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## Negotiating Gender Justice in Tanzania

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### ABSTRACT

In line with more recent studies in legal anthropology, and transnational legal rights studies [—, 2003. Human Rights Law and the Demonization of Culture (And Anthropology Along the Way). *PoLAR*, 26(1):55–73; —, 2006. Transnational Human Rights and Local Activism: Mapping in the Middle. *American Anthropologist*, 108(1):38–51; Sieder, Rachel & John Andrew McNeish. 2013. *Gender Justice and Legal Pluralities: Latin American and African Perspectives*. Routledge], this article explores how a young woman claiming to be abducted and raped navigates among the plural legal systems available in fending for justice. The article thus investigates what I refer to as ‘contesting normative orders’ and different perceptions of sexual violence and rape that are present in the plurality of existing legal systems in Tanzania. How are transnational legal rights approaches to violence and rape against women perceived by the various parties involved – including representatives of local ‘customary law’? How is violence against women acted upon, and – based on which principles – finally settled locally? The article draws on anthropological fieldwork among the Meru in northern Tanzania, conducted intermittently since 1989.

**KEYWORDS** Justice; transnational legal rights; gender violence; Tanzania

The troubled matter of gender violence, violence against women, sexual harassment and rape is a major global issue, but only until recently, it has been defined as a human rights violation. In Africa, as in many other parts of the world, acts of violence against women, including rape, often go unnoticed and thus convey the message that they are condoned and will go unpunished (Green 1999; Merry 2006; Hodgson 2011). This article explores a situation in which a young and yet unmarried woman claimed to have been attacked and abducted by two young men. Although the abducted woman was locked up for days, she managed to escape. The young woman claimed that she had been raped, and was supported by some in her community. Others, however, saw the event as the initial step of the traditional marriage formation process, albeit the fact that force was involved. Still others questioned the young woman’s ‘conduct’ (tabia) and her

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sexual conduct, in particular, and argued that she most likely had herself to be blamed.<sup>1</sup> Whereas the abducted and raped woman, supported by her closest family and friends brought the case to the *formal* court in town, the alleged offender and his family, in their turn, went to the clan leader with the intention to defend their interest by drawing on the Meru 'customary' law and practices.

Scholarship addressing women's legal rights and local customs often portrays women as passive victims and collaborators in their own subordination (for a critique see Green 1999; Merry 2003, 2006; Sieder and McNeish 2013). It is argued, that male-dominant legal systems leave no avenues open for the agency of women except through strategies of evasion and concealment. Complex and elusive notions, such as, 'African culture', 'tradition' and 'patriarchy' are not only seen as barriers to gender equity and women's legal rights but also portrayed in a superfluous and static manner. This is rather no more than a simplistic understanding of alien local practices and frequently portrayed incorrectly and in a stereotypical manner (cf. Mukangara and Koda 1997; Hellum 1999 for a critical discussion; Canadian International Development Agency (CIDA) 2000).

In Tanzania, the socio-cultural diversity found among the approximately 120 various ethnic groups, their economic adaptation and diversity in ways of life are also reflected in the multiple and culturally diverse legal practices and law systems which are currently operating (Rwebangira 1996; Odgaard 2002). In anthropological terms, Tanzania like most postcolonies shows a presence of many and simultaneously legal or normative orders – commonly referred to as 'legal pluralism' (Griffiths 1986; Fuller 1994; Hellum 1999: 64; Merry 2006; Sieder and McNeish 2013).<sup>2</sup>

Today there are three different, but more or less parallel, legal systems; customary law, religious law and in particular that from the Koran applicable to Muslims and statutory law. Such a plurality of legal systems, and, what I refer to as 'contesting normative orders' and practices, ideally offer multiple options for the users, provided that they are aware of them, and, more importantly, have the economic, social and emotional strength to draw on them. To bring a case to the statutory/state court will, for most people, imply a bypassing or neglect of the local customary procedures and, in turn is likely to involve social and emotional costs particularly for legal minors (cf. for instance Hodgson 2011 ).

In line with more recent studies in legal anthropology, and transnational human rights studies (Hellum 1999; Agosáin 2001; Merry 2003, 2006; Sieder and McNeish 2013), this article explores the encounter between young men and women in present day Tanzania with regard to the problem of marriage formation: particularly the initiating of a sexual bond, in a manner at once ambiguous in its consequences, and common sense and modern perceptions of what constitutes rape and the use of force in sexual encounters. It thus also alludes to contesting normative orders and different perceptions of sexual violence and rape present in the plurality of existing legal systems such as among the Meru people.

The agricultural Meru live on the fertile slopes of Mount Meru immediately east of Arusha town in northern Tanzania. Traditionally they are organised in patrilineal clans and age-groups and practice exogamy. Compared to most Tanzanians, the Meru are relatively well-off, however, over-populations has made farming land scarce and

along with out-migration most families on the mountain are currently generating income through a combination of farming, tourism, mining, petty trade and transport (Haram 2004, 2010, 2018; see also Spear 1997).

