

ACCESS TO JUSTICE IN PEMBA CITY: HOW EXPLORING WOMEN'S LIVED REALITIES WITH PLURAL LAW UNCOVERS PROGRAMMATIC GAPS

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Introduction

What can justice sector aid in sub-Saharan Africa learn from women's lived realities with the law? The present contribution examines this question in the context of interventions that aim at improving women's access to justice¹. In recent years, international development actors in sub-Saharan Africa have provided support for a series of initiatives that endorse this goal.² On the one hand, these actors supply technical and financial assistance for the incorporation into national law of international and regional women's rights conventions, such as CEDAW

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² This is not to say that women's access to justice is an area of priority for justice sector aid in sub-Saharan Africa. For an appraisal of the extent to which justice sector aid in the region contributes to gender equality see Nyamu-Musembi (2005a).

and the Protocol on the Rights of Women in Africa. In order to comply with these standards, a number of activities are undertaken, such as legal reforms that eliminate discriminatory provisions from statutory law and the adoption of new legislation that protects the rights of women in specific areas, such as domestic violence. On the other hand, development actors address certain issues that are related to the implementation of women's rights. These include women's knowledge of the law as well as their capacity to claim their rights effectively. In this regard, women face particular obstacles since next to the physical, economic and socio-cultural barriers that make access to formal judicial institutions in Africa difficult in general, women are also likely to suffer ostracism in their communities and unequal treatment in court (Mukhopadhyay 2008). To alleviate this situation, justice sector aid funds initiatives such as legal literacy campaigns, capacity building for justice sector functionaries and the provision of legal aid and paralegal schemes by national bodies and/or local NGOs.³

In addition, the integration of pro-poor strategies within justice sector aid in recent years has meant that grassroots legal realities have begun to receive some measure of attention.⁴ Next to the realisation that formal state justice is not accessible for most people in the region, development actors are increasingly considering how informal, non-state, traditional or customary justice forums can contribute to improving access to justice.⁵ In this context, the relationship between legal pluralism and women's access to justice is seen as a Janus-faced phenomenon. Legal pluralism is deemed to enable access to justice since the absence of formal courts is compensated by the services provided by local instances of dispute processing. However, legal pluralism is regarded as an obstacle to women's rights since local forums often disregard the rights of women and rely on discriminatory norms, have a lenient attitude towards gender-based violence and are procedurally biased against women (UN Women 2011: 69). Against this backdrop, development

³ See for example a range of World Bank grants in sub-Saharan Africa that focus on law, gender and poverty reduction (World Bank 2009) and the 'Women's Legal Rights Initiative' by USAID (USAID 2007).

⁴ See DfID 2000; UNDP 2004; World Bank 2003: 45.

⁵ There is no uniformity in the terminology employed by development actors. DfID and OECD-DAC use the term 'non-state' justice (DfID 2004; OECD-DAC 2007), UNDP refers to 'informal' or 'traditional' justice mechanisms (UNDP 2004), the World Bank speaks of 'customary' law systems (World Bank 2006: 156) and Danida of 'informal' justice (Danida 2010).

actors are beginning to support activities that bring the practices of these forums into line with women's rights, such as training for local justice providers and mechanisms for monitoring their operation (Chopra and Isser 2010; Kipfer-Didavi et al. 2005).

These interventions reflect the idea that legal processes can potentially contribute to gender equality and the empowerment of women, which are necessary conditions for the overall reduction of poverty, and eventually, the realisation of the right to development.⁶ In this sense, the term 'access to justice' can be understood as a process in which a range of different interrelated factors combine to enable people to obtain a satisfactory remedy for a grievance (Wojkowska 2006: 30).⁷ These include (i) the existence of a normative framework that upholds women's rights, (ii) knowledge of this framework by right-holders, (iii) the availability of justice forums where grievances can be presented, (iv) the treatment of cases by these forums in accordance with women's rights and (v) enforcement of decisions (ibid). Following an 'actor-oriented' perspective on gender and legal change, this paper interrogates how women's lived realities with the law can inform interventions that aim at improving such processes. Actor perspectives on gender and legal change pursue a grounded understanding of women's options and limits in negotiating gender relations within rule-generating and rule-upholding processes (Griffiths 1997; Hellum 1995; 2000; Hellum et al. 2007; Hirsch 1998; Nyamu-Musembi 2005b; Tsanga 2003). The individual woman and the girl-child are regarded as actors of change who mobilise different strategies of action in pursuing their goals (Hellum et al. 2007: xviii; Swidler 1986). However, this does not occur in a vacuum. As explained by Hellum: "The actor perspective does not imply that women and men are seen as totally free to change the rules affecting their social positions. (...) The focus of the analysis is therefore on different actors and their structurally limited possibilities to promote their aims and goals" (Hellum 1995: 19). It is from this viewpoint that the paper explores how access to justice

⁶ This approach to international development is generally called 'legal empowerment', which denotes development strategies that seek to empower the poor through the use of the law (United Nations 2009). On the relationship between gender equality and poverty reduction see Morrison et al. (2007).

⁷ As a human right, it can be found in Article 8 of the Universal Declaration, Article 6(1) of the European Convention on Human Rights, Article 25 of the American Convention, Article 7(1) of the African Charter on Human and People's Rights and Article 47 of the Charter of Rights of the European Union. See also Francioni (2007: 24-42).

interventions interplays with women's ability to draw on locally available legal resources.

For this purpose a case study was conducted in Pemba city, Mozambique. There are several reasons why Pemba city, the capital of Mozambique's most northerly province, Cabo Delgado, is a suitable site to study the relationship between women's perspectives on legal processes and interventions that aim at improving women's access to justice. In the first place, Mozambique is a country with a strong patriarchal socio-cultural order, in which women represent the poorest sections of the population (Tvedten et al. 2008: 5, 9). At the same time, Mozambique is grappling with serious obstacles in terms of access to justice (OSISA 2006: 121). As a result, both improved gender equality and improved access to justice can be found on the development agenda as means to fight poverty (GOM 2005). In addition, Cabo Delgado features the lowest indexes of human and gender development, as well as the largest discrepancy between human and gender indicators (UNDP 2008: 17; Tvedten et al. 2008: 15). In this context, a number of initiatives have been undertaken in Pemba city for the promotion of women's access to justice. Moreover, Pemba city presents a rich picture in terms of legal pluralism, with numerous state and non-state legal actors interacting in diverse ways. Finally, Pemba city offers a good opportunity to meet with women from different socio-cultural backgrounds, making it possible to explore the extent to which interventions have different implications for different groups of women (Griffiths 1997).

