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Law in the context of Nkoya society 3

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1. INTRODUCTION

Much successful research into African law appears to have been guided by the following two premises: that law as a social process primarily takes shape within the highly formalized setting of the court of law; and that this process focuses on the examination of such conflicts as are of prime importance to the members of the society concerned. These certainly are the assumptions underlying most of the contributions to the 1974 Leiden seminar, out of which the present volume has emerged. Likewise, these assumptions underlie the Central African legal-anthropological studies initiated by the late Professor Max Gluckman's Barotse research (Gluckman 1943, 1967a, 1972) and carried on elsewhere by Gluckman's one-time associates (e.g., Epstein 1951, 1953, 1954a, 1954b; Werbner 1969; Gluckman 1969).

Indeed, Gluckman's Barotse studies rank among the few classics of legal anthropology, and form the indispensable starting point for anyone who, as I did, engages in a study of social control among a so-called Barotse subject tribe, the Nkoya, some three decades after Gluckman's first Barotse fieldwork. With a wealth of descriptive detail, great insight into the wider social background, and inspiring theoretical and methodological sophistication, Gluckman traced the Barotse judicial process as manifested in the proceedings of the formal courts of law that were defined within the relatively autonomous Barotse administration of the 1940's. He laid bare the notions underlying Barotse law, the principles of their functioning (whose built-in contradictions he revealed and explained) and their connections with the general Barotse ideological and political system

focussing on kinship and the land. Having emphasized the plural nature of Barotse society (Gluckman 1941) he paid considerable attention to the local incorporation of the non-Barotse tribes' custom within the Barotse state and legal system (Gluckman 1967; 204, 234, 244f).

Yet, my own research findings among the rural Nkoya, in the first analysis, seem to run counter to whatever could be anticipated on the basis of Gluckman's approach. In the society I studied formal Local Courts (the immediate heirs to the chief's courts Gluckman described) did exist all right, but they were peripheral rather than central to the judicial process, and to the conflict-regulatory process in general, and such conflicts as most deeply concerned and aroused local communities, were hardly subject to formal litigation in these courts.

In this chapter I shall first argue these rather sweeping statements concerning the Nkoya legal system. I shall qualify them in the light of the actual, if limited, occurrence of Local Court cases under specific conditions. After an attempt to interpret the Nkoya legal situation against the dynamics of their village society, I shall conclude by briefly comparing the Nkoya to the Central Lozi and other Central African groups, and by pointing out the methodological implications of the present approach.[1]

2. THE NKOYA: THE LOCAL COURT

Nkoya (Brelsford n.d.: 15f; Clay 1945; McCulloch 1951; Van Binsbergen 1975, 1976 a, b) is today the name of various groups of people who inhabit the light forests of the plateau of Central Western Zambia. They speak, with dialectical variations, a common Central-Bantu language known as Nkoya, and largely share a common culture, in which hunting, chieftainship, bilateral kinship, sorcery, and the village dead are some of the major themes.

With the general expansion of long-distance trade and slavery in the area during the last few centuries, immigrants of Northern origin brought about a sharp increase of political scale, superimposing a new and more elaborate chief-centred political system upon the older pattern of minor hunting chiefs presiding over local elders. Among the neighbouring Luyi (later called Lozi) (Mainga 1973) a similar process, but stimulated by the eminently favourable ecology of the Zambezi flood plain, and intensified by the Kololo invasion from South Africa, led to a political expansion which in the second half of the nineteenth century brought most of the Nkoya under Lozi political influence. Although Lozi political control over

the Nkoya was in many parts limited, the Nkoya came to be considered one of the Lozi subject tribes, and it is as such that they entered colonial rule at the turn of the century. Since colonial rule based its legitimacy on a treaty with the Lozi king, the white administration boosted the Lozi political claims and favoured the development of a system where Lozi representatives (*indunas*) would take up residence with the major Nkoya chiefs and share in their political and judicial functions (Stokes 1966). Until then the inchoate, shifting political structure of the Nkoya had centred on the open competition for major and minor chiefly titles, most of which would exist for only a few generations between their emergence (as the proper name of a 'big man', leader of a powerful following), and their sinking into disuse. Lozi and colonial rule supplanted this system by a theoretically clear-cut hierarchy of village headmen, minor chiefs, *indunas*, and senior Nkoya chiefs, under the ultimate authority of the Lozi 'Paramount Chief'. The senior chiefs and *indunas* were entrusted with courts of law over which they exerted a strong personal control.

When Barotseland became incorporated into the newly-independent Republic of Zambia, most of the formal judicial and executive functions of the chiefs were taken away from them.

Jurisdiction areas of the Local Courts continue to coincide, by and large, with the areas of the senior chiefs and *indunas*, but between the chief and the Local Court little more than this nominal relation exists today. Thus, in in Chief Kathembe's[2] area (on which we shall concentrate in this chapter), we find the following situation. The court, which used to be at the palace, is now located at a distance of 30km, in the Kapondwe area that has a high incidence of recent non-Nkoya immigrants, and that only after a post-independence redefinition of chiefs' areas fell to Kathembe. The chief appoints only one member of the Local Court, in consultation with the local minor chiefs, headmen and elders, and subject to the approval of the Court and of Legal Affairs. Once appointed this member is in no way answerable to the chief, and he is paid, and trained, by Government. The Local Court's membership is partly Lozi, proceedings are predominantly in Lozi[3], and a jurisprudence is used which consists of the Lozi legal tradition, adapted to local and to modern conditions.

This paper explores why only a small selection of all the conflicts and grievances occurring in Kathembe's area finds its way to the Local Court of Kapondwe. A few minor reasons can already be indicated here. Geographical distance is an obvious constraint in a rural society where motor transport is hardly available for local traffic. Moreover, against the background of a long history of Nkoya-Lozi antagonism (Van Binsbergen

1975) there is some distrust of the application of the law by Lozi Court members. But these are minor factors. Much wider geographical distances are covered in the normal routine of subsistence, ceremony, and recreation. And against occasional allegations of anti-Nkoya attitudes, stand statements supporting the Local Court in its present form. There are no allegations that the Local Court upholds a law that is at variance with 'Nkoya law'. For even if the population is aware of minor discrepancies between Court and village practice (cf. note 8), a century of increasing incorporation into the state systems of the Lozi kingdom, Northern Rhodesia, and the Republic of Zambia (both in the rural area and in the course of labour migration) has led the Nkoya at least to recognize, and subscribe to, a comprehensive legal order beyond the limits of Nkoya rural society. Nkoya villagers consider the task of protection against open violence and crime in the narrower sense to lie ultimately with this comprehensive legal order; they show no reluctance to deliver trouble-makers and criminals from their own ranks to the outside agents of this order. However, the major problem of Nkoya village life is not posed by the odd thug, but by the everyday struggle to maintain a liveable social order in which multiplex, face-to-face relationships and precarious economic conditions are the main elements. The allocation of personnel, goods, services, rights, and status presents a continuous, many-faceted problem always prone to precipitate acute crisis. This may be true for any society; it is all the more true for contemporary Nkoya rural society, whose economy balances around the minimum subsistence level and moreover has to accommodate claims for assistance from (temporarily) urban members. In these fundamental social processes one would suppose the Local Court to be very frequently resorted to – but it is not.

It is the main point of my argument that the Local Court remains at the fringe of Nkoya rural society, largely because it represents a mode of conflict regulation which, given the structure of interaction and the participants' conceptions of the social and moral order, has only a very limited applicability there – whilst internal alternatives to the Local Court are well developed and effective.

3. VILLAGE LIFE AND INTRA-VILLAGE CONFLICT RESOLUTION

A central theme in Nkoya social structure is the tendency for multiplex social relations between co-residing kinsmen (members of a village) to develop into insoluble conflict, leading, through a phase of intense sorcery accusations, to fission, with individuals or small factions moving to other villages or starting a new village on their own. Fissiparous tendencies are built into the very structure of Nkoya society. On the one hand this society fosters the model of the happy, stable village of more or less close kinsmen, headed by the successor to a chiefly title. On the other hand, precisely because Nkoya society regards succession to a chiefly title, and having a village of one's own, as the ideal culmination of a man's career, every male follower is induced to compete for leadership and to pursue the value of individual autonomy that counteracts the values of authority and respect. Succession among the Nkoya is largely a matter of achievement. A new incumbent is chosen out of a large pool of people (bilateral kinsmen of previous incumbents) who live dispersed in several villages over a vast geographical area. In principle, therefore, every talented man has the chance to acquire, in the end, a senior title and his own village. But this means that men from their late thirties on are in constant competition with their age-mates and their seniors over succession to titles which ordinarily can only become available upon the previous incumbent's death: a set-up conducive to ill-will, sorcery, sorcery accusations, – to such an extent as to make natural death an unlikely occurrence, in the eyes of the Nkoya villagers.