As illustrated in the article, the politics of gender violence and the recent growth in discourses and practices opposing violence against women, also challenges local kinship systems affecting familial and gender inequalities. The article thus situates gender violence; i.e. abduction and rape of women, within the diverse and competing legal institutions and practices and discusses the complexities involved in adjudicating justice in the context of 'legal pluralism'. To better grasp the complexities in the contesting normative (legal) orders and practices at play, the article explores changes in marriage formation and discusses why men's 'stealing of brides' (-iiva) is accepted, at least tacitly by the community even when the stolen bride has been taken 'by force' (kwa nguvu) and allegedly raped. By discussing this case in some details, the article excavates the 'contest-ing normative orders' at play in the context of legal pluralism and discusses how and why the involved parties navigate in particular ways. The article also explores how the multiple and often contradictory principles interact; How do various people involved, as in this case, the perpetrator, the 'victim', the aggrieved family and kin, the experts, such as the lawyers, the police and the clan leaders navigate at the interface among the legal normative orders? More specifically, the article excavates how transnational human rights- and gender rights-approaches are understood locally and acted out in a situation of alleged violence against woman. How is violence against woman and forced sex or rape understood; acted upon and 'vernacularized' (Merry 2006) and, finally – based on which principles and practices – settled in this community?

Before I further explore the troubled matter of gender-based violence and its jurisprudence in today's Tanzania, I will give a brief description of the legal systems as practiced in Tanzania with a focus on Meru ethnography and their 'customary law' (referred to as 'Katiba') and practices.

## Legal Systems, Culture and Rights

In the pre-colonial time, the *Mangi* (chief) was the overall guardian of all Meru and acted as a kind of 'high court'. The *Mangi* chieftainship was inherited among members of the 'royal' Kaaya clan, and the *Mangi* chose his 'councillors' from among all of the (Meru) clan leaders (Puritt 1970). During German and British Colonial administrations (1884–1914 and 1914–1961, respectively), a modern court system was introduced whereby the *Mangi* chief also took the position as magistrate. Diverse customary practices were codified and modified more in line with colonial and western notions of jurisprudence than with tribal or local legal practices. Tribal authority administered tribal law in the interest of the colonial state commonly referred to as 'customary law'. Although a commonplace, 'customary law' is not customary or deeply embedded locally and culturally (see, for instance, Merry 1988, 2006).<sup>3</sup>

Upon independence (1961), all chiefs were deposed as Government executives and thus the Meru *Mangi* chief lost his position in the political structure, but he continued to exercise influence in internal affairs (Puritt 1970). Today all (male) members of the

clan elect clan leaders. In cases of sub-clans or lineages, each lineage elects a sub-clan leader whose functions are similar to the clan leader's, but his jurisdiction is smaller. Headed by the Mshili, the head of all clans, together with the clan and sub-clan leaders, they form the constitution; 'council of all clans' (*Nringaringa*, named after the tree *cordia abyssinica*) and hold their meetings about once a month under a large, sacred tree in the central village of Poli (Haram 2004, 2018).

The first president Julius Nyerere of Tanzania maintained and expended legal pluralism with international law and also codified customary law for the 120 ethnic groups in Tanzania; Local Customary law (Declaration) Order, referred to as CLO (cf. also Moore 1986). The most obvious contradictory legal normative principles (between the formal and the Meru customary legal practices) are predicated on two different notions: firstly, of the person; the idea of the autonomous, right bearing individual person; and secondly, on different ideas of justice and punishment.

State system seeks to find out who is right and wrong to implement exact punishment either by corporal punishment, being jailed; a loss of freedom or the healing of the soul. The customary law, however, does not see people as autonomous individuals but as social beings and gendered persons who are connected to each other through kinship, settlement, and more. 'Justice' is sought in the form of compensation as a way of reinstating workable relationships among people. Accordingly, severe violation and even the killing of a person – is a matter of compensation. The perpetrator and his closest family carry the heaviest burden but are assisted economically by the clan or the lineage. The compensation is given to the deceased's family and lineage and shared among them according to closeness of kin, gender and age. Accordingly, there is no crime which is punishable by imprisonment. All crime, including murder, is punished by compensation in goods or money. And, to underscore, the legal person and thus the perpetrator is not 'merely' punished as an individual, but the clan acts as a common body on behalf of the individual perpetrator for whatever wrong he has committed. Thus, the Meru legal person is both an 'individual' and a 'communal' person.

Although the clan as a political and legal unit has lost considerable power in present day Meru society, it is still influential in such local matters as inheritance, land allocation and bridewealth negotiations.<sup>4</sup> The clan also judges cases of dispute between members of different clans, it imposes fines, and it organises the collection of compensation.

