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Women in Law and Justice

Helen Dancer

Summary

African law and justice systems in the early 21st century are the result of over a thousand years of religious and cultural influences and political change on the continent. As customary and Islamic laws became reinterpreted and formalized by colonial states, women experienced the effects of successive periods of religious and political conquest as an entrenching of patriarchal control in the family and personal law sphere. The 20th century saw African women’s resistance rise from the grass roots as an important force for national liberation. African women’s legal activism grew after political independence and African women lawyers were part of global feminist movements. In the wake of dramatic political changes across Africa, Latin America, and Eastern Europe, the global sphere of rights post-1989 became an enabling frame for women’s legal activism. Political transitions to multiparty democracy, the liberalization of African economies, and a wave of constitutional reforms strengthened women’s rights and gender equality guarantees. The 1980s and 1990s saw the founding of regional and pan-African women’s legal activist organizations, including the Action Committee of Women Living Under Muslim Laws and Women in Law and Development in Africa as well as the adoption of the Maputo Protocol on the Rights of Women in Africa in 2003. In the 21st century, while social, economic, and legal inequalities persist in spite of many gains for women’s rights, some African women lawyers have risen to occupy the highest echelons of the judiciary in several countries and in international courts.

Keywords

African law, CEDAW, colonialism, customary law, family law, gender equality, human rights, inheritance, Islamic law, justice, women’s human rights

African law and justice systems are the result of centuries of political and social change. Indigenous peoples' norms and processes of dispute resolution met the spread of Islam and European colonial rule, transforming them into the plural legal systems of contemporary Africa. Women's positions in justice systems have evolved with political and socioeconomic change: from the uncentralized state to colonial state formation and the modern state post-World War II.¹ However, while it can be useful to identify phases of transition, it is problematic to draw clear distinctions between the nature of precolonial or "traditional" law and justice, and foreign impact. Chanock argues this masks not only the fact that there was a succession of conquest states in Africa, but also that the versions of custom, or "customary law" as it became known, that emerged from this were not traditional but rather the products of colonial rule.² Colonial legal processes were characterized by the consolidation of state power, the development of colonial and "native" court systems, and the reinterpretation of customary and Islamic norms in the personal law sphere. Women experienced the effects of these legal developments as an entrenching of patriarchal control under both Islamic law and colonial centralized states.

The 20th century saw the rise of African women's resistance as an important force for national liberation, which gathered momentum through political independence and into the 21st century. African women's legal activism grew from the 1970s onward, and African women lawyers were part of global feminist movements. From the 1970s, the legal recognition of women's rights had moved from an early "protective" approach to "corrective," "non-discrimination," and "equality" approaches.³ The corrective and equality phases brought a revising of personal laws, constitutions, and bills of rights to give greater recognition to women's rights and non-discrimination. From the 1990s onward, women's legal activism grew with political transition to multiparty democracy, the liberalization of African economies, and further constitutional revision. In the 21st century, while social,

economic, and legal inequalities persist in spite of many gains for women professionally, some African women lawyers occupy the highest echelons of the judiciary in several countries and in international courts.

The Transformation of African Law and Justice Systems

The pluralism of norms, practices, and legal systems that exists throughout Africa reflects over a thousand years of religious influence and socioeconomic and political change on the continent, as well as the historical “receiving” of English common law and Roman-Dutch legal systems under colonial rule. African processes of dispute settlement were based on kinship ties and age sets or were presided over by village authority figures, including priests and chiefs. However, 19th-century European and African accounts of precolonial African justice systems are too fragmentary and subjective to serve as a basis for historical reconstruction of customary practices of the diversity of communities and ethnic groups who were then under colonial rule.⁴

