Justice Administration Outside The Ordinary Courts of Law in Mainland Tanzania: The Case of Ward Tribunals in Babati District

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Introduction

Since colonial days, justice administration in what is now mainland Tanzania, has invariably involved arbitral procedures alongside the more court-based litigation process. The British colonial government in Tanzania (then Tanganyika) systematized and put in place a system of customary arbitration which, although distinct, formed part of the colonial legal system. At first the post-colonial state adopted this system without any alteration, but in 1969 a statutory provision was made for the creation of a more formal and village-based structure known as the Arbitration Tribunals (1969). In 1985, a parliament Act (no. 7 of 1985) replaced these with more formalized and regularized organs called the Ward Tribunals. In contrast to the Arbitration Tribunals, the latter organs are based in wards and are meant to function under the overall control of the district-based local government authorities.

This act clearly states that these organs ought to function primarily through mediation and arbitration, as opposed to litigation (Sec. 8). As such, they would achieve justice at the local community level through amicable settlement of disputes and, in this way, enhance the spirit of reconciliation and understanding among community members (Msekwa, 1977: 111). On the other hand, it is well documented that the Tribunals also were established to relieve the primary courts of their increasing work load. It follows that they were meant to supplement rather than replace the ordinary courts of law at the lowest level (Msekwa, 1977: 111).

It would be worthwhile to note that the establishment of the Ward Tribunals took pace at a time when the central government had decided to consolidate and revitalize local governance. Some lip service had been paid to giving power to the people to determine their own affairs since the early days of independence, but actual practice largely contradicted the often neatly presented manifestos in this regard (Ngware and Haule, 1993: 6). The re-establishment of the local government system in 1984, after it had been abolished in 1967, was officially explained as aiming at enhancing popular participation in development efforts (Meshack, 1991: 6).

The newly established local government system encompassed a network of administrative structures and institutions. At times these local governance structures and institutions, which include district/town councils and village governments and cooperative unions, have been coordinated by a full fledged ministry. However, more often they have worked under the umbrella of the Prime Minister's office.

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Ward Tribunals were to function as part of the Ward Committees (Sec. 24[3]) which, together with village governments, work under the direction of district councils. Taking the Ward as an administrative unit, the above sketched structural and institutional arrangement presents some degree of conformity to the modern ideal of separation of powers in governance. While the functional government officials at the Ward level (headed by the Ward Executive Officer) clearly discharge executive duties, and while the Ward Committee in liaison with the District Council performs functions close to those of the legislature in nature, the Ward Tribunals' functions, as specified by law, are essentially judicial.

The Problem: Broad Concerns

The combination of the goals and intentions for the establishment of the Ward Tribunals, together with the statutory specification of their functions, jurisdiction, and powers, raises a number of questions which are general as well as specific in character. On one hand, there is an obvious need to appraise the performance of the Tribunals on the basis of their stated aims and objectives. In view of the goals stated above, one question, therefore, has to do with the extent to which these organs have been effective in achieving justice through their mediation and reconciliation activities. Another obvious question is whether the Tribunals have had a notable impact with regard to easing the primary courts' work pressure. At a more general level it is imperative to consider the question whether justice may be achieved through the implementation of the stated goals and working principles of the Ward Tribunals. The Presidential Commission, which recommended the establishment of these organs, envisaged that they would be reconciliatory, flexible, informal, and sensitive to local culture in their functioning (Msekwa, 1977: 111 [116]). These principles were resounded by the Act establishing the Tribunals. The question, therefore, is whether the implementation of these principles would insure justice to everyone in the context of rural Tanzania in the 1990s.

Specific Questions and Assumptions

The present study was conceived and designed in the light of the foregoing concerns. Based on one of the administrative districts in the country, namely Babati, the study set out to address concurrently the questions outlined above. To start with, the basic questions were expanded and categorized into three sets.

The first consisted of questions concerning the composition of the Tribunals in terms of the socio-economic status of their members and leadership. These questions were posed with a view toward establishing whether or not such a composition in each respective Ward can allow justice to prevail in the Tribunals' handling of disputes. The assumption to be tested in this regard was that, given the increasing pace of differentiation among rural dwellers in Tanzania, the Tribunals may easily be dominated by the well-to-do and relatively more powerful people. The relevant questions inevitably touched on the kinds of people who characteristically tended to be put on the Tribunals, how they are selected, the characteristic socio-economic status of the Tribunal leadership, how the latter are appointed, and the powers they enjoy when discharging their duties.

The second set of questions concerned the manner in which disputes characteristically find their way into the Ward Tribunals. The basic objective was to know whether or not people willingly and freely decide to take their disputes to the Tribunals. The assumption underlying this concern was that, under the conditions of possible corruption in the Tribunals, poor people could have been victims of rich individuals' intrigues to have them accept mediation of Ward Tribunals for the purpose of insuring favorable settlement of disputes in their favor. The questions in this set, therefore, sought evidence of interception of individual disputants' will to have the disputes handled either by the primary courts or by Ward Tribunals. Additionally, they sought to establish whether or not there was any association between socio-economic status of disputants and their choice of an organ to settle a dispute.

