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African Women, Colonial Justice and White Man's Mercy: Female Murderers and Capital Sentencing under British and French Colonial Rule in Africa, c.1920-40s

Stacey Hynd, University of Exeter

Thaïs Gendry, Scuola Superiore Meridionale, Naples

Abstract –

As the first comparative analysis of the treatment of African women in British and French colonial law, this article shows the processes through which ideas of race, status and public order intertwined with European and local African gender norms, both within courtrooms and political offices, to determine the outcome of murder cases involving female accused. The article compares evidence from 115 trial records involving female accused from French West Africa and Kenya, Ghana and Malawi. It shows how intersections of racial and gendered stereotypes, many shared across French and British colonial cultures, often ended up working in favour of African murderesses through the operation of mercy processes. The article investigates the development of a colonial 'white man's mercy', to show the cultural and politico-legal reasons why many African women were adjudged befitting of mercy and judicial leniency. It then explores the treatment of 'wicked women' who were only spared execution explicitly on grounds 'of [their] sex' and often against the opinion of on-the-ground colonial judges. Finally, it interrogates those cases where women were executed, to highlight the limits of gender in determining sentencing.

This article argues that gender was a significant factor in capital sentencing, but its significance varied according to three main factors. Firstly, the distance between the original crime and final sentencing outcome, both geographically and in terms of the axes of politico-legal hierarchies within the criminal justice process. Secondly, gender's impact on sentencing was shaped through its intersection with other facets of a defendant's identity. Thirdly, the nature of the offence, and how this did (or did not) violate gender norms or colonial order, was a key determining factor in judicial severity. Overall, the differences in treatment of women accused of murder between French and British courts stemmed primarily from differences in the mercy process and separate waves of repression of African societies across each empire. African women's own agency was also significant in shaping the narratives that emerged in these courtrooms to fuel colonial discourses of punishment and mercy.

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Article

> "I admit I killed my husband. He used to beat me up…I wanted to revenge myself and be rid of him, I waited until he had gone to sleep and when he was fast asleep I hanged him with a rope and thus killed him".

With these words, Tabule wife of Kirupto Arap Soi pled guilty to murder at Nakuru court in Kenya and was sentenced to death. That sentence however was subsequently commuted to only five months imprisonment. Her 1947 case file reveals multiple officials expressing sympathy for her actions, due to her pregnancy, her "emotional instability" and the years of abuse she had endured.[1] Despite the premeditation of her offence, and despite the inherent violence, racism and patriarchal structures of imperial control, the colonial legal system here viewed Tabule as a victim as much as a perpetrator. This article explores why colonial legal authorities and governance regimes granted leniency to many accused female murders like Tabule, whilst a smaller number were denigrated as dangerous and degenerate criminals, being condemned to execution or life behind prison walls.

In colonial Africa, murder trials were an arena where local and colonial notions of violence and socially acceptable behaviour clashed, and where private lives became the subject of public discourse.[2] These arenas were also intensely gendered, in both their form and discourse. Overall, few African women appeared in colonial courts for violent crimes.[3] Illicit African female behaviour was primarily a target of civil rather than criminal law, with women appearing in colonial courts in divorce or adultery cases, as runaway wives, or in relation to dowry conflicts.[4] Criminal cases involving African women as perpetrators rather than victims largely pertained to household spaces and to the control of female sexuality or reproductive capacities: offences such as prostitution, adultery, abortion, infanticide, and domestic violence, including violence against children and between co-wives in polygamous

[1] Kenyan National Archives, Nairobi (KNA), MLA/1/281, R v Tabule d/o Kipkiget w/o Kipruto Arap Soi.
[2] Hynd (2010, 159).
[3] Goerg (2007, 8-10); Perrot (2001, 78-9).
[4] Coquery-Vidrovitch (2007).

households.[5] This domestic focus was also the case for many – but not all – murder cases involving female accused.[6] Women's lethal violence brought them to the apex of the colonial state's struggles to manage the behaviour of its African subjects, as well as of local communities' attempts to exert control over women. Yet these attempts did not always result in severe penalties for women accused of homicide.

This article offers the first comparative analysis of the treatment of African women in British and French colonial law. It will show the processes through which ideas of race, status and public order intertwined with European and local African gender norms, both within courtrooms and political offices, to determine the outcome of murder cases involving female accused. Unlike much of the existing scholarship on violent African female offenders and colonial courts, the focus is not on the socio-cultural realities of women's lives, but rather on the judicial processes and legal fictions that shaped their conviction and sentencing in African territories under French and British rule. While the archives reveal no explicit inter-imperial comparisons by French or British officials on colonial law or the punishment of women, this article argues that broadly similar responses to violent female offenders did emerge. There were however noticeable differences between British and French empires in the targeting and sentencing of various types of female violence and criminality.

Comparing the treatment of women across colonial borders and legal traditions enables us to illuminate the similar tensions arising in British and French African colonial settings from the intrusion of colonial law into local conflict resolution strategies and customary legal practices, with the colonial state presenting an alternative locus of authority to headmen, village leaders and patriarchs within family units.[7] It also shows how intersections of racial and gendered stereotypes, many shared across French and British colonial cultures, could end up working in favour of African murderesses through the

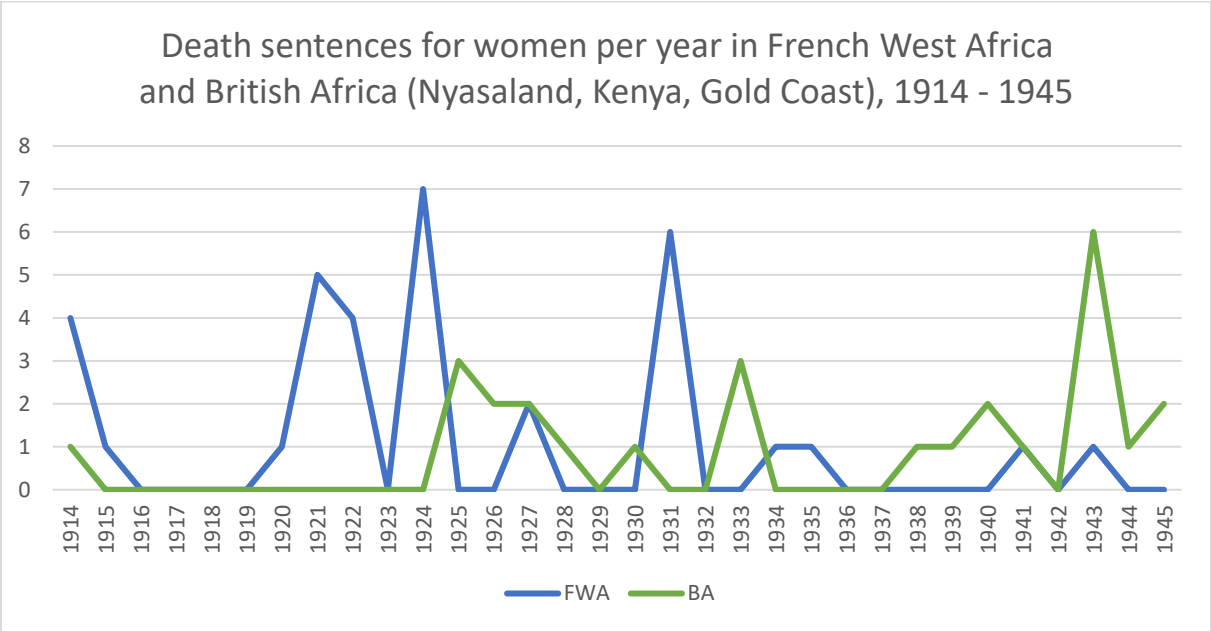
[5] In British Africa, see McKittrick (1999, 266); Schmidt (1990, 632-34). In Belgian Africa see: Hunt (1991, 471); Lauro (2015, 183-90). In French Africa, see Coquery-Vidrovitch (2007); Goerg (2007), Marc Le Pape (2007), Rodet (2007).
[6] Hynd (2007, 23).
[7] Burrill, Roberts and Thornberry (2010).

operation of mercy processes. However, as legal scholars have noted, gendered mercy can be an exclusionary, rather than benign, process.[8] Black argues that in post-Independence Ireland it was "an indicator of patriarchal gender relations under which women were implicitly regarded as a class apart".[9] The factor of race further complicates such notions of gendered mercy. In both British and French imperial legal configurations, African women were largely considered to bear diminished responsibility for their criminal actions and to be the victims of so-called "primitive" social and cultural systems dominated by "savage" men. This colonial discourse of primitivism, in its varying psychological, cultural and social forms, fuelled a gender and race specific mercy process that in questioning the severity of the law questioned at the same time the ability of African women to govern themselves as individuals.

