Traditional justice or State justice-

The games of litigants among the Rwa of Tanzania's Mount Meru

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In Tanzania, among the Rwa of Mount Meru, two types of justice coexist. On the one hand there is an indigenous justice system, in the hands of the leaders of this small ethnic group, who arbitrate conflicts according to local rules, and on the other hand a national justice system whose operation is dictated by the State. The procedures and means of action of the two are extremely different. The first, traditional justice mobilises not only individuals, but all the group(s) to which they belong and it strives, after long debates, to reach a general consensus. Its effectiveness comes from the weight of the community, the fines it imposes on offenders and, in the most extreme cases, the threat of a curse. The second, State justice, is based on the Western model. It targets individuals, without taking groups into account. Its objective is to designate and punish the guilty party, and its coercive means are very different from those of traditional justice. Apart from imprisonment, the most feared sanction is land expropriation, when someone proves unable to pay his debts. The Rwa are farmers with a visceral attachment to their land, the most desirable asset of all, often the only source of wealth and prosperity. Conflicts arise over the smallest square metre of land, and there are countless land conflicts. Clans are the usual arbiters, but recourse to State justice is not only possible but is occurring more frequently, especially when the dispute is outside the recognised competence of the clan. But whatever the choice of individuals, and despite their very different conceptions, these two forms of justice do not turn their backs on each other. On the contrary, they collaborate and refer cases to each other to resolve the most difficult conflicts. One of them willingly relies on the conclusions of the other to render a judgment. Below, we first present these two forms of justice, and highlight their constraints and advantages in the eyes of the population. Then we show how they work together, giving examples of some disputes. Finally, we will discuss the trends that can be observed and the future prospects of the two forms of justice. But first of all, which traditions are we talking about? The community in question should be presented.

1. WHO ARE THE RWA?

The Rwa, who number about 250,000[2], are Bantu-speaking farmers who have lived on the south-eastern slopes of Mount Meru (4585 m), opposite Mount Kilimanjaro in northern Tanzania, since the 17th century. They are known locally as Meru (pl. Wameru) but in their language, *Ki-rwa*, they are called Rwa (pl. Varwa)[3]. They are a small ethnic group, culturally and linguistically close to their much larger neighbours, the Chaga of Mount Kilimanjaro. Like

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[1] This is a translation of Catherine BAROIN, 2018, "Justice traditionnelle ou justice étatique ? Le jeu des plaideurs chez les Rwa du mont Méru (Tanzanie)", *in* AMRANI-MEKKI Soraya, DAVY Gilduin, KERNEIS Soazick, ROCCATI Marjolaine (dir.), *Les chimères de l'alternativité ? Regards croisés sur les modes alternatifs de règlement des conflits (droit, histoire, anthropologie)*, Paris, Mare & Martin, pp. 165-186.

[2] According to the 2014 census.

[3] We retain their ethnonym here to avoid confusion with the Meru of Mount Kenya, with whom they have no connection.

the latter, they mainly cultivate coffee and bananas. Coffee, as a cash crop, was the source of considerable economic growth, while bananas, as a food crop, provided food and drink[4]. Other food and/or cash crops include maize, beans and vegetables. Livestock are bred with zero grazing since the pastures on Mount Meru have long disappeared due to the density of the population. The habitat is composed of contiguous farms, the so called "villages" being only administrative units. Since the fall in coffee prices, the proximity of the city of Arusha to the west has been a valuable asset for the Rwa, providing a variety of jobs and outlets for their agricultural products.

At the beginning of the 20th century, the Rwa were colonised by the Germans, and were gradually converted to Lutheranism. After the First World War, the British took over until Tanganyika gained independence in 1961. Today, the vast majority of Rwa are Lutheran and literate. Many of them have secondary or even university education. All speak Swahili, the national language of Tanzania, and a few speak English, the other official language of the country. However, they remain attached to their traditional social organisation, which is highly structured. It has three components: a centralised chieftaincy, patrilineal clans and an age system.

The latter, strongly inspired by that of the Maasai, is the oldest structure[5]. It establishes a succession of distinct groups (*rika*, pl. *marika*) according to age, which follow one another chronologically. The collective memory thus preserves the names of 23 successive groups from the beginning. Each of these groups has its own identity and its members progress in solidarity through the successive stages of life. Advised by their 'fathers', the youngest, after their circumcision, first constitute the warrior class. As their warrior function is no longer on the agenda, they are now in charge of some collective work. These young men are educated to respect their elders and the rules of good conduct. Although the current role of the age system is no longer military, it still reinforces social cohesion, disciplinary control of youth, demographic regulation[6] and a sense of identity. It is the responsibility of its leaders to intervene in cases of flagrant misconduct, such as a son's lack of respect for his father, or a couple's disagreement (in the case of infidelity, for example), but legal problems are not its responsibility. They are a matter for the clans and the chieftaincy, as we shall see below.

Each married man, responsible for his family unit, manages his own farm. However, he remains under the control of his patrilineal clan which, in the event of a problem, intervenes in family affairs and in the sharing of inheritance, particularly land. These issues are crucial in a context where land is becoming scarce due to demographic pressure, and are bound to generate numerous conflicts. Let us therefore see how traditional justice deals with them.

[4] Thomas Spear, *Mountain Farmers. Moral Economies of Land and Agricultural Development in Arusha and Meru*, James Currey/Mkuki na Nyota/University of California Press, 1997.
[5] C. Baroin, « Un système d'âge dans une chefferie tanzanienne : les Rwa du mont Méru », *Journal des africanistes*, 85, 2015, p. 218-256.
[6] Because of certain prohibitions on marriage and procreation.

2. TRADITIONAL JUSTICE

Apart from the very limited legal role of the age system mentioned above, traditional justice is administered by two bodies. It is the clan organization at its lowest level that intervenes in the first instance. If that intervention fails the problem proceeds, if necessary, step by step up the clan organization. An intractable case may have to be arbitrated by the paramount chief of the whole tribe who, together with his council, will consider the case and deliver judgment. In rare cases, supernatural justice can also be used, by implementing a curse ritual.

