

# Resolving the indigenous family disputes in Taiwan: Taking the family mediation as an example

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## Abstract

This article examines the socio-legal status of indigenous peoples in family disputes in order to protect their judicial rights. According to the discourse of legal pluralism and the concept of the “semi-autonomous social field”, participant observation of indigenous family mediation was accomplished in the Nantou District Court in Taiwan.

Indigenous family mediation is carried out within a matrix of state law, domestic laws, and indigenous customary rules. This paper suggests that these processes are affected by the inequalities among different members of the household, as well as the life experiences of indigenous Taiwanese who live within an unequal power environment imposed by the *Han* Taiwanese majority. Moreover, if one of the disputing parties asserted that a particular customary law should be followed, the district court would encourage the other party to respect it. Consequently, the indigenous customary law, instead of the state law, would be regarded as the basis of dispute resolution.

**Keywords:** family mediation, indigenous people, legal pluralism, alternative dispute resolution, customary law.

## 1. Introduction

Indigenous peoples in Taiwan are Austronesian peoples, with linguistic and genetic ties to other Austronesians in South-East Asia. Statistically, 558,465 people in Taiwan are aborigines, who have constituted nearly 2.37% of the population as of June 2019.<sup>1</sup> There are 16 major groupings, including Amis, Atayal, Paiwan, Bunun, Tsou, Rukai, Puyuma, Saisiyat, Yami, Thao, Kavalan, Truku, Sakizaya, Sediq, Hla'alua and Kanakanavu, which are officially recognized as “tribes” by the Council of Indigenous Peoples. The nature of some societies is patrilineal (ex. Sediq, Atayal, Tsou, Yami, Bunun, Thao, Rukai, Truku, Saisiyat, Hla'alua, and Kanakanavu). The nature of others is matrilineal (ex. Amis, Kavalan, Sakizaya and Puyuma). As for Paiwan, it is categorized as a bilateral society. Each society has its own customary rules in terms of family and inheritance.

Article 34 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) provides that the aborigines have the right to develop and maintain distinctive customs, traditions, practices, and juridical systems in accordance with international human rights standards. Article 33 of the UN Draft Declaration, proposed by the Working Group on Indigenous Populations under the leadership of Mme Daes, and benefitting from intense consultations with indigenous representatives from 1985 to 1993, also provides that the aborigines have the right to promote, develop, and maintain their institutional structures and their distinctive juridical

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<sup>1</sup> The total population of Taiwan was 23,591,031 June 2019. This statistical information is provided by the website of the Ministry of Interior: <https://www.ris.gov.tw/app/portal/346> (Last date of visitation: 05/Aug/2019).

customs, traditions, procedures, and practices, in accordance with internationally recognized human rights standards.<sup>2</sup> Resonating with such international standards of human rights<sup>3</sup>, Article 30 of the Indigenous Peoples Basic Law 2005 in Taiwan stipulates that the government shall respect tribal customs, cultures, and values of indigenous peoples in legislation and judicial procedures, mediation or any other similar procedure for the purpose of safeguarding their rights. To protect the indigenous peoples' rights and access to the judiciary, indigenous peoples' courts and tribunals may be established.

Mediation, as an alternative dispute resolution (ADR), modifies the focus of legal study from the "black letter tradition"<sup>4</sup> to a more complex set of rules or norms practiced in the process of dispute resolution.<sup>5</sup> Here, theories of legal pluralism are capable of demonstrating the co-existence of more than one legal system within a social field such as family mediation, and the relationships among these regulatory forces.<sup>6</sup> By focusing on and reviewing the handling of the disputes, in other words, how orders are established and maintained within a society and how people have used legal resources for their own purposes in particular times and places, a

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<sup>2</sup> Patrick. Thornberry, *Indigenous Peoples and Human Rights* (Manchester: Manchester University Press, 2002)., p.381; Lee Swepston, "Indigenous Peoples in International Law and Organizations," in *International Law and Indigenous Peoples*, ed. Joshua Castellino, & Walsh, Niamh (Netherlands: Martinus Nijhoff Publishers, 2005)., p.61.

<sup>3</sup> Taiwan is not a member state of the United Nations. However, Article 141 of the *Constitution* indicates that the foreign policy of the Republic of China shall respect treaties and the Charter of the United Nations.

<sup>4</sup> David. Sugarman, "A 'Hatred of Disorder': Legal Science, Liberalism and Imperialism," in *Dangerous Supplement: Resistance and Renewal in Jurisprudence*, ed. Peter Fitzpatrick (London: Pluto Press, 1991)., pp.34-35.

<sup>5</sup> Catherine Morris, "The Moulding of Lawyers: ADR and Legal Education," *Windsor Y.B. Access Just.* 17(1999)., pp.275&278.

<sup>6</sup> Galit A. Sarfaty, "International Norm Diffusion in the Pimicikamak Cree Nation: A Model of Legal Mediation," *Harv. Int'l L. J.* 48(2007)., pp.446-447.

more informed analysis of legal pluralism could be provided.<sup>7</sup> To highlight the interaction of state law and tribal customs, cultures, and values of the indigenous peoples in the process of dispute resolution, the following discussion focuses on family mediation carried out in the family division of the district courts, which is the first stage of family proceedings in Taiwan's judicial system.

The literature concerning legal pluralism and the family disputes of indigenous peoples used to emphasize a narrow definition of legal pluralism: which was, legal diversity recognized by the state in a multi-cultural society.<sup>8</sup> However, this kind of perspective is too narrow to provide appropriate resolutions for indigenous family disputes. Indeed, state law should not be categorized as doctrine alone. Rather, it may be regarded as having a reality in the social world that it inhabits.<sup>9</sup> While the law is important in constituting family relationships and regulating the positions of men, women, and children in society, it is necessary to de-center the law and to look at the wider social concerns and relations of power in resolving disputes.<sup>10</sup> Moreover, the ideology of legal centralism, which only regards the law recognized by the state as law, is problematic because the law and legal institutions in societies are affected by regional,

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<sup>7</sup> Anne Griffiths, "Reconfiguring Law: An Ethnographic Perspective from Botswana," *Law & Soc. Inquiry* Vol.23(1998)., pp.589-593.

<sup>8</sup> Barbara Ann Atwood, "Tribal Jurisprudence and Cultural Meanings of the Family," *Neb. L. Rev.* Vol.79(2000)., pp.321, 327, 329; Ann Black, "Replicating 'A Model of Mutual Respect': Could Singapore's Legal Pluralism Work in Australia?," *J. Legal Pluralism & Unofficial L.* No.65(2012)., pp. 69, 82, 90.

<sup>9</sup> G. Woodman, "Customary Law, State Courts, and the Notion of Institutionalization of Norms in Ghana and Nigeria," in *Peoples Law and State Law: The Bellagio Papers*, ed. Antony Allott, & Woodman, Gordon R. (DE GRUYTER MOTON, 1985)., pp.143-164.

<sup>10</sup> Abdul Paliwala, "Family Transformation and Family Law: Some African Developments in Financial Support on Relationship Breakdown," in *Law and Crisis in the Third World*, ed. A. Sammy, & Paliwala, A. (London: Hans Zell Publishers, 1993)., p. 271.

national, and international networks of power and information.<sup>11</sup>

Furthermore, the majority of indigenous customary rules have not, as yet, been recognized by the judicial system in Taiwan under the assimilation policy carried out during the past 70 years. Adopting the narrow standpoint of legal pluralism may therefore lead to customary rules practiced in the existing indigenous tribes being ignored.

The “law” is a complex set of norms, rules, practices, and activities of agencies, including legislation, administration, and adjudication. The law and the social context in which it operates should thus be examined simultaneously.<sup>12</sup> Using the concept of “semi-autonomous social field” as a means of defining a research problem, Sally Falk Moore argues that the semi-autonomy of the small field studied by anthropologists is capable of creating rules and customs internally, but equally, can be adversely affected by the surrounding world.<sup>13</sup> State law is only one of the factors that affect the decisions that people make, the actions they take, and the relationships they have. As a consequence, this article advances the view that state law should be critically reviewed within a larger social matrix.<sup>14</sup>

In regard to the family mediation as a semi-autonomous social field<sup>15</sup>, this article seeks to depict the interaction of state law and indigenous customary rules, and to further consider the power relationships within family mediation sessions. The second part of this article will review the literature concerning the pros and cons of mediation, and the effects of

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<sup>11</sup> Anne Griffiths, "Legal Pluralism," in *An Introduction to Law and Social Theory*, ed. Reza Banakar, & Travers, Max (Oxford: Hart Publishing, 2002)., p.298; John Griffiths, "What is Legal Pluralism?," *Journal of Legal Pluralism* No.24(1986)., p.38.

<sup>12</sup> S.F. Moore, "Law and Social Change: The semi-autonomous social field as an appropriate subject of study," *Law and Society Review* Vol.7, No.4(1973)., p.719.

<sup>13</sup> Sally Falk Moore, *Law as Process: An Anthropological Approach* (Oxford: James Currey, 2000)., pp.55-56.

<sup>14</sup> *Ibid.*, p.78.

<sup>15</sup> A. Hellum and J. Stewart, *Pursuing Grounded Theory in Law* (Oslo, Norway: Mond Books, 1998)., pp.40-43.

power as a regulatory force in the process of family mediation. Owing to the fact that culture may be regarded as one of the regulatory forces in a semi-autonomous social field, and indigenous culture might be able to provide effective alternatives to dispute resolution, the ways of incorporating indigenous cultures into the process of dispute resolution are also explored. Research methods carried out in this study are provided in the third part. The first section of the fourth part will sketch the interaction of state law, indigenous customary rules, and power relationships in the process of indigenous family mediation. The second section will explore the existence of indigenous customary rules and the benefits of applying them to mediation sessions.