Lastly, a series of questions were raised concerning the actual work of the Ward Tribunals. Here, too, the primary objective has been to establish whether or not justice in its broad sense was being upheld in the manner in which they actually settled disputes. The major concern here has been to know how the conciliatory functions of the Ward Tribunals are carried out, and whether the Tribunals have been consistent in this respect. The worry, and the hypothesis to be tested, was that since the law guiding the functioning of the Tribunals allows plenty of roam for discretionary decisions, on the part of the Tribunals, the Tribunal leadership would be corrupted into using that discretionary power by influential and powerful people against the interests of the powerless poor. It thus was considered appropriate and necessary to examine how disputes were being received by Tribunals' leadership, how the Tribunals conducted themselves in settling disputes, whether enough time was provided for each of the disputants to give their side of the story, whether evidence is consistently called for (or otherwise), whether or not reference is made to any set of laws/regulations consistently, and whether final decisions were based on the principles of litigation or, conversely, those of reconciliation.

Theoretical Perspectives

Justice administration as an area of inquiry attracts the attention of not only lawyers and specialists in public administration but also that of social historians, sociologists, social psychologists, as well as of moral philosophers. The present study was conceived from the point of view of social science in general. Thus, while it avoids the technical specifications of the relevant individual disciplines, it draws on theoretical perspectives from them. It is, therefore, through an interdisciplinary approach that the basic concepts and theoretical concerns in the present study are understood and defined. In a nutshell, the basic theoretical issues which shall now be discussed include the concepts of justice and arbitration, and the whole phenomenon of justice administration in the wider context of the people-government relationship.

Our first concept, justice, is an extremely controversial one. Even in ordinary discourse people hardly refer to the same thing when they mention the word. Philosopher Chaim Perelman's analysis is instructive in putting the various contradictory conceptions in perspective. For him there are two possibilities of understanding or conceptualizing justice, the distinction being underlined by the assumed meaning of equality in each case. Accordingly, justice may either mean giving "to each the same thing," or giving "to each according to some distinguishing particularities," such as merit, need, rank, and legal entitlement (1963: 7).

Whereas in the former case universal or perfect equality is assumed, in the latter case, equal treatment goes only with specified criteria of equality among, or between individuals.

Perelman's conceptualization of justice is obviously informed by two distinct historical contexts, which our modern minds have experienced either directly or through cultural transmission from past generations. The first context is that of an undifferentiated egalitarian society of the past, in which prevailed egalitarian ethical values, attitudes, and ideas. It is in this context that justice and fairness can possibly be conceived as giving to each the same thing. Our modem society, founded on private property and characterized by social and economic stratification, provides the context in which the notion of justice as giving to each according to certain qualifications makes sense.

The point being made is that what we now call justice has meant different things in different historical epochs in different places. In the context of European history, for example, it has clearly been shown that conceptions of justice have radically changed as societies transformed from primitive communal through feudal to capitalist order (Miller, 1976: 253-335). According to the available literature, whereas in primitive communal societies justice was hardly a virtue (the main virtues being generosity and sociability), in feudal societies it gained top importance, generally being understood as observance of, or respect for, established differentiated rights. In the advanced capitalist society, justice came to be understood primarily as "requital of deserts" or giving to people what they deserve.

One can easily see that this latter conception belongs to the second of Perelman's two possibilities as outlined above. The basic distinguishing particularity in this case is "deserts," hence the dictum "to each his due" (Miller, 1976: 20). In our contemporary setting what is due to a person in a particular situation is often specified by relevant laws, regulations or norms. Needless to say that these laws and regulations are usually expressions of certain ethical and political values, not always shared by all the people in the respective society. It should also be noted that since judicial systems do not always provide all the required rules to the fine details, those entrusted with justice administration have often had to use their own discretion. Here, too, fairness in judgement is always gauged to certain values in the respective society, often those of the dominant political and cultural groups.

In view of the variability of the sense of justice with changes in social circumstances, it is obvious that a realistic universal and all-time definition of justice is not tenable. Accordingly, in this study, justice is considered to be a social construct that is transformatory in nature. The basic tenets of justice, as conceived here, are presented in Fuller's definition, which states that justice involves "regulating with fairness and equity the relation of men in common to improve their coexistence" (Lloyd and Freeman, 1987: 62). The necessary addition to be made, however, is that the stated criteria of justice, that is fairness and equity, are in each case determined by the social values and conceptions which enjoy a position of influence and power in the respective society.

This brings us to the second concept, arbitration. Simply defined, the term refers to processes involved in settling disputes without necessarily making recourse to law or any other established rules and regulations (Rowland, 1988: 1). In practice the process may take place in law courts (a process called statutory arbitration), as an alternative to litigation, or it may consist in the settlement of disputes in private. In both cases arbitration involves a process of

conciliation, which consists in devising terms that are acceptable to both parties, normally under mediation of a commonly accepted third party (Rowland, 1988: 13).

Mention has already been made of the fact that the Tanzanian Ward Tribunals were meant to follow the principle of conciliation in their functioning. It is notable, however, that these Tribunals are legally established, and that the act establishing them gives broad guidelines for their operation. Furthermore, they are required by law to operate in public. This is to say that their activity fits the designation of statutory arbitration, as opposed to arbitration in private.

The question with which we are centrally concerned is how the concept of justice as outlined above relates to the process of arbitration as defined here, and whether the former virtue can be achieved through the latter process. It will have become clear from the above exposition that justice does not necessarily consist of adherence to established rules and regulations. On the contrary, it refers to socially determined fairness and the equity of human affairs in a particular society. On the other hand, given that established laws and regulations are normally expressions of the values of only a section of the society, adherence to them may not necessarily result in justice to all the people involved. The vital therefore, point, is that the handling of disputes outside the ordinary courts of law is in itself not an indication of whether justice will or will not prevail. Hence, to the dictum "where law ends tyranny begins" Keneth Davis (1968: 3), has added that this could, but need not be, the case.

