

# Women in the Context of Justice: Continuities and Discontinuities in Southern Africa

A CSA&G Edited Collection



Edited by Cori Wielenga



UNIVERSITEIT VAN PRETORIA  
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**CSA&G**  
CENTRE FOR SEXUALITIES,  
AIDS AND GENDER

# **Women in the Context of Justice: Continuities and Discontinuities in Southern Africa**

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## i. Acknowledgements

This Handbook builds on the work of a longer term project on justice and governance practices at community level during periods of transition. This project is being undertaken by a team at the University of Pretoria led by Dr Chris Nshimbi, the director of the Centre for the Study of Governance Innovation, and I. In this project, we are particularly interested in the burgeoning endeavour to incorporate community justice practices into transitional justice interventions after mass violence. One of the issues which we became aware of is that there seems to be a knee-jerk reaction to community justice practices, including the response that such practices are ‘patriarchal’ and ‘gender-biased’, and thus that they need to be abolished. This project, supported by the Centre for Sexualities, Aids and Gender, is an attempt to explore some of the evidence for and against such an assumption.

Our work coincided with the commitment of the Centre for Sexualities, AIDS and Gender to work with non-governmental organisations (NGOs) in Southern Africa to understand better issues of gender justice at the community level. Our shared position is that we need to understand gender dynamics at the community level in its own terms, and not necessarily through a ‘western feminist’ lens. Drawing on the work of feminist scholar Kimberley Crenshaw, our starting point is that the intersection between locality, race, class, and the colonial experience shape the gendered experience differently.

In this Handbook, we explore these intersections specifically in relation to how communities meet their justice needs. Again we seek to understand ‘justice’ from the perspective of the community, and to define it broadly to include the general well-being and harmony of the community. In our exploration of justice practices, we find that women play a central role. We believe this may be a starting point in bringing nuance and complexity to the knee-jerk assumptions that justice practices in Southern Africa are oppressive to women, and that women have no agency in shaping their own society.

We would like to acknowledge and thank the Centre for Sexualities, AIDS and Gender for supporting our endeavour to understand the role of women in justice practices in Southern Africa. I would also like to thank my research team which enthusiastically embraced the opportunity to spend time with people in rural and peri-urban communities in South Africa, Namibia, Zimbabwe and Mozambique, to try to understand women’s roles in these contexts. Flat tyres on dusty roads, long conversations regarding conceptual ideas, and late nights to complete drafts of reports were all par for the course for this great research team which remained dedicated to the task of trying to grapple with what we are finding ‘on the ground’.

We would also like to acknowledge all the people in Alexandra, Okombahe, Mudzi and Gueguegue who offered their time to speak with us about their day-to-day realities. We thank the traditional authorities, community leaders, local government officials, and all the men and women who participated in our research project.

Our hope is that what we find will begin to challenge some of the assumptions made by government and non-governmental actors in some of the interventions made in communities. The human and relational resources in these communities are astounding; the starting point for any intervention needs to be a full understanding and appreciation of the resources already present before introducing any additional resources.

**Dr Cori Wielenga**

## ii. About the authors

**Dr Cori Wielenga** is a senior lecturer in the Department of Political Sciences at the University of Pretoria and a research associate in the Centre for the Study of Governance Innovation. Her research interest is in the intersection of local, national and international justice and governance systems in Africa. To this end, she has spent time in Rwanda, Burundi, Zimbabwe, Mozambique, Namibia, Nigeria and South Africa to understand the impact of these intersecting systems of justice and governance on people 'on the ground'. Dr Wielenga has published her work in numerous journals on Africa including *African Insight* and *African Journal on Conflict Resolution*. A volume she has edited about justice and governance systems in Burundi, Zimbabwe and Mozambique is to be released by Codesria in October 2018.

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# 1. Introduction: Women's roles, gender politics and justice in Africa

Cori Wielenga<sup>1</sup>

<sup>1</sup> The author would like to thank Sarah Matshaka for her research assistance in preparing this chapter, particularly in relation to the section on gender in an African context.



In this Handbook, we are interested in justice 'on the ground' in Southern African communities, and in particular in the roles that women play in this process. When we speak of justice on the ground, we refer to the ways in which justice needs are met by people in rural and peri-urban communities on a day-to-day basis. Research suggests that between 70% and 90% of justice needs on the African continent and globally are met outside of state-led justice systems (Chirayath, Sage & Woolcock 2006). This is certainly the case in Southern Africa, but there is limited understanding of justice on the ground, and instead, many assumptions and generalisations are made about these practices.

Justice on the ground includes family courts, community courts, the interventions of traditional and community leaders in resolving conflicts, and state-influenced interventions at the local level. We also include the general perspectives of how people understand justice and meet their justice needs. This is quite different, we have found, from how we understand justice in national and international justice systems.

Typically, in 'the West' the long tradition of justice led to the Roman-Dutch system of law, which centres on the contract between the state and the individual. Contrary to this, justice practiced by communities in Southern Africa centres on the contract which people have with one another. Some have called this 'connective or 'relational' justice (Granes 2017), thereby giving particular emphasis to the fact that what is prioritised is the relationship between people, and the complex set of relational networks that hold a community together.

In rural and peri-urban communities, the network of relationships between people and the well-being and health of a community as an integral whole continue to be of central importance, as the survival of the community depends on the entire community functioning interdependently.

These networks or webs of relationships are not only between people, but also point to the cosmological or metaphysical. They include the relationships between the living, the not-yet-living and the living dead (Benyera 2014). Some would even include the relationship with the ecological (Murove 2004). The intrinsic importance of the intersection of the physical and metaphysical is most visible in the cleansing rituals that characterise most African systems of justice (see for example, Baines 2010). Even if a conflict between individuals is resolved through the formal state system, on returning to their community individuals may need to engage in a cleansing ritual that involves the whole community in the cosmological sense (Allen 2007; Baines 2010; Masoga 1999; Honwana 1997).

In this sense, justice means more than simply the resolution of conflict, but has to do with the well-being of the community as a whole. As Honwana (1997: 297) describes in the Mozambican context:

*If the relationships between human beings and their ancestors, between them and the environment, and among themselves are balanced and harmonious, health ensues. However, if they are disrupted in any way, the well-being of the community is jeopardised. There is a complex set of rules and practices that govern the maintenance of well-being and fecundity in the community.*

Of particular interest in this Handbook is the role of women in justice. This is important since it is often assumed that justice practices on the ground are patriarchal, and they are often dismissed for this reason. However, as shown in this Handbook, our findings suggest that in many cases women are centrally involved in justice practices on the ground.

Of course, patriarchal practices can be found in most world systems. Similarly, in the evolving systems of justice in Southern African communities, one may find evidence of patriarchy along with evidence of attempts to address this issue as these systems evolve. Yet one of the questions that needs to be asked is what we mean by patriarchy, and in particular, does patriarchy have the same meaning in a rural Southern African community as it does in, say, an urban centre in Europe or North America? One of the themes explored in this introduction is African feminism and African approaches to understanding gender dynamics.

Our encounters in rural and peri-urban communities across Southern Africa suggest that, as is the case elsewhere in the world, gender dynamics are complex and difficult to understand at a mere glance. Where in some instances, on the surface governance, leadership and justice systems seem to be male-dominated (for example, counting the number of men, as opposed to women, who hold positions of leadership), in reality men and women intervene in the community in a variety of ways. In other instances, a mere numerical count would suggest that men and women hold equivalent positions of power, but this doesn't necessarily mean that there is 'gender equality'.

Questions regarding the meaning of gender equality abound in gender debates, but what seems most urgent is to understand what this means from the perspective of a given community, and not necessarily through the lens of Western feminist scholarship. Feminist scholars have already gone far in questioning the ways in which gender is understood predominantly from a Western perspective. For example, in the late 1980s Mohanty (1988: 63) critiqued the "cross-culturally singular, monolithic notion of patriarchy or male dominance" which "leads to the construction of a similarly reductive and homogenous notion" of what she calls the "'third-world difference' - that stable, ahistorical something that apparently oppresses most (if not all) of the women in these countries". She specifically critiques the idea that all women form a homogenous group of 'sisters' engaged in the same struggle, that women should be essentially defined as victims of male violence, and women should be seen as universal dependents rather than as active agents in their own lives.

In this Introduction, we will explore the role of women in justice on the ground from the starting point of the lived experiences of women, and in the intersections of race, class, culture and the colonial experience. In the case discussions in this Handbook we attempt as far as possible to avoid use of the term 'gender' and related terms, in order to enable descriptions of the roles of women in justice on the ground to emerge on their own terms without framing it within a particular gendered discourse. However, in this introductory chapter we explore our understanding of gender dynamics, and the role and position of women in Southern Africa within our discussion of justice on the ground.

## Continuities, discontinuities, tradition and modernity

Often, justice practices on the ground, particularly those which directly relate to resolving conflict, such as community courts, are described as 'traditional'. We avoid this term, firstly because the term 'traditional' comes with baggage, and secondly, because justice practices on the ground, although based in tradition, have evolved and adapted so much that they sometimes only have a loose relationship with the historical traditions on which they are based.

In some of our previous writings, we have referred to these practices as being tradition-based, emphasising the fact that they are based on traditions, but are not necessarily traditional. However, we found that our readers still tended to associate such practices with historical traditions, and struggled to discern the dynamic nature of justice practices on the ground.

We also considered using the term 'indigenous justice system' in order to relate our work to the emerging interest in indigenous knowledge systems. The concern here was that this term also has a great deal of baggage, because it implies that some knowledge systems (such as those from the West) are universal, whereas others are 'indigenous', meaning strange, particular and context specific.

Some writers have used the term 'alternative' to describe justice practices on the ground, but since such practices are utilised by the majority of the people in the countries that we discuss in this

book, it made no sense for us to call them alternative. They are in fact the main means of meeting justice needs. For most people in these countries, the state-led system is in fact an alternative system which they might turn to when they have exhausted all other means of meeting their justice needs.

Part of this discussion leads us to the debate about tradition and modernity. The knee-jerk reaction to justice on the ground is that it is 'backward'. The assumption made by many people is that in order to 'modernise' and become part of the twenty-first century, what is needed is to strengthen the state and its systems, and ensure that state-led governance and justice systems have a wider reach. In this scenario there should be a functional magistrate's court in every small village across Southern Africa.

Yet what we have found in villages across Southern Africa is that even where a magistrate's court and a local municipality function optimally (and this is seldom the case in rural and peri-urban Southern Africa), many day-to-day needs of the community are still not addressed. Justice on the ground deals not only with the 'technical' aspects of governance and justice which the magistrate's court and local authority aspire to provide, but also more broadly with the relational well-being of the community which is critical to its functioning.

What we identify here is a fundamental difference in the norms and values which underlie different systems of practice. For a long time (and perhaps still today), the norms, values and practices of such local communities were seen as 'backward' or 'primitive', and the values and practices

of 'the West' were seen as 'modern', embodying something to which communities should aspire.

Much has been written about Africa in relation to 'modernity', and terms such as 'multiple modernities' and 'alternative modernities' have been used in an attempt to question the notion that the 'modern', found its zenith in Europe, while Africa embodied all things 'primitive', 'savage' and 'dark' (see for example, Ashcroft 2009, and Ferguson 2005). The emergence of the terms 'alternative modernities' and 'multiple modernities' speak to attempts to broaden the definition of 'modernity' beyond its European origins to encapsulate the complex ways in which 'modern' societies across the globe have emerged, influencing and shaping one another (Hassan 2010).

As Becker (2007: 31) writes:

Modernity may be an overused term, yet it makes sense in relation to an institution that postcolonial states, local populations and, last but not least, many academics understand to be 'traditional' and, thus, distinct from the 'modern' social and political forms of the postcolonial state. I find John Comaroff's approach particularly helpful to understand local modernities. He defines 'African alternative modernities' as signs, practices and dispositions that, while having originated in African encounters with 'elsewheres', are always negotiable and constantly in the making. What is of special concern for my argument is his contention that they are as much the product of local agency, as they are a reaction to exogenous forces.

What is practiced on the ground today reflects some continuity with the past, as well as much discontinuity. There have been many disruptions to the way in which communities in Southern Africa function. Slavery, colonialism, apartheid (in South Africa and Namibia) and Christianity are only some of the many influences that have distorted and changed knowledge and justice systems in these contexts.

Batley (2018), drawing on Faris (2014) and Rist et al. (2011), advocates the concept of endogenous knowledge, "a process of social construction carried out by a community that interacts on the basis of a shared worldview, that is, symbolic representations, epistemology, norms and values, and practices", and argues that:

Scientific knowledge, instead of representing a universal product of the highest cognitive development of humanity that allows humanity to get rid of 'indigenous beliefs' expressed in idolatry, superstition, and ill-understood relations between nature and society, becomes just one – albeit important – form of knowledge among others.

The idea of endogenous knowledge systems speak to the resilient ways in which communities engage with the coming together of multiple knowledge systems, and economic, political and socio-cultural realities. This has become evident to us through the ways in which communities have adopted (and continually adapted) 'endogenous' systems of practices to meet their justice needs.

## Justice on the ground

The prevalence of informal justice systems is recognised all over the world. Chirayath, Sage and Woolcock (2006: 2) state that “even in societies with the most developed legal system, only about 5% of legal disputes end up in court”. We are particularly interested in how they manifest themselves in the African context.

Our findings and the research literature suggest that there are certain conceptions of personhood that are central to African ways of being which have implications for justice practices. These conceptions of personhood are characterised as relational, and communities are understood as composed of complex networks of relationships.

Englund and Nyamnjoh (2004: 9) describe how in post-colonial African states people accommodate multiple identities and speak of a “relational aesthetic of recognition”. Rather than recognising distinct communities of difference, they suggest that instead we recognise the relationships that unite groups of people. We should acknowledge these relations not merely as aspects inserted into communities after they emerge, but as intrinsic to the very emergence of such communities.

As previously mentioned, networks or webs of relationships are not only between people, but also point to the cosmological or metaphysical, including the relationships between the living, the not-yet-living and the living dead. Metaphysical aspects of justice on the ground are reflected in the rituals practiced in many communities across Southern Africa, although in some contexts, these are no longer practiced.

In some contexts, such rituals have taken on the flavour of their religious context. In parts of North and West Africa, there is evidence of the influence of Islam on such practices. In Southern Africa what is evident is the influence of Christianity in the form of Catholicism and Pentecostalism and, in the case of Namibia, of Lutheranism.

What are fundamental to justice practices on the ground are the authorities which are the custodians of such practices. The role of these traditional authorities and their ability to facilitate justice practices has been compromised to some extent by the colonial experience, which has undermined the authenticity, legitimacy and moral authority of traditional authorities.

During colonialism, some African traditional authorities constituted proxy institutions of colonial rule, insofar as chiefs provided an avenue for furthering the economic and political interests of the colonial powers and of ensuring indirect rule of indigenous people (Logan 2013; Ndlovu & Dube 2012). Such traditional leaders were seen as having betrayed their communities, especially those engaged in struggles for liberation (Mamdani 1995). The dilemma that the chiefs faced was that refusal to comply with colonial powers could mean being ousted from leadership or destruction of their authority (Ndlovu & Dube 2012). Complicity or subjugation contributed to the transformation of traditional leadership institutions. However, some chiefs continued to exert social, cultural and political control over communities within the newly defined territorial jurisdictions marked out by colonial powers (Nshimbi 2017).

As Nshimbi (2017) writes, one would expect such 'sell-out' chiefs who had been exploited by colonial powers to be deposed in the context of post-independence. Instead, they have "artfully reinvented themselves in the interim and have discovered a variety of methods to reclaim their authority" (LiPuma & Koelble 2009: 206). Traditional authorities have survived by deploying various strategies, including shifting alliances and reinventing themselves in cultural, ideological and economic ways (Nshimbi 2017).

In contrast with much recent literature, Logan (2013: 353), who draws on data collected in 19 African countries, finds that although Africans describe traditional leaders as flawed, they "enjoy widespread popular legitimacy". In response to the argument that traditional authorities have remained resilient only because of weak states, Logan (2013: 373) suggests that they are highly valued and desired by their communities for what they represent, and that do not depend on the backing of the state for their survival. In fact, she suggests that state actors need traditional authorities to secure their own popular support. She writes:

*Their character as leaders, flawed as it may be, and their connection with and accessibility to the people in their communities, set them apart from politicians and government officials. They are more available as problem solvers, and they have the advantages of local knowledge and an understanding of community norms and practices that can make them effective in resolving local conflict.*

It is important to note that when traditional authorities have lost their legitimacy, community members may take it upon themselves to implement rituals or conflict resolution mechanisms. Baines (2007), for example, recounts that in northern Uganda, where local systems were disrupted by conflict, "the neutrality and capacity of elders and cultural leaders to adapt local approaches to crimes committed during the conflict" was limited. Yet, her findings suggest that in such situations other members of the community might initiate cleansing rituals to put their 'worlds in order' through traditional healers and spirit mediums (Baines 2007: 97).

It is worth noting that spirit mediums, traditional healers and diviners, all of whom have a recognised role in communities across Africa, often include both men and women, and play a very powerful and influential role in their communities (Honwana 1997).

This was also evident in our findings, which included case-studies where religious leaders had adopted the roles that traditional authorities and traditional healers might have played in the past, implementing rituals that incorporated both aspects of tradition-based customs and Christianity. This phenomenon has been mapped across the continent. Igreja, Dias Lambranca and Richters (2008), for example, discuss the influence of Christianity on tradition-based practices in the Gorongosa region of Mozambique.

States continue to be limited in terms of their reach and resources, making it impossible to dismantle altogether systems of traditional authority. Thus, as described

earlier, to differing degrees attempts have been made to integrate traditional authorities into the formal state system. However, the relationship between traditional authorities and government authorities at District level has remained complex. There is often a confusing overlap between functions and jurisdictions, and they derive their legitimacy from different sources.

This confusing overlap is perhaps evident in the difficulty of defining whether an area is urban or rural, and the jurisdiction under which it falls. Mobility between urban and rural spaces is characteristic of most African societies, to the extent that some argue that we need to interrogate what notions of 'urban' and 'rural' mean altogether (Nyamnjoh & Brudvig 2014). Although urban areas are defined principally in terms of population density and the availability or absence of various public services, which areas 'count' as urban and which do not has been disputed globally. In addition, borders of urban areas have becoming increasingly unclear, particularly as large numbers of people commute into urban centres from the periphery, or even more as settlements develop on the outskirts of urban centres and provide the workforce to sustain the urban centre. Increasingly these areas are being referred to as 'peri-urban', suggesting the blurred distinction between urban and rural (Tacoli 1998).

