

RESEARCH ARTICLE

Street Hawking or Street Walking in Dahomey?: Debates about Girls' Sexual Assaults in Colonial Tribunals, 1924–41

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Abstract

Between the judicial reorganizations of 1924 and 1941, the colonial tribunals in Dahomey heard more than two hundred cases of rape. Teenage or younger girls engaged in street hawking were the most common victims of rape who reported their assaults to these tribunals. Many of the cases stand out because market women played the dominant role in transforming girl hawkers' experiences of sexual assault into formal grievances. The history of sexual assault in colonial Africa has largely focused on how 'customary' and colonial courts have or have not punished the crime of rape. This approach privileges masculine authorities' views of sex, consent, and gender violence. This article focuses on the investigative processes in cases of sexual assault. In doing so, two gendered histories emerge: firstly, a history of elder female caregiving to girls suffering the aftereffects of sexual assaults and, secondly, a history of the vulnerability of hawkers to quotidian sexual violence.

Keywords: Benin; West Africa; sexuality; law; colonial administration; youth; gender

'The attitude of the young girl leaves me to think that she is lying', pronounced Commandant Laure, the president of the criminal tribunal of Abomey in the French colony of Dahomey, the modern-day Republic of Bénin in West Africa. In the 1937 indictment wherein Laure made this remark, he referred to Philomèle, the fourteen-year-old accuser, as the 'supposed victim' of rape.¹ This was perhaps the most explicit acknowledgement of the colonial legal system's skepticism of girls' testimonies about their lived experiences, but it was not atypical or unusual for tribunals to attach disbelief to a girl in her capacity to act as a witness, a victim, or an accuser.² In colonial tribunals throughout Africa, girls encountered colonial officials who made no assumptions about their sexual innocence or childish naiveté regardless of their young ages. Admittedly, this disbelief was not always so egregiously evident, but it was there. Both the French and Dahomean men who staffed the colonial tribunals approached accusations of rape with a shared *a priori* doubt that could transform any word, action, or non-reaction of the girl during her deposition into suspicion that resulted in dismissal of the case or acquittal of the accused.³ In Dahomey, the types of questions members of the tribunal asked, the judgements tribunals rendered, as well as the refusal of the tribunals to

¹Archives Nationales du Bénin, Porto-Novo (ANB) 1M171, Laure, 'Réquisitoire n. 66 (1937): Affaire Adama Samuel', Tribunal colonial d'appel de Dahomey, 17 Sep. 1937.

²In South African colonial courts, British colonial authorities similarly operated on the presumption that girls and women lied about their sexual experiences, see E. Thornberry, *Colonizing Consent: Rape and Governance in South Africa's Eastern Cape*, (Cambridge, 2019), 162 and 186.

³For the role of a priori doubt in rape cases heard in French tribunals, see G. Vigarolo, *A History of Rape: Sexual Violence in France from the 16th to the 20th Century*, trans. J. Birrell (Cambridge, 2001), 3, 45, 139–40.

render any sort of judgement made these men's skepticism clear. In a preponderance of cases, accused perpetrators were neither condemned, nor acquitted. The complaints of rape languished with no action taken whatsoever.

In Dahomey, girl hawkers, or ambulant salesgirls who balanced goods on their heads to sell everyday items in the streets and marketplaces of West Africa, represented the largest identifiable group of victims of rape who took their cases to colonial tribunals to adjudicate. These girls needed an adult ally to formally lodge an oral or written complaint with the authorities. In the case of Philomèle, her mother supported her accusation, went to the colonial administrator, and conveyed an oral complaint. In relatively few instances these supporters were girls' biological mothers. It was more common for the girls' foster mothers to act as the plaintiff. Many Dahomean girls spent their childhood from the ages of approximately seven to fourteen entrusted to a foster mother, whom the girl's parents carefully selected to rear, nurture, and discipline their daughter. The entrusted girl lived with and worked for her foster mother.⁴ By the 1930s, the entrusting of girls had become a fundamental part of the colonial household, economy, and society. Rape cases presented some of the most detailed information about the caretaking roles that these women took on as guardians.

The scholarship on sex crimes in colonial West Africa to date has concentrated on official and popular anxieties about rape rather than the real-life experiences of girls and women to this trauma. The stereotype that hawkers were actually sex workers trained to do so by the market women they apprenticed became the dominant and assumed narrative frame for accusations of rape. The sensationalized newspaper coverage in Lagos, Nigeria of select cases of sexual violence along with elite women's prominent activism in that colonial city has of late been the focus of innovative scholarship.⁵ Lagos though was relatively unique in these regards. Newspapers remained silent about rape in Dahomey.⁶ Elite female activism, such as that found in the British crown colony of Lagos, struggled to develop in French Dahomey.⁷ In Porto-Novo, despite its proximity to Lagos, no highly

⁴The two foundational theoretical works on child circulation are E. Goody, *Parenthood and Social Reproduction: Fostering and Occupational Roles in West Africa* (Cambridge, 1982); S. Lallemand, *La circulation des enfants en société traditionnelle: prêt, don, échange* (Paris, 1993). For a detailed analytical engagement contrasting the two schools of thought that these two scholars represent, see E. Alber, 'The transfer of belonging: theories on child fostering in West Africa reviewed', in E. Alber, J. Martin, and C. Notermans (eds.), *Child Fostering in West Africa: New Perspectives on Theory and Practice* (Leiden, 2013), 79–107. Alber has written extensively on Baatombu fostering in northern Benin, see E. Alber, *Transfers of Belonging: Child Fostering in West Africa in the 20th Century* (Boston, 2018); E. Alber, 'No school without foster families in northern Benin: a social historical approach', in *Parenting After the Century of the Child* (Burlington, 2010), 57–78; E. Alber, 'Denying biological parenthood: fosterage in northern Benin', *Ethnos*, 68: 4 (2003), 487–506; E. Alber and J. Sommer, 'Quand l'application du droit national est déterminée par la demande locale', *Cahiers d'études africaines*, 44:175 (2004), 659–80. For more information about the phenomenon of child entrustment in Africa more broadly, see E. Razy and M. Rodet (eds.), *Children on the Move in Africa: Past and Present Experiences of Migration* (Suffolk, 2016); N. Argenti, 'Things that don't come by the road: folktales, fosterage, and memories of slavery in the Cameroon grassfields', *Comparative Studies in Society and History*, 52:02 (2010), 224–54; P. M. Shipton, *The Nature of Entrustment: Intimacy, Exchange, and the Sacred in Africa*, (New Haven, 2007); M. Deshusses, 'Du coniage à l'esclavage 'Petites bonnes' ivoiriennes en France (The 'misfortunes' of fosterage in France: the case of 'little maids' from the Ivory Coast)', *Cahiers d'Études Africaines*, 45:179/180 (2005), 731–50; M. Etienne, 'Maternité sociale, rapports d'adoption et pouvoir des femmes chez les Baoulé (Côte d'Ivoire)', *L'Homme*, 19:3–4 (1979), 63–107.

⁵A. George, *Making Modern Girls: A History of Girlhood, Labor, and Social Development in Colonial Lagos* (Athens, OH, 2014); S. Aderinto, *When Sex Threatened the State: Illicit Sexuality, Nationalism, and Politics in Colonial Nigeria, 1900–1958* (Urbana, 2015). While not directly addressing sex crimes, Kristin Mann's scholarship on marriage in colonial Lagos also gives insight into the formation of female activist groups and their agendas, see K. Mann, *Marrying Well: Marriage, Status, and Social Change among the Educated Elite in Colonial Lagos* (Cambridge, 1985).