Justice administration, the process by which conflicting interests are reconciled using the principles of fairness and equity, historically has been both a judicial and governmental-administrative function. Even though in modern society this function is assigned to the judiciary, which in principle ought to work independently from the executive arm of the state (i.e., the government), in practice it has been part and parcel of government administrative functions. Accordingly, the nature and functioning of the Tanzanian Ward Tribunals has to be understood in the light of the mission and administrative role of the government. Like the British Administrative Tribunals, after which they have mainly been styled, the Tanzanian Ward Tribunals are primarily a part of the administrative system. This is clear first of all in regard to their historical roots, which are quite clearly traceable to the British colonial administration system. In Tanganyika, as elsewhere in their colonial empire, the British used their so called indirect rule principle to maintain or create customary courts to operate at the bottom of the judiciary system. As mentioned earlier the Ward Tribunals were a modification of the customary courts, left in place by the colonial government. The purported primary aim of both institutions was to control ordinary social strife at the local community level for the purpose of keeping peace and tranquility by the cheapest possible means (Msekwa, 1977: iii; Farmer, 1974: xi).

Moreover, it is quite clear that the Ward Tribunals were intended to be an organ of the local government in the respective government administrative districts. This is evidenced by the fact that, although the Tribunals are supervised by the primary courts, they are responsible to, and are directly controlled by, the local government authorities. Furthermore, in accordance with the provisions of the act (Section 8[3]), Ward Tribunals have often been used by village and Ward government authorities to enforce certain regulations relating to social and economic development.

I have already expressed skepticism about the capability of the Ward Tribunals to consistently observe justice in their functioning, despite possible corruption resulting from the rural socio-economic context of our day in Tanzania. The above illustrated statutory sanctioning of local governments' direct control over Tribunals poses an equally profound doubt. For instance, when it is known that the Tribunal leadership and membership are both directly determined by the local government authorities, the possibility of having suitable people occupy these positions will depend on the nature of the local governing regime in place. Additionally, given that the Tribunals would often be used to resolve conflicts arising from people-government relationships, there is a high likelihood that the Tribunals will do injustice to ordinary common people in favor of possible unpopular government interests. It is on the basis of these concerns, doubts and assumptions, and the ones stated in the previous section, that the present study was conceived.

Presentation and Discussion of Data: The Sample, Data Sources, and Methods

The data to be presented and discussed come from four sample wards selected from Babati district in north central Tanzania. These wards are Magugu, Babati, Madunga, and Dareda. The data was generated through the use of a questionnaire administered to people whose disputes were handled by Ward Tribunals between 1990 and 1993. In each sample Ward, twenty five disputants were selected to constitute the sample population. Additionally, an interview protocol/schedule was used to guide interviews with Tribunal leaders and members. The third source of data was direct observation, in which a total of ten Tribunal sessions were observed.

Data Presentation and Analysis: The study first considered the general question as to how often the Tribunals were involved in dispute settlement and what sort of disputes they settled. The basic information from these questions is summarized in Table 1 below.

Table 1:Number and Categories of Disputes Handled by Ward Tribunals by Wards, 1991- 1992

	CIVIL		CRIMINAL		TOTAL (1991 & 1992)	
	1991	1992	1991	1992	CIVIL	CRIMINAL
MAGUGU	17	25	93	21	42	114
BABATI	7	11	49	31	18	80
MADUNGA	21	21	8	7	42	15
DAREDA	24	27	18	10	52	28

It is clear from the table that the number of cases dealt with by the Tribunals widely varies between the two years as well as across the wards. The scope of the available data does not allow any attempt to explain this high rate of fluctuation.

A further observation to be made is that whereas the Babati Tribunal (which caters to a semi- urban population) recorded a bigger number of criminal cases than civil ones, the opposite is true for the typically rural Madunga and Dareda Tribunals. This rural-urban

contrast however, is not supported by the recorded figures for Magugu Tribunal, which also caters to a rural population. Upon further inquiry it has been established that the number of criminal cases handled by the Magugu Tribunal during 1991 were inflated by an occasional event. During the year the local government launched a special environmental health campaign, which involved identifying people who did not have pit latrines near their houses and taking them to the Tribunal. These people were eventually fined. The significance of this story is that 88 out of 93 criminal cases handled by Magugu Tribunal during 1991 were directly linked to the campaign in question. If these cases are excluded, the total number of criminal cases handled by the Magugu Tribunal drops from 114 to 24 during this two-year period. This makes Magugu comparable to Madunga and Dareda in terms of the frequency of criminal cases, thus making the rural-urban contrast in this regard to hold in general.

The explanation for this disparity falls outside the main thrust of the present study, but it can be stated, in passing, that differences in terms of social dynamics between the two geographical locations seem to explain the difference in the frequency of criminal and civil disputes. Whereas disputes in the rural setting seem to revolve mainly around land-related conflicts (usually categorized as civil), in the semi-urban setting ordinary social strife (e.g., abusive language, threatening statements, all categorized as criminal) seem to dominate.

A brief analysis of the cases brought to the Tribunals shows that those categorized as criminal cases ranged from abusive language or threatening statements, and contravention of social and economic regulations to actual assaults and related violent acts. The cases which were classified as civil ranged from land disputes, claims of unpaid bridewealth and unreturned borrowed property, to conflicts arising from issues such as broken or troubled marriages, division of property among divorced couples, and claims of neglect by a husband.