Tacoli (1998) points out that when people migrate from rural areas into urban centres they may nevertheless maintain strong ties with their families 'back home'. Although in this Handbook we have focused on peri-urban and rural communities, many people living in urban centres have a rural 'home' to

which they return, and where they engage on the ground in practices of justice to resolve conflicts and restore balance.

## Gender in an African context

It is often assumed that justice on the ground is problematic because it is male-dominated. However, drawing on Afrobarometer data Logan (2013: 370) states, "Although it is often assumed that traditional leadership institutions are inherently bad for women, women themselves do not appear to see it this way." She questions whether this is true because women in such contexts are themselves conservative, or whether they simply experience traditional leadership as being both familiar and beneficial.

Mengisteab (2006) notes that women's power in decision making differs from community to community, including the extent of their involvement in chieftaincies. One of the communities under study in Zimbabwe followed a matrilineal line, and there are examples of this across the continent. Furthermore, even within patrilineal lines women wield power in a variety of complex ways.

Increasingly scholars and feminists in the global South are raising concerns about the 'cultural imposition' on African societies through the retheorising of race, global inequalities and gender through a 'global North' lens which has resulted in an inaccurate understanding and representation of gender power relationships in rural African societies (Mohanty 1988; Schiwy 2007; Soetan 2001). These scholars argue that women may have more leverage, control



and autonomy than is evident at first glance. Women notably head up households, co-ordinate finances, delegate tasks and manage small household agricultural holdings (Soetan 2001).

Many have written about the socially constructed nature of gender (Nyamu-Musembi 2007; Schiwiy 2007), but it remains a contested concept in African scholarship, with some dismissing it as 'Eurocentric' and others saying that it does not sufficiently reflect African realities (Nyamu-Musembi 2007). Schiwiy (2007) argues that gender is an historical and social category which appears to differ across geopolitical boundaries. She goes on to argue that "when debates about gender abstract from the colonial making of social relations (among women, among ethnicities and classes), they risk perpetuating colonial relations". She adds that "in the context of global coloniality both race and gender are concepts which interact, coalescing into gender specific forms of oppression and meshing longstanding imaginaries in order to justify hierarchies of subjectivity, economic and political as well as epistemic orders associated with these subjectivities".

Nyamu-Musembi (2007, drawing on the work of Steady 2002) suggests that there are three common assumptions about gender politics which African scholars have critiqued. The first of these is the notion of the 'universal subordination of women', which ignores the intersectionality of gender with race, ethnicity, class and religion. The second assumption made is with regard to separation between the public and the private spheres, and the assumption that men enjoy privileged participation in the

public sphere. This view marginalises the ways in which women "draw power from family, religious systems or female secret societies, or provide evidence that women's public participation can vary depending on lifecycle, with older women serving as elders in some communities" (Nyamu-Musembi 2007: ). The third assumption is that gender should be used to critique the hierarchies and differentiation of roles within the nuclear family, whereas the "isolated nuclear family is not the dominant family form in the African and other non-Western contexts" (Ibid). Also, 'power centres' are diffused through other kinship categories, which may be based on age, seniority or distinctions between those born into the family and those marrying into it" (Ibid).

This critique is of particular interest for this Handbook, since our case-studies reveal the complex and organic ways in which women have power and influence in relation to justice on the ground which may not be immediately obvious. Significantly, for example, in the African context women have never been denied the right to provide for their (extended) families, since women have always played critical roles in agriculture and farming, planting and harvesting the crops which ensured the survival of families and of communities. Thus the struggle for women to have access to work takes on a different nuance in an African rural context.

Coulibaly (2015) traces various forms of African feminism through a study of African literature. She identifies six strands that capture the ways in which African feminists have attempted to establish an "African feminist theory which neither duplicates or imitates Western feminist views nor

radically subverts African social values and hierarchies". There may be some questions raised about the 'values and hierarchies' that are maintained, such as the centrality of heterosexual married life and family life. Nevertheless, these strands point to ways in which to understand feminism and the construct of gender from within an African perspective. Many of the values that these strands uphold, such as negotiation, consensus, compromise and balance, reflect characteristics of justice on the ground as described in the previous section.

*Nego-feminism*, for example, suggests that women challenge patriarchy through negotiation and compromise, and know how to negotiate with or about patriarchy in different contexts (Nnaemeka 2004). Similarly, *snail-sense feminism* is about African women's 'clever' uses of negotiation and diplomacy in patriarchal systems of socialisation to assert and affirm their self-actualisation and empowerment. The feminist scholar Akachi Ezeigbo, who developed this term, uses the analogy of how a snail withdraws into its shell for safety whenever danger threatens, hence providing a parallel to the ways in which women may similarly withdraw from harsh patriarchal cultures into spaces which provide greater safety. Such 'withdrawal' by women may take the form of accommodating men or tolerating their behaviour, as well as co-operating with men. Snail-sense feminism is about carefully negotiating what is often treacherous terrain.

*African womanism* is about African women's search for self-fulfillment within the diverse cultural contexts in which they live through dialogue and collaboration

with men, as well as struggling for self-respect, assuming various active roles and participating in truly dynamic ways in all the social spheres of development. They do this with dignity and alongside their fathers, husbands and brothers as allies. The African man is seen as neither the enemy nor the problem, but rather as an ally in overcoming their predicaments and the problems of development engendered by colonialism and neo-colonialism. Similarly, *stiwanism* is about the processes through which social transformation can be achieved for the benefit of both men and women on the continent. The emphasis here is on a collaborative process of building a harmonious society.

*Motherism* primarily focuses on the centrality of motherhood in the African female experience. The contention is that "the life of African women cannot be dissociated from the mother-child love relationship and it is through motherhood that African women can achieve psychological and social freedom" (Coulibaly 2015). In motherism the terms "patrifocality" and "matrifocality" are used to replace the concepts of patriarchy and matriarchy which are deemed to be western concepts that are removed from African sociocultural realities. Patrifocality and matrifocality can be used to explain the complementarity between men and women in which no gender dominates how society is organised. Catherine Acholonu, the feminist theorist who developed this idea, states that African men are generally dominant in socio-political spheres of African societies whereas "African women dominate the spiritual and metaphysical segments". In their immediate cultural environment

African women “have specific roles related to motherhood, childrearing, spirituality, trade, and the management of the family whereas their husbands are mainly known for politics” (in Coulibaly 2015). Women play roles in the political arena as advisors to their husbands concerning the big issues facing their families and their society.

Coulibaly (2015) suggests that in these strands of African feminism, there is an attempt to move beyond men and women as being in opposition to one another, and instead to transcend the idea of gender binaries altogether. As Schiwy (2007, drawing on the work of Partha Chatterjee), importantly states, there is a need to ask “whether decolonization mustn’t include within it a struggle against the false essentialism of home/world, spiritual/material, feminine/masculine propagated by nationalist ideology”.

It is these binaries between the public and the private, between the immediate family and the rest of the community, between the physical and metaphysical, between the feminine and the masculine, and in terms of role distribution that are so completely different in rural and peri-urban African societies compared to the comparable binaries in Western contexts. Hence much of our gender discourse and theory simply doesn’t make sense when applied here.

This is not to say that systems of justice and governance aren’t patriarchal, or that there isn’t a need for change in the African context. However, such changes needed to reflect the needs and realities of these contexts rather than the imagined requirements of the assumed ‘universal’

woman. At the intersection of being African, rural and woman, a very different set of needs and desires emerges. The need is not to return to an idealised past, nor to adopt a western understanding of gender, but to allow changes to emerge dynamically within communities as they come into contact with other knowledge systems.

## The role of women in justice on the ground

One of our first findings arising from time spent in Namibia, South Africa, Zimbabwe and Mozambique is that there are many actors involved in meeting a community’s justice needs, including traditional authorities such as chiefs, headsmen and women, traditional healers, diviners, community leaders, faith healers, religious leaders and political leaders.

Some twenty years after Becker (2007) undertook his research on gender discourses in rural Namibian communities, we visited similar communities to explore the roles which women play in conflict resolution as a means of gaining insight into the gendered nature of traditional leadership and management of conflict. There is often an assumption that traditional leadership is ‘essentially patriarchal’. However, what Becker’s work shows is that the evolution of gender discourses in these communities is complex and dynamic. His study engages with four diverse communities in north, south, east and west Namibia, and illustrates the ways in which global, national and local dynamics intersect to influence how gender is understood. For example, he shows how in some contexts, women’s leadership roles were undermined and, in some cases,

completely discontinued, as a result of colonialism and Christianity. He discusses the subsequent ways in which global and national gender politics have influenced local realities, and also how local actors themselves have continued to reinvent 'traditions' and 'customs'. Becker (2007: 48) argues that rural women and men produce local, gendered modernities:

... the re-making of local gender discourses and practices testifies to the ability of chiefs and ordinary rural people alike continually to reinvent the political and judicial institutions in their communities. The recent gender politics of traditional authorities, in their various forms, are a product of local agency; they are a reaction to exogenous forces while building on local forms and histories.

Important to note here is the dialectic between exogenous forces and local agency. As our findings in communities in South Africa, Namibia, Zimbabwe and Mozambique reveal, women on the ground are active agents in shaping their communities.

## Conclusion

The chapters in this Handbook attempt to give the reader glimpses into the lived experiences of community members in rural and peri-urban communities, and to describe how these communities meet their own justice needs. The intention of this undertaking is not to exoticise such communities or to point to their peculiarity, but rather to normalise, to show how people function in the everyday. When we propose intervening in or assisting these communities

– whether as researchers, staff members of non-governmental organisations or government officials – the driving purpose should not be 'What can we bring?' but rather 'What can we learn?' We would argue in this vein that any intervention in a peri-urban or rural community should necessarily begin with training of the 'outsider' regarding how the community meets its day-to-day needs.

If we want to contribute to meeting justice, and specifically, gender justice in these contexts, our starting point needs to be a deep understanding of how justice is practiced, the identities of the people involved, and how community dynamics contribute to maintenance of balance and harmony in the network of relationships that characterise these communities.

One of the major problems we identify in this Handbook is that frequently well-meaning local or international non-governmental or charity organisations, or even well-meaning local government officials, attempt to 'help' people in rural and peri-urban communities. However, such 'help' often fails to recognise the distinctly different norms and values in terms of which such communities function.

As we visited different communities – in the Erongo region of Namibia, in Mashonaland (Zimbabwe), in the township of Alexandra (South Africa) and in the Boane area of Mozambique – we become aware that the resources within communities are plentiful. We also become aware that justice is far broader than simply resolution of conflict; rather, it involves the well-being of the entire cosmological community. Finally, we become aware that women play a central

role in maintaining such well-being, and that their roles need to be well understood and on their own terms if we are to engage meaningfully in helping meeting justice needs in these contexts.

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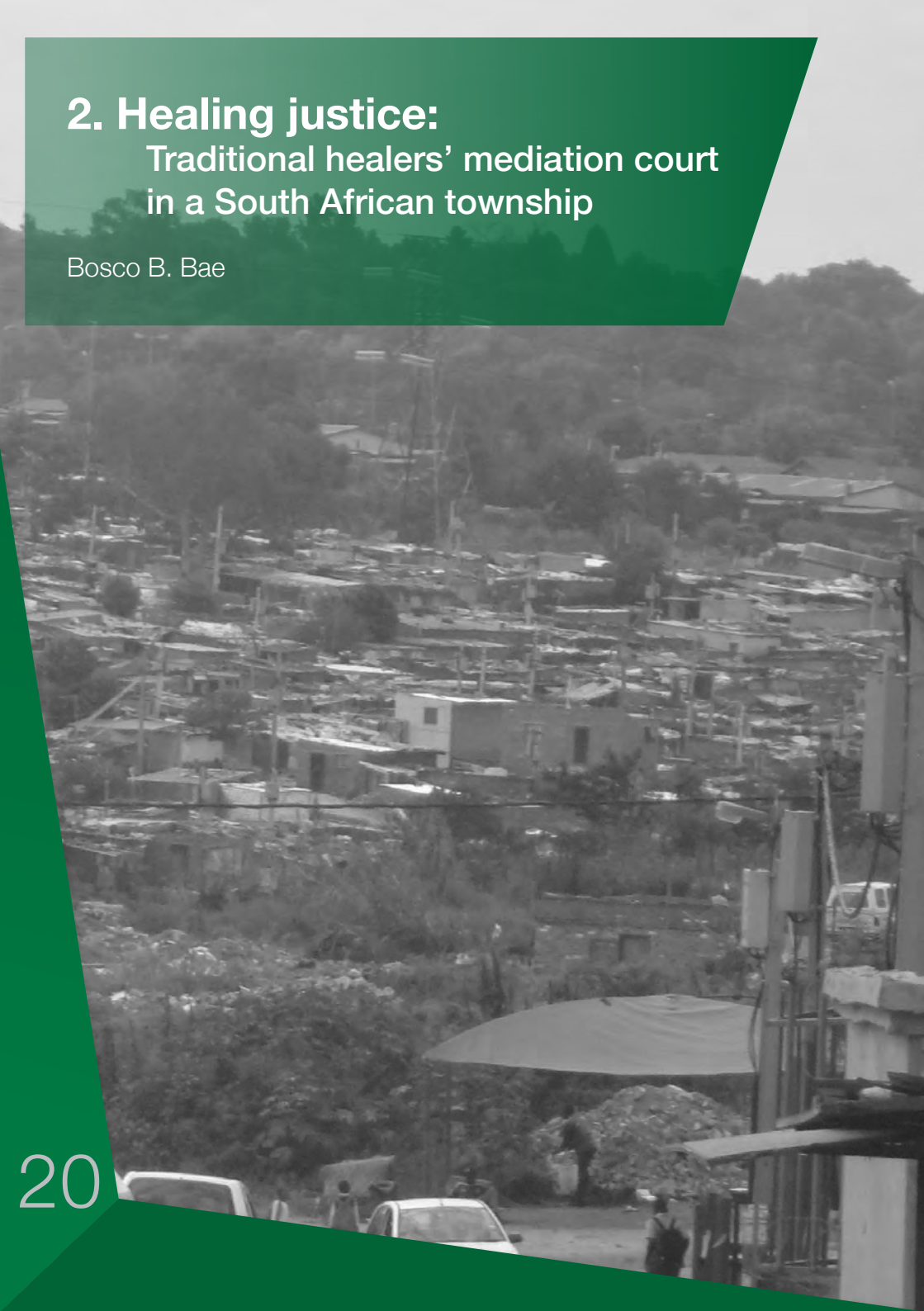
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## 2. Healing justice: Traditional healers' mediation court in a South African township

Bosco B. Bae



On an April morning in the township of Alexandra, the magistrate's court was scheduled for a bail hearing. A man in his late twenties was charged for the rape and murder of a two-year-old girl. He was also alleged to have threatened the six-year-old sister that if she told anyone about what happened, he would kill her as well.

In alliance with the local office of Agisanang Domestic Abuse Prevention & Training (ADAPT), several traditional healers – along with other organisations – gathered before the court to protest against granting bail for the defendant. They held up signs that read: 'No bail for the murderer'; 'Justice delayed is justice denied'; 'Stop child murder'; 'Our children Our future Stop killing them' 'You kill a woman you kill a nation'; 'Tougher and stiffer sentences for rapists!!'; 'Violence against children must stop'; 'You hurt a child you hurt the nation'. A traditional healer held up a handwritten sign: '*Ngeke aphinde ayidle usathane useyoyidla ngamehlo usathane mletheningimsike itoloz!*'<sup>2</sup>. The hearing was postponed.

After the protest one of the traditional healers walks down to the Multi-Purpose Centre. The parliamentary constituency office (PCO) of the African National Congress (ANC) kindly agreed to allow a group of traditional and faith healers to use its boardroom and conduct mediation. Two cases were to be heard that day. The first case involved a young female traditional healer, *sangoma*<sup>3</sup>, who was engaged in

a dispute with her mother and her aunt. The young healer's mother and an aunt whom she lived with alleged that she had been disrespectful to both of them. The young woman was apparently fighting with her cousin as well as inviting friends to sleep over at her aunt's home without first obtaining her aunt's permission. On her part, the young woman claimed that her aunt had disturbed her space of practice as a healer (known as *indumba*), usually a designated place within a house or a separate hut. I was told that one should not be disturbing such spaced. The case presented a dilemma regarding the issue of 'respect': respect for one's elders and family members versus respect for traditional practices and sacred spaces. The healers emphasised both but chastised the young healer: moral discipline is seen as a component of any healer's training. The mediation court recommended that the family hold a meeting to discuss the issues further.

The second case was brought by a middle-aged woman who was undergoing training (*twasa*) to become a traditional healer. Unusually, she had been in this process with her teacher (*gobela*) for some 2½ years. She had spent over R20 000 in South African currency on her training. Yet, instead of being able to focus on the process of becoming a traditional healer, she was expected to do all the household chores and much of the other work around her teacher's home. The student's husband

<sup>2</sup> A male translator: 'He won't eat it again, he will only see it through his eyes. Bring him here, let me chop off his penis.' A female translator: 'This devil will never eat pussy. He will only look at it. Bring him here so I can cut off his dick.'

<sup>3</sup> 'Traditional healer' is an umbrella term which includes several types of healing. A *sangoma* is a type of traditional healer who practices divination, an *inyanga* is a herbalist, an *ababelethisi* is a traditional birth attendant, and an *ingcibi* is a traditional surgeon. All are considered traditional healers.

had tried to intervene but was threatened by the teacher and her family members. When consideration of the case began, the teacher was absent. The police were called, and the secretary of the healers' forum accompanied members of the police to fetch the teacher to attend the session. After the mediation process was completed, the student was released from the verbal contract with her teacher. She eventually found a new teacher who could provide her with training. Rumour in the township was that the original teacher passed away soon after the case was heard. Like many other individuals who are unfamiliar with traditional healing but who receive a 'calling' from their ancestors, this particular student knew little about the training process and was hence susceptible to exploitation. This was a concern raised by the healers during their deliberations.

The township of Alexandra (hereafter called 'Alex') was founded in 1912. Although it has an area of only 6.9 km<sup>2</sup>, in 2011 it had a population of 180 000<sup>4</sup>. Alex is bounded by the suburbs of Sandton, one of which is Rivonia, boasting "the richest mile in Africa". Alex is home to between 300 and 500 traditional and faith healers, a demographic that once served as counsel to chiefs and traditional leaders and, more importantly for the purposes of this chapter, acted as relevant deliberators in customary courts. Despite centuries of epistemic violence<sup>5</sup> and suppression, the healers in Alex have emerged to conduct a mediation court. The court is still in its early years, but the agency

of the healers displays a concern for the well-being of individuals, their social and familial relations, as well as a general desire for the township to flourish.