This case study is based on qualitative research carried out in August and September 2009 in Maputo and Pemba city and in September and October 2010 in Pemba city⁸. A first round of thirty-nine semi-structured interviews with international development actors, government officials, civil society organisations and local experts in Maputo allowed for the identification and discussion of trends in policies and interventions in the justice sector in Mozambique regarding legal pluralism and human rights. Based on this, Pemba city was selected as a suitable

⁸ I am grateful to my supervisor, Prof. Eva Brems, for her continuous guidance and support. I also wish to thank all the interviewees who shared their time, views and experiences with me during the fieldwork in Mozambique. My thanks are also due to Angelo Matusse for his help in establishing contacts with state justice actors in Pemba city and to Esmeralda Mariano for her generosity in sharing material with me.

site to 'zoom in' on these issues at the local level. Second, eight local project implementers were interviewed in order to collect more information about interventions in Pemba and the local legal landscape. In addition, eighteen local justice providers (community court judges, community leaders, civil society organisations, legal practitioners and state justice providers) were interviewed in order to learn about their practices. The registers of the community court of Natite were also analysed, as well as the activity reports of 2008 of the community courts of Paquitequete, Natite and Cariacó. This was complemented by the observation of twenty-four mediation sessions at the local association 'Cabinet of Women's Legal Rights' (GDJM), one at a 'community police' and another at the 'Police Victim Support Centre for Women and Children Victims of Violence' (GAMCVV). Third, twenty-one semi-structured interviews with women who had resorted to (a) local instance(s) of dispute processing in Pemba city served the purpose of gathering women's perspectives on local legal processes. The findings from individual interviews were complemented by two focus group discussions with women from Paquitequete and Natite neighbourhoods on the kinds of conflict affecting women and their pathways to justice. The research did not cover specificities of Muslim women of Indian origin, a minority in Pemba city.

The paper is structured in five parts. Following this introduction, the second section describes the justice landscape of Pemba city in terms of the legal actors to whom women resort, their procedures, the types of case with which they deal and how they relate to each other. Part three depicts the kinds of strategies that have been supported at the national level and in Pemba city in order to improve women's access to justice and analyses how these relate to the justice landscape of Pemba. Section four examines the testimonies provided by different women in Pemba city regarding their perspectives on justice processes and their experiences with the law and explores how the latter are related to programmatic efforts. Finally, the conclusion summarises the main arguments of each section and links them together, at the same time showing the relevance of incorporating 'actor-oriented' perspectives on gender and legal change within justice sector aid.

Women and the Justice Landscape of Pemba City

Pemba city is the capital of Mozambique's most northerly province, Cabo Delgado.⁹ A coastal city on the Indian Ocean close to Tanzania, Pemba is

⁹ The city has 138,716 inhabitants, of whom 49.5 per cent are women (INE 2007). Next to agricultural and informal economic activities, the city offers some formal

historically linked to the Swahili world and Islamic culture (Bonate 2009).¹⁰ While specific figures for Pemba city are scarce, the province Cabo Delgado features particularly high levels of poverty and gender discrimination (Collier 2009). In a number of areas, the subaltern position of women is quite prominent. For example, illiteracy rates in the province are especially high amongst women, i.e. 88.5 per cent as compared to 60 per cent for men (Collier 2009: 25). The latter is associated with socio-cultural practices that inhibit girls from taking an equal part in education, including domestic responsibilities and early marriages (Tvedten et al. 2008: 12, 27). Moreover, sexual abuse, child motherhood and domestic violence are especially worrying in the northern provinces (Tvedten et al. 2008: 28, 29). According to available studies of gender relations in Pemba city, women tend to depend on their husbands and male relatives in respect of social and economic life strategies, while men increasingly combine multiple relationships and forms of family constitution, such as informal unions and religious or traditional marriages (Casimiro and Fonseca 2009). At the same time, widespread poverty in northern Mozambique makes it difficult for many men to maintain their roles as household heads (Tvedten et al. 2009: 6). In urban areas, where social pressure is more diluted, men more easily abandon their wives and children when they find another wife or lover, or they remain in polygamous unions while de facto not fulfilling their responsibilities towards all the wives (Tvedten et al. 2009: 28). In addition, women in this region are often dispossessed in cases of divorce or when the husband dies (Casimiro and Fonseca 2009).

In terms of justice options available to women, Pemba city displays a rich network of state and non-state legal actors and forms of normativity.¹¹ In contrast to most of the country, formal state justice is well represented in Pemba city, with the presence of district and provincial courts, the office of the prosecutor and the police, including special police centres for domestic violence. Regarding accessibility, district and provincial courts present general obstacles, such as

employment opportunities in the fishing sectors, transformation industries, banking and telecommunication services and the public administration (ROM 2002: 248).

¹⁰ According to the 2007 Census, 72 per cent of the population in Pemba city are Muslim, 23 per cent are Catholic and the remaining 5 per cent adhere to other or no religion (INE 2007).

¹¹ For an analysis of legal pluralism in Mozambique in general see Meneses 2007, Santos 2006, Santos and Trindade 2003. For an analysis of legal pluralism and women's access to justice in Mozambique see Araújo 2005.

extended delays, as well as a number of barriers that affect poor and uneducated segments of the population in particular, such as litigation costs, language and the formality of procedures.¹² Nevertheless, the profile of female complainants recurring to these courts depends on the case. For example, cases involving minors, such as alimony payment, regulation of parental custody and recognition of paternal affiliation are often channelled through the office of the prosecutor, which operates expeditiously and is free of charge. Consequently, women from different socio-economic backgrounds resort to this institution when their ex-husbands have formal employment and hence a salary that can be confiscated for the payment of alimony.¹³ By contrast, women from a better socio-economic background present cases at the formal courts, including labour disputes, dissolution of property on divorce and inheritance.¹⁴

In addition, the city counts on a number of state-sponsored legal services that operate either in collaboration or in parallel with the district and provincial courts. In the framework of national policies to combat domestic violence, the state created the 'Police Victim Support Centres for Women and Child Victims of Violence' (GAMCVV). These centres started operating in Pemba city in 2003. Since then, the volume of cases handled by the GAMCVVs has increased considerably. However, not all the disputes brought to the GAMCVVs involve domestic violence. In practice, women turn to the police with all kinds of grievances, including abandonment by their husbands and requests for payment of alimony. In these cases, the GAMCVVs provide counselling and mediation services. When domestic violence is the main grievance, the GAMCVVs' response depends on the case. Where there are serious physical injuries, the GAMCVVs request forensic examinations at the hospital and transfer the cases to the formal courts.¹⁵ It is not uncommon, though, for complainants to go to these centres in search of an authority that can command their husbands to stop beating them but without intending to prosecute them. In such cases, women often withdraw their

¹² Formal state courts operate in the official national language, which is Portuguese. However, most people in Pemba speak Emakwa, Kimwani or Maconde. Only educated people master Portuguese fluently.

