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WOMEN IN VILLAGE COURTS IN PAPUA NEW GUINEA

THE TRANSFORMATION OF GENDER ROLES

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As for many African countries, the legally pluralistic architecture of family law in Papua New Guinea (PNG) has become a subject of controversy. My analysis of PNG's village courts addresses scholarly debates about the subject. I use my empirical material to discuss two conflicting positions: 1) that male-dominated village courts contribute to the subjugation of women through the prescribed use of «custom»; and 2) that village courts form the only local dispute resolution forum in which women have a chance of their rights being acknowledged.

In my PhD project «Legal pluralism and the limits of state sovereignty: an ethnography of the local state in the Markham Valley, Papua New Guinea»[1] I try to achieve a broad understanding of the various relationships between the forums for dispute resolution existing in the area. I focus on one forum in particular, that of the Nazab Village Court among the Wampar. During the case[2] collection process I concentrated on gender-related disputes rather than on quarrels about damaged gardens, stolen pigs, debts or land rights[3]. My work is situated at the intersection of various debates on issues of legal pluralism, the anthropology of the state and women's access to justice.

WOMEN'S DISCRIMINATION IN VILLAGE COURTS

The constitution of PNG (1975) contains a contradiction: on the one hand, it promotes women's equality[4] but, on the other hand, it promotes the Melanesian family, an institution which is based on numerous attitudes that subordinate women. The contradiction seems to be resolved through Schedule 2.1 of the constitution itself which states that «custom»[5] shall not be applied if this is inconsistent with a constitutional law or

[1] Fieldwork was conducted with the Wampar language group in Morobe Province, Papua New Guinea from February 2002 to August 2002. Further research is planned for the summer of 2009. Fieldwork was funded by the Deutsche Forschungsgemeinschaft (German Research Council); currently my dissertation is funded by the Swiss National Science Foundation (MHV Programme).

[2] In my thesis I deal in detail with the difficulty of translating local concepts related to law.

[3] Gender-related disputes are on the increase in the research area, as several magistrates told me. Scaglion and Whittingham noted already in 1985 that, according to their findings, this was the main subject of quarrels in Abelam society (1985: 126).

[4] See Johnson (1982) for a detailed analysis of women and the constitution of PNG and Gustafsson (2003) on recent strategies by the PNG government to promote women's status in society.

[5] The Constitution defines «custom», to be applied by the village courts, as «the customs and usages of indigenous inhabitants of the country

a statute. In such cases, an act of parliament may provide the resolution for conflicts between «custom» and the constitution. The problem here is that each violation of the constitution that takes place in remote areas would have to be proven and regulated in the capital through an act of parliament.

The constitution provides the possibility for the parliament to establish «courts intended to deal with matters primarily by reference to custom or in accordance with customary procedure, or both» (section 172). The parliament institutionalised these courts through the «Village Courts Act» in 1975. Today, there are more than 1,000 village courts in PNG. Here, the above formulated contradiction between women's equality and the adoption of «custom» seems to continue. Since village courts are expected to adopt local «custom» it is inevitable that they use norms that discriminate against women (Mitchell 1982). The «evidence of conflicts between custom and the rights guaranteed under the constitution» was also discussed ten years later in a judicial assessment of the PNG legal system wherein custom was seen as «archaic and oppressive of women» (PNG Supreme Court, Annual Report by the Judges 1990: 8, cited in Goddard 2004: 2). At the same time newspapers in the country published a number of articles[6] about village courts' discrimination against women on the basis of «custom». Most of these cases were related to marital problems. More recently, women's rights advocate Sarah Garap (2000: 163ff.) came to the same conclusions about the situation of women in village courts as Mitchell. Garap's account has been cited frequently in recent publications on women in village courts (Dinnen 2001: 109; Parker 2002; Lipset 2004: 66). Through constant citation of the same cases and authors it has been generally acknowledged as a «fact» that women are discriminated against by village courts through custom. But why and how do women in rural PNG utilize these village courts which are represented in academic literature and in the media as discriminatory against women?