Coming to the main thrust of the study, one major question raised had to do with the composition of the Ward Tribunals in terms of the social status of their members and leaders. The findings show that the Tribunal activities in each Ward were coordinated by a chairman and a secretary. While in all cases the chairman was a man aged between fifty and seventy years old, the secretary was always a young man aged between twenty-five and thirty-seven years. A quick survey of records revealed that the two top positions were invariably occupied by men in all the wards in the entire district, at least until the time of research.

Also, in al1 the cases, the chairman was a fairly well-known person in the respective Ward. He would have an average or slightly above average income, with some record of public involvement, such as being a primary court advisor, a party (CCM/TANU) leader, or a retired civil servant. Formal education does not seem to have been a consideration when selecting the chairman. This follows from the fact that in one case the chairman had gone only through adult literacy classes, while in two cases, he had ended only at the fourth grade level. Only in one of the four sample wards was the chairman educated to the eighth grade. The secretary, on the other hand, was always an ordinary employee of the local government, often a class seven leaver. If at all, he would have acquired some degree of social recognition only through his functioning as the chief coordinator of the Tribunal activities.

Apart from the chairman and secretary, each Tribunal consisted of four members, all selected by the Ward Development Committee from within the respective Ward. (The act provides for the selection of up to five members.) In all except one of the wards under study,

Tribunal members were all males. Curiously, the single female member was located at the Babati suburban Tribunal. The age of the members range from thirty to eighty years, with 75 percent falling in the forty-five to sixty- five age range. Levels of formal education among the Tribunal members range from zero to eight years of schooling. All the sixteen members identified themselves as peasant farmers. Further investigation, however, revealed that one of them was also a night watchman, while two were government pensioners. Regarding relationship to influential institutions, one member identified himself as a church elder, one revealed that he is from the influential "rain- making" (Manda) clan, while one identified himself as a religious teacher (Maalim).

lt follows from this description that, except for very few and insignificant deviations, the Tribunal leaders and members were usually ordinary people relative to their respective social contexts; But it is also true that the Ward Tribunal, at least in the study area, is a male-dominated institution. This point must be considered together with the fact that women are not a minority group in Tanzania and, above all, that most of the disputes handled by the Tribunals involved nearly just as many men as women.

Moreover, the Tribunals seem to exclude the younger generations from their membership. The significance of this observation concerning the age of the bulk of the Tribunal membership lies in the fact that in Tanzania life expectancy, at the moment, hardly exceeds fifty years, and that a larger proportion of adult population are below forty years of age. Judging by the age criterion, therefore, it would seem that the Tribunals are a minority-based institution. Two further points should be stressed in relation to this tendency. The first is the fact that Tribunal members in every Ward are appointed by the Ward Development Committee, itself an elitist and bureaucratic organ. Secondly, it is evident that the bulk of the disputes coming to the Tribunals involve young adults.

Overall, the above exposition indicates that, although by the criterion of class character there seems to be no ground for supposing that the Tribunals would inevitably favor individuals belonging to certain socio-economic groups or strata, when age and sex status are considered, such a skepticism becomes meaningful. It must be emphasized that in the context of rural Tanzania, where class divisions are not as yet clearly manifest, age and sex identities play a greater role in social interactions more often than generally recognized. In Babati, for example, the rural communities are still predominantly patriarchal, in the sense that it is largely the interests of male elders which dominate. Although ideologically these interests present themselves as the interests of the entire community, in practice it is often clear that they contradict those of women and the younger generations. One can conclude, therefore, that the composition of the Ward Tribunals clearly reproduces the dominant social relations in the rural society which, as pointed out above, are not particularly democratic.

One should stress, however, that while these findings confirm the doubts expressed above concerning the composition of the Tribunal membership and leadership, they do not provide any grounds for suggesting that the Tribunals have actually been doing injustice to members of the social groups that are not so well represented in them.

The second area of inquiry is the manner in which disputes find their way into the Ward Tribunals with a view toward uncovering possible intervening forces. Some of the available data on this question are summarized in Table 2 below.

Table 2:Manner of Arrival of Disputes at the Tribunal Offices, by Wards (nb: Sample population for each Ward was 25 people)

WARD	DISPUTE FIRST HANDLED BY			CASE BROUGHT TO TRIBUNAL BY			DECISION TO TRANSFER DISPUTE TO W.T TAKEN BY			
	W.T	P.O.	G.O.	O.C	O.D	G.0	O.C	O.D	P.O	G.O
MAGUGU	5	9	11	15	7	3	11	3	1	5
BABATI	2	18	5	20	4	1	4	1	12	6
MADUNGA	10	10	5	19	6	0	10	0	2	3
DAREDA	9	12	4	21	4	-	9	2	2	5
TOTAL	26	49	25	75	21	4	34	6	17	19

KEY: W.T. = Ward Tribunal, P.O. = Party Organ, G.0. = Government Official, O.C. = Original Complaints, O.D. = Original Defendant

The table shows that while some disputes came directly to the Ward Tribunals (26 percent), a larger proportion (74 percent) were handled either by party organs or government officials in the first instance. There is a clear indication in people's thoughts that Ward Tribunals are considered by many as an appeal institution, where cases unsatisfactorily handled by lower organs, that is the party ten-cell and village leadership, as well as functional government officials, are taken. It is worth noting in this connection that of the 76 cases transferred to Ward Tribunals from other organs, the transfer decision was taken by the original complainants or defendants in forty cases (52.6 percent), and by the party organs or government officials in thirty-six (47.3 percent). It is also known that quite a few cases came to the Tribunals after they had been handled by elders in the respective localities.

