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Deadlier than the Male? : Women and the Death Penalty in Colonial Kenya and Nyasaland, c.1920-57

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Abstract

The position of women and the operation of justice were both contentious issues in colonial Africa. However, when combined in the discussion and sentencing of African women charged with murder and facing the death penalty for their crimes, a relatively coherent gendered discourse emerged: African women were frequently regarded as lacking the emotional and mental development to render them fully responsible for their actions before the law, and consequently liable for the death penalty. What challenged this benevolent, patriarchal discourse were the actions and responses of the women themselves, transgressing supposed gender stereotypes and social hierarchies in their use of lethal violence. This article attempts to analyze violent African female crime in Africa through the medium of High Court murder trials in Kenya and Nyasaland, focusing on both colonial judges' perceptions of women as perpetrators of violent crime and on women's responses and perceptions of their own criminality. Contrary to much existing feminist criminology, this paper will argue that women were not just reluctant killers; they could also be violent in their own right and for their own self-interest.

> I would recommend her to mercy, as I do not consider that the mind of the female native is sufficiently developed to justify the application of the extreme penalty of the law.[1]

African women accused of murder and standing trial in a colonial court were caught between the lethal machinery of colonial justice, and local, African interpretations of their crimes. Their crimes situated them at the apex of the colonial state's struggles to control the behavior of its African subjects, as well as of African communities' attempts to exert authority over women. However, as the articles in this edition show, neither "gender," nor "colonialism" itself, were homogenous, uncontested binary categories. Conflicts within the colonial legal system interacted with female agency in contesting gender constructs to shape the trial and sentencing of violent female African criminals, and determine whether or not they went to the gallows for their fatal violence.

To date there has been relatively little research into violent female criminality in Africa and the impact this had upon gender construction, particularly during the colonial era. This article investigates the experiences of violent African female offenders in the colonial judicial system in Nyasaland (now Malawi) and Kenya through the medium of High Court murder trials, with focus being given to both colonial judge's perceptions of women as perpetrators of violent crime, and on the women's responses and perceptions of their own criminality. Homicide is a social relationship; the situations which predispose women towards committing acts of violence must be studied as much as violent women's individual characteristics. No-one can ever claim to know the reality of these women's lives, but employing a broadly epistemological standpoint, influenced by feminist criminology, assessments of women's material and social realities can be made which move beyond traditional conceptions of female criminals as "mad" or "bad" (Smart, 1976; Heidensohn, 1985; Morris, 1987). We need to look at structural categories of gender, race, ethnicity, and sexuality to understand the lives of these women, as well as the gendered social processes of domestic violence, motherhood, domesticity, and respectability which contribute to them, particularly in the colonial context where rapidly changing social conditions created fractures and discordances in colonial

[1] R v Alikutu, 1926, J5/12/23, National Archives of Malawi, Zomba [hereafter NAM].

discourses relating to both punishment of crime and women. What was known about female defendants as individual women played a considerable role in determining how their crimes were perceived and constructed. Problematically, in colonial Africa, this was often very little, giving counsel and the courts wide scope for interpretation, a flexibility which could work to both the advantage and detriment of the accused woman. The dramas of women and the death penalty were played out on many levels: that of the individual, the family, local communities, and the colonial state, and it was the relationship between these which determined the accused woman's fate. By looking at women charged with spousal murder, child killing, the murder of other women, and criminal insanity, this relationship can highlight the changing perceptions of gender and violence in colonial Africa.

Judgments and Justice: Colonial Courts and Capital Trials

Legal proceedings relating to murder in Nyasaland and Kenya were largely based upon English precedents. Statute law applied to homicide only substantially differed in having a wider definition of "provocation" under which a charge could be reduced to manslaughter – a rare example of racial inequality before the law which benefited the African. Judges sat with three or four assessors, usually headmen or chiefs, and occasionally a European official, settler or missionary. These assessors were to use their local knowledge to advise the Judge in his decision, but he was in no way bound to follow their advice.

A murder conviction in Kenya and Nyasaland, as in Britain at the time, carried a mandatory death sentence, for males and females, unless the offender was under eighteen years old, or pregnant. The right of appeal existed but the last hope of escaping the gallows lay in the Governor's royal prerogative of mercy to commute capital sentences, a power which in Africa was frequently exercised. Chief Justice Jackson, discussing the death penalty in Nyasaland with Attorney-General Belcher and Governor Smith in 1920 asserted that this was due to the judicial beliefs that "the comparative instability of the native mind and the natural tendency of primitive peoples towards violence" and other supposedly "tribal and racial characteristics" were proper factors in determining sentence.[2] It is clear that many colonial

[2] R v Matthew, 8 December 1920, J/5/12/16, NAM.