⁶The ANB no longer has copies of colonial era newspapers that circulate. I was informed in 2013–4 that they had crumbled to 'dust' over the years. I have consulted all available newspapers published in Dahomey prior to the Second World War available either through Gallica, the platform for digitized archival material in the Archives nationales de France, and those available in printed form at the Archives nationales d'outre-mer in Aix-en-Provence, France.

⁷I suspect that this had to do with the contrasting histories of female education and professional opportunities available to women in Lagos, Nigeria and Dahomey. Once educated in Dakar, Senegal or metropolitan France, West African women rarely resettled in their natal colonies. Educated women, and some men for that matter, often spent their careers stationed

influential group of Western-educated African female activists formed to campaign against illicit sexuality.⁸ Female engagement in Dahomean social issues adopted different methods from their contemporaries in Lagos. Uneducated, market women in Dahomey expressed their activism through their support for individual girl's attempts to seek redress for sexual assaults in colonial legal venues. The agenda of these women differed from their more formally educated peers in Lagos, they did not want to modernize girlhood norms. Rather, they demanded the colonial state enforce traditional safeguards to ensure the security of girl hawkers in colonial streets and marketplaces.⁹

This article examines hawkers' narratives of sexual assault and their reception by both market women and the men of colonial tribunals from 1924 to 1940. It analyzes cases in the periods preceding and following the pivotal 3 December 1931 reorganization of the judicial system, which took effect in April 1932. It begins with the previous 22 March 1924 reorganization and ends when the 11 February 1941 reorganization took effect. The 1930s witnessed the most dramatic official shift in chiefly legal responsibilities in French West Africa since the establishment of colonial rule in the late nineteenth century. As late as 1930, Inspector Demaret remarked that chiefs had no 'real' power.¹⁰ The 3 December 1931 decree institutionalized a reversal of official policy concerning chiefs' place within the colonial legal structures. Article 3 of the decree emphatically stated this reorientation, 'The European and indigenous members of jurisdiction have, always and in every matter a deliberative voice'.¹¹ This included a recognition of parity among French and indigenous assessors in the newly created criminal tribunals, which radically transformed a foundational element of the colonial legal system. Since the system's founding in 1903, the colonial legal system had not trusted traditional authorities with the responsibility of participating in the prosecution and judgement of felony crimes. The legal records show that after 1931 chiefs embraced their new responsibility and actively used their authority to transform juridical norms in Dahomey. The 1931 decree augmented the authority of indigenous personnel in the criminal tribunals that heard rape cases and changed the jurisdiction of the cases. These two procedural reforms had profound effects on the outcomes of rape cases. These changes increased the hostility women faced, but they continued to steadfastly demand the intervention of the colonial legal system. Through contrasting the period 1924 to 1931 and 1932 to 1940, the significance of the 3 December 1931 decree on both juridical thinking and penal practice becomes clear.

The judicial records of the National Archives of Benin contain more than two hundred cases of rape for this period.¹² This article considers in detail a subset of these cases involving victims raped while engaging in street hawking. It focuses on the investigative processes in rape cases in colonial Dahomey, rather than emphasizing the outcomes of the cases, in order to place girls' narrations of sexual assault at the center of the analysis. The rituals of legal processes limited girls' voices and obscured their testimonies.¹³ The *procès-verbal*, or recorded statements produced during the district commandants' investigations of written or oral statements of complaint, contained rare first-hand accounts of normal activities during girlhood, which the assault disrupted. The *procès-verbal* of

in far-flung colonies with frequent relocations. See P. Barthélémy, *Africaines et diplômées à l'époque coloniale, 1918-1957* (Rennes, 2010).

⁸Aderinto does not compare Dahomey to Lagos, but he makes this point in regard to Lagos's uniqueness. Aderinto, *When*, 11.

⁹Markets and streets in precolonial Dahomey had been heavily policed and were reputed to be among the safest in West Africa.

¹⁰Demaret's comments are quoted in B. Brunet-La Roche, "Crime et châtement" aux colonies: poursuivre, juger, sanctionner au Dahomey de 1894 à 1945' (unpublished PhD thesis, Université Toulouse II, 2013), 228–9.

¹¹Brévié, '151 A. P. Arrêté promulguant en Afrique occidentale française le décret du 3 décembre 1931, réorganisant la Justice indigène en Afrique occidentale française', *Journal officiel de l'Afrique occidentale française*, 6 Feb. 1932, 125–34.

¹²In 2013–14 and 2018, I systematically photographed all legal documents containing information related to sex crimes in Dahomey. These were contained in the 1M and 2M series at the Archives Nationales du Bénin and 3M, 8G, and 5C in the Archives du Sénégal.

¹³For a more detailed analysis of legal rituals, see E. Craig, 'The Inhospitable Court', *University of Toronto Law Journal*, 66 (2016), 199–202.

market women revealed the caregiving side of the entrustment relationship. Their testimonies emphasized how guardians monitored the well-being of girls in their care. Market women, perhaps due to their own or their friends' experiences hawking during girlhood, believed girls' narratives of assault and aggressively sought the prosecution of their employees' rapists.

Defining the crime of rape in French Colonial Dahomey

Early twentieth century traditions credited King Ouègbadja, the founding monarch of the kingdom of Dahomey, with making rape a capital crime in the early to mid-seventeenth century.¹⁴ Colonial Dahomeans widely believed that their ancestors had long recognized rape as a grave offense. How exactly seventeenth-century Dahomeans defined rape though remains unclear. Auguste Le Hérisssé, a colonial administrator and amateur ethnographer stationed in Dahomey from 1903 to 1914, recorded the earliest Dahomean definition of rape. In his 1911 ethnography, he stated, 'The Dahomeans do not distinguish from the point of view of wrongdoing, attempted rape from consummated rape, when the victim is a child. On the other hand, Dahomeans believed it impossible for a woman or a pubescent girl to be raped'.¹⁵ This definition reflected a common understanding of rape shared by Dahomean and French societies. Historically in the seventeenth and eighteenth century, France recognized rape as having degrees of gravity based on the age of the assaulted girl or woman. Both cultures popularly agreed that adult women could only be raped in exceptional circumstances.¹⁶

Viol is the French term commonly translated into English as the crime of rape. During the early twentieth century in the colony of Dahomey, this singular term encompassed a host of forms of sexual violence. Official and popular colonial understandings of sexual violence redefined *viol* and gradually distinguished it from other forms of sexual violence.¹⁷ The 10 November 1903 decree created a native court system in French West Africa, but it did not give any guidance about the definition or jurisdiction of rape in colonial tribunals.¹⁸ The judicial reorganizations of 1912 and 1924 reinscribed this reticence to specify policies and allowed tribunals of all levels great latitude in amorously defining rape and other sex crimes. Individual personnel of the tribunals made decisions regarding the classification of sex crimes and their proper jurisdiction rather than any overarching judicial guidance coming from a central authority. This created an unpredictable, anarchic environment in which women and girls reported these assaults.