This chapter will first discuss the epistemic violence during the colonial era which has, through a discourse of 'health' and 'witchcraft', suppressed forms of traditional healing and replaced customary judicial practices with the system of magistrate's courts. The chapter then considers the effects of the apartheid era on Alex, briefly noting the anti-crime youth movement and community justice. While youth were for a time successful in reducing crime, and even received praise and confidence from the community, the youth's brand of 'justice' soon became over-enthusiastic and was eventually prosecuted as a form of sedition and subversion of the apartheid state. What emerged during the first decade of the 2000s, from this historical context of colonialism and apartheid, was the healers' mediation court. Not only do the healers address various issues regarding traditional healing such as accusations of witchcraft, but they also concern themselves with a range of social, family and cultural disputes that arise within the township.

## Health, witchcraft and justice

In South Africa, customary law (also known as 'indigenous law') is formally recognized by section 211(3) of the Constitution and is technically placed on an equal footing with

<sup>4</sup> This is the South African 2011 Census figure. Current estimates are that the population of Alex is between 750 000 and 800 000.

<sup>5</sup> Drawing on Gayatri Spivak's (1988) use of the term to illustrate the violence of historical discursive practices.

the 'common law'. However, the practice of customary law – outside of marital matters – is marginal and is seemingly far removed from the public eye. Legal recognition and “equal footing” in the Constitution does not result in equal standing or an enjoyment of equal infrastructural support from society, nor does it entail a resolution of past transgressions and historical imbalances.

It has been noted that during the pre-colonial era chiefs and traditional healers conducted customary courts to resolve various disputes,<sup>6</sup> but this system was suppressed and marginalised during the colonial and apartheid periods. One of the issues that contributed to such suppression was the concern of 'health' and 'witchcraft' which occupied colonial forces and Christian missionaries. In the nineteenth century, when European medical knowledge was far from its present state,<sup>7</sup> Great Britain launched a campaign which propagated a discourse of 'healing' the suffering in Africa and the “ailing” black body. This provided a public platform for an intervention disguised as a “mission to the suffering”, marking an era of so-called “humane imperialism”. It launched the initial stages of a discourse constructing a category of 'health' as development. In this regard, colonialists presented themselves in terms of a “heroic response rather than

an enterprise of political and economic self-interest”,<sup>8</sup> despite the latter being their primary concern. The Christian missionaries, of course, were interested primarily in the “*spiritual* suffering” of Africans. However, when the missionaries struggled to initiate a dialogue regarding spiritual matters, they changed their language to one of “decency, cleanliness, and health”. At the time, Christian medical missionaries were uncertain whether they could, indeed, effectively treat serious illnesses better than the local South African healers. They acknowledged that “Tswana populations tended to be 'remarkably' free of disease”<sup>9</sup>, yet the missionaries continued to argue that African people were “sentenced to death” owed to “their lack of self-determination, their filthy habits, and their brazen nakedness”.<sup>10</sup> This put forth the interplay between Christianity and colonialism through a discourse of 'health' and a body politics by which “persons were disciplined and communities redistributed in the name of sanitation and control of disease”.<sup>11</sup> In other words, 'health' became a conceptual category that was framed to address both the spiritual agenda of the missionaries and the colonial agenda of power through control and economic exploitation. The emphasis on 'health' not only contributed to issues of control and power but its emphasis

<sup>6</sup> Several healers in the township had mentioned this to me; see also Hund (2000: 367).

<sup>7</sup> Nineteenth century Europe drew primarily on the theory of humours, which designated four humours (blood, phlegm, black bile, and yellow or red bile) and their imbalances – a lack or excess of any – as causes of various physical and mental illnesses; bloodletting was a widespread practice. Cocaine was used as a remedy for 'tooth-ache': Sigmund Freud prescribed the drug to his patients. Opium was sold on the streets with city permits.

<sup>8</sup> Comaroff 1993: 313

<sup>9</sup> Ibid: 315; Citing Seeley 1973: 81 and Willoughby 1899.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid: 319

on the physical – sanitation, disease, cleanliness, etc. – further served to uproot local African understandings of the body and its metaphysics, which went beyond the physical.

Concurrent with this agenda, the colonial government introduced several pieces of legislation that would restrict the ownership of property by black South Africans (the Native Location Act of 1879) and perpetuate views of the black body as one of impurity (the Contagious Diseases Act of 1885). Such pieces of legislation, under the auspices of ‘health’, were utilised to control local populations. Moreover, they also actively sought to eradicate traditional medical practices by introducing the Witchcraft Suppression Act of 1895 (based on the 1735 Witchcraft Act in Great Britain<sup>12</sup>). That is, traditional healing practitioners and their clients/patients were criminalised by law at the intersection of ‘justice’ and ‘health’. The 1895 Act would come to be reinvigorated by the Afrikaner Nationalist Party in their Suppression of Witchcraft Act of 1957.

By this time, the epistemic violence inculcated by historical discursive practices of ‘health’, ‘suffering’, and ‘well-being’, which would supplant African understandings with European ones, was solidified by way of a government that maintained a system of white welfare dependent on black labour. Through a

political violence of control, an economic violence of exploitation and an epistemic violence under the guise of a “mission to the suffering”, the discourse of ‘health’ and ‘witchcraft’ contributed to the instantiation of an imported punitive judicial system<sup>13</sup> which was alien to the black majority. The colonial and apartheid governments would effectively institutionalise their own brand of ‘medicine’ and ‘justice’, while leaving their African counterparts behind in a wounded and discouraged state.

## Apartheid in Alex: justice on the ground

During the apartheid era, community justice was conspicuous in Alexandra and in many of the townships. But contrary to the ways in which it was once practiced, communal justice would become labelled as mob justice. At its most extreme, the residents of Alex would seek out perpetrators and burn them after beating or stoning them (e.g. those accused of being ‘witches’). Often, such events would take place without meaningful deliberation of innocence or much consideration of the consequences for that person’s social relations. Hearsay and witness corroboration were the primary mediums for justified action.

In the mid-1980s, when violence occupied much of South Africa, committees were established in various townships by yard,

<sup>12</sup> The Act was repealed in Great Britain in 1951.

<sup>13</sup> This not to say that the individualist punitive model of justice is necessarily Eurocentric. Indeed, in this case, the Eurocentric critique is also Eurocentric. There are many judicial models that employ punishment, execution, exile and public humiliation as a means of reducing violence and criminal activity. However, the methods of punishment and deliberating criminality includes a cultural logic. It is here that a European model will differ from an African or any other model of punishment and jurisprudence.

by street, and by block, to manage their affairs.<sup>14</sup> The idea of street committees was shared as a way for South Africa's black majority to "take their destiny into their own hands and show that they are able to live as human beings and as a community, sharing the sorrows and sharing the joy you know together as a community."<sup>15</sup> In other words, conflict management and consensus-building were introduced by the people's own agency at varying levels of the 'local'. These committees continue to exist in the township today and convene for various social concerns.<sup>16</sup>

As ideas were beginning to take shape, the youth<sup>17</sup> of the 1980s were in motion. They created anti-crime patrol groups<sup>18</sup>, moved from shebeen to shebeen to deter the youth from drinking and encouraged them to go home and study.<sup>19</sup> During the 1996 Truth and Reconciliation hearings in Alex, Obed Bapela stated: "The type of funerals that took place ever since were the people who died because of natural causes."<sup>20</sup> Moreover, weapons were confiscated and destroyed by

the anti-crime youth group, which gradually gained the confidence of their communities and of the township:<sup>21</sup>

"[People] started bringing problems to the youths, saying "I have got a problem with my neighbour" or "I have got a problem with my wife" and so forth ... Obviously they were quite selective, they were only looking for those violent types of cases. They would start putting the complainant and the perpetrator together and say "can we talk amongst ourselves and resolve this matter amicably". [...] So it was more to give advice than really to prosecute or to sentence people.

...

But unfortunately, as time went on, after the six-day war, when now everyone was angry, it was the deaths and Alexandra was unsettled ... Some of the youths got excited, unfortunately. When people were brought, instead of resolving those problems ... they started trialling people and prosecuting them; in some instances then they would sentence them to sjambokings and so forth.

<sup>14</sup> Obed Bapela, during the 1996 Truth and Reconciliation Commission ('TRC') hearings in Alex, states that these committees were first formed in the Eastern Cape.

<sup>15</sup> Ibid.

<sup>16</sup> For instance, street committees have met regarding the efficacy of health clinics and the need for additional police presence on the ground.

<sup>17</sup> Bennet Lekalakala, also during the 1996 TRC hearings in Alex, states:

"In early 1986 Alex erupted in violence and joined the countrywide revolt. The youth joined hands with Alex Civic Association and the newly formed Alex Action Committee. This increased confrontation with the state. Local grievances and structural factors taken together prompted a challenge to state control at the local level. What took place in 1986 in Alex was a movement from communal outrage to avid rebellion. The period was characterised by mass funerals where people were tear-gassed and restrictions were placed on funerals. However, these restrictions were defied by members of the community."

<sup>18</sup> Ibid.; patrol groups continue to exist in Soweto.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

So it then became a norm in those people's courts ... When we were arrested, amongst the charges under sedition and subversion was that we had run those courts. But the intention there from the state was that we had taken over the justice administration, which is the function of the South African government and was now in the hands of the people. Therefore we were furthering the aims of the ANC and the South African Communist Party, that of overthrowing the state and replacing it with the organs of people's power."<sup>22</sup>

The youth-led initiative to reduce crime became a political gambit, framed as an "organ of people's power", between the state and liberation parties. Prior to its politicisation, the youth had taken it upon themselves to look after their homes, yards, streets and blocks, despite their marginalisation, the systemic injustice with which they were treated and the prevalence of crime and violence within the township. As mentioned above, the anti-crime youth groups were useful and, to an extent, effective. However, without disciplined and supporting structures, it is not surprising that the violence created a form of righteous zeal that would become their downfall and eventually lead to their prosecution for crimes against the state. The historical narrative would suggest that after colonial forces impeded and suppressed the customary courts, the elders, chiefs and traditional healers who were disciplined in the functioning of their societies were unable

to support community-led justice systems in the way they were known to have done previously. The lack of supporting social structures for the youth-led anti-crime movement and its criminalisation follows a historical trend of suppressing local justice mechanisms on the ground.

Furthermore, in 1996, members of the Ralushai Commission submitted a report that criticised "law enforcement agencies and the Suppression of Witchcraft Act as an ineffective solution to the problems of witchcraft and witch-killings".<sup>23</sup> Not only did they report a proliferation of unfounded accusations of witchcraft, but customary judicial measures on the ground, which drew on traditional authorities and healers, were also criminalised. Such practices were considered "repugnant to the 'civilizing mission' of the white, Eurocentric apartheid government", which would go on to sow the seeds of mob justice.<sup>24</sup> Emerging out of this historical context of anti-crime and witchcraft suppression comes the mobilisation and organisation of traditional healers in Alex and the insemination of the mediation court by the Alexandra Traditional and Faith Healers' Forum (subsequently referred to as 'the Forum').

## Healers' mediation

The Forum consists of two elected representatives from each of the four healer organisations in the township of Alex. The elected representatives decided amongst themselves who would fill the positions of chairperson, deputy chair, secretary, deputy

<sup>22</sup> Ibid.

<sup>23</sup> Niehaus 2001: 188.

<sup>24</sup> Hund 2000: 367.



secretary and four coordinators. In 2017, five women and three men comprised the Forum<sup>25</sup>. All of them traditional or faith healers.

An often-quoted statistic is that 80% of black South Africans frequent traditional healers.<sup>26</sup> If this statistic is true, then traditional healers are a significant point of contact for the local population regarding their well-being. Traditional healers are commonly understood within the scope of health care; even in South Africa's legislation they are considered 'traditional health practitioners' and framed within the 2007 Traditional Health Practitioners Act; this contains several unreasonable regulations, given the lack of support and structure from government, and the considerable discrepancies in terms of how healers practice.<sup>27</sup> Moreover, the 2007 Act aims to subordinate traditional healers to the power structures and conceptual frameworks of the Department of Health.

Traditional healers, however, engage in an operative scope of well-being that goes far beyond the conventional paradigm of 'health'. In addition to addressing physical ailments, which tend to be associated with ancestral concerns, they also "offer a wide range of counselling, divination/ diagnostic" services that address "anxiety

and depression", advice on various decisions and enhancement concerns such as increased business, promotions and protective services from "motor accidents, theft, witchcraft, infection, unemployment and loss of love, lovers or spouses". They are also consulted for "lost or stolen objects" and persons.<sup>28</sup> In this regard, traditional healers are engaged in the well-being of individuals and their concerns. Moreover, the healers in Alex are also involved in community concerns such as youth and education, domestic abuse, violence and crime, as well as interfaith engagements.

For the past six or so years, the Forum has been conducting a mediation court within the township. They address two to seven cases a month, which involve, among other conflicts, issues of witchcraft and bewitchment, domestic abuse and violence, property disputes, family and neighbourly concerns, and malpractice by healers. They are also engaged in settling financial and other disputes between healers and their students.

When there is at least one case, the healers convene once a week to deliberate on such matters. The process is usually initiated by a complainant who has either taken a case directly to the PCO or spoken to a healer who referred the person to the PCO. The

<sup>25</sup> The Forum is changing how it selects members. When elections are not always available, or the organisations do not fully co-operate in selecting a representative, alternative means are employed, e.g. recommending that a healer be a part of the Forum.

<sup>26</sup> Mbatha et al. 2012, unofficially confirmed by Thornton 2016; the statistic has, however, been disputed: cf. Nxumalo et al. 2011.

<sup>27</sup> The 2007 THP Act, however, is incongruent with the lived experiences and practices of traditional healers in the township. Disputes have also arisen regarding the relationship and power dynamics between traditional healers and the Department of Health.

<sup>28</sup> Thornton 2009: 17.

PCO then sends out a summons to all the parties involved, as well as to any witnesses. When a party does not show up on the summoned date, the secretary of the Forum accompanies a police officer to retrieve the absent party. When both parties are present, the eight members of the Forum first hear the complainant's side of the story and then asks questions to obtain clarification and insight. The defendant will then share his or her side of the story, during which the Forum will again ask questions. Once both sides have presented their cases, then either with or without the parties present in the room, the Forum will deliberate and recommend a course of action so the parties can move forward from the dispute. Prior to presenting a mediated solution, the healers often speak at length, offering advice and guidance to both parties about what had transpired and their courses of action. Moreover, the healers may also potentially draw on an ancestor during their deliberations. For example, one healer noted that the ancestor could vary from day to day. On the mother's side, a great-grandmother or grandmother may be present. On the father's side, a great-grandfather or an uncle. The particular set of ancestors is not a decision made by the healer, since their ancestors have chosen them, and the physical body may differ from what is spiritually expressed.

The Forum consists primarily of women, but the members may also draw on an ancestor, who could either be a man or a

woman.<sup>29</sup> Collectively, they have offered recommendations such as payments through monthly instalments, family or yard meetings, or the release of a student from a verbal contract with a teacher. They may even suggest that the parties proceed to the magistrate's court.

The healers' mediation court is marginal in many respects, since it is lacking in resources, visibility and a working relationship with the legalised judicial system. However, it does provide a service that engages with concerns that fall outside the scope of the magistrate's court. In theory, the members of the court hold themselves accountable to a degree,<sup>30</sup> and monitor any healers who may be perverting the practice, or abusing their positions just as the mediation court also curbs any accusations of bewitchment before they spiral out of control.<sup>31</sup>

The mediation court is much less costly and time-consuming than the magistrate's court. Once a case is filed, it may be heard the following week. During their proceedings, the healers speak in local languages and operate within a set of metaphysical heuristics that resonate with the people who seek their services. Unlike the magistrate's court, the healers' mediation court further combines custom – previously suppressed by colonial and apartheid forces – with pragmatic adaptations and approaches to contemporary circumstances.

<sup>29</sup> A pressing concern from civil society organisations, non-government organisations, embassies and related structures is the patriarchal dominance of social institutions.

<sup>30</sup> This is coupled with their certification system; in theory, it should enable the representatives to report to their respective organisations regarding any malpractice conducted by their members, and provide recourse for the organisation to discipline a healer, although how frequently this actually occurs is another question.

<sup>31</sup> In the past, healers accused of being 'witches' have been burned alive in the township.

## Healing justice

Every justice system has its own set of social, cultural, legal, and economic histories. Like many customary judicial practices across Africa, colonialism has suppressed, crippled and buried local expressions and understandings of justice. In South Africa, a humanitarian veil was fashioned through a discursive “mission to the suffering” which ultimately combined colonialism, nineteenth-century European medicine and the Christian mission to cultivate a history of ‘health’ as a means of ‘development’, control and exploitation. Concerns of witchcraft and the precarious colonial order led to the suppression of traditional healing practices and systems of justice led by chiefs and healers. Eventually, both medical and judicial practices would be replaced by European institutions, situating South Africa on a trajectory towards a legacy of asymmetrical proportions and advancement.

The healers’ mediation court contingently emerges from this history and from the anti-crime youth movement during apartheid. Since the new dispensation, according to the Constitution, customary law has been placed on an equal footing with common law. However, an equal standing in law holds little significance in a lopsided landscape of recognition, institutional support and distribution of resources established according to the country’s historical precedent. In other words, the state of governance and operative institutions inherited from colonialism, as well as that of apartheid, have advanced the current legal system, while local, pre-colonial practices of the land and its people have been ignored.

No significant efforts have been made to recognise, legitimise or provide any official support. The traditional healers of South Africa have gone through generation after generation of South Africa’s ugly history and its implicit agenda directed against their practices. They bear witness to the atrocities and epistemic violence against South Africans and the practice of traditional healing which continues to this day in the country’s “post-apartheid” era.

While the consistent stream of resources and development for the magistrate’s court system has made it suitable for the addressing of serious crimes such as child rape and murder, the healers’ mediation court, with the few to no resources available to it has, among other things, aimed to reduce witchcraft-related violence and familial disputes involving traditional healers, as well as abuses of power and exploitation; these are cases which may be unsuitable for the magistrate’s court owing to a lack of corresponding regulations, methods, procedures and cultural logics. The healers’ mediation court addresses disputes and aggressions on the ground, in the people’s own languages, within their own cultural and religious frameworks, and before such cases escalate into greater violence.