officials and judges were loath to employ capital punishment widely, whether from personal antipathy to the penalty or from a paternalistic, racialised attitude towards Africans. But it is still significant that between 1903-1947 in Nyasaland there is only one record of a woman being executed. To place this in perspective, during the same period in Nyasaland, 215 men were executed in some 900 capital trials, and in England and Wales between 1900-50 120 women were sentenced to death, with twelve being executed (Gowers Commission, 1953: 289-301). During this period some twenty-seven women in Nyasaland were brought to trial on murder charges, but of these, only sixteen were convicted of murder. Of these, twelve had their sentences commuted to imprisonment for terms of between two months and ten years, three women were sentenced to life imprisonment, and one was executed. In Kenya, records show that forty-one women faced capital charges in the Supreme Court - not including those accused of Mau Mau offences under the Emergency Assizes - of which one was executed, and twenty-two had their sentences commuted to imprisonment, with two found guilty but insane.

White Men and Black Women: Colonial Judge's Attitudes Towards Violent Female Offenders

Colonial judges' interpretations of violent African female criminality were most frequently marked by a paternalistic, sometimes benevolent attitude; what is described in the literature as a "chivalry of mercy" (Rapaport, 1991: 368). Judges often sought to diminish these women's moral responsibility for their crimes and to deny the rational nature of their acts. Constructions of female deviance developing in the late 1920s saw women as feebleminded and prone to irrational, violent behavior, which for African women was explained on bio-cultural grounds (Chisholm, 1991). Explanations for violent crimes were often linked to female bodily functions, such as menopause, post-natal depression, or general female mental instability and weakness. White judges were seldom able to clearly establish the motives of African murderers. Partly this was a consequence of cultural incomprehension, and partly due to the accused maneuvering to avoid conviction. Although often awed and confused by court surroundings and legal proceedings, female accused were not simply passive recipients of the judicial "chivalry of mercy," but active agents capable of using

courtroom demeanor together with specific explanations and rationalizations of their violence as legally-aware strategies to gain leniency.

Perhaps it can also be suggested that colonial judges, recognizing the frequency of violence against women and their subordinate status but unable to do much about it, were more willing to be lenient in sentencing. Where women were executed in colonial Africa it was due to the perceived "excessive" violence of their acts, premeditation, or acting for personal gain. Colonial judges were separated from African women less by the racial divide than by gender considerations, but their sentencing was also determined in general by their often negative views of capital punishment itself. But whilst colonial judges did not see African women's violence as being a significant threat to the social order, and were thus inclined towards benevolent paternalism in their dealings with such murderesses, African assessors perceived these women's actions as a dangerous inversion of social hierarchy and established patriarchies, particularly at a time of rapid and widespread change in socio-economic and gender relations. Their representations of violent females thus demonized such women and declared them unnatural and not "womanly."

Speak for Yourself: Violent Female Offenders on Violent Female Offenders

Feminist criminology has frequently highlighted the importance of traditional gender-role stereotypes in influencing the treatment of female offenders in male-dominated criminal justice systems. Defendants whose background character and courtroom demeanor conform to male judicial stereotypes of appropriate female gender roles are seen to have benefited from a wider application of mercy from male judges (Rapaport, 1991). Although these were secondary considerations behind the legal merits of an individual case, it seems true that such considerations did influence sentencing, particularly in mercy recommendations for women convicted of murder. Tapiwa Zimudzi convincingly argues that in Southern Rhodesia violent African female offenders were not intimidated by colonial courts, but used courtroom demeanor consciously together with specific explanations and rationalizations of their violence as legally-aware strategies aimed at gaining favorable treatment from colonial judges. Highlighting the agency and legal consciousness of these women in the

High Court, Zimudzi shows that they were active participants with the ability to engage with the power and procedures of colonial justice in their own interests. Some women were credited to have "at all times displayed an intelligent interest in the proceedings" and been "eager in her cross examination of some of the witnesses to be establish the fact that she had been ill-treated by her husband and his relations" (Zimudzi, 2004: 505-7).

