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A brief history of a neo-traditional form of chieftaincy and its 'constitution' in Northern Tanzania, 1945-2000

by Catherine Baroin

Introduction

Van Rouveroy van Nieuwaal has repeatedly emphasised that African traditional chiefs often play a hybrid role: they are caught between on the one hand the state and its government, whose policies and legislation they are supposed to enforce, and, on the other hand, the people over whom they preside and whose - occasionally conflicting - interests they are meant to represent. Even when they don't turn out to be mere government puppets, or when a socio-political situation generally allows for more flexibility, chiefs are often stuck in this inescapable, ambiguous position.¹

Until the early 1950s, the chiefs of the Rwa of Mt. Meru in Northern Tanzania experienced such an ambiguous situation.² However, a land conflict with the British colonial administration created such turmoil, that the ruling traditional Rwa chief was rejected by his people and that new political institutions, including a different conception of chieftaincy, were put in his place. Subsequently, the role of the former traditional chief was split between two persons, both of which had very clear-cut positions: on the one hand there was the former official chief (*Mangi*), who was backed by the colonial administration, but who in reality had very little authority; on the other hand there was the chief (*Nshili Nnini*), who presided over tribal issues and, relying on a new constitution, became the unofficial but true guarantor of the Rwa identity and customs. The present article describes these rather peculiar political institutions, which the Rwa adapted to modern times, and which until today play an important role in the Rwa's public and private life.

A historical background (1947-1953)

Traditionally, the Rwa have been Bantu-speaking farmers who cultivated the rich southeastern slopes of Mt. Meru (4585 m), some 50 kms away from their better-known eastern neighbours, the Chagga of Kilimanjaro³. Like the Chagga, the Rwa mainly used to grow bananas and coffee, combined with maize and beans, which were also cultivated on the dry plains below the mountain. During the 1930s and 1940s, the Rwa experienced great population growth, which resulted in both local and colonial concern with regard to increasing pressure on land. The situation was aggravated by

¹ Cf. Van Rouveroy van Nieuwaal 1992, 1996, 1999.

² Tanzania was formed in 1964 by the merger of Tanganyika and Zanzibar.

³ Cf. Moore 1986.

the fact that many White settlers had set up large and profitable coffee plantations, forming a circle around Mt. Meru, which prevented the Rwa from expanding down the mountain and from taking their herds to the low pastures and watering points.⁴

In Northern Tanganyika, the British administration tried to find a permanent solution to the recurring conflicts between the White settlers and the indigenous Rwa, by commissioning an expert, Justice Wilson, to investigate the situation. Based on his belief that Africans should only carry out subsistence farming and provide labour for other economic sectors, whereas the White settlers should specialise in commercial farming on large-scale coffee plantations,⁵ Wilson advocated homogenisation and extension of the White settlers' areas by expropriating the Rwa pastures and a few farms to the east of Mt. Meru. The Rwa, who already felt congested on the mountain and wished to expand their own coffee production, resolutely opposed the trimming of their tribal land. Resistance against colonial expansion was mostly led by young, educated, dynamic, Christian coffee growers, who had learned to read and write at the Lutheran mission schools, had started growing coffee for cash after getting acquainted with this new plant on the mission fields, and were eager for more social influence.⁶

During the late 1940s, Tanganyika had a rather anomalous position in the British Empire: it was Mandated Territory, which after the defeat of Germany at the end of World War I had been administered by the United Kingdom under the loose supervision of the League of Nations.⁷ Britain thus had 'full powers of legislation and administration', but was bound to promote 'the material and moral well-being and the social progress of the inhabitants'.⁸ According to this mandate, the British attempted to carry out a new policy, under which the former tribal *Native Authorities* - a creation of Indirect Rule - were transformed into more modern and democratic *Local Governments*. It was thus decided that, in accordance with the colonial administration, local chiefs were to be elected and should rule in keeping with a written tribal constitution, which would combine local practices with modern principles, such as the separation of executive and legislative functions.⁹

In 1948, talks about the creation of a tribal constitution started. As a result of the growing unrest on Mt. Meru however, the Rwa refused to collaborate. They boycotted their traditional chief, the *Mangi*, because they felt he was supporting the

⁴ Iliffe 1979: 145; Luanda 1986: 273 & map III. The Rwa were not alone in their situation. In nearby Kenya, White settlers and African farmers were involved in similar land struggles; in Kikuyu land the turmoil led to the collapse of government authority at the end of the 1940s, which resulted in the 1952-1956 Mau-Mau revolt; for the Chagga of Mt. Kilimanjaro, the Rwa's eastern neighbours, on the other hand the situation was somewhat better because European plantations around them were less numerous.