WOMEN'S USE OF VILLAGE COURTS

If women felt marginalised and/or oppressed in village courts one would assume that they would not entrust their disputes to these courts. One would expect women to seek settlement in other forums of dispute resolution open to them instead, forums like the district courts that apply national law. How can one explain the fact that women seem to view village courts as useful and effective for the resolution of their disputes? Women throughout PNG experience domestic violence and other violations of their rights but they nevertheless try to have their rights acknowledged in village courts: «For those who do not hold an especially strong bargaining position, such as women, the [village] court serves as an important ally» (Westermark 1985: 118). In analysing the use made of village courts by male and female plaintiffs in different parts of the country it has been shown by different authors for different points in time that women do widely submit complaints to this kind of dispute resolution forum. Disputes brought to court by women are mainly related to their asymmetrical position. They form the largest number of cases in village courts and in the village and include such themes as conjugal rights, adultery, marital problems, incest, customary divorce, bride-price, child custody and neglect of dependents. Not only do women use these courts frequently, they also «win» at least as many cases as men[7]. How do these findings fit with those claiming the subjugation of women in village courts through «custom»?

DISENTANGLING THE ARGUMENTS – LEGAL PLURALISM

The concept of and theoretical reflections on legal pluralism are useful for explaining the practices of village courts and help to disentangle the misconceptions underlying the debate mentioned above. Legal pluralism refers to the fact that within a given territorial unit (e.g. a nation-state) more than one legal order exists. For PNG this kind of legal plurality is anchored in the constitution and national laws and is achieved through promoting the use of custom in village courts and the use of national laws in the other courts of the judicial system. Legal pluralism also refers to the existence of more than one legal order within a given semi-autonomous social field (Moore 1973; see also Woodman 1998: 41). Such a social field is characterized by its rule-creating force and its self-regulation. It is semi-autonomous because it overlaps with

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5 (Fortsetzung) existing in relation to the matter in question at the time when and the place in relation to which a matter arises, regardless of whether or not the custom or usage has existed from time immemorial» (Constitution 1975, Schedule 1.2 [1]). There is no mention of «culture» in this context and it seems as if custom/culture were understood to be interchangeable.

6 The articles were re-published in *Research in Melanesia* (1992, 16: 95-99).

7 See, for example, Gordon and Meggitt (1985), Westermark (1985), Scaglion and Whittingham (1985), Toft et al. (1986), Scaglion (1990), Goddard (2004).

other such social fields, is influenced by them and yet still exhibits identifiable boundaries. Santos later developed his concept of interlegality as something more adapted to describe situations of legal plurality. He defines interlegality as «the conception of different legal spaces superimposed, interpenetrated, and mixed in our minds as much as in our actions, on occasions of qualitative leaps or sweeping crises in our life trajectories as well as in the dull routines of eventless everyday life. [...] Our legal life is constituted by an intersection of different legal orders, that is, by interlegality» (Santos 2002: 437).

I use the concept of legal pluralism in Santos' sense to analyse village courts and their practice in PNG. Different legal spaces overlap – i.e. the villagers within the jurisdiction of a village court, people from the province (Morobe) within the jurisdiction of the district court, members of the Lutheran church community – and in a highly dynamic process the mixing of legal orders takes place. Decision-making legal actors such as magistrates, peace officers, complainants and defendants mix legal orders based on national law, local law and Christian norms[8] as well as village court officials' personal perceptions of right and wrong. Even if village court personnel are appointed as local experts on «custom» they have, even so, to follow many rules laid out in the «village courts handbook». Since very often they have not been trained «on the job», there is often confusion about the instructions given in the handbook (see, for example, Goddard 2004: 3). In the processes of dispute resolution resulting from the mixing of state and non-state legal orders a new hybrid form of law is generated. This is recognized as the case by village court officials. They state that they treat disputes according to «the new way» (Westermark 1985: 107). The local population conceives of their village court as a forum «outside» the village rather than as something that is part of the village itself (Scaglion and Whittingham 1985: 132). So, contrary to the intention of the state when it was installing the village courts, women (and men) actually escape from «custom» entering instead a sphere consisting of a new hybrid law when using village courts.

