

**TIBETAN OBLIGATION CONTRACTS
(GAN RGYA) FROM NUBRI, NEPAL**



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In this paper we examine three Tibetan legal manuscripts to honor Larry Clark's pioneering research on civil documents. The texts come from an archive in Nubri, a culturally Tibetan enclave of roughly 3,500 individuals in the upper stretch of the Buri Gandakhi River in Gorkha District, Nepal. Prior to 1856 Nubri was under the jurisdiction of Dzonga District in Tibet. At that time the valley's residents were beholden to a Tibetan polity, Ganden Phodrang, based in Lhasa and headed by successive Dalai Lamas. After being annexed by the Kingdom of Nepal in 1856, the new overlords appointed a representative (Nepali: *subbha*) to be the de facto ruler of Nubri on behalf of the royal court in Kathmandu. His duties included collecting taxes and making sure residents adhered to the laws of the kingdom. The *subbha* position passed from father to son until the advent of Nepal's panchayat system in the 1960s. The sons of the last *subbha* currently possess the trove of documents which span roughly 100 years, from 1856 to the early 1960s.

The corpus contains texts written in two languages, Nepali and Tibetan. The Nepali documents tend to cover taxation and legal matters that fall under the jurisdiction of national law, while many of the Tibetan documents are *gengya* (*gan rgya*; obligation contract)¹ drafted in

¹ *Gengya* has also been translated as written agreement and covenant. We follow Bischoff's translation (2017), obligation contract, because it reflects the legal and social dimensions of these documents.

response to issues that fall under the purview of village law.² In this paper we present three gengya selected because they illustrate a variety of cases that can be locally adjudicated: a paternity suit, the settling of a debt, and censuring the behavior of a disruptive individual.³

This study makes a small contribution to a growing literature on Tibetan obligation contracts. Most gengya studied thus far were drafted in Central Tibet during the administration of Ganden Phodrang (Schneider 2002; Mullard 2015; Bischoff 2017). The Nubri documents, on the other hand, provide another example of Tibetan legal traditions in communities under Nepal's control (see also Ramble and Drandul 2017). Interpreting the documents is challenging because some terminology is ambiguous and specific details are often lacking, but mostly because of non-standard orthography (i.e., atrocious spellings).⁴ Nevertheless, it is a living system rather than a relic of past times. Today's leaders assert that, just as in past times, the village headman is responsible for resolving issues among his constituents that do not fall under the jurisdiction of national law (Childs and Choedup 2018). To begin a proceeding, the complainant offers the headman gifts that include a locally distilled beverage and a small amount of cash. The headman then summons the other party who offers the same gifts. Both parties give their version of the dispute. Afterwards, the headman investigates matters and comes to a decision which he records in the gengya, a binding contract backed by the threat of penalties for noncompliance as seen in the three documents presented below.

*Example 1: A Paternity Suit*⁵

The 18th day of the 6th month of the Water Sheep Year [1883 or 1943].⁶ In the presence of the precious magistrate, leader of the two systems [secular and religious], we, whose names and seals are affixed below, voluntarily accept this obligation contract without any

² In local terminology Nubri's three-tiered legal system consists of the golden yoke of royal law (rgyal khirms), the iron ring of village law (yul khirms), and the silken knot of religious law (chos khirms). Village and religious law are mostly under local control.

³ Elsewhere we have analyzed two other gengya from Nubri. One concerns a petition from people who fled Tibet to be accepted as legal residents of Nubri, the other documents the sale of land (Childs & Choedup 2018).

⁴ We have not attempted to rectify all the spelling errors. The transliteration and images will allow readers to see how we interpreted certain terms.

⁵ Researchers with the Nepal-German Manuscript Preservation Project photographed this document in the 1990s. Running Number L10372, Reel Number L1211/2.