⁵ Spear 1997: 216.

⁶ Baroin 1998: 538-541.

⁷ A mandate that later was passed on to the United Nations Organisation.

⁸ Iliffe 1979: 246-247.

⁹ Cory paper n° 71.

colonial administration on the expropriation scheme, and they demanded his resignation. The British tried to suppress the rebellion by deporting its most outspoken leaders, but unintentionally made matters worse. As the *Mangi* maintained his position, turmoil grew bigger and hundreds of Rwa joined the Kilimanjaro Citizens' Union (KCU), a new political party that had been set up by the Chagga the previous year and that was aimed at eroding the standing of local Chagga traditional Chiefs.¹⁰ Despite this immense Rwa opposition, the constitution was created nonetheless; it was, however, never carried out, although the Rwa readily admitted 'the excellence of its underlying principles', as the British administrator bitterly noted.¹¹

The year 1951 is still remembered by the Rwa as a most dramatic year in their history. It was the year that the forced land eviction took place and that the British even went as far as to burn down the local Lutheran church, which was a great sacrilege for the, by then, devoutly Christian Rwa. Other less dramatic, but equally significant, events also took place in 1951, and they were to have more continuing effects.

On 1 January, the Rwa rebellion thus organised itself in an independent political party, the Meru Citizens' Union (MCU), splitting from the Kilimanjaro Citizens' Union. This party was to play a leading role at a later stage when dealing with the British administration and setting up an independent coffee co-operative.

On 24 February, the Rwa elected their first Paramount Chief, in parallel with the pro-British *Mangi*. They gave this new chief a new title, *Nshili Nnini*, meaning 'big leader', using the same word, *nshili*, that was used to refer to a clan leader, *Nshili wa Ufwari*. While the election of a Paramount Chief in a comparable situation had been quite official - the Kilimanjaro Citizens' Union had campaigned for the election of a Paramount Chief for all Chagga,¹² and the first Chagga Paramount Chief, Thomas Marealle, had been elected on Mt. Kilimanjaro one year later - the election of the Rwa's *Nshili nnini* was never acknowledged by the British administration. His election was for instance never even reported in the District Commissioner's (DC) annual report, which was not surprising: his authority had been bitterly challenged by the Rwa. Although their confrontation remained non-violent, it took all sorts of administrative and legal forms, and extensive international contacts were set up in order to have the Rwa case known all over the world.¹³ The DC was not inclined to praise the organisational abilities of such a trouble-making tribe.¹⁴

¹⁰ Iliffe 1979: 491-494.

¹¹ Tanganyika Territory, *Annual Reports of the Provincial Commissioners for the year 1948*, p. 63.

¹² Moore 1986: 154.

¹³ Spear 1997: 223.

¹⁴ In the 1949 *Annual Report*, the Rwa were thus mentioned as 'a tribe whose political aspirations are greater than their ability and experience'.

Subsequently, the Rwa hired a lawyer and filed a suit against the British, the Meru Land Case, which was heard by the Trusteeship Council of the United Nations Organisation (UNO) - the legal successor of the League of Nations - in New York, in 1952. It was the first time a small African tribe challenged colonial domination on the international scene, and as such it became a well-known episode in the African struggle against colonialism.¹⁵ However, the new political institutions that the Rwa created in the wake of the Meru Land Case, have never been mentioned, nor reported, in the Colonial Archives and hardly received any attention in later studies.¹⁶ They remained underground, but nevertheless played - and still play - a significant role in the Rwa's central political system. In fact, the unacknowledged character of the Rwa's alternative political institutions is the reason that they remained in place after traditional chiefdoms were abolished in Tanzania in 1963 in the first place. When chieftaincy was abolished, the *Nshili Nnini* was left as the sole representative of tribal identity.

