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## AFRICAN WOMEN AGENCY, GENDER-BASED VIOLENCE AND THE LAW IN COLONIAL HARARE C.1930s TO 1950s

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### ABSTRACT

*African historiography has largely silenced the domestic agency of African women. Studies have shown that urban spaces, particularly in colonial Zimbabwe in the 1940s and 1950s, became centres for high mixed-culture population growth. In addition to local rural urban migration, regional migration from Malawi and Zambia contributed to the population. Growth of manufacturing and the service industry stimulated by the Second World War opened opportunities for several economic activities, thus creating opportunities for women's empowerment. African women demonstrated agency in their multiple identities as economic players: as informal traders, formal employees, wives and part-time lovers. Due to housing restrictions allotted only to men and later married persons, some women entered into marriages of convenience so called Mapoto marriages; others became entrepreneurs in the local beer brewery, Skokiaan; while others engaged in informal trade and commercial sex work. Amidst all these shifts and turns and processes of urbanisation, gender-based violence found a breeding ground. As will be shown, women were not passive victims of gender-based violence. African women used the colonial justice system to challenge patriarchal male entitlement exposed in sexual and physical violence. Admittedly, that very legal system also identified them as legal minors who were represented by male figures. In spite of these limitations, women redefined their own identity and negotiated their survival in urban spaces. This paper uses largely court records to explore African women's agency in the face of structural constraints in the colonial urban spaces and within the households. The findings are significant in amplifying the voice of women, who have largely been considered as victims.*

**Keywords:** Gender, African women's agency, urban space, gender-based violence, colonial law, sexual / intimate violence, colonial Zimbabwe.

## 1. INTRODUCTION

This article historicises the contemporary global issue of gender-based violence (GBV) in the domestic spaces of colonial Harare from the 1930s to the 1950s. This period witnessed a significant proliferation of urbanisation on the back of colonial-era land reforms as well as other accompanying legislation. GBV is a relatively new term, especially in legal and criminal proceedings, that came into currency around the 1970s. Prior to this time, what is now called GBV was referred to as “ill-treatment”, a term borrowed from metropole Britain. The Shona rendering *kurwadzisa* and *ukuzwisa ubuhlungu* in isiNdebele hardly conveyed the gravity of what was taking place. Other popular renderings of this time include *mhirizhonga* or *mheremhere* in Shona and *ukuhlukuluzwa* or *ukuhlukuluzana* in isiNdebele which equate what is now GBV to the lack of marital harmony. GBV, for the purposes of this article and in reference to the sharp increase recorded during the Covid-19 pandemic, refers to harmful acts directed against women that are structured to take advantage of cultural expectations of femininity, procreation, and nurturing.<sup>1</sup> GBV remains a topical issue whose form, meaning and responses are continuously evolving. The article comes against the backdrop of a sharp increase in GBV cases recorded globally, especially in Southern Africa, during the Covid-19 pandemic.<sup>2</sup>

Using original archival research, specifically analysis of court records related to assault, divorce, and rape, this article provides an assessment of proto-feminism and female agency in Zimbabwe between the 1930s and the 1950s. It attempts to reconstruct and restore the agency of African women by propounding legal recourse as a viable option to escape abusive relationships and take custody of their children. This article raises questions about how we recognise and assess agency in historical data. The data analysis suggests that women displayed “networked” and “situated” agency.<sup>3</sup> A shared agency recognises the interdependence of women in households within specific structural contexts, in this case, the urban colonial environment of Zimbabwe between the 1930s and the 1950s. This period witnessed a rise in cases where women, both migrants and locals, married working men in *mapoto*.<sup>4</sup> These women (wives), sex entrepreneurs, beer brewers and informal traders spoke out openly against GBV, resisted physically and brought their attackers

1 N Scheper-Hughes and P Bourgeois, *Violence in war and peace* (Malden: Blackwell Publishing, 2008), p. 1.

2 NJ Dlamini, “Gender-based violence, twin pandemic to COVID-19”, *Critical Sociology* 47 (4), 2021, p. 583–590.

3 S Connor, “Structure and agency: A debate for community development?”, *Community Development Journal* 46 (2), 2011, p. 104.

4 Mapoto referred to temporary cohabitation without formal marriage rituals between families.

to colonial courts.<sup>5</sup> Amidst several structural constraints arising from the urban space, women were not silent victims of male violence but instead negotiated with societal structures and institutions of power and used them to their advantage.<sup>6</sup> Arguably, urban women were stratified by age, class, marital status and whether or not they had children. Other women, whose voices were ignored by the colonial institution and thus the colonial archive, used other strategies to negotiate, bargain, and adapt to gender-based violence.<sup>7</sup> In some cases, women decided to remain silent about the violence they experienced for fear of exposing their families to ridicule and thus unknowingly contributed to its silencing.<sup>8</sup>

The interpreted voices of women in the courtroom stand to reframe women's responses to GBV in domestic spaces. By tracing women's agency, this article recognises the strides some African women have made in resisting gendered forms of oppression in the domestic sphere. In a way, these women could be seen as the pioneers of African feminism in the urban space of colonial Zimbabwe from the 1930s to the 1950s. However, as warned by Naomi Nkealah in her analysis of African female writers, "not every text written by a woman, with the intent to show the disadvantaged position of women versus the potential of men or women to resist patriarchal coercion, translates as a feminist text".<sup>9</sup> The same applies to the women in the cases discussed. Nonetheless, this article attempts to reconstruct and restore the agency of African women by propounding the merits of legal recourse as a viable option to escape abusive relationships and take custody of their children.

The female historical actors discussed in this paper migrated from various rural areas of Southern Rhodesia.<sup>10</sup> Others immigrated from Zambia and Malawi<sup>11</sup>, mainly along the railway line. These women in urban communities resorted to colonial courts because their families and

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5 S Hawkins, "The woman in question: Marriage and identity in the colonial courts of northern Ghana, 1907–1954". In: J Allman *et al.* (eds.), *Women in African colonial histories* (Bloomington: Indiana University Press, 2002), p. 117.

6 C Lee and A Logan, "Women's agency, activism and organisation", *Women's History Review* 28 (6), 2019, p. 832.

7 E Schmidt, "Negotiated spaces and contested terrain: Men, women and the law in colonial Zimbabwe, 1890-1939", *Journal of Southern African Studies* 16 (4), 1990, p. 625.

8 R Magorokosho, Two years after enactment: Assessing the efficacy of protection orders in terms of the Domestic Violence Act: A study conducted in Harare, Norton and Chitungwiza (MA, University of Zimbabwe, 2010), pp. 70-78.

9 N Nkealah, "Conceptualising feminism(s) in Africa: The challenges facing African women writers and critics", *The English Academy Review* 23 (1), 2006, p. 135.

10 National Archives of Zimbabwe (NAZ), S2584/73, Vol. 6 report of the Native Commissioner (NC) Umtali to Chief Native Commissioner (CNC), 4 June 1931.

11 I Mudeka, "Gendered exclusion and contestation: Malawian women's migration and work in colonial Harare, Zimbabwe, 1930s to 1963", *African Economic History* 44, 2016, p. 30.

support networks were distant. While others found the colonial courts more lenient than African family courts in adjudicating marital conflicts.<sup>12</sup> These women lived in the geographic area of the Salisbury Municipal Location and Old Bricks in what is now Mbare.<sup>13</sup> Before the 1950s, Mbare municipal accommodation consisted of three male dormitories and one female dormitory and couples' cottages between Ardbernnie and Beatrice Roads. The growing African population and squalor pushed the colonial government to initiate the Highfield housing project to cope with the overcrowding, targeting middle-class families.<sup>14</sup>

African women's agency and response to GBV in domestic spaces remains an under-researched topic. Studies by Elizabeth Thornberry<sup>15</sup> and Pamela Scully<sup>16</sup> on South Africa; Koni Benson and Joyce Chadya for Bulawayo in Zimbabwe are examples of the few works that shed light on women's agency in their fight against sexual violence in public spaces.<sup>17</sup> Historically, victim narratives have dominated the GBV discourse because more women and girls experience violence compared to men and boys.<sup>18</sup> Feminism's second wave in the 1970s identified the domestic arena as unsafe for women due to the violence they experienced from known perpetrators.<sup>19</sup> A few scholars have delved into African domestic spaces to identify women's responses. Stacey Hynd's work on colonial Kenya and Nyasaland and Tapiwa Zimudzi's study on colonial Zimbabwe give insights into African women's responses to extreme conflict in domestic spaces.<sup>20</sup> As victims of persistent physical and verbal violence, women turned into perpetrators, resorting to

12 TW Bennett, "The African court system in Rhodesia: An appraisal", *The Rhodesian Law Journal* 15 (2), 2011, p. 151.

13 T Yoshikuni, *African urban experiences in colonial Zimbabwe: A Social history of Harare before 1925* (Harare: Weaver Press, 2007), p. 1. Mbare was Salisbury municipal location before 1982.

14 MO West, *The Rise of an African middle-class colonial Zimbabwe, 1898–1965* (Bloomington and Indianapolis: Indiana University Press, 2002), p. 128.