Whilst this is certainly true of some cases, in others, especially where the defendant was young or very old, unrepresented by counsel, and listening uncomprehendingly to the proceedings in English, it would be surprising if they did not feel themselves at a disadvantage. Certainly this would account for the unwillingness of some female defendants to give their version of events, or to cross-examine witnesses. Perhaps it was more important for women to be seen in court than heard, as Zimudzi suggests. African women were there "expected to convey the qualities of gentleness, quietness, modesty and good motherhood" (Zimudzi, 2004: 507). Discourses of sexuality, domesticity, and respectability are crucial to the regulation of women's behavior. Falling short of such gender role expectations, through a series of complex social and legal processes, could leave a women becoming subject to cultural and judicial misogyny. It was not that these women were "defeminized," as Western studies of women and the death penalty have suggested, but that they are associated with more dangerous feminine traits (McClintock, 1995). The colonial state built its discourses of violent female criminality around the assumed dangerousness of certain types of femininity and more generally around assumptions about the potential effects of femininity on the public order of things, where the public and private spheres overlapped (Heberle, 2001: 49). That colonial concepts of "African womanhood" and the positions of women themselves were multiple and fluid only rendered courtroom interpretations of such discourses more unpredictable, and liable to manipulation by lawyers and the accused.

It is noticeable that the majority of women convicted of murder in Kenya and Nyasaland, and indeed in other parts of Africa, viewed their violence as rational and justifiable in the circumstances. Many gave straightforward explanations for their actions: "I killed him because he refused to get me medicine" or "I killed my husband in self-defense. We had quarreled and he picked up a panga and threatened to kill me. I got

very frightened, so I seized hold of an axe and struck him several times."[3] In some cases, women openly asserted their conformity to gender stereotypes and pleaded that their position as "proper women" meant they could not be responsible for the crimes of which they stood accused. Ndau d/o Wamboti, accused of murdering a man Katana in Kenya, 1946 after he broke her pots and cursed her family, asserted "It is not usual for a woman to be caught fighting with a man" and "Being a woman I could not have left my hut [...] to look for a man who had been fighting with my husband." Rather, she stressed, she had been pursuing such typically female duties as feeding her children and tending her goats.[4] In fact, it was when women's status as "female" was challenged that they tended to resort to violence, as when Akamala w/o Mwirikha claimed as provocation for killing her husband the fact that he called her "a man" during a quarrel, or with Tapchelong w/o Buyot who killed her co-wife's son after he taunted her with being barren and "not a real wife."[5]

Whilst few women pleaded "not guilty," some chose to deny responsibility for their actions, claiming they had been acting under provocation, like Wacheke d/o Githinji who murdered her husband in Kenya, 1940 but petitioned for mercy as "I had been beaten by the deceased and was not responsible for my actions at the time of the crime."[6] Some women stressed that native custom allowed the killings they had committed. Mukambe d/o Saburi was released by the Governor after being convicted of hiring three men to kill her son who had raped her. A combination of sympathy for her plight, and administrative confirmation that Duruma custom allowed such action determined her early release.[7]

Other women such as Kerubo w/o Ayienda, presented themselves as willing supplicants to colonial mercy, confessing their crimes, co-operating in court, and pleading "I have nothing to say, I ask you to forgive me or to hang me, as you feel," whilst some chose to garner the court's and Governor's sympathies by stressing their position as mothers: who would

[3] Gando d/o Kithongo, CC85/45, MLA/1/223; Kabon w/o Kirop CC66/46, MLA/1/248, Kenyan National Archives, Nairobi [hereafter KNA].

[4] Kiman s/o Ngutu & Ndau w/o Wamboti C195/46, MLA/1/270, KNA.

[5] Akamala w/o Mwirikha CC162/43, MLA/1/182; Tapchelong w/o Buyot, CC292/52, MLA/1/458, KNA.

[6] Wacheke d/o Githinji, CC99/40, MLA/1/55, KNA.

[7] Mukuko s/o Chembeyo + others, MLA/1/201, KNA. .

look after their children when they were gone? [8] The multiplicity of strategies employed by women belies the argument that they were devoid of agency in criminal courts.

Striking Back or Striking Out? : Spousal and Domestic Murders

Spousal murder by women in Kenya and Nyasaland was a relatively rare event, although it is probable that a larger number of non-lethal assaults did occur, and that many cases simply did not make it to court. Such murders were occasioned predominantly in response to male violence and abuse. African women were often seriously assaulted by their husbands or lovers for alleged infidelity, disrespect, quarrelling, refusal to have sex, neglect of children or running away from home. In fact, spousal murders – predominantly men murdering their wives or mistresses - were broadly the most common category of murders in Nyasaland between 1900-47 and thirty eight per cent of murders with an attributed motive resulted from sexually motivated or domestic quarrels involving women. The gender violence perpetrated on and by African women was fundamentally rooted in their subordinate socio-economic status and cultural norms which validated physical violence (Green, 1999).