⁶ 1883 and 1943 are both Water Sheep years. Although we were unable to determine which is the date for this document, it is in relatively good condition which leads us to suspect that 1943 is the more likely candidate.

changes. Basis of the legal act: An illegitimate child⁷ was born to me, the girl Dorje, on the 17th day of the 2nd month. A written petition was submitted that the illegitimate child's father is none other than Pemba. To this, Kunsang [Pemba's relative?] petitioned that he can prove that it is not true. If Kunsang cannot offer proof to the contrary [i.e., prove that Pemba is not the father], he will offer a fine of one gold coin in the presence of the magistrate. If the claim [that Pemba is the father] can be disproven, the girl Dorje shall offer a fine of one gold coin in the presence of the magistrate. The two parties will abide by any decision made on the above matter and swear that there will be no denials and accusations, coming up with new claims, speaking with two tongues from one mouth, or failing to adhere to what was agreed upon. In the case of even a hint of careless talk of refusal to obey [the judgement], as a penalty the above-mentioned petitioners will offer one gold coin. The girl Dorje affixed her seal [seal]. Kunsang affixed his seal [seal].⁸

This gengya was drafted in response to a disagreement over the identity of the man who fathered an illegitimate child. The mother, Dorje, is certain that Pemba is the father. Kunsang, acting on behalf of Pemba, disputes the claim. Both are offered an opportunity to prove their case, with the loser being compelled to pay a fine of one gold coin. We do not know the relationship between Kunsang and Pemba, but can assume they are close relatives (perhaps brothers?) because people who are socially distant would generally not get involved in a paternity suit. Unfortunately, we could not locate any record of who they determined to be the father. What we could ascertain, however, is that the system of resolving paternity disputes remains intact today. While reading the above document with a current village leader he immediately understood the

⁷ The spelling in the text, *nyal lu*, closely approximates local pronunciation. More literary forms for a child born out of wedlock include *nal bu* and *nyal bu*.

⁸ *chu lug zla 6 tshes 18 la lugs gnyis gong ma khirms dag rin po che'i zhabs drung du zhu ba la/ bdag ming rtags mkhung's gsham gsal rnam's nas blos blangs mi sgyur ba'i gan gya rtsang's mar 'bul snying don rtsa bdag bu mo rdo rje nas nya lu thon dus zhung zla 2 tshes 17 nas nyal lu a rba span pa rang yin zhen med su thad nas med thags chod gyi gan gya 'bul rgyu'i zhu ba dang de la dkun bzang nas de la thar gyabs gyu yod zer nas zhu ba dang da ba [smudged] gong khirms zhabs su 'ba' gser spram gcig 'bul rgyu'i dang thar thon na bu mo rdo rje nas gong khirms zhabs su 'ba' gser spram gcig 'bul rgyu'i dang gong du mchod pa'i don tshig la gnyis chogs nas nga min kho min dran tams sar kyed kha gcig lce gnyis spon rtags mkhur sogs mi zhu zhu ba dang gal te smi nyin brangs skad til 'bru rtsam zhu shar tshes gong khirms zhabs su gong gsal 'ba' gser spram gcig zhu ngo gron 'gyur med pa 'bul lam zhu rgyu'i gong gsal bu mo rdo rje rtags [seal] dkun bzang gi rtags [seal]//*

terminology and details, and explained the process leading to the drafting of obligation contracts over paternity disputes. He said,

In the past there were many illegitimate children, at least one born each year. According to village law, the expectant mother should first indicate her status by burning juniper as an offering at the monastery and to the village leaders. Once her status [as pregnant] is known then she is prohibited from entering any monastery until the child is born. Meanwhile, she presents an offering of liquor to the village leader and names the father, just like in this document. If the claim is confirmed by the leader, then the father must provide the mother one bushel of grain, one large measure of butter, and one chicken. He must also work for three days as a servant for her household. Afterwards he does not owe her anything and does not have to provide the child with an inheritance. If the man is unmarried, then it is not a problem. But if he is married, then he must beg forgiveness of his wife and ask that she not be angry.

Sometimes a girl denies she is pregnant. In that case the village leader will measure her midriff with a rope. He will measure again after one month, and if the length of the rope has increased then he will begin the inquiry to ascertain the father's identity. It is always important to identify the father because we need to know his lineage. She would be told very clearly that one can't have a child without the father's name. The father's name will have to be divulged irrespective of whether he is wealthy, poor, or an imbecile.

Sometimes, if a girl has several lovers and is not sure who fathered the child, like in this document where she says, "He is the father," and he says, "Not me," the village leader calculates backwards from the time of birth. If the timing coincides with when one particular man slept with her, then he is deemed the father. In some cases, the child's appearance and skin color are compared to the possible fathers. Whichever man the child resembles is determined to be the father. If those methods don't work, the potential fathers draw lots. He who draws the long stick is considered the father.