15 E Thornberry, "Sex, violence and family in South Africa's Eastern Cape". In: E Burrill *et al.* (eds.), *Domestic violence and the law in colonial and postcolonial Africa* (Athens (OH): Ohio University Press, 2010), p. 117.

16 P Scully, "Rape, race, and colonial culture: The sexual politics of identity in the nineteenth century Cape Colony, South Africa", *The American Historical Review* 100 (2), 1995, p. 335.

17 K Benson and J Chadya, "Ukubhinya: Gender and sexual violence in Bulawayo, colonial Zimbabwe, 1946–1956", *Journal of Southern African Studies* 31 (3), 2005, p. 587.

18 R and R Dobash, *Violence against wives: A case against the patriarchy* (New York: Free Press, 1979), p. 45.

19 H Johnson *et al.*, *Violence against women: An international perspective* (New York: Springer Science & Business Media, 2008), p. 133.

20 S Hynd, "Narratives of spousal killing and domestic violence in murder trials in Kenya and Nyasaland, c.1930-1956". In: E Burrill *et al.* (eds.), *Domestic violence and the law in colonial and postcolonial Africa* (Athens (OH): Ohio University Press, 2010), p. 159.

lethal violence.<sup>21</sup> Departing from women as perpetrators of crime, this article focuses on women's daily forms of resistance, which are not visible unless triggered by incidences in the household. Using case stories that nuance household dynamics, the article fills a gap in the literature on GBV and women's responses. It also mirrors Sean Hawkins' study, based on evidence from Ghanaian courts, in which she argues, "We know that women had both agency and autonomy in this area simply because these were the root causes of most litigation; without such agency and autonomy, disputes between men and women would have been greatly reduced".<sup>22</sup> Understanding the context of the cases and judgements made in this article is informed by Zimbabwe's colonial legal history scholarship and urban historiography. In his analysis of the Zimbabwean colonial legal landscape, George Karekwaivenane argues that the laws of the colonial state had to balance their law and order functions with the need to maintain social order as they superintended over the African population.<sup>23</sup> Scholars on women in urban colonial Zimbabwe provide helpful background to the cases discussed.<sup>24</sup>

As it interacts with structure in the GBV discourse, women's agency offers valuable insights to academia, policymakers, practitioners and feminist activists. It demonstrates how African household gender and power dynamics played out in an urban environment and how the different actors used the courts to negotiate different notions of what marriage and gender relations might or should be. Though women were primarily victims, they used the legal options made available by the colonial state to fight against sexual, physical and emotional forms of violence. This article further contributes to Zimbabwean urban historiography by making the presence and responses of women to urbanisation more visible.

The article is divided into three broad areas. The first part explains agency and structure, while the second gives the methodology and urban context. The third section contains the evidential part of the paper, expanding on the cases and asking questions such as: who was involved? How did colonial officials approach the cases? How did gender and generational

21 T Zimudzi, "African women, violent crime, and the criminal law in colonial Zimbabwe 1900-1952", *Journal of Southern African Studies* 30 (3), 2004, p. 499.

22 Hawkins, "The Woman in Question", p.117.

23 G Karekwaivenane, *The Struggle over state power in Zimbabwe: Law and politics since 1950* (Cambridge: Cambridge University Press, 2018), p. 35.

24 T Barnes, "We women worked so hard": *Gender, urbanisation and social reproduction in colonial Harare, Zimbabwe, 1930-1956* (Portsmouth : Heinemann, 1999); Schmidt, "Negotiated spaces", pp. 622-648; T Scarnecchia, *The politics of gender and class in the creation of African communities, Salisbury, Rhodesia, 1937-1957* ( Michigan: University of Michigan, 1993); Y Tsuneo, *African urban experiences in colonial Zimbabwe: A Social history of Harare before 1925* (Harare: Weaver Press, 2007).

dynamics shape the cases? What do the cases reveal about gender-based violence? What was considered legitimate/acceptable and illegitimate and unacceptable behaviour in intimate family relationships by the courts? The language used when presenting the cases? How did men justify their use of violence? What terms and descriptions were used by the court officials, and what does the language say about subjectivity and the need for self-preservation?

## 2. AGENCY AND STRUCTURE IN GBV DISCOURSE

Borrowing from social theory, the defining characteristics of agency are the intentionality and capacity of social actors to show conscious goal-driven behaviour. This implies that beliefs and desires can provide the motives and explanations for individuals' actions.<sup>25</sup> John Meyer and Richard Jepperson add that agency comprises, "situated practices" and individuals' capacity to take action.<sup>26</sup> Nripendra Mishra and Tulika Tripathi further buttress the idea of women's agency as the ability of women to make effective choices and transform those choices into desired outcomes.<sup>27</sup> Women's agency is, therefore, an aspect of women's empowerment that shows a development of consciousness of injustice. In contrast to models of victimisation common in women's history<sup>28</sup>, women's agency is an analytical framework for the study of women's lives, culture, and history that exists in tension with and, in some cases, in conflict with structure.<sup>29</sup> It emphasises challenges to patriarchy, social structure, and the status quo.<sup>30</sup> In colonial Salisbury (now Harare), some women, individually and collectively, covertly and overtly, opposed

25 S Connor, "Structure and agency: a debate for community development?", *Community Development Journal* 46 (2), 2010, p. ii99.

26 J Meyer and R Jepperson, "The actors" of modern society: The cultural construction of social agency", *Sociological Theory* 18 (1), 2002, p. 109.

27 K Mishra and T Tripathi, "Conceptualizing women's agency, autonomy and empowerment", *Economic and Political Weekly* 46 (11), 2011, p. 59.

28 E Thornberry, "Defining crime through punishment: Sexual assault in Eastern Cape, c.1835-1900", *Journal of Southern African Studies* 37 (3), 2011, pp. 415-430; B Shadle, "Rape in the courts of Gusiland, Kenya, 1940s-1960s", *African Studies Review* 51 (2), 2008, pp. 27-50; See also Article 1 of the 1993 United Nations Declaration on the Elimination of Violence against Women (DEVAW).

29 GR Musolf, "Social structure, human agency, and social policy", *The International Journal of Sociology and Social Policy* 23, 2003, p. 6.

30 C Lee and A Logan, "Women's agency, activism and organisation", *Women's History Review* 28 (6), 2019, p. 831.

violence, harnessing the power of fathers and male friends<sup>31</sup> to resist and report it. <sup>32</sup> Stuart Connor argues that this is the embodiment of a “networked” and “situated agency”.<sup>33</sup>

On the other hand, structure refers to, “ways in which we understand how to do things, practices organised around those understandings, and capabilities that support those understandings”.<sup>34</sup> Structures can enable and constrain individual action. Thus, structures that include colonial laws, marriage practices, and gendered cultural norms and practices acted against women’s agency, yet in other times and spaces enabled the decisions of the African Court of Appeal, where the judgements positively supported women’s agency.

### 3. WRITING WOMEN’S AGENCY: ARCHIVAL COURT CASES AS SOURCES

Sources of writings on women’s agency are located at the National Archives of Zimbabwe (NAZ), the University of Zimbabwe Law Library and the Southern and Eastern African Regional Centre for Women’s Law (SEARCWL) based at the University of Zimbabwe, in Harare. The total number of criminal cases involving assaults of women and girls from the Salisbury District Court that have been examined is 50. This included girl child sexual abuse, older women abuse by sons, rape and physical violence. Of these, 23 were assault cases involving marital conflicts in domestic spaces. Out of these, 11 had detailed accounts of the court proceedings, revealing intra-household gender dynamics. Out of 30 divorce cases assessed at the district court where women were plaintiffs, 75 per cent of them were successful in securing a divorce from abusive husbands. 26 contested divorce cases were referred to the Provincial Native Commissioner’s higher court, the African Appeals Court, and women won almost all the cases. Cases selected in this article show GBV in African domestic spaces through courtroom dynamics and point to the underlying causes. As will be shown, the cases are contextualised within broader social, legal and political trends.

31 Women were legal minors who depended on men to access the law. See T Ranger, “The Invention of tradition in Zimbabwe”. In : T Ranger and E Hobsbawm (eds.), *The Invention of tradition* (Cambridge: Cambridge University Press, 1983); J May, *Zimbabwean women in customary and colonial Law* (Gweru: Mambo Press, 1983), pp. 60-65.

32 M Kishore and T Tripathi, “Conceptualizing women’s agency, autonomy and empowerment”, *Economic and Political Weekly* 46 (11), 2011, p. 59.

33 Connor, “Structure and agency”, pp. ii97-ii110.

34 A Giddens, *The constitution of society: Outline of the structuration theory* (Berkeley: University of California Press, 1986), quoted in JG Rigby *et al.*, “Understanding how structure and agency influence education policy implementation and organizational change”, *American Journal of Education* 122 (3), 2016, p. 296.

The court transcripts from examined cases are the primary source for exploring the nature of gender relationships, norms and beliefs prevalent during the colonial period and how these were played out in the colonial courts. Accusations and counter-accusations often reveal the points of tension that triggered violence. To that end, the specific cases identified are grouped according to issues around gender-based contestation in African urban households. Intra-household competition for food; conflict over female drinking of beer; concern over childlessness; conflict over adultery and the custody of children in divorce cases adjudicated in the African Court of Appeal (ACA), formerly Native Court of Appeal (NCA).

