

**Emancipating Rituals: Women's Empowerment through
Customary Justice**

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**PAPER DELIVERED AT
'THE RITUALS OF HUMAN RIGHTS' WORKSHOP
CENTRE FOR INTERNATIONAL GOVERNANCE AND JUSTICE, REGNET
AUSTRALIAN NATIONAL UNIVERSITY
CANBERRA, AUSTRALIA
25-27 JUNE, 2014**

International human rights law is committed to gender equity and the elimination of discrimination against women. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides a framework for the empowerment of women and devolves to state parties the responsibility to take appropriate steps to eliminate inequalities between men and women. It also recognizes that discrimination against women often results from social and cultural patterns of conduct and therefore it asks state parties to take appropriate measures for the “elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”¹

Despite recognizing the need to address discrimination arising from custom in the text of the CEDAW, until recently, little attention has been given to customary justice systems. This is changing, however, as human rights advocates realize the central role these systems play in local communities and the legitimacy they enjoy. For this reason it is useful to explore the effects of rituals of customary justice on women's empowerment.

This paper proceeds in three parts. The first section demonstrates the ritual character of state justice systems and customary law. It draws from the work of ritual theorists to bring out this connection and underline the purposive quality of rituals as vehicles of both perpetuation and transformation. Given these two attributes of rituals, the second section explains how rituals of customary justice may perpetuate discriminatory beliefs and practices against women but also transform in an emancipatory way social subjectivities pertaining to gender identities. The last section develops this idea further based on performativity theories, with particular attention placed on Judith Butler's work on gender and performance.

At the outset, it is important to note that this paper does not argue for social change based on a culture of human rights that would subjugate local culture and practices; rather it proposes, as Sally Engle Merry suggested a decade ago, to take into consideration the “cultural possibilities of human rights as an emancipatory discourse.”² That is, the paper inquires whether this emancipatory discourse has the potential to mediate between local culture and women's right to equality and dignity. It argues that cultural relativism should not serve as an excuse to avoid challenging practices entrenched in customary law that are morally wrong. Addressing discrimination against women should consider the wider cultural space within which these discriminatory practices take place.

Part 1 – Legal Rituals

Rituals as Purposeful Events

Rituals are common to all societies. They may have different purposes and symbolics but they also share certain attributes that allow them to produce and alter social meanings. Indeed, what is consistent in most readings on rituals is the acknowledgment that these events bear consequences that affect the social conditions within a community.³ Victor Turner, whose work was largely devoted to the study of rituals, conceived of these events as transformative performances reinforced by symbols that contribute to the assignment and reassignment of cultural meanings.⁴ He argues that by definition, rituals are associated with social transitions.⁵ The concept of liminality, first coined by van Gennep and further developed by Turner, may most aptly demonstrate the transformative potential of ritual. According to Turner, rites of passage, but also other forms of ritual, are constituted of three successive phases: separation, liminality and aggregation. Through rituals the individual, or group, is detached from an earlier social structure (separation) and enters a liminal stage, “a realm of pure possibility whence novel configurations of ideas and relations may arise.”⁶ Liminality, as explained by Turner, is a phase of potential transformation, “a cultural means of generating variability, as well as of ensuring the continuity of proved values and norms.”⁷ The outcome of transiting into this liminal space is then consolidated at the aggregation stage of the ritual process.⁸

While early studies of rituals concentrated on religious rites, Moore and Myerhoff’s contribution underlines the multiplicity of ritualistic ceremonies in industrialized societies; they identify the “western” court trial process as one of them, along with a variety of other public performances.⁹ Moore and Myerhoff define rituals as dramatic occasions imbued with symbolic behaviour, which can hide behind a stated purpose some untold objective.¹⁰ They suggest that collective rituals share a number of attributes. They are repetitive whether in their occurrence content or form. They are calculated events whereby participants act in a self-conscious way. They use stylized actions, symbols and staging techniques to attract and reinforce attention in a particularly evocative way. Rituals are also ordered activities, often taking place in a specific location and time. Finally, their collective dimension endows them with social meaning.¹¹

This account builds on Moore’s earlier work highlighting the relationship between dispute resolution and ritual in the African Chagga community.¹² Moore maintains that judicial or quasi-judicial hearings and decisions may be interpreted as rituals of situational transformation whose ideological and symbolic aspects are interwoven with the social organization of the community.¹³ Legal rituals are one example of collective rituals that are set in specific places and time, and endowed with symbolic representations relevant to the society in which they are performed, create, inform about and enforce relevant community norms such as women’s status in a community. If conducted efficiently, they can transform social situations.¹⁴

