

WOMAN IS KING, MAN A MERE CHILD

Some notes on the socio-legal position of women among the Anufom in Northern Togo¹

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Introduction

The Anufò saying 'woman is king, man a mere child',² sounds like a challenging feminist slogan. Perhaps this was the reason I choose it as a motto for this paper, but that is not at all the kind of context in which it is used among the Anufom. Actually I never heard it from a woman's mouth. On the contrary, it is cited frequently by men, embroiled in a dispute over a runaway wife or fiancée, when the woman in question upsets the relationship between men by her obstinate refusal to do what they expect of her. It is cited by Anufo men in particular in situations when they feel cornered by the strategies of women. Sometimes it is not easy to tell whether the saying is uttered ironically or whether it ventilates a deep grievance. In any case, it clearly implies a recognition by men of the con-

1 The data presented in this article were collected during fieldwork among the Anufòm in Northern Togo in 1969-1972 and 1977-1978, together with Dr. E.A.B. van Rouveroy van Nieuwaal (Afrika Studiecentrum, Leiden).

2 *Bara ti fèmè, bièsò ti ba kan*: woman is king, man is a small child (*fèmè*: person with power (*fanga*), chief or king).

Proverbs in Anufo culture are used profusely in conversation and in the judicial process to evaluate a special social situation according to certain standards, characterizing or caricaturizing the interaction and the relationships involved from a specific (normative) point of view.

siderable female *power* which counteracts male *authority* in some situations.³

Women seldom feel the need to mention explicitly that they have such power. Even when they are aware of the fact that they could use it effectively, they realize that abuse of their power would seriously damage the very relationships they value.⁴ Moreover, experience teaches them that compliant behaviour is more often rewarded than the overt exercise of power. This preference for a compliant approach often manifests itself in a woman giving a standard for her behaviour in terms of the male ideology, while at the same time acting contrariwise (as in the example below of the woman who 'had no child'). This may explain why women do not typify their own situation as that of a 'king': on the one hand they sharply realize the limits of their power, on the other they know that boasting of this power tends to bring more trouble than keeping up the appearance of male dominance.

1 Comparing the position of women

1.1 *Incomparable women: avoiding false comparisons*

In comparing the socio-legal position of women in different societies or 'semi-autonomous social fields' (Moore 1973) in Africa, one must take careful account of the context in order to avoid making false comparisons. In the first place, 'women' is a category based on the single criterion of sex only. For purposes of description, analysis and comparison we need a far more differentiated approach which takes account of social age, marital status, socio-economic status and

3 The distinction between power and authority derives from Rosaldo:

... even in situations of overt sex role asymmetry women have a good deal more power than conventional theorists have assumed. [Nevertheless,] ... relative to men of their age and social status, women everywhere lack generally recognized and culturally valued authority. (1974: 9, 17)

See also Poewe (1980).

4 There is some instruction of a newly-wedded wife as to the behaviour she should display towards her husband's agnates, his mother and the co-wives. There is some informal instruction of younger by the older women and exchange of information between age-mates with respect to specific female power strategies.

other criteria that may be relevant in a certain context. We cannot evaluate the socio-legal position of 'women' in a particular society by looking only at the constraints on the marriage choice of a young girl or the considerable influence of a middle-aged widow.

Further, we have to take into account the great differences that exist, not only because of cultural diversity, but also as a consequence of different degrees of 'acculturation' or 'modernization', resulting from urbanization, education and the impact of western economy. There are often more resemblances in the socio-legal position of women belonging to different ethnic groups in rural areas than among women from the same ethnic background in rural and in urbanized areas. Comparison of women from the same ethnic background in rural and more or less urbanized/developed surroundings may present us with several stages in a process of change. Comparison of the socio-legal position of women from different ethnic backgrounds either in a rural or in an urban setting, may provide some insights as to the significance of socio-cultural background for the position of women.

1.2. The question of superiority or inferiority

A great deal of the discussion about the socio-legal position of women centers around questions of equality-inequality, superiority-inferiority of men and women in particular societies or even in general. The obvious dominance - at least in the public domain - of men in many societies,⁵ has lead feminist anthropologists to look feverishly for examples of women in dominant roles, for matriarchal societies much like the ones Bachofen dreamt of, for African Queens and Amazons.

I prefer to leave the question of superiority and inferiority aside for the moment as it is difficult to assess the relations between the sexes in such general terms. Appearances can be quite deceptive. I think it is only possible to decide on questions of dominance of one

5 Compare Rosaldo (1974: 17):

Women may be important, powerful and influential, but it seems that relative to men of their age and social status, women everywhere lack generally recognized and culturally valued authority.

Rosaldo makes a distinction with respect to women's authority in the domestic and in the public domain.

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sex over the other within certain domains of a particular society and provided there exist good empirical data not only concerning the ideological vision of the participants but also the actual situation which, as the distinction between 'authority' and 'power' suggests, may be quite different.

1.3. *Some points for comparison*

This article is an analysis of some data on the socio-legal position of women in a West African society, the society of the Anufom in the north of Togo, in order to illuminate several points of a more general comparative interest. Those points of general interest are:

1. The rights of women and the gap between stated rules (ideal rules) and actual practice in and out of conflict.
2. The position of women in a system of marriage exchange.
3. Women's strategies in and out of conflict.
4. The position of women in marriage conflicts and the treatment of these conflicts at different levels of dispute settlement. Women's participation in or withdrawal from the dispute processes and selective use of legal systems as a special female strategy.

The first point deals with 'women and the rules'; the other three points concern processes within the socio-legal domain.

In the case of Anufò women, these subjects are clearly interrelated. Each of these points may be compared with examples from other societies.

2. The invisibility of women's rights

The Anufom say 'a woman has no children', meaning that a woman has no right to make decisions or to take part in decision-making concerning her children's marriages (Van Rouveroy van Nieuwaal 1976; Van Rouveroy van Nieuwaal and Baerends 1977). The Nanumba consider a woman's contribution to agricultural work negligible (Fogelberg 1981) and among the Luo a woman has no rights to the land she cultivates (Pala 1980). The Shona state that a wife cannot dispose of her own property without her husband's consent (Holleman 1973, 1986) and among the Nandi a wife is said to have no property rights independently from her husband (Oboler 1985). Many more examples could be found of women's rights being omitted or denied in the ideal rules of law as formulated by the participants in a particular society. Those views, based on the male-centered ideology

of the societies concerned, are not only expressed by the male participants but often by female participants as well.

In actual practice Anufò women play a crucial role in arranging and effectuating their daughter's marriages and in finding brides for their sons. Nanumba women do the majority of agricultural labour as do the Luo women, who enjoy important usufructuary rights on the land allocated to their husbands. Shona women may sue their husbands for disposing of their personal property without their consent and Nandi wives have actual property rights within their husband's estate.

Any inquiry into a system of (unwritten) customary law should follow the three main lines of investigation set forth by Hoebel (1954): the ideological or rule-seeking approach, the descriptive approach and the case-method. This last method has been much elaborated upon (Epstein 1967; Gluckman 1973; Van Velsen 1969; Holleman 1973, 1986) and is widely practiced by legal anthropologists. Holleman, however, calls attention to the importance of studying trouble-less cases in addition to trouble-cases. In his article on legal anthropological method, Holleman shows clearly how the three approaches should be used in combination to get a complete picture of the legal system in action. It is not accidental that the example he takes from his fieldwork among the Shona concerns the property rights of a married woman.

If we look into ethnographies and (legal) anthropological studies for descriptions of the socio-legal position of women in various societies, we often find that in the stated rules women's rights are left out, or are left more or less implicit in a man's obligations towards his wife and children. From observation of actual cases (trouble-cases as well as trouble-less cases) we learn that in reality women have many rights, though these are not always recognized by the same institutions or pursued with the same strategies that men resort to.

In such circumstances one of the untoward consequences of applying a taxonomic definition of 'law' (Griffiths 1984), is that many of the rights of women get labelled 'not legal'. Thus the rights of a man to the land that has been allotted to him under customary law may and often are regarded as 'legal' in the sense of the national law and can for example be formally registered. The customary usufructory rights of women on land allotted to their husbands are on the contrary frequently considered as merely 'informal' and cannot be registered or

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protected in the same way.⁶ The omission of women's rights from the ideal rules of an unwritten legal system means that when such a system is studied from the ideological angle only, the impression is created that women have no rights whatsoever.

