# CHANGE WITHOUT CONFLICT: A CASE STUDY OF LEGAL CHANGE IN TANZANIA

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Lawyers and anthropologists who are equally concerned with scientific and pragmatic questions have called for investigation of specific instances of legal change. Such men as Garland and Roth (1967), Healey (1964), Schiller (1965), Thompson (1968), and Twining (1964) have pointed out the need for concrete facts and figures for use in evaluating particular theories of and hypotheses about the process of legal change. In *The Place of Customary Law in the National Legal Systems of East Africa,* Professor Twining comments that "it would be of great value to have some intensive studies in depth of the introduction of the new courts system and the unified customary law" in Tanzania (1964: 51). He adds that "it is encouraging to hear that a private research project on similar lines is under way in Sukumaland" (1964: 59, fn. 42).

The project referred to was this writer's research among the more than one million Sukuma who inhabit five administrative districts in north-central Tanzania. Using functional realism (Llewellyn and Hoebel, 1941; Hoebel, 1954) as the methodological and theoretical orientation, the writer investigated both the formal, official courts and the modern role of traditional Sukuma mechanisms for the settlement of disputes. She recorded 139 cases from a sample of 14 courts selected to represent rural and urban situations in each of the five districts; in addition, she interviewed magistrates, administrators, headmen, elders and other Sukuma. Here the analysis of the research data concentrates on the factors influencing the favor-

able Sukuma response to two major national legal changes, the Customary Law (Declaration) Orders and the Magistrates' Courts Act of 1963.

**Cultural and Temporal Perspective**

The Sukuma, as many other Tanzanian tribes, have a Bantu heritage, a mixed economy with some cash crops and a modest standard of living. The Sukuma, however, are twice as numerous as the next largest Tanzanian ethnic entity, the Nyamwezi, who live just to the south and who share many cultural traits with the Sukuma. A cardinal characteristic of Sukuma culture is the existence of acceptable alternatives in all realms of activity from marriage to religion (see Nicholson, 1968: 24-104 for an extended presentation of ethnographic data). Table 1 reports some of the details about Sukuma culture and society, but it can only hint at the variety, adaptability and practicality typical of Sukuma life. Since their culture includes the concept of maximizing personal choice, the Sukuma can participate actively and successfully in today's world without sacrificing any of their basic "Sukuma-ness."

TABLE 1: SUKUMA PROFILE

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|---|---|
| Population: | 1,059,486 (1957 census) |
| Language: | Bantu, related to Nyamwezi in mid-central Tanzania |
| History: | migratory flow toward Lake Victoria from Nyamwezi locale; later, smaller immigrations from north of Lake Victoria; little impact from Arab slavers, brief visit from Speke, Stanley; contact with German and British missionaries from 1870, with German control in 1891, British control 1916-61 |
| Ecology: | 19,050 square miles of cultivation steppe at 3,000-5,000 feet altitude and with 25-40 inches average rainfall |
| Economy: | agriculture with livestock, cotton as main cash crop, temporary wage labor not crucial; land allotted and controlled by each village |
| Kinship: | neolocal nuclear family with bilateral affiliation and patrilineal inheritance but no corporate lineages or clans |
| Marriage: | no particular preferential forms and divorce acceptable; voluntary flexible progeny price (more rigid in the past) |
| Sodalities: | variety of voluntary associations, both traditional and new; intra-village associations organized by sex and age; villages function as associations; extra-village sodalities based on interest — dance groups especially characteristic but also religious groups; political affiliation with TANU party branches and membership in cotton cooperatives (local units under the Victoria Federation) |

| | |
|---|---|
| Religion: | unformalized pantheon of spirits, no priests but part-time practitioners concerned with ancestors, health, witchcraft; minimal Islamic effect, somewhat more impact by Christian ideas |
| Political: | tradition of both patrilineal and matrilineal chiefs serving fifty autonomous political entities; village headmen allot land, migration uncomplicated; colonial modification, especially of chief's functions; post-Independence abolition of chief's position |
| Legal: | no Sukuma-wide court, no hierarchical structure, little or no use of oaths or ordeals; reliance on intra-associational control; tradition of three types of parallel courts within each chiefdom and an assembly within each village; colonial modification of jurisdiction and sanctions, particularly the chief's court (which was abolished shortly after Independence); continuation today of traditional devices and mechanisms of social control but common, increasing use of national courts |

The Sukuma legal system reveals that traditional mechanisms for resolution of conflict have survived throughout the 70 years of colonial rule. Still evident in the early 1960's were the three types of aboriginal courts: the court of the chief (*ibanza lya ntemi* in Sukuma), the court of the headman (*ibanza lya ng'wanangwa*), and the court of the elders (*ibanza lya banamhala*). In addition, a village assembly (*long'we*) handled numerous problems of social control. These institutions are described in comparative terms in Table 2. Before 1891 the indigenous courts and the village assembly were *parallel* components active in *each* of the 50 or so Sukuma chiefdoms; that is, the legal system reflected the polycentric organization of Sukuma society as well as its basically egalitarian character.

