

TO CLAIM OR NOT TO CLAIM: CHANGING VIEWS ABOUT
THE RESTITUTION OF MARRIAGE PRESTATIONS AMONG
THE ANUFÒM OF NORTHERN TOGO.*

Emile & Els van Rouveroy van Nieuwaal

Introduction

In this paper we intend to describe the system by which women are reciprocally given and received in marriage, and the accompanying marriage prestations, as it exists among the Anufom, an ethnic group in Northern Togo.¹ That this

*This article was first presented as a working paper at the annual conference of the Afrika-Studiecentrum, Leiden, The Netherlands, "New Directions in Family Law in Africa" (30th September - 4th October 1974). It results from a study of customary family law in the Anufò area in the circonscription Mango, in Northern Togo. The study was carried out between July, 1969 and July, 1970, and between February, 1971 and October, 1971. Data were collected in the town of Sansanné-Mango (capital of the circonscription Mango) and in the surrounding rural area, mostly in the village Ayikpèrè (see also note 9). The research was supported by the Netherlands Foundation for the Advancement of Tropical Research (WOTRO), The Hague, and executed under the supervision of Professor J. F. Holleman, University of Leiden, The Netherlands. The authors gratefully wish to acknowledge the assistance of John Griffiths (New York University). We are indebted for his insights and criticism during the preliminary work for the publication of this article.

¹The Anufòm, or Tyokossi (Chokosi, Chakosi and Tschokossi) as they are called by the administration and other surrounding ethnic groups, are practically unknown in ethnographic literature. Some German articles at the beginning of the 20th century can be mentioned: Asmis (1912) Fisch (1911); von Thierry (1899); von Seefried (1913); von Zech (1904). More recently the Anufòm are mentioned by: Levtzion (1968, 1969); Wilks (1966); Ahrin (1974); van Rouveroy van Nieuwaal (1971, 1973a, 1973b, 1974, 1975a, 1975b); Rey-Hulman (1975). For a discussion of the Anufò language: Hintze (1953); Prost (1958); Stewart (1966).

system is not just a construction in our minds, but one with which the participants are daily concerned, should become clear from the description.

The system of marriage and marriage prestations is the subject of a great number of disputes brought before the two most important judicial institutions in the area: the Tribunal Coutumier de Première Instance (the lowest government customary law court) and the Court of the Paramount Chief of the Anufòm. There is significant disparity not only between the traditional ideas on these subjects as expressed by the Anufòm and as formulated by these courts in their judgments, but also between the views of the Tribunal and those of the Court, as we will illustrate through a detailed examination of two cases.

I. The Anufòm Marriage System

The Anufòm are a small ethnic group of about 20,000, who live in northern Togo, in and around Sansannè-Mango, a town of approximately 10,000.² Their name, Anufòm, refers to their origin from the region of Anò in the Ivory Coast, between the rivers Comoe and Nzi. During the second half of the eighteenth century a group of Anufòm set out from Anò and engaged in several military exploits (some in the service of the king of Gonja and in the service of the Mamprussi), one of which finally led them to their present habitat.

Anufòm society consists of three social groups of different status (and partly different ethnic origin), membership of which is hereditary in the male line. The leaders of the Anufòm, formerly the army commanders (donzo, pl. donzom³), form the ruling estate. Subordinated to the ruling estate is the estate of the commoners, the former soldiers (ngye, pl. ngyem). Next to them there is the estate of the learned Muslims (karamò, pl. karamom), who act as councillors and magicians to the rulers. The karamom are not subordinated to the donzom, nor do they have any ambition to leadership of the society; their relationship was defined by a pact, concluded before leaving Anò, by which the two groups promised

²In 1974 the Anufòm renamed the town N'zara. In this article, however, we shall refer to the town by its former name for the sake of convenience.

³See for discussion of the term donzo: Cisse (1964) and Delafosse (1955:470).

each other mutual aid and respect. When the Anufòm arrived in Northern Togo, two centuries ago, only the karamom and a few donzo lineages were Muslims, and it was not until the first decades of this century that the whole ruling estate and part of the commoner estate gradually adopted Islam. Today in the town of Sansanne-Mango most Anufòm are Muslims, but in the rural areas most have still not been converted. All three estates speak the language of the original people of Anò, a form of Agni-Baule. The karamo of Dyula origin and those donzom who are Mande by origin still speak Mande on ritual occasions.

Although they constitute only one third of the total population in the circonscription (province) Mango, the Anufòm have for centuries dominated the other ethnic groups in this region of Togo, and the Paramount Chief of the Anufòm is accepted by the Anufòm and by others within the circonscription Mango as the highest traditional authority. Before the pacification of Northern Togo by the Germans at the end of the nineteenth century, the Anufò economy was based on raiding the surrounding country and levying a tax on the subjugated population. When the Germans put an end to the raids and the oppression of the local population, the Anufòm had to start cultivating the land themselves. Today all three estates derive their principal income from hoe cultivation.

A. The exchange of women

The most important social unit of Anufò society is the patrilineal descent group, the awuru. In its maximal form it has a depth of seven generations, descent being reckoned from the original ancestor who came from Anò. Every such maximal lineage is subdivided into lineage segments ranging in depth from three to five generations. These smaller descent groups, also referred to as awuru, are the units which usually act more or less autonomously in everyday matters such as the giving and receiving of women in marriage. Each maximal lineage and lineage segment has a head, the oldest man of the oldest living generation. It is rare that an entire maximal lineage will be actively involved in such transactions, though the lineage head should be informed of all marriage transactions.

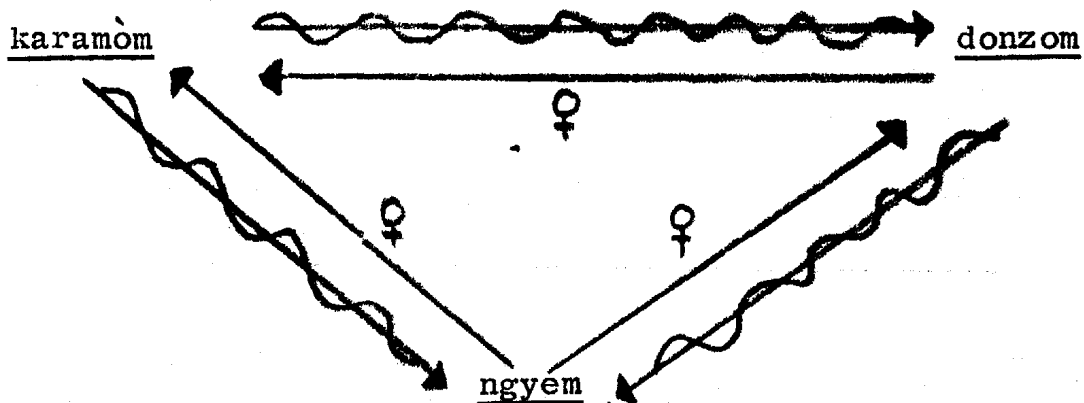
The maximal lineages of the Anufòm are not exogamous. Among the ngyem the exogamous unit is the lineage segment with a depth of three generations. Among the donzom the nearest kinswoman a man is allowed to marry is his second cousin (FFBSD). Among the karamom even marriage between parallel cousins (FBD) is possible, although it is considered

preferable to marry a daughter of one's father's half brother, i.e., a brother with the same father but another mother. The Anufom hold explicit ideas about the advantages and disadvantages of a "marriage within the lineage" as against "a marriage far away", i.e., a marriage with a member of another lineage.⁴ Marriages within the lineage are supposed to enjoy greater stability, carry an expectation of fewer prestations from the groom and his parents to the parents of the bride, and afford the satisfaction of further strengthening bonds with one's nearest and dearest kinsmen. On the other hand, marriage outside the lineage can serve to confirm an existing and valuable friendship and to create or cement a useful alliance with another lineage. Since the Anufom are under no obligation to marry the women of their lineage to men of other lineages, when they do so they part with something they can "use" themselves equally well. This fact is thought to increase the value of the gift of a woman in the case of "a marriage far away."

