

# Legal Pluralism and Gender Violence

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

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## Legal Pluralism and Gender Violence *Case studies of non-state justice in the Asia-Pacific region*

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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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