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SOCIAL AND LEGAL CHANGE IN KURIA FAMILY RELATIONS

Thesis Submitted by

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I am, of course, entirely responsible for any errors in this thesis.

ABSTRACTSOCIAL AND LEGAL CHANGE IN KURIA FAMILY RELATIONS

Barthazar Aloys Rwezaura

This is a study of social and legal change among the Kuria people of Tanzania. It examines the transformation of the Kuria ideas and practices concerning marriage, children and property rights. The study covers a period following the colonial rule in Tanzania beginning about the turn of this century to the present.

The aim of the study is to show the relationship between the integration of the Kuria economy into a world economic system and the transformation of extant social relations. Although we recognise that social change is an unceasing process in any society, this study argues that forces associated with capitalist penetration accelerated this process. Thus, for example, the authority and power of the elders who had for many generations dominated the Kuria society was undermined. There was radical transformation of kinship and property relations and elders were no longer influential in matters relating to production. There was progressive individualisation of property rights as subsistence production was transformed to serve the needs of the capitalist sector.

The role of the law and state is also discussed. We argue that both the colonial and the post-colonial states were instrumental in this process of change even if some of their policies appear to have been aimed at conserving certain forms of traditional relations.

Within this context of change the responses of the Kuria people to economic change is examined. The study argues that rather than being passive objects of capitalist penetration the Kuria tried to influence events even though their options were highly circumscribed. For the elders change represented an opportunity to utilise their traditional positions to secure resources from the non-traditional economic sector while for the younger generation and the women, change opened up the means for them to extricate themselves from relations of subordination.

## CHAPTER ONE

### INTRODUCTION

This is a study of social and legal change among the Kuria people of Tanzania. It examines the transformation of Kuria ideas and practices concerning marriage, children and property rights. The study covers the period following the colonial occupation of Tanzania, beginning about the turn of the twentieth century.

Whereas it is recognized that social change is a continuing process in any society, this study argues that forces connected with colonial rule have accelerated this process. These changes have affected certain areas of social life more than others. In particular, family relations have been dramatically transformed.

This study of Kuria social change has drawn insight from a number of recent theoretical and empirical studies on the 'Third World', the most important being studies on law and underdevelopment. These have provided a number of related theoretical frameworks for research on the specific processes through which various peasant societies are drawn into a world capitalist economy. The role of colonial law in promoting this process among the Kuria and the contemporary effects of capitalist penetration are examined within this theoretical framework.

My research on Kuria society has also benefited from anthropological sources. These historical accounts of Kuria pre-colonial law and practices have been used. Although I have not always come to the same conclusions as those of the authors I cite, they are nonetheless acknowledged for their contribution. There are, however, only a few published works on the Kuria people. Those few authors upon whom I have relied are cited in the text.

Tarime district was chosen as the location for the research and this choice was influenced by a number of considerations. The two most important were my preliminary examination of historical sources which

showed that Kuria people had an impressive history of resistance to colonial initiatives to regulate livestock economy and bridewealth. My early studies of court cases and interviews with court personnel in the Mara region indicated that Kuria bridewealth rates are the highest in East Africa. This suggested that marriage, its legal consequences and divorce would be greatly influenced by those people who controlled access to cattle.

Secondly, cattle played a significant role in establishing and maintaining political alliances, ritual and other vital aspects of Kuria social life. It seemed therefore that if cattle were so central to the social and economic life of a people and were traditionally controlled by elders, the 'commoditization' of cattle would certainly disturb existing patterns of social relationships.

In August 1979 I arrived at Musoma, the headquarters of the Mara Region, to begin the fieldwork. During the first three weeks I gathered documentary sources from regional offices in Musoma township. I had interviews with regional and departmental heads. These included officials in the departments of agriculture, livestock development, education, social welfare and the stock-theft control unit.

Talking to regional officials and reading their annual reports was very helpful for my subsequent fieldwork in the Tarime district. The Mara regional sources contained information collected from all the five constituent districts including Tarime.

In September 1979 I began my six-month field research in Tarime. I spent the first two months working at the district court where I read past cases and talked to many litigants and their witnesses. Sharing office space with the court clerks enabled me to pass as one of the court staff which facilitated access to litigants.

I also developed informal contacts with other informants. I had two assistants working with me. In October I toured parts of the district with leaders of the Tanzania women's movement and took part in discussions

on women's problems and community development issues.

The last two months of 1979 were spent in the Nyamwaga and Nyamwigura areas located a distance of about twenty kilometres north-east of Tarime township. With the help of the local magistrate, I obtained accommodation at Nyamwaga and through him gained access to a number of local party leaders, court assessors, ten-house cell heads and local elders, from whom I obtained data. The archives of Nyamwaga and Nyamwigura primary courts proved surprisingly rich. Here I found a variety of colonial records such as bridewealth and marriage registers, report books of daily local events and summaries of cases heard by chiefs' courts. These sources provided invaluable background information.

In late December I travelled to Kagera region, west of Lake Victoria, to do a comparative study of dispute settlement. This comparison was necessary for supporting my hypothesis that there are similarities between the economic importance of cattle and land to the Kuria and the Haya people. In both cases, rights in cattle and land were undergoing rapid transformation as a result of economic changes. I spent most of January doing a survey of cases at various courts in that region.

I returned to Tarime in February where my assistants had continued collecting data. Throughout the fieldwork I did not restrict myself to any particular method. I interviewed informants of various age groups and of both sexes, civil servants, peasants and those in business. Being a man limited my opportunities of gathering data from women. This problem was partly rectified by employing a woman as a research assistant. Most interviews were conducted in such informal settings as market places, shops, bars, restaurants and homes. I did not use a tape recorder nor a prepared questionnaire. I had a list of questions on which I based most of my interviews.

This study is divided into ten chapters. First, I describe briefly the geography of the Tarime district, and its climate, and give an account of Kuria history and the social organization of the people. The chapter includes a brief discussion of the pre-colonial land tenure system and the early period of British rule.

The third chapter outlines the principal features of the pre-colonial economy, concentrating on agriculture and animal husbandry. The sexual division of labour and the distribution of rights over property in a 'typical' Kuria household are examined. This chapter constitutes the background material for the discussion in chapter four concerning the transformation of Kuria pre-capitalist economy.

Next I look at various methods devised by colonial officials to change Kuria economy. These included the compulsory production of cash crops and livestock marketing. I conclude the chapter by noting that although the initial period was marked by more direct state intervention in the transformation of the economy, the 1940s saw the emergence of the so-called 'progressive' peasant farmers and the rise of Indian and African entrepreneurs.

The fifth chapter looks briefly at the process leading to marriage, emphasizing the role of fathers as marriage 'brokers', and the economic interests involved in a marriage transaction. I argue that marriage in Kuria society enables the families of both the bride and her husband to establish important affinal links as well as providing the husband with an opportunity to gain a level of economic autonomy from which point he can advance toward the status of an elder. Marriage also acts as a vehicle for the distribution of cattle wealth among a range of relatives.

In a more detailed discussion in the sixth chapter, I examine the extent of colonial state intervention in the regulation of bridewealth rates and the responses of the Kuria elders to this policy. It is

argued that colonial regulation of bridewealth was part of a wider policy intended to weaken pastoral economy and to encourage the production of cash crops. Kuria resistance to this policy is explained in terms of the central position of cattle in their economy and social life.

The period following Tanganyika's independence saw a different kind of problem. Unlike its colonial predecessor, the post-colonial administration did not seriously seek to discourage pastoralism nor to limit bridewealth rates. The commercialization of cattle since the colonial era, among other factors, had created a situation where cattle ownership gradually became individualized and concentrated in fewer hands. Poor men found it increasingly difficult to marry, while rich men acquired more land and increased their opportunities for accumulating greater wealth through cash crop production by investing in more marriages. In order to limit the effects of rising bridewealth, the post-colonial government ruled that payment of bridewealth was no longer a requirement for contracting a valid marriage. This move, however, had little effect on practice, as most parents continued to influence their children's marital choices. Moreover (and despite legislation prohibiting the practice) parents encouraged their daughters to leave primary schools in order to be married.

The seventh chapter discusses rules of affiliation. It considers the legal importance of marriage payments in determining the status of children and how this has been changed by state law in the post-colonial period. The imposed law which states that the payment of bridewealth is not essential for the validity of a marriage is often disregarded with the result that all husbands consider themselves entitled to the children their wives bear during the marriage, whoever is the genitor. The fact that the economic importance of children has remained, up to the present, has been responsible for the resistance of most Kuria men to the changes in affiliation rules.

In chapter eight I continue to examine economic changes and their effects on marital relations. I argue that the concentration of the cost of marriage on an individual household - a result of narrowing kinship ties and wider economic alliances - encourages husbands to be authoritarian and less sensitive to wider kinship influence in the treatment of their wives. This period witnesses a situation in which wives are increasingly involved in commercial farming, trade and other capitalist economic undertakings. To some extent women's involvement in these economic concerns makes them more conscious of 'exploitation' by their husbands. They seek to share in their husbands' decision-making powers in the management of domestic resources.

In their continued attempts to gain relative economic autonomy from their husbands, wives often run into difficulties. Marital violence and other forms of conflict result. State courts provide a forum for disputes, and are involved in reallocating resources between couples, particularly at the time of divorce.

Chapter nine considers two matters. First, I discuss the woman-to-woman marriage and its economic functions in pre-colonial Kuria society. I show that the internal economic divisions of a typical household facilitated the emergence of this type of marriage especially in cases where a wife has not borne sons. Secondly, new economic opportunities for women in both rural and urban centres enable them to use existing 'traditional' forms of relationships to acquire rights in other women. The latter are 'deployed' in capitalist economic activities in the same way as wives were used by husbands. Competition for domestic resources, noted in the preceding chapter, is also considered here. It appears that one of the effects of capitalist penetration is to weaken traditional male monopoly control over resources by enabling some women to achieve positions of economic dominance with similar power as men to control other women.

This study is concluded by noting the role of colonial and post-colonial law and the state in promoting change in social relations among the Kuria people. I emphasize the fact that Kuria people were not just passive objects of such forces but actively participated in shaping events. They responded to particular situations in a variety of ways, trying to minimize adverse effects while, at the same time, taking advantage of new opportunities.

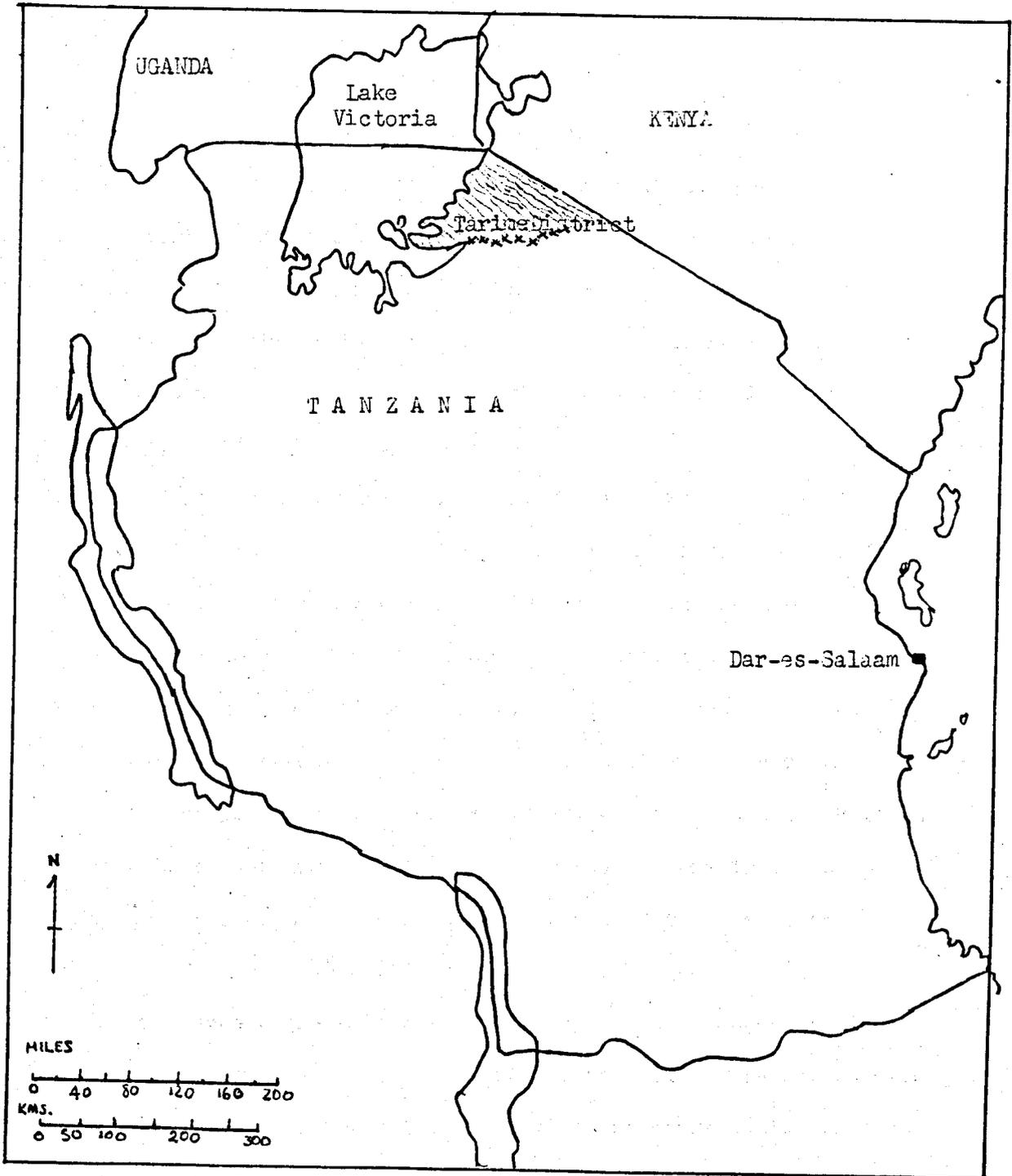


Figure 2.1 Map of Tanzania showing the location of Tarime District.

## CHAPTER TWO

### THE LAND AND THE PEOPLE

#### Geography and Climate

Tanzania has a land area of some 361,800 square miles and a population of about seventeen and a half million people, distributed unevenly throughout a variety of ecological zones. The highest population densities (about 100 persons per square mile) occur in the highland and lake zones where the soils are fertile and rainfall reliable, while in such areas as the central region, rainfall averages are low, soil poor and the population generally sparse.

The United Republic of Tanzania acquired its present name in 1964 when the two independent states of Tanganyika and Zanzibar merged. Both states had formerly been under British rule. Tanganyika became independent in December 1961 to be followed by Zanzibar two years later. From 1891 to the end of the First World War (1918), Tanganyika, known as German East Africa, was under German rule. After the war the responsibility for its administration as a mandated territory was given to Great Britain under the League of Nations. In 1945, the United Nations Trusteeship Council replaced the League of Nations and continued to oversee the administration of Tanganyika until its independence.

Tarime, the area where this research was conducted, together with four other districts, form an administrative unit called Mara Region with its headquarters at Musoma township. The region is situated in north-east Tanzania, east of Lake Victoria. Its name derives from the Mara river which has considerable influence on the ecology and human economic activities of the area. The river originates in Kenya, crosses Tarime district and empties its waters into Lake Victoria, north-east of Musoma. As may be observed from the map (figure 2.2), Tarime district has the shape of an inverted triangle. The Mara river and part of Serengeti

district boundary form its uneven southern border which may be called the hypotenuse. Lake Victoria, with its numerous bays and estuaries, forms its western boundary. At the height of the inverted triangle is the Kenya-Tanzania boundary, running straight from the north-eastern midpoint of Lake Victoria to the Indian Ocean.

Tarime district has an area of 3,885 square kilometres. It is the most fertile part of the region and has a mild climate. Although Tarime district is considered to be a land of hills, it divides conveniently into three main regions. The Mara river valley stretches along the river. This area lies between 1128 and 1219 metres above sea level, and has an annual average rainfall of 635-889 mm. The main crops grown are bull-rush millet, cassava, eleusine, and sweet potatoes. Cattle thrive in this area due to the favourable climatic conditions and vegetation. The absence of permanent agricultural crops in this area means there is more pasture land available for livestock. Cattle are also allowed to feed on millet stalks after harvest.

The plateau area covers the central part of the district. It lies between 1200-1270 and 1500 metres above sea level and has an annual average rainfall of 1016-1270 mm. The main agricultural crops produced in this zone include bull-rush millet, cassava, groundnuts, sun-flower and maize. As in the Mara river valley, the plateau climate and vegetation favours livestock. In both these areas there are a number of milk-cooling stations belonging to Utegi dairy plant, situated near Tarime town.

Tarime highland is the third and perhaps the richest and most fertile of the three zones. Situated in the north-eastern tip of the district adjacent to the Kenya boundary, the highland area rises from an altitude of 1500 metres to over 1800 metres above sea level. It has an annual average rainfall of 1524 mm., distributed evenly through the year with marked peaks during the months of April and December. Bananas, beans,

coffee, eleusine, European and sweet potatoes and onions are grown in this area. Although a larger part of highland area is rapidly coming under cultivation of permanent crops, cattle are still reared in large numbers.

The traditional staple food in the plateau and highland areas is finger millet, while maize is a recent addition. It was introduced during the colonial period to ensure food supplies during famine. The staple food of the people of the Mara river valley and the Lake Victoria lowland (both of which share the same climate) is sorghum and bull-rush millet, to which milk is added. Cassava flour, locally known as udaga, is consumed throughout the district, particularly during lean years, as a less desirable alternative.

The name, Tarime, is taken from a hill in the area and the town has a population of about 9000 and is the district administrative headquarters. It was established by the British in 1929 during which time the district of Musoma consisted of both North and South Mara. In 1947 North Mara was split from Musoma to form a separate district, while retaining its former name of North Mara. After independence, the name was changed to the Tarime district.

Tarime is linked by road with the rest of the country. Two privately-owned bus companies, together with the one operated by the state-owned Musoma Development Company, carry passengers daily from Tarime to Mwanza via Musoma. Meanwhile, other passenger buses operate within the district. Although the roads are rough and often hazardous, they are used most of the year, unless there are especially heavy rains. Plans for building a more permanent road link to Mwanza are underway, with the possibility of reviving the abandoned construction of a bridge across the Mara river. There are no plans to establish an airport, but electricity is expected to reach Tarime township in 1981.

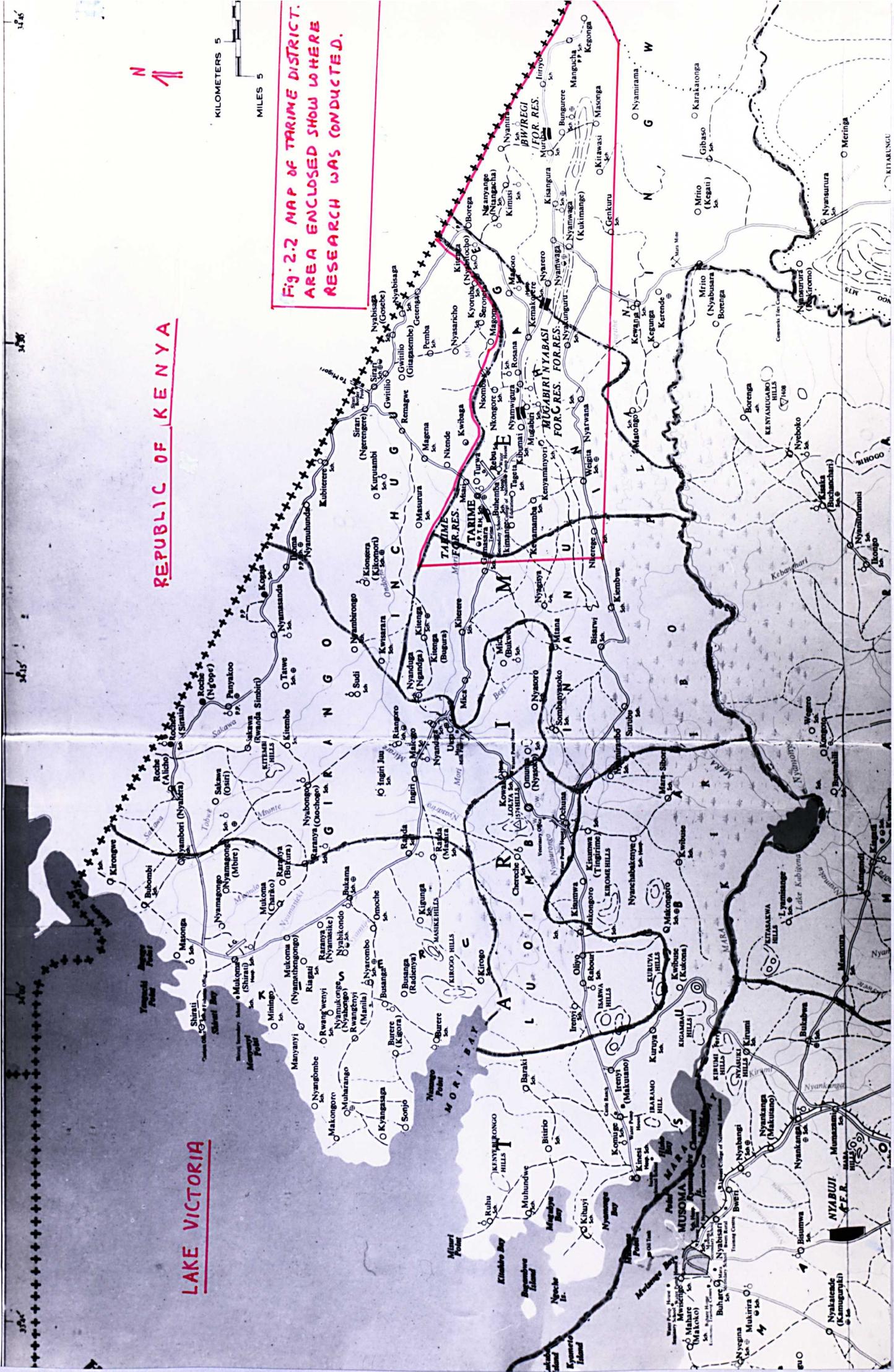


KILOMETERS 5  
MILES 5

**REPUBLIC OF KENYA**

**LAKE VICTORIA**

**Fig. 2.2 MAP OF TARIME DISTRICT.  
AREA ENCLOSED SHOW WHERE  
RESEARCH WAS CONDUCTED.**



34°35'

34°35'

34°35'

KITARINGU

MIHOLO

MAKARA

MAKARA

MAKARA

MAKARA

MAKARA

### Kuria People and their History

Tarime district is divided into eight administrative areas known as tarafa. Most of the Kuria people, constituting about 40 per cent of the district population, reside in four of the tarafa, namely, Inchage, Ingwe, Inchugu, and Inanu. Except for Inanu, all are situated in the highland zone of the district.

Historical evidence relating to the origin of the Kuria people suggests that they are a mixture of Bantu and highland Nilotic peoples, who migrated into the area and intermarried (Were 1968:177-96; Ehret 1968:175). The Kuria are not the original inhabitants of their present territory (Sutton 1968; Cory 1952:27; Chacha 1963:1-6). Chacha, who gathered first hand accounts from elders and who is himself a Kuria, states that Kuria clans descended from two ancestors named Mowa and Mbiriri. These men belonged to a party of pastoral Hima groups who founded the interlacustrine kingdoms around Lake Victoria. According to Chacha, Kuria ancestors moved in small bands from north of the Nile to the south, then branched off to the eastern side of Lake Victoria and settled in the present country of the Gusii people, south-west of the Republic of Kenya. From here they moved south to their present habitat. Then followed a series of lineage segmentations resulting in the formation of several clans presently numbering seventeen.

E.C. Baker, whose unpublished monograph on the Kuria provides some detail on Kuria history and settlement, partially agrees with Chacha's historical account of the Kuria. Both agree that Kuria ancestors moved south from Kenya to their present lands. Baker, on the other hand, states that nothing is known about Kuria history beyond the fact that they formerly lived in the southern part of Kenya at a place called Sunna. They were forced to migrate southwards to avoid clashes with the encroaching Masai and Luo people. Hans Cory (1952:27) suggests that the Kuria are a splinter group of the Kenya Masai who 'emigrated into their

present habitat about eleven generations ago'. He states that it is not known why this group abandoned their nomadic habits and settled down to become sedentary cultivators. He stresses, nonetheless, that the Kuria still have some of their Masai 'spirit' which manifests itself in their 'love for cattle and great zeal in acquiring them'.

In an earlier paper, Cory (1947:71-2) asserts that a Masai named Kiula left his home in Kitula, Kenya, and settled at a village called Mtingiro in the present tarafa of Inchage. After his death, Kiula's son named Mugena, returned to Kenya. A number of years later, the grandson of Kiula, named Mwita, returned to Mtingiro where he settled and raised a family. Matiku, his only son, was born at Mtingiro and is reported to be the founder of the Bahiri Mwita clan. This clan is recorded by Chacha and its Masai origin is acknowledged. There is no evidence, however, to confirm that all the Kuria clans descended from the Kenyan Masai. It is reasonable to assume therefore, given conflicting accounts, that in their southward move, Kuria ancestors intermarried freely with other groups, a practice they retained even after arriving in Tarime district (Chacha 1963:2; Sutton 1968:86-90).

According to Chacha, the original inhabitants of Tarime were peaceful and accepted Kuria intrusion into their lands without resistance. These included the Abatatiro, Abaitumbo, Abasungusu and Abandorobo. It is said that these original inhabitants were good cultivators and had skills in pottery, and iron forging. This point is supported by Sutton whose account concerning the descendants of the early Bantu and highland Nilotic people of this area, indicates that they practised grain agriculture and engaged in 'dimple-based' pottery (1968:89-93). As Kuria clans increased in number, they split up into subdivisions and occupied new lands. For example, the Bakira, Bakenye, and Bamera clans share a common totem, i.e., the elephant. These are reported to have descended from three brothers named Mukira, Mukenye and Wimera. These clans now

consist of hundreds of members living in different parts of the district. In some cases large clans did not split because of their size but due to quarrels among sub-clan heads (1963:15) or simply as a result of a new immigrant group wedging itself between them.

Out of all this movement of people Kuria groups emerged with new names. In 1904, for example, the Anglo-German expedition came into contact with a group of Kuria people calling themselves Basuba. These people had come from the country of Bu-Suba in Kenya. Today, the majority of their descendants live in the tarafa of Suba situated between the Mara and Mori river bay in the vicinity of Lake Victoria. They are a Luo-speaking people who likely descended from the main Kuria clans, but subsequently intermarried with Luo-speakers. Indeed, Tarime district, and Mara region as a whole, present a kaleidoscopic picture of people of mixed origins and varying history.

#### Kuria Social Organization

The family is the smallest unit within Kuria society. It may be composed of a man, his wife or wives, and their children. The household is called umugi (pl. imigi). Each wife with her children has her own 'house', inyumba. Although inyumba is a term ordinarily referring to a house, it is also used to mean, or to convey the idea of an establishment of which the wife is the representative. These family sub-units may be termed matricentral units, thus emphasizing the central position the wife occupies in them. As I shall show in later chapters, the emphasis placed on the individual wife as the head of her 'house' is significant both in economic and ritual spheres. Such houses are semi-autonomous in production and management. Each wife must ensure the continuation of her 'house' by bearing a son.

Beyond the household (umugi) is a larger unit called eka (pl. icika), comprising several agnatic homesteads numbering between ten and as many as thirty, spread out in a wide territorial area. In pre-colonial times when inter-ethnic group conflicts were regular and defence of livestock and people was necessary, Kuria homesteads were built much closer together. After colonial occupation and the relative 'peace' which followed, residence patterns became more dispersed. Each household might be separated from another by a distance of three to four hundred metres, leaving room for expansion. With minor exceptions, this pattern of settlement was maintained until the 1970s when the rural 'villagization' programme nearly re-enacted the pre-colonial settlement pattern, but this time for different reasons.

The eka occupies an identifiable territorial area called omoge (Cory 1947:70), and is often headed by an elder, usually its founder or his successor in the agnatic line. According to Matango (1976:14) such an elder is ordinarily appointed by the heads of individual households on the basis of seniority in age, wisdom and leadership capabilities. As almost all the members of the icika are related to each other through a male ancestor or through marriage in the case of their wives, they are regularly involved in a variety of economic activities. They assist each other in agriculture, attend one another's beer parties and provide mutual support during times of hardship. To this extent, the Kuria eka may be considered for a number of purposes, a corporate social group. Indeed, its substantive head is usually a representative of the eka at a larger unit called irigiha, which includes several icika.

Irigiha (pl. amagiha), as noted above, consists of a number of icika and also has an identifiable territorial area in which all the constituent icika are located. During the British colonial period, such territory - if large enough - could be designated as a gunguli, a term

which appears to have been borrowed from the Sukuma people. Gunguli was merely an administrative unit assigned to a headman who was not necessarily a traditional leader.

Members of the same irigiha are related through a common male ancestor who is usually its founder. Incorporation of new members through marriage or blood pacts was also possible. In such cases, new recruits were considered in the same way as members of the group even if they were not descended from a common ancestor. Irigiha, unlike the eka, did not have an institutionalized head but a council of elders representing their various icika met regularly to deal with any matter affecting their welfare. In cases of emergency an ad hoc committee could be convened by any of the members to deal with that problem and report to the general meeting of the irigiha.

The fourth unit of Kuria social organization is the egesaku, consisting of all the amagiha in its territorial area. It had no institutionalized leadership and only operated through the heads of the various icika. Its members trace a common male ancestor and occupy an identifiable area. It is the next largest unit of Kuria social organization.

A number of egesaku form what is loosely called a sub-tribe (Cory 1947:70) or a province (Ruel 1958:55). The sub-tribe is the largest single social organization which unites the majority of the agnatic lineages of Kuria people. According to Chacha all the Kuria people are members of seventeen of these social groups. Every sub-tribe is a separate unit in a number of respects. It conducts its own circumcision ceremonies, has its own territorial boundaries, and shares a common totem. Baker notes that 'many of the Bakuria have no conception of any larger unit and when asked to what tribe they belong, reply that they are of such and such a clan' (1958:65). It seems Baker overlooked the fact that the word 'tribe' was not in the Kuria vocabulary! Kuria people did not

have centralized political organization whose effect would have been to group together a large population under a common political authority. Unlike the neighbouring interlacustrine kingdoms, Kuria political organization was acephalous. The colonial policy of creating chiefs faced a number of setbacks as each sub-tribe had to be assigned its own chief and was generally hostile to any attempts to amalgamate. The problems of the so-called 'petty chiefdoms' were partly resolved in 1925 when a Kuria Federation was formed whereby each chief was permitted to remain in control of his own sub-tribe while acquiring membership of the Tarime Native Council Court and contributing to a common treasury.

At another level, the Kuria are organized into circumcision sets and age grades, which cut across family, lineage and clan boundaries. The Kuria call their age grades marika (sing. rika). Circumcision for boys and clitoridectomy for girls are rites de passage which mark a change of status from the child to the adult, with specific rights and obligations. For example, an uncircumcised young man is not expected to indulge in sexual relations with any woman. He cannot get married or establish his own homestead. As noted by Ruel, any man who has married and had children may be said to have built a 'homestead' even though he may be residing in his father's house (1958:60). An uncircumcised young man cannot establish his own umugi. The power to regulate and determine fertility is vested entirely with the elders who decide when circumcision may take place. According to Chacha (1963:19), in pre-colonial times, boys were circumcised when they were between twenty and thirty years of age, but during the last half-century, the average age for boys has fallen to about seventeen years. The time interval between circumcision ceremonies has also decreased. In the past this was four years, while in modern times, it has been reduced to every two years. The number of boys that may be circumcised at any one time must not be less than three hundred and fifty. If there are compelling

reasons to circumcise fewer, the circumcision set may not be given its own separate name but acquires that of the preceding one (Chacha 1963:19). Circumcision sets should be of sufficient number to carry out their social, economic and military duties. Kuria age sets are made up of a number of circumcision sets, and often compete with one another for honour and fame.

Usually circumcision sets take their names from an event of importance occurring at the time of the ceremony. In this way, dates of significant historical value are marked. For instance, the set circumcised in the 1940s at the time when a company of the King's African Rifles was stationed in the district (and many Kuria men were joining the army) was named Keeha and those immediately before them were called Kambuni. Both Keeha and Kambuni are a Kuria translation of the 'K.A.R.' and 'Company' respectively. Since colonial occupation, names assigned to many circumcision sets have been derived from an external event or a foreign nationality such as the French (Suransa); the Americans (Merika); the English (Ngereza); and the Russians (Rusia). Circumcision set names indicate certain historical events and their importance to the Kuria.

As noted above, Kuria circumcision and age sets are social and economic groups whose importance has persisted to the present day. Their organization is hierarchical and the eldest are considered the most senior. Rules of conduct exist between age sets and each group has its leaders who have diverse functions. They range from enforcing rules concerning appropriate personal conduct within the age set members to organizing work teams for the local community. A junior set is expected to respect its seniors and to give way to elders in many situations.

Kuria circumcision creates a bond among the members of a given set who look upon each other's wives and children as common to them all. They are expected to observe rules of incest in relation to all the children of their colleagues. This sexual prohibition does not, however, extend to those men who stand as 'grandfathers' to the daughters of their son's circumcision set.

Girls' clitoridectomy takes place at an earlier age than that of boys' circumcision. It is usually done after the girl's first menstrual period. As in the case of men, this rite of passage enables a girl to marry and bear children. Before this rite, a girl must not have sexual relations. Should she become pregnant before she undergoes the rite, it is said that she would be cast into the bush to be devoured by wild beasts. In modern times, such girls usually run away to a town, both to spare her parents the shame and to ensure her own safety. Female circumcision sets are called by the same names as those of men who are circumcised at the same time. Yet since at marriage a woman acquires the set name of her husband and loses her own, their solidarity as a set is less important.

When a Kuria man marries a woman from another society where circumcision is not practised, he is expected to arrange for her excision before she delivers her first child. This arrangement allows intermarriage with Luo girls who live in close proximity to the Kuria.

As noted, a number of circumcision sets combine to form a single age grade (Spencer 1976:153), referred to as irikora (pl. amakora). There are four age grades among the Kuria which include circumcision sets of approximately the previous twenty-five years. These age grades are, in turn, sub-divided into junior and senior age grades running parallel to one another and each having its own name. The age grade cycle is completed after about one hundred years when the newly-promoted grade takes the name of the first age grade. For instance, the senior age

grades are known as the Basae, Banyambureti, Bagamunyi and Bamaina. The junior grades, on the other hand, are called the Bachuma, Bagorogoro, Bagini, and Banyaangi (Chacha 1963:7). According to Baker (1958:69), members of the corresponding age grades (i.e. senior and junior) are considered to be of the same generation and their children would be grouped together. Thus, for example, if the Basae and Bachuma consisting of the corresponding grades are of the same generation, their children would be grouped as Banyambureti and Bagorogoro respectively and their grandchildren would be called Bagamunyi and Bagini. Finally, their great-grandchildren would be Bamaina and Banyaangi, thus ending the cycle. The next group following the latter would be known as the Basae and Bachuma, thus starting the process all over again.

Thus, Kuria social organization extended far beyond kinship categories. As noted, Kuria age grade systems provide an additional organizational principle to that of kinship. By invoking these categories of social relationship, Kuria society achieved a measure of social cohesion which was essential for its survival and wellbeing. The authority of elders was derived from a variety of sources; some were members of a council of elders, that is, inchama, which was a supreme body governing a collection of Kuria clans within a given province. Age was always important (if not decisive) and the elders' authority often coincided with their location on what Spencer (1976:155) has called the 'rungs of a gerontocratic ladder'.

#### Kuria Land Tenure

When Kuria founding fathers came to occupy their present country, there was abundant land for settlement, cultivation, and for grazing their herds. As noted by Cory, a man and his family were entitled to cultivate as much land as they could and 'no one cared about the size of the fields

of a cultivator until another man wished to open fields in the same area' (1947:72). Kuria land rights were vested in a group of agnatic lineage heads who exercised power of allocation at the level of the irigiha. Their territory, referred to as oruberi, was marked off from others by natural boundaries such as hills, valleys, or rock outcrops. A collection of a number of oruberi constituted a territorial unit belonging to one egesaku, which was called omogei. As in the case of the oruberi, omogei was separated from other lineage territories by natural boundaries.

A newcomer wishing to settle in a particular oruberi needed support from a sponsor who was either a blood-brother or an affinal relative. In such cases, the individual became a member of a homestead or eka and acquired similar rights and duties as the rest of the group.

Kuria land tenure remained unchanged until during the colonial period. Certain factors contributed to this stability. There was no shortage of land so there was no need for developing a system of individual family tenure. Technology being relatively simple kept the demand for land in line with the population size. Among the implements used by the Kuria during this time was a wooden hoe called inkurro, a buffalo rib, known as bukombe and occasionally an iron hoe. Another factor which encouraged stability of communal land rights was that land was used basically for subsistence production. Subsistence production in Kuria society was characterised by what Kitching (1980:14) calls 'the under-utilization of labour time' among pre-capitalist societies. Some family members, particularly the warrior grades, spent their time herding and defending cattle, building houses and occasionally raiding their neighbours' herds. On the other hand, older men were occupied with politics, ritual, and other non-agricultural duties, leaving most of the cultivation work to women and girls.

There are reports of trading activities between Kuria highland men, and their neighbours, in which the latter exchanged small stock

iron tools and pottery for grain during lean years, but this trade does not seem to have attained a volume sufficient for generating production of grain surpluses. Agricultural production did not greatly exceed what was considered sufficient for immediate consumption. Indeed, it would appear that most of the surpluses used for exchange were those left over at the beginning of the next harvest season.

During the first decade of British colonial rule, some changes occurred in Kuria land tenure. First, the power to allocate land which had formerly been the preserve of the lineage heads, was taken over by the newly-appointed chiefs and their headmen. Their authority to allocate land was derived from the colonial government and its exercise was neither sensitive to clan interests nor prone to its control. For instance, before land was allocated, a chief or headman demanded money, euphemistically termed 'a present' (Cory 1947:72-3). As this payment was usually substantial, in some cases amounting to more than twenty shillings, the applicant perceived it as payment for the land. The people who witnessed the transaction were the headman's assistants and were called ruga ruga. The members of the clan or local lineage were rarely consulted. As noted by Cory, when a person obtained good title to land, he could not 'be deprived of his plot or part of it, even if he was not cultivating it.' He could allow other people to use it and only lost his rights if he abandoned it. This method of land acquisition was neither dependent upon membership of a local lineage nor on the maintenance of good conduct. It resulted from colonial intervention and co-existed with the traditional forms of land rights.

The Kuria clan heads were naturally annoyed that their traditional authority had been usurped. They reacted quickly and divided up all the best land among the existing oruberi. Homesteads took large blocks of land which they did not expect to cultivate because they were alarmed that their children would have no land when they needed it.

They used sisal and Euphorbia plants to demarcate boundaries of their parcels of land. The exercise was no doubt intended to pre-empt any future attempts by headmen and chiefs to allocate the unoccupied land to non-clan members. The headmen, however, were not deterred by these measures. They continued to allocate unoccupied land, particularly when the applicant had given a large sum of money as a 'present' to the chief or his headman. Not surprisingly, this led to a series of disputes over land boundaries. The disputes were often decided in favour of the new occupiers. As Cory put it,

... it happens that the village headman, perhaps not knowing the distribution of the land amongst the inhabitants, or purposely ignoring it, infringes upon the boundaries of existing holdings. [If] the immigrant has paid his gift to the headman or chief no dispute will be ... entertained, nor, in fact, will it be made if the elders have had previous experience of failure (1947:73).

The creation of a new category of land rights by the colonizers and the fragmentation of land into family holdings gave rise to a new development in Kuria land tenure. This was an evolution towards individual and family land ownership which had not existed in pre-colonial times. The years following colonial intervention in land allocation were marked by artificial land shortages resulting from the creation of these large family holdings. This shortage could not be resolved by the occasional allocation of land by the government to outsiders, which was at any rate very unpopular with the local people and often bitterly resisted.

By 1934, most chiefdoms no longer had unoccupied land. There were efforts to extend available land by eliminating tsetse fly in bushland in the Ikorongo, Morito, and other parts in the districts. This programme, however, was also resisted by the chiefs who feared that the opening up of new land would reduce their income obtained from land applicants in a situation of growing competition for scarce resources.

## CHAPTER THREE

### MAIN FEATURES OF KURIA ECONOMY

#### Introduction

Although Kuria people are keen cattle-keepers, they are also farmers who depend for most of their food needs on cultivation. It is perhaps because the Kuria attach such great value to livestock, that it is often thought that they are pastoralists first, and only in the secondary sense cultivators.

Cattle-keeping and cultivation in the Kuria pre-colonial economy were complementary. The following outline of Kuria economy and society is not intended to be exhaustive. It simply sets the background for an adequate understanding of the social and legal changes which have occurred in Kuria society during the early colonial period and since. Such a division of time into the pre-colonial, colonial, and post-colonial is arbitrary and these are mere bench-marks for a discussion of social change.

In the first section of this chapter, I shall briefly discuss pre-colonial Kuria agriculture and its relationship to the social structure. Emphasis is placed on the ways in which kinship relations provide a framework for the organization of agricultural production. Their age-grade organization, which, as noted before, cuts across kinship lines, provides a second framework for the organization of agricultural work, particularly through work-teams.

Secondly I describe the livestock economy and its relationship to agriculture. In this section I also look at the distribution of rights in cattle within Kuria households and the use of livestock as means of gathering dependents and of forming a variety of social alliances through cattle herding and borrowing agreements. Finally, I look at the role of men and elders in the Kuria economy, and the extent to which their control of production is related to the other roles in the Kuria social system.

This chapter provides the background to the later discussion of the transformation of Kuria pre-colonial economy and the implications of this change for existing social relations.

### Pre-colonial Agriculture

In chapter one I outlined the main features of Kuria social organization and land tenure. The discussion in that section is here related to the mode of Kuria agriculture and the significance of kinship organization to production. In his study of the Guro of Ivory Coast, Claude Meillassoux (1978:289-90) stated that Guro people attach greater social and economic importance to rice than to any other agricultural crop. He notes that although rice is grown exclusively by women, men are directly concerned with its storage and when sold, the proceeds always go to them. Rice is given to travellers as an expression of hospitality and as reciprocal payment to relatives and neighbours for co-operative labour.

What Meillassoux says of the Guro and their rice, may be said of the Kuria and their finger millet, that is, oburwe. Production of finger millet in Kuria society is central to their economy and social relations. Finger millet constitutes the main food of the household to which milk, meat and vegetables are added. A non-alcoholic drink made from finger millet, called busara, a refreshing, nutritious beverage, is taken regularly by both the household members and guests. Busara is served frequently to members of a mutual work team during their agricultural work. Kuria beer - traditionally taken by elders only and served essentially at all major social gatherings - is also made from finger millet.

Finger millet is regarded as a sign of prosperity and its flour is used in a variety of rites such as circumcision, marriage, birth and prestations to ancestors.

The significance of finger millet to Kuria pre-colonial economy is demonstrated by the division of a Kuria agricultural year. For example, the month of January is called Kinyariri and marks the time for planting of finger millet. Time is measured by the stage of growth of the crop. For example, the month of April is called Kimwamu, i.e. darkness - arising from the growth of the millet shoots and the manner in which they cover the fields. The month of June is called Iheta, which literally means 'to pass by'. At this time, the finger millet crop is half-ripe and people passing by the wayside tend to pick millet ears and eat them raw. In August - the month of harvest - people are seen carrying baskets of grain heading for their homes. This month is called Isahi, or 'baskets'. And finally, in September, when all the crop has been harvested, people are often heard complaining that they did not harvest sufficient grain this year. This month is called Kuraa, which means 'to cry or to complain loudly'.

It is in the cultivation of finger millet and in its use that one finds profound expression of the relationship between the process of Kuria agriculture and extant forms of Kuria social relationships. Formerly, land on which food is grown was not subject to individual household ownership. It was controlled and allocated to household heads by a larger lineage group. In turn, the homestead head re-allocated his share to his individual wives and married sons. Such allocations were accomplished by a system of throwing a small hoe used in the weeding of the finger millet, called Ekebeyi. The parcel of land measured by 'one hoe-throw' was known as Ekerebo. Three ekerebo constituted a parcel of land called Intui, and was considered sufficient for one wife. In a normal season such a plot would yield sufficient



Figure 3.1. Wives' Granaries. (Photograph by Author)



Figure 3.2. Emongo. (Photograph by Author)

millet to fill one and a half large granaries, each measuring about six feet high by three to four feet in diameter and containing up to one thousand kilogrammes (Tobisson 1980:113). Each wife had her own granaries where her crops were stored. Today, as in pre-colonial times, a number of granaries varying in size may be observed mounted on large granite rock outcrops or wooden pedestals. These have thatched roofs which makes them look like miniature huts. In a country with abundant rainfall and pests, storage of grain for the whole year demands particular skill. It is usually the husband who builds a sufficient number of granaries for each of his wives.

The fields of co-wives were usually located close to one another and co-operative labour was practised between them and other neighbours. A household head owned his field which was cultivated by all his household. The crop yields obtained from this field were stored in a large granary belonging to the household head and were called emongo, i.e. saving. The grain stored in the emongo was under the control of the household head. Each wife had an obligation to use her own grain as carefully as possible and save sufficient quantities of seed for the next planting season. In cases of food shortage resulting from a bad harvest, the head of the household distributed some quantities of finger millet from his granary. Should his savings be exhausted before the next harvest season, he was expected to exchange one of his cows for grain. When there was sufficient food for the year in one locality, grain was exchanged for cattle from those areas suffering from a poor harvest.

Through a system of shifting cultivation and crop rotation, land fertility was maintained. Maintaining land fertility through fallow system was possible because land was relatively plentiful. It was also aided by the grazing of cattle on the fallow land. It is estimated that one head of cattle produces a ton of cow dung per annum. Thus a household possessing a large herd did not have serious problems

keeping their fields well-manured. Here one notices the element of interdependence between livestock husbandry and agriculture.

Sexual division of agricultural labour was not strictly enforced, particularly where a man did not have a large household and there was need to assist his wife, or wives, to produce sufficient quantities of food. There were, however, certain jobs which were done only by men. These included slashing grass, removing tree stumps and breaking hard soil. On the other hand, planting, weeding and harvesting were considered to be women's work.

Most agricultural production was undertaken with the help of work-parties. These work teams were very useful when weeding and harvesting required a larger labour force. Such work-teams often did other types of work such as housebuilding and fencemaking. Normally, the type of work depended on the membership of these teams. For example, a team of a circumcision set, usually drawn from the neighbourhood, did other jobs such as hunting wild pigs or protecting the herds. They also cultivated the fields of the members or others on invitation.

According to Matango (1976:15), there are both ad hoc teams formed, as and when need arose, and semi-permanent work teams. The semi-permanent work teams have an elected convener and perhaps a treasurer who keeps the money earned on completion of a piece of work. These teams are usually active throughout the agricultural season.

Ad hoc teams are formed on invitation by any member of the community who requires help. For example, a work team called Ekegonkyo falls into this category. It is summoned by invitation when a newly married 'daughter' of that neighbourhood requires help in her new fields. The team consists of members of various lineage groups and of all ages emanating from the natal homestead and its neighbourhood. Before

work begins, the team is given busara to drink and a cow is tethered in the vicinity of the field, waiting to be handed over to the team on completion of their assigned work.

Another example of ad hoc work teams, is the Irisanga team, usually convened by invitation. Any person desiring the assistance of a larger number of people than his immediate household can convene it. There is no restriction as<sup>to</sup> the number of people who may be invited. Once convened, the team does an assigned piece of work and is served with porridge called Kirunguri (which is also made from finger millet) at the end of the day. This team will also be invited again to a beer party later on, where food is also served.

Some work teams tend to be more enduring and to have recognized membership. The selection of members of the team may depend on their age, marital status, membership of a circumcision set or membership of a neighbourhood dancing club. For example, Isiri team consists of between twenty and fifty members. It is formed from young people aged between fifteen and twenty years who form a local dancing club. Its members may be married or single, circumcised or otherwise. Egosorio team on the other hand consists only of older married men and their wives. Its membership may range between four to twenty people. A third example is the Irika, which consists exclusively of men or women of about the same ages. The name, irika, is derived from an age grade also known as irika. Usually a section of the neighbourhood age-grade forms this team.

Kuria co-operation in agriculture reflects patterns of existing social relationships within the neighbourhood community. As work-teams are formed from extant social institutions, this means co-operation in agriculture is just one activity among a number which are performed by the members of that group. Secondly, since these members are united by a more valued form of relationship, as in the case of a circumcision set,

co-operation in agriculture may serve to consolidate their unity as members of a circumcision set. To this extent production is integrated into the whole network of social relationships. The same may be said of a work team consisting of members of a household or lineage group. Here such members regard themselves first as relatives and their participation in agriculture is seen as an expression of solidarity as relatives.