The advent of foreign control in 1891 meant the introduction of such alien concepts as judicial hierarchy, the right of appeal and the legitimacy of extra-chiefdom political and judicial authority. The Germans (1891-1916) and the British (1916-61) also directly affected the jurisdiction and sanctions of the court of the chief as that institution was absorbed into the colonial judicial system. Colonial administrations continually changed the role of the chief's court as the country's judicial structure was altered through the years (see Austen, 1965; Moffett, 1952; and Nicholson, 1968: 105-36). In contrast, the colonial governments largely ignored the headman's and the elders' courts as well as the *long'we*. Perhaps as a result of this very neglect, these three institutions survived as vital parts of the total system of social control in Sukumaland throughout

TABLE 2: TRADITIONAL SUKUMA MECHANISMS FOR DISPUTE SETTLEMENT, 1890-1964[1]

| | Court of Chief | Court of Headman | Court of Elders | Village Assembly |
|---|---|---|---|---|
| Members | Chief,<br>Chiefdom elders | Headman,<br>Elders he chooses | Important elders from elders' society | Adult villagers, sometimes without headman |
| Venue | Chiefdom in question | Village (**gunguli**) | Neighborhood (**shibanda**) in question | Village |
| Jurisdiction | Serious assaults<br><br>Cattle theft<br>Witchcraft*<br>Homicide** | Debts<br>Domestic disputes<br>Assaults<br>Theft<br>Trespass damage<br>Land use, rights<br>Boundaries<br>Unpaid compensation for admitted wrongs<br>Disturbing peace | Debts<br>Domestic disputes<br>Assaults<br>Theft<br>Trespass damage | Slander, insult, profanity<br><br>Continual theft<br>Witchcraft<br>Spells, cursing***<br>Drought***<br>Epidemics***<br>Failure to meet community duties<br>Headman's failures or wrong-doing |
| Fee | 5 goats or hoes for chief,<br>5 goats or hoes for chiefdom elders | Yes, amount by wealth | No | No |

| | | | | |
|---|---|---|---|---|
| **Sanctions** | Death<br>Ostracism (**bupeja**) throughout chiefdom<br>Confiscation<br>**Compensation**<br>Restitution<br>Fines in kind, hoes or beer | Compensation<br>Fines in kind, hoes or beer | Compensation<br>Fines in beer or hoes | Fines in beer or hoes<br>Communal beatings (theft, witchcraft)<br>Ostracism (**bubisi**) with possibility of withdrawal if behavior improves<br>Ask chief for final ostracism (**bupeja**) |
| **Change:** | No jurisdiction for treason, witchcraft, homocide; | Recognized in 1920; amount of fines limited | Not officially recognized or influenced | Not officially recognized; leaders prosecuted for communal beatings |
| Colonial | New jurisdiction many ordinances;<br>No death sanction, add imprisonment, strokes, money fines | | | |
| Independence | Officially abolished, did cease functioning | Recognized as pre-formal mechanism | Recognized as tribunal for domestic only | Not officially recognized, prosecuted for beatings |

* only if a death bed accusation is confirmed by divination; living accusors must resort to anti-witchcraft medicines or request action by a *long'we*.

** only in cases of a murderer's failure to pay traditionally calculated "blood-money" termed *njigu* in Sukuma.

*** considered the direct or indirect result of witchcraft activities if no other explanation satisfies villagers; action only after properly-conducted divination by special elders consistently indicates a specific culprit.

the years prior to Independence in 1961 (Cory, 1954: 58, 67; Libenow, 1960; Healey, 1964; Nicholson, 1968: 115-7, 136).

Research in 1964 indicated two significant trends related to these traditional Sukuma institutions (see Nicholson, 1968: 138-57 for basic data). First, the elders' court and the village assembly, or *long'we,* were decreasing in their importance as mechanisms for resolving conflicts. The *long'we* was being assembled with less frequency and for a decreasing variety of problems. Nevertheless, the *long'we* continued as the major means or arena for handling accusations of witchcraft. While some Sukuma had begun to take accusations of witchcraft activities to the national courts which have jurisdiction over such claims, most Sukuma still preferred to try anti-witchcraft medicines first and then, if necessary, to ask their village elders to summon a *long'we.* No rash accusations were considered and no action was taken by a *long'we* unless a "culprit" was revealed by divination undertaken by properly chosen elders; the usual communal "punishment" of a divined witch was — even in 1964 — the administration of a severe, often fatal, beating undertaken by the village as a unit (Hatfield, 1964; Nicholson, 1963-5a).

