

Unearthing the unfinished: Revisiting the German project on Tanzanian customary law for modern legal development

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https://doi.org/10.29053/978-1-0672373-9-4_10

1	Introduction.....	254
2	Pre-colonial Tanganyika.....	255
3	Justice administration during German colonialism.....	256
4	Indigenous resistance to German colonisation.....	257
5	Today's Tanzanian legal order	257
6	Collecting customary rules as a colonial project.....	258
7	Customary law in pluralistic legal orders.....	259
8	Revisiting the unfinished: The forgotten project on customary law	261
9	Legal pluralism and restorative justice as lenses for post-colonial legal reform	262
10	Practical pathways for integrating customary justice in Tanzania.....	263
11	Conclusion	265

Abstract: *Between 1885 and 1918, German colonial rule in Tanganyika established a racially divided legal system that privileged European settlers over African communities. While courts in Dar es Salaam served the colonial elite, Africans were largely governed through customary law administered by colonial intermediaries. Although the German administration initiated efforts to document Tanzanian customary law, the project remained incomplete, leaving a fragmented record of indigenous legal traditions.*

Despite these disruptions, Tanzanian communities sustained their systems of reconciliation, social harmony and restorative justice traditions, offering a more humane and inclusive vision of the law.

This chapter revisits the unfinished German project both as evidence of colonial interference and as an opportunity for renewal. It argues that revitalising Tanzanian customary law within a pluralistic framework is key to restoring cultural legitimacy and social trust.

Grounded in international legal instruments, the study affirms the right of communities to shape their own systems of justice. Prioritising indigenous traditions is not a rejection of modern law but a reaffirmation of cultural identity, dignity and continuity. Re-engaging with local legal knowledge through a decolonised partnership invites Germany to act not as a former coloniser, but as a partner in supporting the restoration of Tanzania's legal heritage.

1 Introduction

Justice encompasses fairness, equality and the moral order that sustains social balance. While Rawls conceives it as fairness secured through systems that protect rights and opportunities,¹ Gyekye emphasises mutual respect and shared responsibility,² and Mbiti highlights the restoration of social harmony through reconciliation.³ In pre-colonial Tanganyika, justice was largely understood in these terms as a communal process centred on reconciliation and social cohesion.⁴ When communities are excluded from such processes, the traditions that sustain their social fabric gradually erode.⁵ Indigenous justice systems, therefore, deserve recognition.⁶

The 1884 Berlin Conference marked not only the territorial division of Africa, but also the disruption of long-standing systems of self-governance and justice.⁷ In Tanganyika, German colonial rule (1885 to 1918) imposed legal institutions detached from local realities, replacing

1 J Rawls *Justice as fairness: A restatement* (2001) 5.

2 K Gyekye *An essay on African philosophical thought: The Akan conceptual scheme* (1987) 14.

3 JS Mbiti *African religions and philosophy* (1990) 266.

4 J Gabagambi 'An East African comparative study of indigenous versus post-colonial restorative justice in Tanzania' in T Gavrielides (ed) *Comparative restorative justice* (2021) 65.

5 S Sankan *The Maasai* (1971) 14.

6 J Braithwaite 'Restorative justice: Assessing optimistic and pessimistic accounts' (1999) 6 *Crime and Justice* 85.

7 J Ilife *Tanganyika under German rule 1905-1912* (1969) 3.

indigenous norms with foreign structures administered by foreign officials.⁸ This legacy continues to shape Tanzania's legal system today.⁹

Tanzania now stands at a crossroads, facing the dual challenge of, on the one hand, addressing the remnants of colonial legal systems left behind by the Germans and the British and, on the other, constructing a framework that reflects its own cultural values and social realities. This chapter does not seek to revive colonial codification, but to reassess customary law on its own foundations. Rather than reinserting it into a hierarchical colonial framework, it calls for restoring its normative legitimacy within a modern constitutional order.

Revisiting customary law aims to identify elements that can contribute to a more inclusive, culturally grounded and restorative system of justice. While existing scholarship has examined colonial codification and legal pluralism, little attention has been given to the unfinished German effort to document customary law and its lasting impact. This chapter seeks to continue that unfinished conversation, grounding contemporary legal development in the lived experiences and values of Tanzanian communities.