This article argues that the indigenous peoples in Taiwan still suffer from the power of unequal differentiation. Customary rules of indigenous families might be overlooked by the district court in the process of family mediation. As long as one of the indigenous disputing parties insists on resolving the family disputes in terms of customary rules, however, the court would respect the indigenous customs. Knowledge of indigenous customary rules thus enhances the possibility of reaching settlements and reinforces the indigenous children's rights to enjoy their own culture. Nevertheless, if applying the customary law would violate the human rights, of which should be enjoyed by indigenous women and children, the court would uphold the international human rights standards embedded in the state law.

## **2. Alternative and Indigenous Dispute Resolution**

### **2.1 Family Mediation**

The functions of mediation have been discussed by some scholars. Mediation usually serves as a mechanism for dispute resolution, which is

able to foster more harmonious relationships between the disputing parties. Through the process of mediation, instead of adversary litigation, parents have the chance to learn about their own emotions and those of their children, and to develop business-like boundaries around their co-parenting relationship when working on a parenting plan.<sup>16</sup>

Interestingly, family mediation in the form of “marriage therapy” conducted by social workers, marriage counselors, or psychiatrists, appears to help the disputing parties accept the inevitability of divorce, rather than cementing marriage relationships.<sup>17</sup> Court mediation is thus regarded as a mechanism for collaborative dialogue.<sup>18</sup>

In line with the discourse on legal pluralism, critics of family mediation focus on the power imbalance that affects the operation of state law and the fairness of mediation. Some scholars have asserted that mediation is a simplistic alternative to litigation, which might privatize the dispute resolution and enhance the power of the strong over the weak in family disputes.<sup>19</sup> In other words, the formal structure of the civil procedure is able to suppress biased treatment in certain situations of informal ADR setting.<sup>20</sup> Lisa Parkinson asserts that various aspects of power imbalance emanate from gender, knowledge, earning capacity,

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<sup>16</sup> Robert E. Emery, *Renegotiating Family Relationships: Divorce, Child Custody, and Mediation*, 2nd ed. ed. (Guilford Press, 2012).; pp.216-218.

<sup>17</sup> Lon L. Fuller, "Mediation-Its Forms and Functions," in *Foundations of Dispute Resolution: Vol.I*, ed. Carrie Menkel-Meadow (Farnham, Surrey: VT Ashgate, 2012)., p.308.

<sup>18</sup> Thomas Moyer, J., "Mediation as a Catalyst for Judicial Reform in Latin America," *Ohio St. J. on Disp. Resol.* 18(2003).., pp.649-655.

<sup>19</sup> Eleventh Annual Philip D. Reed Memorial Issue Partnerships Across Borders, "A Global Forum on Access to Justice April 6-8, 2000: Transcript Roundtable: Pro Bono and Volunteer Practices April 8, 2000," *Fordham Int'l L. J.* 24(2000).., p.363-364; Carrie Menkel-Meadow, "The Many Ways of Mediation: The Transformation of Traditions, Ideologies, Paradigms, and Practices," in *Foundations of Dispute Resolution: Vol.I*, ed. Carrie Menkel-Meadow (Farnham, Surrey: VT Ashgate, 1995).., p.353.

<sup>20</sup> Eric K. Yamamoto, "ADR: Where have the critics gone?," *Santa Clara L. Rev.* 36(1996).., pp.1059-1061.

emotional pressure, education, social status, culture, and religion. Since internal and external resources may not be equally available to both parties, balanced negotiation is impeded.<sup>21</sup>

Among those factors which might result in power imbalance and have an impact on mediation, gender has been highlighted by some scholars. Marian Roberts, for example, indicates that women as a group suffer fundamental power inequalities in family relationships. It is easier for them to be ill-informed about their rights and suffer from depression, while legal advice is more likely to be affordable for husbands. Men might also have some experiences of negotiation. Therefore, unequal bargaining power between the disputing parties might be masked by the consensus of settlement, which is supposed to be reached in the light of the principle of freedom of contract, based on free choice.<sup>22</sup>

In addition, Jamila A. Chowdhury maintains that gender inequality originating from social discourses may still have a dominant impact on mediation and can damage the negotiating capacity of women, even though the income, education, or employment status of female disputants might be superior to that of their male opposing parties.<sup>23</sup> It is suggested that mediators should be aware of cultural factors which may result in power disparities between the disputing parties, challenge gender biased discourses which are dominant in society, and seek some pro-women alternatives so as to emancipate women's subordinate voice in mediation sessions.<sup>24</sup>

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<sup>21</sup> Lisa Parkinson, *Family Mediation: Appropriate dispute resolution in a new family justice system* (Bristol: Jordan Publishing Limited, 2011), pp.254-261.

<sup>22</sup> Marian Roberts, *Mediation in Family Disputes: Principles of Practice*, 2nd ed. (Aldershot: Ashgate, 1997), pp. 156-157.

<sup>23</sup> Jamila A. Chowdhury, *Gender Power and Mediation: evaluative mediation to challenge the power of social discourses* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2012), p.70.

<sup>24</sup> *Ibid.*, p.93.



Moreover, mediators are expected to act as a neutral third party when resolving disputes. Nevertheless, a number of scholars have noticed that it is quite usual for mediators to introduce knowledge, assumptions, interests, values, and perceptions of their own to the process of negotiation. Consequently, it is argued that mediators do not, in fact, act with impartiality, as required by the code of ethics for mediators.<sup>25</sup>

## 2.2 Indigenous Culture and Family Dispute Resolution

It has been recognized that indigenous peoples are often regarded as a less worthy race, and that their cultures are inferior to the cultures of the colonizers or the dominant ethnic group in society.<sup>26</sup> Consequently, indigenous peoples are often disadvantaged in the justice system, because indigenous customary law and traditional native dispute resolution practices are overlooked or suppressed by formal judicial systems.

To resist colonial domination, and to emphasize the importance of respecting the customs and values of indigenous peoples, which might be able to provide an effective alternative for resolving disputes, some scholars have demonstrated how indigenous methods of dispute resolution are adopted and practiced in a variety of societies in line with the theme of legal pluralism.

To avoid children being removed and relocated to foster care, which is not consistent with the Maori culture in New Zealand, Susan Chandler &

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<sup>25</sup> P. H. Gulliver, *Disputes and Negotiations: A Cross-Cultural Perspective* (New York: Academic Press, 1979), pp.213-214; James Coben, & Penelope Harley, "FALL 2003 Dispute Resolution Institute Symposium: Intentional Conversations about Restorative Justice, Mediation and the Practice of Law," *Hamline J. Pub. L. & Pol'y* 25(2004), pp.251-259.

<sup>26</sup> M. Ahren, "Indigenous Peoples' Culture, Customs, and Traditions and Customary Law--the Saami People's Perspective " *Arizona Journal of International and Comparative Law* Vol.21(2004), p.64.

Marilou Giovannucci suggested that the opinions of extended family members should be sought when resolving disputes, a process referred to as “family group conference”. The resources of the community, clergy, and family friends are regarded as family support in terms of traditional tribal principles, and the care and safety plans for the children are shaped by the cultural patterns of the family and community involved. This kind of conferencing model and mediation has been adopted by the child welfare agencies and courts in the United States.<sup>27</sup>

Following the pattern of encouraging the involvement of family and community in the process of problem solving, Susan Swaim Daicoff introduces the concept of restorative justice into family law. It is suggested that the “circle process”, an indigenous form of conflict resolution developed in North America, is an ideal mechanism to supplement existing family mediation services. Members of extended families, other interested people, and legal staff, are thus able to take part in dispute resolution. Ground rules and the questions addressed in the process are developed by the participants. Each person involved is given an opportunity to express his/her opinion so as to form creative, non-monetary solutions. Since the participants are responsible for ensuring that the disputing parties comply with the agreements developed in the circle, this process is able to reduce the possibility of post-dispute litigation. For example, the perspectives of the extended family members who will support the co-parenting relationships and schedules can be brought into the process, in order to encourage the participants to help others in the circle to obey the circle’s decisions.<sup>28</sup>

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<sup>27</sup> Susan M. Chandler, & Giovannucci, Marilou, "Family Group Conferences: Transforming Traditional Child Welfare Policy and Practice," *Family Court Review* No.42(2004)., pp.217-220.

<sup>28</sup> Susan Swaim Daicoff, "Families in Circle Process: Restorative Justice in Family Law," *Fam Ct. Rev.* Vol.53(2015).; pp.430, 432, 434, 435.

In the family court of Australia, “family consultants” are appointed to assess the cultural needs of the indigenous family involved and share information with the counselors before mediation starts. Whether the extended family members of the disputing parties should be consulted is also advised by the consultants. In other words, family consultants and counselors work together to decide on appropriate ways of supporting indigenous parties in mediation sessions.<sup>29</sup>

The aforementioned literature has explored the function, the pros and the cons of mediation, the problem and possible resolutions of power imbalance in family mediation, and the ways of incorporating indigenous cultures into the process of dispute resolution practiced in Australia, New Zealand, and North America. However, family mediation relating to indigenous peoples in Taiwan and the interactions of plural legal orders in this social field have not been examined thus far. Only a few court cases concerning indigenous customary rules have been analyzed. It was found that the customary rule of “vusam inheritance” in Paiwan tribes was not regarded as the legal basis of the inheritance case in terms of Article 1 of *Civil Code*<sup>30</sup>, because Article 1138 of *Civil Code* stipulated that each child had the same right to the properties left by the deceased. Nevertheless, the practice of “vusam inheritance” was recognized by the Pingtung District Court, and a family member of the eldest daughter (the plaintiff) was required to look after a family member of the younger sister (the defendant) through performing promised obligations according to the contract of loan for use. As a result, the court ruled that the plaintiff could not request the defendant to remove the family house built on the

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<sup>29</sup> Stephen Ralph, & Meredith, Stephen, "Working together: A Model of Mediation with Aboriginal and Torres Strait Islander Families in the Family Court of Australia," *Family Court Review* No.40(2002).; pp.329-330.

