

Programm Point Sud 2019

Gender and Judging in Pluralistic Societies: A Comparative Assessment of Access to Justice for Women Across Africa

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**Institute of African Studies/University of Ghana, Legon
Report by Dr. J. Jarpa Dawuni**



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Gender and Judging in Pluralistic Societies: A Comparative Assessment of Access to Justice for Women Across Africa

Conveners

Prof. Aram Ziai, Political Science, University of Kassel

Prof. Akosua Adomako Ampofo, African Studies & Gender Studies, Institute for African Studies, Accra

Prof. Josephine Jarpa Dawuni, Political Science, Howard University, Washington, DC

Prof. Lydia Apori Nkansah, Law, KNUST, Kumasi

Themes and Objectives

In postcolonial Africa, courts established under the inherited legal systems (statutory courts) are accorded primacy in the structure of judicial institutions available for the citizenry to access justice. In the context of plural legal systems, there are many other normative orders that serve as avenues for informal justice or traditional justice (defined as courts that fall outside the inherited legal court structures). The Modernization School had predicted that with increasing urbanization, industrialization and the emergence of a multi-ethnic society and an educated elite class who would be less rooted in their traditional beliefs and practices, the chieftaincy institution is bound to gradually lose its relevance within the African context.

Despite the enormous academic attention given to the chieftaincy institution, customary courts have received little attention especially the historical development of court actors, the transformations in these customary courts over time, the kind of changing relations between the state and customary courts, and between customary courts and the traditional state courts. Furthermore, studies done in this area have not examined the interactions and gendered impact of the formal (statutory) and informal (traditional) court systems. Existing evidence suggest that efforts being made to improve women's access to justice across Africa are often biased towards the formal means, that is, the courts. However, there exists a large sphere of informal means of accessing justice which is prevalent especially in the rural parts (deprived urban communities) and which is more easily accessed by the urban poor as well. These spaces are the traditional chief courts and some religious courts where most matters arising within local communities often find redress and where women often find themselves seeking judicial redress.

This workshop had the following objectives:

1. Examine the pluralistic ways in which some communities remain prone to having more customary or religious courts than statutory courts.
2. Examine the opportunities and challenges for women accessing justice within these plural judicial systems
3. Examine the gendered patterns of access to customary and religious courts. Do men or women use these courts more often, and if so, are the pathways for accessing these courts equal?
4. Examine any discernible patterns of gendered outcomes in these courts. Do women receive harsher sentences or punitive measures than men?

5. Evaluate the challenges women face in accessing these courts. What innovative solutions and strategies can be used to improve access to justice, and equitable outcomes for women?

Methodology and Results

Day 1: Court Visit and Cultural Immersion

The first day of the workshop was used to provide the participants with a cultural and legal immersion in the history of Ghana and the functioning of the judicial system. First item on the day's agenda was the visit to the Accra circuit court that handles gender-based violence matters. Participants got the opportunity to see how cases are heard in the court by listening to a child defilement case. After the court hearing, participants met with the presiding magistrate and engaged with her in a session of questions and answers to further understand how the courts operate and the opportunities and challenges for women in accessing the courts.

After the court visit, participants went to the Kwame Nkrumah Mausoleum; there, participants were introduced to the history of Ghana's independence and the role of the first president of Ghana, Osagyefo Kwame Nkrumah. Participants learned of President Nkrumah's role in Ghana's independence, and uniting of all African countries under the Organization of the African Union (OAU), now the African Union (AU). From the Kwame Nkrumah Mausoleum, participants visited the Accra Cultural Arts Center to engage with artists.

This first day allowed participants to have a taste of not only the political history, legal functioning and cultural arts in Ghana, but also provided a little tour of the city from the University of Ghana to the city center. This approach was very important in addressing the issue of "safari researchers" where researchers zoom in and out of a country to do research without taking time to understand the historical, cultural and social complexities of the country.

