

Uncovering contracting norms in Khayelitsha stokvels

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Abstract: Most written accounts of traditional African customary law in South Africa do not describe a law of commercial contracting. This is despite the fact that contracting happens every day in South Africa's largely African informal sector. This article reports the findings of a qualitative empirical study of stokvels (informal savings and credit associations) conducted in Khayelitsha, Cape Town in 2018. Stokvels are an example of the appropriation and adaptation of modern financialised practices into Indigenous African culture. As such, they present an example of Indigenous modernity, being neither Western nor traditional. I will argue that vernacular commercial norms may be found in modern stokvel practice, which is ordered through a system of private contracting.

Keywords: Contract, Vernacular Norms, South Africa, Stokvels, Informality.

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1. Introduction

This article is about the use of contracts in the informal economy of Khayelitsha, Cape Town. Khayelitsha's residents mostly identify as "African", however the environment is different from the "traditional" setting described in most African customary law texts. Urbanisation and labour migration have been key markers in this process of change and in "townships"¹ such as Khayelitsha, new norms have formed, along with new Indigenous governance and dispute resolution structures (Super 2016; Rautenbach and Bekker 2014, 15-16; Schärf and Nina 2001, ch 3-4). Whether these norms are accurately termed "African customary law" in the traditional sense is debatable. What is certain, however, is that State law enforcement has a low level of penetration in Khayelitsha, and that access to justice there remains a challenge (cf. O'Regan and Pikoli 2014). Of course, Khayelitsha is not entirely devoid of external influences: the local economy is home to formal sector banks, insurers, retailers, mobile network operators, and other forms of business – mostly housed in a new shopping mall next to the main train station. There are also local businesses, with varying degrees of informality: spaza shops, street vendors, barbeque outlets, hairdressers, taverns – the proprietors of which must also earn a livelihood in a modern monetized economy (cf. Charman and Petersen 2014). Poverty is everywhere, but so is commercial activity (Seekings 2013).

In what follows, I will discuss one key form of economic organisation in this setting: the informal financial associations formed between relatives, friends, and neighbours. The purpose of these is to provide a solution to the difficulties of access to formal sector consumer credit and simultaneously to encourage diligent savings habits. These associations are referred to (generically) in South Africa as "stokvels" (Verhoef 2001; Bähre 2007; James 2015, 118-146; Mashigo and Schoeman 2012; African Response 2012). I will show using empirical evidence that these associations are based on contract and rely on the private ordering mechanisms of this universal human institution of exchange in order to function effectively.

Indigenous contracting is discussed in the (South African) African customary law literature, but often in a sense which does not imply commercial application. In their discussion of the South African position, Himonga and Nhlapo focus considerable attention on agreements related to getting married (2014, 188-193). Further examples given are agreements related to the care of children and livestock (193-195). Rautenbach and Bekker take a more generalised and abstract approach and extend coverage to contracts of exchange, loans for use and consumption, and contracts for services (2014, ch 7). The context remains rural and traditional, however, and no commercial applications of the above contract forms are suggested.

I aim to contribute to the discussion as to what type of norms govern commercial contracting in a modern Indigenous economy. By “contract”, I intend an “obligation created by agreement, which is normatively binding on those who enter into it”. I do not necessarily imply a contract at (formal sector) common law, although there is extensive interaction between the formal and informal economies as I will show below.

The article will proceed as follows: in part 2 I locate the empirical study by providing a brief literature review of Khayelitsha itself, of stokvels as a form of association in South Africa, and of the discourse on Indigenous contract norms in African customary law. I will also set out my conceptual apparatus, which is mostly drawn from anthropological sources. I will focus on “Indigenous modernity”, whereby the “modern” is blended with the “traditional” to produce hybrid or mutant forms of cultural organisation. In part 3 I set out my methodology. I describe the underlying fieldwork, which was conducted in Khayelitsha between April and September 2018. Part 4 sets out the resultant findings on stokvels and stokvel contract behaviour. In part 5 I will analyse these, using the conceptual framework set out in part 2. Part 6 will conclude by returning to the theme of Indigenous modernity.

2. Locating the study²

2.1 *Khayelitsha*

Khayelitsha is located in Cape Town at the South-Eastern city limit, about 30km from the downtown area (O'Regan and Pikoli 2014, 30). This peripheral situation is a legacy of Apartheid spatial planning: the township was first established in 1983 in order to resettle parts of the African population within Cape Town and to accommodate migrants from impoverished rural areas of the country (30-33). Many of those living today in Khayelitsha have migrated to Cape Town from the Eastern Cape, or trace their ancestral homeland to this area (40). The population was estimated at about 400 000 – 450 000 in 2014, but continues to grow all the time (35). Census figures from 2011 reflect that 98.7 per cent of the population identifies as African and 89.8 per cent speak isiXhosa as a home language (37).

With regard to the local economy, there are many businesses both formal and informal in Khayelitsha, while others perform salaried work in the city. Census 2011 reflects the median annual income in Khayelitsha at R20 000 (O'Regan and Pikoli 2014, 40; Seekings 2013, 14). This is below the 2011 median of R40 000 for broader Cape Town (O'Regan and Pikoli 2014, 40), which in itself is still well below what is considered middle class in South Africa (Hosken 2019).³ The unemployment rate in 2011 (including discouraged work seekers) was about 40 per cent (Seekings 2013, 15). Those that do have a job in the formal sector are usually forced to commute lengthy distances to work each morning due to the peripheral location of the township, adding to the cost of living. Road transportation is mostly facilitated by minibus taxis, which will reappear in this narrative in part 4. Housing varies between single storey brick and mortar dwellings and informal structures built from metal and wood – often this variation marks the distinction between the different neighbourhoods in Khayelitsha, some of which are more formal and longer-established than others.⁴

As far as access to justice goes, in 2014 a provincial commission of inquiry delivered its report on policing in Khayelitsha (O'Regan and Pikoli 2014). This document provides evidence of the nature of life in the township, highlighting in particular the failures of policing in this space. Although there are three police stations, crime is a rampant problem which law enforcement officials are unable to fully keep a handle on (xxiv-xxv, 40-45). As a result of this and other factors, for many years there have been alternative forms of ordering at play in Cape Town's townships. These include Street Committees – community bodies which were given a role to play in the maintenance of law and order in Apartheid times and have lived on to this day (Super 2016). As will appear from the findings set out below, taxi operators appear also to have risen to the status of dispute resolution agents in Khayelitsha. What is clear is that State law does not fully penetrate the township, resulting in a certain measure of disregard for this system.