Reciprocal giving and receiving of women in marriage between lineages is restricted to lineages belonging to the same estate. Mutual exchange between lineages from different estates is made impractical by the impossibility of, or very strong objections against, some types of inter-estate marriage: a karamo woman cannot be given in marriage to a donzo or ngye man, and a donzo woman cannot be given in marriage to a ngye man. Thus, if an ngye lineage gives a daughter to a donzo or a karamo lineage, they will not receive a woman in return. Permitted and prohibited marriages between the three estates are shown in the following diagram (the arrows represent permitted and the crossed arrows prohibited marriages).

⁴The terms for these are awuru adya and tí adya, adya meaning marriage, and tí, far away.

DIAGRAM 1. Permitted and prohibited marriages.



From the genealogical material we collected it appears that the principle of an equal exchange of women between lineages is carried out, on the whole, in all three estates. In the following description of the system of exchange of women we will limit ourselves to the estate of the commoners, because the principle of exchange is formulated most clearly by them. While exchange relations between lineages of karamom and donzom are established and perpetuated in much the same way as with the ngyem, ngyem speak of "paying back a woman's debt," where karamom and donzom prefer to speak of "giving a woman" even if the woman given is a return gift.⁵ Only among the ngyem is the obligation to reciprocate a woman considered something that can be enforced before a court.

The basic rules of the exchange system can be formulated thus:

- (1) If lineage A has received a woman in marriage from lineage B, lineage A must compensate lineage B for the loss of this woman's procreative capacity by returning one of its own women to lineage B.

⁵The terms for these are to bara kari and kye bara, respectively.

(2) This obligation of lineage A to return a woman to lineage B is considered to be a debt⁶ which cannot be settled in any other way. The idea that money, cattle or other goods might serve as substitute compensation for the loss of the procreative capacity of a woman is rejected, and when in former days the Anufom sometimes paid for women with cattle or money, such transactions were considered merely as a "purchase" of a female slave or prisoner of war and there was no question of an alliance with the lineage of the purchased woman. Nor can one lineage's obligation to furnish a wife be satisfied by another lineage. We shall hereafter refer to the obligation to return a woman as a "bride debt".

A lineage which receives a woman is not obliged to repay the bride-givers immediately. Often a woman is given in return only after the first woman has borne children and in many cases the repayment of the debt is postponed until the next generation.

That it is the right to the procreative capacity of a woman which is exchanged between lineages may be shown by the following additional rules:

(3) The right of lineage A to the children of a woman received in marriage from a lineage B is only fully established when a woman has been returned by lineage A to lineage B.

(4) A lineage which has received a woman who remains childless is not under an obligation to give a woman in return; on the contrary, they are often offered a second woman to replace the barren one.

⁶The obligation to return a woman to the bride-givers is called bara nkato: bara=woman; n=ni a suffix which indicates that it concerns this woman (bara ni) who will be given in marriage as a discharge of a debt; kato=kari to and kari=debt; to=to pay, thus to kari: to pay a debt.

Even if a wife deserts her husband, his lineage will honor their bride debt, provided that children have been born from the union. Should the same woman bear children to her lover, the latter will also do his best to give a woman in return to her lineage. Similarly, if a widow does not remarry a man from the lineage of her deceased husband (as the prevailing leviratic custom requires) that lineage will still return a woman for her, provided she has borne her first husband children; Finally, a marriageable woman is often referred to as an awuru, a patrilineage, in the sense of a future patrilineage.

It follows from the foregoing that Anufò lineages, especially among the ngyem, have to follow a policy of marrying off their daughters to other lineages. The marriage policy of a lineage gives rise to much internal discussion among its adult male members, a discussion in which the opinion of the father of the girl concerned is of the highest consequence. The head of the lineage segment makes the ultimate decision and bears responsibility for it towards other lineages. A father cannot be forced to marry his daughter to the candidate preferred by the lineage head and elders. However, he will hesitate to oppose a reasonable proposition from them, since he depends on their goodwill for the payment of the bride debt incurred by his own or his son's marriages.

There are considerations which serve to guarantee the discharge of the obligation to return a woman, for example:

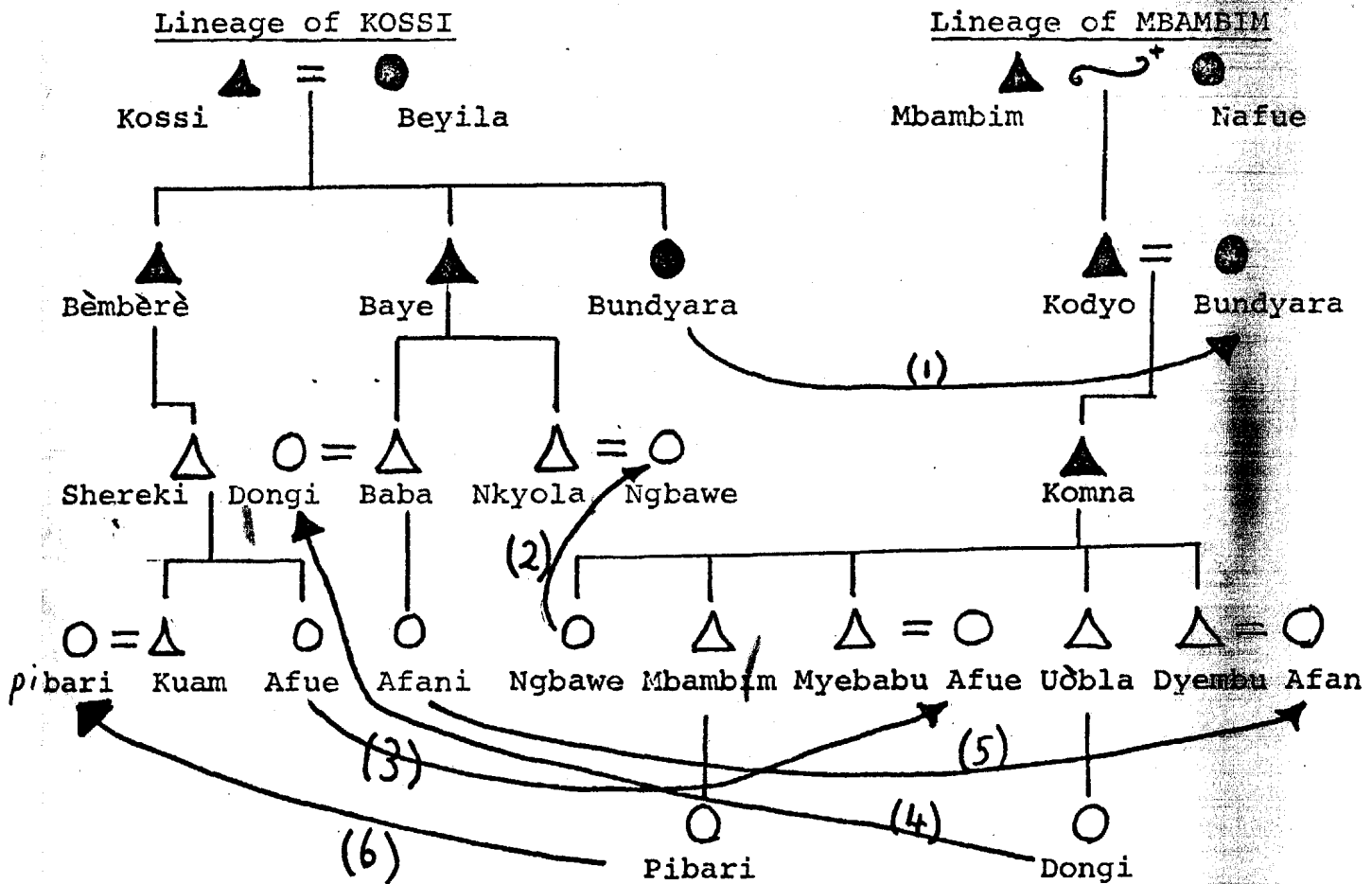
- A high value is placed on good relationships between two lineages, which should not be jeopardized by a failure to reciprocate.
- A special relationship exists between a person and his (or her) mother's patrilineage, his na-awuru.⁷ A woman will often take her children to her father's lineage to cure or prevent illness by seeking the aid of her ancestors, the protection of the mother's patrilineal ancestors being considered more effective in case of illness, barrenness, etc. than the aid of a person's own patrilineal ancestors.