Islam first arrived in Africa in the 7th century. By the late 15th century, reformist Muslim rulers were promoting Islamic legal, political, and religious cultures in some West African kingdoms. Militant Islamic states emerged in the savanna region in the 16th century, and waves of Islamic reform and revival reached the East African coast and South Africa in the 17th century.⁵ From the earliest period, shari‘a was regarded as the moral source of the Muslim ethical code as an expression of God’s will. In both the Sunni and Shi‘a normative traditions, shari‘a was interpreted dynamically in response to changing times. Colonial encounters would later result in this flexible shari‘a becoming interpreted more formally as “Islamic law,” driven by colonial administrative agendas that favored codification.⁶ Nowhere was this more significant for women than in family law, an area of law that colonial

authorities prioritized in consolidating their rule. In parts of northern and western Africa where Islamic law prevailed, constructions and interpretations of Islamic law by male religious leaders also reflected and reinforced contemporary male and Arab attitudes that women were not equal rights-bearers to men. Some Muslim feminist scholars argue that this was also intended to serve the political interests of the time.⁷

In contrast with traditional interpretations of Islamic law, which prohibited women from becoming qadis (Islamic judges), in customary contexts there is a history of women's involvement in other kinds of dispute settlement as chiefs in West Africa before and during the colonial period (e.g., among the Ffulp in southern Senegal and the Mende and Sherbro of Sierra Leone). Coquery-Vidrovitch observes that women's power as chiefs in these societies derived from passing offices and wealth through matrilineal social structures and that there was therefore a tension between the preservation of women's power as chiefs through their lineage, and motherhood (through patrilocal marriage) as the source of women's social status. Among the Baule of Côte d'Ivoire, a woman's eligibility to become a chief was contingent on remaining within her maternal line. Women who became chiefs either did not marry at all, maintained a dual residence upon marriage, or divorced their husbands. In Nigeria, Igbo women ruled among themselves by an ikporoani, or assembly of related women who heard disputes between spouses, groups, and villages. Married women arbitrated disputes outside their village and lineage and could impose rules on their village's political authorities. Seniority among women was determined by who had been married the longest. Colonization saw an overall reduction in the number of female chiefs in West Africa, but some, for example, Mammy Yoko in Sierra Leone (1849–1906), gained more power through allegiance to the British during indirect rule.⁸

In the late 19th century, British and French colonial powers took different approaches to establishing legal control through establishing protectorates. Indirect rule by British

authorities was mainly concerned with the politics of administration and court creation rather than the defining of Islamic or customary law. For reasons of practicality and resistance, general or “received” law of the colonial power only extended to public law issues, and a racialized dual court system was established comprising colonial courts and “native authorities.” French colonial authorities took a different approach, incorporating Muslim courts into the colonial administration itself.⁹ Throughout colonial Africa, customary and Islamic laws in the family and personal law sphere were made subject to the “repugnancy doctrine,” which prevented courts from applying rules that were regarded as repugnant to natural justice. This was significant for women in situations of conflict of laws and forced law reform concerning female consent to marriage in British Africa and French West Africa.¹⁰

At first, it appears that this transition provided women with increased freedoms in marriage and residence. However, it was also met with a conservative reaction from male elders who had become part of the colonial legal system itself.¹¹ The social and legal position of women in relation to men, as wives, mothers, and daughters, was therefore shaped by both African and colonial influences. While contemporary European values concerning women and property, including coverture, were evident in colonial court systems, patriarchal control over women was also reinforced in the decision-making of male elders and religious leaders within African communities.¹² For example, under customary law, in many contexts it was common for the divorced wife of a customary marriage to be entitled to virtually nothing beyond her personal possessions, the homestead and livestock generally remaining with her husband. Colonial courts also reinterpreted local concepts of marriage and the status of women where they did not fit into colonial paradigms and categories of control over a woman as a wife.¹³

Customary law became defined and interpreted as part of the wider colonial capitalist transformation of African societies. This in turn facilitated the consolidation of patriarchal control of the private law sphere through colonial administrative systems.¹⁴ Projects of customary law restatement and codification began during the colonial period, but continued into the 1960s. For example, in Zambia, the Lower Courts Bill introduced in 1966 transferred judicial power from chiefs to modern courts, but lawyers and magistrates continued to apply written customary law.¹⁵ Tanzania's Local Customary Law Declaration Orders, which were enacted in 1963 shortly after the country's political independence, were based on the research of German anthropologist Hans Cory during colonial rule.¹⁶ The evidence-gathering process itself was gendered, based upon the work of male colonial officers who collected individual statements from selected male elders. It produced a highly patriarchal and rigid entrenchment of customary law and control over women that continued into the 21st century.