Understanding justice systems in terms of rituals is relevant when exploring customary justice’s norms, processes and institutions. The term “customary” is preferred to “informal,” frequently used in the development literature, as customary law focuses on indigenous systems. It is also in line with the definition given by the International Council on Human Rights of non-state legal orders, which states that customary law is formed from “norms and institutions that tend to claim to draw their moral authority from contemporary to traditional

culture or customs, or religious beliefs, ideas and practices, rather than from the political authority of the state.”¹⁵ Customary justice may predate colonial interventions but it may also have undergone substantive transformations as a result of contact with colonial powers or other significant historical events. In fact, customary justice, like culture itself, is dynamic; it emerges and evolves from social practices and for that reason it is sometimes referred to as “living law.”¹⁶

While there is debate about the legal standing of customary law, recent developments in the field of legal pluralism have helped us recognised the influence of non-state norms and processes on dispute settlement. As noted by Forsyth, the claim to the centrality of legal powers within the hands of the state has suffered in the last decades with the realization that law takes multiple forms in any social field.¹⁷ This negates a conception of law as the exclusive domain of the state and recognizes instead the existence of parallel legal orders that influence each other within social spaces.¹⁸

Interestingly, Moore also contributed on developing a better understanding of legal pluralism and the influence of non-state normative systems in the regulation of social behaviors.¹⁹ According to her, social control is achieved through a multiplicity of “semi-autonomous social fields” endowed with the capacity to make rules and to induce and coerce compliance in parallel with state institutions.²⁰ These systems, like formal legal systems, use symbols and convey values that are familiar to participants by drawing from normative structures present locally.²¹ They operate within a shared community of beliefs, grounding practices in social relations, authorities and traditions recognised by that community. Customary justice’s reliance on recognised cultural practices, often based on religious concepts, confers it with legitimacy.²² In this sense, customary law, like ritual more generally, is a cultural artifact that gains its meaning and significance when shared among people who understand how a given society works.²³

The instrumental nature of ritual described above is often expressed in the potential for rituals to both *perpetuate* and *transform* the normative framework of a society. As noted by Moore, the properties common to all forms of collective ceremonies make ritual a valuable vehicle to communicate messages in an “authenticating and arresting manner.”²⁴ As such they have the power to “traditionalise” *existing* or *new* social constructs.²⁵ Given these attributes, it can be useful to explore the effects of customary justice systems, understood as ritualistic performances, on women’s empowerment. How do these systems, embedding salient beliefs and attitudes about religion and identities, have the potential to affect women’s place in society? Must they only perpetuate discrimination against women, or instead, can they provide an entry point to influence a reconstruction of social interactions and a reinterpretation of gender that promotes the emancipation of women?

Part 2 – Between Perpetuation and Transformation

As seen above, state law is rarely the only relevant regulating order governing individuals’ lives.²⁶ It often competes with other influences such as social norms, and in certain instances customary justice. While discrimination against women arises both within formal and customary justice systems, in many countries and regions customary justice plays a particularly significant role in regulating issues affecting women’s lives such as familial relations and property rights.²⁷ Challenges may arise in relation to both procedural and substantive rules.²⁸ Procedures governing customary justice may limit women’s participation

as adjudicators, parties or witnesses.²⁹ For instance, the Danish Institute for Human Rights' report *Informal Justice Systems: Charting a Course for Human Rights Based Engagement* (hereinafter "Charting a Course") notes that under the former Pakistani Hudood laws, rape trials held before religious courts required evidence of the rape by four male witnesses. While the report acknowledges that a 2006 legal reform removed rape cases from the jurisdiction of religious courts, it emphasizes that in many countries women's testimonies still hold lesser value than men's in *Shari'ah* religious courts.³⁰ Furthermore, evidence is required to assess whether the jurisdictional shift in Pakistan has had an impact on the number of rape cases brought before state courts.

Women also suffer from the impact of substantive rules in customary legal systems. In Papua New Guinea, the acceptance of polygamy increases women's economic vulnerability. A woman may seek redress by bringing the matter to the court as an adultery case, yet if the husband argues that he intends to wed the other women, then customary law, the law applied by the court, requires that his view overrides that of his wife.³¹ Norms surrounding witchcraft are another case in point. In Malawi, socially vulnerable women, especially elderly widows and women in positions of authority are more likely to face accusations of witchcraft.³² "Charting a Course" showed that criminalizing the accusation of witchcraft in the formal legal system simply redirected the adjudication of these accusations to the customary justice realm.³³ This also demonstrates the limits of initiatives that overlook customary systems and exclusively target state law and institutions.³⁴