2 Pre-colonial Tanganyika

In pre-colonial Tanganyika, justice systems were communal and restorative, led by elders. In communities such as the Haya, Nyakyusa and Zaramo, they resolved conflicts through dialogue, apology, restitution and reconciliation.¹⁰ Among the Haya, mechanisms such as the *baraza* and institutions such as the *Ntegeka ya Bagurusi* reflected this approach,¹¹ while the Zaramo emphasised relationships, trust and spiritual dimensions.¹² In more serious cases, including accusations of witchcraft, local courts, diviners and rituals were used to restore social

8 RP Celestin 'Impact of the Berlin conference (1884-1885) on EAC development: 140 years after the divide of Africa' (2025) 6 *International Journal of Political Science and Public Administration* 27.

9 F Becker 'Locating the "customary" in post-colonial Tanzania's politics: The shifting *modus operandi* of the rural state' (2019) 13 *Journal of Eastern African Studies* 146; M Nicholson 'Change without conflict: A case study of legal change in Tanzania' (1973) 7 *Law and Society Review* 754.

10 Eg G Wilson 'Introduction to Nyakyusa law' (1937) 10 *Journal of the International African Institute* 29.

11 As above.

12 L Swantz *The medicine man among the Zaramo of Dar es Salaam* (1990) 121.

and spiritual balance. The Nyakyusa also grounded justice in community relationships rather than formal courts. Disputes were mediated by trusted neighbours or elders, with witnesses playing a role in criminal matters.¹³ Serious conflicts, such as those involving land or marriage, were addressed in public hearings to ensure fairness and communal acceptance.¹⁴ For the Nyakyusa, justice aimed to restore harmony and maintain respect, integrating legal practice directly into everyday life.

Hutt, district officer of the Iringa District since 1932, and Brown, a leading British anthropologist, defined the role of the chief before colonisation as judge, maker and guardian of the law, the repository of wealth, dispenser of gifts, and leader in war.¹⁵

3 Justice administration during German colonialism

Colonial powers viewed African indigenous people as inferior and imposed foreign legal systems, while claiming to 'civilise' them.¹⁶ Indigenous systems of justice were widely practised throughout Africa prior to their replacement by colonial administrations, which introduced foreign legal frameworks.¹⁷ Under the German colonial rule since the late nineteenth century, customary law was formally recognised, but controlled, reshaped and only applied when it served colonial interests.¹⁸ Indigenous justice systems, which were originally community-based, flexible and oriented toward reconciliation, were later standardised, constrained and adapted for purposes of administrative control.¹⁹ Customary norms were applied through native courts and recognised chiefs, but under administrative supervision and procedural rules introduced by the state. Under both German and, later, British rule, traditional institutions such as the *Ntegeka ya Bagurusi*

13 Wilson (n 10) 29.

14 Swantz (n 12) 26.

15 G Brown & AMB Hutt *Anthropology in action: An experiment in the Iringa District of the Iringa Province Tanganyika Territory* (2018) 172.

16 J Haustein 'Strategic tangles: Slavery, colonial policy, and religion in German East Africa, 1885-1918' (2017) 14 *Atlantic Studies* 499.

17 R Peacock 'Restorative justice and access to justice: Critical reflections of the Global North-South divide' (2023) 6 *The International Journal of Restorative Justice* 192.

18 A Redmayne & C Rodgers 'Research on customary law in German East Africa' (1983) 27 *Journal of African Law* 27.

19 cf B Garth 'Comment: A revival of access to justice research' in R Sandefur (ed) *Access to justice* (2009) 258.

lost much of its independence, reduced to handling minor cases under supervision. German administrators distorted local legal systems by replacing community mediation with alien and punitive colonial courts, standardising fluid customs into rigid rules, and treating disputes as offences against colonial authority. Tanganyikan law was only recognised when it served the interests of the colonial government. It was denied the space to develop, reducing it to a second-class status within its own land.

