

L
36

• L25

• 96

• 2014



UNIVERSITY OF LAGOS
Inaugural Lecture Series 2014

TOPIC:

**IN SEARCH OF
TRANSFORMATIVE JUSTICE:
THE PROSELYTISM OF
LEGAL FEMINISM**

By

PROFESSOR AYODELE ATSENUWA

100
6
29
6
0 14

IN SEARCH OF TRANSFORMATIVE JUSTICE

THE PROSELYTISM OF LEGAL FEMINISM

An Inaugural Lecture Delivered at the University of Lagos
Main Auditorium on Wednesday, 23rd July, 2014

by

PROFESSOR AYODELE ATSENUWA

LL.B.(Ife), BL, LL.M. (Lond), LL.M.(Warwick)

Professor of Public Law

Faculty of Law
Department of Public Law,
University of Lagos

© Ayodele Atsenuwa, 2014

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the author.

Published

by

University of Lagos Press
Unilag P. O. Box 132,
University of Lagos,
Akoka, Yaba-Lagos,
Nigeria.

e-mail: press@unilag.edu.ng

ISSN 1119-4456

Preamble

Mr. Vice Chancellor, Sir, today indeed, is momentous in my life as I get the privilege to deliver this inaugural lecture some 26 years after I embarked on my academic career. In these years, I have constantly engaged myself with the question of what my mission is as a university teacher. Having decided to make a complete U-turn from pursuing specialisation in Corporate Law in 1986, and follow my first love and passion for social justice, my choice of a career in legal academics was propelled by the fact that it provides an unequalled platform for moulding of human minds and the society. If I did not have what it takes to re-engineer the world through science and technology (as underscored by the emphasis my Physics teacher placed on the remark, “She must drop Physics” in the Result Sheet issued to me at the end of my Third Form in Secondary School), I could, at least, pursue its social re-engineering through law.¹ For law is the life blood of society - as the human blood pumps to every part of the human body, so law reaches to every single part of social existence. The reach of law is unsurpassed. It not only regulates how humans, whether as individuals and social groups, may behave and their social interactions with themselves, it shapes their interactions with the worlds of other animates and the inanimate.

Legal academics was greatly appealing as a career for it comes with the opportunity to encounter an average of 250-350 students per year at the undergraduate and postgraduate levels and to share with these students, the body of knowledge and skills that has evolved over millennia and which continues to evolve. With these opportunities also come the prospect of

¹ I say re-engineering because society is engineered as it is by law. Roscoe Pound, the father of sociological positivism, described law as an instrument of social engineering.

shaping and reshaping this body of knowledge and skills through research and publication. Simply put, legal academics offers the opportunity to proselytise, that is, to seek to convert people to ideas or a cause. In the last 26 years I have proselytised for transformative justice and won converts; many of whom have gone forth into the world "to obey and to teach others to observe the same things". Today, I seize the opportunity of this Lecture to continue my proselytising for justice.

My bent towards a critical approach to legal studies was first ignited by my exposure to Criminology and Criminal Justice in 1986 which not only challenged me to adopt a practical approach to legal scholarship but equipped me with empirical research skills not commonly possessed within the legal community. The other major experience was my early foray into legal feminism initiated by the late Professor Jadesola Akande in 1988 at the Lagos State University where as Vice-Chancellor, she gave me the opportunity of presenting a paper at the National Conference on Better Protection for Women and Children under the Law in Nigeria convened by the Federal Ministry of Justice under the leadership of Prince Bola Ajibola, SAN. What sealed my commitment to this approach was my subsequent exposure to the field of legal studies known as Law in Development (sometimes described as Law and Development). From all these encounters, I came away with the conviction that critical approaches to the study of, as well as radical perspectives on, law are just as important as mainstream approaches and perspectives if our aim is to deepen understanding of how law works in society and to evolve new ideas of how law should be restructured to meet contemporary justice needs and aspirations. I have, therefore, spent the last 26 years in the pursuit of research and teaching with the goal of improving law's capacity to work for social justice in mind.

Deciding which area of law to devote this lecture to was by no means easy given the breadth of my teaching and research interests which straddle Criminal Law, Criminology and Criminal Justice, Human Rights Law and Gender and the Law. I, however, settled for legal feminism out of a conviction that it is an overarching discourse that is reshaping the contours of all areas of law to the end of transformative justice. Legal feminist perspectives are reshaping principles of law in substantive fields such as Constitutional Law, Criminal Law, Labour Law, Family Law, Law of Torts and Law of Evidence and influencing the emergence of new legal fields such as Women's Human Rights Law and Sexual and Reproductive Health Law. However, the most notable impact of legal feminism has been felt in the area of law known as Jurisprudence and Legal Theory, which is the underbelly of law, where the sub-field known as Feminist Jurisprudence has striven to bring out alternatives to traditional jurisprudence and legal theories with the aim of raising new legal foundations conducive to transformative justice. Beyond its contributions to theory, legal feminism has also been instrumental in evolving and strengthening new forms of legal action for social justice. Together with the Law in Development movement, legal feminist action is expanding the nature and scope of legal services especially for the poor and other vulnerable members of the society.