Over time, native authorities were attacked for corruption and chiefs were attacked for being part of the colonialist strategy of divide and rule. Political independence brought changes to colonial court systems and Islamic law. Some countries established a unified state system that applied customary and general law. Interpretations of Islamic law vary from country to country. In Sudan, following the Islamization of all laws in 1983, women's rights and freedoms within marriage and to work and travel were restricted and subject to a husband's or male guardian's control.¹⁷ By contrast, in northern Nigeria, Islamic women acquired the right to own land and other property and to keep their own property upon divorce.¹⁸ By the 1980s, the gap between ossified versions of customary law and principles of gender equality became increasingly contentious and led to women activists mounting legal challenges through a series of constitutional test cases.

Women's Political Resistance and Legal Activism

In the early 20th century, women's resistance to colonial laws and legal systems were integral to anti-colonial struggles and liberation movements across Africa. In South Africa, women protested against the extension of anti-pass laws to women, which already controlled men's freedom of employment and movement into urban areas. The Aba Women's War of 1929 in southeastern Nigeria saw Igbo women protest against the behavior of corrupt "warrant chiefs" appointed by the British administration to enforce indirect rule and the extension of taxation to women.¹⁹ Their protests took the form of chanting, singing, and dancing, as well as attacking the symbols of colonial administration, including burning court buildings.²⁰ However, their demands for the removal of corrupt chiefs and their request for no tax on women were met with state violence, with fifty women being killed in open fire on the protesters.²¹ African women's political resistance to discriminatory laws gathered momentum during the early post-independence period of the 1950s through the 1970s. In Kenya in the 1950s, women in the forests provided vital practical and strategic support to the male leaders of the Land and Freedom Army in the Mau Mau rebellion, and some women sat as judges in forest communities.²²

During the 1950s–1970s, African women's activism was closely aligned with the patronage politics of the single-party state and, to a large extent, focused on welfare, domestic concerns, and "developmentalism."²³ It also turned increasingly to law reform. Tanzania led the way in the recognition of married women's equal property rights during this period, on the wave of African socialist ideology from the country's then ruling party, and in particular, activism from its women's wing, the Union of Tanzanian Women. The Law of Marriage Act of 1971 was the first of its kind in Commonwealth Africa and sought to integrate the plurality of customary, Islamic, and English common law relating to private law

matters, as well as enhance the legal position of married women and children.²⁴ The rights of married women under this groundbreaking law were upheld by the Court of Appeal of Tanzania in *Bi Hawa Mohamed v. Ally Sefu*.²⁵ Women's property rights on divorce were similarly recognized in the Ghanaian case of *Achiampong v. Achiampong*.²⁶ However, gains for women in some countries were countered by denials of rights elsewhere. For example, in the Kenyan case of *Otieno v. Ougo*, a widow was denied the right to bury her husband in their home city in favor of the right of the deceased's natal family to bury him at their homestead.²⁷

Women's activism and the idea of "women's rights as human rights" crystallized globally during the United Nations Decade for Women, the Third World Conference on Women (Nairobi, 1985), the Second United Nations World Conference on Human Rights (Vienna, 1993), and the Fourth World Conference on Women (Beijing, 1995).²⁸ This globalization of women's rights movements occurred at the same time as a regional shift toward multiparty democracy and the liberalization of African economies. African women's activism became increasingly focused on legal and constitutional recognition of women's equal rights and reform of customary law and institutions.²⁹

The 1980s and 1990s saw the founding of regional and pan-African women's legal activist organizations. The Action Committee of Women Living Under Muslim Laws was formed in 1984 by nine women from African, Middle Eastern, and South Asian countries in support of local women's struggles. In 1989, women lawyers from seven southern African countries formed the network Women and Law in Southern Africa (WLSA) to conduct action-orientated research and advocacy for women's rights. The largest African women's rights non-governmental organization (NGO), Women in Law and Development in Africa (WiLDAF) was formed in 1990 as a pan-African network with a largely professional women membership base, using law as a strategic tool to promote and protect women's rights.