The leader's account helps us understand the process of determining paternity, details that are not included in the *gengya*. Worthy of note, he emphasizes the importance of knowing the father's identity "because we need to know his lineage (*rgyud pa*)." Lineage exogamy is practiced in Nubri, so a person of uncertain paternity risks committing incest inadvertently by marrying or having sexual relations with a close relative.

Example 2: Debt Resolution (fig.1)

The mother document⁹ of the obligation contract [pertaining to] the plot of land inherited by Nyima,¹⁰ daughter of Tenzin of Drongmey in Rö.¹¹ 13th day of the 11th month of the Wood Tiger Year [1914].¹² In the presence of the precious magistrate, leader of the two systems [secular and religious], we, whose names and seals are affixed below, voluntarily accept this obligation contract without any changes. Basis of the legal act: We, Tenzin and [daughter] Nyima from Drongmey [neighborhood] of Rö Village, borrowed money from Sonam Puntsok, the Pönzang representative.¹³ Because we did not repay the money according to the agreement, we offer him a landholding of 10 measures¹⁴ that we put up as collateral¹⁵ on the loan of the 29 silver coins. Without pressure from anyone, we fully accept the afore-mentioned transfer of land that Nyima received through patrilineal inheritance from Tenzin. We swear that there will be no denials and accusations, coming up with new claims, raising even an iota of disagreement, or failing to adhere to what was agreed upon. In the case of even a hint of refusal to obey [the judgement] we agree to pay a penalty of three gold coins to the honorable magistrate. The father and daughter named above [Tenzin and Nyima] collectively affixed their seal [seal].¹⁶ The witnesses Drongmey Barwa and Dorje Kyab collectively affixed their seal [seal].¹⁷

⁹ The term is written *ma yi gan rgya* with no tseg mark between *yi* and *gan*, which leads us to read it as *ma yig gan rgya*. The term *ma yig* (mother document) refers to a main document that is related to subsidiary or supporting documents. We know of no related documents in this case, for example the original loan contract or a land ownership deed, but presume they existed at the time the *gengya* was written.

¹⁰ The term *mo nor* can refer to female cattle or female inheritance. Here, we take it as the latter.

¹¹ Rö is the name of a village in Nubri. Drongmey (Lower Village) is the name of a neighborhood in Rö.

¹² Other Wood Tiger years are 1854 and 1974. The former came before the Kingdom of Nepal annexed Nubri in 1856, and the latter after the last *subbha* lost his power, so 1914 is the most likely date.

¹³ Pönzang (spelled *dpon tshangs* in the document but is actually *dpon bzang*, “Good Rulers”) is one of the main descent lineages in Rö. In the past each of the four principle lineages in the village appointed one man to represent them in village matters.

¹⁴ *Bre* is a Tibetan measurement of land area. In Rö one *bre* is roughly 400 square feet.

¹⁵ Collateral is spelled *tag ma* in the document, approximating how it is pronounced. The proper spelling is *gta’ ma*.

¹⁶ Seals are commonly used in Tibetan societies in lieu of signatures or thumb prints. In the case of this document only one seal is affixed for each pair of people (father and daughter, the two witnesses). The phrase *lags bkor gyi rtags* is presumably an abbreviated (and misspelled) version of *lag bskor gyi phul ba’i rtags*, which Bischoff

Money-lending is common in Nubri with land typically used as collateral. Although some details of this case are murky, we know that Nyima is Tenzin's daughter. Being unable to repay the loan of 29 silver coins, she legally transferred 10 measures of land to Sonam Puntsok. Nowadays the average household in Rō possesses roughly 60 measures of land, so the 10 measures Nyima forfeited is not an insignificant amount.¹⁸

One curious aspect of this gengya is the fact that a woman, Nyima, owned the land that was used to secure the loan. Through patrilineal inheritance sons receive the bulk of their father's property, but the status of land ownership is clear in this case because the document refers to "land that Nyima received through patrilineal inheritance."¹⁹ Because Tenzin and Nyima are both identified as borrowers of money from Sonam Puntsok, it seems they acted collectively and therefore probably lived in the same household. If this is the case, then Nyima may have been a nun. Ordaining a daughter as a nun, then retaining her labor to benefit the household and to provide old-age care used to be a common practice in Nubri (Childs and Choedup 2015). Nuns typically inherited a small plot of land for their own subsistence. Another possible scenario is that Tenzin did not have any sons, in which case Nyima could inherit her father's property and bring a matrilocally resident husband (*mag pa*) into the household. This would help explain why Nyima's father, with whom she presumably still lived, rather than a husband is listed in the transaction. Although Nyima's marital situation remains a mystery, the land was undoubtedly hers until she and her father defaulted on the loan.