The table also shows that most of the disputes (96 percent) were brought to the Tribunals by the initial complainants or defendants, rather than by party or government officials (4 percent). It should be noted, however, that the indicated proportion of cases brought to the Tribunals by government officials is sometimes largely exceeded, as evidenced by the data for Magugu during 1991. Yet, given the trends in Magugu during 1990 and 1991, as well as in the other sample wards, the statistics given here seem to approximate the reality under normal circumstances.

Additionally, twenty-six of the disputants who brought their cases directly to the Ward Tribunals (24 percent) confessed that they did so largely because of advice they received either from relatives and friends or from government or party officials. There is no indication, however, of any intrigues or ulterior motives behind such advice. On the other hand, the cases that first passed through other organs are usually transferred to the Ward Tribunals on one of the three grounds given below.

The first is a failure of the organ to satisfy the initial complainant to the extent that the latter finds it necessary to try elsewhere for justice. The second is the failure of disputants to come to compromise and agree to settle a matter informally before a party organ (Ten-cell leader or Village Party chairperson/secretary) or government official. In such a situation, the organ in question finds it necessary to transfer the case to a Ward Tribunal, as the latter

institution is generally understood to have a higher capacity for dealing with ordinary disputes. Finally is the fact that often the initial arbitrating organ finds a dispute demanding a determination of guilt or innocence and thus requiring the use of compulsive judicial powers. The Ward Tribunals have clearly been imitating the ordinary courts of law in this respect.

Whatever the circumstances, it seems there are very few instances of extreme belief that the Tribunals would not do justice to any of the disputants. An exception to this could be the occasions when people are rounded up en masse and taken to a Ward Tribunal, for example, on account of failure to participate in some community work. In these situations, individual people normally have their specific explanations as to why they failed to turn up. A blanket treatment, even the mere apprehension and submission to the Ward Tribunal, may thus have rightly been conceived as an act of injustice. Nevertheless, a vast majority of the people covered by this study (93.3 percent) indicated that they were quite willing to have their disputes handled by Ward Tribunals.

People bringing their disputes to the Ward Tribunals are of diverse socio-economic status. For those covered by this study, ages range from twenty-two to seventy-nine years. Cursory observation shows that respondents are almost evenly distributed between ages twenty-two and sixty, after which the number sharply declines. One interpretation of this picture is that age is not a factor to consider when people decide where to take their disputes for settlement. The sharp decline of cases after age sixty seems to be associated with the fact that few people survive beyond sixty years of age, and that those who survive will normally have markedly reduced public involvement.

A different picture emerges when one considers occupation, income levels, and formal education. All except five of the 100 disputants covered by this study were ordinary peasant farmers. Two of the five exceptions were Ward executive officers (who were in the Tribunal accusing a group of villagers for failure to pay development levies), or participating in a communal work; one was secretary to a primary cooperative society, one was a former clerk, and one was a town-based night watchman. Furthermore, 34.5 percent of the respondents had a standard seven education, while the remaining 65.5 percent had at most attended functional literacy classes. Regarding income levels, a narrow variation from low to medium status was observed. (This classification was determined by estimating the position of an individual in terms of wealth within the Ward community, based on annual farm production, number of livestock owned, and number of dependents).

This pattern of distribution excludes the higher stratum of the society. In particular it does not include businessmen in Babati township, the above-average peasant farmers in the villages, the whole bureaucratic clique at the District Headquarters in Babati, as well as the government functionaries located in wards and villages, the professional groups like doctors, nurses, teachers, veterinary and agriculture extension officers, and religious elites, such as teachers, priests, and bishops. One of the cases observed in Babati involved a local sheikh and a religious teacher (Maalim) but the handling of the case was so distinctively cautious that one could easily tell the case was an unusual one.

This casts doubt on the universal relevance of the Ward Tribunals among the respective local communities. It is quite clear that, while many common people have found these institutions relevant and useful, those in the upper stratum do not seem to consider them

particularly relevant. In a sense this contradicts my initial hypothesis, that powerful and influential people would be using Tribunals as a cover-up mechanism when pursuing their interests against the rights of the poor and ignorant people. What we realize in these findings is that this category of people have not been using the Ward Tribunals to settle disputes among themselves, or between them and people from the middle and lower strata. The initial hypothesis, therefore, is not ascertained by the generated data.

One can contemplate possible explanations for this conspicuous disinterest of people from the upper stratum of society. It may have to do with the nature of dominant disputes in which people in this category are involved. It may be that the bulk of these disputes lie outside the jurisdiction of Ward Tribunals. It is notable that, according to the Act, the Tribunals have no power to imprison persons without the endorsement of the respective primary courts (Sec. 10[2]), and that they cannot impose fines exceeding T. Shs. 3,000 for civil matters and T. Shs. 2,000 for criminal mattes (Sec. 10[3]). The second possibility is that the well-to-do people may have found procedures followed in Ward Tribunals to be rather degrading, possibly so much so that they would rather settle their disputes in private. When it becomes necessary to seek legal justice, they would rather go to the ordinary courts of law. Additionally, given the socio-economic and educational status of the members and leaders of the Tribunals, most of the people in this group must have found them inconsistent with their status. This latter attitude has been fully confirmed by a cross-sectional post- research survey conducted in Babati among government bureaucrats and businessmen. Yet, further inquiries are necessary to ascertain or refute these guesses.