During the years between 1924 and 1931, colonial authorities debated the proper jurisdiction of rape cases within the colonial legal structure. At this time, both first- and second-degree criminal tribunals prosecuted rape cases. Judicial officials repeatedly opined the ambiguity of article 22 of the 1924 decree, which outlined what crimes remained the exclusive jurisdiction of the higher, European-dominated second-degree tribunal. Article 22 of the 1924 decree omitted rape and left it by default to lower-level African courts to prosecute. Individuals, such as the district commandant of Allada, a town in the plateau region of southern Dahomey, justified including rape in the second-degree tribunal's jurisdiction. Indigenous custom, he said, considered rape a serious enough crime

¹⁴None of the seventeenth or eighteenth century European visitors to the Kingdom of Dahomey confirmed this twentieth-century tradition regarding the punishment of rape. M. J. Herskovits, *Dahomey: An Ancient West African Kingdom, Volume I* (New York, 1938), 87–8 and 290. In his mid-nineteenth-century ethnography of the precolonial kingdom of Dahomey, Forbes does not include rape in his list of capital crimes, F. E. Forbes, *Dahomey and the Dahomans: being the journals of two missions of the king of Dahomey in the years 1849 and 1850, Volume I* (London, 1851), 26–7.

¹⁵A. Le Hérisssé, *L'ancien royaume du Dahomey: Moeurs, religion, histoire* (Paris, 1911), 76–7.

¹⁶It is possible that his interrogation of his informants created a feedback loop that simply solicited confirmation of his own definition, but nothing in either the precolonial or colonial documents leads me to believe this. Vigarello, *A History*, 13, 93, and 201.

¹⁷D. Lett et al., 'Éditorial: les violences sexuelles au coeur de l'intime', *Clio. Femmes, Genre, Histoire*, 52 (2020), 1.

¹⁸See article 5 of A. LeBrun and A. Briand, 'Décret portant réorganisation de la justice indigène en Afrique occidentale française', *Journal Officiel de La République Française*, 44:227 (1912), 7586–9.

Table 1. Cases of Rape as the Exclusive Charge

Dates	1913–23		1924–31		1932–40	
	#	per cent	#	per cent	#	per cent
Convicted	14	82.4 per cent	57	78.1 per cent	38	28.1 per cent
Acquitted	0	0 per cent	9	12.3 per cent	14	10.4 per cent
Outcome unclear	3	17.6 per cent	5	6.8 per cent	48	35.6 per cent
Reduced to a lesser charge	0	0 per cent	1	1.4 per cent	15	11.1 per cent
No charges	0	0 per cent	1	1.4 per cent	20	14.8 per cent
Total cases	17	100 per cent	73	100 per cent	135	100 per cent

Source: Archives Nationales du Benin, series 1M and 2M, and Archives du Senegal, series 3M

to warrant including it within the second-degree tribunals' purview despite the vagueness of article 22 of the 1924 decree on the subject. The commandant conceded that misdemeanor sexual assault was rightly a matter for the lower-level, indigenous-led courts. He believed that rape, however, along with felony-level indecent assault, should be handled by the French-controlled tribunals.¹⁹ Neither French nor Dahomean staff of the native tribunals had any formal legal training and relied on popular and customary understandings of crimes unless the judicial decrees gave them further direction.

Colonial officials finally provided concrete jurisdictional and procedural norms for rape cases in article 46 of the 3 December 1931 judicial reorganization. Henceforth, rape was considered exclusively a felony charge. This classification made rape the only sex crime defined as beyond the capacity of first-degree tribunals.²⁰ Elevating rape to a felony charge forced authorities to articulate why rape warranted this more severe classification. After 1931, the increased role of indigenous assessors in the criminal tribunal allowed them to contribute opinions about what criteria should determine when a sexual assault was a felony, a lesser misdemeanor, or a non-prosecutable offense.

The judicial records of the National Archives of Benin contained two hundred and twenty-five cases of *viol simple* or cases where the exclusive charge was rape. The data presented in Table 1 does not include rape accompanied by other charges, such as murder or assault and battery. It also excludes sex crimes categorized as indecent assaults by colonial officials that might today be considered rape or attempted rape in many societies. Table 1 divides the available quantitative data on rape cases preserved in the colonial archives of Dahomey by the dates of the judicial reorganizations of 1912, 1924, and 1932.²¹ The data for the period prior to 1924 seems to be haphazardly preserved and many of the documents that remain are in such a poor state that they are virtually impossible to read. The extremely small size of data for this era, only seventeen cases, also makes these records problematic. The main conclusion to be drawn from them is that the overburdened and overstretched colonial officials almost certainly had other concerns at this time that they deemed more pressing, such as pacifying the colony and forcing Dahomeans to submit to French authority. Cases of rape that neither resulted in murder nor serious injury caused by battery were largely disregarded or categorized as indecent assault and left to village chiefs to settle. Another notable limitation of the data from 1913 until 1924 was that colonial officials appeared to have only

¹⁹ANB 1M113, Commandant de cercle d'Allada, 'n. 1092', 9 May 1931. In the colonial setting, indecent assault often became the default crime for attempted rape or forcible sex perpetrated against female bodies that the tribunal deemed could not be raped, such as adult women or pubescent girls. In 1810, French magistrates invented the crime of '*attentat à la pudeur*', or indecent assault, as an alternative category of sex crime distinguishable from *viol*/rape. For a discussion of how rape and indecent assault overlapped and defined one another in opposition in the history of French tribunals, see Vigarello, *A History*, 105, 115–21 and 142–5.

²⁰See article 19 in the 1912 decree, article 22 in the 1924, and article 46 in the 1931. A. LeBrun and A. Briand, 'Décret', 7586–89; A. Millerand, 'Arrêté promulguant en Afrique occidentale française le décret du 22 mars 1924, réorganisant la Justice indigène en Afrique occidentale française', *Journal officiel de l'Afrique occidentale française*, 20:1026 (1924), 398–406; Brévié, '151 A. P. Arrêté', *Journal officiel de l'Afrique occidentale française*, 6 Feb. 1932, 125–34.

²¹Even though the 1931 decree was issued in December of that year, it was not actively applied until April 1932.

recorded, or perhaps even only prosecuted, cases that had irrefutable evidence to prove the crime of rape. The seventeen accusations of rape from this period resulted in fourteen convictions, no acquittals, and three that have unclear outcomes in the remaining documentation. Ostensibly, authorities anticipated the outcome before they even compiled the judicial dossiers. This form of censorship skewed the data and limits the information that it can tell historians.

The volume of court data increased after each of the next two reorganizations in 1924 and 1931. There was a dramatic rise in the number of cases where the charge of rape was the exclusive charge considered in colonial tribunals for the seven-year period from 1924 to 1931 and again for the eight-year period from 1932 to 1940. For the years 1924 to 1931, colonial tribunals judged 73 cases of rape. For the period from 1932 to 1940, a roughly similar length of time, cases of rape almost doubled with juridical authorities investigating 135 cases of rape. This exponential growth in the volume of cases did not necessarily indicate an increase in the frequency of sexual violence or its reporting; rather it might reflect changes in record keeping on the part of colonial judicial structures and their archives. Archives have not preserved many of the cases from the earlier period in which the tribunal never issued a definitive judgement. For the period 1924 to 1931, only 9.6 per cent or a total of 7 cases have an unclear outcome, a reduction to a lesser charge, or no charge at all, whereas, from 1932 to 1940, 61.5 per cent (or 83 cases) fall in these categories, which more than accounts for the increased volume between the two eras. From 1924 to 1931, judicial authorities seemingly waited to formally record their initial investigations until they felt confident the case had sufficient evidence to issue a judgment.

The most dramatic change between the period 1924–31 and 1932–40 was the decline in the conviction rate. [Table 1](#) shows that the conviction rate declined from 71 per cent of rape cases to 21 per cent while the acquittal rate hovered just above 10 per cent. Despite the case total being twice as many in 1932–40 as the 1924–31 period, the absolute number of convictions declined from 57 to 38, a 33 per cent decline. Admittedly the outcomes of 48 cases remained unclear; however, the annual statistics submitted to the federation level tribunal charged with the oversight of native courts indicated that the vast majority of these were not convictions or acquittals. Most of these 48 cases remained undecided with no formal judgement issued. The 1931 decree's major procedural change that affected these outcomes was the granting of Dahomean assessors a deliberative voice in criminal tribunals. Transforming the crime of rape to a felony crime further intensified the effect that this change had on outcomes.

