The (De)Link Between Legal Feminism & Legal Education
Introduction: *A Historical Overview*

The imprints of women and gender studies are beginning to place their markings on the conceptual and empirical landscape of the social sciences in Africa. However, feminist legal studies, is yet to dent the rigid, traditional ways of teaching law on the continent. This is partly on account of the relatively fewer numbers of female faculty members found in African law schools, but it also has a lot to do with the orthodox wrapping of legal concepts and norms in allegedly "objective," "gender neutral" and "universalist" trappings. Hence, there is a strong resistance within law to feminist analysis. Law is paraded as a value-neutral tool that applies universally to all individuals irrespective of social and other differences (e.g., gender, class and race). The question is often posed in all seriousness: "What has feminism got to do with the law?"

Teaching of the law in Africa has had a long and chequered history. Colonial history was the determining factor in what system was adopted by which country. Law schools generally follow either of two Western legal traditions or a mixture of the two. Former British colonies adopted the Common Law tradition while former French, Portuguese, German and Dutch colonies follow the Civil Law tradition with its roots in continental Europe. Countries like South Africa, Zimbabwe, Lesotho, Botswana, Namibia and Swaziland have mixed legal systems.[6] Some of the North African countries such as Egypt adopted a mix of Occidental and Sharia legal systems. The difference between the various traditions and systems basically lies in the legal style and technique. However, despite the historical differences between common law and civil law,[7] the patriarchal fiction of "gender-neutrality of the law" runs across both systems.

Furthermore, irrespective of the legal tradition, men historically dominated legal training and women were virtually absent in the teaching and practising of law. In Uganda, for example, the committee set up by government in the mid-1960s to study and make recommendations for introducing legal education in the country never envisioned female students. When, in its 1969 report, the committee stated the function of University legal education as: "to produce men with an understanding of the role of law and society, and a deep and thorough grounding in legal principles (emphasis added)," they were referring to the literal meaning of the term 'men'.[8]

Thus, decades into post-independence legal education on the continent, not only is the structure of the law extremely sexist, but the law teacher and the law student were exclusively male. Today, the position has only slightly changed in most countries. Academia in Africa has traditionally been led and controlled by men. The struggle for gender-equality, women-sensitive agendas and affirmative action in hiring, promotion and retention of female academics continues to meet a great deal of resistance from both within and outside academic life (Tamale & Oloka-Onyango (2000), Mbilinyi & Mbughuni 1991).

The Evolution of Teaching Gender in Legal Education

A commonality that most African countries share is the dual/plural character of our legal systems and structures. Part of the legacy that we inherited from our colonial histories meant that parallel systems of law (e.g., received written law, customary law, religious law) would operate in tandem. But in most cases, the imported or received law from the colonizing countries took precedence whenever there were inconsistencies with other systems of law.
When formal legal education was first introduced on the continent, the main purpose was to produce narrow legal technicians who could work as legal practitioners in law firms, business and government departments. Thus the training of such lawyers did not go beyond the black and white letter of the law and its applicability. Soon afterwards the need was felt in developing countries to train lawyers with a broader outlook, those who could foster national development through law. Thus the ideology of law-in-development (LID) was introduced to many law schools on the continent in the late 1960s and early 1970s. Scholars and academics from the USA were central to the evolution of the law-in-development movement on the continent (Mabirizi 1986). It was part of the American attempt to broaden their sphere of influence, curb the spread of communism and penetrate the African market. American LID missionaries flocked to law schools all over the continent, while hundreds of young African male scholars were sent to the US to train under American scholarships.

The LID analytical model introduced to Law Schools in developing countries was fatally flawed from the onset. Very similar to the story of Women in Development (WID) programmes that were to follow almost a decade later, LID programmes simply sought to pursue the "modernization" paradigm without seriously addressing the underlying structural factors that were responsible for underdevelopment. It certainly did not analyse law as a means of social control or a tool for maintaining patriarchy. The law that was taught was

steeped in the positivistic paradigm and perceived as a value-neutral tool that could be used to effect development, and to remove poverty and oppression. Certainly, gender did not feature anywhere in this paradigm.

At the height of the cold war in the late 1970s and early 1980s, some faculty members in law schools across the continent started to seriously challenge the LID approach. Most of these were either trained in Eastern bloc universities or those like the University of Dar-es-Salaam in Tanzania where Socialism had a stronghold. They attempted to analyse the law using the Marxist method of Political Economy. Unlike LID scholars who saw history as only relevant to law in its descriptive form, these scholars taught law as an integral part of its socio-economic history, revealing the actual roles of various legal concepts in the social order. Indeed, this gave birth to a number of inter-faculty and intra-faculty rifts between and amongst two schools of thought on the continent. The emphasis, however, for these LID critics was on the class-based character of the law, neglecting other power structures such as gender.

Even when legal curricula broadened with the introduction of various "Law-and-" courses, gender remained alien to most African law schools. But African feminist jurisprudence was an offshoot of Marxist legal scholarship within the legal academy. Hence, from the early 1990s, the gendered character of the law became part of the discourse in a few law schools around the continent. For the first time in the law lecture room, a gendered analysis of the legal norms and concepts was offered at a handful of law schools in African universities. This coincided with the consolidation of women's movements across the continent and the heightened strategic and political engagement of African women at all levels. It happened against the backdrop of constitutional reforms, pressure from the international women's movement, but most important was the growing concern with the inequitable situation of women on the continent within legal feminist circles. Today, the number of law schools offering gender courses has grown. A summary of the various courses currently on offer is provided in Table 1 below. However, as stated earlier African feminist jurisprudence is yet to make its mark on legal studies generally.

Furthermore, if legal feminism is to contribute positively to social transformation in Africa, legal feminists must rethink, reassess and redefine their political strategy. There is limited emancipatory value in legal feminism that does not attempt to 'shake up' oppressive and patriarchal institutions of the family, religion, sexuality, politics, etc. Most importantly, African legal feminists should prioritize the production of indigenous feminist jurisprudence. Certain areas of study within feminist legal studies are under-researched mainly because of the obvious deficiency of relevant theoretical frameworks. Take the example of African women's work. Because the majority of women on the continent are engaged in informal and unorganized work, mainstream theories of formal work are largely irrelevant and impotent to their analysis. Indeed, there is a lot of room for African legal feminists to develop theory. The recent case of Amina Lawal from the state of Katsina in Nigeria (the Muslim woman who narrowly escaped death by stoning for adultery), for example, offers great potential to build theory relevant to African women's realities in arriving at substantive citizenship and social inclusion.

Gender and Law Courses and Institutions