¹³ Interview with the prosecutor of Pemba city, 1 October 2010; interview with an officer of the office of the prosecutor, Pemba, 22 September 2010.

¹⁴ Interview with provincial court judge Beirão, Pemba, 29 September 2009.

¹⁵ Interview with an officer of the GAMCVV, Pemba, 14 September 2009.

complaints when they understand the implications of prosecution.¹⁶

The city also hosts a branch of the ‘Institute of Legal Representation and Assistance’ (IPAJ), which is sponsored by the state to provide free legal aid to economically disadvantaged persons (Law 6/94). According to the local director, the cases brought to the IPAJ by female complainants are in the minority.¹⁷ They mostly concern dissolution of property on divorce, alimony payment and payment delays in labour cases.¹⁸ The IPAJ works with paralegals, who receive the cases, provide legal advice and attempt to mediate the disputes. Lawyers only intervene when a case needs to be transferred to the formal courts. In principle, the services of the IPAJ are free of charge, but the institute has to cope with the problem that some of its members request illegal fees (KPMG 2009: 30). A number of practising lawyers also offer their services in the city. However, considering that the average fee for a consultation amounts to about 37 USD, only women in a better socio-economic position can afford their services. When they do so, it involves cases of divorce, dissolution of property on divorce, inheritance and alimony payment.¹⁹ Finally, though not directly associated with dispute processing, it is worth mentioning that there is a civil registration department in Pemba city, where parental affiliation and civil, religious and traditional marriages as well as marriage contracts can be registered. These registrations are particularly important for women in the context of producing proofs in the event of a divorce. However, the latter are difficult to obtain for various reasons, such as the high cost, i.e. about 50 USD, the delays and the reluctance of men to agree to register a marriage and the paternity of a child.²⁰

At the level of non-state justice, Pemba has an even greater number of legal actors. The city is divided into 10 administrative units called neighbourhoods, which are further sub-divided into quarters and groups of ten houses. Each of these units is

¹⁶ Interview with a local representative of Oxfam Intermon, Pemba, 7 October 2010.

¹⁷ The bulk of cases handled by the IPAJ involve legal representation in criminal cases. Provincial Direction of the Justice Sector Cabo Delgado (2007: 2).

¹⁸ Interview with Mr Alimusa, Pemba, 28 September 2010.

¹⁹ Interview with legal practitioner Mr Mussirica, Pemba, 24 September 2010.

²⁰ Interviews with local women, Pemba, September/October 2010. See also Casimiro and Fonseca (2009: 3).

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respectively presided over by a neighbourhood secretary, a chief of quarter and a chief of ten houses. These actors intervene in local conflicts when families and neighbours are not able to arrive at a solution on their own.²¹ Often, senior members of the 'Organization of Mozambican Women' (OMM) provide advice in domestic disputes. The latter is done according to custom and common sense. In criminal cases, the neighbourhood structures work in close cooperation with the 'community police'. The latter are composed of volunteers from the neighbourhood, whose official function is to monitor crime in the community and provide liaison with the police. In reality, though, the community police represent yet another forum where conflicts are handled. Even cases for which they do not have jurisdiction, such as the rape of a minor, are 'solved' by the community police.²²

Imams, their wives and church leaders also play a role in the non-state legal landscape of Pemba city. Their involvement as mediators in disputes depends on the role that religion plays in the life of the parties. When they intervene, it is often in the context of marital disputes, in which they try to reconcile the spouses. In this process, they resort to a combination of local customs and religious values rather than the strict application of religious or state laws.²³ Depending on the nature of a grievance or dispute, a traditional healer may also be involved at a certain point.²⁴

²¹ Interviews with local women and community leaders. Pemba, September 2009, September/October 2010.

²² In these cases, the community police mediate the agreement of a compensation payment to the male custodian of the victim either by the perpetrator himself or by his family if he is a minor. The community police discourages the plaintiffs from taking these cases to the formal police. Observations at a community police forum, Pemba, 29 September 2010. The widespread character of this practice was confirmed at interviews with representatives from local civil society organisations. Interview with a local representative of the Human Rights League of Pemba (LDH), Pemba, 13 September 2009; interview with a local representative of Oxfam Intermon, Pemba, 7 October 2010.

²³ Interviews with Muslim and Catholic religious leaders from Natite and Paquitequete neighbourhoods. Pemba, 15 September 2009, 30 September 2010 and 5 September 2010. See also Casimiro and Fonseca (2009).

²⁴ When questioned about the role of traditional healers in disputes interviewees were rather reluctant to discuss the matter in detail but acknowledged that they are

In addition, each neighbourhood has a ‘community court’. Created by the state but never regulated by law, these courts defy the state vs. non-state dichotomy.²⁵ The community courts are composed of predominantly male lay judges whose mandate is to mediate and seek reconciliation between the parties in minor criminal and civil cases by means of applying ‘good sense and justice’ (Law 4/92 art 2). In contrast to the operation of other neighbourhood leaders, these courts are legally entitled to impose small fines and community work as penalties, though they represent a voluntary forum so that enforcement of decisions depends on consensus and social pressure (Law 4/92 art 3).²⁶ Moreover, the community courts can transfer a case to the district court when no satisfactory agreement is reached at community level (Law 24/2007 art 86a). For this purpose, some community courts in Pemba city keep records and refer to state law in their rulings.²⁷ Community courts are easily accessible as they operate regularly in the neighbourhoods, charge fees that are affordable, i.e. about 3 USD, and conduct the proceedings in the local languages. A great majority of the cases they process involve women. These concern all kinds of domestic disputes called ‘social cases’, such as adultery, abandonment of the home by the husband, dissolution of property on divorce and inheritance, payment of alimony and witchcraft accusations. Systematic studies of the extent to which community courts in Pemba city respect the rights of women are not available. Nevertheless, the testimonies of community court judges indicate

consulted when women want to recover their husbands. Traditional chiefs (*regulos*) were not mentioned by interviewees as a local legal actor in Pemba city. When asked about their role, respondents said that their functions in the city do not cover dispute processing, as is the case in rural areas. Interviews with local women and community leaders, Pemba, September/October 2010.