<sup>30</sup> Grace Ying-Fang Tsai, “Inheritance Dispute Resolution in Paiwan Tribes”, *National Taiwan University Law Review*, Vol.10, No.2 (2015), pp.306-307.

land inherited by the vusam.<sup>31</sup>

Yun-Hsien Lin's study of civil mediation in Taiwan asserts that many indigenous tribes are assimilated to the *Han* culture, and even adopted *Han* identities, and thus there is no need to explore the interaction of state law and indigenous customs in family mediation sessions.<sup>32</sup> Nevertheless, the Indigenous Peoples Basic Law was enacted in 2005, which ended the assimilation policy.

Jewel Chen argues that the indigenous customary law has started to be adopted as the legal basis of civil mediation. For instance, the customary rule of "vusam inheritance" was applied by an indigenous mediator in a civil mediation case at the Taitung District Court. The defendant, the eldest daughter of the family, was suggested to pay her father (the plaintiff) maintenance fee owing to the fact that she had already owned the family assets in terms of the Paiwan custom of "vusam inheritance". Consequently, the former accepted this suggestion, and an agreement was reached. The father eventually withdrew his case which requested the eldest daughter to return the real estates registered under the plaintiff's name before.<sup>33</sup>

However, how the aborigines assert their rights in terms of customary rules in the process of indigenous family mediation has not been explored yet. It might be worthy to examine how the indigenous customary rules could be applied to resolve the problems encountered by the indigenous disputing parties.

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<sup>31</sup> Ibid., pp.313-314.

<sup>32</sup> Yun-Hsien Diana Lin, "Civil Mediation in Taiwan: Legal Culture and the Process of Legal Modernization" *East Asia Law Review* No.6(2011).; pp.192-193, 207-214.

<sup>33</sup> Jewel Chen, "The response to the disadvantaged status of the indigenous peoples in Taiwan's judicial system", *Taiwan Indigenous Law Review*, No.4 (2018), p.91.

### 3. Research Methods

Legal rules and cultural contexts of the jurisdictions that might affect the outcomes of family mediation have rarely been explored and analyzed.<sup>34</sup> To investigate the interactions of state law, indigenous customary law, and other regulatory forces in the semi-autonomous social field of “indigenous family mediation”, participant observation was conducted within the Family Division of the Nantou District Court dating from 6th/August/2014 to 27th/January/2016. This court is located in a rural area near indigenous tribes. It is an ideal site to observe the interaction of state law and customary rules practiced by indigenous tribes. A clerk of the court provided the dates of the mediation sessions with reference to the indigenous family disputes. All of the documents given by the petitioners were read and summarized prior to each session. At the beginning of the mediation sessions, the judicial associate officer introduced the researcher to both parties and asked for their permission to participate in this research. The process of each session was recorded immediately by handwriting or typing. The drafts of this manuscript had been sent to the judicial associate officer twice by e-mails. The district court did not provide any more suggestion regarding to the collected cases. The case numbers for family mediation and the ethnic backgrounds of the disputing parties are provided in Appendix 1.

Initially, this research planned to carry out interviews with the disputing parties connected with each case in order to obtain a more comprehensive knowledge about the background of the conflict, the factors affecting their decisions, and whether their positions were improved by the

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<sup>34</sup> Joan B. Kelly, "Family Mediation Research: Is There Empirical Support for the Field?," *Conflict Resolution Quarterly* No.22(2004)., pp.3-4.

agreements. However, the timetable of this research had to be postponed for six months so as to receive the full-approval of research ethics from the National Changhua University of Education Research Ethics Committee. Simply stated, this research project could not be at the same pace with other projects under the same integrated research plan. Consequently, an expedited approval of research ethics was applied and granted for the first year of this project, and the author was not allowed to have any conversation with the indigenous disputing parties of each case collected from the Nantou District Court.

Moreover, the semi-autonomous social field could be regarded as a frame around a rule-generating and rule-upholding activity, which should not be confused with the institution being researched, such as the district court.<sup>35</sup> It would also be important to note that none of the family mediators in the Nantou District Court was indigenous when this project was carried out.<sup>36</sup> Additionally, full approval of research ethics was granted for this project in the second year. To acquire knowledge of indigenous people's perspectives about applying indigenous customary rules as a basis of family mediation, semi-structured interviews with the mediators, ex-mediators, the secretary of the Mediation Committee of the township office, and the village headmen who would resolve disputes for local communities, were carried out at Sinyi Town, Nantou County, with the help of the mediation committee dating from 3rd/August/2015 to 28th/March/2016. The senior members of a Bunun tribe (F,G,H,I,J), who were capable of resolving local disputes for community members were also introduced by a member of the Mediation Committee and gathered as a focus group for discussion, so as to understand their perspectives concerning the indigenous customary rules. Background information

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<sup>35</sup> Anne Hellum & Julie Stewart, 1998, *Supra note* 15., p.147.

<sup>36</sup> There are two indigenous family mediators in the Nantou District Court at present.

about the interviewees is provided in Appendix 2.

Participant observation of Christmas events was also conducted in the Luona tribe, Nantou County, in December, 2015, so as to understand the importance of the Christmas festival for the Bunun people, and how it might affect the child visitation plans of the Bunun disputing parties.

Hopefully, this way of demarcating the field boundaries could help the author keep the focuses of the research clear on indigenous family mediation. Random data collection could be avoided as well.

#### **4. Observation of indigenous family mediation in the Nantou District Court**

In January 2013, indigenous *ad hoc* Chambers were initially established in nine district courts<sup>37</sup>, dealing with civil disputes and criminal cases involving indigenous peoples. Taking the Nantou District Court as an example, the indigenous customary law resonating with the state law would be adopted as the ruling basis. For instance, a sale contract with reference to a piece of land, which was located in the indigenous reservation area, was established orally without any written document by two aborigines in 1970 according to indigenous customary law. The civil division of the indigenous *ad hoc* Chambers ruled that this contract should be valid because the plaintiff's father and the defendants' father had reciprocally declared their concordant intent in terms of Article 153 of the *Civil Code*.<sup>38</sup>

As for the family cases concerning indigenous peoples, the disputes

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<sup>37</sup> Indigenous *ad hoc* Chambers are initially set up in Taoyuan, Hsinchu, Miaoli, Nantou, Chiayi, Kaohsiung, Pindong, Taitung, and Hualian. The Indigenous *ad hoc* Chamber was further established in the District Courts of Kilong, Taipei, Shilin, New Taipei, Taichung, Chunghua, Yunlin, Taiwan and Yilang, the High Court and its branches in Hualian, Taichung, Tainan and Kaohsiung, and the High Administrative Court in Taipei, Taichung & Kaohsiung in September 2014.

<sup>38</sup> Nantou District Court, 2015 Indigenous Lawsuit Case No.22

are resolved by the Family Court or the Family Division of the district courts rather than the indigenous *ad hoc* Chambers. Moreover, family mediation is required prior to the litigation process, according to Article 23 of the Family Proceedings Act. Consequently, most disputes in the case of indigenous families are resolved by the mediation of third parties in the district courts.

Mediation sessions involving indigenous families were carried out and participated by the judicial associate officer, family mediators, and legal consultants. Some lawyers were designated by the Legal Aid Foundation. However, it is important to note that none of the judges, judicial associate officer, legal consultants, and family mediators was aborigine when this study was conducted. The educational background of most mediators was in social work.

## **4.1 Interactions of regulatory forces in the social field of indigenous family mediation**

### **4.1.1 State law**

Article 1 of the *Civil Code* in Taiwan stipulates that the case shall be decided in terms of customs only if there is no applicable act for a civil case. Moreover, the provisions of the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), have the effect of domestic law according to Article 2 of the Implementation Acts of the CRC and the CEDAW. Consequently, it was found that mediating with indigenous family disputes was mainly a process of bargaining under the framework of state law. For example, the custody of children is normally given to the father in the case of divorce, according to the indigenous customs of the



Atayal and Bunun.<sup>39</sup> Despite the fact that the stereotyped impression of gender relationship of indigenous groups recorded by the Japanese colonial government might result in a power imbalance in the mediation sessions, an Atayal mother (Case 3) and a Bunun mother (Case 14) claimed for joint custody in terms of Article 1055 of the *Civil Code*.<sup>40</sup> The husband of the former (Case 3) agreed to share custody, and the husband of the latter (Case 14) agreed to continue negotiating with the wife (the petitioner), and privately sought to reach an agreement regarding divorce and child custody. It could be said that the state law which complies with the human rights conventions including CRC and CEDAW was also upheld as the basis dispute resolution.

To take another example, the assets left by the deceased are supposed to be inherited by their youngest son in the case of the Seediq people.<sup>41</sup> According to this customary rule, the second wife of the deceased (one of the defendants of Case 13) claimed that the only son of the deceased, who was born by her, should be entitled to a bigger share of the heritage, while the eldest daughter adopted by the deceased and his ex-wife (the petitioner of Case 13) should take at least NT\$100,000 less than she was entitled to,

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<sup>39</sup> TEMPORARY INVESTIGATION COMMITTEE OF GOVERNOR-GENERAL OF TAIWAN CONCERNING TAIWAN'S OLD CUSTOMS, *INVESTIGATION REPORT OF INDIGENOUS CUSTOMS: VOL.1 TAIYA* (Taipei: Institute of Ethnology, Academia Sinica, 1996), pp.184-185; TEMPORARY INVESTIGATION COMMITTEE OF GOVERNOR-GENERAL OF TAIWAN CONCERNING TAIWAN'S OLD CUSTOMS, *INVESTIGATION REPORT OF INDIGENOUS PEOPLES: VOL.6 BUNUN* (Taipei: Institute of Ethnology, Academia Sinica, 2008), p.136.