For example, the mediation court was able to resolve financial disputes between a teacher and a student-healer without the contractual paperwork that might have been required for the magistrate’s court. Moreover, neighbours or family members might accuse one another of bewitchment because something was buried in the yard, or because dirty water was poured in front of a door. In this context, the healers are capable

of addressing witchcraft accusations, issues of respect, taboo, sacred spaces and various other cultural and social concerns. The healers address a myriad of concerns across social spheres and are in the process of restoring a sense of accountability and responsibility to their identities and practice.

At present, the healers' mediation court lacks the resources to organise itself properly. It is without an office of its own and lacks support, apart from the PCO, for record-keeping and storage, as well as lacking administrative and technological support (e.g. no computers or audio-recording devices). It convenes voluntarily, as elected members of the Forum, and engages in the cases brought to it without any form of compensation, or even refreshment, during the proceedings; at times the court members may be deliberating on cases from morning until late afternoon. Thus far, through their own networks and various affiliations, they have managed to liaise with the local police, ADAPT and the PCO, while retaining good relations with a major law firm that conducts *pro bono* work in the township. In this regard, they are well-informed intermediaries between conflicts on the ground and formalised legal structures. Moreover, the majority of healers in the Forum are women, and they may also draw on women ancestors. They were born and raised in Alex and have seen how the township has changed, how it has stagnated, what is happening on the ground and which social concerns require attention and improvement. Metaphorically, they are engaged in the work of healing society, particularly the persons who seek their consideration.

South Africa's history further illustrates how local, indigenous forms of justice have been wounded, which is further evidenced by the current lack of national support and recognition as an operative structure and institution. The healers' mediation court is, in this sense, also a means of healing residual colonial damage by reviving and reinventing a custom and pragmatically adapting it to heal contemporary urban problems within a township. In this sense, there is a 'justice' that requires healing and a form of 'justice' that heals.

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### 3. Mending social relations: Community court in a Namibian village<sup>32</sup>

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**MAGISTRATE** **OFFICE**  
**OMARURU**

On a relatively cool Thursday morning, the Namibian village of Okombahe slowly awakens and two elderly men arrive at the community court building at 09:40 a.m. Inside a modest assembly room that has seen better days, two women begin setting up the court. At the front, three microphones are placed on a rectangular desk before three chairs. Three signs, printed in block letters, are taped on the wall: 'Switch off all cellphones', 'Silence in the court!', and 'No eating in court!', each of which has an Afrikaans translation below it.

On the right side of the room, a piece of paper with 'Defendant' typed on it is taped on the wall. Two chairs are placed beneath the sign and there is a microphone on another chair in front of them. On the left, beneath a sign with 'Complainant' typed on it, a single chair and a microphone are set up. The two elderly men sit down on the 'Defendant' side.

A middle-aged man arrives and sits on other side. At the front, the two women who were setting up the room (a young clerk and a middle-aged, traditional authority assessor) and another elderly man, a traditional authority and judge, take their seats.

The case begins; the complainant proceeds to tell the three authorities his version of events. They sit silently and listen attentively. The clerk diligently transcribes the complaint (an audio recorder is in place as well). She will later translate the transcription into English for official records. The two elderly

men are the complainant's uncles. They are accused of continuous insults, i.e. *crimen injuria*. After listening to his case, the elderly man asks a few questions to which the complainant replies promptly. With the estimated village population being only 2 500, such insults can carry weight, with potential social and economic ramifications.

The case continues in Khoekhoe, the language of the Damara.<sup>33</sup> The uncles are given the opportunity to state their defence. Again, the elderly man asks a few questions of each of them. After both sides of the case have been heard, the elderly man excuses the three men to move to an adjacent room. The two women and the elderly man begin to deliberate. After a period of discussion, they call the two parties back into the assembly room. They rule in favour of the complainant and issue a warning to the defendants. The uncles promptly get up to apologise and shake their nephew's hand. As they shake, they smile and laugh. The charges against the defendants are their first. No fine is issued and the apology is sufficient. The uncles leave the assembly room with gaiety, and the case is over. When the complainant was asked if he was happy with the outcome of the case, he stated "very", and went on to say that instead of going to Omaruru, a neighbouring town, it was "much easier here" in Okombahe. "We are the same people".

What may seem like a trivial matter of insults between family members is a significant one in a small village, where insults can lead to

<sup>33</sup> Okombahe consists primarily of the Damara (=Nûkhoen) people with a minority Herero population. However, the Damara language is not recognised as an official language in Namibia, as are English, Afrikaans, German, Otjiherero, Khoekhoe, Oshiwambo, Kwangali, Setswana and Silozi. The following are recognised regionally: Ju'hoansi, Rumanyo and Thimbukushu.

altercations and domestic violence. Words are often tied to the representation of self and the words we receive and give can influence our day-to-day activities. Public humiliation and the humiliation of friends can motivate action, whether trivial or drastic. In Okombahe, the excessive consumption of alcohol in the *tombo* (traditional beer) houses has been repeatedly noted as a problem for the village. Employment is low and there is little else to do in the draining 30-degree heat. A local resident in the neighbouring city of Omaruru notes the frequency of knife-killings. Radio personalities talk about students bringing knives to school. The magistrate's court in Omaruru, which handles court cases in the Erongo region, including Okombahe, reports that stock theft, housebreaking, theft and assault are the most common cases that arise from the region.

Access to justice in the magistrate's court for the Damara people in Okombahe is constrained by poor proximity and limited transportation. The village of Okombahe is approximately 60 kilometres from the magistrate's court in the town of Omaruru. The local taxi usually makes one trip a day, sometimes two, from the village to the town. In this regard, it is not always practical to take a case to Omaruru. The community court provides an option that is accessible to the people in the village. Within the framework of Okombahe's customary law, it is capable

of addressing a wide range of disputes that emerge in the community: assault; domestic assault between boyfriend and girlfriend, or husband and wife; property theft; stock theft (cattle, goats, donkeys, chickens); arson; adultery; impregnating a girl; inheritance; debt; rape; witchcraft; murder or culpable homicide; and insult that impairs one's dignity or privacy (*crimen injuria*). Through the community court, many familial and social relations can be mended before they escalate into more serious matters that will have to be addressed in the magistrate's court.

This chapter focuses on women and justice on the ground in the Namibian village of Okombahe. First, the emergence of community courts and their constitutional legitimation in Namibia will be noted. The focus then turns to Okombahe, the Damara people and their community court, and then to the women of Okombahe, social change and justice on the ground. In closing, the chapter addresses civil society organisations in relation to women and justice in Okombahe.

## Community courts in Namibia<sup>34</sup>

Namibia is characterised by its ethnic heterogeneity, with no single, homogenous tradition of community courts and customary law. This is evident in Manfred Hinz's

<sup>34</sup> Each of the courts we visited in 2017 had a different history and belonged to a different ethnic community and/or clan. Our visit to these particular courts formed part of an exploratory study to ascertain the relevance of the Namibian case in relation to a comparative study of community courts across the southern African region. The Erongo region was chosen as the first among further case studies in other regions of Namibia, particularly because literature on the courts in this region is lacking. We visited villages in the region (Okombahe, Omatjete, and Uis) where community courts related to the regional magistrate's court in Omaruru. The communities we visited seemed to reflect the complexity of the integration of tradition-based and state institutions, in a quasi-urbanised context, in a central region that has been tremendously influenced by colonialism, unlike northern Namibia. Among the three communities we visited, Omatjete was one of the first to install a court after the ratification of the community courts law, whereas the village of Uis had only recently established its community court.



extensive documentation of a wide variety of customary laws, at the request of the Namibian government, to assist in the law reform process<sup>35</sup>. Ethnic groups in Namibia have been affected by colonialism to different degrees. Whereas the population groups in the centre of the country, in the vicinity of Windhoek, the current capital, have been under the direct and constant influence of missionaries and the colonial rule of Germany (from 1884 to 1915) and then South Africa (from 1915 to 1989), other regions in the far north or in the dry south have been less affected, and have maintained their way of living and culture more than the central regions.

In Namibia, the 2003 Community Courts Act<sup>36</sup> that followed the Traditional Authorities Act of 2000 laid down the basics for the official recognition and installation of community courts as they operate today: “A traditional authority of a traditional community may apply in writing to the Minister for the establishment of a community court in respect of the area of that traditional community”<sup>37</sup>. The act allowed for the inauguration of a community court by recognised traditional authorities on the basis of a group’s customary law, insofar as they were in accordance with the constitution. Previously, most communities had traditional authorities such as chiefs or councils that played a central role in conflict resolution. According to the Deputy Director of Community Courts, 37 community courts have been officially recognised in Namibia. While there have been functioning courts in

the northern regions, not all of them date back to a pre-colonial traditional institutions, but have been applied for by local authorities. The ratified community courts belong to the sphere of the state and certain cases (such as murder) must be forwarded to the magistrate’s court of the region. For Okombahe, the regional magistrate’s court is located in Omaruru. The installation of community courts triggered a process of documenting the variety of customary laws and revived a cultural memory of law practices intertwined with issues of identity and the power politics within each community, as well as the nation.

## Okombahe and the Damara community court

Located in a valley on the Omaruru River, the settlement of Okombahe is regarded as the capital of the Damara (*≠Nûkhoen* which means ‘black people’ in the Damara language). It is situated in a valley and split by the Omaruru River. Okombahe is the village’s name in Otjiherero, the language of the Herero people, but the majority of those living there are primarily Damara. The Damara name for Okombahe is /Â-≠Gomeb which means ‘wet-side’. A senior headwoman, also a messenger of the community court, tells a story that when the Damara people were travelling, a dog found the river, which the Damara chose to build their village around, and returned to them with only one side of its body wet. Although Okombahe lies on the bank of this river, the village has suffered since the 1990s

<sup>35</sup> See Hinz 1999, 2008, 2010.

<sup>36</sup> Government Gazette of the Republic of Namibia, Community Courts Act 2003 (Act No. 10 of 2003), Windhoek, 19 August 2003, No. 3044.

<sup>37</sup> Ibid.

from severe drought and its subsistence on wheat and cattle has diminished, which is a source of conflict within the community. Nowadays, water is acquired from several water taps around the village, which can only be accessed by means of a pre-paid card. There is very little economic activity within the community of Okombahe. Social ills caused by the desolate landscape are central to Okombahe's challenges. Despite being declared a settlement in 2015 by the Ministry of Urban and Rural Development after more than twenty years of lobbying<sup>38</sup>, the promised development of Okombahe has not materialised.

For the Damara, Okombahe is a place of great cultural significance. The late Damara king, David Goreseb, is buried in Okombahe at the Gaob Memorial Stadium. Every year, Damara clans around Namibia gather for the Kings' Festival, to commemorate the death of King Goreseb. At the festival, the various Damara clans arrive in their traditional regalia and clothes. They discuss the kings' legacy and educate the youth about their customs and cultural practices. Okombahe is headed by the politically influential Chief Immanuel! Haoseb (chairperson of the Council of Traditional Authorities of the Namibian Government) and the community court draws on a long tradition of conflict resolution gatherings, headed by traditional authorities who are well respected by the villagers. Customary laws are reported not to have changed much and traditional authorities continue

to play a central role in the governance of the community. Yet the traditions, customs and rituals have been fading away. In the past, initiation rituals played a central role. Elders within the community recall coming-of-age rituals for women, where they would be required to sit in a hut for the duration of their first menstruation. According to archival documents on the Damara, when men came of age, they would engage in a hunting ritual. However, these rituals no longer exist.

The Okombahe community court was established in 2012 and hears approximately 70 cases per year. It is headed by the chief, deputy chief, headmen and headwomen. The court is held in a building opposite the memorial stadium where the court's office, with a full-time clerk, is also located. Any complainant must first contact the clerk, who documents the cases and invites the accused, by way of court messenger, to court. The clerk may also consult with the deputy chief and traditional authorities to get their input. After the case has been taken on, the two judges undertake investigations to secure evidence. In Okombahe, traditional authorities, who make up the Traditional Authorities Council, deliberate on issues of land and may serve as both headmen/women as well as community court judges. The court deals with an array of cases<sup>39</sup> but most often with theft and assault. More severe crimes are referred to the magistrate's court in Omaruru. The most difficult cases, one judge reflects, are those of land and inheritance.<sup>40</sup>

<sup>38</sup> Nampa 2015 < <https://www.namibian.com.na/index.php?id=139720&page=archive-read> >

<sup>39</sup> As noted above, common assault, assault (grievous bodily harm), domestic assault, theft, stock theft, malicious damage to property, arson, adultery, inheritance, debt, rape, witchcraft, murder/culpable homicide, and crimen injuria.

<sup>40</sup> It would seem, then, that the Traditional Authorities Council and the Community Court deliberate on different types of land issues and processes.

Anyone from the community is welcome to attend a court hearing and is offered a chance to share their views. The court will usually begin by hearing the plaintiff and the defendant's cases, followed by an examination of the evidence. The judges then offer advice, make suggestions and intervene in an appropriate manner to resolve the conflict. They may refer to the evidence, to customary law, or to the Bible. One of the judges explained how people come to the court with tears and together they will talk until they smile again (in the original Afrikaans: "Mense kom met die trane in en ons praat tot hulle lag"<sup>41</sup>). In some cases, the guilty party will be asked to pay compensation. While the new interpretation of customary law has translated 'compensation' in terms of monetary value, on the ground other forms are accepted, according to agreement and capacity. At times, incremental payments may be made over an agreed period of time. In other instances, a goat may be offered in lieu of payment. The flexible way traditional authorities and judges interpret and implement the provisions outlined in the Customary Court Act is shown by the way in which the specific situations of community members are taken into account. At the end of a session, the conflicting parties come together and apologise, a distinguishing feature different to the magistrate's courts. In this regard, the community court restores a sense of social harmony between parties who will probably interact with one another in the village. They also prevent offenders from getting a criminal record and being sentenced to time in jail. Not only does this prevent

households from losing sources of income, but also prevents the guilty parties from losing current and future employment.

The community courts in Namibia certainly play a significant role for justice on the ground. However, this constricts 'justice' to a particular space. Indeed, justice on the ground is much more pervasive, as the following section will show in relation to women's roles in Okombahe.

## Social change and the role of women in justice on the ground

Like many communities on the margins of urbanisation, Okombahe has not remained unaffected by changing sociocultural ideas regarding interactions between men and women, and the power relations that delineate these interactions. Among other factors, these have been shaped by changes in the political landscape, the independence of Namibia in 1990. Colonialism, Christianity and apartheid have had a considerable impact on relations between men and women.<sup>42</sup> Moreover, Damara customs and traditions within Namibia's colonial and apartheid history have woven a complex tapestry regarding social roles. For example, Damara women, as far as we can ascertain, have always been able to own and inherit land, yet prior to the constitutional provision, women were not typically part of the institution of traditional leadership. In other words, despite their capacity to own land, they were excluded from positions of power, which may have more to do with the intervention of colonial and Christian norms than Damara traditions.

<sup>41</sup> 2017 Interview.

<sup>42</sup> Angula 2010; Becker 2006; LaFont & Hubbard 2007.

After independence, the country's constitution recognised the rights of women and the need to promote and protect them. As expressed by a woman in Okombahe, "It's now 50-50", which highlights the equality between men and women provided for by the Namibian Constitution after independence. The extent to which these constitutional provisions have been significant in shifting the dynamics between men and women within the community is, however, uncertain. Women continue to face prejudices and biases to different degrees and across various social spheres of participation. The provision has, however, enabled women to take on formal leadership positions, such as that of chief or headwoman. The women of Okombahe have gone beyond the household and into the broader community to fill vacuums in leadership and to provide material resources.

For example, the messenger of the court, a grandmother and caretaker of her two-year-old grandson, is also a headwoman of her farms, since the Constitution allows women to hold this position. She has two farms; other headmen and women may have three or more. She told us that it is the responsibility of the headmen or headwomen to resolve conflicts on the farm. If a matter cannot be resolved, the conflict may be referred to the deputy chief with the Traditional Authority Office. When she was asked if there were any challenges associated with being a woman in this role, she stated: "It's a bit difficult if you're a woman; men are very hard-headed. Most of them do listen, but some disrespect you if you're a woman."

She described an ongoing situation at one of her farms. A man had been misusing water, a critical resource in a drought-stricken semi-desert area like Okombahe. In order to resolve the situation, she met with the man and others on the farm to discuss the issue. Together, they sought to reason with the man and find a way forward. If the issue remained unresolved, she might expel the man from the farm, but she was averse to doing this as the livelihood of the man and his family depended on their living on the farm.

As described at the start of this chapter, there are three people who are centrally involved in deliberating a judgement: a judge, a clerk and, in lieu of the messenger, the assessor and secretary at the Traditional Authority Office. In the time spent at the court offices, it was clear that the messenger and the clerk, both women, ensured the day-to-day function of the community court. They were at the court office during the week and fulfilled various duties, such as handling initial reports from complainants, taking cases to the Traditional Authority Office for further discussion, referring cases to the police or relevant stakeholders, informing defendants of the complaint and communicating with the two judges. They set the date for the hearing and ensured that all parties, including the judges, were present at the hearing and participated in deliberations. The clerk was also responsible for recording the hearings and ensuring that monthly reports were sent to the central offices in Windhoek.

Although formally the two judges are men, the court was very much dependent on the two women, the clerk and the messenger.

At the Traditional Authority Office, the assessor and secretary of the office – also a headwoman – was at the office daily and engages with the everyday concerns of the community. At the Lutheran Church, the pastor's wife, also a secretary at the local high school and a women's leader in the ruling SWAPO party, had taken initiative with women in the community to develop a communal vegetable garden, a soup kitchen and a sewing project. All of these women were from Okombahe and had a vested interest in the community. In contrast, many men who were involved in running the village (councillors, the headmaster of the high school and Catholic and Lutheran leaders) hailed from outside Okombahe.

Okombahe has clearly seen better times, when the river flowed and crops were abundant. A general sense of social disintegration pervades the community. Although the annual Kings' Festival is as a reminder of Damara identity and history, the youth are reluctant to participate. Rituals and ceremonies have diminished importance for the young or are no longer practiced. Some of the adults complain that there is "no discipline" and no structure in place to manage the youth in Okombahe. School drop-out rates are high. Some young people are suspended from school for smoking or drinking, and fail to return. Others drop out to work on neighbouring farms, but many also fail to find employment. Those who are able to complete high school often leave Okombahe to find work in the nearby Swakopmund, or in Windhoek.