⁷Na=term for FF, FM, MF, MM and all lineal ascendants two or more generations removed from ego. Na-awuru is always used for the patrilineage of the mother's father. The man's own lineage is referred to as shi-awuru (shi = father).

Moreover, a man has some very special rights in his mother's patrilineage, the most important of which is his claim to a woman from his mother's patrilineage, the na-awuru-bara⁸ (marriage between a man and his MBD being preferred). A man is only entitled to demand his na-awuru-bara, however, if the bride debt incurred by the marriage of his mother has been paid by his patrilineage.

Diagram Two gives an example of a bride exchange relationship between two patrilineages for over six generations. Both lineages, which belong to the non-islamized ngyem, live in the small Anufò village Ayikpèrè.⁹

DIAGRAM 2: Exchange of women over six generations between the patrilineages of KOSSI and MBAMBIM.



+ ~ = love affair

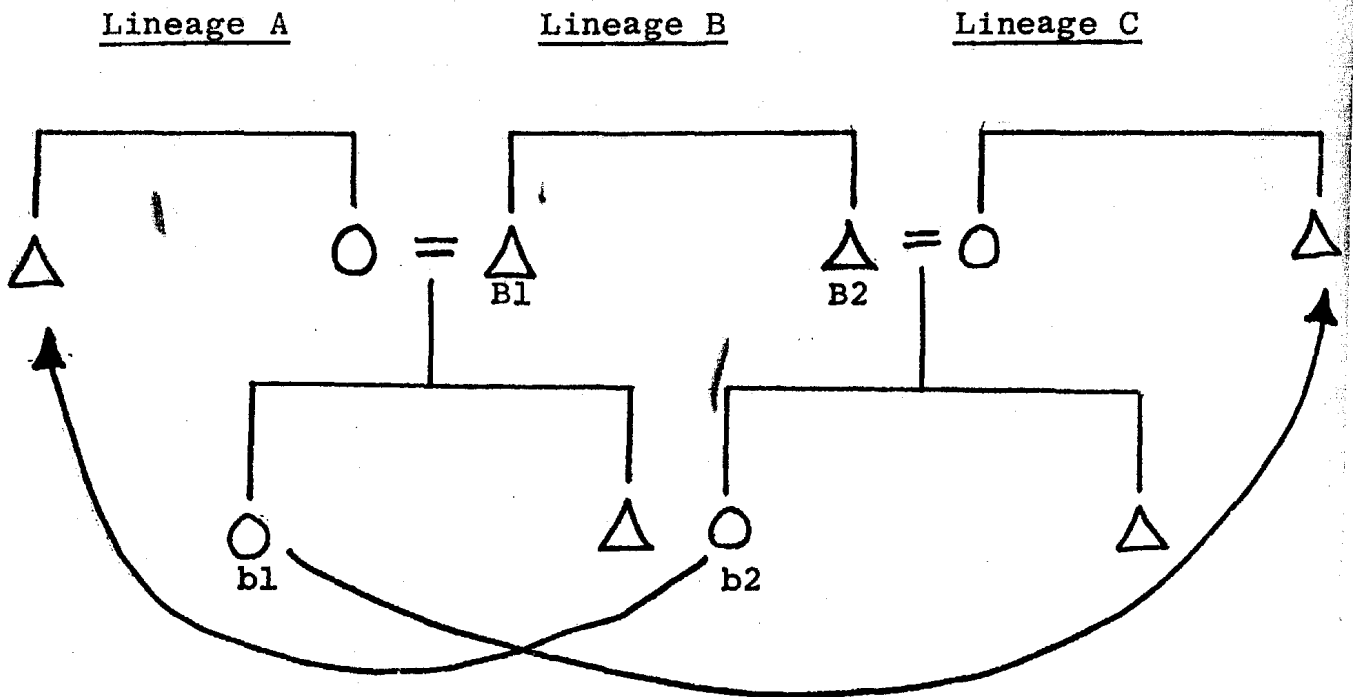
⁸Bara = woman.

⁹Ayikpèrè is a village of about 400 inhabitants, mostly Anufòm, near the border with Ghana and about 30 miles south-west of Sansannè-Mango. Since January 1972, it has been situated in the newly created National Wild Park.

When a bilateral exchange of women has taken place, the following situation obtains: lineage A has given a girl to lineage B and lineage B has given one of its daughters in return to lineage A. The children from the woman of lineage A (who belong to their father's lineage, B) have lineage A as their na-awuru and the children from the woman of lineage B (who belong to their father's lineage, A) have lineage B as their na-awuru. The sons of both women may expect a girl in marriage from their na-awuru, and when these marriages have been concluded the next step towards a solid alliance between lineage A and B has been made. Once such an alliance is finally established it will last as long as daughters in both lineages are available.