<sup>40</sup> Article 1055 of the Civil Code stipulates that both the husband and the wife are entitled to exercise the rights or assume the duties in regard to the minor child through mutual agreement when both parties are divorced.

<sup>41</sup> TEMPORARY INVESTIGATION COMMITTEE OF GOVERNOR-GENERAL OF TAIWAN CONCERNING TAIWAN'S OLD CUSTOMS, *INVESTIGATION REPORT OF INDIGENOUS PEOPLES: VOL.4, SEEDIK & TRUKU* (Taipei: Institute of Ethnology, Academia Sinica, 2011), p.72.

in accordance with Article 1138 & 1144 of the *Civil Code*.<sup>42</sup> Nevertheless, the legal representative of the petitioner, a lawyer provided by the Legal Aid Foundation, refused to accept such a proposal. The land administration agent, a *Han* man hired by the defendants, further argued that the petitioner was a daughter, rather than a son. Therefore, it made little sense for her to take real estate from the deceased.

It seems quite obvious in this case that gender inequality originating from tribal societies still had an impact on mediation. However, Article 34 of the UNDRIP indicates that indigenous customary laws should be maintained on the premise that they resonate with international human rights standards. The General Recommendation No.21 issued by the CEDAW Committee also points out that any custom that grants men a right to a greater share of property upon the death of a relative is discriminatory, which would also aggravate a woman's practical ability to support herself or her family. To emancipate women's subordinate status, a pro-women alternative was sought by the legal consultant. When the lawyer of the petitioner realized that his client had been persuaded by the land administration agent, he attempted to ensure that his client would be able to have an equal cash share with the other children of the deceased.

It may be argued that the family relationships of indigenous peoples are reshaped by the concept of gender equality and the principle of the best interests of the child embedded in the *Civil Code* during the process of family mediation, in the cases of child custody and inheritance. In other words, rules developed from the international human rights conventions including CEDAW and CRC were eventually upheld in the mediation

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<sup>42</sup> Article 1138 of the *Civil Code* indicates that heirs to property other than the spouse come in the following order: (1) Lineal descendants by blood (2) Parents (3) Brothers and sisters (4) Grandparents. Article 1144 further provides that when the spouse inherits with the lineal descendants by blood of the deceased, his or her entitled portion is equal to the other heirs.

sessions of the Nantou District Court.

### 4.1.2 Domestic Law

Additionally, it may be said that domestic law comes into play in the mediation sessions of indigenous families. Domestic law is the law of the household, and as such, tends to be very informal, non-written, and deeply embedded within family relations. Santos argues that domestic law is unequal, in that it is based on patriarchy-based inequalities among different members of the household. However, it also varies across time and space in the world in terms of race and culture.<sup>43</sup> For instance, the norms regulating the distribution of the housework between the male and female family members, coupled with the age hierarchy within the family relationships, may be identified as domestic laws.<sup>44</sup>

While some indigenous societies in Taiwan are patrilineal (ex. Seediq, Atayal & Bunun), others are matrilineal (ex. Amis & Puyuma), and still others are bilateral (ex. Paiwan). Consequently, it may be seen that the domestic laws of the patrilineal societies, matrilineal societies, and bilateral societies co-exist in the social field of indigenous family mediation. As long as one of the disputing parties asserted that the domestic law, which is tailored to the human rights standard and should be applied in the process of mediation, the Nantou District Court would encourage both parties to respect the domestic laws evolved from each other's ethnic background.

For example, Amis is a matrilineal society. The groom will stay with the bride's family and work for them. In the case of divorce, the wife will

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<sup>43</sup> B.D.S Santos, *Toward a New Legal Common Sense*, 2nd ed. (London: Butterworths LexisNexis, 2002)., p.385.

<sup>44</sup> *Ibid.*.

pay compensation for the work done by the husband for her family.<sup>45</sup> However, such a customary rule does not apply in cases where the wife has married into the husband's family. As for Bunun, it is a patrilineal society in which the wife is expected to marry into the husband's family. The groom's family will slaughter pigs and share pork with the bride's family members, but the wife should return the same amount of pigs in the case of divorce.<sup>46</sup>

In practice, the petitioner of Case 4 (an Amis wife) believed that the respondent (a Bunun husband) should merely leave without taking anything, in line with the customary law of the Amis<sup>47</sup> at the beginning of the mediation session, while the latter insisted on being compensated by the former for divorce, in accordance with Bunun customary rule<sup>48</sup>. Eventually, the family mediator suggested that the petitioner and respondent respect each other's domestic law. The disputing parties settled for half the amount of compensation requested by the Bunun husband.

To take another example, the eldest son or daughter is regarded as being the heir of the family in terms of the indigenous customary rule of Paiwan.<sup>49</sup> In other words, the eldest child of each family in Paiwan tribes is called "vusam", which means the best millet seed kept from the last season. According to the customary rule of vusam inheritance practiced in Paiwan tribes, the vusam enjoys privileged status among brothers and sisters, and is entitled to inherit the social status, house, and chattels at

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<sup>45</sup> (DAXIWULAWAN BIMA) TZE-I TIEN, *The indigenous people of Taiwan: Amis* (Taipei: Taiuan, 2001), pp.228, 230.

<sup>46</sup> (DAXIWULAWAN BIMA) TZE-I TIEN, *THE INDIGENOUS PEOPLE OF TAIWAN: Bunun* (Taipei: Taiuan, 2003), pp.194, 196, 198.

<sup>47</sup> TZE-I TIEN, *Supra note.45*, p.80.

<sup>48</sup> TZE-I TIEN, *Supra note. 46*, p.198.

<sup>49</sup> Temporary Investigation Committee of Governor-General of Taiwan concerning Taiwan's old customs, *Investigation Report of Indigenous customs: Paiwan Vol.5* (Taipei: Institute of Ethnology, Academia Sinica, 2003), pp.14-16.

birth. Being the representative of the family in the tribes, the first born also has the duty to carry on the household line and look after each family member of the household.<sup>50</sup> The petitioner of Case 10 (a *Han* mother) agreed to give sole custody of the first-born child (the eldest daughter) to the respondent (a Paiwanese father), and to take sole custody of the second-born child, even though all of the children were actually taken care of by the petitioner's mother at the time.

Consequently, it could be maintained that domestic laws in terms of bilateral, patrilineal and matrilineal family patterns of indigenous societies were all followed and valued by the disputing parties in the form of mediation settlements. Instead of upholding the state law, new rules of resolving family disputes were generated in the mediation sessions, because the district court would encourage the disputing parties to respect the domestic laws evolved from the indigenous custom on the premise that international human rights standards were not violated.

It might also be necessary for Taiwan to develop a law relating to the conflict of customary rules for indigenous peoples, so as to decide on the rules of the choice of customary laws in such a multi-ethnic society.

### **4.1.3 Unequal differentiation**

In addition, it may be argued that indigenous disputing parties are suppressed by the power of unequal differentiation. Under the ideology of *Han* centralism, indigenous peoples are defined as “the other”, and are called “*fan* (savage indigenous persons)” by the *Han* community. Indigenous peoples are defined as incompetent in representing themselves,

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<sup>50</sup> Grace Ying-Fang Tsai, *Supra note.30*, p.292.

because indigenous customs are regarded as inferior to the *Han* culture.<sup>51</sup> To show how the *Han Chinese* people have a “civilizing” influence on the savage aborigines in Taiwan, the story of a Chinese merchant called Feng Wu who sacrificed himself to stop the indigenous custom of decapitation was even mentioned in the school history books in the martial-law period in Taiwan.<sup>52</sup> Consequently, indigenous customs and mechanisms of dispute resolution tend to be despised and neglected not only by the *Han* people but also by the indigenous peoples.

For example, the petitioner of Case 9 (a Seediq father) filed a petition for visitation, while the respondent (a Seediq mother) complained that the former was always drunk during visitation, and had stopped paying child maintenance. The mediation was carried out by a social worker (a *Han* man) and a judicial associate officer (a *Han* woman). When the judicial associate officer asked the petitioner questions, the latter always answered in a self-deprecating manner, revealing the inferior social status of the indigenous peoples in Taiwan:

“The judicial associate officer: Did you pay child maintenance?”

The petitioner: You need to ask her (the respondent).

The respondent: He only paid for one year under the procedure of compulsory enforcement.

The petitioner: I am an indigenous person.

The judicial associate officer: You have paid for one year.

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<sup>51</sup> Said indicates that The Orient is usually orientalised, which is a process that not only marks the orient as the province of the Orientalist, but also forces the Western reader to accept Orientalist codifications as the true Orient. Therefore, truth becomes a learned judgment, but not the material itself. Edward W. Said, *Orientalism* (Vintage Books, 1979), p.67.

<sup>52</sup> [https://en.wikipedia.org/wiki/Wu\\_Feng](https://en.wikipedia.org/wiki/Wu_Feng) (Last date of visitation: 04/Aug/2019)

The petitioner: I am an indigenous person. I don't understand what you have said.

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The judicial associate officer: I know that you (the petitioner) miss your children very much. Bringing up children is a responsibility for both parents. It's not the sole responsibility of the mother (the respondent).

The petitioner: I used to be an indigenous person. I don't understand what you have said.

.....

The judicial associate officer: Do you have your ID card with you?

The petitioner: I am an indigenous person. How could I know that I needed to bring my ID card when I come here?"