WiLDAF has been successful in promoting a discourse of rights and in harnessing transnational networks to press for regional and national legal recognition of women's rights. Hodgson notes that the degree of WiLDAF's success at a national level was affected by the receptiveness of national governments, the existence of preexisting mechanisms for accountability of the state to its citizens, the capacity of local branches, and the history of women's rights movements in the country.³⁰

At an international level, the All African Women's Conference was one of the six organizations involved, and the only regional organization, in the drafting of the 1979 United Nations Convention on the Elimination of Discrimination Against Women (CEDAW).³¹ However, in spite of widespread adoption of CEDAW by African states, progress toward a regional charter for women's rights was slower. The African Charter on Human and Peoples' Rights of 1981 enshrines principles of non-discrimination and equality before the law, including gender equality. A lack of attention to gender-related issues by states led to WiLDAF and other leading African NGOs calling for a protocol to the Charter, specifically on the rights of women.³² The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted in Maputo on July 11, 2003, known as the Maputo Protocol. Like CEDAW, it includes civil, political, economic, social, and cultural rights. As an African historical document of the early 21st century, certain preoccupations and controversies on the status of women in Africa are evident. The Protocol requires states to reform their constitutions and laws to ensure the effective application of the principle of gender equality and non-discrimination. It also includes substantive provisions on reproductive rights, the prohibition of harmful cultural practices including proscribing of female genital mutilation, issues of sustainable development, global trade practices, the impact of war and the protection of refugee women, and the proscribing of all forms of violence and sexual harassment.³³ The early 21st century saw continued progress toward

gender equality through constitutional and statutory change. However, formal and substantive gender equality has yet to be fully realized in many of these areas.

In the 21st century, African women and women's peace movements continued to draw international recognition for their activism and promotion of human and women's rights. In 2003, the regional women's peace organization—the Mano River Women's Peace Network—was awarded the United Nations Prize for Human Rights.³⁴ In 2011, Liberian peace activists Ellen Johnson Sirleaf and Leymah Gbowee won the Nobel Peace Prize for their nonviolent approach and inclusion of women's rights as part of their efforts to bring peace.³⁵ In 2018, Tanzanian legal activist Rebeca Gyumi won the United Nations Prize for Human Rights after successfully bringing a constitutional case that saw the age of child marriage for girls in Tanzania raised from fourteen to eighteen.³⁶ The case was one of a number of landmark constitutional cases brought by African women legal activists following a wave of constitutional reforms across Africa since the 1990s.

Constitutional Reforms and Legal Landmarks

Virtually all African countries have rewritten their constitutions since 1990.³⁷ Where customary or religious laws discriminate against women, such as in areas of family law, land tenure, inheritance, and succession, African constitutions have taken different approaches to conflict of laws. Banda identifies three basic constitutional models governing the relationships between customary law and constitutional gender equality and non-discrimination provisions across different African countries: (1) strong cultural relativism, where customary law continues unfettered; (2) weak cultural relativism, where there is no explicit hierarchy between customary law and equality guarantees; and (3) the “universalist” position, which makes customary law subject to equality provisions.³⁸