A commonly accepted pattern of exchange, involving one wife-receiving and two wife-providing lineages, is for two brothers to use each other's daughters to redeem their own bride-debt, thus:

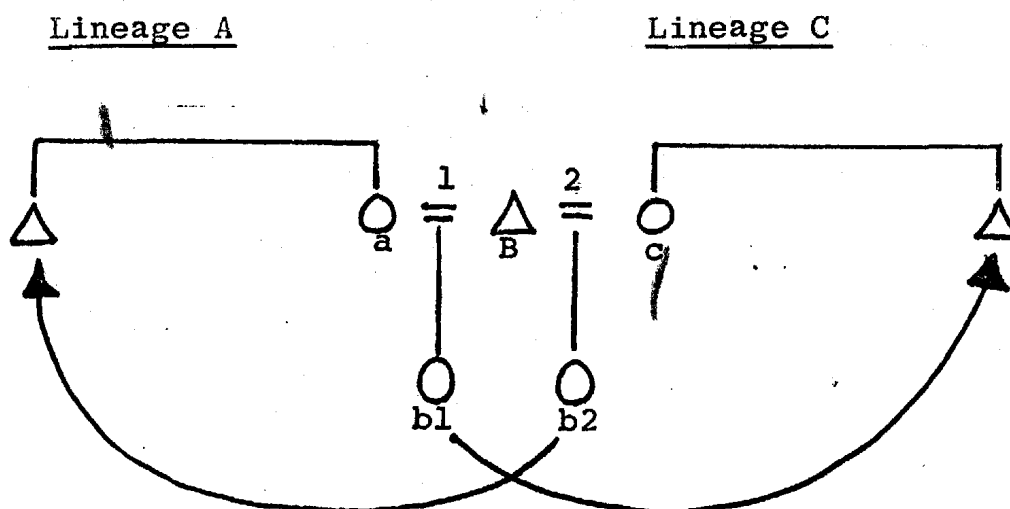
DIAGRAM 3: Reciprocal payment by brothers of each other's bride-debt.



B1 and B2 are brothers (lineage B); B1 has received his wife from lineage A and B2 his wife from lineage C. To pay the debt of his brother B2, B1 gives his own daughter (b1) to lineage C. This obligates B2 to his brother B1 (as far as a "debt" can be spoken of between brothers) and B2 in his turn will be obliged to marry off his own daughter (b2) to lineage A in settlement of the debt incurred by his brother's marriage. This arrangement is very frequent among the Anufom, and is considered the ideal form of exchange. In this way paying a bride-debt with the daughter of the bride can be avoided (a practice considered undesirable, because a man should not marry his cross-cousin, i.e., his father's sister's daughter). The bond between the two brothers is emphasized, and in addition both men will have an interest in keeping all four marriages intact.

Another pattern, often seen in the case of a polygynist who has no brother willing or able to provide a daughter, is to offer a daughter of one wife to redeem the bride-debt incurred for another wife.

DIAGRAM 4: Cross-repayment by polygynist with daughters of two wives.



B pays the bride-debt of his second wife (from lineage C) with his daughter (b1) by his first wife (from lineage A). In this situation the first wife is considered to have been instrumental in redeeming the debt of a co-wife, and she can exert pressure on her husband to give in marriage to her own patrilineage A his daughter (b2) by his second wife.

Among all Anufòm, but particularly in the social estate of the commoners, most marriages are concluded in accordance with the system of bride-exchange. Genealogies from over 400 inhabitants of the Anufò village Ayikpèrè show that the system of bride-exchange has been practised consistently over at least the last five generations. Nevertheless, as a lineage is not always able to return a woman in this or the next generation, the system not infrequently gives rise to problems. The alliance between two lineages is also at risk every time a girl refuses to marry the fiance to whom she has been promised, or a woman leaves the husband to whom she has been given. The system is especially rigid because it is impossible for a lineage which has no daughters available to transfer its debt to a third lineage. Lineage C would never agree to give a daughter in marriage to lineage B on behalf of lineage A, in order to continue an already existing marriage alliance between lineages A and B.

Although divorce is not our primary concern here, it is essential to say a few words about it. A true divorce, resulting in a severance of both marital and inter-lineage ties, involves a difficult adjustment and can only be effected by agreement of the two lineages concerned. The de facto separation of a husband and wife does not necessarily mean a disruption of the relations between their lineages. The husband will continue his relations with his parents-in-law in the hope that his wife's patrilineage will offer him another woman and because he does not want to jeopardize the rights of children in their mother's patrilineage. The Anufòm say that a woman can be given in marriage only once in her life; even if she has left her husband for another man she must perform the widow ceremonies (seclusion for some time) when her husband has died, and likewise her ex-husband must perform the duties of a widower after her death.¹⁰

¹⁰These mourning ceremonies are believed to be required by one's ancestors, and neglect of them may be punished by illness or death. He who acts against the will of an ancestor (especially his own mother or father) runs the risk to be called to account by his deceased parents. He can be tried by the ancestors in a so-called ashyengu dyòrè, i.e., a judgment (dyòrè) under the earth (ashye). The outcome of this ancestral trial may be, if the living man or woman is found to be guilty by the dead, a punishment or curse (samandò).

B. Marriage Prestations

Wooing may commence by a young man rendering service to the father and mother of a girl, visiting them regularly and bringing small presents, like a bowl of millet beer or some cola nuts. His object is to establish a friendship that will result finally in the girl's parents promising their daughter in marriage.

From the moment a man has been promised a girl until he actually marries her, he must render personal services (such as assistance in farm labor) and offer gifts to his future parents-in-law. These services and gifts are called ashibyèya.¹¹ In contrast to the settlement of the bride-debt, which is an obligation of the lineage segment as a whole, the payment of the ashibyèya is the responsibility of the would-be husband, and his father and elder brothers. The ashibyèya is not a genetricial payment; it does not entitle the bride-receivers to the offspring of the bride. That right is only guaranteed by returning another woman to the bride-givers. The ashibyèya is not a fixed sum and the cash equivalent--particularly for the personal services--is hard to calculate; it ranges from approximately 15,000 francs CFA to 30,000 francs CFA, when the personal services are not included. (1,000 francs CFA = 20 French francs = approx. \$4.50.) The most important material elements of the ashibyèya are the harvest products and the kurubi¹² money which are given to prospective mother-in-law every year at the end of Ramadân and which she spends little by little on the trousseau of her daughter. The quantity of harvest products and the amount of kurubi money depend on the age of the girl, but also on the

¹¹The term ashibyèya is derived from the kinship term shibyè, for a male affine; it indicates: 1) the affinal relatives as a group; 2) the duties and obligations towards affinal relatives.

¹²The kurubi feast is celebrated on the 27th of Ramadân, the night in which the Koran is said to have descended from Heaven. The kurubi money is not given on the kurubi day itself, but usually some weeks or even several months later. The amount varies from 500 francs CFA to 5,000 or even 10,000 francs CFA, depending on the age of the girl.

For a calculation of marriage payments see van Rouveroy van Nieuwaal (1973a:46).

outcome of the harvest.¹³ In addition, a man helps his prospective father-in-law in the fields and organizes work-parties for his benefit.

Quite as important, however, are the intangible elements of the ashibyeya. A suitor should make regular visits to the girl's parents, do his utmost to please them in all ways possible, and show them the highest respect and gratitude. Neglect or inability to make the required gifts may be overlooked if a man shows respect to his future parents-in-law, but material gifts can never compensate for a lack of respect. It is primarily disrespect which causes parents to break off an engagement and marry their daughter to someone else. This is, however, an exceptional occurrence.