The shared European imperial constructions of female agency and the shared gendered constructions of crime and mercy that emerge from the legal archives surprisingly stem from distinctly different targeting of criminal courts and legal repression in each empire. Whilst courts in British Africa primarily dealt with domestic and unpremeditated murders (for both male and female offenders), colonial legislation strategically focused French courts on the punishment of "ritual" and "cannibalistic" murders, as offences that threatened colonial law and governance. This article analyses the processes through which various categories of homicides committed by African woman generated analogous colonial discourses and sentencing outcomes from both French and British administrations.

This article focuses on the 1920 to 1940s as this is the period for which comparative evidence exists in the archives but also because this period was shaped by both developments in colonial criminal jurisprudence and significant gender tensions.

[8] Shatz and Shatz (2012).
[9] Black (2018, 140).



Graph 1 : Number of women sentenced to death per year in French and British colonial territories

French and British records alike suggest the 1920s and 1940s were periods of particular patriarchal concern over disobedient and violent women whose expanding autonomy, linked to early twentieth century labour migration and urbanization, was increasingly perceived by colonial (and local) male authorities as a factor in social and political breakdown.[10] The article's focus is primarily on the treatment of Black African women because they constituted the vast majority of offenders, with very few white or Asian women charged or convicted of murder. This article argues that gender was a significant factor in capital sentencing, but its significance varied according to three main factors. Firstly, the distance between the original crime and final sentencing outcome, both geographically and in terms of the axes of politico-legal hierarchies within the criminal justice process. This was particularly the case in French territories where mercy and final sentencing outcomes were an imperial, rather than colony-level decision. Secondly, gender's impact on sentencing was shaped through its intersection with other facets of a defendant's identity, particularly race, age, and their social, marital and reproductive status.[11] Thirdly, the nature of the offence, and how this did (or did not) violate gender norms, was a key

[10] Coquery-Vidrovitch (2007).
[11] Seale (2010).

determining factor in judicial severity. Overall, the differences in treatment of women accused of murder between French and British courts stemmed primarily from differences in the mercy process and separate waves of repression of African societies across each empire. It is important to note however, that African women's own agency was significant in shaping the narratives that emerged in these courtrooms to fuel colonial discourses of punishment and mercy.

For British colonial Africa, the three key case studies are: Kenya, selected as an East African settler colony with a history of penal severity; Nyasaland (now Malawi), as a Southern African peasant economy colony with a less developed peno-legal apparatus; and the Gold Coast (now Ghana), as a West African 'model' colony, with both a long history of colonial contact and early processes of Africanization in its colonial legal system.[12] The primary evidence base from these territories is over 2300 murder case files involving both male and female accused located in the National Archives of Nairobi, Zomba and Accra, supported by legal and judicial records and annual statistics. For each case study territory, the archives contain a variable level of data from murder cases. Some files contain little more than a name, charge sheet and initial sentence; others contain witness statements, full trial transcripts, judge's reports, appeals, petitions, and a report from the district commissioner of the accused person's locality that outlined local opinion on the crime and offender, and what sentence would be imposed under customary law. A review of the extant capital cases from Africa involving female accused was conducted in the National Archives at Kew, London, which confirms that the findings from these colonies are in line with the broader framework of gendered justice in British Africa.

Murder carried a mandatory death sentence across British colonial Africa, with executions by hanging (Hynd, forthcoming). Criminal justice in Kenya operated under the Indian Penal Code until 1929, when a modified English common-law based Criminal Procedure Code was introduced. Both Kenya and Nyasaland in 1920-40s operated a system of bench trials in capital cases, with either district

[12] The comparative focus was dictated by the authors' respective geographical expertise as additional research in West African archives was prevented by the Covid-19 pandemic.

commissioners or judges presiding over cases, supported by assessors, usually African chiefs or elders, whose role it was to provide information on local customary law and understandings of the offence. This was also the case in the Northern Territories and Asante in the Gold Coast, but the coastal Colony jurisdiction directly imported English common law and therefore established trial by a jury of peers for African offenders, presided over by a colonial judge. The provision of defence counsel and appeals only became routine by late 1930s-early 1940s as part of the broader formalization and professionalization of criminal law. Judicial severity was modulated through the royal prerogative of mercy, which devolved onto a colony's governor, advised by his Executive Council and Chief Justice. Reports from the trial judge and district commissioner were central to gubernatorial mercy decisions and therefore form the primary basis for this article's analysis. Mercy could reduce a sentence to anything from life down to one year's imprisonment.

The French case study is French West Africa (FWA), a federation of eight French colonial territories.[13] Colonial law in FWA was created *ad hoc*, specifically for the federation, with a common peno-legal inquisitorial system established in 1903. Unlike in British colonial Africa, capital sentencing was an imperial process, with final sentencing decisions made in Paris. A petition process brought cases to the ministry of colonies, the ministry of justice and finally to the presidential cabinet, respecting the established metropolitan tradition of the head of state deciding the outcome of every capital case. In 1931, it became obligatory for the colonial administration to file a plea of clemency on behalf of every person sentenced to death in FWA. These clemency records are the primary evidence used in this article. 685 capital cases were extracted from mercy files in the *Archives nationales d'outre-mer* in Aix-en-Provence and national archives in Dakar, the administrative and political capital of FWA where all clemency petitions transited through. Cross-referencing against annual legal statistics shows this pool of capital cases covers more than ninety per cent of all death sentences handed down in the federation. Much as in the British archives, the composition of the files varies widely. While some hold the trial

[13] Mauritania, Senegal, French Sudan (Mali), French Guinea (Guinea), Ivory Coast, Upper Volta (Burkina Faso), Dahomey (Benin) and Niger.

transcript (*procès-verbal d'audience*) and every report, from the judge to the Governor general's, most simply contain the report from the colonial department that summarizes the case for the President and records the positions of local, federal and ministerial administrators on the merits of mercy.

The data gathered from the mercy records show that capital sentences in FWA were almost exclusively used to sanction murder - voluntary homicides without premeditation (*meurtre*) or with premeditation *(assassinat*) - although the offense did not carry a mandatory death sentence until 1931.[14] The impact of this change was however mitigated by a professionalization of justice through the institution of criminal courts and defence attorneys, which offered greater protection to African accused. The majority of those sentenced to death were executed (sixty-seven per cent across genders), and those granted mercy usually spent no less than twenty years in prison. In most cases, the initial severity of the judge was upheld along the mercy process. Throughout the existence of the colonial courts system, the judge was also the commander of the area – *Commandant de cercle* – and thus gathered both executive (administrative and police) and judicial power into his hands. As judge, he was assisted by two African assessors, whose status and role were similar in French and British colonial courts. There was no right to appeal.

This article opens with a contextual discussion of the data on women accused and convicted of murder in colonial courts. From there, it analyses three categories of sentencing outcome. First, it investigates the development of a colonial 'white man's mercy', to show the cultural and politico-legal reasons why many African women were adjudged befitting of mercy and judicial leniency. Then, it moves on to explore the treatment of "wicked women" who were (often begrudgingly) spared execution, explicitly on grounds of their sex. Finally, it interrogates those cases where women were executed to highlight the limits of gender in determining sentencing.

White Man's Mercy: Gender, Race, and Colonial Justice

[14] The data set for FWA comes from mercy records for capital cases and therefore unlike the dataset for British colonial Africa, it does not detail the number of murder cases that did not result in a death sentence.