With regard to savings and credit in the South African informal economy generally, financial inclusion is a stated goal of the South African government.⁵ Indeed, the country's banks are currently locked in a price war in an effort to attract the business of the low income market (Buthelezi 2019). The Apartheid-era financial exclusion of the African population, which arose due to a lack of political will to provide incentives to the banking industry, is thus receding (Kelly-Louw 2008, 203-204; Porteous and Hazelhurst 2004, 1-3). Recent research indicates that around 80 per cent of South Africans today have a bank account, although some of those included in this number use that account simply to receive a salary and thereafter withdraw the money immediately to transact in cash (Finmark Trust 2017, 24, 31-33). Consumer lending is governed by the National Credit Act⁶ ("NCA"), enacted in 2005 and fully in force by June 2007. Following a ministerial determination in 2016, the registration threshold for anyone who lends to consumers is now R0.⁷ There also has never been an exemption for consumer to consumer loans.⁸ This means that all lenders must register: failure to do so would

render the loan unlawful and hence unenforceable through the courts.⁹ In addition, registered credit providers are prohibited from lending recklessly.¹⁰ Reckless lending would include lending to those who are blacklisted by the credit bureaux.¹¹ The NCA permits a thriving formal sector market for unsecured lending, with credit being offered both by mainstream banks and by fringe lenders.¹² In addition to this, there are illegal loan sharks operating in South Africa's informal economy, who are unregistered and do not adhere to consumer credit law (Mashigo 2012; Roth 2004, ch 2 and 4).

2.2 Stokvels

A comprehensive literature review on rotating savings and credit associations (“ROSCAs”) is provided by Ardener, who collects comparative and historical literature from developing countries in Asia, Africa, the Americas, as well as Scotland (Ardener 1964; see also Geertz 1962). With regard to the origins of ROSCAs, Ardener suggests the possibility of “overlapped borrowing” of this device between cultures, even noting that there might be a single central origin for this type of association (209). She is also clear, however, that within the constraints of available data and materials it would be hard to prove such a central origin theory (209). With regard to South Africa in particular, Ardener notes the presence of various immigrant cultures which could have brought this technology with them (209). Ardener stated that these associations were operated by Africans, Indians, and European factory workers in South Africa at the time of her writing (207). Verhoef's more recent historical account of stokvel practice by South African women during the twentieth century also states that the origins of stokvel culture in that country are obscure (Verhoef 2001, 265). She goes on, however, to relate the popular folk narrative that stokvels arose among the African employees of English-speaking farmers in the Eastern Cape (265). White farmers would host “stock fair” gatherings where livestock were sold, and during these their African employees would hold gatherings of their own, which came to be known as “stokvels” (265).

Stokvels provided a source of capital in the face of the previous financial exclusion of many Black South Africans (Verhoef 2001). A 2014 quantitative survey estimated that there are as many as 8.6 million members of 421 000 stokvels in South Africa, with combined capital holdings of R25 billion (African Response 2014). This represents a sizeable proportion of the population and provides a financial incentive for formal sector businesses to target this market.

Stokvels are formed with various purposes in mind (cf. African Response 2012): some follow the ROSCA structure, with regular contributions by all members going into a common pot to be paid in full to each member in turn according to a pre-determined roster, usually at a periodic meeting (Bähre 2007, 12-14). Another stokvel model involves accumulating regular member contributions in a common pot and retaining these up to a specified maturity date, whereupon each member's total contributions are paid out to her in a lump sum, possibly with accrued interest (14-16). (The capital may also be used at maturity for bulk grocery purchases in which all take a share) (14-16). This second model, known in the literature as the ASCRA ("accumulated savings and credit association"), means that there is capital on hand for lending purposes and members are often permitted to take loans from the stokvel when required, usually to be repaid with interest (14-16). The stokvel capital is sometimes also banked in the interim with a formal sector bank (African Response 2012, 11). A third type of stokvel is the burial society, where members make a regular contribution to a common pool, which is then used to provide funeral benefits to the member upon her own death, or the death of other insured lives (Thomson and Posel 2002; Verhoef 2001, 266-269). Burial societies were not investigated in this study, however, and will not be discussed further here.

From a legal point of view, stokvels are the informal equivalent of the credit unions found elsewhere in the world (Hutchison 2020). The co-operative corporate structure on which a credit union rests elsewhere is legislated for in South Africa,¹³ but the vast majority of South African stokvels are unincorporated and choose not to opt in to the formal sector laws (Sarkin

2015, 278-279). In recognition of this fact, and possibly in an attempt to cure the problem of lack of access to formal sector capital, there is an exemption under the Banks Act¹⁴ which provides that stokvels do not need to acquire a banking licence in order to take deposits from the public.¹⁵ Stokvels are also not required to register as credit providers, since a “transaction between a stokvel and a member of that stokvel in accordance with the rules of that stokvel” is not subject to the NCA.¹⁶ This gives stokvels free reign to charge any interest rate on loans (provided – at least in theory – that this does not meet the common law definition of “usury”, which is exceptionally permissive in any event).¹⁷ The only restriction is that this carve out exists only for loans by stokvels to members, not on-lending by members to non-members.¹⁸ If a member lent money to a non-member, she would need to be a registered credit provider under the current law, regardless of the amount of the loan. This is because, as explained above, there is no exemption from the registration requirement for any size loan or even a loan between consumers. A member would also lend as principal and not as agent of the stokvel to a non-member, which clearly falls outside of the ambit of the NCA’s stokvel exemption. If the loan is at arm’s length and there is a cost to the credit over and above the principal sum lent, the rules in the NCA would thus apply.¹⁹ This would prevent an unregistered stokvel member from enforcing the latter type of loan through the courts.

In sum, stokvels are prevalent throughout South Africa and have an important social and economic role in society. To the extent that statute law deals with stokvels, it serves largely to exempt them from the financial regulatory system. This lack of regulation allows these entities to act as the banks of the informal economy, providing access to capital for those who need it.

2.3 African customary law

South African State law is mostly derived from a process of transplantation of laws originating in Europe (Zimmermann and Visser 1996; Chanock 2001). Following the enactment of a

supreme democratic Constitution,²⁰ however, there have been fundamental shifts in the nature and emphasis of South African law. One of the key changes wrought by the new constitutional order was the granting of equal status to African customary law: it is now on a par with other sources of law and is subject only to the Constitution.²¹ The apex Constitutional Court has heard several cases relating to customary law since its inception.²² Key to this jurisprudence has been the interpretation that it is the “living” version of customary law which is recognised by the Constitution at section 211(3).²³ The “living” law is usually distinguished from the “official” version set out in historic statutes, judgments, and textbooks (Himonga and Nhlapo 2014, 24-25). This living law is the law that is practised by the various Indigenous peoples of South Africa on the ground (bottom up), rather than the ossified version captured in written texts (top down) (27-30). South Africa is thus a legally plural state.