²⁵ Originally, Law 12/78 established these courts as the lowest echelon of the popular justice system that was introduced after independence. With the political transition towards neoliberal democracy that followed the end of the civil war (1977-1992), these courts were withdrawn from the official justice system. The ‘community courts’ were then created by Law 4/92, but since then their operation has never been regulated.

²⁶ Nevertheless, in certain cases such as theft, the neighbourhood structures and the community courts collaborate with the community police for the enforcement of penalties, which includes illegal corporal punishments. However, this seems not to be the case when it comes to ‘social cases’ (see *infra*).

²⁷ Observations and interview at the community court of Natite, Pemba, 12 September 2009.

that this varies from court to court and from case to case. As will be explained in the next section, some community court judges participated in training on the Mozambican Family Law and in certain areas the decisions of these courts seem to be inspired by this law in favour of women. For example, in cases of dissolution of property on divorce or inheritance, some community court judges were reported as ruling that women are entitled to a share of the assets. This deviates both from the law and local practices. According to the former the division should be equal, but according to the latter women are virtually dispossessed. Nonetheless, community courts seem not to challenge the male-dominated model of social order. A case in point is the treatment of domestic violence, where community court judges were reported as requesting the husband to refrain from mistreating his wife while asking the wife to obey her husband.²⁸

Finally, a range of civil society organisations provide free legal advice and mediation services. A local branch of the 'Human Rights League' (LDH) provides legal advice and representation in labour, civil and criminal cases that involve human rights violations. Moreover, they act as mediators in non-justiciable cases.²⁹ The 'Association Women and Development' (MULEIDE) has a similar mandate but with a specific focus on gender. In Pemba city, though, this organisation has seldom functioned as a legal advice centre and has mainly participated in legal awareness and civic education campaigns.³⁰ Finally, the 'Cabinet of Women's Legal Rights' (GDJM) plays a major role in dispute processing in Pemba city. Launched 1992 as an initiative of the OMM to shelter victims of domestic violence, the GDJM grew to become a popular mediation centre for domestic conflicts. This is largely the result of the charisma and authority of the coordinator, a woman of considerable social prestige and political power. In addition, the services of the GDJM are free of charge and the centre is open every day from Monday to Thursday. Overall, the work of the GDJM is similar to that of the community courts since it deals with the same kinds of cases and operates in a semi-formal manner, by mixing custom, common sense and state law as well as oral and written procedures. In contrast to the community courts, certain legal provisions, such as the equal division of assets on divorce, are consistently

²⁸ Interviews with community court judges from Natite, Cariaco, Paquitequete, Ingonane and Mahate, Pemba, 12, 15 and 16 September 2009.

²⁹ Interview with a local representative of the LDH of Pemba. Pemba, 13 September 2009.

³⁰ Interview with the local coordinator of MULEIDE, Pemba, 14 September 2009.

applied. However, gender equality is not always the guiding principle in the treatment of cases. Rather, the GDJM redefines proper masculine and female behaviour by combining the law and local norms. This favours women in some areas, but it also reproduces a patriarchal order in other ones.³¹

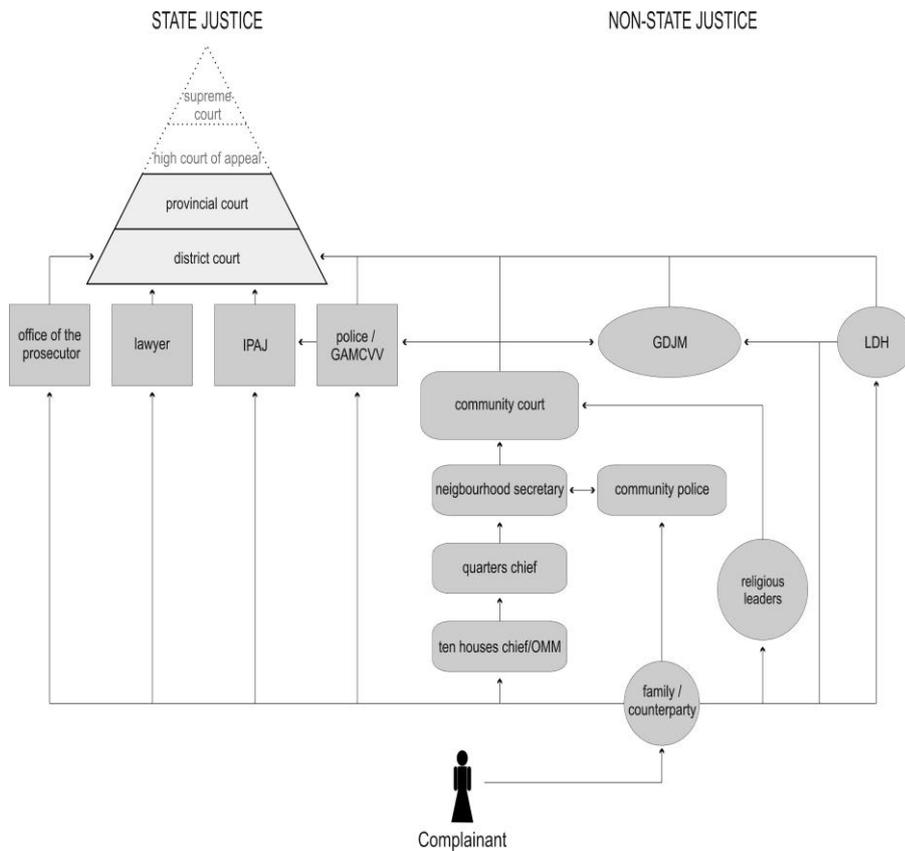
Regarding the relationships amongst these actors, the picture is quite complex. In most cases, grievances are first negotiated amongst the parties or with the involvement of close relatives. If this fails, the case is likely to be presented to the community structures, to the religious leaders, to the GDJM or at the community police. Should the community structures or religious leaders not succeed in facilitating an agreement, the case is generally transferred to the community courts. Whenever the latter cannot settle a case, they either refer it to the GDJM or to the GAMCVV or to the district court, depending on the dispute.³² The GDJM may transfer a case to the district court or to the GAMCVV in cases of domestic violence, though in practice they rarely do so. In turn, the GAMCVV may refer the parties to the GDJM for reconciliation in cases where the complainant does not present serious injuries and she wishes to withdraw from prosecution. In civil cases, the GAMCVV may also suggest that a complainant seek advice at the IPAJ. Only a minority of disputes seem to be effectively pursued at formal judicial institutions, though direct recourse to the office of the prosecutor were reported to be frequent in cases of child support where the father has formal employment.³³ In cases involving better-off women, they may directly approach the IPAJ, the LDH or a lawyer. Appeals from the district courts lie with the provincial court. Appeals to the high court of appeal and the Supreme Court must be pursued in the capital city, Maputo. The following graphic illustrates this rich justice landscape:

³¹ For example, women are reprimanded for not respecting male authority. Observations at the GDJM, Pemba, September/October 2010.