Few women overall were charged with or convicted of murder in British Africa, and most of these murders were killings of husbands or children, often in response to patterns of domestic violence or quarrels within families or kin groups, as will be explored below. Women as a category of offender in British Africa were routinely granted mercy following conviction, more so than men. Nyasaland records from 1903-47 indicate that from 897 murder cases, twenty-seven women were brought to trial on murder charges with sixteen convicted. Of these, one was executed and three had their sentenced commuted to life imprisonment, with the remaining twelve receiving shorter terms of imprisonment. In Kenya, from 1108 murder cases that resulted in convictions between 1908 and 1956 (excluding cases associated with the Mau Mau Emergency), forty-one women were charged with murder, of which one was executed, and twenty-two saw their convictions commuted to sentences of imprisonment, usually for between one and five years. In the Gold Coast, from 268 workable case files and statistics between 1925 and 1946 fourteen women came before the courts on murder charges (mostly related to child killings), but of these only two were convicted of murder: both had their sentences commuted explicitly on the grounds of their sex. Across the case samples only two women were executed, in Kenya and Nyasaland, both coincidentally in 1927, as discussed below. These numbers are broadly in line with patterns in other parts of British Africa: even the more penally repressive states like Zimbabwe executed only six women between 1906 and 1952, all occurring in the period 1922-44, whilst the most populous colony Nigeria executed five women between 1939 and 1946, alongside 493 men.[15] Colonial administrations appear to have been reluctant to impose judicial execution upon women even in comparison with their metropolitan counterparts, with 130 women sentenced to death in England and Wales in 1900-50, eleven of whom (all white/European) were executed. Annette Ballinger argues however that women who murdered an adult had less hope of reprieve than men, whilst Lizzie Seal and Angela Neale show that in 1900-41 men of colour received significantly less mercy than white men, with twenty-two of twenty-five executed.[16] So a distinct, colonial tradition of gendered and racialized mercy that granted leniency to Black African women can be identified.

[15] Zimudzi (2004, 506). Data taken from Blue Book annual statistics for each colony.
[16] Ballinger (2019); Seale and Neale (2020, 885).

In FWA there were fewer trials and convictions for murder, but a higher rate of executions due to the specific nature of the crimes prosecuted by French colonial courts. Across the region, thirty-four women received capital sentences for murder between 1903 and 1946, representing five percent of the total of death sentences handed out in the federation. All these women were African, with the legal status of *indigène* (unassimilated). Four of these women were found guilty of murder, while the other thirty were convicted of "murder and acts of cannibalism", a type of criminality regarded as exceptional by the French colonial state and dealt with under a specific set of decrees. Of the thirty women sentenced to death for "murder and acts of cannibalism" across FWA, all came from French Guinea or Ivory Coast, two colonies whose poor reputation in the federation had been fuelled by a lengthy resistance to colonisation, which translated into a general perception of backwardness and widespread "ritual" or "traditional" criminality in the French colonial mind.[17] Fifteen women were executed and thirteen had their sentences commuted to between twenty years and life in prison, with two of these explicitly granted mercy because they were pregnant or breastfeeding.[18] Of the four women convicted for "simple" murder, two were condemned for the murder of children and two were condemned for the murder of men to whom they were indebted. Three had their sentences commuted to life in prison and one was executed, Kambiri Touré, in Ivory Coast in early 1941.[19] To look at the level of a single territory, in Dahomey between 1894 and 1945 only four women were tried for murder: one was exonerated on lack of proof and two sentenced to life imprisonment, whilst the fourth was sentenced to death but subsequently had her sentence commuted to life in prison explicitly on the grounds of her sex.[20] Across both categories of cannibal-related cases and standard murder cases, women were predominantly convicted for the murder of family members.

	Brought to trial	**Sentenced to death**	**Executed**
Malawi (Nyasaland)	27	16	1

[17] Gendry (2018).
[18] The remaining two died in prison.
[19] Archives Nationales du Sénégal (ANS), 3M 192, Affaire Touré Kambiri.
[20] Many thanks to Bénédicte Brunet La Ruche for sharing this data.

Kenya	41	23	1
Ghana (Gold Coast)	14	2	0
Côte d'Ivoire	Unknown	18	5
Guinée française	Unknown	14	12
Dahomey	Unknown	1	0
Haut-Sénégal-Niger	Unknown	1	0

Table 1: Number of women brought to trial for murder sentenced to death and executed per colony between 1914 – 1945.

What accounts for this generally low rate of trial, conviction and execution of women across French and British colonial Africa? It should be noted that in both empires, officials regarded violent crimes by women as rare, although to what extent this represented a reality of female criminality rather than a 'dark figure' of undiscovered and unprosecuted offences is impossible to determine from the archival record. In both British and French colonial courts, judges' interpretations of Black African female criminality and lethal violence were marked by a paternalistic, sometimes self-consciously benevolent, attitude, but one that was deeply grounded in racist and racialized understandings of African women. Colonial officials viewed African women as doubly victimised by their gender as women and their racial status as Africans, though with a different dominant trope in each empire. In British territories, officials understood women to resort to violence in response to mistreatment by inherently violent African men, as discussed below in relation to spousal and domestic violence. In French territories, the main interpretation of female homicidal violence was their total subordination to the will of African men; officials held women's actions to stem from male influence rather than individual intent. In colonial courtrooms this translated into a common perception of African women's violence and deviance being driven by their subordination and mistreatment within their societies and family units rather than a determined criminality. Such legal discourses informed the operation of what we term a 'white man's mercy' for accused African women, to highlight the combined impact of race, gender and colonial notions of the civilizing mission on mercy processes and discretionary justice. This 'white man's mercy' formed a racialized paternalism that denigrated African men and societies as "primitive" and African women collectively as generally unthreatening to colonial order and bearing diminished responsibility for their actions, thereby securing leniency for individual African women at the price of reinforcing racial and gendered colonial hegemonies.

Colonial understandings of female criminality as warranting a familialist or paternalist response stemmed from well-established trends in criminology and prosecution across Western Europe that viewed female violence as marginal, apolitical, and unthreatening to public order. Women benefitted from "favourable or preferential treatment", a "sort of clemency" infused with the paternalism and chivalry of prosecutors and judges.[21] In metropolitan France for instance, there was a *de facto* immunity against execution for women.[22] Emmanuel Taïeb argues that executions were perceived by the French public as an essentially masculine and martial event, a perception all the more salient in FWA where execution was by firing squad. [23] The Lieutenant-Governor of Upper Senegal-Niger drew on this tradition when he stated that it was "more humane" to not execute women as this would "avoid the sad apparatus of a measure to which our sensibilities are repugnant".[24] This attitude was amplified by the perception of African women as even less rational and more subject to uncontrollable impulses than European women.[25] FWA followed metropolitan precedent in viewing women as subordinate to male co-accused.[26] As one official noted, "given the poorly evolved condition of African women (…) it is difficult to accept that she acted of her own accord and for her own interest".[27] Local opinion sometimes corroborated this view, such as when male witnesses in Ma Touré's trial for murdering another woman declared "only males can slit the throat".[28] Women also often presented their violence as stemming from male authority, as the 1930 case of Aylie Daple and his wife Toko Ano demonstrated. The couple from Dahomey were charged with murder after Toko seized an axe to help Aylie escape his bonds whilst being transported for questioning in a debt case, and Aylie killed the chief's courier. The judge unhesitatingly accepted Toko's assertion that her husband told her to grab the axe, "and that she obeyed

[21] Cardi, Pruvost (2012, 20-1); Black (2018, 151).
[22] No women were executed in France between 1887 and 1939. Ninety women received capital sentences between 1906 and 1950, but only six were ultimately guillotined. Four of these executions occurred during the wartime Vichy regime in 1941-3. See Picard (48, 327, 752-4).
[23] Taïeb (2011)
[24] Archives Nationales d'Outre-Mer (ANOM), Affpol 1925, Affaire Nema Aliou, Rapport Gouverneur général AOF, 1916.
[25] Dorlin (2006).
[26] Picard, (302).
[27] ANS, 3M 184, Affaire Coffi Caté, Avis Procureur général AOF, (1935).
[28] ANOM, Affpol 2791 et 1880, Affaire Ma Touré, Audience publique, du 7 novembre 1921.

him as she was accustomed to do in all things".[29] Such female narratives fit colonial perceptions of women's place in African societies: subservient to men, always "passive", "victims" or "oppressed".[30] Daple was sentenced to death for murder and executed, whereas Toko Ano received a sentence of ten years imprisonment as an accessory to murder.