Eventually, the judicial associate officer persuaded the respondent to arrange a visitation schedule, and asked the petitioner to stay sober whenever he visited his children at his sister's house. Indeed, indigenous peoples are defined as "savage, uncivilized, and illiterate" by the *Han* people. Chinese people have regarded their country as "the centre of the world (*Chung-Kuo* in Mandarin Chinese) since the beginning of the Zhou dynasty in 1046 BC. Other ethnic groups are considered as unreasonable barbarians. Consequently, indigenous people in Taiwan have been recorded as "*fan* (uncivilized barbarians)" in local chronicles by Chinese authors since the Ching dynasty.<sup>53</sup>

From the above dialogue, it is reasonably clear that the self-esteem of indigenous peoples in Taiwan is rather low in view of the power of unequal

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<sup>53</sup> Shi-Fan Yang, "Local Chronicles, Descriptions of the Aborigines' Drinking, and Ethnic Politics - An Investigation from the Perspective of the Sociology of Knowledge," *Taiwan Journal of Indigenous Studies* Vol.5, no. No.2 (2012)., pp. 45-46.

differentiation imposed by the *Han* community.

In another example, the respondent of Case 15 (a Bunun wife) claimed that the petitioner (a *Han* husband) and his mother despised her and kept calling her “*fan*” at home. Even though the Bunun community is patrilineal, which means that the wife is expected to marry into her husband’s family, the son-in-law is supposed to help his father-in-law in accordance with Bunun customs.<sup>54</sup> However, the petitioner refused to visit her father when the latter was very ill and in hospital.

Under the patrilineal family pattern of the *Han* people, the wife is also supposed to marry into her husband’s family. Therefore, the wife is expected to look after her parents-in-law<sup>55</sup>, while the husband is not obliged to get along with his parents-in-law. Only a considerate husband would accompany his wife when the latter visits her natal family.<sup>56</sup>

Consequently, it may be asserted that the respondent of Case 15 was doubly oppressed by the patriarchal cultures emanating from the *Han* and Bunun communities, and the power relations of the unequal differentiation between *Han* and Bunun, when she was at home.

To sum up, it may be argued that the patrilineal relationships of indigenous peoples are reshaped by the concept of gender equality and the principle of the best interests of the child, as stipulated by the *Civil Code*, the Implementation Acts of the CEDAW and the CRC during the mediation sessions. Domestic laws derived from the patrilineal, matrilineal, and bilateral family patterns of indigenous communities are all adhered to by the disputing parties and embodied in the form of mediation agreements.

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<sup>54</sup> (DAXIWULAWAN BIMA) TZE-I TIEN, *Supra* note 46, p.197.

<sup>55</sup> Yow-Hwey Hu, *Three Generations in the Same Household? -Myths & Traps* (Taipei: Chuliu, 1995), p.64.

<sup>56</sup> Chi-Rong Chen, "Between the Father-in-law and the Son-in-law: A Research Concerning the Son-in-law and the Father-in-law" (2006), pp.35-36.



Even though the voices of women may be marginalized in the process of family mediation, due to the power of patriarchy diffused in Bunun families, the justice of family mediation could still be maintained if the mediators and lawyers are aware of the disparities of both parties in the power of negotiation resulting from the family culture of indigenous communities.

Moreover, not only the *Han* disputants, but also the indigenous respondents, regarded indigenous culture as inferior to *Han* custom. It would thus be preferable if the mediators could remind the disputing parties to respect indigenous family customs.

#### **4.2 The benefits of applying indigenous customary rules in the process of mediation sessions**

Taking Bunun customary rules concerning a wedding, divorce, and child visitation as examples, this section now explores the benefits of applying indigenous customary rules to family mediation sessions. First of all, the evolution of the Bunun customary law with reference to wedding and divorce is examined. The way in which the knowledge of Bunun customary rule is able to increase the possibility of reaching settlements in mediation sessions is further demonstrated. The importance of reviving the indigenous mechanism of dispute resolution is also illuminated. Secondly, the Bunun custom of child visitation is explored, and the way in which it is applied to strengthen the indigenous children's rights to enjoy their own cultures is established. It might be argued that new rules of resolving family disputes could be generated in the process of indigenous mediation if one of the disputing parties maintained that a specific customary law evolved from the indigenous tribes should be followed.

#### 4.2.1-1 The evolution of Bunun customary rules with reference to wedding and divorce

Pigs are regarded as a classic form of a bride's price in the case of the Bunun community. The groom and his family members are supposed to bring pigs to the lady he is just about to marry, and prepare a feast for the bride's family at the bride's home. The father or one of the brothers of the bride should be responsible for carving a slice of pork as part of an ancestral worship ceremony and say, "Today we marry off a daughter." The wedding banquet will start when he has the first bite of the pork and the cooked rice. The internal organs of the pigs are cooked and eaten at the banquet. After the feast, the bride's family begins to share the pork brought by the groom's family. The pigs are quartered and shared equally among the family members of the bride. Pork legs are supposed to be given to the maternal uncles of the bride. Women who have married off the family still have the right to a share of the pork. The bones of the pigs are given to the male family members of the bride to demonstrate the patrilineal family relationship. It would be a sign of bad luck if any family member were neglected in the process of pork sharing.<sup>57</sup>

Professor Ying-kuei Huang has argued that pork sharing at the wedding ceremony in Bunun tribes required only three pigs in past times. However, the bride's family would require at least 12 pigs nowadays. Recently, the most common amount of pigs requested by the bride's parents

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<sup>57</sup> Chang-hui Chan, "An Oral History Report on Indigenous Marital Customs Connected with Catholic Pastoral Work Among the Bunun," *Bulletin of Aboriginal Theology and Pastoral Work* 4(2012), p.62; Wen-da Chen, "The record of 7th Folk Symposium of Taiwan Province Literature Committee: Bunun's customs of wedding and funeral," *Journal of Taiwan Literature* 38(2)(1987), p.223; (DAXIWULAWAN BIMA) TZE-I TIEN, "Food Culture and Drinking Culture of Traditional Ceremonies of Bunun," *Quarter of Foundation of Chinese Dietary Culture* 11(1)(2005), p.7.

would be 18.<sup>58</sup> Through pork sharing at the wedding ceremony, Bunun people could introduce the relatives to the newly-wedded couple, and strengthen the ties and cooperation among the relatives.<sup>59</sup>

As for divorce, there is no word that means “divorce” in the Bunun language. The only similar word is “*musbai*”, meaning the woman has run away owing to adultery, stealing, or childlessness. Consequently, if a wife decides to leave her husband’s family and go back to her natal family, she will be required to return the same amount of pigs that her husband has given her family as a bride price at the wedding ceremony. If the wife fails to do so, the patrilineal family members of the wife who shared pork at her wedding ceremony will be responsible for the payment.<sup>60</sup> However, the husband might not ask the wife to return the whole expense where the marriage had lasted for a long time.<sup>61</sup>

As for the latest perspectives of indigenous peoples about this customary rule, the senior members of the tribe (Respondents F, G, H, I, J, K), aged 74 to 90, mentioned that they hardly heard of any couple getting divorced in past times. If anyone committed adultery, he or she would be physically punished with bamboo sticks.

One of the seniors further stated that marriages were arranged by

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<sup>58</sup> Ying-Kuei Huang, *The Path Towards "Civilization" Vol.3: Local Society under the Neoliberal Order (1999 to the present)* (Taipei: Institute of Ethnology, Academia Sinica, 2014)., p.63.

<sup>59</sup> (DAXIWULAWAN BIMA) TZE-I TIEN, "The life rituals and ceremonies' yearly agenda of Bunun," *Journal of Taiwan Literature* 43(1)(1992)., p.63.

<sup>60</sup> Ying-Kuei Huang, *The Path Towards Civilization Vol.1: The Formation of Bunun Tradition under Japanese Colonization (1895-1945)* (Taipei: Ethnology, Academia Sinica, 2012). , p.104. The clans and kinships are expected to undertake the responsibility derived from the Bunun customary rules. Husluman Vava, *The Guardian of Central Mountains: Bunun* (Taipei: Daw Shaing Publishing Co. ,ltd., 1997)., p.83.

<sup>61</sup> TZE-I TIEN, *Supra note .59*, p.62.

parents when they were young. She married at the age of seven. Originally she supposed that she was adopted by her parents-in-law. She knew that she was married when her parents-in-law asked her to sleep with one of their sons. Divorce would only happen if the wife could not bear any child. In such a case, the wife would be expelled by her parents-in-law.

Such an opinion resonates with the literature written by a Bunun scholar, Daxiwulawan Bima, who maintains that the concept of “divorce” did not exist in the Bunun language. The marriage might be dissolved if the wife ran away (*musbai*) because she felt ashamed due to infertility.<sup>62</sup>

Respondents E & K also indicated that it was rare for Bunun couples to get divorced. In cases where marriage was dissolved, some families on the husband’s side would agree to the divorce unconditionally, while others would claim compensation for wedding expenses. However, Respondents A, B, C, D, L, M, P maintained that all of the wedding expenses (including more than a dozen pigs requested by the bride’s family, wedding jewelry, all kinds of expenses of dressing up spent by the bride’s senior relatives, and the wedding banquet for the families of the groom and bride) were paid by the groom’s family in terms of Bunun custom. The wedding banquet would need at least 100 tables in the Bunun tribes regardless of the social-economic background of the groom. It was thus a significant financial burden for the groom. If the groom did not have enough money, he would obtain a loan at a high interest rate from the local credit union. In addition, the brides were not expected to improve the economic situation of the groom’s family by bringing dowries. It is little wonder, therefore, that the husband would claim compensation for the wedding expenses in the case where the wife wanted a divorce.

Respondents A & B further pointed out that the husband would not

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<sup>62</sup> TZE-I TIEN, *Supra note*. 46, p.198.

request compensation if he was the divorce litigant who was at fault. Respondent Q also specifically emphasized that the husband should not be allowed to claim compensation for the wedding expenses if the marriage was dissolved due to his fault.