Descriptive method and case method demand a considerable amount of direct observation of the sort exemplified in the anthropological tradition. The ideological approach is by contrast relatively easy if one has access to expert informants and an adequate questionnaire. So when description and the case method are thought to take too much time and codification of a system of customary law is required, the rule-seeking method seems better than nothing. However, ideal rules, collected without regard to the actual practice in and out of conflict, only represent part of the legal system. Especially women's rights tend to be left out when ideal rules are presented which reflect a male-centered ideology.⁷

6 For the case of Luo women and rights with respect to land see Pala Okeyo Achola (1980). Compare Oboler (1985: 11):

Private ownership of land is the second change that radically altered the nature of the means of production and thereby generated a redefinition of the rules of property ownership. When the land was partitioned, titles were distributed to individual adult males, and it was assumed that land inheritance would follow the same rules as customary law provided for the inheritance of cattle. What this meant for women was the sudden emergence of a situation in which they could, under certain circumstances, be denied access to land. Women perceive, though they only rarely express it in words, that their traditional rights in land have been undermined.

7 When there is a male bias (Milton 1979) in the mind of the legal anthropologist as well as in the ideology of the culture he is studying, there is a great chance that the 'invisible rights of women' will be overlooked.

A male bias in the ideology of a culture is often also presented by women informants, so neither the sex of the informant, nor that of the researcher or the interpreter, is any guarantee against a male bias. Good examples of male bias in statements by female informants are given by Teresa Fogelberg (1981) on Nanumba concerning the contribution of women to agricultural labour and by Marion Rookmaker (1984) on the amount of time spent by women working the family fields and working their own fields. In both cases the women's statements correspond to the cultural ideal of the way women should spend their time and not to actual practice as observed

3. The socio-legal position of women in Anufò society

In discussing the rights of women in Anufò society, we should realize that there is a great difference in the status and hence in the rights of young, unmarried girls, married women with young children and older women whose children are married and have children of their own, and who are past childbearing.⁸ In each of these life-periods a woman occupies a different position both within her lineage of origin and within the lineage into which she is married (lineage of procreation).

Following some ethnographic notes on the Anufom, I will give a brief description of their system of marriage exchange, since the socio-legal position of Anufò women is largely determined by that system.

3.1. *The Anufom*

The Anufom are a small ethnic group numbering about 20,000 living in the north of the Republic of Togo, in and around the provincial capital Sansanné-Mango (N'zara). They are known also by the name Tyokossi⁹ but refer to themselves as Anufom, people from Anò, the region in Ivory Coast from which they originally came.

In the first half of the eighteenth century their forefathers set out from the Ivory Coast on a military expedition. Engaging in military exploits in the service of several kings, among them the king of Gonja and the king of the Mamprussi, they finally reached their present habitat, where they camped on the river Oti. For about 150 years they lived from the tribute collected yearly from the subjugated population (Ngam Ngam or Dye, Konkomba and Moba) and from the loot acquired by raids or warfare. At the turn of the century the region was pacified by German colonization and most Anufom were forcibly changed from feudal lords into farmers. This caused a

by an anthropologist.

8 Anufò:

sungguru: unmarried girl, virgin
tarawa: married woman with children
bara buke: old woman past childbearing age.

9 According to Cornevin the name Tyokossi is derived from the Anufò term for the estate of the leaders of Mande origin, the *nzòkò*. Thus *nzòkò-shi* has become *tyokossi*.

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considerable change in their relationship to the Ngam Ngam, who, as the original inhabitants of the region, were the ritual 'owners' of the land. The Anufom colonized and cultivated large areas obtained from the Ngam Ngam (Van Rouveroy van Nieuwaal and Baerends 1980).

Anufõ society consists of three social groups of different status and different ethnic origin, membership of which is hereditary in the male line. The former army commanders, nowadays the political leaders, comprise the ruling estate (*donzo*, pl. *donzom*). Subordinate to them are the commoners (*ngye*, pl. *ngyem*), descendants of former footsoldiers, craftsmen and captives. The third estate is that of the (learned) muslims (*karamõ*, pl. *karamõm*), who act as councillors and magicians to the rulers, but are politically not dependent on them. The system of marriage exchange exists within all three estates, but is most pronounced among the commoners, who constitute by far the majority of the Anufõ population.

If my description of Anufõ society and the position of Anufõ women presents a rather traditional and static picture, this is not because all elements of rapid social change have been kept purposefully out of sight, but because society had - at the time of my field-research - undergone comparatively few radical changes under the impact of western influence, especially in the rural areas. Cash crops were not cultivated on a large scale, but some of the young unmarried men did engage in wage labour seasonally, in Ghana.

Social organization is based strongly on kinship: membership of a patrilineage forms the base for an individual's social position and for access to economic resources such as land. The provincial capital Sansanné-Mango is the center of Anufõ society and from here 'modernization' tends to spread. Several changes can be observed taking place 'in town', while the rural areas are still relatively unchanged. By comparing the two locales, it is possible to get an idea of the changes taking place and the factors that affect them.

3.2. *The socio-legal position of women*

Women are highly valued among the Anufom for their reproductive as well as for their productive capacities. The value attributed to women in Anufõ society is directly connected with their role in the subsistence economy (simple hoe agriculture and some husbandry of cattle, sheep and goats). The harsh conditions of life in rural areas make both housekeeping and agriculture very labour-intensive.

In rural areas, coöperation of a wife in agricultural activities and in performing domestic tasks is indispensable. Sowing, weeding and assistance in reaping, threshing and transporting the harvest from the fields to the household's granary, are all women's tasks. Fetching water and firewood, both very time-consuming, are work for women, hardly ever performed by men. Cooking is a wife's task par excellence: it is the essential domestic duty that distinguishes a marriage from a love-affair. In polygynous households each woman prepares meals for her husband (sometimes also for the other wives and children, in reciprocal arrangements among co-wives), during several days in succession and during this period her husband should sleep exclusively with her.

In her role as genetrix, a woman is usually referred to as a 'house', i.e. a (future) lineage segment. Wealth is in numbers, girls and boys alike contribute to the growth and prosperity of the descent group. A girl cannot marry within her father's descent group (the exogamous unit is a patrilineal descent group with a depth of at least three generations), but by being exchanged for a marriageable girl from another descent group, she provides her kin group with a wife and with a set of in-laws. The woman herself, though during her lifetime she cannot become a member of her husband's patrilineage, may some time after her death be considered as the female eponym of a lineage-segment within her husband's patrilineage. Segmentation of patrilineages takes place along lines of matrifiliation: brothers with the same mother and their children tend to form separate units within their father's patrilineal descent group.

However essential a woman's contribution may be, ideologically she is a dependent person who has to be represented by male relatives or by her husband on many formal occasions.

In a system where men are also dependent in many respects, as long as their father or any of their father's brothers is living, the dependency of women is not a conspicuous disadvantage for many of them.

Under customary law the 'owner' of a woman (*bara-fô*), either the father or the husband of a woman, will be held responsible for her doings and so she has to keep him formally informed of many things and seek his permission for a great many more, for example going to the market, visiting her parents, joining a workparty, buying and selling her own property and engaging in loan-transactions. Although permission should be sought, it can hardly be refused. By informing the man who is responsible for her, a woman ensures herself of his support and avoids possible conflict. A married woman who has

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received a present will show it to her husband, thus avoiding the impression that she has acquired it from a secret lover. When a man really wants to divorce his wife, he declares that he will take no responsibility for her any more (*ma yaki uhakè*: I leave you in your own right).

The rights of a wife are usually formulated as the obligations of a husband, the most important (the 'three hearth-stones') being: the obligations to feed, to clothe and to beget children with his wife. Neglect of any of these fundamental obligations is a recognised reason for a woman to leave her husband.¹⁰

Under Togolese national law, the dependency of women under customary law is conceived as one that does not allow any independent economic or legal activity nor access to property, i.e. land. This is a serious distortion of women's actual socio-legal position under Anufò law. Thus, a woman's position under the customary law recognized by modern law is often considerably worse than under local law as practiced by the Anufom.

3.3. *The Anufò system of marriage exchange*

The Anufom practice a system of marriage exchange in which women are reciprocally given in marriage between patrilineal descent groups. The only acceptable equivalent in return for a woman received in marriage is another woman. The idea of payment in cash or cattle for a woman is not unknown, but is limited to the purchase of slaves or captive women, formerly a common practice but nowadays non-existent. Any suggestion of exchanging a woman for cattle or money is seen as a degradation of the woman's status.

Women are considered to be scarce, although figures - from a colonial report dating from 1932 and from my own genealogical/demographic data from 1969/71 - do not indicate a significant difference in numbers of men and women. Scarcity is partly due to polygyny. In rural areas the average number of women married to a man is 1.5 and in town 1.9. In rural areas few men are married to three women or more. Among muslims in town and among the members of the ruling

¹⁰ Thus the wife of the poor fisherman in the documentary film *Sherea* (Van Rouveroy van Nieuwaal and Baerends 1975), when accused of adultery, retorted by declaring her husband incapable of providing her with food and clothes.

estate the average is somewhat higher. Most men in the villages seek to marry two wives, as this provides a certain social security with a minimum of conflict between co-wives. When one wife is ill or with child, it is very convenient if there is a second wife she can get help from. A third wife, on the other hand, means an extra pair of hands in the household and in agriculture, but her presence doubles the possibility of quarrels. Four women - often the muslim ideal - means that there are between them six possibly strained relationships for one husband to handle. The uneven distribution of married women is somewhat adjusted by the fact that girls marry before the age of 15 and men not until they are over 25. Women are often married successively to more than one man, during their reproductive lifetime, remarrying as widows or as divorcees.