Apart from this long-term perspective there is the day-to-day concern for health, food, respect, and security. With respect to these fundamental concerns, anthropologists have tended to conceive of kinship as allocating to Ego *specific* rights and duties vis-à-vis his kinsmen in a specific geneological position. Peculiar to the Nkoya bilateral system is that, as far as everyday interaction between kinsmen is concerned, these rights are highly *unspecific;* they are to some extent determined by age, sex, co-residence, but they are hardly implied or dictated by precise genealogical relation or by the kinship terms people use to each other.

No single statement could better sum up the Nkoya kinship system than the adage:

Mwana wa hakati ka jifumo (the child is in the middle of the womb). Here we have in a nutshell the basic principle of bilateral descent: *jifumo*, womb, stands for line of descent through either the father or mother. A person's patrikin and matrikin have essentially the same rights over him, just as he has similar rights over both clusters of kinsmen. No single individual or group has complete, exclusive rights over a person. And, while patrikin and matrikin are free to compete over the realization of whatever claims of domestic, economic, political and religious support they may

foster in relation to Ego (and these claims are usually secured through co-residence), Ego retains the right to choose between them in his own interest. Whatever the specific content (in terms of transactions of goods and services) a particular kinship relation between two Nkoya will have, depends on the dynamics of the concrete situation in which these two find themselves. A general morality (enforced to a degree by the village dead, fear of sorcery, and by the dynamics of status allocation) prescribes unconditional support between kinsmen particularly if living in the same village. But no specific and formally-sanctioned norms indicate what constitute reasonable claims and reasonable refusals. Interaction between kinsmen is based not so much on norms and rights, but on general expectations, and here disappointment and resentment are rife.

Example A illustrates the general problem with reference to inheritance. When someone is to inherit from his deceased kinsman, other relatives do have expectations about what portion of the inheritance will be shared out amongst them. They may even present these expectations as based on 'the law' (*milao*). However, these expectations are not fixed rules in the sense that formal redressive action could be undertaken on the basis of them. Should someone fail altogether to honour the expectations, then there is no effective judicial or other mechanism to make him part with the inheritance. The relatives are left with their resentment, and are likely to turn to sorcery for revenge.

A. The Greedy Successor. Headman Shipande had amassed considerable wealth, including a gun, a sewing machine, and a wireless set. When he died, his cousin Kabesha, who for several decades had stayed at the distant court of Chief Kathembe, managed to get himself elected successor. But instead of taking up residence among the previous Shipande's following (as a headman should do), he collected the entire inheritance and returned to his place. So, in addition to leaving the village without a leader, he did not share out part of the inheritance (normally he would only have retained the gun, as a central symbol of male and chiefly identity); and by taking all this wealth, he deprived his kinsmen even of the possibility of using or borrowing it. The kinsmen resented this action very much. No one wondered however, how Kabesha managed to escape their wrath; he is regarded as a powerful sorcerer. His nephew joined him in his distant village, and started to use the inherited goods. When a few years later several of this nephew's young children died in quick succession, extensive divination pointed out that the wronged kinsmen had, by means of sorcery, allegedly directed the spirit of the deceased Shipande to Kabesha's village, where, unable to attack the old wizard himself, the aroused spirit had, allegedly, turned against the children of the village. Public opinon rather favoured the wronged kinsmen, and, unscandalised, agreed that there was nothing else they could have done – least of all take the matter to court.

If crucial interaction in Nkoya society focuses on kinship; if kinship roles merely stipulate expectations which generally lack effective formal sanction within and without the judicial sphere; if resentment and sorcery are the common results of this situation, and ultimately lead to the breaking-up of relationship between co-residents; what conflict-regulatory processes, then make Nkoya society possible at all?

Fission and inter-village migration constitute powerful mechanisms to get over a crisis and make a fresh start. Most people have moved to another village at least once in their lifetime, many have moved much more often, and in a majority of cases an insoluble conflict was at the bottom of the change in village affiliation. A person staying in a village (e.g., his father's) and feeling that he does not get his due, will contemplate what other possible refuges he may have: the villages of his mother's brothers, of his classificatory fathers, actual and assumed grandparents, his joking partners (*ba-thukulu:* putative grandchildren) failing these, his own new village, and (as a temporary option) settlement in town. One moves away from a disappointing relative and, if possible, towards a more promising one. Often moves of the latter type are encouraged by senior kinsmen who try to attract junior kinsmen (their main political following) from elsewhere; in this process of recruitment expectations are kindled which, after the move, are often not met: characters may turn out to be incompatible, whilst other, already co-residing, junior kinsmen try to prevent their common leader from bestowing undue favours upon the newcomer. Thus, the solution of one crisis tends to breed the next.

A second major conflict-regulatory factor may be looked for in the religious sphere. Writing about Ndembu Lunda society, which is both historically and structurally closely related to the Nkoya, Turner (1957, 1961, 1962, 1968) has presented the view that such profound conflicts as originate in the field of close kinship and co-residence, can be effectively expressed and partly resolved in the ritual sphere: divination, village shrine ritual, and cults of affliction. Very similar institutions exist among the Nkoya (Van Binsbergen 1972, 1976 a, c, in press) but their contribution to conflict management should not be overestimated. These religious institutions may express general structural tensions in the society, they may even reveal (cf. A) the concrete participants and events of a specific non-religious conflict, but they only lead to redressive action implying a restoration of disrupted social relations if decisive conditions deriving from the social process outside the ritual sphere already make such a restoration desirable and feasible. An example of this is B, which brings out some local-political factors working towards conflict resolution through ritual mechanisms.

B. The Son who ran amuck. Dickson, a man in his early twenties, was in love with a Lozi girl from the Kapondwe area, some 20 km. away from his village His relatives, among whom his father Shelonga is prominent, wanted him to give up the girl: they did not favour a marital tie with Lozi people, whom they alleged to ask too high bride prices and to lack respect for Nkoya affines; moreover, Dickson's relatives feared the high damages that would be due in the case of elopement or a premarital affair. They refused to assist Dickson financially, and he had no money of his own. Tensions mounted and the result was that Dickson ran amuck after an evening of drinking. He set fire to his own house and threw his father's bicycle as well as his elder brother's wireless set in the flames – the inconceivable waste of long years of thriftiness. Shelonga, also in his cups, ritually cursed his son and kicked him out of the village. Dickson exiled himself to Lusaka, where he was admitted to a Nkoya urban yard in Kalingalinga compound, of which his cousin is the leader. After the better part of a year he finally managed to secure a job. Throughout his stay in town he kept in frequent contact with his elder brother and his sister in Lusaka, who through letters communicate regularly with the village home. When the elder brother visited the village shortly after Dickson had found work, their mother dug up a few tubers from the redflowered shrub that constitutes the village shrine. Taken from the sacred spot that represents the village, its unity, ancestors, and continuity, the tubers symbolize that Dickson is still considerd attached to the very life of the village, in other words that the curse ('you are no longer my son') may be lifted. When Dickson receives the tubers he is quick to take the hint. No sooner is he allowed to take a long weekend from his job than he takes the bus home in order to reconcile his father to him and – to elope with the Lozi girl! In the village a small ritual is performed at the shrine: the curse is revoked, and a prayer is said to the ancestors ('We were misled, we quarrelled, but now we have regained our mutual understanding'). Still the family is not prepared to give in as far as his Lozi love is concerned, and Dickson is again angry about this, but this time he controls himself well.