The examples above illustrate the influence customary justice can have on women's experience. They also appear to support the argument that customary justice is more likely to perpetuate rather than challenge social values, attitudes and patterns of discrimination against women.³⁵ Yet, these studies also point to the potential for customary law to affect change that is rooted in a community's values – values that are not, however, static.³⁶ This tension in rituals of customary justice suggests that the empowerment of women almost inevitably requires deep engagement with customary systems. In the first instance, the capacity that customary justice has to entrench existing practices and values that discriminate against women needs to be addressed for any women's empowerment initiative to succeed. Neglecting to engage with these systems would most likely counter any effort deployed in other spheres, including in reforming the formal legal system. Conversely, the transformative potential of rituals may assist in promoting women's empowerment. Here, customary justice rituals can lend their authority and legitimacy to the promotion of new social meanings and values and foster a remodelling of women's rights and identity within the community.

The need to engage with these systems is all the more pressing given that a majority of people in developing countries seek resolution of their disputes through customary justice; in some countries as many as 80 per cent of disputes are resolved through these mechanisms.³⁷ The study *Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment* (hereinafter "Accessing Justice") shows that women are more likely than men to rely on customary justice due to structural and cultural factors.³⁸ They often have limited resources – time, money and knowledge – to access the formal justice system.³⁹ Discriminatory state laws or social stigma associated with women seeking legal remedies from the state can deter women from using formal justice mechanisms.⁴⁰ Against this background, customary justice is appealing to women who may be more comfortable navigating these systems with procedures rooted in the local context and using a familiar language. Customary processes may also be considered more responsive to participants with limited financial resources who seek to obtain economic reparation to palliate the

consequences of being wronged.⁴¹

Perpetuation and transformation

The potential for customary systems to perpetuate discrimination against women was highlighted by the Human Rights Committee in its General Comment no. 28 concerning the equality of rights between men and women. The Committee notes that violations of women's rights often result from deeply embedded traditional, cultural and religious beliefs.⁴² Thus, women's empowerment is endangered more by individuals and social groups than by state law.⁴³ The Committee on the Elimination of Discrimination against Women also expresses concern about the risk of customary justice impinging upon the rights of women. Referring to a Namibian law that gives supervisory power to traditional authorities to ensure the application of customary law, the Committee notes that this "may have a negative impact on women in cases where such laws perpetuate the use of customs and cultural and traditional practices that are harmful to and discriminate against women."⁴⁴ According to Harper, the role customary justice plays in reinforcing the status quo constitutes one of the biggest challenges in fighting discrimination against women.⁴⁵ The difficulty of affecting change can be explained by a number of factors. One of them is that change to existing legal systems can be seen as a threat to the authority of community leaders.⁴⁶ Local leaders and other segments of the population can be hostile to changes in local customs that challenge long-entrenched prejudices from which they benefit.⁴⁷

Customary justice is also influenced by inequalities between actors. As noted by Bourdieu, law is generally influenced by individuals with resources.⁴⁸ Customary justice may be particularly likely to reflect dominant social codes and power hierarchies because of the absence of written procedural and substantive rules.⁴⁹ This ad hoc quality promotes the resolution of disputes in a manner that reflects the power and resources of the disputants, biased social norms, and local authorities' conception of group cohesion.⁵⁰ Community mediation for instance "often reflect[s] what the stronger is willing to concede and the weaker can successfully demand."⁵¹ Studies in sub-Saharan Africa confirm that attempts at expanding women's involvement in decision-making in circumstances where this risks undermining leaders' influence are met with determined resistance by groups in authority.⁵² The fact that in most communities chiefs are male increases the likelihood of such a reorganization of power being faced with opposition.⁵³

Even so, customary justice can be an effective platform for implementing new norms "by providing a link to the community, its myths, its elites and its traditions."⁵⁴ Hence, customary justice may open opportunities for change by connecting reform actors with communities and promoting an incremental transformation of social norms.⁵⁵ A number of factors work together in dispute institutions to impact on broader social practices. Among them is the centrality of these processes to the community, with methods and results often public and repeated regularly before different audiences. Customary law also calls for the active participation of the disputants and other members of the community such as witnesses and judicial officials. Significantly, these processes are typically presided over by individuals with an authoritative status in the community, vested with the right to speak in the name of the community.⁵⁶

At the same time, to be considered legitimate, customary justice needs to reflect the beliefs and values of the community.⁵⁷ As mentioned above, legitimacy, cultural accessibility and linkage to accepted norms are key elements on which the popularity of these systems sits.