When one looks at the methods and medium of remuneration given to these teams for their work, it may be seen that co-operation in agriculture offers an opportunity for the group to express their mutual alliances and loyalties. On such occasions, members of a work team feast and communicate with one another more as relatives than as agricultural workers or as 'farm labourers' sharing their food ration. In terms of Méillasoux's research among the Guro, such an occasion is described as the 'collective meal' where

... food products are redistributed to all the members of the community; the collective meal is the end result of the process of agricultural co-operation; everyone's unspecified labour is mingled in a common product. Everyone's labour is blended and each participates in the product of the other's labour (1970:292)

Thus the Kuria combination of a variety of social relationships in agricultural production and the emphasis they place upon the relationship of the work team members as relatives, encourages a tendency for them to regard their labour as a means of renewing lineage loyalty.

#### Pre-colonial Animal Husbandry

The Kuria's great love for cattle has been associated, rather mistakenly in my view, to their Masai ancestry (Cory 1952:27). There is no doubt that the Kuria are historically linked to the Masai people, as indeed to their other neighbours such as the Luo and Gusii of Kenya. As noted in chapter two, some of the Kuria clans such as the Bahiri Mwita of

Utimbaru are descended from the Kenya Masai. There is also historical evidence showing that the Kuria have gone to war several times each year with their Masai neighbours either to recover their cattle or to raid for some. All this is a good indication of the importance of cattle to Kuria economy other than suggesting that either the Kuria were one time pastoralists who turned into cultivators or that their geographical proximity to, and historical links with, the pastoral Masai have influenced their economic system and turned them into what may be characterized as 'cultivating pastoralists' (Rigby 1969:26).

Yet the Kuria social and economic system, as indeed that of the Gogo studied by Rigby (1969) seems to defy any categorisation as to whether it is pastoral or agricultural. Rigby notes that the Gogo are 'sedentary... cultivators who subsist upon sorghum and millet ... but who also have considerable numbers of livestock.' His study of the Gogo social system leads him to the conclusion that although they have a 'cultural bias almost inextricably bound up with the possession and exchange of ... cattle ... the ambiguity implied by subsistence upon agriculture and a value system entirely oriented towards pastoralism, should not be considered as a "paradox" nor as a kind of dichotomy between "norms" and "behaviour".'

Rigby's explanation concerning Gogo ambiguity is based on what he calls the Gogo response to their type of environment and their development of a 'home-made' model suitable for their kind of existence. Except for ecological differences between the Kuria and Gogo countries, it would appear that Rigby's conclusions concerning the relationship between cattle economy and agriculture in Gogo society can be generally applicable to that of the Kuria.

The foregoing remarks therefore suggest that we are dealing with a people whose values are highly influenced by both agriculture and animal husbandry. It is however not suggested that Kuria or Gogo culture is unique. As Gavin Kitching has argued, most pre-colonial Kenyan societies

attached high value to livestock and its acquisition 'was the most important occupation' (1980:203).

Kitching's conclusion seems borne out by studies on East African economic history (Kjekshus 1977; Herskovits 1965:62-72).<sup>1</sup> As noted in chapter two, Kuria ancestors moved south-west from what is now the Republic of Kenya with their herds and settled in their present lands. In due course they were joined by other immigrants from the west and north. Both the new arrivals and those indigenous to the area were cattle keepers as well as cultivators.

Oral evidence and the accounts of nineteenth century travellers show that before the 1890s rinderpest epidemic, most societies in Tanzania owned substantial numbers of cattle. The epidemic decimated their herds and for several decades, the Kuria and their neighbours endeavoured to build up their stockholdings again. The rinderpest epidemic is well remembered in Kuria circles. The elders call it Ekehaha, and say that it killed all the cattle, leaving only a few, i.e. ebitama. The effect of this epidemic was even more severe among strictly pastoral societies such as the Masai. It is said that in the aftermath of the disease, marriages were contracted on a 'credit' basis! A man wishing to marry gave one head of cattle and pledged to give the remainder when his stock size improved. By the time the Germans occupied Tarime, cattle numbers were rising steadily and bridewealth rates were beginning to rise again also.

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<sup>1</sup> The Kuria could be grouped with those people who share what Herskovits calls the 'East African cattle complex'. These people live in an area stretching from the north-east horn of Africa to the extreme south of the great lakes. This area, argues Herskovits, "combines elements of social and economic structure, political position, and ritual, all focusing on these animals [which] gives the culture their most distinctive feature and the area its name" (1965:62-72). Moreover, "[t]he special position of cattle gives most of these East African cultures a dual economy, that derives from the functional distinction between subsistence and prestige systems, the former being based on agriculture, the latter on cattle" (ibid.) He recognizes the significant aspect of this area as being the duality of the economy and the interdependence of agriculture and animal husbandry.

Although the Kuria have an institutionalized warrior class, as do their Masai neighbours, cattle herding appears to have been done mainly by young uncircumcised boys known as Barisa (sing. murisa), a term meaning literally 'those who herd cattle'. This division of labour was considered ideal as young men aged between seven and twelve years could not do substantial agricultural work. Their energies were accordingly directed to cattle herding which was done within the vicinity of the homestead while the adults cultivated a distance away. The idea of leaving pasture land close to the homestead and cultivating further away had the advantage of ensuring the security of the herds from Masai raids.

Cattle belonging to close lineage members drawn mainly from one eka were grazed together by a team of barisa and bore common markings. These marks distinguished them from cattle belonging to distant relatives and established the ownership of stray cattle or those retrieved from raiders. Occasionally cattle were taken by the older boys to salt licks known as irisanchu. In such cases, the warriors accompanied the cattle as a precaution against attack.

The economic importance of cattle for Kuria society may be demonstrated by the variety of uses to which they may be put. Apart from their function as bridewealth, cattle provide milk, butter and ghee. And when they are bled, the blood may be taken raw or mixed with cereals and eaten. Although cattle are rarely slaughtered simply for food, there are sufficient numbers of occasions for ritual slaughter of cattle which provide meat for consumption (Ruel 1965:299). On such occasions as marriage and circumcision, many cattle are killed and meat distributed to all kinsmen and affines. Cattle hides and skins are used for clothing, scabbards for swords and in the manufacture of household utensils. When soaked in water and mixed with milk, hides may be eaten as well. Cattle horns provide containers for the storage of milk and other liquids and may also be used to make household tools.

Cattle are exchanged for grain in times of food shortage - a practice known as iritondani. In this way, cattle owners are insured against the adverse effects of a bad harvest or even famine. Unlike grain which can only be stored for a few years, cattle provide a means of accumulating wealth. That cattle increase through natural reproduction is an attraction for this kind of investment. Consequently, those who exchange grain for cattle are always at an advantage. As noted by Kitching (1980:203) 'the rates of exchange between livestock, food crops ... and artisan products were generally in favour of the livestock owner.' In support of this view, he shows that the volume of millet which was exchanged for one cow or goat was normally a product of more labour than that expended on rearing the livestock (see also Bohannan 1959: 491-503).

This may explain why the Kuria were reluctant to exchange their cattle for food and so eager to recover them when the harvests were good and their granaries full. As noted before, the savings (emongo) made by the head of the household were used for this kind of exchange. Cattle obtained from such trade were known as the cattle of the backbone i.e. ichingombe chiomogongo, thus implying that they were a product of agricultural activity. The fact that a successful cultivator could acquire cattle through this form of exchange gave greater importance to agriculture. As Ruel noted (1958:144), Kuria people take agriculture seriously and Murimi - meaning cultivator - is commonly used to refer to people in the area. For the Kuria, an individual's success in agriculture could lead to an increase in numbers of livestock. In turn, failure of crops meant a loss in cattle.

As cattle were principally used in marriage transactions, their exchange was a major way of increasing household labour. The recruitment of wives both as agricultural producers and as mothers, and the establishment of affinal alliances which flow from the marriage shows how the Kuria agricultural economy depends upon livestock husbandry.

The interdependence of the two branches of Kuria economy and the way they were integrated into the social system, explains the peoples' resistance towards colonial initiatives to regulate livestock marketing, bridewealth and agriculture.

The distribution of cattle ownership rights within a Kuria household also provides further insight concerning the importance of cattle in the Kuria social and economic system. Rights in cattle in pre-colonial society may be grouped into three categories. Some of these practices still obtain today. First there were cattle in which the owner had absolute rights. There were those paid for the marriage of daughters. And, finally, those cattle entrusted for safekeeping to a relative or a friend.

The first category included cattle obtained through trade, inheritance, the marriage of a sister, or through gifts. These are called the cattle of the homestead, i.e. iching'ombe chi'aka - sometimes also called the cattle of the backbone (Ruel 1958:87). It could be said that the owner of such cattle had absolute rights over them and could dispose of them as he saw fit. When the head of a household died, it was these cattle which could be inherited.

The second category included all cattle given for the marriage of daughters. These were called the cattle of the daughters (i.e. iching'ombe chi'abasubaati). These belonged to the 'house' of the bride's mother who took great interest in them as the means of acquiring brides for her sons. In a polygynous household where there were more sons than daughters, the protection of a daughter's marriage cattle became extremely important. Thus, although the husband may exercise some general authority and influence over his wives regarding the use of such cattle, he could not overstep his powers. Such cattle could not be used for the marriage of a co-wife's sons without her consent. Even in cases where such consent had been obtained, such transfers were considered as

loans (isire) and must be repaid at a later time (Ruel 1958:88).

Neither could the head of a household freely use such cattle for his own marriage. If he did, the new wife could not form an independent 'house' of her own. She was counted as belonging to her co-wife's 'house' from which her marriage cattle came. When a new wife bore children, these were also counted as belonging to the co-wife's house. The marriage of such a wife's daughters meant that their marriage cattle would also belong to the house of the co-wife. These rather harsh rules were intended to protect the property of each 'house'.

As noted in the earlier discussion of the relative autonomy of each wife in matters concerning agricultural production, here too she enjoyed a measure of autonomy in the control of her daughter's bridewealth cattle.

In purely economic terms, a Kuria mother benefits from the marriage of her sons. She acquires additional labour from her daughter-in-law. The latter helps her in such household chores as milking the cows and preparing food. During the first few years of her marriage, a daughter-in-law farms together with her husband's mother and both store their grain in the same granary.

There are other reasons why a Kuria mother is deeply interested in the marriage of her sons. As the head of her 'house', she must ensure that it prospers and continues through the recruitment of new members. This is possible only when her sons marry and have children. This is the supreme ambition of every Kuria mother, and it is through her control of her daughter's marriage cattle that she can discharge this important duty.

In addition to controlling cattle obtained from a daughter's marriage, a mother also acts as an overseer to the cattle acquired through raiding by her sons. Cattle raiding in pre-colonial Kuria Society was an important activity. It was closely related to the training of the warrior age sets. Men should be courageous, skilled in raiding, and have the ability to protect their father's herds from their neighbours.

Raids were either provoked by similar acts from the Masai, Luo, or by distant Kuria clans, or could be started by the 'warleader' as a means of paying off old scores. As noted by Ruel 'each province had its own traditional enemies (ababisa, literally 'those who hide'), usually neighbouring provinces with whom no totemic alliance existed but always including the Masai' (1958:51).

Cattle acquired through raiding were usually handed to the father with the understanding that they be used for the marriage of the young warrior or his brother (if the former was already married).

The final category of cattle includes those entrusted to the household head for purposes of safe-keeping. This process of 'setting off' cattle provided an important method of distributing wealth among relatives and friends. The practice was also a means of hiding an individual's wealth from the covetous eyes of his neighbours. At the same time it provided a degree of security by spreading the risk of raids or an outbreak of a serious disease. The Kuria experience of the 1890 rinderpest epidemic taught them the wisdom of dispersing their wealth with the hope that a few might survive if they were dispersed in several households. Finally, such arrangements provided another opportunity for creating alliances and cementing relationships beyond those possible through marriage and kinship links.

A person to whom cattle have been entrusted acquires definite rights and obligations over such cattle. He is entitled to drink their milk and take their blood. Should any beast die or calf, the fact must be reported to the owner, and, in the former case, the trustee is entitled to a specific share of meat known as sagarambe.

Whether slaughtering of such cows is a result of its death or for ceremonial purposes, the trustee is entitled to a portion of meat as 'shepherd'. Permission to dispose of a dead beast by the trustee is presumed where the owner lives more than a day's journey away. In

such cases the trustee must retain the animal's hide, dispose of some of the meat and dry some of it and send it to the owner. The hide is considered proof of the animal's death and is always given to the owner of the cattle. Where a trustee fails to account properly for the calves or dead beasts, he may be held responsible and the burden of proof is on him to show that the particular cow died or failed to calf. As noted by Baker, 'the owner of the cattle holds the man in whose custody they have been placed, entirely responsible for the beasts which are in fact in exactly the same position as a deposit account in a bank' (1958:44).

Unlike a banking relationship, these 'contracts' depend upon mutual trust as there is seldom anyone to witness the transaction. The people who know about it are the members of the household, particularly the wives from whose houses such cattle were taken. To observe no secrecy in such matters would defeat the original aim of the arrangements. Indeed, during and after the colonial period, such arrangements were used by the Kuria to evade compulsory cattle sales to meet some tax liability or the payment of court fines. Today, when some of these 'contracts' have become the subject of litigation, there has been a tendency for the courts to blame the cattle owners for not having written records of the transaction or independent witnesses.<sup>1</sup>

One point must be emphasized. Each head of a household considers all the cattle within his kraal as 'belonging' to him. As Ruel has noted, the general 'ownership' of property within the household is a reflection of his status and general authority in the man who is its head. This authority must be exercised in the best interests of his family and in accordance with accepted rules regarding what may be called the internal ownership rules.

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<sup>1</sup> See for example the case of Musa Mnata v. Orento Karera. Mz. High Court (PC) Civil App. No. 141/72 (4/8/76) in which Mfalila, J. advised that where an individual decides to entrust livestock to another, he must ensure that there is written record of the transaction otherwise courts cannot help him. "People like the appellant should stop conducting their business based purely on trust. It was up to him to get something in writing. This would have been conclusive. As the courts below chose not to believe his witnesses, who included his wife, I cannot substitute my own opinion on the matter."

It is to this exercise of control of the head of the household over the Kuria domestic economy that we now turn.

#### The Elder's Control of Kuria Economy

In previous sections of this chapter, I have referred to the division of labour between men and women in pre-colonial Kuria society. This division of labour has important implications for the general functioning of Kuria economy. The sexual division of labour reflects broadly the underlying assumptions concerning male-female relationships in a patrilineal society. Although women carry the greatest burden in food production, their economic contribution appears to be in an inverse ratio to their control over these resources. Economic power is in the hands of men.

The Kuria pre-colonial agricultural economy may be characterised as a 'female farming system' (Ester Boserup 1970:16-17). Most of the work is done by women with some help from men in jobs such as clearing the fields, breaking the soil and sometimes cultivating. Although little data is available for the Kuria in the pre-colonial period, studies made on other 'female farming systems' show that the time women spent doing agricultural work far exceeded that of men. Using a variety of statistical sources for the whole of Africa south of the Sahara, Boserup has concluded that the number of women in cultivator families taking part in agricultural work was found to be higher than that of the men (1970:20). When women's total annual labour output (including housework) was compared to that of men, it was found that women did "more than half of the agricultural work; in some cases they were found to do around 70 per cent and in one case nearly 80 per cent of the total" (1970:22).

A recent study by Eva Tobisson has shown that some women in a Kuria highland village of Nyamwigura contributed a total of 80 per cent of all the time spent on agricultural production (1980:112-22). Thus, although studies made during and after the colonial period might show an increase in the labour time spent by men in agriculture, particularly in the

production of cash crops, it is very unlikely that cash crop production has in any way reduced women's labour. On the contrary, it has increased as many women have become actively engaged in cash crops as well as food production since the colonial era.

Although women spend more time in agricultural production than men, as noted earlier, men take control over the product of women's labour. A caveat to this must be added: in monogamous households, particularly where a man and his wife have been married for just a few years and are starting a semi-independent economic existence from the larger household, the husband does much more work in the fields than a man having several wives. His labour is necessary to produce sufficient grain to feed the family. Moreover, his wife may be pregnant or suckling a baby. It would be necessary for the husband to assist her and he is also likely to seek the help of work teams within the neighbourhood. No wonder, therefore, young husbands become active members of several work teams.

Beyond the need to produce enough food, there was a desire on the part of young husbands to accumulate grain for exchange. In due course, and with the help of relatives, a young husband should be able to gather sufficient cattle to enable him to marry another wife. As his household increases in size and more land is put under cultivation he has a chance of realizing a surplus. Thus, except in a few cases where an individual has inherited a large herd of cattle while still young, most Kuria men acquire their wealth over time.

Thus it is the elders who largely controlled the pre-colonial economy. The heads of large polygynous households were, according to Baker, mainly concerned with 'directing the energies of their womenfolk' into agricultural production (1935:49). These were the owners of the large granaries called emongqo, who accumulated for future exchanges the 'surplus' product of their dependents.

In order to appreciate the social basis of male control of Kuria economy, three important sources of power must be noted. First, their

control over land allocation and use; their control of ritual activity; and finally their control of the political life of the society including the maintenance of peace or the conduct of war.

It is in the exercise of these powers that the Kuria husband controlled production which depended on women's labour. Men obtained land from their senior male agnates and in turn re-allocated it to their wives. They regulated agricultural production by determining which areas were cultivated. Men were responsible for praying to their agnatic ancestors (not to those of their wives) for rain and to bless the fields (Ruel 1965:299). Through the councils of elders, they regulated warfare to enable production to go on without undue disruption. They guarded the village from hostile neighbours and in cases of food shortage in other areas, men guarded their fields from raids by hungry neighbours (Ruel 1958:171).

The organization of agricultural work teams, as noted, is based upon local kinship alliances and the bond of circumcision. The social framework in which production and food sharing occurs, provides an occasion for reinforcing group solidarity at the same time obscuring the purely economic aspects of the labour power of each producer.

In a patrilineal society such as that of the Kuria, marriage is usually virilocal, that is, the wife moves from her natal home and joins her husband's family. Such marriages involve the transfer of property from the husband's family or lineage group to the family of the wife. The main function of such transfers is to give the husband and his family certain rights in the wife. These include the right to her labour power. This right is exercised within a framework which gives the head of the household undisputed authority to regulate the domestic economy. It is important to understand the basis for the control of domestic production exercised by the older men in order to appreciate how later economic changes affected social relations within Kuria society.

Summary

Three main points emerge from this discussion. There is the interdependence of Kuria agriculture and animal husbandry; the integration of production into status relationships based on kinship, marriage and circumcision; and finally, the elders' regulation of domestic work.

The importance of examining the framework in which pre-colonial Kuria economy operated lies in the fact that property relations were generally obscured by the existence of a 'multiplex' of social relations. Consistent with this ordering of Kuria society, men and elders - a powerful group in a patrilineal society - organized and managed domestic production and appropriated the surplus produced mainly by women and their children.

The changes in Kuria social and economic relations to be discussed in chapter four started about the time of the colonial period. These have had the effect of gradually transforming the framework in which production occurred including kinship, marriage and other status relationships and the underlying property relations which they sustained. This process of change has been gradual and its effects partial.

## CHAPTER FOUR

THE FORMATION OF A PEASANT ECONOMYIntroduction

The aims of colonial occupation of Africa and most of the 'Third World' have been a subject of study for over half a century. The effects of colonization however, are still being studied and research on imperialism and underdevelopment in contemporary scholarship is high on the agenda. Kuria society today may be best understood by drawing upon this approach. This chapter will discuss the specific ways in which the Kuria were drawn into a world capitalist system. Such a study is essential for showing how the development of commodity relations, both within Kuria society and beyond, transformed social relations among these people.

The chapter is divided into four sections. Firstly, a brief summary of German and British colonial occupation of Tanganyika and the establishment of a political and economic infrastructure for effective colonial domination is given. Then I discuss the introduction of such cash crops as cotton and maize into Tarime district.<sup>1</sup> The imposition of tax is discussed in terms of its aim to stimulate the production of cash crops and to force people into wage employment. In the third section I look at the colonial cattle marketing policy and the way it was implemented in Kuria society. The release of cattle from elders' control into the open market is also discussed and the implications on Kuria social relations are examined. The final section looks briefly

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<sup>1</sup> The term 'cash crop' is used here to mean crops grown specifically for sale outside the traditional Kuria economy. These include cotton, coffee, maize, bananas and onions. Although maize was eventually consumed by Kuria peasants after the Second World War, it qualifies as a cash crop because it was mainly grown for sale. Although other crops such as millet, sorghum and beans did eventually enter the world market, I do not refer to them as cash crops because they were grown for subsistence and only the surplus was sold.

at the pattern of import and export trade between Tanganyika and the rest of the world during the colonial period and the extent to which the latter facilitated the process of economic integration of many indigenous economies into the wider economic system. I conclude the chapter by noting that although at the inception of colonial rule there was direct state intervention in the Kuria economy, the latter period of colonial rule saw greater penetration of commodity relations and a corresponding decrease in the use of state power to regulate ordinary economic matters.

### Consolidation of Colonial Rule

Following the signing of the Anglo-German agreement in 1890, the land area which was later to become Tanganyika, was known to the Western powers as German East Africa. During the first twenty years, German colonial government prepared itself for the consolidation of its rule throughout the colony. A number of military expeditions were despatched to areas of the hinterland which had shown resistance to German occupation. German soldiers set out "methodically round the country dealing with African leaders in turn" (Ward and White 1971:47). They built administrative posts in conquered areas.<sup>1</sup> This process was followed by the division of the whole territory into districts, each headed by a German resident commissioner.

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<sup>1</sup> Malcolm Ruel gives a vivid account of how the Germans conquered the people on their arrival in Kuria country. He states that a German military column crossed

... the Mara river at boKenye, where they were received peacefully. Spurred perhaps by the aba'Kenye, they attacked and raided the neighbouring province of bo'Soeta; and then moved on to Shirati. From there at various times they raided the aba'Timbaru, aba'Nyabaasi, aba'Kira, aba'Renchoka, and aba'Soba (1958:148).

Accounts of these attacks are still related by the elders, most of whom had learned about them from their fathers.

The construction of roads and railways was undertaken about this time. The first railway line was built from Tanga in 1893, reaching Mombo in 1905 and Moshi in 1912. The central line was begun in 1905 following the old Arab trade route through Tabora in 1912, to Kigoma in 1914. The Tabora/Mwanza link was built during the British colonial period. As noted by Iliffe, the construction of railway links 'opened the country to more intensive European domination, enabling the international economy to absorb indigenous economies and restructure them to meet its needs' (Iliffe 1979:135; Brett 1973:91-9).

German officers arrived at Shirati in 1902 and immediately started the construction of a fort and a network of access roads throughout the district. They also used canoes to cross part of Lake Victoria to Musoma and the adjoining areas. The process of effective administration also required the appointment of auxiliary staff to help in the recruitment of local labour, the levying of tax and the imposition of fines on those who disobeyed colonial law and policy.

Thus, although the majority of the population did not recognize chieftaincy - being largely stateless - chiefs were nonetheless appointed. Unlike some other parts of German East Africa, where such staff were of Arab and Swahili descent, most of the headmen and chiefs appointed for the district were indigenous to the area, even though they were not traditional leaders. Such appointees had gained the favour of German colonial officers by collaborating with them in a variety of ways. For example, Maregesi of Mugango who permitted the Germans to use his large canoe called Nyamaregi, was appointed chief of Mugango. Chief Wandwi of Bwayi also offered his canoe to the German officials and earned for himself the office of chief in his home area. Others such as Nyakulinga of Mugumu who invited Captain Schlobach to repel the invading Luo people and Sange, a Zanaki of Bumangi, who guided the Germans from Mwanza, were both appointed chiefs. Others such as Fundi Kanyeke, a Zanaki blacksmith of

Busegwe showed great skill in the construction of dhows at the German fort of Shirati, and was appointed chief of Busegwe (Musoma District Book; Iliffe 1979:116).

As these chiefs owed their office directly to the Germans and were readily punished or removed when they disobeyed,<sup>1</sup> most of those who survived became useful agents of colonial rule and thus facilitated the process of Kuria economic transformation. These agents of colonial power were quick to take over power from traditional leaders and to use their newly acquired offices to enrich themselves (Iliffe 1979:120-21). It is not surprising therefore that when the Germans were forced out of the Mara region towards the end of the First World War, all but chief Ruhanga of Ushashi were removed by the people and replaced by the council of elders, who had lost their positions at the beginning of German rule (Musoma District Books; Baker 1935:11).

After the war, the British reinstated these chiefs in all places except where resistance was too strong. In such cases, a close relative of the former chief was normally selected. The British, no doubt pressed by the shortage of administrative staff, were prepared to retain most of the German appointees. They simply added new staff to existing local personnel, some of whom were recruited from Uganda. For example, Kawesa, the son of the famous Apollo Kaggwa of Buganda was put in charge of Mugango,

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<sup>1</sup> The German administration executed many 'disobedient' chiefs throughout Tanganyika. In the Kuria area two incidents are given in which chiefs and their headmen were hanged. According to Ruel "in bu'Timbaru, the appointed chief was hanged in the presence of his people for failure in his office" (1958:148). And Cory states that in about 1908, the headman of Utimbaru named Nyamoni and his chief Kiongo, were "sentenced to death by the Germans and executed" (1947:73). It is not clear whether both authors are talking about the same person. As Ruel has noted, '[t]here are many stories of German atrocities at this time and their methods were certainly forceful. A comment on the language difficulties was that one had to understand or be shot" (pp. 158-9).

Bwayi and Mrangi until 1919 when he was transferred to the district office at Mwanza. Muslim, another Ugandan, was put in charge of Bukwaya and Bukiroba for some time while Jabere, also a Ugandan, was given the task of advising and supervising all Musoma chiefs from 1917 to 1918 when he returned to Uganda (Musoma District Books).

### Cash Crop Production

Cotton cultivation was first introduced by a German planter in the Lake Victoria region in 1902. He distributed seeds to the headmen of Nera chiefdom in the Sukumaland. The project collapsed, however, six years later because, as Iliffe has noted, the system of share-cropping which the German planter introduced benefited only the headmen and was very unprofitable to the people who actually cultivated the crop (1979:155).

After this failure, Gunzert, a German district officer for Mwanza, distributed cotton seed to all chiefs in his district and ordered that they should require every able-bodied man to cultivate a specific acreage of the crop. This second attempt was successful and a rise in the production figures was recorded. In 1909, for example, Mwanza district had exported a mere 123 bales of lint, yet four years later the figure had risen to 3735 bales (Iliffe 1979:155).

In 1912, the Germans introduced cotton into the Tarime district, but the policy depended upon the ability of the chiefs to mobilize the people. It was reported, for example, that in Shirati, "the sultans have made their people hurry to cultivate large cotton plots" (Kiongozi, June 1912).<sup>1</sup> Yet, rather than allowing the people to cultivate the crop in their plots, some chiefs required them to work in their fields. The resulting cash income went into the chiefs' coffers. Such misuse of power, where it occurred, beset early attempts to grow cotton in the Tarime district.

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<sup>1</sup> Cited in Iliffe (1979:155)

Under British rule fresh efforts were made to grow cotton in the Mara region. During the cultivating season of 1924, cotton seeds were obtained from Mwanza and distributed to all chiefs in the area. As the Sukuma people had done over the previous twenty years, the Mara people also opposed cotton production. The people of Uzanaki are reported to have secretly boiled a large portion of their share of the seeds before planting. As the seeds did not germinate, the agricultural officials were 'convinced' that Uzanaki soil was not suitable for cotton production (Musoma District Book). In other areas such as Bukwaya, the chief and headmen of that area were described as being "wantonly obstructive' to the 'plant-more-cotton drive".

The colonial agricultural officers did not give up so easily, and in the course of time cotton was adopted in many parts of the Mara region. In 1936, Lake Province Cotton Company established a ginnery at Mugango in Musoma district. A year later, cotton production in the district reached a record of 3000 bales. Among the Kuria of South Mara the production of the crop was personally supervised by a district officer in co-operation with the chiefs. The production for 1936 was recorded as 2054 bales. This success paved the way for the introduction of the crop elsewhere in the region.

Maize was first introduced in the Kuria highland where the soil was favourable and rain abundant. The demand for maize meal came mainly from the miners in the district. In the late 1920s, Mara Mines employed about 700 miners. Buhemba Mines in south Mara employed about 1200 people (Musoma District Book). According to Matango (1976) there was a total of 78 gold mines in the region, and many of these employed from 200 to 400 people.

Before maize was introduced in the Kuria highland, most of the food rations given to the miners came from Kenya, but as the supply was irregular and transport facilities poor, it was decided that maize could

be grown locally. Apart from the need to provide food for the miners, there was also an anti-famine policy aimed at making all peasants produce enough food for themselves. As maize grew very well in the Kuria highland, there was no reason why the Kuria should not produce their own food.<sup>1</sup>

Consequently, a Kenyan 'expatriate', Captain Humphrey, arrived in Tarime and began to supervise the production of maize. He brought hybrid maize seeds and distributed them in the area. Humphrey set out to enforce the cultivation of the crop with great zeal. Every adult male was required to grow a specific acreage of maize. As the Kuria did not consider maize to be edible, they opposed the project, but force was applied and maize was grown by many. During the harvest season, Indian traders established temporary buying posts and purchased all the maize from the Kuria peasants. The Indians then resold the crop to Captain Humphrey. According to Matango, a debe<sup>2</sup> of shelled maize was purchased at fifty cents from the growers and resold to Captain Humphrey at one shilling (1976). Maize production was boosted by the arrival of

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<sup>1</sup> In 1931 at a meeting of chiefs, it was disclosed that a locust invasion had occurred and it was feared that famine would hit the area (Musoma District Book). The colonial administration was naturally concerned about the menace of famines and their disruption of cash crop production. In order to ensure that the peasants did not revert to purely subsistence production, it was necessary to introduce new high-yield crops such as maize and cassava. This point is developed by Debora Bryceson who argues that "to ensure commodity production, the colonial state was forced to ensure the subsistence of the peasantry" by dispensing famine relief food and encouraging the peasant to grow anti-famine crops (1978:1).

<sup>2</sup> "There exists also an unofficial but universally recognised unit of measure known as the debe. This term is applied to the European kerosene tin which, in consequence of its suitability for head portorage, has been adopted by the native as a convenient receptacle for the conveyance of grain to the market" (Tanganyika Blue Books, 1930:113). One debe of grain weighs about forty pounds.

Luo commercial farmers who used ploughs and produced the crop on a large-scale basis. They sold their produce to mining companies in the Tarime district and to the growing urban population (Iliffe 1979:294).

After the Second World War, famine struck the whole region and maize-milling machines were imported into the district to enable the population to subsist on maize meal. For the first time the Kuria had to eat maize, though they have retained their preference for finger millet as their staple diet.

As the preceding discussion has shown, the introduction of cash crops into the Mara region was not easy. A number of factors were responsible for this, some of which are examined below.

Efforts to introduce cash crops in Tarime and indeed throughout the whole of the Mara region during both the German and the British colonial periods, appear to have been affected by four major factors. First, the pastoral bias of most men limited their interest and involvement in agriculture. Secondly the power of chiefs to mobilise crop production was very limited. Thirdly, transport and market facilities for such crops were not easily accessible. Finally, there were alternative means for earning money to pay the imposed tax and fines.

As has been discussed before, men in pre-colonial Kuria society took great interest in livestock husbandry and left most agricultural work to women and other dependents. As long as there was enough to eat and to store for the next season, a Kuria husband was unlikely to be directly involved in cultivation. Another factor which encouraged concern with cattle over farming was the effects of rinderpest which had decimated Kuria cattle just before the German colonial period. It is probable that the Kuria concern to rebuild their herds to pre-rinderpest strength would have reduced their enthusiasm for cash crop production.<sup>1</sup> This was more apparent

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<sup>1</sup> See chapter six.

in cases where cash crops such as cotton could neither be eaten nor exchanged for cattle. After the rinderpest epidemic, all surplus grain was converted to livestock or used as bridewealth. The economic and social importance of cattle was also demonstrated by the men who took up paid employment to earn money to save their herds from being auctioned by the tax collector or for the purchase of more livestock.<sup>1</sup>

Most Kuria chiefs who were given the job of supervising agriculture lacked legitimacy and political authority in their communities. This made it impossible for them to effectively mobilize cash crop production in their chiefdoms. On the other hand, the power of the council of elders and other lineage heads was not completely destroyed. It had survived the German colonial era and persisted during the period of British rule. Operating in a clandestine manner, most of these traditional leaders remained effective in ritual, circumcision, and other matters important to the community.<sup>2</sup> As the elders did not identify

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<sup>1</sup> There are a number of recorded cases where people had their cattle seized and sold to satisfy tax requirements. For example, Burianyero Matiko of the village of Nyamuko, left in 1921 to a place called Magadi (perhaps in Kenya) to work for his mother's tax money. He later returned to find the headman, Cherema Muhaguchi, had seized the old lady's cow and sold it. He sued, seeking to repossess the beast, but the court held that it was too late to recover the animal (Magoma Civil Case No. 55/33).

<sup>2</sup> From about 1910, the British policy in Kenya towards traditional councils of elders was different from that which obtained in Tanganyika. Colonial appointed chiefs were expected to take into consideration the advice of these elders even though they were not bound to follow it all the time. When the British took over from the Germans in 1918, they applied the Kenya policy but because there was much political competition and bickering, the policy was abandoned. From 1917-1921, the Kuria were united under a paramount chief, Mageta, who was subsequently removed on grounds of corruption. From then on, colonial-appointed chiefs ruled without the co-operation of traditional leaders. In 1925 another attempt was made to unify the so-called petty chiefdoms under what was called a Kuria Federation. This federation was a looser structure, having only a native Treasury and a court of appeal in common. In 1949 there was another reorganization in the local government structure (Winnington-Ingram 1950:10-15).

themselves with colonial policy, and indeed, actively opposed it, it is likely that they opposed the introduction of cash crops. Instead they encouraged the production of finger millet which, incidentally, was planted at the same time as cotton.

Apart from the above, some of the appointed chiefs opposed colonial policy because they themselves wanted to gain support among the people. For example, Chief Marumbo of Mugango was described by the British as not being as

... wantonly obstructive as his Bukwaya colleagues are, but has little inclination to assert his personality over his people in the way that his father Wandwi did. Has (probably sincerely) attempted to cooperate (without great effort) with the recent plant-more-cotton drive by the Agriculture Department in his, the main cotton area of the district (Musoma District Books).

Thus, even though chiefs were relied on to enforce colonial agricultural policies, the results were not always successful and a number of them were consequently deposed.

The location of Kuria country was also an impediment to the production of cash crops. Baker has noted that the Kuria people disliked head portorage so much that after the First World War they stopped growing groundnuts as they were not prepared to take them for sale to the Indian shops at Shirati. The port of Musoma which served the area was farther away and could only be reached after crossing the formidable Mara river. Road transport was equally bad and only a few Indian traders could afford the cost of lorries. The most direct and convenient place to turn to was Kenya, but the two territories were administered separately, even after the German period. Thus, unlike other parts of the Lake Victoria region where transport facilities were reasonably good, Tarime district was relatively isolated from the markets. Moreover, the Kuria had other sources of money. They could sell their



Figure 4.1. A Market Day in Tarime Township. (Photograph by Author)

cattle even though this was not considered an acceptable alternative.<sup>1</sup> They could also find work in the gold mines in the district, or on the coffee and tea plantations in neighbouring Kenya.<sup>2</sup> They could even join the colonial armed forces - and many did - or work on road construction. Some older men sent their sons away to earn tax money for them. Thus the existence of alternative opportunities for obtaining money seems to have been an important factor in retarding the development of cash crop production in Kuria society.

Eventually, however, cotton, maize and other cash crops became generally acceptable in Tarime district and indeed, throughout the Mara region. Such economic change stimulated a demand for agricultural implements. Several hundreds of European-type hand-hoes, machetes, axes and other farm implements were purchased by many people in the region. Early in 1936, Kisii traders from Kenya sold a total of 1200

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<sup>1</sup> The Kuria people consider it profitable and 'good' to exchange grain or other foodstuff for cattle. A reverse exchange is considered unfavourable and may only be made when a serious need arises. In this sense, Kuria conception of the hierarchy of resources, is similar to that of the Tiv described by Bohannan who say that 'it is "good" to trade food for brass rods [read cattle for Kuria], but it is "bad" to trade brass rods for food' (1959:497). In the early period of colonial rule (and in some areas this still is in practice), the Kuria considered an exchange of cattle for money as unfavourable. Thus, they endeavoured to use some money saved after tax for the purchase of cattle.

<sup>2</sup> During this period a number of Kuria men went to Kenya to work on the construction of the Mombasa/Nairobi railway and road works in the area. According to Ruel, the British administration in Kenya made efforts in 1913 to "induce the border folk [meaning the Kenya Kuria] to become more useful in the way of maintaining roads, and in supplying labour for the Public Works Department at Nairobi and Mombasa" (1958:150). Yet the 'border-folk' not being in favour of the idea, often retreated across the border to the German section of Kuria territory. By 1915, 75 Kuria men from the Kenya side were registered as working away from their homes (Ruel 1958:150). It is probable that some Tanganyikan Kuria were also engaged in wage employment about this time. For an interesting critique of the colonial attitude towards African labourers and the effects of capitalist penetration, see Culwick (1944:26-33).

ploughs to Tarime residents.<sup>1</sup> These were resold throughout the region and those who were not able to buy them hired from their neighbours. During the season of 1939/40, Musoma Indian traders imported another 500 ploughs from Kenya. As the growing of cash crops became generally more accepted in the area, plough sales rose. By the end of 1950 an estimated total of 3500 people in the Mara region owned at least one plough. Some fathers began to ask their prospective sons-in-law to plough for them as part of their marriage payment.<sup>2</sup> This seems to be the beginning of the process whereby the Kuria cultivator started to depend upon European industrial goods for his production needs.

#### Cattle Marketing Policy

The policy of transforming the Kuria people into peasant cultivators was combined with a policy of weakening their pastoral economy. Using British colonial livestock marketing policy as an example, I show how efforts were made to compel the Kuria to sell their livestock and how this was resisted. In concluding this section, it is argued that although at the beginning the resistance of the Kuria to compulsory cattle sales was inspired largely by their preference for livestock rather than money, their gradual dependence on European industrial consumer goods reduced their determination not to sell their cattle.

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<sup>1</sup> Baker notes that "a few of the wealthier natives have European ploughs but the bulk of the population tills the land by hand with an iron hoe which is purchased in the Indian stores for about 65 cents. When worn down it is taken to one of the native smiths who shapes it into the narrow hoe used for weeding" (1935:150). Ruel reports that "in 1913 it was recorded that 15,000 hoes had been sold in Kisii District "in the past few months", at least some of which must have found their way to the Kuria and in later years ploughing by oxen was introduced and encouraged" (1958:150).

<sup>2</sup> In 1949, Matiku Sese of Nyamwigura area petitioned in Magoma Baraza court claiming 24 shillings from Buhure Matiku. He claimed that during the time of his engagement to the defendant's daughter, he ploughed four times for his prospective father-in-law. Because the engagement had been terminated, he claimed payment or compensation for these services. The chief's court awarded him 12 shillings (Magoma civil case No. 448, 1949).

Despite a gradual change of attitude in favour of selling livestock, the colonial government was unable to secure sufficient numbers of cattle to purchase. Large numbers of cattle were diverted to private buyers both within and outside the district. As these buyers paid more competitive prices than the government, they dominated the cattle market in the region.

As already noted, through compulsory taxation, cattle owners throughout Tanganyika had little option but to sell their livestock in order to meet this liability.<sup>1</sup> Both Griffiths (1938:87-9) and Winter (1962) observed these cattle auctions among the Masai and Iraqw respectively. Their accounts of these auctions indicate that cattle sellers were not happy to part company with their beasts and at times refused to sell on the grounds that the price offered was too low. When they did sell and received their payment, they would queue before the desk of the tax clerk to pay up. During the Second World War when there was a desperate need to feed the British troops at the war fronts, force was used to secure marketable cattle.

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<sup>1</sup> In 1922 the British administration passed the Hut and Poll Tax Ordinance and applied it throughout the territory. Under the Ordinance every owner or occupier of a hut was liable to pay tax. Where the owner of a given hut was a polygynist, he was liable to pay additional tax in respect of each additional wife. Every able-bodied male of sixteen and above, who was not the owner of a hut was liable to pay an annual poll tax. In 1930 the Hut and Poll Tax rate for Mara region was ten shillings. This rate placed the Kuria as paying the third highest rate of tax among the 28 districts in Tanganyika. The pastoral Masai paid the highest rate of fifteen shillings while the major coffee-growing districts such as Bukoba and Kilimanjaro paid twelve shillings. Failure to pay tax exposed the defaulter to prosecution, fines, and attachment of property. For example, in December 1932, fifteen Kuria men were charged with failing to pay hut tax. They were all found guilty by the chief's court at Nyabaasi and ordered to pay twelve shillings, the excess being fines and court fees (Crim. Case No. 14/32). The next day at the same court, five more people were charged with similar offences and punished.

At the beginning of the war every tax payer in the Mara region was required to contribute one head of cattle towards the 'war effort'. Those who did not wish to give cattle were required to pay the equivalent in money. Although three beef canning companies, namely Liebig's Limited of Kenya, Lake Rations Limited of Tanganyika, and the Kenya Meat Commission undertook the responsibility of canning beef for troops, they were unable to secure sufficient beasts for slaughter. The need to secure supplies was clearly expressed in a letter sent by the D.C. of the North Mara District (Tarime) to the Lake Provincial Commissioner in which he made a number of recommendations suggesting how cattle sales could be stimulated in his district. He noted that if the Provincial Commissioner could "open up the North Mara and Musoma cattle trade, it [would] relieve a very awkward situation so far as supplies to the military are concerned and it [would] assist Britain to get her beef" (TNA 16/47/54).

Following these requests and the lack of increase in the number of cattle sales, the colonial officials decided to make cattle sales compulsory. Chiefs were consulted and they in turn suggested that each chiefdom should be required to produce for sale a given number of cattle in relation to an estimated cattle population.<sup>1</sup> Even though these recommendations were accepted by the colonial officials and chiefs were permitted to implement them, the cattle owners still refused to sell. Once assigned a quota, chief's messengers were deployed throughout the district and given powers to seize cattle from specified homesteads (TNA 47/36/1940). For example, Musoma district was required to provide

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<sup>1</sup> According to the 1945 livestock census, the whole of the Mara region had 20,000 bullocks; 18,000 old cows; 33,000 young bulls and bullocks (TNA 220/318/53). It is appropriate to warn against taking these figures as accurate. Considering cattle tax and the force used by the colonial officials to change the traditional economy, it is reasonable to assume that people would not be willing to disclose the size of their herds.

4000 head of cattle in the space of four months to the Kenya beef canning companies. Tarime district was required to supply almost the same number.

After the war, demand for beef did not decline substantially due mainly to the expanding urban and mining population in the region. In Musoma alone for example, there was a demand for about 600 slaughtered cattle per month (TNA 6/9/318). Yet the supply of cattle could only be guaranteed by continuing 'administrative pressure' and compulsory selling orders. These orders, made during the emergency, could no longer be justified during peace time. It was announced that with effect from February 1946, cattle marketing would be voluntary. However, in his notice to all chiefs, G.D. Popplewell - the North Mara District Commissioner - stated that

... in the previous years cattle owners had been compelled to drive in their cattle to the auctions, but now it is no longer compulsory to sell... Chiefs should do everything within their powers to persuade cattle owners to sell their cattle because if they do not willingly sell, the government may change its mind and reintroduce compulsory sales (TNA 6/9/292) (trans. B.A.R.)

Two months later a Livestock Marketing Board was formed to promote the sale of cattle and a number of officials were appointed to run it (TNA 1991/29/24).

The revocation of the compulsory sale order was received with some relief and it seemed that most of the Kuria people would never volunteer to sell. As Popplewell later confirmed,

I never anticipated that much would be produced [i.e. cattle] under a voluntary system in North Mara, and this view is confirmed by various chiefs with whom I have discussed the matter. The only part of my notice to the Native Authorities which still stands is that if adequate supplies for slaughter stock are not forthcoming then recourse to requisitioning will result.

The District Commissioner put forward a number of suggestions intended to stimulate cattle sales. For example, he suggested that a law should be enacted providing for compulsory reduction of livestock which exceed a specified number; adding that "in North Mara improved

stock-keeping and improved agriculture must go hand in hand". Secondly, he recommended that local traders should flood the markets and shops with industrial consumer goods in order to "increase the demand for money". This, advised Popplewell, "would result in [cattle] sales showing an increase over those brought forward under compulsory quota [system]".

The chiefs also suggested a rise in the poll tax rate to eighteen shillings in lieu of compulsory unpaid labour. This form of labour had been utilized both before and after the war for public works such as road construction or the clearing of tsetse fly-infested bush. The chiefs argued that if the poll tax rate were raised, rich cattle owners would readily sell their cattle, whilst those who did not have cattle to spare would continue to work as before. It was also thought that, if this was accepted, it would work as a corrective measure for a number of young men whom the chiefs considered insufficiently occupied.

Although Kuria reaction to the government's policy of using force in securing cattle for sale contributed to their refusal to sell to government controlled markets, three other factors seem to have had the same effect. First, the government-imposed tax on the cattle sold; second, there were private buyers who offered higher prices; and third, the Livestock Marketing Board's inefficiency. These factors are briefly examined below.

Cattle sales tax had been imposed by the Governor to improve the post-war budget. The tax was termed "a revenue from a class of people which could afford it with minimum difficulty". It was levied on both the seller and the buyer, using the following scale; for cattle sold at a maximum of 30 shs. a tax of one shilling was levied; for every 20 shs. (or part) paid in excess of 30 shs. an additional one shilling was levied. A total of 1519 shs. was collected from Tarime in 1947.

Because of its unpopularity and particularly as it acted as a break against increased cattle sales in the area, the District Commissioner endeavoured to have the tax removed. In December 1947 he wrote to the Provincial Commissioner at Mwanza complaining that;

...all our energies are directed to trying to persuade the African to sell his cattle. And yet this tax is imposed upon sales... Talks about taxes being pushed to the seller are rampant in the villages and Africans think if there is no tax, prices for cattle would be high.

The District Commissioner suggested that it would be equitable if taxes were imposed on people who had many cattle and did not wish to sell. This, he suggested, would be called 'overstocking tax'.

The problem of the private buyer had been there since the first years of British administration. During the Second World War, the colonial government prohibited sales of cattle between persons outside the official auctions. This was intended to prevent the Kenya Luo from Nyanza province and other buyers from within the district, from purchasing cattle. The prohibition was also aimed at creating a monopoly over the cattle trade in favour of the Livestock Marketing Board. After the war, this prohibition was not removed and the subsequent imposition of sales tax on cattle made this prohibition even more desirable from the point of view of the revenue collectors.

In practice however, cattle sales outside the official auctions were carried on in utter disregard of the rule. Although it is not known how many cattle were sold privately each year, the number must have been substantial. Private cattle buyers offered competitive prices so they were naturally preferred to the government auctions. The District Commissioner assessed the situation accurately when he remarked that "all the veterinary laws in the world will not prevent natives from taking their cattle into Kenya where excellent prices are obtainable. The border is entirely artificial and is not ... properly guarded" (TNA 1/24/472/2). There is no doubt at all that the location of the district close to the Kenya border influenced cattle prices. For example, in

1948 the average price for one head of cattle in government auctions for the neighbouring Musoma district was 52 shillings, while that of Tarime was 74 shillings (TNA 489/1200, P.C. Lake Province to D.C. North Mara).

Other cattle buyers within the region were also prepared to offer higher prices than the government. For example, Kuria servicemen having returned from the war with large sums of money, offered to purchase heifers and calves at twice the recommended prices. When the district veterinary officer learned of this, he was annoyed and determined to stop the practice. He wrote to the Director of Veterinary Services suggesting that the price and marketing of young stock be controlled instantly in order to prohibit the practice, noting that "unwise spending was anti-social".<sup>1</sup>

In an area where private cattle buyers were always going about in the villages with money in hand, soliciting for cattle, it was essential that the government-controlled marketing system be efficient and provide readily accessible and regular opportunities to potential cattle sellers to market their livestock. Unfortunately, this was not the case with the Livestock Marketing Board. Auction centres were few and tended to serve much larger areas, thus making it inconvenient for distant cattle sellers to drive their beasts to auction. Furthermore, auctions were held infrequently. As the time interval between one auction day and another was about three months,<sup>2</sup>

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<sup>1</sup> This kind of restriction was later to come under criticism from the East African Royal Commission which noted that

The public auctions and the competition of traders are clearly preferred by African producers. Alternative methods of purchase and distribution by compulsory monopoly like the Kenya Meat Commission ... have not been successful in covering the full field. It is reasonable to doubt whether any such organization, which inevitably has high overheads, can seep into the remote crannies of the trade and offer anything like the resilience of the itinerant trader who very often functions on a barter basis (Cmd. 9475, HMSO, 1955).