Respondent C indicated that each pig would cost NT\$11,000 approximately. If the whole wedding cost was NT\$1,000,000, the groom would expect the bride to share the costs jointly during the marriage if a double-income family was established. Therefore, it would be quite natural for the husband to claim compensation in the case of divorce if he had to pay back more than NT\$1,000,000 alone, owing to the wedding expenses. Respondent O also mentioned that some of the male disputants would claim compensation amounting to NT\$400,000 in cases where their wives had affairs with other men and got divorced. As for Respondent N, he argued that the bride would become a member of the groom's family after the wedding. In the case of his wife wanting a divorce or getting married again when she was a widow, it would be necessary for her to return the same amount of pigs shared by her relatives at her wedding to the ex-husband's family. This kind of opinion resonates with Professor Ying-Kuei Huang's perspective, namely, that "the number of the pigs slaughtered and shared at the wedding represents the bride's price paid by the groom's family". In other words, the families of the bride and groom would become in-laws through the ceremony containing pig slaughter and pork sharing. Therefore, the relatives who shared pork at a wedding would be collectively responsible for returning the same amount of pigs if the marriage were to be dissolved. Pigs or pork represent transactional materials in this case.<sup>63</sup>

It may be argued that the Bunun customary rule, which allows the

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<sup>63</sup> Ying-Kuei Huang, *Cultural Practice and Social Life Among the Bunun of Taketonpu* (Taipei: Institute of Ethnology, Academia Sinica, 1992)., pp. 201 & 206.

husband to claim compensation for the expense of the pigs slaughtered at the wedding ceremony in the case of divorce requested by the wife, is still regarded as a law by indigenous peoples.<sup>64</sup> Even though no one would request that the other party return the same amount of pigs slaughtered and shared at the wedding, the disputing parties would negotiate the amount of compensation in cash.

#### **4.2.1-2. Enhancing the possibility of reaching settlements**

During the process of observing family mediation concerning indigenous disputes, it was found that being knowledgeable of indigenous customary laws increased the possibility of reaching settlements. For instance, the petitioner of Case 4 (an Amis wife) intended to get divorced from the respondent (a Bunun husband). The disputing parties were both heirs to their natal families (the eldest daughter and the eldest son of their families), because the family pattern of Amis is matrilineal, while the Bunun family is patrilineal.

The respondent agreed to the divorce, but insisted that the petitioner should provide compensation for his wedding expenses. The respondent even asked a member of the county council to take part in the mediation session and speak for him. The councilor pointed out that the mother of the respondent sold a piece of land for the wedding. The land was left by her father, and worth NT\$800,000. In addition, family savings amounting to NT\$200,000 were spent on the wedding banquet. Now the

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<sup>64</sup> A "custom" should satisfy the following requirements: (1) It must have been practiced continuously and regularly in the community; (2) People must have considered such custom as being a binding norm; (3) It may not be contrary to public order and good morals. Tay-sheng Wang, "Taiwan," in *Asian Legal Systems: Law, Society and Pluralism in East Asia*, ed. Tan Poh-Ling (Sydney: Butterworths, 1997), p.144-145; Chang-fa Lo, *The Legal Culture and System of Taiwan* (Netherlands: Kluwer Law International, 2006), p.44.

daughter-in-law wanted a divorce, the marriage would be dissolved, and it was indeed a big loss for the mother of the respondent. Therefore, the respondent hoped that the petitioner could provide compensation for the loss of his family.

According to Article 1056 of the *Civil Code*, the mediator indicated that the injured party might be able to claim equitable compensation in money for a non-pecuniary loss, but it would be inappropriate to claim compensation for the expense of the wedding in the process of divorce litigation. However, the mother of the respondent insisted that the petitioner should pay NT\$200,000 as compensation for the wedding. The mediator tried to persuade the respondent to accept the divorce settlement without compensation, because the disputing parties had lived separately for six years, and it was quite possible that the judge would agree with the statement of claim for divorce made by the petitioner. Nevertheless, the respondent insisted that his mother's wishes should be respected in the mediation session.

The judicial associate officer entered the mediation room later, and asked the author of this article:

“The judicial associate officer: Do indigenous peoples have this kind of customary rule?

The author of this article: In the case of divorce, the customary rule of Bunun would require the wife and her family members to return the same amount of pigs being used as gifts and cooked at the wedding banquet. However, the Amis community does not have such a customary law. Amis is a matrilineal society, while Bunun family is patrilineal.

The judicial associate officer: Frankly speaking, the court will only

make a decision with reference to divorce. If the couple should separate from each other, the judge would not require the petitioner to compensate for the wedding cost. Neither would the customary rule of Amis. Would you change your mind, Mr. K (the respondent)?

The County Councilor: Mr. K spent over NT\$1,000,000 on the wedding. His mother even sold the land left by his maternal grandfather. We did not ask the petitioner to compensate for the expense of the whole wedding. We only asked her to pay for NT\$200,000.

The petitioner: I would need to work as a prostitute if you asked me to give you NT\$200,000.

The mediator: It was Mr. K's mother who insisted on this. How much would be affordable for you?

The petitioner: I am not able to give him NT\$200,000.

The judicial associate officer: The pressure is not imposed by the respondent but by the customary rule of Bunun. Of course, we need to respect the tradition of the Amis as well. Would it be OK if I lower the amount of payment to NT\$100,000? I believe that Mr. K would be willing to let you pay by installments.”

Eventually, the disputing parties agreed with the divorce settlement proposed by the judicial associate officer, and the payment was divided into 20 installments.

It might be asserted that this case was mediated within the framework of state law in terms of Article 1 of the *Civil Code* at the beginning. Even though applying the customary law is a new approach to resolving the



indigenous family disputes, the judicial associate officer tried to introduce the concepts of indigenous customary rule asserted by one of the disputing parties as one of the bases for negotiation. The judicial associate officer and the mediator created a space for the indigenous disputants to respect each other's traditional customs in the form of a mediation settlement. A new rule of resolving the indigenous family disputes was thus generated.

Consequently, even though the court would not order the petitioner to pay compensation for the expense of the wedding paid by the respondent in the process of divorce litigation in terms of Section I, Article 1056 of the *Civil Code*, the Bunun customary rule, allowing the husband to claim compensation for the wedding expenses in cases that the wife wanted a divorce while the husband was not at fault, was preserved by the mediation settlement. Respecting indigenous customary rules ultimately helped the disputing parties realize each other's standpoints and reach a settlement.

In another instance, the petitioner of Case 19 (a Bunun wife) took an action for declaratory judgment so as to confirm that her marriage was invalid, because one of the witnesses invited by the defendant (a *Han* husband) did not attend the procedure of their wedding registration at the Household Registration Office in 2015, and the signature of that witness was actually written by the defendant. However, the respondent asserted that,

“I do not agree with her opinion. Pigs were slaughtered and the pork was divided in terms of the number of her relatives at our wedding. Each person lived in the tribe saw the ceremony. Everybody knows about our long-term relationship.”

Both of the disputing parties lived in a Bunun tribe. In the process of mediation, the mediator asked the petitioner,

“How much compensation does he want? He fulfilled the pig-slaughtering ceremony required by Bunun custom. Therefore, he might claim compensation. Sharing pork with your relatives would cost him some money.”

The petitioner answered,

“Originally, he asked for NT\$600,000. However, I negotiated with him, and the amount of compensation has been reduced to NT\$100,000.”

The mediator suggested that the petitioner change the statement of claim as “divorce”, so that the marriage could be dissolved as long as both parties could reach an agreement and NT\$100,000 could be regarded as the equitable compensation in money for a non-pecuniary loss. In other words, it was unnecessary for the witness to testify as to whether the signature was true or false. The disputing parties accepted this proposal.

It may be asserted that the settlement was shaped by existing state law. Confirming the invalidity of marriage could only be done by judges, according to Article 3 & Article 33 of the *Family Proceedings Act* (FPA). By changing the statement of action as “divorce”, the disputing parties would be able to resolve the problem by themselves through negotiation in terms of Article 3 & Article 23 of the FPA.

However, it was also found that the new rule generated in Case 4 was also adopted in the process of resolving this dispute. The mediator of the district court also applied the Bunun customary rule as the basis of family mediation, and helped the disputing parties reach a settlement after knowing that the amount of compensation for the wedding expense had been reduced from NT\$600,000 to NT\$100,000. It may reasonably be argued that the semi-autonomous social field of the “indigenous family mediation” could generate rules and apply customs internally. Having the

knowledge of indigenous customary law increases the possibility of reaching settlements in the process of family mediation as well.

#### **4.2.1-3 The problem of enforcement and the revival of indigenous conflict resolution mechanisms**

Recently, the bride's family has tended to ask for at least a dozen pigs for the wedding in Bunun tribes. The most common amount of pigs requested is 18.<sup>65</sup> The respondent of Case 4 originally intended to claim compensation for the wedding expenses amounting to NT\$200,000 (equivalent to the total price of 18 pigs). Through negotiation with the petitioner assisted by the mediator and the judicial associate officer, the amount of compensation was reduced to NT\$100,000 (equivalent to the total price of nine pigs). As for the disputing parties of Case 19, the amount of compensation for wedding expenses was reduced from NT\$600,000 to NT\$100,000 (equivalent to the total price of nine pigs) through negotiation prior to the mediation session. Consequently, it could be maintained that the amount of compensation settled in the Nantou District Court was quite reasonable in terms of the current price of the pigs slaughtered and shared at the Bunun weddings.

However, a few respondents (A, B, D, L, M, P) in the Luona tribe mentioned that it was quite often the case that the wife would agree with the husband's compensation request in the cases of divorce, because she just wished the marriage to be dissolved as soon as possible. However, the wife failed to comply with the agreement in most cases. Since the Bunun husbands were normally not familiar with the procedure of enforcement, and did not know whether the wives had salaries sufficient for

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<sup>65</sup> YING-KUEI HUANG, *Supra note* 63.

enforcement, the total amount of the compensation settlement would normally be indefinite. Consequently, it may be argued that a characteristic of Bunun customary rule, namely “collective responsibility<sup>66</sup>”, has weakened in the tribes. As a result, it seems that the Bunun customary rule which allows the husband to claim compensation for the pigs slaughtered at the wedding in the case of divorce requested by the wife has not been adhered to as firmly by indigenous peoples in the tribes as before.