The alleged scarcity of women and their value in procreation and production, lie at the root of the continuous preoccupation of adult men in Anufò society with obtaining women to marry. The most appropriate way to express real friendship or deep gratitude is the gift of a woman in marriage. Because almost all marriage transactions start with a good relationship between the bride-giving and bride-receiving parties (men as well as women), if the marriage does not work out well and cannot be kept intact, much effort will be spent on keeping up the original relationship. (Van Rouveroy van Nieuwaal and Baerends 1977; Schott 1978: 631).

bara-kyewa: the woman given

The first woman in a sequence of marriage exchanges is presented as a 'pure gift', *bara-kyewa* (*bara*: woman; *kyewa*: gift) and no counter-gift is stipulated explicitly at the time of the first marriage promise, nor at the time when the marriage is concluded by transferring the bride to her husband's home. Everyone knows, however, that a woman has to be given in return, for as the proverb says: 'if you eat a leg of a chicken from your fellow-man, your own rooster already walks one-legged'. The meaning is that every gift received automatically makes the receiver indebted to the giver.

bara-n-katò: the woman to be paid in return

The woman given in return is referred to as 'the debt paid for that one', *bara-n-katò* (*bara*: woman; *-n-*: that one; *katò*: the debt paid-in money as well in other ways). The original bridegivers should wait

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patiently for their bride-takers to return a woman, merely hinting when they are in need of a marriageable girl, but never claiming explicitly, certainly not in court. Within a normal relationship between bride-givers and bride-takers there is a constant implicit reminding of the extant debt. If the debt is not clearly acknowledged, informal pressure will be brought to bear on the debtors to make them recognise and eventually pay off their debt. Explicit claiming of a debt, however, is an evident sign that the claimant wants to break off the relationship altogether. Claiming a woman in return in the course of a dispute before a chief's court is a way to express great anger and such a claim should be put aside by the court if it is clear from further evidence that the parties will have to keep up their relationship in the future (Van Rouveroy van Nieuwaal and Baerends 1977).

nawuru-bara: the woman from the mother's house

Once a woman has been given in return, the sons of the first given woman have the right to demand a daughter from their mother's patrilineage: a real or classificatory mother's brother's daughter. After this 'woman from the mother's house', the *nawuru-bara*, has been promised by the lineage of the original bride-givers, they may suggest that they in turn would like a bride from their mother's house. The initial exchange is thus followed by a subsequent exchange between the same parties and a connubium is set up between two patrilineal descent groups, that may be continued in the following generations. When in the course of time those descent groups split up into segments, exchange relations will go on between these segments separately, the maximal lineage to which all segments belong giving only formal consent to the marriage transactions. Thus the lineage-head of the house of Kondyè from Mango used once a year to visit all the scattered segments belonging to his maximal patrilineage to lend his formal support to the marriage transactions that were to be concluded.

Marriage-exchange is often described by the model of sister-exchange and whether this is the native model or the anthropologist's model is not always clear.¹¹ Among the Anufom, it is very exceptional for

11 Compare James (1975). Bohannan (1953: 70) observes about marriage exchange among the Tiv that "... true sister exchange is often said to exist by a sort of social fiction where it does not exist in social fact".

men actually to give their own sisters in marriage, because these matters are controlled by the older generation as long as the father or any of his brothers is alive. Many men, however, profit directly or indirectly by their sister's marriage in obtaining a wife for themselves or for their sons.

A system of marriage exchange like this, though basically simple, may in practice and in time become rather complicated. It can function only if there is both the possibility of some delay in paying off a woman-debt and some mutual support among agnates in disposing of their daughters in marriage. Within the lineage-segment there is usually some pooling of outgoing daughters and a corresponding distribution of incoming wives.

Long-term debt relationships are created not only between lineages but also within the lineage. When a man supports his brother in a marriage exchange, there is a preference for supporting a brother from the same mother (and father) over a brother with only the same father. As a result segments consisting of brothers with the same mother tend to form separate units within their father's patrilineage, based on this mutual assistance in paying back their woman-debts.¹²

If a man pays his debt to his in-laws with a brother's daughter, he has become indebted to his brother (Van Rouveroy van Nieuwaal and Baerends 1977; Huber 1969). This indebtedness is not merely abstract and moral, the various marriages and relationships are mutually dependent (see the documentary film *'In Search of Justice'*, Van Rouveroy van Nieuwaal and Baerends 1982).

Figure 1 shows an example of mutual support between brothers (real or classificatory) in paying off the debts for their wives.

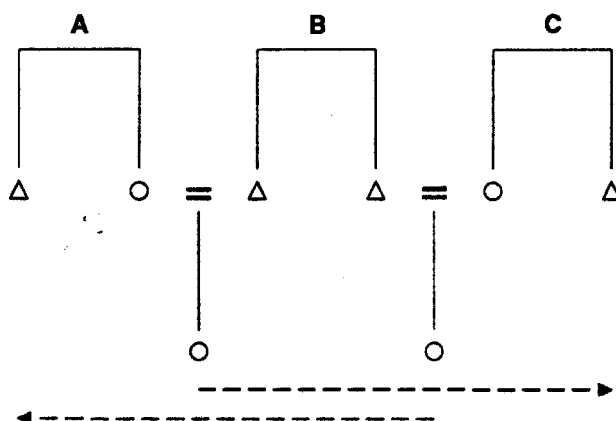
A man from lineage B has married a woman from lineage A, his brother has received his wife from lineage C. The debt to A is paid with a daughter of the woman from C, the debt to C is paid with a daughter of the woman from A.

A man with two or more wives is not necessarily dependent on assistance from his brothers or other agnates in marriage exchange. He may give a daughter of his first wife in exchange for his second wife and vice versa. In this case the two wives have become mutually indebted and this indebtedness is continued by their children and the

12 Compare the *ingol* group as described by Bohannan for Tiv marriage exchange (Bohannan 1953: 6).

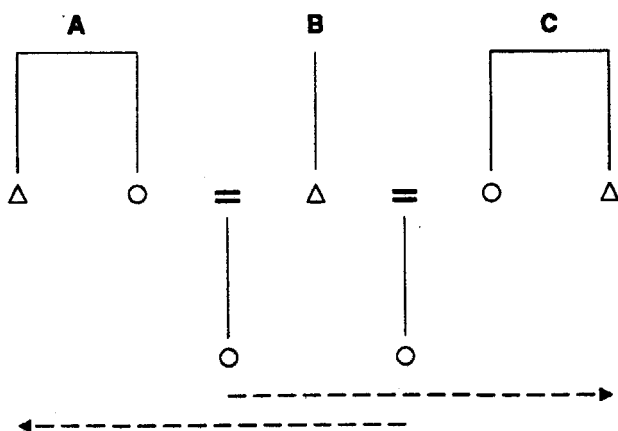
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Fig. 1: Returning a brother's daughter in marriage exchange



descending segments in the next generations. They are mutually obligated for their existence as segments. Figure 2 illustrates this situation.

Fig. 2: Returning another wife's daughter in marriage exchange



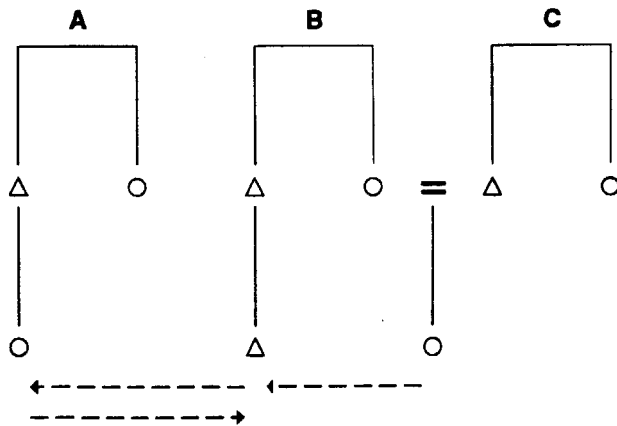
A man from lineage B is married to a woman from lineage A and also to one from lineage C. He pays his debt to lineage A with a

daughter from his second wife from C and his debt to lineage C with a daughter from his first wife from A.

A man is under the strict obligation to treat his wives equally. This means, for example, that when the debt of his first wife has been paid with a daughter of the second wife, this one has the right to demand payment of her debt with a daughter of the first wife. The debt of a first wife has to be paid before the debt of a second wife; the debt of one's mother before that of one's wife. A man's sons should be provided with their first wives by their father in order of birth, irrespective of their mother's seniority.