This is not to argue that women's rights are never violated in village courts. The court officials' power may lead to abuse of their authority. My argument, however, is that village courts do not, as institutions, systematically discriminate against women. Rather, they help women to overcome customary discrimination in the villages and open up a new forum for the negotiation of gender roles. In the following sections I substantiate my argument with the analysis of a case study taken from my own data.

THE BACKGROUND, THE DISPUTE AND THE RESOLUTION

The dispute discussed below took place between 2000 and 2001 and had finally been settled when I conducted fieldwork. The life stories of the couple involved in the dispute are not unusual and reflect the prevailing gender roles of Wampar men and women. Fanintsru (f.) and Boneng (m.) were both born in 1973, grew up and lived in Munun village and got married in 1995. Both of them had a school education: Boneng had finished high school while Fanintsru had studied up to Grade 8. They lived with their son Godila (born 1996) in their own house, close but not next door to the house of Boneng's family. Boneng worked in the nearby town of Lae in a company producing motors. Fanintsru farmed the gardens, sold the produce at the local market, looked after Godila and did the housework. Boneng used to give his salary to his wife regularly, keeping a small part for himself for commuting expenses. As he was paid fortnightly she received about Kina 270 (CHF 105) every two weeks and spent this money on family and household needs.

In 2000, over a period of about two months, Boneng only provided Fanintsru with Kina 50 and, at the same time, did not always come home at weekends. In the end Fanintsru was informed by a relative of hers that Boneng was seeing another woman, Maria.

Fanintsru tried in vain to mobilize kin and church support, these representing the different dispute resolution forums available in the village[9]. Failing to draw support for

[8] Missionary activity (proselytisation) in PNG begun at the end of the nineteenth century and has been very successful from the missionaries' point of view. Today, Christian ideals and morality are considered «traditional» by my informants. The Christian missionaries' contribution to subjugating women in PNG has been discussed in recent literature (Gustafsson 2003: 23ff.).

[9] There are several forums of dispute resolution available in the villages that are not recognized by the state. One is a weekly meeting run by the church elders, the other is ad hoc counselling through church connected councillors, the third is the family of a party to the dispute where opinion is formed. The first is public, taking place at the main meeting place of the village at night with the participation of everyone interested in raising a problem or contributing to a conflict. The second is exclusively private, including only the parties to the dispute and the councillors. These forums are closer to local tradition than the village court.

herself in her difficult situation, she approached Nadzab Village Court[10]. The magistrate summoned the husband and his lover to a court hearing, where they admitted their guilt. Fanintsru asked for the money her husband owed her and for compensation for the damage to her reputation resulting from the adultery. Boneng and Maria were directed by the court to stop seeing each other and were ordered to each pay Kina 200 to Fanintsru as compensation for the adultery and Kina 50 as a fine to the court. Boneng complied but Maria did not.

Boneng and Maria later restarted their relationship. This time, Fanintsru did not engage the village court. Instead, she used self-help and went directly with two female friends to Maria's workplace in Lae town where she hit Maria. Afterwards Fanintsru also quarrelled with Boneng. Fanintsru tried to involve the pastor of Munun village for a second time but he refused since the case had already been in the hands of the village court. Only at this point did Fanintsru inform the magistrate and the case then proceeded to its next hearing where the court order was repeated. Maria, however, paid neither the court fine nor the compensation.

A year later Fanintsru and her son Godila fell sick. She was advised by a relative to forgive Maria «for her sin» in order to be healed[11]. Fanintsru abandoned the dispute resolution procedure of the village court. Instead she invited Maria and Boneng and their respective parents and close relatives and the village's church elders to a «traditional» reconciliation ceremony, including «*stia tok*», reprimands and exhortations by the church elders and collective eating and drinking. In the end, an agreement known as a «shake hand» between Maria and Fanintsru settled the dispute. Fanintsru finished telling her story to me with the expression «*mi bel kol nau*» (*tok pisin*: my belly is cold), meaning that she no longer was angry. To the best of my knowledge, Maria and Boneng lived happily ever after.

ANALYSIS

I started with the assumption that village courts provide an important arena at the local level for women. This was true for Fanintsru as well even if, in the end, her case was settled via another forum. Fanintsru did «forum shopping» (v. Benda-Beckmann 2001: 29) when she searched for a remedy within different legal spaces with different legal orders: within the family, the village, the church, through self-help and at the village court.