4 Indigenous resistance to German colonisation

In German-ruled Tanganyika, a racially unequal system emerged in which Europeans were subject to German imperial law, while Africans were governed under restrictive supervision and denied equal rights.²⁰ Indigenous communities resisted colonial rule and the imposition of foreign legal systems that displaced their own. The most significant uprising was the Maji Maji rebellion (1905 to 1907).²¹

Another notable resistance was led by Chief Mkwawa of the Hehe in the Iringa region. Following continued opposition, including attacks on caravans, a German expedition was defeated in 1891. A larger force returned in 1894, destroyed Uhehe, and overran Mkwawa's stronghold; he ultimately chose suicide over capture.²² German responses to resistance were marked by executions, imprisonment, collective punishment and the suppression of indigenous governance, reflecting severe coercion rather than the 'civilizing' mission they claimed to advance.

For the Hehe, Mkwawa's final stand is remembered as an effort to defend their autonomy and legal traditions, with his death symbolising both the loss of sovereignty and the erosion of cultural identity.

5 Today's Tanzanian legal order

In Tanzania, customary law remains only partially integrated into the modern legal system and is often marginal in practice. Although recognised under statutes such as the Judicature and Application of

20 J Iliffe *Tanganyika under German Rule, 1905-1912* (1969) 184.

21 J Iliffe 'The organisation of the Maji Maji rebellion' (1967) 8 *Journal of African History* 497.

22 A Redmayne 'Mkwawa and the Hehe wars' (1968) 9 *Journal of African History* 409.

Laws Act, it must conform to statutory law and not be ‘repugnant’ to justice or morality. In effect, this subjects customary norms to external legal standards, creating a hierarchical system in which their legitimacy depends on conformity to foreign principles. Rooted in colonial doctrine, these repugnancy clauses constrain the autonomous development of customary law and limit its capacity to reflect Tanzanian social values and legal philosophy.²³ As a result, despite constitutional recognition, customary law is largely confined to civil matters and minor criminal cases. Historically, however, it addressed even serious offences; for instance, the Maasai have resolved murder cases through restorative justice.²⁴

International instruments such as the United Nations (UN) Declaration on the Rights of Indigenous Peoples (UNDRIP)²⁵ and the African Charter on Human and Peoples’ Rights (African Charter)²⁶ emphasise the right and importance of preserving and integrating indigenous legal systems. However, Tanzania’s legal structure remains largely aligned with foreign, adversarial models, limiting its ability to fully reflect its own legal heritage and weakening the cultural legitimacy of its justice system.²⁷

6 Collecting customary rules as a colonial project

German colonial authorities in Tanganyika recognised the importance of customary law for the local population. They sought to document and systematise the law to administer justice more effectively through existing chiefs and native tribunals rather than applying German civil law across all areas of life.²⁸ German scholars also showed a genuine academic interest in the legal system, treating it as valuable material for comparative and anthropological study.

23 YTW Bennett & T Vermeulen ‘Codification of customary law’ (1980) 24 *Journal of African Law* 206.

24 J Gabagambi ‘The applicability of restorative justice in the Tanzania’s criminal justice system’ PhD thesis, Open University of Tanzania, 2022 112.

25 United Nations UN Declaration on the Rights of Indigenous Peoples, 13 September 2007, <https://undocs.org/A/RES/61/295> (accessed 28 July 2025).

26 Art 17 African Charter, 1 June 1981, https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf (accessed 2 April 2026).

27 Gabagambi (n 4) 66.

28 H Sippel ‘Customary family law in colonial Tanganyika: A study of change and continuity’ (1998) 31 *Comparative and International Law Journal of Southern Africa* 373.

Although framed as a means to respect local practices and promote consistency in administrative and judicial decisions, the project primarily served colonial governance by rendering customary law more manageable within a controlled framework rather than preserving the conditions for its autonomous development.²⁹ In the process, flexible and evolving law was transformed into a more fixed system shaped by administrative and judicial demands, often reconfigured to fit colonial legal structures.³⁰

This colonial legacy continues to influence the present, contributing to the marginalisation of customary law within Tanzania's legal system. While these traditions persist, their scope is progressively narrowed as they are required to conform to external legal standards. In this way, German colonialism disrupted local approaches to conflict resolution and conceptions of fairness.

7 Customary law in pluralistic legal orders

Colonial legal systems were designed to control populations and reshape indigenous law, often recognising customary practices only superficially.³¹ Today, legal pluralism exists in a hierarchical form in which state law dominates, while customary law remains marginal.