2-1. Clan organisation

The organisation of Rwa society into a system of patrilineal clans crystallised long after the age-group organisation that initially predominated. The term for clan, *ufwari*, refers to any type of multitude. It is therefore not specific to the notion of clan. It is also used, for example, to refer to a multitude of children or chickens. Each of these patrilineal groups was formed gradually, starting from an initial founding ancestor. Before colonisation, two clans were predominant. The Kaaya clan held political power and appointed the supreme chief (*Mangi*) from among its members, while the Mbise clan held religious power. The Mbise clan performed rituals to the ancestors to ask for rain or the end of a disaster.

It was only later, around 1930, that clan chiefs were established. The paramount chief of this period, *Mangi* Kishili Kaaya (1930-1945), established a hierarchical structure for his own clan, the Kaaya clan: the chief of the whole clan supervised the chiefs of the smaller units that made up the clan, i.e. the local lineage chiefs (*numba*). Following his example, the other clans (Sumari, Mbise, Pallangyo, *et al.* subsequently appointed their own chiefs. Today, Rwa society is composed of 17 patrilineal clans, of unequal numerical importance.

The role of the clans is first of all in the area of land. Indeed, although land is individually owned and each farmer manages his farm independently, all the land belonging to one or other member of the clan is nevertheless considered as forming a whole. Together they constitute a collective asset of which the clan is the guarantor. The collective nature of these lands is particularly evident when they are sold.

Indeed, when a farmer seeks to sell a plot of land, which is his legitimate right, an ancient rule states that he must first offer it to members of his clan. Only if none of them declare themselves buyers, can the land be sold to a person outside the clan. A second rule, concerning the sale price, reinforces the first one ensuring that the plot of land remains part of the clan's collective land capital. If a member of the clan buys the land in question, he or she must pay a lower price than that which a buyer from another clan would have to pay. The clan jealously guards the respect of these two rules each time land is for sale, and thus preserves this collective land ownership. However, various factors are now challenging their application, undermining the clan's authority in this area. The main threat comes from the rise in land prices. Thanks to the growth of the nearby city of Arusha, a lot of economic activity is taking place in the region, especially at the foot of Mount Meru, along the tarmac road that links this city to Moshi and Dar-es-Salaam. Due to the many businesses seeking to locate along this route, land prices in the vicinity are very high. Local landowners seeking to sell a plot of land can therefore obtain a much higher price by selling it to a non-clan buyer than they would by selling it to a clan member. The temptation to bypass these ancient rules and sell land to the highest bidder is therefore very strong, to the dismay of the clan leaders, who are powerless to fight it.

In land matters, the responsibility of the clan is also at play in another major area, which is a source of recurrent disputes. This is the abusive displacement of field boundaries. Land, of course, is of paramount value to these mountain farmers, and its value is all the greater as demographic pressure increases its scarcity and cost. This is why some are tempted to surreptitiously move the boundary of their field to increase its size, at the expense of the neighbour's field. This practice, as frequent as it is ancient, is a constant concern. However, there is no land register on Mont Meru, and it is the clans that preserve the memory of each person's property. The demarcation of the fields is most often vegetal. Each farmer marks the boundary of his fields with a row of *isale* plants (*Dracaena sp*.). This plant, with time, comes to constitute high barriers, because it has important qualities which lend it to this use: its longevity, its resistance to drought, and the absence of shoots at the base of the plants, so that it allows for durable and perfectly clear marking of land boundaries. It also has a strong symbolic value as a symbol of peace that can be observed in various rituals.

Disputes over field boundaries are so recurrent that they have a specific name in the Rwa language (*iyaanu*, pl. *miyaanu*). Each time they require the intervention of the clan(s) concerned, whose members meet to discuss and settle the issue. The aim is to reach a consensus and reconciliation (*itanisa*) between the parties. When this happens, the clan members who have judged the case receive a gift from the people involved called the 'sheep of the limit' (*yaanri lya iyaanu*). This is a sheep, or nowadays more often its monetary equivalent, a gift for the clan members.

There is another land issue where the arbitration of the clan is necessary, and that is the division of inherited land. If the division made by a father before his death cannot be questioned, on the other hand, when the deceased did not make this division and did not mark the limits of the fields between his sons, it is his clan that takes care of it. It is his clan that sees to the division of the deceased's property, personal belongings and clothing. It finances and organises the funeral, the cost of which is covered by a fixed contribution from each clan member. The clan is also the protector of the widow and the orphan, and of their land interests in particular, in the face of the frequent covetousness of the agnates of the deceased. When there is a murder, the regular compensation, *ikari*, which amounts to 49 cattle, is collected by the clan of the murderer who pays it to the clan of the victim. In everyday life, each clan arbitrates quarrels between its members and settles marital problems, apart from sexual issues or minor difficulties managed by the age system. In particular, it is the clan that negotiates the return of a wife if she has run away from the marital home because of mistreatment or abuse. In fact, for the Rwa, a wife is not only attached to her husband, but also, in a way, to her clan. The ancient practice of levirate, which remains desirable but is no longer systematically adhered to is an illustration of this.

Should it be specified? The patrilineal clans of the Rwa are first and foremost male organisations. Only the men of the clan are called to the meetings to discuss and make decisions by mutual agreement. Women do not participate. After her marriage, a wife remains a member of her original clan, i.e. her father's, but she goes to live with her husband, whose fields she works, and she has no right to her father's land inheritance, which is shared among the sons of the deceased. However, the increasing number of births outside marriage has led the Rwa to make some exceptions to this rule. In the still recent past, single mothers were all chased away and settled in the city where they made a living as best they could through petty trading or

prostitution[7]. But it is now accepted that a father will grant a small piece of land to his daughter if she gives birth to a child of unknown father, and the child will belong to the lineage of its maternal grandfather. This very limited right of some women to the use and inheritance of the father's land creates a departure from the usual rule of reserving the right to land to male heirs only. The latter, as can be expected, do not view this development very favourably and it is not surprising that it is a source of various conflicts. Dispute No. 1, analysed below, is an illustration of this. The clan, whose main concern is to preserve common land rights, presides over the sharing of inherited land. However, as these meetings are all-male, there is a strong tendency to favour male heirs over female heirs. The latter may therefore feel discriminated against, and nowadays some of them do not hesitate to appeal to the State justice system to win their case. We will give some examples of this below, after presenting all the structures, both traditional and state, to which litigants can have recourse in the event of a dispute. But first, we need to introduce the supreme vernacular jurisdiction of the Rwa, referred to as *Mringaringa*.