The challenge is thus to embed emerging values favoring women's empowerment within the set of recognized community norms that serve as referents in customary legal systems. If this can be achieved through a form of ritual that does not encroach on existing values in such a way as to empty the process of its legitimacy, then the social anxiety that can result from the deployment of a new norm can be minimized.⁵⁸

This resonates with the "Accessing Justice" report which holds that the "fluidity and dynamism" of non-state legal systems can facilitate gradual reforms and innovation around women's rights.⁵⁹ While customary law borrows from tradition, it also develops in response to changing conditions. Harper notes that colonization, decolonization, civil conflicts and globalization have all influenced the content and application of customary law.⁶⁰ This dynamism can facilitate the development of creative initiatives that promote women's interests. It allows for the crafting of solutions that respect local circumstances and respond to the issues that triggered the dispute.⁶¹ Moreover, changes to local customs, because they are grounded in local practices, benefit from a level of legitimacy that makes them more sustainable in the long-term than changes imposed from outside the community.⁶²

Another important finding of the "Accessing Justice" report is that the content and processes of customary law may in certain contexts have more to do with power hierarchies and contemporary politics than tradition and culture.⁶³ Hence, discriminatory practices against women may result from the interpretation of customary law by individuals currently in authority rather than reflecting long-standing traditions and broadly shared values. In these cases, informal justice initiatives that seek to open customary justice to the influence of weaker actors in the community, such as women, can support the development of procedures and norms favorable to women. The importance of women playing active roles in effecting changes to customary law must not be overlooked, especially where these projects lack traction within predominantly masculine power structures.

In these cases women's agency is crucial. This is shaped by the relevant community's power dynamics. Local women may be the only group with an interest and willingness to stir up social structures and give purchase to initiatives aimed at promoting gender equality. Participation of women in customary justice can further deepen this empowerment process. Female adjudicators and justice officials are necessary to help raise awareness of patterns of discrimination against women and ensure that they have their claims adequately assessed.⁶⁴ Conflicts between women's rights and customary law are not inevitable and enhancing women's role as active actors in customary justice can help bring these systems into line with the international human rights' commitment to gender equality. Women can make a significant contribution towards a reinterpretation of customary law and practices that promote the emancipation of women. A Namibian initiative, discussed in the next section, shows that greater involvement of women in community leadership roles, dispute settlement, and in the interpretation of the substantive content of custom can have a beneficial impact on gender equality within customary systems of law.⁶⁵

Part 3 – Ritual performance and the illusion of gender

Some contend that widespread beliefs and practices, such as those pertaining to gender, are based on particular social representations, strongly influenced by the imagined or real behavior of others and often shaped by social performances.⁶⁶ In recent years, theories about social performance have thrived, helping explain the influence of rituals on the social and

cultural construct of communities. With respect to sexual subjectivities, aspects of Butler's work on performativity are useful to understand how gender categories are socially constructed to function as natural and unavoidable facts. She argues that gender differences, rather than being the result of biological or psychological conditions, are historical and cultural products.⁶⁷ For Butler, gender is "a performative accomplishment which the mundane social audience, including the actors themselves, come to believe and to perform in the mode of belief."⁶⁸

Butler explains that "performativity is not a singular act, but a repetition and a ritual."⁶⁹ Stylized repetitions of gender help sediment artificial identities whereby hegemonic gender meanings are promoted, perpetuated and believed.⁷⁰ Repetitions promote the endurance of binary stereotypes about gender (e.g. passive/active, submissive/independent, weak/strong, private/public). This resonates with Moore's argument that the repetitive and stylized nature of ritual makes it a particularly potent instrument for the perpetuation of traditions.⁷¹

Most importantly, however, Butler demonstrates that artificial gender constructions can be disrupted.⁷² Her theory of gender performativity is based on the rejection of sexual differences as irreducible.⁷³ Hence, gender identity is not stable; in fact Butler questions the very existence of categories such as sex and gender, which she sees as the product of power relations based on compulsory heterosexuality.⁷⁴ Using her work as a basis for women's emancipation may thus appear to contradict the core tenets of her theory. Yet, Butler's contribution does not necessarily attempt to adopt a post-gender position; as she notes it is "politically important to represent women, but to do that in a way that does not distort and reify the very collectivity the theory is supposed to emancipate."⁷⁵ Therefore, her understanding of gender as socially constructed through performativity remains especially relevant for our purpose.

