



# Study on the Judicial Procedure Dispute Settlement Mechanism in Sichuan Yi Nationality Area

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## Abstract

In recent years, with the further advance of ethnic exchanges, exchange and blend, the state has vigorously advocated the use of judicial procedures in ethnic minority areas to solve disputes. But for a long time, the development of all ethnic groups of our country in their historical development formed a unique dispute resolution mechanism, which was in a stark contrast with the judicial dispute resolution approach of our country in ethnic minority areas. It plays an important role in resolving social conflicts in ethnic minority areas and maintaining national stability and unity. From the perspective of the dispute resolution mechanism in the Yi area of Sichuan Province, this paper analyzes the diversified dispute resolution mechanism in the Yi area of Sichuan Province, and probes into the conflicts of the dispute resolution mechanism caused by the application of judicial procedure in the process of dispute resolution in the Yi area of Sichuan Province, which is the construction path of the diversified dispute resolution mechanism in the minority areas of China.

## Keywords

Yi nationality in Sichuan, Judicial proceedings, Dispute outcome mechanism

## 1. Introduction

Due to the rapid development of Chinese economy and the increasingly complex social judicial contradictions, the diversified dispute resolution mechanism in ethnic minority areas has become the main way of economic development and social stability in ethnic minority areas, but also an important measure of long-term social peace and stability. The customary law has long been used to regulate and deal with ethnic affairs in minority areas, and according to the related data in recent years, the judiciary system was basically realized in minority areas of our country, but it is still not in a minority to use the customary law to solve affairs disputes, which produced a certain tension with the deeply promoted national law. Based on this, the dispute settlement mechanism in ethnic minority areas should be further analyzed, promote the integration of customary law and national law in ethnic minority areas, satisfy the comprehensive implementation of national laws in specific regions, let legal awareness deeply rooted in people's hearts, promote the transformation of dispute resolution methods from single to diversified, and promote the integration of customary law and national law in ethnic minority areas. Promoting the construction of regional rule of law has become a common concern of scholars from all walks of life.

## 2. The value of multi-dispute resolution mechanism in our country minority areas

The main means of maintaining ethnic minority unity and stability is to deepen the understanding of ethnic mi-

minority areas to the state judiciary, to the reasonable use of the state judicial procedure to solve their internal disputes and contradictions, ethnic minority areas diversified dispute resolution mechanism has a certain value to promote the social stability and development of our country, the specific social value is mainly in the following aspects:

### **2.1 It will help promote the process of national rule of law**

After the establishment of the policy of "rule of law" in our country, the cases of disputes resolved by law have increased gradually, however, due to the fact that minority areas are located in remote areas mostly, with imperfect transportation and communications facilities, the process of the legal progress is particularly slow. Historically, minority areas are inclined to customary law to solve internal ethnic disputes contradictions, and the rule of man is turned into "rule of law". It takes time to change from "right" to "right" in common law. From the perspective of the historical history of our country, the customary law of minority areas is more inclined to the governance of human rights, which is mainly conducted by the most senior internal ethnic patriarch or religious deacon. Their power was reached the peak within ethnic groups, so it is still very difficult to change from power stripping to the rule of law of state.

Therefore, improving the mechanism of multi-dispute resolution in minority areas is the main content of accelerating the process of rule by law, perfecting the governance by law, and reflecting the implementation result of the basic rights of our people in charge of their own affairs. The judicial process of our country and the traditional dispute resolution mechanism of ethnic minority areas, the formation of a new pluralistic social legal governance mechanism, to be in accordance with the law, strict law enforcement, violation of the law, to strengthen the legal management level of relevant local government departments, more reasonable protection of ethnic minority areas of justice, safeguard the legitimate rights and interests of the people. It will play a more active role in promoting the process of our rule of law.

### **2.2 It is conducive to protecting the legitimate rights and interests of the parties concerned**

The purpose of safeguarding the legitimate rights and interests of the parties is to safeguard the justice of the law and put the rights into the cage of the system. In minority areas, the customary law is used to solve internal disputes. However, the customary law focuses more on the settlement of cases, and tends to ignore the civil, administrative or criminal responsibility of the abuser, which is more likely to produce greater contradictions. Since China entered the new era of the rule of law society, Chinese citizens have gradually paid more attention to the protection of individual rights and interests from being forced to obey the results of trials. Therefore, the diversified dispute resolution mechanism in ethnic minority areas provides more options for the settlement of civil disputes in ethnic minority areas, which is conducive to the protection of the parties' basic rights and interests and satisfaction, and greatly reduces the further stimulation of conflicts. The effectiveness and quality of dispute resolution in minority areas have been significantly improved (Zhu Yanying, 2008).