C. Restitution of marriage prestations

If a woman refuses to marry her finacé or a married woman elopes with her lover, a claim for restitution of the marriage prestations is considered highly improper. The ashibyeya is aimed at establishing and maintaining a good relationship between a man and the parents of his future wife and is not considered payment for the woman or her procreative capacity. Restitution of the marriage prestations would disrupt the relations between a finace and his prospective family-in-law. If a woman abandons her husband or fiancé, the best he can do is to wait patiently for his parents-in-law to offer him another woman as compensation. This will probably happen, provided that the elopement was not a result of his own behaviour. A man will only claim return of the ashibyeya from his parents-in-law if he is convinced that they caused or abetted their daughter's behaviour. In that case, the relationship between a man and his prospective parents-in-law will be beyond redemption anyhow. Since the ashibyeya is given personally to the girl's father and mother, a claim of restitution is addressed only to them, not to the woman's lineage as a whole.

If the ashibyeya is claimed back, this is usually intended as a show of anger against the lover, not the prospective parents-in-law. A man who elopes with the wife

¹³ If the mother of the girl considers the amount paid by the future son-in-law insufficient to buy her daughter's trousseau, she may try to delay the marriage for another year or two. In doing so, she takes the risk that her grown-up daughter will run away with another man and then she may even find herself accused of deliberately giving her daughter the opportunity to run away.

or betrothed of another man may nowadays be legally forced to pay the latter a considerable sum of money, in part by way of indemnification for the ashibyèya he had paid to the family of the woman (at least 25,000 francs CFA if the case is heard by the Paramount Chief, and between 5,000 and 10,000 francs CFA if his rival has gone to the Tribunal, see below).

Even after he has indemnified the husband (or fiancé), a lover is not assured of the normal relations with the family of the woman which are entailed by marriage. According to Anufò norms, a woman can be given in marriage only once and any second marriage is her own affair. Her parents will say they have nothing to do with the second man, whom they do not know (i.e., they do not recognize him as the husband of their daughter). Moreover if the parents of the woman were too ready to accept their daughter's lover as her husband, this would be an insult to the first husband (fiancé), and he would suspect them of having instigated or abetted their daughter to leave him. The lover will, nonetheless, do his best to come to good terms with his wife's parents, especially when he has children with her (thinking of their rights in their na-awuru, their mother's patrilineage). If he bides his time, there will come a point when greetings and presents will be received; and if he never overlooks an occasion to prove his good intentions, he will eventually be accepted, the more so after he has indemnified the first husband. Apart from the indemnification of the first husband, he will thus have to pay a lot of money for presents to his wife's parents, not to mention the presents he gave to his wife when she became his lover, in order to prove his love. A marriage resulting from a love affair is generally very expensive.

It sometimes happens that a man confronted with such onerous prospects retires from the whole affair, leaving the woman in a somewhat awkward position. Should the woman still refuse to return to her first husband, she can only return to her parents. The husband who cannot claim from the lover and does not want to claim from the parents of his ex-wife is left without indemnification. As a solution to cases like this, the Court of the Paramount Chief nowadays usually requires the lover of an engaged or married woman to pay the ashibyèya back to her first husband (fiancé), regardless of whether the relationship is continuing or not.

II. The Law in Action

Disputes concerning the exchange of women, refusal to marry, and claims for the restitution of marriage prestations occur frequently. When not informally disposed of, such claims can be brought both in the Tribunal and in the Court of the Paramount Chief.

The Tribunal was set up under the "Loi relative à l'Organisation Judiciaire" of the 12th of June 1961, and is thus an official court (Laloum, 1963: 124). It is staffed by an African lawyer (trained in French law) known as the "Juge de Paix," advised, but not bound, by two African assessors. The competence of the Tribunal is restricted to civil matters ("en matiere civile et commerciale") and to minor criminal cases which the Juge de Paix tries without assessors. In general the territorial jurisdiction of a Tribunal is limited to one circonscription. In Sansanné-Mango the Tribunal commenced its duties in October 1965.¹⁴

The Court of the Paramount Chief of the Anufòm is the highest traditional judicial institution. The present Paramount Chief, Na Tyaba Tyekura, was officially so designated by the Togolese government of 6 December 1963, after being elected to that function by the Anufòm. As in the case of other traditional authorities¹⁵ the Paramount Chief is only a local civil servant, as far as the government is concerned, and not a judge, as the Anufòm believe. Local chiefs are not recognized as "courts" in section 1 of the "Loi relative à l'Organisation Judiciaire." The judicial competence of traditional chiefs in Togo is still based on two decrees issued during French colonial rule.¹⁶ According to these decrees the Paramount Chief is only authorized to conciliate people, and only in civil matters. In practice the Paramount Chief does not restrict himself to either conciliation or civil matters, frequently handling (among other things) accusations of witchcraft and theft. (compare Lowy, 1975: 38). Although the local government in Sansanné-Mango condones this exercise of unrecognized jurisdiction by the Paramount Chief, it keeps a close watch on all his activities. The Chief himself is well aware of this fact. During his service as head of a canton, and from 1963 onwards as Paramount Chief, he has learned what the local government will leave to him and what it will not.

¹⁴For the relation between modern and customary law and the judicial organisation in Togo, see van Rouveroy van Nieuwaal (1975c).

¹⁵For a detailed discussion of the lower traditional authorities, see E.A.B. van Rouveroy van Nieuwaal (1975a).

¹⁶Journal Officiel du Togo, no. 1145, 2 October 1949; Journal Officiel du Togo, no. 59-121, August 1959.

Despite the high rate of litigation of marital disputes at both courts, it is clear that many such disputes are handled initially, and often conclusively, at lower traditional levels, e.g., by lineage-, village-, canton-, or ward-heads. In this article we restrict ourselves to the Tribunal and the Court of the Paramount Chief, although we observed and recorded on tape many dispute settlements by these lower institutions (van Rouveroy van Nieuwaal, n.d.).

The Juge de Paix and the Paramount Chief have differing viewpoints concerning the exchange of women, divorce, and the restitution of marriage prestations. These differences may be attributable to the different cultural background, education and positions of the Juge de Paix and the Paramount Chief: the first represents "modern" and mostly Western law (which in official and educated circles is also regarded as "progressive"), while the Paramount Chief represents traditional rules and values. This does not mean that in his decisions the Paramount Chief ignores rapidly changing ideas about an institution like marriage, such as the fact that nowadays a woman cannot be forced to marry a man whom she does not want. On the other hand, in certain situations the Juge de Paix must apply customary law, and certainly cannot act in utter disregard of traditional ideas. Nonetheless there is a tension between the Tribunal which is directed by the central government to introduce new institutions, and the conservatism of the Paramount Chief. Consequently the two legal institutions are more or less competitive with each other. Since both are available to men and women who are looking for a favorable disposition of their disputes, there is an excellent opportunity for many a litigant to play off these institutions against each other. At the same time, litigants are the means by which the Chief and the Juge de Paix compete with each other: thus every case is potentially an affair of four parties engaged in mutual manipulation. At any event, the Juge de Paix and the Chief must always each take account of the existence and views of the other (compare Tanner, 1970).