Writing on the Gisu in Uganda, La Fontaine states, "it seems like the marital relationship is more prone than any other to drive women to murder" (La Fontaine, 1960: 105). This could be the case either where a husband's violence drove a woman to react violently, or where she did so in response to an external threat, perceived or otherwise, as with adultery or rivalry between wives in polygamous marriages. Wife-beating in colonial societies was normative and institutionalized to the level of "reasonable chastisement," which often simply meant that the wife did not require hospital treatment (Zimudzi, 2004: 505; Mushanga, 1978: 484; Rude, 1999). Women accused of murdering their husbands were often perceived as reacting to aggression on their husband's part, but their reciprocal aggression was rarely viewed as being reasonable by African or colonial judges. African assessors were often less sympathetic towards female victims of domestic violence than colonial judges, and frequently stated that in cases of domestic abuse the victims should properly have reported the

[8] Kerubo w/o Ayienda, CC176/51, MLA/1/431; Wacheke d/o Githinji, CC99/40, MLA/1/55; Sangano w/o Kinsop, CC216/49, MLA/1/347, KNA.

abuse to their headman, or in the areas of Nyasaland where the system operated, they should have visited their *ankhoswe* (marriage guarantors) for arbitration.[9]

When Chengwani was convicted of murdering her husband Glasiano on 13 June 1930 in Nyasaland, Chief Justice Reed stated in his judgment, "The accused is a raw native woman of a low standard of intelligence and if she had not confessed she could not have been convicted of the crime. It is also very unusual to hang a female."[10] The combination of perceived low intelligence and a confession, with Chengwani choosing to co-operate with the colonial legal system and appearing to put herself at its disposal, encouraged its benevolent paternalism. This was despite the fact that Chegwani had earlier openly contested colonial conceptions of women as weak and subordinate by repeatedly changing her story about the murder. First she told her brother-in-law that she had found Glasiano murdered on her return from grinding millet. Then on the 25 June she claimed Gostino had murdered Glasiano in a quarrel. Two days later she was asserting that she and Gostino had been having an adulterous relationship for two years, and Gostino had killed her husband so he could marry her. However, by the time of her trial, Chengwani admitted murdering her husband after a quarrel. Glasiano had been a sick man who could not work or provide for her. They had quarreled over her having to go around dressed in rags. Chengwani stated that Gostino had become angry, hit her over the head, and threatened to kill her with a knife. She rationalized her actions by claiming she acted in self-defense, seizing an axe, and knocking Glasiano on the head, unintentionally killing him. However, neither the assessors nor Judge Reed believed she had acted in self-defense or received serious provocation. Principal Headman Makata commented:

> She had no right when her husband was down and the knife out of his hand to hit him with the axe. If after her nagging, the husband had hit her with the axe it would have been all right, but not for her to hit him. I do not think she attacked in self-defense, nor do I think any ordinary woman would have lost her self-control and hit her husband with an axe.[11]

[9] R v Levi Khumba CC13/34 and R v Nyamula, S/106/35, NAM.

[10] R v Chengwani, CC14/31, J5/5/35, NAM.

[11] Ibid.

Even the European assessor, Mr H. George, asserted "If it was only the common event of a husband threatening to cut her throat, she would have run out and called her mother." This clear chauvinism led Judge Reed to comment that "this looks like a man-made law administered by men," but he still could not find self-defense.[12] Chengwani's lying and apparent materialism contradicted her supposed low intelligence and feminine submissiveness. In the end, Reed recommended mercy, mainly on the grounds of her sex, and Chengwani was sentenced to ten years imprisonment – a heavy sentence for a woman in Nyasaland.[13]

Colonial law generally viewed unpremeditated killings leniently, and it was rare for a woman to be charged with planning a murder. But murders resulting from assault with a lethal weapon – such as an axe, spear or knife – were liable to be punished more harshly, and women's general physical weakness relative to men meant that many women resorted to using such instruments in attack or self-defense, as revealed in their trials. The line between self-defense and revenge murder was narrow and fluid, but legally crucial. Akamala w/o Mwirikha had her death sentence for murdering her husband commuted to seven years imprisonment in Kenya, 1943. Although the court accepted that Akamala had been beaten by her husband, the savagery of her attack, with eleven blows to Mwirikha's skull using a stick, caused one assessor to comment "Even before white rule, people did not kill each other in this brutal manner." Judge Lucie-Smith made "no recommendation, except that the accused is a woman."[14] It is interesting that in the majority of cases involving female killers where details of the murders are known, the violence was directed at the victims head and neck, which is suggestive that these were not random, impulsive killings committed as a result of a sudden quarrel as frequently occurred in incidences of intra-male violence, but were rather specific acts directed at the person who somehow threatened them. Women tended to utilize weapons close to hand in their killings. Knives and pangas were the most frequent weapon employed in both Kenya and Nyasaland, followed by sticks or wood, axes, stones, hut burning, and death through beating or strangulation.[15]

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[12] Ibid.

[13] R v Chengwani, S1/1135/31, NAM.