In British colonies, legal officials repeatedly asserted that, following metropolitan precedent, there was "'no definite ruling", "principle" or "general rule" against the execution of women.[31] However, in practice, socio-cultural and political factors strongly inhibited the use of the death penalty against colonized women. The archival records suggests that, discursively at least, British colonial officials were less prone than the French to citing cultural sensibilities as influencing their recommendations. But British cultural constraints surrounding the infliction of judicial violence upon women combined with a growing international focus on the symbolism of the treatment of colonized women as a marker of the "civilising mission" and good colonial governance in the inter-war period to drive a lego-political reticence to deploy the death penalty against African women.[32]

Evidence from the 1920-30s shows a strong correlation was drawn between female violence and mental instability in colonial courts, informed both by wider androcentric criminological perspectives which located female criminality in women's biological characteristics and by contemporary ethnopsychiatric theories that viewed Africans as inherently unstable and prone to violence.[33] As one judge pronounced in Nyasaland in 1926, "I would recommend her to mercy as I do not consider that the mind of the female native is sufficiently developed to justify the extreme penalty of the law".[34] Explanations for violent

[29] ANOM, Affpol 1881, Affaire Ayeli Daple, Audience publique du 18 octobre 1930, Tribunal du Deuxième degré de Grand-Lahou.
[30] Rodet (2006, 21).
[31] National Archives, Kew (TNA), CO 859/19/6 Penal and Prison Affairs: Death Sentences on Women, Governor Kenya to Secretary of State MacDonald, 26th September 1939; CO 859/37/12, Death Sentences on Women 1940, Home Office to Under-Secretary of State for the Colonies, 25th April 1940.
[32] Bush (2018).
[33] See Hynd (2007), Levine (2007), Vaughan (1991, 100-15).
[34] National Archives of Malawi, Zomba (NAM), J5/12/23, R. v. Alikutu, CC9/26, Report from District Magistrate W. H. Murphy.

crimes were often linked to female bodily functions, particularly to pregnancy and puerperal mania, or post-natal depression.[35] Women convicted of murdering their young children were commonly granted leniency on these grounds or found guilty but insane.[36] Across both British and French territories, colonial judges often sought to diminish women's moral responsibility for their actions and to deny the rational nature of their acts, either due to internalized gender stereotypes or as part of a deliberate legal rationale to reach a sentence they deemed appropriate. In the case of a child murder trial in Dahomey, the President of the tribunal stated in the court judgement that: "This odious violence, committed by a woman carrying her young child on her back, would certainly be inexplicable if Housatto were not currently pregnant again and therefore in a state that certainly influences her nervous balance".[37] He further explains that the tribunal "wisely" chose to consider the pregnancy to be "an extenuating circumstance" and sentenced Housatto to "only 10 years". He also expected her be granted "full pardon"' after serving a few years.[38]

In British colonies, another reason for judicial leniency was a – perhaps surprising – level of sympathy accorded to African female murderers because judges and officials viewed them as victims of domestic violence. Domestic murders were normally the largest category of murders brought before British colonial courts, with spousal murders constituting over one third of all cases in many years, the majority committed by men. However, in a departure from global trends on spousal murder and broader colonial inaction on gender-based violence, some seventy per cent of men convicted of murdering their wives or "concubines" were executed in Nyasaland, and sixty per cent in Kenya.[39] This high rate of execution was linked to officials' unease at the levels of domestic violence experienced by women, with wife-beating considered normative in many cultures.[40] Whilst colonial officials had little intention of

[35] See McKittrick (1999); NAM, J5/12/23, R. Alikutu CC9/26, Report by Chief Justice Belcher.
[36] NAM, J5/12/23, R. Alikutu CC9/26; J/5/5/46, R. v. Msunga CC27/35.
[37] Archives Nationales du Bénin (ANB), 1M161, extrait des registres de jugements et rapport du président du tribunal, 1931.
[38] ANB, 1M161, extrait des registres de jugements et rapport du président du tribunal, Affaire Houssato, Tribunal du 2d degré du Mono, 13 février 1931.
[39] Hynd (2010).
[40] Ibid.

intervening in African families to prevent this, when domestic violence escalated to lethal levels and offended metropolitan sensibilities, judicial sentencing attempted to delegitimize extreme spousal violence by denying mercy to men who killed their wives. One consequence of this was that women who killed their husbands were more likely to have testimony of abuse believed and be treated leniently. Kabon, wife of Kirop, a Kamasia woman who killed her husband in his sleep in 1946, openly stated in Kabarnet Magistrate's Court that: "I admit that I killed my husband, but I had a good reason for doing so. He had ill-treated me every year since we were married. He gave me no chance to leave him and take another husband…I decided that I would kill my husband and if Government wanted to hang me they could do so".[41] Such murders appear from the archival record to have been more common in Kenya, reflecting increased gender tensions from the 1930s.[42] African assessors frequently perceived these women's actions as a dangerous inversion of social hierarchy and established patriarchies at a time of rapid and widespread change in socio-economic and gender relations, demonising them as not "womanly" and requesting they be "severely punished to uphold the position of the husband according to local custom". [43] British officials however did not regard female violence as a significant threat to colonial order and were thus more inclined towards benevolent paternalism in their dealings with such murderesses, with sentences commuted to one to five year's imprisonment.

The comparison with French Africa shows this judicial practice around mariticides was unique to British Africa: in FWA, government regulations mandated the 2nd degree courts that heard murder cases to focus on politically sensitive crimes such as anti-colonial rebellions and "ritual" rather than domestic murders.[44] Data for FWA shows that uxoricide constituted only ten per cent of capital cases and had the highest reprieve rate of any category of murderer. Scholars of FWA have repeatedly pointed out how little violence against women, even femicide, was prosecuted.[45] In spite of these legal differences

[41] KNA, MLA/1/248, Kabon w/o Kirop CC66/46.
[42] See Kanogo (2005).
[43] KNA, MLA/1/347, Sangano w/o Kimosop.
[44] ANS 6M 370, Le Gouverneur Général à M.M les Lieutenant-gouverneurs des Colonies, Circulaire sur le fonctionnement de la justice indigène, 13 mars 1922. See also Ganot (2014).
[45]See Burrill, Roberts and Thornberry (2010); Burrill (2007); Le Pape (2007).

however, a relatively coherent discourse emerged in trials of women accused of murder across both empires: African women were frequently regarded as lacking the emotional and mental development, and social agency, necessary to render them fully responsible for their actions before the law and consequently to render them liable for the death penalty.[46]

What challenged this benevolent, patriarchal discourse were the actions and responses of women themselves, transgressing supposed gender stereotypes and social hierarchies in their use of lethal violence. Although they were likely disconcerted by courtroom surroundings and legal procedures conducted in English or French, African women were not simply passive recipients of a judicial 'white man's mercy' but were active agents capable of using courtroom demeanour together with specific explanations and rationalizations of their violence to influence sentencing.[47] Women testified that: "I killed my husband in self-defence. We quarrelled and he picked up a panga (machete) and threatened to kill me. I got very frightened, so I seized hold of an axe and struck him several times".[48] While some women appropriated colonial discourses in their defence narratives to plead for mercy, presenting themselves as abused or neglected wives or mothers defending their children, other women laid full claim to their violence. In the Ivory Coast, Ma Boura Konté claimed "I have committed many crimes, maybe a hundred, and if you sentence me to death, you will only kill me once".[49] This defiant attitude did not fit French perceptions of African women's docility, and the judge not only sentenced her to death but also adamantly refused to recommend her for mercy, stating she was an unusually dangerous and degenerate woman. She died in prison before her sentence was confirmed.