The new political institutions

The new political system created by the Rwa in 1951 was made of three parts:

- i. the *Nshili Nnini*, or head leader
- ii. the *kamati*¹⁷, or tribal council
- iii. the tribal constitution.

The duty of these institutions has been to rule local affairs and to enforce moral and social order, completely independent from the national political system. The British colonial administration, and later the Tanzanian State administration, never interfered with these internal matters. Let us take a closer look at these three-fold new institutions.

(i) The *Nshili Nnini wa Varwa*, the Paramount Chief of the Rwa, is the tribe's moral leader. In Swahili, his title is translated either as *Mwenyekiti wa koo zote Meru* (Chairman of all Meru clans), or *Mwenyekiti wa Jadi na Mila za Wameru*. The Rwa themselves translate this latter formula into English as 'Chairman of taboo and Meru traditions'.¹⁸ This Chief's role is thus to enforce customary law according to the tribe's constitution and wishes. He does not make decisions alone: a global consensus

¹⁵ Japhet & Seaton 1967; Iliffe 1979; Spear 1997.

¹⁶ Neither Puritt's study of Rwa social organisation (1970), nor Spear's excellent book (1997) make mention of them.

¹⁷ This Swahili word is derived from the English 'committee'.

¹⁸ This translation is not accurate as *jadi* should rather be translated into ancestor, descent, origin, genealogy, lineage (Johnson 1990: 147).

is always looked for, and all matters of general concern are discussed within the tribal council or in general meetings.

The first *Nshili Nnini*, who was elected 24 February 1951, was Tobia Nassari Ayo, the former leader of the Ayo clan. His clan was a commoner one, and Tobia was chosen not for any prominent position or wealth, but for his personal qualities: he was a gentle and quiet man, who listened to people and spoke eloquently. He had strong moral standards and knew the Rwa traditions and culture well. He remained *Nshili Nnini* for 25 years, until 1976, when he resigned because of old age. The next *Nshili Nnini* was Yesaya Lemera Kaaya, the former *Nshili's* long-term and experienced assistant. He, in turn, resigned because of old age in 1984. Moses Isacki Nnko, the former leader of the Nnko clan, succeeded Isaya after being formally installed in January 1986. He resigned because of ill health in 1994, and his assistant, Bethuel Paulo Kaaya, took over.

The *Nshili Nnini* and the clan leaders have no special dress. They wear western clothes like all other men nowadays. However, when on duty, chiefs can be recognised by the special sacred stick they carry with them. Each chief has his own stick, *ndata*,¹⁹ which is about 50 cm long and ends up in a sphere about the size of a fist on the one end. It is carved out of a very hard and dark wood, from a tree called *senefu*. The *Nshili* holds his stick right below the sphere, vertically. No one else should touch the stick, and although the chief can curse a person by pointing it at him, or by turning it upside down in front of this person, he should never use it to kill another human being. The supernatural power of *ndata* is such that it also stops fights: the chief only needs to raise it above the belligerents, and they will stop immediately.

(ii) The *Nshili nnini* presides over a council of elders called the *kamati*.²⁰ This council is composed of about 15 to 20 members, which include the leaders of the main clans and older age groups,²¹ together with a few respected old men. The secretary, *katibu*,²² of the *kamati* convenes meetings and writes letters decided upon by the council. The *Nshili Nnini* also has an assistant (*ivele* or *ngoviri*). This man, because of the experience he normally accumulates in performing this duty, usually succeeds the *Nshili Nnini*.

The council holds regular meetings, two or three times a month, to discuss a variety of tribal affairs. Most of its activity pertains to general matters (the Meru Land

¹⁹ The stick is a well-known status symbol throughout in the area, and both the Maasaï and the Swahili used them.

²⁰ This council is also referred to as *mringaringa*, the name of the huge tree (*Cordia abyssinica*, Borag) under which the council meets in the very central village of Poli.

²¹ Rwa society is organised according to age and the whole male population is divided into a number of *rika*, age groups. Young men enter the youngest *rika* through circumcision and initiation, and after 15 years or so, recruitment in this *rika* will close and its members will, under their elders' guidance, take up the status of warriors. Meanwhile a new *rika* is opened for younger men.