In the 17 months of investigation, only a half dozen Sukuma mentioned asking elders to handle their disputes. Indeed, headmen and elders often commented that the Sukuma seemed to be taking their conflicts in increasing numbers to the headman's court or even the national courts. Some younger Sukuma said that they avoided the elders' court because the elders were "old-fashioned." The writer's research assistant noted that the headman's court in the 1960's appeared to be handling problems which previously would have been settled by the elders' court or even the village assembly. For example, even relatively simple domestic quarrels were being taken to the headman's court, whereas traditionally such disputes would have been resolved by the elders' court.

The second important trend in the changing role of the traditional Sukuma legal institutions involved the increasing acceptance of the headman's court as an informal but very active lowest rung for the national, official judicial ladder. Even when an accusor knew that his problem was serious enough that it must be handled by the national courts, he would take the matter first to the headman's court or sometimes to the headman alone. The headman was viewed by most Sukuma as an advisor, knowledgeable in the ways of

the greater world and especially informed about legal rules. Headmen frequently appeared as witnesses either for the plaintiff or the defendant; testimony of such local leaders was considered seriously by national magistrates who knew that a headman was in a better position to assess the evidence and understand the extenuating circumstances. Simultaneously, headmen were becoming an extension of the national courts' staff: they were asked to deliver summonses, to enforce court orders for payment of fines and compensation; and to apprehend, for delivery at court, those Sukuma who were delinquent in paying fines or compensation.

**The National Changes of 1963-64**

Important national legal changes occurring in 1963 and 1964 altered the formal judicial structure, the procedure used in official local courts and the substantive customary rules relating to marriage and inheritance. These changes were instituted by President Julius Nyerere in an attempt to provide his emerging nation, independent since 1961, with a legal system suitable for a civilized country's needs and with legal unity as a basis for the political unity necessary for a viable state (African Conference on Local Courts and Customary Law, 1963: 108; Schiller, 1968: xiii; Twining, 1964b: 42-3; Verhelst, 1968: 19-20). To accomplish these aims, President Nyerere moved simultaneously to unify customary law and to integrate the courts.

On one hand, President Nyerere acted to control the confusion and conflict inherent in the presence of numerous systems of indigenous substantive law. He did this by building on the British beginnings toward unification undertaken by colonial government sociologist Hans Cory, who had collected individual tribal statements from more than twenty patrilineal Bantu groups (Twining, 1964b: 36-8). Under President Nyerere, Cory and his successors prepared initial drafts of marital and inheritance rules, consolidated so that tribal differences were minimized. These drafts were amended by the elected District Councils in the districts which would be affected; later, final drafts were ratified by these same District Councils and, in 1963, enacted as the Customary Law (Declaration) Orders, Numbers 1-8 (Tanganyika, 1955: Supplement 1963; Government Notices 279, 303, 380, 436, 474, 475, 604, 605). These Orders provided standardized rules regulating, in one set, customary marriage, bridewealth (or progeny price), divorce, adultery and

the status of minor children; and in the second set, guardianship, intestate succession and wills. These Orders applied to patrilineal Bantu peoples residing in 35 of Tanzania's 58 administrative districts, including the five districts inhabited by the Sukuma.[2]

On the other hand, President Nyerere moved to remedy the problems created by the colonial bequest of parallel segregated court systems dominated by administrators. The President integrated the courts by means of the Magistrates' Courts Act (Tanganyika 1955: Supplement 1963, Chapter 537) which established a single racially integrated system of Primary, District and High Courts throughout the nation. Beginning in 1949 the British, anticipating a future with a single court system, altered the judicial structure somewhat and considered other changes (Healey, 1964). For example, in areas considered "suitable," colonial administrators relieved chiefs of their judicial duties and established full-time local arbitrators.

When the Magistrates' Courts Act became effective on July 1, 1964, its sections 66-1 and 67-1 abolished all customary criminal law and all previously existing chiefs' courts (called Native, later Local, Courts by the British). Section 14, as detailed in the First Schedule, specified the jurisdiction of each of the three types of courts; for example, the newly-created Primary Court was granted jurisdiction for civil matters involving less than two thousand shillings, 48 offenses under the Penal Code, plus tax and traffic ordinance violations. Section 12 of the Act established Swahili as the language for Primary Court sessions and court records, while section 29 denied litigants representation by advocates in initial Primary Court cases. Section 15, as detailed in the Third Schedule, standardized civil and criminal procedure, as well as the powers for the Primary Courts. Magistrates serving the Primary Courts became full-time civil servants, members of a national judiciary, instead of appointees subject to local District Councils or local administrators.