2-2. The *Mringaringa*: Supreme Chief, Supreme Council and Constitution

This higher political and legal body of the Rwa is responsible for settling all questions of general interest, disputes between clans, and those that a single clan has not managed to resolve. It consists of three elements: a Supreme Council, a Supreme Chief presiding over this council, and a written text on which it bases its decisions, which the Rwa call their Constitution. Briefly, the Rwa refer to this whole, in a symbolic way, by the name of the majestic tree under which the meetings of the Council take place. This is a *mringaringa* (*Cordia abyssinica, Borag*), a huge tree which, in a large grassy square in the very central village of Poli, spreads its wide branches and provides abundant shade throughout the year. The hardness of its wood and its great longevity accentuate its symbolic character. Under this tree, not only the Council meetings are held, but also all other important meetings and general assemblies to which all male Rwa are invited. (Only a few women attend these meetings, where they stay aside).

The council, or 'Central Committee' (*Kamati Kuu* in Swahili), consists of about 20 members, including the 17 paramount chiefs of the 17 clans as well as the age group chiefs. The chairman of this council is called the 'Great Chief', *Nshili nnini*, from the term *nshili* which also refers to any clan chief (*nshili wa ufwari*). This term, it should be noted, differs from *Mangi*, which refers to chiefs in the colonial period. Indeed, the title of *Nshili nnini* was created in the heat of a violent land dispute with the British colonial authorities, which was brought to court under the name of Meru Land Case (1947-1952). The Rwa opposed a land expropriation scheme and the case was tried in New York at the United Nations[8]. In the turmoil caused by this conflict, the Rwa rejected their *Mangi*, a chief who was too submissive to the colonial power, and at the same time set up another chieftaincy to truly defend their interests. Thus, in 1951, in the shadows and at their convenience, they created a new higher authority with a chief with a new title, that of *Nshili nnini*[9]. Ten years later, Tanganyika gained independence, followed shortly afterwards by the abolition of all traditional chieftaincies in 1963. This was the end of the *Mangi*, but the institution of *Nshili nnini,* which was not official, remained.

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[7] They are the "women out of sight" studied by Liv HARAM ("*Women out of Sight": Modern Women in Gendered Worlds. The Case of the Meru of Northern Tanzania*", Norway, Bergen University, Department of Social anthropology, Allkopi, 1999.

[8] Indeed, Tanganyika was then administered by the British, under the supervision of the UN.

[9] C. BAROIN, « Une chefferie “traditionnelle” réinventée : les Rwa du Mont Meru (Tanzanie du Nord) », in Cl.-H. PERROT et Fr.-X. FAUVELLE-AYMAR (dir.), *Le retour des rois. Les autorités traditionnelles et l’État en Afrique contemporaine*, Karthala, 2003, p. 419-428.

The 'Great Chief', *Nshili nnini*, who is still in place, is supported by a bureau of 4 to 5 members, including a secretary and a treasurer. The Council as a whole meets two or three times a month to discuss the general problems of the ethnic group and to settle any disputes that arise, in particular disputes between clans, or all those that cannot be resolved at a lower level by the lineage or clan chiefs. The Central Committee and its Supreme Chief have the task of ensuring general good order. They base their judgements on a set of rules that they themselves have written down, and which they call their 'Constitution' (*katiba* in Swahili, the national language of the country)[10].

It may seem surprising that a small Tanzanian ethnic group would choose to have such a document, and this fact in itself is an exception in that country. However, it should be noted that the term *katiba* is in very general use in Tanzania. Any organisation or association has such a text, which could be called 'statutes' or 'internal regulations' in France. As for the Rwa as an ethnic group, the idea of drawing up a written 'constitution' is a direct continuation of a British initiative from the colonial period. After the Second World War, the British sought to modernise the management of their colonies by replacing the indirect administration then in place in Tanganyika with tribal 'Local Governments' with a pyramid of chiefs and councils at all levels[11]. This project raised many difficulties. In the case of the Rwa, a constitution was proposed to them in 1948, but it was rejected in the heat of their Meru Land Case revolt. It was later re-discussed and finally officially accepted on 27 May 1953. It provided for the secret election of the *Mangi* and the separation of the executive and judicial branches of government[12]. However, it remained a dead letter because of the conflictual context in which it was voted. But the very principle of a constitution remained in people's minds since, much later, it led the Rwa to write down the rules they set for themselves.

The current Rwa Constitution is the result of successive reworking over time. Written in Swahili, it initially set out various rules of their customary law, originally oral, including those relating to marriage payments and various fines to be paid for offences. It was gradually expanded and the latest version, dating from 2008 (still in force in 2016), includes a detailed description of the indigenous political system, specifying the election procedures and the prerogatives of the various chiefs at different levels of the hierarchy.

The *Mringaringa*, i.e. the Supreme Council chaired by its Chief, on the basis of its Constitution, conducts the general policy of the ethnic group. It discusses possible changes to customary law, which are then translated into the Constitution, a new version of which will be published. It settles all disputes that have not been settled at a lower level. It is therefore both a political body and a high court. However, it may not be able to settle a case to everyone's satisfaction, in which case it often refers the case to the State courts. It then writes a report and sends it to the West Meru Primary Court. Conversely, the West Meru Primary Court may consider itself less competent than the traditional authorities, clan or *Mringaringa*, to decide a dispute and refers the case to them for review and final decision. We will see below some examples of these

[10] C. BAROIN, "A brief history of a neo-traditional form of chieftaincy and its 'Constitution' in Northern Tanzania, 1945-2000", in W. van BINSBERGEN & R. PELGRIM (dir.), *The Dynamics of Power and the Rule of Law. Essays on Africa and beyond in honour of Emile Adriaan B. van Rouveroy van Nieuwaal*, African Studies Centre, 2003, p. 151-166.
[11] John ILIFFE, *A Modern History of Tanganyika*, Cambridge University Press, 1979, p. 482.
[12] Paul PURITT, *The Meru of Tanzania: A Study of Their Social and Political Organization*, Ph. D., University of Illinois at Urbana Champaign, 1970, p. 70.

exchanges. In addition, the *Mringaringa* also exercises its jurisdiction in another very important area, that of initiating supernatural justice.