We shall illustrate the different views of the Tribunal and the Paramount Chief concerning the exchange of women, divorce, and marriage prestations, by presenting two cases. The first is based on a record of the Tribunal, amplified from our own knowledge of Anufò society. The second was tried several times by the Court of the Paramount Chief, and observed by us.

Case 1: The Tribunal Coutumier de Ire Instance (1968)

In August 1968 a young girl of 18 years, Nabara, sued her father's sister Awu for attempting to force her to marry one Yombo, to whom she had been given in marriage by her father before he died. Nabara refused to marry Yombo, because she

preferred her lover Takpye, by whom she was pregnant (we do not know whether Nabara refused Yombo before Takpye had made her pregnant, or only afterwards). Nabara had been entrusted to Awu after the death of her father. The record refers to Awu as the "tutrice" (guardian) of Nabara.¹⁷ The Tribunal heard testimony by Nabara, Awu, Yombo, and Takpye.

According to the record, the facts were as follows: Several years earlier Nabara had been given in marriage to Yombo. He started with the ashibyèya and for several years he paid the kurubi money to his mother-in-law (first to Nabara's own mother, but after her death to Awu). However, before the marriage was contracted, both of Nabara's parents died. During the betrothal Nabara had taken a lover, Takpye, and after her father's death she refused to marry Yombo and eloped with Takpye. Her family however, insisted that Nabara should marry Yombó, as her father had wished. They forced her to come back and to cut off her relationship with Takpye. Awu in particular was opposed to her "daughter's refusal to marry Yombo, because she felt "the responsibility to carry out her brother's wish." This was an important indication that Awu feared retribution from her deceased brother.¹⁸ The Juge de Paix did not pay much attention to her fear, though Awu expressed it more than once.

The discussion between the Tribunal and the litigants was very brief, except in connection with Yombo's calculation of the total amount of the marriage prestations. "After long hesitation and calculation," as the reports says, "I [Yombo] fix the ashibyèya at 82,000 francs CFA."

¹⁷If a woman is childless or bears only sons, one of her brothers will frequently entrust a daughter to her for education and to help her "sweep her court-yard". However, this guardianship -- atari -- does not entitle the woman to marry her pupil without the permission of the father, although she may of course suggest a fiancé to her brother. Marriage prestations would be made to the girl's guardian only after deliberation between the fiancé, the girl's parents (or, if they are deceased, their successors), and the guardian.

¹⁸See note 10, supra.

We quote at length from the opinion of the Juge de Paix because of the clarity with which he expressed his views concerning the bride-exchange system and the restitution of the marriage prestations:¹⁹

that the customary rule [i.e. that a father gives his daughter in marriage] had its origin in a patriarchal society heavily dominated by the cult of the ancestors;

that the paternal power of the family head, so provided, is excessive;

that the family constituted the basic unit of traditional society;

that it is composed of all those who are descendants of a common ancestor;

that it protects and subjugates;

that such a rule is dictated by concern for the protection of the family against every undesirable intrusion;

but considering that the system has been very markedly changed over time because of various circumstances, in particular the intermingling of ethnic groups and the rural exodus;

that lovers have succeeded in making girls pregnant, despite traditions;

that thus the social structure is transforming itself;

¹⁹ [Q]ue la disposition de la coutume se concevait dans une société de type patriarcal fortement dominée par le culte des anciens;

que la puissance paternelle, celle du chef de famille, y est excessive;

que la famille constituait la cellule de base de la société traditionnelle;

qu'elle est formée de tous ceux qui se rattachent à un ancêtre commun;

qu'elle protège et assujettit;

qu'une telle disposition est dictée par le souci de protection de la famille contre toute intrusion indésirable;

that one witnesses the liberalisation of institutions and the simplification of certain formalities;

that this innovative current exists in all societies;

that nowadays the wife lives alone with her husband and often far from her family;

considering that it is important, in these conditions, that the spouses know each other;

that this implies and requires the consent of the girl;

that the obligation of the girl to marry the man to whom she has been assigned, and the ensuing compulsion are contrary to public policy;

such practices should not be legitimized because they involve a serious abridgment of the freedom of marriage;

that they instead incite girls to engage in illicit unions with their lovers;

mais attendu que le système a été très sensiblement altéré au cours des ages à cause de multiple circonstances notamment la compénétration des groupes ethniques et l'exode rural;

que les amants sont arrivés à mettre enceintes des jeunes filles au mépris des traditions;

qu'ainsi la structure sociale se transforme;

qu'on assiste à la libéralisation des institutions et à la simplification de certaines formalités;

que ce courant novateur se rencontre dans toutes les sociétés;

que désormais seule l'épouse vit avec son conjoint et bien souvent loin de la famille;

attendu qu'il importe dans ces conditions que les époux se connaissent;

que cela implique et exige le consentement de la jeune fille;

que l'obligation pour la jeune fille d'épouser tel homme déterminé et la contrainte subséquente sont contraires aux règles d'ordre public;

that it is therefore fitting in order to facilitate marriage and to make sexual relations moral, to renounce this customary rule;

that therefore it is appropriate to grant the petition and to uphold the petitioner in her refusal to marry her fiancé and in her choice of her lover as her future husband

The Tribunal thus pronounced the betrothal between Nabara and Yombo illegal because it considered the Anufò system whereby the girl is given in marriage by her father (or family head) as against the fundamental right of every person freely to choose his or her spouse. This fundamental right is a rule of public policy ("ordre public") and therefore any forced marriage is considered to be illegal. Nabara was relieved of any obligation to marry Yombo, and freed to marry her lover if she wished. Her lover, however, was obliged to pay 20,000 francs CFA as indemnification to Yombo.²⁰

There is no information in the record about the way in which Takpye was to pay Yombo, nor the date by which the payment had to be made, nor how Yombo might execute the award of the Tribunal. We do not know whether Yombo was able to do so, but we found no evidence in the records of the Tribunal between 1968 and 1973 of any suit by Yombo against Takpye for non-payment.

Case 2: The Court of the Paramount Chief (1971)

This case appeared three times in the Court of the Paramount Chief between May and June of 1971.²¹ The relationship of the litigants to each other is as follows:

de telles pratiques ne sauraient être consacrées parce que portant une atteinte grave à la liberté du mariage;

qu'elles incitent plutôt les jeunes filles à s'engager dans une union illégitime avec leurs amants;