Example 3: Disciplinary Action (fig. 2)

The gengya of Ladza Emba. 8th day of the 11th month of the Fire Ox Year [1877 or 1937].²⁰ In the presence of the precious magistrate, leader of the two systems [secular and religious], we, whose names and seals are affixed below, voluntarily accept this obligation contract without any

translates as 'collectively affixing the seal after every family member [or person involved] has touched it' (2017, p. 176).

¹⁷ Drongmey Barwa is a nickname ("The Wealth Person of Drongmey"), while Kyab is a very unusual name in Nubri today.

¹⁸ If the loss of land seems to be a steep penalty for failing to repay a loan, consider a gengya from Central Tibet in which a man had no recourse but to accept lifelong servitude in the household to which his deceased mother owed an unsettled debt (Bischoff 2017, pp. 157-59).

¹⁹ *pha dpun* (spun) *rgyud rigs su thad nas*.

²⁰ The Fire Ox years of 1877 and 1937 are both candidates for the dating of this document.

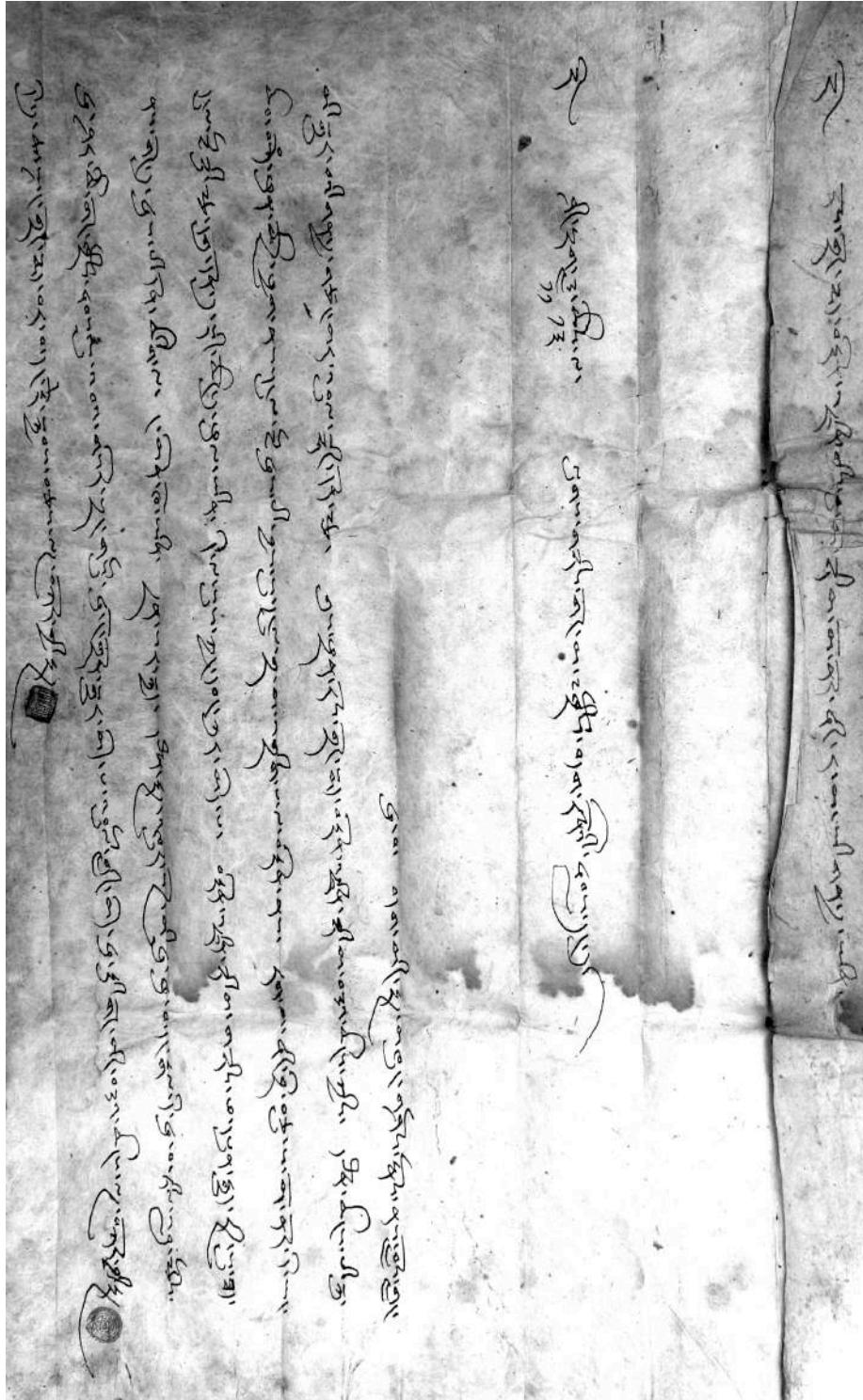


Fig. 1. Document of Debt Resolution, local archive, Nubri (photo by Geoff Childs)



Fig. 2. Document of Disciplinary Action, local archive, Nubri (photo by Geoff Childs)

changes. I, Ladza Emba of Tsak,²¹ have not observed the religious obligations based on the local regulations for a long time. Furthermore, I committed countless harmful actions in violation of the local regulations. Therefore, based on the decision by the local headman, I, Emba, henceforth promise that I will not engage in these illegal activities, including any form of sinful activity like hunting or instigating others to commit actions that go against the religious laws. The four persons listed below agreed to act as sureties of this agreement.²² In the case of Emba showing even a slightest disagreement or any indication of not following the afore-mentioned decision, he will pay a penalty of 10 gold coins and receive 500 lashes in the presence of the magistrate. The petitioner Emba affixed his seal [thumb print]. The four sureties from Tsak affixed their seals: Sherab Namgyal [thumb print],²³ Pema Chöphel [thumb print], Penpa Tsering [thumb print], and the Dorje Chöphel [thumb print].²⁴ The witness Pema Gyaltzen affixed his seal [seal], and the witnesses Nyima Ongyal, Mey Pema Dorje, and Rangdol of Tsak collectively affixed their seal [seal].