Court records provide insight into domestic struggles and the role of the colonial legal processes. The administration of justice in urban areas exhibits many weaknesses stemming from legal pluralism and the different approaches of different courts to issues of African Law. The Law stipulated that in African courts, practice, procedure and evidence should be governed by African Law and custom—no such prescription applied to the District Commissioners and other higher courts.<sup>35</sup> As a result, potential litigants in urban areas could choose the court most likely to give them the best outcome.<sup>36</sup> In addition, judges and magistrates were all white middle-class men with particular ideas and ideals concerning families and marriages, husbands and wives' roles and behaviour informed by Christian and conservative gender ideologies of the time. The profile of the judges alone leads one to believe that defendants in domestic violence cases (men) would favour the District Commissioners and other higher courts over the ACA.

When reading divorce reports, bias and lying cannot be ruled out as defendants and plaintiffs exaggerate claims related to personal matters, such as gender-based violence, in order to gain an advantage over the other. This sullied the objectivity of the source material. In some instances, archival sources were displaced and could not be retrieved, and in others, final criminal case judgments were missing. Withholding private and sometimes embarrassing details in historical GBV cases from often sexist and racist colonial officials hampers the ability to measure the extent of GBV. Gender-based violence sometimes only emerged after interrogation of assault cases and the reasons behind the divorce. Furthermore, the term gender-based violence was not used in the legal sphere and criminal law until the 1970s.<sup>37</sup> The preceding significantly contributed to the silencing of GBV under the terms assault and ill-treatment.

35 JF Holleman, "Disparities and uncertainties in African law and judicial authority: A Rhodesian case study", *African Law Studies* 17, 1979, p. 25.

36 TW Bennett, "African court system in Rhodesia: An appraisal" (Johannesburg: Sabinet Gateway, 2011), p. 149.

37 S Ahmed, "Introduction: Sexism, a problem with a name", *New Formations* 86 (1), 2015, p. 8.



Despite these potential weaknesses, court case documents remain valuable sources of evidence for GBV. Robertson Smith argues that court sources reveal behaviours not covered in other sources, asserting that, “They record the voices of illiterate, working-class, and women, allowing the historian to hear people speaking about love, emotional and sexual intimacy, power and betrayal, and broken promises”.<sup>38</sup> In doing so, court records can take the researcher beyond the crime scene into the socio-economic and cultural worlds in which the crime took place. As Ann Stoler rightly notes, “archives are entry points for tracking domains of the intimate”.<sup>39</sup> In tracking these domains, caution is essential in assessing the interpreted voice of the women plaintiffs since colonial courts used the English language, which African men translated. Men gave meaning to the violence described by women through gender ideologies shaped by African beliefs about legitimate and illegitimate violence in domestic spaces. This reality has recently led to the value of colonial archives being reconsidered.

Literary works, newspapers, and interviews augmented court cases, in shaping the position adopted in this article. Works by renowned African writer Dambudzo Marechera were particularly useful in providing graphic accounts of GBV between the 1930s and the 1950s in Zimbabwe.<sup>40</sup> However, such works remain fiction, and care was taken in their deployment in this article. Re-reading secondary materials as data sources aided the process of “recovering” and “inserting” women’s agency as they responded to GBV in domestic spaces. Newspapers like the widely read African Weekly carried stories that reflected issues concerning men and women in towns. In particular, issues of marriage, divorce, and violence dominated letters to the editor. A total of 15 interviews with older men and women aged 70 or older corroborated some domestic experiences of the 1930s to the 1950s. As indicated by Tsuneo Yoshikuni in his biography of Mai Musodzi, some older people in Mbare recall Mai Musodzi and the role she played in assisting Salisbury location women in dealing with violence in domestic spaces, among other achievements.<sup>41</sup>

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38 R Smith, “What’s law got to do with it?: Legal records and sexual histories”, *Journal of the History of Sexuality* 14 (1 and 2), 2005, p. 161.

39 A Stoler, “On archival labour, recrafting colonial history”, *Dialogue Andino-Revista de Historia* 46, 2015, p. 154.

40 D Marechera, *House of hunger* (London: Heinemann, 1978).

41 T Yoshikuni, *Elizabeth Musodzi and the birth of African feminism in early colonial Zimbabwe* (Harare: Weaver Press, 2008), p.11.

GBV research reveals personal and private matters which require ethical considerations.<sup>42</sup> According to the World Health Organisation (WHO), informed consent, the safety of respondents and interviewers, confidentiality protection, harm reduction, and the correct interpretation of research findings are crucial to conducting GBV research.<sup>43</sup> In historical GBV research, actors' confidentiality was protected by changing the actual names of both perpetrators and survivors. Despite this, the references in court transcripts and police reports still bear the actual names. In interpreting research results, the article considered the need to reduce harm and perpetuate harmful gender practices and stereotypes.

#### 4. AFRICAN SOCIETY, URBANITY AND COLONIAL LEGAL SYSTEM

This section discusses three contextual issues that enhance understanding of GBV in African urban spaces. These include African marriage systems and conflict resolution processes prior to urbanisation, the impact of urbanisation on households, and the colonial justice system for Africans. These processes were not linear but interacted, influenced each other, and changed over time.

##### 4.1 African Society on the eve of colonial rule

On the eve of colonial rule, African belief systems and values were the determining factors in all aspects of life. The institution of marriage played a crucial role in defining the gender balance of power between men and women. Marriage payments<sup>44</sup> legitimised marriages and were seen as an important ritual with spiritual aspects that carried through generations.<sup>45</sup> *Lobola/roora* granted a man entitlement to his wife's labour including food preparation, rights to children, monogamous sexual satisfaction, submission, and respect. Fecundity was considered central to the survival of a lineage. Women, in turn, looked to their husbands for care, protection, and procreation. Society

42 R Jewkes *et al.*, "Ethical and methodological issues in conducting research on gender-based violence in Southern Africa", *Reproductive Health Matters* 8 (15), 2000, p. 93.

43 World Health Organization, *Putting women's safety first: Ethical and safety recommendations for research on domestic violence against women* (Geneva: WHO, 1999).

44 The term marriage payments is preferred, unlike bride price or bride wealth, which distort the original meaning of these exchanges, which were, in some cases, paid over a lifetime.

45 NT Taringa and G Museka, "No to bride price/bride wealth, yes to *roora*: Investigating the meaning, function and purpose of *roora* as a ritual". In: L Togarasei and E Chitando (eds.), *Lobola (bride wealth) in contemporary Southern Africa: Implications for gender equality* (Gewerbestrass: Palgrave Macmillan, 2021), p. 13.

sanctioned limited violence against the wife.<sup>46</sup> Only severe cases of physical harm were escalated to higher levels of conflict resolution outside the family system.<sup>47</sup> Consistent GBV was resolved through a tiered system involving close family members, the paternal aunt and maternal uncle, reminiscent of concepts from *hunhu/ubuntu*<sup>48</sup> and the traditional indigenous *dare*<sup>49</sup> system. Divorce was frowned upon because of the spiritual bonds formed during the marriage ritual.<sup>50</sup> In most cases, reconciliation was the preferred option. In addition, the obligation to return *roora* acted as a disincentive for families to accept a divorce initiated by their daughters. For these reasons, women could potentially endure GBV in silence to protect the family economy.<sup>51</sup>

## 4.2 Urbanisation and Urbanity

Compared to West Africa, which had a history of towns and cities before the advent of colonialism, Southern Africa had few cities like Mapungwe and Great Zimbabwe.<sup>52</sup> Like other 19<sup>th</sup> century cities, Nairobi, Lusaka and Johannesburg, Salisbury was founded by and for white settlers.<sup>53</sup> As Helen Callaway succinctly noted, “these settlers established colonial service as a masculine institution in all its aspects: its masculine ideology, its military organisation and procedures, its rituals of power and hierarchy, and its strong gender boundaries”.<sup>54</sup> Southern Rhodesia’s urbanisation followed as a response to industrial demand for labour.<sup>55</sup> Africans were housed in separate

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46 May, *Zimbabwean women*, p. 75.

47 E Masitera, “The moral Significance of the *dare* system in seeking justice and peace among the Shona of Zimbabwe”. In: N Marongwe *et al.* (eds.), *Violence, peace and everyday models of justice and healing in postcolonial Africa* (Langaa: African Books Collective, 2019), p. 291.

48 Ubuntu is a philosophy that values humaneness.

49 Dare was a platform to discuss cases and issues affecting the family.

50 Taringa and Museka, “No to bride price/bride wealth, yes to *roora*”, p. 13.

51 J Chitakure, “Bride wealth in Southern Africa: Origin, functions, rights, and gender-based violence”. In: Togarasei and Chitando (eds.), *Lobola (bridewealth), in contemporary Southern Africa: Implications for gender equality* (Gowerbestrasse: Palgrave Macmillan, 2021), p. 45.