Nevertheless, despite efforts at revision, much of the material captured in textbooks describes the traditional norms dating back to a past era (“official law”). Sometimes these texts contain the express caution that what is reflected may no longer be accurate (Himonga and Nhlapo 2014, 195). When browsing the contracts section of such a book, one is struck by the absence of commercial contracts. Rather (as above) one reads of contracts relating to marriage or traditional communal life. In one of the older legal anthropology texts on African customary norms, Gluckman argues with reference to his field work in the 1940s in the country today known as Zambia that:

[In the past,] [f]ree contractual relations between persons not united by social position were thus relatively few and unimportant in Barotse life. In this respect a study of Barotse law, as of law in most tribal societies, validates Maine’s most widely accepted generalization, “that the movement of progressive societies has hitherto been a movement from Status to Contract.” (Gluckman 1965, 171)

Gluckman goes on to add: “The Barotse have now been brought into a world of contractual relations.” (Gluckman 1965, 171; cf. Schapera 1969) He then describes several types of transactions, both commercial and non-commercial, and the resolution of disputes relating to these. Why is it then that there is no written African customary law of commercial contracts in South Africa today? One suggested answer, put forward by Chanock, is that past choice of law rules favoured settler law over customary law in commercial matters (Chanock 2001, especially ch 13-15). This meant that customary law was prevented from evolving along with the South African Indigenous economy. It is my view that this lacuna exists only in the books which capture the written sources of law. In part 4 below I will describe a system of norms which is alive and well – there is normative pluralism at play and the influence of State law is only indirectly felt through the apparatus of the formal economy.

2.4 Indigenous modernity and commercial contracting norms

2.4.1 Indigenous modernity

First a disclaimer: I do not intend to set up a form of othering by referring to the inhabitants of Khayelitsha as “Indigenous”. It is accepted, however, that “African” South Africans are the original inhabitants of the country and that they have their own traditions and culture, including forms of legal ordering. The discourse on African customary law arises from this fact. It is in this sense of linking the original inhabitants of the land to a pre-colonial, or “traditional” culture and way of life, which I set up the category “Indigenous”.

Life in present day South Africa is also vastly removed from the pre-colonial past, and in this sense all South Africans are part of a continually modernising society. Tradition versus modernity remains a powerful topic for debate, however. Indeed, Gyekye, the Ghanaian philosopher, took this as the theme of his influential book on African social norms (Gyekye 1997). Gyekye links “modernity” to development and the world-wide spread of Western

technology and values beginning in the seventeenth century (263-264). He also notes, however, that being modernized does not necessarily entail being Westernised (280), and that non-Western cultures are selective in the process of choosing what forms of modernity they adopt (270).

Anthropologists Arce and Long pick up on a similar theme when they state that modernity is simply “a sense of belonging to the present and an awareness of the past to which people can link and at the same time distantiate themselves” (Arce & Long 2000, 4). The focus of their discussion is instances where Indigenous populations have appropriated the devices of modernity and “re-embedded [these] in locally situated practices” (1). This gives rise to “mutant” modernities when “new social forms emerge out of existing ones” (16). In other words, the binary categories of “tradition” and “modernity” are blurred into a new artefact which is part and parcel of the context in which it finds itself. Other related terms for much the same concept are “hybrid modernity” (a blend of cultures and origins) or “Indigenous modernity” (Indigenous appropriation and adaptation of Western structures and devices) (Robins 2003, 266; Hebinck et al 2019, 15).

Of these, I have chosen Indigenous modernity as an organising theme of this article. I will argue that stokvels in Khayelitsha are a good example of the appropriation of practices and technologies which are distinctly modern and financialised in order to render a form of commercial association and practice which is Indigenous and adapted to the informality and culture of the environment in which it operates.

2.4.2 Popular economies and vernacular norms as Indigenous modernities

There is a tendency to describe South Africa’s economy as a “dual” one, drawing a sharp distinction between the formal and the informal (Callebert 2014, 119). From a legal point of view, it is the formal economy which we read about in the law reports or in textbooks on

(contract) law. This is the sector which most legislation is designed for and where it is best implemented. The informal economy, conversely, is (as set out with regard to Khayelitsha above) often beyond the reach of the law and of law enforcement. Here, economic activity would be less regulated, in the sense that disputes would be less likely to reach a State court; businesses might be operated beyond the reach of the tax authorities; and employment and consumer law might have less penetration.

From an economic point of view, this simple formal/informal binary has been collapsed by qualitative empirical study of how low-income South Africans survive in the contemporary economy. Wages earned in a job in the formal sector might be remitted to unemployed family living in a context characterised by informality. Or formal income could serve as capital for an informal business run as a side-line. Hull and James note that popular economies are situated “between globalised settings of financialised capitalism on the one hand and impoverished local arenas where cash-based economic transfers predominate on the other” (Hull & James 2012, 1). They do not, however, discount the value of the notion of “informality” in order to describe the space outside of the reach of the State (7).

The blending of cultures and livelihood strategies inherent in the popular economy literature provides useful examples of Indigenous modernity (see the essays collected in (2012) 82(1) *Africa*). Indeed stokvels are a common topic in this branch of economic anthropology (James 2015, Bähre 2007, Thomson & Posel 2002). But how does Indigenous modernity link to legal anthropology and the discussion of binding norms, which the present study of stokvels requires? There is acceptance in South African customary law that Indigenous norms are not static. This is demonstrated by the preference for living customary law as discussed above. Mnisi-Weeks has chosen to move away from the uncomfortable history associated with the term “customary law”, preferring the more dynamic concept of a “vernacular law” to describe the evolution of norms in South Africa:

“Vernacular law” reflects more clearly that the normative order at issue is one owned and developed by the people who observe it through their use. ...“Vernacular law” integrates imposed and elective elements of other normative orders... (Mnisi-Weeks 2018, 62)

This then reflects the process of appropriation and adaptation characteristic of Indigenous modernity. In this terminology, Mnisi-Weeks draws on Merry (1993, 67-69), who had previously used the term “vernacular law” to describe the appropriation of the human rights discourse by non-Western societies. Merry points to the fact that Indigenous communities have adopted and instrumentalised human rights law as weapon in the fight for recognition (68-69). In so doing she counters the relativist argument that human rights are in binary opposition to Indigenous culture (68-69). I wish to make similar use of the term vernacular norms to describe the community ordering of modern forms of commercial practice in Khayelitsha’s popular economy, particularly those related to contracting

The textbook account of community ordering in townships in South Africa describes a normative construct which is neither African customary law nor State law (Bennett 2004, 151-160; Rautenbach & Bekker 2014, 15-16). There have also been a few empirical studies which have reported on the non-State tribunals of these spaces (for example: Burman & Schärf 1990; Super 2016). These vernacular forums dispense a form of community justice, but neither the tribunals nor the norms they enforce are formally recognised in South African law.

In parts 4 and 5 I will describe a set of norms which goes beyond those that a rule-centred account might draw attention to as being a form of law which could be applied in a tribunal (Comaroff & Roberts 1981, 3-17). Rather I focus on processes of private ordering, by which relational and economic devices are employed to shape and control behaviour (for example: Macaulay 1963; Ellickson 1991; Bernstein 1992; Richman 2004; Hutchison et al 2018, 326-333). Together these processes demonstrate the normative links between formal

and informal economies and between State law and the vernacular norms of Khayelitsha stokvels.