2-3. Supernatural justice

Supernatural justice is the last resort. It is used to solve problems that cannot be solved otherwise, when the culprit of a wrongdoing remains unknown. Why is it the last resort? Because it is extremely dangerous. The Rwa fear it very much. Indeed, this justice places a curse on the guilty party, i.e. a threat of death and destruction, not only on him, but also on all the members of his clan, his parents, his family, his children, his fertility, his prosperity, his livestock and his crops[13]. Moreover, all these misfortunes can occur at any time, today, tomorrow, or decades later. This series of misfortunes can only be stopped by another ritual, after the wrongdoer has declared his fault, repaid the damage done to the victim, compensated for his fault and paid the costs of the ritual that will 'cool' the curse.

Because the curse ritual is so dangerous precautions are necessary. It can only be initiated after several preliminary discussions. First of all, the lineage or clan of the victim, which wants to launch the curse, must be careful that the (undeclared) offender is not himself a member of the lineage or clan. In such a case, the curse would be turned against the very people who had cast it. Then the matter is discussed at the level of the Supreme Council, because every clan is threatened if the culprit is one of its members. That is why only the Supreme Council of the Rwa is empowered to authorise the launching of this procedure. And once the Supreme Council has given its green light, the District Commissioner must give his, by stamping the written document authorising it, which will be posted everywhere before the ritual is launched. This is a sign that this form of justice is subject to the consent of the State authorities.

When all these conditions are met, the first step is to advertise the planned operation widely, one month in advance. Signs are posted at crossroads announcing that the curse ritual will be launched on such and such a day, at such and such a place, for such and such a reason. The aim is to inform as many people as possible. This publicity is important, because it gives the culprit the opportunity, up to the last minute, to pull himself together and admit his crime, in order to escape the dreadful consequences of the curse that would threaten him after the ritual has been performed. In fact, all the debate and publicity about the case often pays off, as it puts such pressure on the clandestine perpetrator that he or she often prefers to admit the crime, rather than face such heavy supernatural threats. In this case, regulations and compensations take place, and the ritual project is cancelled.

But if not, the curse ritual is initiated. It is widespread in this region of East Africa and is called 'breaking the pot' (*kuvunga chungu* in Swahili, *ipara nungu* in the Rwa language, *Ki-Rwa*). The main stages of this ritual, which is described in detail elsewhere[14], are summed up here.

The victim, seeking justice, turns to, and pays, a ritual specialist. This is usually an old man who keeps the dreaded 'pot' hidden in a safe place near his home. This is not a container, but a 10 to 15 cm clay figurine, roughly representing a human being without arms or legs. Therefore it is not really a pot, and it is not 'broken' either. When the day comes, the specialist takes it out

[13] Catherine BAROIN, « La malédiction au secours de la justice chez les Rwa de Tanzanie du Nord) », in Raymond VERDIER, Nathalie KALNOKY, Soazick KERNEIS (dir.), *Les Justices de l'Invisible*, Paris, L'Harmattan, Coll. « Droits et Cultures », 2013, p. 317-330.
[14] *Ibidem*.

of its hiding place and slowly walks around the country, cursing the culprit and swinging the pot with his right hand in all four directions. A procession forms after him, and moves slowly. It continues for 3 to 6 hours a day and for 3 to 7 consecutive days. It ends at its starting point with a common meal at the home of the ritual specialist. After this, everyone is convinced that death, illness or sterility will strike not only the culprit, his livestock or crops, but also his descendants, and even all the members of his clan. Everyone will watch for the effects of the curse, with the general conviction that the culprit is usually the last to be hit.

3. STATE JUSTICE

The Tanzanian courts are one of the country's administrative divisions, which operate at five levels. As Tanzania has two official languages, English and Swahili, each of these divisions is designated by an English term and its Swahili equivalent, noted below in brackets. The Tanzanian State thus comprises 30 regions (*mkoa*) which are further divided into districts (*wilaya*). These are subdivided into divisions (*tarafa*) which group together local wards (*kata*), each ward comprising several villages (*kijiji*).

At the bottom of this administrative scale, that of the village, are the first judicial bodies. They were established by the Village Land Act, enacted in 1999. The Act provides for the formation of village land courts to manage and control village land in order to recognise and secure the customary land rights of rural communities. The village land courts are therefore primarily concerned with land disputes on village land. Their legal jurisdiction is therefore distinct from that of the clan, which arbitrates land disputes on land belonging to clan members. However, the village land court is sometimes called upon to decide land cases when the clan's judgement is challenged. Case 1, presented below, is an illustration of this.

Let us take a concrete example, that of the village of N. The land court of this village is composed of 6 members appointed by the village, i.e. 4 men and 2 women. The proportion of women is high (even though they are half the number of men), especially when compared to their total absence in traditional bodies. This situation is the result of the Tanzanian government's deliberate desire to combat gender inequality, a policy strongly encouraged by donors and international bodies, the UN in particular. The results are noticeable: at the national level, more than a third of the members of parliament are women. The land court in the village of N meets once a week and the cases it settles are few. But my interest in this subject was met with extreme suspicion by the court president, who only mentioned one minor case to me, that of a private individual complaining that the branches of his neighbour's tree were spilling over onto his property. After a visit to the site and a hearing of both parties, the neighbour was asked to cut down the branches in question. Whenever a case has to be tried, the question arises of the cost of the procedure and the time spent. There is the scale for the drafting of the deed and the travel expenses of the members of the court, who are compensated for these costs.

At the higher administrative level, the ward is made up of several villages. The establishment of courts at this level dates back to the Ward Tribunal Act (No. 7/1985), the purpose of which was to lighten the work of the Primary Courts. For example, the Ward Tribunal can impose fines, but imprisonment remains the responsibility of the Primary Courts[15]. The Act provides for the Ward Tribunals to try minor cases, and to operate primarily on the basis of mediation

[15] A. N. MWAKAJINGA, "Court Administration and Doing Justice in Tanzania", in C. Jone-Pauly and S. Elber (dir.), *Access to justice. The role of court administrators and Lay adjudicators in the african and islamic contexts*, Kluwer Law International, 2002, p. 237.

and arbitration, in order to strengthen the spirit of reconciliation and understanding within local communities[16]. In sum, interaction between these courts and local traditional authorities is encouraged. However, the lack of resources, as highlighted by magistrate Mwakajinga[17], seriously hampers the proper functioning of these courts.

