MAASAI INDIGENOUS JUSTICE SYSTEM

“THE EXPERIENCE LEARNED FROM ILKISONGO AND ILPURKO SECTIONS OF TANZANIA”

OLBAREI OITISIPU ENJURRUNOTO ERISHARE ENKAJI E MAASAE
## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABSTRACT OF THE RESEARCH PAPER</td>
<td>1</td>
</tr>
<tr>
<td>THE RESEARCHERS</td>
<td>3</td>
</tr>
<tr>
<td>MATERIALS AND METHODS</td>
<td>5</td>
</tr>
<tr>
<td>1.0 INTRODUCTION</td>
<td>7</td>
</tr>
<tr>
<td>2.0 MAASAI INDEGENEOUS CUSTOMARY LAW</td>
<td>11</td>
</tr>
<tr>
<td>3.0 INSTITUTIONS USED IN ADMINISTRATION OF MAASAI JUSTICE</td>
<td>35</td>
</tr>
<tr>
<td>4.0 PRINCIPLES AND VALUES THAT GOVERN THE ILKISONGO JUSTICE SYSTEM</td>
<td>58</td>
</tr>
<tr>
<td>5.0 RECOGNITION OF MAASAI CUSTOMARY LAW IN TANZANIA</td>
<td>64</td>
</tr>
<tr>
<td>6.0 CHALLENGES FACING MAASAI CUSTOMARY LAW</td>
<td>76</td>
</tr>
<tr>
<td>7.0 CONCLUSION</td>
<td>78</td>
</tr>
<tr>
<td>8.0 REFERENCES</td>
<td>82</td>
</tr>
<tr>
<td>LIST OF INTERNATIONAL INSTRUMENTS</td>
<td>85</td>
</tr>
<tr>
<td>LIST OF LEGISLATION</td>
<td>85</td>
</tr>
<tr>
<td>LIST OF CASES</td>
<td>85</td>
</tr>
</tbody>
</table>
ABSTRACT OF THE RESEARCH PAPER
Il-kisongo and Il-purko Maasai indigenous justice system

This research work deals with the justice administration among the Ilkisongo and IlPurko sections of the Tanzania Maasai, and it seeks to contribute to the larger discourse on Maasai peoples’ notions of justice, institutions, and principles that undergird the Maasai justice system. Examination goes further to reveal that there exists formal recognition of Maasai customary law in the Tanzanian legal system. We specifically focus on the Il-Kisongo and Il-Purko sections that constitute most of the Maasai population of Tanzania. This study was limited to studying districts such as: Simanjiro, Ng’orong’oro, Longido, Monduli, and Kiteto in Tanzania.

Almost all tribes across the world have their traditional concept of regulations, rules, and grievance redress systems developed with the evolution of the community to guide how best justice, harmony, and peace, can be maintained in the society. The Maasai tribe also has its laws, which are used to govern the society, and which have stabilized this community for centuries. The Maasai people take law as a way of life and understand it through experience and
interaction. Most of the Maasai justice system is embedded in Maasai customary laws, and hence reflects traditional Maasai norms and values. They are part of the social fabric in Maasai, and they explain the resilience of the Maasai’s culture and lifestyle to date. The Maasai justice system encompasses justice processes based on strong group coherence, social conformity, social obligations, consensus-based decision making, cooperation, and strong social sanctions\(^1\). It involves the use of shared patterns of dispute resolution, conciliatory dialogue held by elders known as *ilaig’uanak* in special meetings (*Inkig’uanat*) in the society, and compensatory concessions that provide information regarding fines (*Eropa-re*). It also guides where food can be shared by community members, and which parts of domestic animals meat can be used eaten together during dispute resolution meetings to symbolize the end of animosities and the harmonious re-engagement (*Enkitaunoto Osotua*) of the flow of social life\(^2\).

---


THE RESEARCHERS

1) **Michael Lengtambi Laizer**

Studied Bachelor of laws (LLB) from Mzumbe University (2014), and joined the Law School of Tanzania for a Post-Graduate Diploma in Legal Practice (PGLP) in 2020. He is highly interested in Maasai literature and researches, and has in many occasions interacted with *Ilaig’uanak le Maa* (as a promoter) especially in the process of establishment of *Ilaig’uanak* headquarters, and the development of *Endonyo oo Morruak* as a Maasai historical site and heritage center in western Kilimanjaro, Tanzania. Apart from being a Maasai, the researcher has experienced many events and disputes resolution in traditional ways by the *Ilaig’uanak*. Being a lawyer, he also observed how the Tanzania legal system failed to properly enforce the application of customary law in the country including Maasai customary law.

2) **David ole Moonka Laiser**: Ole Moonka is a mentor, an independent collector, a researcher and a fine writer of Maasai literature of folktales and folklore in the Maa language. He is wise (*olang’eni naa olaikooni*), and a knowledgeable tutor through social Media of Maasai traditions and cultural values. He is a Director and Founder of *Oloip le Maasinta*, an organization that educates Maasais about their
cultural values, bonding norms, and innovative ways that the Maasai can use to protect and preserve their people from becoming extinct as a race.

Ole Moonka Laiser consults widely on matters of traditional knowledge on herbal medicine, definition of cultural values, traditional norms, identification of cultural artifacts, indigenous customary laws and their application and connection to Maasai’s beliefs. He is well-versed with all sections of Maasai in Kenya and Tanzania, with a great experience and interaction with all Ilaig’uanak and elders from most of the sections in Maasailand both in Kenya and Tanzania.

Apart from being a passionate cultural activist, ole Moonka is an experienced top hotelier in the hospitality industry, a Group Operations Manager in one of Tanzania’s luxury lodges and camps, where he has been based in the northern circuit for more than fifteen years. He has a Diploma in General Management from The Institute of Management Studies (Nairobi, Kenya), and a Diploma in Tourism and Information from The Collage of Tourism and hospitality, in Nairobi, Kenya.
MATERIALS AND METHODS

Study Site
The study was done in Simanjiro, Monduli, Longido, Kiteto and Ng’orong’oro Districts of Manyara and Arusha regions, located in the northern part of Tanzania. Nine (9) respondents (Ilaig’uanak) from each of the districts of Simanjiro, Monduli, Longido, Kiteto and Ng’orong’oro were selected as key informant to this research paper. The main sections of the Maasai with these Districts are Ilkisongo and Ilpurko, which are sub-divided into clusters or sections and sub-clusters, or sub-sections. The Ilkisongo section is the largest section of Tanzania Maasai (more than 65% of total population of the Tanzania Maasai) inhabiting four different districts and being further distributed over other districts of the north.

Methodology
The approach used to study the justice system of the Ilkisongo and Ilpurko evaluates and analyses natural behavior and instinct, as the indigenous communities perceived it, rather than imposing external value judgment. The approach also helps to differentiate noumena (things as they are) from phenomena (things as we perceive them). So first-hand information was collected through interactions and interview with Maasai elders (Ilmorruak) and leaders (Ilaig’uanak).
Interviews with Ilaig’uanak

Interviews were conducted in Ilkisongo and Purko from selected respondents (Ilaig’uanak). The interviewee’s stories were later translated from Maa to English. The interview was specifically conducted on the Maa justice administration system, laws, institution use, principles followed, cross-border issues, the leadership structure among the Maasai people, meetings, emblems of power and authority, and anything else related to the administration of justice in Maa communities. Selected Ilaig’uanak from Purko and Kisongo sections were used as informants to respond to different questions posed by the researchers. These leaders described themselves as people who were conversant with, and have long accumulated experience in all the issues involved in the justice administration system among the Purko and Kisongo people.
1.0 INTRODUCTION

1.1 The concept of customary law

Among the most distinctive features of indigenous people are their unique cultural patterns, social institutions, and legal systems. These features vary according to different social and political systems in different parts of the world. Although indigenous peoples throughout the world live within State systems with formalized legal systems, many of their social and cultural practices continue to be regulated by traditional law (referred to as customary law). By definition, customary law is an established system of immemorial rules, which evolved over time from the way of life and natural wants of the people, the general context of which was a matter of common knowledge, coupled with precedents applying to special cases, which were retained in the memories of the ancestors, their sons and their son’s sons, until they became part of the immemorial rules.

In Tanzania, customary laws may be defined as any rule or body of rules whereby rights and duties are acquired or imposed, established by usage in any Tanganyika African community, and accepted by

---

such community in general, as having the force of law.\textsuperscript{5} Meanwhile, customary laws comprise “customs that are accepted as legal requirements or obligatory rules of conduct; practices, and beliefs, that are so vital and intrinsically a part of a social and economic system, that they are treated as if they were laws”\textsuperscript{6}. Customary law generally lacks a codified system of records and it is about what can be remembered as a practice, as well as having occasionally some academic evidence of what the practices were and still are.\textsuperscript{7}

\textbf{1.2 The Maasai peoples of Tanzania and their origin}

To understand the contemporary issues about the Maasai justice system, it is crucial to understand Maasai people’s history, their origin, cultures, norms and traditions, or any other factors that may help in understanding social justice between different sections in Maasai. In terms of origin, the Maasai people are pastoralists who belong to the Nilotic language group found in Northern Tanzania and southern Kenya. In Tanzania most Maasai live in regions like Arusha, Kilimanjaro, Manyara, Tanga and Morogoro but recently many groups of Maasai have moved to the south and southern highland regions of Tanzania seeking pasture for their cattle. Traditionally,

\footnotesize{\textsuperscript{5} Section of the Interpretation of laws Act [Cap. 1 R. E, 2019] \\
\textsuperscript{6} Black’s Law Dictionary, 8th Edition, 2004 \\
\textsuperscript{7} Nasieku G. Tarayia Arizona Journal of International & Comparative Law Vol. 21, No. 1}

they are semi-nomadic pastoralists who keep cattle, goats, sheep, and donkey. Maasai practice transhumance but in recent years some involve themselves in mixed agriculture while maintaining their traditional livestock keeping.

The Maasai are divided into territorial sections and clans within which all members have accesses to grazing resources. The Maasai are divided into large sections that are internally structured into the following sections from Kenya: Il-kisongo, Il-purko, Illoitai, Isiria, Il-keek-onyokie, Il-matapato, Il-moitanik, Il-kankere, Il-kaputiei, Il-damat2, Il-wuasin-kishu, Ilodo-kilani, Il-kisongo, Il-purko2 and Ilaikipia. Other Maa speakers are Isampur, Ilchamus, Ilmokododo, Ilg’uesi, Irrandile, Ilorrobo.