²² A Swahili word.

Case for example, before it was settled), policies and contributions to be collected for development and it functions as a supreme court, settling disputes for which no solution has been found at the lower level.

When an ordinary dispute arises, the matter is first discussed at the local level, i.e. within the family if it is a family problem, or within the lineage or clan if that is appropriate. If two clans are involved, leaders and members of these clans will meet in order to settle the dispute. Only when no agreement is reached at a lower level, is the matter sent to the level above. When a family conflict cannot be settled by the head of the family, it is thus discussed by the lineage; if the lineage in turn does not succeed to arbitrate the case, members of the whole clan will try to find a proper solution. In former times, a plaintiff who asked for the arbitration of his lineage or clan had to provide beer for the elders. Only then would they meet and discuss the issue. But as beer consumption has dropped heavily as a result of Lutheran influence,²³ the elders' demand for beer dropped, and plaintiffs are supposed to provide others drinks or cash when they ask the elders to meet and consider their case.

Besides general issues pertaining to the whole tribe, the cases that are finally brought up to the *kamati* usually stem from daily controversies that families or clans are not able to solve. Many cases relate to land issues, which are normally of clan concern: inheritance, lending or selling of land, and boundary marking (when a farmer unduly displaces a field limit, encroaching onto his neighbour's land). Family and matrimonial problems also take up much time on the council agenda: conflicts between a man and his wife, between brothers, parents and children, or decisions as to the fate of a widow and orphans. All of these are not personal matters but legitimate group concerns. Compensation for theft, injury or murder may also be brought to the *kamati*, since they are also matters that the lineage or clan are normally involved with. Such is also the case with controversies relating to women (if, for example, a man takes somebody else's wife), or with contracts on animal lending, which entail arrangements that are defined by customary law.

Before the whole council meets to discuss a problem, a simpler solution may be looked for. For example, one or a few members of the council will be asked, personally, to arbitrate a specific dispute in which the parties involved have not been able to come to an agreement on their own. It is hoped that the wisdom and influence of an elder will help find a settlement. If this does not suffice, the whole council will meet to discuss the issue, and the decision will settle the matter once and for all, no appeal being allowed within the traditional system.

In most cases, people bow to the *kamati's* decision, and only seldom does someone decide to take his case further to the local Primary Court. A Primary Court judgment, if contrary to traditional customs, can be reversed by the *kamati*, and the latter's verdict will usually prevail because it stems from a collective agreement that the individual is bound to accept. Moore's keen remarks on Chagga law apply here as well: she rightfully notes that official Tanzanian law, which is enforced in Primary

²³ Baroin 2001: 89-92.

Courts, and local customary law rely on opposite conceptions of society. Official law is strongly influenced by European ideas, which look at societies as ‘only a great sea of individuals (...) [where] clans and families [are] not (...) given serious official attention’.²⁴ Yet it is quite clear that both in Chagga and in Rwa society today, clan and family interests prevail over the individual. Clans and families remain the basic operating social units, the concerns of which customary law (whether Chagga or Rwa) deals with. Because they address the appropriate issues in a suitable manner, the clan or the council usually succeeds in settling matters.

There is one final important field that falls within the competence of the tribal council: decisions pertaining to ordeals. Ordeals indeed set up a threat not only for individuals, but for the social group (family or clan) as a whole, which is why they are of family or clan concern. The procedure to which the Rwa resort is called ‘to break the pot’,²⁵ and it is still used in present Rwa’s daily life, as a manner to solve some problems for which no other solution has been found. If some damage has been done - somebody’s barn is burned down, a cow is stolen, a piece of property (in one case from 1997, a radio) is stolen from a house - and despite extensive searches and inquiries, no thief or wrongdoer can be found, and thus nobody can be held responsible, there is only one sure way for the victim to secure compensation or revenge. He (she) will launch a supernatural procedure, called ‘to break the pot’.²⁶ First it is publicly announced, some two weeks in advance, that the pot will be broken for this specific case. The announcement is meant to give the person at fault a further opportunity to report himself (herself) before it is too late. If he does not show up, a specialist of pot-breaking will be called for. This specialist uses a small clay pot shaped as a feminine figure with two breasts, puts some specific plants inside it and lays a curse, by saying: ‘If the person who burned this barn (or stole this cow, or stole this radio) does not report himself, let him be cursed’.