3. Methodology and research question

Another goal of this empirical study was to obtain more material on Indigenous commercial contracting for the University of Cape Town (“UCT”) LLB course on Commercial Transactions Law. As above, the leading texts provided little assistance with this. Neither did a database search of reported South African judgments. The literature which did exist was mostly produced by scholars from other disciplines, particularly economic anthropology and sociology. Stokvels immediately caught my attention: these are fairly well documented by social science scholars and dovetail nicely with commercial topics such as financial inclusion, consumer credit, and insurance. The author of this article formed a research team with Dr Nkanyiso Sibanda of the University of the Western Cape, who acted as an adviser on the project. A research assistant, who had a degree in finance from UCT and a network amongst Khayelitsha stokvel members, was hired. We also worked with a community sponsor, who facilitated access for all of us to what can potentially be a dangerous area for external parties.

The method of the study was qualitative. We conducted twenty in-depth, semi-structured interviews – some of which lasted well over an hour. Research participants were chosen mostly from the Harare neighbourhood of Khayelitsha where our sponsor lived, although a few excursions were also made into surrounding suburbs of the township. We chose members of both ROSCAs and ASCRAs for our sample, some participants were members of both types of stokvel. There was a mixture of stokvel office bearers and regular members. Sampling was mostly done through the sponsor’s community connections, subject to the above instructions on the type of stokvels and members we wanted represented. Interviews were conducted over the weekend and took place in the participants’ own homes or a place of their choosing within Khayelitsha. No financial incentives were offered for participation; only a gift

of a UCT branded coffee flask at the end of the interview. Our questioning began with demographic details about the interviewee and her stokvel, but moved on to issues dealing with norms, such as stokvel rules and how these are enforced. Many interviews also touched on dispute resolution as a result.

In addition to the in-depth interviews, two focus groups were conducted – the first in Khayelitsha towards the beginning of data collection with five participants in attendance (“Focus group 1”); the second at UCT with seventeen participants present following the completion of all in-depth interviews (“UCT focus group”). At the UCT session, a plenary discussion of about an hour was held, followed by a written survey. We closed with a celebratory lunch and a tour of the campus to thank all our participants who were able to attend.

All interviews and focus groups were audio-recorded and then transcribed. The data was then coded under various headings. The over-arching research question which informed this process is what norms govern stokvel contracting in Khayelitsha’s modern, urban Indigenous economy.

4. The role of contracting in Khayelitsha stokvels

In this part 4, I report the findings of our fieldwork under four headings. First in part 4.1 I deal with demographic details of the stokvel members whom we spoke to. Thereafter in part 4.2, I present details of the stokvels which were reported to us, focusing on issues such as structure, membership, and finances. Thirdly in part 4.3, I investigate the nature of the founding “constitution” on which each stokvel is based. I will discuss issues relating to the drawing up and amendment of these documents, as well as the acceptance thereof by members. I will also cover the typical contents of a constitution. I argue that a stokvel’s constitution is a multi-lateral contract and is binding on members by agreement. Finally in part 4.4, I look at the all-important aspect of contract enforcement, since it is this discussion which grounds my

argument that stokvels operate in a largely privately ordered system, based on local vernacular norms.

4.1 Stokvel members

All the in-depth interviews were conducted with practising stokvel members. Focus group participants were also drawn from this same pool of participants, so there is duplication between the focus group and interview datasets. The focus groups were used for testing key themes in the data in an inter-subjective manner. The written survey at the UCT focus group also provided quantitative statistics on those who attended.

Our sample was overwhelmingly comprised of women – in fact, we only interviewed one man (Interview 1, cf. African Response 2012, 7). This male participant proved invaluable, however, as he invited us to one of his stokvel’s monthly meetings. This allowed us not only to observe stokvel operations first-hand, but also to speak directly to members at the celebration after the formal proceedings were over. With regard to the other interviews: five interviewees confirmed that they were members of mixed men and women stokvels (Interviews 1, 5, 6, 8, 16), while eight expressly stated that their stokvels were for women only (Interviews 3, 4, 7, 9, 10, 13, 17, 18). In the remaining interviews, this was not discussed.

Participants were not specifically asked their age in interviews, but in the survey conducted at the UCT focus group, the youngest age bracket represented was 30-35 and the majority of members were between the ages of 40 and 60. The most represented age bracket was 55 to 60 year olds.

Of those interviewed all barring only two were originally from the Eastern Cape, and almost all spoke isiXhosa as a home language. All participants lived in Khayelitsha and most reported that their stokvels drew their members largely from this area. In one interview we encountered a workplace stokvel, however, which was mixed in terms of gender, ethnicity and

race, and met at the work premises (outside Khayelitsha) (Interview 19). All participants of this stokvel were employees of this same business.

As far as income status goes: in the quantitative survey eight of the seventeen respondents earned R5 000 or less per month. Seven respondents chose not to declare their income levels. No-one reported earning more than R7 500 per month. The survey further reflected that while some respondents were part of the formal economy as salaried workers, many were self-employed in Khayelitsha-based businesses. In the field we also saw some trappings of wealth, however: at the stokvel meeting we attended several members drove cars and one member stated that he had studied at UCT. In another interview, one participant specifically mentioned that the members of her stokvel were credit black-listed and used their membership in order to obtain credit (Interview 16). Another participant stated that she belonged to a stokvel in order to avoid paying the steep interest rates which the loan sharks charge (Interview 6). Conversely, and possibly to supply the obvious demand that this social environment creates, three of our participants had loan sharking businesses on the side from which they earned a living (Interview 1, 14, 16). One participant confirmed that she employed her stokvel's capital in such a business (Interview 14).

In several interviews we encountered culture-related expenses as a motivator for stokvel membership. One key item mentioned was the costs associated with an initiation ceremony for an adolescent son, said by three participants to cost about R50 000 (Interview 1, 11, 16). Our male interviewee spoke of the costs of paying lobolo, which is the payment by a prospective husband to his bride-to-be's family in order to formalise the union (Interview 1; cf. Himonga and Nhlapo 2014, 188-191). A further expense mentioned was the costs of a funeral (Interview 20). The role of the Eastern Cape as an ancestral homeland featured in several interviews too, with one respondent saying that most of her stokvel savings went to her family homestead there in order to maintain her family (Interview 16).

In sum, our sample comprised mostly older women of isiXhosa ethnicity who had originally migrated to Cape Town in order to seek work. Cultural practices appeared to continue to play an important role in their lives. Our sample was characterised by low income status, but the homes we visited were usually spotlessly clean and carefully maintained by the owners thereof. Participants spoke proudly of stokvel membership and of diligence and sacrifice in their resultant savings behaviour. Indeed, participants saved significant amounts proportionate to their monthly income, which given the scarcity of their financial resources must have come at considerable personal cost. Participants also spoke of wanting to uplift friends and neighbours, so that these might also improve their homes and families through the careful management of money. Strong evidence of community and communal values ran throughout the data collected, despite some of the fairly harsh terms on which stokvels operate, which I shall describe in part 4.4.