Ladza Emba is not a Tibetan name, so he was probably not native to the region. Nevertheless, he must have been a full-time resident with certain rights or valued skills in order not to get banished after stirring up so much trouble. We suspect that Ladza Emba was a blacksmith who had no qualms about hunting or practicing animal sacrifice. Across Tibetan and Nepali societies blacksmiths are considered low caste and marginalized (Holmberg 2007). In addition to having a distinct identity, they often worship their own deities and maintain discrete cultural practices. Blacksmiths in Nubri are notorious for contravening local conventions. In an oral history interview an elderly blacksmith revealed that his great-grandfather, Purney Sahoo, came to Nubri after being expelled from neighboring Lamjung. He was reputedly banished because, when appearing for a court hearing over the charge that he stole money, he disrespected the proceedings. Specifically, “During the purification

²¹ Tsak is a village in the lower section of Nubri Valley.

²² The term khag theg is written twice in abbreviated form in the document. In both cases, the tha of the second syllable appears below and between the kha and ga consonants of the first syllable. We translate the term as sureties because the men are accepting the responsibility of ensuring that Emba adheres to the ruling.

²³ We are not sure why some people affix a thumb print while others apply a seal. The difference could reflect social status. Like the previous text, several men (in this case three of the witnesses) collectively affixed one seal.

²⁴ His name is preceded by grog sha ma. We are unsure what that means.

ceremony involving incense burning, throwing holy water, and appeasing a female deity, he blew or spit over everything. He even urinated in public.” At the summit of the pass leading into Nubri, he and his son “constructed an altar by piling three stones. They killed a rooster, poured its blood upon the altar, drank the dripping blood, then made an oath that they would never show their faces again in Lamjung.” The son was eventually expelled from a village because, during an epidemic that killed several people, he roamed about the cremation grounds touching the corpses. His actions angered local deities who caused an avalanche.