Butler notes that the creation of abiding gender models through sustained social performances hides the performative prospects for proliferating gender structures that do not abide by the "restricting frames of masculinist domination."⁷⁶ She claims that a reinterpretation of gender is available and its possibilities can be found in "a failure to repeat, a deformity, or a parodic repetition"⁷⁷ of gendered acts. In other words, if gender identity is constructed through performance, then performative inconsistencies will impact upon that performatively created identity.

Her argument about the prospect for subjective transformation through deformative or parodic performances shares similarities with the work of Turner on liminality. Turner notes that liminality is often the stage for "immolative" and "innovative" actions whereby participants in a ritual are invested with symbols that represent the opposite of their pre-liminal status.⁷⁸ Significantly, both authors refer to cross-dressing as an attribute of certain transformative performances; Butler's attention is turned towards drag and queer theories whereas Turner's is on rites of passage during which boys and girls bear symbols that evoke the attributes of the opposite sex.⁷⁹

For both, the deconstruction of accepted social understandings through the performance of unconventional or diverging roles opens up possibilities of generating variability. But the particular relevance of Butler's work resides in her argument that performative techniques can be deployed to challenge the cultural framework that produces gender subjectivities.⁸⁰ Following this understanding, the performative nature of rituals of customary law can become a vehicle for deeper cultural transformation. In societies where a multiplicity of

interests are coalescing to defy existing social structures, the performance of legal rituals can transform collective representations about women by providing a stage from which to project new meanings about gender categories.

This intersects with recent scholarship on social performance theory. According to Alexander symbolic performative acts in rituals produce an emotional connection between the “actor” and the “audience,” thus making the projection of cultural meaning that challenges social identities possible.⁸¹ Alexander explains that for a performance to be successful, it does not need to conform to existing social representations as long as the ritual is imprinted with authenticity.⁸² Authenticity can be reached by fusing the meaning to be transmitted with existing social representations so as to allow a cultural extension of those representations. From this perspective, the transformative potential of women performing roles that challenge existing understandings about gender categories, for example, as adjudicators, parties or witnesses, can be strengthened if taking place within and building on accepted rituals of customary justice.

To illustrate these processes, the “Accessing Justice” analysis of an initiative by the Uukwambi Traditional Authority in northern Namibia to address gender inequality within the customary system is useful. The project was developed with the aim of eliminating discriminatory aspects of customary justice by expanding women’s presence in key spheres of leadership. Efforts included increasing the number of women traditional leaders, the promotion of women’s active participation in traditional courts and the amendment of customary norms prejudicial to women.⁸³ Legitimacy and authenticity in relation to existing social meanings was achieved by using the authority of influential local actors to transmit new interpretations of customary law. The Namibia case showed that strong support by village chiefs for new cultural norms and the promotion of women in public positions of traditional leadership was essential in effecting and legitimating a transformation of gender relations.⁸⁴ These changes were made more salient through the repetition of symbolic narratives. For instance, one traditional council started each of its court sessions by addressing women in the following manner:

You women have been neglected. Now it is time for change. So if you see something you don’t like, speak up. Everyone now, watch carefully. Stand up and speak if you think something is not right or if you don’t understand something.⁸⁵

Empirical results drawn from this case demonstrate that women gained authority and legitimacy by performing authoritative roles. When attitudes about women’s leadership were measured in communities lead by headwomen, both male and women respondents had more favorable attitudes to women’s leadership than those in villages lead by headmen.⁸⁶ The study showed that men and women tend to assess their headwomen similarly, however, women’s attitudes were usually more favorable to women leaders than their male counterparts.⁸⁷ Despite these positives developments, the results also indicate that the transformation required for women to be perceived as able leaders, on an equal footing with men, was not complete. The report notes that many male leaders would still prefer to be succeeded by their sons rather than their daughters. Some participants in the study also affirmed that men possessed in greater measure attributes that women lack and that make

them better leaders.⁸⁸ Notwithstanding, the study concluded that despite an enduring preference for headmen, exposure to successful female leadership had significantly transformed opinions about leadership and gender.⁸⁹

A second “Accessing Justice” case study that looked at a 1994 intervention by the Bougainville Centre for Peace and Reconciliation (PFM) to assess the impact of women’s participation in conflict resolution trainings in the customary sector shows similar results. The PFM was tasked by the Bougainville Interim Government to conduct conflict resolution trainings in communities. Participants in these trainings included local women and men, members of civil society, chiefs, and religious leaders. One of the project aims was to evaluate the extent to which intervention could use legal empowerment strategies while remaining legitimate in the eyes of the population. The report notes that because the project emphasized local values such as consensus-based decision-making and the maintenance of good community relations, participants recognized the similarities between PFM dispute resolution techniques and customary justice.⁹⁰