52 B Freund, *The African city a history* (Cambridge: Cambridge University Press, 2007), p. 3.

53 Freund, *The African City*, p. 37. See also, D Jeater, “African women in colonial settler towns in East and Southern Africa”, *Oxford Research Encyclopedia of African History*, 2020, p.1.

54 H Callaway, *Gender, culture, empire: European women in colonial Nigeria* (Oxford: MacMillan Press, 1987), p. 5.

55 K Chitofiri, “Law and order must take precedence in everything that has to do with the Native: The African ‘Location’, control, and the creation of urban protest in Salisbury, colonial Zimbabwe, 1908-1930”, *The Historian* 81 (2), 2019, pp. 213-234; T Ranger, “The meaning of urban violence in Africa: Bulawayo, Southern Rhodesia, 1890-1960”, *Cultural and Social History* 3 (2), 2006, p. 194.

places (Locations)<sup>56</sup> to achieve the most excellent possible separation between rulers and ruled, white and black, rich and poor.<sup>57</sup> Subsequently, funding urban services and infrastructure followed the underlying assumption that cities would never become the permanent residences of single African men whose social reproduction depended on the rural economy served by African women.

Urban environments are prone to GBV because of their physical geography, fragmented impersonal social relationships, overcrowding, poverty and pressures of city life.<sup>58</sup> Such features have dominated African urban spaces at various historic points in racially segregated colonial Harare. In the 1930s, urban accommodation for African migrants was male-centred and built for single men. Architectural designs for municipal African houses were simple: one-bedroom, shared bath, toilet, and kitchen facilities. Streets were not well-lit, and clean drinking water needed to be improved.<sup>59</sup> Overcrowding and shared facilities created a strange intimacy, leading to numerous reports of rape of women and children in public spaces. For Benson and Chadya, urban environments became sites of male aggression, redefining previously safe spaces in rural settings as unsafe in cities.<sup>60</sup>

In the 1930s, women were not welcome in the city as independent citizens with legitimate claims of work and space.<sup>61</sup> Thus, they became victims of state and African male violence as they ventured into urban spaces in search of better opportunities in colonial Harare.<sup>62</sup> As part of its law and order functions, the state controlled the movement of African men through the pass system. At the same time, women were subjected to *chibheura*, a medical screening for sexually transmitted infections, particularly syphilis.<sup>63</sup> Married women had to show marriage certificates when visiting their husbands. In some cases, single women strategically entered into partnerships of convenience to access accommodation as they navigated their legitimacy in cities. Some fell victim to sexual abuse by compound police during routine

56 Places in urban areas that were officially demarcated for the settlement of Africans.

57 Ranger, "The meaning of urban violence in Africa", p. 194.

58 C McIlwaine, "Urbanisation and gender-based violence: exploring the paradoxes in the global south", *Environment & Urbanization* 25 (1), 2013, p. 65.

59 T Yokushini, *African urban experiences in colonial Zimbabwe* (Harare: Weaver Press, 2007, p. 54.

60 Benson and Chadya, "Ukubhinya", pp. 587-610.

61 Jeater, "African women in colonial settler towns", pp. 1-19.

62 E Schmidt, *Peasants, traders, and wives: Shona women in the history of Zimbabwe, 1870-1939* (Michigan: Heineman, 1992), p. 25.

63 L Jackson, "When in the white man's town: Zimbabwean women remember *Chibeura*". In: J Allman et al. ( eds.), *Women in African colonial histories*, p. 191.

inspections when they failed to explain their presence in town.<sup>64</sup> Debates about the need for women in the city ended in a compromise in which they were tolerated because they offered, “comforts of home”.<sup>65</sup> and the social reproduction of the African migrant workers.<sup>66</sup>

In response to the challenges of accommodation, health, and unemployment, women organised themselves in clubs and churches. One such club was the African Women’s Club (AWC), established in 1938 by an African woman popularly known as Mai Musodzi and a white lady named Councillor Mrs G. Maarsdorp, who both shared early feminist orientation in solving women’s problems. The AWC was fashioned along the lines of whites-only women’s institutes of colonial Zimbabwe. Through its programmes, women had access to information on health, marriage registration, and divorce procedures, among other skills.<sup>67</sup> Those arrested for failing to produce inadequate documents to stay in the location also got support from the AWC.

Unlike the high unemployment crisis of the 1930s, the Second World War created demand for labour in the manufacturing and mining sectors. However, the demand did not match the capacity and desire of the white-dominated economy to pay for African labour. By the mid-1940s, a combination of low wages, poor living conditions, and lack of educational opportunities imposed tremendous hardships on African men and women, creating tensions and subsequent violence in domestic spaces.<sup>68</sup> Structure and agency intertwined, as structural constraints of poverty and limited employment opportunities in the cities forced women to develop new identities and economic opportunities, which challenged masculine constructions of African women. In the late 1940s, they largely controlled beer brewing, and several had a lucrative commercial sex business. A “skokiaan” culture of beer brewing, drinking and dancing emerged, which, for Brian Raftopoulos, later evolved into “mahobo” parties.<sup>69</sup> The pressures caused by urban poverty and restrictions of colonial rule, a structural reason for violence, triggered a crisis in African masculinities. Reading Marechera suggests that the gendered colonial economy destabilised African men, leading them to struggle to gain their privileged position in the face of changing social relations in urban spaces.<sup>70</sup> This contributed to GBV in African urban spaces.

64 NAZ, S246/782 Letter from CNC to TC Salisbury, 30 September 1930.

65 L White, *The comforts of home: Prostitution in colonial Nairobi* (Chicago: University of Chicago Press, 1990).

66 Barnes, *We women worked so hard*, p. 21.

67 Yoshikuni, *Elizabeth Musodzi*, p. 16.

68 T Barnes, “Am I a Man?": Gender and the pass laws in urban colonial Zimbabwe, 1930-80”, *African Studies Review* 40 (1), 1997, p. 63.

69 B Raftopoulos, “Gender, nationalist politics and the fight for the city: Harare 1940-1950s”, *SAFERE: Southern African Feminist Review* 1 (2), 1995, p. 35.

70 Marechera, *The House of hunger*, pp. 54-59.

### 4.3 Colonial legal system

The last contextual issue relevant to the assessment of women's agency in response to GBV in colonial urban spaces is the colonial legal system. Karekwaivenane observed that the colonial legal system served to create and maintain a colonial social and political order based primarily on racial differences.<sup>71</sup> The colonial state used the law as an instrument of social change to promote the so-called "civilisation". Colonialism produced a legal pluralism that recognised pre-existing African Law and separated it from the inherited law of the metropole.<sup>72</sup> In Southern Rhodesia, European District Commissioners were responsible for African civil claims in towns. Provision was made for Africans to bring any case before either the District Commissioner or the Magistrate, and appeals were made to the ACA.<sup>73</sup>

Women and men of low social status saw opportunities in the new colonial institutions to escape other forms of oppression.<sup>74</sup> Both customary and colonial laws assigned legal minority status to African women who had no individual identity outside of a male guardian.<sup>75</sup> Despite this status, African women strategically deployed the concept of "collective agency" to gain the support of their male family members. The cases will show that they used legal avenues to address individual violations. In the absence of specific laws regulating violence in domestic spaces, rape, assault, physical and other forms of violence were treated as criminal and civil offences.<sup>76</sup> The courts were generally intimidating, as they were staffed by male court staff: interpreters, clerks, judges, and magistrates, as was the official court language, English.<sup>77</sup> Despite the services of a good translator, there was a good chance that the woman's story would get lost in translation since interpreters brought sexist attitudes and prejudices with them.<sup>78</sup> Judges also asked probing personal questions that reflected colonial gender beliefs from a racial perspective. Despite the challenges, courts became sites of resistance to gender and racial injustices.

71 Karekwaivenane, *The Struggle over state power in Zimbabwe*, pp. 35–45.

72 M Mamdani, *Citizen and subject: Contemporary Africa and the legacy of late colonialism* (Princeton, NJ: Princeton University Press, 1996), p. 21–23, quoted in E Burrill et al. *Domestic Violence and the Law in colonial and postcolonial Africa* (Athens, OH: Ohio University Press, 2010), p. 14.

73 Bennett, "The African court system in Rhodesia", pp. 133–151.

74 S Merry, "Colonial law and its uncertainties", *Law and History Review* 28 (4), 2010, p. 1068.

75 May, *Zimbabwean women in colonial and customary law*, pp. 22–28.

76 J Stewart et al., "The legal situation of women in Zimbabwe". In: J Stewart and A Armstrong (eds.), *The legal situation of women in Southern Africa* (Harare: University of Zimbabwe Publications, 1990), p. 224.

77 D Jeater, *Law, language, and science: The invention of the "native mind" in Southern Rhodesia, 1890–1930* (Portsmouth: Heinemann, 2007), p. 121.

78 AK Armstrong, *Struggling over scarce resources: Women and maintenance in Southern Africa* (Harare: University of Zimbabwe Publications, 1997), p. 94.