However, young women also play critical roles in the community. The court clerk is in her mid-twenties. The woman running the

Gender Office in Okombahe is also young and a driving force for change. The Gender Office, however, is primarily engaged with child welfare grants, and many of their issues deal with abuse of child welfare grants by parents. Often, we have been told, both men and women will spend these grants for their children at the tombo houses rather than on meeting the basic needs of their children. It is this woman's role to reason with them and try to convince them to take better care of their children. When this fails, she may refer the case to the social worker. However, there is only one social worker for the region and she is only able to come to Okombahe a few times a year. Beyond dealing with the abuse of grants, the woman running the Gender Office is trying to initiate a youth forum of key stakeholders to support youth empowerment projects. She aims to start a community centre that offers skills development opportunities for young people.

Speaking to elderly women and men of the community about their way of life in "the old days", it was previously perceived that the woman's place was in the home as a caregiver and teacher to her children and other members of the extended family. The role of the man was to go out and work to provide for his family. As expressed by one elderly woman in the community, "The man made all the decisions because he was the provider and the woman had to respect that."

Margaret Angula writes:

Amongst the Damara the man is defined a "man" as the middle pillar of the house. This is the central pole that holds the house intact. He is the tough tree that can survive long period without

water. This implies that a man is strong and can endure hardship and is able to protect his household. The “woman” on the other hand is defined as the foundation and keeper of the house. The Damara further regard a woman as a right-hand of the man.<sup>43</sup>

Yet much of this is changing in Okombahe. Many women have also become breadwinners. Undeniably, the Okombahe community cannot be described simply in terms of well-defined roles; these are negotiated on a daily basis by interactions between women and men, and are shaped by both internal and external dynamics. In a community with a high rate of unemployment, small businesses such as selling vetkoek<sup>44</sup> and other snacks to school-children are conspicuous sources of income, and are a trade primarily pursued by women. A recurring narrative in Okombahe is that fewer men are gainfully employed and many spend their days in the local tombo houses, drinking. Although women are also known to drink,<sup>45</sup> the general consensus is that it is predominantly a male pre-occupation. Men are also often said to be absent from the community because they work on distant farms, leaving women to play increasingly important roles at home and in the community.<sup>46</sup>

Amidst the sense of a community struggling to survive in conditions of severe drought, there is an awareness of social change and development. The messenger of the court

described how Okombahe had changed over the past few decades and mentioned the lack of public institutions such as clinics, schools or public offices. There was no community court and conflicts used to be resolved under a large tree. “The world is changing,” she told us, “We can go back to our old ways, but this is better for the young people – they don’t want to sit under a tree.”

## Closing remarks for civil society

Less than 20 years have passed since the passing of Namibia’s Community Court Act of 2003, and less than a decade since the establishment of Okombahe’s community court. And yet, despite such legal formalisation being recent, the merits of a community court are evident. Not only does it operate in the local language, but it is run by those who share a cultural and historical background. It also provides context-specific adjudication and sensitivity by authorities who are also concerned with the social ramifications of an offence. Addressing various conflicts on the ground also aims to maintain amicable social relations between community members and mitigates conflict prior to its escalation. The consequences of jail time and a criminal record can have detrimental effects on households that rely heavily on an individual’s income. Jail time suspends any source of income for the duration of a sentence. A criminal conviction can terminate employment and a criminal record could prevent future

<sup>43</sup> Angula 2010.

<sup>44</sup> A kind of fried dough bread.

<sup>45</sup> In one case at the community court, a man accused his wife of neglecting her duties towards him and his children, as she spent her days at the tombo houses.

<sup>46</sup> Angula 2010.

employability. The community court prevents such spiralling social and economic consequences.

The concern of jail and criminality has been repeatedly voiced in discussions on domestic abuse and violence; a number of such cases have gone to the magistrate's court in Omaruru. Women who endure abuse share a concern about losing their household's primary source of income and placing a financial burden on fellow community members. Both the Gender Office in Okombahe and the prosecutor in Omaruru, as well as others, have stated that many women will often withdraw reports of domestic violence before the accused can be prosecuted, out of fear of losing the primary breadwinner. Consequently, the local police no longer take accusations of domestic violence seriously; there have been too many experiences of processing all the paperwork, only to find that the cases are withdrawn. When this occurs, the surviving party does not receive any compensation or recourse, while the offending party continues without a criminal record. In this regard, the community court would seem well-positioned to engage with cases of domestic violence without the punitive model of the magistrate's court and its socio-economic consequences. The surviving party may have access to compensation and disciplinary action against the accused, while preventing the concern of jail time and a criminal record. Moreover, adjudication by the community court also gives notice to those within the

community about individuals with histories of abuse. In this regard, it is in the community members' interest to ensure that conflicts, no matter how trivial, are resolved within the community prior to escalation.

The issue of domestic violence illustrates the paradoxical position women occupy within Okombahe. On the one hand, they are subject to domestic abuse and are often survivors of it. On the other hand, they are the drivers of 'justice', with a greater concern for the well-being of the community. In this sense, they suffer for the household so that their partners may continue to support the family and retain employability. In other words, individual 'justice' is sacrificed for familial sustainability and social 'harmony'. Similarly, the women of Okombahe have positioned themselves in propagating a view of 'justice' that extends beyond the magistrate's punitive, individualist model with its legal, social and economic consequences.

At first glance, the structure of Okombahe's community courts and the primacy of the judges' voices and decisions may give the impression of patriarchy. However, this does not necessarily mean that women's voices are absent. While we can certainly raise questions about the extent to which women are taken seriously, but their continuous and consistent presence within the community court system ensuring its functioning, as well as their presence outside the community court structure suggests that the line

between patriarchal and judicial dominance is blurred<sup>47</sup>. As exemplified by the women quoted above, the advocacy of justice in Okombahe is more holistic. Not only are they the support that enables various structures to function, but they are also concerned social actors who take on community development initiatives, mediate conflicts and serve as drivers and leaders of justice on the ground. In other words, 'justice' is not confined to any single space, but also occurs within and between them.

Similarly, prejudice and bias can also cultivate a form of injustice that seeps into the cracks of Namibian social structures. The notion that community courts are "backward", "traditional", and "corrupt" is one that can be found in various offices in Omaruru. In other words, there seems to be little indication from many public officials, such as the magistrate's court and regional government departments, that the community courts are effective or even necessary. Imagined and conditioned conceptions can often colour views of how traditional authorities and community courts operate. Several public officials in Omaruru and Okombahe were unconvinced of the value of local community courts. A relatively new young public official was unaware of the community court's existence. Another official in Omaruru thought the community courts were backwards and susceptible to corruption. Yet another one did not think

they were helping to reduce crime and violence. None of them had ever been to a community court hearing. That is, there is a bias of imagination and understanding.

The community courts are contemporary representations of customary practices and have evolved within particular environmental, social and economic circumstances, as well as in accord with the histories of the land and its people. The merits of the court, on one hand, include mitigation of jail time and criminal records in circumstances where employment and income can be scarce. After years of colonialism there is also merit in employing a system of conflict resolution through one's own language and involving local people. In its optimal state, not only does it resolve conflict between parties prior to an escalation in violence, which may require a referral to the magistrate, but it also informs the community of those who are prone to offend again. Moreover, for those cases that require flexibility to achieve resolution, the community court may upon deliberation accommodate such instances.

It is all too easy to assume what a social structure should be without considering its function on the ground. Such presumptions have fuelled many ineffective top-down approaches to development and hard definitions of justice. Without experience of the environment, its deprivation, and the many actors on the ground, especially

<sup>47</sup> On one hand this raises further questions about the extent to which the community court structure and customary laws are in themselves patriarchal. The issue becomes whether women are simply upholding the social embeddedness of patriarchy. The same question can be raised with regard to the magistrate's court system. On the other hand, if the structure in itself is neither patriarchal or matriarchal, the community court of Okombahe presents a case of blended involvement and operationalisation. Both instances require an investigation into customary law and community court structures and how they are, or are not, 'patriarchal', as well as the cultural variance characterising 'patriarchy'; see footnote 10 (Angula 2010).



women, the disparity between deliberations at the top and everyday concerns seldom converge. In the case of Okombahe, and of Namibia in general, it is worth building a

greater alliance between community courts, magistrate's court systems and the women that enable them.

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# 4. Creating social harmony: Justice on the ground in Mudzi District, Zimbabwe

Ruth Murambadoro



## Introduction

In 2016 I took part in a community court hearing chaired by one of the local chiefs in Mudzi District, Mashonaland East, a province in Zimbabwe. Mudzi District has a population of 133 252 and it comprises three main ethnic groups; maBudya, maTonga and maToko, which all fall under the Shona group (Zimbabwe National Statistics Agency 2012). Mudzi District is less than 10 km from the Zimbabwe-Mozambique border, along Mozambique's Tete Corridor. It is largely rural, but the Nyamapanda border post and growth point area of Kotwa are peri-urban centres, which have electricity and tap water. In contrast, communities on the periphery rely on firewood for cooking, candles for lighting and borehole or stream water for drinking and personal hygiene, and much of the rural population uses a pit toilet or the bush for sanitation.

My visit to Mudzi District was arranged through two local conveners, who hosted me for over two months while I learned more about how justice occurs on the ground and which parties are involved. Early one Sunday morning, the chief of one of the villages in the District hosted a court hearing to resolve an issue of infidelity that had been brought to the *dare*. The term *dare* is the vernacular word for a court, but its use among the community members refers to an assembly where people come to resolve their issues, with family elders, community leaders or traditional authorities mediating or adjudicating the matter. When a *dare* sitting occurs, all the members of the community, both men and women, are welcome to attend and to participate. A *dare* is a highly regarded platform for interaction among

community members as people regularly gather at the assembly to deliberate and resolve any issues or points of concern.

In this chapter, I will begin by situating the community courts within the justice systems in Zimbabwe, following which I will examine the place of community courts in everyday life. I will also give an account of how justice is rendered through the *dare* at the community level. The chapter also explores norms, proverbs and social dynamics that influence relations of men and women in Mudzi District, after which I will offer some concluding remarks.

## Community courts in Zimbabwe

The Constitution of Zimbabwe (2013) recognises that there are two parallel legal systems in Zimbabwe, which fall under the categories of the superior courts (national justice system) and the inferior courts (community or tradition-based justice system). The divide between the national and community court systems was created during the colonial era, when the British settlers superimposed a Western system of government onto the tradition-based systems that existed among the African population in Zimbabwe (Mlambo 2014).

Mlambo (2014) argues that after the British settlers had tricked King Lobengula into signing the Rudd Concession of 1888, they implemented many other treaties to ensure their occupation of Zimbabwe. For example, through the Royal Charter (1890), the businessman and politician Cecil John Rhodes and his accomplices, established a semi-permanent governing structure through

the British South Africa Company (BSAC) to manage Southern Rhodesia (present-day Zimbabwe) on behalf of Britain until the 1922 referendum, which established a new colonial government (Mlambo 2014). The Royal Charter gave British settlers legislative, administrative and judicial powers, which enabled the BSAC government (and subsequent regimes) to establish formal laws that, in some instances, co-opted or eroded pre-existing customary laws. For example, a high court was established in Salisbury (present-day Harare) in 1894 to preside over disputes. The Court of Appeals (the Cape Supreme Court) was in the Cape of Good Hope, South Africa. The national court system was comprised of the Magistrates' Court, the High Court, Supreme Court and the Constitutional Court. A professional judge presided over these courts, which were very procedural and formal because legal representation was required during a court hearing and the Anglo-Roman-Dutch laws were used to reach a verdict.

Although the BSAC government established the national court system and utilized English and Roman-Dutch law, the customary laws of the African population remained in use, especially by the rural population, because the community structure was made up of people who belonged to the same ancestral family or bloodline. The family *dare* occurs within the family, while the village court and chief's court are usually located at or near the residence of the village head, headman or chief. Each community had a chief or family elder who served as a leader of the community in the physical realm, but the community was further connected to the metaphysical realm, comprising the ancestral

family (Gelfand 1973). The ancestral family are spirit beings of the departed members of the community, who form a generational pattern of communities that precede the current, living community. The ancestral community (the living dead) serve as a protector and guardian of the 'living living' (the people in the physical realm) and intercede for the people to God, who is the creator of all beings, be it in the physical or metaphysical realms (Gelfand 1973; Nyathi 2015). Aside from being the leader of the community, the chief or family elder serves as an arbitrator of justice in the physical realm, which usually occurs through the *dare* system. It can take the form of a family *dare* (within the family unit, led by an elderly family member), a village *dare* (led by a village head or headman) or a chief's *dare*.

After independence, the use of three official languages (English, Shona and Ndebele) enabled previously marginalised population groups to access the national justice system to resolve their conflicts, but these courts remain largely procedural (for example, requiring legal representation from a qualified lawyer) and informed by Anglo-Roman-Dutch laws set up during the colonial era (Saki & Chiware 2007). A large proportion of the African population in rural areas, who make up over 60% of Zimbabwe's total population, have remained without access to the national courts, mainly because of (i) exorbitant legal fees, (ii) national courts usually located far from the homes of many rural people, and (iii) the fact that cases take so long to conclude, making the process expensive and time-consuming for rural people to follow through (Bhebe & Ranger 2001; HZT & ZIMCET 2016).

The rural populace (including people in Mudzi District), have been left to rely on the community court system, which interviewees described as a three-tier court (*dare*) made up of the family court, the village court and the chief's court, as described earlier. The family *dare* occurs within the family, while the village court and chief's courts are usually located at or near the residence of the village head or chief. These officials often reside within reach of the community members and the community court hearings are guided by the cultural norms and values (*tsika nemagariro*) of the community that falls under the jurisdiction of customary laws.

Community courts are recognised by the government through the Traditional Leaders Act (Chapter 29:17) and customary law (Chapter 7: 05), and they are categorised as inferior courts because they can only preside over civil disputes at the community level (Constitution of Zimbabwe 2013). This means that the *dare* justice system has limited jurisdiction, only applying to matters enforceable under customary law, which involves cases of a civil nature.

Nonetheless, both the chief's court and the village court often intervene in various disputes affecting their community, and can issue lenient or harsh penalties to remedy local conflict. For example, in the case of infidelity, an offender may be compelled to pay a goat or a cow as compensation to an affected party. The case of infidelity examined in this chapter could, therefore, be handled through a *dare*, because the parties involved chose to follow the community court system, starting within the family, where the *tete* (aunt) was asked to intervene. When the aunt failed to resolve the matter,

she escalated the case to the village head, who subsequently referred it to the chief's court, where it ended up being resolved by the chief, following custom.

## Justice on the ground and the place of community courts in everyday life

At the chief's court, the chief's council oversees court deliberations. In this community, the council is comprised of two men and one woman, who serve as advisors to the chief and assessors of matters before the court. Members of the chief's council are selected from among people of the same clan, as the community structure is formed out of family or clan population groups that have settled within the same area. These family or clan groups are identified using totems: the totem represents the ancestral clan name, which enables the people to identify the family branch to which an individual belongs.

Each clan reveres the entity after which it is named. For example the *Dziva* clan respects water and would not consume any organism that lives in water. The *Dziva* people use the sub-titles *Save*, *Musikavanhu*, *Nyika*, *Pakuru*, *Sambiri*, *Musaigwa*, and *Ganda* to refer to their clan name, a practice that was used before the colonial era to identify persons. Other totems found among Zimbabweans are *Nzou* (elephant), *Shumba* (lion), *Moyo* (heart), *Gumbo* (bull's leg), *Ngoma* (drum), *Nhari*, *Shava*, *Nyathi* (buffalo), *Soko* (monkey), *Mbizi* (zebra), *Mbeva* (mouse), *Mhara*, *Tembo*, and *Gwai* (lamb) (Kwayedza 2014). Within

Mudzi District, the totems of the Shona clan groupings in the area are *Nzou*, *Tembo*, *Soko* and *Gwai*.

A totem embodies the moral values and norms (*Tsika nema gariro* or *Imikhuba lenhlalo*) that guide families, including choosing local leaders (who are appointed along either patrilineal or matrilineal lines) and marriage partners, as well as regulating many other day-to-day social activities. In the case of marriage, the offspring from the union adopts the patrilineal clan name. Clan names have been carried over generations and maintained through inter-clan marriages and the traditional leadership institutions. The village head, headman and chief are the traditional authorities and custodians of the family or clan name and its heritage, including land, mineral resources and nature.

The villages on the Mudzi communal land fall under six chiefs, namely Chief Chikwizo (of the *Nzou* clan), Chief Mukota (of the *Soko* clan), Chief Nyakuchena (of the *Gwai* clan), Chief Nyamukoho (of the *Nzou* clan), Chief Chimukoko (of the *Tembo* clan) and Chief Goronga (of the *Nzou* clan). The system of chieftaincy is hereditary and is passed from brother to brother through the patrilineal system within the same clan, except for Chief Chimukoko's clan, which is matrilineal and appoints women leaders who are selected by the *vadzimu* (ancestral spirits). Chief Chimukoko is the only woman chief in the area and possibly the oldest living woman in this rank among the Shona population group; her reign began in the early 1970s when the chief was still a teenager. At the chief's court, there is also *mupurisa wamambo* (the chief's security officer), who is responsible for maintaining peace and order within the court.

Before the current court session started, all the community members who had gathered for this assembly were invited by the *mupurisa wamambo* to enter the courtroom, which is a dilapidated one-roomed building that serves as a pre-school during the week and a *dare* over the weekends. In some instances, a *dare* is held under a tree, a feature that was said to embody great symbolism for people as the many branches of the tree resemble diversity, while the trunk which connects the tree to its branches and leaves represents the unity and harmony of the community.

On this Sunday morning, two men and a woman had come through to the chief's *dare* to resolve a matter of infidelity. Before this assembly, one of the men had gathered information about an extra-marital affair involving his wife. This man belongs to the African Apostolic Church sect (*mapositori enguwo chena*) and at one of the church gatherings, the couple had gone for prayer with the church intercessors. One of the church prophets began to pray for the couple, and during the prayer, the prophet received a message from the Supreme Being, which was conveyed to the couple. As narrated by the complainant, the prophet had revealed that the couple had been having problems in their marriage and the issues needed to be resolved with the assistance of other church leaders. This prophet took the couple to a more secluded space within the confines of the church grounds and called upon other prophets and church elders to pray for them, confirming that the message could be confirmed by other intercessors. This is a common practice in their religious sect: when a

prophet has received a prophetic message, it gains more impetus when other spiritually gifted people within the church can confirm the revelation. Hence, taking the couple aside to pray was a way of giving the people space to allow the Supreme Being to provide similar revelations to the other intercessors.

As the revelation came through, the other intercessors prophesied to the couple that the woman was carrying a burden that was affecting relations within their marriage. It was revealed that the burden stemmed from an extra-marital affair that the woman had had during her husband's absence from home. The prophets added that the couple needed to find ways to resolve the matter, in order for the woman to be relieved of the shame and guilt she carried, and to remedy any strain on their marriage. The husband was surprised to hear of this revelation but accepted that the affair may have occurred in his absence because his line of work (gold-panning) often took him away from home for long periods of time, which had caused tension in their marriage.