The judicial situation in Sukumaland was affected in several ways by the abolition of chiefs' courts and the elimination of chiefs as official arbitrators. The number of locally-situated courts in the five Sukuma-inhabited districts was reduced from the 120 courts of colonial days to 106 Primary Courts which held their sessions in British-built courtrooms formerly employed for the chiefs' (Native, then Local) courts. The venue of the Primary Courts, with a few adjustments, coincided with

traditional or, in a few cases, colonially-modified chiefdom boundaries. The position of Primary Court magistrate was filled by 35 full-time employees of the national judiciary; only four former chiefs and one regent were accepted for the new position, while the other 110 former chiefs returned to farming full-time, found new administrative positions, or sought non-governmental employment.

These 1963-64 national legal changes did not restrict Tanzanians' use of such traditional mechanisms as the headman's or elders' courts. Explicit provisions covering the relationship of the Primary Court to local means of dispute settlement were included in both the Magistrates' Courts Act (Third Schedule, 4-2; Fourth Schedule, 3h) and the Customary Law (Declaration) Orders (sections 98A, 99A). The Act, in its Fourth Schedule explication, even permitted Primary Court magistrates discretionary powers to return a conflict or a minor crime to a headman for resolution as well as lesser punishment.

**Sukuma Response to the 1963-64 Changes**

The Primary Court magistrates, administrators, former chiefs, headmen and elders in Sukumaland generally viewed the national legal changes in the best possible light. Interviews revealed that these men associated the legal and judicial modifications of the Magistrates' Courts Act and the Customary Law Orders with President Nyerere, whom they admired, and with his attempts to provide his country with good government. In addition, many of these men were politically aware of the need for improving the nation's judicial system to suit the needs of an independent, growing country. Similarly, Sukuma who were cotton cooperative officials, members of District Councils, court clerks and teachers also supported the need for and the actual legal change in large part because of their approval of President Nyerere as a person and a leader. A vocal minority of this second group was eager to have a nationally uniform judicial system and standardized substantive law because of a concern with the disastrous divisions rending such nations as the Congo.

The more typical Sukuma, generally farmers and housewives, were nearly as enthusiastic when they learned about the Act and the Orders. In some areas Primary Court magistrates and local administrators had worked through headmen and elders on an informal basis to make the general populace aware of the overall nature of the legal changes. Most average

Sukuma, however, were not cognizant of any details until specific innovative measures were encountered during the course of an actual court case. Then word of change was spread throughout the neighborhood or village of not only the litigants, but also of the witnesses and spectators. Since the Sukuma are less litigious and less legally sophisticated than such tribes as the Chagga and Haya, they learned about the Magistrates' Courts Act and the substantive Orders relatively slowly. Interviews indicated a clearly positive reaction on the part of persons in all five Sukuma-inhabitated administrative districts. Many mentioned their confidence in President Nyerere and his many efforts to improve Tanzania, but just as many men and women voiced a practical view of the 1963-64 changes: "Now we can get the same treatment in any court wherever we go in our country."

Indeed, the Sukuma commented most frequently upon the benefits of courts' integration as established by the Magistrates' Courts Act. Many — no matter what their occupation or educational background — expressed their positive view in these terms: "At last we are fully citizens of our own nation" or "It is time we were judged fairly by our equals." An awareness of the colonial condescension and discrimination was common in Sukumaland and elsewhere in Tanzania, so that the new court system was widely considered a concrete example of the disappearance of a repressive alien order. Yet the Sukuma for the most part did not concentrate on the injustices of colonial administrations, but emphasized the positive aspect of integration — a step forward toward being "a serious nation" (Healey, 1964; Nicholson, 1963-5a).

The Sukuma commented almost as frequently upon the improvements wrought by the establishment of the local magistrate as a full-time arbitrator supervised by the national judiciary instead of local administrators. The Sukuma indicated, in interviews with the writer and in conversations with the new magistrates themselves, that they felt that better trained men were needed; that the chiefs had had to spend too much time on administration to do a good job at adjudicating; and that younger, more energetic men could handle more cases more speedily. Moreover, many Sukuma were egalitarian enough to interpret the abolition of the chiefs' courts as a necessary and appropriate blow to those men who not only had gained a great deal of power during the years of British rule, but also had often misused that power to favor relatives and friends.