<sup>2</sup> For example, in 1946, cattle auction dates for Musoma district were: Nguruimi, 6 March and 11 December; Kiagata, 7 February and 12 February; Mugango, 11 March and 10 June; and Bukwaya, 12 March and 11 June.

the small butcher could not buy sufficient numbers of slaughter animals to last him that long. These butchers, unlike the commercial companies, operated with small capital and, as they could not arrange for credit facilities, they had to buy a few head of cattle at a time. When these were slaughtered and sold before the next auction day, the butchers had to buy cattle outside government auctions.

When one looks at the Kuria cattle market in the post-Second World War period, it becomes clear that the Kuria were no longer refusing to sell their cattle due to what may be called 'pastoral conservatism', but largely because they did not accept the marketing system of the colonial state. They were aware that their cattle were being undervalued and therefore decided to divert them to other buyers who would offer better prices. Thus, although the British colonial administration failed to effectively control cattle marketing in Tarime district, economic changes were such that many peasants needed money to meet their day-to-day needs. As more cattle were put on the market, anyone with sufficient money could purchase them, which resulted in the loss of the elders' traditional control over livestock.

#### Import and Export Trade

A study of the integration of Kuria economy into a wider capitalist economy would not be complete without a brief examination of the national pattern of import and export trade in which the Kuria economy became part. Although this broad topic requires deeper treatment my concern here is to illustrate the extent of involvement of colonial Tanganyika in a wider economy through trade. My selection for study of the period between the wars has been influenced by the availability of reliable statistical data, and by the fact that the process of capitalist penetration was much slower in Kuria society than, for example, in the major coffee-growing areas of Kilimanjaro and Bukoba (Ilfie 1979:273-4).

The lack of statistical data for showing the volume of Kuria cash crop production for the world markets and the value of industrial goods consumed, make it difficult for one to state with any degree of confidence the extent of the integration of the Kuria economy into wider economic relationships. But this problem may be overcome using available information concerning trade between Kenyan traders and the Kuria in goods such as hoes and ox-ploughs. Also, since the discussion concerning the effects of Kuria economic integration goes beyond the inter-war period, lack of statistical data for this period need not weaken the main argument.

As noted earlier, the colonial policy of enforced agriculture was intended to ensure the production of sufficient food for the local population at the same time as securing raw materials for Western European manufacturing and processing industries. In addition to supplying raw materials, Tanganyika became a consumer of manufactured goods from countries such as Britain, India, and Japan. Thus the import and export trade brought together two economic systems which had not been in contact on such a scale before. The contact facilitated a sustained capitalist penetration and gradual dependence by peasants on industrial goods.

In the period before the First World War, Tanganyika produced and exported substantial quantities of agricultural crops. For example, in 1913 cotton lint worth £120,753 was exported to world markets by the German colonial government. In the same year, a total of 21,180 tons of coffee and 179,220 tons of groundnuts were also exported (Tanganyika Blue Books, 1946). Animal products such as ghee, skins and hides were also exported in large quantities.

During the period of British rule, particularly during the 1920s and 1930s, there was an expansion of agriculture. Between 1926 and 1930, Tanganyika exported coffee, cotton, cotton seed, maize, millet, rice and beans worth, on average, £348,766 per annum (see Table 2). Coffee, cotton and cotton seed alone accounted for over 92 per cent of the total exports.

TABLE 1: Summary of principal livestock products of domestic exports for the years 1926-1930 (ending 31 December)

Item	Quantity/Year					Value (£ sterling)				
	1926	1927	1928	1929*	1930	1926	1927	1928	1929	1930
Bulls & oxen	262	235	203	14	231	1127	908	985	49	955
Sheep & goats	4042	2911	865	340	1802	2697	2046	711	173	1011
Ghee/ cwt.	7428	7912	10002	9073	5860	32577	30015	37547	36546	16385
Hides/ cwt.	36235	48614	56521	41789	34744	137469	206536	321818	172408	89732
Sheep- goat- skin	5672	6853	9327	9199	7128	26966	30236	53012	50594	33739

\* The year 1929-30 shows a sharp drop in exports partly due to the depression in Europe which caused a drop in prices. During the same period there was drought and famine in the country.

Source: Tanganyika Blue Books, 1930.

TABLE 2: Summary of the principal agricultural domestic exports from Tanganyika for years 1926-30 (ending 31 December)

Item	Quantity (in centals and cwt.)					Value (£ sterling)				
	1926	1927	1928	1929	1930	1926	1927	1928	1929	1930
Coffee	130793	131899	208622	177140	230940	495199	463420	739657	588871	387040
Cotton seed	5295	4576	6962	8732	3619	22185	18440	33099	46550	11891
Cotton lint	109450	88272	109607	110821	82224	427437	361916	495405	487863	247413
Maize	13158	26393	27643	7190	3859	3566	7774	8526	2607	995
Millet	58126	72268	154636	95323	36288	24094	29164	52243	30334	8234
Rice	65295	78820	79973	51884	90131	57564	72253	85884	58985	73682
Beans	1498	6298	5891	2561	7743	901	3200	2700	1236	2969

Source: Tanganyika Blue Books, 1930.

There was also an increase in the export of livestock, meat, dairy products, hides and skins. In 1930 Mara region was the sixth largest producer of skins and hides and the second largest producer of ghee. These products were exported mainly to Britain, France, Belgium and Italy (Tanganyika Blue Books 1930).

During the same period industrial goods were imported into Tanganyika. Their value was even greater than that of exports. The largest single import was textiles. Between 1926 and 1930 an annual average of 33 million yards of bleached, unbleached, printed, dyed and coloured cotton materials were imported for use in Tanganyika (Table 3). These cotton products were used widely throughout the territory. For example, while on a tour of Bukoba district in 1929, Margery Perham witnessed the Haya people celebrating Empire Day and was "amazed at all the evidence of prosperity" she saw. Then she decided to

... wander, among the crowd for a bit and noticed how happy they all seemed. Nearly 20,000 of them were well dressed, the men in white suits or long white kanzus, while many of the women wore gorgeous coloured silks, with the following girdle and bows similar to Baganda fashion (1976:77).

As noted by Iliffe (1979:130), imports of cotton cloth are a good indicator of African purchasing power.

TABLE 3: Cotton piece goods imported into Tanganyika Territory during the years 1926-1932 (ending December).

Item	Quantity in Yards						
	1926	1927	1928	1929	1930	1931	1932
Cotton							
Unbleached	13915979	14836444	12127953	13507761	12944975	13485780	11032031
Bleached	1792084	3096073	3025834	3692775	3075646	2723251	2656159
Printed	3627548	4116337	5833726	5522524	5421892	3549441	6219599
Dyed	5866021	8251447	7712307	7819887	7242888	7643677	9621161
Coloured	3077754	5831708	7000074	6225599	4284449	3188149	3711005

Source: Tanganyika Blue Books 1930, 1931, 1932).

A few years later, Griffiths observed a Masai cattle auction where she found that after the pastoral Masai had sold his cattle and paid his tax, he

...[t]hen with what remains of the price of his beast, the owner finds his way to the lines of Indian stalls, where in tents, piles of blankets are for sale, and rings of beads are temptingly displayed on large bamboo frames. On the ground are mugs and pots of iron and brass, and steel swords and spear heads for the men... Among the throng of buyers [Italian] blankets of all sorts are replacing the skins in which the men arrived (1938:100).

The major exporters of textiles to Tanganyika during this period were Britain, India, Holland, Japan, Italy and Germany. Other consumer goods included shoes from Japan, bicycles and cars from Britain and the United States.

#### Summary

The period of colonial rule marked the beginning of a process through which pre-capitalist Kuria economy was integrated into a wider economic system. This was accomplished through a painful and degrading process in which force and other types of pressure was brought to bear upon the Kuria people. The imposition of tax created a need for money which could be obtained through the production of agricultural crops, the sale of livestock or by engaging in wage labour. The location of Kuria country close to the Kenya border and in particular to the fertile agricultural highland zone, gave the Kuria opportunities for paid employment in both Tanganyika and Kenya. Some Kuria men joined the colonial armed forces and others worked on European farms, in gold mines, and on road and railway construction.

Once acquired, money was not exclusively used to discharge tax liability, but some of it was used to purchase consumer goods. With the indigenous craftsmen increasingly being pushed out of the market, imported products such as hoes and textiles became 'necessities' for household production. Hence, the Kuria peasant not only produced raw materials for these industries but, at the same time, he provided a captive market for

their sale. Once the needs had been created and a consumption pattern set, the market for these products was generally assured.

Production for the international market became increasingly a necessary means of acquiring needed goods and services. Once caught up in this trading network, the Kuria peasant no longer had to be forced to sell his cattle to purchase these products, instead he refused to sell only because the price was low and endeavoured to look for better markets outside those approved structures of government.

Finally the loss of the exclusive control over cattle by the elders had important consequences for Kuria social relationships.

CHAPTER FIVE

FORMATION OF KURIA FAMILY UNIT

Introduction

A marriage relationship in Kuria society serves a number of related functions. The three most important are: the continuation of the lineage group through natural reproduction; the provision of domestic labour by the wife (and her children); and its use as a means for establishing wider political and economic alliances between the affinal groups. Marriage thus provides a framework for realizing wider goals, going beyond the concerns of the immediate parties to the relationship. Given these functions, the participation of a larger social group in the process leading to marriage and thereafter during the couple's married life, may be seen as both essential and consequential.

In this chapter I look at the principal assumptions underlying marriage in pre-colonial Kuria society and how these are related to existing social and economic conditions. Then I go on to examine some aspects of change in Kuria economy and society and how these have influenced marriage assumptions. What appears in contemporary Kuria society therefore as the 'rebellion' of the young generation - an assertion based largely on the decreasing parental and wider family influence on the marriage process of the young people - is to be understood in this context of change. Similarly, the oft-noted inability and reluctance of some parents to meet the cost of their son's marriage, is a result of the same process of change.

The chapter is concluded by noting that the gradual diminishing of kinship solidarity and the increasing importance of the notion of individual property has the effect of depriving marriage of its integrative role, that is, of making it the concern of the immediate parties and, in some cases, as a means of accumulating personal wealth.

### Preparation for Marriage

Broadly speaking, the process leading to the first marriage of a Kuria youth could be described as typical of most pre-colonial African societies. Marriage, for example, occurs along a continuum of a person's life experience upon which many other related events also take place. These events may be divided into three major categories: those relating to socialization during childhood; those which occur after the period of puberty leading to marriage; and those associated with the progress to elderhood.

In this section I discuss the first two categories, showing their relevance to the marriage relationship and to society as a whole.

From an early age, boys and girls are trained for their adult roles. The mode of child socialization is diverse, informal, and sometimes indirect, depending often upon the particular skills or matter being imparted. For the most part it relies on observation and imitation of parents and older children.

Boys begin to imitate, in play, the roles of adult men, from about the age of three years. They collect stones, meant to represent cattle, and build miniature huts and cattle corrals. They assign each hut to a 'wife' and divide up their fictitious cattle into heifers, bulls, oxen and calves. (Matango and Seba 1976:1). Similar accounts of Kuria childhood are given by Baker who also notes that Kuria children "consort with the domestic animals from their earliest youth and when they are big enough [usually about five - are] put to herd the goats and calves" (1935:100).

When the older boys are herding cattle, they instruct their juniors in the use of spears, knives and the identification of animal sounds. They are encouraged to be brave and to defend their herds against wild animals, and often engage in mock raids to gain martial skills. Sometimes, they try their skill in hunting, collecting wild fruits and honey. Hence, on attaining the age of thirteen, a Kuria teenager is expected to have acquired some understanding of his environment, and through imitation, he performed a number of economic activities in the sphere of animal husbandry.



Figure 5.1. Playing Mother (Photograph by Author)

Young men, as already noted, not only herd cattle but take part in a variety of other economic activities, such as house and fence construction, and agriculture. Uncircumcised boys may join a number of work teams. Their admission to some of these work teams usually marks the first point at which they become involved in larger units of production and co-operation. Their acts and attitudes begin to have a wider social and economic importance to the community.

Although girls may sometimes play with the young barisa and participate in herding as well, their future roles as food producers and processors, and as wives and mothers, tend to occupy them most. Hence, while boys are playing husbands and cattle herders, girls play wives and mothers. When they are sufficiently grown, they are assigned the duty of caring for their younger brothers and sisters while their mothers are engaged in housework or agriculture. Here again, the older girls teach their juniors a variety of skills, all broadly related to their future adult roles. As noted by Joelson (1920:122-3), this constant association of mother, or elder sister, and child has important advantages for providing both the opportunity of training the infant and labour power for domestic production.

On approaching puberty, Kuria girls are provided with sex education and taught to respect their husbands and affinal relatives. They are often reminded that the integrity of their natal families depends upon their good conduct and reputation for hard work. These attributes are considered basic for a successful marriage relationship and men look for those girls who are known to possess such qualities.

The period of circumcision and clitoridectomy for boys and girls respectively which follows the attainment of puberty, is the first rite de passage marking the end of childhood and the beginning of adult life. As noted by Baker (1935:109), when "an individual has finished the ritual of circumcision he is ... a man or a warrior and the first thing he does is to show his manliness ... through prowess in war or cattle-thieving".

After circumcision, a Kuria youth is no longer referred to as murisa - a term which would have been embarrassing to him for some time before the rite - and is now called muraa, meaning warrior.<sup>1</sup> This change in status is significant to his parents as well as to himself. It marks the beginning of a process of relative economic independence which precedes the initiate's first marriage, and his father becomes entitled to the new status of junior elder. The circumcision of the first son allows the initiate's father to establish his own homestead and control his own fields. As noted by Ruel "after [the first born] child has been circumcised, the corral gateway through which it passes in re-entering the homestead must belong to the child's father ... it cannot pass through the gateway of its grandfather" (1958:67). Establishing a separate homestead enables the initiate's father to organize his household production activities with less parental intervention or control. Such relative autonomy permits a man to begin accumulating wealth, to increase the size of his household, and establish alliances - all attributes of status.

Once he becomes a warrior, a young man's life changes radically. He is subjected to the discipline of his circumcision set as a whole and is required to observe a decorous code of conduct towards the older sets. He is expected to work hard for his father in the fields and to discharge a number of economic obligations for his family. He takes part in sporadic raids on the herds of neighbouring groups in the company of his peers, and in the case of counter-raids, he is expected to defend the clan's herds. If he is fortunate, he may gather a few head of cattle which, together with those his father can muster, may pay for his first marriage. Demonstrating obedience and dedicated service to his father are important for the young man's future.

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<sup>1</sup> The term murisa could also be used as an insult when it is applied to a person already circumcised or a person of a society which does not practice circumcision.



Figure 5.2. Sporting and Childcare. (Photograph by Author)

On the other hand, the marriage of a son has advantages for his father as well, as marriage involves the creation of affinal links. Furthermore, the transfer of large numbers of cattle is an important act which has political and economic significance going beyond the immediate parties to the marriage relationship. Looked at in this way, the marriage of a son serves the interests of two household heads who take the occasion of their children's marriage to establish new relationships, to consolidate existing ones, and thus improve on their social standing. This point must be understood in order to appreciate the role of parents as 'marriage-brokers' and their great disappointment when children refuse to co-operate with them.

#### Betrothal and Marriage

There are conflicting opinions concerning who had the right to choose a wife for the Kuria son in pre-colonial times. According to some informants it was entirely the business of the prospective husband to look for a girl, interest her in the idea of marriage and, if successful, inform his father or paternal uncle about the matter. According to Baker (1935:114) when a young man wishes to marry a particular girl, he decorates himself and secures the company of his best friend - usually from the same circumcision set - and the two go to the girl's village. As they cannot be certain of the girl's reaction, they must keep a good distance from her father's homestead waiting for an opportunity when she is sent to draw water or collect firewood. Should the girl come their way, the young man will approach her and, by planting his spear on the footpath - symbolically obstructing her way - he formally announces his intention to seek her hand in marriage. If she accepts his proposal, she then removes her necklace and hands it to him.

It is said that this acceptance sets in motion a series of visits, consultations, and negotiations which may culminate in the transfer of

of cattle from the boy's family and the marriage ceremony. Needless to say, if the girl 'jumps the spear' - signifying refusal - the matter ends then and there and the process may be started again with another girl.

Other informants agreed that this was the practice but said that parents also planned ahead for their son's marriage, even before he realized it. Parents gathered cattle for the marriage and carefully balanced the merits of one marriageable girl against another before deciding on the most suitable. Other relatives may also have been consulted for their opinion, to avoid the possibility of an undesirable marriage. Parents wish to avoid marrying their son to a girl from a family with no recognized abilities in agriculture and animal husbandry or those having a reputation for the practice of witchcraft or suffering from hereditary diseases. Kuria elders say that young men are like fire (i.e. abamura moroo), and must be restrained and guided in important matters such as marriage.<sup>1</sup>

The division of opinion as to who selects a bride arises from differences in the various circumstances surrounding individual marriage choices. In some instances, the views of the young man may coincide with

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<sup>1</sup> It would be easier to say that Kuria law permits a son to select his bride and forbids parental intervention in this process of selection. I did not come across such data nor cases where parents were prepared to say that they selected wives for their sons and compelled them to marry. I believe that the true position lies in between. That is why I find it necessary to go into the underlying reasons which would make parents wish to select wives for their sons even though they may not wish to admit to the fact. Secondly, I detail the question of spouse selection as if it constitutes the whole marriage relationship. This is necessary because I feel that the right of an individual to select a spouse (independent of external family influence) represents a significant step in forming a personal relationship and would offer a clue as to the possible nature of the marital relationship which follows such a selection.

those of his family, in which case no conflict of interest results. Similarly, the young man not wishing to oppose his parents may give the impression that he is the one who selected the bride. It is perhaps the hard cases which present ideal conditions for identifying the rules relating to bride selection and eventual consent to marriage. These cases will be examined in the next section. For the moment it is necessary to examine common feature of Kuria marriage transaction in order to discern overriding factors which influence the selection of a future bride.

Three factors relating to Kuria marriage in the pre-colonial period are common to many marriages and influence spouse selection. First there is the transfer of a large amount of wealth from the family of the boy to that of the girl. As marriage may not be contracted without the transfer of such property, the person in control of these resources also has the upper hand in making such decisions. Secondly, since marriage relationships involve the formation or consolidation of political, social and economic alliances between larger groups, they cannot be allowed to take place between families which have had long-standing feuds.<sup>1</sup>

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<sup>1</sup> The geographical closeness of the couples provides an indication that some members of both families would know one another before marriage occurs. According to available figures for 1955, out of 100 marriages registered at Nyamwigura chief's court, 99 were contracted between spouses residing in the same chiefdom and most probably belonging to the same 'sub-tribe'. Moreover, over half these marriages were contracted between neighbours. Similar marital preference is shown by the 1960 registration particulars collected from the neighbouring ward of Nyamwaga, where only four per cent of all marriages contracted involved a spouse resident outside the district. The 1977 and 1978 records, based on a smaller number of marriages but covering the whole district, show a similar picture of marital choices, in which an average of two per cent of all marriages were contracted between couples, one of whom was from another district. These figures, however, are only helpful in showing a general picture of spouse selection pattern. This is so because, apart from the fact that some marriages were not registered - particularly after 1961 - some which took place outside the district were not always recorded.

Finally, marriages provide labour for the homestead and are a source of new recruits for the lineage. It is, therefore, seen to be too important to be left in the inexperienced hands of the young.

The process leading to marriage, that is, the gathering and transfer of bridewealth, its distribution and the actual wedding ceremony, all reflect once again the wider concerns of the Kuria household group and the immediate neighbourhood. As bridewealth is transferred in instalments over an extended period, the process ensures the continuation of affinal contacts which are an essential characteristic of Kuria pre-colonial society. Some of these matters are examined below.

First, the cattle given for the marriage of the Kuria son often come from the marriage of his sister by the same mother. Ruel notes that when "supplicating for fortune and prosperity, Kuria ask to be blessed with children of alternating sexes so that there will be no problem of providing bridewealth by other means" (1958:89). The linking of a sister's marriage cattle to that of her brother creates special responsibility for the sister to ensure that she does not jeopardise her brother's chance of an early marriage by eloping with a poor man or a stranger. This responsibility is also enforced by the mother who has a similar interest in the marriage of her son by which she acquires the services of a daughter-in-law and her children. Mothers-in-law are also concerned for the posterity of their particular houses, which is possible only through the marriage of their sons and the birth of grandchildren.<sup>1</sup>

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<sup>1</sup> An example which appears to support the view that wider economic and social factors worked in favour of selecting a spouse for one's child, is to be found in a practice called ekebete. This is a form of marriage in which the father of an infant son marries a wife for him and appoints someone else to live with her until her husband matures (Ruel 1958:110; Chacha 1963:33). In such cases the legal husband (the young son) becomes the legal father of the children born before he assumes cohabitation. Needless to say, such infants were not consulted in advance, even though they were given an option on attaining puberty to assume cohabitation or permit their wives to continue living with their consorts, in which case the children born between the two would still belong to the husband.



Figure 5.3 Fetching Water for Mama. (Photograph by Author)

When the sister's marriage cattle are used to obtain a wife for her brother, the sister stands in a special relationship to the children of her brother. For example, should she fail to bear a son in her own marriage, she may ask her brother to provide - at reduced bridewealth - a daughter, who then becomes associated with her as a 'daughter-in-law' - that is, mokamona (Huber 1969:748). Similar links through a sister's marriage cattle are reported among other African societies such as the Lovedu and the Shanganatonga (Krige and Krige 1943; Junod 1927). As noted by Krige and Krige, where a sister's marriage cattle are used to pay for the brother's marriage, the sister is said to have 'built the house for her brother'.

When enough cattle cannot be obtained from a sister's marriage, some close agnatic relatives may be contacted to provide a loan, repayable at a later time. There is usually no fixed time for such repayment and often such loans are paid after the death of the original parties to the agreement. This is what is referred to later as the 'extended credit system'. The participation of agnatic relatives in the marriage of a son thus serves as an integrative mechanism of the wider community while, at the same time, lightening the weight of the son's marriage expenses. As will be shown, it is the loss of such extended credit from agnatic relatives in contemporary Kuria society which has concentrated the burden of the cost of a son's marriage on the father, thus making it extremely difficult for some parents to meet this obligation.

The transfer of bridewealth in instalments also assists in cementing and maintaining good relations between affinal groups. Among the Batimbaru clan, when a daughter has given birth to two or three children, and her marriage is considered to be firmly established, her father asks for another cow known as 'the cow of the ibirundu plants', that is nyabirundu. According to Ruel, this cow is given as recognition of the fact that the marriage has held together (1958:104).

From the time when the initial bridewealth is transferred, through the period when the marriage is deemed stable, on to the circumcision of the first-born and the elderhood ceremony of the wife's father, a number of gifts and counter-gifts pass in opposite directions.<sup>1</sup> It is often difficult to determine exactly what is given as bridewealth or as a mere gift. For example, should the father-in-law fall sick or be injured, his son-in-law is expected to provide a bull or a goat for slaughter in order to speed up his recovery. During the colonial period, a son-in-law was expected to assist his wife's father to meet his poll-tax responsibilities and fines, and in more recent years, to pay for the education of some of his wife's brothers.

Such transfers, though often counted as bridewealth and reclaimed on divorce, should be considered merely as gifts given in pursuance of the duties attaching to the in-law relationship.

The importance of continuing the process of giving bridewealth and other resource transfers lies in the maintenance of effective affinal relationships and the expectation of help during times of need. Thus, as noted by Mayer concerning the neighbouring Gusii people, "a man's personal footing in other villages, including his expectations of hospitality or safe conduct, depended very largely on his network of affinal ties through wives, sisters, and daughters" (1975:276).

#### Aspects of Contemporary Kuria Marriage

Even though it is still largely accurate to describe a Kuria marriage as providing means of establishing wider social alliances, the statement needs qualification when applied to some aspects of contemporary Kuria marriage.

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<sup>1</sup> As also discussed by Mauss (1969:18) marriage creates perpetual obligation between affines to exchange gifts.

In this section I discuss some causes concerning the decline of parental influence in the selection of their children's spouses; the effects of rises in the cost of marriage, and more generally, the transformation of the character of marriage as means for social integration into an institution for accumulation of individual wealth.

As we have seen, the period of colonial rule saw the introduction of cash crops and the opening up of labour camps and mines and other opportunities for wage labour. These new economic opportunities were usually taken up by younger, unmarried men. Hay found that among the Luo people, "by 1930 a large number of men had left Kowe at least once for outside employment. Almost all were between the ages of fifteen and twenty and were unmarried when they first sought employment" (1976:98). When these young men returned, they were able to purchase cattle. Some who could afford an ox and plough settled down to cultivate cash crops. As noted in chapter four, Kuria servicemen returning in 1948 used their military allowances to purchase livestock. Some documentary sources also show that most of those in wage employment often sent money to their relatives to purchase livestock for them.<sup>1</sup>

Baker observed in 1935, that a Kuria man will work only if the pay is sufficient to enable him to pay his tax and "he will work for his tax and no more, but if he can gain sufficient money to buy cattle he will continue working" (p.51).

Yet the ability to purchase cattle by the young Kuria men, must be seen in the context of the penetration of market economy and the availability of livestock in the open market. Cattle, which in pre-colonial times, were

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<sup>1</sup> Records obtained from Nyanwigura chief's court register for the year 1955, show that a total of 90 persons received money from their relatives through the post in the form of money orders, registered letters and telegraphic money transfers. Some of these entries did not show the sum of money sent but in 50 cases, a total of 9410Shs. was sent. The highest sum received for that year was 800Shs. and the lowest was 10Shs.

circulating only among elders in a closed system of marital exchanges could now be purchased by men who had acquired money through a variety of non-traditional economic activities. The new economic opportunities interfered to some extent with a carefully balanced system where individual upward mobility in economic and social terms went hand in hand with a man's age and access to the means of production.

Furthermore the acceptance of European money as a universal medium of exchange, and its wide circulation, paved the way for it to become a component in the marriage transaction. Parents, though reluctant at first, began to accept small amounts of cash as bridewealth in addition to livestock. They also accepted consumer goods such as blankets, hoes and textiles.<sup>1</sup> In some cases, others required their prospective sons-in-law to plough fields for them.<sup>2</sup> By the end of colonial rule, a number of parents were prepared to take larger sums of money as bridewealth.

The early colonial period also witnessed the emergence of the Christian influence, formal education, and various forms of other external contacts. According to Michael Kirwen, the first Catholic mission station was established at Rosana in Kuria country in 1949, from whence it expanded to Nyamwaga in the 1950s. Other Christian churches operating in the area were the Mennonite and the Seventh Day Adventists. Although there does not seem to be any historical evidence of active Islamic teaching in the district, a good many Kuria people are Muslims. As noted by Kirwen:

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<sup>1</sup> For example, in 1949, Nyasae Masere admitted having received a blanket valued at fifteen shillings from her son-in-law as part of the bridewealth for the marriage of her daughter (Wandwe Marwa v. Nyasae Masero: Magoma Civil Case No. 414/49).

<sup>2</sup> In 1949, Matiku Sese sued Buhure Matiku claiming a sum of twenty-four shillings as compensation for the work he did while he was engaged to the defendant's daughter. The claimant stated he had ploughed four times for his prospective father-in-law, on the understanding that such services would count as bridewealth. The claim was admitted and the court awarded him twelve shillings.

... no one seems to know why there are so many Bairegi Kurias who claimed affiliation with the Muslim faith. Some speculated that it was due to the fact that many Kuria men had at one time or another been members of police forces or armies of the Tanzanian and Kenyan governments, and were converted by the strong Muslim communities located in the urban areas where they lived and worked. This hypothesis was not substantiated by the survey data. The Muslims were distributed throughout the five survey areas and half were women (1979:70).

Whether or not the Kuria were Islamicised at home or abroad, it seems clear that by the late 1950s Islamic influence and that of Christianity were beginning to penetrate the traditional religious system, even though only marginally. Thus, according to Kirwen's survey in Buiregi (a Kuria clan) 26 per cent of the people were Catholic; 10 per cent were Muslim; 6 per cent were Seventh Day Adventist; 3 per cent were Mennonite and the remainder belonged to the traditional religion.

Formal education in Tarime district began in 1938 when a primary school was opened. It became a boarding school and admitted twenty-five boys. By the end of 1941 two dormitories had been completed and the number of pupils increased to forty. In 1939, another primary school was opened at Kinessi with an enrolment of twenty-five pupils. Both primary schools extended to standard four and their medium of instruction was the Swahili language. In 1941, another primary school was opened at Nyamwaga.

Previously some of the Kuria went to Musoma school which had opened in 1924. In 1941 it had an enrolment of 140 pupils (94 of these being boarders). A quota of 40 boarding places were reserved for children from Tarime district.

These schools were jointly financed by the local administration treasuries and the central government. In addition there were primary schools at almost every Christian mission post. For example, the Seventh Day Adventist (S.D.A.) mission established a teacher training college at Ikizu in Musoma district, open to all S.D.A. members in the area, including Kuria candidates. There was also another primary school run by S.D.A. at Mogabiri, in Butimbaru.

By the early 1940s, the Mara region as a whole was served by a total of 58 primary and preparatory schools. Some pupils also trained in Kenya and elsewhere in Tanganyika.

Although opportunities for education were limited during the colonial period, not all Kuria parents were anxious to send their children to school. They wanted, rather, to have them looking after the cattle, helping in agriculture and with housework. Others who agreed to register their children for primary education, soon withdrew them before they could complete their studies in order to give them away in marriage. A few of these parents were taken to the chief's court and fined.<sup>1</sup>

The expansion of primary and secondary education in the district since the end of colonial rule has made it more difficult for most parents to resist sending their children to school. Between 1969 and 1976, the number of pupils rose from 43,793 to 105,872. The enrolment of girls also went up from 45,052 in 1976 to 73,469 in 1978. This rise in enrolment lists was a result of a government decision in 1977 to make primary education compulsory for all children aged seven and above. Failure to take one's child to primary school was punishable

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<sup>1</sup> In 1958, Taigo Chacha and Munanka, of Kemairi village, Tarime, were charged with the offence of 'withdrawing children from school'. They were found guilty and fined fifteen shillings (Magoma Criminal Case 220/58). During the same year, six other parents from the village of Nyarero were charged and found guilty of the same offence. They were fined fifteen shillings each (Magoma Criminal Case No. 221/58).

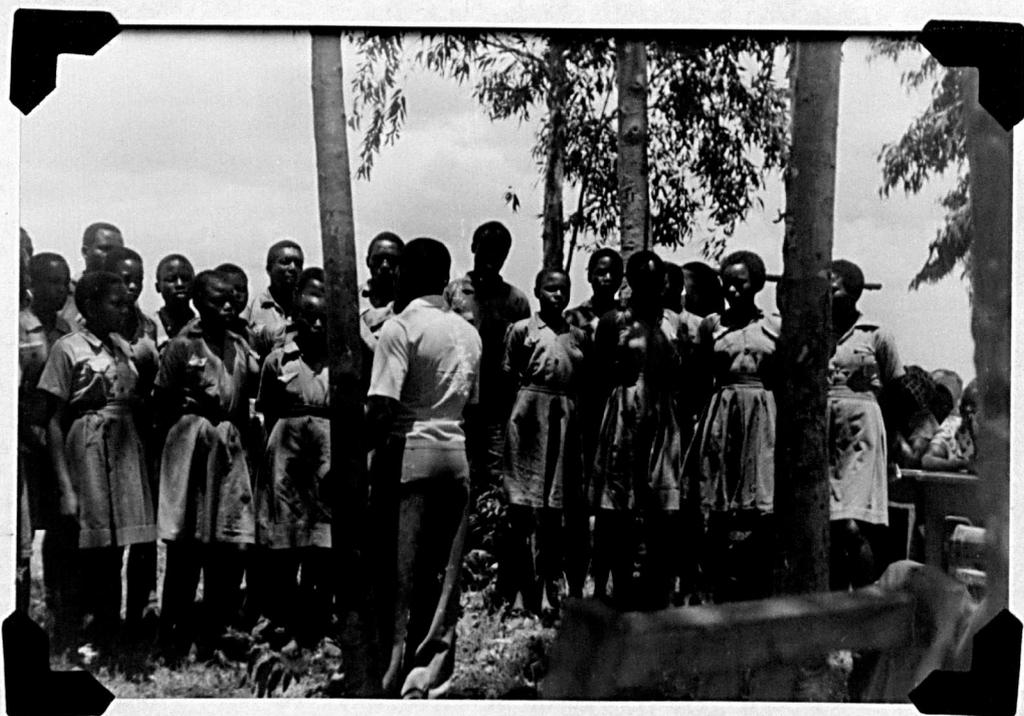


Figure 5.4. From an Age-Grade to a Classroom: Muriba Primary School Choir. (Photograph by Author)

by fine and imprisonment.<sup>1</sup>

Thus, formal education, wage employment and world religions affected many aspects of Kuria society. These alien influences profoundly transformed marriage and family relationships. For example, the schools to which the youngsters went did not prepare them for life in their communities and their lack of training in agriculture and animal husbandry influenced their disposition towards manual labour.<sup>2</sup>

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1 The Public Primary Schools (Compulsory Enrolment and Attendance) Order 1977, GN. 150/77, made under section 35 of the Education Act (No. 50/69):

Section 3. As from the effective date, the enrolment and regular attendance of every child in a public primary school shall be compulsory.

5. Every child enrolled at a primary school shall, unless exempted, attend such school until he has completed primary education.

7.(1) Any parent of a child to whom this Order applies and who fails to ensure or to take reasonable steps to ensure that his child is enrolled in a public primary as required by paragraph 3, shall be guilty of an offence.

(2) Any parent of a child to whom this Order applies who fails to ensure ... or to take reasonable steps to ensure that his child regularly attends the school at which he has been enrolled until such time as he completes primary education, shall be guilty of an offence.

(3) Any person who is guilty of an offence under this paragraph shall be liable on conviction, in the case of first offence, to a fine not exceeding one hundred shillings or to imprisonment for a term not exceeding one month or to both fine and imprisonment...

2 According to the 1978 census figures for five Kuria wards (in which the majority of the Kuria people live, children aged up to four years comprise 21 per cent of the whole population and those aged between five and nine years constitute 19 per cent of the population. The latter, as previously noted, are often very helpful in production.

They preferred 'white-collar' jobs. As remarked by Nyerere (1968:278-9) colonial education was seen by many as a means of escaping the drudgery of agriculture.

Another consequence has been the migration of young people into the city. As noted by Kisenbo, young school-leavers in contemporary Africa 'drift into urban areas lured by the gleaming lights of cinema halls and the wild sounds of the jazz bands, but without clear plans about what they will do there' (1977:125). Such young people no longer understand or appreciate the social institutions and alliances of which marriage was a part. Their values differ from those of their parents. Also, their strategies for social and economic advancement became oriented towards the external world, away from the traditional economic sector.

Formal education also had the effect of creating new forms of social relationships, at the same time as undermining existing ones. For example, whilst circumcision rites have continued up to the contemporary period in Kuria society, this often has to be done during vacation.<sup>1</sup> Schools, unlike the traditional circumcision organization, admitted pupils from all clans and beyond the Kuria group. The interaction of pupils from various areas within the district provided ideal conditions for cultivating a new type of consciousness and collegiality which cut across the more parochial youth organisation structure.

Opportunities for boys and girls to meet away from the watchful eyes of the community encouraged individual choices in marriage. Literacy skills enabled pupils to write love letters, which the parents often could not read. Heijnen, cites examples of daughters who left their home after a quarrel with parents over choice of spouse. For example, Mary, a Shashi twenty-four year old woman, was in primary four in 1956 when her father found her with

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<sup>1</sup> Local officials at Nyamwigura issued an order requiring Mosei Chacha, a local circumcision doctor, not to perform any operations until all the schools were on vacation (Nyamwigura Report Book, 1970-73).

a love-letter from her boyfriend. Her father forbade her return to school. In 1958, Mary ran away to Moshi with her boyfriend, a police officer. This is how she related the rest of her story:

We stayed in Moshi for four years, and after his transfer went to Tanga for another two years. At the end of 1964 we separated because this man claimed I was sterile... from Tanga I went back to Moshi, where I lodged with a friend until I got a job in February 1965. I was employed as a barmaid at a salary of 180/- per month ... until I got pregnant and had a baby in November 1965. It then became impossible to continue working, since I was not allowed in the bar with my child ... so I wrote to my brother in Mwanza asking whether I could stay with him . He agreed and came to meet me ... I had never been home since I ran away... (1968:81-4).

While in Tarime I came across similar cases of young women who had defied their father's attempts to select husbands for them and who had escaped into the urban centres with their boyfriends, to joined relatives who where already working there.<sup>1</sup>

One of these was a girl named Esther, born in 1957, the seventh child of the family. In 1970, she had hardly completed 'primary four' when her father ordered her to be married to Wambura, an old friend of his, living in a neighbouring village. Esther's father made this decision because one of his sons had eloped with a neighbour's daughter and he was under pressure to pay the bridewealth. Esther's father had already accepted Wambura's seventeen head of cattle and three hundred shillings and had promised him Esther for a wife. As Esther did not like the idea, she ran away to Mwanza where her brother was working, and tried to re-enter primary school. But

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<sup>1</sup> Escape into urban areas must be distinguished from the traditional practice of abduction. Also the conditions under which the practice was followed have changed. For example, Ruel notes that although abduction, that is, okobasia, of a girl for marriage is a recognized means of forcing a marriage, it is 'much disapproved by responsible opinion'. In pre-colonial times, once the boy had 'obtained the girl's agreement and co-operation, the youth [took] her to a previously arranged hiding place; traditionally this was the homestead of a "cross-link" relative ... but nowadays the girl frequently goes completely away with the youth to where he is working' (1958:105). See also, Nyakanga v. Mehengo (1971) H.C.D. 270

shortly afterwards her father came to collect her and took her back home with him. During the following two years, her father tried to force her to cohabit with her 'husband' Wambura. In 1973, she escaped again and went to Morogoro where her brother had since been transferred. That year, Esther - then aged sixteen - met a young man named Murimi from her village and began living with him. The following year the couple had a son. They then moved to Arusha and on Murimi's advice, Esther returned home in 1975 with her baby.

At home again, her father tried to force Esther to cohabit with Wambura and take the baby to him as he was considered to be the legal father. Instead, Esther reported the matter to the Tarime police and was subsequently referred to the Tarime Social Welfare Office, where she narrated her story. She stated that she had no wish to be the wife of Wambura, whom she did not love, and whom she described as being old enough to be her father. She complained that she had lost the chance of being educated, and added that she had now reported this matter to the police because her father beat her often, and she feared he would kill her.

When Esther's father appeared before the Social Welfare officer, he defended his decision to give his daughter in marriage, saying that he had no option as Esther's brother had eloped with a neighbour's daughter without advance warning. As he did not possess any cattle, he had decided to follow the tradition of linking Esther's marriage with that of her brother. He was, nonetheless, prepared to accept his daughter's choice of husband, provided that any man she selected was able and prepared to refund Wambura's cattle promptly.

The Social Welfare officer explained to Esther's father that his daughter had no duty to refund Wambura's cattle nor did she have an obligation to marry anyone. At the end of the session, Marwa promised that he would not force his daughter to cohabit with Wambura or anyone

else. Yet, as events that followed show, this was a difficult promise for Marwa to keep. One month after the session at the Social Welfare office, Esther returned to complain that her father was still trying to force her to cohabit with Wambura. She applied for permission to return to Arusha where her boyfriend was living, but when her father heard of this, he took all her clothes and gave her son to Wambura. Esther's unsuccessful attempts to seek the intervention of the local government and party leaders led her to run off a third time, leaving her son behind.

Some husbands have forcibly confined their reluctant brides in their houses hoping they would change their mind and stay.<sup>1</sup> Some fathers, in an act of desperation, have committed suicide when their daughters have refused to marry the men selected for them. This happened in 1974 when an elderly father in the Mara region took his own life as a result of his daughter's refusal to marry an old man, who had given bridewealth to her father while she was still very young. The young woman, having gone to school and acquired some qualifications, was working as a court clerk at Musoma district court. Her father reminded her several times of her obligation to marry the man selected for her, but she kept procrastinating and finally refused. Her father, not having enough cattle to refund, nor an alternative bride to offer, could not bear the shame.<sup>2</sup> Beattie (1964) recorded several suicide cases in Bunyoro, where daughters - being forced to cohabit with husbands they did not love - killed themselves.

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<sup>1</sup> In 1960, a father coerced his daughter into marriage with a man named Marwa. Wambura aged about 60 years. She was about 20 years old at the time. Her father received 56 head of cattle and two goats as bridewealth. As described by the appellate judge, the father 'commanded her on the pain of death to go to the respondent [husband] and be an obedient wife to him; [she] had to be chained in the respondent's home to prevent her from running away'. She subsequently escaped and went to live with her boyfriend in another village.

<sup>2</sup> Personal communication with C.J. Maruma, Resident Magistrate at Musoma at that time.

A recent report on marriage in Africa noted that

... parental authority over many aspects of the children's life is slackening. Whereas in the old days the choice of marriage partners was made by the parents, or the families, today this system is rejected by the young people. They insist on making their own choice and in many instances the parents ... give in. Any show of resistance on the part of the parents can easily drive the young lovers to an elopement or a decision to live together' (Kisembo et al. 1977:124).

Peter Lloyd, reporting on the Mossi of the Upper Volta, states that although some parents still have considerable influence in arranging the marriages of their children, yet 'when an individual finds his personal choice thwarted by the elders, the young couple can abscond to Ghana, to return a few years later when the fait accompli will be accepted' (1972:95). Thus, a combination of factors such as opportunities for education, urban employment, missionary influence, and so on exacerbate tensions between parents and children.

In the context of unstable relations between parents and children, we must place the policy of the colonial state and the law. This policy was geared to promote relative individual autonomy. Although broadly conceived the policy of indirect rule aimed to preserve, wherever possible, the traditions of the colonized people, the application of the policy did not extend to cases where it was considered that the liberty of the individual had been seriously infringed. We have already noted how chiefs' courts were used to enforce the policy of education against parents who withdrew their children prematurely for the purpose of marriage. Various marriage legislation in Tanganyika provided for individual consent to marry once the person had attained the majority. Courts were always inclined to promote similar policies in their interpretation of a variety of legislation and customary law.

During the post-colonial period, this policy was strengthened. Individuals were encouraged to select their own spouses and to lead independent lives. Indeed, even the Customary (Declaration) Order 1963,

supposedly a codification of 'customary law', stated that upon the attainment of the age of twenty-one, an individual was entitled to select his spouse.<sup>1</sup> This position was upheld in 1971 when the Law of Marriage Act was passed.<sup>2</sup> The Act lowered the age of dispensation from parental consent from twenty-one to eighteen years and provided for recognition of long cohabitation as a valid marriage relationship. Moreover, it provided that courts could grant consent to marriage in cases where it was considered that parental consent was being unreasonably withheld.<sup>3</sup>

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<sup>1</sup> G.N.279/63: Rules 3 and 4.

'3. Before the daughter has reached the age of 21 years she needs the consent of her father or his legal deputy to her marriage.

4. After the age of 21 she is free to marry [without her father's consent or that of his deputy].'

<sup>2</sup> 1. A female who has not attained the apparent age of eighteen years shall be required before marrying to obtain the consent:

- (a) of her father; or
- (b) if her father is dead, of her mother; or
- (c) if both are dead; of the person who is her guardian; but in any other case, or if all those persons are dead, shall not require consent.

It is important to note however that for those parties wishing to contract a 'customary' marriage, section 17(3) empowers the person officiating at the marriage ceremony to refuse to perform the ceremony where the requirements for consent imposed by customary law in addition to those provided for under s.17(1), have not been fulfilled. This provision seems to remove the capacity granted by Rules 3 and 4 of G.N. 279/63 for the 21-year-old to contract 'customary' marriage without parental consent. The Judicature and Application of Laws Ordinance provides that rules of customary law (including G.N.279/63) shall not apply in any matter provided for by the Law of Marriage Act 1971. Notwithstanding the above, the provisions of section 17(3) would seem superfluous as all marriages which can properly be classified as 'customary' must be performed 'according to the rites of the customary law' under section 25(1) (d), which implies that all the requirements, including consents, from specific persons, have been fulfilled. It seems to me, therefore, that in practice the provisions for dispensation of consent can only apply to marriages contracted in civil form. (See Francis Leo v. Paschal Simon Maganga, 1978 L.R.T. n.22)

<sup>3</sup> Section 17(2) states that:

Where the court is satisfied that the consent of any person to a proposed marriage is being withheld unreasonably or that it is impracticable to obtain such consent, the court may, on application, give consent and such consent shall have the same effect as if it had been given by the person whose consent is required by subsection (i).

A number of decisions by the High Court show clearly that individual choices as opposed to arranged marriages are encouraged. In the case of Marwa Rioba,<sup>1</sup> for example, a father refused to meet the cost of his son's marriage on the grounds that the latter had disobeyed him by taking a wife of whom he did not approve. The son petitioned for a court injunction to compel his father to pay the bridewealth for his marriage. His father, Rioba Ogola, defended his decision, saying that he did not wish to give bridewealth for his son, because he did not see why his son should marry Robi's daughter. He added, 'I do not want that because we are not on good terms with Robi. If he gets married to Robi's daughter, I shall not pay the bridewealth, but if he gets married to any [other] woman, I am prepared to do so'. The Tarime district court held that it was the custom of the Kuria people for a father to meet the cost of his son's first marriage and that there was no reason 'why Rioba should force his son to get married to a woman he does not love'. The court then made an order for seizing forty head of cattle to be used for the bridewealth.

Although this decision was overturned by the High Court three years later, during another case,<sup>2</sup> it is clear that the concern of the district

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<sup>1</sup> Robi Mangure v. Marwa Rioba: North Mara District Civil Revision No. 8/67.

<sup>2</sup> Kimicha, J.: decision in Masero Mwita v. Rioba Masero (1969) H.C.D. 199, where he says that

It is undisputed that according to Kuria customary law the respondent had a right to claim bride price from his wealthy father and in the remote past, a reluctant father could have his cattle seized by clan elders and used for the son's bride price... But I am of the view that this obligation though very strongly felt by Kuria tribesmen, cannot be enforced by the courts. To do so would be dangerously encroaching on the individual rights to property.

Broadly interpreted, the decision assumes that the property of the father is personal to him and the son has no legal right to use part of it unless prior agreement from his father is obtained. This decision, reflecting existing conditions, gives support to ideas of individualism.

court was to uphold the right of the individual to select his own spouse. Indeed, the magistrate remarked obiter dictum, that after all, 'love is blind' and the young man must be allowed to marry a girl of his choice. It may be said that it is this kind of 'blind love' which the elders have tried to stop even though they are losing the battle with every passing day.

### Summary

We have seen the extent to which marriage was an integral part of Kuria pre-colonial society. I showed how individuals passed through life in stages, most of which prepared them to assume responsibilities in production, politics, and other aspects of society. Marriage was an important relationship which enabled society to reproduce itself both biologically and socially. Marriage offered the means for establishing wider alliances beyond the immediate parties to the relationship. As most other important relationships, marriage was dominated by men and elders whose initial control of cattle - then the major means for entering such unions - assured them of overriding influence on the marriage of their children.

Yet colonial occupation and the penetration of a capitalist economy, brought about a number of changes which profoundly affected marriage and the family. The creation of alternative means for acquiring wealth; the acceptance of European money as a universal means of exchange; the introduction of cattle into the open market; and the incorporation of money and consumer goods in marriage exchanges, seriously undermined the monopoly control of elders over women. Young men who acquired money or cattle through wage employment and cash crop production became relatively free to select their own spouses. The introduction of formal education, together with the resultant decline of the traditional institutions for socialization of the

young also had changed the character of Kuria marriage. Some young people challenged their parents' authority to choose a spouse for them, and even went away to urban centres where they expected less community control. The policy of the colonial and post-colonial states and law was geared towards encouragement and recognition of individual freedom to contract a marriage and often leaned towards upholding individual autonomy from wider community control.

These changes and others transformed the traditional marriage relationship. Some elders, in desperation, tried to restrain their children physically, while a few others took their own lives.<sup>1</sup>

Even though in contemporary Kuria society there are some parents who still dominate their children, the trend shows increasing participation of the young in their marriage process. Thus a situation has occurred where, as noted by Hulsen and Mertens 'there is a balance between the initiative of the young people and the guiding, advising role of the parents of the extended family' (1977:124).

The implications of these changes for relations within marriage, particularly over children and matrimonial property, are discussed in chapters seven and eight respectively. In the next chapter, however, I will examine colonial regulation of bridewealth in the light of these economic and social changes.

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<sup>1</sup> For instance, on 3 May 1971, three elders from the ward of Kibasuka, Tarime, applied to the ward secretary for permission to hold a 'traditional' gathering at which they intended to discuss a number of issues including the issue of 'children failing to obey their parents' (Nyamwigura Report Book 1970-73).