To strengthen the practice of this kind of Bunun customary rule, it would be preferable if the lawyers assigned by the Legal Aid Foundation, the mediators of the Family Division of the district court, and the mediators of the Mediation Committee of the Township Office, provide basic information about enforcement procedures at the end of each mediation session. Moreover, applying other mechanisms of dispute resolution which are different from mediation might also reduce the problem of enforcing agreements.<sup>67</sup>

If the indigenous mechanism of dispute resolution practiced in Bunun tribes, which requires the clans of the disputants to take the responsibilities collectively<sup>68</sup>, could be adopted as a primary method for resolving family disputes, the problem of enforcing agreements encountered in the Family Division of the Nantou District Court might also be alleviated.

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<sup>66</sup> If one person committed a crime in a Bunun tribe, the whole clan would undertake the responsibility of compensation, while the victim would share the assets of compensation with his/her clan. In the case of divorce, if the natal family of the wife or her new husband family failed to return the same amount of pigs provided by the ex-husband's family at the wedding, the wife's clan would be responsible for the compensation. TZE-I TIEN, *Supra note.* 46, pp. 49 & 198.

<sup>67</sup> This finding resonates with the research results of the circle process and the Peacemaker Court on the Navajo reservation. Susan Swaim Daicoff, *Supra note.* 28, p.430; Rosemary C. Salomone, "Multilingualism and Multiculturalism: Transatlantic discourses on language, identity, and immigrant schooling," *Notre Dame Law Review* No.87(2012)., pp.651-652; Nancy A. Costello, "Walking Together in a Good Way: Indian Peacemaker Courts in Michigan," *U. Det Mercy L. Rev.* 76(1999)., pp.899-900.

<sup>68</sup> Husluman Vava, *Supra note.* 60.

#### **4.2.2-1 Recognizing local culture and religious rituals of indigenous community as regulatory orders**

The Concept of legal pluralism recognizes the existence of multiple legal systems within one social field, in which people belong to multiple groups and are bound by the norms of these multiple communities. Indigenous groups usually make an effort to reclaim their cultural heritage through the campaign for respecting plural legal orders.<sup>69</sup> In the semi-autonomous social field of “indigenous family mediation”, new rules of resolving family disputes could be internally generated if one of the disputing parties insisted on following the indigenous culture and customary rules.

Culture shapes the way a family is formed and functions, and plans for parenting and visitation in the case of divorce. Article 30 of UNCRC indicates that indigenous children should not be denied the right to enjoy their own culture. Even though this article refers to negative rights, which are expected to limit the state interference rather than place a confirmative obligation upon the government to develop and maintain the cultural roots to which indigenous children belong<sup>70</sup>, it may well be maintained that indigenous children are deprived of opportunities to learn and practice their tradition and culture if the festivals of indigenous peoples are entirely neglected by the lawyers and mediators during the mediation, under the dominant culture of the *Han* people within Taiwanese society.

Children may be seen as indigenous peoples’ paths to the future, and

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<sup>69</sup> Lindsay Short, "Tradition versus Power: When Indigenous Customs and Stae Laws Conflict," *Chicago Journal of International Law* No.15(2014)., pp.391-392.

<sup>70</sup> Rosemary C. Salomone, "Multilingualism and Multiculturalism: Transatlantic discourses on language, identity, and immigrant schooling," *Notre Dame Law Review* No.87(2012).; pp.2045-2046.

their key to cultural survival.<sup>71</sup> It would thus be better if the holidays and festivals of indigenous peoples could be included as an important issue of the visitation plan in the process of family mediation.

Additionally, it is important to note that indigenous culture has been mingled with Christianity in Taiwan's social context. It may be argued that not only the ancestral laws and local knowledge with the precedence of original identities and roots of indigenous peoples<sup>72</sup>, but also religious rituals emanating from the West should be regarded as one of the regulatory forces operating in the indigenous community of Taiwan.

Taking Bunun as an example, malaria transmitted in the tribes caused a high mortality rate when rice farming replaced slash-and-burn agriculture under the policy of the Japanese colonial state. Given that witch doctors could do nothing about malaria through traditional medicine, the Presbyterian Church started to preach to Bunun tribes and promote Western medical treatment in the 1950s.<sup>73</sup> Consequently, healing was regarded as an effective evangelical strategy for the missionaries<sup>74</sup>, and Christianity began to be accepted by indigenous peoples in Bunun tribes.

Moreover, the participants of subgroups of the Presbyterian Church further established the credit union, a mutual-aid team of labour and a freight company for agricultural produce, in order to resolve the economic problems encountered in the tribes. The Catholic Church also distributed relief supplies, including milk powder, clothes, and food in Bunun tribes. As a result, many more indigenous people converted to Christianity and the daily lives in Bunun tribes were mixed with Christian rituals and ceremonies.

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<sup>71</sup> Atwood, Barbara Ann, *Supra note*. 8, p.609.

<sup>72</sup> Santos, B.D.S., *Supra note* 43, pp.391&398.

<sup>73</sup> YING-KUEI, HUANG, *Supra note*. 63, pp.254-256.

<sup>74</sup> Shu-Yuan Yang, "Christianity, Identity, and the Construction of Moral Community Among the Bunun of Taiwan," *Social Analysis* 52(3)(2008), p.62.

Even though some seniors in the Bunun tribes asserted that the Bunun tradition was nearly ruined by Christianity because some taboos and perspectives about soul were regarded as superstition by the priests<sup>75</sup>, nearly 90% of Bunun people converted to become Christians.<sup>76</sup> In addition, Christianity has been “Bununized” in the tribes. The concept of “Dihaning (holy God)” is transformed to “Jehovah” by Bunun priests. The story of Noah’s Ark also resonates with a story about flooding (*Laning’avan*) passed down in Bunun tribes.<sup>77</sup> Some churches in Bunun tribes even hold the ceremony of the “infant festival”, in which babies are given Bunun names in terms of Bunun tradition. Consequently, Christmas has become an important festival for Bunun people, and is mixed with Bunun culture.

Taking the Luona tribe as an example, a competition of Christmas lights was held on 17<sup>th</sup> December, 2015. Christians in the community sang Christmas carols with torches on the 24<sup>th</sup> of December. A special volleyball game in which two balls were used at the same time was held on the 26<sup>th</sup> of December before the Christmas party. On December 27<sup>th</sup>, the Christians gathered for lunch and roasted pigs together. The special volleyball game was held on December 28<sup>th</sup> again to celebrate Christmas. A Bunun respondent, Ms. Umav Takiludung, told me that the “family” would be the basic unit to participate in these events. Christians in Bunun tribes would devote every effort to going home and take part in these activities. Therefore, it may be argued that the Bunun culture has been mixed with Christianity to some extent.

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<sup>75</sup> Chia Ning Yeh, *The History of Formosan Aborigines: Bunun* (Nantou: Historica of Taiwan, 2002)., p.187.

<sup>76</sup> Umav Takiludung, "A study on Positioning and Strategy of Indigenous Festival Events: A Case of Bunun Tribe in Nantou County (Master dissertation)" (Nanhua University, 2011)., p.13.

<sup>77</sup> Haisul Palalavi, *Origin and Migration of the Bunun Tribes* (Taipei: The Council of Indigenous Peoples of the Executive Yuan, 2006)., p.250.

#### **4.2.2-2 Reinforcing indigenous children's Rights to enjoy their own culture**

Family disputes concerning children and religion in the societies with legal plurality were hardly discussed. Chee Ying Kuek and Eng Siang Tay demonstrate that legal pluralism in Malaysia is reflected by the dual system of civil and Syariah law. According to the opinion of the civil High Court, the Muslim husband's custody application at the Syariah Court was held not to be binding on the wife, as she was a Hindu, and not a Muslim. In other words, a non-Muslim mother would not lose her right to the custody of her infant Muslim children, so long as she did not make them eat pork or bring them up according to a religion different from the father.<sup>78</sup> Nonetheless, the way in which religion affects the visitation plan of family disputes in a society with plural legal orders has not yet been explored by the existing literature.

In the process of observing indigenous family mediation, it was found that the religious festivals of indigenous peoples are often overlooked by lawyers and mediators in cases concerning child visitation schedules. For example, the petitioner of Case 17 (a Bunun mother) filed a divorce petition against her husband (a Bunun father) and claimed sole custody of the children. The respondent agreed to the divorce, but asserted the right to have joint custody with the petitioner. The petitioner's lawyer suggested that legal custody could be shared by both parties, while the physical custody of children might be divided between parents. The mother was

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<sup>78</sup> Chee Ying Kuek, & Tay, Eng Siang, "Unilateral Conversion of a Child's Religion and Parental Rights in Malaysia," *SAC LJ* 24(2012), pp.93, 108-109.



willing to look after two younger children (a boy and a girl). As for the two older ones (both of them were boys), they might stay with the father. Eventually the respondent agreed with this settlement plan, which resonates with the Bunun custom of leaving the eldest son with the father's family. It could be argued that Bunun's customary rule of children's custody was respected by both of the disputing parties and the Nantou District Court. In the process of negotiating the visitation plan, however, the lawyer of the petitioner only mentioned that both parents should have the right to celebrate the lunar New Year (the Chinese New Year celebrated by *Han* people) with children in terms of the visitation template provided by the court. Therefore, one of the parties should be able to see all of the children during the lunar New Year's holidays on the odd-numbered years, while the other party would be able to do so on the even-numbered years. It could be said that special Bunun holidays and religious festivals were entirely ignored in the process of negotiation, because the disputing parties did not pay attention to them.