Some Sukuma explicitly mentioned their anticipation of "better decisions" from the Primary Court magistrates, who purposely were not assigned to their original local in a conscious attempt to reduce temptation and partiality (Nicholson, 1963-5b).

Many average Sukuma interviewed about the Customary Law (Declaration) Orders appeared aware that customary domestic and inheritance rules were being altered, but few were knowledgeable about the myriad of modest and minor modifications. A majority, however, could report correctly that only four "real" changes had been effected by the Orders. This writer's own comparison of the new provisions with those recorded for the Sukuma after World War II (Cory, 1953) revealed that the Orders did not extensively or intensively affect Sukuma marital or inheritance practices. As it happened, the modifications most commented upon by the Sukuma were in fact the most evident changes:

1. Abolition of compulsory bridewealth, or progeny price (called *bukwi* in Sukuma) for daughters over twenty-one years of age: section 10;
2. Elimination of a father's right to claim compensation (*misango*) payment from the progenitor of an illegitimate grandchild if the progenitrex is over twenty-one; correlative limitation of such compensation to one hundred shilling maximum if the progenitrex is under twenty-one: section 190;
3. Abolition of compensation (*ng'wekwe*) in cases of the enticement to elope if the daughter is over twenty-one: section 89;
4. Establishment of a one hundred shilling limit on compensation for adultery (*bushihya*) which may be claimed by a cuckolded husband from his adulterous wife and her partner: section 115.

Younger Sukuma interviewed were more favorably inclined towards these four changes. Men and women spoke of the advantages conferred by the existence of standardized national marital and inheritance rules: one could be sure of behavior standards that would receive legal support as one moved to other parts of Tanzania. Moreover, younger Sukuma realized the need for "up-to-date" customs and rules. They were particularly pleased by the first three changes described above since these new provisions eased the financial complications

surrounding marriage and dalliance. In contrast, fathers of daughters over twenty-one sometimes — but not always — voiced disapproval of the change which would deprive them of progeny price. A few cuckolded husbands also were vocal about their preference for the traditional adultery compensation.

Only a very few Sukuma, mainly men over 50 years of age, were concerned about any supposed loss of "Sukuma-ness," while only one man was so disapproving as to suggest that Sukuma rules should have been imposed upon the rest of Tanzania's population. No Sukuma of any age expressed any concern about or expectation of the Orders as a force in altering any important Sukuma institution. Research indicated that many Sukuma had felt, prior to Independence, that compulsory bridewealth, or progeny price, would wither away gradually as a result of economic and educational factors. In any case, the Orders did not prohibit a potential son-in-law from volunteering to pay progeny price in order to insure affinal good will. The Orders, moreover, did nothing to alter Sukuma marriage customs in any significant fashion, since many Sukuma eloped without paying progeny price and since divorce had been common even with an exchange of cattle and gifts.

Numerous Sukuma commented that prior to the Customary Law Orders the practice of claiming *misango* and *ng'wekwe* (compensation for illegitimacy and enticement to elope) had shown a gradual "natural" decline. Different views were expressed about the reasons for such a decline, with many persons recognizing an interplay among such things as formal education, increased variety of cash crops, greater economic independence of young people, and a growing tendency to marry under church or national regulations. Many Sukuma also felt that the custom of claiming compensation from adulterers (*bushihya*) would have continued its decline in popularity; indeed, some hard-working Sukuma suspected unscrupulous and lazy husbands of encouraging infidelity as an easy means of obtaining funds. Thus, by and large, the Sukuma recognized that traditions are not immutable and that not all traditions are worth retaining.

The writer's conclusion that the Sukuma were accepting the Magistrates' Courts Act and the Customary Law (Declaration) Orders was not based exclusively on interviews. The truth of Sukuma verbal assertions of adherence to the new laws was demonstrated in concrete terms. First, the Sukuma did not organize public rallies to protest the provisions of the Act or

the Orders as they had done in 1958 when they strongly objected to political changes in the District Council system. Second, the Sukuma did not evince any passive resistance to the 1963-64 alterations as they had done on a widespread, persistent basis in the 1950's when the British tried to introduce a cotton tax and a program of livestock innoculation. (For details on these and other examples of Sukuma resistance see Maguire, 1969: 196-248.)