## CHAPTER SIX

THE REGULATION OF BRIDEWEALTH BY THE  
COLONIAL AND POST-COLONIAL STATES

Introduction

In considering the nature of marriage payments<sup>1</sup> in most of contemporary Africa, one faces the complex problem of whether one is dealing with a traditional (i.e. precapitalist) form of economic exchange or an individualised economic transaction. The duality of social and economic relations found in most societies of rural Tanzania makes it difficult, therefore, to make a categorical statement about the real nature of marriage payments or indeed other forms of social relations which are undergoing rapid transformation.

This Chapter tries to answer the question relating to the nature of bridewealth in Kuria society. I do this by looking at state regulation of bridewealth rates during the colonial and post-colonial periods. I show the process of transformation which marriage payments underwent. The interplay of economic and legal factors and their influence on the transformation of bridewealth are also examined. The state is viewed in this Chapter as an agent of change whose laws and economic policies provide a framework as well as a stimulus for social change.

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1 The term bridewealth is in this Chapter used interchangeably with the following other terms - bride-price, marriage payments and matrimonial exchanges. These terms describe the transfer of property, such as livestock, money, agricultural and industrial consumer goods and/or services from the prospective son-in-law or his family to the father of the woman he wishes to marry. It can be paid in one lump sum or in instalments during the married life of the couple and sometimes posthumously by the couple's children.

The Chapter is divided into four sections. After examining briefly the Kuria pre-colonial bridewealth rates I go on to discuss the regulation of marriage payments by the colonial state and the responses of the Kuria elders to the policy. The third section considers the question of the transmutation of bridewealth and the economic factors underlying this change. In the last section I deal with the containment of the rising bridewealth during the post-colonial period and the role played by the law and the courts in this process. This Chapter is then concluded noting that the transformation is part of a wider process of change in the Kuria social and economic relations. This process must be considered as a whole in order to understand the causes of the transmutation of matrimonial exchanges and the ever-rising cost of marriage in the Kuria society.

#### The Kuria Bridewealth Rates

In considering the question of change in bridewealth rates in Kuria society two points must be stressed. The first has been discussed already in the preceding chapter and will be briefly summarised here. Chapter Five considered the way in which the Kuria elders controlled the process of marriage and how this was possible largely because such marriage took place within a relatively small circle of people who were united by multiplex social and economic alliances. These factors facilitated the maintenance of a state of equilibrium in the numbers of marriage cattle which were considered by most people to be adequate for establishing a legal marriage relationship at any one time. In short, it could be said that as long as the Kuria elders maintained adequate control of the circulation of cattle and women the rate of exchange between women and cattle remained generally undisturbed.

Secondly, a combination of climatic, technological, and economic factors influenced significantly the performance of the economy, resulting in an increase or depletion of livestock population. This, as I shall show below, affected the bridewealth rates in the region.

One of the most serious economic disasters which could be given as a point of departure in the discussion of bridewealth rates occurred during the 1890s when, due to the outbreak of rinderpest, large numbers of cattle were killed. The destruction of herds, as would be expected, lowered bridewealth rates and encouraged alternative means of matrimonial exchanges, such as bride-service and the giving of grain instead of cattle. According to Ruel, "[b]efore the outbreak of rinderpest and bovine pleuro-pneumonia towards the end of the last century, the number originally paid is said to have been about ten, with fifteen as the maximum. Following the wholesale depletion of herds caused by these diseases, the number fell to only one or two cows or their equivalent in goats or millet" (1958:107). In most of eastern Africa which Melville Herskovits has characterised as the 'cattle complex' area, the effects of rinderpest were similarly felt and affected matrimonial exchanges in the same way. Adele Casalis (in Murray 1977:82), having noted the effects of the 'great' rinderpest on Basuto bridewealth, wished "if only it could have killed marriage by cattle [but] alas no; they are so fond of their cattle that they will contrive, as in the past, to marry women with cattle even if they have none". Casalis was referring to the Basuto custom of marrying on the basis of a solemn promise to make payment when the prospective son-in-law was able to obtain cattle. Similar social and

economic adjustments were made throughout the region with the view to counter the adverse effects of the epidemic (Van Onselen 1971:66-84). Such adjustments were usual and indeed reflected the fortunes and hardships of the various communities. As remarked by Hennings, pastoral living in most parts of Africa involves "a life which alternates between want and plenty, hardship and ease, according as rain fails or falls....Every so many years there comes a long drought when a proportion, often considerable, of livestock die of starvation" (1961:197).

The years following rinderpest saw a gradual restocking of the Kuria herds and by the time the Germans occupied the district, substantial numbers of cattle had begun to accumulate. Some evidence of this appears in the researches of Ruel (1958), Kjekshus (1977) and, more generally, Kitching (1980). Malcolm Ruel's research among the Kuria showed that they had then more cattle than during the previous years. He remarks that "the increase on pre-rinderpest herds of cattle must have been at least fivefold and on the post-rinderpest herds of the late 19th century when the Germans first arrived, the increase is nearer twentyfold" (1958:171). He notes further that the increase in cattle was not only observable in the numbers of cattle given in marriage at this time, but also "in their slaughtering" for purposes of ritual and feasting.

Such increases in livestock holdings were possible not only because the Kuria were such good cattle-keepers but were also a result of successful cattle disease control which in the early colonial period had become very frequent (Baker 1935:41; EARC 1953-55:295). Secondly, cash-crop production, which had been introduced by the colonial government as a means of undermining

livestock economy in the area, was used to purchase cattle in order to consolidate the herds. It is also widely reported that the drought which hit most of East Africa in the late 1920s and 1930s (Baker 1935:49), forced most pastoral and other sedentary people living in drier areas of the Mara river valley to barter their livestock for grain with the high land Kuria. In the neighbouring Kenya, similar trade is reported to have occurred between the regions which escaped the drought and those which were hit. Kitching notes that

[i]n the immediate aftermath of the war, stock prices fell, with pastoral areas being hard hit by droughts from 1918-21. This allowed grain producers to benefit from much improved terms of trade between stock and crops, and we have evidence of advantage being taken of this by the Kisii [the Kuria neighbours] of South Kavirondo in trade with the Luo of the lake shore, by the Abaluhya of North Kavirondo in trade with the Luo of Central Kavirondo...and the Kisii... in trade with the Masai (1980:217-18)

Finally, opportunities for wage employment in the British army, the mines and other areas of the colonial economy made it possible for some Kuria people to obtain money with which to purchase livestock.

Therefore, a combination of economic, climatic, technological, medical and other factors worked in various ways to assist in the increase of livestock population in the Kuria society.

Rises in cattle population in turn encouraged corresponding rises in the bridewealth rates. Ruel found among the Kuria that between 1920 and 1935 the number of cattle given in marriage went up "to reach the present figure of 30-35, occasionally even more" (1958:107). Other reports show a similar rise in the bridewealth rates during the same period. For example, it is reported that "long ago the bride price in Bukuria was one Kitara [i.e. one granary] of grain or one goat but as the cattle



Figure 6.1. " Hazina ya Mwafrika ni Ng'ombe"  
(An African's only Durable Wealth is Cattle.)  
(Photograph by Ponsiano Rukazibwa.)

increased so the bride price rose until it reached eleven to fifteen head and eventually to twenty head" (Musoma District Book). Similar rises in bridewealth during the 1930s are reported also by Chacha who cites the figure of eighteen head of cattle as being commonly given among the Kuria of the highland region (1963:32).

A major factor which marks the whole colonial period and later is that although a number of social and economic changes were taking place in the Kuria society during this time, the use of livestock remained predominantly in the sphere of marriage. This point must be recognised in order to appreciate the relationship between the escalation of bridewealth rates on the one hand and rises in the livestock population on the other. As Ruel correctly observed

Since cattle are needed for marriage and are an index of wealth, the desire for them is limitless, and where changing conditions make increased herds possible, the increase in numbers - the greater 'economic surplus' - is taken up in the same way. As herds increase the social value of cattle (their value in social exchange) decreases and bridewealth goes up. No outlet has been given to cattle as wealth (1958:171).

But the increase in the Kuria herds and in the amount of bridewealth given for their marriages were not viewed with equanimity by the colonial administration which was at this time dealing with the problems of land conservation and cattle thefts in the region. The colonial government was soon to find a link between high bridewealth, overstocking and cattle thefts. When the chiefs were consulted, they agreed that this link indeed existed. In the next section I deal with the attempts of the colonial administration to prescribe and control the marriage payments and how the Kuria responded to this.

The Regulation of Bridewealth During the Colonial Period.

The study of the colonial policy of limiting the Kuria bridewealth rates discloses an interesting interrelationship between a number of policies pursued together. These included land conservation, promotion of agricultural production (as opposed to pastoral economy), and the control of cattle thefts. The records of the colonial administration beginning from the early 1920s to the end of colonial rule show great concern for soil conservation. This was to be achieved through the implementation of a policy of destocking in the concerned districts. The Natural Resources Ordinance of 1949 stands out as the embodiment of this policy. It established a multipurpose Board with wide powers to supervise the management and conservation of natural resources. The Board had powers to examine projects concerned with conservation, to stimulate public interest in conservation and in the improvement of natural resources. It was also empowered to make regulations on a wide range of subjects including land use, control and use of water, methods of cultivation and livestock husbandry. The measures taken by the Board were buttressed by other rules and regulations made by the Native Administration councils and other agencies of the colonial state. In order to examine specifically how some of these agencies operated, it will be helpful to set out in a broad outline the judicial and administrative structures of Tarime district during the British colonial period.

Between 1917 and 1921 the Kuria people were ruled by a British appointed paramount chief — an ex-Sergeant Major of the K.A.R. named Mageta of Busweta. The office of the paramount

chief was later abolished following a rising of the Batimbaru clan who objected to Mageta's attempts to take their lands away. Each of the existing nine chiefs was permitted to rule his own people until 1925 when Kuria Federation was formed. The latter was a more flexible and looser organisation which permitted each chief to govern his people while becoming a member of a federated Native Court with a joint treasury. In 1929 when the policy of indirect rule, conceived by Governor Donald Cameron, began to be implemented, North Mara had a total of twenty-three chiefs divided into the Girango, Suba and Kuria federations (Winnington-Ingram 1950:10). All the chiefs in North and South Mara sat on the Native Council, which had the power to pass a variety of Orders and Rules under the Native Authority Ordinance of 1926.

Apart from having legislative powers, the chiefs, as already noted, exercised judicial powers as magistrates in their own chiefdoms. They presided over Chiefs' (Baraza) Courts which were established under the Native Courts Ordinance of 1929. These courts had jurisdiction over all Africans residing within the chiefdom and were empowered to apply the local 'customary' laws. Their criminal jurisdiction included power to hear cases involving infringements of Orders and Rules made by the Councils under the Native Authority Ordinance. Some courts, especially those falling in Class A, on which all the North Mara chiefs sat, were authorised to hear cases under some Territorial Ordinances such as offences under the Arms and Ammunition Ordinance<sup>1</sup>.

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1 The Arms and Ammunition Ordinance Cap.223; and Arms and Ammunition (Native Authorities) Regulations (Vol.VI).

Appeals from chiefs' (Baraza) courts went straight to the Federation Court situated at Utimbaru Hill, where Tarime township is now located. The North Mara Federation Court was under direct supervision of the District Commissioner, while the individual chiefs' courts were subject to periodic inspection of the District Officer. Except for informal dispute settlement undertaken by clan heads and the councils of elders, chiefs' courts were the only bodies recognised by the colonial state as having judicial powers within the various Kuria chiefdoms. The chiefs were assisted in their judicial work by assessors, while headmen were involved in administration of smaller units within the chiefdom. The headmen did not possess judicial powers as such, even though in practice they decided small disputes if asked to do so by disputants.

A number of Orders directed at limiting bridewealth rates were enforced through the above structure, using the lowest administrative officials to trace the offenders and the chiefs' courts to punish them. In 1929 the North Mara Federation Council issued an order limiting bridewealth transfers to three head of cattle<sup>1</sup>. As the average bridewealth rates were, at this time, well over three times the official maximum, several breaches occurred and soon it became necessary to raise the figure to ten. Breach of the bridewealth limitation rules was a criminal offence

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1 Baker notes, for example, that "in pre-European days the bride-price is said to have consisted of one food bin of grain or one goat and rose as the number of cattle in the district increased, to eleven, fifteen and even twenty head until, in 1929 the [chiefs] agreed to reduce it to three head"(1935:45).

carrying a maximum penalty of three months' imprisonment and a heavy fine, often amounting to one hundred shillings<sup>1</sup>. Both the giver and the receiver were liable to the same punishment<sup>2</sup> and all cattle given in excess of the prescribed number were forfeited to the Kuria Federation treasury. Until 1958, when the Central Court of Appeal declared the practice of forfeiture illegal, confiscation of excess cattle was widely practised and considered to be the law<sup>3</sup>.

Rules intended to govern the movement of cattle within various wards in the district were used also to regulate the movement of marriage cattle. These rules prohibited the transfer of livestock from one ward to another without the permission of the headman and the person receiving such cattle was required to report to the headman.

Although these rules were no doubt aimed at reducing cattle thefts and the risk of livestock infection in cases of epidemic outbreaks, they were nonetheless used together with the bridewealth limitation rules to monitor the movement of marriage cattle given in excess of the prescribed number. After 1930 the prescribed procedure for transferring marriage cattle was for the intended husband to drive his herd to the Chiefs' Court where he handed them over before witnesses; with each beast being registered

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1 The Order was designated as the Marriage (Dowry)(Kuria) Rules. Examples of offences committed under this Order can readily be noted from the criminal case registers at Nyamwaga and Nyamwigura.

2 Usually one hundred shillings or three months' imprisonment in lieu of fine. The value of the shilling has been fluctuating. At present the exchange value of Tshs. 100 is about UK.Pounds 5.5.

3 Hamisi Nzonio v. South Mara Native Authority (1958) 144 D.A.L.C.11

individually by name and sex in a special (Mahari) book. Today these books are a valuable source of information.

Although harsh penalties were imposed on the offenders, the limitation rules were largely ignored. Malcolm Ruel, whose study included the operation of similar rules among the Kenya section of the Kuria, notes that in the Butende Location, Kenya, "the law was accepted and enforced for a few years but then broke down and by 1958 had become as it was everywhere else in Kuria country in both territories, a dead letter" (1958:177).

Evasion of limitation rules took many forms. The more common ones, reported by Ruel (1958:177) and Chacha (1963:36), involved a practice of giving the excess cattle to relatives and friends appointed by the prospective father-in-law, within the same local area and sometimes beyond the administrative unit of the ward. Often the intending husband was asked by his prospective father-in-law to offer cows with young calves and those which were about to calf. For those cows with calves, it was easily explained to the authorities that the young could not be separated from their mothers. The colonial authorities were made to believe that calves would be returned to the owner. But they were never returned<sup>1</sup>. For example, in 48% of the 175 marriages registered at Nyamwigura (formerly Magoma), prospective husbands tendered cattle including a number of calves. As shown in the last column of Table 4 below, eight out of the ten cows given had calves and,

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1 Rule 46 of GN.279/63 states that "if a calf which is not yet weaned has to be returned with its mother it is counted as one of the number of cattle due to be repaid". This provision suggests an awareness that calves accompanying their mother at the time of giving bridewealth were not returned to their owners.

in the second case, all the ten cows given had their young with them.

Table 4.

Number of cattle given	10	11-12	13-14	15-17	18-20
Numbers of marriage with % in brackets	91(52%)	31(18%)	38(22%)	13(7%)	2(1%)

Source: Nyamwigura Chief's Court Register for 1955.

Other fathers decided to give their daughters to distant husbands where limitation laws were non-existent or less restrictive. In the neighbouring Kenya, the colonial government had fixed the bridewealth rates at fifteen head of cattle and the difference between the two areas acted as an inducement for some elders to establish marriage relationships between their daughters and husbands from the Kenyan section of the Kuria group. For some time this practice was not considered illegal or harmful to anyone until in 1949 when the Chief of Utimbaru decided that too many women in his chiefdom were being lost to the Kenyans. He therefore took steps to end it by seeking the support of other chiefs in the Kuria Federation. An order abolishing the marriage of daughters to the Kenyans was given formal legal sanction by the chiefs and its breach was made punishable<sup>1</sup>.

One of the early criminal prosecutions based on the breach of the restriction was that of a man called Wataigo Sinyo. He

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1 Kitching (1980:222) notes the existence of a similar flow of women to high bridewealth areas among the Kenyan societies. He reports for example that "in the Fort Hall district report for 1932 it is noted that Kiambu bride-wealth levels were notably higher than Fort Hall, and as a result a large number of Fort Hall young women are married to Kiambu natives" (Fort Hall District Annual Report 1932, p.4).

was found guilty of the offence of giving his daughter in marriage to a man named Mwita Burure of the ward of Renchoka in Kenya<sup>1</sup>. The court records in the area show a number of convictions involving breach of the rule<sup>2</sup>.

Although it is difficult to estimate the extent of the breach of these regulations<sup>3</sup>, Kuria elders agree that these rules were regularly breached. Sometimes chiefs and headmen were privy to such breaches. They demanded bribes in cash or

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- 1 Native Authority Baraza Inchage v. Wataigo s/o Sinyo and Anor. Crim. Cas. No. 389/49. In Native Authority Baraza Inchage v. Gake. Crim. Cas. No. 405/49, Gake was charged with the offence of permitting his daughter to marry a man in Bukira, Kenya. At the trial Gake admitted having married another daughter to a Kenyan husband for which offence he had earlier been fined.
  - 2 Both registers at Nyamwaga and Nyamwigura show that such offences were common. Interviews with elders showed that there were many more people who avoided prosecution through bribing headmen and chiefs. Bribery of court officials and headmen is an involved subject requiring greater study. Lugoe notes, for example, that "the chiefs were corrupted by the little power they had and instead of combating crime and helping in the creation of good administration used their judicial powers to further their own ends and to accumulate wealth in form of cattle" (1965:48).
  - 3 Hans Cory, who did a study of the Kuria about 1945, states that
    - "4. Rules restricting the amount of bridewealth payable have been issued under the Native Authority Ordinance. These rules are not followed and there are very few cases in which legal bridewealth is [not exceeded]".

kind as consideration for "closing their eyes"<sup>1</sup>. The overall response of the Kuria to the limitation rule is best summarised by Chacha, who noted that for twenty-five years the colonial government had unsuccessfully tried to limit bridewealth rates in Kuria society "but there was not a single year in which the prescribed number was observed. Consequently, so many people were fined and others imprisoned and their cattle, given in excess of the limit, confiscated and handed to the local treasury, but contravention of these rules remained" (1963:36). Nimrod Lugoe's research in the district also confirms that the rules were not observed by the majority of the Kuria (1965:60).

There are a number of reasons why the limitation rules were not observed. It can be argued that the colonial state was not efficient enough to enforce rules to which the Kuria elders were so strongly opposed. The failure of the colonial administration to enforce cattle sales during the same period (Chapter Four) could be cited as yet another example of this weakness. On the other hand, the refusal of some chiefs and local headmen to co-operate with the colonial administration

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1 See note 2 p102. Most of the British colonial officials who worked in Tarime district seemed to have been convinced that corruption among the chiefs and headmen was just as much a problem as the 'crimes' they were expected to punish. In 1932 McMahon recorded in the District Book that "[h]alf the trouble is that Native Courts are not functioning with justice, but once we abolish corruption I think the present troubles will automatically cease". In 1940 S.R. Tubbs noted that "[t]he courts are not greatly respected and are not, in my opinion, worthy of much respect". And finally, in 1944, J.C. Clarke wrote that "[a]s Kuria natives are not above offering bags of money to their administrative officers, it must be assumed that the practice of bribery is so ingrained amongst them as to become a second nature" (cited in Lugoe 1965:48).

also contributed to the undermining of the policy. But these reasons are not as significant as the fact that marriage payments underwent radical transformation during the colonial period. It is this transformation which made it virtually impossible to control the rates of matrimonial exchanges even with an efficient governmental system. Therefore, the failure of the colonial administration to regulate bridewealth must be seen as an effect of some of its wider social and economic policies. The implementation of these policies led to the integration of the Kuria economy into a world economic system resulting in the transformation of many aspects of the Kuria social and economic relations. The transformation of bridewealth was therefore part of this wider change.

#### The Transmutation of Kuria Bridewealth.

Although the Kuria bridewealth retained an outward appearance of a pre-capitalist economic exchange during the colonial period, it was substantially transformed towards the end of the colonial era. In this section I examine the specific ways in which this occurred and the extent to which colonial state intervention assisted in this process. This section also argues that the transmutation of bridewealth and its escalation in rates occurred simultaneously as a connected process and as a product of social and economic transformation.

A key factor which must be recognised in the whole process of bridewealth transformation is that in pre-colonial times the Kuria elders had a monopoly control of all production including livestock economy. This power enabled them to control the circulation of women and thus made it possible for them to control a number of other social and economic relations. Their

control of women and livestock was also the basis on which they controlled the young men who depended on them for wives. As already noted (Chapter Five) a young man depended upon his father for providing him with land on which to grow food and a wife to assist him in the economic concerns of his production unit. Through marriage and the birth of children the Kuria young man attained relative economic autonomy but his household and his cattle remained attached to that of his father and were counted as one. On the circumcision of his first child, a Kuria son was then allowed to establish his separate homestead which at any rate continued to be part of his father's household and all his cattle remained under his father's control until the latter's death. Daughters were under the direction of their father until they were handed over in marriage to the family of their husbands. The daughter's marriage brought cattle into her father's household while at the same time creating binding and long term affinal obligations for the son-in-law. A son-in-law was expected to assist his wife's relatives during times of hardships. He was expected to share with his father-in-law any cattle acquired in raids (Cory 1945:4).

Thus control of dependents by the Kuria elders provided them with the means to secure the economic surpluses produced by these dependents. Part of this economic surplus was in turn utilised to keep the dependents attached to them and to attract others through marriage, gifts, and other forms of patronage. This type of control was boosted by an effective kinship ideology which reduced every economic exchange into a status relationship (Gluckman 1965:74). Moreover, the elders monopolised ritual and political power which buttressed these

status relations and all these combined together to maintain a complex social and economic system on which rested the whole of the Kuria social formation.

The integration of the Kuria economy into a world economy transformed existing social and economic relations. In one aspect this integration took the form of providing individuals with new opportunities for attaining economic autonomy. Opportunities for acquiring property were not limited to elders as in the past. Indeed as noted in Chapter Five, it was mostly the younger unmarried men who had the energy and less family responsibilities (see also Snyder 1981b:201). They migrated into urban centres to engage in wage employment. They worked in the colonial army, the mines, tea plantations and road works. Initially the elders were satisfied with this arrangement because their dependents were able to earn money for them with which they paid colonial tax, the surplus being invested in agriculture and livestock. But these young men, having been away from the control of elders, began to acquire ideas of individualism and began to have plans for their money as well. Some kept part of it and, on their return to Kurialand, were able to purchase agricultural implements such as ox-ploughs, and livestock. We noted earlier that the returning Kuria servicemen were able to use their military allowances to purchase cattle at high prices. Other youngsters did not return to their homes, preferring the 'free life' of the cities.

In short, the existence of economic opportunities which were beyond the traditional economic sphere created conditions which interfered with the Kuria elders' exercise of control over

the labour power of their juniors. Using kinship ideology, ritual and political power, and other forms of indirect pressure, the elders tried to maintain control over their dependents' economic fields but this was not always possible. Tensions between them and their dependents emerged, often leading to a gradual rupture of the relations of subordination on which the traditional Kuria society was based. Hence, as Francis Snyder found among the Banjai of Senegal,

the individualisation of labour power and its transmutation into commodity form undermined the previous control of elders over the production of labour, while the increasing division of labour that necessarily accompanied the subsumption of the Banjai within capitalist relations of production altered relations between men and women and between elders and dependents (1981b:201).

The transformation of marriage payments from a pre-capitalist economic exchange which was based on status relations, into an individual transaction was part of a general transformation of Kuria social relations. The rise in the amount of bridewealth which occurred throughout the colonial period was, on the one hand, a result of an increase in the population of livestock and, on the other hand, a result of bridewealth becoming an item of individual consumption. This made elders want to maximise their gains from the marriage of their daughters. Elders, having lost control over the labour power of their juniors, took the opportunity to extract as much as possible from their sons-in-law. It was feared that in future fathers-in-law could not look forward to continuing to receive cattle and other gifts from their sons-in-law. They became less concerned about the integrative functions of bridewealth and the wider social and economic relations created by marriage.

Moreover, as the young men were the active migrants with resources and whose obligations to surrender the proceeds of their labours to elders were becoming less binding, it seemed pragmatic that elders should secure a share of the juniors' resources by means of their control on marriageable women. As Colin Murray has observed concerning the Basuto,

large bohali transfer in Lesotho redistribute upwards, from the junior (active migrant) generation, to the senior (retired) generation, a proportion of the means of subsistence derived from the earnings in South Africa. Being enforceable in court, they are a more effective way of ensuring maintenance of the elderly than kinship morality per se. (1977:80).

Murray's remarks are applicable not only in situations where traditional bonds of economic reciprocity are dissolving but also where the economic condition of the peasant, as a commodity producer and consumer of industrial goods, is increasingly becoming precarious. As noted by Kitching, most male household heads faced with static or even declining incomes as a result of land shortage and rising prices find their daughters' bridewealth to be a valuable source of income (1980:226).

The desire to get much out of their daughters' marriages must have greatly contributed to the Uitimbaru elders' decision to 'shop around' for sons-in-law in Kenya and to employ all possible subterfuges to evade the colonial limitation rules. Other factors also accelerated the process of change and contributed to the rise of bridewealth. For example, the narrowing down of wider social rights in cattle was such a factor. We saw earlier how the Kuria elders used to lend cattle to one another during periods of need. This is what I earlier described as the 'extended credit system' whereby an individual who had

accumulated sufficient cattle could loan some to needy relatives. The latter used the cattle as his needs dictated and some years later the loan was repaid. The extended credit system facilitated the distribution of cattle wealth to a wide range of people and played a part in obscuring the disparity between the rich and the poor. During the colonial period the extended credit system came under strain and individuals were no longer willing to lend their kinsmen any cattle while those who had borrowed some were not paying up as readily. State courts came to be used more often to decide disputes concerning non-payment of such debts. This made other people even more reluctant to lend cattle to relatives. Sons-in-law who married after paying a smaller number of cattle were often unable or reluctant to remit the remaining instalment. State courts were asked to intervene more readily in deciding unpaid instalments and there are cases in which sons-in-law did defend such claims on the ground that such claims exceeded the official bridewealth limits. These circumstances altered the attitude of elders who insisted that all the marriage cattle should be given in one lump sum.

The legal prohibition of cattle raids also assisted in the increase of the bridewealth rates. This was so mainly because fathers-in-law were the beneficiaries of the raids. As noted in 1945 by Hans Cory,

When a man married he gave a few head of cattle to his father-in-law and if later he acquired stock during a raid it was customary for him to send a good share of the spoil to his father-in-law.... After the arrival of the Europeans the chances of obtaining stock by raiding were diminished but the custom of paying bridewealth cattle after marriage was not abolished. In the end it led to an increase of the actual bridewealth payable to the present figure of anything from twenty to thirty cattle, even more (1945:4).

Thus, although the British colonial administration were of the opinion that the prohibition of cattle thefts would reduce bridewealth rates the effect of the prohibition was to concentrate that which was payable in instalments into a lump sum. Indeed this lump payment became an attractive way of ensuring that the son-in-law did not default payment.

Thus increases in the bridewealth rates during the late colonial period were a result of a combination of factors which took place simultaneously. As the population of cattle went up, wider social rights in cattle were diminishing as a result of the transformation of the Kuria pre-capitalist relations. Hence elders found it economically rational to demand large amounts of bridewealth. This could not be easily controlled by law because, as noted already, it was a result of a much deeper process of social and economic transformation. At the end of the colonial period, matrimonial exchanges had become completely integrated into commodity relations even though it retained an exterior appearance of a pre-capitalist economic exchange. We next turn to the response of the post-colonial state to the problem of high bridewealth.

#### The Containment of Rising Cost of Marriage During the Post-Colonial Period.

This section examines the economic and legal problems arising from the increase in the cost of marriage and the manner in which the state and the law have responded to these problems.

In the previous section it was noted that, although capitalist penetration resulted in commercialisation of livestock,

it did not destroy their use in the formation of marriage. Contrary to the situation in some parts of Kenya (Kitching 1980:222-6), where, due to expanded agriculture in the 1940s, pastureland had become scarce and the livestock economy was nearly destroyed, Kurialand did not experience land shortage until during the late 1950s (Ruel 1958:173). Even then, the extent of the land shortage did not pose a serious threat to livestock economy as cattle-keepers could still obtain sufficient pastureland within Kuria highlands<sup>1</sup>. There was also an option for those who had large herds to move into new areas along the sparsely populated Mara river valley.

Thus cattle population in Kurialand continued to go up after the colonial period and some individuals were able to accumulate large herds. In order to give an idea of the cost of marriage in Kuria society since the end of the colonial era, it will be helpful to show the cattle population and distribution of herds among existing households.

The first reliable cattle census was carried out in Mara region in October 1978. According to the Regional Livestock Development Officer, earlier attempts to conduct cattle census had not yielded accurate data mainly because of the failure of concerned officials to communicate effectively with cattle owners. There was justifiable suspicion, originating mainly from the colonial period, that livestock enumeration was usually a prelude to compulsory destocking or cattle tax. Before the 1978 census

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1 See Chapter Two.

was performed, all the local officials including the ward, village, and ten house cell leaders held a number of meetings with livestock officers at which the aim of the cattle census was discussed. The local leaders were instructed to inform all the cattle owners in their areas that enumeration officials would be coming to take a physical count of the animals. Secondly, that the enumerators would not be taking down the names of any cattle owners as they were only interested in the beasts and not in their ownership.

These precautions having been taken, together with the fact that most of the enumerators were selected from the local area and assigned to their own villages, resulted in a more accurate record of livestock population in the region. This exercise also, for the first time, resulted in more data showing household distribution of cattle herds throughout the region (see Table 5).

Mara region as a whole had a total population of 1,036,338 cattle; 343,179 goats; and 266,231 sheep. Tarime district alone had 383,431 cattle; 146,213 goats and 88,613 sheep. Although the figures shown on Table 5 are based on the whole region, they indicate broadly the distribution of livestock holdings among the various households in the region. For example, in Tarime highlands where most of the Kuria people live, 65% of the households have no cattle. Those possessing up to twenty head account for 26% and households owning over twenty but less than forty-one head of cattle account for 5%. The remainder, that is 4%, are the largest cattle owners, sharing among them herds ranging from forty-one to over one hundred beasts.

Table 5. Percentage distribution of herd-sizes and percentage of households owning cattle in given herd category.

AREA \ HERD SIZE	0	1-10	11-20	21-30	31-40	41-50	51-100	100+
Tarime Highlands	65	12	14	3	2	1	1	2.
Tarime Lowlands	48	14	23	4	3	1	4	3
Mugumu Uplands	35	10	15	10	10	3	4	4
Mara River Valley	31	18	20	8	5	7	8	2
South West Peninsula	74	7	10	6	1	1	1	0
Regional Average	50.6	12.2	16.4	7.4	4.2	2.6	3.6	2.2

Source: Livestock Development Office, Mara Region.

If one were to accept the above figures, disembodied as they are from their social setting, we would conclude that the majority of the highland Kuria do not own any cattle. This, however, is not entirely correct for two reasons. First, among those shown to possess few cattle may be some who have given them away to be looked after by friends or relatives elsewhere in the district. Secondly, some of the households who appear to have no cattle at all might be potential cattle recipients on the marriage of their daughters. Conversely, those families recorded as having many cattle could be shortly transferring them on the marriage of a son. Nonetheless, even after allowing for these factors, it is still correct to say that the burden of meeting the cost of a son's marriage has become heavier in recent years. This problem, as noted already, is made more serious by the fact that the traditional bonds of economic reciprocity and the distributive relationships have dissolved and property ownership has become individualised. Statistics of bridewealth payments collected at the primary courts of the wards of Nyamwaga and Nyamwigura show that in 1960 an average Kuria marriage cost

thirty-three head of cattle. This figure represents the period following the repeal of the bridewealth limitation rules (see Table 6).

Cattle Given	10-20	21-25	26-30	31-35	36-40	Total	Year
No. of Marriages	2(2%)	4(4%)	26(25%)	43(41%)	31(29%)	106	1960
No. of Marriages	1(6%)	2(12%)	2(12%)	7(41%)	7(41%)	17	1961

Table 6. Showing the numbers of marriages registered at Nyamwigura Chief's (Baraza) Court.

Source: Nyamwigura Chief's (Baraza) Court 1960/61.

This figure however has remained stable for over one decade, for example in 1970 a High Court decision confirmed that the figure of 33 head of cattle represented a 'standard amount' of bridewealth among the Kuria<sup>1</sup>.

The price of cattle has been rising since colonial times and this also has presented considerable problems to the potential purchasers of marriage cattle. In 1948 the average price paid for a head of cattle in Tarime district was shs.91/-. A decade later the average price was up again by almost one hundred per cent (i.e. shs.167/-), and two decades after, the average cost of a cow was shs.901/-, a figure approximating a ten times rise within thirty years.

Therefore, although from the colonial times there has been a noticeable rise in the incomes of peasant households and wage earners, it cannot be said that this rise in peasant incomes would be sufficient to offset the ever rising cattle prices and that of industrial consumer goods. The effect of

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<sup>1</sup> See Nyakanga v. Mehengo (1971) H.C.D.270.

the rising cost of living, which is partly a result of greater dependence by peasant households on manufactured consumer goods, has led some of them to sell their cattle. In this sense, rises in cattle prices have served as an inducement to poorer households to sell their livestock in order to meet their essential needs<sup>1</sup>.

Using the cattle prices for 1973, Michael Kirwen concluded that "the purchase of twelve cows by an average [Kwaya] man would require his total income for a period of two years" (1979:93). In the case of the Kuria man, the period would be about five years, taking the average bridewealth to be thirty-three head of cattle at an average cost of shs.30,000/-. As would be expected, a wage earner receiving, for example, shs. 600/- in an urban centre barely makes any saving and the chances of accumulating money for a marriage are extremely slim.

Thus rises in bridewealth rates, the dissolution of the wider social bonds of reciprocity, and the often deteriorating economic conditions of peasant households, have contributed in varying degrees to the rise in the cost of marriage. This has created problems for poorer households which also need to secure wives for their unmarried men. Rises in bridewealth have also created an incentive for girls' fathers to marry them to those who can raise the largest number of cattle - most of these being the elders themselves (see Kitching 1980:226).

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1 Rises in the price of industrial consumer goods since the last decade have been tremendous and especially damaging to peasant households which depend on basic goods such as soap, paraffin and sugar. Matango found that between 1972 and 1976 the cost of an ox-plough and a hand hoe rose by over 200%, an axe was up by 267%, a bush knife by 183%, a bag of cement by 227%, an iron frame bed by 167%, a lantern by 229%, a gallon of paraffin by 205%, and a kilogramme of sugar went up by 250% (1976:78).

This condition has in turn encouraged conflicts between rich elders and their dependents over access to women. Anaclet Othiambo found intergeneration tensions in the Kuria village of Nyantira. One aspect of this tension was the existence of disputes over access to women. The elders complained for example that

since the establishment of the Nyantira Ujamaa village the young men had been showing no respect for elders. They were dancing with young women without taking precaution to find out whether such women were their mothers [i.e. married to men of their fathers' age-grade B.A.R.]<sup>1</sup> The young men on the other hand defended themselves saying that it was the elders who had lost self-respect by marrying very young women most of whom had been the young men's fiancées (1975:15) [Trans.B.A.R].

The problem of young men failing to meet the cost of their marriage has been encountered in other parts of Tanzania. In Bukwaya, Musoma District, Huber interviewed some young men, one of whom stated that the idea of giving bridewealth was not bad in itself, "but the amount was high for ordinary people. [One] may like to marry a certain girl, yet the amount of bridewealth her father demands is more than [one] can afford.... For these reasons many girls are not married for bridewealth since young men have no cows" (1973:265).

Kirwen, on the other hand, found that some Sukuma fathers, when faced with the situation of supporting unmarried over-aged daughters, bow to the inevitable and agree to a marriage in

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1 Under Kuria tradition any woman, no matter how young, may be classified as 'mother' to all persons who consider her husband as 'father'. This is so because on marriage a wife acquires the membership of her husband's age-grade and the social status which goes with it.

which there is no exchange of bridewealth. "They feel that a promise of bridewealth is better than no bridewealth at all" (1979:124).

Throughout Tanzania opposition to bridewealth has acquired national political significance and is now closely linked to the question of women's rights. For example, ninety-eight prospective University of Dar es Salaam entrants, men and women from all over the country, were asked in March 1977 to write an essay based on a newspaper report that the Women's Seminar held in Dar es Salaam had recommended to the government "to outlaw bride-price, polygamous marriages and other practices which create inequality between men and women"<sup>1</sup>. The candidates were required to give their opinion on the question of bridewealth and to say whether or not it should be prohibited by law. Although only eleven replies suggested that bridewealth should be prohibited by law, the majority of the replies were generally opposed to it. Forty respondents stated that the transfer of bridewealth was a source of inequality and often resulted in marital instability. Most of these responses indicated that a bride is either forced by her parents to marry a rich man she does not love or has to put up with constant interruptions of her cohabitation from parents who wish to enforce payment by recalling their daughter. Twenty-seven were of the opinion that bridewealth amounted to buying a wife, impoverished the family of the man and should be regulated. The rest of the respondents expressed diversity of views such as that fear of

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1 See Daily News 6/9/75. These candidates were drawn from Dodoma, Lindi, Mwanza and Dar es Salaam centres.

refunding bridewealth tended to maintain unhappy marriages, and that people should be educated on the evils of bridewealth.

The above study finds support from the views expressed in the national newspapers since the early 1970s. Some of the recent contributions have stressed that bridewealth has become transformed from a socially meaningful transfer of property between kinship groups to a commercial transaction between individuals; that young men cannot afford such transfers; and that the practice is exploitative to the husbands and oppressive to the women whose views on the selection of a spouse are not considered<sup>1</sup>.

The weight of these views is particularly heavy considering the socialist ideology of the post-colonial state and the particular influence of Nyerere<sup>2</sup>. One of the most quoted statements by President Nyerere on the equality of sexes is in his paper on socialism and rural development, where he states that:

[t]here was in most parts of Tanzania, an acceptance of one human inequality. Although we try to hide the fact, and despite the exaggeration which our critics have frequently indulged in, it is true that the women in traditional society were regarded as having a place in

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1 See Sunday News 26/10/75; 22/8/76; 15/4/79 and Daily News 6/10/75.

2 For instance, after President Nyerere's speech to the Women's Organisation (UWT) in March 1975, in which he criticised bridewealth, a UWT spokesman announced from Dodoma that the Women's Organisation intended to ask the Government to amend the Law of Marriage Act in order to make the transfer of bridewealth unlawful. However, the proposal was never made to the Government because of disagreements within the Organisation over the matter.

the community which was not only different, but was also to some extent inferior.... Although it is wrong to suggest that they have always been an oppressed group, it is true that within traditional society ill-treatment and enforced subservience could be their lot. This is certainly inconsistent with our socialist conception of the equality of all human beings and the right of all to live in security and freedom.... If we want our country to make full and quick progress now, it is essential that women live in terms of full equality with their fellow citizens who are men (1968:339).

President Nyerere spoke again in 1975 on the question of equality between sexes. In his inauguration speech of the International Women's Year, Nyerere stated that<sup>1</sup>

Equality between men and women will continue to be impossible if dowry is still going to be demanded ...because the mere fact that the man was required to pay something to get married to the woman spelled out inequality in a union that was supposed to be between equals. The former becomes the buyer and the latter the commodity.

An analysis of the various opinions publicly and privately expressed suggest clearly that there is strong pressure building up against bridewealth exchanges. Such opposition however does not emanate from the parents of the girls who are potential recipients; it is often expressed by political leaders and the young generation. The latter are naturally disappointed about their inability to obtain wives of their choice and, in the case of the girls, a husband they desire. The politicians, such as Nyerere, are concerned about bridewealth as an aspect of tradition which is inconsistent with general principles of individual freedom and equality of all citizens irrespective

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1 Extract from the Sunday News 9/3/75.

of their sex. Nyerere also recognises that bridewealth has ceased to be a traditional payment and its continuance has been disadvantageous to the women and the young generation.

Nyerere's ideas are fully reflected in the policy of the law and the state towards social relationships in Tanzania. Right from the end of the colonial period, state law has played a significant role in facilitating individual autonomy in the economic and social spheres, thereby further undermining the authority of the elders. The state views marriage as an individual relationship and its formation an individual decision. Individuals must be permitted to form marriage relationships without the intervention of the community. In particular, bridewealth should not be an impediment to marriage. Thus the Government Proposals on Uniform Law of Marriage (White Paper No.1) noted that "payment of bride price...in respect of customary law marriage was another problem facing many young men today. [They] are not able to marry because they do not have enough money or livestock to pay...as a result...young couples elope and live together...even if they are not properly married" (Para.14). In order to undermine the position of elders and perhaps end this problem, the Government decided to pass a law which would make bridewealth legally irrelevant. Indeed, section 41 of the Law of Marriage Act, which states in effect that payment of bridewealth is not essential for the validity of marriage, was a result of this concern. The Act defined marriage as a voluntary contract between individual men and women and assigned to the marriage contract rights and obligations which did not put into account the corporate aspect of marriage. The Act also set a minimum age for marriage at fifteen for a

woman and eighteen<sup>1</sup> for a man and further provided that contravention of the minimum age was an offence and parties to such a ceremony would not become legally married. By so providing, the law ensured that parents would be discouraged from giving their under-aged daughters in marriage. This would also keep girls longer in schools. After attaining the age of eighteen both parties could contract a valid marriage without the consent of parents and cohabitation lasting for at least two years led to a legal presumption of valid marriage. By providing for individual autonomy in the field of marriage, the state concretised into legal form a process which had been going on during the colonial period. This was a process in which the role of the individual was becoming prominent and that of the wider community was diminishing.

In the application of the law, state courts have given support to the policies of the post-colonial state to which reference has been made above. The state courts' practice since 1963 can be described as both enabling and regulatory. The facilitative role of courts in this sense has been to provide an institutional framework for enforcing claims and hearing disputes relating to bridewealth. The regulatory role has been to refuse to enforce claims of bridewealth under certain conditions and also to exert moderating influence in claims for its refund at the time of divorce. The two aspects are examined below.

A sample of civil cases registered at the Nyamwigura and

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1 See S.13, Law of Marriage Act No.5 of 1971.

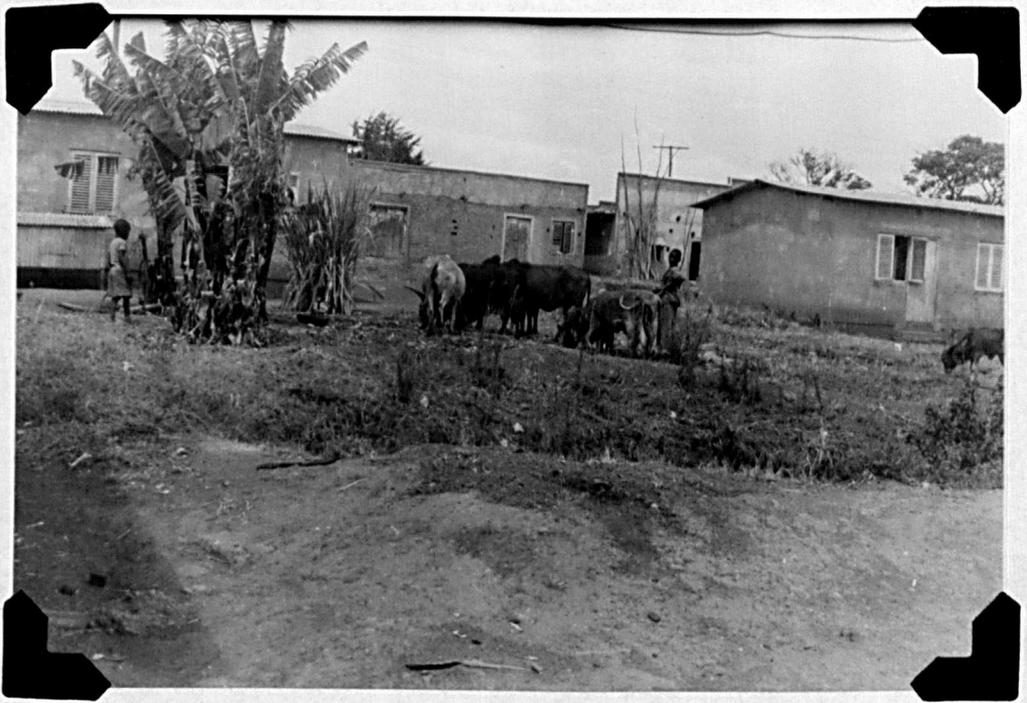


Figure 6.2. Cattle Herding in Tarime Township. (Photograph by Author)

Nyamwaga primary courts between 1970 and 1978, showed that on the average, 20% of all the civil cases involved bridewealth claims. This is a significant figure considering that such claims constituted over half of all matrimonial disputes registered in the relevant courts. Another sample collected from the Tarime district court for the period between 1968 and 1972 showed that appeals involving bridewealth issues accounted for an average of 47%. Given that the rates of disputes concerning bridewealth are so high, the regulatory power of the courts is no doubt significant.

An analysis of cases drawn from the Mara Region and those reported from other areas of Tanzania show a broad policy in which a bridewealth transaction is increasingly being individualised. For example, courts have held that bridewealth transfers are private agreements between a man and his prospective father-in-law and can only be enforced on proof of an agreement to pay. Where evidence of an agreement does not exist, courts have refused to imply it on the basis, for example, that elopement has occurred followed by cohabitation<sup>1</sup>. Secondly, the duty to exchange bridewealth has been restricted to the son-in-law and no-one in his family, including his father, is legally required to pay for him. If he does not possess property, the father-in-law has no means of enforcing such payments<sup>2</sup>.

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1 See, for example, Fatuma Amani v. Rashidi Athumani (1967) HCD 173; Ramadhani Mohamed v. Omari Ramadhani 1976 LRT n.8; Raphael Dibogo v. Frabianus Wambura 1975 LRT n.42, and Masera Mwita v. Matiko Muhabe (1968) HCD 490.

2 Masero Mwita v. Rioba Masero (1969) HCD 199.

Thirdly, in cases where a father has attempted to break cohabitation between his daughter and her husband, in order to enforce payment, courts have opposed such measures and condemned them as acts intended to disrupt families<sup>1</sup>.

Sawyer's study of the High Court decisions in Tanzania has shown a trend towards "the encouragement of individual as against communal ownership of property, and the promotion of the nuclear family of husband-wife-children at the expense of the wider tradition" (1977:127).

It is in the pursuit of freedom of the individual to select a spouse and to marry without being hindered by the requirement of giving bridewealth that courts have reflected the concerns of the law and state policy. To this extent it could be said that legal regulation of bridewealth in the post-colonial era has taken on a more subtle approach of promoting ideas and processes which facilitate or enable an individual to detach himself from the control of the larger community. As Kawawa pointed out, the removal of parental consent for any marriage after the parties have attained majority age will assist young people to make their marital choices without being obstructed by the demands of tradition (1971:375).

Apart from this, courts have also exercised a different kind of control over bridewealth. Under the Declaration Order, courts were empowered to hear applications for refund of marriage payments after divorce. They retained this power after

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1 Loijurus v. Ndiinga (1971) HCD 331.

the Law of Marriage Act came into force and have continued to exercise such powers. Rules 52-61 of the Declaration Order outline the principles courts are expected to consider when deciding the amount of marriage payments to be refunded. These include the guilt of the parties for the breakdown of the marriage, the length of the marriage and whether or not there are any children of the marriage.

The wide discretionary power of courts to decide the amount of bridewealth refundable has proved to be an extremely useful tool for regulating marriage payment at the divorce level. For instance, courts have been inclined to order smaller amounts of refund where children have been born. Similarly, in cases where the marriage has lasted for many years, courts have been disposed to order smaller refunds. One of the reasons for this is that, as the wife cannot remarry, her father would have great difficulty in raising the amount of refund.

Some of the recent cases on this point show that as superior courts get increasingly opposed to the practice of bridewealth transfers, they tend to become more inclined to order reduced amounts. In this regard, the practice of the primary courts has shown a tendency to order the refund of more cattle than the district and high courts. For instance, in 1971, the Nyamwaga primary court ordered a dissolution of a marriage in which thirty head of cattle had been given. After considering the duration of the marriage and the fact that there were children born, held that twenty head of cattle be refunded by the wife's father. On appeal to the Tarime district court by the wife's father, the figure was reduced to ten head<sup>1</sup>.

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1 Ruhinda Muhiri v. Marwa Wambura Mwanza High (PC) Civ.App. No.177/75 (14/9/76 Maganga J. (unreported)).

Perhaps consistent with Kuria litigation skills, the exercise of such control has exposed a number of courts to a series of tactics devised by claimants and defendants alike, intended to increase the chances of securing either an order for a larger refund or a reduced one. For instance, a few cases show that some Kuria husbands have sometimes denied that they had any children in their marriage in order to increase the chance of higher refunds being ordered<sup>1</sup>.