4.2 Stokvel associations

In our sample we encountered several different stokvel structures. Since structure is not regulated in any way, members determine this themselves. There were common trends, however, suggesting that stokvel know-how is transmitted through the community. All clubs mentioned fell into the broader ROSCA or ASCRA categories described in part 2 above. Of our sample of 20 stokvels, six expressly stated that theirs was a ROSCA only (Interview 1, 5, 7, 10, 12, 16). A further four participants stated that theirs was an ASCRA only (Interview 4, 6, 8, 15). For these purposes, I have included grocery stokvels, which pay out in goods rather than cash, as ASCRAs, since they fit this model in terms of how the capital is dealt with. The remaining ten participants stated that there were simultaneous ROSCA and ASCRA models operating between their club members (Interview 2, 3, 9, 11, 13, 14, 17, 18, 19, 20). A possible reason for running both a ROSCA and an ASCRA simultaneously with the same members is that part of the members' capital is held in the ASCRA, which accumulates throughout the year

and is stored. This capital can thus serve as collateral should the member default on a ROSCA payment (Interview 9). Several participants confirmed that they were members of multiple stokvels, some as many as four or five (Interview 11, 14). Some of the ROSCAs ran two parallel groups within the same umbrella association: members were permitted to belong to both groups and save more correspondingly, or to belong to only one (Interview 1, 2). This is thus a means to ensure affordability for different income levels. ROSCA contributions were mostly around R1 000 per month, although some were larger at R3 000 (Interview 1, 2, 9, 20) or even R5 000 per month (Interview 12, 18). ASCRA contributions were usually less, between R200 and R400 per month.

Most ROSCAs had 10 or 11 members, those with less had five or six (Interview 7, 11), and those with more members had 20 or 21 (Interview 14, 16). This reflects the fact most participants reported that meetings were held monthly and that the cycle of their club ran according to the calendar year. Thus a ROSCA with 10 or 11 members would run for the bulk of the year, allowing a payment holiday over the expensive Christmas and (January) back to school period. Clubs with half this number of members could have two cycles per year, and clubs with twice the number could pay two members at each meeting. Since the majority of participants reported that club members ran a ROSCA and an ASCRA simultaneously, it makes sense that the number of members of both models usually correlated. Some of the ASCRAs were larger, however. One grocery stokvel had 94 members (Interview 20) and one savings ASCRA had so many members that the participant did not know the exact number (Interview 14).

As far as financial behaviour goes, of the reported interest rates for lending by ASCRAs (both savings and grocery stokvels were reported to lend capital), the most frequently cited number was 30 per cent per month, although one participant indicated 25 per cent per month (Interview 17) and others as high as 40 or 50 per cent per month (Interview 13, 15, 20). All

interest was said to accrue on a simple model: no one reported charging interest on interest. The majority of participants confirmed that their stokvels made use of bank accounts, either to store capital (ASCRA stokvels) or to transfer payments to a recipient via EFT (usually directly member to member). A few participants did say that they were in a club which dealt exclusively in cash, however (Interview 2, 8, 10, 13, 16).

Security was an ever-present risk mentioned by participants (as the stokvel rules discussed below shall attest to). This explains the prevalence of bank accounts. Many of the bank accounts discussed were the club account offerings which certain South African banks have created specifically in order to target the stokvel market.²⁴ One of the cash only stokvel members said that her ASCRA money was mostly lent out during the year rather than kept on hand, which avoided the need to worry about safe storage of funds (Interview 2). Of the groceries ASCRAs, some stored value by buying “stickers” from leading retailers in the area, which were then kept in a dedicated book (Interview 11, 15). The retailer would sell these stickers to a member for cash and the book containing stickers could be exchanged for a corresponding value of goods in the store when required.²⁵

Unsurprisingly in associations formed with the purpose of accumulating financial resources, we found a strong emphasis on the value and importance of money. Research participants were quick with mental arithmetic around financial details, probably due to frequently dealing with this type of calculation in their stokvel practice. There was also a strong focus on the cost of credit – one participant spoke of the high cost of modern living and also stated that everything was more expensive now than in the past (Interview 15).²⁶ The philanthropy that led to encouraging friends and neighbours to join stokvels did not extend to lending practices – the high interest rates discussed above attest to this. These interest rates are higher than those permitted by the National Credit Act in this type of unsecured lending, but without the compound interest or the other fees and charges permitted under the Act, which

can cumulatively have a disproportionate effect on the cost of small loans (cf. Campbell 2016). Stokvels are one response to the difficulty of obtaining formal sector credit in Khayelitsha, but this access comes at a cost commensurate with limited supply of funds.

In sum, the days of the non-commercial Indigenous society, as portrayed in historic anthropological accounts and African customary law textbooks, are over in Khayelitsha. Indeed, these written accounts are only representations anyway and may not be an accurate reflection of the true nature of commercial activity in pre-colonial society. Stokvels provide key evidence of current financial practice in the contemporary context and have become collective players in the broader South African financial and retail landscape.

4.3 Stokvel constitutions

The constitution of a stokvel, referred to using this terminology by participants speaking in English, was mentioned in all interviews. This is the set of rules which members agree will be the basis on which their association will be run. The majority of participants said that their stokvel was based on a written constitution (Interview 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20). We obtained copies of five of these: all were hand-written in isiXhosa, although for one there was an English translation available (Interview 1, 2, 4, 7, 9). This is thus not representative of the full sample of twenty interviews. When correlating the written rules against the rich account of the full rules of stokvel practice in the given association, however, it was obvious that some of the rules were unwritten and extended the ambit of what was formally included in the actual constitution. None of the documents we received was particularly lengthy or attempted to comprehensively cover all the various rules discussed in this part 4. The model made available for download on the website of the National Stokvel Association of South Africa (“NASASA”) has a bit more detail, but still does not comprehensively deal with all the types of rules discussed in this part 4.²⁷

Several participants discussed the procedure for adopting a constitution, which was said to be by a majority vote of members at the beginning of the stokvel period (Interview 1,4; Focus group 1). Some participants also stated that a constitution could be amended as and when needed by a simple majority vote at a stokvel meeting (Interview 1, 4).

As to the process of agreeing to be bound by the constitution: some participants spoke of a written signature being needed by new members, or all members, at the beginning of the stokvel period (Interview 1, 7, 8, 10, 13, 19). Sometimes this was also further formalised by turning the written acceptance into an affidavit at the local police station (Interview 8, 10, 13). Those who reported using affidavits argued that this was necessary to facilitate extra-curial debt execution by the stokvel upon default by a member, which will be discussed further in part 4.4 below. By notifying the police of the rules of debt execution upfront, the defaulting member would be prevented from arguing that her home was being robbed should execution become necessary.²⁸ In other stokvels, the process of agreeing to the constitutional provisions was accompanied by non-written formalities: the UCT focus group spoke about a ceremony where the rules were read out at the first meeting and then had to be verbally assented to by all members. Those who disagreed could choose not to be a part of the club (Focus group 1).

With regard to the actual rules themselves, a variety of issues were reported which dealt with most aspects of the functioning of the stokvels. Normally, there would be provision made for stokvel office bearers – although this was not identical in all stokvels, it is conventional to have a chair, a secretary, and a treasurer. These office bearers are also provided for in the NASASA model. A standard meeting date was generally set out (for example, the first Saturday of the month).²⁹ Another crucial issue was the amount of the contribution required of members. In a ROSCA stokvel, members would also have to agree upfront on an order of payment. A trend detected was that new members would be placed last or towards the end in this roster, since they had not yet established their trustworthiness (Interview 1, 5, 13, 17).