In this intra-family conflict, resolution was possible, and even imperative, for a complex of reasons. Shelonga is highly respected throughout the chieftancy, because of his wisdom and integrity. His political position however is precarious. About twenty years ago he left his distant valley, as a result of intra-family conflict. He took refuge in Mukuata's village, where his mother had come from. Since his migration, throughout a complex, conflict-ridden local-political process, Shelonga had always refused (partly under pressure from his sons, who feared for their father's life) to succeed to the several very senior chiefly titles that circulate in his family. As a result he now finds himself as the reluctant *de facto* headman of a small village, with his only daughter and three of his four surviving sons in town, and surrounded by villages whose headmen are closely related to him but most of whom consider him as a major rival in the competition for titles and honour. In the past Dickson had already given a heavy blow to

Shelonga's prestige: at another drinking session he had become violent and insulting and Shelonga had been reproached in the neighbourhood court for failure to control his child. So a second time Shelonga had to act firmly. But on the other hand he could, both as a leader and as a politically insecure person, not afford to let the size of his effective following diminish. Another contributory factor in the resolution of the conflict lies in the fact that, despite such momentary disruptions as described in this case, the Shelonga family in general displays exceptionally high harmony and integration as manifested, e.g., by the lasting marriage of Shelonga and his wife, the pride and concern that the sons take in their father, and the firm support between the children when in town. His siblings in town pressed for a reconciliation between Dickson and his father, whereas on the other hand Dickson's relations with the cousin with whom he had put up deteriorated to a state where Dickson was eager to restore the good relations with his original village.

Example B shows how religious institutions focussing on the village shrine can underpin a process of intra-familial reconciliation and seal its ultimate completion, provided that non-religious social conditions towards resolution are present. More often however, among the Nkoya, if a conflict spills over into the religious sphere, this means that the development of the conflict is accelerated, and that whatever potential for reconciliation may have existed, is now lost forever. The conflict will leave the sphere of everyday inter-personal interaction and the exchange of goods and non-religious services, and, more or less under a symbolic disguise, will live on mainly in the ritual sphere. The outcome of example A was a typical one: after divination had pointed out (no doubt as a result of the diviner's knowledge of prevailing social relationships) the conflict allegedly responsible for the children's deaths, no attempt was made to approach the wronged kinsmen and to arrive at some settlement (e.g., sharing out the disputed inheritance); while concerned about the well-being of those children and adults that had survived the spirit's attack, all attention of Kabesha subsequently concentrated on the ritual means of allaying the spirit. Once conflict has entered the sphere of sorcery, little is left but ritual which amounts to accepting the rupture as irreparable.

The third major form of conflict regulation (which, contrary to the two discussed so far, goes on continuously in every Nkoya village) is the informal action by which most minor clashes are prevented from developing to an ultimate stage of fission and sorcery. The petty frictions and irritations that spring from living closely together and from sharing crucial economic, political and religious tasks are the subject of constant

scrutiny and concern especially of those who are held responsible for the integrity, general welfare, and honour of the village: the village headman (who may leave part of his tasks to a younger assistant), and any other elder people of either sex. Seeds of disruption are quickly detected and brought to the fore in informal impromptu gatherings of those involved. They concern trivialities; children who make noise and upset the village; young, inexperienced wives who are late in sending their prepared meals to the men's shelter; a mother-in-law who leaves too much of the heavy job of pounding to her daughters-in-law; a man who cannot hold his drink. The successful headman is the one who manages to deal with these petty issues in such a way as to avoid their becoming laden with such long-standing grievances as individuals or factions associated with either party in the petty conflict may have.

In this form of conflict settlement emphasis is not on justice and formal rules of behaviour. It is 'discussing' *(ku-ambola)*, not a 'court case' *(mulandu)*. The headman is hardly concerned with assessing who was right or wrong and does not press for admission of guilt. Rather he applies all his psychological skills and wisdom to appeal to the parties' obligations vis-à-vis the integrity and solidarity of the village. He emphasizes that village unity (*ku-jiuva:* understanding) is primarily in their own and their children's interest. The appeal is usually strengthened by reference to the disasters that struck members of certain villages that had not managed to preserve their unity; and this will not be a tale of the distant past, but the accounts of the misfortunes of well-known close kinsmen of those present. The headman has a practical, informal authority in these situations insofar as he represents the unity of the village. He is the one who, on occasion of his installation at the village shrine, has ritually inherited the name and social person of the village founder; and although he is not considered to have control over the actions of the now deceased former members of the village (he cannot invoke the dead in order to add supernatural sanctions to his authority), people believe that the dead have power to interfere and take revenge on those living members whose actions threaten village unity. The headman is the main link between the living and the dead[4] and when he has managed to quench a more serious-looking intra-village conflict, he informs the dead of the outcome through a short prayer and offering of mealie-meal at the village shrine.

This standard pattern of conflict resolution, which is frequently resorted to in the everyday life of the village, brings out important structural characteristics of the Nkoya system of conflict regulation, including their legal system. Conflict is primarily regarded, not as a matter of right or

wrong against abstract, unalterable criteria of formalized rules of behaviour – but as a direct threat to group unity. Nkoya consider such unity essential for both collective and individual well-being. Without unity, the village members will not be able to co-operate in their crucial tasks; the village would be hit by shame, ancestral revenge, sorcery, and (as the minimal subsistence barrier is so very near) by hunger, disease, and death. It is not the optimistic conviction of the actual existence of village unity, but on the contrary the awareness of continually being of the edge of disruption, that makes the village deeply afraid of open expressions of conflict – they may well turn out to be the straw that breaks the camel's back. Meanwhile, no doubt, it is in the direct, personal political interest of those in authority (elders, the headman) to pose as the advocates of such a lofty goal as village unity; underneath their admonitions a measure of cynical manipulation of their fellow-villagers might be discerned, but this does not greatly diminish the generally integrative effect of their pleas for unity.

The principal aim of conflict resolution in an intra-familial context is not to define and administer specific rights and obligations as attached to particular kinship roles but to take away the sting from whatever animosity has arisen. Such conflict resolution cannot afford to go into the depths of latent fissiparous tendencies, old grievances, fundamental incompatibility of characters, as will usually exist within the family group. On the contrary, for as long as possible, in the face of mounting tensions, those responsible for conflict management have to present, artificially, each incident of observable conflict as a small matter, ephemeral and without consequence. The standard approach is to hush up matters, to emphasize that a full discussion would be a waste of time; no formal setting is given to the discussion, the reconstruction of the events leading to a petty conflict is intentionally kept scanty and the analysis superficial, and often the matter is abandoned in the most inconclusive manner. The parties may not be entirely satisfied, but the general appeal to their responsibilities towards group unity keeps them from saying so openly. Each has a strong personal interest in keeping peace within the family group: both for reasons of future assistance and for the avoidance of sorcery.

But this central concern of avoiding open conflict is often overrun by the equally important values of individual autonomy and honour; and then expressions of animosity, sometimes violence, do occur. Against the plea for unity and understanding stands the management of self-respect and honour, expressed by the aggressive assertion: *Ami mulume!*, 'I am a man!'. Usually, one has sufficient opportunity to assert one's honour in the course

of the public, if informal, attention given to an incident. If one drops the matter publicly this can easily be presented not as an admission of weakness and guilt, but as a magnanimous yielding to group interests. But as soon as either party stubbornly refuses to drop the issue for unity's sake, the headman and village elders are virtually at a loss. Not only do they openly fail as leaders but, more important, there will be no way out except through sorcery and fission.

Informal settlement of intra-familial conflict is not only a contribution to village unity, but also a test of it. Under certain conditions a member of the village may cause a small matter to escalate often beyond repair, ignoring the values that suppress conflict. These crises often take place in a context of drinking, or immediately after the death of a member of the village. In the latter case many people will be frantic with fear of sorcery, and the authority of the headman is at its lowest, for he has obviously failed to protect his followers, and at the same time (in view of the connections between power, age and sorcery in Central-African societies: (Van Binsbergen 1976 b, c; Parkin 1969), he himself is tacitly suspected of having caused the death. Example C illustrates however, how in such a crisis *ku-ambola* can produce positive results.