Third, the Sukuma who encountered procedural modification and substantive innovations in the courtroom sometimes indicated curious surprise, but rarely reacted with displeasure or indignation. A calm, mildly questioning behavior reflected their interested, non-rebellious attitude just as clearly as their smiles, frowns, nods or shouts mirrored their various attitudes toward testimony in amusing or serious cases. Fourth, the Sukuma did not continue taking disputes to the chiefs as did the Nyamwezi near the town of Tabora (Miller, 1966: 147). Moreover, the Sukuma did not try to circumvent the application of the substantive changes by taking to the headman's court cases involving the four provisions discussed earlier. Fifth, the Primary Court records demonstrated that the Sukuma were increasing the rate with which they were bringing conflicts, including marital and inheritance disputes, to the Primary Courts. These facts should serve to dispel the doubts of such critics as Cotran (1962) and Tanner (1966) that the Customary Law Orders would not be considered binding by patrilineal Bantu peoples such as the Sukuma.[3]

The conclusion that the Orders and the Act are considered binding is applicable to other areas of Tanzania than just Sukumaland. A dozen District Court magistrates, who in their capacity as Regional Local Courts Officers were supervising Primary Courts magistrates' implementation of the 1963-64 changes, claimed that the unification and integration innovations were being accepted willingly in most parts of the country (Healey, 1964; Nicholson, 1968). Indeed, nothing existed to indicate that the Orders or the Act were in any degree "fantasy law," or regulations unacceptable to those affected and paper law unenforceable by the enacting government, as was the situation with Prohibition in the United States or with certain substantive modifications futilely introduced in the Sudan in 1951 (Thompson, 1968: 161). As far as the Tanzanian judicial administrators were concerned, the Orders and the Act had been successfully implemented. Moreover, these non-Sukuma magis-

trates felt that the 1963-64 changes were considered as binding as most citizens of the United States considered laws binding; that is, the large majority of citizens would acquiesce, a minority would complain but comply, and a smaller minority would ignore or avoid provisions they felt unfair (Nader, 1972: different economic and ethnic groups in the United States also ignore or avoid specific laws).

**The Agent of Change as a Factor in Successful Implementation**

The agent of cultural change often has a crucial influence on the process of introducing innovations. In this instance the prime agent of legal change was the Primary Court magistrate. Most Sukuma, as discussed earlier, considered the establishment of a national judiciary as a concrete step away from colonialism. They pointed with evident pride to the 35 newly created Primary Court magistrates (referred to below as PCMs for brevity) and claimed, "Now we are like other nations: we have *real* judges." The PCMs symbolized Independence and "progress" by their very differences from their predecessors, the chiefs. The Sukuma valued the fact that the new judges not only had specific judicial training, but also represented a more modern point of view as well as occupying a more impartial position than the chiefs.

As important as the Sukuma expectation of more objective judgments was the Sukuma awareness that the Primary Court magistrates understood Sukuma life and behavior. The Sukuma knew that the PCMs were fellow Sukuma or men of long residence in Sukumaland. The populace was not envious of the PCMs' somewhat higher degree of education and more prosperous financial situation since the magistrates differed only to a slight degree. The Sukuma knew the PCMs were not different in kind: they spoke Sukuma, lived modestly, worked relatively hard, and had wives who participated in local activities. Interestingly enough, the Sukuma frequently contrasted the helpfulness of the PCMs with the aggressiveness and pomposity of the local political leaders. (See Nicholson, 1968: 174-91 for details on 35 Sukumaland magistrates and 18 PCMs from the Chagga area.)

In addition, the Sukuma appreciated the PCMs' willingness to explain the implications and ramifications of the 1963-64 changes. This writer was present in court on many occasions when a magistrate took time and pains to relieve the doubts and anxieties of a litigant or witness, confused by new pro-

visions of the Orders or the Act. She also observed explanatory efforts undertaken by magistrates in their chambers and she heard PCMs praised by their supervisory magistrates for patience and skill in implementing change.

The objectivity, skill and cultural understanding of the Primary Court magistrate were important to the implementation of legal change elsewhere in Tanzania. The supposedly "reactionary" Masai, a people without an indigenous tradition of courts, dramatically tripled their use of the national locally-situated court when it was staffed by an experienced, quadrilingual, full-time magistrate. Many Masai explicitly told supervisory magistrate Woodley (1964) that they had avoided the court as long as the British-created chief acted as arbitrator, favoring his friends and relatives (not Masai) and not attempting to understand Masai customs. Appreciating the abilities of the new magistrate, the Masai were willing, even interested, in learning about the changes established by the Magistrates' Courts Act; being non-Bantu, the Masai were not affected by the substantive alterations of the Orders.