There were an array of fines for minor transgressions, such as arriving late for or missing meetings, or paying a contribution a few days late. Other rules, possibly informal, dealt with who would pay for refreshments at the social function which followed a formal stokvel meeting; and whether and at what cost members could invite non-member friends to attend (Interview 1). Many participants confirmed that fines paid by members for transgressions would be jointly shared through the funding of a party at the end of the club's period (Interview 10, 13, 19). There were also fines for the use of mobile phones during meetings (Interview 2, 3, 8, 10, 13, 20). The reason for this, reported in several interviews, was the risk of robbery. In one interview we heard a lengthy story about how a member had made a phone call during a meeting and assailants had shortly thereafter burst into the venue and stolen the large amount of cash on hand (Interview 2). In order to further manage the risk of robbery, we heard in addition that meetings were sometimes conducted in a bank (Interview 15) or very early in the morning on the weekend (Interview 8).

Whether oral or written, what is clear is that the stokvel constitution has an important role to play in reaching collective agreement on the rules of engagement.

4.4 Enforcing payment

Many of participants whom we spoke to said that default was not an issue in their stokvel and that all members paid eventually (Interview 1, 2, 3, 4, 7, 10, 11, 12, 16, 17). What also emerged, however, was that late payment does occur and that sometimes a certain amount of negotiation and even various forms of coercion were necessary to get what was owing.

A defining feature of the severity of a default was whether the recalcitrant member had received a payout yet or not (cf. Interview 13, 14, 18, 20, Focus group 1). With ROSCAs this is particularly acute, since a member who has received a payout during the cycle effectively owes money to every other member who has not yet received a payout. This makes early

withdrawal difficult. If no payout has been received, then early withdrawal would be easier, although receiving a return of moneys paid would still be an intricate process potentially involving several members. The withdrawal would also affect the financial planning of other members who would now receive a smaller payout. In an ASCRA, early withdrawal was less problematic, although often the withdrawing member would have to wait until the end of the cycle to receive the money which she had paid in to date. This would occur, for example, where a fixed deposit agreement was in place with a bank (Interview 4). If a member had taken a loan from an ASCRA, this would need to be repaid. Participants spoke of managing the risk of ASCRA lending by ensuring that members were not advanced more money than they had deposited with the club, thus insuring collateral for any loan (UCT focus group). In several interviews we heard the opinion expressed that stokvel debts (to both ROSCAs and ASCRAs) were binding on the families of members, who would be called upon to pay if a member died or was otherwise unable to service the loan (Interview 1, 2, 3). We also heard a story of a routine late-payer who was ordered to leave the group by the other members (Interview 7).

As to debt enforcement procedures, it was clear that repayment was usually obtained by using the group pressure of the club as a whole in order to coerce payment (Interview 2, 9, 13, 14, 15). This may account for the common response detailed above that default (perhaps in the sense of not paying at all, rather than paying late) was not a problem in the participant's own stokvel. We heard that it would be normal to negotiate with a defaulter and to give her time in which to correct her omission before taking further action (Interview 10, 20; Focus group 1; UCT focus group). The attitude of the debtor was said to be relevant here: there might be good reasons for default, such as a death in the family or unemployment (Interview 5), and it was important to be honest about these (Interview 3). It seems that co-operative debtors will be better treated than unco-operative ones.

If the default escalated to a dispute, then external agents were sometimes used. Some reported that their stokvels would use the Street Committees discussed in part 2 above (Interview 2, 5, 13, 18). This was not a widely favoured option, however: two participants stated that it was more effective to resolve the disputes internally (Interview 13, 16). In our study we also found that the local taxi-men³⁰ had a role to play in stokvel dispute resolution processes. Minibus taxis are a firm part of the South African informal economy: this is a lucrative industry, although it has also been the source of violent wars over turf, both historically and to the present day (Ingle 2009; Dugard 2001). We were told that for a fee, the taxi-men would visit the home of a defaulter and would negotiate a repayment plan with him or her (Interview 5, 6, 14; Focus group 1). This was reported to be a faster way of obtaining one's money than going through other channels (Interview 5).

The formal sector apparatus was not commonly used. Only one story was told of enforcement through the Magistrates' Court (Interview 8). Use of the police was more commonly mentioned by participants, such as with regard to the use of affidavits mentioned above. A complaint was made in one interview that the police did not help in resolving disputes, however, they just referred members to the court structures (Interview 16). One unusual ROSCA, which operated remotely via a Whatsapp group and involved a large contribution of R5 000 per month, was said in the interview to be prepared to use lawyers to resolve its disputes (Interview 12). The same participant said that this had not been necessary to date, however. Most other participants were not interested in the services of lawyers, which were said to be expensive. One member was hostile to the use of both the police and lawyers:

When you do that [get lawyers or the police involved in a dispute], that is a fight. You will be fighting with the club. ...That is not our law. (Interview 15)

The most popular option for obtaining payment was self-help debt execution by the stokvel group itself. If negotiation and a notice period had failed to deliver results, several

participants stated that the next step would be the seizure of property at the defaulter's home (Interview 2, 3, 9, 11, 13, 15, 20; UCT focus group). This would then be sold to settle the debt, with the balance going back to the defaulter. Some participants spoke of even selling the defaulter's home itself, although these stories were usually mostly of a hearsay nature (Interview 2).³¹ These self-help debt execution procedures didn't always work out well – if the debtor called the police there would be problems (UCT focus group). One participant even told a story of how the whole stokvel had been arrested while seizing goods and had thereafter received a warning from the local court (Interview 20).

While the above procedures may sound harsh, it must be reiterated that most stokvels we encountered were perfectly functional without resorting to external parties and default was stated to be rare. It is safe, however, to say that contracts are considered binding within our Khayelitsha research pool. Indeed, this system provides the backbone of wealth-accumulating financial behaviour.

5. Analysis

In what follows I will analyse the findings of this study under two headings: first, “popular economies”, where I will emphasize the mutual shaping effects of formality and informality in the Khayelitsha stokvel context. Secondly, “vernacular norms”, where I will then shift the analysis to the processes by which stokvels are ordered.

5.1 Popular economies

I will discuss three contextual aspects of our findings which confirm the popular economy thesis described in part 2.4 above: first, the role of the State and its apparatus; secondly, the role of formal sector private businesses; and finally, the role of informal sector businesses. All three of these dimensions demonstrate a blending of the formal and the informal economies.

5.1.1 The State and its apparatus

In the literature review above, I highlighted the role which stokvels play in providing access to credit when the formal economy is unable or unwilling to service this demand. In a low-income setting like Khayelitsha, short-term loans are often required in order to smooth consumption in periods of need. This was spelt out clearly in our first focus group:

You see now there are no trains and buses; they are on strike, there is no money and month-end is far. They know Beauty has a stokvel so they are busy coming to my house to borrow money because you can't say you have no money and therefore you are not going to work. They help us and we help them. (Focus group 1)

The NCA's restrictions on reckless lending mean that this demand must often be serviced by the informal economy. By making room for stokvels in the framework of the NCA (as set out in part 2 above), the State has expressly recognised the role which these informal associations play in servicing that portion of demand for short-term unsecured credit which is left unsatisfied by the formal economy.