Introduction

This lecture with the title: *"In Search of Transformative Justice: the Proselytism of Legal Feminism"* focuses on the contributions of legal feminism, a discourse belonging to the critical genre and one which traditional legal scholarship often chooses to ignore when it is not being denounced, to legal development. My aim in the lecture is four-fold: first, to present the "gospel" of legal feminism, that is, its vision and mission for transformative justice in society; second, to assess the

impact of legal feminism on legal developments within and without Nigeria; third, to assess the potentials for projecting the ideas and politics of legal feminism to benefit other vulnerable and marginalised groups in the society; and fourth, to proffer ideas for the future direction and continuing development of legal feminism in Nigeria.

Why do I consider a critical and theoretical discourse important enough to make it the focus of this lecture? First, while it is true that legal feminism always adopts a critical stance and that as a discourse field, it is extremely theoretical; it is, nonetheless, true that legal feminism is not all theory. There is the practical aspect known as “Applied Legal Feminism” which is a part of contemporary social activism. Suffice it to say that, whether as theoretical or applied, legal feminism has practical relevance in bridging the wide gap between justice expectations from law (social justice) held by ordinary citizens and the justice that law, in fact, delivers (legal justice). The importance of bridging that gap is underscored by the fact that when legal justice fails to serve social justice ends, the majority of citizens are alienated from the law as they either perceive or experience it more as a tool of oppression than as a tool of justice. This alienation has far-reaching negative consequences for the efficacy of law as a tool for social engineering. If law is to be effective as a tool for social engineering, it is important that the public reposes confidence in the idea of law as a tool of justice. However, if the experience of law that people have consistently undermines that idea of law as a tool of justice, they are likely to choose to live outside the law.² The critical lenses through which Theoretical Legal Feminism views reality enhance the

² I admit that although people may live some part of their lives outside the boundaries of formal law, it is not possible that they live totally outside of these boundaries, and in any case, they yet live within the boundaries of some form of law, albeit informal law (sometimes known as people’s law).

opportunities and prospects of unearthing explanations for the disconnection between law's promises and law's delivery on its promises. In turn, Applied Legal Feminism has demonstrated its potentials for transforming law into a better instrument of social engineering through the scope of legal reforms achieved as a result of the unremitting advocacy undertaken by legal feminists on multiple levels.

Second, law is not an end in itself. The concept of law envisages law as a tool designed to serve the end of society's need for order, cohesion and development as well as the human aspiration for justice. If law is, in fact, a tool; where it fails to serve the end for which it was conceptualised, we must probe and clearly identify why this is so if we are to remedy the problem. We must ask questions such as: Is law defective because the fundamentals underlying its conceptualisation are wrong? Or, is it defective simply because the premises upon which it was conceptualised are no longer valid so that it is inadequate to respond to the contemporary context. If a tool is fundamentally defective or inadequate, it needs refashioning or jettisoning. If society is dynamic and constantly changing, law as the tool of social engineering cannot be shut against constant re-evaluation if it is to maintain its social relevance.

Does legal feminism have contemporary relevance or value given the present context in which an array of laws and institutions exist to formalise the legal guarantees of equality of men and women and we are far removed from the days when women had no rights? Today, women's rights including women's right to equality are roundly acknowledged in an array of international and national legal instruments as well as decisions of courts at the national and international levels. The Convention on the Elimination of All Forms of Discrimination (CEDAW) adopted by the United Nations General Assembly in 1979 and the Protocol to the African Charter on Human and

Peoples' Rights on the Rights of Women in Africa (the African Women's Protocol) adopted by the African Union in 2003 affirm the equality of men and women and prohibit all forms of discrimination against women. At the national level, the Constitution of the Federal Republic of Nigeria, 1999, which is the supreme law affirms gender (used interchangeably with sex in this Lecture³) equality as a fundamental objective and directive principle of state policy (sections 15(2) and 17). It also states that no citizen of Nigeria may be subjected to discrimination on the basis of sex, among other grounds (section 42) and guarantees a right of redress against any threats or actual breaches of this constitutional right (section 46). This constitutional right to equality has been affirmed in a number of judicial decisions,⁴ notable amongst which are the recent decisions of the Supreme Court in the landmark cases of *Mrs. Lois Chituru Ukeje & Anor. v Mrs. Gladys Ada Ukeje*⁵ and *Onyibor Anekwe & Anor. v Mrs. Maria Nweke*.⁶

The contemporary relevance or importance of legal feminism may be challenged on grounds that in the present time, there is evidence that *de facto* equality now approximates *de jure* equality. There are enough women in economic leadership as there are in political leadership worldwide to debunk the "myth of female inferiority". Women have warred and travelled to space side by side men and proven that "what a man can do, a woman can do also, if not better."