[14] Akamala w/o Mwirikha, CC162/43, MLA/1/182, KNA.

[15] See Tabule d/o Kipkiget w/o Kipruot arap Soi, CC212/47, MLA/1/281;Mbeneka w/o

Spousal murders by African women appear to have been more common in Kenya than in Nyasaland, and it is likely that this is a reflection of greater gender tensions and female assertiveness there, particularly by the 1930s (see Kanogo, 2005). One problem which emerged was cases where beaten wives who could stand the abuse no longer or feared for their lives waited until their husbands retired for the night and then killed them in their sleep. From a legal viewpoint, the time elapsed between any direct abuse suffered by the wife and the murder meant that the defense of "grave and sudden provocation" could not be found. Realistically however, judges were aware that most women lacked the physical strength necessary to retaliate immediately to a violent attack, and sympathized with the plight of such women.[16] In one case, Sangano w/o Kimosop was convicted of murdering her husband by dealing him five blows to the head with an axe in his sleep. During the trial it emerged that Kimosop had mistreated her, neglected her children, and forced her to have sex with him at knifepoint on the night of the murder. Despite protests from local chiefs in Tambach that she should be "severely punished to uphold the position of the husband according to local custom," Sangano was sentenced to only five years imprisonment.[17] It was physical ill-treatment and the failure to provide for them and their children that most frequently drove women to homicidal violence, particularly in times and regions where famine conditions prevailed.

Children were also victims of female violence, usually killed as a result of tensions with family or kin groups. Female reactions to patriarchy are complex, and sometimes violence is a result of accommodation with patriarchal ideals. Women tend to kill precisely the people and parts of the social institutions which define - or threaten - their primary roles as wives and mothers, and give them their identities (Brownstein et al., 1994: 110). Conflict between women themselves, particularly trouble between co-wives, could result in the killing of a child.[18] Tapchelong w/o Buyot was a Kipsigis woman convicted of the murder of the seven-year-old son of her co-wife

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Ndonye, C151/55, MLA/1/1301; Chebor w/o Arap Kesu, CC38/56, MLA/1/1352, KNA.

[16] Wacheke d/o Githinji, CC99/40, MLA/1/55; Nyakihinyo w/o Wiathenyi, CC209/49, MLA/1/350, KNA.

[17] Sangano w/o Kinsop, CC216/49, MLA/1/347, KNA.

[18] Tungo d/o Chebili, 1944, MLA/1/213; Kerubo w/o Ayienda, CC176/51, MLA/1/431, KNA.

Tapsabe in Kenya, 1953. She petitioned for mercy as "The crime I committed was I agree one of great wickedness, but I had been provoked by my husband and his other wife to such an extent that I was not in my right mind when I did this thing." Tapchelong made a statement to the Magistrate in Kericho that:

> Tapsabe is always abusing me and insulting me. She does this every day. She has no excuse for doing this. My first born died a few days after birth, then I had a miscarriage. When I was pregnant with the child I now have with me Tapsabe came to me one day and threw mud at me saying "The child you carry will also die." She went to my mother and demanded that my brideprice should be returned as she now alleged that I was barren. She said many dreadful things about me. I resolved therefore to kill Tapsabe's child.

In court she attested that in pushing the boy into a waterhole and leaving him to drown "I had nothing against the child. I pushed him in to punish his mother [...]. I did not care whether he drowned or not."[19] Tapchelong avoided the gallows for her crime; other women were not so fortunate.

Life for a Life: Aiba and Margerina

The sole woman to be executed in Nyasaland, according to the existing court records, was Aiba. That she aided her husband in the murder of a young girl was not a crime of exceptional violence that would not ordinarily have warranted execution. What sent Aiba to the gallows was the fact that she participated in the cannibalism of the girl's corpse. More than any other practice, cannibalism was deemed the most "repugnant" by colonial officers. The case of Aiba and Ntokoma, her fifty year old husband, in 1926 was the first time that administrators in Nyasaland were alerted to a murder committed for the purpose of procuring flesh for consumption as fears of cannibalism spread with the growing famine in Shire Valley.[20] Throughout the trial Aiba remained quiet but co-operative, displaying a "feminine submissiveness" that she perhaps hoped would detract from the court's

[19] Tapchelong w/o Buyot, CC292/52, MLA/1/458, KNA.