In their deliberations, French and Dahomean authorities drew upon popularly agreed upon and historically rooted criterion that their two cultures shared to distinguish felony rape from other forms of violence. The standards that they decided on had nothing to do with the degree of physical harm inflicted or the assessed heinousness of the sex crime itself. French and Dahomean men agreed that the perceived degree of immaturity of the victim, as exhibited in physiology and embodied evidence, determined the level of harm that sexual assault inflicted. [Table 2](#) shows that the demographic profile of the victims of rape who went to colonial authorities for redress remained remarkably consistent during the colonial era with less than a year difference in the mean average of any period and a year and a half difference in the median average. The mode for the periods with sufficient volume of evidence remained consistently eight years of age. The vast majority of victims throughout the colonial era were aged less than fifteen years of age. The choice to seek recourse in

Table 2. Average age of victims of rape

	1913–23	1924–31	1932–40
Mean	11.4 years	12.48 years	11.38 years
Median	11.5 years	10 years	10 years
Mode	6, 10, 12 years	8 years	8 years
Victim of rape under 15 years of age	80.0 per cent	73.5 per cent	80.0 per cent

Source: Archives Nationales du Benin, series 1M and 2M, and Archives du Senegal, series 3M

colonial tribunals for rape was remarkably consistent in one particular regard: the average age of the victim.²²

Notes about customary punishments recorded in registers give further indication of indigenous elites' views of how the age of the victim defined the gravity of a sexual assault. In August 1933, the criminal tribunal in Allada justified how it calculated sentences of imprisonment for those convicted of rape. The tribunal noted, "The local custom punishes rape committed on a young girl aged five to eight years old...with the beheading of the offender; but from above eight years of age until puberty [the punishment is] imprisonment in the royal jail for a time up to a life sentence depending on the circumstances and the state of the victim".²³ This sheds light on why the mode age was eight. Birth registries did not exist in Dahomey and only a small percentage of the population had their birth years recorded in Catholic baptismal records. Judicial authorities assigned ages based on perceptions and rough estimates of age. Any Dahomean assessors who agreed with the Allada tribunals' assessment of customary rape, meant that the designation of eight years of age was important as a reflection of the seriousness of the crime.

Consent was completely absent from these colonial debates. There is no evidence that Dahomean authorities in either the precolonial or colonial era ever conceived of rape as non-consensual sex. Rape, according to them, was a sexual act that *vodun* taboos deemed as illicit, such as when the victim was too young or was an adult woman who was pregnant.²⁴ French judicial norms attached the consent criterion to rape in the mid-nineteenth century, but it remained largely disregarded due to the *a priori* doubt attached to women's testimonies.²⁵ Consent or non-consent did not define the crime of rape in French colonial tribunals in Dahomey.

Colonial Dahomey was part of the global history that fiercely condemned rape, but little punished this pervasive crime.²⁶ Dahomeans and French societies attached special significance to the crime of rape when perpetrated against an immature victim. Dahomean men could act with greater impunity when in the years following the 1931 decree, convictions for rape plummeted. The ways in which tribunals enacted the 1931 decree in Dahomey sanctioned men's use of extreme, violent forms of sexual coercion, nullifying girls or women's resistance and consent.²⁷

Dahomeans and colonial legal pluralism

Cases heard within colonial courts contained limited information regarding why individuals opted to go to the district commandant and lodge a complaint when they did.²⁸ Dahomeans chose when they preferred to engage, or alternatively to avoid, the colonial legal system. It was a complex decision that included a calculation of the anticipated outcome based on the substantive and procedural norms of each possible venue as well as known precedents.²⁹ Dahomeans frequently sought alternatives to the colonial courts because they perceived these substitutes as advantageous or more

²²It is difficult to assess if this had to do with male gatekeeping by those who recorded the complaints and assigned them a French criminal category or if this reflected Dahomean women's internalization of this particular definition of rape.

²³ANB 1M94, Tribunal Criminel d'Allada, 'État des affaires criminelles du tribunal criminel d'Allada: Jugement n. 1 Akpime – viol', 16 Aug. 1933.

²⁴The age taboo has been discussed in this article. For a more in-depth discussion of Dahomean norms of sexual maturation, see J. Reuther, 'Irresponsible boys, promiscuous girls: maturity, gender, and rape myths in the criminal tribunals of colonial Dahomey, 1924-1940', *La Revue d'histoire de l'enfance Irrégulière*, 20 (2018). The taboo against sex — consensual or not — with a pregnant woman was made clear in the well-documented rape case against Epiphane Agbo, see Archives du Sénégal, Dakar (AS) 8G26 (17), Tribunal d'Athiémé, 'Extrait du registre des jugements du Tribunal d'Athiémé: Jugement n. 1 Affaire Epiphane AGBO', 16 Feb. 1937.

²⁵Vigarello, *A History*, 134–45.

²⁶Lett et al., 'Éditorial'.

²⁷Thornberry makes a similar point based on British colonial law courts in South Africa. E. Thornberry, 'Virginity testing, history, and the nostalgia for custom in contemporary South Africa', *African Studies Review*, 58:3 (2015), 162.

²⁸Brunet-La Ruche, "'Crime et châtement'", 509–48.

²⁹R. Roberts, *Litigants and Households: African Disputes and Colonial Courts in the French Soudan, 1895-1912* (Portsmouth, NH, 2005), 16–18.

convenient. Witnesses' comments in colonial courts suggested that households turned to these officially sanctioned legal forums only after other means of dispute resolution failed or produced unsatisfactory results. Colonial courts documented that male Dahomean guardians tried to privately settle sexual assaults out of court.

In the cases that included information concerning Dahomeans' venue shopping among legal forums, overwhelmingly they involved male relatives of girls, generally a father of a rape victim. Some families acknowledged that they had tried to reconcile matters privately before seeking redress in colonial tribunals.³⁰ For example, ten-year-old Kinhodé walked around her neighborhood on 18 November 1932, selling oranges for one *sou* each.³¹ Between one and two p.m. she entered her neighbor's house, where one of the sons, Awandjinou Sogbossi, bought an orange from her. While there, Sogbossi threw her on his bed and raped her. When she returned home a few hours later, she was still bleeding and told her older sister what had happened.³² A week elapsed before Kinhodé's father Dossou approached the chief of police in Ouidah. During this week, the two sets of parents took charge of the affair. Sogbossi's mother pleaded with Dossou to settle the matter out of court. The two sets of parents agreed that no formal complaint would be lodged if Sogbossi came before Kinhodé's entire lineage and admitted his crime. Sogbossi refused to do so.³³ Only after this failed negotiation did Kinhodé's family go to the colonial authorities. Kinhodé's residence in the paternal home made this private settlement between lineages possible. Likely, Dossou feared the long-term repercussions of taking his neighbors to the colonial tribunal before other venues of negotiation had been exhausted. When the families of the sexually assaulted girl and the rapist had long-standing and close ties to one another, they were more motivated to reach an agreed upon settlement out of court in order to preserve the existing relationship with minimal disruption.