Ilkisongo and Ilpurko are the largest sections among the Maasai, followed by the Ilkeek-onyokie and Il-kaputiei. However, the majority of Tanzanian Maasai are from the Ilkisongo section who are further subdivided into sub-clusters or subsections Inkutot or Ilgilat or Iltirenito namely: Il-korong’oro, Il-kiito, Ille-simanjiro, Ilmoipoi, Il-manyara and Il-kiteto, Clusters or Illoshon - Il-parakuyo, Illarusa, Isalei, Isikirari, Ilaitayiook and Illoitai who are mostly found in northern Tanzania and in regions like Arusha, Kilimanjaro, Manyara, Tanga, Morogoro, Mbeya and Lindi.
There is a tragedy about the original home land of the Maasai people, which remains a subject of debate. Most literature about the origin of the Maasai people lacks a common stand and contradict stories told by the Maasai themselves about their original homeland. Two schools of thought developed regarding the Maasai origin. One school of thought maintains that they came from the Arabian Peninsula (the Middle East). Merker M. Berlin (1904) in Die Maasai described the Maasai as follows:

“The remarkable agreement between the primitive traditions of the Maasai, and those of the Hebrews, is still such as should arouse the widest interest today. The question has not yet been settled as to whether the traditions concerned were really those of the original Arabian home of the Maasai tribe, which have been preserved through thousands of years, or whether a Christian or Jewish influence can be admitted”.

The second school of thought insists that the Maasai originated in Sudan, and Ethiopia, due to dialects found in South Sudan and Ethiopia, which resemble that of Maa language. The school maintains that, they slowly moved down the Rift Valley that cuts through central Kenya and Tanzania and later absorbed most previous inhabitants of this semi-arid savannah,
bisecting the fertile highlands on either side. However, the reality remains that there are a lot of untold stories about the original homeland of the Maasai people. It is also very difficult to confidently rely on either school, since much of the information about Maasai history was only passed orally between generations to modern society. Most folktales and folklores from the Maasai believe that all Maasai descended from the Rift Valley cliff famously known as Endikir e kerio, commonly referred as Kerio Valley in Kenya.

2.0 MAASAI INDEGENEOUS CUSTOMARY LAW
Maasai customary law lacks a codified system of records. It is about what can be remembered as a practice, as Ilang’eni (intellectual) and Ilaiug’uanak (leaders) can change the chronology of how offenses and fines are handled within a certain section or clan, according to their geographical location. This report will discuss the nature and methods of the justice system among the Maasai people regarding their customary law and how issues are dealt with in the community. It also discusses fines, offenses, and compensation guidelines used in almost all sections, clusters and sub-clusters, within the Maasai community. Most of the offenses that attract hefty fines, like capital offenses, have been treated in the same way for generations since the time of our ancestors Ilmakuin compared to adultery, theft,
buttery, defamation and common assault among the Ilkisongo and Ilpurko sections.

2.1 Nature and methods of justice systems among the Maasai people

Among several clusters of Ilkisongo section in Maasai communities of Tanzania, conflict resolution has, since time immemorial, taken the form of negotiation, mediation, reconciliation, or arbitration done by elders. Thus, all the methods of dispute resolution had the aim of restoring social order. Conflict resolution was wholesome and tried to resolve all the underlying causes of conflict by ensuring that the parties to the conflict participated in the arbitrating and reached an amicable settlement. In many cases, fines and compensation are used, but only as means to acknowledge the wrongs done by the respondent, also to restore the parties. Cleansing processes aimed at bringing the wrong doer back into line. The fines and the compensation were not retributive in nature but compensatory. The social bonds and ties referred to as social capital, enabled elders to resolve disputes, and the threat of a curse and exclusion from the community made parties very willing to settle dispute. Additionally, the concept of social harmony and peace applied not only to the living but also to the living and the dead. For some wrongs such as murder, one was required to pay 49 cows to ensure cleansing to the murderer. This was always to be carried out to
allow the spirit of the dead to rest in peace and not disturb the living. It was not taken as payment of compensation or remedy for loss of the life of a human being. At an advanced level, intermarriages could be used as a way to expunge enmity between clans or families, and this enabled the Ilkisongo to always live harmony.

2.1 Customary fines and compensation
It is a designed law that keeps the social fabrics in order. It checks and balances the wheel of justice for all offenders to respect the indigenous justice system and enables a peaceful coexistence between different functions, sections, and clans, and promotes good neighborliness not only for the Maasai but their existing neighboring communities. It also provides ways of cleansing one from the sins committed and prohibits prevents the land from becoming abominable.

Common assault - commonly known as Bususo and Ing’iroin among the Maasai
Bususo is anything that can cause death and Ing’iroin is bodily harm. This assault attracts fines commonly known as eng’iro for paying lloikop as an offer for cleansing for having caused the death of another person, as well as a sheep for the act of administering Enkopito for any assault - tying a goodwill rope for quick recovery to the assaulted person if they do not
die. In most assault cases if a person assaults an opponent. The punishment meted on a case of assault varies with the severity of the harm caused. The fine can be measured against the damage caused and it goes beyond just paying a fine. The elders might introduce caning as a way of keeping social order in check, if both of the offenders are minors or juniors. For the Maasai, a senior person rarely gets punished for common assault offenses committed against his or her junior’s. And if the senior person is found or proven to have offended the young person, then the young person still must be fined and the offender bargains offering gifts just as a sign of goodwill. This rule applies too to the parents who offend their own children.

If someone is assaulted and breaks a hand, leg, or has his eyes gouged out, or bones of his body fractured, it attracts a fine of a heifer, a sheep, or a goat as Enkopito for cleansing. A wrongdoer will be compelled to pay for all hospital bills and if the assault causes harm to the body, for example if the body limbs have been chopped off, or someone lost his or her sight in the process (the fine and the cleansing process will vary), it attracts a fine of a young heifer and a white bull will be used for cleansing as 'Enkopito', and the limbs or bones of the person if he died during the assault, will buried under the shadow of a sacred tree during a special ritual conducted by
the elders. Any other expenses or hospital bills accrued by the one who survived the assault but went through hospitalization, during the time of healing, and also for the for the dead, inkirro - bloodwealth is the ultimate penalty. The offender’s family or his clan mates will settle this forthwith. If the offender is a married woman, the husband will clear the fine on her behalf. However, if the assault ended up in the gouging of one’s eye, then the offender is fined one heifer and a sheep, and is used to administer Enkopito. The offender will offset all existing or pending hospitals bills.

If the assault was that, someone’s toe or teeth was accidentally removed during the fight, every toe will be counted and the offender will part with a goat or more. It might also attract a fine of a heifer if the assault was brutal, and the sheep will not apply as 'Enkopito' if its only one toe. unless the victim has other visible physical body injuries. However, if two people fight and one’s ear is chopped off or cut, then it attracts a fine of a goat and a sheep and is used to administer Enkopito rule. It should be remembered that, this fines applies to both men and women.

2.2.2 Defamation -Enkirrare or Osul
In a case of defamation against a senior elder or a woman, the offender will be fined according to the nature of the offence committed, but the assault
mostly attracts a fine and gifts for all community members of the same age-group. Mostly, the age-set of the offender will help to pay fines and purchase the gifts. In case it is defamation against in-laws or family members, it will also attract a fine and gifts in form of clothing, sugar, drinks, and cash in other cases; or the parent or clan may recall their daughter (a wife of the wrongdoer) back home. This will cost the offender a cow or more for getting his wife returned back home. In other instances, if it involves members of one family, for example, assault between a son or daughter, father, mother, or close relatives from the family tree, they might demand hefty fines like cows, cash or both depending on their clan or elders’ decision.

2.2.3 Battery and causing death - dangerous bodily harm – Iloikop or Sesekwan
In the case one has been seriously injured and death has occurred, it might be considered manslaughter ‘Sesekwan’, which attracts a fine of nine cows to be paid first as a cleansing process, then 40 cows, for many Ilkisongo sections. For the Ilpurko, they pay 249 goats as a fine for the assault. This is an exercise that the whole participates in. This applies to both men and women. In many instances the family member of the offender might marry their daughter off to the deceased family in order to renew bonds of blood relation and become in-laws.
The Maasai indigenous laws stipulate that when a man kills his own wife he will be fined 29 cows of which nine (9) cows will be paid to the wife's parents for cleansing, and the 20 cows will be shared among her existing children. The fine is mostly contributed and donated by members from the same family tree and clan. The payment of blood compensation was initially not the same between men and woman, as a woman's death attracted a lesser fine but many advocated for the same fine of 49 cows for both gender. This was not applied in the Kisongo or Purko sections. In a recent agreement by all Ilaig’uanak, it was determined that all human beings are equal and the number of cows would be paid as fine also for a woman’s death from assault.

If uncircumcised (a boy child) lad kills another child, or accidentally kills an adult, he will not be fined until he reaches adulthood (the age of majority). If, however, he dies before the stipulated time, then the family or clan of the deceased will be fined cows for murder, or for the manslaughter committed by their child. However, in the case where someone's weapon, a sword or spear, is used to cause death, then the owner of the weapon shall be held responsible and charged with murder or manslaughter, and cows will be paid as a fine. The murderer will be cleansed according to the rules provided by Alaikooni and Olaig’uanani.
If one is battered and sustains serious injuries, then the offender must produce a sheep for 'Enkopito' cleansing, and take full responsibility for settling any hospital bills and other costs for treatment procured. If someone badly injured his wife, then the clan of the wife, or the parents, might recall her back home, and the offender might be fined a cow and some small gift for the wife to be allowed to go back to her home. The same process is applied to the children if found to undergo abuse by the hand of their parents or keepers.

2.2.4 Adultery and Incest - eloloito – Kutaan empariany oo inturuja te enkanyit olkila)

Immorality of any kind is despised by the Maasai people. Incest is considered the worst act of immorality and an abomination according to Maasai customery laws. There is no cleansing, and no fine in Maasai customary law for such an offense. If a male person is proved beyond doubt that he had sex with his own mother, then he becomes an outlaw. Curses and death will be directed upon him by his own father together with the elders, and he will be disowned by his own age-set. This makes the only curse in Maasai customary law that does not attract any fine or cleansing. It is a verdict of a death wish from the elders and the community as a whole. If a man has sex with his own daughter or the daughters of the
same age-set it, this attracts curses and wrath from all women Olamal le Enkishuroto. If it occurs within the community, cleansing must be performed immediately by the community women by slaughtering a bull for enkipooto rituals. Men or women are not allowed to have sex with their immediate or close family relatives. This is considered to attract a curse and it is an act of shame to the whole family and clan. Any incestuous person is perceived as Olaing’oroyoni a shameful name that no man of good character would want to associate with. If a Junior man has sex with a woman married to someone from the senior age-set, the offense will attract a fine iropeta for both offenders. The woman and the man will be fined a cow each, and the man will be expected to pay extra gifts as a sign of goodwill. If a man is caught in the act of defilement, it will attract a fine of a heifer and cleansing is ensured with a gift of a sheep as per the Enkopito’ rule. The immorality acts are checked between age groups as they pass through initiations rites, and women have a right to check on their husband faithfulness with the wives of a junior age-set, their wives impose a fine on their husbands of a cow after failing to be sworn under oath to prove their innocence. Rape is not tolerated within the community. A hefty fine is imposed according to the age of the victim, the nature of harm and assault witnessed by the older women, and the condition of the victim. There must be a cleansing
process of gifting a sheep for enkopito and other penalties may be added as per the elders’ decision. Maasai do not entertain or practice immoral behavior of sodomy, bestiality, or same sex partnership. Nor do they practice prostitution within the community. It is considered dirty, and it is considered to attract a curse. It is an ungodly practice according to the Maasai, which can bring God’s wrath on people and the whole land, such as famine, disease and plagues.