C. The sick child. A few years previously Yona, now in his early thirties, had left his village in the valley of Kashanda. Returning from work in town he found his father's village considerably dwindled, his wife and children neglected, and his baby son very ill. So he left after a row and settled in Malasha village among his distant uterine kin. The child recovered there, but never became very healthy. Shortly after two adult members of Malasha village had died in quick succession, Yona's children fell ill, formost the problem child of old. In a *ku-ambola* session with the headman and other adult male residents. Yona complains that this village, too, has become a bad place (the implication is: full of unidentified sorcerers). He points out that if the health of the children does not improve soon, he will move again to another village. He knows, as admitted on a different occasion, that he would have no other place to go but back to his agnatic kin, where he would hardly be welcome. The elders of Malasha village appreciate his fears: they too are in a state of frenzy over the recent deaths. On the other hand, Yona's remonstration implies that he takes them to task for failure to protect the village; moreover Nkoya believe that those occupying, or aspiring to, high status may turn to sorcery to enhance their powers. In the situation, Yona needs scarcely say explicitly that he suspects his elder fellow villagers of being responsible for the evil influences themselves – the hint is clear, and covertly arouses, and distresses, the village elders. Yet, with the recent losses and the general despair in the village, they are very keen on retaining Yona's support. Therefore, the situation is not allowed to escalate, no offence is taken publicly, and Yona is not offered an easy exit out of the village. Quietly he is reminded: 'You came here while your son was ill, now that he is ill again you may go and take him elsewhere if you wish, but do realize that it is just your child being of a sickly constitution, and don't come to us accusing us of committing sorcery against him'. This skillfully neutralizes Yona's argument. That the village is severely tried during these weeks, nobody denies; it is in fact an issue debated night and day. However, the *ku-ambola* has now manipulated Yona into a situation where he can no longer with justification set himself off against the rest of the village; he would himself become liable to accusations if he did. He stayed on.

The values of village unity mean that one cannot simply move from one place and settle in another without good reasons. One cannot overtly refer to one's desire to become autonomous; and (in view of the lack of specificity in the stipulation of kinship role behaviour) one's objection to the treatment in the present village of residence is often too vague and too general to convince widely. Thus, to force the issue, petty occasions have to be blown up into a socially-acceptable pretext for leaving.

The success or failure of informal intra-familial conflict resolution reveals the degrees of structural stability of the village at that moment. If a party is intent on leaving, has an alternative place to go to, and/or is already considered expendable in his present village, then conflict settlement is likely to be unsuccessful, and the conflict will be allowed to escalate. In the opposite case, settlement will be accepted. On this basis a complex model of village stability could be constructed, taking into account such parameters as: age and sex of the village members, kinship relation to the headman, availability of residential alternatives, ecological pressure within the village, etc. This, however, falls beyond the scope of the present paper.

4. LITIGATION IN THE NEIGHBOURHOOD COURT: 'RESPECT CASES'

Against this background of the suppression of expressions of antagonism, a few social situations have to be isolated where the rights and obligations attached to certain roles are sufficiently well-defined to be susceptible to formal litigation – which may then reinforce, instead of threaten, group unity.

One class of such situations revolves around the management of honour and respect *(shishemo)* in the interaction between individuals and between groups. Consanguineal and affinal kinsmen of various categories, members of different generations, of either sex, of different local groups, common village members vis-à-vis headmen and chiefs, a chief vis-à-vis his headmen

and his people – they are all subject to complex and well-defined rules of etiquette involving manner of address, of greeting, bodily postures and spatial arrangements, taboos on names and subjects (e.g., sexual matters), the proper way to voice a difference of opinion in front of members of that category, etc. Violation of these rules is taken very seriously not only by the direct victims of the insult, but also by close relatives of the offender and by outsiders. Unless the culprit can be pardoned for lack of age and experience (a child, a newly-married woman), he is sure to have a case *(mulandu)* on his hands. His close kinsmen, though highly embarrassed, will not be eager to let the matter drop. For here is, at last, a situation in which evident conflict can be resolved along clear institutional lines; instead of the ambiguities of personal friction in the intra-familial context, here is a touchstone of behaviour provided by fixed, impersonal, explicit rules. The respect case will lead to a clear verdict which will definitely end the matter. Once the case is publicly dealt with, those wronged are rehabilitated and reinforced in the respect to which they are due in the light of unchallenged principles; and the culprits are isolated and exposed as erring individuals. Once they have acknowledged their mistake, there is little fear left that the wronged party will pursue the matter by means of sorcery.

The close kinsmen of the offender therefore participate in, and may even push, the case for a number of reasons. They want to dissociate themselves, as a group, from the insult – thus publicly advertising (no matter what they feel privately) that no smouldering inter-group conflict lay at the bottom of the incident. They also want to protect their offending kinsmen, as well as themselves, from the sorcery the injured are sure to direct against them if the latter should not be placated. And finally, the kinsmen are in favour of their straying relative being taught a lesson since they themselves will benefit from an improvement of his social behaviour.

The main difference between such respect cases and the type of intra-family conflict discussed above (where formal legal action is impossible) seems to be this. In the respect cases both parties act not so much as individuals on the basis of their personal concerns and inclinations, but primarily as representatives of abstract, broad, general categories of society – young versus old, male versus female, parent-in-law versus child-in-law of the opposite sex, chief versus subjects, etc. The public interaction between these societal categories is subject to unchallenged explicit rules irrespective of the quality of the personal relationships that may exist between particular individual members belonging to these categories. An offence against these rules is not just an individual concern of the individual member in whose person the category is offended –

it is an assault on the total societal and moral order, and therefore of importance to allmembers of society. By contrast, in the case of intra-familial conflict we have to do with relationships whose form, contents, gratifications, and disappointments are almost entirely determined not by norms and rights but by such chance factors as the compatibility of character, the possibility of benefiting from each other in the pursuit of individual goals, etc. A closely related, and equally important, difference is that in respect cases the conflict revolves primarily around the management of such invisible, abstract, highly symbolic values as honour and respect, whereas the transactions between kinsmen in the village, such as tend to lead to crisis and intra-familial conflict regulation, primarily revolve around indispensible, down-to-earth, material items: money, food, assistance in concrete tasks, property. This suggests the possibility of a fascinating semantic analysis – but, again, not within the present paper.

In theory close kinsmen can litigate against each other in the idiom of respect cases, provided each represents a distinct general societal category. But, whereas this possibility is sometimes hinted at in the course of a quarrel, it is seldom put into effect. And even if a formal procedure is started, the case is usually hushed up much in the way of other intra-family conflict.

Example D illustrates the main aspects of respect cases.

D. The offensive youth. Chief Mukuata, the most senior of the 'original owners of the land' and therefore second only to Chief Kathembe, died suddenly at the end of a week in which a plot to oust him from his title had been exposed and had been generally discussed. The situation was likely to precipitate into violence, and so Mukuata was quickly buried next morning near the village in which he died: Malasha village, where his son lived and where Mukuata had happened to be mourning his recently deceased daughter-in-law. A chief should, however, be buried inside his own house, in the village that bears his name. After the burial some twenty closely related and senior mourners remained in Malasha village, including several chiefs and senior headmen from distant places. In the afternoon Shaimon, a classificatory sister's son of Mukuata from Mukuata village, and Kalembwe, a joking partner of the deceased chief from an adjoining valley arrived at Malusha village. They rode their bicycles to the middle of the village (very rude behaviour among the Nkoya), upset vessels with water and beer, threw around heavy logs of fire-wood and shook the roof of the mens' shelter under which the male mourners were assembled, all the time shouting insults: 'You old men, all of you, you killed Mukuata, you are sorcerers, and you even admitted to the fact by burying him not in his own house but in the bush. Is Mukuata not a great chief? You are sorcerers intent on killing his name', etc. Part of this behaviour was acceptable as expression of extreme grief, but to call a person a sorcerer publicly is a very great insult and especially to include all the great men from distant parts in this insult was inconceivable. Only with great

difficulty did the local elders who had organised the burial manage to refrain from answering back. One who started to reply was quickly called away by an old woman. Bloodshed was in the air. However, those present lived up to their role of wise, senior men and ostensibly ignoring the provocations they began to discuss the necessity of building a respect case against Shaimon and Kalembwe. The case was heard next morning. Kalembwe, himself in his fifties and a headman, and more politically-minded than his companion, had retired from the scene at an early stage. He absented himself from the proceedings next morning, but sent a messenger offering his apologies for his behaviour of the previous day. These were accepted. The case against Shaimon however was heard, in Malasha village, with the offended high-ranking mourners constituting part of the neighbourhood court. The defendant showed not the least repentance, repeated his accusations and challenged his close kinsmen to refute them. Discussions the previous day had already indicated that public opinion, while disapproving of Shaimon's unskillful presentation strongly agreed with his protests against the improper burial. The court was greatly embarrassed: as hosts to the mourning chiefs from elsewhere they could not allow their guests to be insulted; but on the other hand, Shaimon was their close kinsman, and although he should not accuse them and their guests of sorcery, he was right in taking them to task for the improper burial of Mukuata. After extensive deliberations, when the boy adopted a more reconciliatory attitude, the most senior guest, Chief Shindovu (classificatory father to the deceased chief, and occupying in the distant valley of Kalombe a position similar to Mukuata's) saved the situation by the weak pretext that the youth had been intoxicated by drink and could not be held responsible for his statements. This suggestion was eagerly adopted by the local elders, and the case was dismissed without further steps being taken against Shaimon.