**The Role of Expectations and Timing**

A second important factor influencing the favorable Sukuma — and Tanzanian — reaction to the national legal changes of 1963-64 was the general expectation that political change on the national level would be accompanied by local legal alterations. This conjunction was anticipated because of the long history of political shifts in the capital resulting in changes in judicial structure, jurisdiction and sanctions. Seventy years of such conjunction of political policy and personnel alterations with local legal modifications had served to "condition" (in the most general sense of the word) many Sukuma and many other Tanzanians to anticipate a continuation of the pattern (Healey, 1964; Nicholson, 1963-5a).

The general expectations of legal change were buttressed with the positive influence of a strong nationalism because of the proximity of Tanzanian Independence to the implementation of the Magistrates' Courts Act and the Customary Law (Declaration) Orders. Sukuma approval of Independence and President Nyerere and his leadership definitely exerted a favorable power to all other changes which could be considered as making the advent of Independence a reality on the local level. Interviews with a dozen experienced District Court magistrates indicated that "positive affect" was displaced in a simi-

lar fashion in areas of Tanzania both more and less "sophisticated" and economically-advantaged than Sukumaland (Nicholson, 1963-5b; see among others Foster, 1962: 156-157 and Goodenough, 1966: 121ff for a discussion of this phenomenon in other instances of change). For example, supervisory magistrate Woodley (1964) reported that the Arusha, who actually had used the colonial courts to a greater extent than recorded by Gulliver (1963: 266-74), had steadily increased the number and variety of cases brought to the national courts after Independence. In light of these first-hand reports, the writer cannot agree with the opinion of A. N. Allott (1965a) that the element of timing was not important to the successful introduction of the Act and the Orders.

**The Influence of Two Governmental Policies**

The implementation of the 1963-64 national legal changes on the local level was influenced also by two important government policies supported by President Nyerere. First, the Tanzanian government did not propose to "interfere with the customary practices of arbitration"; indeed, it even stressed the advantages of "proximity, informality and familiarity" that could be found in traditional approaches to the resolution of conflict (African Conference on Local Courts and Customary Law, 1963: 110, 103). Thus, although the post-Independence changes abolished the chiefs' courts, the Act and the Orders did not abolish or substantially curtail such village-level institutions as the headman's or the elders' courts. Unlike the Germans and the British who largely ignored these village institutions, the government under President Nyerere was unambiguous about its support for any mechanism that might be beneficially employed in the settlement of disputes. Carrying its policy into action, the government explicitly established an individual's right to withdraw his case from a Primary Court and provided the Primary Court magistrate with discretionary power to return a case, even a minor crime, to informal arbitration (Magistrates' Courts Act, Third Schedule 4-2 and Fourth Schedule 3h).

Since the headman's court was not encroached upon by the national changes, the Tanzanian government avoided irritating or antagonizing the Sukuma. Official recognition of arbitration by elders was less crucial to the functioning of the Sukuma system for resolving conflicts, but may have played an essential part in reducing the anxieties or resistance of other peoples who continued to emphasize that aspect of dispute

settlement. As Goodenough (1966: 91), among others, has pointed out, people are more willing to accept change if their crucial institutions are not threatened by the innovations being presented.

The second policy which exerted a beneficial influence was the decision to introduce the Act and the Orders without a nation-wide publicity campaign about the details of integration or unification. Although some *barazas,* or public meetings, were held in some areas of Tanzania, few Sukuma encountered the legal changes by such means. Actually the absence of official propaganda had a salutary effect on the Sukuma who often had been irritated at being inundated with public briefings which took time from farming or recreational pursuits, involved inconvenient travel and sometimes resulted in confusing rather than illuminating the subject under discussion. As Europeans and Americans do (Twining, 1964), the Sukuma preferred concrete illustrations in court to theoretical discussions inconveniently imposed. In the judgment of 11 supervisory magistrates, all with long experience in Tanzania, the government had properly chosen to spend its time and limited funds primarily on the adequate preparation of the men who were to serve as the new magistrates. The PCMs had to attend two three-month special sessions dealing primarily with the Act and the Orders; furthermore, all PCMs met regularly with their supervisory magistrates who encouraged contrasts and comparisons, concrete cases and practical solutions.