2.2.5 Theft - empurrorre or enyamu

Many acts of theft in Maasailand involve livestock theft (commonly known in Maasai as Empurrorre or Enyamu, and other petty theft offenses classified as Endumare. If it is found that you have stolen (Itupurroyie) a cow and the cow is found alive, you will be fined a cow for each cow stolen. The same rule applies for sheep and goats. There is a fine that is commonly known by the Maasai sections as enkitenge enkorotik - a cow of disturbance and harassment. This may be added to the initial fine, as well as payment by the offender of all accrued expenses made while pursuing the stolen livestock. If found to have stolen a cow, a goat, or a sheep and you end up eating it Enyamu, or you sell it and you received money as proceeds, and you are an adult offender, you will be fined 5 cows for each cow stolen, or 16 goats per cow stolen, or 2 cows or 4 goats for every sheep or goat stolen and eaten or sold. The buyer will
be treated as a thief and will take full responsibility for the theft of the livestock as well, unless you produce Olaitaasuroni on behalf of the thief at your own cost. Leniency aiter-a muro can be afforded to the parson who was found to be cooperative Olaireng’esoni, that is the offender who helped the victim reveal more people who were accessories to the theft, as it means more cows will be returned to the owner, as they say Ng’en olapurroni kake, melang’u olaireng’esoni (for minors, one goat for each offender per goat or sheep). If the cow, goat, or sheep was pregnant by the time of the theft, the same rules apply, and it is assumed that it is a grown cow, goat, or sheep, and the same rule of paying expenses applies to the offender. If one was also involved, or collaborated in the theft by unknowingly eating the stolen livestock, or eating of its meat, he shall also be fined as the offender. The Maasai rules go beyond even touching or applying oily fat from the stolen livestock once it was slaughtered and prepared as food, on your walking stick, or on your body. It will be assumed that you also collaborated in the theft.

2.3 Inheritance
As learned from the large Ilkisongo section, the system of inheritance seems to be very simple and easy to follow. If man dies among the Maasai, every undistributed property (cows) by the deceased during
his lifetime, shall automatically be inherited by the eldest son of the deceased person - *Inkishu olgoo le menye*. Most Maasai properties are distributed *inter vivos* to every wife depending on the number of wives the deceased had. Traditionally, Maasai distribute their property to their wives when they are still alive (if they have more than one wife). Each son and daughter is given his own livestock by the mother or the father.

If a further dies and he owned no property, the eldest son within the polygamous household, shall be given one cow by each of the deceased’s sons from the families in the household. The eldest son may by his own discretion choose how many sons in the polygamous family will provide cows for him. If among the sons none of them have cows to give, each of the eldest sons from each wife of the deceased, will give anything else determined by the eldest son, or as determined by the elders.

### 2.3.1 Primary heirs
If the Maasai male who is not the first son dies without children, or without a wife, the primary heir (*Olajung’oni*) is his youngest brother. If he had a wife, the heir is his wife. If he had children, the first son will take the lion’s share of the inheritance. If the first son dies without children, or without a wife, his primary heir is his father. And if the father dies, then his primary heir
is the first son from the other sons within the polygamous household. Likewise, if a male dies and leaves no brother, no father, and no descendants, the heir shall be inherited by a male from the direct line of his family tree. If the primary heir dies before the deceased (primary estate owner), then the second in line shall inherit from the estate. A Maasai direct line of inheritance is called intaloishin based on the principle of the right and the left organization of the households in the kraal as observed in marriage by a single man. This arrangement is passed on through his descendants.

If a mother dies, her primary heir is her last born son. An unmarried woman without children may choose who will be supervisor of her properties, but if she dies, her heir will be her parent. A widow is inherited by her children based on the right heir of her husband, but if she dies without children, a primary heir of her husband shall inherit her property. A married woman is directly inherited by her children under trust of her husband. Generally, Maasai people distribute their properties to their wife and children (most being sons), who inherit from their mothers, while the eldest son inherits all the undistributed livestock left by his father.

In terms of property rights, the girl-child may have access to use the property, but not any hereditary right to property at her parents’ home. This is
considered a precaution because she will be married off as approved by the family and will move to the kraal of her husband. Wives will also be brought home by her male siblings. The same is true with the livestock. She may have access to the stock at her parents' home to maintain their livelihood, but not to own it.\textsuperscript{8}

2.4 Marriage and Marriages disputes
The dispute in Maasai customary marriages may occur due to number of reasons like any other marriages in any African society. It may happen due to assault, humiliation, misunderstanding, common assault, adultery, and misunderstanding between the family of the husband and that of the wife. If a marriage dispute arises between the spouses, the victim, which most times is the wife, will refer the matter to his or her family members for consideration. The matter will be referred to the elders who will determine the cause of action and try to reconcile the matter. If the dispute is not resolved, the elder will convene the meeting and invite the leaders (Ilaig’uanak) of both families, or clans, and try to solve the matter. The meeting will consider the reasons why the marriage is to be dissolved, or not. If the marriage dispute fails to be resolved the husband’s side will have two options: In event of a divorce two options
obtain i) husband’s family keep the children and the bride price is kept with the estranged wife’s family or ii) bride price is returned to the husband’s family while the children go with the estranged wife’s family.

2.4.2 Bride price
The bride price in form of cows (Inkishu enkaputi) is payment by bride groom (Olaputani) to his father-in-law (also known as Alaputani) and mother-in-law (enkaputani) on the occasion of the marriage. The bride groom may bring other gifts to his new father and mother-in-law, which may also be counted as part of bride price, which are reclaimable in subsequent break-up by the couple. Payment of bride price in Maasai is in form of cows, but this may be converted into cash. The number of cows may range from 1 to 40 depending on bargaining power and they are payable in installments or all at once. If there is a break-up, the bride groom is entitled to claim back his cows (Empolua). The bride price is paid to the house where the proposed girl is from, but she (the mother) as she may wish can distribute some to other co-wives.

2.4.4 Legality and general restriction of marriage in Maasai
Marriage among the Maasai people becomes legally recognized in two ways: First, when the bride groom introduces himself to his in-law, negotiates the amount
of the bride price, and pays the bride price (not necessarily in full). If all of these steps are completed the man legally becomes the husband of the girl. In traditional marriage, it is considered a union between a man and woman, or women. Marrying more than one wife, or polygamy, is a common practice among the Maasai. Generally, marriage in the Maasai people can be prohibited between two people due to blood-brotherhood, exogamy (marriage between two members of the same clan), consanguinity (a man cannot marry his family member), and affinity.

2.5 Law relating to property
The father, as head of the family, has absolute authority over all the family properties even if the properties were bought by the children. If any member of the family (except married woman or widow) buys or given any livestock as upright gift and upon bringing it to home that animal will be marked according to the family or clan brand. The father shall have all the authorities over livestock or any other properties belonging to the family and no disposition of any kind without his consent. If the father died and left matured sons, the eldest son will be a supervisor over all affairs relating to property though each member may own his or her own property, such as cows, goats, sheep, land and donkeys.
Traditional land rights reflect the social constraints, and hence such land rights deliberately forge effective solidarity among occupiers and users to practice sustainable management due to nature of animal keeping. There are mechanisms of access, use, and management of land that are implemented by clan elders, including access to water (Ilchorroi) salt licks (Impoorri or Esing`atishu), wood fuel, herbal medicine, grazing areas (Ilaleta, Iloopololi or Iloilila), and ceremonial sites (Endonyio oo Ilmoruak – Olg’esher, for retiring elders and Mukula for retiring warriors - eunoto).

2.5 The cross-border interaction in justice system
There are four most universally shared justice and cultural heritages between the Tanzania and the Kenyan Maasai.

2.5.1 Common passage of rites between age-group in all sections.
There are sections of Maasai that are still sharing same passage of rites despite their border separation. Like the Ilkisongo of Kenya and their brothers Ilkisongo of Tanzania, they still share the same leadership style like Olaig’uani, Olaunoni, Oloboru enkeene and Oloosurutia in their three traditional rites of passage. They share the same prophet called Oloiboni with only one set of age-group initiation within one age-group. The Ilpurko section of Tanzania and the larger Purko of

27
Kenya also enjoy the same interaction as Ilpurko of Tanzania, with two sets from the same age-group, but initiated by Tanzania prophets (Iloibonok le Enkare-naibor) and the Endoinyio oo ilmoruak elders for commissioning and resting sectorial age-group from both sides of the border. They depend on their Kenyan Purko counterpart for all their traditional initiation and all their leaders are appointed from Kenyan Ilpurko section.

2.5.2 Common way of life (common traditional sites, age-group names, indigenous leaders, and livelihood)
Most Maasai sections share common traditional sites and prophets from Inkidong’i of Ilaiser phratry, descendants of the house of the great Loibon Kidong’oi. Since time immemorial, the Maasai used to share common names especially for age-set and age-groups, even to assimilated or partners’friends of Bantu descent, who share the same Maasai traditional values like the Wagikuyu, Meru of Kenya, and the Wameru of Tanzania. They used to share the same age-set names from ltuati age-group to Iseuri. Iseuri age-group becomes the last universal commonly shared name in all Maasai sections and across the borders. Some sections still share some name between different sections, but largely every section prefers to use their own different names.
2.5.3 Shared traditional values and same indigenous knowledge of oral education, indigenous environmental study, and indigenous herbal medicinal properties study
Maasai still share the same dressing and matching beads in most sections. They share names of known herbal medicinal properties, use the same shrubs for blessing, as well as use the same ficus trees for prayers and sacrifice offerings. After the coming of the missionaries in the late 18th Century, who promoted a change of behavior, this adversely changed the Ilkisongo beads from the mostly known dark blue beads Ilorrok-muna to the recent all white beaded ornaments, leading to them being nicknamed of Iloibor-muna. The widely adorned ceremonial seven colors of blue, red, black, white, orange, yellow and green of Maasai beads, is still widely used by most Kenyan Maasai and Tanzania Purko sections.