Colonial courts were spaces dominated by men – predominantly white male legal officials, supported by African legal intermediaries and assessors. Racialized and paternalistic legal discourses combined with women's own agency and testimony to create "cultural defence narratives" that saved individual

[46] Hynd (2007).
[47] Zimudzi (2004), Hynd (2007, 17).
[48] KNA, MLA/1/248, Kabon w/o Kirop. See Zimudzi (2004).
[49] ANOM, Affpol 1880, Affaire Kaba, Audience public du 7 novembre 1921, Guinée française.

African women from the death penalty at a price of reinforcing broader racial and gender stereotypes.[50] It was this white man's mercy, wielded by both French and British officials, that often resulted in mercy and lighter sentencing for African women.[51] However, this combination of prejudices and benevolence could be disrupted when the perception of African women as 'victim-perpetrators' was overturned in some cases.

'Wicked Women' (Begrudgingly) Spared 'for [their] sex'

Whilst some African women were recipients of a 'white man's mercy', others found that judicial leniency to be much more limited, stretching only to sparing them the death penalty explicitly – sometimes solely and grudgingly, according to the language deployed in reports and marginalia – on the grounds of their sex. These women instead received heavy prison sentences of between ten years to life. They were viewed not as submissive wives or victims of "primitive" societies, but rather as "wicked women" and criminals.[52] Such identifications stemmed from the nature of their offences and established norms of mercy that ran across both genders, but also from how their actions violated gender norms, and how other aspects of their identities intersected with notions of colonial criminality. Gender and race were not the only facets of identity that shaped sentencing: ethnicity, social status, age, and motherhood also shaped such decisions, albeit in an uneven fashion.

In capital trial archives in Accra, Ghana, only two women appear to have been convicted of murder: Mary Fogah alias Mary Yameve, and Abina Asantiwa. Mary Fogah was convicted in March 1943 at the Sekondi assizes. The incomplete case file reveals that Mary, a petty trader in Takoradi, was charged alongside her sixteen-year-old son for the murder of her ward, a nine-year-old girl Nedi Asangowa, who was beaten to death and her body dumped outside the town. Mary testified "in partial English" before the court that Nedi had claimed to be bewitching Mary's youngest son. Whilst Mary asserted her innocence, the court found Mary had "previously ill-treated the deceased, beat her cruelly". The judge,

[50] Loo (1996, 109-24).
[51] Rappaport (1991, 368).
[52] Hodgson and McCurdy (2001).

Justice L. E. V. M'Carthy, noted that "nobody…can remember a previous case in which a woman was sentenced to death" in the Gold Coast, but he found Mary guilty of murder and handed down the mandatory death sentence. [53]

Murder trials operated differently in the Gold Coast Colony from most other British territories for two key reasons. Firstly, the accused were tried by a (male) "jury of their peers", meaning that African communities had direct input in sentencing. Secondly, in the 1930s two Africans – M'Carthy and Charles Woolhouse Bannerman – were raised to the bench as circuit judges of the Supreme Court as part of the Africanization of colonial administration.[54] It is notable that both women sentenced to death in the Gold Coast were sentenced by those African judges. M'Carthy noted in Mary Fogah's trial record that the "Jury did not recommend mercy. I venture however, to do so on the grounds that the crime was due to ignorance and superstition, and a desire to protect her son's life", opposing local opinion and adopting instead the gendered norms of colonial mercy.[55]

Why did the jury regard Mary Fogah's crime as deserving of a death sentence? One reason not explicitly referenced in the case record, but which likely influenced the jury's deliberations was that Mary was not a Gold Coast native, but a Nigerian immigrant. Certain ethnic groups were considered more 'sophisticated' and 'intelligent' - euphemistically meaning more 'criminal' in colonial legal parlance. There was considerable prejudice against Nigerians in the Gold Coast amongst locals and officials, with witness testimonies and government reports linking them discursively with criminal behaviours and violence, and Nigerian women being particularly associated with prostitution and immorality.[56] Another reason for moral opprobrium against Mary was her violation of feminine social norms located around maternal care and fosterage structures.[57] Fosterage systems were common, and for many children

[53] Public Records and Archives Department, Accra (PRAAD), CSO 15/3/211, Mary Fogah @ Mary Yameve, report by L. E. V. M'Carthy, 30th March 1943.
[54] Jearey (1960, 133-46).
[55] PRAAD, CSO 15/3/211, Mary Fogah @ Mary Yameve, report by L. E. V. M'Carthy, 30th March 1943.
[56] See Akyeampong (1997, 157-9).
[57] See Coe (2012).

provided crucial socialization, care and skills training. Mary was supposed to be responsible for raising and training Nedi, but instead evidence suggested that she physically abused the girl, and lethally assaulted her. Such actions clashed directly with her courtroom claims to 'good motherhood' when she framed her testimony around her desire to protect her son from witchcraft. Mary's sentencing reveals a tension between the African jury members and judge. Whilst the all-male jury condemned Mary for her actions and supported the death penalty for her, M'Carthy recommended mercy, asserting that she acted out of "ignorance and superstition" from her fear of witchcraft and from maternal instinct.[58] After an unsuccessful appeal to the West African Court of Appeal, the Governor accepted M'Carthy's recommendation and commuted Mary Fogah's sentence to one of life imprisonment. Lethal violence against children (except where it was held to be a result of mental instability) was more severely punished than that against husbands because of how such actions violated hegemonic notions of African femininity framed around motherhood.[59]

Social status was often a significant factor in shaping mercy outcomes. In a contrast with European trends where lower class women could be less likely to benefit from mercy, in colonial Africa more elite, "civilized" "Christianized" or Muslim women (and men), were held to higher standards of behaviour than their "primitive" counterparts by colonial courts and adjudged less befitting of mercy.[60] In a case of so-called "ritual" criminality in French Guinea in 1923, a woman, Ma Souma, was considered to be the mastermind of the abduction and the killing. This is highly unusual since in FWA women were normally thought to obey men's orders in their criminal behaviours. The *Ministre des colonies* stated that because Ma Souma was a Muslim, she was 'conscious of the atrocity of the crime she committed' and, unlike *fétichiste* (animist) women, she therefore carried "the full responsibility" of her actions.[61] Back in the Gold Coast, Abina Asantiwa was convicted alongside three men in November

[58] Africans in British territories would be convicted of witchcraft-related murders to uphold colonial authority but routinely had their sentences commuted to avoid antagonizing local opinion. See Luongo (2011).
[59] See Allman, Geiger and Musisi (2002); Coquery-Vidrovitch (1997).
[60] Beattie (1986, 439).
[61] ANOM, Affpol 2791, Affaire Ma Souma, Guinée française, 1923.

1933 for the murder of Yaw Atta, a labourer on her cocoa farm in Nkwantapong, Kumasi, who had been assisting the police in a case against the Odikro (town headman) and other villagers over the disappearance of a local man. This was a time of considerable colonial concern about killings linked to local political power struggles in the Gold Coast. The judge, Charles Edward Woolhouse Bannerman, found Abina guilty as an accessory to murder, reporting that she "decided to employ the 1st, 2nd, and 3rd prisoners to terminate Yaw Atta's life and they carried out their contract with singular callousness and brutality…[they] obeyed the commands of [Abina] who was ever ready to spend money to achieve her wicked ends".[62]