To return a woman's own daughter in payment of the debt to her patrilineage is only acceptable as a last resort, when no other girl is available. The problem that arises when a daughter is returned in exchange for her mother lies in the fact that she is prohibited as a marriage partner for the mother's close agnates (a man may not marry a father's sister's daughter; nor a woman her mother's brother's son). She can only be given in exchange to a third party, but this complicates the affinal relationships and entails considerable delay. Figure 3 illustrates this possibility.

Fig. 3: Returning a woman's daughter in marriage exchange



A man from lineage C marries a woman from lineage B, he has no daughter or brother's daughter to give in return except the daughter of the woman from B. No man from B is allowed to marry this girl, so they have to exchange her for a girl from lineage A.

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Anufò marriage exchange is characterized by a considerable delay permitted between the first marriage and the return of a woman as *bara-n-katò*. Often it is not until the first woman has borne one or more children that her husband and his agnates begin seriously to consider giving a woman in return. The object of the exchange is the women's procreative capacity and only when a woman has been given in return, do the children of the first 'given' woman really belong to their father's patrilineage.¹³ The children of a *bara-n-katò*, however, belong to their father's patrilineage from the beginning.

By returning a woman, the husband not only ensures his rights over his children as full members of his patrilineage but ensures that they will also henceforth be recognised as sister's children in their mother's patrilineage, and as such have the right to demand a mother's brother's daughter for a wife, the right to approach their maternal ancestors to ensure their personal well-being and many other prerogatives.¹⁴

Only once in her life is a woman given in marriage by her father or marriage ward. A secondary union may be concluded as a consequence of the first, as when the widow of a man marries one of his younger brothers in a leviratic marriage. A woman has the right to refuse a leviratic marriage, but, especially when she has children from her first husband and is not yet past childbearing, the fact that she is dependent because of her children and still wanted because of her fertility combine in pressing her to marry and stay within her first husband's lineage.

If a woman leaves her husband, engaging in a secondary union with a lover, there is usually a dispute that may be settled by condemning

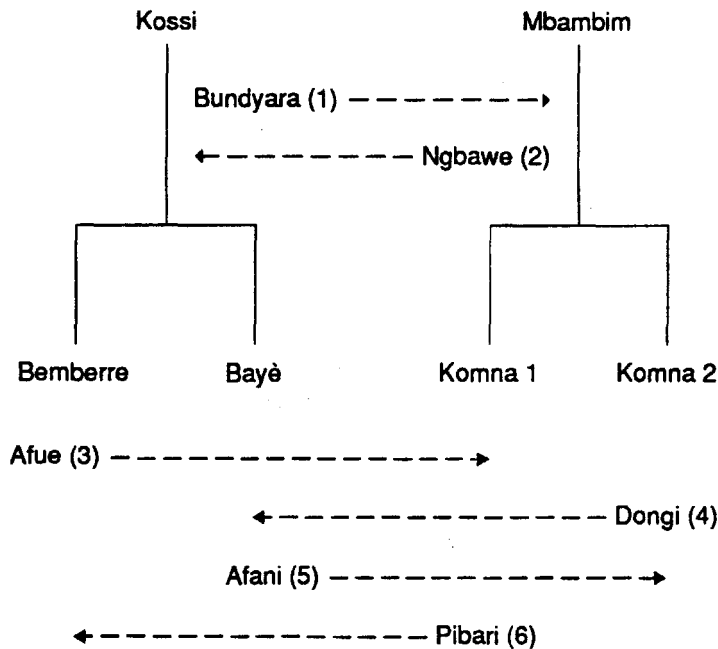
13 Children of an unmarried woman or from an extra-marital love-affair, belong to the patrilineage of their mother. They are referred to as *fa shi*, 'found property'. Formerly the children of a free woman and a captive man were incorporated into their mother's patrilineage as *aburua*. This also happens to the children of an Anufò woman and a stranger that has come to live among the Anufom.

14 There is a difference in socio-legal position between the children of a sister by a formal husband who has given a woman in return and the children of a sister from an informal love affair. The former have a status in their father's patrilineage and an additional but different status in their mother's patrilineage, the latter have a status as adopted children in their mother's patrilineage and no status in their father's lineage.

the lover to pay an indemnity to the husband. In time, especially when children are born from this secondary union, the lover will try to settle his relationship with the woman's parents and may even return a woman to them in order to 'legitimize' his children. The woman in return will usually be accepted, even if the union has not been recognized until then, out of consideration for the affinal relationship with the first husband. The woman given in return will eventually make the balance if the wife's parents have indemnified the first husband by giving him another girl.

The Anufô system of marriage exchange can be illustrated by the case described in figure 4.

Fig. 4: Sequence of marriage exchange between the two patrilineages descending from the male eponyms Kossi and Mbambim, comprising six marriages over five generations



The woman Bundyara was given as a *bara-kyewa* by the man Kossi to his friend Mbambim. More than a generation later, Bundyara's son returned his own daughter Ngbawe to pay his mother's patrilineage back. Mbambim's descendants thereafter had a right to a woman

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from their mother's (Bundyara's) house: the segment descending from Bemberre gave the woman Afue to the segment Komna I (descendants of Komna and his first wife). In return Mbambim's descendants gave the woman Dongi, from the segment Komna II (descendants of Komna and his second wife) to the segment Bayè. The follow-up of the first exchange was thereby completed, but the last two marriages could also be considered as the start of two separate exchanges between Bemberre and Komna I and between Bayè and Komna II. In the next two marriages the reciprocal affinal relations between the two pairs of lineage-segments were confirmed: Komna I returned Pibari for Afue and Komna II returned Afani for Dongi.

The fifth marriage, that of Afani, given by the man Bayè to the segment Komna II, could never have been a marriage of a woman from the segment Bemberre to the segment Komna II, as this would have disturbed the balance between those two segments. Though at the moment of the fifth marriage it is the turn of Kossi's descendants to give a woman to Mbambim's lineage, it is Bemberre's turn to receive and not to give. Exchange at the level of the lineage and exchange at the level of the segments will go on separately from here. Two pairs of lineage-segments have come into existence and will develop into more or less independent descent groups over the next generations. It is not accidental that the segments are paired into two separate exchange transactions. At lineage level care will be taken that at no time the debt between Kossi's and Mbambim's exceeds one woman. That is the reason why the debt for Afue should not be paid before that of Dongi.

This is just one of the more simple cases. Anufò delight in explaining the particulars of far more complicated exchange histories.

The system of marriage exchange is not merely a construction in the mind of an anthropologist, it occupies the minds of the Anufom incessantly.¹⁵ Decisions taken at the lineage level with respect to marrying-out sisters and daughters and dealing with the intra-lineage distribution of incoming wives, establish bonds of coöperation or give rise to conflicts in the future. There is a subtle interplay between the individual rights of a man towards his sisters and daughters and the rights his lineage has over them; this corresponds with the individual debt of a man towards his wife's father (or brother) and

15 Köbben (1971: 188) mentions a similar preoccupation among the Bete in Ivory Coast.

the collective responsibility of a bride-receiving lineage(segment) towards a bride-giving lineage(segment).

Of the marriages over the past three to four generations recorded in a village of about 400 persons belonging to 30 lineage-segments , nearly all were concluded as part of a marriage exchange transaction. Less than 10% of these marriages ended in a divorce. Those marriages that started in a irregular way, as in the case of the elopement of a betrothed girl or the secondary union of a runaway wife with her lover, were - if a stable union with children resulted from it-confirmed in due course by giving a woman in return. In some exceptional cases two marriages by elopement were post facto constructed as an exchange transaction.

3.4. The position of women and the system of marriage exchange

So far the system has been described mainly in terms of male individuals belonging to patrilineal descent groups, reciprocally exchanging women in marriage. This representation is in conformity with the ideal rules the Anufom themselves formulate.

There is however another side to this model.

Objections to the system of marriage exchange have been raised since colonial times, by European civil servants and missionaries. Exchange marriage as well as bridewealth payment were misinterpreted as practices degrading women to exchangeable commodities. Meek, for example, writes about Tiv exchange marriage (1925: 204): "and as in the case of marriage by purchase, the girl is a mere pawn". Ideas like this led to the abolition of marriage exchange (Tiv exchange marriage was prohibited in 1927) and limitation or abolition of bridewealth payments (Köbben 1971). These traditional ways of legitimating a marital union met with western prejudices stemming from a romantic notion of monogamous marriage based on love and free choice of partners. No consideration was given to the high value the African systems concerned place on women, not only as generatrices of children and future descent groups, but also as care-giving, health-keeping, food-processing and socializing persons (Ogbu 1978).