## 5. WOMEN'S VOICES IN THE COURTROOM

### 5.1 Response to sexual forms of violence

Sexual violence against women in colonial Harare took various forms, with cases of girl child abuse perpetrated by male neighbours or the mother's boyfriends being reasonably widespread.<sup>79</sup> These experiences mirrored colonial Bulawayo in many ways<sup>80</sup>, with reported cases of African municipal police sexually abusing ordinary women seeking employment in the city in exchange for favours to be allowed to remain in the city, where their residence was considered illegitimate.<sup>81</sup> Female nationalists became the targets of male anger, expressed through rape in the 1948 General Strike.<sup>82</sup> Likewise, single professional women living at Carter House were punished with rape in 1956 after refusing to join the nationalist-oriented Bus Boycott, an action interpreted as resisting male authority.<sup>83</sup>

The cases described in this section show the vulnerability of women in shared domestic spaces. Cases of female neighbours raped in their sleep suggest a continuum of sexual violations in public spaces. As described in the context, shared living spaces and overcrowding created proximity between strangers. The cases are in many ways similar to *ukuzuma* (having sexual intercourse with someone when they are asleep) cases observed by Thornberry among the Xhosa of the Eastern Cape.<sup>84</sup> In 1930, Sekai narrated,

I went to bed with my drunk husband. During the night, Sokisi, who sleeps in the *kitchen*<sup>85</sup> attempted to rape me, but I hit him back with a stick. Afterwards, my husband awoke, and together, we struggled with him and kept him until a Location police officer came and arrested him.<sup>86</sup>

79 NAZ, S332/14/33, Civil cases Salisbury, 1 May 1933; NAZ, S1252/688/37, Civil cases Salisbury, 3 February 1937; NAZ, S1078/185/39, Civil cases Salisbury, 1 May 1939,.

80 Benson and Chadya, "Ukubhinya", pp. 587-589.

81 NAZ, S246/782, Letter from Chief Native Commissioner to Town Clerk Salisbury, 30 September 1930.

82 T Scarnecchia, "Poor women and nationalist politics: Alliances and fissures in the formation of a nationalist political movement in Salisbury, Rhodesia, 1950-1956", *The Journal of African History* 37 (2), 1996, p. 283.

83 Barnes, *We women worked so hard*, pp. 60-65.

84 Thornberry, "Sex, violence, and family", pp. 117-120.

85 Yoshikuni, *African Urban experience*, pp. 80-85. Verandahs and kitchens were often used as extra rooms due to housing shortage.

86 NAZ, S343/1683/30, Civil cases Salisbury, 29 December 1930.

In his defence, Sokisi apologised for being so drunk that he forgot which door was his and invaded the neighbour's bedroom. He also claimed that he had previous sexual relations with Sekai in the absence of the man she claimed to be her husband. Sekai insisted that Sokisi blamed drunkenness for his actions, which he knew were wrong. She told the court that her attacker was full of lust and had proposed love to her in previous contacts, but she turned it down. Her husband confirmed her story and also insisted that Sokisi compensate him for his wife's abuse. Despite his defence, Sokisi was found guilty and had to pay a fine.

The case points to several gender dynamics in urban colonial shared domestic spaces. Women like Sekai were constantly exposed and vulnerable to male sexual violence in the overcrowded locations. Other women had multiple partners to survive in challenging economic conditions. These fluid sexual relationships complicated gender relations, an issue the perpetrator took advantage of in his defence. Although there is no evidence to support the perpetrator's claim that he had a sexual relationship with Sekai, it is worth noting that men used stereotypes of urban women as prostitutes to justify sexual abuse. Elizabeth Lange and Susan Young observed that perpetrators tend to use rigorous denial, secrecy, silence, and credibility attacks on the victim.<sup>87</sup> Sekai's husband, on the other hand, claimed ownership of Sekai's body by demanding compensation for sexual violence against his wife. Sekai demonstrated individual agency by hitting back at the man and successfully enlisted her husband to support her in approaching the colonial courts to secure justice.

In a related case, in 1942, Sistina, a single professional woman, was raped in her sleep by a neighbour. She reported the following experience to the district court,

I was exhausted and slept like a log. At midnight, I woke up to find Sixpence, one of the males who lives in the same compound, having connection (intercourse) with me. I was wet between the legs and knew it was semen. Sixpence ran away but left his jacket. In the morning, I reported to the police.<sup>88</sup>

In the court, Sistina was questioned about her sex life, marital status and whether she had a previous sexual relationship with the perpetrator. She mentioned that she had a boyfriend but denied any sexual contact with the

87 E Lange and S Young, "Gender-based violence as difficult knowledge: Pedagogies for rebalancing the masculine and the feminine", *International Journal of Lifelong Education* 38 (3), 2019, p. 301.

88 NAZ, S1453/1571/42, Civil cases Salisbury, 05 December 1942.



perpetrator. As expected, Sixpence, in his defence, denied the rape allegation and told the court that he was, instead, in a relationship with the plaintiff, which the plaintiff denied in court. However, the plaintiff insisted that he was not telling the truth. The perpetrator was found not guilty due to lack of evidence. Unlike the previous case, where the plaintiff had a husband, this case suggests that single women living alone were at higher risk of sexual violence, and their cases faced more significant scepticism in court. In both cases of sexual violence, men appeared to capitalise on the stereotypical identity of single women as prostitutes, a view shared and reinforced by court officials. The case also brings to the fore the limits of agency in the face of structural constraints.

The state responded to sexual violence with the criminal justice system. White male court officials exposed existing sexist and racist gender stereotypes through the intrusive questions the victims were asked. Their assumptions based on liberal and racial standards of respectability were that African women were sexually lax.<sup>89</sup> Therefore, the credibility of rape victims was always in doubt. They also point to the alleged sexual availability of single unmarried women and the consequent lack of police protection, a recurring theme in feminist discourse on sexual GBV, as Pamela Scully rightly observed.<sup>90</sup>

The rape of women in their sleep, as observed in these cases, has escaped scholarly attention in the colonial histories of sexual violence in Zimbabwe. However, works by Thornberry and Scully in South Africa have shown that such practices were standard in surrounding states and steeped in traditional practices.<sup>91</sup> It is argued that men whom their victims knew raped the women during sleep to avoid embarrassment, yet rape remained a tool of male dominance in both domestic and urban spaces. Though different in its execution, it is similar to other cases of rape in public spaces because sexual violence is about power, domination, a tool for maintaining gender inequality and is used as a means to shore up masculinity.<sup>92</sup>

In both cases (Sekai and Sistina), the women showed agency by resisting and turning to colonial laws, although negative results were obtained in Sistina's case. Though the cases are few, they help the historian to investigate and understand the silence of sexual violence practices,

89 Thornberry, "Sex, violence and the family", pp. 22-25.

90 P Scully, "Finding gendered justice in the age of human rights". In: E Burrill *et al.* (eds.), *Domestic violence and the law in colonial and postcolonial Africa* (Athens (OH): Ohio University Press, 2010), p. 277.

91 Scully, "Rape, race, and colonial culture", pp. 335-337.

92 EA Armstrong *et al.*, "Silence, power, and inequality: An intersectional approach to sexual violence", *Annual Review of Sociology* 44, 2018, p. 103.

particularly during a crisis. For colonial Harare, the housing shortage created stranger intimacy that triggered sexual predator behaviour among men, leading to the rape of women in both public and private spaces.

## 5.2 Challenge to male entitlement to quality food

Urban poverty caused by unemployment and low wages triggered a crisis in food distribution in African households.<sup>93</sup> Due to male-centredness, an attribute which causes men to desire attention to themselves<sup>94</sup>, men desired preferential treatment in food allocation. Where these interests were not honoured, gender conflicts escalated to the point of physical violence. In 1936, a husband physically assaulted his wife Sofi, accusing her of serving him food that was inappropriate in quality and quantity. In the process, she suffered a broken leg and reported the assault with the help of the neighbours. Giving evidence, Sofi narrated,

When my husband arrived home, I served him *sadza* and vegetables. For a week, we had no alternative relish. After opening the plate, he threw the plate at me, shouting: 'Is this the food for a man?' He rose and started hitting me. This is not the first time; this has been happening often. In the process of attempting to escape from him, I tripped and hurt my leg. I only realised it was broken when I went to the hospital. There was insufficient food, so I served available food. His problem is that he desires more food than the rest of the family.<sup>95</sup>

In his defence, the husband claimed that he hit his wife because he suspected that she was prostituting with other men. He was also irritated by his wife's carelessness in misusing the meat, which, for him, was supposed to last for four days. He was surprised she had finished the meat with her relatives and friends. His justification for hitting his wife reflected the prevailing beliefs of African men, also shared with colonial officials, who stereotyped urban African women as prostitutes.<sup>96</sup> In addition, the burden of the extended family distorted the household budget. This affected household food availability and the ability of the wife to meet the quality food entitlement of her husband.

93 Barnes, *We women worked so hard*, pp. 44-48.

94 A Johnson, *The gender knot: Unravelling our patriarchal legacy* (Philadelphia: Temple University, 2014), p. 223.

95 NAZ, S1252/11264, Civil cases Salisbury, 8 September, 1936.

96 *African Weekly Newspaper*, 2 June 1945, p.1. A contributor, Machipisa, accused urban women of being prostitutes and carriers of diseases and recommended that they pay tax. Similar views were shared in most editorial pages of this newspaper in 1944, 1945, and 1946.