³ I shall return later in this lecture to an examination of the distinction, if any, between sex and gender and provide justification for their interchangeable use as I have done.

⁴ A Atsenuwa (2002) "Custom and Customary Law: Nigerian Courts and Promises for Women's Rights" in *Contemporary Issues in the Administration of Justice: Essays in Honour of Justice Atinuke Ige* (Lagos: Treasure Hall Konsult).

⁵ (2014) *LPELR* 22724 (SC)

⁶ (2014) *LPELR* 22697 (SC)

In Nigeria, women sit atop the federal judiciary (the Chief Justice of Nigeria and the President of the Court of Appeal are both women) and many state judiciaries have female Chief Judges (Lagos, Akwa Ibom, Bayelsa, Ogun, Osun, Niger, Oyo, Sokoto, Taraba and Zamfara).⁷ And in at least one state – Lagos State – women dominate the judiciary with 128 out of 184 judicial officers being women and only 17 out of 52 judges of the High Court being men.⁸ Also, women have stood for and won elections into the federal and state legislatures and women no longer dot appointive ministerial positions. Coming closer to our own community, the number gap between female faculty and female administrators and their male counterpart is closing. Indeed, the constant higher level of academic performance of female students today has come to the notice of the University Senate.

Despite these realities, I argue that critical perspectives on law and justice offered by legal feminism are no less relevant today. Evidence of increasing opportunities for women, the improved levels of female achievements and accrual of rights for women do not negate the fact that the vast majority of women continue to live their lives constrained by historical and institutionalised gender-based barriers of exclusion and discrimination, many of which are founded on and/or supported by law. For example, it is law, albeit a variant of it (religious law), that is used to justify the practice of early marriage.⁹

⁷ Hon. Justice BB Kanyip, PhD, Presiding Judge of the National Industrial Court, Lagos Division, “A Global Overview of Labour Standards in the Judiciary”, a paper presented at the 2013 All Nigeria Judges’ Conference held at the National Judicial Institute, Abuja, December 9-13, 2013.

⁸ As above.

⁹ AV Atsenuwa, “Promoting Sexual and Reproductive Rights through Legislative Interventions: A Case Study of Child Rights Legislation and Early Marriage In Nigeria” in C Ngwena & E Durojaiye (eds.)

Even when it appears at first glance that the gains to date in terms of gender equality are remarkable, a closer look at the real facts often belies that position. Global statistics continue to depict the systemic and pervasive nature of gender disparity in all societies. For example, despite the increasing number of women in jobs globally, there exists a persistent gap in status, job security, wages and education on gender basis leading to what has been termed “feminisation of working poverty”.¹⁰ In assessing the progress of human development, when the in-country situation is measured against the indicators of gender disparity, Nigeria has recorded only marginal improvements over the last twenty years.¹¹

Mr. Vice Chancellor, Sir, permit me to use available national statistics on women in politics (Table 1) and women in the judiciary in Nigeria (Tables 2 and 3) to illustrate how what may be held up as evidence of significant improvements in the direction of gender parity may not be as significant as appears at first glance.

Strengthening Protection of Sexual and Reproductive Health and Rights in the African Region through Human Rights (Pretoria: PULP) (forthcoming).

¹⁰ ILO, Global Employment Trends for Women, *BRIEF*, March 2007. Available at <http://www.ilo.org/public/english/employment/strat/download/getw07/pdf> Also, ILO, Gender Dimensions of Agricultural and Rural Employment: Differentiated Pathways out of Poverty – Status, Trends and Gaps available at http://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_150558.pdf.

¹¹ AV Atsenuwa, Beijing+15: Nigerian Country Assessment Report, a study commissioned by UNICEF 2010.