The threat is such that the wrongdoer usually prefers to report himself straight away. Then, in order to ‘cool down the curse’, *yorisa kidengo*, i.e. to free himself from it, he must compensate the victim, pay for the pot procedure and pay a fine, as soon as possible. If he fails to do so, the curse sooner or later will bring endless misfortunes upon him, his family, his clan, his descendants and/or his property. He may get sick or die, his family or clan members may get sick or die, he may have no offspring himself, his children may die, his cattle may die or have no offspring, or his crops may not ripen. Everybody is so deeply convinced that such disasters are bound to occur, that breaking the pot is a very efficient way to force a wrongdoer to come to the fore, and thus to solve this kind of problem.

²⁴ Moore 1986: 169.

²⁵ *Ipara nungu* in Rwa language, *kupasua chungu* in Swahili.

²⁶ Again, this practice extends far beyond Mt. Meru, and the Rwa say they borrowed it from the outside. Moore thus mentions a somewhat similar ‘curing pot’ among the neighbouring Chagga of Kilimanjaro (1986: 48-49).

Another occasion for breaking the pot arises if a series of misfortunes strike a family or a clan, and people start looking for an explanation. They will agree that some family or clan member did something wrong, possibly a long time ago, that he never paid for. Maybe somebody fell short in his duty of honouring a particular ancestor, and the latter is now seeking revenge; maybe he killed somebody or stole something, and never acknowledged his deed after the pot was broken. The problem therefore is to find out who is responsible, and what misdeed explains the ill fate now beleaguering the group.

Because the curse endangers the wrongdoer's whole clan, no one is allowed to undertake the breaking of the pot without the approval of his clan: the risk would be that the wrongdoer belongs to the same clan as the victim, in which case the procedure would backfire and turn the curse against all clan members. The clan of the victim therefore first inquires and debates among its members in order to make sure that no one within the clan is responsible for the offence, before allowing the procedure to take place. In the late 1980s, the Rwa decided to add one more guarantee against the deadly risks involved in breaking the pot: only the tribal council could from then on be entitled to decide about letting somebody break the pot.

Most Rwa today agree that the social benefit of this procedure is that it provides strong incitement for people to behave. But members of the Pentecostal church, which influence is growing on Mount Meru,²⁷ refuse to participate in laying any curse. They consider it a sin, and claim that breaking the pot amounts to calling the devil upon fellow Christians.²⁸

(iii) As mentioned before, the idea of a tribal constitution was first put forward by the British administration in 1948, but could not be enforced because of local Rwa rebellion. After the land case had been settled,²⁹ and the *Mangi* had resigned in 1952, talks about a constitution resumed between the British and representatives of the Rwa people, including members of the Meru Citizens' Union:

'After twelve such meetings, the new constitution was written up and circulated throughout the tribe; it was discussed at village meetings and finally accepted on May 27, 1953. The more prominent features of the new constitution were the decision to elect the *Mangi* by secret ballot, the separation of the executive and the judiciary at all levels, and the setting up of sub-committees of the tribal council to deal with specific services.'³⁰

²⁷ The Pentecostal church first established itself on Mt. Meru from 1968, and gained more influence after a conflict within the Lutheran church in 1990-1993 (Baroin 1996: 543).

²⁸ Members of the Pentecostal church also refuse to attend *kamati* meeting.

²⁹ The Rwa did not win their case in New York and White farmers did settle on the disputed land. But after five years, the settlers felt they could not develop the area and left, and the Rwa purchased back most of the land (Puritt 1970 : 9-10).

³⁰ Puritt 1970: 70.

After the new constitution was approved, a new *Mangi*, Sylvanos Kaaya, was elected. He dealt with all administrative matters in relation to the colonial power, while the *Nshili Nnini* remained in charge of internal affairs. When in 1963, shortly after the establishment of independence, the *Mangiship* was abolished, together with all traditional chieftainships in Tanzania, the 1953 constitution also ceased to exist. The text completely disappeared,³¹ and is not even clear whether it was ever enforced after Kaaya's election. However, the concept of a constitution remained and lived on in the political system of the *Nshili Nnini*, who continued to perform his duties: he could not be abolished, since he had never been officially accepted in the first place.