Nadzab Village Court applied a new, hybrid form of law that had been created within its jurisdiction, influenced by local norms about compensation and gender roles as well as national laws on women's rights. According to this it would have been Boneng's duty to share his salary with Fanintsru in order to provide cash for the household. She did not receive any reimbursement for this, however. That compensation for adultery was needed was acknowledged not only with respect to her husband but also to Maria. The kind of compensation payment that Fanintsru received did not exist until village courts were introduced. Women traditionally had to tolerate not only their husbands' adultery but polygamy as well. With Christianity, polygamy became less prevalent but it still exists in the area as census data from different villages shows. Fidelity in marriage as a norm deeply rooted in Christian belief and morality adds to the hybridity of the law as applied by the magistrate.

The dispute continued through the re-adultery of Boneng and Maria. This time Fanintsru chose another remedy instead of involving the village court again. Self-help is the traditional remedy by which dispute resolution is channelled into more sophisticated mechanisms of settlement achieved through the installation of village courts. This traditional remedy had been pointed out to Fanintsru by the village court's peace officer. He had told her during their first encounter to either take action by herself (starting a fight with the other woman without involving the court) or to put the case in the hands of the court directly. Fanintsru actually combined these options. She used self-help when fighting Maria. Afterwards she tried to involve another forum through contacting the pastor for a second time, without a positive response however. Only then did she take the case back to court where it was treated as a breach of a court order, thereby reinforcing the older court order. For the period of about a year the magistrate did not take any further steps to force Maria to realize the payments (court fine and compensation) demanded by the court. Fanintsru was disappointed by the magistrate's patience. In the end Fanintsru withdrew the case from the village court in accordance with the Christian belief in the value of forgiveness.

[10] Nadzab Village Court is one of 87 Village Courts with a total of 960 members in Morobe Province. It was established in 1992 and consists of 13 people: a chairman and a deputy chairman, both of them magistrates in their villages, plus five other magistrates from other villages, two court clerks and four peace officers. All of them are male. Nadzab Village Court hears disputes from eight villages and their settlements; about 8000 persons live in the area.

[11] I cannot elaborate here on the connection between Christian belief and older assumptions about sorcery and witchcraft still current throughout New Guinea.

The case was finally settled in a customary way through a reconciliation ceremony which involved all the families, church elders and the pastor. Such a traditional settlement is often the result of dispute resolution in the forum of a village court. The preferred resolution (compensation paid in cash without the reconciliation of the families involved) had been influenced by modern state law. It had not led to a final settlement of the dispute. This only became possible after Fanintsru's status in the village had been strengthened through the village court's approval of her case. The traditional forums of dispute resolution in the village that usually lead to such a settlement had initially not approved of Fanintsru's case. The pastor had refused to become involved in conflict resolution twice and had instead sent Fanintsru to the village court. An explanation for the pastor's reluctance to get involved in the case can be found elsewhere. As was indicated by several informants, cases related to adultery have increased in recent years and have also increasingly been discussed in *kibung*, the public weekly meetings. During this gathering not only adults are present but children and adolescents as well. In order to protect them it had been decided by the church elders responsible not to discuss this kind of quarrel in public any longer. Another reason for the reluctance of the traditional forums to approve of Fanintsru's case might be the aforementioned local norms about fidelity in partnership.

CONCLUSION

Looking at specific gender roles shows how women are not as subjugated, as powerless and as bound by custom and male dominance as is assumed by the authors emphasizing village courts' paternalistic bias. Women may very well – within specific institutional contexts – act upon and demand their rights as is exhibited in the dispute settlement process pursued by Faninstru. Women can make choices of their own in order to obtain better results or change results already obtained. Women's utilisation of village courts can be interpreted as having to do with their perception that these courts are forums that acknowledge their rights, unlike traditional institutions of dispute resolution. This is an unintended consequence following the installation of village courts in Papua New Guinea. In conclusion, village courts are forums in which women's and men's rights can be negotiated in different ways and cannot be simply assumed to be institutions for the perpetuation of women's discrimination.

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