³² The interviewed community court judges reported that cases of domestic violence where physical injuries are serious are transferred to the GAMCVV whereas ‘social cases’ are mainly transferred to the GDJM. Though community court judges reported that they transfer divorce cases to the district courts, representatives from local civil society organisations said that such disputes are rarely pursued at that level.

³³ Interview with the prosecutor of Pemba city, 1 October 2010; interview with an officer of the office of the prosecutor, Pemba, 22 September 2010.

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Graphic 1: women and the justice landscape of Pemba city

Despite the variety of legal actors that women may encounter on their pathways to justice, the extent to which female complainants are in a position to ‘forum shop’ should not be overestimated.³⁴ First, only better-off women or those whose husbands have formal employment seem to be able to engage with actors associated with formal judicial institutions, such as practising lawyers, the IPAJ or the office of the prosecutor. As a result, most women in Pemba city seem not to

³⁴ The term ‘forum shopping’ refers to the ability to navigate these legal instances strategically by calculating which forums will provide the most favourable response according to one’s interests (von Benda-Beckman 1981).

have real access to state justice and statutory laws.³⁵ Second, none of the non-state instances to which most women refer seems to challenge patriarchal norms of social order.³⁶ At the same time, this is not totally surprising as these actors derive their legitimacy and means of coercion from a tacit social consensus about the appropriateness of their counselling and decisions. This context gives rise to processes of ‘inter-legality’, such as when community courts or the GDJM refer to state laws and written procedures as resources that reinforce their authority, particularly when they deviate from local practices that prejudice women.³⁷ In turn, the presence of formal judicial institutions in the city strengthens these actors’ capacity to mobilise state law as a coercive means (Galanter 1981; Greenhouse 1985). The next section turns to the question of how national and local level strategies for improving women’s access to justice relate to plural justice landscapes such as that of Pemba city.

National and Local Strategies for Improving Women’s Access to Justice

In recent years, a number of multilateral and bilateral agencies as well as international NGOs in Mozambique have provided support to governmental bodies and civil society organisations in devising and implementing strategies to improve women’s access to justice.³⁸ At the national level, efforts have concentrated on

³⁵ For a discussion of the extent to which formal state courts uphold gender equality see WLSAMAZ (2001).

³⁶ This is not to suggest that women’s complaints aim at challenging patriarchal norms of social order per se.

³⁷ The term ‘inter-legality’ refers to the mixture and interpenetration of elements from different legal orders (Santos 2002: 437).

³⁸ At the time the research was conducted, the main international development actors working on law and gender were the Embassy of Norway, the Embassy of The Netherlands, the Embassy of Sweden, UNIFEM, UNICEF, UNDP, Oxfam UK, Oxfam Solidarity, Action Aid and Save The Children. At the national level, the Ministry of Justice had a gender unit and important civil society organisations included Forum Mulher, Women and Law in Southern Africa, Associação de Mulheres de Carreira Jurídica, Mulher Lei e Desenvolvimento, Liga dos Direitos Humanos de Moçambique and the Network for the Defense of Childrens Rights.

supporting advocacy and lobbying for advancing legislative reforms that would bring national laws into line with the National Constitution and the international treaties to which Mozambique is a signatory in the area of women's rights.³⁹ This resulted in two important pieces of legislation: the Law on Domestic Violence (Law 29/2009) and the Family Law (10/2004). The former makes domestic violence a crime and foresees that the aggressor be separated from the victim, but the text of the law that was finally approved has been strongly criticised for its many flaws (Arthur 2009). Amongst the main problematic issues, we find the provision in article 37 that the law be applied with consideration for the collective interests of the family, the lack of enforcement mechanisms for community work penalties and the lack of severe punishment of sexual abuse within marriage (Arthur 2009). Nevertheless, the law conveys considerable symbolic power by making domestic violence a public crime rather than a private affair.

The Family Law also represents an advance towards gender equality in several areas. Under this law, religious and customary marriages are recognised on an equal footing with civil marriages, allowing women to claim property rights on condition that the union is monogamous and registered (Law 10/2004 Art 16 and 17). In addition, the figure of the 'informal union' is created, which is defined as a singular and stable relationship between a man and a woman with the legal capacity to marry and who cohabit for at least one year without interruption (Law 10/2004 Art 202). As in the case of registered marriages, the legal regime for informal unions foresees the equal division of the property acquired during the union in case of divorce as well as an assumption of paternal affiliation. However, it does not prevent the parties from contracting a civil marriage with another person and though it does confer some maintenance rights upon the death of one of the partners, the law makes no provision for inheritance rights (Association of Women in the Media et al 2007: 23). Other areas that were modified by the Family Law include the introduction of the right of women to work without their husbands' consent (Law 10/2004 art 98), the provision that family assets are to be jointly administered by both spouses instead of the husband alone (art 102) and an increase of the minimum age of marriage from 14 and 16 years for girls and boys respectively to 18 years for both (art 24).

³⁹ The Constitution of the Republic of Mozambique upholds the principle of equality and non-discrimination in Art.35 and of gender equality in Art.36. In addition, Mozambique ratified CEDAW in 1993 and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa in 2005.

When looking at the initiatives undertaken in Pemba city with a view to implementing these laws, we find strategies on three fronts: first, improving the population's knowledge of the laws; second, enlarging the availability of forums to which women can have recourse for claiming their rights; and third, enhancing justice forums' knowledge of the law so that they decide cases accordingly. Regarding the first area, both pieces of legislation arrived in Pemba by means of civic education initiatives that were conducted by the 'gender working group' of the city, i.e. the LDH, GDJM, GAMCVV, MULEIDE and FOCADÉ (Forum of the Organizations of Cabo Delgado). In order to disseminate the laws, the gender working group organised different activities in the neighbourhoods, such as public lectures on the main aspects of the laws, group discussions at schools and radio programmes.⁴⁰ The GAMCVV also distributed folders at the neighbourhood administrative posts about their work as well as simplified versions of the law on domestic violence.⁴¹ The GDJM provided information about their services through the radio as well. Concerning the availability of forums where women can claim their rights, international NGOs, such as Oxfam Solidarity Belgium and HIVOS, supplied financial support for the legal aid and mediation services provided by the LDH and the GDJM. In the area of domestic violence, the Ministry of the Interior opened two GAMCVVs in Pemba city. The creation of these specialised centres was a nationwide initiative motivated by the discrimination and prejudices that women victims of domestic violence suffered when reporting their cases at police stations.

