

## Examples of Landmark Cases

### Unity Dow (Botswana)

When Unity Dow, a Tswana legal feminist, discovered that the Citizenship Act prohibited her children from acquiring Tswana citizenship because she was married to an American citizen, she dragged government to court. Under that law children of a Mtswana woman married to a foreigner were not entitled to citizenship, while children of a man married to a foreigner were. The Court of Appeal agreed with Unity Dow when it held that the Citizenship Act was unconstitutional, granting citizenship to her children and all those similarly placed. [*Attorney General v. Unity Dow (1992) 103 ILR 128*].

### Sara Longwe (Zambia)

In 1992 a gender activist, Sara Longwe, won a sex discrimination case against the Lusaka Intercontinental Hotel, which had policy that prohibited women from entering its premises without the company of a man (supposedly to curb prostitution). The High Court found that the hotel's exclusion policy amounted to discrimination and declared it unconstitutional as it violated women's autonomy and freedom of movement. [*Longwe v. Intercontinental Hotels (1993) 4 LRC 221*].

### Holaria Pastory (Tanzania)

Pastory was a peasant widow who was determined to fight for her rights. She challenged her nephew and the Haya custom that forbade her from selling customary land that her father had bequeathed her through a will. The High Court cited the Constitution and international treaties such as CEDAW to outlaw this custom, holding that it was discriminatory as it violated women's property rights. [*Ephrahim v. Pastory and Kaizingele (1990) 87 LLR 106*]

### Virginia Muojekwu (Nigeria)

The Court of Appeal had to determine the legitimacy of an Igbo custom called Nrachi that entitles a father who had no male heirs to keep one of his daughters ("idegbe") at home to bear sons and raise them for him. This daughter would assume the symbolic status of a son and ensured the perpetuation of her father's lineage. The Court found the custom to be discriminatory and in violation of the right to marry and freedom of association. [*Muojekwu v. Ejikeme (2000) 5 NWLR 402*]

### Jean-Paul Akayesu (Rwanda)

In 1998, the International Criminal Tribunal for Rwanda (ICTR) made history when the war crimes charges in this case moved far beyond the familiar definitions of genocide in international law. The scope and elements of genocide were thus broadened to include rape as a crime against humanity. Rape was comprehensively defined as: "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive." Thanks to this case, for the very first time, rape was removed from the private realm to the public domain and recognized as torture. [*The Prosecutor v. Jean-Paul Akayesu Case No. ICTR-96-4-A*]

### But there are some limits and constraints to legal feminism in Africa, some of which are outlined below:

- Despite the name, "*legal feminism*," the majority of organizations within the African legal feminist movements take a very '*legalistic*' stance to women's oppression and subordinate status. There is a tendency to lay too much emphasis on the reform of both the received and customary laws as a panacea to the woes of African women. Reformist strategies or other "silver bullet" approaches are essentially limited in that they leave the oppressive system intact. The strategy of affirmative action, for example, focuses on sex-gender redistribution and overlooks the underlying power relations and structures that create imbalances and inequities between African men and women. There is an urgent need to develop a radical theoretical framework with the potential to radicalize reformist strategies.
- A closely related problem concerns the wide *gap between legal theory and praxis*. Legal feminists in the academy and the activist practitioners tend to operate in their separate cocoons. Gender equality and women's rights rhetoric hardly spreads beyond the legal landscape. Yet theory leads to informed activism. When legal feminist theory does not speak to gender activism and when the latter does not inform the former, the unfortunate result is a half-baked and truncated legal feminism. Social transformation can hardly be achieved under conditions of under-theorized legal praxis.
- Even where gender responsive laws are put in place there is always the enduring problem of the *gap between law-on-the-books and law-in-practice*. Even when all the apparent legal loopholes have been plugged, women's lived experiences do not

change much. Not only do most people follow traditional customary practices in their day-to-day activities, but also the deficiency in implementation is still a huge problem.

- Another big challenge to legal feminism in Africa lies in the concept of *cultural relativism*. Politicians, cultural leaders, and mainstream scholars use “cultural relativism” to challenge gender equality by arguing against universal rights and making a case for understanding different cultures and societies on their own terms and relative to their own values and beliefs. Such arguments are invoked to justify practices such as, female genital mutilation and female subordination within the family institution. The false dichotomy created by the debate between universality of human rights and cultural diversity is particularly damaging to the rights of African women. Universality should mean that all human beings - in all our diversity - are entitled to the full enjoyment of all human rights.
- There is a tendency (intentional or unintentional) for legal feminists to adopt an ethos of *sentimentalism and victimization*. Wives, mothers and women are often depicted as ignorant, helpless, suffering victims. Moreover, we tend to invoke homogenizing and unrealistic ideas about how women should “stand up for their rights.” When legal feminists go down to grassroots women using the language of victimization and the politics of suffering, they come out as sionary, maternalistic and even matriarchal – retrenching the definition of womanhood in subordination.
- Legal feminism often has to contend with the reactionary *backlash* of legislative reforms. One particular area that has suffered severe backlash in Africa are the various affirmative action policies. The decade old policies are experiencing a violent backlash from cultural patriarchs that are everywhere calling for their scrapping from the continent.