The real reason for the physical violence was alleged non-compliance with a gender dietary hierarchy. By serving vegetables as relish, Sofi had no option but to serve what was available, which unfortunately did not comply with her husband's expectations. Violence was used to show power and control over the wife and to remind her of the need to respect this culturally mediated norm and entitlement in the preparation and allocation of food.<sup>97</sup> Underneath his action was a belief in the rightness of violence, defending and protecting his entitlement to good food.<sup>98</sup> In the case of Zimbabwe, such patriarchal expectations of preferential treatment in food allocation have their roots in the socialisation of men and women through marriage preparation processes that train women to serve more significant portions to their husbands.<sup>99</sup> In some Zimbabwean ethnic groups, men demand a specific part of a chicken, such as a gizzard, wing, or thigh, and pressure their wives to comply.<sup>100</sup> Not surprisingly, such gender norms and practices have existed for a long time. They are tested and amplified in times of economic crisis, such as those in colonial Harare in between the 1930s and 1950s. Mary Johnson Osirim observed the same during the Economic Structural Adjustment Programs (ESAP) in the 1990s.<sup>101</sup> In recent years, social and economic stress induced by the COVID-19 pandemic from 2020 onwards exacerbated by pre-existing patriarchal social norms and gender inequality.<sup>102</sup>

Sofi expressed her displeasure at her husband's sense of entitlement in the face of household food scarcity. In the process, she also demonstrated closeness to the African culture of sharing food with relatives, which seemed irrelevant in urban settings, according to her husband. To some extent, Sofi's action of reporting her husband to the colonial courts for physical violence suggests agency on her part. Though the final judgement was not available, the case exposes intricate household gender relations in colonial Harare.

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97 A Whitehead, "I am a hungry mom': The politics of domestic budgeting". In: K Young *et al.*, *Of marriage and the market: Women's subordination internationally and its lessons* (London: Routledge, 1984), p. 112.

98 Johnson, *The gender knot: Unravelling our patriarchal legacy*.p. 214.

99 D Jeater, *Marriage perversion and power: The construction of moral discourse in Southern Rhodesia, 1894-1930* (Oxford: Clarendon Press, 1999), p. 25.

100 SAFAIDs, *Community practices, religious and cultural norms around the construction of masculinity report*, (Harare:SAFAIDs Media &Publications, 2017), p. 27.

101 MJ Osirim, "Crisis in the state and the family: Violence against women in Zimbabwe", *African Studies Quarterly* 7 (2-3), 2003, p. 157.

102 Dlamini, "Gender-based violence: Twin pandemic to COVID-19", p. 585.

### 5.3 Request for divorce due to physical violence

In a situation of ongoing physical violence committed by her husband from 1947 to 1949, Dorica decided to take legal action to seek a divorce. Her father represented her in court. He informed the court,

We have been to the police on four occasions after my daughter was assaulted by her husband. In each case, my daughter sought refuge at my place, but the husband followed her and beat her. When my wife intervened, she was hit with a fist. I also intervened but was assaulted, too. It was only when I was also assaulted that I changed my mind. I now support her request for a divorce based on ill-treatment.<sup>103</sup>

The court ruled that there was no evidence of violence as there was no physical injury, after which the divorce was denied. Different actors in the colonial space reflect the gendered nature of the colonial courts. Dorica's father only responded to her appeals against GBV after the entire family had fallen victim to the man's abuse. This shows the intergenerational differences between Dorica's father and his daughter. His generation's patriarchal thinking informed his thinking and mindset about marriage as a lifetime commitment. He could not understand how his daughter failed to endure the violence experienced in marriage. For him, violence became intolerable when he became a victim of the same violence from his son-in-law. The son-in-law displayed violent masculinities, crossing the line of traditional African norms that demand respect for the in-laws. Such behaviour by a son-in-law suggests the effects of urbanisation on the transformation of cultures, values, and relationships during the colonial era.

In the absence of a specific law governing domestic-based assaults, there was a general belief that actual domestic violence needed evidence in the form of injuries to constitute an assault. Other remedies for severe cases included criminal actions for personal injury, a peace order that a man refrains from assaulting his partner, legal separation, divorce and the payment of civil damages.<sup>104</sup> The major problem was that the police treated domestic violence as a domestic and not criminal matter, taking it less seriously than other assaults. Case histories such as these show the ambiguity of colonial laws, on the one hand, by offering relief through the possibility of dissolving marriages and, on the other, by playing down abuses that have been banished to the private sphere. In this case, the law supported masculine entitlement by defining what "legitimate" violence was.<sup>105</sup>

103 NAZ, S2688/11/493/49, Civil cases Salisbury, 1 March 1949.

104 Stewart, "The legal situation of women in Zimbabwe", pp. 214-217.

105 SE Merry, "Narrating domestic violence: Producing the 'Truth' of violence in 19th-and 20th-century Hawaiian Courts", *Law & Social Inquiry* 19 (4), 1994, p. 972.

The successful and unsuccessful cases of divorce show that women could try to use the symbolic power of the law to challenge oppressive structures and relationships. Despite enduring continued violence, Dorica eventually managed to get her father to support her in the courtroom. Although she was not granted the divorce, she used a collective agency, working in partnership with her father to fight GBV in the domestic space, using a colonial court.

#### 5.4 Control of female drinking of beer (skokiaan)

Julia filed for a divorce in 1949 after enduring repeated assaults, which caused physical injuries and hospitalisation. Using her own words from the transcripts, “On numerous occasions my husband assaulted me. On the last occasion, I was hospitalised for three days. I have approached the courts several times without success”. The husband responded, “I beat her because she was drinking ‘skokiaan,’ (a local beer) and having extra marital affairs with other men. I caught her two times and agreed to beat her on both occasions”.<sup>106</sup> After numerous approaches to the court and using evidence from other men, the court eventually granted Julia a divorce two years later, in 1951. She left the marriage and lived alone as a single parent, surviving on the sale of traditional beer.

The colonial court’s delivery of justice had pitfalls, as its primary purpose was to restore social equilibrium without upsetting African patriarchs.<sup>107</sup> It was not only male-centred, but the courts ignored women’s agency, did not recognise women and assumed they had no inherent rights.<sup>108</sup> Despite the patriarchal nature of the colonial courts, women like Julia persisted in seeking justice, and after a long wait, Julia’s story ended in a successful divorce. She managed to survive on her own in an urban setting. From this case, one can make linkages between women’s economic empowerment and the ability to challenge abusive relationships.<sup>109</sup> The brewing of skokiaan beer was a lucrative business that had the potential to increase women’s income and subsequently empower them to end and or escape abusive relationships. The period 1945-1960 saw colonial Zimbabwe avail increased opportunities for women’s employment in both informal beer sales and commercial sex work, as well as in the formal sector, teaching, nursing, and domestic service. Divorce statistics for Africans are, however, not available for this period.

106 NAZ, 2866/11/491/4916, Civil cases Salisbury, 1 September 1949.

107 Schmidt, “Negotiated spaces”, pp. 622-649.

108 Hawkins, “The woman in question”, pp. 116-143.

109 M Strauss, “Measuring intrafamily conflict and violence”, *Journal of Marriage and the Family* 41, 1979, pp. 77.

Hence, the article cannot make a correlation between improving African women's economic status and divorce.<sup>110</sup> More research is necessary to establish the relationship between African women's empowerment and access to divorce.

### 5.5 Fight over few children

Some women challenged the normative framework of African marriages that linked marriage to procreation, the birth of many children, and marital chastity. In traditional African culture, it was rare for a woman to initiate a divorce. One Francisca successfully filed for divorce in 1951. She was married to Matope, and they had two children, one of whom died. Francisca accused her husband of being physically abusive, hitting her four times for failing to conceive another child. Francisca subsequently left her husband to live with her parents in another part of Salisbury.

While at her father's house, Francisca started attending meetings organised by the AWC.<sup>111</sup> In such meetings, women were equipped with life skills like garment making and knitting, health and hygiene and were counselled when they faced marital problems. Others were supported in securing jobs and accommodation. Interactions of this nature exposed her to new ways of thinking about herself. With time, she had a relationship with another man, and through this union, she conceived a baby girl. In her own words, "I cheated on my husband because I wanted to prove to him that I am not barren".<sup>112</sup> Her statement shows that women were equally concerned about barrenness and made attempts to get more children as she did.

The act of cheating her husband on purpose suggests a shift in the way of thinking brought about by urbanisation and exposure to information. The courts also mediated the process of social change, introducing and enforcing new social and economic ideas related to gender relations and marriage by allowing divorce in some cases.<sup>113</sup>

### 5.6 Approaching the African Appeals Court

African urban women used the African Appeal Court to oppose GBV. According to the African judicial system hierarchy, the ACA, established under Section 6 of the African Affairs Act, was the second tier of the District

110 R Sieger, *Marital dissolution in Rhodesia* (MA, University of Rhodesia, 1977), p. 55.

111 NAZ, S2883/1/1/46/51, Civil cases Salisbury, 6 October 1952.

112 NAZ, S2883/1/1/46/51, Civil cases Salisbury, 6 October 1952.

113 G Karekwaivanane, *Legal encounters, law, state and society in Zimbabwe, c. 1950-1990* (PhD, Oxford University, 2012), p. 69.