Another example of the interaction between the apparatus of the State and Khayelitsha stokvels was demonstrated by the role which the police played. Some interviews reported hesitation – or even hostility – to use the police in assisting with contract enforcement. We did, however, see other more nuanced roles for the police. In contract formation for example, when some stokvels required members to formalise their agreement to the stokvel constitution by not only writing this down, but also getting the resultant document turned into an affidavit at the police station. This step was intended to allow stokvel members to forcibly attach the assets of a defaulting member without police intervention. While this measure did not always restrain the police, this process potentially implicates the local police force in placing an official mark on a contract which authorises illegal self-help. This may reflect the fact that police officers themselves may be from similar communities and more in touch with local norms than the

formal sector law. The police, as the most immediate arm of the State, thus become role players in the informal economy.

5.1.2 Formal sector businesses

Our data-set was replete with second-hand information about the role of formal sector businesses, particularly banks and retailers, in courting stokvels. To attract stokvel custom, banks have designed dedicated products and accounts. In this way they attract the considerable amounts of capital held by stokvels. There could also be other benefits, such as obtaining credit data on members or potentially new personal account-holders. In return, stokvels get secure storage of funds and access to useful technology (such as EFTs or the notification of deposits by mobile phone). These measures assist in combatting stokvel fraud. One consequence of this interaction has been the imposition of ordering processes on them stokvels:

In the bank also, they want the rules. They can't take you without the rules. Before you go there, you meet with the other members and three people open the account and at the bank they want the rules and the minutes of every meeting and then you present these to the bank. They read the rules and then open the account. They then ask for all the names of the people in the stokvel and after that if you go to the bank, the three must go. We maybe do that for a year and maybe in October we meet and take minutes and put through a notice and the bank then gives you seven days before you get the money. When you take the money, all three must get the money from the bank. (Focus group 1)

There are similar mutual advantages with retailers: shops are able to attract increased custom through bulk sales to stokvels. Savings books also provide a revenue stream and tie stokvel members to a particular retailer. Members in turn receive facilities such as sticker books designed to suit their saving methods, as well as bulk discounts.

In sum, banks and retailers drain capital from the informal economy into the formal economy through their interaction with stokvels, but in a way which proves symbiotic and mutually beneficial.

5.1.3 Informal sector businesses

Stokvels provide a means of funding informal businesses, potentially circulating money earned in formal sector employment into informal enterprises. The most common example of this (discussed in part 4 above) was where stokvel capital was used in an informal money-lending business by individual members. We spoke to many such loan sharks, who helped service the ever-present demand for short-term credit in Khayelitsha.

We also heard about the use of stokvel capital in other forms of informal enterprise, however. The participant in Interview 16, for example, was an entrepreneur. Previously she had run a hair salon; today she runs a tuck shop, as well as a bottle store and tavern. Stokvel membership imposed the financial discipline to service her debt and thereby keep her businesses viable:

I'm doing business and when I'm selling I know that I need to keep money for someone who helped me, every day. So I put my money in the bank and then when it's time for *gooi gooi* [the Khayelitsha term for a ROSCA] at the end of the month, I just get that R2 000 and give someone for *gooi gooi*. (Interview 16)

Informal enterprises are thus also symbiotic with stokvels: these associations provide access to capital to fund enterprises. Enterprises provide opportunities for growing that capital, which benefits the stokvel.

The sustainability of stokvels is not merely as result of an interactive symbiosis between the formal and informal economies, however. As a form of collective social activity, stokvels must be ordered in some way in order to make their operations efficient and advantageous to

members. I turn now to the vernacular system of ordering inherent in the data set out in part 4.

5.2 Vernacular norms

In line with legal pluralism theory, stokvel norms in Khayelitsha have been developed at a community level and are considered binding within those communities. The following sub-part will discuss the normative and ordering processes of the Khayelitsha stokvel community.

A defining feature of our research participants, as set out above, was their high degree of demographic homogeneity. Perhaps it is unsurprising then that most interviews reflected a sense of community between stokvel members, with concern for the upliftment of family, friends and neighbours being common. As one participant said, “stokvel is not me, stokvel is us” (Interview 1).

From an organisational point of view, our sample of participants also presented us with a shared reservoir of knowledge on stokvel practice. There was a high degree of continuity in how different stokvels operated, including with regard to ordering practices. In the UCT focus group, one participant reflected on the process of rule creation:

The more there is trouble you come up with ways to avoid it because you don't want to fight. You want everything to go well. Stokvels are nice but not when there is trouble. Like I said, there are advantages and disadvantages. Sometimes you put your money all year and when it's time to share the money there is crying. When troubles come we learn new ways to avoid them. (UCT focus group)

As we saw in part 4 above, the resultant set of norms and practices is usually formalised and entrenched in some way, often in a written memorial. New members would be required to consent to be bound by the constitution of a stokvel, thereby entering into a contract with the collective of members of the association. The community bonds between members are

necessary in order to ensure compliance with these contracts, since most contract enforcement was achieved through the mechanisms of the group itself.

The first step in promoting efficacy in the above system of ordering was careful selection of members, in order to preserve the sense of community:

When you are doing these things you have to work with people that you know and you have to understand each other so much that even if you lend someone money, you don't give someone who won't pay it back. (Interview 17)

Beyond that, there would be a resort to negotiation, followed by extra-legal sanctions of increasing severity. This trend in our dataset largely confirmed other reports in the South African stokvel literature. Mashigo and Schoeman, writing from an economic perspective, argue that the rules of a stokvel are upheld due to “personal relationships, trust, loyalty and reputation among members” (Mashigo & Schoeman 2012, 55). This sense of what one might paraphrase as “community” leads to deep knowledge of other members, which reduces risk in contractual relations due to knowledge asymmetries (which might otherwise lead to the dangers of adverse selection and moral hazard) (55-56). Close proximity of members also allows for peer pressure and mutual monitoring to ensure compliance (56). Taken together, these devices shape behaviour and reduce the risk of default. Bähre, an anthropologist, is more circumspect about attributing stokvel co-operation and efficacy to trust between members alone (Bähre 2007, 139). Bähre notes in addition the other strategies for containing risks, such as holding savings in the club account as a form of collateral (140). He is also candid about the threat of violence or confiscation of property as a factor in intimidating members into compliance (140).

In our own study, the reputational and monitoring devices described by Mashigo and Schoeman came through strongly: examples include how members are screened before joining a stokvel, the order in which members receive a payout in a ROSCA, or the group shaming

involved in discussing payment at face to face meetings. We also found evidence of the risk management strategy of holding member deposits as collateral, as described by Bähre. His account of intimidation of defaulters was confirmed in our study through practices such as group visits to a recalcitrant member's home, or the use of taxi-men as agents. Similarly, we heard many stories of the confiscation of property in order to settle an outstanding debt.