However, Based on a small sample of 12 cases, collected between 2005 and 2016, my data shows that an increasing number of women bring their cases to the statutory court – either directly or as an appeal to the local law system. The very detailed case about Betti and Chris is a 'telling' case (Mitchell 1984: 239) which I have chosen because the particular circumstances illustrate analytical and theoretical connections. Or to argue with Geertz (1973) 'small facts speak to large issues'. Although I found that people increasingly are aware of the changes in 'haki za wakinamama'; women's rights, to bring a case to the formal court usually is a very long and enduring process, with the 'wasting of time and money' as it is generally put. Women as daughters, sisters, wives, widows, divorced and unmarried increasingly voice their interest in such crucial matters as the competing struggle over scarce (agricultural) land, in the

matter of marriage, and in the case of unmarried mothers they fight for the custody of their children which traditionally, according to the patrilineal structures, is held by the child's father's lineage. This also seems to be the case when men wish to marry but bypass normal procedures in marriage formation by 'stealing a bride', which points to the problem of conflating marriage formation with male violence against women – including forced sex, rape and abduction, which I now turn to (Haram 2004, 2010).

### Marriage Formation and 'Stealing of Brides'

As in most parts of Africa, marriage formation among the Meru is a long and drawn-out process in which several events and exchanges between the parties involved are to be fulfilled both prior to, and after, the woman is 'handed over' by her father's clan to her new kin (Comaroff 1980; Parkin and Nyamwaya 1987; Pison and Bledsoe 1994).

With socio-economic changes, growing out-migrations – particularly among young men of marriage age – growing regional and national integration of the rural Meru ways of life, have generated new opportunities as well as challenges to the young generation. Such changes have also influenced the trajectory of adult personhood and marriage formation with severe consequences for the young women because they according to the ethnically prescribed marriage age of 18–25 often 'get delayed' and thus fail to get married. The time of marriage formation is a critical and very uncertain period in the life of both young men and women. The 'road to marriage' is, however, particularly thorny for women. Her marriageability is easily 'destroyed' (imeharibika). The older generation argue that these changes in marriage formation are caused by young men's lack of self-discipline (usutu) and deference (wiindi) towards the elder's authority. While this argument is likely to be a perennial claim, there are other factors such as a drop in polygyny, reducing demand for marriageable women, and a higher number of men who out-migrate compared to women – and thus (rural) women outnumber men. Young women's vulnerability during premarital years, is, further, reflected in the increasing number of unwanted pregnancies, with a resulting high number of (illegal) abortions as well as children born out of wedlock and, in turn, an increasing number of unmarried mothers. 'To get married [for women]', as most say, 'is a matter of luck', but also increasingly a matter of choice (Haram 2004, 2010).

In today's Meru, there is a wide variety of marriage formation along a scale from an ethnically prescribed marriage, to an elopement planned by the two, and further to an elopement which looks like a forced elopement, which in effect might be a true abduction. In addition to these alternative marriage formations, the girl may also try to 'elope herself'. This latter form is very rare, but may occur when the girl is pregnant and has no promise of marriage and in addition fears that the man will marry another. In desperation, she goes to the man's home place and although she will be scolded and threatened, refuses to leave. Such an attempt by the pregnant girl will be successful if the man and his family accept the girl. If she still refuses, the clan elder or the ward chairperson will be called upon and the case is settled by bringing the girl back to her natal home.

According to most people I spoke with, the practice of elopement began in the late 1950s (see also Puritt 1970). Gluckman, who lived among the neighbouring Chagga of

Kilimanjaro in the 1950s, however, argues that elopement, abduction and bride capture were commonly practised in the early 1900s (cf. Setel 1999: 128–129 for a discussion of this practice in later today Kilimanjaro). While the Chagga, for instance, have a particular term for elopement (-torosha; drive into running or seduce), the Meru very tellingly refer to it as to ‘steal [*iiva*] a bride’. ‘To steal a bride’ is a type of marriage in which parts of or all marriage arrangements, and at times, even the bridewealth may partially or fully be left out by the groom and his kin, i.e. prior to marriage. Whereas the couple, in most cases, elopes before such arrangements are finalised, some elope before any arrangements have been initiated between the two families. Although the bridewealth, in cases of elopement, is usually paid afterwards, it is often reduced considerably.<sup>5</sup>

Discussing elopement with young men, they mention several reasons why some men choose such a marriage strategy. Some claim that elopement is caused by competition among men of the same age set over a particular girl. Others turn to elopement since they favour a girl who is already (formally) betrothed and their only option is to ‘steal’ their age-mates’ bride. Still others are said to ‘steal’ a bride simply because they want to snatch a friend’s girlfriend. A more common reason, though, is illustrated by cases in which a suitor cannot meet with the demands of the girl’s family and therefore the parents have either refused his proposal or are likely to do so. Under such circumstances a man may even ‘deliberately’ (*kwa maksudi*; with the intention) impregnate the girl and thereby strengthen his chances of marrying her, or as one marriageable man argued, ‘I trapped her through pregnancy because I feared that she otherwise would refuse my proposal – and perhaps choose another’. And he added, ‘I planned it so that it would be easier [less costly] to marry her’. But as noted, a man may also elope to escape marriage with a woman he has impregnated. To avoid that either of the families force a marriage between the two, the man quickly elopes with another woman – or abducts her; by force.