As the case shows, increased opposition to bridewealth transactions by the High Court could result in penalising a former husband to the advantage of a father-in-law, thus ironically giving the impression that those who demand high

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1 In Paulo Nyatutu v. Marwa Mwita, Mwanza High Court (PC) (Civ. App.No.23/73 (17/7/76) Mfalila J. (unreported), a former husband sued for refund of forty-one head of cattle. His marriage had lasted for seven years and had resulted in the birth of a daughter named Suzana Bhoke. The district court granted him conditional custody of the child and ordered that he should be refunded thirty head of cattle by his former father-in-law. The ex-husband appealed to the High Court where, in an attempt to secure an order for a higher figure, denied that there was any issue of the marriage. This tactic naturally annoyed the Judge who had the benefit of the lower court's record of proceedings. In a rather irritated way the appellate Judge noted that:

It is...surprising that for the sake of 41 head of cattle this person, if he is one, is now turning round and denying the existence of his daughter. I do not know when people like the respondent will get out of this dismal cattle mentality. It certainly is beyond my comprehension that a father can deny his daughter in order to win 41 head of cattle.

Mfalila J. then held that the district court award of thirty head of cattle "was not only extravagant but highly unreasonable both in law and in conscience". Having set aside the district court order, the appellate Judge refused to make any order for refund and instead condemned the appellant to pay the costs of the suit.

marriage payments stand a chance of retaining most of it when their daughters divorce. On the other hand, the fact that the courts will in future order smaller amounts of refund or nothing at all, would discourage potential husbands from offering any bridewealth, since they might never recover it should their marriage fail.

Since 1971, the regulatory role of courts has been re-enforced by the abolition of non-judicial divorce. In the past courts had power to dissolve marriages and order refund of bridewealth in the same suit. They retained a divorce certificate until all the cattle had been refunded<sup>1</sup>. Although arrangements for the wife's remarriage could be made in the meantime, to enable the father to obtain cattle from the second husband, the second marriage could not take place before the certificate was issued. Indeed Rule 49 of the Declaration Order provided that all the payments made by the second husband had to be done at the court for the refund decree to be promptly satisfied.

In the case of spouses not wishing to divorce in court, they retained a right to petition in court for the outstanding amount if a dispute occurred between them. After 1971 no one could petition for refund of bridewealth without first obtaining a divorce decree<sup>2</sup>. Today Kuria men who had got used to the idea that divorce is only possible when refund of marriage payments

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1 See, for example, Rule 50 GN.279/63, which codified that practice.

2 Sungwa Fumbuka v. Kasulucha (1968) HCD.84; Tenga v. Zinzi (1972) HCD.237; and Khamisi Mustafa v. Asia Abdu 1977 LRT n.54.

has been completed are often startled to find that their wives could petition for divorce and secure a decree before an order for refund has been made<sup>1</sup>. The new rule has operated to free women from the marriage bond irrespective of their father's ability to refund their former husband's marriage cattle.

In conclusion, the regulation of bridewealth using law and courts during the post-colonial era has been more sophisticated than that experienced in the earlier period. Secondly, the attitude of judicial officials has been generally receptive to the growing opposition to the practice. The High Court and to some extent the district courts have shown greater willingness to exercise more active control of bridewealth than the primary courts. The reasons for this difference in approach is that the former are more disposed to view bridewealth in the same way as political leaders and the young generation, largely due to their educational background and knowledge of the legal rules on which they base their decisions. The primary courts, on the other hand, are in closer contact with the rural (or traditional) society in

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1 For example in Morabu Chacha v. Marwa Wambura, Mwanza High Court Matr.Civ. App.No.25/76 (unreported), the deserted husband who knew where his wife was living did not wish to claim his fifty-six head of cattle given as bridewealth. Instead he continued to claim up to seven children born between his wife and her boy-friend with whom she had been cohabiting for many years. When the wife petitioned for divorce, her application was rejected by the primary court on the ground that bridewealth could not be refunded by the petitioner's father. On further appeal to the High Court, Mfalila J. dissolved the marriage and severely criticised the lower court for failing to apply the law properly and further advised the respondent husband to sue separately for his cattle.

which they operate and, being prone to the local influences, are more hesitant to play a leading part towards control of bridewealth.

Summary.

This Chapter has discussed two interrelated issues: the transformation of bridewealth from a pre-capitalist economic exchange to an individualised transaction; and the policy underlying colonial and post-colonial regulation of marriage payments and the use of law to achieve these policies.

In analysing the transformation of marriage payments, the Chapter considered bridewealth in pre-colonial and early colonial periods as part of a system of economic exchange between small-scale groups in which the circulation of livestock and women served wider aims. In such societies bridewealth functioned not only as a means of distribution of resources, but also as a basis for the establishment of significant affinal links. To that extent such transfers of resources, like other economic exchanges in these societies, was a tool for the realisation of wider goals.

This Chapter has also shown that, since marital exchanges were simply an outward expression of a broad complex of social and economic alliances, they tended to fluctuate quantitatively when economic conditions demanded, yet retaining their traditional (i.e. pre-capitalist) character throughout the pre-colonial period. During the colonial era, bridewealth continued to rise while simultaneously losing its traditional attributes. As the Kuria social relations were changing, bridewealth provided a means for elders to realise their lost incomes. Because of all this the

limitation laws imposed by the colonial state were ineffective in keeping down rates of marriage payments.

The post-colonial state, therefore, not only inherited the problem of inflated marriage payments, but also assumed power when most societies, including the Kuria, were undergoing rapid change - the change which had resulted in the loosening of the corporate character of marriage exchanges and transformed it into a commodity. Thus even though livestock continued to be given in marriage in even greater numbers than before, the exchange was increasingly losing most of its integrative functions. In its changed form, bridewealth became an economic subsidy for poorer households while in other situations serving as means for capital accumulation for the rich ( see also Snyder 1981:22).

Opposition to marriage payments came mainly from the young generation, women's groups, and politicians, whose views found legal expression in the Customary Law (Declaration) Order and the Law of Marriage Act. The law and courts in the post-colonial period came to play a supportive role for the anti-bridewealth feelings and, more generally, to uphold policies aimed at promoting individual autonomy from wider community control. At the same time courts appeared to show some tolerance to certain aspects of 'tradition' which appeared to persist.

CHAPTER SEVEN

THE CHANGING LEGAL STATUS OF CHILDREN

Introduction

This Chapter considers the law and practice governing the status of children in contemporary Kuria society. The changing legal status of children may only be properly understood if examined within the context of wider social relations which are also in flux. I have already examined aspects of this process in the preceding Chapters. Chapter Five showed how the role of the community in marriage has diminished. It raised issues concerning the decline of parental influence on their children's choice of spouses and the manner in which today the law and the state promotes individual autonomy. In Chapter Six the transformation of bridewealth was examined. It showed how a pre-capitalist economic exchange had become an individual transaction in which the former integrative functions of such an exchange had diminished if not altogether disappeared. Law and judicial practice tended increasingly to separate a marriage contract and its legal incidents from the exchange of bridewealth. The legal status of children has been affected by all these other changes.

Drawing mainly from court decisions, an attempt is made here to show how new rules governing the status of children and their relations with parents are continually being created and redefined, partly in anticipation<sup>of</sup> and partly in response to social change.

This Chapter is divided into three sections. After looking

at the law governing the affiliation of children and its relationship to pre-capitalist social and economic relations, I go on to discuss the intervention of the colonial law and state in regulating the parent and child relationship and the policies underlying such intervention. The final section looks at the relationship between the child and the state in the post-colonial era and the role of state law in promoting the autonomy of the child from parental control.

Affiliation of Children in Pre-Colonial Kuria Society.

The importance of children in pre-colonial Kuria society has been noted. Among other things, children provide labour power and represent security to their parents, whom they support in their old age. The process of socialisation has been described and the importance of children in agriculture, animal husbandry and defence has been emphasised. Through the marriages of their children elders also establish a variety of social and economic alliances.

The rules of affiliation reflect the high value the Kuria place on the control of children. The exchange of bridewealth is the means for transferring the rights over a woman's procreative powers to the lineage of her husband. As Rigby puts it, "[t]he transfer of the bridewealth (or nearly all of it) is the central act in the transfer of jural rights and obligations between the potential spouses and the groups of kin involved. [And] upon the transfer of bridewealth, the husband receives exclusive rights in genetricem". These rights remain vested in the family of the husband as long as bridewealth has not been refunded and "[i]n the event of his death [i.e. the husband], his close agnatic kin...can take these rights [through

widow inheritance system]" (1969:220). In another study of the Nyakyusa of Tanzania, Wilson found that, "a legal marriage is effected by the handing over of cattle...by the representatives of the bridegroom to the father of the bride" and where no bridewealth has been given, the children are retained by the wife's lineage unless subsequently redeemed by giving a cow. (1950:121). Such a union was described as 'a cock marriage'. As the Nyakyusa put it, "chickens follow the hen, a cock goes about by itself" (Wilson 1976:400). Others (Gluckman 1950; Evans-Pritchard 1951; Radcliffe-Brown 1950; and Goody 1973) have emphasised the significance of bridewealth transfers as the critical act which establishes the right of the husband or his kinsmen to claim all the children born to his wife.

Hans Cory documented the same rule among the Kuria. He found that all children born in wedlock "belong to the husband of their mother and are his heirs in all circumstances" (1945: para.72). As Cory noted, a "child of a married woman can never be an illegitimate child. It is the child of her husband whether he was present or absent at the time of conception"<sup>1</sup>. And Malcolm Ruel made similar observations concerning the role of bridewealth in determining the status of children. He states

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1 Cory (1945: Para.91) notes that "a child of a married woman can never be an illegitimate child. It is the child of her husband whether he was present or absent at the time of conception". See also paragraphs 92, 73, 86 and 89 of Cory and the case of Rosa d/o Wilbald v. Ebenezer s/o Yosia (1969) HCD.195.

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...the function of the bridewealth (ikihingo) is on a metaphysical level similar to the function of a log of wood (umuhingo) used to close the corral gateway at night: having been brought into the homestead or family, the bride and her future children are now kept there by the cattle paid to her kin. Bridewealth...establishes her conjugal alliance to her husband's [family] and affiliates her children to his descent line (1958:101-2).

Ruel stressed that the Kuria principle concerning bridewealth is a very clear and definite one, and it may be said that "it is the cattle which beget people i.e. the children which a man has begotten are legally his only if he has paid cattle for their mother" (1958:101). But if he has not given cattle, such children belong to the man who has, or (if no bridewealth has been paid) to the woman's father. As the Kuria saying goes, "what she-who-has-not-been-redeemed bears, they go" (Nyantaborooye aribora, bagende)(1958:101-2). Studies made by Baker (1935:113) and Chacha (1963) both confirm the above conclusions.

It may therefore be said that Kuria law governing the affiliation of children is based upon the relationship created by the transfer of bridewealth from the family of the husband to that of the children's mother at the time of the latter's marriage. The husband is then designated as the legal father of all the children his wife bears during his lifetime and after death.

Before discussing the legal enforcement of Kuria affiliation rules during the colonial period, I look at the social context in which these rules operated. More specifically, I examine the mode of male control over female sexuality and their reproductive potential, and how this control is a reflection of the existing conditions in pre-colonial Kuria society.

First, the military needs of the Kuria kept many men unmarried well past the age of puberty and had important implications for the control of females. Reference has been made in the previous chapters about the Kuria people being surrounded by hostile neighbours among whom the most important are the Masai (Baker 1935:52). It is most likely that the Kuria adopted the age-group system from their Nilo-Hamitic neighbours as a solution to their defence requirements. On the other hand, Levine and Sangere (1962:97-8) found that the Gusii did not adopt the age grade organisation although they also needed to defend themselves. De Wolf (1980:305-310) has recently contributed to this debate by suggesting that the migration of certain people may have contributed to the diffusion of the age-group organisation and other martial skills among some Bantu groups.

Whether or not the adoption of a military type social organisation by the Kuria was inspired by the need for defence, the age grades were the basis for conscripting an army. The Kuria people went to war several times during the pre-colonial period, to defend their herds and property. This obligation was deeply felt by all men. Young warriors were primarily the active fighters, who not only defended but also provoked war by raiding their neighbour's herds.

The warriors usually remained unmarried up to the age of thirty. A man's marriage might also be delayed because of the lack of livestock. The effect of all this was that at any one time there was a large number of unmarried men who were free to indulge in sexual relations with married or unmarried women.

As Baker observed, "[w]hen an individual has finished the ritual of circumcision, he is...a man or warrior and the first thing he does is to show his manliness which apart from prowess in war or cattle-thieving is demonstrated by success with the other sex. It is said that every bachelor has three concubines and every concubine three lovers" (1935:109).

Circumcised girls who were not yet married also had considerable sexual freedom. As Baker has noted "[t]he elders place no obstacles in the way of their daughters taking lovers, indeed they rather encourage it, since a pregnant woman will readily obtain a husband who is willing to pay a large bride-price [because] her condition is a guarantee against her being sterile" (1935:110). Since most circumcised girls married between the ages of fifteen and sixteen and men remained unmarried for many more years, their sexual liaisons were usually with young married women (some of whom might have been their girl-friends before they married). Baker's account suggests that such sexual freedom existed during both the pre-colonial and early colonial era.

Similar findings have been reported by Rigby in a more recent study of the Gogo people of central Tanzania. He notes, for example, that

After initiation and public acceptance of his change of status a Gogo youth begins to prepare himself for marriage. Because he is unlikely to be able to marry for some time due to the problem of high bridewealth, he might establish liaisons of some permanence with the young wives of older men through the mbuya relationships (1969:207).

Rigby observed that young Gogo men are expected to be sexually active before marriage, and usually have a great number of affairs before marriage.

Both Kuria and Gogo husbands are expected to tolerate their wives' affairs. Unless their wives are indiscreet no action will be taken (Rigby 1969:207-8). After having studied a number of adultery claims coming to the chiefs' courts during the period before 1935, Baker states that he formed the opinion that the Ba-Kuria, especially the old men, do not mind their wives committing adultery provided that the fact is not forced on the husband's notice. Cory has noted as well that in the opinion of Kuria elders, "the attitude of some askaris [i.e. servicemen] who made a fuss if their wives had children in their absence was just a kind of modern trouble-making" (1945: Para.91). Since there were always a large number of unmarried men in the Kuria society it was obviously necessary to have a relaxed attitude towards extra-marital sexual relations. Adultery was encouraged also by the practice of forcing a woman to marry against her will and by the practice of polygyny. After all, a woman having many co-wives would have infrequent congress with her husband<sup>1</sup>.

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1 Adrian Hastings notes that "The wider possibility of polygamy depends upon women marrying at an earlier age than men, and the more polygamous is a society the greater will be the difference in marrying age for the two sexes, particularly among the poor. In fact every sample survey of a society which has shown a rather high proportion of married men with more than one wife inevitably also reveals a large number of unmarried adult males. Again a high degree of polygamy frequently goes with a high level of bridewealth: the old and the rich secure extra wives, the young and the poor have to wait, making do perhaps with a secret arrangement with someone else's junior wife" (1973:36).

Thus we can see how the rules of affiliation protected the husband's rights over all children born to his wife regardless of who was the genitor. As Baker remarks, "[c]ustom has...provided the man who is too poor to marry with a legitimate means of gratifying his appetite, for he can become the lover of widows who are living in their deceased husband's village or of young girls who are married to old widowers" (1935:110) and, one might add, a lover of married women as well.

There are other rules which, while recognising the general principle that all children born to a married woman belong to her husband, were intended to deal with exceptional situations. For example, Cory reports the existence of a practice whereby a divorced woman or a widow could take all or some of her children to live with her in her new married home provided she had permission from the children's father or his heirs. Where such permission was granted, the new husband gave a head of cattle for each child to the children's father. Such children then belonged to the second husband unless their father decided to return the cattle. On the death of their father, such children could claim inheritance rights and in such a case their stepfather's cattle were returned. This practice assisted divorced or widowed women who did not want to leave their young children behind. It also protected women who did not have sons in their second marriage. Under Kuria law, a wife who did not have a son in her second marriage was entitled to return to her former husband. Her second husband had no right to stop her. As noted by Baker (1935:63) and Cory (1945: para.77) it was common for a wife to take her son to the second marriage if she did not have a son by her second husband.

(see also the Musoma District Books). It is now clear why still today some Kuria parents wishing to recover all their marriage cattle deny in court that their marriage has produced any children<sup>1</sup>.

Judicial Modification of the Kuria Law of Children.

During the colonial period in Tanzania legal enforcement of affiliation rules was based on two systems of law. The first was the Affiliation Ordinance derived from the English Bastardy Laws dating as far back as the Victorian era<sup>2</sup>. The Affiliation Ordinance was designed to deal with all affiliation and maintenance claims arising in respect of children born out of wedlock. All children born in wedlock were legally presumed legitimate until the contrary was proved. Although the law was for unmarried mothers, married women separated from their husbands who had children with other men could also sue under this Ordinance.

Jurisdiction under the Affiliation Ordinance was exercised exclusively by the Subordinate and the High Courts. A court order made under the Ordinance assigning paternity of a child to a named putative father did not operate automatically to 'legitimate' such a child. Under English law, as applied to Tanganyika, such a child was 'illegitimate'<sup>3</sup> and could be

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1 See note 1, p.156 and note 2, p.156.

2 See Halsbury's Laws of England, Vol.3 (3rd Ed.) 87.

3 Under English Common Law a child born out of wedlock was for ever illegitimate. In 1926 the Legitimacy Act provided for the legitimation of children born out of wedlock on the marriage of the child's parents. See Blackstone, Book 1, Chap.16 454 and Cretney 1974:310-311).

legitimated (i.e. affiliated to the kin group of its father) under the personal i.e. traditional law of its father<sup>1</sup>.

The second system of law which embraced the majority of the patrilineal peoples of Tanzania (including the Kuria) was based on the traditional (loosely termed customary) laws<sup>2</sup>. Unlike the Affiliation Ordinance, the customary laws recognised all children born to a married woman as belonging to the husband and <sup>then</sup> were accordingly affiliated to his descent line with full inheritance rights. Various personal laws concerning the affiliation of children, and <sup>the</sup> determination of custodial rights over them, were administered by the local courts under the general jurisdiction granted to them by the Native Courts Ordinance. Hence, throughout the British colonial period, the state intervened to regulate the status of children as much as it regulated bridewealth, divorce and other aspects of matrimonial life of the colonised people. Although it is not easy to say what proportion used courts or considered themselves

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1 See rules 181 and 182 of GN.279/63 and some cases decided under these rules. Birigi v. Wajamu (1971) HCD.266; Mtaki v. Mirambo (1970) HCD.188; Saidi v. Msamila (1970) HCD.228; Kinyanzi v. Bandawe (1970) HCD.311; and Teofrida v. Kanisius (1971) HCD.29.

2 During the colonial period, the term 'customary law' was not free from ambiguity, and jurisprudential issues as to whether it was law, custom, or religion or even a combination of all these, loomed large (Read 1972:212). After independence 'customary law' in Tanzania came to mean officially "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 in general as having the force of law, including any declaration or modification of customary law made or deemed to have been made under section 9A of the Judicature and Application of Laws Ordinance ..." See s.3(1) of the Interpretation of Laws and General Clauses Act 1972. For a recent reconsideration and analysis of the origins of customary law see Snyder (1981c).

bound by court pronouncements, it is nonetheless possible to outline the general features of colonial court intervention in relations between parent and child.

Throughout this period, both the Local and Subordinate Courts upheld the patrilineal principle that all children born to a married woman belonged to her husband<sup>1</sup>. Except in a few cases, superior courts throughout the East African territories followed this practice. For example, in Kenya, a number of reported cases show that the Court of Review upheld the rule and always awarded custodial rights to husbands with full knowledge that the latter were not the genitors of the children. As Kamau described the East African situation, it is the husband who is, under traditional law, entitled to the custody of the children borne by the wife during the subsistence of the marriage, even where such children are a result of her extra-marital relations with other men (1979:39).

Occasionally the Court of Review attempted to introduce the 'welfare of the child' doctrine in exceptional cases, as where cohabitation of the child's mother with a second man appeared stable and likely to result in a marriage. Even then

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1 By the term 'patrilineal principle' we mean a rule or principle of traditional law under which a father claimed absolute rights in all the children born to his wife. These included the right to be declared the father of the said children, the right to their custody irrespective of his suitability to have their custody and even if it was against the best interest of those children to be placed under his custody. For an earlier discussion of the principle see Rwezaura (1977).

the preponderance of judicial practice shows a clear adherence to the patrilineal principle<sup>1</sup>.

In Tanzania after the colonial period the patrilineal principle was codified in the Customary Law(Declaration)Order of 1963. Rules 125 and 175<sup>2</sup> declared that the husband has a right to all children born to his wife whether or not he is the genitor. The entry into force of the Declaration Order provided a more authoritative basis for the application of the patrilineal principle. Courts continued to apply the rule in all cases where children were born during desertion. Such desertions were in effect de facto divorces, but as bridewealth

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1 For instance in the case of Ngoko Nyandiko v. Kerubo Motanya (1955) 3 CRLR.5, the Kenya Court of Review refused to follow the decision in Momanyi Nyaberi v. Onwonga Nyamboga (1953) 1 CRLR.5 in which two years previously the same Court had granted legal custody to the husband and physical custody to the mother who was then maintaining a stable relationship with the children's natural father. The Court stated that "the customary law on this subject is clear and long established, namely that the children of any irregular union between the wife and a man other than the husband, as well as the children of the marriage belong to the husband". See also Read (1972:178-9).

2 Rule 125: If a husband returns to find his wife pregnant or having borne a child which cannot be his because of the length of his absence, several courses of action are open to him:

- (a) He can claim damages for adultery, refuse to accept the child as his and forgive his wife; the child then belongs to its maternal family.
- (b) He can claim damages for adultery, acknowledge the child as his and forgive his wife.
- (c) He can claim damages for adultery, divorce his wife; and the illegitimate child then belongs to the maternal family.

Rule 175: Children born in wedlock belong to the father.

had not been refunded<sup>1</sup>, the deserted man was still recognised as the legal husband and hence had rights over her children. For example, Justice Seaton, in the case of Mohamed Stabuli v. Mwanahamisi Selemani<sup>2</sup> applied the rule and stated that "birth during marriage was conclusive proof of legitimacy". In a later case, Kwikima Ag.J, stated that it was a settled rule among the patrilineal communities of Tanzania that all<sup>3</sup> children conceived during wedlock belonged to the husband no matter who was their natural father. In a case originating from Tarime district<sup>4</sup>, Chief Justice Saidi stated that "a child born during the subsistence of a lawful wedlock is presumed in law to be the child of the husband of its mother unless for good reason the husband repudiates paternity. This was a case in which a deserted husband sued for a declaration of paternity and custody of a child born during his wife's desertion. Some judges, however, while upholding the right of the husband to all the children born to his wife, introduced a qualification to the rule which was aimed at doing

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1 See, for example, Benjamin Kisoleka v. Bi. Elizabeth Josephat (1970) HCD.103 and Lengunyinya v. Lormasi (1971) HCD.260.

2 (1968) HCD.357.

3 Mgowa Madole v. Mgogolo Dododo 1973 LRT n.7.

4 Gaudencia Chacha v. Chacha Sinda, Mwanza High Court (PC) Civil App. No.42/72, Saidi C.J. (unreported).

what they considered to be in the best interest of the child<sup>1</sup>. In this way courts were able to introduce into traditional law a new legal concept derived from English law. This development had the effect of subordination of the patrilineal principle to the welfare of children.

Two significant factors must have led to the subordination of the patrilineal principle. First, superior courts which exercised matrimonial jurisdiction under the Matrimonial Causes Ordinance (Cap.374) were applying the welfare of the child principle in custody cases between married people where the paternity of the child was not in issue<sup>2</sup>. In such cases courts did not have to decide the question of the child's status as it was not relevant, but decided the question of which parent was entitled to the custody of the child. It is very possible that as the same courts were also deciding cases involving customary law (consciously or otherwise) they extended this principle to customary law cases.

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1 See for example Makende s/o Kisunte (1969) HCD.5 in which Saidi J. stated that "where the children have been born in another house and brought up in that house by the mother and another man and may not have known anything about their legal father and where there is no complaint that they have not been properly looked after, the best thing is to leave them with their mother. To move them from the home to which they have been accustomed, during their most impressionable years, would be very upsetting and might result in serious psychological consequences". Saidi J. added that "as is well known and upheld by this court, the welfare of the children whose custody is disputed is the first matter to be taken into consideration".

2 For an interesting study of the development of the doctrine of patria parens and the state takeover of parental powers in England see John Fitz (1979).

Secondly, the particular cases which were brought before the courts seemed to demand a different approach. Courts considered it rather harsh to separate children from their mother and natural father. In such cases courts were prepared to qualify the patrilineal principle. Judicial ingenuity in these cases led to the distinction being made between the right of the parent (i.e. the father) to the custody of the child and a separate right to have a child declared his 'legitimate' issue without obtaining custody<sup>1</sup>. Courts therefore declared the husband to be the father of the contested child and yet refused him the custodial rights, granting these instead to the child's mother. In addition such a father was given a right to arrange the marriage of his children and to receive the bridewealth in the case of daughters<sup>2</sup>. It was then hoped, by the court, that when the children matured they would decide where they wished to live. In some instances the welfare of the child principle was extended to cases where a traditional law wife applied for custody of her children after a

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1 See Mahende s/o Kisunte (1969) HCD.5 where the court, having found that the children belonged to the husband, ordered that they should stay with their mother but "their legal father owe[d] a duty to look after their maintenance and he [would be] entitled to arrange their marriages when they grow up and to receive dowry paid in respect of the marriage of any of the daughters".

2 See note 1 above.

divorce<sup>1</sup>.

The enactment of the Law of Marriage Act in 1971 led to greater uneasiness among some High Court judges as to the appropriateness of applying the patrilineal principle, even in its modified form. A few of them openly criticised the rule but still applied it. For example, in the case of Nchangwa Paul v. Marwa Mwita<sup>2</sup>, Mfalila J. noted that:

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- 1 A typical case is that of Waryoba d/o Katara v. Kirimi s/o Wangari (1969) HCD.6; in which, after dissolving their customary law marriage, the trial court awarded custody to the husband without considering whether or not it was in the best interest of the child to be with its father. Saidi J. stated that although the two lower courts had correctly found the husband to be the father of the child for whose custody he was applying, they however failed to take into account the welfare of the child because "[a]s the facts are, I am firmly of the view that the welfare of this child will be more secure if it remains in its mother's custody than its father's custody...."  
See also the judgment of Seaton J. in Ng'washi Kamwezi v. Bunga Kulaba (1969) HCD.267.
  - 2 Mwanza High Court (PC) Civil App.No.80/71; Mfalila J. (15/12/73) (unreported).

In recent years, particularly after the enactment of the Law of Marriage Act (see s.125(2)), courts have been more emphatic about the overriding importance of the welfare of the child principle. In the case of Siael Rwegasha v. Christian Rwegasha (Mwanza High Court (PC) Matrimonial Civ. App.No.25/77, unreported), a wife successfully petitioned for judicial separation. During the hearing of the case the husband informed the court that if the wife was determined to live apart from him it was entirely her choice provided that she gave up custody of all the five children of the marriage. To this remark Katiti J. replied that "it[might] be useful to the respondent to know that the times when the father's dictatorial powers over his children were recognised unquestionably, without regard to the interests of the children, have gone. It is my confirmed view that custody of children can no longer be equated with chattel ownership, where even the most unfit person would own chattels provided he has the purchasing power. In proceedings where custody, or the upbringing of a minor, is in question the court in deciding that question must have regard to the welfare of the minor, or infant, as the first and paramount consideration. The rights of parents whether under customary law or otherwise, and the wishes of the parents, whether impeachable or otherwise vis-a-vis the infants, can only be assessed and weighed in [light of the welfare of the said infants]".

The appellant's case is that the respondent [i.e. husband] is not entitled to this child because... she was made pregnant by another man while staying with her parents. I think this is true, that the respondent is not the father of this child.... The appellant has my sympathies but the law under which she married the respondent, that is Kuria customary law as expounded by the assessors in the Primary Court, is that whoever this child's father may be, she nonetheless belongs to the husband as she was born during the subsistence of the marriage. The rule may be harsh in practice, but it cannot be easily disturbed whatever the individual hardship.

Shortly after this decision, Mwakibete J. disregarded the patrilineal principle by rejecting an application of a husband for a child born during his wife's four year desertion<sup>1</sup>. He held that the husband had no right over the child because there was sufficient evidence to show that he did not have access to his wife during the relevant period. Two years later Maganga and Mfalila JJ., joined Mwakibete J. in holding that a husband did not have rights over a child born to his wife where there was evidence that he is not its natural father.

The first of the two cases came as an appeal from Musoma in which a husband claimed two children born to his wife during her desertion<sup>2</sup>. The parties were married according to Christian rites in 1961. The issue before the court was whether or not the said children were 'legitimate' issue of the marriage. In determining this question, Maganga J. applied the provisions of section 121 of the Evidence Act 1967 (as

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1 Luchiga Nkube v. Ngwalu Kalabo; Mwanza High Court (PC) Civil App.No.143/72 Mwakibete J. (unreported).

2 Richard Mapesa v. Rashidi Bwana 1978 LRT n.4.

amended by the Law of Marriage Act of 1971). The section provides in effect that a child born in wedlock is presumed legitimate till the contrary is proved. On this basis, Maganga J. concluded that the presumption of legitimacy had been rebutted and that the two children were born out of wedlock. He further expressed an opinion that Rule 175 of the Customary Law(Declaration)Order was not applicable where "children are admitted to have been fathered by a person other than the [husband]". "Such children", he added, "cannot be said to have been born in wedlock". Shortly thereafter Maganga J. was joined by Mfalila J., who held, in another case involving a similar legal point, that "all these problems regarding the status of children born in adulterous circumstances are purely a product of the confusion that has unwittingly befallen the construction of Rule 175 of the Declaration of Customary Law". He held therefore that Rule 175 dealt only with "children who were born to people married to one another [and hence] a natural product of the physical union between the husband and wife"<sup>1</sup>.

These two decisions are significant because, while purporting to follow customary law, they boldly rejected the earlier interpretation of Rule 175 in favour of a new meaning. As I shall show shortly, this approach left the rule with an outward appearance of traditional law while in substance transforming it completely. An examination of the two decisions shows three common characteristics: first the claimants (i.e. the husbands) admitted not having been

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1 1978 LRT. n.6.

responsible for the birth of the relevant children; secondly, the marriage between the claimants and the mothers of the children was subsisting at the time of the children's birth, and finally, in both cases the appellate judges did not rule that customary law (i.e. Rule 175) was inapplicable but instead held that there had been an error in the earlier courts' interpretation of Rule 175 and that this error had led to incorrect decisions. As Mfalila J. put it, "once a start is made with the correct translation of Rule 175 all the subsequent confusion disappears, hence I think that the cases cited by the district Magistrate in support of his judgment would not have been decided in the same way had the court started off with the correct translation of Rule 175".

According to Mfalila J., therefore, the correct translation of the rule is not that all children born to a married woman belong to her husband, as it has been held in earlier cases. Instead, children who belong to a husband are those who "are the natural product of the physical union between husband and wife".

Maganga J. arrived at a similar conclusion through a slightly different legal route. For example, he did not see any problem in the translation of the Rule. Using section 121 of the Evidence Act, Maganga argued that Rule 175 was subject to a "general principle of law that a child of a married woman is presumed to be legitimate, and her husband presumed to be the father, until the contrary is proved". In his view, where a claimant (i.e. husband) admits that he is not the natural father of the children born by his wife, such evidence

constitutes sufficient ground for rejecting his application, and such admission is also an admission that the children he is claiming are "illegitimate". As he put it, "The appellant [i.e. husband] cannot admit the illegitimacy of the children and at the same time claim that they belong to him".

Justice Maganga's modification of customary law lies in his introduction of an English legal principle relating to legitimacy of children into the sphere of African traditional law. Having done this, he had no difficulty in applying Rule 175 restrictively to exclude all children born in adulterous relations of the wife. As noted earlier in this chapter, traditional rules governing the affiliation of children are different from the English principle of legitimacy of children.

In another case involving a similar legal problem Katiti J. held that where children are born during the wife's desertion and where there is evidence that such children were a result of the wife's adultery, such evidence constitutes adequate basis for rebutting the presumption of legitimacy under section 121 of the Evidence Act. He held, therefore, that children born under such circumstances belong to the maternal family<sup>1</sup>.

Although not all High Court judges accept the new interpretation of Rule 175, there are indications that it will become acceptable to other judges unless the Court of Appeal

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1 Penina Mwita v. Charles Murimi Mwanza High Court (PC) Civil App. No.117/74 (unreported).

intervenes sooner<sup>1</sup>. It seems appropriate now to consider the background causes leading to the change in the Rule.

We examine first the development in the law relating to bridewealth. As noted in Chapter Six, both the Customary Law (Declaration) Order 1963 and the Law of Marriage Act 1971 provided that bridewealth was not an essential condition for the validity of any marriage. Judicial practice has also fully supported the above rules. Since 1963 courts have stated that a marriage may be contracted without giving bridewealth and that such marriage could be legally dissolved before any marriage payments are refunded. On the basis of such decisions, I concluded that since 1963 the practice of courts has been aimed at reducing the importance of bridewealth by severing its link with the legal incidents of marriage.

In purely legal terms, therefore, it could be said that where the affiliation of children to a husband's lineage is closely tied to his offering of bridewealth on marriage, it is most likely that changes in the law, whose effect is to render marriage payments legally irrelevant, must necessarily affect the legal status of children. In other words, where a deserted husband's basis for claiming a child is founded entirely on the existence of a marriage relationship, and where such relationship in turn is based on the transfer of bridewealth, it seems difficult for courts to hold, on the one hand, that transfer of marriage payments is not essential for the validity of a marriage (and its refund for divorce)

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1 I am not aware of any decision from the recently established Court of Appeal of Tanzania on this point.

and yet, on the other hand, that a husband who has been deserted for several years has a right to the children born to his wife (because his bridewealth has not been refunded).

One is bound, therefore, to disagree with Justice Mfalila's view that earlier interpretations of Rule 175 were a result of an incorrect translation of the Swahili version of the Rule into English. This view is supported neither by the sociological studies made in these societies and summarised in this Chapter, nor by Cory's own English versions of the patrilineal rules such as that of the Sukuma (1953) or of the Kuria (1945) from which most of the Declaration Order was drawn. I think it is fair to say that some judges simply decided that it was no longer appropriate to hold the patrilineal principle in the light of changes in the law of marriage and of bridewealth and social change generally. Legal change in the rules governing the status of children has come about as a result of a combination of legislative action and judicial ingenuity. The change has been slow and incremental. It would appear also that changes elsewhere, as in the case of changes in the Kuria law of bridewealth, have necessitated a need for a fresh look at other aspects of family law, including that of children. Hence, as already noted, change in the law governing affiliation of children was not a direct result of legislative action but has been initiated from the bench.

#### Disputes over the Control of Children.

This section deals with disputes relating to the control of children. It argues that the transformation of the Kuria

pre-capitalist social relations makes individuals desire to enlarge their immediate households. This desire is to some extent a response to the dissolution of wider social relations and is intended to strengthen the household labour force. Moreover, the rising cost of marriage and the penetration of commodity relations in the marriage relationship encourages husbands to seek maximum returns from their relationships with women.

In the previous section, emphasis was placed on the legal enforcement of affiliation rules and the transformation by courts of the patrilineal principle encapsulated in Rule 175. The background leading to the change of the Rule has been provided in order to account in part for the changes in the affiliation law. This explication is partial because disputes over the control of children need to be located in the wider economic relations. As Chapter Six showed, instead of strengthening wider social ties, bridewealth transfers and the marriage relations resulting from such transfer became matters for the concern of individuals and at most involved the household group. Furthermore, in the case of some rich peasants, a daughter's marriage payment formed an important source of wealth, while for the poorer families it provided substantial economic support. In the light of contemporary economic importance of matrimonial exchanges in the Kuria society, I argued that daughters were very valuable economic assets while sons were still valued as defenders of herds and providers for their parents during old age. Therefore, changes in the economy rather than weakening the desire for children have reinforced it.

The patrilineal principle which vests in the husband rights in all the children his wife bears must be seen, therefore, as providing useful armoury on which a husband draws to defend these rights. On the other hand, because the validity of the Kuria marriage is still tied to the payment of bridewealth, a son-in-law who fails to pay up has difficulties in claiming the children of the marriage. Thus disputes over children are not always as straightforward as they might appear at first instance. They often turn out to be disputes over bridewealth and over other property between affines. Elders, for example, use their daughters' children as means of putting pressure on their sons-in-law to pay up outstanding bridewealth instalments. On the other hand, where a daughter deserts her husband who has paid up all the bridewealth and goes to cohabit with another man, her children may be taken away from her and given to the deserted husband to dissuade him from claiming back his cattle. Some husbands deliberately avoid seeking refund of their marriage cattle in order to lay claim over the children their former wives will bear elsewhere. There are many examples of how various individuals exploit ambiguities in rules or simply manipulate fact situations in order to gain advantages or escape certain liabilities. Disputes involving rights in children provide a suitable illustration of this phenomenon.

Caroline Bledsoe's (1980) research among the Kpelle of Sierra Leone considers the ways in which status relations could be manipulated to gain individual advantages. She notes, for example, that the distribution of political and economic power in sections of Kpelle society can shape social definitions

of kinship. She notes that many people are quick to point out close kin ties to important leaders in the area, whether or not these ties can be documented, whereas deposed leaders quickly lose kin (1980:46). At a more personal level, Bledsoe found that men and women alike were engaged in a variety of 'manipulations' of marital statuses whenever it was advantageous to do so. For example, she states that men

usually insist that women with whom they are living have been 'turned over' to them [i.e. legally married] but they may swear that troublesome wives are only girlfriends whom they can discard with no legal penalties. Married women on the other hand, may try to prove they were not 'turned over' to poor men or men they have come to dislike, but may try to hold on to wealthy men even though they are not yet 'turned over' to them. Similarly, mothers may manipulate the social identity of their children's fathers in order to leave men they do not like or to get support from wealthy men (1980:7-8).

Such manipulations of status do not stop at an inter-personal level; they form strong arguments in local and superior courts in disputes over resources. And in such disputes, especially those involving marital statuses, courts have had to put up with what Bledsoe calls "a tangle of contradictory testimonies from numerous witnesses" (1980:8).

Simon Roberts (1977:241-260), Colin Murray (1977; 1976) and Francis Snyder (1981:216-46) observed similar manipulations of statuses among the Kgatla, the Basuto and the Banjal respectively. According to Murray, one of the most significant forces underlying the manipulation of personal status is to gain access to economic resources earned by young men from migrant labour in South Africa. He notes that, among the Basotho, the question whether one is married or not is often difficult to determine and because marriage comes about rather

gradually, conventional criteria for the "definition of marriage are difficult to apply" (1976:104). Such uncertainty always affects the determination of the paternity of children of such unions thus leading to a series of disputes and further manipulations of statuses. Although the Basotho accept that transfer of bridewealth affiliates to the husband's lineage all the children a wife bears, such an outcome is not certain where a husband has not given sufficient cattle. Where a man has given six head of cattle or less for his marriage, he has no claim whatsoever to any children he has begotten. On the other hand, if he has given ten head of cattle, the wife's family cannot easily dispute his legal right to the children. But whether or not the wife's natal family will dispute the paternity of children also depends on other factors, including whether the husband is living peacefully with his wife and whether his wife's relatives consider him acceptable. Thus in cases where the marriage is terminated through divorce, desertion, or the death of one spouse, and if the respective families do not get on well, there is likely to be dispute over the affiliation of children (Murray 1976:104). Thus the grey area regarding the status of the marriage may be exploited by the wife's relatives to deny the husband his children. In this process of tactical manipulation of rules and individual status and various fact situations, an estranged wife may prove a useful ally to her relatives as against her husband<sup>1</sup>.

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1 Barbara Mitchell (1980:33) found that in the lower courts of Tanga Region, about 75% of the cases involving disputes over custody of children occurred between divorcing couples who belonged to different ethnic groups. This would suggest that each party wanted the children to be brought up in his own community. There are other factors in the Tanga Region which might encourage disputes over children. These include cases of intermarriages between the patrilineal and matrilineal peoples residing in the area creating conflicting claims concerning the affiliation of children of such mixed marriages.

The Kuria data show interesting similarities to the foregoing studies. Reference has been made concerning a case<sup>1</sup> in which a man suing for the refund of bridewealth of forty-one head of cattle totally denied that he had a daughter in that marriage. His denial, as recognised by the appellate judge, was motivated by a desire to recover all his cattle since he was aware that birth of children in a marriage was a factor tending to reduce the amount of bridewealth refundable. In another case originating from the ward of Nyamwaga<sup>2</sup>, a husband, having successfully petitioned for divorce, claimed refund of his thirty head of cattle. But the primary court ordered that the husband be refunded twenty head of cattle because the marriage had lasted for many years and resulted in children. The husband unsuccessfully appealed to Tarime district court which reduced the original court order to ten head of cattle. Annoyed and puzzled at the result, the husband filed another claim at the same primary court, arguing that he did not want the children of the marriage but wanted full refund of his original twenty bridewealth cattle; he had already accepted ten head ordered by the district court. This claim was allowed by the primary court but overturned on appeal to the district court by the former father-in-law. The former son-in-law then appealed to the High Court, where Maganga J. (like Mfalila J. in the earlier case) was both surprised and annoyed. The appellate judge noted that the basis on which the appellant's claim was based was that

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1 Paulo Nyatutu v. Marwa Mwita, Mwanza High Court (PC) Civ. App. No. 23/73; Mfalila J. (17/7/76) (unreported).

2 Ruhinda Muhiri v. Marwa Wambura, Mwanza High Court (PC) Civ. App.No.174/75; Maganga J. (14/9/76) (unreported).

He did not want the issues of the marriage and he asserted that he should be refunded 20 head of cattle so that the children of the marriage should remain permanently with their grandfather, the respondent. In a surprise judgment the trial primary court gave judgment for the appellant. The record of the earlier case shows that the issue of custody of the children...was neither raised nor dealt with .... This is probably so because the appellant is more interested in cattle than the children. [Yet] he cannot ask the court to order the respondent to 'purchase' the children. This would amount to the court condoning a system akin to slavery. This appeal is devoid of any merit and...is dismissed with costs.

These two cases might appear to contradict my earlier assertion that Kuria elders are keen to acquire rights in children. Yet their desire for rights in children is not a blind pursuit of rights in children simply for its own sake but is based on a calculated tactical move in which children are sought only if their acquisition represents an economic gain. Sometimes a man who wishes to meet an immediate economic need may seek prompt refund of his cattle, while temporarily foregoing his rights in children. He will therefore seek to invoke an existing traditional rule which provides that in return for cattle a husband may allow his wife to take all the children of the marriage. In future when the husband's economic position improves, he may invoke another rule which permits him to redeem his children by giving a head of cattle for each child to his former father-in-law or the second husband of his former wife. Even then this would be yet another tactical move because if the children, especially the daughters, are already grown up he will, as soon as he gets them, give them in marriage, usually at a much higher bridewealth.

In such situations, the existence of a given rule, whether

traditional or imposed by the state, provides a basis for individuals to pursue their goals and merely invoke rules as justifications. Individuals bend rules to suit their needs while in other situations denying that such rules exist. Moore has remarked, "[s]ocial transactions usually take place in the service of objectives to which legal rules are merely ancillary shapers, enablers or impediments. Conformity to rules is seldom in itself the central objective" (1978:4).

For example, a Kuria man whose troublesome wife has deserted and gone to live with another man has a number of options. He may sue the adulterer and recover some cattle as damages and further petition for divorce and refund of bridewealth. On the other hand, he may decide to ignore the fact for a number of years, hoping thereafter to claim the children resulting from the wife's cohabitation with a lover<sup>1</sup>. The decision to act one way or the other will not so much depend on the existence of the rules but on his decision as to what is most advantageous. Nonetheless, the existence of the rules is significant; they provide a framework in which an

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1 In Morabu Chacha v. Marwa Wambura, Mwanza High Court Matr. Civ.App.No.25/76, a husband collected a total of seven children born during his wife's cohabitation with a lover. The husband did not seek to terminate this relationship because his wife who was three times younger than her husband had refused to cohabit with him despite all the pressure applied on her (see Chapter Five). Her boyfriend was also aware of the woman's status but as he did not possess 56 head of cattle to refund to her husband, he found it difficult to object to the taking of the children.

individual exercises his options and are part of his armour, or pitfalls to avoid.

One may thus appreciate the behaviour of a father who gave evidence that his daughter had been married for a longer period than she really had<sup>1</sup>, or one who denied the existence of his own daughter in a bridewealth refund suit. Both men were involved in a complex game in which the players tactfully shift positions, often assuming contradictory statuses as and when it suits them.

To conclude this discussion, I examine a case<sup>2</sup> which, in my opinion, encapsulates the argument of this section. A wife named Asha Meragane sued her husband named Hamisi Gorogoro, claiming thirty-two head of cattle and two goats which he had received as bridewealth on the marriage of his 'stepdaughter' named Amina Nyangi. The evidence showed that Amina Nyangi was a daughter of Asha Meragane and that she had been born during Asha's previous marriage to a man named Meruma Somote. Amina had been abandoned by both parents when she was only two months old and was consequently brought up by her maternal grandfather. Somote abandoned his child because his father-in-law had insisted on more cattle; since Somote had no cattle, he fled with his wife, leaving their child at the house of his in-laws where his wife had given birth.

A few years later Asha Meragane left her husband Meruma

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1 In Paulo Nyatutu's case note 1 page 156.

2 Hamisi Gorogoro v. Asha Meragane 1977 LRT n.41.

and married Hamisi Gorogoro, the defendant in the instant case. Hamisi Gorogoro had refunded Meruma's initial bridewealth before marrying Asha. This refund effectively dissolved Asha's marriage to Meruma. Meruma Somote then tried to claim his abandoned daughter. Asha's father refused to hand over his grandchild. In a civil suit which followed between Asha's father and his former son-in-law, the court held that Meruma Somote was the father of the child and therefore entitled to custody. Yet her father did not seek to enforce the court order. Instead he requested the man he had defeated in court to keep his granddaughter Amina until later because he did not have a home to which he could take Amina. When Amina had attained the age of about six, Meruma Somote approached his former father-in-law again and asked him whether he could keep Amina permanently in return for six head of cattle. As Asha's father did not have the cattle, he suggested that Meruma Somote should contact Hamisi Gorogoro - Asha's second husband - who would be prepared to keep his wife's child. Hamisi agreed and promptly gave the required cattle in return for Amina. Thereafter Amina lived with her mother and stepfather until she attained marriageable age. Despite his wife's protests, Hamisi arranged for Amina's marriage and obtained thirty-two head of cattle and two goats. Hamisi's apparent economic gain from Amina's marriage greatly pained his wife Asha, Amina's mother, all the more so because after receiving the bridewealth, Hamisi sold all the cattle at a local auction and kept the proceeds.

In these circumstances, Asha Meragane sued her husband, alleging that the latter had no right to receive Amina's

bridewealth, since he was not her father. At the primary court, and later at the district court, Asha invented her own story, in which she stated

that Amina Nyangi [was] her daughter by another man other than the appellant [i.e. Hamisi Gorogoro]. She said that she gave birth to Amina while she was still a young girl before she married the appellant; that Amina was fathered by a man called Mwita who is since deceased. When she married the appellant she left the child Amina with her parents but Amina had later to join and live with her when her father [i.e. Asha's father] parted with her stepmother so that there was no woman at her father's home who would look after the child Amina. She therefore took Amina to her new home where Amina continued to grow up until she reached marriageable age.

Despite the fact that Asha's story was contradicted by the evidence of her father, stepmother (who brought up Amina) and of her former husband Meruma Somote (Amina's natural father), the two lower courts believed her and ordered that the child belonged to the maternal side. Yet, as the appellate judge later remarked, "[b]oth [courts] took the easy way out without analysing the evidence of the various witnesses and concluded that Amina was illegitimate and that therefore the appellant had no claims over Amina". On discovering these complex arguments and conflicting evidence, the appellate judge decided "to look at the evidence of each witness much more closely". The court then came to the conclusion that "where a transfer of one's rights over his daughter is valid under customary law, such transfer includes the right of the transferee to receive the bride price on the marriage of the daughter".