Premeditated murders and paid assassinations were heavily censured in both local opinion and colonial courts. Such crimes were viewed by colonial officials as threats to law and order, but also ran counter to colonial constructions of African murders as acting from uncontrollable, "primitive" instincts: that a women committed the crime, using her power and influence, only compounded the offence.[63] Abina transgressed colonial codes of defendant behaviour as well as gender norms in her testimonies before police and court. Abina's power as a rich landowner gave her the means and authority to order men to commit violence in her name, inverting normal gender hierarchies of female submission. That Abina was found by the court to have lied repeatedly was also held against her, with lying a strong correlate for conviction and heavy sentencing. When deliberating on a recommendation to mercy, Bannerman noted that Abina "aided and abetted [her co-accused] to commit this revolting crime, and as much as I sympathise with her on account of her sex, I can find no redeeming features in her case to justify me to make any recommendation in her favour... It is most pathetic to see a woman of her age in this grave situation, but she has herself to blame for it".[64] A petition lodged by Abina's son attempted to counter prosecution narratives of Abina as a calculating ringleader by depicting her as "a woman in her dotage", "a most Loyal and humble British subject", who "did not understand the trial".[65] Age was a non-linear

[62] PRAAD, CSO 15/3/319, Yaw Agyekum and Abina Asantiwa, Report by Acting Judge C. E. Woolhouse Bannerman, November 1933.
[63] Ibid.
[64] Ibid.
[65] Ibid., Petition. Case files are unclear as to Abina's actual age.

vector for mercy, with both young and elderly routinely being spared execution. Generational and gender norms ultimately intersected in gubernatorial mercy decisions, with two of Abina's male accused being executed whilst her sentence was commuted to ten years' imprisonment explicitly on grounds of her age and sex. Subsequent appeals to reduce this sentence were rejected as Abina was considered 'likely to become involved in this class of crime again'.[66]

Race played a significant, but not static, role in shaping these gendered processes of conviction and mercy. No cases of white or Asian female murderers are recorded in the FWA, Gold Coast or Nyasaland archives. In settler territories like Kenya, very few white women found themselves tried, never mind convicted, of murder. Those accused of killing or attempting to kill husbands and family members were commonly sent to Mathari Lunatic Asylum, their actions deemed insane rather than criminal.[67] In one of the few cases of a white woman tried for an inter-racial killing, Helen Selwyn was charged alongside her husband in 1934 with the murder of an African farm hand whom she had flogged for theft and who subsequently died of his wounds. Tried by a jury of white farmers in her local district, and treated sensitively on account of her "nerves", Helen Selwyn was found guilty only of manslaughter with a strong recommendation for mercy.[68] Her whiteness, and attributed respectability as a white farmer's wife, ensured that her actions were seen as driven by desperation and hysteria rather than criminality.[69] Conversely, the most heavily documented murder case in the Nairobi archives belongs to Gurnam Kaur, a young Sikh woman who was convicted of shooting dead her father-in-law in June 1949, becoming the first Indian woman sentenced to death in Kenya.[70] Here colonial racial discourses of Indians as duplicitous liars who enacted premeditated criminality combined with gender norms amongst the local Sikh community to condemn Gurnam as a barren, adulterous young woman who lied about her father-in-law sexually assaulting her and attempted to cover up the shooting. Gurnam's sentence was

[66] PRAAD, CSO 15/3/320, Abina Asantiwa- Murder Case of.
[67] See Jackson (2013).
[68] *East African Standard*, 28th July 1934, 43, 6th October 1934, 14-15.
[69] Poor white women however were less likely to receive supportive or lenient treatment from courts in settler territories, being seen as outside the limits of respectability. See Anderson (2010); Turrell (2004, 234-6).
[70] Hynd (2015, 226-44).

eventually commuted to ten years imprisonment, but only after a high-profile public campaign for mercy from her husband and the East African Women's League, the pre-eminent women's association in Kenya, who argued that the family knew she had acted in self-defence and were acting to protect their patriarch's reputation. Officials grudgingly noted that "but for her age and sex, she would probably have been hanged".[71]

While ethnicity, social status, age, and motherhood influenced court decisions, along with the courtroom demeanour of women and local cultural perceptions of unacceptable female behaviour, these elements did not carry the same weight at all stages of the mercy process. The archival record reveals a significant variation in attitudes towards women accused of lethal violence between local, colonial and imperial nodes of legal authority, particularly in FWA. On-the-ground administrators like *Commandants de cercle* or *Lieutenant-Gouverneurs* tended to ascribe greater criminal agency to the women they judged and often pleaded for the death sentence to be enforced, perceiving female murderers as a genuine danger to local order. When cases reached the desks of metropolitan authorities in Paris for final decision however, the *Ministre de la justice* and *Ministre des colonies* were far less likely to see women as serious criminals posing a threat to public order and were consequently more generous in their recommendations to mercy.[72] Federal authorities in Dakar, including the *Gouverneur general* and *Procureur general* oscillated between the two positions, but more often than not recommend women for mercy on the grounds of their sex.

The stakes and the penal narrative of each trial were understood differently between local courts and capital or imperial offices. One reason for this variance between local, colonial and imperial opinion may be the evidence upon which legal judgements were made. Whilst officials serving as judges in colonial courts – be they judges, district commissioners or *Commandants de cercle* – incorporated first-hand testimony and courtroom demeanour into their judgements and recommendations, governors and

[71] KNA, MLA1/329, Mrs Teja Singh, Report by K. K. O'Connor, 20th August 1949.
[72] Nicolas Picard has noted a similar trend in metropolitan France, calling it the "slope of leniency" (*pente d'indulgence*), Picard (318).

ministers in regional capitals and the metropole were reliant on externally-produced reports and transcripts, which did not allow for these more direct, human, insights. In FWA, death sentences against women were almost exclusively handed down from rural courts. It could be that the more isolated an administrator was, the more his understanding of the stakes of a trial and the seriousness of an offence was in part determined by situated African norms, carried into court by male assessors aiming to reaffirm their authority and cultural standards on women during a period of increasing gender tensions. Hynd has noted that in British Africa, on-the-ground administrators and assessors sometimes formed "patriarchal alliances (…) to punish [violent and homicidal] women".[73] This argument equally applies to French territories. As one *Commandant de cercle* specified to bolster his death sentence against a woman, his judgement was in line with the verdict of African assessors in the case who found proof of her guilt using their "deep knowledge of local customs" and by "observing her in court".[74]

Outside of the courtroom then, in their assessments of a case, officials – all of them men – based their judgements on their prejudices, on their racial and gendered constructions of African women and cultures, as well as their legal opinions. As a result, perceptions of female criminality and guilt became increasingly generic as a case moved up the hierarchical chain. The defendants progressively became subsumed into general, metropolitan, racial and gendered categories. The higher up the colonial hierarchy, and the further along the mercy process, the more "European" and allegedly "scientific" the understanding of female violence became.[75] This process of homogenisation – whereby particular criminal behaviours are blended in the overarching biomedical category of women and ethno-criminal categories – erased local contexts and understandings of gender, as well as denying the determined rationality of female criminal acts, is present in most cases in FWA.

Néma Aliou's case is illustrative here. Néma was sentenced to death in 1915 by the *Tribunal de cercle* of Goundam in High-Senegal-Niger for the murder of her eight-year-old daughter-in-law, born of her

[73] Hynd (2007, 31).
[74] ANS, 3M 184, Affaire Coffi Caté, Avis du Commandant de cercle, Côte d'Ivoire, 1935.
[75] See Turrell (2004), McKittrick (1999).

husband's previous marriage. The *Commandant de cercle* and the Governor General of FWA argued for Néma's execution not only because the killing of a helpless child violated maternal norms and social taboos, but out of a didactic intention to countermand domestic violence within polygamous families, where women were perpetrators rather than victims.[76] The *Commandant* acknowledged metropolitan attitudes towards African women's crimes, when he conceded that "One wonders whether the primitive mentality of the woman Néma Aliou did not render her incapable of controlling her jealousy and whether, in carrying out this murder, she did not obey violent suggestions [i.e. instincts] which her lower degree of moral culture would explain, allowing us to find, if not an excuse, at least a mitigation of responsibility". But he quickly refuted this line of argument by stating that "it is too often the case that the wives of polygamists inflict the worst treatment on children born to another wife after her death, and this is not the least of the abuses to which the practice of polygamy leads".[77] However, the Colonial and Justice Minister ignored this colonial view and aligned themselves with metropolitan attitudes, recommending Néma for mercy on the grounds of her sex and her supposed lower moral culture. Her death sentence was commuted to life imprisonment. Capital punishment was used as a pedagogical tool by both French and British colonies, but this is a rare instance in which death penalty was mooted to address a specifically feminine criminal behaviour, making the violence of women a worthy site of intervention of colonial penal and public policy.