Southall’s study among the Junam of Uganda on the Congo border argues that elopement is not a resource for a suitor who cannot raise the required payment or an escape for a girl whose parents want to marry her against her will, but rather a marriage strategy for a suitor to secure the girl before she has time to change her mind (Referred to in Mair 1969: 58). In the Meru situation, there are also cases where women take the initiative and even succeed in marrying under false pretences. This latter form usually occurs when a woman has become pregnant and fears that the man who has impregnated her will refuse to marry her and, as noted above, quickly marries another, i.e. through elopement. If the family and clan support the woman and, more importantly if the man’s parents favour her, the pregnant woman may succeed – even if the man, at first, refuses.

While most cases of elopement or abduction happen quietly, others are extensively commented on; The abduction is well planned and carefully arranged by the young man who is usually helped by his age mates. A car may be hired, and when, for instance, the girl is alone at home, the hijackers, who often belong to the suitor’s age set, enter the girl’s home and quickly attack her. Bound and gagged she is carried to the car, and, in haste, before any neighbours or people nearby can interfere they drive off – usually straight to the groom’s home. The stories usually end by telling about how the poor girl suffers at her in-laws’: since she attempts to escape, she is guarded and

even locked up. For days and nights, she is crying and begging her 'husband' to ask her parents to come and collect her.<sup>6</sup> Parents, however, do not come to collect a 'stolen daughter' – an issue I will return to soon.

The above sections lend some contextual understanding as to why young men abduct or 'steal' girls and – if necessary, use force and even rape – to accomplish their ambitions. To a certain degree, it also explains why it is accepted, at least tacitly that men can use force and even rape to accomplish their endeavour – without being punished.

To further illustrate the troubled matter of gender-based violence and how the parties involved try to solve such problems within a plural legal setting, I will present a case which brings home with great force some of the issues at stake.

### ***The Case of Betty and Chris***<sup>7</sup>

When the following event occurred, in December 1999, Betty was a young and attractive woman aged twenty-three. She was still unmarried and lived with her parents together with her two younger unmarried sisters aged 19 and 16. When Betty finished Primary School [the compulsory seven years in school], she attended a tailoring course in her home area. Assisted by her father she bought a sewing machine and although her work as a tailor at the local market provided her with some 'personal' money, her parents were also supporting her economically.

One late Sunday afternoon, Betty had been to celebrate her confirmation anniversary. It was eight years since she and her classmates had been confirmed in the Lutheran Church.<sup>8</sup> Betty left the party accompanied by a young woman of her own age, who lived in the same neighbourhood. Soon after the two friends bid each other goodbye, two men suddenly attacked Betty. One of them, Chris aged twenty-five, wished to marry Betty and together with his age-mate they had carefully planned how to abduct Betty. Although Betty defended herself by fighting and screaming for help, the two men easily overpowered her and, by force and constant threats, brought her to Chris's parents' home. Betty's friend was, by then, too far away to hear Betty's screams for help. There was no one who came to Betty's rescue. When Chris reached his parents' place with the still screaming Betty, Chris's mother ululated with joy; her son was getting married! While Betty was still screaming and trying to get loose, Chris, helped by his age-mate, took her to his room and forced himself sexually upon Betty. In other words, he raped her. When Betty was being abducted along the road Max, Betty's cousin heard her screaming, and although he ran to the place, he arrived too late to help her. Max then immediately went to inform Betty's parents about what he feared had happened, but albeit regretful, they were hesitant to take any action.

According to customary law, an elder representing Chris and the perpetrator's family came to Betty's parents to inform them that they should not search for their daughter as she was in safe custody at their home-place. Also according to custom, the elder apologised on behalf of their son since he had 'stolen' their daughter. Betty's father found the apology presented by the 'elder' hard to accept. According to him, the representative was too young to be considered a respected elder and he felt that Chris's family were



belittling him and playing down what had happened. Betty's mother also got very upset, but she was more concerned to hear her daughter's opinion before she made up her mind. However, the parents did not take any action to reclaim their daughter and thus tacitly accepted the representative's message. The second day after the abduction, Betty was offered a bath, and she used the opportunity to escape, but Chris managed to catch her. On the fifth day, Betty was visited by some female friends and later when she made another attempt to escape she succeeded. She ran directly to her aunt's – her father's youngest sister's home, situated roughly one kilometre from Chris's. When Betty reached her aunt's, she was totally exhausted both physically and mentally. She told her aunt what had happened. She felt (sexually) 'ashamed' (*usutu*) and fully aware of the social consequences this event might cause upon herself, as well as causing shame on her family, she wanted to commit suicide. Her aunt had to comfort her continuously to avoid such a fatal outcome. Betty's parents were called upon and with Betty, her aunt, and her aunt's husband, Mal, they listened to Betty's story. Although Betty at this stage still had the opportunity to return to Chris as his wife, no one considered it as a real option. Rather, they decided to support Betty and to report the event to the statutory court in Arusha town as a criminal case, that is, as a rape.

The following morning, Betty's aunt escorted her to the district hospital for a medical examination. There was no sign of semen. Betty had taken several baths. Her body had bruises and sores; showing that she had been exposed to violence. Together with the medical doctor, Betty's aunt filled out the medical form. The following day, they reported the case to the District Police Office as a criminal case – upon which the police should begin their investigations by interviewing various parties pertinent to the case.