Commissioners Court.<sup>114</sup> It was a structure that provided a platform for aggrieved plaintiffs or defendants to seek justice in cases decided by the lower courts. This court comprised a president (a retired judge or attorney with at least ten years' experience) and two other District Commissioners as members. Further appeals from this court were examined in the Appeals Division of the High Court.<sup>115</sup>

By the late 1940s, both men and women had appropriated some of the individualistic values and cultures of the white settlers, championing individual rights and using the law to ensure individual justice. Nevertheless, they retained elements of their traditional African culture. Esnati is an example of African women who suffered constant physical and verbal abuse from their husbands because they were childless. Esnati successfully petitioned the district court for divorce. Her husband Harry appealed to the Provincial Native Commissioner for Salisbury in 1947, but his appeal was unsuccessful. Not satisfied with this decision, he appealed to the African Appeals Court, requesting his wife's return. The closing words of the chair of the African Court of Appeal, K. Yardley, are revealing,

I cannot extend the extension of the husband's marital power under customary Law to include the right to *thrash* his wife over a period of years from 1927. It was my duty to interpret the provisions in conformity with *civilised concepts*. Moreover, the native custom is flexible and changing with the times, in the same way, common Law is changing.<sup>116</sup>

Not surprisingly, the Appeals Court upheld Esnati's divorce. Harry regained part of his *lobola/roora*, a right many African men enjoyed whenever their wives initiated a divorce. Women like Esnati defied the constraints of abusive marriage relationships and found justice in the Court of Appeal. However, upholding divorce by the colonial courts was part of the colonial states' agenda to bring civility and reform to African cultural practices in urban spaces. As argued by Susan Hirsch, colonial courts had a semblance of fairness and justice. For him,

Courts are "complex sites of resistance" in part because they have the potential to play pragmatic, ideological, and symbolic roles in contestations over power. This complexity is also generated by the fact that people use courts to contest multiple relations of power, reworking understandings of Gender, race, class, and other

114 Bennett, "The African court system in Rhodesia", pp. 133-135.

115 Bennett, "The African court system in Rhodesia", pp. 135-151.

116 Native Appeal Court, *Harry vs Nomi Esnati*, Salisbury 12-15 August 1947, p. 401.

hierarchies sometimes simultaneously. Thus, oppositional practices in courts, emerging in response to a range of dominations, assume many forms and generate diverse outcomes.<sup>117</sup>

Despite providing access to justice for subordinate groups, as in the case of Esinati, colonial laws nonetheless continued to be repressive. Unfortunately, this repression was felt by African women much more than men in both the public and domestic spheres.<sup>118</sup>

In another case of GBV linked to childlessness, Saniso suffered violence from her husband after failing to have children in the three-year marriage. In 1949, she applied for a divorce. In her words, confirmed by her father,

My husband beat me several times and kicked me with boots on my stomach and breasts. I went to the hospital, and he continued beating me. I no longer want to live with him. I want a divorce.

Giving evidence, Saniso's father said,

My daughter frequently reported about their quarrelling and fighting with her husband. On all occasions, I told her to go back to her husband. I did not support my daughter in claiming a divorce. I have always tried to make them live together correctly.<sup>119</sup>

In defence, Saniso's husband said,

I assaulted my wife because of her drunkenness. When she gets drunk, she does not think of cooking food for me. I have often found my wife away from home, and when I questioned her, she would say she had visited friends. I warned her several times to desist from these practices, and her reply would be, 'You cannot assault me because of the fifteen pounds you paid for lobola'. My father can return your money at any time. Marriage does not mean anything to me.<sup>120</sup>

Saniso showed determination and tenacity by insisting that her case be tried in the colonial courts outside the traditional household dispute resolution structure. She viewed the courts as an independent platform on which to challenge an abusive relationship. Her comments about the amount of *lobola/roora* paid and the fact that she could pay it back indicate contempt for the

117 S Hirsch Khadi, "Courts as complex sites of resistance: The state, Islam and gender in postcolonial Kenya". In: M Lazarus-Black and SF Hirsch (eds.), *Contested states: Law, hegemony, and resistance* (New York, Routledge 1994), p. 120.

118 Karekwaivanane, *The Struggle over state power*, pp. 173-176.

119 NAZ, S2866/11/474/49, Salisbury Native Civil cases 10 November 1949, p. 617.

120 NAZ, S2866/11/474/49, Salisbury Native Civil cases 10 November 1949, p. 618.



marriage payment system. Such views reflect debates about the link between *lobola/roora* and male abusive behaviour, which started in urban spaces in the 1940s, a debate that is still alive in postcolonial Zimbabwe.<sup>121</sup> Saniso's response also coincided with women's solidarity movements in colonial Harare, such as the AWC, which provided information on access to divorce, among other things.<sup>122</sup> Women's organisations provided spaces, solidarity, and supportive mechanisms for other women facing gender-based violence. Saniso also took advantage of the divorce provisions of the Matrimonial Causes Act 1943, which added three legal grounds for divorce such as adultery, desertion and cruelty previously unavailable to Africans.<sup>123</sup>

The father's reaction was consistent with traditional African patriarchal beliefs about marriage, based on a code of silence and patience overseen by elders.<sup>124</sup> African culture did not approve of daughters leaving marriage, as marriage was a familial rather than an individual institution and affected other members outside of the couple. The demand for the return of marriage payments (*lobola/roora*) to the son-in-law partly contributed to continued gender-based violence in marriage, where women continued to endure because *lobola* was paid and could be reclaimed should they seek divorce.

The reason Saniso's husband hit his wife shows how men like him maintained traditional African expectations of a married woman in terms of unpaid domestic work, cooking, subservience, valuing marriage and having children. He also controlled her social associations by limiting beer drinking. Such controls were standard, as highlighted by Michael West.<sup>125</sup> Married men were not comfortable with the familiarity that occurred between respectable married women and other men and the association with prostitutes.<sup>126</sup> Saniso had since changed her mind about her husband's expectations, as set out in his defence. She ridiculed the practice of marriage payments and the fixation on traditional gender roles and norms of behaviour regarding beer drinking and socialising outside the home.

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121 *Moto Magazine*, Lobola, 5 January 1940; *Rhodesia Herald*, Lobola, 18 March 1960; *Newsday*, Lobola, 11 June 2020.

122 T Scarnecchia, *The politics of gender and class in the creation of African communities, Salisbury Rhodesia, 1937-1957* (D Phil, University of Michigan, 1994), p. 29.

123 Stewart and Armstrong, "The legal situation of women in Southern Africa", p. 173.

124 LB Christiansen, "In our culture: How debates about Zimbabwe's domestic violence law became a cultural struggle", *NORA: Nordic Journal of Feminist and Gender Research* 17 (3), 2009, p. 175.

125 M West, "Liquor and libido: Joint drinking and the politics of sexual control in colonial Zimbabwe, 1920s-1950s", *Journal of Social History* 30 (3), 1997, p. 643.

126 West, "Liquor and libido", pp. 645-667.

The District Commissioner did not grant Saniso a divorce because her father asked her daughter to maintain the respectability of marriage, which had lasted only three years. By denying Saniso a divorce, the court did not consider her right and decision to leave an abusive relationship. Instead, the court honoured her father's request for respectability, another patriarch. This case shows the contradictions within the colonial legal system between the lower and higher courts. In some cases, divorce is justified out of courtesy, as in the case of Esinati, but in other cases, divorce is refused based on a request from the guardian, the father of an adult woman. The Appeals Court overturned the lower court's decision and granted Saniso the divorce.

In addition to childlessness, custody issues in informal/*mapoto* marriages could also trigger GBV. Such marriages were flexible, unregistered, and more easily terminated than registered marriages. Quarrels between lovers and conflicts over child custody were also common.<sup>127</sup> In 1947, Chigwere, an African woman who had been in an abusive *mapoto* marriage for eight years, left her husband. The husband received custody of the child. Aware that her husband had failed to meet the traditional cultural requirement of having rights to the children of the marriage through lobola payment, Chigwere appealed to the Marandellas District Native Commissioner. In 1947, the court decided to give her *Mapoto* husband custody of the child. Unsatisfied with the decision, Chigwere escalated her appeal to the African Appeals Court in Salisbury. In her words, "I want my child Edwin. I have neither a father nor a brother. I want Edwin to take care of me when I grow old. This marriage was just a *Mapoto* marriage".<sup>128</sup> The Appeals court granted the woman custody of the child.

In a related case, in 1951, an African woman, Reya, successfully petitioned for the custody of her child after enduring years of GBV at the hands of a Zambian (at that time Northern Rhodesian) citizen, Zuze. In her words, "I want my child, no lobola was paid, no marriage was arranged with Zuze, and the arrangement was only a temporary matter". The court ruled in the woman's favour under the requirements of the Natives Marriages Act, which also governed Africans in neighbouring countries.<sup>129</sup> These cases demonstrate the growing legal awareness of urban African women and the increasing sophistication of applying common and colonial law provisions.