## **3. Current situation of traditional and non-traditional dispute settlement mechanism in Yi area of Sichuan Province**

The minority areas of our country have two kinds of ways to resolve disputes and contradictions: the traditional dispute resolution and the non-traditional dispute resolution. The traditional dispute settlement mechanism can be divided into two kinds, one is the affairs handling mechanism established by religious authority, the other is the customary law affairs handling mechanism established by clan deacons. However, the non-traditional dispute resolution mechanism is an integrated administrative affairs mediation mechanism based on our judicial procedure and supplemented by ethnic areas. The traditional dispute settlement mechanism in Yi area of Sichuan is mainly based on traditional customary law, such as Degu system in Liangshan Prefecture of Sichuan. With the development of legal education and legal publicity, the non-traditional dispute settlement mechanism has gradually achieved results in the Yi minority areas.

### **3.1 The traditional customary law dispute settlement mechanism dominated by Degu**

Previously in Liangshan Yi area of Sichuan Province, folk authorities dominated by customary law were the main subjects of conflict resolution, and there emerged authoritative institutions of family system represented by clans and authoritative institutions represented by the high prestige of tribes (villages), which acted as the principal representative for the settlement of regional conflicts and disputes. The "Degu" in the Yi area of Sichuan originated

in the period of the Yi tribe. It played a leading role in resisting foreign invasion, maintaining social order and coordinating and managing tribal disputes (Zhang Zhiqiang, 2022). In traditional Yi society, there is no systematic unified regime, and ethnic minorities have their unique national values and local culture, so disputes are often settled by customary law, that is, the role of the third party "De Gu". Solve the contradiction between the two sides of the de Gu is not a person, but both parties (known as Mo know) at the same time to hire a de Gu to preside over the case, presided over the case of de Gu generally by the family of male elders for the guardian of the post (known as great), when de Gu received the case, and the other party to hire de Gu interview place and time, In addition to family and personal privacy, the case must be handled in public. After repeatedly listening to the statements of the parties and extensive understanding of the case, Degu conducted persuasion, negotiation and other matters according to the traditional customary law to solve the problem (Yang Ling & Yuan Chunlan, 2009). In addition, the Tecos not only rely on common law, but also take a more objective attitude based on the regional code of ethics and historical jurisprudence. The post of "Degu" is similar to the post of Han district judge, which mainly performs its supervisory function. Therefore, the person who holds the post of Degu must ensure fairness and justice, be good at speaking and dare to speak the truth, whereas the Yi people believe that both the public and Degu are to be punished by heaven. Dracu handles a wide range of cases, involving criminal cases, civil cases and economic disputes, etc. Mediation opinions must be agreed by both parties, otherwise Dracu will continue to adjust until both parties agree. After successful mediation, slaughter sheep and cattle, drink together and cure the wine, no one can overturn the case, so Degu handling the case has a lifetime validity.

The customary law of the Yi nationality in Sichuan differs greatly from the judicial procedure of China in criminal cases, mainly because the maximum penalty of the customary law of the Yi nationality is death. According to Article 37 of the Constitution of the People's Republic of China, "The personal freedom of the citizens of the People's Republic of China shall not be infringed. No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and for execution by a public security organ. Unlawful detention and deprivation or restriction of citizens' personal freedom by other means shall be prohibited, and unlawful search of citizens' bodies shall be prohibited (Constitution of the People's Republic of China, 2018)." Obviously, this is contrary to the law of our country. The "Degu" mediation has hindered the process of implementing the national legal system to some extent. Undeniably, the customary law in the Yi area of Sichuan has played a strong regulating role in the rule of the secular people. However, as the Yi people in Liangshan Prefecture of Sichuan gradually integrated and communicated with the Han people with the development, the regional characteristics of Han Yi co-living were formed, which caused great conflicts to the traditional social order of the Yi people. It is very important to improve the diversified dispute settlement mechanism in Yi area of Sichuan province to promote the construction of legal system and stabilize the social order.

### **3.2 A diversified and non-traditional dispute settlement mechanism integrating national judicial procedures with customary law**

With the further promotion of legal education and publicity in ethnic minority areas, people in the Yi area of Sichuan have gradually increased their awareness of national judicial dispute settlement and rights protection. The Yi people have accepted China's modern concept of legal governance and learned to safeguard their own rights and interests by law. However, the traditional customary law dominated by "Degu" has been used for a long time to resolve internal conflicts in the Yi area, and the coexistence of national law and customary law appears. For example, on March 29, 2021, the Information Office of Sichuan Provincial People's Government held a press conference on typical cases of deepening reform in Sichuan Province since the Third Plenary Session of the 18th CPC Central Committee in Chengdu, and Leshan's "Degu Mediation Work Law" was selected. 92 "Degu" with legal knowledge, high prestige, fairness and decency were employed as people's mediators, establishing a dispute mediation model of "diversity + autonomy" and social governance in the form of government, forming a new social governance trend in the Yi area (Gong Qianqian, 2018).