Table A: The Maasai shared knowledge of Earth Science

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Maasai Names</th>
<th>Beliefs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The stars</td>
<td>Ilakir</td>
<td>the stars consists of many good and bad fortunes in Maasai beliefs in many folktales, hence the four compass of the Earth position</td>
</tr>
<tr>
<td>No.</td>
<td>Name</td>
<td>Maasai Names</td>
<td>Beliefs</td>
</tr>
<tr>
<td>-----</td>
<td>------------</td>
<td>--------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>2</td>
<td>The rainbow</td>
<td>Olakir-Ai</td>
<td>(believed to be a violent force which prematurely gives miscarriages 'eitikir enchan' to the rain, hence the name olakir-Ai)</td>
</tr>
<tr>
<td>3</td>
<td>The Sun</td>
<td>Enkolong'</td>
<td>The sun controls the day, hence it's born new every day, that's why Maasai use it for early morning blessings and circumcision ceremonies upon sunrise, curses are performed against one's sunset.</td>
</tr>
<tr>
<td>4</td>
<td>The Moon</td>
<td>Olapa</td>
<td>Maasai have 30day of every new moon and it foretells for good tiding, it warns for bad and good season and it provides for all Maasai traditional ceremonies,</td>
</tr>
<tr>
<td>5</td>
<td>Milky Way</td>
<td>enkoitoi Enkai (known in Maasai as God's pathway)</td>
<td>Which believed to have water dams <em>lturot</em> and at the very end, there stops the southern cross 'enkawuo Enkai, that foretell the Maasai exodus from the North following the Southern cross to the South. Even upon one's death, the deceased legs are put to the grave facing south</td>
</tr>
<tr>
<td>6</td>
<td>The Cardinal</td>
<td>The North Moikuape</td>
<td>which represents the four winds which brings rain</td>
</tr>
</tbody>
</table>
No. | Name | Maasai Names | Beliefs |
--- | --- | --- | --- |
points (Ilubot enkop) | The East (Iloo-isaen) | (Ilopir) Kipusi Mukarot Ilasialek Ilkirosion, Note... the names vary from sections depending on their geographical location. | |
West (Oloo-intoluo) | | | |
South (Kopikop) | | | |

2.5.4 Common beliefs and common justice systems governed by traditional chosen leaders.

The governing structure and the judicial system between all Maasai is the same. Their court processes and principals of judgments are shared without interference despite the border lines that separate their countries. Ilkisongo and other sections in Tanzania view their brothers in Kenya as just other Maa sections rather than being from a different country. The indigenous leaders are respected in all sections and can fully pass or execute their authority or duties in any section without interference. Maasai have four common beliefs which are perceived to be God's weapons of power and this applies to all Maasai across the borders.

The Maasai (Kenya and Tanzania) share common value of protecting the environment and abiding to
their abomination and strict beliefs, such as protecting wildlife, as most animals are named after their clans, which makes wild animals being treasured by both Moieties (this is cross-border knowledge).

Most Maasai indigenous clans have been named against a certain wild animal. This defines the true nature of how Maasai indigenous justice system is deeply connected to nature and earthly beings, for thousands of years. In the case of any disputes or fights arising between two functions where most decision are arrived, determined and judged upon individual character according to characteristic in relation to the animal behavior, which sometime might be used as jokes to encourage harmony between the defendants in the court. That the two sides in question are well known natural jungle enemies or close friends and this quickly brings to the quick understanding of the matter beforehand. Below charts describes a few examples.

### Table B: The Maasai and the Wild animals

<table>
<thead>
<tr>
<th>No.</th>
<th>Animal</th>
<th>Identity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Snakes represents (IIaisi in from both Moieties of Orokiteng and Odomong’i)</td>
<td>This are feared clans from both divide of the phratry that practices witchcraft, sorcery and administers oath in any dispute, they are known as the</td>
</tr>
<tr>
<td>No.</td>
<td>Animal</td>
<td>Identity</td>
</tr>
<tr>
<td>-----</td>
<td>--------</td>
<td>----------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>poison clan, and have an evil eye.</td>
</tr>
<tr>
<td>2</td>
<td>Buffalo (represent Ilaiser Inkidong’i)</td>
<td>Naturally good eaters, possessive, truthful and willing defenders of their rights, can make good leaders</td>
</tr>
<tr>
<td>3</td>
<td>Hyena represents – Iltaarasero</td>
<td>The clan that missed the ear brand, this are good eaters but they welcome everyone with their laughing gesture, perceived to be kind and protective, natural hustlers. Women makes good leaders</td>
</tr>
<tr>
<td>4</td>
<td>Baboons (represent Ilukumae clans)</td>
<td>Naturally good eaters, possessive, truthful and willing defenders of their rights, territorial, can make good leaders</td>
</tr>
<tr>
<td>5</td>
<td>Vevet monkey (represent Ilmakesen)</td>
<td>Very selfish and does not want to share, cunning and hides secrets, not cooperative, mostly appointed to be lead as ceremonial positions.</td>
</tr>
<tr>
<td>6</td>
<td>Rhino (Emuny) represents Ilmolelian</td>
<td>unstable in their judgment can stumbled on their own feet, reckless, calm when not interfered and makes rushed decision, natural born leaders with just judgments, mostly confrontational, cannot be</td>
</tr>
<tr>
<td>No.</td>
<td>Animal</td>
<td>Identity</td>
</tr>
<tr>
<td>-----</td>
<td>--------</td>
<td>----------</td>
</tr>
<tr>
<td>7</td>
<td>An elephant (Olkanjaoi) represent Ilaitayiook clan</td>
<td>Ilaitayiook are known as enkaji entakule, very fierce warriors and have agility to fight with their enemies and win, naturally calm but can easily be provoked, not trusted, one cannot make a lasting agreement with the member of this clan. In any dispute, a strong Olaig’uanani from their Ilaiser clan is needed to determine the case.</td>
</tr>
</tbody>
</table>

2.6 How laws are stored and taught among the Maasai people

Knowledge of laws comes in diverse forms from the wisdom of an elder who understands the community and the cycle of life in Maasai. Laws (customs and norms) in Maasai are passed through generations by stories told by the Maasai elders to young people, with training done during circumcisions and through other activities during child development. The Maasai boys and girls live together with their mothers in a small house Enkaji built of cow dung and wattle, in a large enclosure and homestead called an Enkang’. The father, his other wives, and young children, live nearby in almost identical houses of their own. This is where
the do’s and don’ts are taught to the young people. There is a place called entaloshi or Entala (it also called Oleng’oti by many current clusters of Ilkisongo section) where elders sit after checking the livestock in the evening or early morning. This is the place near the main gate to the homestead by the right side of the gate entrance. It may also be done at a small house called orripie or Waarusha cluster oltombo, where the father of the family stays and he uses these places to teach the young the Maasai laws and customs.

3.0 INSTITUTIONS USED IN ADMINISTRATION OF MAASAI JUSTICE

The strong basis for Maasai judicial experiences show that whenever conflicts arise, parties (both the wrongdoer and the victim), often resort to negotiations to resolve the matter amicably. To solve the matter is not an easy task and parties in a dispute cannot call themselves to solve the matter. Instead, one of them, or any other interested third party, may refer the matter to the of Council of Elders or elderly people, most of them being men, and in rare cases include women who act as third parties in the resolution of conflicts. Elders among the Maasai people remain the most important institution used to solve disputes in almost any dispute. Traditions, customs and norms among the Maasai people in the traditional sense are the preserve of elders. These elders are carefully selected because their work calls
for greater wisdom, personal discipline, and knowledge of the traditions. They are selected among the right minded member of the Maasai community as representatives of each family tree, clan, or age-set system, to deliberately deal with all matters of social welfare, dispute, abuse, separation, divorce, marriages, murder and manslaughter, livestock stealing, common assault, the age-set retirement system, and inheritance and all forms of compensation. Upon being selected, representation is based on the family tree and loyalty, clan, fairness, and justice. Any perception of misnomer on the part of either elder disqualifies a candidate and his respect is lowered within the society, and sometimes their decisions become not binding due to misconduct. Misconduct may be matters of personal conduct in previous cases, lack of integrity, poor communication, an inability to articulate traditional norms as a reflection of fairness, among other reasons.9

3.1 Leaders as institution in Maasai people (Ilaig’uanak)
The Maasai culture is predominantly patriarchal, with a Council of Elders overseeing the daily running of the village and administering matters on the basis of an oral body of law. The system of leadership between the Maasai people is mostly based on what is

9 Nasieku G. Tarayia Arizona Journal of International & Comparative Law Vol 21, No. 1
performed by that leader. Recently the system became more complicated than before among the Maasai. This leader is less involved in decision making and justice administration among the members of the community at large. Leadership among the Maasai is traditionally undertaken not at the level of the ethnic group as a whole, but rather the leaders in Maasai society are chosen through two major ways (i) at the clan level and (ii) age-set group leader (chosen amongst the member of the group in the initial stage of the group), which includes people who are understood to be historically related through commonly recognized ancestors. The leading elders in the Maasai Council of elders held the title of Olaig’uanani, and those men who attained the position of Olaig’uanani did so by virtue of their character and having demonstrated their ability to lead. Apart from age-group leaders who chosen based on blood-lineage, one of the principal attributes of any other leader is the ability to speak well and mobilize his clan or community, being a peace lover, and a person of high integrity in public.

Despite the high regard and respect with which elders in Maasai are held, they seldom had the ability to coerce a particular behavior from an individual, or the power to enforce a specified judgment on his people. Yet rarely did an individual disregard an elder. Instead, elders in Maasai brought their influence to bear
through the moral force of persuasion, coupled with emphasizing their ability to bless and curse individuals and events in the society. While in practice, it is a blessing that was nearly always offered; the potential for this to be replaced by a curse was well recognized. Because those individuals that elders have the most regular contact with were family and immediate neighbors, everyday reality was such that no elder wanted to utter a curse and bring misfortune on those closest to him, except under special circumstances. Often, well before a situation might bring forth a curse, others in the family or community used their powers of persuasion, even intimidation, to bring about more appropriate or correct behavior from the offender.

In almost all the Maasai communities in Tanzania and Kenya, leaders (Council of elders) were often enough to reduce bad behavior. Yet, always in the background, underpinning the social order, was the recognition that an elder among Maasai people could use his power to curse or to bless. This recognition not the threat of a police force or militia taking someone to court or taking them into jail, is what aided the maintenance of law and order in many Maasai communities for centuries. It may happen that these social norms were not enough to limit particular bad behavior, but the elders may determine other forms of punishment fit for the wrong
doer. Sometimes elders involved in the dispute may impose sanctions such as the payment of a fine in the form of livestock, drinks, clothes, or cash, on an individual in any situation where social norms are silent on that matter.