Litigation before the neighbourhood court can indeed be termed 'formal' by comparison with the utterly informal procedures of *ku-ambola.* A neighbourhood court case *(milandu)* has a fixed procedure which can be summarized as follows.

When there is public breach of respect rules, the more senior amongst those present raise the question of whether the incident could make an admissible case. This preliminary discussion will include close kinsmen of the injured party, of the offensive party, and outsiders. If they agree that the matter should be pursued further, they usually give it into the hands of one of the most senior headmen in the cluster of villages (a valley) where the incident took place. The proper person to be entrusted with the case is the 'subchief' (*mutwe ya ba mwene*, 'the chief's head') one of the senior local headmen whom the chief, in consultation with local headmen and elders, has appointed to represent him in each of the several valleys that make up a chief's area. The subchief's prerogatives are confined to the judicial field and (in contrast to the chief) neither government recognition nor payment are attached to his office. The sub-chief has by no means the

monopoly over formal conflict regulation in his valley: any widely respected headman can organize and preside over cases in his neighbourhood. But a subchief is prone to claim a monopoly over the referral of cases to the official Local Court in Kapondwe, whenever such is deemed necessary (see below). When a case is entrusted to a senior person, he quickly informs other headmen and elders in the same, and occasionally adjoining valley, and a meeting is scheduled for the next day or so. Not infrequently such meetings are abortive, because either plaintiff or defendant or important witnesses or a sufficient number of headmen and elders, fail to turn up. If all necessary people are present, the case is heard. There is no fixed chairmanship: everybody in turn contributes questions and points of view, interrogates the parties and their witnesses, and helps to arrive at a consensual agreement. There is no entourage of ritual, and no oaths are taken. The verdict at which the neighbourhood court arrives can be acquittal, apology, or the payment of a fine to the wronged party. No payment goes to the court, the chief or the community in general.

By virtue of its own powers the neighbourhood court has no proper sanctions to enforce a verdict – it has, in particular, no power to use physical coercion. There are, however, many reasons why people accept the verdict, evenif this involves payment of a considerable sum of money. People are very keen to quench the conflict and thus to avoid sorcery. In addition, in those cases that could also be heard in the official Local Court (see below), the fines imposed by the neighbourhood court are considerably lower than those to be expected in the Local Court. So for defendants likely to be found guilty, it is advantageous to settle 'out of court', i.e., before the neighbourhood court. Moreover, ignoring the neighbourhood court's verdict carries unmistakable sanctions in terms of social credit as well as alleged susceptibility to sorcery and to ancestral revenge. More important than all these rather pragmatic calculations however is the fact that for the Nkoya villagers the headmen and elders in the neighbourhood court are not make-shift judges without proper authority (as they might appear from the point of view of a bureaucratic, centralized national legal system), but the very embodiment of moral judgement and authority. They are the heirs to great chiefly titles established in previous generations. Acceptance of their rulings is reinforced by deeply internalized values. This is not to say that these values are not increasingly challenged by the penetration, into the rural area, of modern organisational forms greatly at variance with the Nkoya gerontocratic model, and by the concomittant intensification of the rural inter-generation conflict. I have dealt with

this complex problem, however, elsewhere (Van Binsbergen 1976 b). Finally, of course, the most comprehensive factor making for the effective functioning of the neighbourhood court is the fact that its structure is embedded in the total extra-judicial social process of Nkoya rural society. Patterns of authority, power, status, resources, which determine the social process in the neighbourhood, also determine the personnel and, to a large extent, the outcome, in the neighbourhood court. This does not exactly amount to a model situation of judicial independence – such as would be desirable, and possible, in a highly diversified industrial society. The Nkoya neighbourhood court displays far-reaching manipulation of the judicial process for the sake of extra-judicial processes, but this is precisely what endows this judicial institution with great relevance and efficiency in keeping Nkoya rural society more or less together.

5. MARRIAGE LAW IN NEIGHBOURHOOD COURT AND LOCAL COURT

Given the structure of Nkoya society, personal relationships and transactions between its members can become the object of formal litigation if between those involved rights and obligations have been stipulated to a sufficient degree of specificity and definition. Common, everyday transactions between kinsmen do not satisfy this condition and therefore are not subject to litigation. Etiquette however, provides one class of situations where this condition is met. The major other class of such situations concerns sex and marriage.

I will not try to give a full picture of Nkoya marriage law as it exists today, nor sketch the very considerable changes this institution turned out to have undergone over the past hundred years: the increase of geographical distance over which marriages are contracted; the decrease of kin-endogamy and village-endogamy; the increasing juxtaposition between bride-givers and bride-takers (complementary roles which tend to merge in the case of endogamy); and the introduction of bridewealth. A full discussion will involve a rather technical kinship-theoretical and quantitative analysis (Van Binsbergen 1974, forthcoming). For the purposes of the present paper, let it suffice to say that, while common everyday interaction and such conflicts as spring from it, are still mainly interpreted by contemporary rural Nkoya by reference to the fundamental bilateral orientation ('the child is in the middle') – the same people tend to adopt a rather different perspective when they discuss the legal position of adult women,

and of minors, in the context of sex and marriage. In the latter case, emphasis is increasingly put on the question of custody, with all the close-to-exclusive rights implied in this term. In fact, the allocation of custody of women and children among their male consanguineal and affinal kinsmen, and the custodians' claims to marital payments and fines in relation, respectively, to transfer of and infringement upon their custody, have become the central issues in Nkoya family law today.

Nkoya now consider a child to be, primarily, in custody of his father's family if the father has paid bridewealth for the child's mother. If so, then the father is free to take the child wherever he wants, irrespective of dissolution of his marriage with the child's mother, through death or divorce. At the same time, the father is considered responsible for the care of the child, and he must compensate any other persons (e.g., the child's maternal relatives, or a subsequent husband of the child's mother[5]) who have temporarily acted for him. As long as no bride-price has been paid for a woman, her services as a woman and her powers of procreation are considered to be in the full control of her consanguineal relatives. Theoretically a distinction should be made here between her agnates (who control her if in the past they paid bridewealth for her mother) and her uterine kin, who control her in the alternative case; but in practice control over an unmarried woman is exercised by the senior kinsmen (agnatic, uterine, or both in case of overlap) in whose village she happens to dwell at that moment. In other words, the exercise of custody rights over an unmarried woman reflects not so much fixed rules but, pragmatically, her actual network involvement at a particular moment.

Custody is not unrelated to a notion of ownership. One is 'owner of a woman' *(mwine ya mbeleki)* much in the same way as one is 'owner' of a village, a title, a patch of cleared land, a gun. To any student of Central African ideas about property, and such connected themes as honour, masculinity, autonomy, and respect, it will be clear however that such an assertion hardly does justice to the complex underlying conceptual reality (cf. Gluckman 1972: 141f; Van Velsen 1964: 140f, 185f). Particularly, village, title, land, woman, and (to a certain extent) gun have the following connotations in common, which help to amend an all too naïve conception of 'ownership'. They represent central attributes of accomplished masculinity and as such have very strong symbolic implications. They impose upon the 'owner' *(mwine)* heavy moral obligations which are subject to constant scrutiny (occasionally leading to effective formal sanctioning by means of respect cases) from the total surrounding community: it is trust, in the legal sense, much more than ownership. And finally, the actual trans-

fer of the implied rights from one individual to the next involves distinct procedural and ritual conditions, and, particularly, rules out purchase as a means of access.

