at the age of 15 to a man I agreed to marry and moved with him to another village. My mother was a senior wife in a polygamous marriage and we lived in poverty as my father neglected us. My husband was a friend of a teacher at the primary school I was studying at and he was also our neighbour. My mother discouraged me but my father said it was a good step as I was the first-born. He said I had raised the family status. I had a late pregnancy which initiated the current harassments.... The daily physical and verbal violence, as well as the denial of freedom to attend any ceremonies, have had profound emotional consequences on me. I became weak and my husband sent me home. We are now separated and I don't know if he will come to take me back.

9. **Holo (16) said:** I was married at the age of 14 as a second wife to a man my father had arranged for me to marry after having been promised many cattle for himself. We already had a number of cattle but still he wanted more; I dropped out from school in primary six. My father took a transfer form and informed the school that I was sick. I moved to this village but I'm not studying any more; I'm very sad. I wanted to study to be a teacher but my dream is no longer attainable. My husband always travels to town without informing me; he has been rude and arrogant, saying that he had bought me and that I should be obedient and stop questioning him about where he was going. I have one child but I experienced complications in labour and birth. I gave birth through an operation and I'm very weak. However, although we have a lot of food here, the main problem is that there are too many house chores and I'm always ill; my co-wife doesn't help me much.

CHILD-WIDOWS IN SHINYANGA

1. **Kunese (16) whispered:** I was married when I was about 13 years old; it was through an arranged marriage by my father. I stayed with my husband for 3 years and then I experienced the trauma and grief of his death. I cared for my bedridden husband for some months and no relatives helped. After the death of my husband, my brother-in-law evicted me from the matrimonial home and squandered all the matrimonial property. I moved to my father's hut with my two children. We slept on the floor. I begged from neighbours for my daily food and one child was often sick. I encountered emotional distress. I'm an orphan and had been widowed at 15; during the clan *baraza*, my relatives were not invited to the *baraza*. It was decided that all the matrimonial assets would remain with my brother-in-law and that he would take care of me. I was not satisfied with this decision but I was afraid and did not have the confidence to question it. I'm physically weak, but I had to fend for my two children on my own. My brother-in-law has now abandoned me and he has all the property....

2. **Suzan (16) lamented:** I was forced into marriage at the age of 12 as my father wanted cattle to marry another wife. I dropped out of school at the primary three stage. However, my married life wasn't too bad; my husband was a polite man. However, I had two miscarriages and suffered regular abdominal pain. I became a

widow at the age of 15 while I was pregnant. I experienced the trauma and grief of my husband's death. Immediately after the death of my husband, my brother-in-law organised a clan *baraza*. In this *baraza* I was powerless, as I was the only one who attended the clan *baraza* from my natal family, my husband having moved to Kigoma (he was half Sukuma and half Ha). I was asked to list the deceased's property but was then told that the matrimonial house now belonged to my brother-in-law, as he had been the one who had financed the deceased. I feared my in-laws. I just kept quiet, powerless to negotiate my claims, but I knew what my brother-in-law had reported was untrue. I knew the matrimonial house belonged to me as the senior wife was already divorced and had been given another large house. I participated in cooking and fetched water for the builders and watered the bricks. My husband was an old man and had many properties, but the *baraza* only gave me a sewing machine. I was already pregnant and have never received any support from the deceased's relatives.

3. **Beti (16) whispered:** I was married at the age of 14 to a man my family proposed and I agreed to their plan. I became a widow at the age of 16. After the death of my husband the clan *baraza* was conducted. The *baraza* process was quick, but I was not given the right to participate and I was ordered to implement the *baraza* decisions. The *baraza* members remarked that I was still 'just a child and a mere girl' and thus should not be given the opportunity to give her views. However, my maternal uncle was given the chance to participate and he argued against widow-inheritance. The *baraza* deliberated that I should remain with my mother-in-law until I gave birth, and the brother-in-law agreed to provide me with daily basics maintenance. I stayed with my in-laws for about two years, but I experienced a miserable life. This seemed to be because I had refused to be inherited; the erstwhile cordial relationship between my brother-in-law and myself grew sour. When my brother-in-law neglected me I started to sell local beer. Nonetheless, I stayed with my in-laws for a longer period of time so that my child should belong to the deceased relatives' family.... My mother advised me to stay as a single woman at the natal family home and I agreed.... I was refused any of the matrimonial property, such as a bed, mattress and other household goods.... Unfortunately, my relative's belief in witchcraft made them withdraw their claim for my property as my brother-in-law had squandered it all.