These 11 supervisory magistrates agreed with the writer's conclusion that the 1963-64 innovations cannot be considered as having been introduced "prematurely" as has been suggested by some critics. These critics who include three District or High Court magistrates, as well as Professor Allott (1965a), believe that the national changes should have been postponed until the Tanzanians reached a proper level of "readiness." These men, however, do not specify how the preparation should have proceeded, what a proper level of readiness might have been, or what criteria should have been used in measuring the adequacy of the degree of local legal knowledge. A critique of these critics was offered by Douglas Healey (1964), a supervisory magistrate with fifteen years in many geographically and culturally diverse areas of Tanzania. He claimed that the British-trained "professionals" consistently underestimated the ability of the supposedly "uneducated" populace to grasp legal concepts and to adjust to legal change. While Healey admitted

that not all tribes were as legally sophisticated as the Chagga, Haya or Nyakusa, he pointed out that few living Tanzanians were old enough to remember aboriginal law in its "pure" form and almost no Tanzanian had escaped the influence or pressure of legal change. Although 70 years of gradual modifications and extra-tribal influence may not have been the type of legal preparation envisioned by those familiar with formal legal education, Healey felt that the average citizen was "ready" enough to accept the 1963-64 changes.

**Change Without Conflict**

The analysis of the data on legal change among the Sukuma indicates the importance of such factors as the agent of change, expectation of change, timing, and governmental policies. Exerting a directly favorable influence on the Sukuma response to the Magistrates' Courts Act and the Customary Law Orders, these factors probably owed a portion of their persuasive strength to their identification with President Nyerere. To say that President Nyerere personified nationalism would be an exaggeration of what was a more concrete relationship in the minds of the Sukuma. If the President represented any abstract to the Sukuma, perhaps it was fundamental independent accomplishment, since they were as concerned with basic, practical improvements in the daily functioning of their country as they were proud of Independence *per se*. Considering the comments of supervisory magistrates knowledgeable about other parts of Tanzania, the writer would broaden this conclusion about the Sukuma reaction to the 1963-64 legal changes. In Tanzania as a whole the metamorphosis of Formal National Law into Real National Law (following the distinction made by Hoebel, 1965: 44) was accomplished because charisma was combined with practical implementation, whereas either alone might not have been sufficient to insure acceptance of the Act or the Orders.

The Sukuma case history illustrates another crucial point about achieving change without conflict. Although these favorable circumstances might be considered unlikely to be reproduced or reproducible elsewhere, further thought suggests that the conjunction of factors was due to more than mere good fortune. The beneficial atmosphere was created in part by good will: the sincere concern of the "donor" of the legal innovations, President Nyerere; the insight and skill of the agents of change, the Primary Court magistrates; and the warm, positive feelings of the populace. All were motivated

in part by nationalism and in part by pragmatism. The President and his government moved carefully and cautiously, but not surreptitiously, to meet the needs of the country without sacrificing the values of the people who were to be affected by the changes. The Primary Court magistrates were essential to the process of successful implementation because they could effectively convey the meaning behind the changes and interpret specific provisions to the still tradition-oriented citizenry. Tanzanians such as the Sukuma, recognizing the necessity for many national changes, raised no blind opposition to the substantial alterations. Surely there is no reason why such rational, mature attitudes cannot be recreated in future instances of change.

Even if President Nyerere's national legal changes do not bring about his goals of full national judicial maturity and political unity, his attempts to do so by means of law "are making a most valuable contribution to the never-ending search for better solutions" (Twining, 1964: 51). Certainly the efforts of Julius Nyerere to provide his country with a mature legal system and with legal unity offer a concrete example of the "quest for law" described by E. Adamson Hoebel (1954: 330-1):

> . . . the urge to extend the realm of peace through law and the finding of the means to do it are clearly as old and as enduring as the urge to fight. The heartening fact is that for all the inadequacies of their judicial and administrative creations, for all the breakdowns of the mechanisms of social control that have occurred again and again in human history, the quest for law has never ceased on the part of man in society . . . .

## FOOTNOTES

[1] This table is the writer's own summary of data available in Cory (1953, 1954); Austen (1964); Moffett (1952); The Laws of Tanganyika (1955); and Nicholson (1963-65b; 1968: 115-54).

[2] Domestic-marital matters in Sukumaland are regulated by Orders #1 (Kwimba district), #2 (Shinyanga), #3 (Geita), and #6 (Maswa and Mwanza). Inheritance and guardianship are regulated by Orders #4 (Maswa, Shinyanga), #5 (Mwanza), and #8 (Kwimba); Geita had not yet been included at the time of this study.

[3] Valid criticisms of the Orders have been made by Cotran (1962); Tanner (1966); Schiller (1965); Twining (1964); and Verhelst (1968). Twining (1964: 34) makes a most telling point when he says that the controversy about unification "is reminiscent of some of the worst kind of jurisprudential dispute in which issue is never really joined." The lawyers who oppose unification as a process concentrate on such primarily legal matters as technical precision without discussing the objective behind the process, *i.e.*, the need to create a workable, administrable law and legal system which will aid in developing national maturity and unity.

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