The fact that many common people have found the Ward Tribunals relevant is an indication that these institutions may be ranking higher than others dealing with justice. This is confirmed by responses to the question as to which institution would rank the highest as far as fairness in justice administration is concerned. Responses are shown in Table 3 below.

Table 3: Frequency Distribution of Responses to the Question: Which of the Given Five Institutions (ranked Highest in Terms of Being Just and Fair When Involved in Dispute Settlement?

	Party Organs	Ward Tribunal	Primary Courts	Village Elders	Religious Elders	Total
Numerical	4	27	15	8	21	75
Percentage	5.3	36	20	10.7	28	100

A cursory examination of the frequency distribution shows that Ward Tribunals rank highest, followed by religious leaders, and primary courts. To ascertain the reliability of these findings, the question "if you had a dispute with another person where would you present your case for resolution" was asked of a randomly selected group of respondents in Dareda Mission area. Of the 50 respondents, 29 (58 percent) mentioned "Ward Tribunals," (30 percent) mentioned "court" and 6 (17 percent) mentioned "village/clan elders." Needless to say, these results confirm the leading role of the Ward Tribunals as far as ordinary people's opinion is concerned.

Contrary to the initial hypothesis, Ward Tribunals happen to be quite popular among the common people, both in villages and townships. Explanations given by those who ranked this institution the highest militate around two points. The first is that they are placed in every administrative Ward and are within easy reach of the people. This argument was made with regard to both distance and approachability of the functionaries, particularly the Tribunal secretaries. The second concerns the procedure followed when handling disputes. Most explanations contrasted Ward Tribunals with the primary courts, which were characterized by most people as too strict, apprehensive and unpredictable. Many respondents showed distrust of the primary courts because they are too technical, and because disputants failed to follow argumentation and justification often given by magistrates before delivering a ruling.

The final area of inquiry was the manner in which disputes were actually handled by the Ward Tribunals. The purpose was to establish whether or not the procedures most often used insured justice. The basic assumption was that since the act establishing the Tribunals leaves a lot of room for the exercise of discretion, that discretionary power could be used against the rights of some people, especially the poor and powerless.

Regulations specified in the act require that disputes be submitted to the Tribunal secretary, who then fixes a date for the hearing of the case and dispatches a summons letter to the accused party. All the disputants involved in this study expressed satisfaction with the secretaries' openness and promptness in this regard.

A number of respondents, however, complained that the actual settlement of disputes often took a disappointingly long time. To this complaint, Tribunal leaders have replied that the delay was normally caused by factors beyond their power. One of these has been the failure of some of the disputants to bring their witnesses, inevitably causing postponement of the hearing of the case. It also was said that quite often the accused person would ignore summons from a Ward Tribunal. Since Tribunals normally are not served by the police force, it would take time to get such a person to the Tribunal, and often the complainant is forced to engage a militia guard (mgambo) at his/her own cost.

The time period used to settle individual disputes ranged from two weeks to fifty-nine weeks, with an average of fourteen weeks for the sample population. Further analysis shows that a clear majority of the cases (78 percent) took between two and twenty-three weeks to conclude, while the remaining cases (14 percent) are unevenly spread between the next two time intervals of twenty weeks, that is twenty-two to forty-one (14 percent) and forty-two to sixty-one (8 percent). A further breakdown of the duration of time shows that 62 percent took between two and twelve weeks while the remaining 36 percent took between thirteen and twenty-three weeks.

It seems, therefore, that disputes take a fairly long time to settle in Ward Tribunals. One implication of this is that disputants have to spend a significant amount of time frequenting the Tribunal office between the time of registration of the case and when the dispute is finally settled. As an indication of this, 56 percent of the disputants asserted that they attended Tribunal sessions more than six times when dealing with their respective cases, half of these attending ten times and above on separate days.

No conclusive statement can be made about these rates, since such a statement requires data from comparable institutions, such as primary courts and elders' councils. Unfortunately,

this study did not get such data. Access to primary court records was blocked by the prevailing political situation in the country during the research period. There is, however, ample evidence to show that here, too, delay in dispute settlement is not uncommon. On the other hand, elders' meetings usually are not recorded. It must, nevertheless, be stressed that most of the interviewed people clearly showed dissatisfaction with the current slow pace, and wished that something could be done to improve it. Despite this complaint, however, none of the interviewees approved the suggestion that the Ward Tribunals be abolished due to their slow pace in handling disputes.

Regarding the details of how disputes were actually being handled by the Tribunals, the basic issues investigated included whether or not each disputant was given enough time to explain his or her part of the story, whether witnesses from both sides were allowed and heard, how the Tribunal leaders and members typically conducted themselves in relation to the disputing parties, and what criteria were finally used in arriving at decisions. The available data for each of these concerns are discussed below.

As to whether or not enough opportunity was provided for individual disputants' self-explanation, 93.3 percent of the respondents affirmed that they were given enough time to narrate their story as well as to ask questions of the other party. The remaining 4.8 percent complained of too many interruptions by Tribunal members and leaders to the extent of constraining self- explanation and clarification of the facts of the case, from their point of view. Further inquiry revealed that the latter incidents were mainly associated with cases in which the plaintiff was an official of the local authority, such as the Ward executive officer, an extension officer, or the village government leadership.

A similar picture also emerges with regard to the use of witnesses in dealing with disputes. While 94.5 percent of the respondents affirmed a consistent use of evidence given by witnesses, the remaining 5.5 percent indicated that they were either not allowed to call in their witnesses, or evidence given by their witnesses was not taken into account in the final judgement. Asked whether this minority complaint was genuine, a chairman of the Tribunal where the complaint emerged most forcefully responded in affirmation, but then rationalized the action to restrict hearing of witnesses by saying that in certain cases facts were so clear that the calling of witnesses would only complicate and prolong the case.