The challenges surrounding customary law reflect deeper tensions between the inherited colonial legal framework and indigenous cultures. The colonial legal system in Tanzania is grounded in adversarial procedures, rigid evidentiary rules, technical regulations, and individualised rights features that contrast sharply with the restorative orientation of customary practices centred on dialogue, communal participation and the restoration of social harmony.³² What may be described as the foreign dimension of the law lies not only in its origin, but in its procedural logic and underlying assumptions about dispute resolution. Once cases enter the criminal justice system, they are treated as offences rather than interpersonal disputes, becoming state-driven processes that leave little room for restorative approaches.

29 A Redmayne 'Research on customary law in German East Africa' (1983) 27 *Journal of African Law* 34.

30 M Chanock *The making of South African legal culture 1902-1936* (1985) 3.

31 S Joireman 'The evolution of the common law: Legal development in Kenya and India' (2006) 44 *Commonwealth and Comparative Politics* 5.

32 N Kilekamajenga 'Referral mechanisms for restorative justice in Tanzania' (2018) *South African Crime Quarterly* 17.

Although pre-colonial systems were imperfect and at times punished the innocent, such as in cases of witchcraft, these errors reflect human fallibility rather than systemic failure.³³ They invite a renewed recognition of their human-centred approach in which responsibility is often shared and the aim is reconciliation rather than punishment.³⁴ For example, an aggrieved party might be asked why they chose to bring the dispute before the elders rather than to forgive the offender.³⁵

Scholars such as Robins argue that criminal justice cannot succeed without grounding in local customs.³⁶ Similarly, Possi notes that Tanzanian communities have lost confidence in a justice system that excludes them from meaningful participation in disputes affecting their lives.³⁷ As a result, community-based mechanisms are widely perceived as more accessible, effective and humane than formal courts, which can appear distant, costly and unresponsive, particularly for rural and economically vulnerable populations.³⁸ Courts tend to marginalise traditional dispute resolution, treating it as secondary.

This dynamic creates a gap between legal recognition and lived legitimacy, as well as tension between community expectations of reconciliation and a system centred on public prosecution.³⁹ Ultimately, these differences reflect competing understandings of justice. Legally valid outcomes may fail to resonate with societal notions of fairness,

33 As above.

34 JJ Gabagambi 'Tête-à-tête with Tete: Supporting exonerees of wrongful convictions in Tanzania through restorative justice' (2020) 8 *Internet Journal of Restorative Justice* 1.

35 L Mbunda 'Dispute settlement: Pre-colonial to post-independence Tanzania' LLM dissertation, University of Dar es Salaam, 1985 27.

36 S Robins 'Restorative approaches to criminal justice in Africa' in Institute for Security Studies *The theory and practice of criminal justice in Africa* (2009) 57, <https://issafrica.s3.amazonaws.com/site/uploads/M161C4.PDF> (accessed 7 July 2025).

37 A Possi 'It is better that the guilty escapes than that one innocent suffer' (2017) 1 *African Human Rights Yearbook* 320.

38 N Kilekamajenga 'Learning from contemporary examples in Africa: Referral mechanisms for restorative justice in Tanzania' (2018) *South Africa Quarterly Crime* 23; F Kiwanga 'Access to customary law jurisprudence from Kenyan courts: Implications for traditional justice systems to justice in Tanzania: It is high time the legal system was decolonised' 29 May 2023, <https://www.thecitizen.co.tz/tanzania/oped/access-to-justice-in-tanzania-it-is-high-time-the-legal-system-was-decolonised-4250022?utm> (accessed 29 July 2025).

39 As above; F Kariuki 'African traditional justice systems, <http://kmco.co.ke/wp-content/uploads/2018/08/African-Traditional-Justice-Systems.pdf> (accessed 14 November 2025).

causing the law to appear detached as it speaks a different normative language from the people it governs. If justice is not understood by those it serves, its legitimacy remains in question.

8 Revisiting the unfinished: The forgotten project on customary law

The German initiative remained incomplete, producing only a fragmented record of legal traditions. The Germans initiated a project to document customary laws in their colonies, but it ended after Germany's defeat in World War I.⁴⁰ Also, Cory died before completing his studies of 20 Tanganyikan tribes documenting marriage, bride wealth and child maintenance customs.⁴¹ His work provides important insights but was shaped by the colonial legal framework in which it was collected. As a result, much of Tanganyika's customary legal knowledge remained under-documented and undervalued in formal legal development.