After receiving the revelation, the two parties reacted differently to the ordeal. The wife admitted to her involvement with another man during the absence of her husband, but would not divulge the identity of the other man. The husband insisted that acknowledgement of the ordeal was insufficient. For him to move beyond the breakdown of trust in the marriage he needed closure: he needed to know the identity of the other party and how long the affair had lasted.

This process of obtaining closure could no longer be provided by the church intercessors and they advised the couple to

consult with their families to establish how they could resolve the matter. According to family custom, when an extra-marital affair occurs, the couple can take the matter to the family *dare*, which comprises family elders called *tete* and *sekuru* (aunt and uncle), who are relatives of the two parties. These family elders may provide counsel to the parties by inquiring from the couple separately, what transpired and then facilitating a mediation process whereby the two are brought together with the support of the family elders to resolve the matter and to forge an amicable solution which results in peace and harmony.

## Rendering justice through the *dare*

In the couple's experience of infidelity, as narrated above, the husband had involved the family *dare* to resolve the matter. He had first asked his wife's aunt to engage with his spouse to find out what had transpired. However, the woman declined to confide in her aunt, presumably because she was ashamed of what had occurred. The husband was infuriated by his wife's actions, and this resulted in the couple coming to blows. Since domestic violence had occurred, the matter was escalated by the aunt to the village *dare* (a local court led by a headman or village head), in an attempt to remedy the situation. Constitutionally, the traditional leaders have no legal authority to preside in matters involving domestic violence, which are regarded as a criminal offence subject to adjudication by the magistrate's court. However, accessing the magistrate's court is difficult for many rural people owing to these courts being few in number, the cost of legal fees and other

logistical constraints. Community courts are closer to rural people's place of residence and there are minimal costs involved in accessing them, which makes them the main means of justice for most of the people in Mudzi District.

The village court, therefore, took up the matter and treated it as a civil dispute, since community courts have legal jurisdiction of civil disputes. While the matter was being resolved at the village court, rumour began to spread regarding the identification of the third party, based on the strange relationship that he and the woman had had during the period that her husband was away for work. At the village court the wife was asked about the rumours, and whether the identified person was linked to the prophecy made at the church. The woman broke down and confessed to the whole affair, including how and when it had occurred. She emphasised that the affair had occurred at a time of great need. She apologised to her husband and the family for having taken so long to disclose what had happened. She expressed her fears and concerns, which were mostly that she would be considered an ill-mannered person (*munhu asina hunhu*) for violating the couple's dignity. She explained her actions by relating how the absence of her husband had made her feel lonely, and that she had found comfort in the arms of another man in her community, who spoke kindly to her and provided her with her basic household needs, which were not being adequately provided by her absent husband.

When it became clear who had been involved with the woman, the headman who facilitated the village court meeting assigned

his messenger to call in the other man for a meeting to discuss the matter. The co-accused did not show up for the meeting and all attempts to get him to attend within reasonable time failed. He denied his involvement; this was interpreted as a failure on the part of the offending party to uphold the dignity of the couple, and a disregard for the value of the *dare* in addressing issues affecting members of the community.

The matter was escalated to the chief's court. When an individual fails to appear before the chief to deliberate on matters that require their full co-operation, a warrant of arrest may be issued by the chief, and this means that the matter is escalated to higher courts within the national justice framework. In this case, it would have meant attendance at the magistrate's court.

Taking the matter to the chief's court was a last avenue of appeal with regard to the hierarchy within the *dare* system of justice at the local level. The chief has authority to address matters of infidelity and domestic abuse, following customary law. A case of infidelity is regarded as defiling the institution of marriage and some form of redress is required to deter those involved in the act, as well as to appease the wronged party.

Customarily, compensation in the form of cattle and goats is offered to the aggrieved party. The offenders are also given an opportunity to apologise for their actions and to take responsibility for rebuilding broken relationships. Here the couple and the third party were expected to apologise to one another and to offer appeasement: (1) the wife to the husband, for being involved in an act of infidelity; (2) the husband to his wife, for



using violence in trying to make her divulge information about the man she was involved with; and (3) the third party, for defiling the marriage of the couple.

The third party who had been involved with the woman was himself married, and, therefore, the issue at hand affected two families. The chief inquired from the wife of the other man how she had reacted, and the form of redress which she required. This woman failed to make a claim regarding redress, and instead insulted the woman who had been involved with her husband. She used demeaning words, and was rebuked by the chief, who corrected the woman for being insensitive and disrespecting the *dare*. She was immediately asked to apologise for her actions and for disrespecting the people who were gathered to assist in solving a problem that was facing the two families.

At that point, the chief expressed the value of the *dare* system in fostering social harmony in the community, indicating that when people have disagreements or conflict, the *dare* provides a platform where people can air their concerns and the parties can deliberate on how they want the matter to be resolved. What is critical is showing remorse, acknowledging the wrong, taking responsibility and respecting the dignity of all beings. Justice results when dignity is restored and social harmony is rebuilt. Furthermore, the social fabric of the community needs to be preserved, even in ugly circumstances of violence and harm, and these sentiments bring to the fore the values of *hunhu* or *ubuntu* that are embedded in the African understanding of justice.

*Hunhu* or *ubuntu* is seen as the essence of humanity in the local community, so that

even those accused of wrong-doing are still regarded as human beings, although they have deviated from the moral code of the community. Justice seeks acknowledgement of the wrongs done and involves making the offender aware of the impact their actions have had on others. Once an offender has become aware of this, they are expected to take responsibility by reaching out to the affected party and asking for forgiveness as well as paying any compensation that may be required. Creating space for these deliberations to occur and then offering compensation for the harm that has been done fosters social harmony. It renders an African understanding of justice as favourable to fostering human dignity because it goes beyond punishing the offender for their actions and mends the social relations of people in community.

This account reflects the complex experiences of men and women in relation to administering justice at the community level. Justice on the ground is a verb and a disposition that can be captured by local words such as *kuenzanisa* (creating a balance), *kunzwana nhunha* (listening to troubling issues), and *kuringanisa* (making amends or creating a balance). Justice occurs when a sense of dignity has been restored through the actions of the offender, as well as through the support of the community in rehabilitating the affected parties. Rehabilitation of parties in conflicts is often provided through local idioms and proverbs, for example, *Munhu haarasi hunhu nekuda kwechigumbu* (A person cannot throw away their dignity because of anger or a bad encounter), which will be examined further below.

## Norms, proverbs and the social dynamics influencing relations of men and women in Mudzi

In March 2018 I conducted follow-up interviews in Mudzi District to engage with women involved in providing justice at the community level. Here my target respondents were women involved in the *dare* system of justice as well as other community platforms that deal with resolving disputes. The focus of this research study was to understand the socio-cultural underpinnings of a society that influences the relations of men and women at the local level. I managed to engage with a total of seven women, including a chief, village heads and community elders, as well as with a government official who serves in the gender portfolio in the Ministry of Women's Affairs, within the District administrator's office.

The women in the study explained that, according to their custom, it is unacceptable for men to quarrel or fight with women. They apply the Shona proverb, *Amai havarohwe/kutukwa unotanda botso* (A mother cannot be bitten or scolded; you invoke a curse on your life). In the broader sense, this prohibits violence against women. In the Shona custom, the title of a mother is not limited to the biological mother who gave birth to the person, but extends to any women who performs the mothering role, i.e. to an aunt, a wife, a sister, a grandmother, a teacher, or a community or religious representative, amongst others. This broad spectrum of women who are regarded as mothers plays a significant role in the lives of people at interpersonal, family and community levels.

Even as people are being raised in their families (nuclear and extended), they are taught to show respect to women, but even more towards all people, because *unhu hwemunhu* (one's being) is measured by the ability to relate and live well with others. This brings to the fore the idea that people live in a relational model where they must be aware of how their behaviour influences others.

The relational model that exists in Mudzi District stems from how the communities are made up of Shona people who belong to clan groups (namely Soko, Gwai, Tembo and Nzou, as mentioned earlier) and are guided, to a significant extent, by the values and norms of the groups to which they belong. As a result, the relations of people in their clan groups produce complex individual identities that are influenced by age, culture, religion, colonialism and class. Underlying these identities is the view that all people share a common identity, informed by *hunhu*.

*Hunhu* is both a moral code and a self-reflective lens for understanding the relations of men and women in this District. It ascribes value to human beings by emphasising human dignity as integral to the wholeness or oneness of all life and it locates the individual human within the larger community (Nabudere 2011; Setiloane 1978). *Hunhu* identifies human beings as interdependent entities that strive to bring out the best in society by respecting and valuing the essence of life that all beings possess (Benyera 2014). Chimuka (2001: 30) argues that *munhu* (the being) becomes a being when it has *unhu* (virtuous qualities), because life is a shared enterprise (*munhu vanhu*). Life is lived in the community and the

individual's conduct is therefore sanctioned by the same community in a reciprocal relationship. The *hunhu* (virtuous qualities) vary according to how the community conceptualises what makes up their being, and it also evolves to the extent to which the community encounters experiences that transforms their being (Chimuka 2001: 31).

Nonetheless, the goal of *hunhuism* is to develop *munhu* (the being) principled on *hunhu* (virtuous qualities), and *munhu ane hunhu* (a well-cultured person) is conceived as being endowed with a disposition to act virtuously (Chimuka 2001). Chimuka (2001: 32) adds that the Shona virtues that account for *hunhu* are prescribed through *tsika nemagariro* (norms and values) which relate to *kunzwanana* (mutual understanding), *kugarisana* (peaceful co-existence), *kuwadzana* (fellowship), *hushamwari* (friendship), *kudyidzana* (mutual hospitality) and *mushandirapamwe* (co-operation). One participant said:

*Chakakosha mukugarisana kwevanhu ndechekuti vazive kuti vese vanhu saka vanofanira kuremekedzana zvisinei kuti munhurume kana munhukadzi (It is important for people in their place of living to recognise that they are all human beings and they should respect one another regardless of being men or women) (33-year-old woman).*

This was further elaborated through the use of the Shona proverbs *Kandiro kanoenda kunobva kamwe* (One good turn deserves another) and *Rudo moto runotokushidzirwa kuti rwusadzima* (Love is like fire, it needs fanning to continue burning). The first proverb was used to indicate that people exist in a relational model, where your

actions have a bearing on how other people treat you. People often strive to live a life of *kunzwanana* (mutual understanding), *kugarisana* (peaceful co-existence), *kuwadzana* (fellowship), *hushamwari* (friendship), *kudyidzana* (mutual hospitality) and *mushandirapamwe* (co-operation) (Chimuka 2001: 32). Hence, an act of goodwill is equated with love that should be cherished and fostered through relating with others in a reciprocal manner that respects the dignity of all.

Human dignity provides a deeper understanding of human bodies in their community setting, in that it encapsulates the essence of one's being in relation to others, and without dignity, one's sense of self loses meaning. As a result, human dignity is built on the principle of reciprocal recognition of human beings as entities within a cosmological community that has duties and responsibilities of one towards another (Setiloane 1978). Being *munhu ane hunhu* (a well-mannered person) has a lot of bearing on how other people relate to you, because information about the ill-mannered behaviour of a person is often shared among community members and can cause one to be rejected.

All the women I interviewed during this visit indicated that men and women play varying roles in society, and these roles are seen as complementary. Making a case for the relations of men and women in a marital setting, they used the Shona proverbs, *Baba musoro wemba* (A man is the head of the household), but *Musha mukadzi* (A woman makes the home). These proverbs illustrate the complementary roles that men and women have in the family unit, as the

men are often seen as the breadwinners who go out to work and earn an income that sustains the family.

The exercise of earning a wage was introduced during the colonial era, when the British settlers dispossessed the local population from their homesteads where some had been living as hunter-gatherers, and others were subsistence farmers (Chinamasa 2001). Chinamasa (2001) argues that the BSAC conquest of Southern Rhodesia (present-day Zimbabwe) was enforced through treaties, government policy and war, which left many of the black majority population bitter, wounded and alienated. Examples can be drawn from the Land Apportionment Act of 1930 and the Land Tenure Act of 1969, both of which formalised racial segregation by dispossessing the black population, and prevented them from owning land in agro-ecological regions, subsequently compelling firstly men, and then women and children, to provide cheap labour for white-owned businesses (Zvobgo 2009).

The separation of men from their families often led to them spending long periods of time away from their households, leaving the women to take care of everything at home. Working men became sole providers for their households, while the women became care-givers, which involved raising children, farming, cooking, and ensuring that the home remained functional. Even today most men in Mudzi District were reported to work away from home and the women have remained the guardians of their homes, taking care of the children, farming and keeping the household in good shape. The research participants

suggested that such an order is seen by many of the people as normal. Since most homes are headed by women, it can be argued that women play a leading role in their community. One participant elaborated that women have agency in nurturing the society because although men may be the heads of households (*musoro wemba*), their leadership role is only ascertained insofar as they recognise that women have a footing in the well-being of the household (58-year-old woman).

Hence the worth of women in their community is ascertained by the proverb *Kusina amai hakuendwe* (Do not go where there is no mother), which expresses that a woman is a vital player in society. The research participants elaborated that they make use of these empowering cultural values to build the understanding that men and women have a complementary relationship.

The research participants also shared the view that both men and women ought to conduct themselves in a dignified manner, because bad behaviour tarnishes the relations of people and creates havoc in the society, which disturbs its harmony. Referring to the case of infidelity in a marriage setting, whether committed by a husband or a wife, they expressed the view that cheating on one's spouse destroys trust, which makes it difficult for people in union to live in harmony. If people have problems in their marriage, they are supposed to first discuss the matter as a couple, and if they fail to resolve it, there are structures within the family that can assist them. Here they can be referred to family members such as sisters, brothers, aunts, uncles and grandparents,

who, in most cases, are familiar with both parties and would have leverage in advising the parties about a path to resolve the matter amicably. However, concerns were raised about situations in which some family members disliked one of the parties, which might engender further bad feeling. Here they mentioned religious elders and community elders as entities in community that are often neutral but are willing, and often able, to help people with a dispute to resolve their issue.

What remained peculiar in their community with regard to strengthening the relations of men and women when a dispute occurs, is re-instilling *unhu*. This occurs through discussions that allow the affected parties to reflect upon the causes and consequences of their actions in a manner that respects the dignity of all entities. The conflict is resolved by upholding the dignity of beings and rendering compensation in a manner that improves the situation for affected parties. The interviewees emphasised that justice should transform the violated party in a manner that fosters positive social relations between conflicting parties. This fulfils the expression of one participant that *Munhu haarasi hunhu nekuda kwechigumbu* (A person cannot throw away their dignity because of anger or a bad encounter) (44-year-old woman). These words were shared to demonstrate that the virtuous qualities of a person are demonstrated by their ability to remain peaceful even when they have been provoked or things do not go the way that they would like them to go. Hence, one 52-year-old community elder shared that she often advises married couples not to use physical violence or

demeaning words towards each other, because such actions are a sign of their lack of *unhu*. Managing relations well requires people to live in *kunzwanana* (mutual understanding), *kugarisana* (peaceful co-existence), *kuwadzana* (fellowship), *hushamwari* (friendship), *kudyidzana* (mutual hospitality) and *mushandirapamwe* (co-operation).

The gender officer at the District administrator's office emphasised that the community plays a vital role in determining what is acceptable behaviour. Drawing on the prevalence of child marriages among people in their community belonging to the Marange religious sect, she shared that this challenge could not be addressed without involving the community. Some of the contributing factors to early child marriage that she identified were poverty, unemployment, high school dropout rates and peer pressure. Some parents are reported to have offered their children to older men in exchange for money or material resources that could help alleviate their poverty.

Referring to an incident where a young girl had been married off by her parents, the gender officer shared that this young girl had been rescued through the co-operation of the community and her office. The young girl had completed primary school with good grades and was offered a bursary to continue with her secondary school education in the same District. However, during the school holidays it was reported that the girl had been married off to a man within the Marange religious sect (a sect of the African Apostolic Churches), and when the girl failed to come back to school teachers investigated the matter. The young

girl's parents denied that they had married off their daughter and instead gave the impression that she had been taken in by a relative in the city, who had sent her to a better school. With the assistance of local informants, the village head established that the girl had been married off under age, and gave the parents an ultimatum to either bring back the girl or be excommunicated. Fortunately, in this instance, the parents co-operated fully and ordered their daughter to be brought back. This story was shared as an example of how the shared values of the community could foster co-operation in transforming unacceptable conduct.

This anecdote was corroborated by a participant who said:

*Zera rino gashirika kuti munhusikana aroorwe kana kuita mukomana hungwe ave ne 19 kana 20 years. Asi vamwe vana vemazuvano vari kumhanyirira kunge zvinonzi vasaririra (An acceptable age for a girl to get married or be in a relationship with a man is 19 or 20 years, but nowadays they are rushing into marriage as if they are losing out on something) (67-year-old woman).*

Several participants raised the concern that poverty is changing the ways in which people conduct themselves in their communities. The economic disparities between men and women can be illustrated in terms of the proportion of resources that are owned by men, especially land, whereas women are usually the producers from the land. Women have full access to land and are most involved in the agricultural activities that occur in the District. Many households

in Mudzi District are headed by women (men are absent because they work outside the community), but women do not own the land on which they live or which they cultivate. Seemingly, culture determines that the land is owned by men and inherited or apportioned to them. Further interrogations into this trend of inheritance and ownership of land along patrilineal lines led me to question the extent to which the land policies of colonial administrators created this pattern.

Mlambo (2014: 30) writes that, "British colonisation of Zimbabwe was part of the nineteenth century European expansionism in which European countries imposed political and economic control over territories in various parts of the globe." Prior to the expansion of British rule to Zimbabwe around 1890, people exercised their sovereign rule through a traditional institution of leadership and monarchies, for example through the Rozvi and Munhumutapa empires (Ndlovu-Gatsheni 2009). All land was shared communally, and both men and women worked together to cultivate it and to sustain their households. The Shona people in Zimbabwe, who engaged in subsistence farming, often worked collectively through the practice of *nhimbe*, a local practice used mostly by rural communities to pool resources and labour in order to assist community members in their agricultural activities (Benyera 2014). The *nhimbe* served as a food security practice that assisted communities in obtaining better yields from their small-scale farms. Community members would assist each other in ploughing and harvesting their fields.