Let us take the example of the Ward Land Tribunal of K. It is composed of 6 elected members, i.e. 2 per village, among whom there must be at least 2 women (here again we note the national will to fight against gender discrimination). This court meets every Thursday, and on Tuesdays as well if necessary. In June 2010, it had decided 10 cases in 6 months, since the beginning of the year, and 4 others were pending. I noticed some absenteeism at one of its meetings that month, as only 4 of the 6 members of the tribunal were present, including a woman who arrived very late. In her defense it must be said that these meetings are unpaid and time consuming. This is a disincentivising factor, especially since in general, women are much busier than men in Rwa country, as they are responsible for a large part of the agricultural work in addition to caring for their households.

One of the cases dealt with by this court concerned the sale of land to build a school. The owner of the land was to receive other land from the District Council in return, according to an agreement with the *village government*, which was to notify the *ward*, with the *ward* in turn notifying the *District Council*. Having received nothing, the landowner brought a claim in the Ward Land Tribunal against the *village government*, and won the case. The *village government* then took the case to the District Land Tribunal, which asked the Ward Land Tribunal to disclose the file to it. The District Land Tribunal found in favour of the owner who was finally compensated. This case illustrates the cumbersome nature of the multiple levels of administration, which is a source of complexity and slowness in the administration of justice in particular.

A litigant who is unsuccessful in the Ward Tribunal can appeal to the Primary Court (*mahakama ya mwanzo*). The Primary Courts are very numerous as there is one in almost every ward. The official language, as in the Ward Tribunal, is Swahili. But the work of these courts, like that of the Ward Tribunals, is severely hampered by the lack of qualified staff and insufficient salaries (which encourages corruption) as well as by the general lack of resources (premises, stationery, computers, etc.), which seriously hampers their operation[18].

Above the Primary Court is the District Court (*mahakama kuu*). If the Primary Court's judgement is not satisfactory, an appeal can be made to this higher court, which, as the name suggests, is at the district level. It is very rare that the cases that occupy the Rwa go beyond this. However, there are still the High Court and the Court of Appeal to decide disputes at the highest levels.

The police, for their part, work closely with the Tanzanian judiciary. They are mandated to investigate violations of the law and receive reports of crimes and offences, which they will

[16] Y. Q. LAWI, "Justice Administration Outside The Ordinary Courts of Law in Mainland Tanzania: The Case of Ward Tribunals in Babati District", *African Studies Quarterly*, 1, 1997/2, p. 1-18.
[17] A. N. MWAKAJINGA, quoted article, p. 237.
[18] A. N. LYAMUYA, "The Administrative Judicial Personnel and Court Process: Their Role in the Collection of Evidence and Execution of Judgements in Tanzania", in C. JONE-PAULY et St. ELBERN (dir.), *Access to justice. The role of court administrators and Lay adjudicators in the african and islamic contexts*, Kluwer Law International, 2002, p. 217-226.

investigate. The suspect is immediately arrested and remanded in custody, which cannot exceed 24 hours. During this time, the police carry out an investigation, before releasing the person or handing him/her over to the courts, as the case may be. It is also the police who initiate proceedings before the *ad hoc* court. The findings of the police investigation will be incorporated into the trial. The role of the police is therefore essential.

But pre-trial detention procedures are a source of many abuses, which many Rwa deplore. They note that it is easy to accuse someone without much evidence, and thus have him/her imprisoned. The police are all the more willing to make an arrest because the person concerned will usually pay a bribe to the police officer(s) on duty to obtain his/her release before the legal detention period expires. Indeed, it should be noted that corruption is very high in this country, which ranks 116 out of 176 in Transparency International's 2016 Corruption Index. Not the least corrupt are the police, whose position allows them to effortlessly take multiple bribes, for which the Swahili language has a colourful vocabulary. They are called 'daily rations' (*posho*) or 'tea' (*chai*), a euphemism for the snacks that the money will buy.

In the end, the Rwa do not hesitate to resort to the State justice system in their country, and there are many procedures available. An individual may have recourse to them either because he is not satisfied with the judgement rendered by the customary justice system, or because he hopes to obtain a more favourable judgement from the State justice system. In addition, the economic diversification that is developing is a source of new disputes, which by their very nature escape the traditional authorities. This is the case, for example, of debt problems linked to commercial activities. Judging business disputes is not the responsibility of the clans or the *Mringaringa*. When an individual mortgages his land to finance a business, he runs the risk of expropriation, which the traditional courts are powerless to address. Only the State judiciary can order the sale of land to pay debts, and this ability gives it a formidable and unrivalled power. It is all the more so because the temptation to do business is spreading in Rwa country, as an alternative to agriculture, given that, with the demographic pressure, the land often no longer yields enough to feed everyone. This critical situation is one of the reasons for the enthusiasm raised by the development of micro-credit on Mount Meru, particularly among women. It allows them to start a small business and to finance their children's schooling. But it involves a risk that is not always well measured and that can lead, in the event of insolvent debts, to the sale of one plot of the husband's land.

In any case, State justice is repeatedly criticised for two reasons. On the one hand, its procedures are much more expensive than traditional justice, and on the other hand, its judgements are too often biased by the omnipresence of corruption, which only increases the use of this type of justice. Although the corruption of a clan chief is sometimes denounced (though this cannot be publicly proclaimed), it is clear that most traditional chiefs, who are chosen for their righteousness, derive only moral prestige from the exercise of their functions, to which they show great devotion.

Finally, it should be noted that both traditional and State justice are exercised without a lawyer. A lawyer would be too expensive for most people. In 2014, there was only one recently established Rwa lawyer at the foot of Mount Meru. His practice was conveniently located at Usa River, on the Arusha-to-Moshi road, where economic activity is flourishing.

4. SOME EXAMPLES OF DISPUTE RESOLUTION

Here are six examples of disputes that required the combined intervention of these two courts.