All the same, usurping a custodian's control over a woman is considered 'stealing' and answerable under that heading. Thus, there is a fundamental identity between adultery (i.e., infringing upon a husband's rights) and premarital or extra-marital affairs with an unmarried woman (i.e., infringing upon the rights of the consanguineal kinsmen acting as custodians). There is the difference, though, that the latter is not supposed to enter into sexual relations with the woman concerned, whereas the husband is. While there is a great deal of extra-marital sex going on in the village (mainly in exchange for cash), sexual offence, if publicly known, is never considered lightly: it affects a woman's good name; large sums of money can be gained in litigation over such cases; even more important, public failure to control that of which one has the custody causes a fall in prestige, which can only be restored by successfully suing the offender.

The very high fines usually imposed for sexual offences have nothing to do with a transfer of custody over a woman. Therefore, a man who is known to have entered into an extra-marital relation with a woman, and who subsequently wishes to obtain paternal rights over the children that were born out of this union, normally faces the payment of both a fine and a regular bride-price. As long as a man is legally married to a woman (i.e., he has paid, or started to pay, the bride-price and has not yet gone through the legal procedure of formally divorcing her), he can sue any other man who usurps his rights. Emphasis here is upon sexual rights, but essentially the same applies to other domestic tasks such as cooking food, washing clothes, helping out at a funerary party, etc. Hence the necessity of formal divorce: without divorce any husband, even after a *de facto* breakdown of his marriage, could successfully sue any other man who tries to take his place.

Because of the recent development of a considerable body of well-defined rules and obligations, conflict in the sphere of sex and marriage need not be suppressed and hushed up, but can be publicly dealt with in the formal setting of litigation. This leads to either reconciliation or divorce. The case will initially be heard before the neighbourhood court. The proceedings are the same as described for respect cases.

Theoretically, divorce[6] involves return of the bridewealth. In practice however, no such restitution occurs in many, perhaps the majority of divorce cases. In some cases the bride-givers will themselves offer to return the bridewealth and to dissolve the marriage: if they feel that the woman

and her children are suffering under the neglect and the bad ways of her husband (drinking, violence, leaving the family without adequate housing, food and clothing, spreading venereal disease, and endangering her and her unborn children by breaking taboos on illicit sex). The same applies to marital conflicts arising out of wrong behaviour of the woman (adultery, inadequate housekeeping, failure to show sufficient respect vis-à-vis her senior in-laws) in which case it will be the bride-takers asking their money back.

The outcome of such cases depends largely on the inter-group relations between bride-givers and bride-takers. If the senior representatives of both groups have good mutual relations, and in general a high prestige, which they cannot allow to be threatened by the bad marital behaviour of a member of their group, an effort will be made to make him better his ways. The case usually ends in reconciliation and apology; a typical example is the following case. The proceedings are presented in some detail, as they nicely render the general flavour of Nkoya conflict resolution, and show the typical strategies employed.

E. The iron bedframe. Kabambi, a middle-aged man from Mukowe's village, has two wives. The senior one, Ennesi, he has had for many years; the other is Loshia, a young girl he married only recently. Shortly after this marriage Kabambi was asked by his new brother-in-law to lend him K4.[7] Kabambi refused and the brother-in-law offered to sell him an iron bed-frame for K6, which Kabambi agreed to. The bed had belonged to Loshia's deceased elder brother, who had left it to her when he died. Kabambi was keen to acquire ownership over this bed that his new wife was using; he feared she would remind him 'This is not your bed'. (The conjugal bed plays an important part in Nkoya sexual symbolism.) Ever since this time Ennesi had retired to her consanguineal kinsmen's village, only to come to Mukowe's for a few days of gardening. She refused to stay: but she did not refuse sexual intercourse – provided that Kabambi would come and sleep at her own village, which he refused. Obviously the senior wife feels threatened in her position by the younger co-wife, but for fear of being accused of sorcery (a standard allegation in the case of polygyny among the Nkoya) she cannot afford to express animosity with regard to this rival. However, no one would deny that she has a right to fair treatment from their mutual husband, and she often scolds him when she feels she is getting the worse share of the game and fish he brings home. This, however, is not sufficient reason to explain her absenteeism. Puzzled by Ennesi's behaviour, and annoyed, finally, by her refusal to return home, Kabambi decided to put the case before the neighbourhood court. The court is held away from the village, at an open space where Mukowe made chairs. Most headmen of the neighbourhood attend, as well as many elders and lesser men. The gist of the proceedings follows here (apart from the spouses, all taking part in the discussion are village headmen).

Shelonga: Look, Kabambi, you called us here, what is the matter?

Kabambi: My wife stays away and refuses to do anything.

Shelonga (turning to the woman): Well what is the matter?

Ennesi: I haven't got a good home, no clothes, no pot, no mosquito-net. I am eaten alive by the mosquitos. I don't have any good things in the house. My little sister (= co-wife) has got an iron bedframe but I am the senior wife and I don't have one.

Kapashi: Is this true?

Kabambi: No, if you think it necessary I can call children to bring and show what she has got inside her house.

(Children are sent on the errand and the result is truly impressive; Ennesi's possessions include two big iron pots on legs, three small pots, six plates, eight spoons. The only obviously missing items are blankets; but these she is likely to have taken away when she left Mukowe's.)

Kanjilo: Look, this house is full of possessions. Many people have only got one pot, and then not a pretty one like these. So what do you really want?

Ennesi: This is not what I mean. But I have no proper clothes.

Kanjilo: So what do you wear right now?

Ennesi: These are the clothes I bought myself, with my own money that I got from the sale of my maize.

(The exchange continues in the same vein. It finally becomes explicit that Ennesi wants a divorce, and that the only concrete thing she can mention as a ground is her co-wife's iron bedframe.)

Kanjilo: In the past, before the Whites came, did we have an iron bedframe to sleep upon? No. Did we have a mosquito-net? No. In that time, was there divorce just like that, for nothing? No. So why do you behave like a little girl now, why do you want to divorce over such a small matter?

Wankie: Look, all of you, I find this a very difficult case myself. The easiest solution would be just to divorce today.

(Nobody agrees with this solution).

Kapuka: Look, this is my sister. You cannot tell her to divorce, just like that. You are a big man, you are supposed to know how things are done in Court. This is no reason for divorce, at most we can caution. The only problem is really the bed. We don't know about her clothes or her blankets, but we see all the things that she has got in her house, so we don't believe her complaints about blankets and clothes either. The only problem is the bedframe. When this man bought it for his junior wife, he should also have given his senior wife a bedframe or K6. That is the only problem. This woman is my sister, I do not want her to divorce just like that.

Mukowe: I have no proper power over these people. Originally Kabambi lived far away from me, he only came to settle with me when we ourselves moved to this place. He never reported his troubles to me. Today is the first time that I hear all these things. Only Kabambi's wife came to tell me that she was leaving, never to return. 'Just ask your little brother (Cousin Kabambi) if you want to know why', she said. But when I asked him, Kabambi did not seem to know the reason. The best solution is really just to buy another bedframe.

Kapuka: We do have faith in Kabambi. For whenever somebody would fall ill, Kabambi would tie his blankets and bring them to sleep in that place until everything would be all right again. And when someone would die, it was the same. But since this woman started to vex him he has changed. He stopped doing all these things because of you, Ennesi.

Mukowe: Look, out of my own experience I can answer you back. I can reply to what you just said. When Kabambi's mother died, your sister slept there for only two days, no matter how many mourners came and how much work there was to do. On occasion of another funeral, she only came for one day. On yet another occasion, she did not even turn up at all. That is why this man is annoyed now!

(The court discussed the various aspects of the case, but found it hard to arrive at a verdict.)

Shakupota: The only problem is the bedframe, really. Kabambi should buy another bedframe as soon as possible. Then if in future a new problem arises, we can see whether someone really made a mistake, or whether it is all just a matter of jealousy (= the state of mind in which one resorts to sorcery).

Kapuka: My sister, now you should take away all your possessions from our village and go back to live with Kabambi again. He will buy a bedframe for you or give you K6. This is the end.

(Ennesi is obviously not entirely satisfied with this verdict; but since even her close relatives helped to arrive at the verdict, and agree with it, she has no choice.)

In this case we see how, for the sake of mutual interests of male consanguineal and affinal kinsmen, obvious indications of deeper personal and group conflicts are ignored and Ennesi is forced to yield to these interests. It would be interesting to assess, in a follow-up, whether the senior wife's dissatisfaction with the verdict has in fact precipitated a continuation of the conflict in the sphere of sorcery, divination, and ritual.