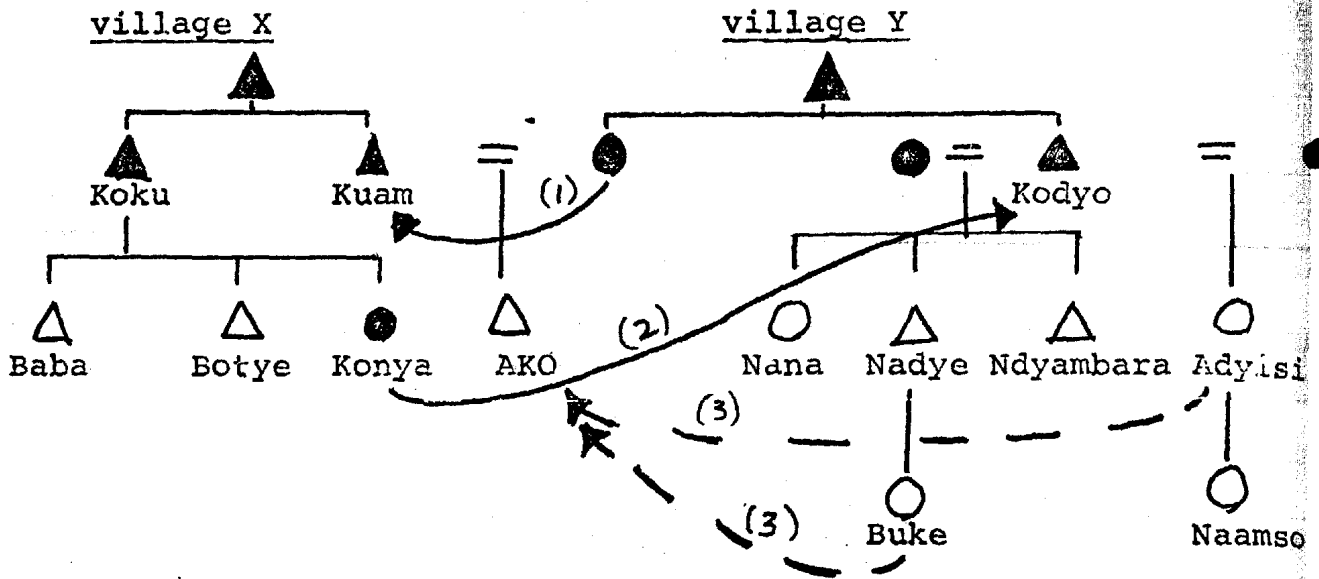
qu'il convient donc pour faciliter le mariage et moraliser les relations sexuelles de renoncer à cette disposition de la coutume;

que c'est le cas dès lors de faire droit à la demande et de donner acte à la demanderesse de son refus d'épouser son fiancé et de son choix de son amant comme futur époux

²⁰In the records of the Tribunal the marriage prestations are referred to as "dot." Although the word means "dowry" in French, it is commonly used by the Tribunal to indicate the ashibyeya.

²¹All three court sessions were recorded on tape and transcribed and translated in full.

DIAGRAM 5



Akò, an old man of about sixty from the village X, is the son of an elder sister of Kodyo, from the village Y. The marriage between Kodyo's sister and Akò's father Kuam (from the village X) entitled Kodyo's lineage to a woman from Kuam's lineage. Kuam gave a younger (classificatory) sister of Akò, called Konya, to Kodyo, who married her. Before his death, Kodyo promised Akò his own daughter Adyisi. She is Akò's MBD and a marriage with her would be a preferential one. Akò had already begun to fulfill his ashibyèya duties, but when Adyisi had grown up, she refused to marry him because, like several other men in his lineage, he is blind. Kodyo understood quite well that he could not force Adyisi to marry Akò. He offered Akò to refund the ashibyèya rendered to him and Adyisi's mother, but Akò waved his offer away and expressed the hope for a second girl from Kodyo's lineage, if not for himself, then for his son. Kodyo promised to look for another girl in his lineage and Akò continued paying the ashibyèya, not to Kodyo, who had died in the meantime, but to Kodyo's sons Nadye and Ndyambara.

After some time, Kodyo's lineage promised to give Buke, Nadye's daughter, to Akò's lineage. Buke had been brought up by her father's sister Nana, because Nana herself had no daughters. As Buke reached the age to marry, she too refused to marry Akò or any man from his lineage, because of the blindness in Akò's lineage.

Before her betrothal Buke ran away with a lover. She then appeared before the Tribunal, accusing her lineage of forcing

her to marry the old man Akò. As in case 1, the Tribunal declared the betrothal illegal, and Buke's request for freedom to marry the man she liked was upheld. Her lover, however, was ordered to pay compensation to Akò. After this trial Buke had a miscarriage and her lover -- a clerk at the local administration -- abandoned her, probably because he did not want to pay the compensation to Akò. Buke took refuge in Northern Ghana with a new lover.

When Akò heard that Buke too had refused to marry him, he was furious and decided to sue Nadye, Nana and Ndyambara at the Court of the Paramount Chief.

During the first session Nadye and Ndyambara denied doggedly that they knew anything about the promise of Buke to Akò. They rejected every responsibility, saying that Nana, their elder sister, had been the guardian of Buke. They knew, however, that the Court could not accept this defense, for a woman is never entitled to marry off her adopted child without permission of the girl's father.

In fact, the Court took it for granted that Buke had been promised to Akò, for Akò had offered the so-called nashi beer (a large quantity of millet beer offered to sanction betrothal among non-islamized ngyem) to Buke's family and Akò would, of course, never have done this if Buke had not been promised to him. All those who were present at the beer party and drank the beer could testify that the promise had been made. Nadye and his brother did not deny the occurrence of the beer party.

The Chief's Court held Nadye responsible, as he was Kodyo's eldest living son. He was given the choice between keeping his father's promise or compensating Akò with 35,000 francs CFA. This was 10,000 francs CFA more than the usual amount, but after all Akò had rendered the ashibyèya twice.

Nadye, however, objected that not he, but his elder sister Nana had received the ashibyèya. This defence was rejected by the Court, which stated that he and his brother Ndyambara were responsible for paying the compensation and that Buke would remain in the custody of the Court until Nadye promised to give another girl to Akò, or paid the 35,000 francs CFA.

Again Nadye protested, saying that a man of Akò's lineage had recently eloped with Naamsò, daughter of Adyisi. He maintained that this elopement should offset the debt from Kodyo's lineage to Akò. Although Akò did not deny this claim the Court did not go into the matter, probably on account of the fact that the elopement was too recent to be sure whether Naamsò would marry her lover or not.

Partly as a result of pressure by the Chief, who argued that a good relationship between cross-cousins (as Nadye and Akò are) is preferable to a selfish orientation towards seeking

the maximum gain from oneself, the bitterness between Akò and Nadye appeared to subside considerably in the last session, even though Nadye had not yet been able to keep his promise to pay a small part of the 35,000 francs CFA to Akò. Both men were already inclined to compromise. This endeavor was facilitated by the fact that Naamsò was still living with her lover in Akò's lineage.

III. Discussion

Considering the traditional views and attitudes of the Anufò, one is puzzled to see both the Tribunal and the Court of the Paramount Chief upholding and even encouraging claims for recovery of the ashibyèya. Yet there are some remarkable and interesting differences between the views of the Tribunal and the Court of the Paramount Chief.

1. As the Anufò system of bride-exchange is considered to be against public policy, the Tribunal will declare a betrothal or marriage void when the woman sues her fiancé, her husband or her parents for forcing her into an unwanted marriage. The Court, seeing that nowadays a woman cannot be forced to marry her fiancé or to stay with her husband against her will, accepts factual separation between a man and his wife or fiancée, but this does not necessarily imply disruption of the relationship between the two lineages.

