

Legal Pluralism and Gender Violence

*Case studies of non-state justice
in the Asia-Pacific region*

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Plenary presentation to
Asia-Pacific Conference on Gendered Violence and Violations
University of New South Wales, Sydney
10-12 February 2015

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Question

Is it possible to transform informal (or non-state) justice practices to bring into relief women's and girls' experiences of and desired remedies for gender violence?

Question context

- Most of the world's disadvantaged and poor peoples (over 80%) rely upon and prefer informal justice to state justice
- Recent interest by international and donor groups on informal justice: 'a sea change' (Harper 2011)

Informal justice and human rights

- Can informal justice practices comply with human rights standards?
- Anthropological reflections (Jolly 1996; Hermkens 2013)
- Abstract and contextual ways of framing and interpreting women's human rights

Terms

- Gender violence
- Legal pluralism
- Informal or non-state justice

Types of informal justice

- (1) customary, tribal, traditional, or indigenous legal systems
- (2) religion-based legal systems
- (3) NGO-modified versions of customary or religion-based systems (the 'hybrids')
- (4) other

Problems and prospects for women and girls seeking justice

- Two 'worlds' of legal authority (state and non-state): neither is accessible or responsive to women and girls affected by gender violence
- The hybrids provide potential for change

Translating 'women's human rights' to local practices

- *What is translated: vernacularization*
Rights concepts selectively appropriated by grassroots women (Merry 2006a)
Process 'not linear but more like a spiral'
(Rajaram and Zararia 2009)
- *Who translates*
Translators who have 'multiple consciousnesses';
they are powerful but vulnerable (Merry 2006b)

Case studies (1)

Nepal

International Alert (2012)

- State and non-state justice in six districts
- Women use hybrids rather than customary, religion-based, or state justice
- Hybrid sector is 'vibrant and growing', but members are subject to threats and gender violence

Case studies (2)

India

Mengia Tschalaer (2013)

- Tribal women's forum (hybrid) in South Rajasthan
- Forum straddles 'tradition' and 'modernity'
- It provides women a 'space of resistance'
- Cooperation of men and women important

Sylvia Vatuk (2013)

- Review of women's courts, with focus on all-women courts that use peer mediators

Case studies (3)

Bangladesh

Fauzia Erfan Almed (2013)

- NGO-managed shalish in rural Bangladesh, which draws on feminist Muslim spirituality
- Wisdom (*bodhi*) resource for 'everyday justice'
- 'Principles of truth-seeking': seeing larger context of violence, women's dignity, using *bodhi*

Case studies (4)

Cambodia

Catherine Burns and Kathleen Daly (2014)

- Informal justice practice, *somroh somruel*
- Clash of human rights rhetoric and realities faced by rape victims and their families

Yrigoyen Fajardo et al. (2005) and Ramage et al. (2008) (field research); Katherine Brickell (2015)

Case studies (5)

- **Pacific Island Countries and Territories**

Considerable research on women's rights and gender violence, but sparse on informal justice

- **Fiji**

Sally Merry (2006a); Lynda Newman (2015)

Informal justice practice, *bulubulu*

Concluding points

- Informal justice can open 'discursive spaces' to challenge gender norms, but outcomes ameliorate women's circumstances, not change them
- State justice is inaccessible and does not accommodate women's or girls' needs
- More research needed on informal justice
- Research requires 'multiple consciousnesses' (like that of the translators)
- 'Human rights' and 'culture' should not be opposed

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