Accused men tried to dissuade girls, their guardians, or their parents from formally lodging complaints with colonial administrators. Some of the plaintiffs and victims frankly mentioned attempts by the accused to bribe village authorities, guardians, and the girls themselves. One accused rapist named Jean offered a six-year-old girl's father fifteen francs to keep him quiet after a doctor's examination confirmed the girl's rape. Further compounding matters in this case, the examination also revealed that through the rape the girl had contracted a sexually transmitted disease.³⁴ The extreme youthfulness of the victim and the infection prompted the family to reject a private settlement and seek harsher penalties along with a public condemnation of Jean. The publicness of the condemnation may have been important because Jean was a mason who had been invited by the girl's father into the house to complete some repairs. Jean took advantage of his access to the household and raped the girl during a break in the course of his work.³⁵ All of these factors — the girl's age, the sexually transmitted disease, and the location of the rape — contributed to the father's decision to go to the colonial tribunal.

The dynamics of the decision-making process for a rape victim living in her father's home followed a different path than that of a girl entrusted to a market woman. Girls' fathers sought out local political leaders for advice on how to denounce their daughters' rapists; rarely do female guardians mention their attempts at alternative venues of dispute resolution. Seemingly, extralegal private resolutions were a male domain. Women and girls in Dahomean society were resource poor

³⁰Letters of complaint and oral statements of complaint made clear that Dahomeans did not think of colonial courts as their first avenue of recourse. For an example of a detailed discussion of multiple failed attempts to resolve a dispute over an entrusted girl out of court, see ANB 1M99, letter from Madame Yovonon to commandant le cercle de Porto-Novo, 12 May 1932. The administrator noted that he settled it out of court with no official legal process even opened.

³¹*Sou* was a bronze coin in the French currency equal to five centimes or .05 franc.

³²ANB 1M139, H. Ravet, 'Procès-verbal: n. 222 Viol - Affaire Kinhodé ... c/ Awandjinou Sogbossi', 25 Nov. 1932.

³³ANB 1M139, illegible, 'Requisitions: Affaire AWANDJINO Sogbossi', 11 Jan. 1933.

³⁴ANB 1M4, 'État des jugements rendus en matière répressive: Jugement n. 16 du 28/9/1928,' 30 Sep. 1928.

³⁵*Ibid.*

and time-constrained, but they still regularly chose to accuse rapists within tribunals. Formal litigation consumed time, energy, and, indirectly, money from those who chose to plead their cases in colonial legal forums.³⁶ These barriers make it even more surprising that market women seemed to frequently prefer to adjudicate these matters in colonial tribunals. The pronounced overrepresentation of girl hawkers and their female guardians in cases of sexual assault indicated that these women had less access to other avenues of redress or perceived these alternatives as less advantageous. The household dynamics of colonial-era entrustment arrangements made negotiations with male lineage heads unattractive to market women. If a woman asked her male household head, normally a husband or son, to negotiate the redress for a young, female dependent's sexual assault, she would have ceded some of her authority over the girl to this male figure. Women justified their access to entrusted girls' labor because they accepted responsibility for their care, including prosecuting those who abused the girls entrusted to them. Through asserting their exclusive responsibility for entrusted girls, they reified their independent power over junior female dependents. Some groups of Dahomeans, namely girls' fathers, seemed to have preferred to at least attempt to resolve the matter in a sub-judicial setting. Despite the limitations of colonial legal records, the prevalence of women as plaintiffs for girl hawkers in rape cases from colonial Dahomey suggests that female guardians of hawkers believed other mediational domains were unavailable or hostile to them.

'Until she bathed in the light of day': market women's discoveries of the sexual assault of hawkers during the 1920s

Sexual assaults occurred in the course of normal days for hawkers in southern Dahomey. Details varied from case to case, but narratives submitted to courts consistently started with a hawker recounting a typical transaction. Girls searched the streets for buyers with their mistresses' wares balanced on their heads. As they walked, they cried out the price and quality of their goods. When a girl encountered an interested party, she lowered the tray from atop her head so that her customers could better examine the product she offered them. Then, after a price negotiation between the hawker and her customer ensued, she measured the product and collected the agreed upon payment. As long as hawkers remained in groups or on busy streets during these exchanges, they were relatively safe. The danger increased when prospective customers asked girls to enter private compounds in order to inspect the merchandise more leisurely, find a container to hold it, or search for money.³⁷ Girls worked until they sold all of their allotted goods, which motivated them to pursue every interested buyer. They feared punishment if they returned home to their mistresses without the anticipated profit. Given the highly competitive nature of hawking, girls either ignored concerns about their own personal safety in order to make a sale or did not anticipate the danger.³⁸

Some Dahomean girls testified that they had refused to enter the residences of their attackers. These girls were painfully aware of the danger, yet in the end, their attackers overpowered them, forced them inside, and assaulted them. In one such instance on 1 June 1929, Stanislas Amoussouvi invited eight-year-old Akouéle into his house in Athiémé, a town along the Mono

³⁶D. H. Dwyer, 'Outside the courts: extra-legal strategies for subordinating women', in M. J. Hay and M. Wright (eds.), *African Women & the Law: Historical Perspectives, Papers on Africa, Volume VII* (Boston, 1982), 93. She raises these points in general, not specifically in the context of colonial era Africa or Dahomey/Bénin.

³⁷Judicial documents attest to all these commonplace scenarios. Also, little technological innovation has encroached on the hawking profession and today the general dynamics of these encounters and exchanges remain much the same. While living in Benin in 2013–14, I witnessed and participated in such exchanges.

³⁸George, with the help of Wale Makanjuola, surveyed 46 current and former septuagenarian women traders who recalled that while they were hawkers in Lagos during the 1940s and 1950s, the chief danger that they feared was of being robbed of their goods or money. George acknowledged that the fear of sexual violence may have been downplayed due to these women's reluctance to discuss issues of sexuality or sexual violence with Mr. Makanjuola. George, *Making*, 124–7.

River in southwestern Dahomey. He told her that he needed to find a plate for the meal he had purchased from her. Akouéle declined to enter the residence. Amoussovi then shoved a handkerchief in her mouth, dragged her inside, held her down, and raped her. After threatening her, he paid her for his meal and allowed her to leave. Akouéle, like many other hawkers who were sexually assaulted, returned directly to the street to finish selling the remaining food prior to returning to her mistress's home. The next morning, she woke up with abdominal pain, yet she remained silent about the attack for several weeks.³⁹

Girl hawkers often chose not to speak about sexual assaults that occurred in the course of their work, but the intimate proximity in which they lived with other members of the household commonly prevented them from concealing the assault entirely. In the days following sexual assaults, women detected the trauma on girls' bodies. When women in the compound observed bruises, abrasions, inflammation of the labia, abnormal genital secretions, symptoms of sexually transmitted diseases, or other signs of discomfort on the bodies of girl hawkers, they could no longer remain silent about their traumatic experiences. Girls revealed, intentionally or not, these sorts of symptoms on their most intimate body parts to women when they bathed together. When Akouéle 'bathed in the light of day' with Alougba, a sixteen-year-old friend and coworker, her friend saw the physical evidence of the sexual assault on Akouéle's young body in the form of purulent secretions on her sexual organs. The older girl then proceeded to notify Ahoussi, the two girls' mistress. Ahoussi instructed Alougba to take Akouéle to a nurse. Akouéle refused to explain the cause of her maladies to the nurse. Only when Ahoussi questioned her after the visit to the nurse did Akouéle reveal that a customer had assaulted her.⁴⁰ Ahoussi then took Akouéle to the district commandant and filed the complaint of rape on her behalf on 19 June 1929, eighteen days after the crime.⁴¹ Market women, such as Ahoussi, transformed sexual assaults into grievances that they formally articulated to the colonial administration. They assigned meaning to girls' experiences and in the process named the crime, blamed the assailant, and then claimed wrongdoing on behalf of the girl.⁴²