When I returned to the field, more than a year later, in March 2001, little had happened with Betty's case. The district police officers had been dragging their feet and had not yet finalised the interrogation of the accused. Thus, no police report had yet been handed into the police prosecutor and the case had consequently not yet been heard in the formal court in Arusha town.

The numerous trips to the court in Arusha town, as well as to the district office, without any results, were exhausting Betty and her family. They were concerned about the failure in the police reporting system. Although the police excused themselves by lack of facilities such as manpower and transport, Betty's family questioned the police explanations and wondered whether it was simply due to corruption – which, according to most, is not uncommon in the police force nor in the formal court. As time passed by without much being done by the police officers their suspicion about corruption was strengthened, and their fear of losing the case increased accordingly. Although most people in the community did not consider it morally acceptable to abduct and force a woman into marriage, they still argued that Betty's parents 'simply wasted their time and money', as they expressed it, by taking the case to the formal court in town.

Considering what had happened, it is interesting to look into what was at stake for Betty and her family. Did Betty's parents and closest family fear blame and being

stigmatised by the community? And did they fear it to such an extent that they were willing to 'sacrifice' their daughter's well-being?

To get closer to answering such questions, we need to understand how the legitimacy of this 'illegal' practice hinges on some central gender notions and, above all, how the notions of 'respect' and (sexual) 'shame' as well as conduct is gender specific and more easily turns blame onto women. There is, I argue a local 'moral economy'<sup>9</sup> of 'respect' (wiindi) and 'shame' (usutu) which is expressed in the abduction and rape of marriageable women and which seems to contradict with the ethics inscribed in the formal statutory law.

## Contesting Normative Orders and Practices

### *The Moral Economy of Female Respectability*

The very fact that there is a set fine and procedure for 'stealing a bride' informs us that the practice of elopement and abduction is not uncommon. According to Meru custom, the fine for 'stealing a bride' is: two heifers or, one sheep and four-gallon tins of beer. If marriage arrangements had been initiated but not fully finalised prior to the abduction/elopement, the fine is one heifer. The fine can also be given in the equivalent monetary value, i.e. the market price. The girl's father should be compensated, accordingly. Firstly, as they say, 'since the father searched for his daughter during the night, he stepped on thorns'. Secondly, 'since he searched for his daughter at night, he needed a lamp'. Accordingly, there is the 'beer for the thorns' and the 'beer for the lamp'. Thirdly, those who stole his daughter must ask forgiveness which in addition to the beer, is asked for by giving a sheep; the 'beer of the sheep'.

Usually, the fine is paid within a week or two after the elopement or abduction. This payment is said to compensate 'for the grief and pain' suffered by the girl's family and clan. Once the fine is settled, the girl's clan is formally asked by the groom's family for permission to marry their daughter and marriage arrangements can now proceed. In Betty's case, such further arrangements never took place since she escaped home before her parents agreed to initiate such negotiations.

But why is it that the girl's parents make no attempts to bring home a 'stolen bride', but – with some very rare exceptions – instead prefer to settle the fine, and soon come to an agreement on the payment of bridewealth? When I raised this question, the answers were many. According to customary law, a father who reclaims a 'stolen bride' is not given any economic compensation. Therefore, many claim – some with condescendence – that the girl's father's primary interest is to be given the fine as well as the bride-wealth for his 'stolen' daughter – underscoring the economic value of a marriageable daughter as well as the clan's economic interest. A closely related reason as to why a daughter is not brought back to her natal home, deals with a girl's moral conduct and consequently the respectability of the closest family and clan. Clearly, 'to steal a bride' is a demonstration of the father's and the clan's inability to control or protect their daughter and thus, their lack of authority. A girl who has 'slept outside' [i.e. in another man's house] 'has become [sexually] spoiled'. 'Who will marry a spoiled

woman', I am told. Hence, if the parents should reclaim their daughter, the argument goes, she will remain unmarried. I have spoken with formally engaged girls who were abducted by other men, but even in such cases the girls are not reclaimed since, as it is argued, not even their fiancé will marry them after such a disgraceful event. I have also spoken with many older women who had been abducted into marriage in their young age, and tacitly accepted their situation instead of returning to their parents. The main reason for not returning is, according to them, the fact that they 'bring shame' and disrespect upon themselves, their parents and kin and consequently become unmarriageable by local standards. Thus, once abduction or forced elopement has occurred – often resulting in rape – it seems that the girl sets aside her own well-being and 'simply' hope for the best instead of returning back home to her natal kin and consequently bringing shame on herself and her closest family. Parents, on their part, accept it, at least tacitly. There seems to be no return (Haram 2004, 2010).

Considering the particular case of Betty and Chris, Betty obviously risked losing her respect and her marriageability since she refused to become Chris' wife, but, instead, escaped home. Although Chris had taken a woman [sexually] by force and caused her injuries and suffering, his respectability, on the other hand, was not equally at stake. Rather, according to the clan leaders and rumours that quickly spread in the community, Chris did not have the means, as it was expressed 'to keep a woman'; i.e. he did not have the sexual strength. Betty left him. Thus, Chris' respect as a man, that is, his masculinity and virility, was questioned. While Chris's respectability; his sexual strength and masculinity is questioned, Betty's respect however, questions her marriageability; her total person. Knowing that rumours move fast and wide, Chris acted quickly and some (seven) days after Betty left him, he 'married' [i.e. eloped] another girl from a more distant village. It turned out that Chris had had a relationship with this girl and she willingly eloped with Chris. She was then four months pregnant with Chris' child. Yet another incident occurred which underscores both the uncertain marriage arena for girls, and the male hegemonic power.