In the area of enhancing justice forums' knowledge of the laws, a few activities were found too. At the level of state justice, the Centre for Legal and Judicial Formation (CFJJ), which provides national training for magistrates, incorporated a module on gender and human rights covering the laws (Arthur and Osorio 2009: 18). At the level of non-state justice, the project 'Support to the Citizen in Access to Justice', financed by the European Union and UNDP (2005-2009), supported the Human Rights Department of the Ministry of Justice to provide one-time training for some community court judges on the Family Law.⁴² The community

⁴⁰ Interview with representatives from the gender working group of Pemba (MULEIDE, GDJM, LDH, GAMCVV, FOCADÉ), Pemba, 13, 14 and 15 September 2009.

⁴¹ Interview with an officer of the GAMCVV, Pemba, 14 September 2009.

⁴² Interview with a representative of the Human Rights Department of the Ministry of Justice, Maputo, 22 September 2009.

court judges of three neighbourhoods of Pemba participated in such a three-day training course in November 2007. During the training, discussions were held on how certain areas that are regulated by the Family Law were resolved in the community courts and subsequently the trainers explained how they should be resolved according to the new legislation. In addition, the community court judges who participated in the training course were requested to pass on this information to the judges of the other community courts of Pemba city, who had not been invited due to a lack of capacity to include them all. Finally, Oxfam Solidarity Belgium also organised collective training courses and exchange sessions about the topics addressed in these laws for the members of the gender working group.⁴³

When looking at these initiatives, it is striking that local civil society organisations and their international partners drove most of them. The exception is the area of domestic violence, where the government set up the GAMCVVs, though these centres operate under serious structural constraints, such as deficits in their budgets and lack of autonomy to initiate legal processes (Arthur and Osorio 2009: 17).⁴⁴ As a matter of fact, the 'National Plan for the Advancement of Women' (2010-2014) acknowledges that domestic violence is a critical domain in promoting gender equality. Yet, national policies in the area of justice and legality foresee few concrete initiatives for improving access to justice for women. The 'National Plan for the Reduction of Absolute Poverty' (PARPA II 2006-2009) includes enhanced access to justice as one of the objectives for the justice sector under the first pillar on governance (GOM 2005: 80). However, none of the specific objectives mentioned under this rubric refers to gender. In turn, the second 'Strategic Integrated Plan for the Justice Sector' (PEI II 2009-2014: 83) has gender as one of its transversal issues, covering the development of gender policies in the justice sector, the reform of discriminatory legislation and the promotion of gender balance in decision-making positions. Nevertheless, transversal approaches to the promotion of gender equality in Mozambique have not been accompanied by enough tangible actions (Tvedten et al. 2008: 47). For example, despite obstacles to women's access to the formal courts there are no initiatives to improve the IPAJ's responsiveness in this area. Another important subject that remains poorly addressed is women's difficulties in registering their marriages and the paternal affiliation of their children (Casimiro and Fonseca 2009). Since most women in

⁴³ Interview with a representative of Oxfam Solidarity Belgium. Pemba, 14 September 2009.

⁴⁴ The Ministries of Justice and the Interior have traditionally been underfunded in Mozambique (OSISA 2006: 28)

Mozambique celebrate customary or religious marriages, in practice lack of access to registration means that most of them fall under the legal regime of informal unions, which affords them weaker legal protections (Monteiro 2007).

In addition, most interventions seem to engage only partially with the plurality of justice forums and normativities that are at play in Pemba city. Despite the role of community courts in processing a considerable share of local disputes and the fact that they were created by the state, no initiatives were found to provide them with operational support. Community court judges work *ad honorem* and receive little training and no funding for working materials, such as furniture, paper and stamps. Moreover, many community court judges regretted their weak articulation with the formal courts, the lack of communication with them and the poor follow-up of cases that they transfer to them.⁴⁵ The training that community court judges received on the Family Law was welcomed but it was only a one-time event involving a minimal fraction of the actors that women encounter on their pathways to justice in Pemba city.

Furthermore, the semi-autonomy of state laws, i.e. how state laws interplay with local normativities, is an area that deserves more attention (Moore 1973).⁴⁶ As was described in the previous section, local forums such as the GDJM and the community courts apply women's rights in a partial manner, thereby bridging the distance between the letter of the law and the patriarchal structures in which these forums and disputes are embedded. This implies that interventions need to deal with non-state norms too. In other words, those initiatives that aim at improving women's and justice forum's knowledge of the law need to move beyond legal and technical approaches and discuss the causes of asymmetrical gender relationships. For this purpose, sustained efforts are required in order to generate intra-community dialogue on gender relations and what women's rights might mean to women's concrete struggles (An Na'Im 1994). It also entails that these debates interrogate the subaltern position of women in society, while dismantling the ideologies that sustain the hierarchy of sexes (Tsanga 2003).

⁴⁵ Interviews with community court judges from Natite, Cariaco, Paquitequete, Ingonane and Mahate, Pemba, 12, 15 and 16 September 2009. Activity reports of the community courts of Natite and Cariaco for the year 2008, on file with author.

⁴⁶ According to Moore (1973: 720), social fields are characterised by their semi-autonomy. While they can generate rules and symbols internally, they are also vulnerable to rules, decisions and forces emanating from the larger world that surrounds them.

Exploring Women's Testimonies

This section explores the testimonies of different women from Pemba city regarding their perspectives on legal processes and their experiences on their pathways to justice. What kinds of grievances emerge from these stories? What do they tell us about women's different strategies of action in response to them? How are the latter related to the justice landscape of Pemba city and those initiatives that seek to improve women's position in it? These accounts illustrate the many shapes of recurring themes while they hint at programmatic gaps.