During *nhimbe* the household which hosted other community members that supported their farming activities would often provide food and drink as payment for the support rendered. Where resources allowed, participating community members were served *sadza* and *murivo* (pap and relish), but in most instances, they would be served *maheu* (a traditional beverage made from sorghum). The research participants explained that sharing a meal during *nhimbe* was symbolic because it demonstrated one's hospitality, as people believe *Ukama igasva hunozadzikiswa nekudya* (Relationship bonds are strengthened by sharing a meal). Through *nhimbe*, people would spend time together (*kuwadzana*), share the burdens, provide for the food security of all members and strengthen their relations, as it was considered good behaviour to engage in *kushanda nevamwe* (working together).

When the British settlers took over the territories inhabited by Africans, many Shona people lost control of their land and all its resources (Zvobgo 2009). In accordance with British jurisprudence regarding property ownership and rights (such as the Land Apportionment of Act 1945 and the Land Tenure Act of 1969), local populations were dispossessed of their land and transformed overnight into squatters and labourers, to provide cheap labour for the colonial settlers. The country was thus divided between urban dwellers and rural dwellers, and most of the black population lived in rural areas.

Nzenza (2013) points out that disparities between black and white people in terms of income, living conditions, access to education and career paths were striking.

Many black people living in rural areas were forced into reserves where they became poorer because they lost access to fertile land that could keep their subsistence agriculture viable. To survive, black people had to assent to the British system of paid labour, and they ended up being seasonal workers, employed on commercial farms or mines owned by white settlers. Many African men were forced to leave their homes in the process, and this affected their subsistence agricultural activities as fewer hands were available to till the land (Huddle 2007). The withdrawal of men from their households left mostly women and children to engage in subsistence farming and productivity was significantly affected, pushing many African families to the margins. The labour force provided by migrant workers became a vital part of the Zimbabwean economy because it sustained the economic activities of British settlers.

The land situation was worsened by the introduction of legal frameworks that created two land-use categories: state land and freehold land. As mentioned earlier, African people were pushed into reserves (communal land) that were regarded as state land with usufruct rights, while the white settlers occupied freeholding land with title deeds (Huddle 2007: 66). It can be argued that when property ownership rights were introduced in the colonial era, much of the land owned by white settlers was registered as owned by men, and seemingly when the black population was moved into native reserves a similar model may have been used to give communal land to African men and not to women. Hence the current trend, in terms of much of the communal land

being said to belong to male figures may be associated with the colonial legal framework for property ownership. However, further research is required to establish the extent to which colonialism influenced the gendered land ownership patterns in this District.

The colonial system arguably pushed many African people into poverty because the land which was taken over by the white settlers disrupted African agricultural activities. In addition, the earnings of migrant labourers who worked on commercial farms and mines was low, and this perpetuated a cycle of poverty amongst the black population of Zimbabwe. To sustain such a cycle of poverty, white settlers created an education system that was highly racialised, in that the white population group was able to obtain qualifications suitable to secure employment in the white-collar sector, where as the African population could only acquire skills for the blue-collar sector (Zvogbo 2009).

Even after independence, the economic disparities between African population groups were highly visible, especially in the rural communities, because most people did not have educational qualifications that enabled them to earn a better living. Most of the people who worked at the District administrator's office in Mudzi District were not from within the District, but they had tertiary educational qualifications which enabled them to earn better wages. It was reported by research participants that the District had a low literacy rate because most scholars, particularly girls, dropped out before finishing their secondary school education. Some scholars dropped out of school because of a lack of finance to pay for tuition, because of teenage pregnancy

or in order to look for a job to supplement family income (especially boys). The lack of educational qualifications perpetuated the cycle of poverty prevalent in the District because many people could only find menial jobs such as gold panning, domestic work or herding. Other people crossed over into Mozambique, Zambia or South Africa, where it was reported that they worked as car guards, security guards, gardeners, farm labourers, mine workers and domestic workers.

It was also reported that the lack of formal employment and decent wages had led others venture into sex work, drug trafficking and human trafficking. In Zimbabwe these are considered illicit businesses, punishable in terms of law. Women were reported to be mainly involved in sex work and domestic work, while men often served as mine-workers, herders, gold panners, gardeners, car guards and security guards. However, the men were more often said to be absent from their homes than the women were, and this had given women the lead in taking care of and providing for their households. Further research is, therefore, required to ascertain the extent to which colonialism has changed the structure of society and the relations of men and women in Mudzi District.

## Closing remarks

This chapter has shown how justice occurs on the ground, and the remedy it provides for affected parties, especially the fostering of social harmony. Most people in Mudzi District rely on the community courts for justice, and women are involved at the *dare*. All the women involved in the traditional leadership institution indicated



that their positions give them authority that was respected and acknowledged by both men and women in their community. If they adjudicate regarding a dispute, anyone who disregards their authority (*kusvora dare*) can be made to pay compensation for failing to respect the institution.

Even though more men than women are appointed to chieftaincies in Mudzi District, research participants elaborated that women still play a role in community courts, because of constitutional provisions that have ensured that both men and women are involved at local level. The research participants shared that neither a male or a female chief can have a council without men and women, and this applies also to the village head (*sabhuku*) and to the headman (*sadunhu*). This accommodation of men and women in community leadership structures brings to the fore the idea that socio-cultural practices are not static, but rather complex and open to change. What stands out for participants is the necessity to live in harmony.

It can be argued that the Shona people in Mudzi District exist in a relational model that binds people to value the dignity of all. Their relational bonds have seemingly been fostered by socio-cultural norms and values enshrined in *hunhuism*. *Hunhu* is both a moral code and a self-reflective lens for understanding the relations of men and women in this District. Through *hunhuism*, the people in this community strive to become *munhu* (the being) with *hunhu* (virtuous qualities). *Munhu ane hunhu* (a well-cultured person) is conceived as being endowed with a disposition to act virtuously (Chimuka 2001: 32).

As most participants echoed, *hunhu* is central to establishing a just society because people need *kunzwana* (mutual understanding), *kugarisana* (peaceful co-existence), *kuwadzana* (fellowship), *hushamwari* (friendship), *kudyidzana* (mutual hospitality) and *mushandirapamwe* (co-operation). Using the Shona proverb *Amai havarohwe/kutukwa unotanda botso* (A mother cannot be bitten or scolded: you evoke a curse on your life), it is possible to argue that the participants share a common valuation of women: they ought to be respected and treated in dignity. The agency of women at community level is exemplified by the various roles they play which are seen to be complementary to those of men. While men may be *musoro wemba* (heads of the household), women are regarded as owners of the household (*musha mukadzi*). It is seen as impossible for men to exist without women, because *Kusina amai hakuendwe* (Do not go where there is no mother), which suggests that women are vital players in society.

At a socio-structural level, men are more involved in the economic sector, and this can be attributed to the structures established by colonial administrators. During the colonial era, many African men were compelled to leave their homes and to work for white settlers, who paid them wages that were insufficient for them to sustain their households. The withdrawal of men from households generally left women and children to maintain family structures and farming activities on their smallholdings, which significantly affected their productivity and pushed many African families into poverty.

Currently, when one visits Mudzi District, one observes the disintegration of families, as most men are absent owing to migrant labour. Many households are headed by women and they play vital roles in moulding the community. Women are involved in

communities as mothers, advisors, leaders, breadwinners, nurturers, counsellors and custodians of customs, especially where they serve in traditional institutions of leadership as council advisors, village heads or chiefs.

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## 5. Women at the centre: The case of Gueguegue community, Mozambique

Zefanias Matsimbe



TRIBUNAL COMUNITÁRIO  
DA LOCALIDADE DE GUEGUEGUE  
Boane

## Introduction

As in most countries across the African continent, and in the Southern African region in particular, people in Mozambique use multiple mechanisms to meet their day-to-day justice needs outside of the state-led system of justice or the magistrate's court. As was mentioned in the introductory chapter, various scholars who analyse systems of justice in the country name these practices differently; some call them traditional or indigenous, and others call them informal or alternative, in an attempt to distinguish them from the formal or state-led system of justice.

The introductory chapter of this handbook provides a well-elaborated explanation of the meaning of each of these nomenclatures. That chapter also provides the rationale for our decision not to use these designations in this Handbook. Instead, we call all these forms of justice outside of the state-led system 'justice on the ground'.

Our interest is to identify the different practices and examine how they work to meet the justice needs in the Gueguegue community in southern Mozambique. More particularly, our interest in the chapter, and in the Handbook as a whole, is to understand the role of women in justice on the ground. For this, we scrutinise women's influence in community-level initiatives of justice, such as family and neighbourhood courts, church-led initiatives of conflict resolution, the different levels of community leadership and traditional healers. Some of these actors are acknowledged by the law and constitution of the country and some are not.

Gueguegue community is located less than five kilometres from the town of Boane, where the local magistrate's court and administrative and state services are located. Despite being so close to these services in Boane, people in Gueguegue mentioned turning to the district court to meet their justice needs only when they have exhausted all other means of conflict resolution within the community, or when faced with issues that involve criminality. Distance is not an impediment, since the court can be reached on foot, but local residents have a very strong preference for the local mechanisms of conflict resolution. This could lead us to describe the state-led system as the 'alternative' to the systems of justice on the ground. Justice on the ground is considered to be more accessible, faster, cheaper and with rulings based on the framework of local customary law. It tends to restore harmony within society.

In many instances, there are negative perceptions of justice on the ground, since it is considered 'patriarchal' or male-dominated. However, the findings in Gueguegue reveal that although there are complex relationships between women and men, women in Gueguegue remain centrally involved in justice practices and wield power in rulings on social matters at all levels. More importantly, women are the frontrunners in fostering the norms and values that help the community to restore balance and harmony in the complex networks of relationships between men and women.

Another important finding of the research project is the co-existence of discontinuities and continuities regarding understanding of

the role of women and the relations between men and women in society, which will be discussed in the course of this chapter.

This research process took place between January and May 2018 through semi-structured interviews with women, mostly community elders, and members of other community bodies involved in dispute resolution in Gueguegue, as well as participant observation.

Gueguegue is a poor, peri-urban community within the Boane municipality in Maputo province, southern Mozambique. In the last few years Boane has suffered from massive pressure on the land, provoked by the expansion of Maputo city, the capital of Mozambique, and of Matola city. The most common types of grievance in Gueguegue include breaches in individual dignity (insults), assault, domestic conflict (mostly between husbands and wives, often ending in violence), property theft, adultery and accusations of witchcraft.

## Women's roles in justice within the family

In Gueguegue, as in other parts of southern Mozambique, families abide by hierarchies and differentiation of roles between men and women. In the case of a couple (husband and wife), the man is seen as the head of the family, and the 'provider' (*wanuna i n'hloko ya munti*). Because of this, a woman (or wife) is expected to desist from disrespecting her husband, regardless of his socio-economic status. However, this does not necessarily mean that the wife is submissive to her husband. A woman also has power within

the household. The proverb *a munti i munti hi wansati* (a house only becomes a home if it has a woman in it) speaks to this, as does the fact that a *n'gwendza* (a man without a wife) earns little respect in society.

Although the assumption of the superiority of *mulumuzana* (the head of the family) is apparent in Gueguegue, the reality on the ground is the existence of collaboration between husband and wife in decision-making regarding domestic affairs. As one of the interviewees said<sup>48</sup>, *xilo ni xilo la muntini kulaveka mukombisana wene na bava* (decisions about all aspects of the household are taken after a constructive discussion between husband and wife).

The majority of women interviewed did not have formal employment, but those whose husbands were still alive affirmed categorically that although they had no formal income, they played a key role in decision-making about the management of financial resources brought home by their working husbands. As one woman explained: "I don't have a formal job, but I do my farming, which allows me to produce vegetables and cereals for our consumption. I help my husband. So when he gets his salary, we sit down to decide how we use it." The argument is that although the wife may not bring money home, she contributes economically through the resources gained from the farm, and thus has economic power.

In conflict between a couple, the first option to discuss the matter is in the bedroom late at night when the children and the rest of family are sleeping, to avoid making public what is considered *xihundla xa*

<sup>48</sup> A woman of around 50 years.

*munti* (the secret of the family). All couples have conflict, but *vani xihundla* (they keep it secret). It might be difficult to determine the power of a woman in this discussion, but what is known is that most of the time, the matter ends there because the issue is resolved in the home.

In the case of failure to resolve the matter as a couple, the couple communicates its dispute to other family members, and more particularly to aunts from both sides of the family, to help resolve the matter amicably. Couples make a tremendous effort to avoid making their disputes public, for the sake of harmony. We found evidence of the strong influence of women (aunts or other elderly women) in conflict resolution within the family.

Families in Guegue are generally extended families. Children with wives and children still live in their parents' homes. Daughters who give birth out of wedlock also live with their children in their parents' homes. This situation increases the possibility of conflict. In these cases mothers are the first to know and to intervene in trying to solve the conflict, because they are in the home, compared with husbands who leave the house in the morning to go to work and only come back at the end of the day. *Mamani hi yena a tivaka ta vana a muntini* (The mother is the first to know about any issue related to the children).

Mothers-in-law are the first to intervene in cases of conflict between sons and daughters-in-law. The practice in Mozambique is that in a case of conflict a daughter-in-law must approach the husband's mother or a *sungukati* (elder woman) from the spouse's family, as a sign

of respect to the husband's family. The most important advice given by the mother-in-law is that the daughter-in-law should be understanding of her husband, saying: *Nwananga, ku yaka ka ndjangu swa karhata, swi lava uni mbilu* (My daughter, building a family is difficult, it requires patience). They teach their daughters-in-law to respect their husbands and to always apologise to them if any wrongdoing occurs: in other words, woman must always apologise even if the man is in the wrong. They use their motherhood and long-lived relationship in their marriage to convey this idea to their daughters-in-law, in the name of peace and harmony within their families.

Thus, in Guegue the family constitutes the first site for resolution of domestic conflict, and women play a central role in resolving conflict.

## Women's roles in justice within the immediate neighbourhood

Relating well to others in a reciprocal way is of great importance in a community in which people live in close proximity to one another and are dependent on one another for survival. As most of our interviewees said, *Muyakelani i xaka lawena lo sungula* (A neighbour is your first relative), and therefore, there is a need for peaceful co-existence and friendship.

Conflicts between neighbours are inevitable. Again, the fact that women are most often present in the household makes them the first to face conflicts which arise. The most common conflicts are between children and youth, and quite often they end up spreading



to other family members, particularly mothers from both sides, who come out in defence of their children. At the same time, mothers are also the first to try to resolve conflict with neighbours, and this is often achieved as soon as conflict is experienced, to prevent it from escalating and souring relations for a long time, because neighbours frequently help each other out on a daily basis. As a 51-year-old woman put it, when conflict occurred with my neighbours, they sat down and tried to resolve the issue immediately to restore harmony, *hikusa loku hi nga twanani hinge wokelani ndzilu kumbe munyu* (because without understanding each other we cannot ask each other for a match-stick to make fire, or for salt). Neighbours mean survival in this context.

Conflict involving children or youth is easily resolved as parties understand their mutual dependence: *Nawena upsaille. Namuntla hi mine, mundzuku hi wene* (You also have children. Today it may be mine to make an offence, but tomorrow it may be yours involved in misconduct). This leads mothers to soften and attempt to mediate without the need for compensation.

Women from the community teach children from the neighbourhood to play peacefully, to see each other as brothers and sisters, and to learn to apologise when they offend one another. This happens in order to maintain social harmony and balance in relations between neighbours. Mothers work as counsellors and teach the children from the community how to behave.

Some conflict may require the offending party to approach the mother or grandmother of the other party to request them to pay attention to the behaviour of

their child, but in the end, the general advice is for parties to forgive one another and to move forward together.

## Women's roles in justice within the *chefe das dez casas*

The *chefe das dez casas* (chief of ten households) is the next option that is resorted to when cases cannot be solved within the family or between neighbours. This position is occupied by an individual chosen by the community. In Gueguegue we found several women who played a leading role in conflict resolution. In fact, the majority of chiefs were women. The explanation given for the predominance of women in this position is that they are more sensitive and show a greater interest in holding the community together. They are more available as problem-solvers and they keep the community functioning. In Gueguegue, some women were known particularly for their aptitude for facilitating the practice of justice, which allowed the mending of family and social relations within the community and also fostered the norms and values that helped the community to live in harmony.

When a conflict is not solved within the family or between neighbours, the case is taken to the home of the *chefe das dez casas* to seek resolution. The chief calls both parties to come together for a hearing. This chief, who is either a man or a woman, is assisted by women elders, depending on the type of conflict. In conflicts involving a couple, older men are also called upon to assist in hearing the case. The most common problems taken to the *chefe das dez casas* in Gueguegue include excessive



consumption of alcohol by youths, smoking of *mbangi* (marijuana), property theft and domestic conflicts. Most of the youth in Gueguegue are unemployed.

## Women's roles in justice within the block

The *chefe de bloco* (chief of the block) is the next option after the *chefe das dez casas*. One block is made up of about fifty households. In principle, neither the *chefe das dez casas* or *chefe de bloco* are part of the traditional authority, nor are they assumed to be part of the traditional dispute settlement mechanism (Araújo, 2008), but the reality on the ground shows that they are very important for the resolution of conflict.

In cases of unresolved problems brought by the *chefe das dez casas*, the *chefe de bloco* calls upon some elders and the *chefe das dez casas* who brought the case. During interviews, the role of women in conflict resolution at this level was emphasised. *Chefes de bloco* tend to be men, but women tend to gain predominance in conflict resolution at this level, by virtue of the majority of *chefes das dez casas* being women.

## Women's roles in justice within the social affairs group

In Gueguegue we found a prominent group, called the *acção social* (social affairs group), made up of mostly *masungukati* (elder women). The group was formed to provide basic services to meet the social needs of the community and to deal with its day-to-day concerns, with the objective of minimising the limitations of the state in

reaching the community and providing the necessary resources for them to live. The group has helped in funerals, particularly in relation to families in great poverty.

Women in Gueguegue draw power from this organisation in order to address an extensive array of disputes emerging in the community, particularly those that are called 'social cases', any conflict that occurs in the domestic context, or those which emerge in family relations. In resolving conflict, women seek to hear both sides and appeal for mutual understanding. The group also plays an important role in *kudjodzisa wutomi laku hanya* (teaching how to live a community), namely, teaching 'right behaviour' to couples, and in the community as a whole. The *acção social* works in close collaboration with local authorities in Gueguegue.