In summary, Ladza Emba’s name indicates possible blacksmith status, and his behavior seems to fit the contentious relationships that blacksmiths sometimes have with Nubri’s residents. Ladza Emba’s confession of guilt points to an escalating scenario whereby a local headman forced him to guarantee, through a gengya signed by four sureties, that he would cease violating village regulations and hunting which is prohibited by religious decree. Ladza Emba apparently did not transgress local rules on his own because he admits to instigating others. An unusual feature of this gengya is that four sureties, men from Tsak, vouched that Laza Emba would abide by the ruling. Given the severity of the consequences for non-compliance (500 lashes sounds like a death penalty!) the villagers of Tsak were no doubt fed up with his behavior.

Discussion

The format of these documents is not a local innovation, but follows rather precisely the language and configuration of Tibetan gengya analyzed by other scholars (Schneider 2002; Mullard 2013; Bischoff 2017; Ramble and Drandul 2017). Each gengya starts by listing the date it was drafted followed by the standard inscription, “In the presence of the precious magistrate, leader of the two systems [secular and religious].” The introduction protocol then contains a standard statement affirming that those involved will adhere to the ruling. It is followed by the narratio which begins with the term *don rtsa*, “basis of the legal act”. The narratio then introduces idiosyncratic elements, the particulars of the case. In the texts presented here these include a disagreement over paternity, an agreement of land transfer resulting from defaulting on a loan, and an admission of bad behavior. The dispositio stipulates decisions and associated penalties, in these cases the payment of a gold coin by whoever fails to prove their version of the paternity case, and a hefty fine and flogging for Emba if he continues to contravene village rules. The *sanctio* then returns to formulaic conventions that draw from a corpus of standard admonitions, for example, to not shed doubt on the decision through subsequent denials and accusations (*nga min kho yin*; literally

“it’s him, not me”), coming up with new accounts [dran tams sar kyed (dran gtam gsar skyes)], and speaking with two tongues from one mouth (kha gcig lce gnyis). It also threatens to impose financial penalties on anyone who even hints at disobeying the order.

At the time the three documents were drafted the subbha, as Nepal’s government representative, was technically the arbitrator of all legal matters. We know that the gengya were once in his possession because his descendants now hold the corpus of these and other administrative documents in Nubri. However, it is debatable if the opening passage pays homage specifically to the subbha’s authority through the statement, “in the presence of the precious magistrate, leader of the two systems (both secular and religious).” Here, the precious magistrate (khrims bdag rin po che) could refer to the subbha, but could also denote a village leader vested with the authority to resolve local cases, or it could merely be a writing custom held over from past times. Meanwhile, lugs gnyis refers to the principle of merging religious and secular matters, a convergence that was fully elaborated during the 17th century under the Ganden Phodrang government of Tibet led by the 5th Dalai Lama. Combined with gong ma, the term is a standard way of addressing Ganden Phodrang. The same idiom is found in gengya from Tibetan areas prior to 1959 when they were under Ganden Phodrang (see Schneider 2002; Bischoff 2017), and continues to open gengya penned nowadays in Nubri when the area is no longer administered by either Ganden Phodrang or a subbha. Thus, we interpret the phrase “in the presence of the precious magistrate, leader of the two systems” as a nod to the general principle of merging religious and secular matters that continues to guide village-level administration in Nubri, and as a written convention that was never modified after Nubri fell under the domain of Nepal.

The gengya presented in this paper demonstrate that the people of Nubri have maintained autonomy over cases pertaining to village law (yul khrims), and continuity with legal principles that were commonly deployed in Tibet before 1959. As Bischoff notes (2017), such documents and associated proceedings contain a wealth of information on Tibetan legal practices, social relationships, behavioral expectations, and values. The three documents presented in this paper advance our understanding of how the people of Nubri resolved paternity disagreements and unpaid loans, and deployed the threat of severe repercussions to moderate the behavior of those who disobeyed local regulations. They provide hints about gendered relationships, social hierarchy, and power dynamics. By signing the gengya, the people in these cases entered into formal agreements with local authorities to abide by the verdicts. Whether or not they did so, and mechanisms deployed to enforce decisions, are topics worthy of further research. Because China

thoroughly dismantled the Tibetan social and legal systems in 1959, manuscripts and fading memories of the eldest generation are all that remains for understanding how Tibetans adjudicated disputes. Therefore, Nubri (and other Himalayan regions) where gengya are part of a living tradition present an intriguing research opportunity to combine textual and ethnographic studies that can clarify the nuances of a unique Tibetan system for regulating inter-personal and institutional interactions.

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