After the initial abolishment of all traditional polities, the *Nshili Nnini* and his council dealt with tribal affairs and cases on an oral basis, according to customary law. It was, on Mt. Meru as elsewhere, a set of unwritten rules, of which the elders were knowledgeable with regard to traditional local affairs and that they could judge cases. It was only much later, apparently, that the tribal council decided to write down the customary law. They wrote a document that they themselves referred to as their 'constitution', using the same word that the British had introduced in 1948. However, the content of this document was quite different from that of a constitution in the English sense.

The document, written in Swahili, has had many shapes and forms. In the course of four stays on Mount Meru,³² I collected four successive versions of it, spanning over a time of ten years, from 1985 to 1995:

- The earliest written document I came across dates from 1985. It is a six-page, typed manuscript in Swahili, entitled *Decisions of the Assembly of Traditional Leaders of the Meru (Rwa) people – Phase Three – 1985*.³³ This document first indicates the names of the 14 members of the tribal council who enacted the 66 laws that follow (*sheria zilizowekwa*, 'the laws that have been changed'). It is signed by three persons: Yesaya Lemera Kaaya, who was the ruling President of the council, his successor Moses Isacki Nnko,³⁴ and the secretary of the tribal council.
- The next available document is written in English and is dated December 1986. It is called *Meru traditional regulations*, and starts with the same list of 14 people, followed by a greater number of paragraphs. The previous 66 are extended to 74, and they are divided into a number of subheads: regulations

³¹ I could find no copy of it in the Tanzanian or British colonial archives, nor could Henry A. Fosbrooke, the Government Sociologist who had originally helped write it down, provide me a copy of it when I met him as a very old man in 1992.

³² These stays took place between 1992 and 1997, and add up to 10 months.

³³ *Maazimio ya kikao cha washili wa mila za Wameru – Awamu ya tatu – 1985*. No document was found corresponding to phase 1 or 2.

³⁴ At the time, Yesaya was still *Nshili Nnini*, in charge since the official inauguration of his successor Moses took place in 1986.

concerning marriage, injury or murder, stealing animals or food, rites concerning death and inheritance, and general regulations.

- The third document corresponds to ‘phase 4’ of the 1985 constitution. It is written in Swahili, and dated 1989. This time, it comprises a list of 81 different ‘laws’ (*sheria*) decided upon by a list of 16 council members.
- The latest document was agreed upon in 1995 by a council of 20 members. The 1989 draft of 12 pages developed into a neatly typed document of 25 pages, where the same 81 points are given a more detailed phrasing. The obvious concern is to avoid ambiguity in interpreting the law. The title is also more elaborate: *Laws of Meru traditions and customs as decided upon in the general meeting of all leaders (Mringaringa) on 28 January 1995.*³⁵ At the bottom of the front page it is written: *Zimetungwa na halmashauri kuu ya jadi na mila za Wameru*, meaning ‘Compiled by the Head Council of Tradition and Customs of the Meru people’.

These four documents clearly demonstrate that, in recent times at least, the Rwa have paid much attention to their laws. From one to the next, the constitution has become more complete and longer. Comparing the first and last version (1985 and 1995) enables us to draft the general contents of the constitution, and to analyse the global trend of its evolution.

Fitting to modern times

Both documents share the enumeration of long series of fines that are due in various circumstances. The first 18 articles deal with marriage payments. They give a long list of animals, cash and other gifts that the bridegroom has to give to various members of his bride’s family, before and after the wedding. No mention is made, however, of the time when these gifts should be given. Another long list of articles indicates which fines must be paid, depending on a great number of possible damages: injuries of different kinds, murder, helping with abortion, impregnating girl, thefts of all sorts (stock, agricultural products, honey or beehives). Other important topics that the two documents are concerned with are inheritance, selling or lending of a field, or other economical regulations such as those to be followed when someone keeps somebody else’s animal.