**Table C: Informants or Interviewees (Ilaig’uanak)**

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Age-Set</th>
<th>Secti on</th>
<th>Details</th>
<th>Place</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Kilorit Ngulupa Lesinga</td>
<td>Ilkishumu</td>
<td>Kison go</td>
<td>served both as top chief, for the junior Ilkishumu age-set, Olaig’uana ni omishira enkupes from Ilkishumu age-group and Olaig’uana ni lo Olosho for all Ilaityiook sub-clans Isumaga-IIparasais within Ilkiito sub-clusters</td>
<td>Longido</td>
</tr>
<tr>
<td>No.</td>
<td>Name</td>
<td>Age-Set</td>
<td>Section</td>
<td>Details</td>
<td>Place</td>
</tr>
<tr>
<td>-----</td>
<td>---------------------------</td>
<td>---------</td>
<td>---------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>2</td>
<td>Ndasikoi Lekui</td>
<td>Ilkishumu</td>
<td>Kison go</td>
<td>A respected and wise elder of Iseuri Age-group from Ilkiito sub-cluster, Orokiteng moiety, Aiser phratry of Iloodokishu sub-clan-Iseankai phyle</td>
<td>Longido</td>
</tr>
<tr>
<td>3</td>
<td>Nanyorri Kirorony Iseuri Ntoipo</td>
<td>Iseuri</td>
<td>Kison go</td>
<td>A respected elder woman married to Iseuri Age-group and a renowned indigenous midwife across Ilkiito, a knowledge able natural historian and an Arden</td>
<td>Longido</td>
</tr>
<tr>
<td>No.</td>
<td>Name</td>
<td>Age-Set</td>
<td>Secti on</td>
<td>Details</td>
<td>Place</td>
</tr>
<tr>
<td>-----</td>
<td>-----------------------</td>
<td>---------</td>
<td>----------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>4</td>
<td>Tarayia Oloong'e so Ndoipo</td>
<td>Iseuri</td>
<td>Kison go</td>
<td>A renowned wise elder (Olaikooni) from Ilaiser phratry of Ilparkeneti Iseker sub-clan.</td>
<td>Monduli</td>
</tr>
<tr>
<td>5</td>
<td>Magilani Ole Pello Ilkidotu</td>
<td>Kison go</td>
<td>a wise elder and a great chief Olaig'uana ni lo Olosho representin g Ilkipuyio sub-clan of Ilmolelian phratry for Ilmanyara and Monduli sub-clusters.</td>
<td>Monduli-Makuyuni</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Name</td>
<td>Age-Set</td>
<td>Section</td>
<td>Details</td>
<td>Place</td>
</tr>
<tr>
<td>-----</td>
<td>------------------</td>
<td>---------</td>
<td>---------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------</td>
</tr>
<tr>
<td>6</td>
<td>Isaac Ole Kisong’o</td>
<td>Ilkishumu</td>
<td>Kison go</td>
<td>The great chief ‘Olkarsis’ - The chairman of Maasai council of elders representing Oreteti loo Inkaik council of all Ilaiq’uanak loo Ilarusa and Kisong’o-Monduli, covering three Districts in Arusha region.</td>
<td>Monduli, Ngorongoro, Manyara and Longido</td>
</tr>
<tr>
<td>7</td>
<td>Metui Ole Shaudo</td>
<td>Ilkishumu</td>
<td>Kison go</td>
<td>A wise elder and the founder of Ngorongoro pastoral council. A former elected ward</td>
<td>Ngorongoro</td>
</tr>
<tr>
<td>No.</td>
<td>Name</td>
<td>Age-Set</td>
<td>Section</td>
<td>Details</td>
<td>Place</td>
</tr>
<tr>
<td>-----</td>
<td>--------------------</td>
<td>---------</td>
<td>---------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>councilor and a renowned chief of Ilmolelian clan - Ilmasang'ua sub-clan, double as a respected Maasai cultural activist</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Olaig’uanani Mosite</td>
<td>Ilkorianga</td>
<td>Purko</td>
<td>He is a chosen chief (Olaig’uana ni le enkashe) of the age-group</td>
<td>Loliondo</td>
</tr>
<tr>
<td>9</td>
<td>Jackson Ole Kamaika</td>
<td>Ilkimunya</td>
<td>Kisongo</td>
<td>A nominated chief lo Olosho representing Ilaitayiook - Isiria of Ilmarcae sub-cluster</td>
<td>Kiteto</td>
</tr>
</tbody>
</table>
3.2 Meetings as institution among the Maasai people

Similarly, it is documented that dispute resolution starts at the family meeting level called enkig’uana olmarei. If a dispute cannot be resolved at this level, it is taken to the enkig’uana enkang’ which is in the extended family meeting level. Here elders from the extended family sit and listen to the matter. This kind of meeting is mostly comprised by the member of the same family tree and its aim is to resolve matters which affect a member of one family tree; matters like debts, marriage and divorce, murder cases and manslaughter, theft; and matters relating to bankrupts and restoration of one family member. In this meeting, the elders emphasize mediation of disputes and amicable settlement. If the enkig’uana enkang’ does not resolve the dispute, the disputants take the matter to enkig’uana enkishomi, (The sub-clan meeting), which is a customary court with formal court like procedures comprised of many neutral parties. It consists of the invited elders from the same clan at the family tree level and other invitees of the same descendants who may be invited by elders or parties to the dispute. If the enkig’uana enkishomi does not resolve the dispute, the disputants may take the matter to enkig’uana e enkaji, which is a highest customary court in the family tree level from the same moiety, which has the closest procedures like the formal courts procedures. If the matter fails there, it
may be taken to Enkig’uana oloslo, which is the highest court in the land. It has friends of the court (amicus curie) from the different moiety to assist the court to reach a just decision. It invites different leaders from clans and Maasai intellectuals called in Maa ilang’eni to give explanations of certain facts, which may help leaders to reach a just decision. It may also have representation before the elders. A representative can be a leader (Olaig’uwanani) from his or her clan or family tree or a relative or any person conversant with cause of action.

3.2.1 Procedures in the meeting
The court starts with the victim who is given the right to address the elders, the cause of action, the stage of the dispute, and explain why the matter has been referred to the highest meeting of elders. The respondent also after the victim is given a right to address the meeting and put his defense before the elders. These elders have power to call witnesses and receive evidence, and after that, all the elders will start to address the meeting on the adduced facts by the parties to the disputes. To them, they belief that the truth shall never be covered by lies eiput emonkoi inkishu boo neipang’ie esipata and their decision will be based on truth according to facts adduced by each party in the dispute emonkoi impira Enkai niar olaisimani. Sometimes ilaig’uwanak from the accused
clan or phratry or phyle can act as the accused or as the defendant’s lawyers.

Experience obtained from Ilkisongo section, decision-making processes in the meeting have been based on consensus, which it was the responsibility of the communities’ elders to build. Groups of men who could be found in the meeting sit around under a large tree by the roadside for any passersby to participate in the course of justice and help foster peace (tipika enkig’uana embata enkoitoi pee etum ilarishak) - leaving the entire livestock task to solve disputes. The meeting is in a kind of open forum to determine the course of action for whatever issues were referred to the elder, or any matter arising from their community. Maasai elder’s methods for reaching consensus were not characterized by fierce debate or the exchange of harsh words. Rather, it was a highly structured and controlled affair often holding a staff in hand as a symbol that would give the speaker the right to speak. One elder after another would air their views until everyone who wanted to speak had done so. In such situations certain elders, who were looked up to either for their successful counsel in the past, or those who made former precedents (Irasheta), had more persuasive voices. Often, such leaders waited until nearly everyone else had spoken, and only after they had listened to the majority would they weigh in with their view, summarizing a position that would
move the group to consensus. Once a consensus was reached, it had the force of law and was binding on everyone.

3.2.2 Execution of the decision made in the meeting
After all procedures are completed in the meeting, the decision will be passed by all elders. Their decision is binding and final, and it is respected by the whole community soon after being communicated to its members, especially the area where the dispute arose in the first place. The execution of the decision made by the elders in the highest meeting is done by communicating the decision to each leader (Olaig’uanani) of each family tree, or clan leaders, or age-set leader in the area where the dispute arose, depending on the nature of the decision made by the elders. In case of any appeal it’s the top chief Olaig’uanani who’ll grant an appeal after consultation with the other elders. In case of any new development, an appeal will be granted, with the parties involved to be notified through their clans’ Ilaig’uanak.

3.3 Emblems or instrument of power and authority
3.3.1 Elders’ power and authority (signs of seniority)
Maasai ethics and social justice is closely related to what is commonly known in Maasai as Inkai, which simply means ‘weapon of strength or power’, which is identified with an individual. These weapons of
strength may affect justice administration since the presence of such individuals who possess such strengths in any dispute may influence the decision, since each Maasai knows the meaning and effect of such weapons of power.

**Enkonong'oi pus or emurt – narok:** This is a dark blue beaded necklace worn by every elder. The beaded necklace defines the powers of God as an authority of life for all living things as it implies the same to any elder who has been bestowed the same power of God, and by his age-group senior elders, as they pave way for new elders of the land. The necklace is mostly worn by elders. It is a sign of great wisdom. This weapon of power enkonong'oi is only worn and given to every Maasai man after attaining seniority. It is the readiness and preparation period for any leader from every group set of the land to prepare himself to be a mentor, as a fatherly figure for the upcoming generation of new age group. It is an instrument used for observing prayers, and a sign of leniency, when any elder spits on it in any situation, asking for mercy or God’s power and righteousness to intervene in any cause of justice.

**Olkidong:** Bamboo tobacco stick: This is one of the most valued honor bestowed on any man during the Oling'esher celebration. It represents elder-hood and the occasion is to bestow the new inaugurated elder
with instant powers to bless through spitting. Hence, the new elder can spit good blessing using sweet wine, or using tobacco bitter spit to perform curses. This is to warn the new generation to respect them as elders as they can exercise their indigenous powers of age-group autonomy as new season elders of the land, to demonstrate their readiness to initiate a new age-group of young men.

**Olorika:** (The four legged wooden stool): This is a great symbol of power for every man who has reached the stage of being a Maasai elder. It demonstrates the power and authority within an age-group. It also implies the presence of a man within every family, and whenever the man is absent in his house, his traditional chair will represent him. The four legs of the stool represent the four compass positions of the earth, making him an elder sitting on the four pillars of the world, with great authority and power to make decisions for the Maasai. The round top represents full authority of *Enkang’* like the moon halo, or the sun ring, which symbolizes complete unification and self-protection and guidance, hence all *Ilmasin* – hair-cutting ceremonies are performed when one is sitting on the top of the stool and a replica of a home is plaited using one’s hairs.

**Olaratat or Olchartula:** (walking stick): This is a long walking stick for the elders. The stick is used to support
the body, and it can as well be used to perform curses or cleansing in the land. The Olartat is a symbol of seniority and wisdom for men, while orchartula can be used by elder women for the same purposes. Whenever a senior or elderly man appears in any gathering or meeting, his Olartat seniority has to be respected and he is given a chance to speak his mind based on his experience. His view can lead to the Olaig'uanani changing his judgment. The presence of olartat can be sent to the meeting without the elder being present, and anyone sent can fully represent the wishes of that particular elder. The senior or elderly women can send their olchartula to the meeting for the same purpose, as mostly women are not allowed to attend courts, but to only send their representatives.

3.3.2 A Maasai woman and her instrument power and authority

1. Maasai beaded leather skirt (Olakesena or Olkila le erotikian): This is women’s clothing that covers her from waist to below the knee. It is one of the most sacred clothing as it covers the women’s nudity, and it represents the birth (Olkesen) of all descendants of the house of Maasai (Maasinta). It is a sacred cloth to men of all ages and cadre. Men are not allowed to touch a woman skirt at all cost, as it is deemed disrespecting of women private body. The same leather or cloth skirt can be used by any women to
show their anger; protest against unjust cause or to perform one of the most feared and worst curses of the land. Since it is most feared for possessing curse power, a woman can use it to express dissatisfaction or retributions.

The women's skirt is not allowed to be worn by young girls - *merrotiana intoyie* - until one passes the initiation stage to become an adult. The clothing is mostly made of a sheepskin, or it can be of any other clothing material that can be used for the same purpose and that is designed as *Olakesena*.