'Women thank God'

One of the main issues that surfaced in discussions with women about their experiences and views on local pathways to justice is the prominence of dyadic arrangements.⁴⁷ It is not uncommon for women in Pemba city to try to negotiate a solution with their counterparty and if this does not yield a positive outcome, to simply 'thank God'. This is often the case even if women know that there are alternatives.⁴⁸ This is exemplified by the case of Adelaida. At fifty-four, she works as a nurse and maintains her daughter aged twenty-five and her two grandchildren of nine and six. She divorced many years ago and her daughter is unemployed. The father of her grandchildren never wanted to register them and he refuses to provide any support. She talked about it with him and his family several times but in vain. She was recommended to go to the GDJM for counselling but she prefers

⁴⁷ According to Nader and Todd (1978: 8-11), the crucial variables in legal procedures are the number of actors involved and whether the outcome is voluntary or not. In unilateral arrangements the aggrieved party does not press a complaint, while he/she may continue or terminate the relationship with his/her antagonist or resort to self-help strategies. In dyadic arrangements, the two principal parties negotiate the settlement of their conflict by mutual decision. Triadic processes are differentiated by whether the intervention of a third party is voluntary or not (adjudication), and when it is voluntary, whether the outcome is decided by the parties themselves (mediation) or by the third party (arbitration).

⁴⁸ Individual interviews, Pemba, September/ October 2010; focus group with women from Paquitequete neighbourhood, Pemba, 20 September 2010; interview with a local representative of the Human Rights League of Pemba (LDH), Pemba, 13 September 2009; interview with a local representative of Oxfam Intermon, Pemba, 7 October 2010.

that justice be done by God.⁴⁹

In other cases, women were reported as consenting to arrangements that were detrimental to them. Such responses were attributed to a lack of confidence that pressing a complaint would lead to a positive result. In this regard, many women regretted that men can pay to have a case decided in their favour while women cannot afford that.⁵⁰ Other women simply think that the forums they may refer to will not favour them. The case of Fatima is illustrative. She is twenty-two and does not work. After being traditionally married for four years, she got tired of her husband and told him that she wanted to divorce. Her husband sent her away from their house, keeping all their property. She accepted this. She knows the neighbourhood structures will agree with him because she was the one who requested the divorce.⁵¹

...and some also press complaints

At the same time, some interviewed women explained that things are changing with the presence of organisations such as the GDJM and the GAMCVVs, which encourage women to seek redress. According to a member of the OMM, “women used to suffer in silence, now they dare press complaints”.⁵² In this process, the exchange of experiences seems to play an important role. Consider the case of Maria. She was nineteen years old when she met her partner Domingo. They dated for a while until one day he gave a party with her family to recognise their union. However, he never built a house for the two of them, spent the night with her or left his belongings at the house of Maria’s parents, where she lived.⁵³ Domingo was then forty and already had a wife. Ten years on, Maria has had two children with Domingo and is pregnant with a third. Maria and her children continue to live with her parents but she has never given up hope that Domingo would one day build a home for them. Every time she discusses the matter with him, he gets mad

⁴⁹ Individual interview, 28 September 2010.

⁵⁰ Focus group with women from Natite neighborhood, Pemba, 24 September 2010.

⁵¹ Individual interview, 20 September 2010.

⁵² Individual interview, 20 October 2010.

⁵³ These are all local signs conferring official status on a marital relationship.

and beats her. Her family tried to convince him too, but without success. Once she explained her situation to a friend, who recommended her to look for counselling at the GDJM. She presented her case there and attended a mediation session with Domingo, at which he promised to assume his responsibilities towards Maria and their children. He never did so. Then another friend of Maria who had been helped at the office of the prosecutor suggested that Maria go there. Maria's husband has a formal job with a transport company so the office of the prosecutor intervened and made him pay alimony for the children. Maria is satisfied with this outcome since Domingo is obliged to pay or he would go to jail. Though the alimony payment is not much, it helps her to send her children to school for she is unemployed. Nevertheless, what she really wants is to build a home for the children with Domingo.⁵⁴

There are a couple of remarkable things about this case. In the first place, it reveals the relevance of a forum's capacity to enforce its decisions as a key element in access to justice. Maria's concerns about Domingo's duties towards her as his second wife were regarded as legitimate at the GDJM. That was not the case at the level of formal state justice. This places the GDJM normatively closer to the experience of Maria. However, the GDJM could not enforce the agreement. The office of the prosecutor would not offer any answers to Maria's frustrations as a wife, but it did have enough coercive power to make sure that Maria's children received their alimony. Not all women would have benefited from this, but Maria's partner had a formal job.

Enforcement: the missing link?

In a context where women are gaining confidence to press complaints, knowledge of forums that are accessible and have the reputation of defending women's interests may encourage women to seek redress for their grievances. At the same time, if these instances have limited means of guaranteeing compliance with their decisions, lack of enforcement may undermine women's trust in legal processes, even if women are satisfied with the outcome. This was the case for Carla, aged thirty-eight and working sporadically. She was married traditionally for three years and when she was five months pregnant her husband abandoned her. First, she waited to see if he would reconsider the situation when the baby was born, but he didn't. Then she decided to go to the GDJM, where the couple was invited for a

⁵⁴ Individual interview, 7 October 2010.

mediation session but her husband refused to go. He wanted to have the case solved by the community court. There, he recognised the paternity of the child and the community court determined that he had to pay her 18 USD per month alimony. Instead, he proposed to make a one-time compensation payment of 260 USD and thereby close the case once and for all. Everybody agreed, but so far he has not paid.⁵⁵

Lack of enforcement is not only a barrier to accessing justice within those forums that mediate and rely on consensus. State justice also grapples with this issue in certain areas, as exemplified by the case of Mariana. Mariana is forty years old and works as an administrative assistant. She was traditionally married for eighteen years to João and had two children with him. Their relationship was a difficult one. João was very violent and would often beat her badly. Eventually, Mariana decided to divorce. Then, João sent Mariana and their two children away and kept their house for himself and his new girlfriend. After two years, he came back after Mariana. He threw down the front door of the apartment that Mariana was renting with her children and started beating her again. Mariana went to the police, who exhorted him to apologise. He would not do so and ended up in jail for a week. After that, he never disturbed Mariana and the children again. In the meantime, Mariana got in contact with a lawyer from her hometown, who helped her file her divorce at the district court. The district court decided that Mariana was to keep the custody of the children and that João had to pay alimony. In addition, the court ruled that Mariana was entitled to fifty per cent of the house, which was acquired in the course of their informal union. For a year and a half João would not pay alimony but the office of the prosecutor intervened and confiscated the amounts. From then onwards, João paid regularly. However, four years after the sentence was passed João continues to live in the house of which Mariana is half owner. In the meantime, he has married officially with another woman with whom he lives in that house. Mariana complained several times about it at the district court, but she did not get a satisfactory response.⁵⁶

These testimonies suggest that while interventions focus on (i) the existence of a normative framework that upholds women's rights, (ii) knowledge of this framework by right-holders, (iii) the availability of justice forums where grievances can be presented and (iv) the treatment of cases by these forums in accordance with women's rights, (v) *enforcement of decisions* seems to be a key

⁵⁵ Individual Interview, Pemba, 3 October 2010.