Women and elder girls monitored younger girls' bodies.⁴³ In Akouéle's case, communal bathing provided Alougba the opportunity to observe bodily trauma. In other cases, the aftereffects of the assault were evident to household members even without the girls disrobing and bathing. Elder women cared for girls' symptoms, such as vomiting, bleeding, pain in the lower abdomen, and their inability to sleep or eat.⁴⁴ When, in November 1924, sixty-year-old Natala observed that ten-year-old Saba was sick, she questioned her, but the girl offered no explanation. Natala treated Saba's symptoms for six days with no improvement in the girl's condition. Natala, not Saba, described the girl's ongoing suffering for the tribunal, '[W]hen she would eat, she would vomit; in examining her I observed that her sexual organs were inflamed, so I cleaned them with water. I kept soothing them, but she was always sick.'⁴⁵ Natala's testimony revealed that Saba, like Akouéle, was reticent to explain the cause of what ailed her to her mistress. Natala, like Ahoussi, cared for the girl regardless of the source of her sickness.

³⁹This narrative is primarily based on the *procès verbal* given by Akouéle. Some of the details are drawn from the testimonies of Alougba and Ahoussi. ANB 1M162 'Procès-verbal d'audition de témoins - Affaire Stanislas Amoussovi: Akouéle', Cercle de Mono, Poste d'Athiémé, 19 Jun. 1929.

⁴⁰*Ibid.*

⁴¹ANB 1M162, 'Procès-verbal d'audition de témoins - Affaire Stanislas Amoussovi: Ahoussi', Cercle de Mono, Poste d'Athiémé, 19 Jun. 1929.

⁴²W. L. F. Felstiner, R. L. Abel, and A. Sarat, 'The emergence and transformation of disputes: naming, blaming, claiming ...', *Law & Society Review*, 15 (1981), 631–2.

⁴³Thornberry discusses how elder women in South Africa monitored girls' bodies to ensure their chaste status through virginity testing. Thornberry, 'Virginity', 134–5.

⁴⁴This list of complaints was compiled after an exhaustive review of rape cases contained in series 1M in the ANB.

⁴⁵ANB 1M154, C. B. d'Almeida, 'Extrait du registre des jugements du Tribunal du 2^e degré de Ouidah: Jugement n. 39 Affaire Adamon - viol', 21 Nov. 1924, 3–4.

In addition to physical suffering, elder women observed the psychological trauma hawkers experienced after a sexual assault. Girls could not always maintain their normal activities after the assault. Despite her youthfulness, Saba had always been responsible with the money she earned selling soap in the market. The trauma of the assault left her in a mental state where she was incapable of conducting business as normal. When Saba returned home without the anticipated profit for her products, Natala became frustrated. Saba's abrupt change in demeanor prompted Natala to investigate. Eventually Saba disclosed that Adamon, one of her regular customers, had assaulted her.⁴⁶ Natala observed both physical and psychological changes in Saba after the assault.

Dahomean girls' female guardians were concerned about the well-being and safety of entrusted girls while hawking. Once women were made aware of a sexual assault, they promptly approached the commandant and filed oral complaints against the men who assaulted the girl hawkers. While not all cases of assault provided information on the decision-making process prior to reporting the crime to colonial officials, many cases described girls' hesitance to report sexual assaults to anyone. Elder women, such as Ahoussi and Natala, often uncovered the assault, and then reported both what they had observed and what the girls had told them to French administrators. Men more rarely witnessed the effects of rape on girls. Those who did were often not part of the households where the girls lived.⁴⁷ This pattern does not necessarily reflect a lack of concern on the part of male co-residents, but rather the reality that men had much more limited contact with girls. Women, in general, took their responsibilities for caring for entrusted girls seriously. On the one hand their daily interactions with these girls made them sensitive to changes in the girls' bodies and behaviors. On the other hand, they chose to investigate and report the physical symptoms as well as changes in the girls' demeanors that they observed. During the 1920s, market women vigilantly reported the sexual assaults of girl hawkers to authorities. In doing so, women tried to create a safe environment in streets and marketplaces for girls to work.

Eliding female testimony in rape cases, 1932–40

Despite a decline in convictions after 1931, women continued to bring forth rape complaints on behalf of girls. Women steadfastly supported girls' accusations of rape. Their persistence in taking girls' rape cases to colonial tribunals demonstrated that they believed that the state should protect girls in the markets and streets of colonial Dahomey. After the 3 December 1931 decree took effect, indigenous and French men evaluated the evidence women and girls presented to tribunals differently. Male legal authorities increasingly ignored elder women's appraisals of girls' bodies and minds. Colonial legal processes elided the rape victim's own testimony as the decision-making process inexorably progressed to a masculine, colonial authority issuing a judgement.⁴⁸ If historians emphasize the judgements of colonial tribunals, the distrust of girls and women becomes a historic actor. This distrust allowed powerful men's observations to replace girls' and women's testimonies.⁴⁹ When tribunals issued judgements these men's opinions about women and girls were transformed into legal facts.⁵⁰ Admittedly, Dahomean and European men controlling the legal process had

⁴⁶*Ibid.*

⁴⁷For example, after being raped, sixteen-year-old Hounghoné returned to the market to sell *akassa*, a traditional Beninese recipe made of cornmeal and typically served as the base for a stew. Shortly thereafter, Sokou, the canton chief, saw Hounghoné crying and bleeding. He then took her to the French administrator to report the assault.

⁴⁸Shadle, Thornberry, and Getz have all separately commented on how rarely African women's and girls' experiences were heard in colonial courtrooms or in the larger legal and intellectual discourses. See: B. L. Shadle, 'Rape in the courts of Gusiiland, Kenya, 1940s-1960s', *African Studies Review*, 51:2 (2008), 30; Thornberry, *Colonizing*, 201; T. R. Getz and L. Clarke, *Abina and the Important Men: A Graphic History* (2nd edn, New York, 2016).

⁴⁹M. Trouillot, *Silencing the Past: Power and Production of History* (Boston, 1995). For an example of applying Trouillot's theories about silencing to African women's voices in colonial legal records, see T. R. Getz and L. Clarke, *Abina*, 139–40.

⁵⁰In two different contemporary contexts, Bailey shows how observations become medical facts, see M. Bailey, 'Misogynoir in medical media: on Caster Semenya and R. Kelly', *Catalyst: Feminism, Theory, Technoscience*, 2 (2016), 18. Similar processes regarding the manipulation of evidence presented to a tribunal were taking place in the colonial setting as well.

different reasons for agreeing to transform unfounded suppositions about hawkers' ages and reputations into legal facts regarding sex crimes. Despite their differing motivations, the collusion of the two groups resulted in the discrediting of girls' experiences of rape and the disregarding of women's reports of girls' physical and mental suffering in the aftermath of these sexual assaults.

Male tribunal members diminished these elder women's authority as witnesses in rape cases through their decision to favor physical, certified medical evidence provided by colonial doctors. Across Africa, the recognized expertise of African women was displaced by the pseudo-techno-scientific witness of the district surgeon. These surgeons had no formal training in forensic medicine or gynecology.⁵¹ The scant physical evidence that these physicians found after days or weeks had elapsed between the assault and the medical exam was interpreted through racist and stereotypical lenses that had long posited the alleged libidinous and supposed deceitful nature of African females.⁵² A French doctor's racism in an early twentieth century colonial setting was unsurprising. More alarming for Dahomean women was the development of a cross-cultural misogynoir, or anti-Black misogyny, based on the collusion among indigenous assessors and French officials.⁵³ European and African patriarchal agendas were not always aligned with one another, but on their hostility to claims of rape after 1931 they reached an agreement.⁵⁴ Both groups treated girls' and women's accusations of rape with suspicion based on the assumption that most cases of sexual assault were not actually the colonial felony of rape.