The general trend has been toward the universalist position, although fewer countries have undertaken wholesale statutory inheritance and succession law reforms. A notable early exception was Rwanda in the aftermath of genocide.³⁹ Kenya's 1992 constitution included a prohibition against sex discrimination but with a caveat for certain areas of family, property, and other personal laws.⁴⁰ This caveat was eventually closed by a prohibition on discriminatory customary practices in Kenya's 2010 constitution.⁴¹ In Zimbabwe, the Administration of Estates Amendment Act 1977 made major changes to succession law based on gender equality between sons and daughters and the patrilineal nuclear family. However, the 1980 constitution made a customary law exception to the general constitutional principle of non-discrimination.⁴² This was confirmed in the 1999 case of *Magaya v. Magaya*.⁴³ The Supreme Court dismissed an appeal challenging discrimination against a daughter on the basis of a customary rule of succession, which preferred males to females as heirs to the deceased father's estate. The priority of customary law was eventually reversed under Zimbabwe's 2013 constitution, which established that all laws, customs, traditions, and cultural practices that infringed on the constitutional rights of women were void.⁴⁴

The Tanzanian constitution of 1977, incorporating the 1984 Bill of Rights, is an example of the second constitutional type. Its relatively weak Bill of Rights resulted in inconsistent interpretations of women's inheritance rights by the higher courts over time. In the landmark 1989 case of *Ephrahim v. Pastory*, the activist judge James Mwalusanya held that the prohibition of women's inheritance of clan land under the codified customary Rules of Inheritance was inconsistent with Tanzania's Bill of Rights.⁴⁵ However, subsequent judgments on women's inheritance rights were more conservative. In 2005, a group of activist women lawyers brought a constitutional case, *Stephen and Charles v. Attorney General*, on behalf of two widows who had been denied the right to inherit or administer their husbands' estates.⁴⁶ The High Court declined to strike out the discriminatory customary rule,

notwithstanding gender equality guarantees in Tanzania's Bill of Rights and international and regional women's rights conventions. The women took the case to the Court of Appeal and then to the United Nations CEDAW Committee under *ES and SC v. United Republic of Tanzania*, which found not only a "denial of access to justice" in the Court of Appeal, but also failure by the State to take legislative action to eliminate the remaining discriminatory aspects of its codified customary rules of inheritance.⁴⁷ As of 2019, Tanzania's constitution and customary laws of inheritance remained unchanged.

In other African countries, early legal reforms on women's succession rights opened a lagging gap between legal change and social change. During the 1980s, Ghana attempted legislative reform of its customary laws relating to marriage, divorce, and inheritance. This reform process took over ten years, but eventually culminated in the Intestate Succession Law of 1985, which was welcomed by urban women and women's organizations as well as some rural communities. In 1988, the Court of Appeal of Ghana in *Akorninga v. Akawagre* invoked human rights law and overturned the decision of the Chief of Yorugu who had awarded damages to a man for failure to obtain possession of his deceased elder brother's widow as his wife through customary leviratic marriage practices.⁴⁸ Yet these legal developments did not change public feeling at the time on the nature of a wife's interest in her husband's property following death or divorce.⁴⁹

By the early 21st century, widespread reticence of African states to address the constitutional position of discriminatory customary rules of inheritance precipitated a wave of women's legal activism and constitutional test cases. In 2005, the Constitutional Court of South Africa broke new ground in *Bhe and Others v. Magistrate of Khayelitsha and Others*, declaring gender discriminatory customary rules on male primogeniture under the Black Administration Act of 1927 to be unconstitutional.⁵⁰ Women's succession rights were similarly upheld by the Ugandan Constitutional Court in *Law Advocacy for Women in*

Uganda v. Attorney General, the Kenyan Court of Appeal in *Rono v. Rono and Another*, the Nigerian Supreme Court in *Ukeje v. Ukeje*, and the Court of Appeal of Botswana in *Ramantele v. Mmusi and Others*.⁵¹

Women in the Judiciary

At the time of political independence, African judiciaries and the rule of law itself were vulnerable to political change by one-party systems and military regimes as well as by sudden constitutional change.⁵² Power remained concentrated in the executive, and there was a scarcity of local lawyers and judges.⁵³ However, by the 1950s, women had begun to enter the professional legal sphere. Annie Jiagge was the first female lawyer admitted to the Bar in Ghana in 1950, with Elizabeth Nyabongo the first female barrister in East Africa in 1965.⁵⁴ From the 1990s onward, democratization, constitutional reform, and women's legal activism led to an increasing number of African women being appointed to their countries' most senior judicial positions. In 1961, Annie Jiagge became the first female High Court judge to be appointed in the British Commonwealth.⁵⁵ The year 1998 saw Unity Dow named the first woman in Botswana's High Court. She had previously broken new ground as a litigant in *Dow v. Attorney General*.⁵⁶