The sanctioning of domestic and pecuniary murders by women was shaped by multiple intersections of race, social status and gender norms. Colonial interpretation of these factors varied at different stages of the mercy process, reflecting changing perceptions of the danger posed by women and the necessity of repression between local and imperial settings. These shifts usually ended up working in favour of women as in the final stages of the mercy process, in Paris for FWA and the capital of each colony for

[76] The heaviest prison sentence given to a woman in Nyasaland was life imprisonment, not to be reviewed before serving fifteen years, for two co-wives convicted of murdering their husband's prospective new wife. NAM, S1/14/25, R. v. Ndinga and Ndame, 1925.
[77] ANOM, Affpol 1925, Affaire Aliou Néma, Rapport du Ministre des colonies, Haut-Sénégal-Niger, 1915.

British Africa, authorities usually upheld a paternalistic understanding of African women's criminality that categorised them as penally irresponsible and politically unthreatening.

Condemning Cannibals and Agential Women: The Limits of Gender, Executions, and Colonial Security

Whilst the execution of women was rare in British and French colonial Africa, it did occur. And when it did, the cause was not a so much legal reaction against women transgressing gender (or other colonial) stereotypes, but rather the politico-legal concern generated when their violence shattered cultural taboos and directly challenged the purpose of colonial sovereignty and its moral standards – in other words, when it challenged the "civilizing mission" and colonial "law and order". Two categories of female executions emerge across the archives. One, where the violation of gender norms intersected with other compounding cultural and legal factors to render a case perceived more grievous, and therefore necessitating the "extreme penalty" of the law. Secondly, where women were involved in 'repugnant' challenges to colonial morality and order and were sentenced as part of 'moral panics' surrounding cannibalism and so-called ritual murders.

The only execution of a women occurring in FWA not related to "acts of cannibalism" was that of Kambiri Touré in Ivory Coast in 1942.[78] Kambiri Touré was found guilty of poisoning her two grandchildren to death. Several elements combined to seal her fate. First was the violation of (grand)maternal duty, but also the fact that as a widow she was considered by colonial officials to have more individual responsibility than a married woman. Moreover, instead of appearing recalcitrant in court, she justified her actions by saying that the father was of another ethnicity, one she considered inferior to hers and her daughter's, and confessed to a previous murder of a child from another marriage of which she disapproved. Kambiri Touré was executed because she was perceived as an agential woman, a recidivist whose long-lasting hatreds lead to the premeditated death of three children. Lastly,

[78] ANS, 3M 192, Affaire Touré Kambiri, Avis du Procureur général, Côte d'Ivoire, 1942.

it is significant that her execution took place under the Vichy regime. In 1941 the Vichy government promulgated the *Code Pénal Indigène* which imported metropolitan capital offences like murder by poison and parricide into FWA.[79] Vichy leader Philippe Pétain also had the most restrictive mercy record of any French head of state in the twentieth century – including allowing the first executions of women in metropolitan France in decades.[80] That this unique combination of crime and politico-legal circumstances drove Kambiri Toure's execution highlights the exceptional nature of female judicial execution in this period.

According to the archives of Kenya, Ghana and Malawi, only two women were executed in these territories, both coincidentally in 1927. Margerina wa Kori, a Kikuyu woman was hanged in Kenya in 1927 for the murder of her neighbour Eliza at the Italian mission in Fort Hall. The women had apparently been quarrelling for months before Margerina attacked Eliza with a knife she had hidden in her cloak just outside church land. The offence was regarded as particularly heinous because Margerina was a Christian convert, who carried a knife to church and stabbed her neighbour when they were returning home from a prayer meeting, whilst Eliza was carrying her young baby. The acting solicitor-general categorised the killing as "deliberate murder by a person who sought out the quarrel". For this premeditated killing that violated both the sanctity of church land and feminine, maternal norms, Margerina was sent to the gallows. Colonial judges routinely held that Africans who had converted to Christianity and/or gained European education should be held to higher standards of behaviour and were consequently adjudged to be less befitting of mercy than their "savage" counterparts. Nevertheless, even in Margerina's case, a subsequent note on the file by an incoming Attorney-General stated that this case should have gone to appeal, and if it had, the sentence "could easily have been commuted".[81] Legal representation for accused persons did not become standard until 1930s in Kenya, and the lack of defence counsel also left Margerina more vulnerable to a severe sentence.

[79] ANS, 3M 037, Décret portant institution du Code Pénal Indigène pour l'Afrique Occidentale française, 1941.
[80] Four women were guillotined by Pétain's Vichy regime in 1941-3. See Picard, (48, 327, 753).
[81] KNA, AG/52/316, R. v. Margerina wa Kori (woman) 1927.

These above executions stand as outliers on the continuum of colonial penal severity. More commonly, female executions occurred when the nature of their offences and the threat they posed to colonial governance overrode normative gendered constructions of mercy. Specifically, in FWA, this occurred in one category of offence: "murder and acts of cannibalism". There was a shared European construction of cannibalism as the epitome of "uncivilized" and "primitive behaviour", but it became viewed as a particular threat in mid-1920s to early 1930s French Guinea and Ivory Coast. The French obsession with cannibalism in the 1920s was fuelled by the political and cultural threats to colonial rule in the interwar period, with the impact of the First World War and the rise of a young African urban elite hungry for new rights and political participation combining to challenge the purported political and racial superiority of Whites.[82] In depicting Africans as "bloodthirsty primitives" in need of civilisation, French administrators attempted to reaffirm their perceived racial and cultural superiority and the significance of their political endeavour in the colonies. Individuals and communities participating in acts of cannibalism were accused of impeding the advent of colonial modernity by fostering barbarity and resistance to "civilized" colonial cultural norms.[83]

These crimes of "cannibalism" were however legal fictions rather than empirical realities. The sentencing and execution of "cannibals" was a legal stratagem and political statement that functioned as a metonymy to denounce cultural primitivism. Scholars have proven that this moral panic emerged from the cultural fantasies of colonial administrators and was appropriated by locals to advance their personal interests by accusing an enemy of such crimes.[84] The archival record reveals that investigations were botched, lacking material proof for conviction, and riven by inconsistent testimonies.[85] Despite this, between 1914 and 1943, there were 185 convictions (155 men and 30 women), resulting in 144 executions by firing squad, 129 men and fifteen women. That this occurred at a time when justice

[82] Zalc (2013, 61-64).
[83] Gendry (2018).
[84] Gendry (2018); Baum (2004).
[85] Ginio (2011).

systems in the French (and British) empires were becoming increasingly professionalized highlights that cultural and political shifts were more significant to the patterns of repression and leniency applied to African women and men than the formalization of justice.

According to the French narratives of crimes of cannibalism, women were central to the deed, performing gendered roles alongside male relatives. Women were viewed as accessories to the crime, rather than murderers themselves. The severity of their guilt lay in their connection to the victim(s). Women were presented in court as wives who got rid of their husbands, as in the case of Pali Lobré, who was accused of "cooking her husband's remains", which she denied.[86] They could be depicted as mothers who killed their children opportunistically, like Nfaldy Taraore, accused of having eaten her daughter to obtain witch powers, which she also denied.[87] Often, they were depicted as selecting younger family members, luring them to the forest and sequestering them until the ritual killing, thereby corrupting both gender and cultural norms. Most cases reveal a family relationship between an older women and younger, vulnerable relatives that made the anthropophagic act even more monstrous. In the files, these women are depicted by judges as perverted, greedy, jealous individuals without maternal instinct, the monstrosity of their actions presented as necessitating the resultant extreme penalty. Analysis of the case files reveals that the bio-cultural narrative elements of female submissiveness, excusable irrationality and mental weakness that elsewhere generated a benevolent paternalism for accused women were still present in these cases, but their discursive purchase was diminished by the imperative for exemplary punishment to combat specific patterns of female involvement in morally, culturally and politically intolerable (or in British discourse 'repugnant') cannibal cases. The imperative of the «*mission civilisatrice*» here outweighed the hegemonic gendered construction of mercy.