Day 2: Plenary Sessions and Presentations

The second day began with a plenary session with two presentations. The first one was by Mrs. Afua Brown-Eyeson, a lawyer and president of the International Federation of Women Lawyers (FIDA) in Ghana, under the topic *Practical Reflections on Statutory and Traditional Courts: Access to Justice for Women*. This plenary session gave participants an overview of the intersections of gender, law and customary norms and practices. The speaker highlighted among others, how:

FIDA renders mediation services mostly for women. When men access the services of FIDA its mostly to insist on the rights of female relatives not their wives. FIDA educates people about domestic violence. FIDA is currently working on affirmative action law. Lack of education makes the formal system uncomfortable for rural folks. Some believe that chiefs have more authority than the central authority. Most family members think it's a betrayal to go to the courts rather than the chiefs. There is also the perception of high corruption in the police system. There are institutional problems which actually go beyond corruption. Traditional laws have been mostly unfair to women. Most informal systems do not have power to enforce their decisions.

The plenary speaker then engaged in a question and answers sessions with participants which provided a forum for participants to also share the implications of traditional law and courts

from their various jurisdictions. In the end, we noted the similarities and differences, as well as other intervening variables and how all these factors impact women's access to justice.

The second plenary session by Dr. Veronica Fynn Bruey, a Lecturer of law at the University of Cape Coast, provided participants with an introduction to methodology under the topic *Complex System Methodology for Gender Justice Research*. The session focused on providing participants methodological training for conducting socio-legal and gender-based research through a combination of different methodological strands. Issues raised by this plenary included:

Complex research systems give the opportunity to reconstruct what research should be. It is a system where you test out different methodologies and theories to find out which one works. Gender justice is a complex term which concentrates on marginalized groups. Feminist jurisprudence asks the question; when do we test laws to check its impact on women? Indigenous epistemology and ontology look at the way knowledge is considered and structured. Under the theory of decolonization, everyone is entitled to moral consideration and no one is dispensable. The law is usually raised by western discourse. There's no context for Africa. Third world aspects of international law assert that blacks are capable of coming up with their own laws. Phenomenology says that the experiences of one person is as important as thousand persons. Intersectionality argues that, there are so many intersecting factors that affect women as black, gay, disability etc. which needs to be looked at. Empirical research challenges what complex research is. Observable research questions the law. Active research is a research that can be used for practical purposes.

The plenary discussion on *Complex Methodology* was well received by the workshop participants. It highlighted three main issues that need to be taken into account:

1. There is a need to train more African scholars on methodology and theoretical approaches in conducting research. This issue was very loud and clear and would therefore form the basis for the second workshop we are hoping to convene under the Point Sud.
2. This session highlighted the complexity of doing an interdisciplinary research project where scholars come from different theoretical, methodological and epistemological backgrounds. How do are we able to bridge our disciplinary backgrounds and silos for purposes of producing research that is relevant across disciplines?
3. The session contributed to enriching the workshop by showing how a triangulation of data sources and case stages (being that it relied on indigenous women's access to justice in Liberia, Australia and Canada). It highlighted how using an intersectional approach can unearth the commonality of dominant patriarchal structures despite the different historical and cultural contexts.

The second part of the day involved three panels, each with three paper presenters and one chair and discussant.

- First Panel: Legal Pluralism and Gendered Impact on Justice Delivery
- Second Panel: Gender and Traditional Justice Systems
- Third Panel: Gender and Statutory Justice Systems

The day ended with participants being divided into four groups for collective discussion, reflection and debriefing from the day's events and sessions.

Major Outcomes From Day 2

1. Participants enjoyed the plenary sessions on the legal access to justice systems in Ghana
2. Participants benefited from the methodology section and wish there would be a whole workshop on methodology to get participants immersed and understand how the different methodologies work
3. There were suggestions that codification would complicate the situation because once reduced into writing, the customary practices may be interpreted out of context. Codification defeats the flexibility and natural evolution of customs. Furthermore, the formal process of validation raises the issue of who determines what custom is valid, why and when?
4. There were suggestions that it would be interesting for future research to analyse the records from customary courts in order to understand the underlying norms that inform the decision-making process.
5. There were expressions of scepticism over customary law institutions being the best place for securing justice for women, because of the patriarchal nature of customary law systems in general within the African context
6. Inefficiency of ADR in delivering justice for women. What is the place of the ADR in the justice system? How can they be strengthened?