Political transformation has proved to be a significant factor favoring the appointment of women in some African legal systems. By 2015, only four of twenty-four High Court judges in Botswana were women. By comparison, the 1990s democratic transition in South Africa resulted in 32 percent of High Court judges as women by 2014. This compares favorably with a world average of 27 percent "women's representation in the judicial system" in 2011–2012.⁵⁷ Rwanda is the African country with the greatest presence of women in the judiciary. Since the new constitution of 2003, between 2008 and 2012 women were 50 percent of

judges on the Supreme Court, and in the judiciary overall, women were around 39 percent of judges in Rwanda's ordinary courts.⁵⁸

Women remain prohibited from judicial office in shar'ia courts. In Egypt, Hamad notes that "while Islam has provided women with a plethora of civil and political rights, traditional Islamic practices forbade females from serving as judges," with women judges still hardly present in civilian courts as of 2019.⁵⁹ However, women have been appointed as chief judges in Nigeria and other northern states where Islamic law is recognized. Moreover, in Tunisia, shar'ia and rabbinical courts were abolished in 1956 and 1957 respectively, with women being recruited into the legal profession from the mid-1960s onward.⁶⁰

Dawuni and Kang's comprehensive survey of top judicial posts in African civil law, common law, and mixed judicial systems between 1990 and 2014 reveals that of the twenty-one civil law countries, five (Benin, Burundi, Gabon, Niger, and Senegal) had had one or more women preside over the high court. Women were selected as chief justice in six of the twelve common law countries (Gambia, Ghana, Liberia, Malawi, Nigeria, Sierra Leone). In the nine countries that combine civil and common law systems, only one—Lesotho—had selected a woman as chief justice. One explanation for the relatively lower number of senior women judges in common law jurisdictions may lie in the split profession, where judges are usually appointed from the (male-dominated) bar.⁶¹

The number of women chief justices has increased steadily over time, while women presidents of constitutional courts peaked at five in 2007, declining since then. Dawuni and Kang attribute the increase in the number of women judges to several factors: the commitment of gatekeepers to women's judicial appointments, the end of major armed conflict accompanied by strong women's movements and mobilization for peace, and a "snowball effect" to neighboring countries when women are selected for senior positions.

Quotas were found not to be significant, with women appointees having the same or more professional experience as their male counterparts.⁶² In the 21st century, African women judges occupy international judicial posts. In 2012, Fatou Bensouda became chief prosecutor of the International Criminal Court. As at 2019, two out of the four African judges at the International Criminal Court were women, and one of the three African judges at the International Court of Justice was a woman.

The rise of some African women lawyers to the highest judicial posts compares favorably with many other parts of the world and signals a new phase for women in African law and justice systems. The 20th century saw women's contribution to national liberation and postcolonial legal transformation, to the founding of regional and pan-African women's legal activist organizations, the Maputo Protocol on women's rights, and a wave of constitutional equality provisions across Africa. While gender inequalities persist in many areas, the 21st century promises to see grass-roots organizations, women judges, and activist lawyers playing significant leadership roles in shaping the future direction of African judicial decision-making and law reform.

Discussion of the Literature

The first historiographical research on women in law and justice in Africa emerged in the 1980s in the form of anthologies, notably Hay and Wright's *African Women and the Law*.⁶³ These early anthologies on women stood apart from publications in the broader discipline of African history and tended to focus on the impact of colonialism on women.⁶⁴ Hay and Wright's anthology explores the personal sphere, women's changing position within marriage, their property rights, and the extent of their freedom of movement. The challenge facing many of the contributors to that volume was the fragmentary nature of legal historical

records from the 18th and 19th centuries that could be used to trace women's legal history, which allowed for only tentative generalizations. For example, judicial records were found preserved in the margins of Ethiopian church books, or in the letter books of Rhodesian (Zambian) colonial magistrates.