Colonial officials feared that hawkers' apprenticeship to market women introduced these girls to transactional sex alongside market trading in goods.⁵⁵ While indigenous assessors understood that this was in fact not the case, the shifts in the tribunals' debates, the decline in convictions for rape, and the dismissal or pleading down of rape cases after 1931 showed that with their new deliberative voice, indigenous assessors favored a very narrow definition of rape. The conflation of street hawking with street walking helped construct a picture of the majority of victims as at fault for their assaults.⁵⁶ The rape cases heard in the criminal tribunals in the year immediately following the judicial reorganization transparently discuss the perceived blameworthiness of hawkers. One such example was the 1932 rape case of nine-year-old Ahoudjo. On 29 April 1932, Ahoudjo walked the streets of Cotonou, the economic capital of the French colony of Dahomey, selling beans. On the day in question, all parties agreed that Ahoudjo entered Comlan Gaudens's house, where the two had sex. The criminal tribunal investigated whether or not the sexual act constituted rape, as Ahoudjo claimed. Ahoudjo stated that Gaudens had raped her on two different occasions in April 1932.⁵⁷ Gaudens, on the other hand, asserted that she had consented to having sex the

Tribunal members in Dahomey were working with a different set of biases about black femininity and black girls' sexuality that are distinct from but related to the misogynoir analyzed by Bailey. More broadly on medical discourses vis-à-vis Black bodies, see Delphine Peiretti-Courts, *Corps Noirs et Médecins Blancs: La Fabrique Du Préjugé raciaL XIXe-XXe Siècles* (Paris, 2021).

⁵¹Thornberry makes this same point about the lack of forensic training of district surgeons, but she does not comment on their gynecological expertise: Thornberry, *Colonizing*, 253.

⁵²For more on the origins of these stereotypes, see J. L. Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia, 2004), 12–49.

⁵³Bailey, 'Mysogynoir'. For more on the specific French iterations of these stereotypes, see T. D. Sharpley-Whiting, *Black Venus: Sexualized Savages, Primal Fears, and Primitive Narratives in French* (Durham, NC, 1999); R. Mitchell, *Vénus Noire: Black Women and Colonial Fantasies in Nineteenth-Century France* (Athens, OH, 2020).

⁵⁴Thornberry, *Colonizing*, 8.

⁵⁵By the 1930s, European condemned ambulant and itinerant professions to be morally dangerous and sought ways to eradicate them. There exists comparatively less information on French views concerning children's street trading in West Africa, in part because, unlike in British Lagos, no indigenous activist movement existed. George, *Making*, 113–41. George does not use legal records to determine the veracity of this anxiety. See Aderinto, *When*, 78–81.

⁵⁶The posited blameworthiness of rape victims that plagues prosecutions of the crime of rape in a variety of contexts is one of the reasons rape victims are in a unique position. See R. Chennells, 'Sentencing: the "real rape" myth', *Agenda: Empowering Women for Gender Equity*, 82 (2009), 32.

⁵⁷This was not the only case where the girl reported the assault only after repeated rapes or attempts by the same man. Formally filing a complaint with colonial authorities was often the last option for girls.

first time on the condition that he pay her. He stressed to the tribunal that Ahoudjo had come to his residence of her own accord the second time.⁵⁸ Gaudens's account of transactional sex with a street hawker on multiple occasions confirmed French authorities' fears that hawkers actually sold their bodies along with the merchandise they balanced on their heads. The presumption that girl hawkers were in fact profiting from sexual encounters as a side hustle to selling goods cast doubt on the veracity of their claims of rape. This doubt extended to the market women who supposedly trained them in matters of transactional sex. Tribunals presumed that both the girls and the women who supported them lied about the circumstances of the sexual encounters that transpired with their customers. This gendered and sexualized stereotype transformed the types of evidence that tribunals found admissible. If women and girls could not be trusted to be honest about sexual experiences or even understand what sex acts would be considered rape, the previously recognized expertise of women no longer mattered.

Tribunals disregarded the testimonies of women and girls and allowed rape victims' bodies to 'speak' in their stead. In a July 1932 report submitted to the *chambre d'accusation*, the five-person criminal tribunal of Cotonou weighed the merit of the criminal charges against Gaudens. The court recorder summarized the evidence against Gaudens. The synopsis started with the proof Ahoudjo's body offered. The tribunal argued, 'Considering that the medical certificate concluded that the disappearance of the hymen seemed old,... one could suppose that the girl had already had sexual encounters before the act executed by Gaudens'.⁵⁹ Girls' bodies gave visual clues about their sexual experience and the stage of development of their sexuality, but these clues were reworked so as to fit within the dominant narrative framework that hawkers were blameworthy for their own rapes.

The embodied proof influenced the interpretation of the remaining three pieces of relevant evidence. The presupposition that Ahoudjo had a history of sexual experience prejudiced the remainder of the deliberation and skewed the tribunal's opinion in favor of Gaudens' claim that the sex act had been transactional. The indictment continued, 'Considering that in this case there is doubt about the actual age of the victim – and it does seem that the already deflowered girl consented for a fee to have sexual relations – [Ahoudjo] must be pubescent and older than nine years of age'. The tribunal reasoned that non-virginal girls older than nine would conceivably agree to transactional sex. Since statutory rape, or sexual relations with someone under the legal age of consent, did not exist in the French colonial legal system as a charge distinct from rape, age or maturity should not have factored into the decision-making process. However, age and concomitantly maturity became the evidentiary crux in rape cases in colonial Dahomey. The conspicuous absence of any reference to age in deliberations before the 1931 decree contrasted with the *chambre d'accusation's* obsession with discerning the 'real [chronological] age' of the claimants after the 3 December 1931 decree took effect.⁶⁰ The tribunal concluded, 'Considering [all of the above] it is important before ruling on this matter to know the real age of the victim [Ahoudjo]'.⁶¹ The tribunal refused to issue a verdict until investigators had verified Ahoudjo's age and suggested an age that supported the other embodied evidence.

As girls aged and approached womanhood in their teenage years, these stereotypes allowed for less debate. The tribunal crudely reasoned that girl hawkers, who were widely considered adults at fourteen years of age in Dahomey, engaged in sexual encounters with their customers and then accused them of rape after disputing the terms of the transaction. A loquacious scribe expressed in the strongest terms the stereotypes of teenaged 'working girls'. According to his translation of her narrative, Akpoto, a fifteen-year-old street hawker, exited a house entirely nude and claimed

⁵⁸ ANB 1M106, 'Requisitions n. 24 (1932): Affaire Gaudens – viol', *Chambre d'accusation*, 6 Jul. 1932.

⁵⁹ *Ibid.*

⁶⁰ The only time that the 1931 decree explicitly mentions age relates to the question of discernment, or when a juvenile should be held accountable for their actions.