A system of marriage exchange implies that the majority of marriages is arranged by the parents of the marriage partners, supposedly without the consent of the man and woman concerned. It is not always clear whether objections to the practice of marriage exchange are concerned with the exchange element or with the arranging of marriages, which is present in most other marriage systems too.

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Before condemning the practice of arranging marriages, we should know much more about the way in which these kind of decisions are made, formally and informally, whether and how the consent of the partners is obtained and how these arranged marriages work out. A relatively low divorce rate - as among the Anufom - is of course in itself not to be considered as evidence for marital happiness. On the other hand, if we could find a way to evaluate marriages as to stability and happiness, I believe arranged marriages would not figure as more unstable or unhappy than marriages by 'free choice'.

Lévi-Strauss has been accused of viricentrism in his models of marriage exchange, presenting women as valuable objects for men to exchange. On the structural level he has in mind his model is not in itself offensive to women, but I agree with Van Baal (1975), that it is one-sided. In feminist anthropological literature (Rubin 1975), on the other hand, systems of marriage exchange or bridewealth payment are considered very disadvantageous for the position of women, because control over production and reproduction is supposed to lie completely in the hands of men.

Looked at superficially the Anufo system might serve as an illustration both for Rubin's negative assessment and Lévi-Strauss's model. However, on closer acquaintance the Anufô data strongly support the hypothesis of Van Baal (1975) that women profit from being 'objects' in the marriage trade. Van Baal bases his argument mainly on data from New Guinea, where marriage exchange is widely practiced. His idea is that women manipulate their exchange value to their own advantage and to that of their children. The husband who has received a wife is as a bride-taker indebted for life to his wife's brother (initially to her father). The brother, in turn, is indebted to his sister, who directly or indirectly provides him with a wife. By marrying out, a woman acquires a claim on her brother, who by 'giving away' his sister, acquires a claim on his brother in law. A woman in need of maintenance and protection for herself and her children, can claim these from both men, from her brother who is indebted to her and from her husband who is indebted to her brother.

The Anufo data reveal a strong tendency for actual marriage arrangements to be made so that a woman provides a full brother with a wife through her marriage.

Among the Anufom such indebtedness of a brother or any other close agnate to the woman through whose marriage he has obtained a wife is explicitly recognised. She can ask for material support in case of need (social security) and may occasionally borrow a small

sum to engage in some trade of her own. Presents will be made by him to her on special occasions and she may act as an informal intermediary between this man and his bride-giver. Giving a daughter in marriage to a sister's son (the *nawuru-bara*) is the most explicit recognition of the debt to the sister.

The relation between a man and his mother's brother in Anufò society should be considered with a twofold indebtedness in mind. As his father's child a man is indebted to his mother's brother, as his mother's child he has his mother's brother indebted to him. Actually a man should pay the debt for his mother first, before reminding his mother's brother of his indebtedness to him.

Furthermore, a woman whose daughter has been given in marriage on behalf of one of her husband's agnates (see figure 1) has the latter indebted to her. The man should in due time provide her sons with a girl to marry or to exchange. In the meantime he is expected to treat the mother of the girl who provided him with a wife as a sort of mother-in-law, respecting her and lending some assistance if she requires it. By visiting and greeting her he is supposed constantly to acknowledge his indebtedness, even though no material prestations are expected. If the husband is indemnified with his brother's daughter (intra-lineage debt), this girl should be married off so as to provide a wife for the brother of the first girl, preferably a brother by the same mother.

3.5. 'A woman has no children'

According to Anufò ideology, women do not take part in marriage exchange as responsible parties and have no right to make decisions with respect to the marriages of their own children. 'A woman has no child (*bara la a ba*), as even the women themselves say. Here again there is a formal denial of a woman's rights, whereas in everyday practice a woman in fact does have rights that should be respected and that can even be enforced in case of conflict. Women are very much involved in the marriage exchange and not only as 'objects' (be it manipulated or manipulating). By their own strategies they exert influence within the seemingly male domain of marriage transactions. Mothers have a crucial role as intermediaries, especially in matters of love and marriage. These are however very different spheres: a woman acting as a formal go-between in her daughter's love-affair

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can at the same time, but in a different sphere, formally accept presents as a mother-in-law.¹⁶

All informal exchange of information preceding formal marriage transactions takes place through women. They get information far more easily than men about a marriageable girl's physical condition, her character and skills, virtues and faults. Moreover, they can find out whether the other party is really interested so that once the men engage in formal negotiations preceding a marriage transaction, they

16 Among the Anufom a girl is allowed and even encouraged to have a premarital love-affair with a young unmarried boy to whom she is not engaged. The two meet regularly, especially at the Sungari festival, mostly in the company of younger sisters. Presents and tokens of love are exchanged and the lovers pass the night in a hut in the girl's father's compound on several occasions. They are allowed to 'play', but should refrain from complete sexual intercourse. A girl who is still a virgin at her marriage, will send her lover a pot of beer as a fare-well present to thank him for having left her untouched. These love-affairs are arranged and controlled by the girl's mother, who is the go-between as well as the watch-dog and who takes special care to keep lover and fiancé far apart. A boy who wants to start a love-affair will be thoroughly screened by the girl's mother as to his relations (neighbourly or parentally) with the girl's fiancé. Girls and boys should have only one premarital love-affair, which usually lasts for only two years, ending definitively at the girl's marriage. Changing love-partners degrades girls and boys in their reputation as prospective marriage partners. When a woman becomes a widow, her girlhood lover very often shows up as a serious marriage candidate.

These formal love-affairs seem a rather unrealistic practice, running counter to the ideal of arranged marriages and virgin brides. At the time of my research the custom was still prevalent in the rural areas. In the town of Sansanné-Mango 'modern times' meant a decline in the arranging of marriages, marriage for girls at a much higher age than 14, (partly as a consequence of schooling) and consequently more and less controlled love-affairs of girls at an age over 14. Many parents in town have now to accept that their daughter will make her own choice of partner. Most of them insist however on formalizing this choice and strongly oppose changing partners. For an unmarried girl to become pregnant from her lover is forgivable, but to become pregnant without even knowing who the father could be is considered an unbearable shame.

stand little chance of being rebuffed and loosing face, thanks to the informal preparations of their womenfolk.

A married woman occupies an intermediary position between her family of origin (her father's lineage) and her family of procreation (the lineage of her husband, and later, that of her sons). After the birth of her first child, she starts to put pressure on her husband to give a woman in return to her father's lineage. When she has succeeded in providing her father's lineage with a wife, she is in a position to require a wife from them on behalf of her sons. The shift of loyalty that this implies, first begging a wife for her father's lineage and later from them for her sons, coincides with a more general shift of interest of a woman in the course of her lifetime, from her father's lineage to that of her husband and especially to the segment of her sons. A woman without children or without sons, is much less attached to her husband's lineage and will often return in old age to her father's lineage.

When marriages are arranged by parents on behalf of their children, it is important for all concerned that the arrangements result in stable unions that are agreeable to the individual partners and their nearest relatives. A girl's mother has a crucial role in making a good match considering the interests of the families concerned as well as those of her son or daughter. It is common knowledge among the Anufom that girls who refuse to marry their fiancés, often do so at the instigation of their mothers. When a father threatens to curse his daughter if she does not consent to the marriage he has arranged, she may dutifully obey and marry the man of her father's choice but leave him soon after the marriage with the support of her mother. That is the reason why, if a case of elopement of a young wife is brought before a chief's court, the girl's mother is always summoned to appear. When called to answer for her daughter's behaviour, she will deny all interference in the matter with the blank observation, 'a woman has no child'. Thus, when a man has not considered his wife's opinion in marrying off their daughter, she retaliates by declaring herself not responsible for the consequences or even by acting irresponsibly, i.e. by encouraging her daughter to run away with another man.¹⁷

17 Information from Nassaku, sub-paramount chief from the house of Sangbana:

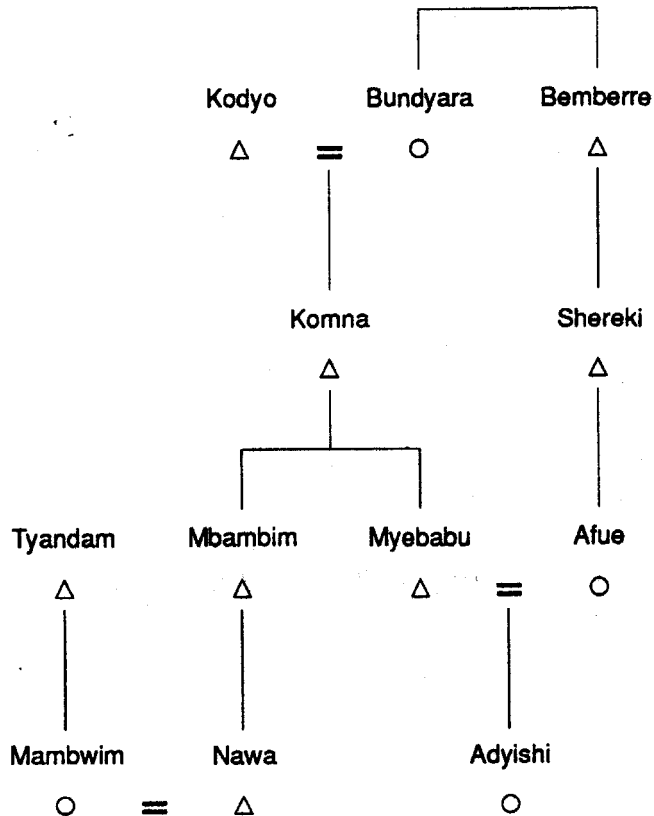
When a woman has at one time influenced her daughter, telling her to refuse the marriage arranged for her by her father, the father will hesitate in the future to promise any daughter of this