A full analysis of all these laws, which the Rwa consider as the cornerstone of their tradition, would involve a detailed description of their social customs and rituals, which is beyond the scope of the present article. It will suffice here to highlight the most significant changes that were introduced in the last constitution, as compared to

³⁵ *'Sheria za jadi na mila za Wameru kama zilivyopitishwa katika mkutano mkuu wa washili wote (mringaringa) uliofanyika tarehe 28.01.1995.'*

the one written ten years earlier, as they provide evidence about the social changes which took place lately in Rwa society:

- From one document to the other, rules are reordered in a more logical way and fifteen new points are introduced, thus turning the last constitution into a lengthier (from 66 articles to 81) and more detailed document. Many rules are phrased more explicitly ways and examples are introduced in order to avoid ambiguity. This concern for more logic and more precision is, again, a clear signs of the people's interest in these laws.
- Another obvious basic concern is to adapt rules to modern times. This can be seen in one striking difference between the two documents; namely, the updating of fines. Their increase is not a mere consequence of inflation. It also demonstrates the people's understanding of inflation and their desire to deal with its effects.
- Another sign of the Rwa's concern for modernity is the introduction of a new clause: the obligation for parents to send their children to primary and secondary or technical schools. Indeed, the general concern for providing education has continued to grow on Mt. Meru, keeping pace with demographic pressure and land shortage. These factors in turn make it necessary to look for other sources of income, which better education is likely to make available.
- Land pressure on Mt. Meru also led people to keep and breed less livestock. It is thus not surprising that many fines that were valued in kind (cattle or small stock) in 1985, have been given cash equivalents in the updated constitution. Few people would be able to pay these fines in kind nowadays.
- Again, the Council's desire to adapt customary law to the changing conditions of life is demonstrated in a new article: it formally states which rules should apply in case of a car accident. Such occurrences are indeed on the rise, due to the ever-increasing traffic on the Arusha-Moshi tarmac road, right to the South of Mt. Meru.
- But other new developments in the 1995 document result from more fundamental changes in the Rwa's mores and mentalities. Children are for instance increasingly born out of wedlock, and the new constitution takes this new social trend into consideration by providing them with rights they did not have previously. Such children and their mothers used to be social outcasts, but they became so numerous that they cannot be simply discarded anymore. A new attitude has developed, partly as a result of church influence, and the general feeling today is that these mothers and children should be given a minimum social recognition and economic support. One new article in the constitution thus stipulates that, if a man is proved to be the father of a child whose mother he refuses to marry, he must still provide for the child's upbringing, pay for his school fees as a married father does, and give him a share of inheritance.

- Moreover, a number of new rules specifically deal with various cases of sexual intercourse outside wedlock, and a new article has been introduced that allows daughters to inherit land from their fathers, ‘in case they do not live in their husband’s homestead’ (a euphemistic way of saying that they are not married). The new constitution not only tries to make good the damage on the side of the mother and the child; it also punishes the wrongdoer by prescribing heavier fines on a man who impregnates a girl and subsequently refuses to marry her. This harsher punishment is another indication of the growing general concern for what has come to be a big moral and social problem.
- Married women as well are endowed with increasing rights. For example, a new article states that a woman who is expelled by her husband has a right to cultivate a field that her husband’s clan will provide her with. This is a way to provide her with personal means of subsistence and with the right to stay with her children in the area. A heavier fine is also levied upon a husband who injures his wife and breaks one of her bones: an extra ewe is added to the previous fines.³⁶

Where some of the articles in the Rwa’s constitution thus demonstrate their concern for adapting to modern times, others remain very much in line with tradition. Thus, the custom of ‘breaking the pot’ is introduced, by stipulating that it is prohibited to break the pot without *kamati* permission. However, the purpose of this article is not to officially acknowledge a custom that everybody takes for granted; it is to rule and control the handling of this very dangerous procedure.

In all successive versions of this document, land clearly remains a basic issue. The latest version introduces two additional articles regarding land. One stipulates what should be done in case one unduly moves the boundary mark of his field (not a rare occurrence), and the second expressly prohibits mortgaging a field. This article can be considered as an attempt by the clan elders (who are strongly represented within the *kamati*) to safeguard their main source of power, namely control of land, since mortgaging a field can be an indirect way to sell it without clan permission, i.e. to escape the traditional obligation to ask for the clan elder’s permission in order to sell a plot of land.