The study found that female empowerment through customary law takes time.⁹¹ Yet, it showed that it could succeed in challenging interpretations of customary norms and practices that discriminate against women. Women mediators involved in gender-related disputes were conducting the procedures in ways more favorable to women. For instance, most women mediators barred the resolution of rape cases by the victim marrying her rapist.⁹² Interviews carried out following the project also demonstrated the positive impact women’s participation had had on men’s perception of women in the community. The study noted the reaction of one community chief who explained that:

the training had helped him realize that women play a major role in the household and community, that they also have rights and are important, and that they are capable of accomplishing things [while other participants] came to realize that they should listen more to women’s perspectives and opinions and that men often quash women’s rights.⁹³

This echoes claims that performance shapes meanings about gender.

Conclusion

The discussion above highlights the importance of considering rituals of customary justice when seeking to promote the international human rights’ commitment to gender equality through the alteration of discriminatory norms and practices based on gender. It shows that rituals can both perpetuate and challenge existing values, practices and institutions. Their performative character makes them particularly potent channels for this purpose. The repetitive performance of discriminatory practices against women may further entrench the acceptance and legitimacy of these practices within the community. Yet, the same attributes of ritual can be channeled to transform or replace existing meanings in ways that benefit women. This can be done through “repetitions that subvert dominant gender norms in the hope of destabilising and displacing these regimes.”⁹⁴

While the strategy opens up possibilities for change through signifying practices, the outcome of the project is never certain.⁹⁵ Empirical evidence shows that initiatives aimed at securing

women's rights at the customary level do not always yield the results hoped for. The situation may be more acute in systems that draw heavily on religious precepts that bar women from active participation in customary justice. The Namibian initiative to promote female leadership within the customary system attests to this. There will also be circumstances where social powers exert such a control over the "symbolic production" of new social meanings, either through intimidation or censorship, that the very possibility of women performing emancipatory customary rituals is limited or nil.⁹⁶ But, as noted by the Danish Institute for Human Rights, while customary justice present challenges, it is a reality that cannot be avoid.⁹⁷

Women often face impediments when seeking justice through the state apparatus; this may be due to structural factors but it can also result from social understandings about gender subjectivities. Customary justice is woven so deeply into the social fabric of certain communities that failing to engage with these systems to focus solely on state law will inevitably fail the great number of women who have no access to state institutions. It would also mean relinquishing a valuable vehicle of transformation. For that reason customary justice is one site of social performance where alternative significations about gender are possible.

¹ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46 (1979), 1249 U.N.T.S. 13, entered into force September 3, 1981. Art. 5, see also Art. 2.

² Sally Engle Merry, "Human Rights Law and the Demonization of Culture (And Anthropology Along the Way)," *Political and Legal Anthropology Review* 26, no. 1 (2003): 55.

³ Sally F. Moore and Barbara G. Myerhoff, eds., *Secular Ritual* (The Netherlands: Van Gorcum, 1977), 15; For a discussion on the inefficacy of rituals see William Sax, "Ritual and the Problem of Efficacy," in *The Problem of Ritual Efficacy*, eds. William Sax et al. (New York: Oxford University Press, 2010), 3–16.

⁴ Victor W. Turner, "Process, System, and Symbol: A New Anthropological Synthesis," *Daedalus* 106, no. 3 (1977): 77.

⁵ *Ibid.*

⁶ *Ibid.*, 69.

⁷ *Ibid.*

⁸ Victor Turner, "Liminality and Communitas," in *A Reader in the Anthropology of Religion*, ed. Michael Lambek (Oxford: Blackwell, 2002), 369.

⁹ Moore and Myerhoff, *Secular Ritual*, 4.

¹⁰ *Ibid.*, 5. More recently this definition was used by Celermajor: See Danielle Celermajor, "Mere Ritual? Displacing the Myth of Sincerity in Transitional Rituals," *International Journal of Transitional Justice* 7, no. 3 (2013): 287.

¹¹ Moore and Myerhoff, *Secular Ritual*, 8.

¹² Sally F. Moore, "Selection for Failure," in *Symbol and Politics in Communal Ideology: Cases and Questions*, eds. Sally F. Moore and Barbara G. Myerhoff (Ithaca: Cornell University Press, 1975), 110–111.