4-1. Case 1: Clan's inheritance division improperly favours male offspring

A man dies without sharing his inheritance. It is therefore up to his clan to make the division. The deceased left a widow, who had only daughters, and these daughters themselves did not produce any male descendants, except for one of them who had a son. Born of an unknown father, this son is a member of the clan of the deceased after adoption by his maternal grandfather[19]. This clan, which comes to share the land of the deceased on which his widow lives, decides to allocate all the land to the only male heir, the grandson. The women of this family, i.e. the widow and her daughters, who have been denied any share of the land by the clan, then challenge the clan's decision before the local Land Tribunal. The court arbitrates that the grandson would receive a slightly larger share of the land (1 acre) than his aunts, who would each receive only 1/2 acre. This judgement satisfies everyone because it maintains the advantage of the male descendants, without the daughters of the deceased being deprived. It is the widow who makes the distribution.

The challenge by women to the clan's division of inheritance reflects ongoing developments. In the past, only male heirs shared their father's land, and the clan division respected this tradition. However, women are increasingly challenging this male privilege, and it is the State justice system (the village Land Tribunal) that opens up this possibility. This court opts for an intermediate solution by granting a share to the daughters of the deceased, but this share is half that of the sole male descendant. The clan, whose judgement has been challenged, is presented with a fait accompli. State justice takes precedence over clan justice.

4-2. Case 2: A dispute between a father and his sons over the division of his property

An old man, father of several sons and a daughter, divides his property among his children. This is a customary act encouraged by Rwa society. He allocates his house to a granddaughter, the daughter of one of his sons, because she is the one who takes care of him in his old age. Normally, it is the youngest son who is responsible for taking care of his parents in old age and who receives the parental house after their death in return. On the basis of this custom, the youngest son goes to the clan to contest the division made by his father. The elders of the clan, who are responsible for resolving disputes between agnates, look into the matter. They check the division of the land, but cannot convince the father to modify his division in favour of the youngest son. After careful consideration, they finally decide that the father's division is fair, as it complies with the new provisions of the Rwa Constitution. The latter now allows the donation of the father's house to a female descendant, if she has taken care of the parents in

[19] This mode of adoption, as noted above, is a recent development that many still find difficult to accept. Indeed, unmarried mothers and their illegitimate children are still sometimes rejected by society and disappear from the social scene (Liv HARAM, *op. cit.*). However, the Lutheran Church has helped to improve their lot. Very influential in Rwa country, it pleaded for these children to have their place in its midst, otherwise they could not hope to go to Heaven after their death. To avoid this tragic post-mortem fate, they must be baptised and therefore have a godfather. With this in mind, the Church has encouraged the maternal grandfathers of such children to recognise them so that they can have a social identity and be baptised. This adoption gives them both membership of the religious community and membership of the grandfather's clan. The latter is all the more essential for the Rwa as one cannot belong to their community except as a member of a clan.

their old age. The claims of the youngest son are therefore rejected by the clan. Although his claims are rejected, the youngest son perseveres in his opposition to his father, so that the latter, in order to obtain peace, brings the case before the State court. At the judge's request, the elders of the clan give him the minutes of their meeting, stating the decisions taken. The judge stamps the clan's minutes (as validation) and summons the old man's sons to 1) respect the clan's decisions; 2) apologise to the clan elders for challenging their decision; and 3) consult with their father if they persist in seeking a larger share of the inherited land from him.

In this conflict, it is again noticeable that the arbitration of the clan elders is not sufficient to settle the case. Whereas in the previous case, the clan's arbitration was rectified by the State justice system, in this case the clan's arbitration is not enough to win the support of those concerned. It must be confirmed by the State justice system in order to silence the dispute among the heirs. This dispute therefore also shows, but for different reasons, a certain loss of authority on the part of the clan, to the benefit of the State justice system.

4-3. Case 3: A field boundary problem

E. Kaaya has surreptitiously moved the boundaries of his field to the detriment of his sister's neighbouring field. She complains to their clan leader, but he fails to resolve the matter to her satisfaction. She takes the case to the Ward Land Tribunal. The court summons the clan chief and decides in favour of the woman. Her brother E. Kaaya wants to appeal the court's decision to the District Land Tribunal, but this involves costs that he cannot afford. The case is therefore not heard by the District Land Tribunal, and the Ward Land Tribunal's judgment is upheld. The boundaries of the field are returned to their previous location. The chairman of the Ward Land Tribunal tells me that in order to settle the case, the Ward Land Tribunal members had to travel three times, and that E. Kaaya's sister reimbursed them for their expenses. But it is the losing party (E. Kaaya) who has to pay the costs, and therefore E. Kaaya has to reimburse these costs to his sister. If he fails to do so, the Ward Land Tribunal will serve notice on the higher court, the District Tribunal, which will issue an order for payment. If E. Kaaya does not comply, part of his land will be confiscated and sold to meet the costs.

This case, reported by the Ward Land Tribunal President, illustrates several facts:

1) The alternation of the jurisdictions used: the sister first appeals to the clan justice system and then, when she fails to win her case, to the State justice system.

2) The patrilineal clan tends to favour its male members to the detriment of women, and in particular the land ownership of men to the detriment of women. This tendency can be seen in the sharing of inheritance (see case 1), and this land case is a further example of that.

3) The enormous means available to the State justice system to force the application of its judgements: land expropriation. Clan justice, on the other hand, is a justice of consensus. It has the authority to impose fines, but it cannot expropriate a guilty person's land. Expropriation

would be contrary to one of the main roles of the clan, which is to protect the overall land ownership of all its members.

4-4. Case 4: The case of an unrecognised child who is taken in by another clan, but who is then taken back by his biological father

This case involves three clans. A woman from the Urio clan, who was not married, gave birth to a daughter whose father, from the Mbise clan, did not recognise the child nor marry the mother. The mother subsequently married a man from the Kaaya clan. The husband takes the child in, but when the girl reaches the age of 17, her biological father resurfaces. While living far away, he returns to kidnap his daughter and takes her with him. The members of the Kaaya clan, the one that raised the girl, go to the police with a complaint. But the Mbise clan, that of the kidnapping father, prefers to settle the matter itself and asks the police "*to bring the case back home"*.