This case includes a number of individuals each wanting to maximise gains from the particular relationship. First, on the birth of Amina, the father-in-law insisted on being

given more cattle, which he was justified to do under the Kuria law. However, he did not get the cattle because of the flight of his son-in-law. The former retained his granddaughter Amina, whom he expected to give in marriage, but before he could do so, Amina's father, having left his wife, tried to recover his daughter using the local court process. It may be speculated that Meremo Somote had no desire for the custody of the child, since he had not seen her from the time when she was two months old. Thus when he obtained a custody order he did not seek to enforce it. Somote simply needed an enforceable right in the child which could be reactivated at the right moment. Indeed when the child was six years old, he 'exchanged' her for some livestock and disappeared from the scene altogether. Amina's mother, having received nothing from the whole transaction, saw good cause for suing, hoping that she could bend the rules by distorting the facts. Indeed had the husband not been sufficiently firm Asha would have wrenched some cattle from him. As correctly noted by the appellate judge

I am satisfied that the respondent [i.e. Asha Meragane] is trying to ease out Meruma from his claims over Amina in order to stamp Amina with illegitimacy so that she can remain on the maternal side so that in turn [Asha] can have a right on the bride price paid for her [daughter]. But her claim that Amina was fathered by someone called Mwita was not supported by members of her immediate family so that I think these claims were baseless....

The facts of the case show that Somote was a poor man and although it is not clear why his wife Asha divorced him, it appears that she married a rich man who was able to

'redeem'<sup>1</sup> her from her first marriage and to make additional bridewealth payment to Asha's father. Secondly, Asha's father was aware that his new son-in-law, Hamisi, was wealthy. He therefore suggested to Meruma that he could contact Hamisi to transfer his rights in Amina. Meruma Somote's statement that he did not have a permanent home may have been true, and he probably did not remarry after Asha had left him, but Hamisi appears to have been a man of means and when he sold all the cattle given for Amina's marriage and opened up a retail business, he certainly augmented his economic position through commerce. Yet in gaining what must have been a large capital (of about Tshs. 32,000/-) he relied on a 'traditional' rule which permitted him, as Asha's husband, to acquire Amina<sup>2</sup>. The High Court, which in a previous case equated such a transaction to a sale of a daughter and described it as a system "akin to slavery", did not question this arrangement. As argued by the appellate judge:

If therefore Meruma Somote was Amina's legal father with all the legal rights of a father over his daughter it follows that he had the right to transfer his rights over his child to any other person in as

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- 1 According to Kuria law, a wife may be 'redeemed' (i.e. Kuborora) by her lover or any man wishing to marry her, by refunding directly to the husband the bridewealth he gave for her marriage. Sometimes a husband might initiate the process by suggesting to the wife to look for someone willing to redeem her. Where the husband still loves his wife and does not wish her to divorce him, no lover would compel a husband to accept such an arrangement.
  - 2 It seems that Amina was acquired by Hamisi because the latter was married to her mother (Cory 1945: Para.75). Thus, although it is the husband who gave the cattle and acquired the child, his rights were derived from Asha's association with him.

far as customary laws allowed him. The validity of what he did in transferring his rights over Amina to the appellant [ i.e. Hamisi Gorogoro ] was not disputed in the customary law of their tribe. It therefore appears to be valid in the parties' community for this kind of transfer to take place. The appellant on making the necessary customary payments therefore acquired the legal right of a father over the child Amina Nyangi. She therefore became his daughter in the same manner as she had been Meruma's before this transfer. This being the case all the rights of a father were passed to him including the right to receive bride price on the marriage of his daughter.

Courts did not object to this transaction as being contrary to public policy (or even as being illegal) because in the instant case all the parties except Asha consented to it. In the previous case, decided by Maganga J., the father-in-law was not prepared to take his daughter's children and make full refund of the bridewealth cattle. He therefore could not be forced into the transaction. Hamisi Gorogoro was on good terms with Asha's father. The latter must have been pleased that Hamisi had fulfilled all his bridewealth obligation to him and that, unlike the impecunious Meruma Somote, he had not absconded from his duties. This was probably the reason why Hamisi had his wife's family support in his legal battle with his wife Asha. Had this not been the case, perhaps no witnesses would have presented themselves or, if they had done so, would have given an unfavourable story in order to strengthen Asha's case. Asha thus lost the case, not only because she had no legal claim to Amina's marriage cattle but also because she was in dispute with a rich man - her husband, who had wider support including that of Asha's family.

All the disputants, given their relative strength and bargaining power, recognise that their economic success depends often upon exploiting the support they can muster from their

existing social ties - hence our discussion on manipulation of individual statuses. This support is often, though not always, founded on traditional terms of status relations and the rights to which such status gives rise. A man who discharged his 'traditional' duties to his father-in-law gained support from him in a state court. As noted by Moore, "[n]o man can hope to keep his head above water if he does not have the approval and support of his neighbours and kinsmen .... He may claim lands that should be his by any normative standards, and find that all local witnesses are against him. He may go to court expecting to get redress there, only to find that witnesses never turn up" (1978:74).

Although most of the parties who support a litigant may be motivated by ideas of reciprocity and traditional obligation, it is often possible for an emerging rich 'relative' or neighbour to 'harness' tradition in order to maximise his gains in a non-traditional economic sphere. This then, may explain why such individuals do not sever ties with their social milieu even though at times their relatives make claims on them which are subversive to capitalist ideas of accumulation. The success of a local rich man may well depend not so much on how effectively he can isolate himself from the 'traditional' ties of obligation, but rather<sup>on</sup> how he succeeds in using such ties to gain wealth while at the same time meeting some of the demands made on him. In my estimation, Hamisi Gorogoro meets this criterion very well.

Finally, under these circumstances, the position of a local court, manned by a 'foreign' civil servant who has no idea of the social context in which some of these disputes occur, may become a tool of contending parties who know better.

By assuming contradictory statuses and invoking rules from both the 'traditional' and the modern spheres, parties may easily manipulate state courts in order to win disputes. Perhaps one of the most interesting, if not equally humorous, incident related to me by an informant, involved a Kuria litigant who, having exhausted all the possible arguments in support of his case, thought he could improve on it by stating that the local court which had tried his case did so without having hoisted the national flag - a practice he had reckoned had some bearing on the local court's jurisdiction.

#### Summary.

In both pre-colonial times and later periods, children in Kuria society, as indeed elsewhere in Tanzania, were, and still are, considered to be resources for which individuals compete. In pre-colonial Kuria society children were desired as means for establishing wider alliances and as economic resources in matrimonial exchanges. They provided productive labour and were sources of old-age security and defenders of community values and wealth. In the colonial and later periods, children were still considered as resources. In the light of the dissolution of wider social ties of obligation and mutual economic support, a man's large family became more important as a source of emotional satisfaction and economic support. Hence, the desire for children intensified instead of declining and so did disputes relating to their acquisition. With marriage payments rising and becoming more burdensome to poor people, husbands were keen to acquire all children to which their wives gave birth. The traditional rules, such

as the patrilineal principle, provided the basic source of arguments for claiming children born in a wife's adultery.

Hence Rules 125 and 175 of the Customary Law (Declaration) Order were used by men to maintain relationships with women who had deserted them and in all cases to neutralise the effects of their adultery. As long as the rule was applied by courts, men with property were generally assured of getting the children of their wives. To this extent, the patrilineal principle was a typical male weapon used against women who wanted to free themselves from relationships they considered unacceptable. It could be said, therefore, that the change in Rule 175 by courts will enable women to terminate relationships considered burdensome, even if such women have no means to refund their husband's cattle. The change in the Rule will also enable men who have no means of meeting the cost of their marriage to maintain a relationship based on mutual consent between them and the respective women, while hoping to acquire rights in the children of the union at perhaps a smaller cost. In addition, if the courts order that a child born in such relationships belongs to the maternal side, as they are now doing, the wife's family might use their new bargaining power to gain out of court economic advantages from the contending parties. In this sense, judicial change of the patrilineal principle may be viewed not as a solution but as a continuation of the disputes over rights in children. On the other hand, it represents a clear policy in which the law and state provide support to individual initiative and autonomy from the wider community.

CHAPTER EIGHT

MARITAL RELATIONS IN A CHANGING ECONOMY

Introduction

This chapter discusses the effects of economic change on relations between spouses. In particular it examines the transformation of property relations within the Kuria household economy. I argue, for example, that the integration of the Kuria economy into a world system transformed the Kuria household production from subsistence to commodity production. This transformation occurred as part of a process of change affecting other aspects of society. For example, changes occurred in the traditional sexual division of labour as women became involved in commodity production. Social relations were radically transformed. The kinship system which had provided the framework for subsistence production was undermined thus preparing the way for the rejection by women of their economically subordinate role. Women's consciousness about the economic value of their labour power was facilitated by the fragmentation of the traditional forms of social security on which most of them depended. Women endeavoured to gain economic autonomy but were opposed by the men who considered themselves entitled to control their labour as in pre-colonial times. Thus marital conflicts and disputes over property resulted, often leading to marital tension and breakdown.

This chapter considers the above issues in three sections. After examining the economic importance of polygyny in a changing economy, I proceed, in the second section, to discuss the ways in which women have responded to such economic changes

and to the control of their labour by men. The last section deals with the role of state courts in the distribution of household assets and the underlying assumptions governing such allocation.

#### The Economic Importance of Polygyny.

According to a 1963 report of the United Nations Economic Commission for Africa, the major motive behind widespread polygyny in Africa is economic. The report notes that "a man with several wives commands more land, can produce more food for his household and can achieve a high status due to the wealth he can command" (U.N.ECA. 1963:5). Similar conclusions have been reached by researchers on specific African societies (Bledsoe 1980; Hay 1976; and Kitembo 1977) and in other more general studies (Boserup 1971 and Goody 1976). Esther Boserup has found that in many parts of Africa south of the Sahara "one third to one fourth of all married men have more than one wife" (1971:48). In Tanzania, for example, the crude polygyny rate has increased since 1957 from 1.20 to 1.25 in 1967 and the Mara region, according to the 1967 census figures, has a higher rate of 1.37<sup>1</sup>.

The study of polygyny in contemporary Kuria society, as in most of Africa south of the Sahara, reveals the extent of transformation of pre-capitalist property relations between spouses. By looking at the way in which men deploy their wives' labour in the modern economic sectors, we hope to show how this pre-capitalist relationship is now utilised under changed economic conditions to enhance the economic power of

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1 See Kitembo et al (1977:65-6).

elders.

Polygyny has been utilised to safeguard individual rights in rural land and sometimes as a means of land accumulation in areas where land shortage is occurring. For example, urban workers who wish to retain their land rights in the rural areas find it economic to marry a second wife. By allowing wives to join him at certain intervals, the husband is able to maintain a foothold in both the rural and urban economic sectors. The former provides the necessary old-age security and retirement benefits which wage employment does not usually provide.

Sending a wife back to the rural home to care for the farm, especially where she has children, may also provide a subtle excuse for the husband wishing to desert his wife without officially divorcing her. In such cases the husband takes another wife, the first one remaining married only in name. To some extent the rural wife may entertain hopes that her husband will come back to her and occasionally may receive token presents for herself and the children, thus keeping the public ignorant of the real situation. This form of unofficial divorce has some mutual economic advantages. The wife secures her maintenance from her husband's land, while looking after their children. The man, on the other hand, does not have to hire someone to look after his farm or the children.

Some rich urban dwellers working in government or in business find the system of polygyny equally useful when they want to expand their land holdings. For instance, James Holway (in Kisembo 1977) found that some rich men in Nairobi, Kenya, purchase a number of farms in the countryside in which

they place their 'common-law' wives, often without the knowledge of their official wives. This way of investment in land enables the urban dweller to accumulate land with the assistance of his wives and relatives. It is reported, for example, that after the expulsion of the Asian community from Uganda, Idi Amin handed some of their shops to his senior army officers. But since they could not manage these shops without resigning their jobs, they married some wives to help them. And others like Amin, who already had many wives, simply allocated these shops to them (Kisembo 1977:76). Comparative cases have been reported among the Kpelle of Liberia where, as noted by Bledsoe, wealthy people in Monrovia "buy land in remote areas for growing cash crops". By buying land they "retain or even increase their power over their rural wives and clients, who must comply with their demands if they want land to farm" (1980:119; see also Hastings 1973:40).

Government sponsored rural settlement schemes have also encouraged polygyny in post-colonial Tanzania. James Brain's study of a village settlement scheme shows that some men in Uluguru, Tanzania, who moved into Bwakira Chini in 1965, had to take another wife. As these men could not be accepted in the new settlement without being accompanied by their wives, and fearing that they might lose their land rights in their original villages if they ceased using it, "some of the Luguru men left their legal wives behind and picked up partners among the many divorcees living in Ukutu (1976:271).

In 1972 Njelu Kasaka found in Tabora area of Tanzania that wages paid for each working member of the family in the tobacco

farms of Matwiga Ujamaa village, induced husbands "to marry more than one wife". He also found that a man with many wives was allocated a larger family plot (Kisembo et al 1977: 68-9). Comparable findings were made by Lubowa at another Ujamaa village in Iringa, where a similar practice also favoured polygyny. Tobisson found that the 1974 rate of marriage among the Kuria people earmarked to join an Ujamaa village was exceptionally high, being 70% compared to 35% in 1975 and 38% in 1976. She concluded that this was due to the young men who had married quickly in time to qualify for allocation of land plots. Tobisson also noticed a "tendency for young married men who had previously been residing in their fathers' homesteads to register themselves as heads of households in order to acquire building sites [and land] of their own" (1980:57).

The need to obtain good pastures away from the Kuria highlands, where agricultural expansion has reduced pasture land and increased the risk of legal liability for cattle trespass and destruction of crops, has also encouraged polygyny among Kuria cattle keepers. More often in the past the dispersal of one's herds was done through the establishment of herding agreements with 'cattle friends'. Today, however, fewer people may be trusted to fulfil this function. Some men therefore tend to take the convenient alternative of marrying an additional wife who would be sent to live in a new area in order to look after the family herds.

During my fieldwork in Tarime district, I recorded a number of cases which show similar responses to the changing economic conditions. For instance, some shops at Nyamwaga

trading centre were being entirely run by women. In one case two co-wives were assisting one another to run their husband's business. Further inquiries showed that the men, who had to travel often away from their homes in search of merchandise, needed someone who could be trusted to run the shop for them, and naturally their wives seemed to them the best choice. In Tarime township, I found a few wives of rich businessmen managing shops, restaurants, guest houses and bars. When I interviewed a man who had previously married a third wife at a bridewealth of about Tsh. 35,000, he said that his first wife was in the village managing the farm and livestock; the second was operating a restaurant at a rural trading centre a few kilometres from Tarime; and the third was to run a newly established maize milling business in another area of the district.

These cases show a variety of situations in which polygyny has been utilised to meet changing economic circumstances. This adaptation partly explains why polygyny has not yet declined in most parts of Africa including Tanzania. That is why I think Sister Aquina is mistaken when she attributed a high incidence of polygyny in the newly established tea estates in Zimbabwe to "the fact that there was a high percentage of traditionalists and illiterates among the workers and little contact with agents of change such as teachers and missionaries" (Kisembo et al 1977:68).

It might be thought on the other hand that in areas where hoe agriculture has been partially replaced by the ox-plough and the tractor, the need for recruitment of additional wives

would not arise<sup>1</sup>. Yet this is not the case. The tractors used in most parts of Africa often turn the soil, but they neither break it, weed or harvest. The tendency therefore is for a farmer to require additional labour which may either be hired where this is possible or recruited through marriage. As Philip Raikes noted among some commercial wheat farmers in Mbulu district of Tanzania, "[i]n many cases, the acquisition of a new wife is a primary indicator of rich farmer status, the motives for this being largely economic - to gain access to more fields or supervisory labour or for such jobs as shop assistant" (1978:309).

In areas such as Tarime highlands, where ox-ploughs were introduced during the early British colonial period, women have become, since the 1940s, increasingly skilful in operating them "without male assistance" (Tobisson 1980:52).

Kuria data and studies made elsewhere in Tanzania show, therefore, that wives are employed in a variety of economic activities ranging from production of food for family consumption to commercial agriculture and trading. In this context, polygyny has become a means of gaining access to more land and labour for a variety of economic enterprises.

It is essential to emphasise that polygyny is not viewed in this section as the only form of marital relationship which permits the deployment and utilisation of women's labour power in the monetary economy. The use of polygyny is intended first,

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1 See, for example, Boserup's discussion of this development in areas of female farming affected by land shortage and population pressure (1970:31-35).

to focus more closely upon a group of rich elders whose accumulated wealth enables them to recruit additional labour power. Secondly, I use polygyny to illustrate the transformation of a type of family organisation which is considered by many people to be ' traditional' and therefore by implication to be pre-capitalist. By showing how polygyny functions in modern Kuria society and indeed as elsewhere in Africa, I have provided another dimension to the effects of capitalist penetration in rural Africa. Even though elders have continued to keep alive the ideological structure which for many generations has supported polygyny, the pressure of change in social relations throughout the Kuria society provide little scope for the sound functioning of such an ideology. Hence what emerges as disputes over property between spouses must be seen as one aspect of this change. In the next section, I examine such disputes and how these are related to the general transformation of the Kuria society.

Marital Disputes over Property Rights.

In Chapter Three I outlined the main features of the Kuria pre-colonial economy. In particular, I discussed the distribution of property rights between a man and his wives and the management function of the household head in the production process. The distribution of rights in livestock was especially mentioned to emphasise the controlling interest of each wife's 'house' to a particular category of livestock. The latter represented both a physical entity and a concept of procreation. A wife's house represented an essential unit in the Kuria household economy. It controlled the livestock given for the marriage of the daughters from which the sons of that house drew to meet the cost of their marriages.

In the agricultural sector a wife was in control of her granary from which she obtained food to feed her children and husband. She was often an active member of mutual work teams and, with the help of her husband, she was generally in control of her production duties. All Kuria wives were expected to contribute to the husband's granary called emongo, i.e. saving. The emongo, as already noted, was kept as a reserve against shortfalls in the crop harvests but was later converted into livestock during times of good harvest.

Underlying all the production process was an efficient kinship ideology which provided both the framework for production and the means of masking the economic aspect of labour, thus integrating kinship and property relations into one and the same thing.

The integration of the Kuria economy into a world system affected the production process in a number of ways. Sexual division of labour was blurred and so were the rules relating to the distribution of rights in property acquired outside the subsistence sector. Wives became producers for the world market as well as for domestic consumption. They had to work much harder under conditions where land fertility was on the decline and where their time had to be divided between subsistence and export production, often without the assistance of their school-age children. Sometimes the husbands were living in urban centres engaged in wage employment and wives had to learn to use ploughs and to market crops. The proceeds thereof were then turned over to their husbands.

Colonial taxation, by requiring men to cultivate given acreages and to pay tax, reinforced their claims on the proceeds from the cash crops. Contrary to the period when production was purely for subsistence, cash crop production marked an era when women's autonomy in production was curtailed considerably. By the end of the colonial period Chacha found that a Kuria husband had controlling "rights over maize, coffee, cotton, sesame, groundnuts and the finger millet stored in his granary [i.e. emongo]. Where the husband was deceased, his heir inherited similar rights. A married woman, on the other hand, had rights over sweet potatoes, vegetables, cassava and the finger millet stored in her granary (1963:41). Thus the man controlled all the cash crops, leaving the wife control over subsistence crops. In other economic spheres, where women were engaged in managing business concerns for their husbands, they collected the realised cash daily.

Hence, whether involved in commerce or export agriculture, women became increasingly aware that they were crucial to the wellbeing of their husbands. This realisation was one factor which contributed to the women seeking to participate in the management and use of the household resources. Claims brought in court by wives to seek distribution of matrimonial assets express vividly how women conceive their economic roles in marriage, thus indicating the profound changes taking place in the Kuria marital relations.

We begin with the case of Martha Robi, married in 1966 to a shopkeeper named Augustino Kinogo<sup>1</sup>. She deserted two years later after which her husband successfully petitioned at the Tarime primary court for a decree of divorce. Following the pronouncement of the divorce decree, Martha filed at the same court a claim against Augustino on the basis of what she described as a "salary due to her as a former wife". The primary court awarded her 180 shs. In his appeal to the Tarime district court, Augustino expressed surprise over the court's decision to require him to pay a salary to his wife. In his memorandum of appeal he stated that it was surprising that: "the respondent should ask me to pay her a salary while she is my former wife and while we did business together we used all the profits for our maintenance and shared the loss between us" [Trans. B.A.R.].

Two positions were taken by the parties in the foregoing case. The claimant wife stressed her right to be compensated

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1 Martha Robi Timotheo v. Augustino Kinogo, Tarime (P.C.) Civil Case No. 130/68. (Unreported)

as a former wife and a shop-assistant of her husband. The husband, however, defended on the ground that the parties were man and wife and it was absurd for the claimant to talk of a salary being due to her. It should be noted that the use of the terminology such as 'salary' was not accidental. It reflects the views and attitudes of many women concerning the appropriation of their labour power and their relationship with elders. Frequently women have claimed compensation from their husbands at the time of divorce, framing their claims in varying language couched in the metaphor of employer/employee relationships.

The case of Kaguri Mchuma v. Tantu Marwa<sup>1</sup> provides another illustration. In that case a wife successfully petitioned for divorce and further claimed what she described as "kiinua mgongo", meaning a type of severance allowance usually given to employees on the termination of their employment. The term also is applied to pension payments. As noted earlier, husbands have consistently defended against such claims saying that the claimants are their wives and ought not to be compensated.

The importance of these and similar disputes occurring between spouses throughout Tanzania is that wives feel that they have a right to be compensated. This feeling is evidence that women do recognise the economic value of their labour power and the extent to which their role in production has

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1 Kaguri Mchuma v. Tantu Marwa, Mwanza High Court (P.C.) Civil Appeal No. 34/77 (unreported).

enriched their husbands. The usual occasion on which married women take the opportunity to make such claims is divorce. Dissolution of marriage in contemporary Kuria, or indeed in most Tanzanian communities, brings into sharp focus the economic precariousness of a peasant wife who not only lacks land for growing food but sometimes may be too old to make a living unassisted. Some wives are known to have objected to a divorce on the ground that they were too old to be divorced as they could not find other men to support them.

As noted earlier, the evolution of land rights from communal towards individual tenure and the fact that in some areas land has become a saleable commodity (even though not legally so), has meant that divorced women cannot obtain free land for use without associating with men either as wives or as relatives.

In the light of loosening kinship ties and intensified land shortage, the duty of providing for a former wife has become increasingly concentrated on the husband. Most of the young women who divorce do not wish to remarry. They prefer going to an urban centre where they expect to start a new life. Others who return to their natal homes soon realise that they are not considered by their parents or their fathers' heirs (where the former are dead) as belonging there. They are seen rather as 'transit lounge' travellers waiting for their next flight into a second marriage. In most patrilineal societies, including that of the Kuria, daughters have no recognised inheritance rights in land. This lack of rural economic base makes them desire to leave for the urban centres. As remarked by Deborah Bryceson, many women decide to migrate into urban

centres because " they have far less security of livelihood in the village than boys [who can inherit land]" (1980:20).

In traditional Kuria society, a practice known as 'to untie' or 'to redeem' a married woman (i.e. Kubohorora) was commonly accepted as one way by which a wife could divorce her husband without having to return to her father<sup>1</sup>. In such cases, a dissatisfied wife could find a lover who was prepared to refund directly the husband's cattle and marry her. Her father was usually informed after the event and often did not object if the new son-in-law was not otherwise ineligible to marry her. This arrangement was considered convenient as it deferred the father's liability to refund his first son-in-law's cattle.

Today the practice has declined considerably and only occurs in cases where the breakdown of the first marriage is a result of the wife's adultery with the man wishing to 'untie' her. The decline of the practice has been initiated by the women who desire to break away from what Bryceson calls "the intricate web of pre-capitalist male control over their labour" (1980:10). It is unlikely, therefore, that a Kuria daughter who wishes to terminate a marriage relationship without seeking to remarry would be looked upon with sympathy either by a father or his male heir. Wherever possible she

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1 The process of 'untying' a wife could be initiated also by a husband who wishes to divorce his wife. Baker notes that where a husband "wishes to get rid of his wife, perhaps he suspects her of bewitching his cattle or family, he turns her out of his [homestead], telling her to find some man who is willing to marry her and to pay back the cattle paid by the husband as bride-price...." (1935:126).

may be allowed to stay as a guest until she can find a suitable husband<sup>1</sup>.

The need for security during old age motivated older women to initiate a separation by moving away from their husbands' homesteads with their children to other parts of the district. Such women often took all the cattle assigned to their 'houses'. This practice is reported to have begun during the colonial period and has continued ever since. Such migrations were designed to protect the son's cattle from the encroachment of the husband. As most Kuria elders were so often concerned to safeguard their reputation in the clan and among their peers, they did nothing to stop their wives from taking this step, nor did they complain publicly about the matter. They wished to keep the neighbours ignorant and to make believe that the movement of the wife was planned. This pretence was not difficult to maintain since other Kuria men were moving their wives during the same period to areas of better pastureland in the Mara river valley.

Once a wife moved in this way, she was still considered married and as part of her husband's household. By this technique she avoided exposing her father to the economically damaging claim of refund of bridewealth while at the same time

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1 The Mara Regional Party Secretary, who is also a member of Parliament, expressed the view during the debates on the Law of Marriage Bill, that as women were usually expected to remarry on divorce, it was not right for the law to give them a right to a large share of matrimonial assets especially cattle (Hansard, January 21st 1971:132). Harrell-Bond and Rijnsdorp (in Roberts 1976:212) found in Sierra Leone that a divorced daughter's remarriage is always considered with favour as her family "will not welcome the idea of her continuing indefinitely as their dependent".

protecting her children's inheritance. Cory has cited a case of a Kuria elder who was deserted by his wife under similar circumstances but for fifteen years, "his brothers...prevented him from reclaiming the bridewealth he [had] paid for her" (1945:46). Thus in theory the husband was entitled to visit his wife and children but the circumstances were such that men would not wish to make such visits for fear that their wives would poison or bewitch them.

This practice of emigration was an ingenious method of avoiding the escalation of marital conflicts while salvaging part of the marriage relationship, particularly for the sake of the children who would otherwise lose their mother's moral and material support. The practice also enabled the wife to continue bearing legitimate issue without having to cohabit with her husband if she did not wish to do so<sup>1</sup>.

In recent years and in view of the decline of the practice of 'untying' married women, a number of wives have emigrated to distant places, sometimes beyond the district. The elders explain this trend as being related to the 'rebelliousness' of womenfolk. One ex-colonial chief informed me that they move partly to gain greater freedom from their husbands and partly to save their sons' inheritance. He said that he had suffered a similar experience when his wife emigrated to Mugumu district

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1 Under Rule 175 of GN.279/63, all children born in wedlock belong to the husband no matter who their genitor may be. For a fuller discussion of the recent changes affecting this rule see Rwezaura (1977:67-99) and Chapter Seven of this study.

after alleging that he had 'squandered' the bridewealth cattle given for the marriage of her four daughters. The husband was unaware that she had plans to move until one day he returned home, after visiting a relative for a few days, to find she was gone. She took all her daughters' cattle and everything in the house, including all the grain. The former chief added that it was common for wives who had misunderstandings with their husbands to emigrate with their children to other areas of the district.

The general trend for most deserting wives is to refuse to go back to their natal homes if it can be avoided. But such tactical withdrawal, as practised by Kuria wives, is only available to women who are older and have sons to protect them against possible attacks from the deserted husbands. For, as noted before, the weight of the brothers' influence noted by Cory in 1945 and the public reputation consciousness of the Kuria elder noted by Ruel in 1958<sup>1</sup>, have declined over the years. It is not uncommon today for husbands to travel long distances in urban centres looking for their 'escapee' wives and returning them forcibly to their natal homes where they are then handed

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1 According to Ruel, Kuria elders have the tradition of showing off through singing, usually at beer parties. On such occasions an elder who is known in the neighbourhood to have behaved in a mean or dishonourable way cannot 'broadcast' his self-praise without risking a counter attack from his neighbours who know him better. As Ruel has noted, "when a man has sung his own praises with little cause, another may succeed him, suggesting by contrast the lack of weight which the former's self-praise has. On these occasions a man's pride may suffer severe setbacks and those who have little cause for self-praise will usually be forced to sit silent in the company of others" (1958:143-4).

over, usually in the presence of local village leaders, to act as witnesses. The motive, of course, is to remove any obstacles in the way of recovering their marriage cattle<sup>1</sup>.

Grown up sons are usually behind the mother's decision to emigrate. They assist in looking for a new area to live and often sons are prepared to sever relations with their difficult fathers where it seems economic to do so. All this is possible, however, only where land is still easily accessible. When land for new settlements is no longer available, the options of some Kuria wives will have thus become further narrowed.

To sum up, married women in contemporary Kuria society have become more determined to gain access to matrimonial assets, and they employ a variety of means to that end. Some use state courts and others simply sever relations with their husbands as in the case of emigrant wives who go to urban centres or settle in other areas of the district. Under these circumstances it seems necessary to examine the policy of the law and state courts in dealing with the conflict between spouses over property. The next section examines this issue.

#### Judicial Allocation of Matrimonial Assets.

This section begins with a brief account of the traditional system which excluded women from the sphere of public affairs,

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1 Traditionally, a husband whose wife has disappeared without reporting to her father is counted as still being with the husband and the latter cannot recover his cattle without handing over the wife to her family.

including litigation in state courts, then I consider the role of state courts in reallocating matrimonial assets and its impact on marital relations.

Although in the early colonial period traditional dispute settlement institutions were legally replaced by colonial state courts, matrimonial disputes in most of rural Tanzania continued to be settled within the informal sphere of lineage and family groups. Women were often under social pressure not to take their matrimonial problems to institutions which were closely identified with the colonial administration. Among the Haya people of Bukoba, for example, a wife who defied her husband's family and complained to the official courts, risked exclusion from her children and was considered an enemy of her husband's family. She also risked her chances of remarriage as she was considered very dangerous<sup>1</sup>.

Among many societies in Africa, a wife who had children in her marriage could not completely sever her affinal ties. Thus although she was legally divorced, she was expected to return to her former husband, at appropriate moments, to partake in a variety of rites concerning her children. Under these conditions a former wife was naturally anxious not to endanger

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1 In her study of Tanga region, Barbara Mitchell found that one of the reasons why divorced women were hesitant to pursue their property rights in courts was that they were "afraid that the seeking of assets from a former spouse [would] appear greedy and make remarriage more difficult or impossible, [and] in some areas, fear of witchcraft prevented women from seeking division of matrimonial assets"(1980:28).

her chances of maintaining amicable relations with her former affines. Hence, despite the readiness of the Haya people to take other kinds of disputes to courts (DuBow 1973:114-126), a recent survey of primary and district court cases in the area showed that only a small number of matrimonial disputes were taken to court<sup>1</sup>.

In colonial Kuria society, public opinion against wives taking their matrimonial problems to courts was equally great. Wives were expected to raise their marital disagreements with affines, such as the mother-in-law or other close female relations. Where this preliminary effort at resolving the dispute failed, a wife could return to her natal home to begin further mediation.

The limits of action imposed on the Kuria wife in cases of matrimonial difficulty reflected the exclusion of women from the sphere of public affairs. Even in contemporary Kuria society, the exclusion of women from wider social interaction is readily observed in some Ujamaa villages. As Tobisson observed in Nyamwigura, "[t]he exclusion of women from village affairs is manifested also in political discussions and decision making" (1980:108). Tobisson further notes that the participation of women at the village assembly "is negligible" and only three out of the total of twenty-five village councillors are women.

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1 My study of civil cases decided between 1971 and 1979 in two primary courts situated in two districts of Kagera region showed that less than six percent of all the cases concerned matrimonial disputes. This figure contrasts sharply with thirty-six percent of cases involving land disputes and twenty-nine percent relating to cash debts.

Close examination of these three women showed that they were not representative of Kuria village women. Two were described as "widows who maintain themselves and their children without support from their deceased husband's kin" and the third "had recently returned from Dar-es-Salaam where she lived for many years while her husband served in the army". In a way, these women were accepted as some type of honorary men.

Just as the Kuria elders were instrumental in regulating the process leading to marriage (Chapter Five), they were also expected to decide when it would be terminated. As its termination involved a difficult decision of refunding bride-wealth, such decision could be made by those who controlled the wealth of the community. Very often parents of the woman were inclined to delay the decision by advising, and even compelling, the wife to return to her husband<sup>1</sup>. As noted in the preceding section, the continued reluctance of the father to refund his daughter's marriage cattle, led to the woman looking for a man to 'untie' her.

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1 As noted by Baker where a man has expelled his wife from his house and she has returned to her father, in "such cases the woman's father will rarely, if ever, voluntarily repay the amount due, [i.e. the bridewealth] even if the girl takes refuge in the village [i.e. her father's homestead] pending her marriage with another man" (1935: 126). Harrell-Bond has noted that in Sierra Leone when a daughter deserts her husband, her parents usually try to persuade her to return to him because they "realise that if the separation continues, the husband may...demand a divorce which would include the return of the 'dowry' and all other contributions he has made" (1977:204).

Often, however, the husband ignored the wife's desertion and later laid a claim on all the children born during the desertion. Alternatively he could sue the man cohabiting with his wife and recover damages, at the same time compelling his wife, by a court order, to return to him. A husband who could not wait for the wife to bear children because he needed the cattle urgently often sued his father-in-law to force a refund of his marriage cattle. As noted by Baker, "it is rare to find a man who will return his daughter's bride-price, except on the order of a court" (1935:113). Huber also found that the desire to recover bridewealth was the main motive for instituting court divorce (1973:178). On the whole it can be said that during the early colonial period women were excluded from participating in public affairs which included court appearances. Under these circumstances disputes relating to the allocation of matrimonial property of which the most important was livestock were between the elders.

During the latter part of the colonial period, state courts were used more frequently by men. This was partly a result of the decline of the political power and influence of the elders and also a result of the changes in the economy and social relations which seemed to require the intervention of a more authoritative tribunal. Thus by the 1950s the Kuria people were described as being very litigious. Malcolm Ruel's study of the litigation figures for 1956, covering all except three districts of Tanganyika, showed that the North Mara district had the second highest ratio of the total civil cases per court. During the same year the number of appeals to the District Commissioner's Court per original cases heard in the native

courts was also the highest in the whole country. Cases originating from the Kuria chiefdoms accounted for about 68% which was a much higher figure having regard to the population ratio per court within the whole district (1958:175).

Therefore, although the Kuria elders excluded their women from using courts, they were themselves very deeply involved in litigation, often relating to livestock. But women came to be involved also, at first rather indirectly as witnesses for male litigants. Later women were encouraged to petition for divorce by the colonial state. A study made among the neighbouring Luo, Kisii and Kuria people show how the colonial state encouraged women to seek redress in courts. It is reported that in 1949 the Provincial Commissioner of Nyanza issued an administrative instruction to his subordinate officials in the Province noting that although a woman did not have a right under traditional custom to seek divorce from her husband "...modern developments, which forbid forced marriages, also enable a woman to plead before the indigenous elders and the formal Chiefs' baraza for an annulment of her marriage". The Commissioner strongly advised that in the more advanced areas of the Province it was fair to permit a woman to obtain a court decree of divorce if she first referred the dispute to a Chiefs' baraza. Therefore,

...once this custom of obtaining a court decree that a divorce has taken place becomes widespread, cases concerning the custody of children will become very much easier to decide justly. At the moment there is always the difficulty of knowing when a woman ceased to be the wife of one man and became the wife of another. (Knowles 1961:11).

As more women approached these tribunals for divorce and

other relief, it became difficult to keep them away. It is reported for example that in 1954 the Luo section of the South Nyanza Customary Law Panel came to the conclusion that a divorce could be granted in cases where the courts were satisfied that the girl was living under very difficult conditions which impaired her health "even if her parents or guardians [were] opposed to the divorce" (cited in Knowles 1961:11). As a result of this decision, Knowles' subsequent study found that of the

one hundred divorce suits filed under customary law in South Nyanza African Courts in 1954 revealed petitions alleging widely different grounds for divorce. They included physical cruelty, failure to provide necessities such as clothing, soap or a hut .... All the petitions except three were filed by women. The three petitions filed by men occurred among the Kuria tribe. In each case the husband alleged that his wife had become a prostitute, and by filing a divorce suit sought to exert pressure on reluctant relatives to refund his bride-price.

Through interviews with elders, Knowles found that the volume of divorce was increasing and one of the reasons given as causing greater marital breakdown was the fact that women were demanding luxury consumer goods such as clothes, shoes and ornaments from their husbands. As some men would not offer these goods, women deserted them and went away into urban centres to earn money, or gave themselves to richer men who were prepared to offer these items. The elders also stated that women were getting drunk and becoming difficult to control. In the pre-colonial times women were not allowed to drink alcohol, but since beer was now available in the bars it was not possible to enforce the rule. Just as livestock had slipped out of the elders' monopoly control through the open market, so

did alcohol. Some women were reported to have 'stolen' their husbands' money and others to have obtained consumer goods such as clothes without their husbands' knowledge or approval, which caused further disputes. Men pressed with cash problems sold the grain reserves before they were sure of the next year's harvests. Others sold their cash crops and used the money to purchase goods which were not of direct benefit to the family. Goods such as bicycles are known to have been a preserve of men, as women and children were not allowed to ride them (Cf. Culwick 1944:28).

Thus a combination of economic, social and cultural change gave rise to a variety of conflicts between spouses which increasingly found their way into state courts. As I noted earlier, most of these disputes were based on the rejection by women of the traditional constraints. This situation was correctly summarised by Iona Mayer, whose remarks on the neighbouring Gusii people are generally applicable to the Kuria. She notes that

Two generations of Gusii had accepted some colonial-style modernisation without seriously blurring the patriarchal lines. Men talked most about honouring 'the ways of our ancestors', but they had also taken up prestigious innovations like modern dress, ploughing, cash-cropping, and largely monopolised them just as they had monopolised iron-work since long ago - leaving the goatskin-clad women with their hand-made utensils of clay and stone, wood and grass, to get on with the daily business of subsistence in what must have been much more literally 'the ways of their ancestresses'. (1975:265).

It is mainly because women were rejecting the ways of their ancestresses and concerned to change their conditions of

life that they became so much involved in disputes with their husbands. At first women could not gain access to courts but with time they succeeded, mainly with the help of the colonial state. Several factors must have operated to induce women to utilise courts for settling matrimonial grievances. Perhaps the most significant factor is that the nature of remedies sought by women were not usually available to them under Kuria law. Hence women expected little support from the elders. Courts on the other hand were inclined to listen to some of these claims and would take action. For example, courts were prepared to grant a conditional divorce pending the refund of bridewealth. In such cases courts directly ordered the father to refund the marriage cattle, thus assisting the wife to free herself from a difficult marriage relationship.

Secondly, changes in the economy, as noted earlier, transformed the pre-capitalist forms of social security which had supported divorced and widowed women in pre-colonial times. Under the changed conditions, kinship solidarity was weakening, reciprocal obligations among kinsmen and neighbours becoming less compelling and land rights becoming individualised. This in turn created the need for divorced wives to be assured of personal economic security. State courts were seen, therefore, as the most effective institutions to deal with their economic condition.

Thus the period following the end of colonial rule marked an era where numbers of Kuria women, and others throughout Tanzania, started to use state courts to secure redistribution of matrimonial assets.

In order to study the general influence of courts in reallocating matrimonial property, it is essential to examine the legal rules which provided a basis for the justifying decisions. The Customary Law (Declaration) Order 1963, which also applied to Tarime district<sup>1</sup>, provided that on divorce, a wife of a 'peasant' farmer would be entitled to one quarter of the annual or perennial crops in store and in the fields of the year in which she secured a divorce certificate. In the case of a merchant's wife or that of an artisan, the court was given discretionary power to assess the size of the enterprise and to make an award accordingly. The divorced wife of a wage-earner was given a right to the equivalent of one month's salary of the former husband. Under this law, the husband would be required to pay maintenance to his former wife only if he was the guilty party, i.e. if he caused the breakdown of the marriage. In all cases, whether separation or divorce, a wife was given a right to retain her personal effects acquired during or before marriage.

A brief comment on the Customary Law (Declaration) Order may be made here. First, it does not appear that the Order recognised the right of a wife to a share of the matrimonial assets, as a separate entitlement from the right of maintenance after divorce. Had the Order recognised this, it would not have made the award conditional upon the good behaviour of the wife. For if the wife was to blame for the breakdown of marriage,

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<sup>1</sup> By the provisions of GN.604 of 1963.

she lost her right to the award. On the other hand, Rule 94 of the Order, which dealt with matters arising from the break up of an irregular relationship, stated that where a couple establishes a common household, the property acquired by common effort was to be divided between them in equal proportion except the house which belonged to the man<sup>1</sup>. The foregoing rule clearly recognises the principle of division of assets. It is correct therefore to say that the Order did not provide for divorced wives to be given a share of the joint assets.

Secondly, the share of one quarter of the agricultural crops was certainly inadequate. This can only be explained in terms of the underlying assumption that the divorced wife would soon remarry, failing which she would secure sufficient land at the homestead of her father for use. The inadequacy of this amount may also be seen as the failure of the Order to recognise that post-colonial Tanzanian peasant society had substantially changed from that of the pre-colonial period. Thus by ignoring this economic reality, the Order was not likely to give lead to the trends in marital conflicts over

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1 Rule 94 of GN.279 of 1963 states that "if a man and a woman have started a common household together the property which has been acquired by common effort is divided as follows: Cattle, food in stores and perennial crops and unharvested crops are equally divided amongst the two persons. The house is given to the man whilst the woman receives the kitchen utensils. Individual property, such as clothing, ornaments, etc., including gifts made by one or the other, are kept by the owner. After harvest the fields belong to the man. Where either a man or woman follows the other to his or her own residence, (Rules 95 and 96) the resident party retains three quarters of the property including the house and fields and other property personal to that party". For application of the rule see Wandwi s/o Chacha v. Nyanganane Makere 1968 HCD.123.

resources which had begun to come into the courts about this period.

Although inadequate, the Order represented the first post-colonial state intervention, albeit a cautious one, in the regulation of property relations between spouses. Court decisions handed down between 1963 and 1971, when the Order was substantially repealed, reflected this cautious, yet interventionist policy. For example, in one case a former wife sued for division of ten bags of rice which she and her husband had produced together; the court awarded her two and a half bags, representing a quarter of the whole crop<sup>1</sup>. Yet when the court was asked by a wife to divide four farms cultivated jointly between the couple, it refused<sup>2</sup>. Chief Justice Saidi held that "a wife owe[d]her husband a duty to assist him with his gainful work, whether it be cultivation, shopkeeping, or any other lawful engagement. In the absence of a contribution of capital by the wife, the divorced wife [would] not be treated as a partner in the man's enterprises".

In another case decided during the same period, the judge rejected the claim by a divorced wife for two head of cattle as 'compensation' for the services she had rendered during her five-year marriage. The court held that there was no merit in such a claim "having freely and of her own accord married the respondent, [she could not] expect the respondent to compensate her for performing wifely duties"<sup>3</sup>.

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1 Salim Ramadhani v. Miriam Ikunga 1967 HCD.160.

2 Iddi Kumganya v. Ali Mpate 1967 HCD.49.

3 Sitihenge v. Jaseli 1971 HCD.175.

Thus, whereas courts were prepared to award part of the annual crops, they maintained a strong opinion that the domestic services of a wife were part of her duty under a marriage contract and not a capital contribution. Throughout this period state law and courts did not recognise the fact that the rural economy had become transformed to the extent that the rural women, most of whom had married under their various laws<sup>1</sup> were entitled to division of matrimonial assets. Even the right to reside in the matrimonial home was never considered a matrimonial right which could be claimed and granted.

It was not until 1971, when the Law of Marriage Act was passed and applied throughout the whole country<sup>2</sup>, that some progress was made towards reducing the economic exploitation of women. The Act, though repealing the Order<sup>3</sup>, re-enacted some of the earlier provisions. For instance, it recognised

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1 Women married monogamously under the Marriage Ordinance (Cap.109) were legally entitled to maintenance under the Matrimonial Causes Ordinance (Cap.364) and the District Courts (Separation and Maintenance) Ordinance (Cap.274). This right was not available to women married under customary law. A similar situation was noted by Harrell-Bond in Sierra Leone where a "marriage under [different] systems produces quite different legal consequences as regards the maintenance responsibilities of the husband where the couple is separated or divorced" (1977:203).

2 The application of the Act is restricted to the mainland part of Tanzania.

3 Section 9(3A) of the Judicature and Application of Laws Ordinance (Cap.453) (as amended by the Law of Marriage Act, 2nd Sch.) states: "Notwithstanding the provisions of this Act, the rules of customary law and the rules of Islamic Law shall not apply in regard to any matter provided for in the Law of Marriage Act 1971".

separate ownership of property between spouses (Ss.58, 60-63). It also reaffirmed the right of a wife to be maintained by a husband during marriage<sup>1</sup>.

The Act also recognised for the first time the right of wives to secure a share of the matrimonial assets (Ss.114-124). By the provision of section 114, the court was empowered, when granting a decree of separation or divorce, to order the "division between the parties of assets acquired by them during the marriage by their joint efforts". The courts were empowered "to order the sale of any such assets and the division" of the proceeds of such sale to the parties. The right of the former wife for maintenance after divorce was subject to the existence of a 'special reason' - a condition which in practice proved rather difficult to meet.

On the basis of cases in which the Act has been applied since 1971 it could be generally concluded that courts have been inclined, first to award maintenance to deserted wives and children; second, to order maintenance pending the determination of matrimonial proceedings, and finally, to uphold the right of spouses to retain possession of their personal effects on the dissolution of their marriage.

With regard to the question of maintenance during separation or after divorce, the practice of courts has not

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1 The wife also is required to maintain her husband where the latter is unable to do so (Sec.63(b)). See also Zubeda Daudi v. Alimia Inusimia, 1978 LRT.n.7.

been uniform. Some judges have readily granted such maintenance on the implied basis that the needs of the separated wife constitute a 'special reason' for such award<sup>1</sup>. In other cases, judges have refused to order maintenance on the grounds that no special reason has been shown to exist, even though they have not stated what exactly constitutes a 'special reason'<sup>2</sup>. The burden of showing that special reasons exist has been placed upon the petitioner.

On the right of divorced wives of rural peasants to be maintained after marriage, some High Court judges have expressed the view that it is not proper for courts to order a spouse to pay a monthly maintenance sum of money, where the latter has "no known monthly income"<sup>3</sup>. In such cases courts have been inclined

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1 In the case of Tungu Kapela v. Regina Kapela, Dodoma High Court Matr.Civ.App.No.4/77, Chipeta J., noted, while dismissing an application to reduce maintenance for a separated wife, that, "on the question of maintenance, I tend to agree that with the present inflation, the value of money is rapidly diminishing. Even taking into consideration the fact that the respondent has a regular income [of shs.280/-] that income cannot at all be said to be adequate for a woman of her age and responsibility to her son. As the respondent will...admit, he would spend far more than shs.200/- for the respondent if they were to continue living under the same roof. In my view, to reduce the amount of maintenance for the respondent would most probably tempt her into a life of promiscuity. That would be most undesirable for a married woman, albeit judicially separated". In this case the basis for awarding maintenance was the needs of the wife. Also in Matinde Gitano's case (note 2, p 201), the appellate magistrate, while considering the application for maintenance by a separated wife, stated that he had to "consider the standard of living of the spouses...and to take into account the fact that the wife has a house which needs only repairs... and children to look after who will need cattle to provide milk".

2 Fatu Masudi v. Ally Masudi, 1977 LRT n.3.

3 Samweli Marwa v. Wankura Mwita, Mwanza High Court (PC) Civ. App.No.108/75 (unreported) Maganga J.

to award a type of 'lump sum' payment in the form of livestock or crops.

In conclusion, it may be stated that the first decade of the operation of the Law of Marriage Act in regard to the rules of maintenance after divorce reveals a continuing search by courts of a consistent policy concerning the right of a divorced spouse to maintenance and the form in which it should be given. In this sense one would agree with the Kenya Commission's view, that although the wide discretion given to courts in assessing maintenance of divorced wives would result in awards varying from place to place, both in quantity and kind, "we think the courts will gradually adopt standards reflecting the public attitude and that in the meanwhile this flexibility will ease the transition from the old order to new" (Kenya 1968:109).

Yet the search for a uniform policy among Tanzanian judges concerning the right to maintenance and the criterion for such awards is not only to be found in cases concerning maintenance but in those concerning the division of matrimonial assets as well<sup>1</sup>.

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- 1 S.114(1) The Court shall have power, when granting or subsequent to the grant of a decree of separation, or divorce, to order the division between the parties of any assets acquired by them, during the marriage by their joint efforts or to order the sale of any such assets and the division between the parties of the proceeds of sale.
- (2) In exercising the power conferred by subsection (1), the court shall have regard-
- (a) to the custom of the community to which the parties belong;
  - (b) to the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;
  - (c) to any debts owing by either party which were contracted for their joint benefit; and
  - (d) to the needs of the infant children, if any, of the marriage, and subject to those considerations, shall incline towards equality of division.
- (3) For the purposes of this section, references to assets acquired during a marriage, include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

Here again a number of differences between judges have emerged.

Some High Court decisions concerning division of matrimonial assets have been concerned to discover the precise meaning of the term 'joint efforts'. For example, where wives claimed part of the cattle given for the marriage of their daughters, the courts have rejected such claims on the ground that bridewealth cattle are potentially refundable to the son-in-law, and cannot be counted as matrimonial assets.