⁶¹ ANB 1M106, 'Requisitions n. 24', 6 Jul. 1932.

that three young 'guys' had had relations with her against her will. The recorder used the term '*jeunes gens*' to describe the three teenage rapists. The recorder mockingly asked a rhetorical question: 'Is this exactly what happened? Did they lure her into their residence on the pretext of buying *lokapo* [a prepared food dish] and each take a turn? That seems highly doubtful!' The tribunal dismissed the case when one of the three accused 'guys', Ogoudélé Bancole, admitted to having sex with her and provided, according to the tribunal, a very 'plausible' reason for Akpoto's accusation. The *chambre d'accusation* stated that Ogoudélé knew of Akpoto's 'rather wild virtue' and propositioned her. He suggested paying 2,50 francs 'to have connection with her'. Ogoudélé claimed that after having sex they disagreed about the payment. In his account of events, Akpoto threw down her own clothes and the money he had paid.⁶² The tribunal believed that Akpoto had staged her rape and lied about the circumstances of the sexual encounter with three customers.

The doctor who examined Akpoto supported Ogoudélé's assertion of Akpoto's 'wild virtue' through his inclusion of irrelevant personal information in his medico-legal report. The doctor observed that Akpoto's labia exhibited signs that she had stretched and scarred her outer genitalia.⁶³ Europeans had long viewed such practices with both fascination and disgust.⁶⁴ The medical evidence of Akpoto's prior experimentation with her genitalia cast critical doubt on her claim, in the view of the tribunal's members. Her manipulation of her labia over an extended period of time proved to them that she was ready for sex and that nothing sexually taboo had occurred. This point of view, along with the fact that the alleged perpetrators were roughly the girl's peers, led the authorities to redefine the sexual act into youthful 'messaging around', despite the violence Akpoto had described. Perhaps these three men did 'go too far', but this sort of nonconsensual sexual encounter did not, in the minds of the tribunal members, necessarily translate into the felony of rape. The criminal tribunal dismissed Akpoto's case. The authorities assumed an older girl with a reputation for being 'wild', like Akpoto, would habitually trade sexual favors for profit with multiple clients.⁶⁵

After the 3 December 1931 decree took effect, legal decisions and debates in tribunals suggested that French and Dahomean men agreed to condemn a very small proportion of sexual assault cases as felony rape. From 1932 onward, the majority of rape cases in Dahomey either resulted in a reduced charge or in a dismissal with no verdict issued. In order to effect this change, legal authorities built on existing European stereotypes of the lasciviousness of African femininity. The tribunals portrayed girl hawkers as promiscuous liars, and by extension the women who supported them in tribunals as dubious characters as well. The alleged tendency of girls and women to invent falsehoods about sexual encounters called into question even the most basic statements female plaintiffs, witnesses, and victims made in these cases. The eliding of girls' experiences of sexual assault and women's presentation of these girls' suffering led to no judicial sanctions being imposed in all but a few cases of rape each year. The rhetoric of victim blaming negated criminal culpability in official colonial legal forums. But this hostility did not deter market women from continuing to seek redress for the harm done to their young employees.

⁶²ANB 1M005, Tribunal Colonial d'Appel du Dahomey, 'Réquisitoire n. 175 (1936): Affaire Ogoulede Bancole et consorts, viol', Cotonou, 26 Oct. 1936.

⁶³For a detailed explanation of female initiation and the associated genital practices see, Herskovits, *Dahomey*, I: 282–3. Herskovits was able to get this detailed information through informants' discussions with his wife who conducted some of the research and data collection.

⁶⁴Peiretti-Courtis, *Corps*. S. L. Gilman, *Difference and Pathology: Stereotypes of Sexuality, Race, and Madness* (Ithaca, NY, 1985), 85–9.

⁶⁵ANB 1M005, 'Réquisitoire n. 175'.

Conclusion

Teenage or younger girls engaged in street hawking were the most common victims who reported sexual assault to colonial tribunals in Dahomey. This overrepresentation was due, firstly, to the girls' mobility: movement facilitated their success as entry-level apprentices to market traders and gave them a unique value in West African economies, but it also exposed girls to greater risk of sexual assault by male customers.⁶⁶ Secondly, these girls' female guardians had fewer options for seeking redress for crimes perpetrated against their dependents than male familial guardians did. Thirdly, market women recognized the regulation of the marketplace and streets as a governmental responsibility. They held the colonial state responsible for the safety of hawkers in the expanding economic centers in the southern region of the colony.⁶⁷ In the cases studied here, women made their claims for recompense through colonial courts. Without a doubt, these cases represent only a small fraction of the experiences of sexual assault that occurred. While alternative mediational domains existed in Dahomey, many women determined that the preferable, or perhaps only, place to adjudicate and punish the rape of girl hawkers in their care was the colonial tribunal.

Girl hawkers' narratives of assault revealed that sexual violence was an everyday possibility for them. Their profession rendered them uniquely vulnerable to the unwanted sexual advances of their prospective customers. When girls who were assaulted returned to the households where they resided, elder girls and women witnessed their suffering. Commonly, an intergenerational act of witnessing the physical aftereffects prompted elder women to question hawkers. Mistresses showed their concern for the girls in their employ through treating the girls' symptoms, questioning them for explanations, and seeking recourse. The girls' guardians acted upon what they saw and took hawkers to colonial officials. The elder, female guardians of hawkers attempted to hold the girls' customers responsible for sexual assaults. Through focusing on the investigative processes in cases of sexual assault, rather than emphasizing the outcomes of the cases, two gendered histories emerge: firstly, a history of elder female caregiving to girls suffering the aftereffects of sexual assaults and, secondly, a history of the vulnerability of hawkers to sexual violence in the course of their daily activities.

Girls' accusations of rape faced greater skepticism and mounting evidentiary requirements from 1931 onward. In the following decade, Dahomean assessors played a crucial role in manipulating French definitions of the crime of *viol* to create a colonial definition of rape based on presumptions about youthful hawkers' sexuality and promiscuity. Simultaneous with the increasing voice given to male Dahomean assessors, Dahomean market women's role in the judicial process declined. Across Africa, colonial expert medical reports authored by European men which summarized specific forms of physical evidence in rape cases superseded women's narratives of observing the consequences of rape.⁶⁸ Particularly after the 1931 judicial reorganization, women's testimony regarding their observations of the effects that rape had on girls' bodies, minds, and behaviors were eclipsed by the technoscientific witnessing of male colonial medical officers who searched girls' bodies for 'evidence'. Dahomean women documented girls' physical suffering and mental anguish in the days and weeks following sexual assaults in a much more comprehensive manner than the European doctors tasked with making observations about physical force and the state of the hymen. The colonial courtroom became increasingly distrustful of girls' narrations of assaults after the 1931 judicial reorganization. Despite this hostile environment, girl hawkers and their female guardians continued

⁶⁶E. Schildkrout, 'Age and gender in Hausa society socio-economic roles of children in urban Kano', *Childhood*, 9:3 (2002), 342–68.

⁶⁷Throughout the colonial period 1894–1960, the Northern districts were chronically understaffed and overstretched administrators recorded much less documentation concerning the functioning of the courts in these districts. This article analyzes cases from the southern districts of Abomey, Allada, Cotonou, Grand Popo/ Mono/ Athiémé, Ouidah, Porto Novo, Savalou, and Zagnanado.

⁶⁸Thornberry similarly documented the decline in the value and credibility in elder women's testimony regarding virginity testing in sex crimes cases in the Eastern Cape. Thornberry, 'Virginity', 134–8.

to pursue redress for sexual assault in colonial courtrooms because of their dissatisfaction with and marginalization from other venues. The 1931 decree empowered 'traditional' Dahomean chiefs with greater judicial authority. These elite African men enacted their authority within the colonial regime in ways that denied market women the ability to prosecute these men's peers for acts of sexual exploitation against the girl hawkers. In doing so, indigenous assessors prevented market women from upholding their responsibility to the girls in their employ.

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