127 Zimudzi, "African women, violent crime and criminal law", pp. 499-518.

128 Native Appeals Court, Chigwere vs William, Salisbury, 18 December 1947, p. 409. University of Zimbabwe Law Library.

129 African Appeals Court, Reya vs Kapito, Salisbury, 18 January 1951, p. 503. University of Zimbabwe Law Library.

## 5.7 Lobola contested

*Lobola* is an enduring custom that has survived colonial and missionary cultural attacks and changing economic and political structures.<sup>130</sup> In recent years, *lobola* has been shrouded with much controversy, pitting African culture against various forms of feminism. Issues of abuse of women, gender equality and patriarchal power over women are the main areas of contention. Nonetheless, its practices have changed over time, and there is no homogeneity in the views towards this custom by both men and women of different classes and ideological persuasions. Research in Eswatini, South Africa, Zambia and Zimbabwe<sup>131</sup> concluded that most African women value *lobola* as part of the culture and identity of Africans, citing the importance of its relational and, in some cases, spiritual/ritual aspects.<sup>132</sup> However, middle-class women, influenced by feminist theory, have taken leadership to challenge the commercialisation of *lobola* and its link to GBV.<sup>133</sup> As a result, the practice is renegotiated and reinterpreted. Sambulo Ndlovu argues that, “the custom of *lobola* has mutated over time to incorporate capitalist tendencies whereby women become objects of business exchanges between men”. It is this mutation that has commodified women and tied their worth to monetary value, which most African women are against. Commodification “others” women and exposes them to abuse by men who pay to own children, own women and have exclusive sexual rights over them.<sup>134</sup>

The cases adjudicated in the courts reveal some of the debates and controversies and the responses of urban women. GBV linked to adultery also ended up in the Court of Appeal, with men seeking damages for adultery and

130 J Shope, “‘Lobola is here to stay’: Rural black women and the contradictory meanings of *lobola* in post-apartheid South Africa”, *Agenda* 20 (68), 2006, pp. 64-72; N Ansell, “Because it’s our culture: (Re) negotiating the meaning of *lobola* in Southern African secondary schools”, *Journal of Southern African Studies* 27 (4), 2001, p. 697-716.

131 E Chireshe and R Chireshe, “Lobola: The perceptions of great Zimbabwe university students”, *Journal of Pan African Studies* 3 (9), 2010, p. 213.

132 F Matambirofa, “Roora/lobola language, meaning and function: A keystone of Shona culture”. In: Togarasei and Chitando (eds.), *Lobola (bridewealth), in contemporary Southern Africa: Implications for gender equality* (Gewerbstrasse: Palgrave Macmillan, 2021), pp. 29-43.

133 G Parker, “The practice of *lobola* in contemporary South African society”, *Journal of Third World Studies* 32 (2), 2015, pp. 175-190; S Nkosi, *Lobola: black students. perceptions of its role on gender power dynamics* (PhD, University of the Witwatersrand, 2011); MK Chiweshe, “Wives at the market place: commercialisation of *lobola* and commodification of women’s bodies in Zimbabwe”, *The Oriental Anthropologist* 16 (2), 2016, pp. 229-243.

134 S Ndlovu, “Mutation of *lobola* and “othering” of women in Ndebele culture”. In: L Togarasei and E Chitando *Lobola (Bridewealth) in Contemporary Southern Africa: Implications for gender equality* (Gewerbstrasse: Palgrave Macmillan, 2021), p.185.

the return of *lobola/roora*.<sup>135</sup> In 1958, in the *Sh v. Jj* case, the husband beat his wife for committing adultery with another man. He claimed damages from the accused man, but the Chief Native Commissioner ruled that the defendant was not liable and stressed,

The time has now come for common Law to prevail over customary Law in cases where women come into urban areas of the colony and take up employment in the manner described herein.<sup>136</sup>

The decision by the Chief Native Commissioner shows the class-based treatment of women by the colonial courts. Working women in urban areas seemed to deserve more respect and protection from what was viewed as oppressive traditional African cultures. As argued by Karekwaivanane, the law was used as a tool for social reengineering and as an avenue for challenging African patriarchal privileges.<sup>137</sup>

In the case of *Shu vs Tich*<sup>138</sup>, in which the husband assaulted his wife over adultery and claimed adultery damages from her suitor, the court ruled against the appeal. Interestingly, the wife testified that her marriage was not registered, and her father had received only thirteen pounds, an insignificant amount of *lobola*, compared to thirty pounds billed. Despite the urban lifestyle, the woman was aware of the husband's traditionally expected role, which allowed him full access to marital rights. She continued downplaying the *lobola/roora* amount paid in the Appeals Court. This also shows that African urban women valued their relationships according to the seriousness of husbands in making marriage payments. By the late 1950s, families had monetised marriage payments, and it was difficult for men to make all the payments. This created a crisis among urban men, who failed to meet *lobola/roora* payments and could not make demands on their partners. In some cases, urban men became very violent to their partners as a response to their lost masculine position, as dramatised in Marechera's *House of Hunger*.<sup>139</sup>

135 L Ndlovu and NM Ngema, "Does the return/refund and retention of *lobolo* violate the reproductive rights of women in South Africa?", *Comparative and International Law Journal of Southern Africa* 55 (2- 3), 2022, p. 32.

136 African Appeals Court, *Shoniwa vs Jenje*, Salisbury, 6 January 1958.p. 600. University of Zimbabwe Law Library.

137 Karekwaivanane, *Legal encounters*, pp. 24-28.

138 African Appeals Court, *Shumba vs Tichareva*, Salisbury, 3 March 1958, p. 825. University of Zimbabwe Law Library.

139 Marechera, *House of hunger*.

## 6. CONCLUSION

Through archival divorce and civil and criminal court cases, this paper has shown that the urban context created conditions for GBV in the African urban spaces of colonial Zimbabwe. Overcrowding and sharing of living spaces created stranger intimacy, leading to sexual violence in shared domestic spaces. In some cases, familiarity with perpetrators led violent men to commit rape. The urban space became a contested space where cultures battled for survival. African traditional culture remained resilient in terms of gender roles and expectations, yet gender norms and practices changed in the face of settler colonialism, education and Christian teachings. Settler patriarchal laws and officers were responsible for deciding divorce and other civil cases, which posed a dilemma and ushered in misgivings about objectivity in deciding cases.

On the one hand, the state had to maintain legitimacy while maintaining law and order. Laws were meant to protect women from traditional cultures. However, the stereotypes firmly held beliefs and violent ways of showing masculinities, operating in oppressive environments, continued to cause domestic-based GBV.

Patriarchy expressed itself in several ways. Conflicts over childlessness were linked to the patriarchal need for procreation. When it was not forthcoming, it was justification for violence and divorce. Following a food hierarchy in which men take the most significant share despite economic hardship expressed male power within household relations. This practice has persisted from precolonial to postcolonial times. Control over women's sexuality came through in adultery cases, while society constructed rape as men's way of dealing with the frustrations of the urban environment.

Violence in domestic spaces took physical forms, such as assault, sexual violence, and murder. While there is undoubtedly an equal, if not higher, prevalence of non-physical forms of violence, there is a need for studies and investigations to build an evidence base for it. Evidence shows an overwhelming gender bias towards women and girls in the victimhood of physical violence. However, women fought back and appropriated the colonial legal systems to their advantage. Despite the efforts at the collusion of the two patriarchies, there were fissures in the relationship between the colonial state and the African patriarchs, as the colonial state had to balance patriarchal sympathies and maintaining law, order, and civility.

GBV in African urban spaces has also shown the social and cultural effects of colonialism on African households. In towns, the erosion of the traditional values of “*unhu*”, respect and the *dare* system, which also involved compensation of the victim, was replaced by the colonial state’s legal and judicial system. Without romanticising traditional African society, its systems created social accountability for individual actions. The colonial state legislated for social life, including intimate partner relations, based on the Western nuclear family concept. As discussed before, the state usurped the power of the family in resolving GBV, thus becoming the “father figure” and the new patriarch in resolving family issues.

The actions of different African women, ordinary and self-employed women, suggest agency in responding to GBV in domestic spaces of colonial Harare. Faced with structural constraints emanating from cultural beliefs and norms and limitations of colonial patriarchy, women negotiated and used openings in the legal system to fight against GBV. Enlisting their family members, they demonstrated situated agency, and their actions point to a pioneering spirit of feminist resistance to GBV in domestic spaces. Over the years, legal consciousness grew so women could approach the Appeals Court when unsatisfied with the lower courts.

In the absence of a separate law that addressed violence in domestic spaces, most cases were considered in the same way as assault, in case of bodily injuries. At the same time, marriage dissolution was a function of the civil court system for Africans. Women continued to lobby the state for violent-free relationships before and after independence. It was only twenty-seven years after Zimbabwe got its independence in 2007 that the Domestic Violence Act was enacted.<sup>140</sup> This also shows that the fight for gender equality in domestic spaces was relevant not only during the colonial era but continued in the postcolonial era, too. Women’s agency continues to be relevant to fighting structural impediments.

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140 The Domestic Violence Act Chapter 5:16; Act No. 14/2006 (Zimbabwe) was enacted in 2007.