## Women's roles in justice and in supporting the community leader

Community leaders are legally recognised institutions in Mozambique. In Gueguegue, community leadership is exercised by the *secretário do bairro* (neighbourhood secretary), a man who works in collaboration with the *chefe de bloco*, *chefe das dez casas* and the *acção social*. One of his responsibilities is to exercise social, cultural and political control over the community. Though these individuals were instituted by the government as part of a complex relationship between the state and its citizens, they do not depend on the backing of the state for their survival. As in most parts of the continent, community authorities

in Gueguegue enjoy extensive popular acceptance by and respect from their community. The community in Gueguegue call this man *papá* (father), suggesting the way in which the whole community is perceived to be an extended family under his care.

Community leaders are the custodians of practices of justice on the ground because they have knowledge and understanding of community norms and practices. It is this aspect that makes them more effective in resolving a wide variety of local problems. The most important noticeable aspect is that conflict resolution tends to focus on the preservation of social ties, rather than on punishing the offenders. A word of apology is often sufficient to consider the case closed.

Although the community leader is a man, when it comes to resolving disputes he works with a group of older women, most of them from the social affairs group, which includes the wife of the *secretário do bairro*. Women offer their advice to the community leader on how the matter brought before them should be addressed. Their opinions are very important for the deliberations because they are the ones who know best the parties in conflict.

When a case is brought before the community leader, he calls an assembly to gather under a tree to deliberate. Anyone from the community is welcome to attend the hearing and to express their views, if they deem it necessary, or are interested in doing so. Participating in this way reportedly enables a sense of belonging to the

community. One's problems are community problems, and, therefore, the solution has to be found by everybody together. Punishment through a jail sentence or recording someone's wrongdoings (for example, in the form of a criminal record) are not considered at this level.

By law, unresolved cases have to be forwarded to the magistrate's court. However, based on information received from the community leader, this is rare. The community makes an effort to resolve all the cases within its jurisdiction because members of the community consider themselves to be one people. Elderly women, in particular, take the problems caused by others, particularly those of youth, as if they were problems of their own children. They feel the burden of change, insofar as the children of today are no longer 'well behaved' as they were in the past. The expression *a vana lava hi va psalaka namuntla* (children of today) reveals their frustration with the new generation, but at the same time suggests the sense of responsibility on the ground that they feel towards them, as well as the sense of community togetherness.

## The role of women in the church

Christianity is a predominant religion in Mozambique, together with animism. The southern part of the country, in particular, is mostly influenced by Protestant denominations imported from South Africa by migrant miners.

The church is indubitably one of the institutions that plays an important role in

resolving conflict in Gueguegue. As with community leaders, religious leaders and women elders, church leaders occasionally take the lead in resolving conflict. The most common problems solved in this context are disputes between couples going to the same church. Because wives are often the ones bringing the cases before the church, women church members are the first to receive the case.

To start the resolution process, the couple is kept separate. *Va mamani* or *masungukati* (elderly women) take the wife aside to hear her case while *madodana* (elderly men) sit with the husband. All have the sole purpose of reconciliation between the parties. Later, the two parties are brought together in order to resolve the issue. They will receive counselling and advice from the two groups of elders on how they should live in harmony. Quotes from the Bible calling for peaceful living, harmony and love for one another are cited, and prayers are conducted to soften the hearts of the warring parties. Men and women work side by side in meeting justice needs within the church, which helps to restore harmony, not only in the church, but in the community of Gueguegue as a whole. Church members prefer to have their cases resolved by fellow church members as they are seen to be neutral. To maintain social balance in the church, elders teach other members how to live in harmony in a family. In the past, church members, mostly women, used to move from house to house teaching women good home-care practices, but in recent times this is no longer practised.

## The role of women in AMETRAMO

As referred to in the introductory chapter, spirit mediums, traditional healers and diviners have a recognised role in communities across Africa, and Gueguegue is no exception. In Mozambique, traditional healers are organised into an association known as the Mozambican Association of Traditional Healers and Diviners or Associação de Médicos Tarcionais de Moçambique (AMETRAMO), with widespread representation down to the level of the local community. AMETRAMO is present in Gueguegue. The majority of its members are women. The powerful role played by the spiritual or metaphysical gives traditional healers an influential role in the community. Members of this organisation are particularly well suited to resolving conflict related to accusations of witchcraft.

Gueguegue is a poor community and with very little economic activity, making it a fertile environment for accusations of witchcraft to arise. People may attribute unemployment to a misfortune caused by some family members, and women have been the primary victims of prosecution. Accusations of witchcraft among neighbours or relatives are resolved by AMETRAMO, which uses the spirits to reveal whether or not the accusation is valid.

If the accusation is shown to be valid, the offender is expelled from the community and the neighbourhood has to undergo a cleansing ceremony to restore peace. But if the accusation is declared invalid, the accused has to be compensated with a small amount of money, and a cleansing ceremony is conducted to reinstate the person's honesty before the community.

## Police and the magistrate's court

Community leaders do not have legal authority to preside over criminal offences. Cases of violence, rape, robbery or murder are referred to Boane police station and then to the Boane magistrate's court. At the time of our fieldwork, we were informed of a recent case of suspected rape of a minor by his own father. This is a case which, although it occurred within the family, is considered to involve a criminal charge, and so the mother of the minor presented the case directly to the police.

An important aspect worth mentioning is the strong presence of women, even at police level. The police station has a *gabinete de atendimento a mulher e criança* (office for women and child care) to resolve cases of domestic violence and child abuse. This service was created by the General Police Command to provide care and assistance for women and child victims of domestic violence, sexual abuse, trafficking and matters related to juvenile delinquency. The office also works to promote equal rights and opportunities between men and women.

## Challenges facing women in access to justice on the ground

Although women are actively involved in justice on the ground, challenges remain. Women in decision-making positions may well be disrespected by 'hard-headed' men in Gueguegue. Some men do not like to see a woman addressing a public gathering. Even if they do not show it openly, they reflect their displeasure by looking down

when a woman is talking, or they start talking to each other, showing a lack of interest in what is being said.

The *chefe das dez casas* and *chefes de blocos* who happen to be women report not being respected, especially by young men, who look at women as powerless and as unable to impose their authority. In cases involving young couples, young husbands sometimes do not appear when called by female leaders. This forces female leaders to work in the shadow of male leaders.

Another challenge is time. Women play a central role, not only in the activities of the household, which often include large numbers of people working together in the extended family, but also a central role in agriculture, since they are the main labourers on family farms, which leaves them with limited time to get involved in community activities.

Lastly, in some instances husbands of women working in positions of leadership feel unhappy when they see their wives engaged in community activities, perhaps seeing this as a threat to their own power.

## Continuities and discontinuities

On the one hand, there has been some change in the ways in which justice needs are met, particularly in terms of the increasing involvement of women. On the other hand, some long-held assumptions remain in place. One of the values that seems to have remained in place is the assumption that a woman's place is in the home. Women's roles are still associated with taking care of and educating children

at home, while men still hold the power to control resources and the household (*wanuna i n'hloko ya muntl*).

Global political change and the introduction of multiparty democracy in Mozambique from the 1990s shifted the relationships between men and women by opening up more space for various 'civil liberties', including the formal recognition of women in decision-making positions and conflict resolution. Interviewees reflected their awareness of this by pointing to the increasing number of women in ministerial positions.

Women in Gueguegue resisted the assumption that women are powerless. According to our interviewees, women find different ways of exerting power, for example, through initiatives such as *xitique* (women's financial schemes or societies), which give them a source of income and further shift the power relations between men and women in the community.

## Conclusion

The case study of Gueguegue shows that despite the proximity of judicial services, justice practices on the ground play an important role in meeting the justice needs of the community. In fact, justice practices on the ground are the main forms of justice that people use to resolve conflict.

The study also noted that in Gueguegue, as in most parts of southern Mozambique, women hold power in different spheres, particularly in conflict resolution, from the domestic sphere right through to the public sphere. Women play a central role in maintaining harmony within the community. Men and women work together in a range

of ways and continue to restore the balance so that the community can continue to live interdependently and in harmony.

Some of the assumptions regarding women's roles are brought into question in this study. For example, it is evident that women are not simply 'at home', but play a central role in working on and maintaining the farms which form the basis of food security for their extended families. When men are in positions of authority, they work together with other men and women, to govern the community and to find solutions to conflict.

This community, like many others, shows the complex ways in which women and men interact in order to maintain harmony, and the ways in which different influences, from state legislature, global norms and values in relation to women's representation, Christianity and long-held customs and traditions are woven together to shape relationships between men and women as they practise justice on the ground.

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## 6. Conclusion:

### Supporting justice on the ground in Southern Africa

Cori Wielenga

## Introduction

Justice on the ground is being practiced in the absence of, or together with, state-led justice systems across the African continent. The driving question is: How do we support justice on the ground without distorting, damaging or substantially changing it?

Many international and local non-governmental organisations (NGOs), government departments and other international, national and local actors attempt to intervene in rural and peri-urban communities in a variety of ways. There are interventions addressing humanitarian needs, providing basic services, or engaging in peace-building, conflict resolution, development, health, education and so on. Increasingly, we are aware that these interventions need to be locally driven in order to be sustainable.

A lot of attention is being paid to how we can avoid top-down, imposed interventions, yet, there is still little effort made to understanding how community-based practices actually work. Lip service is paid to the ideas of local agency and local ownership, but there is still the assumption that 'local' is somehow 'less than' or 'backward'.

In our engagements with local government officials in relation to justice on the ground, our findings have been that they have little understanding or interest in how community courts function or the role that they play in the community. State-led justice actors never refer cases to community courts or to community or traditional leaders. Similarly, we have found that international or national

NGO actors do not always take seriously what people in communities are already doing. The starting point for international and national NGOs tends to be that those in rural and peri-urban communities need to be trained in gender sensitivity and human rights. Yet we would recommend that it is those of us coming from outside of the community that need to be trained in how a given community functions (this being unique to every community). The way to support justice on the ground is to understand it well, and this requires traditional leaders, healers, community leaders and so on to train all those of us coming from 'outside', including national NGOs and government departments, in how they function. This is a critical starting point if we are to take local agency and local ownership seriously.

## Reflections on the communities

As we spent time in communities in Southern Africa, we were well aware of the many challenges women face as a result of their gender. Domestic violence, direct violence against women and systemic violence were evident in each of the communities. At the same time, it was evident to us that it is often women who are the drivers of 'justice', whether in Okombahe, Namibia or Gueguegue, Mozambique.

It was also evident, if we return to the discussion of African feminist theories in the introductory chapter, that women and men constantly use different strategies to negotiate their position in a given society. As Bae *et al.* describe in Chapter Three, some women may choose to 'suffer for the



household' so that their partner can remain employed and continue to support the family. We were constantly reminded of the relational emphasis of justice practices on the ground: the fact that the well-being of the whole community remains pivotal, over and above individual accountability within a punitive system.

We also gained the sense that women and men were co-operating with one another to achieve certain things, rather than women seeing themselves as fundamentally opposed to men. As Murambadoro discusses in Chapter Four, networks of relationships in Southern Africa are held together by *hunhu* (often seen to be similar to the term *ubuntu* in South Africa), which places emphasis on "human *dignity* as integral to wholeness or oneness of all life and locates the individual human within the larger community". From this point of view, it is perhaps less about asserting the rights of individuals and more about how to restore the dignity of people within a community.

The fact that many of the cases brought to family and community courts had to do with personal insults, which could escalate towards direct violence, points to the central importance of relationships and the necessity of maintaining the dignity of the other. When one treats another with a lack of respect, thereby compromising their dignity, this becomes an offence that needs to be addressed by the community. It is these kinds of issues that are fundamentally misunderstood or ignored by a legal system

that is interested in crimes against the state (and its laws), rather than the breakdown of relationships between people.

Underpinning all of this is an awareness that justice cannot be understood narrowly, in terms of individual accountability for a wrong committed, but is broadly related to the well-being of the whole community. If we understand justice in this way, we can see the central role women play in not only resolving conflicts, but in weaving the very fabric that holds a community together, socially, economically and even politically.

## Recommendations to national and local government and civil society organisations<sup>49</sup>

Drawing on our encounters with people in communities in Southern Africa and local government officials, we make the following recommendations:

### 1: Develop policies and approaches that acknowledge diverse systems of justice and their practices

The current universalist model creates a unitary system that forces local communities to conform to international standards that fail to consider local realities. This results in the development of frameworks that provide irrelevant and inappropriate solutions. Different justice practices (e.g. community courts, national courts) can meet different needs. The state-led national justice systems

<sup>49</sup> These recommendations draw from the report written by Cori Wielenga, Francois Gilles de Pelichy and Joy Green after the workshops held with the Dutch Embassy in Pretoria and the Institute for Justice and Reconciliation, Cape Town in 2018, in which our findings from the field were discussed in order to develop recommendations for the reform of national and international justice systems.

are, for the local communities involved, not the primary system of justice but rather an alternative judicial system. Local systems of justice are not only valid and legitimate, but are also central.

More funds need to be carefully and thoughtfully directed towards the support of community initiatives and legitimate local judicial systems. This would include understanding and accepting the norms and values underlying local systems of justice (including the emphasis on the social contract between people, rather than the contract between an individual and the state, the value of paying compensation rather than serving a jail sentence, and an understanding of justice that incorporates the wholeness, healing and well-being of a whole community), and the inclusion of practices such as cleansing rituals as meeting justice needs.

This would also include the recognition that local systems of justice can take place within a legal framework which provides opportunities for cases to be referred from one system of justice to another, without prejudice, including from the magistrate's court to the community court. Local legal systems need to be constitutionally recognised. Likewise, it is necessary to put institutions in place that allow people to choose which system – international, national, local – will serve them.

## **2: Be aware of how dominant/Western-centric concepts of justice are reinforced through language**

Language is a powerful tool that shapes people's thinking because of the cultural

meanings of words. It is, therefore, important to interrogate the usage of dichotomies and terms such as 'traditional' versus 'modern', as well as their associated connotations.

Some labels attach historic associations to practices that remain relevant to people in local communities today. In addition, such labels imply that Eurocentric ideas are ideal models to emulate. Instead, we need to draw on words and cosmologies from local systems themselves.

## **3: Place an emphasis on first improving the type of justice (its fairness, effectiveness and local legitimacy) over building justice institutions with low levels of support and legitimacy**

Take an incremental approach to empowering justice systems at the local and regional level over developing a unitary justice system. This will allow for regional diversity in justice forms and practices that are locally relevant.

The meanings of concepts such as legitimacy, fairness and effectiveness vary from one culture to another. We need to draw on local perceptions of these concepts if we want our actions to be perceived as legitimate. A bottom-up dialogue on the meaning of justice and its related concepts will greatly improve the legitimacy of the process.

Legal practitioners need to be trained to have a better understanding of the norms and values of the context in which they operate, as well as regarding how customary laws and courts function. Committees of local leaders (including chiefs, for example) can provide such training while advising civil society and local government actors on how to improve the process of justice delivery.

In other words, rather than having the government and NGOs training local leaders, local leaders need to train them on how their communities function optimally. Legal practitioners' education about local contexts makes it easier to enable the referral of cases across justice systems.

One way of allowing for greater movement between systems is by introducing reporting mechanisms into the local legal system. The state or an international actor could, for example, provide support for the training and maintenance of a clerk who makes sure that all the cases that appear before the community court are recorded according to specific standards and specifications, and the information passed on to the magistrate's court. This would allow the magistrate's court to gain a better understanding of how community courts function and the kinds of cases that are addressed. The reporting of cases by the community court to the magistrate's court already occurs in Namibia, but unfortunately does not seem to have resulted in a meaningful understanding of the potential these community courts hold in meeting justice needs. In this case, more education is needed for legal practitioners and other actors involved in these court systems.

#### **4: Seek to understand local justice systems intensively, on their own terms, before suggesting how to change or improve them**

Challenge existing prejudices against local justice systems and avoid knee-jerk critiques of them based on external or prevailing gender or feminist discourse. These systems

are often seen to be male-dominated, gender-biased, weak in protecting human rights and vulnerable to corruption, nepotism and manipulation, whereas in reality they may be all or none of these things, depending on numerous unique factors. Each system of justice practices needs to be understood on its own terms, in its own context.

Continuously consult and engage with local residents instead of conducting once-off visits during research projects. Since the subject matter is too complex to be grasped within a single visit, it is better to carry out multiple visits and consultations in both rural and urban communities. This will create social bonds and familiarity between researchers and communities. This approach encourages people to become willing to sharing their stories.

Organise a feedback mechanism between community leaders, non-governmental organisations, national government and the international community: this will help to continuously adapt and improve the whole process.

Allow communities the freedom to determine their own action timelines. International organisations and NGOs have been known to use their financial power to insist on mediocre, hastily-implemented solutions to accommodate their funding and time constraints. Instead, they should do away with quick fixes by supporting local communities without imposing ideas on them. Local residents should be allowed to meet their own justice needs at a self-determined pace, using methods they deem appropriate.

Protect human dignity, agency and cultural differences. The independent thinking capacity of local communities should be acknowledged and respected. Furthermore, local communities' own measurements of success should be respected. Re-establishment of community harmony, compensation in terms of community service and acknowledgement of guilt by the perpetrator(s) may be of greater value than punishment, blame or imprisonment.

## Closing thoughts

As Bae *et al.* write in Chapter Three, we might well be perpetuating injustices in a community if we dismiss justice practices out of hand on the grounds that they are 'backward', 'primitive' or 'patriarchal'. These kinds of assessments are often made by people who have never spent significant time in a community or participated in a community court hearing.

Justice practices on the ground are the result, as Becker (2007) so clearly argues, of both exogenous forces and local agency. They have been disrupted by slavery, colonialism, apartheid, urbanisation, globalisation and so on. They also reflect continuities with a deep past in terms of the norms and values that continue to underpin them. They have changed and evolved, and against all odds, remained resilient, legitimate and popular in the eyes of community members. They reflect the day-to-day lived realities on the ground, and facilitate the kind of interdependent living necessary for communities that struggle for their survival, often in the absence of the state.

Justice practices on the ground, with all their faults and limitations, are nevertheless able to intervene when relationships are at risk,

often well before they escalate to the level of a more serious act of violence or other criminal action. As Bae *et al.* argue:

It is all too easy to presume what a social structure might be like without considering its function on the ground. Such presumptions and imaginations have fuelled many ineffective top-down approaches to development and hard definitions of 'justice'. Without an experience of the environment, its deprivation, and the many impactful actors on the ground, especially women, the disparity between deliberations at the top and everyday concerns on the ground seldom converge in alignment.

In order to 'converge in alignment', what is needed is a deep understanding of lived realities on the ground, the complex dynamics between women and men, and the numerous people, including both women and men, who play a part in the well-being of the whole community through 'justice on the ground'.











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