To this day, there are still many "Degu" people in the Yi area of Sichuan Province. They not only solve the internal conflicts of their families and nationalities, but also often go out of provinces and counties to safeguard the legitimate rights and interests of the Yi people. In 2002, "Degu" Delagui of Shanlinggang Township, Lebo County, Sichuan Province, spent nearly half a year to mediate a decades-old dispute in Dayanzi Township, Mabian County. In the mediation, Degu uses the perspectives of Chinese laws and regulations, current affairs and policies, and the overall picture, to learn the reason and move the emotion, and finally reach a settlement. At present, according to

the national and local policies, the Degu Association has been established in the Yi area of Sichuan in accordance with its national laws and regional characteristics, giving full play to the effectiveness of Degu and playing a positive role in maintaining social stability in the Yi area of Sichuan. It has not only solved the problems of the difficulty of protecting rights and prosecuting people in the mountainous areas, but also formed a strong and effective driving force for the legal governance of the society in the Yi area.

#### **4. Existing problems of dispute settlement mechanism in Yi area of Sichuan Province**

Throughout the development course of the Yi nationality, the traditional customary law dispute settlement mechanism of the Yi nationality in Sichuan is the product of the slavery period, which seriously hinders the economic development of the Yi nationality area.

##### **4.1 Traditional backward thinking is still maintained in the customary law of Yi nationality areas**

The "Degu" in the Yi area of Sichuan Province mainly uses customary law to solve disputes and contradictions, and retains a large number of traditional ways to deal with slavery period, which is seriously different from the national law. For example, the traditional customary law in the Yi area of Sichuan Province allows revenge of blood relatives within the ethnic group. Meanwhile, the Yi people mostly live in the form of family branches (similar to the form of Han families), and the number of family branches is relatively large. The vengeful acts of blood relatives have led to a sharp rise in the introduction of large-scale violent acts, resulting in mass violent incidents, which are known as "fighting enemies" in the Yi area. This idea is prone to form the paranoid and impulsive thoughts within the ethnic group, which has a high probability of destabilizing factors in the society (Hou Zhutao, 2019).

##### **4.2 The customary law in Yi area hinders the promotion of national law to a certain extent**

The scope of German-Cuban mediation in Yi area is not only limited to civil cases, but also involves criminal cases and economic disputes. The most characteristic is that Yi area retains the custom of "life price" in the customary law. In the autumn of 2010, mountain Leng Gang Township villagers Ji Mu gan and Xining township villagers Ji Mu gan before the assassination of each other, by the "de Gu" Jina history day to mediate, finally to Ji Mu gan to Ji Mu Qian for apology, and compensation for the victim Ji Mu Qian for home 115,000 yuan compensation, by de Gu mediation of both sides of the home are very satisfied (Aku Lisang, 2022). According to the constraint of the customary law in Yi area, after the conciliation between Germany and Cuba, the two parties shall not "resettle old scores", nor shall they seek judicial authorities to protect the individual rights and interests of the victims, nor shall they investigate the criminal responsibility of the violators, especially in the more remote mountainous areas, and will even forcibly obstruct the judicial authorities' involvement in the investigation, even after the judicial authorities' forced intervention. The interference of folk customs and forces will lead to further escalation of contradictions, and the national law will face more difficult to promote the negative impact, and to a certain extent, the national law will be ignored, seriously affecting the deepening of the national law in ethnic minority areas.

#### **5. Countermeasures to improve the dispute settlement mechanism in Yi area of Sichuan Province**

To improve the diversified dispute settlement mechanism in Yi area, it is necessary to base on the concept of governing the country according to law, and make the solution of the actual dispute status into a solid practical basis. It is necessary to work out a diversified dispute settlement mechanism that is truly in line with the social habits of Yi area and has specific operational modes.

##### **5.1 Uphold a dispute settlement mechanism dominated by national judicial procedures**

As a standard social behavior to solve social contradictions and disputes, law plays the role of an important buffer and is the main basis for solving social contradictions and disputes. Most of the Yi ethnic groups in Sichuan live in Liangshan Prefecture and Leshan Prefecture. Although most of the Yi ethnic groups are the main social personnel, there are still some Han ethnic groups and other residents living together with them. The differences of ethnic groups lead to differences in living habits and ideas, and it is difficult for the Yi people to solve disputes in the "De Gu" way. This requires the national judicial procedure as the main measure to resolve contradictions and disputes. Although the diversified dispute settlement mechanism is effective in the Yi area, the national law and judicial

procedure play a dominant role not only because the national law is highly normative and universal in a wide range of applications, but also because of its characteristics.