⁵⁶ Individual Interview, Pemba, 4 October 2010.

area of concern for women in the process of accessing justice that remains out of sight. This is not to say that interventions in these four domains have been intensively carried out and are no longer necessary. On the contrary, these areas need to be reinforced. In the words of Maria, "I heard that women have rights...but what rights I don't know".⁵⁷ Nor does it mean that these four domains are irrelevant to the negotiation of gendered power relations. As a matter of fact, one crucial insight generated by the socio-legal scholarship is that law functions as a resource that can be mobilised for reproducing or contesting power relations (Lazarus-Black and Hirsch 1994; Starr and Collier 1989). In other words, women's ability to have recourse to a justice forum that upholds their rights contributes to counterbalancing male dominance. As explained by Mariana, "this new law on domestic violence is a good thing. Now it is no longer possible for men to just beat their wives cause they know that they can be punished... even if men have no respect, they are scared cause women can go to the police."⁵⁸ In turn, the capacities of these forums in terms of enforcement seems to play a role in the extent to which women can actually mobilise them as effective resources. At the same time, the lack of ability to enforce a decision may be an element in explaining why certain non-state forums apply women's rights only partially, as their rulings cannot deviate too much from what will be acceptable for voluntarily compliance. In that respect, Nader (2001) remarks that mediation and negotiation require conditions of relatively equal power amongst the conflicting parties in order to produce equitable outcomes. In a patriarchal context such as that of Pemba city, this implies that women's rights are often compromised.

Considering the justice landscape of Pemba city, enforcement means different things for different kinds of justice forum. While guaranteeing enforcement of state courts' rulings may require better case-load management, ensuring compliance with the decisions of non-state forums entails a whole other set of challenges that seem to go beyond justice processes themselves. Even if the existence of a legislative framework that upholds women's rights and formal judicial institutions in the city represents a resource to non-state justice providers for inducing compliance (Greenhouse 1985: 93, 94), in practice it seems that asymmetrical power relationships between men and women lead to impunity when men unilaterally decide not to respect their commitments. In turn, these realities need to be considered as part of a context where coercive mechanisms such as social pressure seem not always to operate as effectively. However, enhancing the

⁵⁷ Individual Interview, Pemba, 7 October 2010.

⁵⁸ Individual Interview, Pemba, 4 October 2010.

coercive powers of these forums by bestowing them with the authority to distribute retributive penalties does not seem to be an appropriate solution as this could lead to unchecked abuses of power (Stevens 2000).⁵⁹ Rather, this state of affairs seems to call for a ‘transformative’ approach to legal services addressing the social, cultural, psychological and political constraints that impede the actual implementation of women’s rights (Tsanga 2003: 17). In other words, it requires a sustained commitment to change power imbalances in gender relations at different levels of society (Chopra and Isser 2010). A better articulation between state and non-state legal actors could represent a first step in this direction. This could allow not only for collaboration in enforcing fair decisions of non-state actors, but it could also open up spaces for dialogue and mutual learning amongst these forums.

Conclusions

This paper started with the question of how women’s lived realities with the law can inform development interventions in the area of women’s access to justice. In each section, this question was addressed from a different angle, thereby revealing different parts of a partial answer. ‘Women and the Justice Landscape of Pemba city’ shows that despite the local availability of a rich network of justice actors, not all women have equal access to these instances. This illustrates the significance of non-state justice forums and norms in the lives of many women. The practices of some of these forums also indicate that processes of inter-legality bridge the distance between local patriarchal structures and women’s rights. The latter is facilitated by the presence of formal judicial institutions in the city. This suggests that formal courts and state laws that uphold women’s rights are relevant to improving women’s access to justice, both directly and indirectly.

Subsequently, three issues were raised in the analysis of how national and local strategies for improving women’s access to justice relate to the position of women in plural justice landscapes such as that of Pemba. First, considerable and sustained efforts are necessary in order to translate policy commitments into concrete actions that effectively enhance women’s access to formal courts and state laws. Secondly, given the role of non-state justice in producing and reproducing gendered relations, interventions need to engage with these too. And third, such

⁵⁹ As a matter of fact, this is what currently happens when the community police dole out corporal punishments, though this seems not to be a practice for enforcing decisions in ‘social cases’.

initiatives need to move beyond technical approaches that focus on the letter of the law. Instead, they need to explore how women's rights relate to the concrete concerns of women and they need to generate a public debate on asymmetrical gender relations.

Finally, the last section invoked the testimonies of different women about their lived realities with the law in order to uncover how their experiences relate to interventions. This exploration revealed that when a forum upholds women's rights in its decisions, enforcement is crucial too. Nevertheless, improved enforcement of decisions remains a programmatic gap at the level of both state and non-state justice. This, in combination with a culture of 'leaving justice to God', may undermine the process of building trust amongst women about claiming their rights. In addition, improving enforcement entails different approaches depending on the kind of forum. For state courts it may require more efficient case management whereas for non-state forums it rather points to the need to foster more equal gender relations in society. A better articulation between state and non-state justice forums was suggested as an element that could facilitate such processes of change.

Above all, this contribution illustrates how exploring women's lived realities with the law is essential in two ways. On the one hand, it contributes to understanding the kinds of process that interventions set in motion and the extent to which the latter contribute to the realisation of women's rights. On the other hand, it uncovers areas of intervention that remain unaddressed despite their potential to generate positive changes. As such, the paper shows the relevance of incorporating 'actor-oriented' perspectives on gender and legal change within justice sector aid.

Glossary of Organizations

FOCADE	Forum of the Organizations of Cabo Delgado
GAMCVV	Police Victim Support Centre for Women and Child Victims of Violence
GDJM	Cabinet of Women's Legal Rights
IPAJ	Institute of Legal Representation and Assistance
LDH	Human Rights League
MULEIDE	Association Women and Development
OMM	Organization of Mozambican Women

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