It is perhaps agreeable that accounts of witnesses are not always reliable, hence not a guarantee for justice. Equally true, however, is the fact that denial of an individual disputant's right to bring in his/her witnesses may surely facilitate a cover-up of certain facts of the case in question, resulting in a denial of justice. Since the reported incidents of disregard for witness accounts, however, are so few, one may be justified to ignore them. Suffice it to say that justice demands consistence and regularity in dealing with disputes. If witness accounts are sometimes technically unnecessary, those conditions should be legally specified and uniformly handled by Tribunals.

On the procedure for presentation and defense of cases before Ward Tribunals, most respondents (74.2 percent) explained that the procedure often began with free explanation by each disputant in turn, to be followed by questioning and counter-questioning by Tribunal members. In fewer, but notable, cases (18.7 percent), the procedure was reportedly dominated

by many quick questions from the Tribunal members, requiring short answers. Those involved in the latter experience likened it to police interrogation.

Personal observation of Tribunals' sessions largely confirmed the above. It was noted that the procedure typically began with a short presentation of the case as registered. This is done by the Tribunal secretary and followed by the individual disputant's free presentation. The disputant clarifies the secretary's presentation, confirms or refutes it, or brings in new facts, depending on the situation in individual cases. Only one incident of rather humiliating rapid questioning was observed and this involved a group of young men brought in by village leadership for failure to participate in a communal work. The interchange of statements and counter-statements between the disputants often included an opportunity for the accused party to ask the complainant questions if the former wished to do so. These questions are supposed to help the Tribunal members discover inconsistencies or deceptions underlying the statements of the accusing party, much like the role played by advocates in courts of law.

When all this is done, all the people (including the disputants and the audience) are asked to move out of the room to allow Tribunal members time to converse among themselves and determine the verdict. Interviews with Tribunal members showed that this process usually lasted only a short while, involving a short discussion among them under the coordination of the chairman. The judgement is normally arrived at through a suggestion by a member or the chairman, which after scrutiny and rationalization is either accepted or rejected. Often, although not always, it becomes necessary for the members to vote to indicate support for one suggestion against another. A simple majority vote decides the verdict. In the case of a tie, the chairman will usually cast the deciding vote, although this does not happen often.

After the decision has been made, people are invited back into the room, and the secretary reads the judgement after reviewing all the presentations and arguments made in the course of hearing. The Ward Tribunals Act provides that, at the end of proceedings, the Tribunal may order the party at default to apologize or to be rebuked at a village assembly, or the two parties to perform customary acts which signify reconciliation. The present study has established, however, that Tribunal proceedings hardly ever conclude with any of these acts. Almost invariably, the Tribunal would order the party at default to pay a specified fine or what is due to the winning party. Quite often, too, the proceedings end with an order to the party at default to perform some communal work in the respective village.

A number of conclusions can be drawn from the foregoing description. It is evident that the Ward Tribunals have been trying to imitate procedures normally used by the ordinary courts of law in handling disputes. This is indeed contrary to the expectations expressed in the Act, which anticipated much simpler and informal procedures. The Act also insists that Tribunal leaders and members should be lay people in respect of formal knowledge of law. This is further proof that the imitation of court procedures of Tribunal leaders was not anticipated.

Despite this discrepancy, it can be appreciated that the Tribunal leaders have been creative in trying to follow certain procedures in settling disputes brought before them. They have been trying to utilize all the available resources, including the scant knowledge they have gathered (through experience and reading) concerning how to go about resolving conflicts. It is notable that quite a number of Tribunal leaders and members have been reading simplified law texts written in Kiswahili. The fact that the challenge posed by the establishment of these Tribunals is

causing some knowledge of law to trickle down to the village community level lends credit to this institution.

The important question, though, is whether the imitation of court procedures advances the cherished mission of these institutions, that is insuring justice and tranquility at the local community level. The present study has revealed that more often than not the Tribunals, just like the ordinary courts, have tended to concern themselves primarily with the task of establishing whether or not a particular accused party was truly guilty of the alleged offence. The opinion so formed would then be used to determine the verdict, often a fine, or compensation, or return of property to the deserving owner.

In view of the specified principles of informality and preference of reconciliation to compulsion, one would have expected that the Tribunals would be more informal in their operations than they have so far been, and that the compulsive image would have featured much less than has been the case. It is admitted, however, that in order to reconcile any two disputing parties one has first to find the facts. The point being stressed here is that the fact-finding exercise should be done in a more informal and relaxed manner, so as to prepare a firm ground for later harmony and understanding between the parties concerned.

It is further admitted that at the end of the conciliation process, it is often necessary to cause one party to compensate or pay what is due to the other, or some kind of punishment/reward be given to one of the conflicting parties. These punishments or rewards need to be negotiated by the disputing parties while the Tribunal restricts its role to that of mediation. This would involve persuading the two parties to long for understanding or compromise while at the same time making relevant suggestions on how the conflict could be resolved. Failure to reach agreement through this process should merit an automatic transfer of the case to a primary court.