## **5.2 Giving full play to the role of the traditional dispute settlement mechanism in the Yi area of Sichuan**

The traditional customary law of Yi nationality in Sichuan Province is concluded after a long life practice, which plays a positive role in the social stability of Yi nationality and avoiding the escalation of conflicts. At present, the comprehensive education of law popularization has effectively solved the regional affairs disputes of Yi nationality to a certain extent, but due to the long-term existence of customary law, the consciousness of the Yi nationality people to customary law is greater than that of the national law, and they have a strong consciousness of conflict. Based on this, our judicial dispute resolution mechanism needs to expand its scope on the basis of integrating the traditional customary law of Yi nationality into the national law, using its unique "Degu" mechanism to gradually inculcate the national law into the national legal consciousness, and then give cultural guidance to make it more standardized in legal dispute resolution. Therefore, the corresponding problems that have not been solved in the Yi nationality area can be referred to from the following aspects:

### **5.2.1 Ensure the implementation of the customary dispute settlement mechanism in the Yi area**

Although our country has been forced to promote the process of national rule of law for a long time, it is required that local government fully implement the popularization of law and be deeply rooted in people, but it has never reflected in the Angle of national minority customary law, forcing the national law to impact the customary law of national areas, it is more likely to lead to the conflict of state law mentality. At present, China is still a developing country, and its laws still need to be perfected. Therefore, it is more important to make full use of traditional customary law in Yi area, promote the integration of customary law and national law to the maximum extent, avoid the formation of conflicts between the use of national law and customary law by Yi people in the area, and avoid the abuse of power by local law enforcement to further intensify ethnic conflicts. Making national laws harder to push through.

### **5.2.2 Continue to build feedback mechanisms**

In 2021, the "Decu Mediation Work Method" in Leshan, Sichuan Province was selected, marking the beginning of the reform pilot to construct the dispute mediation mode of "diversity + autonomy" and social governance in the form of government. Up to now, the method has achieved good results in resolving disputes in Leshan, Sichuan Province. The implementation of the policy also reflects the success of the Sichuan government in promoting the diversified rule of law in the Yi area. Therefore, local governments should intensify efforts, continue to deepen the construction of the feedback mechanism (Zhao Gaowang, 2006), timely make reasonable decisions and opinions on the problems arising from the judicial process of resolving disputes and contradictions, keep records of such incidents, communicate with the relevant government departments of minority areas, combine new problems with new policies, and form new solutions. It is necessary to objectively view the traditional customary law in Yi area and introduce the available customary law management mode into the regional governance of the national law so as to optimize the conflict between some legal provisions in the national judicial procedure and the customary law in Yi area.

## **6. Summary**

With the development of society, traditional social structure is gradually changing along with people's awareness of fairness. The simple and crude single mechanism of traditional Yi customary law is difficult to solve more complex contradictions and disputes. Although Chinese law has the advantages of normalization and universality, it still needs to draw experience from traditional customary law to supplement the incompleteness of the law. To promote the integration of customary law and national law and bring more effective solutions to legal disputes in Yi area. The customary laws of various ethnic groups are never the counter of the process of rule of law of our country. On the contrary, they are likely to have a positive role as reference objects in the process of rule of law and modernization of our country (Yang Ling & Yuan Chunlan, 2009).

## **References**

Aku Lisang: "the auspicious day take history: the mountains" dracula "head", yi people web, <http://www.yizuren.com/people/yrjs/22073.html>, November 13, 2022.

- Constitution of the People's Republic of China. Bulletin of the Standing Committee of the National People's Congress of the People's Republic of China, 2018(S1):104-132.
- Gong Qianqian: the rule of law construction series reports (18) | leshan mediation execution of work "dracula" in deepening the reform of the typical cases in Sichuan province, mount WeChat public "leshan city judicial bureau", on March 29, 2021.
- Hou Zhitao. Research on the Mechanism of Pluralistic Dispute Settlement in Minority Areas [D]. Hubei University for Nationalities, 2019.
- Yang Ling, Yuan Chunlan. Yi People's Judicial Mediator under the Background of Multiple Dispute Resolution Mechanism: "Degu" [J]. Journal of Ningxia University (Humanities and Social Sciences Edition), 2009, 31(05):82-86.
- Zhao Gaowang. On the Limits of Justice in a society ruled by Law and the Reasonable Structure of Multiple Dispute Settlement Mechanism [J]. Party School of Qingdao Municipal Committee of CPC. Journal of Qingdao Administration College, 2006(04):93-96.
- Zhu Yanying. The Change of Customary Law in the Multi-Dispute Settlement Mechanism of Southwest Minority Areas in Qing Dynasty [J]. Journal of Yuxi Teachers College, 2008(06):30-36.
- Zhang Zhiqiang. Degu: A Vanishing Population [J]. Journal of Dali University, 2022, 7(05):85-91.