In sum, stokvels in our sample were ordered by various strategies, including extra-legal community sanctions. The basis for imposing these sanctions was contractual agreement, by which members of stokvels were deemed to bind themselves in advance to this form of ordering. The net result was a workable system, as evidenced by the low levels of default on loans. Some of these processes would be illegal in terms of State law, particularly those relating to the confiscation of goods. This element of unlawful self-help means that this set of norms could not be recognised in a State court, even as African customary law. Rather these are unofficial vernacular norms, the product of a survival strategy which adapts Indigenous culture to the modern financialised economy. In order to succeed in an environment characterised by a lack of access to effective justice, desperate measures are necessary.

6. Conclusion

Stokvels are an intrinsic part of Khayelitsha's financial landscape. Given their prevalence and the abundant resources which they control, these informal associations have been accommodated by both the State and non-State actors of the formal economy. Stokvels harness financial discipline to provide a mechanism of wealth creation for members. As such, they present an important counter-narrative to the dismal statistics on consumer debt in South Africa (for example: Finmark Trust 2014).

From a normative point of view, stokvels are privately ordered, using a system of non-State processes centred on contracting. These contracts contain rules evolved through ongoing

experience and transmitted through the community by associations and by word of mouth. Stokvels are neither part of the African customary law tradition, nor fully Westernised. Rather, stokvels are an example of Indigenous modernity, appropriating and adapting financial practices in order to form community saving and credit schemes. It is within stokvel practice that the search for vernacular commercial contracting norms should begin.

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8. Notes

¹ This is the Apartheid era terminology for urban areas set aside for African habitation. The terminology has remained part of the modern South African lexicon.

² In order to contextualise the monetary aspects of the discussion below, it should be noted that in October 2019, 1 United States Dollar was equivalent to about 15 South African Rands.

³ Hosken suggested that in 2019, R13 741 per month was the average take home pay of the South African middle class.

⁴ This view is based on the author's own observations and conversations with the research assistant and community sponsor. See also: Seekings 2013, 6-8.

⁵ See for example: Financial Sector Regulation Act 9 of 2017, section 7(f); National Credit Act 34 of 2005, section 3(a); South African National Treasury 2011, 59-72.

⁶ Act 34 of 2005.

⁷ NCA, Section 40(1) imposes the requirement of registration on credit providers who meet a certain threshold, the determination of which is delegated to the Minister of Trade and Industry under section 42(1). This threshold was most recently set at R0 in GN 513 in GG 39981 of 11 May 2016. See generally and for the prior position: Kelly-Louw and Stoop 2012, 102-110.

⁸ This interpretation of the NCA was recently confirmed by the Supreme Court of Appeal in *Du Bruyn NO & Others v Karsten* 2019 (1) SA 403 (SCA).

⁹ NCA, section 89(2)(d) makes lending to a consumer by an unregistered credit provider an "unlawful credit agreement". Section 89(5) imposes a duty on a court faced with an unlawful credit agreement to declare it to be void.

¹⁰ NCA, Sections 80-84.

¹¹ NCA, section 81(2)(a)(ii), read with regulation 23A(13).

¹² See National Credit Regulations (2006), chapter 5. For discussion see: Campbell 2016. Context is provided in James 2012.

¹³ Co-operatives Act 14 of 2005, see the definition of a "financial co-operative" in section 1, read with section 4(2)(f).

¹⁴ Act 94 of 1990.

¹⁵ GN 620 in GG 37903 (15 August 2014).

¹⁶ NCA, see the definition of “stokvel” in section 1, read with section 8(2)(c).

¹⁷ In *African Dawn Property Finance (2) (Pty) Ltd v Dreams Travel and Tours (CC)* 2011 (3) SA 511 (SCA) the Supreme Court of Appeal held with regard to a business to business loan described as “bridging finance” that before a finding that a particular interest rate was unlawful could be made there would need to be “extortion or oppression, or something akin to fraud” (para 29).

¹⁸ For a reported case involving these facts, see *Mndi v Malgas* 2006 (2) SA 182 (E). This case was decided under the previous Usury Act 73 of 1968 rather than the NCA, however.

¹⁹ For the NCA application requirements, see sections 4-8 in particular.

²⁰ The Interim Constitution (Constitution of the Republic of South Africa, Act 200 of 1993) came into force on 27 April 1994, this was replaced with a Final Constitution (Constitution of the Republic of South Africa, 1996) on 4 February 1997.

²¹ Constitution of the Republic of South Africa, 1996, section 211(3).

²² Key formative Constitutional Court decisions on customary law would include: *Alexkor Ltd and Another v The Richtersveld Community and Others* 2004 (5) SA 460 (CC); *Bhe and Others v Magistrate, Khayelitsha, and Others (Commission for Gender Equality as Amicus Curiae)*; *Shibi v Sithole and Others*; *SA Human Rights Commission and Another v President of the RSA and Another* 2005 (1) SA 580 (CC).

²³ *Alexkor Ltd and Another v The Richtersveld Community and Others* 2004 (5) SA 460 (CC), paras 51-57; *Bhe and Others v Magistrate, Khayelitsha, and Others (Commission for Gender Equality as Amicus Curiae)*; *Shibi v Sithole and Others*; *SA Human Rights Commission and Another v President of the RSA and Another* 2005 (1) SA 580 (CC), paras 40-46, 156-157.

²⁴ Compare the Nedbank club account

<https://www.nedbank.co.za/content/nedbank/desktop/gt/en/personal/save-and-invest/savings-accounts/club-account.html>. A similar club account is offered by ABSA Bank

<https://www.absa.co.za/personal/save-invest/products/club-account/>. Statistics on stokvel usage of mainstream banks may be found in African Response 2012, 11.

²⁵ Compare the description on Shoprite's website: <https://www.shoprite.co.za/money-market/savings-stamps.html>.

²⁶ The South African Reserve Bank targets an inflation level of between 4 and 6 per cent in terms of its constitutional mandate to preserve the value of the currency. See: Constitution of the Republic of South Africa, 1996, section 224(1).

²⁷ NASASA is an umbrella body providing guidance to stokvels around the country (<http://nasasa.co.za/site/>).

²⁸ Extra-curial debt execution is carefully circumscribed in South African law and the seizure of goods by stokvel members would be illegal without a court order. With regard to the seizure of moveable property, see: *Bock and Others v Duburoro Investments (Pty) Ltd* 2004 (2) SA 242 (SCA). With regard to immoveable property, see: *Jaftha v Schoeman and Others; Van Rooyen v Stoltz and Others* 2005 (2) SA140 (CC); *Gundwana v Steko Development and Others* 2011 (3) SA 608 (CC); Uniform Rules of Court 46 & 46A.

²⁹ Four out of the five written constitutions which we obtained provided for a standard meeting date.

³⁰ This is a male-dominated industry in South Africa.

³¹ Properties in South African townships often change hands on an informal basis without resorting to the Deeds Registry. This is yet another example of the problem of access to justice. Compare: Kingwill 2008; Downie 2016, ch 7.

9. References

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