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The case of the woman who 'had no child'

One day, when interviewing a village woman of about 35 about the influence women have in marrying off their daughters, I could not

Fig. 5: Genealogical relationships of the woman 'who had no child'



same wife in marriage. He will leave the choice of a husband to mother and daughter and act officially according to their choice. In the past these things were much easier as men did have authority over their wives. Maybe your father's friend had a daughter and gave her in marriage to you. From this marriage children were born, boys and girls. Then you would in turn give one of your daughters in marriage to your father's friend. If the mother of the girl wanted to spoil the transaction you could ask for help from the mother's brother and he would ask his sister why she was trying to sabotage the marriage between her daughter and the man she had been promised to.

get beyond a repeated insistence that 'a woman has no child'. Surprised at this stubbornness, because I already knew from conversation with other women that things were in practice rather different, I passed on to other subjects. Within a few days after this interview a serious conflict broke out and this very woman openly refused to accept marriage payments¹⁸ from the man who was engaged to her daughter. The reason for this refusal was a very serious insult by a young man from her husband's lineage, who was to profit by her daughter's marriage: it was in return for this young man's wife, that her own daughter had, some years ago, been promised in marriage. She refused the marriage payments not because of any discontent with her prospective son-in-law but because of the outrageous behaviour of her husband's agnate. Though her refusal to accept the payments caused great embarrassment to the lineage head, an elder brother of her husband, she herself was not in the least blamed for this action. The fact that she was not criticised depended very much on the irreproachable behaviour she had displayed during the conflict. The fact that she in public conversation (such as, for example, the interview) upheld the principle that 'a woman has no child', was an essential manifestation of this correct behaviour.

4. Women's strategies

4.1. *Compliance*

Women's strategies consist primarily of tending their relationships with others - influential men and women alike - in order to further their own interests. By rendering many small services within a network of day-to-day relationships, a woman builds up credit to fall back on when needed.

After a bride has been taken to her husband's house by female relatives, there is a special gathering of women from the husband's household and those accompanying the bride in which they all give advice. The newly wedded wife is given instructions on how to behave in her new social setting and how to create a position for herself. She should do this by making small presents of the food she has prepared and water or firewood she has fetched, by lending a hand when other women are ill or with child. By being polite and

18 The prospective bridegroom has to present a certain amount of yams and sorghum to his mother-in-law every year, from the moment the girl is promised in marriage until the actual transfer of the bride.

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helpful, she fosters goodwill in her new household in order to be accepted by the time she has her first child and is in need of help.

The onerous domestic tasks and heavy agricultural work of women in rural areas oblige them to render mutual help and coöperation even where relationships are strained. Within the household there is a hierarchy among women and the first wife of the household settles quarrels and organizes the women when coöperation is necessary. The women of a large household usually form clusters according to age and personal preference, for daily mutual assistance. A woman prefers to rely for help on her own mother and sisters, and later in life on her daughters, but those relatives seldom live in the same household with her for a long period. An important consideration in making marriage arrangements for a girl, is the presence of an older female relative in the household of her future husband (compare Steinbrich, in this issue).

Subservient behaviour of women to the men of the household, their visitors and friends, should be regarded as a gesture of goodwill and not as a sign of oppression by the men. When a woman disagrees with her husband, the first sign of her annoyance is a slackness in observing the prescribed etiquette towards him. A lack of outward subservience from a wife shames a man in public. There are various examples from different cultures that show how effective this kind of shaming can be in the handling of domestic disputes.

One example of the way in which women avoid shaming men in public is shown in the documentary film on the Anufom *In Search of Justice* (Van Rouveroy van Nieuwaal and Baerends 1980). When an elderly woman in a dispute with her husband had been assured by the family council that her rights would be respected, she began immediately and exuberantly to praise her husband. By doing this, she wanted to show clearly that she had no intention of profiting unduly from the fact that her husband had been put in the wrong. At the same time the male participants in the dispute settlement at the same time engaged in a general discussion on the stupidity of women. The fact that the woman in the case had had her way was covered up, both by the woman and by the men (see the 'case of the castaway wife', section 5.1 below).

In the foregoing section some remarks have already been made on the important role of women as informal intermediaries with respect to marriage exchange. Women are accepted as informal intermediaries in other matters too, but most of their activities in this respect pass quite unnoticed. The fact that they have strong bonds with their

lineage of origin and - as they grow older and have children - with their lineage of procreation, enables them to pave the way for many interactions between lineages. Inter-lineage relationships are created and confirmed as well as destroyed by women.

4.2. Irresponsible behaviour as a female strategy

Even where the male ideology does not confer rights upon women, they have rights that are recognised in practice. When these rights are not honored, women may react by refusing to bear any responsibility, or even by acting irresponsibly. It would not be right, I think to regard women's behaviour with regard to marriage exchange in general as irresponsible (Van Baal 1975: 82). When their opinion and support is sought in the decision making process, women are willing to take full responsibility. It is only when their rights are not 'respected' that they respond with their own strategies, which from a male viewpoint amount to irresponsible behaviour (Collier 1974). Cultural ideologies often designate women's strategies in this way as inferior: men deliberate and judge, women intrigue; men exchange information, women gossip; men have supernatural defense mechanisms, women are witches (Esther Goody 1970). What is considered irresponsible in a woman's behaviour, is the fact that she no longer supports the interest of her husband and his lineage members when this goes counter to the interest of her children and herself. Making trouble can be at times a very effective strategy if the other party prefers to live in peace. It can also turn easily against the person who uses it and notorious troublemakers will become socially isolated first and accused of witchcraft later.

4.3. Ridicule and gossip in female strategies

Informal exchange of information by women is seen by men as a useful but somewhat reprehensible activity. As a form of social control, however, especially by letting people know that you know what is going on, what has been done or what someone is up to, gossip can be very effective in preventing open conflicts in a close-knit community.

In rural areas women fetch water three to four times a day. They leave home in twos or threes. As it is practically impossible to lift a full jar of water onto one's head alone, they usually leave the waterhole in company and return in a long chattering line talking continuously, the whole line listening and answering in turn, as if it

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were a well-organized meeting. In this way information spreads like wildfire through a community of several hundred people. Anyone crossing their path or walking along with them will have no trouble in overhearing their conversation and they in their turn will not spare a passer-by their comments, though such comment is never addressed to the person directly. The Anufò language offers the possibility of speaking in ambiguous terms that are nonetheless crystal clear to those concerned. Thus a lineage-head who had spent a lot of money on a rain ceremony that did not work out, was teased good-humouredly, by the passing train of women, saying things like: 'Didn't it rain last night! Plenty of water everywhere, no need to go far to fetch water this morning, thanks to our rainmaker.'

The behaviour of a young man who had made several attempts to sneak into the hut of the wife of his father's brother at night, allegedly to rape her, was discussed along the way to the waterhole for several months. As the rumour spread, several other women came up with similar complaints about this particular man. At last the young man became so furious at these insinuations that he had his father call a meeting of the household (minimal lineage) so as to defend himself. The woman who started the rumour had done so on purpose, thinking she might in this way deter him from further attempts without entailing the risks of a formal accusation. For a woman to accuse a member of her husband's lineage is a step that needs serious consideration, especially because it places the husband in a difficult position and if he is forced to choose sides there is a good chance that he will stand behind his lineage and not support his troublesome wife.

5. Women and the settlement of marital disputes

Among the Anufom divorce is rarely formally pronounced.¹⁹ Most divorces are just factual separations, wives leaving their husbands. An indication of the fact that the first marriage of a woman establishes

19 The imam of the Anufom in Sansanné-Mango is said to perform the ceremony of 'untying the *furu*' to annul a marriage between muslims, but only in exceptional cases, as, for example, when the husband has been proven to be impotent. Divorce by repudiation, without a sound reason, is considered unacceptable by the Anufo muslim community. Among muslims and non-muslims alike, a man should have a good reason to send his wife away or he will be in trouble with his in-laws.

for her a life-long tie, is the fact that even a runaway wife must undergo the widow-ceremonies if the husband she has left, dies.