The 1963 Dar es Salaam Conference on African Customary Law sought to help newly independent African nations to shape legal systems that reflect their own traditions and values and develop African-centred legal education.⁴² However, the conference revealed a post-colonial dilemma: Political independence does not guarantee the authority or expertise to reshape inherited legal systems. Discussions were dominated by formal legal training rather than practical understanding of customary law as it operates in everyday community life, an area not easily captured through doctrinal legal analysis.⁴³ Consequently, debates focused on fitting African customs into colonial structures rather than recognising them as equal justice systems, leaving African law without the authentic identity the conference aimed to restore.⁴⁴ The conference's unfulfilled

40 Redmayne (n 22) 22.

41 NN Miller 'Tanzania: Documentation in political anthropology – The Hans Cory collection' (1968) 11 *African Studies Bulletin* 195.

42 K Quashigah 'Justice in the traditional African society within the modern constitutional set-up' (2016) 7 *Jurisprudence: International Journal of Legal and Political Thought* 95.

43 Y Ghai review of W Twining, *The place of customary law in the national legal systems of East Africa* (1964) 2 *Journal of Modern African Studies* 613; African Conference on Local Courts and Customary Law: Record of the Proceedings of the Conference held in Dar es Salaam, 8-18 September 1963, Dar es Salaam.

44 A Allot 'What is to be done with African customary law? The experience of problems and reforms in Anglophone Africa' (1950) 28 *Journal of African Law* 69.

aspirations remain relevant today, underscoring that meaningful legal pluralism requires not only formal recognition of customary law, but also engagement with it on its own terms as a vital component of a country's living legal heritage.

Revisiting this unfinished project highlights the need to engage with customary law as a foundation for Tanzania's legal development. By documenting, training in, and integrating indigenous justice practices, Tanzania can rebuild trust in a justice system that listens, heals and honours its history. Reaffirming customary law provides a pathway to community participation in justice and restoring legitimacy. It reconnects Tanzanians with pre-colonial conceptions of justice, strengthens awareness of indigenous governance and colonial legacies, and underscores its role in fostering reconciliation and social harmony. This, in turn, requires recognising customary law as a meaningful, community-based legal system under Tanzanian leadership rather than a subordinate administrative tool.

9 Legal pluralism and restorative justice as lenses for post-colonial legal reform

While this chapter highlights the erosion and resilience of Tanzania's indigenous justice systems, it is essential to situate these experiences within a broader context. This demands frameworks that explain how multiple forms of law can coexist and how justice can be meaningful for ordinary people. Two such frameworks are legal pluralism and restorative justice. Both provide intellectual grounding and a moral compass for reimagining Tanzania's legal future.

Legal pluralism recognises that multiple legal systems coexist within a single society.⁴⁵ In Tanzania, this includes statutory laws shaped by colonial history, customary laws passed through generations, and religious laws such as Islamic family law. Legal pluralism challenges the state's monopoly over what counts as law,⁴⁶ recognising that disputes may be more effectively resolved by community elders than by state

45 SE Merry 'Legal pluralism' (1988) 22 *Law and Society Review* 874.

46 Merry (n 45) 869.

magistrates,⁴⁷ and enabling customary law to operate with real authority grounded in the values of the communities it serves.⁴⁸

Restorative justice complements this perspective by offering a deeper reflection on what justice means in African contexts.⁴⁹ Restorative justice views justice not merely as legal correctness, but as the restoration of social harmony and emotional closure, posing the question of how the law might rebuild trust instead of punishing wrongdoing.

Together, legal pluralism and restorative justice offer a pathway forward: Pluralism provides space for multiple traditions, and restorative justice guides their application in the service of peace and dignity. They challenge the legacy of colonialism by asking whose justice counts and whose voice is heard. For Tanzania, embracing these frameworks could create a system that is accessible, culturally resonant, and trusted by all members of society, not only the educated or wealthy, but elders, youth leaders and community healers.