Where livestock belong to the husband, some judges have decided to divide them. Thus in the case of Petro Kidumba, Mwalusanya SRM. granted a divorced wife two goats out of five owned by her former husband<sup>1</sup>. In another case where a separated wife claimed forty head of cattle she was awarded five<sup>2</sup>. In other cases courts have tried to divide the marriage cattle refundable to the husband, only to be overruled on appeal<sup>3</sup>.

In cases where a wife has contributed cash for the family enterprise, judges have found it easier to distribute such assets<sup>4</sup>.

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1 Petro Kidumba v. Alima Sengole, Dodoma High Court (PC) Civ. App. No. 28/75 (unreported).

2 Matide Gitano v. Gitano Mukami, Tarime District Court Civil No. 25/73.

3 Odenyo Okeno v. Silimina Aila d/o Dugiya, Tarime District Court Civil Appeal No. 94/70 (unreported).

4 Omari Oberi v. Mariamu Nyakagere, Mwanza High Court (PC) Civ. App. No. 181/73.

On the contrary, in cases where a wife has not contributed actual cash but labour in the form of running her husband's business, or growing cash crops, some judges have been inclined to consider such services as 'wifely duties' and have attached no monetary value to them. They have argued that it is wrong to suppose that " because a wife runs a household, washes, cleans, cooks, and saves money each month; this should be termed as her contribution to joint efforts towards acquisition of property during the subsistence of a marriage." For to do this would be stretching the concept of joint property too far and " had that been the intention of the legislature, it would have been so specifically stated under the provisions of section 114 of the Law of Marriage Act" <sup>1</sup>.

Under these circumstances it is correct to say, therefore, that courts have restricted the meaning of ' joint efforts' to activities not traditionally identified as household work. Although much could be said concerning the value of a wife's domestic services, one significant point will be discussed here. First a distinction must be drawn between cases where a wife takes part in managing her husband's business or growing cash crops and those cases where she restricts her services to the subsistence sector such as food production, processing and child care. In the former case, it should not be difficult for courts to hold that a wife contributed a recognised share of labour which must be considered part of the ' joint efforts'. Unfortunately some courts have not gone that far.

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1 Hamid Amir Hamid v. Maimuna Amir, 1977 LRT n. 55.

In the second category, i.e. where a wife engages exclusively in the subsistence sector, courts have found little, if any, connection between the husband's economic enterprises and the domestic services of his wife. Yet, given the contemporary economic changes, the distinction between the two types of services is false. Moreover, could it be contended that, in real life, a wife would be involved in one economic sector at the exclusion of another? A wife generally tends to work without having regard to the 'subjective' monetary value attached to one kind of labour and not to another. A rural couple operating a small family business may be given as an example; the wife does not count the number of hours she spends running a shop on the family coffee farm in order to know the amount she can claim when the marriage fails. Similarly, in coffee-growing districts such as Bukoba, each year a wife plants beans, vegetables and other food crops in the coffee farm. It would be very difficult in such cases for the court to decide the amount of labour applied to the tending of food and cash crops. This distinction therefore is untenable.

I noted earlier that division of matrimonial assets in traditional Kuria society was not recognised nor was maintenance after divorce payable to a wife. In such economies, divorce amounted to loss of labour power by the husband and it was expected that the wife who left (with her labour) would apply it to her own or joint benefit, in association with another male relative. The Kenya Commission's conclusion that "under customary law a wife is not usually entitled to maintenance on separation or divorce" (p.107) should be understood within this context.

The penetration of a monetary economy created new spheres of economic activity, in which men with the help of their wives set out to accumulate some property. The labour of the wives became applied not only in traditional but also in the monetary economic sector. We have seen how the Customary Law (Declaration) Order 1963, recognising that in 'traditional societies' there were traders, artisans and people in wage employment, made a half-hearted attempt to give divorced wives shares from the traditional sector, i.e. food crops, and some money in the case of wives of traders, etc. Courts, however, did not take advantage of this rule and were generally slow in exercising their discretion to distribute matrimonial assets in favour of divorced wives. One must also add that the attitude of the men, who formed the majority in the judicial service, tended to reflect the dominant male feelings about women in society. The judicial officers also were anxious to conform to the wider colonial policy of not disrupting traditional communities. This judicial approach was carried over into the post-colonial period. As only few women went to court to seek matrimonial relief, the pressure on courts was not particularly great.

To sum up, therefore, it could be said that although courts have been slow in recognising the right of a divorced spouse to maintenance and division of assets, there has been a growing recognition that wives deserve some share of the family resources. Due to increasing awareness of their economic rights - partly an effect of economic changes - women have continued, in steady numbers, to seek the intervention of courts and other state agencies to resolve marital disputes. It seems, therefore,

that despite transitional problems such as the interpretation of the relevant law, courts are likely to play an important role in re-allocating matrimonial property.

Summary.

This Chapter has been concerned to illustrate the way in which the transformation of Kuria pre-capitalist economy affected relations between spouses. The involvement of the Kuria household in production for export, trading and other concerns of the monetary economy brought about changes in existing social relations within the family. Men and elders, who were traditionally in charge of organising subsistence production and allocation of resources now assumed new interests in the capitalist sector which they began to pursue within the structure of pre-capitalist social relations. At an early stage of this process, the new economic opportunities were utilised by elders to gain access to traditional power and prestige. Yet increasing capitalist penetration and its weakening of existing distributive and social security systems put women generally into an economically disadvantaged position. The latter's economic insecurity was more noticeable when they wished to sever relations with men and seek independent existence. They soon realised that the traditional system, now radically transformed, did not provide them with sufficient, if any, economic security to live autonomously. This realisation worked to make women more determined to alter their relations with men, hoping to gain greater returns from their labour. Using formal (i.e. courts) and other state institutions, they attempted

to effect redistribution of domestic resources as a preliminary step in their bid for economic autonomy.

Our discussion of law and the courts as instruments for re-allocation of domestic resources points out the difficulties, both structural and intrinsic, relating to the law in transition and the role of the courts in assisting, if not sometimes hindering, the process of re-allocation of resources. This Chapter has pointed out, for example, that although the law dealing with redistribution of property between married people at the time of divorce is still restrictively interpreted and applied, there is growing realisation among some judicial officers that there is need for a more equitable sharing of domestic resources between spouses.

Even though conflict over property has been examined within the context of the household, wider economic forces also affect the peasant household as a producer for the world market and a consumer of imported industrial goods. These wider relations affect the women as well as men. Nonetheless, the significance of specific studies of the internal economic relations within peasant households is vital for the understanding of peasant responses to external forces of change.

CHAPTER NINE

MOKAMONA-MARRIAGE IN A CHANGING ECONOMY

Introduction

This chapter considers the impact of economic and social changes on the mokamona-marriage relationship. A mokamona-marriage is a relationship between a sonless 'house' represented by a married woman or widow (hereinafter called the mother-in-law), on the one hand, and a woman, usually a girl (hereinafter called the daughter-in-law) on the other hand. This form of marriage is found among the Kuria people and other neighbouring societies in the region.

The work of Evans-Pritchard (1945; 1951) among the Nuer, and that of Herskovits (1937) in Dahomey are among the earliest on the subject of woman-to-woman marriage in Africa. Krige notes, however, that these studies are misleading because they consider woman-to-woman marriages from a perspective of a conventional husband-wife relationship and its associated concepts and definitions. Consequently "[t]he marriage of a woman to a woman, found in many societies, has not been given the attention it warrants, and is still imperfectly understood (1974:11). Huber's (1969:745-52) fieldwork among the Simbété (or Simbiti) of Tanzania adds an East African dimension to the existing studies. Although Huber characterises the form of marriage he studied as a "woman-marriage" it is appropriate to categorise it with the Kuria mokamona-marriage and to view it as such.

The purpose of this Chapter is to analyse the transformation

of the mokamona-marriage relationship and to relate this transformation to wider social and economic changes occurring in Kuria society. In doing this I look critically at some of the conclusions made by Huber concerning the future of mokamona-marriage. As a form of marriage, albeit a special one, the mokamona-marriage has been deployed by elders as a means for recruitment of labour and as a source of security during old age. The conflicts between elders and dependents over the management and control of resources which have been considered in the previous Chapters also occur at the level of mokamona-marriage. More importantly, this form of marriage has been utilised by sonless wives and widows as a means of maintaining control over the resources of their individual 'houses' which would not be possible under other circumstances. On the other hand the possibility of property accumulation by single women which has been made possible by capitalist penetration, has enabled women to invest in mokamona-marriage relationships without needing the assistance of men. For such women the relationship has been crucial to their success in their new economic concerns and as means for old-age security.

This Chapter is divided into four sections. The first considers the main characteristics of mokamona-marriage and its relationship to Kuria pre-capitalist society. The second examines state regulation of mokamona-marriage, and the third discusses contemporary changes in this form of marriage and their relationship to wider changes in the Kuria society. The final section looks specifically at the transformation of mokamona-marriage from a relationship between a daughter-in-law and her mother-in-law's sonless house to a marriage between two women.

The Main Characteristics of Mokamona-Marriage.

The Mokamona-marriage relationship, as practised by the Kuria, and more predominantly by the neighbouring Simbiti people, is not readily classifiable as a woman-to-woman marriage of the kind found, for example, among the Nuer or the Lovedu. This is primarily because the husband (in the sociological sense) is completely absent from the relationship.

Procedurally, the relationship is formed in the same way as a conventional marriage, being usually preceded by the transfer of cattle from the 'house' of the mother-in-law to the daughter-in-law's father. The main aim of the mokamona-marriage is to secure a son for the house to which the daughter-in-law is sociologically married. This house, as already noted, is represented by the mother-in-law who could not bear a son for it in her marriage. As Kuria people say, a sonless house is a poor house, i.e. inyumba ntobu, and must have a wife married for it in order to raise seed and ensure its posterity.

Such marriages occur at a time when it is obvious that the particular wife has failed to bear a son and this is when the prospective mother-in-law is well past child-bearing age. The requisite marriage cattle are normally given by the husband of the old lady or, if he is deceased, may be obtained from his estate. Where the prospective mother-in-law has daughters whose marriages have brought cattle into her house, such cattle are used to obtain a daughter-in-law for her house .

After the daughter-in-law has been brought into the homestead, a male consort is normally appointed to enter her hut and raise

seed for the house of the mother-in-law. According to Kuria law, the genitor is not a husband and does not have any rights concerning the children born following his association with their mother, nor do the children themselves inherit from his estate. The genitor is ordinarily appointed from the lineage of the father-in-law and could even be a co-wife's son. Also, a son of the father-in-law's brother qualifies for appointment.

Neither the father-in-law nor the mother-in-law ever consider their daughter-in-law as a wife or co-wife respectively. She is not even the wife of the mother-in-law to whose house she is married. She is considered, for all intents and purposes, to be a daughter-in-law and her children are considered to be grandchildren. The latter are affiliated to the father-in-law's lineage and counted as belonging to the mother-in-law's house where their inheritance rights also lie.

This then is how the Kuria see the mokamona-marriage relationship. They draw no distinction whatsoever between the wives of their real sons and that of the imaginary son; nor indeed between any of their grandchildren.

The purpose of mokamona-marriage is to ensure the posterity of every Kuria house, represented by each wife. As in other societies, the ideology of procreation and personal immortality<sup>1</sup> is strong among the Kuria and each wife is not happy until she has her own son. But the possession of a son by a Kuria wife

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1 For an exposition of this point see generally Mbiti (1969); for the Kuria, Ruel (1965); and for the Sukuma, Tanner (1958).

is not merely a matter of life after death; it also concerns the economics of production, resource control, and social security during old age. The Kuria system of semi-autonomous economic units within the same polygynous household, discussed in Chapters Three and Eight, provides sufficient incentive for the occurrence of mokamona-marriage, the basic aim being to protect the resources of the particular house by procuring for it a son who will inherit its property<sup>1</sup>. As noted by Huber, "the availability of cattle which has been obtained either by a woman's own efforts, or as bridewealth for her daughters, is the indispensable condition and an immediate incentive for a sonless wife to 'marry' a daughter-in-law" (1969:747).

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1 Kuria law of succession, as in most patrilineal societies, is most unfavourable to a sonless widow. As soon as her husband dies, she becomes part of his estate and liable to be inherited by her late husband's relatives who become trustees of all property assigned to her house. Should she bear a son in the meantime, her position is accordingly improved because all the property then becomes that of her newly born son. But if she is past child-bearing age she has to find some means of retaining this property. Under these circumstances mokamona-marriage becomes a viable solution to this dilemma. As Cory noted, "[t]he position of a widow without sons and her guardianship of the cattle accruing to her house is the origin of the custom umukamona (daughter-in-law). If a widow realises that she will not be able to have a son, she takes the cattle...and pays bridewealth for a girl whom she takes into her house.... If the girl has a son, he is considered to be the grandchild of the widow and her deceased husband.... The motive of the widow is obvious. She enjoys the status of a mother with a son, the cattle accruing to the house remain where they are and after her death, they are not inherited by the sons of other wives who are probably the object of deep jealousy because they have sons" (1945).

Secondly, although a sonless wife may have many daughters to help her in the fields and at home, their ultimate marriage creates a labour shortage which has to be filled. Under normal circumstances, where a wife has produced grown-up sons, the marriage of a daughter makes possible the procurement of a daughter-in-law who takes over from the outgoing daughter, at least for a few years. Given the semi-autonomous economic standing of a sonless wife, as indeed of other wives, shortfalls in labour and productive potential would lead to shortages in food production, particularly at a time when such a wife is aging and therefore no longer able to exert herself as before. As noted by Huber "a sonless old lady desires a daughter-in-law so that she may relieve her from the burden of house and farm work" and secure her "equal status and prestige among her co-wives" (1969:747).

Thirdly, a son also stands in place of a protector for his mother when she is old and when her husband is already deceased or cohabiting with younger co-wives. As noted in Chapter Seven, having a son is so significant for a Kuria wife that should she fail to bear one in her second marriage, custom permits her to take one of her sons born in a previous marriage into her new marriage where he will be counted as belonging to her new house. Kuria law also provides that where a wife does not bear a son in her second marriage, she must be allowed to return to her first husband - which in effect means to the protection of her sons.

A Kuria wife therefore counts on a son to provide for her during old age, to procure grandchildren who will ensure the posterity of her house and a daughter-in-law who will help her

in housework and in the fields.

To situate the mokamona-marriage in its wider social context, we may consider the Kuria rule that "children follow the cattle". This rule underlies a number of social institutions and their operation is possible through its application. Conventional marriage and the filiation of all children born in such marriage is based on this rule. It is under this same rule that children born in a mokamona marriage are affiliated to the house of the wife from whence the cattle came.

#### State Intervention in the Mokamona-Marriage Relationship.

At the opening of this Chapter, it was noted, quoting from Krige's study, that there were few published studies on woman-to-woman marriage, and even these were frequently misleading, often failing entirely to understand the social relationship. Among the early studies is that of Merville Herskovits. He found that the woman-to-woman marriage practised among the Dahomey people did not involve a homosexual relationship between the two respective women, but he noted nonetheless that "occasionally homosexual women who have inherited wealth... utilise this relationship to the women they marry to satisfy themselves" (1938, Vol.1: 319-20).

Early colonial officials also completely misunderstood woman-to-woman marriage practices. Lugard, for example, when commenting on a similar practice among West African societies, noted that:

[t]he custom of elderly women procuring young girls, with whom they go through a marriage ceremony, appears to be prevalent among tribes with widely different origins and customs. The purchase money is misnamed 'dowry' and the woman-husband becomes absolute owner of the girls (1965:385).

Lugard appears to have thought that such relationships were forms of slavery. He included this material in the discussion on "Slavery in British Africa", and his statement above also supports this view. With regard to the functions of the relationship, Lugard notes that "in some few cases it may be that the purchaser wishes to assure herself of a 'wife' who will tend her in her old age, but the more usual reason is in order to claim fees for adultery, and to gain possession of the children of such intercourse who by native custom are the property of the 'husband' who has paid the dowry".

In Tanganyika, similar views were held. For example, in 1927 the Acting District Officer, W.J. Bonavia, summoned an assembly of all North Mara Chiefs and ordered them to endorse the abolition of the practice. Having done that he then recorded that since the custom had been abolished, it would be helpful to the future colonial officials to understand its basic characteristics and further assist in bringing the custom to a final end. In the opinion of Bonavia,

the custom permitted wealthy spinsters or widows who wished to obtain children to contract marriages with young girls whom they farmed out to chosen men for intercourse, all progeny from such intercourse was the property of the old woman. Secondly, it was the custom for husbands whose wives were barren to invite their wives to buy 'wives' (mokamona). Again the wives farmed out their girl wives and obtained progeny thereby, which became the property of the husband (Musoma District Book).

Some years later Baker described the practice in similar terms, noting that:

[u]ntil quite recently, it was the practice for a rich widow who was too old to attract men herself to marry a young girl or M-Kamona, whose work it was to look after her. Such were in fact slaves and took lovers in accordance with the orders of their female husband. If any children were born to the young girl, they were considered as the children of the widow and her deceased husband and used his name as their patronymic (1935:113-4).

Both colonial social anthropologists and government officials thus shared a common, though mistaken, belief concerning the nature of woman-to-woman marriage in Africa. Some thought that it was a type of homosexual relationship, while others saw it as a kind of slavery with an incipient element of prostitution. In either case the woman-to-woman marriage was considered an immoral practice which was to be discouraged and where possible abolished altogether. Christian missions viewed the practice as being opposed to basic Christian ideas on marriage and at all costs to be avoided by Christians.

During the colonial period in Tanganyika, state intervention in the practice of mokamona-marriage was concretely expressed in the abolition of the custom starting from 1927. Like a number of other colonial attempts to regulate Kuria social relations using law, the measure was not successful. The state succeeded, however, in turning the custom into a clandestine relationship. Indeed some officials, such as Baker (1935:113-4) even believed that it had been abandoned by the people. It is important to bear in mind this point because in the years following independence, many Kuria litigants tended to deny the existence of such relationships whenever it seemed advantageous to do so.

When considering the post-colonial state regulation of mokamona-marriages, one has to bear in mind that such intervention was a logical extension, and to some extent a continuation, of state interventionist policy, of the colonial era. Mokamona-marriage involved the transfer of property and, like conventional marriages, gave rise to disputes over property rights between parties and involved children whose welfare the state was anxious to regulate. One would therefore conclude that the regulation of mokamona-marriage by the state would be entirely to be expected, particularly as more disputes came to court for adjudication.

The post-colonial state while recognising the importance of regulating mokamona-marriage and its incidents, was somewhat ambivalent about how it should do it. If court decisions and the law can be relied upon to assess the mode of state regulation of this relationship, it seems correct to say that ignorance of the nature of the relationship prevailed and outlived the colonial period. Was it a marriage between two women, as earlier colonial scholars and officials had supposed? Or was it a unique and ingenious pre-capitalist social relationship which functioned to protect a sonless wife and ensured that the property she had helped to accumulate was usefully spent in ways which had long term benefits to her? Was it an arrangement which rectified a 'biological' accident while at the same time rescuing a 'poor house' from social and metaphysical extinction? Or was it a form of prostitution and slavery? The mokamona-marriage relationship, having undergone rapid transformation in the era of capitalist penetration, tended

to elude any form of casual attempt to understand its pre-capitalist characteristics and functions. Moreover, the new ruling class of the independence era were just as intolerant of practices they considered backward and out of step with 'civilised' living. These factors tended to influence the form of state intervention in mokamona-marriage during the period following independence.

In 1963, the Customary Law Declaration Panel did not consider mokamona-marriage as one form of customary marriage. It is doubtful that its exclusion from the Declaration Order was accidental or based on the belief that the custom had become obsolete. In our view, the Declaration Order intended implicitly to abolish the custom.

Some support for this view can be found in other sources as well. For example in 1965 Nimrod Lugoe, a law student at Dar-es-Salaam, visited Tarime district to do research on "the former customary law" (the pre-Codification law) among the Kuria and other peoples of the district. He came across a case<sup>1</sup> in which a daughter-in-law had sued her mother-in-law for divorce. In that case a young woman named Nyangi was married to the house of Mugaya d/o Mnanka and the latter had appointed a man named Siongo to act as the genitor of Nyangi's children. But ten years later a misunderstanding led to the institution of a divorce suit at a local primary court. According to Lugoe, the primary court magistrate refused to recognise the relationship, saying that a marriage between two

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1 Nyangi w/o Siongo v. Mugaya d/o Mnanka, Tarime District Court Civil Appeal No. 103/64 (unreported).

women was illegal. He nonetheless ordered a divorce decree on the ground that Siongo did not love the petitioner. On appeal the District court overturned the lower court's decision holding that as no marriage had taken place, there could be no divorce (1965:56).

According to Lugoe's interview with the two lower courts' magistrates who heard the case, the main reason why they refused to recognise the relationship was that the Declaration Order had abolished the practice. Lugoe thought, however, that the two judicial officers, being young men, might also have thought that the custom was 'old-fashioned' and decided not to enforce it. Lugoe's work thus presents us with some evidence on the views and approach of courts in the district during the period following the coming into force of the Declaration Order. Whether indeed the magistrates believed that they were bound by the Order to refuse recognition of the custom, or they were concerned to discourage it as Lugoe suggests, both views are consistent with our understanding of the policy of state intervention in mokamona-marriage practices after the colonial era.

From 1963 to the passing of the Law of Marriage Act in 1971, Tarime courts held the view that mokamona-marriage was not legal. For instance in 1968, Juliana Muhochi, a daughter-in-law of Robi Magau, petitioned for the dissolution of her relationship with her mother-in-law at a primary court in Tarime district<sup>1</sup>.

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<sup>1</sup> Juliana Muhochi v. Magau Kerario, Nyamwaga Primary Court Civil Case No. 123/68, (unreported).

Her main complaint was that she did not want to continue being married to a "fellow woman" . The primary court held in her favour that "a marriage between two women [was] against the law of nature and should be dissolved".

At the level of the High Court only one case in which a legal point involving mokamona-marriage was raised, appears to have been reported before 1971<sup>1</sup>. It involved parties belonging to the Nguruimi (or Ngorêmê) people who also practise such a form of marriage. There was evidence to the effect that a woman named Patiri Magesa was married to the house of Kirisa's mother and had two children before that relationship was legally terminated in accordance with Nguruimi law. The claim involved custody of the children. Kirisa, the plaintiff, sued for custody and further claimed that he was the husband of Patiri. There is no record in the brief case digest as to whether the plaintiff's mother was alive or already deceased; or even whether the plaintiff himself was a real, or a classificatory son. What is clear, however, is that the plaintiff alleged that he was married to the defendant Patiri and that he had a right to the two children she had borne. In support of her case the defendant Patiri stated that she had never been married to the plaintiff but she was his mother's wife and that in any case the relationship had been terminated already. The court held that "since no marriage between plaintiff and defendant ever existed, plaintiff ha[d] no right to custody of the children". The

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1 Kirisa s/o Kitentera v. Patiri d/o Magesa (1968) HCD.254.

court does not seem to have expressed any opinion on the legality of the relationship except in mentioning, obiter, that "if the marriage between the two ladies were still subsisting, some rights of inheritance might eventually benefit the plaintiff; but as the ladies are now divorced, no such question can arise".

The case of Gati Kitoka v. Matinde Kimone<sup>1</sup> sheds additional light on the court's understanding of the relationship, and on the parties' rather tactical approach to the issues. In 1967 Matinde Kimone gave thirty-five head of cattle, three goats and forty-five shillings to Gati Kitoka, being bridewealth for the marriage of the latter's daughter named Robi, to her sonless house. Both parties belonged to a splinter group of the Kuria, residing in Musoma district, who also practise mokamona-marriage. After three years of the marriage, Robi had not been able to give birth to a child, which failure in turn caused misunderstandings between her and her mother-in-law. There was no evidence whether a consort had been appointed for her. Matinde Kimone's petition for divorce was dismissed by the Kiagata primary court on the ground that there was no sufficient reason for dissolving the marriage. On appeal, the Musoma district court held that although it agreed with the lower court's finding of facts and its reasoning, it was nonetheless not proper to maintain a relationship which had elements of "a slavish custom". There was a further appeal to the High Court by Gati Kitoka, where it was held that

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1 Mwanza High Court (PC) Civ. App. No. 2/74, Jonathan J. (unreported). For further discussion of this case see Rwezaura(1974).

"[s]uch a customary union...has meaning, if any, only if it persists by mutual consent, and it cannot be sustained against a rebellious party. Here the respondent [i.e. mother-in-law] seeks to terminate it and...courts should readily accede". The High Court accordingly dissolved the relationship.

This decision reveals that the primary court thought the mother-in-law was being difficult and was not giving her daughter-in-law sufficient time to conceive. This view was shared by the district court yet unlike the lower court, it considered itself obliged to make a more definite intervention by dissolving the relationship. The High Court did not express its opinion as to whether the relationship was or was not slavish, nor did it even decide the issue relating to the legal status of the relationship. And in ordering the refund of the bridewealth, the appellate judge simply relied on the opinion of the assessors.

By 1978 the majority of the High Court judges at Mwanza Registry were unanimous in holding that mokamona-marriage was not a marriage at all and should not be so treated. As Lugakingira J. emphasised "[i]n spite of the notoriety of this practice, our law does not recognise it as a form of marriage"<sup>1</sup>. Mfalila J. was also of the firm view that "[t]his form of marriage was not recognised by the Law of Marriage Act, hence it was not a marriage at all"<sup>2</sup>.

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1 Muyanza d/o Ngweba v. Siaya d/o Mananasi, Mwanza Matri.(PC) Civ. App. No. 6/76 (unreported).

2 Milengali Marwa v. Esta Bhoke, Mwanza High Court (PC) Civ. App. No. 95/75 (unreported).

Although recent decisions of the High Court have so far been consistent in holding that mokamona-marriage is not a marriage, there have been considerable disagreements as to its incidents, particularly in respect of rights to children. A decision of Maganga Ag.J., as he then was, provides the best starting point<sup>1</sup>. In that case a man named Mchele Marwa brought a claim at a local primary court for two children born during the desertion of his daughter-in-law. All the parties belonged to the Simbiti community. There was evidence showing that in 1957 Mchele Marwa's wife, called Nyasanda, married a girl named Robi for her sonless house. A consort was subsequently appointed for her but he died before Robi was pregnant by him. Thereafter, Robi returned to her parents but was brought back later when Nyasanda gave to Robi's father some more cattle. On returning to her in-laws, Robi was not assigned another consort, but she soon became pregnant and had three children by unknown men. In 1968 Robi escaped from her in-laws and went to cohabit with a man called Daniel Saraya in Musoma district. She was discovered five years later by her father-in-law, Mchele Marwa, having in the meantime given birth to two children. It is these two children, born during Robi's desertion, who became a bone of contention.

Both the primary and district courts arrived at different decisions on the case. The primary court magistrate held that Daniel Saraya was the lawful husband of Robi and as such was entitled to the two children, while the assessors held that Mchele Marwa had a right to one child and the other

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1 Daniel Saraya v. Mchele Marwa, Mwanza High Court (PC) Civ. App. No. 56/75 (unreported).

belonged to Daniel Saraya. As a result of this difference of opinion, the case was sent to the District court for review. At the same time, Mchele Marwa successfully appealed to the District court where it was held that "the relationship of 'mokamona' between the respondent [i.e. Marwa] and Robi amounted to a valid marriage and that since such a marriage had not been dissolved the children born to Robi were born in wedlock and belonged to the respondent by virtue of the provisions of [Rule] 175 of the Law of Persons". Daniel Saraya then appealed to the High Court against this decision.

In considering the appeal, Maganga Ag. J. dealt with three main issues. The first was whether Mchele Marwa, not being Robi's husband, had a legal right to claim the children. The second was whether the custom of

a woman marrying another woman is recognised under the local Customary Law Declaration and, if so, what rights does such a relationship confer to the 'marrying' woman and/or her husband in respect of such "wife" and her children, during the subsistence of such relationship (emphasis by Court).

Finally the court considered the legal effect of "the payment of additional cattle by Nyasanda to Robi's father after the death of the [consort]".

The first issue was disposed of easily on the basis that Simbiti law, which governed the parties, permitted a father-in-law to make such claim. On the second issue, the appellate judge held that the Customary Law (Declaration) Order did not

provide for a marriage between a woman and another woman. Thus, although the practice of a woman marrying another woman might have been recognised among the members of the Wasimbiti tribe, it was abolished by

the Declaration.... The practice therefore ceased to be binding among the members of that tribe as of the date the Declaration came into force in [Tarime] district and as such it cannot be adjudicated by courts.

The appellate court, however, did not say that the practice was either illegal or unlawful. It merely expressed the view that courts would not assume jurisdiction on the matter simply because such a custom was not recognised by law and therefore not enforceable in a court of law. According to Maganga Ag. J., the only remedy for people who still recognised customs concerning which no state law exists was "to have disputes arising from such customs settled within their tribal councils, if such councils exist [ed]. They [could] not resort to the courts for remedy since such customs [were] not recognised in the Declaration". Having held as above, the appellate judge did not dismiss the case or even require parties to go to their 'tribal councils' for settlement. Instead he went on to decide the appeal on the basis that mokamona-marriage was a civil contract between the mother-in-law (i.e. Marwa's wife) and Robi's mother. According to Maganga Ag.J., whatever was given to Robi's father was not bridewealth but a consideration for a contract in which Nyasanda was

to have Robi produce children which she could regard as 'belonging' to her either as her own children or her grandchildren. When she assigned Robi to her stepson, the stepson became Robi's husband. But when she paid additional cattle after the death of her stepson and decided not to assign Robi to any other man, she thereby renewed the contract between her and Robi's father to have Robi to help her and produce children for her. Such a relationship cannot be termed 'marriage'.

In the opinion of the appellate judge, Robi's desertion and her subsequent cohabitation with Daniel Saraya constituted a

fundamental breach of contract which entitled her mother-in-law to sue Robi's father for refund of her cattle. The judge therefore held that "[a]ny children conceived and born to Robi after she had run away from Nyasanda's home would belong to Robi's family". Maganga Ag.J., then concluded that the two children were born to an unmarried mother and belonged to their maternal side.

This decision was followed three years later by that of Mfalila J. in the case of Mukami Wankyo v. Robi Mangure<sup>1</sup> in which the appellate High Court substantially agreed with the decision of Maganga Ag. J. above. The two judges, however, differed on the precise moment when mokamona-marriage comes to an end and the status of the children born during the period between desertion and the termination of the marriage. The relevant facts of the two cases were similar. According to Mfalila J. such relationships do not terminate on the desertion of the daughter-in-law but remain operative until specifically dissolved by an act such as refund of the consideration (i.e. bridewealth). As for the status of the children, Mfalila J. stated that as both parties to the relationship were women, the status of the two children could not be determined by biological considerations "for whether the appellant was staying at the homestead or not, she could only give children to the respondent by associating with men". Therefore, Mfalila J. concluded "the appellant's getting pregnant at a place other than the respondent's homestead made

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1 Mwanza High Court (PC) Civ. App. No. 213/75 (unreported).

no difference so long as the relationship subsisted". Having reasoned as above, the appellate judge found that since the two children were born during the subsistence of a mokamona-marriage or "contract" (as the judges now call it), they were therefore "by contractual right the children of the respondent [i.e. the mother-in-law] hence they were properly awarded to her, for that, after all, was the core of the contract between the respondent and the appellants...."

The above decisions, in my view, represent the current judicial understanding of mokamona-marriage. It is clear from these and other decisions that most of the judges and magistrates believe that mokamona-marriage is a marriage between two women. But as noted by Huber (1969:746) over a decade ago, the term "woman-marriage" does not adequately express the meaning of the custom. "There is no suggestion in the view of the people, in the terminology, or in the wedding ritual itself that a woman assumes the role of a husband in relation to another woman". The discussion in the previous section of this Chapter has made the same point.

Yet judicial officers have <sup>not</sup> understood the relationship of mokamona and it seems to me that this has to some extent influenced their attitude to the relationship. For example, in the case of Johanes Mbasu v. Mwita Machel<sup>1</sup>, in which a claim for refund of bridewealth was made following the death of a daughter-in-law, Lugakingira J. expressed the view that

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1 Mwanza High Court (PC) Civ. App. No. 32/78 (unreported).

it was improper to talk of bridewealth being given in respect of mokamona-marriage because "whatever was furnished by the appellant [i.e. mother-in-law] was the price of a virtual slave". In a more serious tone, the judge further appealed to "authorities that be, and those who purport to champion the female cause to wake up to the indignity of these marriages: Lugakingira J. no doubt represents the outspoken thinking on this point while Mfalila J. takes a more pragmatic stand on the matter. In his view, the "custom has a lot of commonsense in it for it safeguards the interests of women who are unable to have children of their own". Mfalila J., in fact, states that although it is an error for anyone to call the custom a 'marriage', courts should not abolish "this centuries old custom of the Wazanaki", but should be "preserved until, as the liberation of women catches more fire, it will itself die of natural causes".

The preceding discussion shows, therefore, that the post-colonial state was unsure what policy to adopt towards mokamona-marriage. It was not explicitly abolished nor was it legally recognised. The judicial officers were also uncertain as to how to treat the mokamona-marriage. Some thought it was rather like slavery while others saw it as an ancient custom which was to be preserved until the women were liberated. Underlying all this official ambivalence was the problem of understanding what the relationship entailed and the more so when it was undergoing such rapid transformation. We turn now to examine the nature of this transformation.

Mokamona-Marriage in Transition.

This section examines two related aspects of change. First I discuss the transformation of the mokamona-marriage relationship as an effect of social and economic change in Kuria society; then I look at contemporary disputes concerning the mokamona-marriage relationship and how these disputes reflect underlying property relations and competition between various parties for control of economic resources.

In 1969, Huber predicted that although mokamona-marriages were far from disappearing, there was a good chance that increased involvement by the local population in the cash economy would change their inheritance rules and alter their economic investment patterns. Moreover he argued, "money flows easier than cattle thus many a wife or widow may find it difficult to keep it for this purpose" (i.e. that of forming mokamona-marriages) (1969:751). Secondly, he noted that progress in medical extension in the area would most probably reduce "not only infant mortality but also, in cases where barrenness has been caused by the peculiar women's disease, ...the number of sonless wives". Lastly Huber noted that the policy of socialism and rural development pursued by the ruling Tanu Party would "surely affect the whole attitude towards cattle and its primary role in marriage transactions".

A decade later, this result seems even less likely than before, especially in Kuria society. My research data show a somewhat different type of change. Today more men and independent women use cash to acquire cattle. This economic behaviour was more evident during the two world wars, when a

number of Kuria servicemen sent money to their parents to purchase cattle for them. In the 1940s Kuria servicemen returning from the Second World War were purchasing cattle at such a high price that colonial officials were worried that this 'extravagance' would cause inflation in the cattle trade (Chapter Four). In 1979, after the Uganda military conflict, a number of young men returning from the border quickly invested their military allowances in cattle. Furthermore a number of Kuria men whom I interviewed held the view that cash was helpful only if used to obtain cattle and marry wives. For them cash was considered a means of obtaining those things which are still associated with prestige and status under the pre-capitalist economic system<sup>1</sup>. Their argument was that as it was no longer possible to obtain cattle loans from relatives, it was wise for one to build up some economic security through cattle accumulation and the gathering of dependents through polygyny.

Changes in marital relations, discussed in Chapter Eight, have also occurred in mokamona-marriage relationships. First, at the level of relations between the husband and his sonless wife, the role of mokamona-marriage lies in ensuring that the property of a sonless wife does not get used by the co-wives or other relatives. This function is today still performed by mokamona-marriage. Indeed in the contemporary period where competition for control of resources between husband and wife is more intensive, mokamona-marriage may be used as an effective

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1 See Chapter Eight where this point is discussed in detail.

means for a sonless wife to acquire a share of the household resources. And where she has a number of daughters who have been married and cattle given for them, a wife would claim as a traditional right to have a daughter-in-law married for her house. In this way mokamona-marriage may be used, as in pre-colonial times, for distribution of property between husband and wife.

The case of Matinde Kitano<sup>1</sup> offers the best illustration of this point. Matinde Kitano and Kitano Mukami were married about fifty years ago. The couple had six children, three of whom were sons. Unfortunately all the sons died young, but their sisters survived. Soon after their first daughter was married, Matinde asked her husband to marry a daughter-in-law for her house. Forty-one head of cattle were then given and a girl named Robi Wikwabe became Matinde's daughter-in-law. When the second daughter got married, Matinde did not make any claim but she subsequently demanded one thousand shillings on the marriage of her third daughter. The latter sum was part of the three thousand shillings given as bridewealth. In 1970 Matinde, who was now living separately and operating a successful brewing business with the help of her daughter-in-law in Tarime township, sued her husband claiming forty-one head of cattle as division of matrimonial property and maintenance for herself, her daughter-in-law and Robi's four children. The case had a long history lasting for a decade, during which time the husband was confined in a civil prison

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1 Gati Kitoka v. Matinde Kimune, Mwanza High Court (PC) Civ. App. No. 2/74 (unreported).

for several months, a measure intended to force him to continue paying regularly a sum of one hundred shillings per month as Matinde's alimony<sup>1</sup>.

At the level of relations between mother-in-law and daughter-in-law, some changes also are found. Whereas it has been stressed that mokamona-marriage was never exclusively intended for providing sons, but for economic support as well, today the employment of daughters-in-law in the economic enterprises of rich businesswomen is a growing practice in Tarime district. A few examples will be given to illustrate this development. We have already seen above the involvement of Robi Waikwabe in the brewing business of her mother-in-law, Matinde. During Matinde's many business trips to adjacent towns, where she was selling bananas, Robi kept the brewing trade operative. Without the assistance of Robi, Matinde would have had some difficulties in her economic concerns.

Another example is that of Mama Marwa who was also engaged in the brewing business in Tarime. The latter had three daughters-in-law, one of whom was a Chagga girl she had married for her house while living in Moshi some years earlier.

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1 The case of Matinde Kitano is one of the few I came across in Tarime district where a married woman pursued what she considered to be her rights through state agencies for so long, reaching the highest court of the land and the President of Tanzania. She displayed a high degree of determination and had the support of local politicians. Privately, however, Matinde was a shrewd lady with high business acumen.

Mama Marwa did not have a son in her marriage, but her sisters had sons to whom she had assigned two of her daughters-in-law as consorts. All the three daughters-in-law were actively involved in the brewery and did all sorts of jobs connected with the trade. They were well taken care of and respected Mama Marwa very much.

In Tarime township I found several such business-women, some belonging to other ethnic groups, operating restaurants, bars, shops and food-stalls in the markets. The majority run these businesses together with male and female dependents who are related to them in a variety of ways. Of those whom I interviewed some had been divorced after conflicts over property with their husbands; while others were divorced because they did not bear any children; and yet others had refused to be inherited when their husbands died and had been forced out of their homesteads by the dead man's brothers. The majority of them had started from humble economic beginnings and had gone into trading as the only decent means of survival. In the course of time, however, increased experience, chance and personal courage had worked in their favour and enabled them to accumulate some capital, part of which they had used to invest in mokamona-marriage relationships and to attract other dependents.

Hence, in the course of seeking economic autonomy outside the traditional sphere, these women needed the assistance of a number of people to whom they were attached by a recognised kinship bond. Such women were, as noted earlier, utilising such relationships to gain economic advantages. Thus, although it may be said that mokamona-marriage served economic as well

as procreative functions in pre-capitalist Kuria society, this relationship is utilised today as a source of labour in the economic activities which are external to the traditional sector. But the growing economic autonomy of the older women has had important consequences for the mokamona-marriage. One of those consequences is that the ability of single women to meet the cost of the marriage has enabled them to recruit such daughters-in-law without the assistance of their former husbands. The result of this development is that such marriages are now gradually becoming transformed. The way in which this transformation has occurred is examined in the next section.

#### Transformation of Mokamona-Marriage.

Two significant characteristics which distinguish the Kuria traditional mokamona-marriage from a woman-to-woman marriage are, first, the absence of a sociological husband from the relationship and, secondly, the fact that the children born in the mokamona-marriage belong to the lineage of a father-in-law - the children's grandfather. Thus the basis for our suggestion in this section that the Kuria mokamona-marriage is now becoming transformed into a woman-to-woman marriage is based on a significant and recent development in the economic position of single women. As more women who are divorced or widowed begin to establish their own homesteads away from the lineage lands of their former husbands or their natal homes, and as they also begin to acquire and accumulate inheritable property, the need for heirs and other dependents also increases. Such women include Mama Marwa who operates a brewery in Tarime township and

Matinde Gitano who also does the same business with the help of her daughter-in-law.

Two more case studies are considered below in which the transformation of mokamona-marriage appears to have occurred. The first involves an old widow from the Luo community who had a son in her marriage but was now living apart with two daughters-in-law whom she had 'married'. The first daughter-in-law, aged twenty-three, was married at a bridewealth of thirty head of cattle about ten years ago. She was thirteen years old when she got married. At the time of the study, she had two daughters and a son. The second, aged about eighteen years, was married about five years ago at a bridewealth of shs. 1300/- and had two children. Their mother-in-law, who provided all the bridewealth, owns a large brick house in Tarime township where all the family lives. She rents part of the house and has given a room to each of her daughters-in-law. The latter are permitted to invite any boy-friends they desire. The two young women appear well dressed and it was hinted that they got the dresses from their boy-friends.

Another case, somewhat similar to the above, concerns a restaurant owner who also had a son in her marriage. She complained that her son was not helping her to run her restaurant, nor was he permitting his children to come and see her. She had decided to 'marry' a daughter-in-law who would help her to run her business and also bear for her children she would look after. In a joking mood, the lady told me that an old woman without grandchildren to look after would be considered as a witch. As she did not want to be called a witch

she had decided to obtain her own daughter-in-law by whom she could get her own grandchildren.

This form of marriage is new to the Kuria people and its origin points to the growing economic autonomy of some divorced and/or widowed women who are engaged in economic activities outside the traditional sector. As noted above, the failure of the Kuria widow to obtain assistance from her son was a factor in her decision to get her own daughter-in-law through whom she could get her own grandchildren. The possessive element in the lady's remarks, though using mokamona-marriage nomenclature, carries the germ of woman-to-woman marriage which is clearly a recent development in Kuria society. Today, however, the new type of marriage is still obscured by the terminology and most probably by the ritual as well, and casual observation would not easily bring out such an important distinction.

Some comparative examples from West Africa may be helpful to this discussion. In most societies in West Africa, as noted by Krige (1974:14) where women are actively engaged in commerce and advanced crafts there are often good chances for them to accumulate sufficient resources to enable them to acquire junior wives for their husbands even if they have children of their own. Where such junior wives have been procured for the husband they are considered as co-wives and their children belong to the husband. In such cases the payment for the junior wife's marriage does not create any rights for the senior wife in the latter's children. She remains, however, attached to her senior and helps her in various types of work. Among the Kpelle of

Liberia, notes Bledsoe (1980:85), senior wives are so eager to have junior wives "that I heard of several cases in which husbands had little to do with the selection of their second wives. One man in Haindi came home one day to find that his wife - without consulting him - had brought a young girl into the house to be her junior wife". Bledsoe believes that, considering that the head wife was operating a profitable cane-juice shop in the area, she may have used "her earnings to help pay the girl's bridewealth". Again in such cases the junior wife usually establishes her own house and has rights in her children with her husband. She is however expected to be loyal to her senior co-wife and to help her in her daily duties, which in this case would include running the cane-juice business. In the two above cases, there is no question about the junior wife being the 'wife' of the senior wife despite the fact that the latter paid for the former's bridewealth (see also Nwogugu 1974:56).

On the other hand, a situation can arise where a wife, being wealthy but without children of her own, obtains another woman to stand in her place and bear children for her house. Tabolt (1926:111, 431, 439, 441) for example, reports this practice to be prevalent among the Ibo and Ijo of Nigeria. In such cases the second woman, usually a relative of the barren wife, does not form her own house. Her 'house' becomes subsumed into the house of the barren wife and her children become the children of the barren wife. The husband treats both the barren and the new wife as his wives. Thus, unlike the Kuria situation, where the daughter-in-law of the mokamona-marriage is prohibited from having sexual relations with her father-in-law, in the Ibo

case above the husband is expected to go to bed with both women as his wives.

In the above type of case, it is incorrect to describe the second woman as the 'wife' of the barren woman because, as pointed out by Krige," such a wife will never have her own independent house, as does a wife in the case of ordinary marriage or woman-to-woman marriage. It is not a separate marriage. The wife merely forms part of the establishment of the older woman" (1974:14). In a recent Nigeria Supreme Court decision the same conclusion was reached on this point<sup>1</sup>. This was a dispute between two brothers concerning inheritance rights in a parcel of land belonging to a deceased widow named Nwanyiokali. The latter was a wife of Chief Cheghekwa. She had not been able to bear children for him and had procured her niece, named Nwanyiocha, to stand in her house and bear children for Chief Cheghekwa. Such children would then be considered as belonging to Nwanyiokali and her husband, Cheghekwa. Following this marriage, Nwanyiocha gave birth to a son named Eugene Meribe who then became, according to Ibo law, the son of Nwanyiokali - his social mother - and Chief Cheghekwa. The latter died in 1925 and was survived by his wife Nwanyiokali, whose death followed later in 1937. Chief Cheghekwa had several children by other wives. In 1937, when Nwanyiokali died, her

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1 Eugene Meribe v. Joshua Egwu, Supreme Court Civil Appeal No. 48/75, Madarika J.S.C., Fatayi-Williams, J.S.C., and Nasir J.S.C. I am grateful to E. Nwogugu for drawing my attention to, and providing me with, a copy of the Supreme Court Judgment.

son Eugene Meribe performed the burial rites as a son and inherited all her property, including the disputed parcel of land. His inheritance rights were not disputed by the other children of Chief Cheghekwu until 1971 when "the defendant committed the acts of trespass giving rise to this action". The main issues in the case turned on whether Eugene Meribe was a son of Nwanyiokali or that of Nwanyiocha, his natural mother.

Chief Ekwuruke, who gave expert evidence on Ibo law on this matter, stated as follows: "[i]t is the custom in our place that if a woman has no issue she can marry another woman for her husband; any issue from the said married woman would be regarded as an issue from the woman who married her for the purpose of representation in respect of estate and inheritance". The High Court of Umahaia, which heard the dispute at first instance, found that: "the facts disclosed in the evidence did not show that Nwanyiokali married Nwanyiocha for herself - a fact naturally impossible - but she 'married' her for her husband. The word 'married' in that context is merely colloquial, the proper thing to say being that she procured Nwanyiocha for Chief Cheghekwu to marry her". The court also found that Nwanyiokali had "treated the plaintiff as her son; and that the arrangement was in accord with the native law and custom of the area".

Having so found, the trial court held that the plaintiff was a rightful heir of his social mother, Nwanyiokali, and that the defendants had committed trespass on the said parcel of land. The defendants unsuccessfully appealed to the Supreme Court of Nigeria where the decision of the High Court was upheld.

The above relationship should not be confused with a proper woman-to-woman marriage also practised by the Ibo. where, for example, a divorced wife X marries her own wife Y and establishes an independent household. In such cases, Krige notes, "X would then be defined as the 'husband' of Y; her role would have changed to a male role; her wife Y's children would then take her father's lineage" (1974:14).

This latter form of marriage has, in my opinion, developed among the Kuria, and its origin is the increasing economic independence of the single women who would never have reached that position in the pre-capitalist period. On the whole, therefore, even though Huber's predictions cannot be statistically refuted at this stage of the research, it seems to me that neither increased involvement in the monetary economy, nor the possible change in inheritance rules, has affected the people's attitude towards mokamona-marriage relationships. On the contrary, the loosening of kinship ties, a growing trend towards individual autonomy and increased peasant insecurity have increased the desire of Kuria people to invest in closer relationships such as marriage and the acquisition of children. In this changed state of affairs, mokamona-marriage relationship becomes readily useful not only for the women without sons but also for those who need an extra hand in their business concerns or other economic enterprises. Some of the Kuria women who have neglectful sons and who do not count on them for old age security have found the new form of mokamona-marriage useful in protecting their accumulated wealth against their less caring sons or their male relatives who did not assist in acquiring such resources.

One must also bear in mind the fact that most of these old women who are operating a variety of businesses in towns are living in a system which is partly traditional and partly modern. As noted in the previous Chapter concerning polygyny among men, here also the influence of tradition comes to bear upon the decisions and investment patterns of the potential mothers-in-law. Thus the acquisition of multiple daughters-in-law as in the above cases cannot be explained merely as the provision of a son to a sonless house. Also, Huber's prediction that advances in medicine would affect the rates of mokamona-marriages by reducing the number of barren women cannot hold for some of the cases we have seen above.

In concluding this section it is vital to discuss these changes in mokamona-marriage relations from the perspective of the young women who act as daughters-in-law in these relationships. A good starting point for this discussion is to deal with Huber's third prediction that "the deterioration of the custom itself, especially the fact that these daughters-in-law become more and more like prostitutes, may prevent serious-minded parents from giving their daughters to old ladies". Huber further observes that even the old ladies themselves would lose interest in marrying girls "as numbers of cases where they have been deceived or disappointed by their daughters-in-law increase" (1969:752).