2. Maasai Women’s leather belt (*Enkitati enkoshoke*): This is made from a cow’s skin. It is not beaded, and it is worn around the waist to protect the women back and to help her regain her shape after birth. The Maasai women belt is a precious and sacred adornment that women can use to perform blessings and curses, or to pardon wrongs done by her children, or for retribution of any wrong doer in the community. The belt acts as a conduit of life and the most formidable force of a woman source of power, strength, and authority, that when angry she unties the belt to release stress and anger so not to harm her own siblings, hence women are generally referred as *enkaji enkitati* “the household of belts” in reference to the power associated to this emblem of power.
3. A string of a blue beaded necklace (Emonyorit): This is usually attached to the right ear pendant that a woman cherishes so much. It is the equivalence of enkonong’oi pus for their male elder counterpart. The beaded string is a sign of authority over her own destiny as an independent woman, and it is also a tool for conducting prayers and displaying submission to her husband. Most women are not allowed by their husband to walk without Emonyorit on their necks, as it is a sign that reminds everyone in the community that the woman is married. Emonyorit also represents the power of God over one’s life, and a woman can use it as a retribution, or forgiveness charm, for any wrong doer in her community.

4. Isurutia: These are two metallic spiral coils of the same size, made of copper or aluminum, that are displayed by women on both sides of their chest, just above the breasts. The coil represents the soul, peace, oneness, kindness, and grace. It is a display of every human soul that connects every human being to feel remorse from the deepest of one’s small intestine when they wrong each other. The spiral shape represents one’s destiny and soul (emonyita), hence the Maasai saying ‘taaraki nekishuku Imonyit ang’ - fight me, but kindly spare my soul and dignity so I may live. Isurutia is the only ceremonial ornament that can be worn by both men and women during many Maasai traditional ceremonies.
5. **Isurri**: This is a long beaded neckless attached to the ear pendant that identifies the mothers of the current warriors. The warriors of the same age-set give much respect to their mother as they collectively help children go through the hardest time of Moranism. It is a weapon of power used by every woman to perform prayers and tie small knots for the protection of their son’s life whenever the warriors are out hunting lions or other trophies, or when they face Olamayio or Impikasin; loitering and having fun enkisilal; or individual heist – Olwuamba; or contacting cattle raid/wars Injorin. It is evident that when the warriors are home safely, then their mothers will untie the Isurri knots and perform the traditional thanksgiving songs in praise of 'Enkai’ God for their son’s protection. In modern Maasai societies Isurri can also be used by the women to pray for their son’s during times of drought and hunger, war, or any other life challenging event.

6. **Esosian**. This is a bottle brush for cleaning traditional milking gourds with a scented smoky fresh fragrance of a tree known in Maasai as 'oloirien'. The legend of the Maasai in their folk tales have that, Esosian is a real fragrance that cleanses the milk gourd. It is a symbol of care and treatment of the husband from the wife. Men are expected to respect their wives, who take time to ensure their health and nutrition is ably catered for, hence they believe that, once a
man is hit by Esosian he will never be able to have a wife in his entire life.

7. **Olmarisian**: The newly circumcised women’s or men’s head gear. This is the first weapon of power ‘crown’ any woman can acquire after being crowned to be an adult, and it prohibits especially warriors from touching it. It forbids men to have sex with a Esipolio *(newly initiate girl)*, or it is an abomination to kill any one of them during that period of Aibartakishu. This is the most respected *(Ilmasin).* Olmasi is a stage and rites in Maasai practices that ushers in any new beginning in one’s life. The hair must be shaved especially in the head for all *(Intomon e Maasae).* This includes when one dies. Entomono means a gracious period when every family or any member of the community welcomes everyone for a feast, or a get-together, through traditional ceremonies of Intaleng’o, Imashoi, intasimi in every party or gathering osirua or isiruai, since it represents the true meaning of togetherness, love, joy, and happiness in every Maasai household.

3.3.3 **Olaig’uanani as an institution of power and authority**

*Olaig’uanani* is the highest office (institution) of justice administration in the land of the Maasai, together with his chosen aides or assistants called in Maasai *Inkopir,* who are also *Ilaig’uanak.* Having the upper hand in
any decision passed by the Maasai highest court of the land, the *Enkig’uana*. *Enkig’uana* consist of three types of hearing: Firstly, open court (*Olchani*); secondly, the business or disputes court (*Olkiiu*), and thirdly, the chamber courts, which also take three forms, the family or close members hearing (*Entonata*), quick hearing (*Enkitashoto*), and the private hearing (*Enkilepata* or *Bata*). Age group leaders (*Ilaig’uanak loo Ilporori*) have powers to adjourn the court proceeding, convene meetings at any given time, and pass any judgment to anyone found guilty. With the help of elders and other leaders they can confiscate, forfeit, seize, or impose fines or penalties, or negotiate on a willing personal contribution according to each and every community member’s wealth capacity.

The most weapon of power used by *Olaig’uanani* to pass his decision is a wooden black club made from the most blessed and hard aromatic exotic trees of the land. The club defines and symbolizes manhood, strength, power, might and potency. It acts as a blessing and directing tool, though it can be used for cursing anyone who dares to disobey the *Olaig’uanani*’s orders. His directives must be respected by all members of the community.

The *Ilkisong’o*, the *Ilpurko*, and all other sections of Tanzania Maasai have two types of *Ilaig’uanak* within
their clusters and sub-clusters. The main Ilaig’uanak are those chosen from the age-group system together with four other leaders known as Inkasisin e Maasae, with different functions within the age-group system. (i) The Head Chief - Olaig’uanani, (ii) The mentor of the young man - Menye Ilayiook; (iii) A scarified soul for the whole age-group Olaunoni or Olotuno; (iv) The keeper of souls, the protector of lives: He keeps the number of all warriors on behalf of the whole age-group Oloboru Enkeene, (v) The mentor of junior elders until they become senior elders Oloosuratia.

In Tanzania Maasai, there is another set of Ilaig’uanak, which was adopted from the Waarusha Maa speaking section of Maasai. Their function is purely to administer justice within the land to help maintain peaceful coexistence, deal with disputes, water rights, and fines, to contain immoral acts between various Maasai clans, and to represent the minority sub-clans. The Ilaig’uanak have the same power as the age-group ones, and they can administer justice at any time within and outside their area of jurisdiction.

This group of Ilaig’uanak is purely for the administration of justice, and for representing their own clans from the two major moieties of black cows Orok-kiteng and the red cows Odo-mong’i. This system was initially established by the Deutsche Colonies and adapted by the British Colony in 1925, and in 1943, the Colonies
advised the Waarusha section of Maasai to have only one Olaig’uanani. It left the leaders with no choice after the worse massacre at Ilkerin whereby the Maasai warriors of Ilarusa section killed 2 missionaries during the Deutschland Occupation, which led to the hanging to death of 20 Maasai Ilaig’uanak in 1904. This was mainly for the Colonialists to control the leadership of the Maasai people by nominating their own representative as Ilaig’uanak while flouting the indigenous system of electing their leaders. For the first time in history, the Waarusha section voted to have Olaig’uanani lo Oloslo namely Olkarsi alongside Ilaig’uanak lo Olporror, thereby Olkarsi Simeone Olaiserri of Ilmoshono from Ituati age-group was elected as the Head Chief of Ilarusa, representing the two factions of Ilborru and Burka sections. This exercise is still operating to-date in the Waarusha, section with a sitting at the Arusha Technical College acting as the Council for all Ilaig’uanak. The larger Maasai section have emulated their Waarusha brothers by establishing the same system within all Maa-speaking sections by electing Ilaig’uanak from all sub-clans within the Maa speaking sections in Tanzania, except the Ilpurko section.

The Headquarters of the Council of Ilaig’uanak that unifies the heads of all clans from both moieties that represent all Tanzanian Maasai, has not been agreed by the larger Maasai sections. They wanted to be the
one to lead, as Warusha are only an assimilated section to the larger Maasai. They felt that the Waruusha did not qualify to be the custodian of highest office of justice of the land. These talks and agreement between the two factions are ongoing by both Ilaig’uanak from the various Maa sections.

4.0 PRINCIPLES AND VALUES THAT GOVERN THE ILKISONGO JUSTICE SYSTEM

Each community has principles that govern the ways the community administers its own justice system. Although justice administration may vary from one cluster or section to another, there are certain principles that run through most of the Ilkisongo and Irpurko sections in Tanzania Maasai.

4.1 Respect for elders and seniority
Maasai cultural values are based on a foundation of the past and present inkapa, inkaun oo intoton, and this is a leading reason why elders and senior members are so well respected. They are always acknowledged as elders and during mealtime elders should be served first. This respect goes to everyone deserving to be respected such as in-laws, relatives, guests and any senior member of the society. Respect for elders, ancestors, parents, fellow human beings,
and the environment, is cherished and firmly embedded in the mores, customs, taboos, and traditions of the Maasai communities. Elder-hood is the most important and respected institution among the Maasai. Due to the respect accorded to elders, people avoid conflicting with them. The admonitions, commandments and prohibitions of ancestors and community elders are highly esteemed as they reflect experiences, which have made communal life what it is to the present. The principal role and the core duty of an elder, both in his own family group and in the community, is one of harmonizing the activities of various groups among the living and departed. In his capacity of mediator, his family group and community in general, respect him for his seniority and wisdom, and he, in turn, respects the seniority of the ancestral spirits.\textsuperscript{10} When conflicts arise, the victim will refer the matter to elders for determination, which will depend on the nature and seriousness of the matter referred to him. The elder will either advise the victim, or call the respondent in person, and tell him of the allegations the victim. If he denies the allegations, he will call both parties, or convene a small meeting for the other elders and neutral parties to solve the matter.

4.2 Management of conflicts is based on established cultural values and norms
Conflict resolution is based on cultural values, norms, beliefs, and processes that are understood and accepted by the whole community, and which were inherited from time immemorial. These values are stored in the hearts of every member of the community and have been inculcated during childhood. They are not written, or documented, or codified, but were narrated by ancestors from the beginning of time, to modern community. This engenders legitimacy and calls for a high compliance rate with the decisions made by the elders.

The Maasai are socialist in nature; living communal life with a sharing spirit and reciprocity, which ensures a mutual exchange of privileges and obligations, and fosters peaceful coexistence. The social and communal life of the Maasai people makes the justice administration system very simple and practicable in their daily life. This minimizes the likelihood of disputes and conflicts, and fosters relationships and a sense of togetherness. Conflicts and disputes have the potential to disrupt the social fabric that holds society together and are best avoided. Social values, cultural norms, and beliefs aim at avoiding conflicts, and
ensure that if conflicts arise they are resolved amicably.\textsuperscript{11}

\section*{4.3 Belief in truth and in curse powers}
Among the Maasai, there is high regard for truth, and a belief in curse powers. These form a great part of dispute resolution and prevention mechanisms in Maasai justice system, as the saying goes, \textit{eeta olotua inkonyek} - the dead have eyes. There is great respect for, and fear and reverence for elders in society as they play a crucial role in truth-seeking among the Maasai people. For instance, if any person denies the existence of certain facts in dispute, elders can administer what is known among the Maasai people as \textit{Olmumai}, a swearing that is similar to the ‘affidavit’ in formal law. However, those who swear know the consequence of lying under oath. Unlike the formal affidavit or oath, which a person may be punished by telling lies under oath, \textit{Olmumai} functions in the form of a curse. They also mediate \textit{inter vivos}, ancestors’ wisdom and adherence to the almighty God. Although, there is existence of spiritual leaders called \textit{Oloiboni} in the Maasai, Conflicts arising from witchcraft are not resolved by the Maasai by using customary laws or traditional institutions. Witchcraft is regarded as a private matter; hence it is privately dealt with together with the affected parties.