Divorce is not infrequently the result of a mutual agreement between the spouses, feeling that they should separate on the basis of incompatibility of habits and of character. Such divorce with mutual consent need not lead to a disruption of inter-group relations between bride-givers and bride-takers. In the public discussion of the case in the village court emphasis will be put on the personal conditions that worked against marital success – any more collective, structural conditions involving inter-group relations are purposely ignored. If the spouses are found to be irreconciliable, no pressures will be applied to let the marriage continue: the senior kinsmen fear to be blamed if in future the marital conflict might lead to disaster (violence, sorcery, death). An acceptable arrangement for the financial aspects of the marriage will be found, and whatever tension remains is expressed not through escalation and sorcery, but through mild joking between the former spouses and between the former husband and his successor. That inter-group relations have not suffered is ostentatiously brought out by the fact that the former in-laws continue to address each other by affinal kinship terms. The good 'post-marital' inter-group relations guarantee that the former husband will not try to make money out of a subsequent attachment of the woman, so no official divorce at the

Local Court is necessary. Such divorce arrangements are considered most honourable for all parties involved.

Relatively frictionless dissolution of marriage is, however, impossible if the marriage has been contracted over a wide geographical distance (which makes close day-to-day interaction between the affines unlikely); if the marriage has already survived for a long time; if previous reconciliation has not succeeded in improving the marriage; or if serious shortcomings, and escalated intra-family tension (e.g., recent deaths), conflict, and the associated sorcery, have reduced marital conflict to a grim battle for survival. Under such conditions various factors combine to take the formal dissolution out of the hands of the neighbourhood court and to entrust it to the Local Court.

The main factors working towards a considerable proportion of the marriage cases being tried before the Local Court are the following. The great majority of marriages is contracted in the village without any official registration; such marriages do constitute valid customary marriages before the Local Court. However, this Court does not acknowledge the validity of a divorce that is pronounced by a neighbourhood court. Therefore, it will admit the case of a former husband who, while divorced in the neighbourhood court, sees fit to sue a man who has taken his place. By consequence, divorced women are much more attractive partners for future marriages if they are in possession of a divorce certificiate issued by the Local Court. Fears of a former husband involving the Local Court are all the more realistic, since in sharp contrast with the neighbourhood court, this Court can impose fines as high as K200 (maximum) and can reinforce its rulings by appeal to the *district* police. Sometimes it is the subchiefs themselves who press for referral to the Local Court: they are aware that it would endanger their brittle informal position of authority if, contrary to the Local Court's explicit wish, they attempted to handle cases that are not mitigated by the desire for good post-affinal relations among the parties, and that therefore could lead to major conflicts, with affines (knowing what they could get at the Local Court) demanding sums of money far bigger than the neighbourhood court is supposed to handle. Moreover, there are certain cases which would furnish admissible grounds for divorce before the Local Court, but not before the neighbourhood court. E.g., according to the Local Court a wife is entitled to divorce and to considerable compensation if a man has left her (particularly to go and work in town) and has not contributed towards her expenses for at least one year. In the neighbourhood the absent husband's relatives would normally try to play down the wife's allegations of neglect, and the elders

would seldom risk a personal conflict with the former. In such a situation a wife may consider it to her advantage to apply to the Local Court.[8]

With respect to sexual offences a pattern is followed similar to that of divorce cases. If good relations and a considerable overlap exist between the immediate kingroups of plaintiff and defendant, settlement will be in the neighbourhood court, and while a relatively small fine may be imposed, emphasis will be on redress of the offender and on the manipulation of honour: the group whose honour has suffered damage because they publicly failed to control a woman entrusted to their custody attempts to restore its dignity and to manoeuvre the defendant's group into a situation where they lose honour by having to admit that they failed to control one of their male members. If the structural requirements for internal settlement are absent the case is usually taken to the Local Court. Such a situation occured in example F.

F. Passion and politics. Alisi is a young, widowed daughter of headman Kabeshas' sister. When her husband's death put and end to Alisi's residence at the district centre (where she had joined Zambia's one party), she joined Kabesha's distant village. In this area the party had so far found very few sympathisers and Alisi proceeded to found a Women's branch of the party. Her work brought her in contact with Peter, chairman of the likewise budding local youth branch of the party. Peter lives in Mulempwe village at the other side of the valley; here he had only remote kinsmen and is rather isolated, as regards his kinship-political position. The acquaintance developed to a stage where an enraged Kabesha has to chase Peter out of Alisi's hut in the middle of the night. The sexual offence, in conjunction with Peter's insults of Kabesha when caught *flagrante delicto*, constituted an obvious case. The relative social isolation and low popularity of both the plaintiff (cf. A) and the defendant, the absence of valued relationships between their respective villages, and the knowledge that the offences constitute an admissible case before the Local Court where they would fetch higher damages than before the neighbourhood court, led to the decision to have the case tried at Kapondwe. Here Peter was found guilty and payment of damages was imposed on him.

6. CONCLUSION

In contemporary Nkoya rural society the Local Court is, as to its geographical location, its personnel, and its functioning, peripheral to the mainstream of the social process. As compared to other institutions of conflict regulation (intra-village *ku-ambola*, the ad-hoc neighbourhood court), the Local Court is infrequently used for very specific types of cases and under specific conditions, such as were outlined in the preceding pages. The Local Court, although the only formal judicial institution stipulated

within the modern administration of the area, is not in the focus of the judicial process; and such conflicts as it deals with are hardly of decisive importance to the individuals and groups involved – as compared to those conflicts which are resolved without reference to the Local Court.[9]

The Local Court, since it is there and since it commands powerful sanctions (ultimately upheld by the nation-state), superimposes upon the internal Nkoya institutions an additional judicial framework. It endeavours to define and to promote such rights and obligations as it presumes to exist between individuals. Neither the definition of its legal premises, nor its authority, nor indeed its personnel, are to any significant degree determined by the social processes within Nkoya rural society. Precisely because the Local Court is external to these processes, it can efficiently deal with conflicts between parties who are not tied to each other by multiplex roles in everyday village situations (and whose conflict therefore would directly affect a host of other people in their environment) but who on the contrary have a specific, one-stranded relationship involving fairly specific rights, obligations, and grievances.

While present-day sexual and marital relationships frequently approach this ideal-type, the bulk of social relationships in Nkoya society is still of the inclusive, multiplex nature: they involve people who are tied by, at the same time, kinship; economic, political, and ritual interests; common residence within the same village or neighbourhood. In these latter situations, involving such a peripheral agency as the Local Court may mean a temporary advantage (in terms of financial gain and revenge) to one or two individuals involved. But it will also inevitably disrupt the existing pattern of relationships to such an extent as to threaten seriously individual security, perhaps even survival; and this also applies to those few who superficially appear to benefit from the Local Court's ruling. The latter's turning to the Local Court is generally resented by the other party (and often by public opinion as well); even if the Local Court manages to sort out the concrete issues of the case, new ill-will is bred, the underlying conflicts over authority, status, and autonomy tend to linger on, and the risk of crisis (sorcery, fission) often remains unabated. Therefore, given well-developed internal alternatives to the Local Court, which are still endowed with sufficient authority in the eyes of the participants as well as tolerated by the Local Court and higher-level authorities, there is little wonder that most conflicts seek their solution outside the Local Court. This is particularly so since, closely related to their immediate conflict-regulatory function, *ku-ambola* and the neighbourhood court provide an arena where, as a direct reflection and continuation of the extra-judicial social

process, basic ideals of Nkoya society are expressed, and where the status, authority and power of significant social groups, social categories, and their senior representatives are continually examined, competed for, and redistributed.

What are the implications of my argument?

Not, I should emphasize, a posthumous attack on Gluckman's extremely valuable and seminal work. There is not the slightest suggestion that his masterly description and analysis of the judicial system of the Lozi proper should contain any major distortions, even if there is a marked difference with the judicial situation in a Lozi subject tribe, thirty years later. On the other hand, inadequacies of my own research (Van Binsbergen, forthcoming) may explain part of the discrepancy.

In addition, there are several systematic explanations of the discrepancy: the specific historical differences between the central Lozi and the Nkoya variant, within the former Barotse state; and, beyond this, a different research approach.

Comprehensive social change over several decades, including the attainment of national independence and the incorporation of the Barotse administration into the national administration of Zambia, may appear a ready explanation (Caplan 1970; Gluckman 1967a: 368f; Van Binsbergen 1975, 1976a, b, c). Yet what data I have on the Nkoya judicial situation in the 1930's–1950's suggests that also in the time of Gluckman's fieldwork a similar discrepancy existed.