Learning what had happened with Betty, most people in the community were concerned that an increasing number of men marry girls 'by force' (i.e. against a girl's wish or consent) as it is generally phrased. When I discussed this practice with mothers of marriageable girls, they sighed and with much regret they referred to young men who would sexually 'destroy their daughters – on purpose (kwa maksudi)' as they said.

Yet, in spite of this disturbing attitude and behaviour among some young men there also seems to be a shared understanding among both adolescents and elders, including parents that a girl, who is taken by force or raped, has herself to blame. Usually, the argument goes accordingly, that she must have shown interest towards the boy/man and thus given him (false) hope, but later turned him down. Or they dressed immodestly, which tempted and lured men sexually. For females to turn males' interest down is not only considered to cause sexual frustration in males, but females are also the ones to be blamed if they invoke such feelings in males. This is (partly) linked to the notion of personhood and the female-gendered person who locally is considered to have more control over their sexual desires compared to males. The practice is also linked to the idea that men are supposed to take the initiative in such matters while women in a

polite way decline the men's offer or they are supposed to consent. Once a woman has returned a man's interest, or worse, if she has accepted a small gift or favour and later rejects him, a man is not only likely to take her by force, but men tend to think that it is their basic right to do so (see also Groes-Green 2009). This is in line with the logic of reciprocity in male–female sexual relationships. She simply owes him a (sexual) favour. Several women with whom I spoke confirmed such ideas 'admitting' that they had been taken by force, sexually.

In Betty's case, people in the community, including the clan elders, were rather sceptical of the fact that Betty had actually been taken against her will to Chris's home. They all knew that Betty and Chris had been to a party, enjoying each other's company. Rumours also maintained that they had been drinking beer together. Others stressed that Chris's grandmother wished that Betty would marry her grandson and that she had always showed a particular love for Betty. Yet others again, stressed that Betty probably wanted Chris, at first, but then, later, regretted it and thus changed her mind. Thus, the community underscored the social circumstances and thus questioned Betty's credibility and her respectability was clearly at stake. In the coming section, I shall discuss how gender violence against women is dealt with – focusing on Tanzania.

### **Contesting Normative Orders: Violence Against Women**

Violence against women is a serious violation of the international rights of women and takes a heavy toll on their physical and mental health. The troubled matter of violence against women, such as sexual harassment and rape – even murder – is a global concern. Violence against women, such as abduction and rape, is commonly associated with times of armed conflict and war. However, globally research shows that most cases of violence against women occur, not primarily in war nor in public spaces, but rather in the 'cosy' home atmosphere of everyday life – and most frequently carried out by the closest and dearest; by men such as lovers, husbands, fathers and fathers in law (Green 1999; Bhabha 2000; Porter 2012, Heinskou 2015). Although many cases of rape and sexual assault are never reported, due to blaming and social stigma on the women's part, cumbersome and, at times, corrupt legal procedures, figures clearly show that reported cases are increasing both in Tanzania and in the west. One might, however, be cautious in the use of statistics in this context (Mukangara and Koda 1997; Green 1999; Heinskou 2015).

Since 1988, Tanzania Media Women's Association (TAMWA) – an NGO mainly operating in Dar es Salaam – has been publishing the magazine *Sauti ya Siti* (Women's Voice), addressing gender-based violence, gender equality and women's and children's rights (TAMWA) (1993).<sup>10</sup> Since 1991, TAMWA has taken an active stand in working against gender violence and has also played a major role in promoting gender equality and women's legal rights. In 1998, in response to an intensified concern about violence against women, the Tanzanian parliament passed into law the 'Sexual Offences Special Provision Bill', which provides for life imprisonment for persons convicted of rape and child molestation. The 'Sex Offences Act of 1998', radically redefines rape, as follows: A man is considered to have committed a rape if he has sexual

intercourse with a woman who (a) is not his wife; (b) does it without the consent of the woman; (c) uses force and intimidation, proof of a rape case does not need the presence of the man's semen in the woman's body. Injury alone is enough to prove rape (Women Legal Aid Committee [WLAC] 2001: 11–12, my translation from Swahili).

The pamphlet entitled *Know Your Rights about Sexual Crimes* (in Swahili *Fahamu Haki Zako Katika Sheria ya Makosa ya Kujamiiiana*), was published by the Women Legal Aid Committee (WLAC) in Tanzania, during the time when Betty and her family struggled to bring the case to the formal court and points to the strong ability of Betty's family to draw on her social network for information and support.