[20] R v Njali alias Ntokoma and Aiba, CC16/25, S1/384/26, NAM. The use of @ is unclear

horror of her actions. The assessors found both accused guilty of murder, but Acting Chief Justice Petrides noted his one difficulty with the case was the degree of Aida's complicity; "There was no evidence that she was present at the murder, but there was enough I considered to establish her prior abetment, so that as an accessory to murder she rendered herself liable to the capital penalty." He regarded the accused as "both an extremely low and degraded looking type and must have grown to maturity before they had any contact with ideas other than those of savagery," and who further shocked colonial sentiment by offering up another child as compensation. Considering the heinousness of the crime and the chance that cannibalism during famine might encourage further murders, Judge Petrides sentenced Aiba and her husband to death, without recommendation to mercy. Governor Bowring confirmed the death sentence, and Aiba was sent to her death on 26 January 1927.[21]

Coincidentally, the last woman to be executed in Kenya also went to her death in 1927. Margerina wa Kori was a Gikuyu woman convicted of the murder of another woman, Eliza, at the Italian mission in Fort Hall on Tuesday, 1 February. It was found that Margerina and Eliza were neighbors who had been quarrelling for some months. The two were walking home from an evening prayer meeting, Eliza carrying a child and holding a lamp aloft, when Margerina drew a knife she had concealed beneath her cloak and started a fight. The two women struggled until another woman called for Eliza to let Margerina get up off the ground. As Eliza stood, Margerina stabbed her in the heart. Eliza cried "I am stabbed" and ran towards her home, but collapsed before reaching it and died shortly afterwards. According to the acting solicitor general, "the case appears to be one of deliberate murder by a person who sought out the quarrel and who provided herself with a stick and a knife before starting the quarrel." It was the elements of premeditation and determined murder that condemned Margerina, particularly when occasioned by a Christian convert shortly after prayer.[22] Although her husband claimed she was pregnant in an attempt to save her from the gallows, this was found to be untrue, and Margerina was hanged.

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[21] R v Njali alias Ntokoma and Aiba, CC16/25, S/1/384/26, NAM. Same remark

[22] African Christians were held to be more "civilized" than pagans, and were consequently held to a higher standard of behaviour. As such, those who committed crimes could find themselves being given more severe sentences.

Deadly Sisterhood: Intra-female Violence

Whilst many women suffer from various forms of domestic violence, violent crime itself can be a type of women's resistance against specific oppressive gender relations within the family and society. Women can be driven to despair by unequal or abusive societal rules and in response kill whomever they perceive as the immediate cause of their distress, although the victim may be innocent of violating any of the women's rights (Timutemwa-Ekirikubinza, 1999: 232-3). In some cases, they were even willing aggressors. What best illustrates their inherent capacity for aggressive behavior is that African women also killed each other, often in jealous quarrels. The trial of Ndinga and Ndame, jointly convicted of beating another woman Ngawonelanga to death in Zomba on 14 September 1921, is a case in point. Ndinga, a thirty-five-year old Yao, and Ndame, a thirty-seven-year old Ngoni woman were both wives of January. Ngawonelanga was a young woman whom January had long wanted to marry, but had been dissuaded by one of the accused. Witnesses for the Crown stated that Ndinga and Ndame were "very jealous of the deceased, and took no pains to conceal this." On the Sunday afternoon of the attack, all attended a beer drinking session where "There cannot be much doubt that the accused at least had consumed too much beer by the time that the deceased arrived at the hut." January greeted Ngawonelanga, shaking her hand, which infuriated the accused who remonstrated with Ngawonelanga for trying to take their husband away from them. Sensing a quarrel was imminent January and everyone else apart from the hut's owner, Nchili, left. Nchili stated in court that the accused then started to beat the deceased; Ndame using a bamboo *ulolwe* (pestle) from the grain store whilst Ndinga held Ngawonelanga down. When the beating was finished, Ngawonelanga crawled out of the hut, where she began to vomit blood and later died.

Ndinga and Ndame both flatly denied in court that they had ever quarreled with or assaulted the deceased. Justice Petrides and all the assessors determined however that they were guilty of Ngawonelanga's death, although they had not intended to kill her. The assessors recommended that the death penalty not be inflicted. Petrides though had difficulty in finding a strong justification for this decision; he noted "The assault was a brutal one and in ordinary circumstances it would have been

difficult to urge much in favor of commutation. The murder occurred however [...] nearly nine months ago." The trial had been delayed after the medical officer in Zomba prison suspected that one of the women was pregnant and Petrides delayed trial until this could be confirmed.[23] A long period between charge and final conviction was frequently mooted at this time as a reason for mercy, it being judged "inhumane" to execute someone after an extended period of stress awaiting sentence.[24] Both Ndinga and Ndame had their sentences commuted to life imprisonment, not to be reviewed before fifteen years had been served, the longest prison sentence awarded for a woman in Nyasaland during this period.[25]