Further articles have been added which relate more closely to constitutional rights proper. They describe how chiefs should be elected, and stipulate that no cumulation of offices is allowed: a clan chief can thus not be an age-group leader or a church leader. These three basic sources of power are thus clearly differentiated.

One final striking feature of the 1995 document is the obvious demonstration of the need for outside recognition. The final article, after listing the names of the 20 members of the constitutional committee who drafted and agreed upon the text,

³⁶ In 1985, one cow, one sheep and beer for the two clans were added.

entails one sentence for government approval: ‘as approved by the Chief Lawyer of the Government’.³⁷ A blank space is left for this person’s signature.

This document, as I was told, was the result of the following steps:

- The new constitution had been prepared by the council of elders whose names are listed at the end;
- Then it had been discussed and approved on a wider scale, by the clan leaders and age-group leaders;
- Then it had been sent for approval to the Tanzanian government, as the final sentence of the 1995 document testifies.

The Rwa indeed felt they could not officially approve their own constitution if any of its articles was in contradiction with the Tanzanian State Laws. This position exemplifies the strength of the national feeling in Tanzania, which is a prevailing attitude throughout the country. The Rwa, somehow, consider themselves to be Tanzanians before being members of their own tribal community. At the time of my fieldwork, they were waiting for a positive answer from the government, before organising a general meeting with the purpose of approving their new constitution officially. Only then would they use it as their new legal basis. With such a purpose in mind, it is quite clear that no other language could be used but Swahili, together with English the official language, and by far the most widespread in Tanzania.

Conclusion

The Rwa constitution provides an interesting picture of what the Rwa consider to be the core of their social laws. However, these laws are the ones that the Rwa *want* to apply to themselves, or feel they *should* apply to themselves. They may not fully correspond to what actually takes place. As Moore commented with regard to Chagga customary laws: ‘... fixity of rule statement is frequently found coupled with flexibility of practise.’³⁸ For example, the livestock that a Rwa bridegroom is supposed to give to his in-laws is sometimes paid years later, if ever. One elderly informant once proudly told me that he had just recently paid the bride price on behalf of his own father, who had died before he had finished paying it. Despite the fact that some rules are thus not given much notice, it is important to keep them in mind: when a crisis occurs, the reason for ongoing misfortunes may be attributed to the fact that these rules were ignored.

The constitution not only provides some insight as to how the Rwa view their own culture. In addition, it is a form of political manifesto. By stating in writing the tribe’s ‘traditional’ institutions, Rwa identity is shaped and strengthened. From a

³⁷ *Na zimeidhinishwa na mwanasheria mkuu wa serikali.*

³⁸ Moore 1986: 40.

historical point of view, the tribal institutions described in this article were created to resist British colonial dominance in the wake of the Meru Land Case. But they can also be understood as a broader consequence of indirect rule, and of the 'creation of tribes' that went with it: Iliffe thus states that, with regard to Tanganyika, the British - in an oversimplification - only viewed Africans as belonging to tribes, and so Africans created tribes in order to function within the colonial framework.³⁹

The Rwa political institutions clearly demonstrate their desire to regard themselves as a united and operational tribal group, and in this respect one should not be surprised that they went as far as to adapt their institutions to modern times, making them one further example of neo-traditional bricolage, for which Africans have demonstrated so much talent.⁴⁰ However, tribal unity was greatly jeopardised in the early 1990s by a violent conflict that erupted among the Rwa over the control of the Lutheran diocese on Mt. Meru.⁴¹ A lingering dispute followed between the authorities of the official Lutheran church on the one hand, and the 'rebels' who started a new independent church on the other hand. It resulted in so much social disruption that development projects could no longer be implemented, and the proper working of the Rwa's political institutions was greatly hindered. In Rwa society today, the neo-traditional tribal institutions compete with two additional sources of power: the churches and the state administration.

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³⁹ Iliffe 1979: 318.

⁴⁰ See for example the Nkoya of Central Western Zambia (van Binsbergen 1992), or the Ngwato of Eastern Botswana (Landau 1995).

⁴¹ Baroin 1996: 540-550.

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