Taking Case 25 as a starting point, nevertheless, the petitioner (a Seediq mother) filed a divorce petition against her husband (a Bunun father) and claimed sole custody of the child. The respondent agreed to the divorce and custody arrangement. He was willing to pay NT\$5,000 per month for child maintenance as well. As for the visitation plan, the respondent intended to bring his daughter to visit his parents. The process of mediation is recorded as below:

“The mediator: When would your parents be available? Would they stay at home during the holiday of Lunar New Year?

The respondent: I wish that my daughter could stay with my parents during the Christmas holiday. My parents used to see

my daughter once a year.

The mediator: I would suggest that you pick your daughter up at 9AM in the morning on the 24<sup>th</sup> of December. If you stay with your daughter until the 26<sup>th</sup> of December, it would be a three-day visitation.

The respondent: I could only ask for personal leave of two days at Christmas time.

The mediator: Would 24<sup>th</sup> & 25<sup>th</sup> of December be appropriate for you?

The respondent: I wish to spend time with my daughter next Saturday afternoon (for the new-year holiday) as well.

The mediator: Would you like to discuss other parts of the child visitation schedule?

The petitioner: We will discuss the visitation for the summer and winter vacations later, when my daughter attends the primary school.”

One might reasonably contend that the calendrical rituals of indigenous peoples are different from those of the *Han* people. The lunar New Year is an official holiday in Taiwan under the dominant *Han* culture. However, indigenous peoples need to request leave to attend calendrical rituals with family members. The “Ear-shooting Festival (*malahodaigian* ritual) of the Bunun tribes<sup>79</sup> has been recognized by the Judicial Yuan and the Council of Indigenous peoples of the Executive Yuan as an important calendrical ritual for Bunun people in the legal pleading template of child visitation provided by the Judicial Yuan. However, Christian rituals mixed with Bunun cultural elements are still overlooked by the judicial system in

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<sup>79</sup> The “ear-shooting festival” is held on the second Friday of May in 2019. This information is provided by the website of Judicial Yuan: <http://www.judicial.gov.tw/assist/assist03/6-0263.pdf> (Last date of visitation: 05/Aug/2019)

Taiwan. In Case 25, the Bunun father expressed that he would be eager to stay with his daughter during the Christmas time, and his wish was respected by the petitioner and the district court.

Therefore, it may be argued that not only the ancestral rules of the indigenous peoples, but also the religious rituals should be recognized as regulatory forces operating in indigenous tribes. Christmas should also be acknowledged as an important calendrical ritual for Bunun people in the template of child visitation provided by the Judicial Yuan, so that indigenous children could substantially enjoy their own culture.

## 5. Conclusion

Although family law plays a significant role in constructing family relationships, it is necessary to de-center the law in order to develop effective strategies for resolving indigenous family disputes in Taiwan. The law should be regarded as constituted to a significant extent by the interaction of regulatory orders and their social fields. The family and its legal order are overwhelmingly affected by the state legal order and international human rights standards, while the state legal order itself is also intensely affected by the family and its legal order. In other words, there is a constituent interaction of regulatory forces and their framing of the social field.<sup>80</sup>

It is found that the bargaining process of indigenous family mediation is mainly carried out under the auspices of state law in terms of Article 1 of the *Civil Code*. In some cases, domestic laws based on patrilineal, matrilineal, and bilateral family patterns were obeyed by the disputing

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<sup>80</sup> Peter Fitzpatrick, "Law, Plurality and Underdevelopment," in *Legality, ideology and the State*, ed. David. Sugarman (London: Academic Press, 1983), p.159.

parties and embodied in the form of mediation agreements. Instead of the state law, some indigenous customary rules which resonates with the requirements of the International human rights conventions were adopted by the district court as one of the bases of dispute resolution.

Under the ideology of *Han* centralism, in addition, indigenous disputing parties are defined as “the other” by the dominant *Han* people, and suffer from oppression derived from the power of unequal differentiation. It would be preferable if the mediators could remind the disputing parties to respect indigenous family customs.

As long as one of the disputing parties insisted that the family disputes should be resolved in terms of the indigenous customary law, fortunately, the Nantou District Court would encourage the other party to respect the indigenous tradition. Owing to the fact that the aborigine customs are not codified by the *Civil Code* in Taiwan, it could be suggested that the indigenous customary rules might be able to be preserved in the civil procedure by mediation.

Moreover, the problem of enforcing agreements encountered by the district court might be ameliorated if the indigenous mechanism of dispute resolution practiced in the Bunun tribe, emphasizing as it does the collective responsibility of the clans of the disputing parties, could be revived and adopted as the first stage of resolving Bunun family disputes.

Furthermore, indigenous culture is adopted by the churches in the process of preaching in the tribes. Consequently, the indigenous festivals and rituals of daily life are mixed with Christianity and practiced by a large number of indigenous people.<sup>81</sup> It could also be suggested that not only

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<sup>81</sup> Taking the Bunun people as an example, Huang Ying-Kuei (2014) had the same observation. Huang, Ying-Kuei, *The Path Towards “Civilization” Vol.2: The Reinvention of Bunun Tradition under Modernization (1945-1999)*, Institute of Ethnology, Academia Sinica, pp.121-182.

the traditional festivals of indigenous tribes declared by the Council of Indigenous Peoples but also the Christian festivals should be discussed in the process of negotiating the indigenous visitation schedule so as to make sure that the indigenous children could enjoy their own culture.

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Appendix 1: Collected case numbers for family mediation and the ethnic backgrounds of the disputing parties

	Case number given by the Nan-tou District Court	The ethnicity and sex of the petitioner	The ethnicity and sex of the respondent
Case1	2014 Family Mediation of Non-contentious Case No. 118	Bunun (F)	Not recorded by the court
Case2	2014 Family Mediation of Non-contentious Case No. 119	Bunun (F)	Not recorded by the court
Case3	2014 Family Mediation of Litigation Case No. 202	Atayal (F)	Han (M)
Case4	2014 Family Mediation of Litigation Case No. 215	Amis (F)	Bunun (M)
Case 5	2014 Family Mediation of Non-contentious Case No. 145	Atayal (F)	Atayal (M & F)
Case6	2014 Family Mediation of Non-contentious Case No. 149	Bunun (M)	Bunun (F)
Case7	2014 Family Mediation of Litigation Case No. 232	Bunun (F)	Bunun (M)
Case8	2014 Family Mediation of Non-contentious Case No. 165	Bunun (F)	Bunun (M)
Case9	2014 Family Mediation of Non-contentious Case No. 170	Seediq (M)	Seediq (F)
Case10	2014 Family Mediation of Litigation Case No. 204	Han (F)	Paiwan (M)
Case11	2014 Family Mediation of Litigation Case No. 247	Seediq (M)	Han (F)

Case12	2014 Family Mediation of Petition for Adoption No. 53	Paiwan (M & F)	Rukai (M)
Case13	2014 Family Mediation of Litigation Case No. 230	Seediq (F)	Seediq & Atayal (F)
Case14	2014 Family Mediation of Litigation Case No. 280	Bunun (F)	Bunun (M)
Case15	2014 Family Mediation of Litigation Case No. 327	Han (M)	Bunun (F)
Case16	2014 Family Mediation of Petition for Adoption No. 68	Bunun (F)	Bunun (M & F)
Case17	2014 Family Mediation of litigation Case No. 230	Bunun (F)	Bunun (M)
Case18	2015 Family Mediation of Non-contentious Case No.69	Bunun (M)	Ataya (F)
Case19	2015 Family Mediation of Litigation Case No.228	Bunun (F)	Han (M)
Case20	2015 Family Mediation of Non-contentious Case No.53	Bunun (M & F)	Bunun (M)
Case21	2015 Family Mediation of Litigation Case No.218	Ataya (F)	Seediq (M)
Case22	2015 Family Mediation of Litigation Case No.348	Ataya (F)	Bunun (M)
Case23	2015 Family Mediation of Non-contentious Case No.109	Han (F)	Seediq (M)
Case24	2015 Family Mediation of Litigation Case No.304	Bunun (F)	Bunun (M)
Case25	2015 Family Mediation of Litigation Case No.319	Seediq (F)	Bunun (M)

Resolving the indigenous family disputes in Taiwan: 55  
Taking the family mediation as an example

Case26	2015 Family Mediation of Litigation Case No.358	Bunun (F)	Amis (M)
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## Appendix 2: Background information of the interviewees in the Bunun tribes of Sinyi County.

Code of the interviewee	Racial background	Age	Sex	Highest Education	Date of interview
A	Han	67	M	College	2015.08.03
B	Bunun: Isi Bukun	56	M	High School	2015.08.03
C	Bunun: Isi Bukun	30	M	University	2016.02.29
D	Bunun: Isi Bukun	54	M	Junior High School	2015.12/06
E	Bunun: Isi Bukun	59	M	Senior High School	2016.03.06
F	Bunun: Isi Bukun	90	F	Primary School	2016.02.20
G	Bunun: Isi Bukun	79	F	Primary School	2016.02.20
H	Bunun: Isi Bukun	87	F	Primary School	2016.02.20
I	Bunun: Isi Bukun	74	M	Primary School	2016.02.20
J	Bunun: Isi Bukun	87	M	Primary School	2016.02.20
K	Bunun: Isi Bukun	56	F	University	2016.03.12
L	Bunun: Isi Bukun	76	M	Master Degree	2016.03.12
M	Bunun: Isi Bukun	62	F	Senior High School	2016.03.12
N	Bunun: Take	67	M	Primary	2016.03.13



Resolving the indigenous family disputes in Taiwan: 57  
Taking the family mediation as an example

	Bakaha			School	
O	Bunun: Isi Bukun	65	M	Master De- gree	2016.03/19
P	Bunun: Take Banuao	61	M	Senior High School	2016.03.24
Q	Bunun: Take Banuao	54	F	Master De- gree	2016.03.28