Killing the Witch: Witchcraft Belief and Murder

Another type of murder committed by women was the killing of suspected witches who had threatened the accused's family or person. This type of murder conviction appears to have been more common in Kenya than in Nyasaland. Typically, the women viewed their actions as entirely necessary and rational. In one trial, Awoi d/o Ewokor, a young Turkana woman, had her death sentence for the murder of a two-year-old girl commuted to eighteen months on the grounds that she genuinely believed its mother had caused the death of Awoi's child through witchcraft.[26] Awoi's case was considered sympathetically by Officer-in-Charge Denis McKay, and everyone else involved in her conviction, for Turkana was a region with strong cultural beliefs in witchcraft. Awoi had been visiting her father's manyatta when her child fell sick. Believing another woman, Rukwalle, to be responsible, she asked her to remove the spell. According to Rukwalle, "I tried to take the spell off. I don't know if I'd bewitched it or not. People said I had [...]. When her child died, she struck my child with a piece of wood and killed it." Rukwalle stated "I want the accused let off - not even cattle taken from her." Assessor Nadyo Lotodo summed up local sentiment in stating "Our law and the Government's are different. There are witches in Turkana who can kill stock or people. According to Turkana custom the

[23] R v Ndinga and Ndame, 1925, NAM.

[24]See Local legislation to obviate the necessity of passing sentence of death, S1/42/22, NAM).

[25] R v Ndinga and Ndame, 1925, NAM.

[26] Awoi d/o Ewokor, SDCC9/45, MLA/1/239, KNA.

accused has not done wrong. Her child was killed so she killed the child of the murderer." McKay wrote to Nairobi in both his capacity as trial judge and prison superintendent, to assert that her conduct in prison was "excellent" and that he had passed the death sentence "with strong recommendation to mercy" as Awoi was "an unsophisticated Turkana woman who has not committed an offence according to tribal law and who at the time she committed the crime was overcome with grief at the loss of her child."[27] Cultural defenses, stressing native custom and the "state of civilization" in an accused's tribe or home area, may not have been a legal excuse to murder, but they did have considerable weight in the final disposition of a case.

Weak-minded Women and Murdering Mothers: Child-Killing, Insanity, and Female Psychology

As has been outlined above, there was a strong correlation drawn in European minds between violent African female criminality and mental instability or illness. This was informed both by wider androcentric criminological perspectives which located female criminality in women's biological characteristics, and popular "ethnopsychiatric" views that viewed Africans as inherently unstable, lacking self-control, and prone to violent outbursts and "manias." Female murderers were frequently reported as being of "below average intelligence" or of a primitive mentality.[28] Although doctors admitted to having a limited understanding of African psychology, there was general belief in ethno-psychiatry that normal Africans were close in temperament to European psychotics, which percolated through legal and administrative circles, particularly in understandings of schizophrenia, epilepsy, and "mania" among Africans (McKittrick, 1999; McCullock, 1995; Vaughan, 1991: 100-15; Jackson, 2005). Racialised and gendered assumptions thus combined to doubly disqualify violent African female criminals from rationality, although it would seem that ascribed gender characteristics often outweighed racial attributes.

One area where female actions were particularly seen as resulting from

[27] Ibid.

[28] Sangano w/o Kinsop, CC216/49, MLA/1/347, KNA.

mental abnormality was in child murders.[29] Mothers who killed children, either their own or those of others, were often seen as suffering psychological imbalance or "puerperal mania," today known as post-natal depression. One young woman accused of such a crime, Alikutu of Kota Kota district in 1926, was held to have murdered her one week old son, but was recommended to mercy by both District Magistrate Murphy, who originally tried the case, and Chief Justice Belcher who approved sentence.[30] Murphy, as stated at the beginning of this paper, recommended mercy on the grounds that "the female mind is [not] sufficiently developed to justify the application of the extreme penalty of the law." Belcher attributed Alikutu's actions to the "result of child bearing" noting "these murders are not uncommon among European women" thus viewing Alikutu's criminality as a result of her gender rather than as a result of African "abnormality." In her defense statement Alikutu admitted that she remembered killing her child, but could not say why she had done so, leading the court to interpret the killing of her son not as a sign of madness but of an "impulse beyond control." Belcher reported in his judgment that "I cannot believe punishment serves any useful purpose in such a case which is the result [...] of something having all the effects of insanity though falling without the legal definition of that mental state." He instead recommended mercy, with a prison term of one year's imprisonment and medical observation to review her mental state.[31] Although there was no evidence of Alikutu being insane, colonial justice could not accept the killing of her child by a mother as a rational action.