Day 3: Presentations and Group Discussions

The third day was a day packed with presentations arranged thematically. Each panel had three presenters and a discussant chair.

- First panel: Gender Justice and Adjudicating Children's Rights Issues
- Second Panel: Gender Justice and Sexually Based Offences
- Third panel: The Impact of Culture and Religion on Access to Justice
- Fourth panel: Gender and Judging in Justice Delivery Systems

The day ended with participants divided into four groups for collective discussion, reflection and debriefing from the day's events and sessions.

Major Outcomes From Day Three

1. There are a lot of obstacles associated with reporting the crimes and justice system.
2. Victims are not able to get legal justice as they are not equipped with mechanisms to report.
3. There is lack of institutional and legal support and economic constraints on victims.
4. The committed justice system is the only means to deal with the cases yet there is a serious gap; lack of justice, lack of corporation from the police, lack of knowledge about albinism and many others.
5. There is denial of freedom of movement especially for girls preventing them to have access to education. Thus, most girls with albinism have been locked up.
6. Although not all women have these discriminatory experiences, those who go through are faced with drastic burdens.

Sustainability of the Event

The workshop has maintained the momentum through two main mechanisms:

1. **Research and Knowledge Dissemination:** Through this workshop and seminar, we will publish an edited book aimed at filling the gap in existing literature where no comparative intersectional study has been done to assess the competing effects of modernity and traditional justice systems on women's access to justice. This book will also provide policy oriented and innovative strategies for fostering women's access to justice. Plans for this book project are underway and we are intending to apply for a second grant from Point Sud to bring scholars together for a peer-reviewing workshop of all papers before sending them out for publication.
2. **Collaborative Research Network (CRN):** The excitement generated from this workshop needed to be sustained. Members of the workshop were invited to join a *Whatsapp* group of other African legal scholars working on law and society issues. Through this network, we have maintained dynamic discussions of ideas, shared research ideas, fellowships and other professional networking opportunities. This network will look at sub-regional practices and differences in order to develop best practices from places on the continent where success has been made in gender equitable access to courts.

Participants

Diversity: The workshop brought together a multidisciplinary group of 22 participants drawn from Africa, Europe and the United States. A scholar based in China could not make it because he missed his flight. A third of the scholars were male. The scholars were drawn from Anglophone and Francophone Africa; we did not receive applications from Lusophone and North Africa.

Inter and Multi-Disciplinarity: The workshop brought together a pool of participants drawn from various disciplines, including but not limited to law, anthropology, political science, sociology and history. The interdisciplinary nature of the workshop will allow for the exchange of ideas on the different ways in which law, politics, custom and religion impacts the pathways to justice for women. The diversity in backgrounds will contribute to methodological rigor through different theoretical frameworks and approaches.

Different Stages: We ensured diversity by recruiting scholars at various stages of their academic careers with the goal of setting up peer mentorships to help junior scholars develop skills in, (1) conducting qualitative and quantitative research, (2) how to publish in scholarly journals and (3) how to approach the job market.

1. Prof. Jarpa Dawuni, Political Science, Howard University, Washington D.C., USA
2. Prof. Chuma Himonga, Law, University of Zambia
3. Prof. Aram Ziai, Political Science, University of Kassel, Germany
4. Dr. Maame Addadzi-Koom, Law, Kwame Nkrumah University of Science and Technology, Kumasi, Ghana
5. Dr. Mutiat Titilope Oladejo, History, University of Ibadan, Nigeria
6. Dr. Pedi Obani, Law, University of Benin, Nigeria
7. Dr. Jeremie Diye, History, University of Yaoundé, Cameroon
8. Dr. Ines Kajiru, Law, Mzumbe University, Tanzania
9. Misozi Lwatula, PhD candidate, Law, University of Zambia
10. Dr. Tshepo Mogapaesi, Law, University of Botswana