4. **Sundi (17) said:** I was married at the age of 13 in a marriage that my father had arranged. My marriage life wasn't very good but I endured the sufferings. My sister-in-law was who was older than me came to stay with me. She used to harass me; she wanted me to do the house chores on my own. After the death of my husband the clan *baraza* was conducted; my in-laws neglected me as they thought I had bewitched my husband. It was a depressing situation. Every night I cried; I became very weak because of the lack of food and the trauma of being called bad names. I look old now and some people stare at me when I walk about during open market days. I don't want to meet people; I have no money to go to hospital but I have heard from our village chairperson that there are NGOs in Shinyanga town that help widows like me who are sick and poor. When I recover I'll go there.

5. **Tatu (17) said:** I was married at the age of 15 in a marriage that my paternal uncle had arranged; he was one of his friends. I had no option but to agree as my mother was a widow and very poor... I had just completed my primary school and I wanted to study further and become a nurse. My husband had a small trading business selling food crops in Shinyanga town. He regularly travelled to buy crops from other regions. Our daily life was just normal and he was a good husband; however, I was restricted to staying at home and had to cover my face as he was a committed Muslim. He died within a year of our marriage. I was about 16 years old and pregnant at the time. After the death of my husband the clan *baraza* was not conducted. I was not given any property because I had a customary marriage and the administration of the estate was conducted under Islamic law. I was regarded as a concubine, thus I was not given any property.... I was left empty-handed, and now live in poverty and feel devastated. I depend on my mother who is also a widow.

6. **Marina (16) lamented:** I was forced into a marriage at the age of 14. It was just at the onset of primary 7. My parents saw my education as a waste of resources for a girl as she would eventually get married anyway. My husband was older than me; the age difference would have been about 10 years. My parents feared that I would become pregnant out of wedlock... One of my husband's pleasures was eating food so it was a big challenge to me as I was not an experienced cook; he insulted me, saying that I had not been taught well and sometimes he beat me.... My major problem, however, was the complications I had during early pregnancy. I have encountered a lot of problems, especially in coping with the daily chores while vomiting and having severe back pains... My husband was involved in an underground mining accident at Nyarugusu and died instantly. When the clan *baraza* convened to discuss the matter, they decided that I should stay with my mother-in-law who can assist me in taking care of the children (twins) while I can carry out work in my small business. My brother-in-law received money from his friends but he hasn't given any of it to us. There are rumours that he got the money and spent it... I was not asked to be inherited as most people here in Shinyanga village are not inherited. The most pressing current problem is poverty and poor nutrition for the twins.

7. **Lena (17) whispered:** I'm an orphan; I eloped at the age of 14. Then my husband paid 2 cattle to my brother. I thought the marriage would be an alternative for me as I was a girl with no parents and no education; but life was not as I expected. I was a virgin and the man was very pleased with me; but the happiness didn't last long. He was a good husband although his big problem was drunkenness and coming home late. He wanted me to wait for him to eat; every day he wanted to have sex and the smell of beer on his breath was horrible. After a long illness he passed away.... The clan *baraza* decided that I should return to my brother as I was still young and I could re-marry. However, my brother-in-law was selected as a symbolic husband and became the guardian of the deceased's family. He was also directed to give me part of the household property; he has helped me in this way. However, life is getting tougher and I'm

working as a house servant selling cooking groundnuts in public areas. My child is weak as I have not been able to provide him with proper food.

8. Someke (17) said: I was married at the age of 15; it was through an arranged marriage by my father. I stayed with my husband for 2 years and then I experienced the trauma and grief of his death. After the death of my husband the clan *baraza* was conducted. My father-in-law promised to support the child and me. However, he evicted me from the matrimonial home and squandered all the matrimonial property. I moved to my mother's hut with my child. We slept on the floor without a mattress but with only a single linen sheet. I begged from neighbours and from the nearby church mission for my daily food. I experienced a lot of emotional suffering. My maternal uncle heard about my suffering and came to rescue me from that situation. I'm presently staying with my uncle and assisting in doing household tasks.

9. Raheli (17) said: I was married at the age of 15 and was widowed at 16. My marriage was a good one as my husband was a born-again Christian. Of course we had arguments, which I think are normal for couples. After the death of my husband, as we were living in one room, I asked my relatives to help in moving my matrimonial property to another of my relatives as I had no rent to pay. The clan *baraza* decided that the property should be given to my mother-in-law as she was my husband's dependent. They commented that as I was so young I would be able to find another husband. I didn't inform my deceased's relatives that I had moved the properties. As a result, my mother-in-law harassed me and demanded the return of the property. With the support of my relatives, I reported the incident to the Village Executive Officer (VEO), who decided that the matrimonial property should remain with me. He remarked that 'this was the practice for a number of adult widows in Shinyanga town, unless there was a court ruling against her'.