In the case of Mwose w/o Mwiba, the accused freely admitted she had killed her four children and then tried to commit suicide, cutting their throats and then slashing her own, during her trial she was able to "display[ed] an intelligent interest in the proceedings," and to give a relatively rational explanation of what transpired.[32] According to Mwose, she had been unfairly accused of theft, beaten by her brother-in-law and neglected by her husband in favor of his second wife: "I killed my children on account of the distress I was suffering owing to the conditions which

[29] See also Tungo d/o Chebili, MLA/213; Estheri Wanjiro w/o Karikui, CC179/49, MLA/1/351, KNA.

[30] R v Alikutu, CC9/26, J5/12/23, NAM.

[31] Ibid.

[32] Mwose w/o Mwiba CC239/48, MLA/1/295, KNA

were in front of me." Nevertheless, according to the Machakos Magistrate who originally heard her case, "the balance of her mind must have been extremely upset when she killed her children and endeavored to do away with herself." Mwose was sent for psychiatric evaluation under Dr J.C. Carothers, the "chief alienist" at Mathari Lunatic Asylum. Carothers came to the conclusion that whilst she was presently:

> …more or less sane [...]. […] her actions on the 2 May were typical of the existence of insane depression [...]. In such a condition she would not know what she was doing. I think her attitude would be quite distorted. I think her attitude would be that it would not be fair to leave the children alive because she would feel that they would be equally badly treated as herself if she took her own life.[33]

Carothers did however admit that Mwose's attempts to pin the blame for the crime on an unknown person upon the discovery of the bodies "might indicate that she knew that those actions were wrong." The assessors all agreed with Carothers though that Mwose should be found "guilty but insane"; it was hard to accept how a women could kill the children she loved otherwise. Judge Modera however, noted that "Whilst I am fully appreciative of the weight of the testimony afforded by Dr Carothers" he was "not satisfied that it had been proved that the accused at the time she killed her daughter was, through disease affecting her mind, incapable of understanding the physical nature of the act, or of knowing that she ought not to do the act [...]. She was, as she herself admitted, overwrought by her surroundings and decided to do away with her family and try to do away with herself,"[34] This tension between the medical and legal definition of insanity had become increasingly problematic in Kenya, with judge's complaining about the poor quality of medical evidence and asserting that the final decision on insanity lay with the court, not with doctors.[35] Here, power struggles between different colonial actors and competing notions of expertise pulled the discourses of insanity in different directions, with Mwose caught between their webs. Whilst the attempts to determine the

[33] Ibid., Carothers' report.

[34] Ibid., Dr Carothers' report; Judge Modera's report.

[35] See Criminal Cases – Procedure in Capital Cases, 1939-43, MLA/1/1368, KNA.

accused woman's mental capabilities could be seen as humane in one sense, it simultaneously reinforced state power. Women were in the end judged against standards of social behavior which were more gendered and medicalized than racialized.

Conclusion

The worldview of British colonial African administrations was determined partially by the African communities over which they ruled. The background stories to many of these murders are enmeshed in dominant ideologies and social institutions which granted women limited responsibility and subordinated them to men. Patriarchal alliances among African and colonial authorities combined to punish these women, but in doing so blurred the differences between their respective perceptions of power, gender, marriage, and motherhood. Women accused of violent crimes could be caught in the contradictions and categories created around them by these discourses. Violent women were not just "mad" or "bad"; their behavior was rooted in their social world, with the patterns of their crimes reflecting the changing social conditions of women. The majority of their crimes were domestic murders, viewed as marginal to general public order and thus subject to lighter sentence. It was only where such crimes were interpreted locally as threatening order, where the woman's violence was premeditated or "repugnant" that execution occurred. Violent female offenders' actions must be read within the contradictory and multiple cultural logics of colonial rule, but in their final court trial it was a more European influenced discourse which prevailed, linking femininity, physical weakness, and irrational behavior. These offenders were firstly "women" in the eyes of colonial judges, then "African." At the same time, this discourse though was not simply informed by a gendered "chivalry of mercy," but more widely by a racial paternalism and an often liberal penalty, reflected in judges frequent antipathies towards the death penalty itself. Neither "gender" nor "colonialism" in these discourses were monolithic, uncontested ideas.

Capital trials in colonial courts were sites of both legal and gender contestations between the colonial legal system and the female defendants. In granting mercy and lenient sentences towards these women, the courts both validated and undermined these women and their use of violence. The

same colonial logic which spared their lives simultaneously limited their social status and independence: in absolving women of full responsibility for their actions, the colonial state also denied women's agency. However, African female offenders were not just passive subjects of colonial justice, but were active agents who could challenge the court's perceptions of their criminality through denial and creation of alternative histories, or who could appropriate and inhabit existing colonial discourses of femaleness, which often contrasted with their own perception of appropriate gendered behavior. African women were both the victims and perpetrators of violent crime; not deadlier than the male, but capable of using and representing their violence in their own interests.

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