As shown in Chapter Five, parental influence on the marriage choices of their children is declining. Potential brides are increasingly becoming involved in determining not only the choice of their marriage partners, but also whether they remain in that marriage. Married women, therefore, whether in mokamona- or conventional marriages, are not likely to maintain their

marriages if they consider such relationships unacceptable. The arguments they deploy to free themselves may differ, but the motive for wishing to dissolve the relationship is usually the same. Kuria data on this point show that where a daughter-in-law is dissatisfied with her relationship, she would more likely complain that her marriage is illegal and ought to be nullified by a decree of court. I previously discussed the case of Juliana Muhochi<sup>1</sup>, who petitioned at a local primary court, claiming that she did not want to remain married to a 'fellow woman'. In her petition Juliana stated that she had been married while she was very young and that her consent had not been sought. It is most probable that Juliana was not so much concerned with her mother-in-law being a fellow woman, as with other problems in her relationship. Yet she was aware that if she deployed the argument which was consistent with state policy and the thinking of the court, the court would be sympathetic to her cause. As earlier noted, the court held that a marriage between two women was against the law of nature and dissolved it.

In the case of Mukami Wankyo v. Robi Mangure<sup>2</sup>, also discussed earlier, the daughter-in-law was even more vociferous in her condemnation of the relationship. In her appeal against the lower court's decision granting the mother-in-law custody of her two children, Mukami complained that:

...the lower courts ought to have held that a marriage between a woman and another woman is forbidden in law. The respondent is a woman but married me, a woman like

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1 See note 1 p. 218.

2 See note 1 p.225.

her, so that I could be running with...men and get her children born by me.... The lower courts ought to have held that this marriage was illegal and the respondent was not entitled to have custody of the children born by me since illegal contracts are not enforceable in law.

In the instant case, Mukami was dissatisfied with the mother-in-law who had rejected her on the ground that she was incapable of producing children. This claim was made two years after Mukami was married to the old lady's house and there is no evidence that the mother-in-law tried to obtain treatment for her. The two children which were claimed by Robi Mangure were born during the time when Mukami was living with her parents.

It may be stated, therefore, that where a daughter-in-law considers it in her interest to maintain the relationship with her in-laws, she will not desert them nor will she invoke such arguments as being married to a fellow woman<sup>1</sup>. The case of the two daughters-in-law found living with the Luo lady, or the

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1 In the case of Nyamburi Waise (note 1 p.244) a daughter-in-law refused to be divorced on grounds of old age. The case came to the High Court as an appeal from a primary court of Mtana, in Tarime district. The appellant, Nyamburi Waise, was married in 1948 to the 'house' of Bhoke Nyakichogo. Four years after this marriage the daughter-in-law had not given birth to a child. It was this delay in becoming pregnant which led to serious conflicts ending with Waise's desertion. As the mother-in-law was still hopeful that Nyamburi would eventually become pregnant, she did not claim refund of her cattle. In 1977, twenty-five years after Nyamburi's desertion, and when the latter was nearly past child-bearing age, Bhoke decided to sue (through the consort) for divorce "alleging desertion and wilful neglect". The primary court found that there had been no valid marriage and advised Bhoke to sue for refund of her cattle. Nyamburi opposed the decision on the ground that "at forty-five years of age she [could not] be usefully divorced". In this case Nyamburi was aware that the divorce would benefit her mother-in-law as it would entitle her to the refund of the cattle at a time when Nyamburi had lost hope of remarriage.

other three married to the house of Mama Marwa, are good instances of daughters-in-law who are reasonably satisfied with their relationship.

What appears to be disrupting the mokamona-marriage in Kuria rural society, as perhaps in other parts of Africa, is the fact that increasing dependence of the rural households on consumer goods puts young men at an advantage vis a vis older men and rural mothers-in-law. The younger men can enter wage employment periodically to obtain money with which to purchase these goods for their wives, while the former are often unable to do that. They are above all very reluctant to sell any of their accumulated cattle for this purpose<sup>1</sup>. As a result, the young women are attracted to the men who can purchase expensive dresses and other consumer items. As noted by Krige, for the Lovedu, a young woman married to a female husband is at a disadvantage today because she lacks "the things that money can buy. Her mother-in-law can provide her with few clothes and, now that so large a proportion of the food consumed also has to be bought from shops, this presents a problem in the absence of a wage-earner" (1974:18). Although the Kuria situation is somewhat different in degree from that obtaining among the Lovedu, there is little difference in terms of the taste or needs, and even expectations of young women, whether indeed married to men, women, to sonless houses or living alone.

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1 This is so because cattle are considered to belong to a higher economic category while subsistence goods are in the lower order. For an interesting treatment of this distinction see Bohannan (1959:497).

Hence, today, Kuria mothers-in-law as well as older men are all facing similar hardships of maintaining their young associates. This, in my view, is not a problem of mothers-in-law as women, but one caused by economic changes which make the rural household dependent on industrial consumer goods under conditions where certain groups of people are not able to obtain money with which to purchase such goods. It is for this reason that many young women have 'drifted'<sup>1</sup> into urban areas where they expect to work and get those things which money can buy. Musoma township, I was informed, has a large number of such women who were formerly married to sonless houses or to old men. The urban business-woman manages to keep her own daughters-in-law, primarily because she can provide or assist in providing most of these needs. Hence Huber's observation that the mokamona-marriage custom has 'deteriorated' in the sense that "these daughters-in-law have become more like prostitutes" is a reflection of the changed economic conditions in which the rural mothers-in-law are unable to provide for the "new" needs of their daughters-in-law and the men who can either want to keep the women permanently or simply abandon them when love sours. The latter are then temporarily befriended by other lovers only to be abandoned again and again. This is what Huber termed prostitution. Thus Huber's finding that "the psychological attitude of the present female generation towards daughter-in-law marriage [was] rather ambiguous; on the one hand, even girls who have attended school are attracted by the free life it promises, on the other hand some begin to feel and express reluctance

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1 The words of Lugakingira J. in Nyamburi Waise v. Bhoke Nyakichogo, Mwanza High Court (PC) Civ. App. No. 12/78 (unreported).

against the practice as "a backward custom" reflects not so much the ambiguity of attitude of the female generation as the differing abilities of mothers-in-law to provide what Huber calls the "free life", by which I assume he means not only sexual freedom but material satisfaction as well.

To conclude it should be emphasised therefore that although economic and social changes have undermined the power of the elders to determine the choice of their daughters' marriage, mokamona-marriage has not declined. Some young women have been attracted to the rich and mainly urban based mothers-in-law whose wealth enables them to guarantee their daughters-in-law economic security which sometimes conventional marriages are not able to provide. Moreover, the young women who drift into the urban centres lacking accommodation and economic support can be persuaded to associate with rich women as daughters-in-law. And the presence of unattached men in the urban setting who do not wish to form permanent bonds with women usually provides ideal conditions for the smooth functioning of mokamona-marriage in its present transformed form. Thus the individualisation of the mokamona-marriage, as indeed of other forms of social relationships, enables the prospective daughter-in-law to decide whether or not she will associate with a prospective mother-in-law. In this context of change the functions and the forms of mokamona-marriage have become radically changed.

#### Summary.

This Chapter has considered mokamona-marriage relationship as practised by the Kuria and neighbouring societies, and shown

how such a relationship served important social and economic functions. Such relationships were integrated in the general framework of Kuria social relations and played an important function of enabling sonless women to secure benefits enjoyed by other women.

Secondly, we have shown how during the colonial and later period state regulation of mokamona-marriage was exercised, first in the form of total abilation of the custom and, after the colonial era, by limited recognition of it. Common to both periods, however, was the courts' general ignorance of what the relationship really involved. The lack of accurate information on the custom was to some extent responsible for the state's ignorance, even though in the latter period parties began to exploit this situation to gain tactical advantages in various litigation contexts.

Today, the nature of mokamona-marriage, though changing in a variety of ways, remains enigmatic to state officials who see the relationship either as "barbarous and absurd" (cf. Farran 1963:81), or simply a practice making sense to just a few traditionalist elements in the Mara region who, at any rate, are being overtaken by the dissolving power of change. This mistaken belief was to some extent held by Huber (1969) whose work has been analysed in this Chapter. Yet, as must now be clear, instead of disappearing or even declining, the mokamona-marriage relationship has been undergoing transformation and modification. Its transformation, for example, from an authentic mokamona-marriage to a typical woman-to-woman marriage is a good illustration. Perhaps other varieties might emerge

in future.

In short, although colonial and post-colonial economic changes have had disruptive effects on traditional society, such disruption has not necessarily resulted in the total destruction of most traditional practices. On the contrary, such changes have sometimes tended to strengthen other types of traditional relationships, albeit often modifying them. Hence, as Eileen Krige (1974:18) has observed "nowadays a woman-marriage may take place as a result of a son's refusal to marry the girl that has been 'born for' him. He may be a Christian and wish to have an educated wife or he may be already married in town. In this case his mother will 'marry' the girl in any case". On the other hand, "[a] Lovedu principal of a large school near Pretoria, too far away for his wife to cook for her mother-in-law, had offered to provide the wherewithal for his mother to 'marry' a wife to help her" (Krige 1974:22). As my Kuria data show above, similar trends have emerged among rich widows and divorcees. Perhaps educated Kuria sons might one day find this to be a solution where they cannot persuade their wives to discharge such obligations or to permit them to take second wives.

It may be stated in conclusion therefore that social and economic change may reduce parental control over their children or, through wage employment, cause the migration of young men from the reach of their parents, yet within this context of change, certain social relationships are created and others modified to reduce the adverse effects of the change. The Kuria people therefore view change not with passive acceptance but

with initiative and a determination to influence their destiny notwithstanding the wider constraints.

CHAPTER TEN

CONCLUSION

Overview.

In concluding this study, final consideration is made of the various arguments raised throughout the entire work. To do this, I present an interpretation incorporating a larger number of issues already discussed and also that which offers some general explanation regarding a variety of social behaviour.

Using this formulation, I stress the regulatory role of law and state during the colonial and post-colonial periods and how it transformed Kuria social relations. I identify two related aspects of state intervention in this sense: policies aimed at undermining and transforming Kuria forms of production and social relationships, and state policies whose broad effects are to conserve these forms of traditional relationships.

Mediating between the two aspects of state intervention is the Kuria response; that is a range of social action intended to minimise the disadvantages of state intervention, while at the same time exploiting changing economic conditions to increase gains. In practice, this form of Kuria initiative is neither exclusively intended to maintain the status quo nor necessarily 'progressive' but has the elements of both. In order to identify the way in which certain groups respond to change, it is useful to emphasise the internal social organisation of the Kuria people. For it appears that the allocation of political

and economic control within Kuria traditional society influences the responses of individual groups towards capitalist penetration. For example, most of the 'progressive' elements, i.e. those who pursue goals external to the traditional order, belonged to the traditionally subordinate groups, while the elders tended to seek the maintenance of the status quo. For the former group, law and state intervention provided a chance for challenging traditional arrangements using state organs, such as courts, as a means of achieving individual autonomy in the political and economic fields. The dominant group, on the other hand, while asserting its traditional claims on the now "openly rebellious" subordinates, took every possible opportunity to use their authoritative and privileged positions in the traditional sphere to attain new economic goals outside the traditional economic sector.

In the last instance, therefore, the overall response of Kuria peasants emerges as having a single objective, that of utilising change for maximum individual gains. For example, in the case of elders, traditional rules are invoked as a means of exercising their authority and control on subordinates, while the latter endeavour to extricate themselves from these obligations by asserting their autonomy using state policy as justification. On the other hand, both the subordinates and elders shift their various vantage points, sometimes assuming, whenever it serves them, positions they had earlier denied.

This study does not argue that such individual behaviour was non-existent in Kuria pre-capitalist society. Rather we see capitalist penetration and colonial state intervention

were the causes of rapid social and economic changes and a corresponding intensification of the processes characterised above as Kuria responses. Secondly, rather than viewing the Kuria peasantry as passive objects of state manipulation and hence as objects of world capitalism within the context of third-world underdevelopment, our formulation takes into account specific peasant responses to change, first in their relations inter se, and secondly, to state and world capitalism as a whole. We believe that this somewhat ignored field of inquiry fills an important gap in the understanding of the impact of capitalist penetration in the rural periphery and the emerging forms of legal ideas and social relationships.

#### Law and State.

Studies on the nature of the state in colonial and third-world countries generally have stressed its relative autonomy from the rest of society, its interventionist character in many spheres of social life and, more generally, its authoritarianism (Snyder 1981c). Taking as an example Papua New Guinea, Yash P. Ghai (1980:2) has noted that "[i]n the Third World, unlike in western societies, the state has a high degree of autonomy from indigenous societies" (see also Alavi 1972). He argues that the creation of the colonial state, with its base in the colonising country, was intended "to subordinate all groups and classes in the colonised society. It thus deployed very considerable powers, even more than might be necessary to perform the state's classical task of establishing the hegemony of the ruling class within the society". These powers were then used as noted by

Fitzpatrick (1980:2, 38) "to integrate the overall colonial social formation [by tying] the traditional mode of production and the capitalist mode together into an operative whole".

Our consideration of the role of law and state in colonial Kuria society has shown, similarly, that law and state operated in a coercive manner to integrate Kuria traditional economy into a world system. We have considered, for example, the use of chiefs and local administrative officials to enforce cash and food crop production and livestock sales. Taxation and compulsory labour in public works were also achieved using law in an instrumental way. Under these circumstances, the authoritarian element of colonial law emerges very clearly. Colonial law and state thus played a significant role in Kuria economic and social transformation and more so during the earlier part of colonial rule.

During the latter period of colonial rule, particularly after the Second World War, the interventionist role of the state in economic matters changed slightly. It was no longer necessary, for example, to compel peasants to undertake cash crop production or to sell their livestock. This function was more readily discharged by economic forces. We noted, for example, that one of the effects of the integration of Kuria economy into a world system was the creation of a demand for Western industrial consumer goods, which ultimately resulted in recurrent cash expenditures for the survival of the household economy. We have seen also that the money obtained from the sale of agricultural crops or wage employment were reinvested in subsistence economic spheres such as the acquisition of

marriage cattle or part payment of bridewealth. Hence agricultural production for world export and wage employment became increasingly vital for the functioning of the household.

In the circumstances, the coercive role of law and state changed from what Fitzpatrick has characterised as that of "tying" together the two economic systems to that of attempting to keep them sufficiently apart to delay the process of transformation and the social disruption it was likely to cause (1980:38). Even here the method of the colonial state was still authoritarian though perhaps for different purposes.

Take the example of state regulation of bridewealth in colonial Kuria society. I showed in Chapter Six that such regulation had become necessary because of capitalist penetration of matrimonial exchanges which transformed it from being the concern of a wider community to that of individuals. I argued that its continuous rise had created too high a burden for some people, and state intervention in this sphere became necessary in order to protect the poor who also had 'a right' to marry.

We saw also that while the colonial state had made every effort to force the Kuria to sell their livestock it was not happy to see the price going up nor was it willing to let the market forces prevail over administrative regulation. In the traditional economic sphere the monetary exchange rate for livestock was also artificially established. The purpose of this was to maintain some stability in this sphere and to shelter marriage and other pre-capitalist forms of relationship from

the 'disruptive' effects of the market. One is reminded here of the remark by Sukumaland chiefs, who, having fixed the price of marriage cattle at forty and twenty shillings for heifers and bulls respectively, stated that although the exchange rates had been fixed for traditional transactions, the price of cattle in non-traditional exchanges would be "one that can be obtained in the cattle market". At the time (1948) the rate was between fifty and one hundred shillings (see also Snyder 1981b:247-253).

Colonial courts ensured that persons who did not observe measures intended to reduce the disruptive elements of capitalist penetration were also punished. As noted by Fitzpatrick (1980:37), the "[l]aw and state had to confront and contain the destructive effects of capitalist forces" by punishing acts which contravened this policy.

Secondly, in the course of the administration of justice, considerations of law and order operated often to favour the enforcement of rules which were conducive to stability in social relationships within the rural areas. Courts, for instance, tended to uphold the authority of the household head over his family and keep wives and children in check ( see also Paliwala: 1979). In return the household head was expected to observe state law and to supervise production. We have noted, for example, how considerations of law and order led to the transformation of Kuria law of adultery and the maintenance of the patrilineal principle which secured to the husband all his wife's children.

Therefore, by the end of the colonial period, the role of

law and state in regulating economic and social life of the Kuria people had a double character. On the one hand it had the effect of undermining the traditional order through supporting capitalist penetration; on the other hand, it tended to pursue a rather contradictory policy which was intended to slow the process of change and in some cases to conserve certain aspects of the traditional social system.

The end of the colonial period in Tanzania did not mark a substantive discontinuity in terms of the nature of the state and its functions. As Ghai has noted, "the colonial state has its own momentum which is not easily arrested by the formal transfer of power. Its ethos and ideology remain the same;.... It remains centralised and bureaucratised... and authoritarianism is maintained" (1980:3). This is indeed what happened, for as we have seen the post-colonial state maintained its interventionist policy and entered every nook and cranny of society to regulate a variety of social and economic relationships. Unlike the colonial state, whose principal purpose was to secure the exploitation of resources for the metropolitan ruling class and whose ideology had been based on the civilising mission and the sacred trust of mankind, the post-colonial state - unable to alter its economic ties of dependence - was nonetheless able to establish its own ideological system for justifying its interventionist policy. Broadly, the ideology of the post-colonial state came to be expressed in terms of national unity and economic development.

At the level of the legal system, it became necessary to unify various traditional laws in order that every individual

may be governed by the same law. Uniformity in the legal system in terms of personnel, applicable law and procedure took on a national character. Hence in 1963, two years after the end of colonial rule, the court system was unified and customary law restated and codified. Although traditional practices were still considered an important part of national life, some of the customs considered old-fashioned or in conflict with national goals were summarily abolished. Bridewealth, which had become a serious economic problem during the latter colonial period, was stripped of its legal significance; marriage was re-defined as a voluntary union between two individuals and divorce became possible before refund of bridewealth. Both the national judiciary and the legislature were actively engaged in transforming traditional laws which were opposed to the creation of a new society, while at the same time attempting to preserve parts of tradition which were not seen as being in conflict with state ideology. It is within this political and social context, therefore, that we must locate the role of law and state in the post-colonial era.

We begin with those aspects of post-colonial law and state policy which have the effect of undermining the traditional order and then consider those which seem to be aimed at conserving it or slowing down the process of social transformation.

Examples of the first feature are discussed throughout this study. In Chapter Five, for example, we saw how the law and state intervened to uphold the principle that marriage was an individual contract and that consent of the parties was essential for its recognition by the state. This policy was

applied in a variety of cases. The case of Esther (Chapter Five) is particularly relevant here. After rejecting her father's choice of a husband, Esther went into hiding in an urban centre, where her brother was working; yet on being returned to her father's house she enlisted the support of the state police and the Social Welfare Office at Tarime. The remarks of the latter officer exemplify the policy. For example, in reply to Esther's father who was insisting that his daughter should refund her husband's cattle or look for another husband to do that for her, the officer stated clearly that Esther had no duty to get married to anyone. Throughout the hearing of the case, the official made it clear that the father had been unreasonable, first in not permitting his daughter to complete her education and, secondly, in selecting a husband for her and forcing her to marry him.

Throughout Chapter Six a similar picture emerges in which the law was used to facilitate individual autonomy in the selection of a spouse. We noted, for instance, the provision of the Government White Paper No.1 of 1969 in which it was stated that many young men were having great difficulties in getting wives "because they [did] not have enough money or livestock to pay...." Their lack of resources was therefore a hindrance to the exercise of their freedom to marry and hence bridewealth had to be made legally irrelevant in order to facilitate this process. Thereafter the Law of Marriage Act 1971 raised the minimum age of marriage for girls to fifteen and that of boys to eighteen. Parents who objected to their children getting married would be easily overruled by courts if their refusal

was unreasonable, and in any case state law was prepared to dispense with parental consent altogether, where all parties had attained the age of eighteen years.

A number of court decisions in which this policy was applied have been considered. We have examined, for example, the case of Marwa Rioba (Chapter Five), in which a father refused to give cattle for the marriage of his son on the ground that the son had selected a fiancée his father did not favour. The District Court, however, found that there was no reasonable ground why the father should force his son to marry another woman he did not love. The court justified its decision on the basis of Kuria traditional law which requires a father to meet the cost of his son's first marriage.

The policy of undermining traditional relations emerges also as an internal aspect of the marriage relationship. For example, as marriage is conceived by the state as a voluntary union of a man and a woman, its incidents are also considered as being an individual affair. Hence, individual autonomy is again emphasised in areas such as matrimonial property rights, custody of children, and divorce. These issues are considered below.

First, all children are by law placed under the general guardianship of the state and are to be protected from the competing claims of their parents. The traditional rule which viewed all children born by a wife as belonging to her husband was revoked and replaced by the welfare of the child principle. Consequently, it was no longer necessarily in the best interest

of the child to be under the custody of the father. Courts, as the agencies of the state, were empowered to exercise their discretion in determining what was in the best interest of the child. Courts found themselves having to curtail the powers of fathers, which in the past had been taken for granted. As a High Court judge later remarked "the times when the father's dictatorial powers over his children were recognised unquestionably without regard to the interests of the children are gone". Katiti J. further noted that "custody of children [could] no longer be equated with chattel ownership, where even the most unfit person would own chattels provided he [had] the purchasing power" (Chapter Seven). The application of the welfare principle, as noted above, conflicts with the traditional law relating to child custody and affiliation; the latter being founded upon different principles. In our view, this aspect of state regulation of social relations represents the boldest intervention and one with far-reaching effects.

A similar policy is found at work in relation to property rights between spouses. Chapter Eight discussed a number of typical court decisions in which wives' claims over matrimonial property were upheld. Here again, though within guarded limits, the law and state intervened to regulate marital relations and to impose new standards unknown in traditional society.

Julius Nyerere, the President of Tanzania, is noted for his support of women's rights. We have considered his pronouncements on this question in Chapter Six, and his critique of the traditional male/female relations is particularly relevant

here. Nyerere notes that in most parts of Tanzania, there was an acceptance of inequality between men and women. He argues that although it was incorrect to suppose that in traditional communities women were always an oppressed group, their position was nonetheless unequal to that of men and that enforced subservience and ill-treatment was often a normal part of their lives. This element of the traditional society was clearly in conflict with the national ideology of socialism. As Nyerere put it, socialist construction can only be attained if "women live in terms of full equality with their fellow citizens who are men". Later, Nyerere reiterated his stand on the question, emphasising that "[e]quality between men and women [would] continue to be impossible if dowry was still going to be demanded...in a union that was supposed to be between equals" (Nyerere 1975).

The Law of Marriage Act 1971, as already noted, was supposed to embody this equality between sexes. Though some of its features have been criticised, it remains the most progressive legislation when compared to the traditional law. As Ghai has remarked, the Government White Paper proposals for reform of the law of marriage were reasonably radical and the Government anticipated considerable opposition from the people (1971:103). It should not be concluded, however, that the Law of Marriage Act is necessarily a socialist legislation, an issue not considered specifically in this study.

Using the Law of Marriage Act, courts were empowered to foster equality between spouses. For example, where property was proved to have been accumulated through joint efforts,

courts were generally supposed to divide it among spouses, putting into account the extent of each person's contribution. Even though the provisions of the law on this point, and the practice of the courts, are not sufficiently radical, they are well ahead of the traditional ideas on marital property rights. As noted by a Senior Resident Magistrate, in a case in which a divorced wife was claiming a share of the matrimonial assets, the law which allows the courts to divide up matrimonial assets on divorce may be annoying to divorced husbands but must be applied by the courts (Chapter Eight).

Division of matrimonial assets also raises questions of refund of marriage payments. The interventionist policy of the state on the legal status of bridewealth has been considered above. In refunding such payments on divorce, courts have also initiated change in favour of women. Throughout the post-colonial period, courts' discretion as to the amount refundable has been exercised in favour of reducing the amount claimed where the marriage has lasted for a long time and where children have been born. As Mwakasendo Ag.J. put it, although there were no rigid rules regarding the exact amount of bridewealth refundable on divorce, courts had the duty to intervene in order to do justice. Hence, argues the Judge; "where a marriage has lasted for a very long time the chances are that the return of bride price will be ordered in inverse proportion to the number of years that the marriage has lasted. The longer the marriage subsists, the dimmer will be the prospects for the claimant...succeeding in getting the refund...". For if this principle were not

followed, argues Mwakasendo Ag.J. there would be nothing to stop "a grand old man of eighty claiming the return of bride price paid fifty years before when he married his divorced sixty year old wife" (which is permitted by Kuria law).

In the exercise of their discretionary powers, even before the Law of Marriage Act came into force, courts acted in direct opposition to traditional law in order to free women from the marriage bond by reducing the amount of bridewealth refundable. Mwakasendo Ag.J., as he then was, is particularly noted for his outspoken views on the duty of courts to abolish what he considered unequitable traditional rules. "Speaking for myself", noted Mwakasendo Ag. J., "customary rules are like the reinless wild horse which only the expert horseman can mount and control; but left to the uninitiated it can do deadly harm". Hence he says "it is the duty of the courts at this momentous period of our history to assist the growth and promotion of equitable customary rules". And courts "would be failing totally in [this] duty if [they] were to abide, without reflection or commonsense, by the unchanging and changeless [sic.] traditions of the past as if they were...mediaeval relics" ( Mwakasendo Ag. J.,)<sup>1</sup>

The foregoing views, then, may be linked with the discussion concerning the way courts regulated mokamona-marriages. We showed in the last chapter how some judges considered the practice rather like slavery, while others thought it was absurd and inconsistent to the liberation of women and called upon the state to abolish it.

To sum up therefore, the interventionist policy of the

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<sup>1</sup> Mbaruku v. Chimonyogoro (1971) HCD 406.

law and state during the post-colonial era, very much as in colonial times, was subversive to most traditional practices in many societies, including the Kuria. This discussion has confined itself to the sphere of family laws, even though it is recognised that state intervention in other areas is at least as substantial.

But this is not an entire picture, for certain policies and acts of the state in both periods seemed to point to an opposite direction. This is what was described earlier as a policy whose broad effects were to conserve the traditional order, or at any rate to slow the progress of social transformation. Such a policy began during the colonial period and continued (often with a different ideological rationalisation) during the post-colonial era.

We begin with the restatement and codification of customary law as a specific act of the post-colonial state. The exercise of recording and ascertaining customary law had started before the end of colonial rule, and its continuation thereafter was not necessarily a radical departure from the British legal ideas of maintaining a definite legal code from which the courts could draw guiding principles for the resolution of civil disputes. We have already noted also how this opportunity was taken to modify many customary rules, a process which had gone on many years before, mainly through colonial courts and local councils (see also Snyder 1981c).

Yet the codification of customary law also represented the policy of conserving a number of traditional practices

which were not considered to be inconsistent with the state's conception of national goals. A few of these have been considered in this study. It is useful to look first at marriage and its formation. Although the Declaration Order recognised a right of individuals to form a marriage relationship, it also permitted parents to arrange marriages for their children and ask for bridewealth as well. Indeed we saw how the revocation of bridewealth limitation laws was followed up with another rule providing that payment of bridewealth was not essential for the validity of marriage. The state recognised that since many people would not stop giving bridewealth for their marriages, it was proper to provide rules for the regulation of such transactions. Furthermore, the Declaration Order provided an exchange rate for marriage cattle which, as in the colonial period, was intended to shelter the matrimonial exchange from the disruptive effects of capitalist penetration. Today, when the open market price of one head of cattle in Kurialand is well above one thousand shillings, the exchange rate for the same beast remains fixed by law at two hundred shillings.

With regard to the status of children, it was shown how Rule 175 of the Declaration Order substantially conserved the traditional patrilineal principle which permits a husband to take all children born to his wife even if they are born as a result of her adultery. Until 1974, this rule, which has a large following in Kuria society and in many parts of the country, was upheld by courts. As Chapter Seven has shown, some judges still follow the unmodified version of the rule.

It must be noted as well that even with judicial intervention in this area, the courts still rule that all children born during a wife's adultery belong to the maternal side. In so doing, they consider themselves still applying customary law, which of course is not the case.

More interesting, perhaps, is the fact that courts have been prepared to enforce traditional contracts providing for the transfer of rights in children from parents to third parties for a consideration. Furthermore, some traditional relationships such as mokanona-marriage have been accepted as a legal means for a barren or sonless widow to acquire rights in children. As a High Court judge put it, courts would not abolish "this centuries old custom" but would "preserve" it until "the liberation of women [caught] more fire..." in which case, it was hoped, the custom would decline and disappear.

Elements of the policy of conservation also appear in the law and practice relating to matrimonial property. We noted in Chapter Eight how the Declaration Order made half-hearted attempts to divide annual crops and to grant small cash entitlements to wives of artisans, businessmen, and those receiving wages. This provision, I argued, represented a recognition of the changing economic activities of spouses, without accepting the principle that a wife was entitled to division of matrimonial assets as a separate right from that of maintenance after divorce. The refusal to divide other properties on divorce, in the case of parties married under customary law, has elements of a conservationist policy of not wishing to disrupt social relations and particularly the

law of inheritance. In broad terms this was consistent with the state's recognition of the traditional rule that land rights in patrilineal societies should, wherever possible, be retained within the lineage or extended family group - a policy still applied.

The provision to a divorced wife of one quarter of the annual crops, as noted in Chapter Eight, was based on the assumption that she did not need independent means of economic existence as she was expected to remarry or to reside at her natal home and use her father's land. During the debates on the Marriage Bill, the same reasoning was given by some Members of Parliament to oppose division of matrimonial assets.

The passing of the Law of Marriage Act represents a substantial step forward in this direction insofar as the right of the wife to division of matrimonial assets was recognised by law but, once again, the right to maintenance after divorce was subjected to considerations such as the guilt of the wife and proof of special reasons. Courts were not prepared to grant cash maintenance after divorce, particularly where "peasants" were parties, because, as the judges argued, peasant husbands do not have a regular cash income. It is worth noting in passing that the imposition of tax on the Kuria by the colonial state was not deterred by the fact that people did not use European money on the eve of colonial occupation. Nonetheless, the reluctance of courts in the post-colonial era to force peasant husbands to pay cash alimony for separated or divorced wives represents an aspect of the conservation policy. So far as we are aware, no court

has awarded to a divorced wife a parcel of her former husband's land, even though it is generally recognised that divorced women do not always have access to land in their natal homes.

The concept of 'wifely duties' on the other hand, has been used by courts to refuse wives a share in matrimonial assets - saying that a wife traditionally has a duty to assist her husband in all his lawful work, whether shopkeeping or agriculture. As noted by Ghai, the provision that a wife is entitled to her separate property or to division of joint assets would not be very helpful to most wives "so long as the law refuses to recognise that wifely functions also contribute to family income" (1971:107). It is not suggested here that the concept of 'wifely' duties or of denying a former wife economic support is necessarily a pre-capitalist aspect of economic relations. On the contrary, it arises in a situation where pre-capitalist forms of social security and economic support are weakening and no longer able to meet these needs, and yet are mistakenly thought to be still operative.

To sum up, therefore, state regulation of Kuria traditional relationships has had two closely interlocking facets, one broadly aimed at undermining the traditional order and the other at slowing down this process. In the sphere of family law, the provisions of the Law of Marriage Act represent clearly this dual policy at work. I agree entirely, therefore, with Read's observation that the Law of Marriage Act "incorporates the flexibility which gives recognition to religious and traditional community practices and beliefs, while allowing for their evolution in changing social circumstances, and its

provisions are appropriate for the regulation of social life in towns without doing injustice to the way of life of overwhelming majority in the villages" (1972:38). As Ghai remarked, the Tanzania state was "clearly keen to reform the law in the context of modern social and economic conditions but at the same time careful not to destroy traditional values and practices. It is therefore not surprising that the proposals contained many compromises between various conflicting principles, and that while it talked in terms unifying the law, it provided for the accommodation of divergent rules and practices. After the public discussion, it was forced into yet further compromises" (Ghai 1971:103).

Today, exactly a decade after the Law of Marriage Act came into force, the conflicts between the two aspects of the same policy have emerged in the courts of law in the form of civil disputes where litigants deploy as many rules and rationalisations as possible in order to win cases. Court decisions in contemporary Tanzania represent one way in which the law and state appear in practice to deal with social conflicts. The influence of civil litigants in this context provides us with a chance to understand not only the way state agencies handle such disputes, but also how parties view their options and how they manipulate their statuses to gain advantage in times of changing social and economic change. This may be described as the Kuria response, to which we now turn.

#### The Kuria Response to Change.

In order to analyse clearly the Kuria response to capitalist

penetration, I discuss separately two otherwise closely related aspects of this response. The first concerns the response of the traditionally subordinate groups such as the young generation and women. For such groups, as noted before, capitalist penetration and colonial state intervention provided an opportunity to challenge existing relations of domination. Elders, on the other hand, saw change as a means of utilising their traditional positions of authority to maximise their gains.

The second aspect looks at the Kuria peasants as a group and their response to change in terms of co-operation and active opposition to various forms of state intervention. I use informed self-interest as the criterion to account for their reactions, even though I recognise that their economic options, as indeed those of the dependent post-colonial state, are often limited by wider, more constraining forces.

I begin with the response of the elders to economic change. In Chapter Four it was noted that the imposition of poll and hut tax by the colonial state caused the movement of young men into wage employment outside Kurialand. Some of them had been sent to work by their parents who were either too old to work or unwilling to delegate the management of the household to their sons, in order to save the family herds from being compulsorily sold by the colonial government. Recall, for example, the case of Burianyero Matiko who, in 1921, went to a place called Magadi to work for his mother's tax money. On his return with the money, he found unfortunately that his mother's cattle had been sold to satisfy her tax liability (Chapter Four). Others were not sent specifically to earn

money for their parents, but often sent some money home in order to enable their parents to purchase cattle for them. And those who decided to obtain the money from cash-crop production often did so with the help of their families. Once the money was obtained and tax paid they used the rest to purchase cattle, which were and still are considered the only form of durable wealth.

In this way the imposition of tax enabled elders to use their traditional authority to harness their subordinates' labour power in order to meet the demands of the colonial state while at the same time some successfully utilised colonial state demands to strengthen their household economy. They were able to retain their cattle and in some cases even increased their livestock holdings by gaining resources outside the traditional economic sector.

Colonial demands on the Kuria households to produce cash crops also enabled the elders to require their subordinates to engage in cash crop production. Since the duty to pay tax was officially imposed on the household head, who was also traditionally the manager of the household economy, enforced cash cropping enabled the head to secure the control of the proceeds from crop sales. The money saved after tax was then used to purchase more cattle and marry additional wives. Here again the elders used changed economic conditions to reinforce their economic positions within the traditional sector, often by invoking their traditional authority.

Examples of this form of Kuria response run through most of the Chapters of this study. An examination of bridewealth,

for example, also discloses a similar picture. We saw how parents were able to acquire consumer goods and agricultural labour from their prospective sons-in-law. I considered the case of Matiku Sese who, in 1949, sued his prospective father-in-law for compensation on the ground that while he was engaged to his daughter, he ploughed for him four times in his farm (Chapter Four). Other parents required their prospective sons-in-law to pay tax or fines for them, and still others were asked to meet the cost of their wives' brothers' education. Today, as observed in Chapter Six, bridewealth exchange has become a source of economic survival for some poor families, while in the case of the rich households it is a means of capital accumulation.

Similarly, Chapter Eight showed how, at the level of relations between spouses, the status of a husband and his traditional authority over his wives may be utilised to acquire rights in more land, cheap labour for production of cash crops, management of businesses and a variety of economic enterprises. We have also seen similar use of daughters-in-law by rich business women who associate with them in mokamona-marriage relationships.

All the above examples show the utilisation of traditional status relations to gain economic advantages in the non-traditional sphere. Such conduct could be explained also in terms of declining ties of mutual economic support, which makes household heads anxious to increase the size of their families in order to meet economic and social security needs.



Figure 8.1. A Happy Hour for the Women of Nyantira Ujamaa Village.  
(Photograph by Author.)

Such response is no doubt directly related to changes in social and economic conditions, but it is also an opportunistic response which is based on the deployment of traditional ideology for gains in a non-traditional setting. As we shall see shortly, the elders who use such traditional ideology are often keen to emphasise that traditions are immutable and social relations based on them ought to be maintained as in pre-colonial times.

The desire of the elders to maintain stability in senior/junior relations may be viewed at one level as the cause of the conservation policy of the colonial state and at another level as its effect, for it seems that the elders' desire to keep their subordinates bound to them did contribute to the conservation tendency of the colonial state and later to that of the post-colonial state. The invocation of traditional ideology by the elders was, in such cases, the only means open to them for justifying their authority over their subordinates and other people. This is more so at a time when traditional obligations were often being disregarded. As noted by Chanock, concerning similar trends in Malawi and particularly the use of tradition as a national ideology, "an oral statement about the law, then, both is and is not a statement about the past but a claim about the present. This claim must be rigidly presented since customary law, especially when in a state of flux, cannot afford to appear flexible because its source of legitimacy is tradition" (1978:86). Chanock's study is particularly interesting because it shows the use of traditional ideology not only at the level of inter-personal relations but

at the level of the state. In the latter situation, tradition is used as a legitimization for state intervention in social relations, the imposition of a harsh criminal law, the punishment of political opponents and the rejection of foreign law and institutions.

In these circumstances appeal to tradition is a ploy designed to enable those who use it to gain particular benefits, whether in litigation or economic matters. For example, a rich man in the village needs the support of his neighbours to operate his commercial concerns or to gain unpaid labour in his cash crop farm. Relatives, on the other hand, need him for support when they fall in debt or when their children get sick. In a sense, there is a reciprocal economic exchange based allegedly on traditional relations, when by all accounts the rich relative may be using these links to accumulate wealth. As we noted in Chapter Seven, the success of a rich man in a rural setting may well depend not so much on how effectively he can isolate himself from his 'traditional' ties of obligation as on how he succeeds in using such ties to gain wealth while at the same time meeting some of the demands made on him by his relatives and neighbours.

This complex interaction of change and tradition has led some analysts of the third-world social formations to remark that capitalist penetration does not eliminate traditional relations partly because of its limited nature and partly because it results in conserving effects. (Fitzpatrick 1981: 15). Thus according to Fitzpatrick, the overall interaction of two modes gives rise to forms of economic, political and legal

organisation that cannot be reduced to either the capitalist mode or a pre-capitalist system. This formulation can be said to explain generally the conditions obtaining in Kuria society.

In conclusion therefore it may be stated that although the Kuria pre-capitalist<sup>social</sup> and economic system has been substantially transformed, traditional elders who used to benefit from earlier relations of subordination and obligation, have retained their ideological systems which they tactfully deploy to gain economic and other advantages from people who, under the traditional system, would normally be bound to them. Finally, the conservationist policy of the colonial and post-colonial state facilitated elders' claims on their subordinates, and both operated together with a mutually reinforcing effect.

Turning now to the response of the subordinates to economic change, one is confronted with an equally complex picture. Subordinates utilised changed economic and political circumstances to attain individual economic autonomy, which led them to attempt a disengagement from ties of obligation and of dependence on their elders while at the same time endeavouring to re-establish these same relationships with other people. Examples of this are drawn from the whole of this study. First, wage employment enabled young people to acquire money which they then used to purchase livestock and sometimes to meet the cost of their marriages. It may be recalled how, in 1948, the returning Kuria servicemen used their allowances from the army to purchase livestock. Similarly, other young

men who were sent by their parents to work in mines and tea plantations in Kenya retained some of the money which they then used to purchase agricultural implements, such as ploughs, or to open some small scale businesses. Those who were sent to school and had some training to enable them to get well paid jobs (by colonial standards) also soon became relatively autonomous from the elders. These were then able to reject their fathers' choice of spouse and others moved away from their fathers' homesteads, to establish theirs a distance apart. By so doing they stood a good chance of improving their economic positions.

So far as women were concerned, opportunities for such economic autonomy did not arise soon enough. Those who were fortunate to be sent to school, as indeed few were ever sent there, still depended upon their parents to select spouses for them. A number of them were removed from primary schools in order to be married, often at an age when they could not resist parental pressure. The case of Esther shows how, at the age of thirteen, she was removed from school and married to a man as old as her father. For most young women who were married at an early age, the means of freeing themselves from what they considered unacceptable bonds of obligation was to petition for divorce in state courts, to escape into urban centres or to elope with young men of their choice. Some, such as Juliana Muhochi and Mukami Wankyo (Chapter Nine), soon discovered that state agencies such as courts were intolerant to mokamona-marriage practices. They were then able to take the opportunity to free themselves from such relationships even though their genuine complaint may have been entirely different

from the reasons they gave to the courts (compare with Bledsoe 1980:178).

Elderly women utilised state policy on marriage to petition for division of matrimonial assets and in some cases to claim alimony during desertion. The case of Matinde Kitano (Chapter Nine) presents an example of a woman who combined the traditional and non-traditional systems to reap maximum benefits. She claimed and secured a share of her daughters' marriage cattle under Kuria traditional law through a system of mokamona-marriage. Thereafter, she used state law to gain a division of matrimonial property, that is besides what she was given under traditional law. Finally, she used the money she had acquired from the two systems and opened a brewery and a green banana business, which she then operated with her 'traditionally' acquired daughter-in-law. In short, Matinde Kitano sought to sever relations of obligation with her husband by obtaining a judicial separation order. This move was of some benefit to her in that it gave Matinde the freedom to live apart from her husband and to retain her income from the business; yet by remaining legally married, she was able to enforce her right to alimony under state law. Thus with state backing, Matinde forced her husband to pay her a monthly sum of one hundred shillings, which she claimed was her traditional right as a wife. She added that, as such payment was insufficient to meet the maintenance of her mokomona-married daughter-in-law, and her grandchildren by the latter, she had been compelled to do business in order to make ends meet. Indeed Matinde had presented a similar image of 'self pity' very convincingly to the courts and won a right

to sue her husband as a pauper. While her husband was held as a civil prisoner at Tarime, the prison charges were met by the President's Office (compare with Bledsoe 1980:165 n.18).

The strategies of the traditionally subordinate groups, as indeed those of the seniors, were therefore geared in both the colonial and post-colonial periods to utilising capitalist penetration and state intervention to maximise their gains by disengaging from traditional bonds of obligation whenever it was in their interest to do so, while simultaneously seeking to tie their subordinates in bonds of obligation. The undermining and conserving roles of law and state policy were significant influences in the choice of individual strategies. Finally, as Caroline Bledsoe has recently found, the age of social actors in this setting is a significant variable (1980:173). This is so because traditionally, as in modern times, the economic options open to women as well as men at various stages of their lives are different. Hence, as our Kuria data show, young women and men are likely to find it easier to run off to urban centres in search of paid employment. Old men and women, who cannot do so, must depend upon their control over marriageable women, cattle, or land, which they use as bargaining levers to extract resources from young working men or rich neighbours. On the other hand, since the older women in patrilineal societies have no land rights at their husbands' or natal homes, they attempt to establish a number of businesses in the urban centres, using the labour of their relatives. Hence, neither the young nor the old, whether subordinates or elders, rich or poor, are likely to ignore the limited economic

opportunities which capitalist penetration makes available to them, or those which can still be gained by deploying traditional ideology in a variety of settings.

Finally, we must complete the picture by a brief consideration of the relations between Kuria peasantry as a whole and the state, from the colonial to the post-colonial period. Here we find a parallel situation of continuous adjustment leading sometimes to passive resistance by peasants against the state's economic programmes. Our discussion of colonial policy on cattle marketing (Chapter Four) and bridewealth limitation (Chapter Six) showed the ways in which Kuria people reacted to the two policies.

Thus Kuria refusal to sell their livestock provoked the British colonial officials to use force, rounding cattle in the villages and auctioning them. Later, when the economic forces were favourable to such sale of cattle, Kuria stock owners still refused to sell to the state agencies, but this time because they wanted to sell outside the government structures where better prices were available. The problem of cattle smuggling across the border to Kenya and stock thefts generally, which remained unresolved through the colonial period, is still causing difficulty to the post-colonial state in relation to contemporary Kuria society. Thus what may be characterised as 'cattle politics' is a highly sensitive issue in Tarime and indeed in the whole of the Mara region.

Kuria response to bridewealth regulation rules, on the other hand, also illustrates the continuing initiative of the

Kuria peasants and their ability to manipulate state law. First the colonial state fixed bridewealth at three head of cattle (1929); after large scale contraventions the limit was raised to ten head. As Kuria people were totally opposed to this regulation, they devised a number of stratagems (Chapter Six) which were intended to evade the limitation rules. These ranged from giving their daughters to Kenyan husbands, where the maximum rate was fifty percent higher than that of Tanganyika, and to giving the prescribed number of ten head accompanied by several calves. Some found it easier to use secretly appointed bridewealth receivers while others simply defied the rules and faced court prosecutions. As noted earlier, most of the so-called bribery which was rampant during the colonial period was part of a passive resistance against such policies and not a moral defect as suggested by some colonial officials. Colonial state chiefs were bribed to close their eyes against such violations while they themselves took advantage of a repressive colonial regime to accumulate personal wealth. Today, even though bridewealth has been made legally inconsequential and state officials are clearly opposed to it, Kuria fathers continue to demand large numbers of cattle and the practice is unlikely to disappear.

Other colonial and post-colonial state programmes have faced similar response. Education for girls, in particular, has suffered due to parental readiness to withdraw their daughters prematurely for purposes of giving them in marriage. In colonial times parents were prosecuted for opposing this policy. Today, when primary education for all children aged seven is legally enforced by the state, contraventions are

still regularly reported throughout the country. During my tour of Tarime district with some Government and Party officials, one of the officials described, at a public gathering, how some Kuria parents bribe primary school head teachers so that they may illegally release their daughters for marriage. The leader expressed disappointment that while in some parts of Tanzania parents were bribing teachers to retain their children in school and others paying for their education privately, Kuria parents were doing the opposite. In recent years, as in colonial times, state courts have been used to prosecute parents who disobey and give in marriage their children prior to their completion of primary education.

In the sphere of agriculture, particularly cash crop production, peasants faced with falling prices of crops (in real terms) and declining land fertility, have attempted to disengage themselves from cash cropping, thus concentrating on food production. In some instances peasants have rejected state sponsored agricultural programmes (Coulson 1977:74-100; Raikes 1978), and state coercion has been applied (Matango 1976). Thefts from Ujamaa village farms have been reported and a variety of other responses indicative of peasant resistance to state sponsored programmes form part of regional reports for the national newspapers. Peasant 'conservatism', an epithet given to this form of peasant response during the colonial times, loom large in contemporary Tanzania.

Peasant resistance to state policies is naturally very worrying not only to the national ruling class but also to the international bourgeoisie, whom peasant production largely

benefits. In Tanzania, most of the foreign exchange earnings come from the sale of agricultural commodities; as Nyerere once put it, it is the peasants who pay the state's foreign bill. Yet peasants support a growing state bureaucracy not with modern agricultural technology but with a hand hoe and a panga. As noted before, this occurs under conditions of worsening terms of trade at the international level and under declining soil fertility and bad weather conditions at home.

Therefore state intervention under these conditions, as in colonial times, assumes a coercive and authoritarian character. Though agricultural crop prices may be raised to encourage production, state officials are often deployed into the rural areas to exhort peasants to double their farming efforts. State supervision of agricultural production sometimes involves the carrot and stick - increased prices for crops, reduction of drinking hours, curtailment of cultural activities such as traditional dance and even restriction of peasant movements.

It is not suggested here that all Kuria peasants are undifferentiated in class terms, nor that they use similar methods to reduce the adverse effects of state intervention and capitalist penetration, but the general conclusion drawn from this study is that their response is oriented towards what they rationally consider to be in their best interest. Some may withdraw their children from school not so much because they dislike scholarship as such but because they need the resources accruing to them from the marriage of their daughters. It is not true to suppose that Kuria peasants

oppose some aspects of state policy mainly because they are conservative or irrational. Instead they know what they want and their responses can be understood if one looks broadly at the options available to them and the various limits on their actions.

I therefore conclude that a study of social and legal change in Kuria family relations must be located in this context of unceasing bargaining and pursuit of self-interest, a context which is becoming increasingly complex as both internal and external forces of change bring pressure to bear upon various social actors within Kuria society.

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## ABBREVIATIONS.

ERLUP : Bureau of Land Use and Planning, University of Dar-es-Salaam, Tanzania.

Abbreviations (contd.)

CROMIA : Churches' Research on Marriage in Africa.

HCD : High Court Digest, Published by the Faculty of Law,  
University of Dar-es-Salaam, Tanzania.

JMAS : Journal of Modern African Studies.

LRT : Law Reports of Tanzania, Published by the Faculty of Law,  
University of Dar-es-Salaam, Tanzania.

TNA : Tanzania National Archives.

TNR : Tanzania Notes and Records. (Formerly Tanganyika Notes & Records)

RAPE : Review of African Political Economy.

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