The case is therefore debated between the three clans involved. The members of the educating clan, the Kaaya clan, agrees that the girl should be returned to her biological father, but in return they demand to be reimbursed by the latter's clan for the costs they had incurred for her education. It is therefore agreed that the father's clan, that of the Mbise, will reimburse the Kaaya for these expenses. In addition, the Mbise will have to compensate the clan of the girl's mother, that of the Urio. To this end, the Mbise must pay the Urio: a heifer, a ram (for the girl's grandmother), and a ewe lamb. In addition, the biological father, who is found to be at fault, must pay a fine, the symbolic amount of which is an ox (*nguleta*). This fine is equivalent to 60,000/- (Tanzanian shillings), but the parties agree to reduce it to 40,000/-. The Mbise father therefore pays this amount which is shared between the Urio and the Kaaya.

At this point a new problem arises, caused by the Mbise clan chief. It turns out that the biological father (of the Mbise clan), who lives far away in Zanzibar, did hand over to his local clan chief the three animals that were to be given as compensation to the Urio. But the Mbise chief, instead of giving the cattle to the Urio, kept them for himself. He hopes to take advantage of the recent death of the supreme chief of the Kaaya clan to escape this payment obligation. Faced with this blockage, the Kaaya organise a new meeting between the three clans on 15 July 2010. It is then decided "*to bring the case to the police"* so that it can be brought to court. The objective is to put pressure on the Mbise to force them to pay. It is the Kaaya who take matters into their own hands.

This rather complex case forces a dialogue between three clans. There is twice a back and forth between the police (i.e. State justice) and clan justice. The harmed clan (the one that paid in vain for the girl's education) first appeals directly to the police, but the clan at fault (the kidnapping father's clan) obtains from the police the return of the case, which it intends to settle itself. The three clans then discuss and agree on the compensation to be paid. However, a new problem arises with the payment of the compensation, as the leader of the offending clan tries to escape this obligation. In order to put pressure on him, the harmed clan once again turns to the State justice system. This example shows that the police and the State justice system have no reluctance to refer a case to the traditional justice system, that of the clans, and that it is only

if the latter fails to settle the dispute definitively that the State justice system is used again to exert greater pressure on the litigants in order to resolve the dispute.

4-5. Case 5: An impossible land division within a family of clan N

Here is a case of inheritance sharing within a clan that is complicated by political tensions within the clan.

When a man died, he left two widows and their respective children. As is customary, he divided his property among his children before his death, and in this division the deceased favoured the one of his sons who looked after him in his old age. This was a son of the second marriage, X, to whom he granted 5 acres while the other sons received only three. But this paternal division aroused great jealousy between brothers and half-brothers. The eldest of them, A, the eldest son of the first wife, must decide the dispute as the eldest. But A is not familiar with the customs of his people. He is newly retired and has just returned home after living most of his life abroad (where he stayed after receiving a scholarship). He chooses not to go to the clan justice system but to the Tanzanian justice system to settle the problem. However, as is often the case, the Tanzanian justice system refers the case to the clan chief. The clan leader is a very old man. He tries as best he can to take the problem in hand, but he comes up against the virulent hostility of a sister of the eldest son A, from the same mother. This sister fears that the advantage given by the deceased to the son of his second marriage, X, will be confirmed by the clan chief. Shaken by this verbal aggression, the old chief gives up the case. He dies shortly afterwards. The dispute therefore remains unresolved. Its settlement awaits the appointment of a new clan chief. But another difficulty arises in connection with this appointment. The usual procedure is for consultations to take place between the elders of the clan, which leads to the nomination of one of the various lineage chiefs of the clan as clan chief. But the lineage chief Y, who was considered by many to be the most qualified to become the clan chief, is then supplanted by another man, B, who improperly arrogates power to himself without anyone daring to openly object to it. B thus becomes the official chief of the clan, which does not prevent him from being badly accepted by many of the clan members and in particular by the supplanted candidate, Y. The latter, well aware of local customs, is in favour of the division made by the deceased, and therefore supports the advantage given to the son of the second bed, X, because X took care of his father before his death.

We therefore find ourselves in a situation where the eldest son, A, ignoring the customs, relies on an official but contested clan chief, B, to challenge a division of land carried out by the deceased father, a division that favours another son, X, supported by Y, the head of lineage supplanted by B. On the one hand, A relies on B, and on the other hand, X relies on Y.

In his repeated attempts to settle the dispute, the elder A convenes conciliation meetings at great expense, but no decision can be reached. Indeed, these meetings are boycotted by the head of the lineage Y, who thus signifies his refusal to recognise the authority of the clan chief B. Similarly, they are boycotted by son X, who cannot expect support because of Y's absence, and thus prefers not to attend the meeting. This affair, which has been going on for years, seems intractable.

As inheritance divisions are normally decided by clans, it is not surprising that the State justice system referred this case to the clan. But the final arbitration is complicated by two facts: on the one hand, ignorance of the rules on the part of the eldest member of the family, A, who contravenes the customs, and on the other hand, the latent non-recognition of the authority of a

usurping clan chief, which hinders any consensus. For a clan to settle a matter to everyone's satisfaction, there must first be a general consensus on the political and moral authority of the clan chief, and then on the rules of custom to be implemented.

4-6. Case 6: The clan takes over a business

The agnatic nephews of a bar owner have caused damage to his bar. Their uncle seeks redress from the police, who refer the case to the Maji ya Chai[20] Primary Court. The clan involved then asks the magistrate to return the case to the clan. The magistrate summons the people concerned (the uncle and his nephews) to ask them if they agree that the clan should look into the matter. As they agree, the magistrate sends the case back to the clan, giving it a deadline to settle the dispute and report back to the magistrate on the matter. The magistrate will then rule on the basis of the clan's report.

In this dispute, which is not a land dispute but concerns members of the same clan, we can see that the uncle who has been wronged by his nephews turns first to the State justice system rather than to his clan. This choice may be linked to the fact that, as a rule, the clan deals mainly with land disputes and inheritance sharing, whereas in this case it is a commercial matter. We can see that the clan's initiative, its request to take the case in hand, is supported by the magistrate, who in no way seeks to substitute himself for the clan's justice. However, as is always the case when the State justice system refers the case to a clan, a deadline is given to settle the conflict. This pragmatic measure aims to put pressure on the clan, which might otherwise be feared to be slow to issue a verdict. This is not a useless measure, given the extent to which certain disputes can drag on within a clan without finding a solution (see case No. 5).