As noted, men's violence against women is an area of much concern also in Tanzania and, as noted above, much research clearly shows that it is increasing both globally and locally. Drawing on theories of masculinities, it is argued, the failure of men to fulfil their expected responsibilities as breadwinners while women undertake new responsibility to promote family survival have contributed to a loss in men's sense of worth and self-respect. With the 'crisis of masculinities', it is argued, that men in their relationships with women, draw on their authority and physical strength to compensate for their failed position as breadwinners and as head of households (Groes-Green 2009).

With this description, let us now return to the particular case of Betty and Chris and see how the various parties act upon the troubled situation and eventually settle the case through negotiations.

### ***Negotiating Over Contested Normative Orders***

Now that a case had been filed against Chris in the formal court, Chris and his extended family feared the grievous consequences which would face Chris in court and ultimately that he would be jailed for life. Chris's family, supported by their clan leader, therefore called for a meeting with Betty's father's clan leader to resolve the case 'the Meru way'.

At this stage, Betty's closest family were somehow worried, Mal reread the 'offence act' and went through the pros and cons: and argued that if the case is well presented in (the formal) court, the witnesses listed should be sufficient to prove rape or that force was used; the testimony by Betty's first cousin should be sufficient to prove that Betty did not consent but was taken by force. Also, they argued, the medical examination should be sufficient to prove injuries beyond doubt. On the other hand, they feared the many cons; they had learnt that a woman who wish to report a rape, must turn to the police station before seeking medical help and thus that their reporting was not adequate (Haram 2018).<sup>11</sup> They also feared that the slow and rather passive stand by Betty's parents when they were told that their daughter had 'been stolen' [into marriage] by the representative of Chris' family. Betty's mother was much concerned with the future wellbeing of Betty and also feared that the case would harm Betty's two younger sisters and their chances of getting married.

When Betty's family, through the many cumbersome visits to the court in Arusha, learned that neither the persecutor nor the person who assisted him had been interviewed by the public prosecutor they somehow gave in to the situation. Thus, due to

the many obstacles they had experienced in bringing the case to the formal court, they agreed to try the case locally, i.e. 'the Meru way'.

When the meeting was set, six members representing each side were chosen. It was finally agreed upon by both parties that, 'Betty had been abducted and forced into marriage without her consent [wish] and that she, therefore, should be [sexually] 'cleansed''. Thus, firstly, Betty and her father were to be compensated for all expenses they had had since Betty had been taken by force to Chris's home. The meeting settled on TZS 200,000.00 (USD 203.00 – a huge amount of money in local terms). Secondly, Chris was fined a bull (*nguleta*) and a sheep (*uruvi*). Whereas the bull was given to Betty's father and her 'brothers' (i.e. first cousins), the sheep was given to Betty. Although a bull and a sheep involve some economic cost, it is the cultural meaning that is significant and primarily has high cultural costs. Accordingly, both the sheep and the bull are tokens loaded with cultural meaning. Whereas the sheep – with its feminine qualities – is usually given by the wrongdoer to apologise to the offended and also, in this case, to restore Betty's respectability; 'to clean her name' (*kusafisha jina*), the bull should 'discipline' (*illosha*) Chris and thus teach him a lesson. In other words; Chris and his family/ clan thus confessed that he had used force against Betty. Thirdly, the man who assisted Chris to abduct Betty was fined a (small) castrated bull (TZS 6,000.00 roughly 6.00 USD). In turn, the conditions set by the perpetrator and his family – agreed upon by both clan leaders – were that Betty and her family should withdraw the case from the formal court. Some days later, when the fines had been paid, representatives from both parties went to the formal court in Arusha town and asked the magistrate to withdraw the case.

## Conclusion

By exploring in some detail the case of Betty and Chris, the article has illustrated the local politics of gender violence and the recent growth in discourses and practices opposing violence against women and how it challenges local kinship systems affecting kinship and gender inequalities. By situating gender violence: abduction and rape within a plurality of legal institutions and practices, we have seen the complexity at play when adjudicating justice. We have seen how the various persons involved reason and navigate in such troubled matters; their restraints and limitations and how the case is finally settled.

What is appropriate punishment is a universal concern, but the responses to wrongdoing differ greatly across cultures. In negotiating gender justice at the interface between international legal rights and local law practices, adjudicating justice is perhaps where the gap between them is most obvious and thus to reach mutual comprehension is most difficult. In the case of Betty, both clan leaders—in accordance with local customary law and practices—agreed that her name (and her family) should be cleansed. The notion of wrongdoing as impurity – the principle of 'cleaning the offender's name' (*kusafisha jiina*) – actually entails a recompensation through the use of ritual to redress what has been contaminated. But, wrongdoing is also seen as a crime and must accordingly be punished; not just by corporal punishment or jail,

but through compensation. Both clan leaders agreed that Betty had been married without her consent, but whereas other ‘stolen girls remained at the man’s home, Betty had escaped and returned to her natal home. Moreover, she had also reported the case to the formal court. Unless we had taken issue, the situation would have become very grim’, they said. As underscored by the clan leaders: ‘we [the Meru] do not speak of “rape” [baka] as such, but of elopement or “forced elopement” [ku shika kwa nguvu, literally meaning “to take with force”]’. Talking about ‘rape’ and ‘consent’, both clan leaders found it difficult to translate, vernacularise, or find equivalent local terms. It seemed alien to them and their voices echoed many in the community. Firstly, with the changes in the ‘Sex offence act’ Chris could be imprisoned for life. Secondly, the clan leaders were more concerned with the well-being of the community, and somehow prioritised the community at the expense of Betty and her desire for individual justice. This underscores yet another major difference: namely, that to foreground the autonomous individual at the expense of the community is not consonant with the local law culture and praxis.