There are two crucial points which, although never denied by Gluckman, have so far failed to attract sufficient attention among his commentators. First, Gluckman's research was confined to the Mongu-Lealui area: the small core of the Barotse state, where Lozi speakers then outnumbered any other groups and where the Lozi king's power and authority were most effective. Secondly, the Barotse state as described by Gluckman was only of recent origin and in full expansion – and expansion of the Lozi legal system, also during the colonial period, was an aspect of this. As late as 1937 the colonial administration helped to establish a Lozi appeal court (Naliele *kuta*) headed by the son of a Lozi Paramount Chief, in the centre of Nkoya country. A major reason for the colonial administration supporting this move was that the imperfect incorporation of the area into the Barotse indigenous organisation made it until then impossible for disputes to go beyond the highly competing local chiefs and *indunas* and to use such appeal opportunities as the central Barotse judicial system provided (G.C.R. Clay, personal communication).

On one level of analysis the Nkoya (and perhaps other subject tribes on the woodland plateau of the former Barotseland, now Zambia's Western Province) occupy, as far as their legal system is concerned, quite a different position from the central Lozi, whose institutions used to focus on the kingship and the land, against the background of the unique Zambezi flood plain-ecology. The difference in effective incorporation into a larger state system does explain in part the discrepancy between the judicial situation among the central Lozi and the Nkoya. On top of this came then, after independence, the general dismantling of the Lozi legal administration and of the judicial role of the Nkoya chiefs (section 2); these recent changes further added to the peripheral nature of the Local Court among the Nkoya.

However, these structural differences between the Central Lozi in Gluckman's time, and the contemporary Nkoya, mainly concern what one might call the intermediate social-structural level: the supra-local organisation which is superimposed on the lowest, village level – but which is in itself determined, to a high degree, by national and international conditions: the governmental and industrial power distribution, world markets of labour and goods, urbanization, etc. However large the historical differences on the intermediate level, on the grass-root level of the village there exists a striking similarity between present-day Nkoya and the Lozi village society of the 1940's, and indeed between these two, and a great many other village societies throughout Central Africa. The small villages, the high geographical mobility, the competition for political and residential following along kinship lines, the competition for titles carrying high prestige, the continuous re-alignment, and fission reflecting the conflicts engendered in this way, the part played by sorcery and sorcery accusations in these processes, the shifting agriculture with a fringe of animal husbandry as providing an additional, ecological basis for village dynamics – these are all recurrent themes in the anthropology of Central African villages (Barnes 1954; Colson 1958, 1962; Cunnison 1959; Marwick 1965; Mitchell 1956; Richards 1939; Turner 1957; Van Velsen 1964; Watson 1958).

Alternatively, on the highest level of national and international politics and political economy, most members of contemporary Nkoya society along with the overwhelming majority of rural Central Africans since the early decades of colonial rule (including most of Gluckman's Lozi), fall within the class of peripheral peasantry. In this respect their situation is also far from unique. Determined by central conditions way beyond the control of the villagers, this situation is characterized by a paucity of local cash opportunities, dependence on urban-rural relations, and an increasingly

direct influence of central agencies in the rural aras. The impact of this macro set-up upon the contemporary rural social and judicial processes can hardly be overestimated.

If both on the lowest and on the highest structural level the Nkoya and the Central Lozi are not too exceptional among Central African rural societies of the twentieth century, then the salient points brought out in my analysis can certainly not be explained exhaustively by mere reference to intermediate-level differences between Nkoya and Lozi. I would moreover, suggest that some of the Nkoya patterns outlined in the present paper may also be found to exist in modified form in other Central African societies today.

This finally brings us to an important methodological point. Whatever the historical and ethnographic peculiarities of the Nkoya, I suspect that my findings also, and to a considerable extent, depend on a difference of perspective adopted in my research, as compared with that of other legal-anthropological studies made in Central Africa. If one concentrates on formal court cases as the unit of study, then the numerous instances of conflict and conflict regulation which occur on the village scene but which never enter this formal setting simply fall outside the scope of the research. If, as I have tried to do, one concentrates on the ongoing social process in the village, taking as one's unit of study such social conflicts as arise, and tracing the social processes through which these conflicts are brought to an end, then litigation before a formal Local Court necessarily appears as only one of the options open to the participants; and it may well turn out that they pursue this option rarely, due to structural conditions which one may then set out to identify. Strictly speaking, the two approaches, while both legitimate and complementary to each other, yield incomparable results.

While one may wonder how limited an insight into a formal judicial system can be gained if the latter is studied as just one of many options within the overall system of conflict regulation (my weakness), one may as well ask if a judicial system can be properly understood if we continue to study it on the exclusive basis of one pre-conceived model, the formal court situation.[10]

NOTES

1. Fieldwork was carried out in the period February 1972–April 1974. I am indebted to the following persons and institutions: my informants and the Zambian authorities for their warm co-operation; the University of Zambia for allowing me to devote ample time to research while I was a lecturer in the Department of Sociology, and later for research facilities provided by the Institute for African Studies; to my wife, Henny E. van Rijn; to D.K. Shiyowe for excellent research assistance; to M. Gluckman, A.J.F. Köbben, H.J. Simons, and especially J. van Velsen for encouragement and advice; to the Netherlands Foundation for the Advancement of Tropical Research (WOTRO) for supporting the writing-up of the field-data; and finally to R.L. Abel, W. Bleek, R. Canter, G. Clay, A.J.F. Köbben, H. Mwene, S.A. Roberts, H.J. Simons, and J. van Velsen for valuable criticism of earlier drafts.
2. All names of people have been altered, as have the names of Nkoya localities.
3. I.e., Kololo, which (contrary to the original Lozi, or Luyana, still the official Lozi court language) is not intelligible to Nkoya speakers, unless they have expressly learned this language.
4. At least, as long as the relation with the dead has not yet developed to a crisis: supernatural illness, possession, post-mortem sorcery; in the latter cases, religious specialists are resorted to as the main link between the living and the dead: Van Binsbergen 1972, in 1976c, and forthcoming.
5. It is common that a divorced woman brings her infant children into the household of a later husband; problems will begin to arise by the time these children have reached school-going age, involving expenses for school uniform, etc.
6. Divorce is relatively frequent in Nkoya rural society. A preliminary estimate indicates that over 60% of all marriages end in divorce (instead of death). For detailed quantitative analysis, see Van Binsbergen, forthcoming.
7. K (Kwacha), the Zambian currency. At the time of research Kl was about Hfl. 4,—.
8. This is one of the rare instances of recognized discrepancy between the jurisprudence of the Local Court and the neighbourhood court. Disputes over land (particularly over highly-valued riverside gardens, pressure on which is beginning to build up now) provide another example: while land disputes are hardly admissible before the neighbourhood courts (due to Nkoya ideal conceptions of land-holding), they are occasionally tried before the Local Court.
9. I am aware that my rather intuitive assessment of relative importance of conflicts should be refined by explicit operationalization and measurement.
10. In later reassessments of his Barotse legal research, Gluckman did admit to having studied the Barotse court cases too much in isolation, and to have ignored their relation with the ongoing social process in general (1967a: 371f; 1967b: XVI).

Family dispute settlement and the Zambian judiciary: local-level legal adaptation* 4

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My concern in this paper is the adaptations which have occurred in Zambia between the National government's local court and local-level forms of dispute settlement. I will examine the conditions under which rural Zambian families turn to the National judiciary to settle their internal disputes, and the role which the local court plays when faced with family dispute settlement.

The Zambian government's local court, the lowest level court in the Zambian judicial hierarchy, is in most cases the forum of last resort in family disputes. Family forums for dispute settlement (*Nkuta)*, though not officially sanctioned, operate successfully through mediation to resolve the bulk of disputes which come before them. When family mediation is unsuccessful, cases are generally appealed to the village moot where mediation is attempted by village authorities. Should village mediation fail, the case will be appealed to the local court for adjudication.

From an analysis of dispute settlement behaviour at the local level, through the use of 'extended case' material, two developments may be observed which reveal significant adaptation of traditional forms of dispute settlement and the local court procedures. The first is the socio/legal expectation on the part of the community and the local court that a mediated settlement should be attempted before bringing a case for

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