[86] ANOM, Affpol 1880, Affaire Boa Niadré, Rapport du Ministre des colonies, Côte d'Ivoire, 1920.
[87] ANOM, Affpol 2791, Affaire N'Faldy Taraore, Rapport du Ministre des, Guinée française, 1921.

Whilst cannibalistic offences were never as great as concern in British territories that they were in FWA, it is striking that the only female execution in Nyasaland occurred for this crime in 1926-7.[88] The woman, Aiba, was convicted and executed alongside her husband for the "repugnant" cannibalistic murder of a young girl at a time when growing famine in the Shire Valley generated administrative fears about murders committed for the purpose of consuming flesh.[89] The case files reveal significant discursive parallels to the FWA cases. The judge, Acting Chief Justice Philip Petrides' report notes that although the husband Ndaje actually cut the victim's throat "the wife, who previously knew and abetted what was afoot…immediately took over the body…so that as an accessory to murder she rendered herself liable to the capital penalty". The assessors were unanimous in condemning both accused. During the trial Aiba was described as quiet but co-operative, displaying a "feminine submissiveness" that she hoped would deflect the court's horror at her actions. Petrides noted that both the accused were "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". However, he felt that "at any stage of an African society, such a murder as they committed would probably have been visited by a speedy death", and therefore made no recommendation to mercy. Both Aiba and Njali went to the gallows.[90]

Conclusion

By observing the ways in which French and British colonial authorities prosecuted, sentenced and either executed or spared African female murderers, this article explores the similarities and differences between colonial peno-legal practices and gendered understandings of acceptable and unacceptable violence. Women were not a primary target of colonial legal repression but their treatment in both legal systems reveals significant details about the targeting of criminal law and state priorities for maintaining law and order. In British colonial Africa, a focus on domestic violence led to a high number of both men

[88] There were comparable moral panics over fetish, ritual and 'medicine' murders in 1940s, in the Gold Coast, Nigeria and Bechuanaland (Lesotho). Thirty-eight women were sentenced to death for *liretlo* murders in Bechuanaland, with ten of these being executed along with 194 men in 1940-60s. Women were executed not as accomplices but for their complicity in such murders, often involving family members and stemming from a desire for personal gain. Murray and Saunders (2006, 273-4).
[89] NAM, S1/384/26, R. v. Njali alias Ntokoma and Aiba.
[90] Ibid., Judge's report, 8th January 1926.

and women being prosecuted for spousal and domestic murders. In French colonial Africa, authorities focused legal attention on "traditional" criminality, in particular cannibalism-related murders, with the largest share of prosecutions for both men and women occurring for these crimes. Despite these different foci of colonial legal repression, the subsequent legal treatment of African women between these two empires then converges.

Women convicted of murder in colonial courts found themselves caught between the lethal machinery of colonial justice and local interpretations of their crimes. Their actions, their testimonies, and their courtroom behaviours were being judged by men, men who would ultimately determine their fate based on a combination of colonial political landscapes and legal structures, gendered cultural norms, legal discourses, and narratives of mercy. Across both FWA and British Africa, women were beneficiaries of a gendered and racialized colonial 'white man's mercy' that framed them as bearing doubly diminished responsibility in law for their lethal actions due to their femininity and African-ness. Such constructions of femininity were relational, developing reciprocally with colonial ideas of Black African masculine violence. Whilst British courts focused more on female mental weakness and their reaction to patterns of spousal violence, French courts foregrounded female submissiveness to male control in their interpretations of African women's lethal violence. Constructions of female criminality were primarily domestic, and women were therefore not routinely held to pose a threat to colonial order. Such politico-legal calculations combined with European discourses linking femininity, physical weakness and mental underdevelopment to justify this practice of mercy, with a colonial 'white man's mercy' operating particularly around convictions of mariticide, and the killing of infants or young children.

There were however distinct tensions surrounding such merciful interpretations of female murderers. At the level of the courtroom, neither gender, justice nor colonial society were homogenous, uncontested categories. Women who violated gender norms in their crimes – such as killing other women or (non-infant) children – and transgressed broader (non-gendered) norms of mercy by engaging in behaviours perceived as "determined" or "criminal" in colonial discourses, particularly lying to the court or

betraying pecuniary motives for murder, received heavier sentences. Such women were often only spared "on account of [their] sex" and faced heavy sentences of between ten years to life imprisonment.[91] The intersecting facets of African women's identities could variously compound or mitigate their perceived innocuousness, particularly their age, social and reproductive status, moving them from the category of 'violent in their victimhood' to 'wicked women'.

During sentencing, politico-legal tensions and the structure of legal systems also moulded the treatment of female murderers. Case files reveal a significant variation in attitudes towards female offenders between local, colonial and imperial nodes of legal authority. This is particularly the case for FWA, where federal and metropolitan authorities hewed much more closely to European perceptions of female criminality and rarely found women's lethal violence to be a subject for the death penalty whilst officials on the ground frequently sided with local African authorities in arguing for a death penalty to be enforced. The divergence was less distinct in British Africa due to a gubernatorial process of mercy operating within colonies. Nevertheless, even there, notable tensions are apparent between African assessors and chiefs' frequent assertions of the need to execute female killers in the interests of maintaining gender roles and (patriarchal) social order, and colonial judges' greater leniency and lesser perception of female violence as a threat to social order. Overall, the further a case progressed along colonial and imperial axes of legal authority, the more metropolitan/European notions of gender and race dominated mercy decisions.

There was an identifiable shift in convictions and sentencing from 1920s to the late 1940s, both legally and politically. In British territories, executing women became increasingly politically unpalatable with rising focus on African women as symbols of the civilizing mission and colonial governance. Developments in the criminal justice system, with increased legal representation, appeals and changes to criminal codes also offered increased protects for women accused of murder, meaning many were found guilty of lesser crimes or recommended for mercy. In the French territories, women's executions

[91] PRAAD, CSO 15/3/319, Acting Judge C. E. Woolhouse Bannerman, November 1933.

were fuelled by wider peno-political trends that shaped both male and female sentencing: most took place during the cannibalism related repression in 1920s or under the wartime Vichy regime. In both empires, executions befell women in specific circumstances where the gravity of the crime – its threat to colonial order and/or its violation of cultural taboos – overrode any gendered claims to mercy. Executions occurred in 1920-early 1930s where murders by women were interpreted as threatening colonial control or where the nature of the offence was premeditated and "repugnant", rejecting the values and benefits of colonial civilisation: in other words, where killing a "cannibal" was politically more important than sparing a woman. However, by the late 1940s-50s the execution of colonized women had become politically untenable, with growing international human rights concern over colonial violence and abolitionist sentiments leading to greater monitoring of capital punishment across both British and French empires. It is notable that even during the Mau Mau state of emergency in Kenya in 1952-60, where 1090 men were hanged in the largest, most explosive spate of executions across twentieth century empires, none of the thirty women convicted of emergency offences were hanged.[92] Similarly, during the Algerian revolution only six women were condemned to death and none were guillotined where 1500 men were sentenced to death and more than two hundred executed.[93] Overall, the application of mercy towards African women accused of murder was shaped by broader colonial norms on crime and capital sentencing, but their effects were nuanced by gender. In both British and French African empires, only exceptional political and criminal circumstances led to the judicial execution of women.

Acknowledgements

Many thanks to the Carolyn Strange and Vivienne Miller for encouraging us to write this article and providing supportive feedback, to Shaunnagh Dorsett, Lyndsay Campbell and the participants in the Legal Histories of Empire symposium and conference, and to Bénédicte Brunet La Ruche, Nicolas

[92] Anderson (2004, 7).
[93] Thénault (2004, loc. 1638)

Picard, and Fernanda Thomaz for sharing their knowledge on France, Benin and Portuguese East Africa. Thank you also to the peer reviewers for their thoughtful and constructive feedback.

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