Consequently, the role of the spiritualists, especially in helping to identify suspected ritual murderers, is prohibited by law in Maasai.

**4.4 Relationships to people matter**

Meeting people and spending time with others to develop lasting relationships is an aspect of Maasai culture that is truly cherished. Keeping in mind, future times are certain and current time is of extreme value - epir enkishon dukuya, nepir siadi. This helps them to avoid conflicts and always resort to amicable settlement through patience, endurance, and respect - enayeng’uyeng’unye enkishon amuu, meeetae nasieku mitum, nemeetae naimutie kiret. Maasai believe in communal life and inter-dependence. Everyone plays a part in sorting matters between disputants even if they desire not to do so. And anyone who refuses peace is considered to refuse the voice of God (eba Ilmaasae anaa Enkai) which means “the voice of the people is the voice of God”. All people can intervene in any dispute and bring justice.

**4.5 Maasai are caring people**
The Maasai are extremely gracious and caring people who are ready to go the extra mile to respect and service others. Their care and respect is extended to animals and the environment in general, trees - *iretet, isek, Imisigiyio*; grass - *inkujit oo inkairrabala*; and any living thing are regarded highly, and preserved, even mountains and water sources. One can make a positive impression the environment and curses are bestowed to those who brake the rule of nature. Maasai show respect that will leave lasting memories in any one observing their mode of life. Maasai are hospitable and welcoming. They love their neighbors - *elatia nainosa imonyit*; are willing to share everything, and they can host anyone in their homes (eeta osotua naa aminin ilmaasae). It is not strange for them to slaughter a goat or a sheep for stranger or a destitute person. When disputes arise, they find a way to settle them since they believe that dispute have no good end (*meeta olarrabal inkipa sidan*). They acknowledge and welcome divergent opinion from anyone.

4.6 Maasai do not publicly show anger, frustration, or impatience

Though circumstances have potential to become frustrating, it is highly important for Maasai people to not publicly display any sort of negative feeling in public. Maasai have incredible self-control, self-discipline, and they are careful not to offend or shame
anyone who is not a party to dispute. They also must not be alarmed or nervous, and often converse with spans of silence. When there is something to say, it will be said; when there is nothing to be said, silence is perfectly fine. There’s no need to feel uneasy during a period of silence in Maasai life. One is to take the time just to enjoy the presence of others and learn to listen from other (Enkanyit oo enkutuk sidai naya Olosho). For example, in village areas and in modern cities of East Africa, normally Maasai are seen with swords and big sticks. More than 90% of energetic Maasai men walk with at least a sword, save for the religious men and the highly educated Maasai men who are employed in formal sectors. Even though they walk armed, the Maasai rarely fight against their counterpart using the swords. To them, this is inherited discipline from the society. The sword will only be used to respond to an attack from an enemy whose intention is to cause great harm or danger to property. The sword is the last resort when all means of defense fail. But the power and weapon used by the enemy justifies the use of swords and spears to defend oneself in Maasai communities. This helps many Maasai people to avoid dispute and not entertain unnecessary likelihood of disputes.

5.0 RECOGNITION OF MAASAI CUSTOMARY LAW IN TANZANIA
African customary law (Maasai customary law included) have received recognition in multiple international instruments, which show that customary laws still occupy a central place in the world of dispute resolution within communities. The problem remains that the domestication of international instruments on traditional justice system in the country. For instance the Rio Declaration\textsuperscript{12} and the International Labor Organization Convention 169, on Indigenous and Tribal Peoples in Independent Countries,\textsuperscript{13} require States to recognize and respect indigenous people’s customary laws and traditional decision making institutions. Likewise, the Brundtland Report, 1987, notes that the recognition of traditional rights must go hand-in-hand with the protection of local institutions that enforce responsibility in resource use.\textsuperscript{14} The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) also recognizes the rights of indigenous peoples and requires these rights to be determined in accordance with their own indigenous decision making institutions and customary laws.\textsuperscript{15}

Customary law (including the Maasai customary law), apart from being one of the sources of law in Tanzania

\textsuperscript{12} Principle 22 of the Rio Declaration on Environment and Development.
\textsuperscript{13} Articles 8 & 9 International Labour Organization Convention 169 on Indigenous and Tribal Peoples in Independent Countries
\textsuperscript{14} World Commission on Environment and Development \textit{Brundtland Report} 1987 at 115-116.
traditional justice systems, are explicitly recognized with a number of formal laws. However, its enforcement and application became too limited in the courts of law. During the Colonial Era in Tanganyika, every court was called upon, in all cases to which natives were parties, to be guided by native law, so long as it was applicable and was not repugnant to justice and morality, or inconsistent with an Order-in-Council, or Ordinance, or any Regulation or Rule made under any Order-in Council or Ordinance. Moreover, the courts were required to decide cases to which natives were parties, according to substantial justice, without undue regard to technicalities of procedure and without undue delay. Basing on the Order-in-Council, one may argue that Maasai customary law as part of African community was recognized and could be enforced in the courts, provided it did not go against the provisions of the existing law, and was not repugnant to justice or morality.

Soon after independence, Tanzania introduced The Magistrates' Courts Act of 1963 where under section 14(1) of the Act, primary courts were given general civil jurisdiction over causes of action governed by customary or Islamic law, and certain other matters in respect of which jurisdiction was specifically conferred.

---

16Tanganyika Order- in-council of 1920
by statute. The same position was maintained by The Magistrates' Courts Act of 1981\textsuperscript{17} whereby primary courts were given powers under section 19(1)(c) and the 5\textsuperscript{th} schedule to determine matters of Islamic or customary law. Therefore, Maasai customary law is applicable save that they are not repugnant to justice or morality or inconsistent with any written law, as explained also in different decided cases. However, the new Magistrates' Courts Act, 1963, limits the customary claims under the law to matters relating to intestacy, family, seduction of unmarried women and girls, enticement of married women to adultery, and the status of women and children. Customary marriages are recognized in Tanzania apart from civil and religious marriages under the Marriage Act of 1971\textsuperscript{18}. The problem remains, that the law does not allow customary dispute resolution before the court, for marriages celebrated under customary law, and does not determine a petition for the dissolution of customary marriage before the court of marriage.

However, The Local Customary Law Declaration Order of 1963\textsuperscript{19} stands to be the most important legal instrument which supports the application of customary law in Tanzania. The Customary Law Declaration Order attempted to codify the rules of

\textsuperscript{17} [Cap 11 R.E 2019]
\textsuperscript{18} [cap R. E 2019]
\textsuperscript{19} G.N 436 of 1963
inheritance of the patrilineal tribes on the Tanzania mainland. This law applies to all members of the African tribal communities, irrespective of their place of origin, where they happen to be, or what religious beliefs they hold. The rules under the Customary Law Declaration Order reflect only patrilineal inheritance and gives members of the given community the chance of being administrators. Rule 6 of the Order provides for the Clan Meeting Council where they make decisions regarding the deceased property, and discuss a system of distributing the estate among the heirs.

This Order generally codified customary laws of Tanzania, without specifically stating which law of which tribe shall be applicable. Rather, it based much on patrilineal societies, which is 80% of all people in Tanzania. The Order mostly covers issues of inheritance and administration of estates without distinguishing the difference in customary laws that exists between tribes in the country. The Maasai customary law seems to have a slight difference from other customary law in the country, which the Order seems to be silent on. Even the laws of Ilkisongo sections defer from each other in Maasai, in determining disputes. This renders GN 436 of 1963 to be unjust in justice administration in tribal societies in Tanzania. The formal law lacks general coverage and proper harmonization of customary law in the country, or any justifiable
mechanisms to codify and application of traditional justice system in Tanzania.

The applicability of customary law (Maasai customary law included) is also affirmed in several court decisions, which recognized the validity and legitimacy of the law in Tanzania. For example, in the case of Maagwi Kimito V. Gibeno Werema,\textsuperscript{20} where the Court of Appeal of Tanzania held that, “Customary laws of this country now have the same status as any other law subjects only to the constitution and other statutory law that may provide to the contrary”.

In the case of Joseph Constantive v. Losilale Ndaskoi,\textsuperscript{21}, the plaintiff agreed to build a house for the defendant and, in return, defendant was to give the plaintiff a piece of land. Both parties were Waarusha. The plaintiff entered the land and carried out a number of improvements. He failed to build the house for the defendant. The defendant forcibly ejected the plaintiff from the land. The plaintiff, in an action brought initially in the High Court, claimed under customary law, compensation for unexhausted improvements, including permanent trees and some houses and produce. In earlier proceedings, the

\textsuperscript{20} [1985] TLR 132 (CAT)
\textsuperscript{21} HCD (1968) 381
defendant claimed title to the land on the basis of Maasai customary Law (Waarusha section).

It was held that (1) The dispute is governed by Maasai Customary (Waarusha) Law, because (i) plaintiff based his claim upon it and not upon the Law of Contract Ordinance; (ii) both parties had accepted that the agreement was governed by customary law; and (iii) defendant’s claim for title of the land had been governed by customary law, and it would now be illogical to decide the question of unexhausted improvements on a different basis; (2) Since the agreement was governed by customary law, the Law of Contract Ordinance was excluded by section 1 (3) of that Ordinance, as amended in the Magistrates Courts Act of 1963, Sixth Schedule; (3) By Section 57(1) of the Magistrates Courts Act, no proceedings relating to immovable property under customary law could be instituted in any court other than a Primary Court without the leave of the High Court.

The Local Customary (Declaration) Order, which codified some customary laws in the country, was challenged, and declared unconstitutional by courts of law in number of court decisions. These decisions affected the application of customary law in Tanzania. For example, In the High Court case of Bernado Ephrahim v Holaria Pastory & Gervazi
Kaizilege the late High Court Judge Mwalusanya, declared the custom of denying women’s right to inherit land unconstitutional and discriminatory. He found Rule 20 of GN.436 of 1963 discriminatory and therefore inconsistent with article 13(4) of the Constitution of Tanzania, which prohibits discrimination.

This ground-breaking case was used by Tanzanian human rights activists in the case of Elizabeth Stephen and Salome Charles v The Attorney General, which sought to have the High Court direct the Attorney General to make amendments to the customary law and declare the Customary Law (Declaration) Order unconstitutional. However, The High Court rejected the petition to declare the Customary Law (Declaration) Order unconstitutional, despite the courts admission that customary inheritance law discriminates against widows and female children. It was held by Justice Mihayo that,

“There were other remedies through which the affected widows could access their rights, instead of declaring the law unconstitutional.”

