

## The Status Of Legal Feminism In Africa: Gains & Limits

It is challenging, in a way, to talk about legal feminism in Africa when the concept of “African feminism” itself is an issue of persistent contestation on the continent. What I address myself to here are the various ways that feminists around the continent have analysed the law and the ways they have used it to pursue their struggles for gender equality and women’s human rights. What gains have been made and what are the limitations?

Legal feminists have been at the forefront of the contemporary women’s and feminist movements in Africa. Most of them started their engagement with feminist politics after they became aware of the numerous laws that blatantly discriminated against women. It was clear that African men and women became subjects of the law in very different social, cultural, economic and political contexts. They demanded gender equality before the law. However, today African legal feminism has gone beyond those narrow demands and are now seriously challenging key concepts in Western legal jurisprudence that underlie the received law of post-independence states. Concepts such as the “neutrality of the law” and “individual rights” have been exposed as myths used by patriarchy and its structures to maintain and perpetuate male dominance on the continent. The challenge is to go even further and confront the power wielded by other social institutions that act in tandem with the law to perpetuate gender oppression.

Legal feminist activism on the continent came of age during the late 1980s when female lawyers who doubled as gender activists organized to pursue gender equality. Prominent among such organizations and networks were the various country chapters of FIDA (the International Federation of Women Lawyers),<sup>1</sup> Associations of Women Jurists (Francophone Africa), Women and the Law in Southern Africa (WLSA), Women and the Law in Eastern African (WLEA), Women and the Law in West Africa (WLWA), Women Living Under Muslim Laws (WLUML) and Women in Law, Development for Africa (WiLDAF). In 1998 the African Women Lawyers Association (AWLA), the umbrella body of African women lawyers, was launched to strengthen networking between women lawyers in the region in their common goal to promote gender equality. It must be noted, however, that legal activism is not limited to lawyers as they are numerous non-lawyer human rights activists on the continent engaged in this field.

Inside the academy, the development of an “African feminist jurisprudence” (theory of law) is still in its nascent stages. Feminist legal academicians on the continent are especially critical of the sexism, patriarchalism, stereotypes and ethnocentricity that is part of the received law, imported with colonialism. They also analyse the position of African women within the multiple legal systems that are a direct legacy from the continent’s colonial history. The fact that almost all African countries adopted two or more legal systems at independence presents complex questions and contradictions for women’s rights. The majority of countries operate under a dual system whereby statutory formal laws (based on British, French, Portuguese, Roman-Dutch legal systems) operate side-by-side with uncoded customary laws. Others have three systems operating simultaneously: for example, Cameroon (English law, French law & custom), Guinea (French civil code, custom law and Sharia—Islamic law) and Nigeria (English law, custom and Sharia). The application of universal rights under international law further complicates the equation.

Such complexities were thrust into sharp focus with the now infamous Zimbabwean case of *Magaya v. Magaya*<sup>2</sup> that marked a serious setback in the advancement of women’s rights for African women as a whole. The main issue in this 1999 case was whether a woman could inherit her father’s estate if he died without leaving a will. The Supreme Court stunned human rights activists worldwide by denying 58-year old Venia Magaya her inheritance right, holding that the “nature of African society” dictates that women are not equal to men, especially in family relationships. Awarding the father’s estate to her half-brother, the court made reference to unwritten African cultural norms that date back centuries, which say that the head of the family is a patriarch, or a senior man, who exercises control over the property and lives of women and juniors. The 5-0 ruling equated the status of a woman to that of a “junior male” or a minor.<sup>3</sup> This dangerously repressive precedent deliberately overlooked domestic law<sup>4</sup>, the constitution and international instruments that were cited in the defence. The *Magaya* case demonstrated that the struggle for African women’s human rights confronts resilient structures and institutions of patriarchy whose primary role is to maintain the status quo.

In the process of developing “home-grown” jurisprudence, African legal feminists have drawn inspiration from the contributions of Western ideological movements such as, feminist legal theory, critical legal theory, critical race theory, Poststructural theory and Marxist theory. Increasingly, when African legal feminists make use of theories originating in the West, attempts are made to interrogate their contexts, find differences and similarities with the local contexts and engage with the extent they can be usefully applied. Caution must be taken to

avoid uncritical superimposition of Western paradigms onto the condition of African women as this may end in disastrous results. For example, in Uganda, attempts to gain land co-ownership rights for married women were dropped when it became clear that it was not mechanical co-ownership that grassroots women needed, but effective control over the land they tilled and security of tenure. Hence, the recently amended land law carries guaranteed security of *occupation* of the matrimonial home for married women.

**Some of the positive interventions deployed by legal feminists in Africa include the following:**

- **Lobbying for Gender Responsive Legislation:** Legal feminists have been advocating for gender responsive legislation in all areas of the law at the national level, regional and global levels. Most recently, on July 11, 2003, the African Union adopted the Draft Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa at the Maputo summit in Mozambique. The protocol, which will enter into force after 15 countries have signed it, is a significant milestone for African legal feminism. The protocol is the first regional document to comprehensively address the particular rights of African women. It is the continent-specific version of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
- **Gender-based Affirmative Action:** Introducing affirmative action laws and policies has been used as a legal strategy for achieving greater female representation, especially in the fields of education and politics. Examples of countries that have benefited from constitutional-based affirmative action laws include South Africa, Uganda, Tanzania, Eritrea and Burkina Faso. Such laws have not only raised the numbers and profiles of women in these respective arenas, it has also given greater voice to the concerns of gender inequality and discrimination that have been in place for centuries.
- **Legal Aid and Legal Literacy:** Women Lawyers/Jurists Associations all over the continent run legal aid clinics offering legal services and legal representation for indigent women. FIDA chapters have been very effective in this field. Indeed, today "FIDA" has become a household name in many African countries, associated with a no-nonsense stance in the protection of women's human rights.
- **Women's Rights Advocacy:** Numerous initiatives to raise awareness about African women's human rights have been launched around the continent. This is done through a wide range of strategies including campaigns, coalitions, lobbying, posters, demonstrations, research, popular theatre, media, training, fundraisers class action cases, etc.
- **Constitutional Equality Test Cases:** Legal feminist activism across the continent has involved undertaking test cases to establish new legal precedents that protect the rights of African women. The overall purpose of such action is to create a culture of judicial activism within the judiciary, the legal profession and the general public. The cases, which are usually filed with the constitutional or supreme courts of the respective countries, often involve pertinent women's constitutional rights such as citizenship, inheritance, and freedom of movement and expression. In the box below is a sample of milestone decisions across the continent that have paid dividends to women in Africa.
- **Research:** African legal feminism attaches a lot of importance on research, data collection and analysis as a vital tool for advocacy, policy formulation, legal reform and institutional development. The Women and the Law in Southern Africa (WLSA) research trust has been a leading institution in this regard.<sup>5</sup> The activist legal and multi-disciplinary research findings generated by legal feminists around the continent have informed and influenced action to improve the legal status of African women. The two areas where legal feminist research has scored results are in the various legislations against domestic violence and women's land rights that have been passed in recent years in various countries. The various National Gender Policies (NGPs) that have been developed on the continent owe their existence to such research work. Unfortunately, most of these NGPs have generally proved to be very blunt instruments for women's emancipation and there is need to expend more energy on engaging political actors at all levels to implement them.