The six cases above involve interactions between State and clan justice. But they are not the only ones involved. It is also the case that the highest traditional body, the *Mringaringa*, is involved in interactions with the State justice system. It should be remembered that this traditional council is the highest legal body of the Rwa. It is responsible for arbitrating all conflicts that the clans, at their level, are unable to resolve. In general[21], most disputes are settled at clan or supreme council level. However, it also happens that the supreme council is sometimes unable to settle a case to general satisfaction. In such cases, the council writes a report and sends the case to the West Meru Primary Court. On the other hand, it is also possible that the State judiciary has difficulty in deciding a difficult case. When this occurs the judge asks the Supreme Council, *Mringaringa*, for its expertise. The council then considers the matter and provides the judge with a detailed written report, which may be several pages long, duly signed and stamped, on which the court can base its judgement[22].

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The various examples above show that traditional and State justice work hand in hand. There is no rivalry or conflict of jurisdiction between them. However, it is common for litigants to try to play between the two, always turning to the one from which they expect the most favourable

[20] The nearest Primary Court is in Maji ya Chai on the Arusha-Moshi road.
[21] According to Betueli KAAYA, then supreme leader of the Rwa, on 9 January 1995.
[22] On 17 June 2010, the Secretary General of the Supreme Council, Jacob Nathanael KAAYA, informed me of such a case, and let me photocopy a report of the Supreme Council duly signed and stamped, which he sent to the court.

judgment. However, these cases also show that litigants do not hesitate to question the clan's judgment if they are dissatisfied with it. This is frequently the case for women, whose rights may be poorly defended by the clan, simply because the traditional clan justice system is male-only (only male members of the clan sit at its meetings) and some men attached to the old rules find it difficult to accept the new rights of women in land matters. Cases 1 and 3 above illustrate this.

The above examples also show the decline of the moral authority of the clan. In case 2, for example, the clan's judgement, which approves the division of inheritance planned by a father, is openly contested by his son to such an extent that the father appeals to the State justice system to support the clan's judgement and impose it on his son. In case n° 6, the uncle in conflict with his agnatic nephews does not turn to the clan, but to the State justice system to assert his right. As this is a conflict between members of the same clan, the clan concerned asks to take over the case, which the State justice system grants. But the clan's role becomes that of an expert mandated by the State justice system. It must produce a report and submit it within a given timeframe. After receiving this report, it is the State justice system that will ultimately decide on the case. This example shows that while the clan is the expert in traditional law, the State justice system is superior to it since it ultimately decides. Furthermore, the weakness of the clan's coercive power is highlighted in case 4. Arbitration between three clans was carried out to the general satisfaction of all to decide on the compensation to be paid by one of them. But the application of this decision is problematic because of the personality of an unscrupulous clan leader who seeks to escape his obligations. To force him to do so, the aggrieved clans decide to resort to the State justice system, which alone has sufficient weight to obtain the planned payment. Case 5, where a clan cannot settle a case because of an internal political problem (a disputed succession to the clan leadership), illustrates another weakness of clan justice; not only does it have no coercive power, but it can only be exercised if there is consensus within the clan.

These various cases illustrate the weakening of the role of clans in the face of State justice. Whenever a clan fails to resolve a dispute internally to the satisfaction of all, any individual involved in the dispute can appeal to the State justice system. The authority of the latter then prevails, even if it willingly solicits the expertise of the clan.

The legal weakness of clans, as we have pointed out, is due to two essential factors. The first is its consensual nature: clan justice is only effective if everyone accepts its verdict. In previous times, the moral authority of the clan was sufficient to impose its decisions, but this authority is more and more frequently challenged, not only sometimes by women but even by a son who does not hesitate to question a decision of his father supported by the clan (case n° 2). Consensus, in this example, has completely vanished.

The second factor that contributes to the weakening of the clan's legal authority is the fact that it has no coercive means of enforcing its judgment. The fines it imposes are not always paid (case 4) and the threat of public opprobrium is no longer a sufficiently persuasive force. In this context, the District Tribunal (which is administratively above the Ward Tribunal) is the only one with a convincing coercive tool: only it can issue a payment order. The latter leads to the confiscation of property, in particular land, if there is a default in payment. The sale of a plot of land for non-payment of a debt is particularly feared by the Rwa, who are peasants at heart and for whom land remains the ultimate value. The clans, on the other hand, would find it very difficult to implement such a measure, as their mission is to protect the overall land ownership

of their members, which they consider to be a collective asset. The clan therefore does not have, and cannot have, coercive means comparable to those of the District Court.

Moreover, the weakening of the clans can be seen in the very area to which they are most attached, that of land defense. As we have pointed out, the increase in land prices, especially along the Arusha-Moshi tarmacked road to Dar-es-Salaam, is causing clans to lose their influence in dissuading their members from selling their land to bidders higher than the clan members. Moreover, the increasing geographical dispersion of clan members obviously undermines clan cohesion.

In addition, a new domain of economic activity is developing, which is generating great enthusiasm and is totally outside the clan's authority. It is driven by micro-credit, under the name of VICOBA (Village Community Bank). This micro-credit formula, supported by the Tanzanian State and made official in 2012, has since developed at lightning speed. It involves small groups of 20 to 30 people (often women) who form a community to contribute regularly to a common fund. The money collected in this way is lent in turn to individual members of the group, in return for interest, to start a business. The borrower must repay the loan, with interest, at the end of the term, and the benefit to the group is distributed to its members in proportion to their investment. VICOBAs have enabled many women to start small businesses for which they would otherwise have had no funding. But these activities carry a risk, of course, that of defaulting on payments. In such a case, it is the confiscation of assets (usually land confiscation) ordered by the District Court that allows the debt to be repaid. These new kinds of disputes are totally outside the jurisdiction of the clans.

The clans nonetheless retain undeniable authority where land is concerned. This is due to the fact that they are the custodians of the collective memory in terms of land ownership and field boundaries. Indeed, there is neither a land register nor property titles in Rwa country, with a few exceptions, simply because the positioning of beacons is very expensive. The memory of the clans takes the place of a land register. The clans, therefore, are far from being threatened with extinction. They remain key players in family and land matters. But they have no coercive force, unlike the State justice system. This is why we can expect the latter to play an increasingly important role in conflict resolution, in the face of the traditional authority of the clan.