The ultimate sanction of a married woman is to leave her husband. Running off entails the risk of being stopped on the way as it is not so easy to leave unseen with a load on the head and a child on the back. It is wiser to ask permission for a visit to one's parents (something a husband should not refuse) and to stay there. If a woman has gone to stay with her parents and it becomes clear that she will not return to her husband, it is up to the husband to come and offer his apologies to his parents-in-law, quite irrespective of the question whether it was his fault or not that his wife has left him. By offering his apologies, in person or through an intermediary, a man clearly indicates that he wants his wife back. When a husband comes for his wife within a short time after she has left, there may be little trouble in bringing about a reconciliation. By letting time pass without coming to claim his wife, a man shows that he cares little for her or her parents.

5.1. *Marital disputes at lineage level*

In its initial stage, a dispute between husband and wife is handled within the husband's lineage. If a married woman has some grievance against her husband she should inform her husband's lineage head (usually the head of the minimal lineage) who may then talk to the husband privately. Within the domestic sphere, a married woman can exert considerable pressure on both her husband and her father's patrilineage. The amount of pressure depends on her reputation as a wife and mother, or as a sister, whether she has children or not and whether she is generally held in high esteem.

If the affair cannot be settled informally, the lineage head will call a meeting of lineage elders and the woman concerned to talk things over openly within the husband's compound. Some privacy is needed and it is not an affair for members of other lineages, although a mother's brother or a sister's son of one of the parties may be present and even act as an intermediary as he can say things that members of the lineage cannot. In this context, all present know the particulars of the relationship and most have an interest in keeping the marriage intact. At this stage the conflict is an intra-lineage matter.

The woman may threaten to take the affair 'outdoors' by officially informing her parents, thus turning it into an interlineage con-

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flict. By doing this, however, she embarrasses her own patrilineage, especially if they have already received a woman. A woman should consider the position of the other woman given in exchange for her. The two often feel some mutual obligation, but there is not such a strong solidarity between them, that a woman will risk her own marriage by leaving her husband whenever her partner in exchange quarrels with hers.

When a woman breaks up her marriage by leaving her husband, or when a girl breaks her engagement by refusing to marry the man to whom she has been promised, there is always much threatening by the bereft lineage that they will take back their sister or daughter, for whom the other woman has been given in exchange. I have, however, never come across a case in which this threat was actually carried out. The fact that it is thought unwise to conclude the two marriages of women who are exchanged for each other, in close temporal proximity and that a strong preference exists for an interval of six or more years, probably also has to do with wanting to avoid too close an association of the two marriages so that the break-up of one would lead easily to that of the other. Another important reason for the time interval is that people want to wait until children are born before giving a woman in return to legitimize them.

A reciprocal breaking up of exchange marriages is all the more impractical, and hence improbable, when there is an interval between the two marriages of ten years or more. In the case of a more or less direct exchange - as exists among the neighbouring Ngam Ngam or Dye - a complete dissolution of both marriages might be more feasible. It seems however, that among the Dye, as well as among the Anufom, people prefer to mend the exchange relationship by promising another girl rather than allowing one broken marriage to upset a valuable affinal relationship.

If a woman has a daughter who has been given or promised in marriage to the profit of one of the husband's agnates, she may even try to upset this marriage arrangement (*casus Afue*).

Withdrawal of coöperation in the domestic sphere, may be an effective sanction of a wife against her husband. A woman can, as a severe sanction on her husband's behaviour, refrain from cooking for him, as cooking for the husband is the crucial wifely duty in marriage. In a polygynous household this is only effective when co-wives act in solidarity. The wives in a polygynous household take turns in cooking for their husband on several days in succession during which they have exclusive rights to sexual contact with him.

Refusing to cook means refusing sexual contact with the husband and is thus a complete denial of the married state by a woman. Successful application of this sanction is illustrated by the following case.

The 'case of the castaway wife'

An elderly man had been offered a girl in marriage. As none of his agnates was in a position to marry her - one being away, another not having the means, a third one wanting to complete his education first, a fourth one, an educated functionary, being satisfied with his one wife - he finally decided to marry her himself, so as not offend his bride-givers. But being married to four wives already, he could according to Islamic law not legally take a fifth wife.²⁰ He thought he had found a solution to his problem by proposing to divorce his first and oldest wife, who was past the age of childbearing, promising to take care of her after the divorce as she was a distant relative from the same patrilineage. This wife not only felt gravely insulted, having been married to this man from girlhood and having borne him quite a few children who now had families of their own, but she also panicked at the idea of being a divorcee without formal rights, having to live from the charity of a former husband and distant relative, as she could have no prospect of remarrying at her age. She reacted promptly by refusing to cook when it was her turn and immediately found the second wife on her side. The two other wives declared their solidarity too, but being much younger and with young children, their interests were different.

The first wife not only refrained from cooking, but at the same time informed the lineage-head of her husband's intentions. In a meeting where the first and the second wife, the husband and several lineage elders sat together to talk things over, the women were given ample opportunity to present their grievances. Statements by the husband and his wives were all preceded by the explicit declaration that for the sake of their children they did not want a conflict to disturb their good relationship. When after some questioning and explaining, the issue was clear to all present, the husband was severely criticised

20 Islamic law has had very little impact on Anufo law generally; but in this case the elder man cultivated a close acquaintance with a prominent family of learned muslims to which the imam of Sansanne Mango belongs; he wanted very much to appear as a good muslim, praying, fasting and participating in Anufo muslim ceremonial gatherings.

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for his plans and the women for their irresponsible behaviour. Though it certainly was not a good idea of the husband to exclude his first wife from cooking (meaning a repudiation ²¹), her reaction of refusing to cook was also reprehensible for 'a woman does not refuse her husband'. As an outcome of this dispute settlement within the lineage, the first wife was fully re-established and the marriage with the fifth wife cancelled.

A man rarely sends his wife away directly, as this would bring him in an open conflict with his in-laws. Rather he will cause her to leave, by treating her as badly as possible, and not claim her back. Although it is said that 'a woman does not refuse her husband' and 'a woman does not refuse marriage', there are far more women who leave their husbands than men who send away their wives.

There is a difference in the way a marital conflict is treated within the husband's lineage and treatment at the wife's parental lineage. When the dispute is treated within the husband's lineage, no member of the wife's lineage will be present. Considerable pressure may be brought to bear upon the husband if he has been wrong, but he will be backed by the members of his lineage and the wife will lack that support. When a husband comes for his wife in the father's lineage, he will have to behave deferentially to all present and he will have to account for his behaviour. If he prefers to be represented by a lineage member, his wife's parents may demand that he comes personally to answer to them for his behaviour.

It is only when all negotiations between the two lineages have failed, that the conflict will be brought before a traditional judicial institution.

A man who sees his years of investment in services and goods offered to his bride's parents lost because of her elopement with another man, is often ready to act violently. In order to handle this situation some lineage elders went so far as to order that no member of their lineage should ever claim an eloped bride nor the repayment of his marriage prestations by violent action. After their death an ancestral sanction was to prevent their descendants from claiming anything by armed force or in court. Retaliation in case of an elopement usually completely spoils the affinal relations, whereas

21 Repudiation of a wife by the husband as in Islamic law, is not possible according to Anufo ideas of justice; a man should have a good reason to send his wife away or else he is in trouble with his in-laws.

patience and good faith normally meant that another woman would be given within several years.

5.2. Marital disputes and chiefs' justice

Traditional justice outside the lineage in Anufo society exists at various administrative levels. From bottom to top these are: village chief, cantonal chief, chief of a ward in Sansanne-Mango and paramount chief of all Anufom. These chiefs are recognized (and in some cases nominated) by the national government as civil servants in an administrative capacity. According to indigenous constitutional ideas, however, everyone who sits as a chief, can and should sit as a judge as well. Adjudication by chiefs is not officially recognized by the Togolese government (Van Rouveroy van Nieuwaal and Baerends 1977: 104). According to two decrees issued during French colonial rule, the Paramount Chief is authorized only to conciliate in civil matters.

Adjudication by the chiefs can be nevertheless considered as a fairly well-organized institution dealing with practically all cases that cannot be solved at lineage level. Appeal is possible from a village chief to a cantonal chief, from a cantonal chief to a ward chief and, finally, to the Paramount Chief. The chiefs who have treated a dispute before are always heard in a higher court and it happens frequently that cases are referred back to a local chief who has to see to the execution of decisions taken in a higher court. A general policy in the chiefs' courts is to bring about reconciliation between parties, to find solutions that enable people to go on living in face-to-face relations.