Although colonial legal legacies cannot be fully dismantled, meaningful reform requires the principled incorporation of African legal traditions, in general, and Tanzanian identity, in particular. The proposed Tanzania-German engagements may not be justified as a continuation of colonial authority, but as recognition of historical responsibility. German support, whether archival, technical or financial, should serve a Tanzanian-led process of legal revitalisation, ensuring that the project restores normative and cultural legitimacy rather than repeating historical patterns.

10 Practical pathways for integrating customary justice in Tanzania

Looking forward, practical steps can be taken to transform these ideas into reality. Regional examples illustrate the potential for integration: In post-conflict Mozambique, community courts blend state law with customary practices to provide accessible and culturally resonant

⁴⁷ As above.

⁴⁸ D Pimentel 'Legal pluralism in post-colonial Africa: Linking statutory and customary adjudication in Mozambique' (2011) 14 *Yale Human Rights and Development Law Journal* 66.

⁴⁹ Braithwaite (n 6) 1.

justice,⁵⁰ while South Africa practises and recognises customary law constitutionally, provided it aligns with human rights norms.⁵¹ Although Tanzania has similar provisions, effective implementation remains a challenge.

Tanzania could pilot a hybrid tribunal model, where community elders and magistrates sit side-by-side to resolve disputes, particularly in areas such as land, marriage and inheritance.⁵² Customary law training centres could equip elders with the tools to uphold justice while respecting constitutional values, especially around gender equity and children's rights. Policy makers might also consider the unfinished legacy of German colonialism in this area, given that the Law Reform Commission in Tanzania is yet to venture on this project. When the German administration began documenting customary law before their departure, it was a rare moment of recognition.⁵³ Germany might now support projects that document and revitalise these systems as a gesture of reconciliation. Such initiatives would allow Tanzania to reclaim its legal heritage and develop a justice system that is participatory, humane and culturally grounded.

Efforts to revive customary law must also be accompanied by a commitment of inclusivity and reform, particularly regarding gender and generational change. Women have often been excluded or silenced in both colonial and indigenous systems.⁵⁴ Revitalisation must give female elders, spiritual mediators and community leaders a central role, ensuring that justice does not reproduce old hierarchies.⁵⁵ Moreover, the Tanzanian youth risks losing touch with traditional forms of justice unless efforts are made to pass on this knowledge. Preserving indigenous law through school curricula, training lawyers in restorative processes and digital recording of oral traditions is essential to ensure that customary law evolves rather than disappears.⁵⁶

50 Pimentel (n 48) 59.

51 Kilekamajenga (n 32) 23.

52 CJ Mashamba *Alternative dispute resolution in Tanzania: Law and practice* (2014) 41.

53 Redmayne & Rodgers (n 18) 22.

54 A Fredoline 'Women and development in Africa: From marginalisation to gender inequality' (2002) 2 *African Social Science Review* 42.

55 Braithwaite (n 6) 25.

56 Gabagambi (n 4) 79.

11 Conclusion

When justice stops making sense to the people it serves, it loses its heart. This was the quiet heartbreak of German colonialism in Tanzania: a foreign system of rules and punishments speaking in another voice, disconnected from the lives of ordinary people. Yet, Tanzanian communities refused to forget who they once were. From village gatherings under mango trees to the shores of Dar es Salaam, people kept meeting in *baraza*, sharing banana beer for reconciliation, and turning to elders for guidance. These were not mere customs but acts of quiet courage, ways of preserving dignity, fairness and belonging when official courts no longer felt like home. Even today, those traditions remind us that justice is not only about laws written on paper, but about people finding peace, understanding and forgiveness together.

Tanzania now stands at a moment of possibility to reconnect its modern laws with the living wisdom of its people. The idea of legal pluralism is not a return to the past; it is a path to a justice system that feels real and human, one that listens before it judges. International frameworks such as the UN Declaration on the Rights of Indigenous Peoples and the African Charter affirm this vision, emphasising that justice should reflect culture, community and care. By training elders, preserving oral traditions and creating bridges between customary and formal courts, Tanzania can shape a system that genuinely serves its people. For Germany, recognising and supporting this revival is an act of respect and reconciliation. Together, both nations can show that justice is more than a verdict; it is something lived, shared, and deeply felt in the hearts of those it touches.

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