2. The Tribunal indemnifies the fiancé or husband for his loss on the basis of an actual calculation of the value of the ashibyèya payments he made. The Court upholds the outburst of anger by the fiancé or husband against the lover who has stolen his bride. In 1963, after the installation of the present Paramount Chief Na Tyaba Tyekura, a standard award of 25,000 francs CFA has been allowed as a kind of retaliation against the lover. That amount, however, is in fact approximately the same as is usually paid as ashibyèya. The Court does not require an exact calculation of the marriage prestations and considers it immaterial whether or not the eloping wife had born children. According to the members of the Court the standard award is meant as a preventive measure against the increase of elopements.

3. The Tribunal requires that the indemnity be paid by the lover, the parents of the woman, or even the woman herself. The Court usually exacts its fixed award not from the parents of the woman, nor from the woman herself, but from her lover.

4. The Tribunal does not take past and future bride-exchange into consideration. If possible the Court takes account of and encourages continuation of the bride-exchange relationship. It does its best to maintain relations between the two lineages, often referring to promises made by the ancestors (thus implicitly referring to the importance of

not provoking their anger).

In admitting claims for the restitution of the marriage prestations, both courts differ from the view that is still widely held by Anufòm, that restitution of the ashibyèya is an unwise and incorrect (if not impossible) action. In the traditional view the only possible compensation would be another woman given by the parents of the errant wife, but as such a claim would never be supported by the Tribunal, with its pronounced ideas on freedom of marriage, an alternative compensation is sought and found even by the more tradition-oriented Chief's Court in a monetary award which is approximately equivalent to the value of the ashibyèya paid to the woman's parent's during the period of betrothal.

The Chief's Court does not speak explicitly of divorce, but it does accept the fact that a woman is opposed to an arranged marriage, a view which formerly would hardly have been tolerated once a marriage had been concluded. Here we may find some influence of the Tribunal.

By contrast, the idea that a husband should be compensated is explicitly accepted by the Chief's Court, but in that Court the choice is left to the husband whether he prefers to claim a sum of money or to wait patiently for the woman's parents to compensate the loss by giving him a second woman in marriage. Because the Chief's Court is well aware of the fact that a claim for restitution of the ashibyèya from the wife's parents will disrupt the relations between a man and his in-laws, this Court never encourages a man to claim his ashibyèya back. Should he nevertheless choose to claim what is commonly called his "sufferings", his claim is hardly ever directed towards his parents-in-law (from whom he still may receive another bride), but in most if not all cases to the man who eloped with his wife. Recovering the ashibyèya from one's wife's lover is not an attempt to be indemnified for the loss, but mainly an act of revenge by the husband and a punishment by the Chief's Court. As an act of revenge it is compared by the Anufòm to the armed pursuit of a lover by the woman's husband in the past. As punishment by the Chief's Court it replaces the punishment of a man who eloped with another man's wife and is meant to have a preventive value.

By upholding a claim for recovery of the marriage prestations the Chief's Court is introducing a new element into Anufò family law, which it knows to be contrary to traditional Anufò ideas. The innovation appears to have taken place through the influence of the Tribunal, which introduced two non-traditional elements, firstly the dissolution of marriage and secondly the restitution of the marriage payments.

Restitution following the dissolution of arranged marriages has been well received by a segment of Anufòm society -- there was a very popular song about the justice of the Tribunal to the effect that the Juge de Paix had freed the women and girls. Disputes concerning such marriages are the subject of the great majority of cases tried by the Tribunal and they are often accompanied by a counter-request for restitution of the ashibyèya by the husband. But the idea of claiming the marriage prestations considered by the Tribunal as a rightful one, is not acceptable to all Anufòm, particularly not when the claim is directed against the parents-in-law.

REFERENCES

- AHRIN, Kwame (ed.) (1974) The Papers of George Ekem Ferguson, a Fanti Official of the government of the Gold Coast, 1890-1897. Cambridge. (African Social Research Documents No. 7)
- ASMIS, R. (1912) "Die Stammersrechte der Bezirke Sansanné-Mangu," Zeitschrift für vergleichende Rechtswissenschaft 78-89.
- CISSÉ, Yousouf (1964) "Note sur les sociétés des chasseurs," Journal de la Société des Africanistes.
- DELAFOSSÉ, M. (1955) II La langue mandinique. Paris.
- FISCH, R. (1911) Nord-Togo und seine westliche Nachbarschaft. Basel
- HINTZE, U. (1953) "Die sprachliche Stellung des Anufo (Chokosi), ein Beitrag zur Gliederung der Akansprachen," I Mitteilungen Institut für Orientforschung 151.
- LALOUM, J.D. (1963) Manuel du Juge de Paix. Lomé.
- LEVTZION, Neh. (1968) Muslim Chiefs in West Africa, a study of Islam in the Middle Volta Basin in the pre-colonial period. London: Oxford Univ. P.
- _____ (1969) in J. Kritzack and W.H. Lewis (eds.) Islam in Africa.
- LOWY, Michael J. (1975) "The Fetishes Are There: the management of a sorcery in an urban Ghanaian town," I Kroniek van Afrika.
- PROST, R.P.A. (1958) La langue des Anufòm de Sansanné-Mango. Dakar: Université de Dakar. (Documents Linguistiques No. 3)
- REY-HULMAN, Diana (1975) "Les dépendants des maîtres tyokossi pendant la période précoloniale," in C. Meillasoux (ed.) L'esclavage en Afrique précoloniale 297-320. Paris.
- STEWART, J.M. (1966) "Akan history: some linguistic evidence," 8 Ghana Notes and Queries.
- TANNER, R.E.S. (1970) The Selective Use of Legal Systems in East Africa. Uppsala: Scandinavian Institute of African Studies.

van ROUVEROY van NIEUWAAL, E.A.B. (1971) "The Tyokossi or Anufòm," in Yearbook of the Foundation for Scientific Research for the Tropics. The Hague.

(1973a) Essai sur quelques aspects du droit matrimonial chez les Anufom. Leiden: Afrika-Studiecentrum (Mededelingen No. 10)

(1973b) Mbambim, un chef de famille d'Ayikperè. Leiden: Afrika-Studiecentrum.

(1974) Musulmans à Mango. Leiden: Afrika-Studiecentrum.

(1975a) Sherea, la justice coutumière à la cour du chef supérieur à N'zara. Leiden: Afrika-Studiecentrum. (To be published in 752 Recueil Penant (1976)).

(1975b) "The Plot of the Sophisticated Son-in-law: disparity between old and new ways of establishing rights over land in N'zara, North Togo," I Kroniek van Afrika 47-60.

(1975c) "Droit moderne et droit coutumier au Togo," 747 Recueil Penant 5-19.

(n.d.) Law, Women and Dispute Settling in a West African Society. Ph.D. thesis, University of Leiden, The Netherlands (forthcoming).

von SEEFRIED, Freiherr (1913) "Beitrage zur Geschichte des Manguvolkes in Togo," Zeitschrift fur Ethnologie 421-35.

von THIERRY (1899). Deutsches Kolonial Blatt 16 (No. 10).

von ZECH, Graf (1904) "Land und Leute an der Nordwest Grenze von Togo," 17 Mitteilungen des deutschen Schutzgebieten 107-35.

WILKS, Ivor (1966) "A Note on the Chronology and Origins of the Gonja Kings," 8 Ghana Notes and Queries.