11. Joshua Kwesi Aikins, PhD candidate, Political Science, University of Kassel, Germany
12. Prof. Rachel Ellett, Political Science, Beloit College, USA
13. Dr. Azubike Onuora-Oguno, Law, University of Pretoria, South Africa
14. Michael Addaney, PhD candidate, Law, Wuhan University, China
15. Dr. Ellah T. M. Siang'andu, Law, University of Zambia
16. Dr. Isabela Warioba, Law, Mzumbe University, Tanzania
17. Charlotte Kwakye-Nuako, Psychology, PhD-Student, University of Ghana
18. Dr. Aimé Parfait Niyonkuru, Law, University of Burundi
19. Dr. Siri Lamoureux, Anthropology, Max Planck Institute for Social Anthropology, Halle, Germany
20. Annelien Bouland, Anthropology, PhD candidate, Leiden University, Netherlands
21. Dr. Ruth Murambadoro, Law, University of Pretoria, South Africa
22. Dr. Stephen Muthoka Mutie, Gender Studies, University of Bayreuth, Germany
23. Dr. Josephine Ndagire, Law, Makerere University, Kampala, Uganda
24. Dr. Veronica Fynn Bruey, Law, University of Cape Coast, Ghana
25. Prof. Akosua Adomako Ampofo, Gender Studies, University of Ghana
26. Prof. Lydia Apori Nkansah, Law, Kwame Nkrumah University of Science and Technology, Kumasi, Ghana
27. Wilhemina Tetteh, PhD candidate, Political Science, University of Ghana
28. Atchere Akwasi, PhD candidate, Law, University of Ghana
29. Afua Brown Eyeson, PhD candidate, Law, University of Ghana

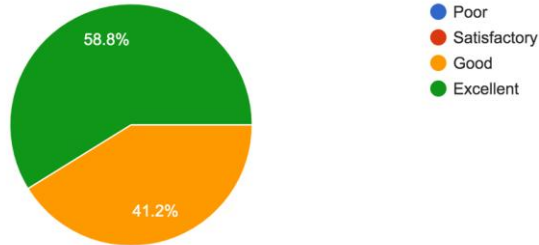


APPENDIX: WORKSHOP EVALUATIONS

(FULL PDF ATTACHED TO REPORT)

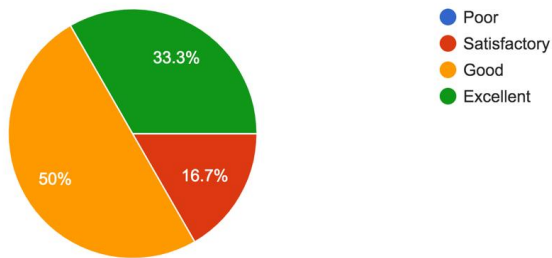
Overall workshop experience

17 responses



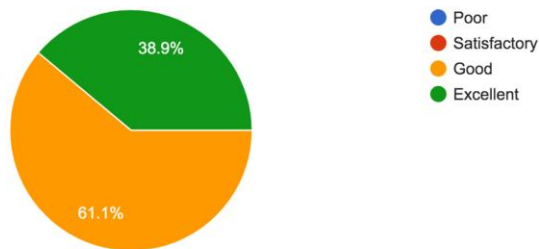
Quality of visit to court

18 responses



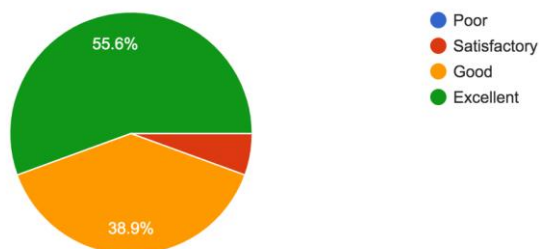
Quality of plenary session on practical reflections on access to justice

18 responses



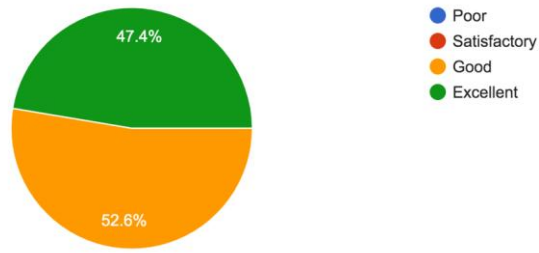
Quality of presentation on methodology

18 responses



Quality of papers and presentations by participants (overall assessment)

19 responses



Were your expectations of the workshop met?

20 responses