¹³ Moore's conception of justice systems in terms of ritual is shared by a number of socio-legal scholars. Garfinkel recognises the ceremonial nature of trials when he advances that "degradation ceremonies" "have become an occupational routine" for the courts and its officers over which they "have something of a fair monopoly": see Harold Garfinkel, "Conditions of Successful Degradation Ceremonies," *American Journal of Sociology* 65, no. 1 (1956): 424. Bourdieu maintains that trial is a symbolic staging. The public "performative utterance" that is the judgment is comparable to a magical act that, when performed by the right individual, provides a "symbolic effectiveness" that increases legitimacy. The symbolic effect of ritualized judicial activities, reinforced by the public representation of social conflicts according to established forms, acts as a way to find solutions socially recognised as impartial: see Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field," *Hasting Law Journal* 38 (1986–1987): 837. More recently, Chase's study on the cultural contexts of legal institutions in America and among the Azande society of North Africa highlights the ritualized character of dispute resolution mechanisms: see Oscar G. Chase, *Law, Culture, and Ritual: Disputing Systems in Cross-Cultural Context* (New York: New York University Press, 2005), 114.

¹⁴ Moore, "Selection for Failure," 111.

¹⁵ International Council on Human Rights Policy, *When Legal Worlds Overlap: Human Rights, State and Non-State Law* (Geneva, 2009), 43.

¹⁶ Robin Perry, "Balancing Rights or Building Rights? Reconciling the Right to Use Customary Systems of Law with Competing Human Rights in Pursuit of Indigenous Sovereignty," *Harvard Human Rights Journal* 24 (2011): 77.

¹⁷ Miranda Forsyth, *A Bird that Flies with Two Wings: The Kastom and State Justice Systems in Vanuatu* (Canberra: ANU E-Press, 2009), 36.

¹⁸ *Ibid.*, 36.

¹⁹ *Ibid.*, 36. See also Sally F. Moore, *Law as Process: An Anthropological Approach* (Boston: Routledge, 1978), 56.

²⁰ Sally F. Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," *Law & Society Review* 7, no. 4 (1972-1973): 744.