When a wife has left her husband and cannot be persuaded to come back, the husband may take the case to a chief's court. He may lodge a complaint against his father-in-law, but more often he makes a charge against his wife's alleged lover. The action in court is compared by the participants to the armed attack, common practice in the past, on the person who stole a man's wife. By the time a marital conflict is brought before a chief, it has been transformed from a conflict between spouses to a conflict between affines and possibly also between a man and his rival.

The wife in question is summoned to appear in court, usually only to confirm that she does not want to return to her husband. She often has little to gain from appearing before a chief's court and in many cases she does not respond when summoned. She makes herself

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invisible, unattainable and non-existent. The men sit and wait in court for the woman to appear, but eventually word comes that she has 'gone abroad' (see the documentary film *Bekoidintu*, Van Rouveroy van Nieuwaal and Baerends 1980). The responsibility for the relationship she once helped to cement is no longer hers. In fact, if she chooses to be present this may be seen as an indication that she is not unwilling to return to her husband.

When a man takes the father or the lover of his wife to court, after all negotiations have failed to bring her back, the marital conflict has become an interlineage conflict and will be treated as such in the chief's judicial system (Van Rouveroy van Nieuwaal 1976). A chief will be aware of the fact that he cannot mend a broken marriage if that has been tried many times before on the domestic level. He may try a show of force, threatening a disobedient woman that he will return her to her husband. The effect on a woman who is determined to quit is nil. Only if the chief is willing to put the husband under pressure to change his behaviour towards his wife is it possible that she may accept a reconciliation, if she thinks that the lineage-head, backed by the chief's authority, will be able to control the husband. A chief's main concern, however, is not to keep a marriage intact or to protect a woman's rights, but to maintain or mend the affinal relations between men. Those relations are the base of political alliances within the Anufo society and ultimately affect the position of the chief himself. His leadership depends on his capacity as a peacemaker between men, between the patrilineages dependent on him.

5.3. Selective use of legal systems by women

The participants in any society are aware - through their own experience and that of their fellow-citizens - of different ways to enforce or obtain their rights and the concomitant advantages or disadvantages, so they will in a certain case make a choice as to how and where to advance their cause. Women have as much experience in manipulating the situation to a profitable outcome as men, though their range of possibilities may in practice be smaller than that of men.

Among the Anufom, women practically never bring their marital conflicts before the chief's courts. If they have not succeeded in getting a satisfactory arrangement within the domestic sphere or in negotiations between their husband and their father (or brother), they most often prefer to act 'irresponsibly', by running away with a

lover, leaving to their husband and father (or brother) the problem of repairing the (inter-lineage)relationship. This female strategy of refusing and withdrawing from arranged marriages is not a recent development, despite the suggestion by elderly informants that 'in the old days a woman never refused to marry the man to whom she had been promised'. From genealogical data going back over more than three generations, it appears that such refusal is a structural feature of the Anufò system. Quite a few (about 10%) irregular unions have during this whole period had to be legitimized by a formal exchange arrangement afterwards so as to secure a place for the children in their father's lineage.

The introduction of a state court, the Tribunal Coutumier de 1ère Instance (Van Rouveroy van Nieuwaal 1976: 57), in the provincial capital of Sansanné-Mango, the center of Anufo society, in 1965, seemed to offer women a new possibility of obtaining divorce or resisting a marriage arranged without their consent. This Tribunal administers justice according to customary law, but only if the rules of customary law are not inconsistent with the 'ordre public'. Marriage arrangements without the consent of the future husband and wife are considered by the 'juge de paix' to be inconsistent with the 'ordre public' and may be declared null and void if the woman (or man) takes her case to the Tribunal. If a woman declares before the Tribunal that she has been forced into an undesired marital union, the marriage will be annulled even though it is valid according to Anufò legal conceptions.

The possibility of resisting a marriage or getting a divorce with the help of the Tribunal, soon became widely known. There is even a popular song saying: "women have finally found justice, young men and young women have finally found justice, now that the 'juge de paix' has come". Notwithstanding this positive publicity, comparatively few cases were brought before the Tribunal, although between 1968 and 1972 the number of challenges to an arranged marriage was high in relation to other types of cases.

Although the actual number of women who choose this way out of an undesired union was relatively small from the start, and, after some initial enthusiasm, decreased still further, the presence of such an opportunity undoubtedly supported women's strategies considerably. All cases of opposition to an arranged marriage before the Tribunal are brought by women (sometimes supported by their lovers). Men never use the Tribunal to refuse a marriage arranged for them. They are given more opportunity to choose a wife themselves, they are

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older when getting married for the first time and they have often gone to considerable trouble to obtain a wife.

None of the women challenging an arranged marriage before the Tribunal brought the case against her own father. In most cases the women objected to arrangements made by a father's brother or another agnate after their father's death. Though this is not always clear from the answers elicited in questioning by the 'juge de paix', in many cases the refusal of the women to marry according to her guardian's wishes is a symptom of a conflict within the lineage between the children of a deceased man and his brother(s).

Two important considerations may have tempered the flow of wives and girls seeking to free themselves from undesired unions. Firstly, the dissolution of a marriage or an engagement by the 'juge de paix' includes no arrangement whatsoever for the social security of the woman concerned. Her opposition to a marriage concluded between her father or guardian and her husband, turns them both against her. The result is that she will have to make a living by herself or find another man to keep her. Many of the women bringing their cases before the Tribunal seem to have already established a more or less stable union with a lover and use this as the reason not to marry the man to whom they have been promised. The lovers do not take part in the legal process and keep in the background so as not to insult the woman's family. The husband or fiancé will often demand indemnification from the lover for his marriage prestations to the woman's parents.

Secondly, the possibility offered by the Tribunal of having a marriage arrangement dissolved, has made both parents and chiefs more cautious in securing the explicit consent of a girl to her marriage.²² Less pressure is brought to bear on girls who refuse to marry according to the arrangements made by their parents. When a marriage is confirmed in the traditional way and registered by a clerk for the 'état civil' in the presence of the Paramount Chief, the consent of the woman is explicitly requested and she has to sign the marriage act, most often (as practically all women are illiterate), with her thumbprint. Rather than forcing a woman into an undesired marriage, the court of the Paramount Chief directs its attention to maintaining the affinal relationship between the woman's parents and the man to whom she had been promised. A claim for indemnification

22 Cf. Galanter's concept of the 'shadow' which court decisions cast on unofficial ordering.

of marriage payments by a husband from his wife's lover did not traditionally exist in Anufo customary law. (Van Rouveroy van Nieuwaal and Baerends 1977).²³ Nowadays such a claim is accepted in the chiefs' courts. The demand for indemnification is made in anger and the amount claimed is generally exorbitant. The Paramount Chief's court orders payment of a rather lower but still considerable amount (average: 50.000 CFA in 1972). No precise calculations of the actual marriage prestations are made, the only question is whether or not they have been given and over how many years. As the demand is not one for restitution from the party that has received the payments, actual calculation is less important than the fact that the payment is considered a fine for the wrongdoer as well as a compensation for the man who has lost a bride. Payment of the indemnification is often in several installments and when the lover is quick in paying the first part, the rest may even be remitted.

The 'juge de paix', if confronted with a demand for restitution, will try (mostly unsuccessfully) to arrive at an exact calculation of the marriage prestations. This is nearly impossible, especially in the case of field-labour done for the parents in law. The amount arrived at is usually much lower than at the chief's court (the average is 25.000 frs CFA in 1972), but the whole sum has to be paid within a short time.

Summary

According to Anufo customary law women have rights that are recognised and respected. They also have means to enforce those rights, although these means are not always effective.

As a consequence of the male bias in Anufo ideology, women's rights are not explicitly recognized when rules are formulated and some rights are even explicitly denied. An approach to such an unwritten system of customary law which considered only the ideological representation from the participants point of view - one reflecting a strong male bias - would render women's rights invisible. Any 'reception', 'recognition' or codification of a system of customary law relying too much on the ideological, rule-seeking approach tends to leave out the rights of women that are generally recognised within the society but not explicitly formulated.

²³ As a matter of fact there exists no right to indemnification for a husband in case of his wife's adultery either. Compare Köbben 1971.

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The practice of exchange marriage and the concomitant arrangement of marriages may occasionally lead to undesired unions, but in many cases women find ways to get out of these unions, either through the old-fashioned means of elopement or by taking advantage of the new possibility offered by the Tribunal Coutumier. However, when women consciously break up marriage arrangements by their parents, they risk losing their basic social security within their family of origin. This consequence has so far not been adequately considered by the advocates of 'free choice' of marriage partners.

The justice offered by the chiefs at various levels in Anufo society treats marriage conflicts as disputes between the male representatives of the patrilineages of husband and wife, without much consideration for the individual marital union. When a marital conflict is treated at this level without taking account of her interests, the woman in question often chooses to act 'irresponsibly' and disappear from the scene.

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