The court said nullification of the law would create confusion among members of different societies

---

22 (HCT) Civil Appeal No. 70 of 1989 (unreported),
23 HCT (DSM) 2005 (unreported)
because Tanzania has many tribes. Apart from Mihayo J. decisions, the country legal system is still reluctant to apply the traditional justice system (Ilkisongo justice included) and left the discretion to the courts to decide whether to apply the traditional justice system or not.

However, the problem with Maasai customary law (like any other African customary law) is that, disputes are not classified as either criminal or civil. Maasais have procedures for dealing with all matters that may disrupt social stability including criminal offences such as murder, manslaughter, stealing, assault, common abuse, adultery, and other offenses. The formal justice system rejects applications in criminal matter where the law specifically requires the application to be in a civil matter. For example, the Judicature and Application of Laws Act,\textsuperscript{24} provides under section 9(1) (b) that:

\begin{quote}
“Customary law shall be applicable to, and courts shall exercise jurisdiction in accordance therewith, in matters of civil nature “relating to any matter or status or succession to, a person who is or was a member of a community in which rules of customary law relevant to the matter are established and accepted...”
\end{quote}

\textsuperscript{24} [Cap 453 R. E 2019]
Tanzanian laws prohibit the use of customary law in criminal matters. An important issue for consideration is to determine when, how, and under what circumstances they cannot apply in criminal cases. Laws in Tanzania limit the application of customary laws and deem them inferior to State laws.

Nevertheless, the problem with these provisions of the law is, it gives the court the discretion to determine which customs are unjust and which are not. In doing so, the courts assess whether a certain practice is detrimental to the physical and emotional wellbeing of a person, and they also use laws from other States to determine what actions are repugnant to justice. In exercising this discretion, the courts may deem a custom as repugnant to justice and morality without fully evaluating the consequences of making the custom illegal. Looking at the experience from Kenya where Maasai communities live, the High Court of Kenya in Katet Nchoe and Nalangu Sekut v R\textsuperscript{25}, held that the Maasai custom of circumcising females was repugnant to justice and morality. The courts disregarded the customs and practices of the Maasai and held that since female genital mutilation caused physical pain, it was repugnant to justice and morality based on the fact that this practice is harmful to the

\textsuperscript{25} Criminal appeal no. 115 of 2010
physical and social wellbeing of a citizen. This decision seems rational and well-informed, but a further analysis makes it fall to pieces. The decision may be unjust to uncircumcised Maasai women who are shunned by their male counterparts because of being uncircumcised. The same decision does not answer the question whether the courts will compel Maasai men to marry their uncircumcised women or not, or at what time customary law will be considered repugnant to justice. It begs the question regarding the criteria used to deem the practice unjust.

There is a slight different between Tanzanian and Kenyan courts. The constitution of the United Republic of Tanzania of 1977\textsuperscript{26} does not speak clearly about the application of customary law in Tanzania. In Kenya, unlike Tanzania, courts are constitutionally empowered to use traditional dispute resolution mechanisms when resolving an issue. For example, Article 159 (2) (c)\textsuperscript{27} provides that ‘courts are to be guided by the principles of traditional dispute resolution mechanisms’. However, under Article 159 (3) the Kenyan Constitution, 2010, limits the application of traditional dispute resolution mechanisms by stating that they should not be used in a manner that contravenes the Kenya Bill of Rights. Herein lies an inconsistency with other written laws and this may

\textsuperscript{26} [Cap 2 R. E 2002]
\textsuperscript{27} Kenya Constitution, 2010
result in outcomes that are repugnant to justice and morality. Despite this limitation, it is still worth noting that the introduction of the use of traditional dispute resolution methods in the Kenyan Constitution is a step in the right direction for customary law. The Judiciary has also published guidelines for promotion and application of Alternate Justice and Dispute resolution mechanisms in the country.

Often the challenge of the State-administered justice system and applicable laws is the privileging of individual rights over collective and communal rights. The logic of the Maasai system (though still safeguarding individual rights) is that, when the whole is in peace and harmony, the individual actors in it are safe and secure as well.

The Recognition of ADR and traditional dispute resolution mechanisms is thus predicated on these cardinal principles to ensure that everyone has access to justice, and that disputes are to be resolved expeditiously and without undue regard to procedural hurdles that bedevil the court system, as they are very informal.

Tanzania has a lot to learn from her sister Kenya, which is a home to many Maasai communities and other African tribes. Tanzania has to proceed from the
recognition of the diverse cultures of the various communities in the country.

6.0 CHALLENGES FACING MAASAI CUSTOMARY LAW
Today, the application of customary law by courts in Tanzania (Maasai customary law included) presents at least two issues: i) It would be remiss to assume that the application of customary law in the modern courts, both now and in the future, is not fraught with difficulties. Maasai society has developed vastly in a number of issues since the pre-Colonial period, while their customary law has not changed much; ii) Its unwritten nature, lack of bounding references, inherent favoritism of the male gender, etc, are definite contributions to its lack of appreciation and absorption, in modern legal systems.

6.1 Unwritten nature of the Maasai customary laws
Like any other common law country, courts in Tanzania apply their constitution, customary laws, Acts of Parliament, Common Law, and the doctrines of Equity, as per the Judicature And Application Of Laws Act.28 The Tanzanian Constitution, 1977 states generally the right to cultural practice.29 However, the Constitution does not specifically mention the word customary law in Tanzania. The Local Customary Order, 1963, limits the application of customary laws to

28 Section of the Judicature and application of laws Act [Cap R.E 2019]
mainly matters related to inheritance. There are a number of customary laws generally recorded and codified in that order, to govern African communities of patrilineal nature, that is societies for which inheritance passes through the male line, but not covering more than 120 tribes in Tanzania and their customary laws, which are all very different from each other. The Maasai customary laws are not written anywhere but they are recalled by the member of the society at large. This lack of formalization can be attributed to the difficulty in establishing a particular customary law, the disregard and demeaning by the Colonial and consequent governments, and the marginalization of indigenous communities in accessing formal education. This is mainly because unlike formal laws, which tends to be uniform, and are amended from time to time, and which are issued formally and publicized, customary law (Maasai customary laws) in Tanzania is diverse and ‘remains largely unwritten or recorded, informal, and often difficult to ascertain, compared to any other law in Tanzania.

6.2 Repugnancy clause
This is the ability to achieve justice using customary law. Customary law application is allowed (Maasai laws included) in Tanzania, on condition that it is not repugnant to justice. This alerts the courts in Tanzania, and deters them from the general usage of customary
laws, and leads most decision makers to not even try to use customary law whenever the issue before the court involves parties of the same tribe.

6.3 Jurisdictional Issues
During the Colonial period, African customary law was only applied when the parties were both Africans regardless that they belonged to different tribes. Even today customary laws apply only to the members of its specific community. The Maasai customary laws apply only to the Maasai people and not to other tribes. Therefore, the courts sometimes fail to distinguish between Maasai sections or clusters or lack proper personnel to remind the courts about the existences of these laws within the Maasai people, due to the fact that many of these laws are in unwritten form.

7.0 CONCLUSION
In conclusion, this discussion about the nature of Maasai customary and justice system, principles used, institutions involved in disputes resolutions, which proves that this society has reasons to be stable for centuries now. This discussion was mostly limited to justice system among Ilkisongo and Purko sections and its sub-sections within the Maasai people of northern Tanzania. This work reveals how lack of recognition of traditional disputes settlement of the Maasai people, by national legal frameworks has contributed to continuous dismantling of Maasai justice systems, their
valuable laws, and their disciplined society. The discussion further observed how the Government of Tanzania failed to recognize and properly enforce customary law in the country, while several international instruments, which Tanzania is the party to, are recognized, promoted and used.

To the Ilkisongo and Purko people, justice connects everyone involved with the problem and handles the problem in its entirety. The involvement of elders, curses, excepted social principles, and the age group set-up, prevents urge to revenge between the disputants. We conclude that some future comparative study should be done on this subject to find innovative ways to maintain social harmony in a sustainable way, by convincing the Government of Tanzania to adjust its legal system for smooth enforcement of customary law and the traditional justice system. For Maasai customary law to work for the Maasai people, and Kisongo and Purko in particular, a number of things ought to be taken into account, including:

Tanzania traditions and customs should be taught to the younger generation in the formal education system, to enhance the respect for Tanzania cultures, especially the justice system, institutions, and principles used in the administration of justice.
There is need to develop a clear legal and policy framework for the application of customary law, that ensures proper recognition of customary law in Tanzania, that respects customary practices and institutions. In resolving disputes. The courts in Tanzania should first opt for customary law before approaching the formal justice systems, and certain personal relations such as marriage, divorce, child custody, maintenance, succession and other related matters, should be determined using customary law.

Most customary law, customs, and practices, are neither written nor codified since they are passed orally from generations to generation. They are at great risk of dying away and should therefore be properly protected and codified.

The tribal people of Maasai are fast losing their material culture of profound knowledge of livestock, the environment, and wildlife. The traditional rites of passage that pass Maasai cultural values and knowledge from one generation to another are waning. The passing of traditional elders, a lack of documentation, and rapid modernization, are obliterating Maasai traditions and knowledge. We then recommend that, all Kenyan Maasai sections and Ilpurko section of Tanzania should adopt (Ilaig’uanak lo Olosho) Clan Chief System. This will unify all Ilmaasae in the future and prevent losing their
culture, and this will enhance the continuity of traditional practices and rites, and regulate and bind the sole principles of justice through the league of Council of Elders from all sections, and clans. This provides a single voice for the Maasai people in matters regarding customs, beliefs, norms, and traditional values.
8.0 REFERENCES


8) Francis Kariuki ‘Applicability of Traditional Dispute Resolution Mechanisms in Criminal Cases in Kenya: Case Study of Republic v Mohamed Abdow Mohamed [2013]


10) Marguerite Johnston ‘Giriama Reconciliation’ Vol. 16 African Legal Studies (1978) at pp. 92-
Johnson notes that the possibility of reconciliation is dependent on the disputants’ broader social relationship, of which the dispute is but a partial reflection.


LIST OF INTERNATIONAL INSTRUMENTS
1) Convention on Biological Diversity, 31 ILM, 1992
2) International Labour Organization Convention 169 on Indigenous and Tribal Peoples in Independent Countries

LIST OF LEGISLATIONS
2. The Kenya Constitution, 2010
3. The Interpretation of Laws Act No. 4 of 1996
5. Customary Law (Declaration) Order, 1963, GN No. 436
7. The Magistrates’ Court Act [Cap. 11 R.E 2019]

LIST OF CASES
1. Bernado Ephrahim v Holaria Pastory and Gervazi Kaizilege (PCC) Civil Appeal No. 70 of 1989 (unreported)
2. Elizabeth Stephen and Salome Charles vs The Attorney General, HCT (DSM) 2005 (unreported)
4. *Re Innocent Mbilinyi* [1969] HCD No. 283
P.O BOX 1088 -20500
ILEPA Offices,
Total Area, Narok-Bomet Road,
Narok, Kenya

Tel: +254 705 905334/+254 722 300 540
Email: info@ilepa-kenya.org
Website: www.ilepa-kenya.org