- ²¹ Danish Institute for Human Rights, *Informal Justice Systems: Charting a Course for Human Rights-based Engagement* (Copenhagen, 2012), 7.
- ²² Chase, *Law, Culture, and Ritual*, 115; Erika Harper, *Customary Justice: From Program Design to Impact Evaluation* (Rome: International Development Law Organization, 2011), 17.
- ²³ Eve Darian Smith, *Law and Societies in Global Contexts: Contemporary Approaches* (Cambridge: Cambridge University Press, 2013), 40.
- ²⁴ Moore and Myerhoff, *Secular Ritual*, 9.
- ²⁵ *Ibid.*, 7.
- ²⁶ Pery, “Balancing Rights,” 74; See also generally Darian-Smith, *Law and Societies*.
- ²⁷ Danish Institute for Human Rights, *Charting a Course*, 109–121.
- ²⁸ *Ibid.*, 90.
- ²⁹ *Ibid.*, 11.
- ³⁰ *Ibid.*, 15.
- ³¹ *Ibid.*, 295.
- ³² *Ibid.*, 94.
- ³³ *Ibid.*, 95.
- ³⁴ *Ibid.*
- ³⁵ *Ibid.*, 12.
- ³⁶ *Ibid.*
- ³⁷ *Ibid.*, 7; For an overview of the reasons that draw individuals towards customary justice systems see Erika Harper, *Working with Customary Justice Systems: Post-Conflict and Fragile States* (Rome: International Development Law Organization, 2011), 172.
- ³⁸ International Development Law Organization, *Accessing Justice: Models, Strategies and Best Practices on Women’s Empowerment* (Rome, 2012), 11–12.
- ³⁹ The study shows that customary justice is easier to access in rural areas than is the state system: *ibid.*, 16.
- ⁴⁰ The report explains that a study on women’s access to land rights in Kenya showed that women who resort to courts are seen to “undercut the man’s household role of ‘owner’ and ‘controller’, with respondents also calling it ‘insulting and disrespectful toward a husband and community’.” The study noted that women that have their rights recognized in the formal legal system can subsequently face threats of violence, altercations, beating and murder (*ibid.*). Another study carried out in East Timor found that 50 percent of respondents thought the formal system favored the rich whereas only 15 percent felt the same way about the informal system. Nine out of ten respondents were comfortable with solving a problem through the informal systems (*ibid.*, 15).
- ⁴¹ *Ibid.*, 16.
- ⁴² Human Rights Committee, *General Comment no. 28: Article 3, The Equality of Rights between Men and Women* (March 29, 2000), 68th session, UN Doc. HRI/GEN/1/Rev.9 (vol. I), para. 5.
- ⁴³ Danish Institute for Human Rights, *Charting a Course*, 98.
- ⁴⁴ Committee on the Elimination of Discrimination against Women, *Committee Concluding Comments of the Committee on the Elimination of Discrimination against Women: Namibia* (February 2, 2007), 37th session, UN Doc CEDAW/C/NAM/CO/3, paras. 16-17.
- ⁴⁵ Harper, *Working with Customary Justice Systems*, 175.
- ⁴⁶ IDLO, *Accessing Justice*, 18.
- ⁴⁷ *Ibid.*
- ⁴⁸ Bourdieu, “The Force of Law,” 827–828.
- ⁴⁹ IDLO, *Accessing Justice*, 18.
- ⁵⁰ *Ibid.*, 18.
- ⁵¹ *Ibid.*
- ⁵² *Ibid.*, 19.
- ⁵³ Danish Institute for Human Rights, *Charting a Course*, 55
- ⁵⁴ Chase, *Law, Culture, and Ritual*, 123.
- ⁵⁵ IDLO, *Accessing Justice*, 19: “Ignoring informal justice systems can result in dismissing one of the few and most probable entry points for enhancing such access.”
- ⁵⁶ Chase, *Law, Culture, and Ritual*, 129; Garfinkel, “Conditions of Successful Degradation Ceremonies,” 423.
- ⁵⁷ IDLO, *Accessing Justice*, 8.
- ⁵⁸ Chase, *Law, Culture, and Ritual*, 123.
- ⁵⁹ IDLO, *Accessing Justice*, 8.
- ⁶⁰ Harper, *Working with Customary Justice Systems*, 16. See also Sally F. Moore, “Treating Law as Knowledge: Telling Colonial Officers What to Say to Africans about Running ‘Their Own’ Native Courts,” *Law & Society* 26 (1992): 11–46.
- ⁶¹ IDLO, *Accessing Justice*, 20.
- ⁶² *Ibid.*, 22.
- ⁶³ *Ibid.*, 21.
- ⁶⁴ *Ibid.*, 13–14. See also Harper, *Customary Justice*, 102.
- ⁶⁵ IDLO, *Accessing Justice*, 26; See also Harper, *Customary Justice*, 102 for a summary of the outcomes of the initiative.
- ⁶⁶ See Douglas W. Bethlehem, “Attitudes, Social Attitudes, and Widespread Beliefs” in *The Social Psychological Study of Widespread Beliefs*, eds. Colin Fraser and George Gaskell (Oxford: Clarendon Press, 1990), 75.
- ⁶⁷ Gill Jagger, *Judith Butler: Sexual Politics, Social Change and the Power of the Performative* (Oxford: Routledge, 2008), 7.
- ⁶⁸ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990), 179.
- ⁶⁹ *Ibid.*, XV.
- ⁷⁰ *Ibid.*, 179; Jagger, *Sexual Politics*, 27.
- ⁷¹ Moore and Myerhoff, *Secular Ritual*, 7.
- ⁷² Jagger, *Sexual Politics*, 6.
- ⁷³ *Ibid.*, 6.
- ⁷⁴ *Ibid.*, 51.
- ⁷⁵ Judith Butler, “Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory,” *Theatre Journal* 40, no. 4 (1988): 530.
- ⁷⁶ Butler, *Gender Trouble*, 180.
- ⁷⁷ *Ibid.*, 179.
- ⁷⁸ Turner, “Process, System, and Symbol,” 69.
- ⁷⁹ *Ibid.*, 70.

⁸⁰ Jagger, *Sexual Politics*, 87.

⁸¹ Jeffrey C. Alexander “Cultural Pragmatics: Social Performance Between Ritual and Strategy” in *Social Performance: Symbolic Action, Cultural Pragmatics, and Rituals*, eds. Jeffrey C. Alexander, Bernhard Giesen and Jason L. Mast (Cambridge: Cambridge University Press), 2006), 38, 55.

⁸² *Ibid.*, 59.

⁸³ IDLO, *Accessing Justice*, 26.

⁸⁴ *Ibid.*, 32–33.

⁸⁵ *Ibid.*, 27.

⁸⁶ *Ibid.*, 30.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*, 29.

⁸⁹ *Ibid.*, 100.

⁹⁰ *Ibid.*, 34.

⁹¹ *Ibid.*, 39.

⁹² *Ibid.*, 38.

⁹³ *Ibid.*

⁹⁴ Jagger, *Sexual Politics*, 34.

⁹⁵ *Ibid.*, 78.

⁹⁶ See Alexander, “Cultural Pragmatics,” 66.

⁹⁷ Danish Institute for Human Rights, *Charting a Course*, 7.