The observed Tribunal sessions revealed that decisions are normally based either on regulations passed by the local government authorities or by reference to customary norms and regulations. In this respect, the Tribunals have been functioning according to the specifications of the act establishing them. More often than not, however, these regulations were used as an absolute and sole measure upon which the resolution of the conflict would then be based. This tendency obviously defeats the central mission of the Tribunals. It is suggested that whereas reference could be made to the existing regulations and other socially acceptable norms in the respective communities, the role of the regulations should be limited to facilitation of amicable settlement of disputes. Reference to them should always be made in the spirit of expanding the range of principles upon which the conflict at hand could be resolved.

The inquiry on what happens after disputes have been handled by the Ward Tribunals yielded interesting results. Figures based on the study sample show that 53.4 percent of the disputes were decisively settled by the Tribunals while the remaining proportion (46.6 percent) have had to be rehandled as parties dissatisfied by the Tribunal decisions appealed to other organs. Furthermore, 74.4 percent of the latter category of disputes went to the primary courts, 21.8 percent went to government establishments(such as the Area Commissioner's office and the offices of the Ward and Division Executive Officers) and 3.8 per cent went back to the village or clan elders.

The ability to decisively settle over half of the disputes brought to them is certainly an indication that the Ward Tribunals have achieved considerable effectiveness. On the other hand, the fact that nearly half of the disputes handled by the Tribunals have been reopened elsewhere for reconsideration indicates that the Tribunals need to perform better. While it may not be possible for the Tribunals to successfully settle all the disputes brought before them, the noted proportion of appeal cases suggests that a considerable weakness exists, which, if rectified, would increase the effectiveness of the Tribunals.

This study did not attempt to establish the specific Tribunal weaknesses that might have caused the noted proportion of appeals against their rulings, but it may be assumed that the tendency may have resulted, at least in part, from unsatisfactory procedures and decisions taken by Ward Tribunals.

To conclude, it has been noted that the findings of this study do not support the assumption that the apparent legal vagueness of the procedures to be followed by the Ward Tribunals in resolving conflicts might have allowed powerful and influential disputants to maneuver decisions in their favor. There is no evidence to show that Tribunal procedures have been changing with the social and economic status of the disputants involved. In light of the fact that the powerful and influential members of the society hardly use the Tribunals in resolving their conflicts, it can be argued that the hypothesized danger of prejudice on the part of the Tribunal leaders would not have been possible.

In contrast to the stated assumptions, the apparent flexibility of law on matters of procedure seem to have stimulated creativity among Tribunal leaders. The noted tendency to experiment with court procedures is contrary to the specified principles by which the Tribunals should operate. Nonetheless, although the noted court-like procedures may have been unpopular among the people whose cases have been handled by the Tribunals, none of the interviewees was of the opinion that this characteristic makes the Tribunals more deplorable than the primary courts as far as their performance in justice administration is concerned.

Summary, Conclusions and Recommendations

The above discussion suggests that, although faced with several notable shortcomings, the Tanzanian Ward Tribunals have not been without important achievements. Their establishment has met with considerable enthusiasm and their performance, on the whole, seems to have maintained hope among the respective communities that this organ will continue to be useful to them.

It has been noted that the composition of both the Tribunal leaders and members is acutely skewed in favor of male elders. This situation can possibly lead to the denial of justice to the largely excluded social groups, that is women and young people. But this study could not establish any case of discrimination against these groups, even after the Babati Tribunal was revisited to check on this. However, while representation on the Tribunals in terms of age may not be so important, it would be necessary to bridge the gender imbalance in the future. Given that a clear division of labor along sex exists in the Tanzanian society men and women can easily constitute antagonistic relations in specific situations. To minimize the possibilities of

prejudice in handling such antagonism in Tribunals, deliberate steps need to be taken to ensure a strong representation of women in these organs.

The study established that while the Tribunals have everywhere proved to be popular among the common people, the upper stratum of society has been conspicuously missing from them. This tendency, while contrary to the respective study hypothesis, tells something about the nature of the Tribunals. Had the Tribunals generally taken a corrupt stature, the well-to-do people would not have failed to take advantage of them. The challenge ahead, however, is how to make the ordinary courts of law inaccessible to corrupt intentions so that justice can be insured in all the relevant institutions.

On the whole, Ward Tribunals in Babati perform well in the actual handling of disputes, but they are not free from short-falls. The most outstanding among these include failure to conclude cases in appreciably good time, incidents of irregularity hence inconsistency in the use of witness accounts in arriving at decisions, and, above all, Tribunal leaders' experimentation with court procedures while no arrangements are in place to constantly guide them in this pursuit.

It was mentioned above that a notable contradiction exists between procedures often used by Tribunals in handling disputes and the principle of reconciliation that has strongly been emphasized by the law establishing the Ward Tribunals. The Tribunals tend to be more compulsive than conciliatory in their conduct. It is the considered opinion of this author that this tendency needs to be corrected.

Before any corrective measures can be determined, however, it is imperative to first decide whether the Ward Tribunals should continue being fundamentally conciliatory or should they be transformed into small, amateur courts. If the former option is chosen, as this author prefers, concerted efforts need to be directed at re-orienting the Tribunals. This task will require the assistance of the social welfare department as well as experts in public administration. What needs to be done is to give Tribunal leaders and members basic knowledge and skills in arbitration and conciliation. The Tribunals so oriented would primarily seek to skillfully persuade or entice people to amicably resolve their conflicts rather than proceeding to courts of law. It should be possible, in this way, to develop a locally available, low-cost and semi-professional body of mediation. This appears to be a better way of achieving the twin objectives of the Ward Tribunals, namely an amicable settlement of disputes at the local community level, and relieving the stress on the primary courts.

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