Anthropologists and lawyers have studied African law since the 1920s, and early European accounts became adopted by colonial officials as part of indirect rule. From the 1980s, historians, lawyers, and anthropologists researching African law, including Moore, Merry, and Mamdani, brought attention to the ways in which African customary laws had been constructed through the colonial encounter and patriarchal interpretation in the sphere of family and personal laws.⁶⁵ Chanock's *Law, Custom, and Social Order* traces the history of this research in Africa, and its colonial gaze, from an early functionalist approach of collecting legal materials as part of developing an overall history of African law to a later interest in indigenous forms of dispute settlement and the evolving nature of customary law.⁶⁶ However, the colonial administrative concern for a clearer body of customary and Islamic rules drove the agenda for research, which would later support the writing of rule books on customary law and its eventual codification.

Much of the research on women in law and justice from the 1990s onward has explored the relationship between human rights, Islamic and customary law, and women's access to justice. Banda's *Women, Law and Human Rights* presents an in-depth women-centered analysis of African law in the 19th and 20th centuries from an African perspective.⁶⁷ It focuses on women's experiences in the family and how law has been used to disempower women in practice. It also analyzes the linkages between international and national human rights norms and local values. The African-based research NGO, Women and Law in Southern Africa (WLSA), has also produced several country series of action-oriented research, including empirical studies on enhancing women's access to justice.⁶⁸

Scholars in the early 21st century are addressing the dearth of research on women in the judicial profession in Africa and the rise of African women judges nationally and internationally. Two recent anthologies, edited by Bauer and Dawuni and by Dawuni, Kuenyehia and Swigart, trace the ways in which women have been able to access judiciaries across Africa and what they have been able to do on the bench when they get there.⁶⁹ There remains a paucity of research on women and the courts in Africa. Feminist ethnographic research in local qadi, family, and land courts has explored women's access to justice and discourses of disputing.⁷⁰ There is a lack of reliable longitudinal or comparative data across countries about women and the judiciary at all levels of court, making it difficult to trace the career trajectories of women legal professionals compared with their male counterparts. A second related strand of research on women in law and justice has an activist dimension. The African Feminist Judgments Project builds on similar projects (Canada, England, Scotland, Ireland, Australia, New Zealand, and the United States) to "rewrite," from a feminist perspective, alternative judgments on important African landmark cases and explore what feminist judicial practice in Africa could look like for the future.⁷¹

Primary Sources

African national archives are repositories for court case records. However, as Chanock notes, the real experiences of people in law and justice systems of the 18th and 19th centuries remains largely obscure in historical records, except through the writings of European travelers.⁷² The Southern and Eastern African Regional Centre for Women's Law is a major African research center for the study of African women's rights. The African Court on Human and Peoples' Rights and the United Nations Committee on the Elimination of Discrimination against Women maintain online databases of their legal decisions and recommendations as well as state parties' progress reports. Primary sources of law can be found in bound volumes of statutes and national and Commonwealth law reports in national

archives in the law libraries of African universities and higher courts and in specialist law libraries in Europe, including the School of Oriental and African Studies, University of London, and the Van Vollenhoven Institute, University of Leiden. Since 2013, the African Innovation Foundation has maintained the online African Law Library to improve access to modern and historical legal texts, including unreported case law.

Links to Digital Materials

[African Innovation Foundation](#)

[Institute for African Women in Law](#)

[Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#)

[Southern and Eastern African Regional Centre for Women's Law](#)

[The African Court on Human and Peoples' Rights](#)

[United Nations Committee on the Elimination of Discrimination against Women](#)

[Women in Law and Development in Africa \(WiLDAF\)](#)

[Women Living Under Muslim Laws](#)

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