As we have seen, Betty and her family were aware of her rights and supported her when she claimed to have been raped – yet, after a thorough calculation of the pros and cons of the situation, they withdrew the case. Although they maintained that Betty had been raped, they realised that they risked losing the case, partly due to fault they themselves had done, but also due to poor management of the formal court system. However, by taking the case to the formal court Betty’s action, in effect, marked a change in subjectivity, and also created some kind of dynamic between the contested and contradictory normative orders. The case illustrates I believe how new forms of subjectivity are in the making, something underscored in Mal’s argument above going through the pros and cons. Mal’s moral argument is grounded in the human rights ethics; the autonomous individual and the ‘context-free’ behaviour. The clan elders, representing the Meru custom, underscore the social event and the particular situation of Betty and Chris. Their reasoning is more ‘context-sensitive’ and strongly embedded in the kinship-based moral. The case also shows how people locate themselves locally among existing normative orders and their pragmatics, as well as their constraints and opportunities. When Betty is claiming her individual rights, global ethics is set up against local moral worlds. She knows that such a decision will have ill consequences for her family and their position in their everyday life in the community.

Mal’s rational reasoning demands too much of Betty. His way of reasoning demands that Betty manages to set herself apart – she must be self-assertive. Women’s rights and human rights in general presuppose that the individual is able to assert oneself. Such an individual would need some training in self-assertion to be able to manage and control her or his own life. The idea of a free and autonomous individual is, in effect, a conception of an egocentric and selfish individual. Betty was, however, not sufficiently selfish. Her strong attachment to her closest kin is perhaps best illustrated in the notion of shame. Her notion of shame made it very difficult for her to claim her rights. She knows that she is shaming her parents and that her (sexual) shame will contaminate her sisters’ respectability as well. Betty’s sense of self and the idea that ‘Rights

have no gender (Haki haina jinsia)', might gradually generate a worldview similar to the current European ones that are more capable of fighting for individual rights.

## Epilogue

Betty did not get pregnant with Chris. Considering the high prevalence of HIV in the area, she was fortunate to test negative (Haram 2005).

I have been back to the study area several times since the case was finally settled in March 2002, and have had several conversations with Betty and her parents. Upon my visit in 2004, the sad incident seemed, at first, to be long forgotten. Betty was still unmarried and lived at her parents' place. When I asked Betty about her life-situation and if she had any prospect of marriage, she smiled and told me about her boyfriend, but she was reluctant to marriage. She worried that people still associated her with the 'escape', and thus not the enduring type of woman men looked for in marriage. Although the event still strained her emotionally, she told me that she had now a partner and wished to have a child with him. I met Betty again in 2016 and found she had become a mother to a nine months old daughter – at the age of forty. She still did not want to marry but she and her partner were planning for another child.

## Notes

1. This argument shares much resemblance with rape and 'date rape' in the West (see, for instance, Bryan and Wallbank 2004).
2. Griffiths refers to 'legal pluralism' as 'the presence in a social field of more than one legal order' (1986: 1). Sieder and McNeish (2013) prefer to use the term 'legal pluralities' because, it better encompasses the fluidity of transnational form of legal ordering today.
3. Sally Merry (2006), notes that this was part of the civilizing mission; missionary courts, evolved into local 'customary' law. Merry also underscores that human rights is a 'cultural system' (2003). The Meru are currently rewriting the third version of their customary law – referred to as the 'Katiba' (Meru Constitution).
4. Bridewealth is given by the man's family and lineage to compensate for the woman's sexual and reproductive capacity (See Goody and Tambiah 1973).
5. Among some families, marriage formation has increasingly become an issue of the individual couple and their respective families. However, in such cases in which a bride's father do not share the bridewealth among his lineage, he will derogatorily be referred to as 'consuming' something which do not rightfully belongs to him alone – underscoring the idea, held by most, that a daughter is not merely valuable but she 'belongs' to the lineage.
6. Similar stories refer, for instance, to a girl who has been invited by some of her female friends who are cooperating with the hijackers to a dance-party in the neighbourhood. On her way home, she is abducted and brought to one of the hijacker's home.
7. All personal names in this article are fictitious.
8. The majority of the Meru are Christian Lutherans.
9. In anthropology, the concept is used to describe the shared mores and values with which people evaluate their relations with others, from economic transactions to the obligations informing social hierarchies and patterns of accumulations, including relations between political elites, states and citizens (see Prince 2012: 536).
10. For more information, see Green (1999: 228–231).



11. According to *Tanzania Country report on Human rights practices* (2016), the many obstacles experienced by Betty and her family, are not unique (<https://www.state.gov/documents/organization>)

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