Table 1: Women in Nigerian Politics: 1999-2011

Year of Election	House of Assembly			House of Representative			Senate			Deputy/Governorship			Presidency		
	Number of Elected Women	Number of Elected Members	% of Women	Number of Elected Women	Number of Elected Members	% of Women	Number of Elected Women	Number of Elected Members	% of Women	Number of Elected Women	Number of Elected Members	% of Women	Number of Elected Women	Number of Elected Members	% of Women
1979	-	-	-	11	445	2.47	1	57	1.75	-	19	0	0	1	0
1985										-	21	0	0	1	0
1993	-	-	-	20	360	5.56	9	109	8.25	-	36	0	0	-	-
1999	12	990	1.21	12	360	3.33	3	109	2.75	-	36	0	0	1	0
2003	38	990	3.84	21	360	5.83	3	109	2.75	-	36	0	0	1	0
2007	54	990	5.45	27	360	7.50	9	109	8.25	6	36	16.66	0	1	0
2011	61	990	6.20	26	360	7.20	7	109	6.50	3	36	8.33	0	1	0

Source: Interparliamentary Union (IPU)¹²

As seen from Table 1, women currently constitute only 6.2% of the 990 members of the House of Assembly, 7.2% of the 360 members of the House of Representatives, 6.5% of the 109 members of Senate. Thus, even though it is true that Nigerian women have the formal right to participate in politics and some Nigerian women occupy highly visible public offices including political offices, women's overall participation in politics at the critical levels of governance and decision-making remains unimpressive with only negligible increase recorded over more than three decades.

¹² INEC & UN Women (2013) *Framework for Implementation of at least 35% Affirmative Action on Women's Political Advancement and Representation in Democratic Governance in Nigeria*

Table 2: Number of Judges/Kadis in State Courts by Sex as at August 2013

STATE	FEMALE	MALE	TOTAL
Abia	11	19	30
Adamawa	1	15	16
Akwa-Ibom	6	16	22
Anambra	7	17	24
Bauchi	1	17	18
Bayelsa	5	13	18
Benue	5	16	21
Borno	4	14	18
Cross River	4	12	16
Delta	18	22	40
Ebonyi	3	16	19
Edo	16	15	31
Ekiti	1	10	11
Enugu	8	15	23
Gombe	2	15	17
Imo	8	14	22
Jigawa	1	15	16
Kaduna	6	25	31
Kano	5	27	32
Katsina	1	12	13
Kebbi	3	18	21
Kogi	3	25	28
Kwara	5	17	22
Lagos	36	14	50
Nasarawa	3	18	21
Niger	5	10	15
Ogun	7	17	24
Ondo	2	18	20
Osun	5	16	21
Oyo	5	17	22
Plateau	5	22	27
Rivers	14	24	38
Sokoto	1	11	12
Taraba	1	17	18
Yobe	-	11	11
Zamfara	1	10	11
TOTAL	209	590	799

Source: National Judicial Council (as adapted by BB Kanyip)

Table 3: Number of Justices/Judges/Kadis in Federal Courts by Sex as at August 2013

COURTS	FEMALE	MALE	TOTAL
Supreme Court	4	13	17
Court of Appeal	18	51	69
Federal High Court	20	45	65
National Industrial Court			
FCT High Court	9	11	20
FCT Sharia Court of Appeal	8	29	37
FCT Customary Court of Appeal	0	7	7
TOTAL	59	163	222

Source: National Judicial Council (Nigeria) (as adapted by BB Kanyip)¹³

Tables 2 and 3 which deal with women in the judiciary in Nigeria, show that spaces are opening up to women. Analysing the data, however, it is noted that female Judges in State Courts constitute only 26.16% of the judiciary while male judges constitute 73.84%. Although two states - Edo and Lagos - have more female Judges than male Judges, in most states, female Judges are a negligible number.

At first glance, the impressive situation of Lagos State where the number of female judicial officers more than doubles that of males stands out but this situation may need to be problematised. In explaining why there are more female judges, it may be hypothesised that spaces are opening for women only because qualified male legal practitioners do not find the bench, especially the lower bench of the judiciary (that is, the magistracy), attractive because it is less financially rewarding when compared to private legal practice. With the prospects of earning legal fees in millions (sometimes in the double digit) of Naira per brief, a career in the public sector may not be valued as prospective. Findings from studies on women's entry into the world of work outside the home indicate that feminisation

¹³ Kanyip (n 7 above).

of employment sectors is not always a thing to be celebrated.¹⁴ These studies draw attention to the fact that spaces open up for women in professions and industry when men begin to move out of these sectors, often for better paying ones. Further, they show that once professions and industry sectors become feminised, that is, female gender-dominated, the result is gender stereotyping with which comes reduction in their social value as evidenced by the examples of feminisation of the teaching and nursing professions. Finally, there is the risk that feminisation of the judiciary will create a gender stereotype which in future may foster the exclusion of males from the judiciary in the same way as the historical domination of the bench by men worked to entrench a stereotype that fostered women's exclusion and that is not our goal. Indeed, it will be most useful to study more deeply the trend towards feminisation of the judiciary in Nigeria.

It suffices to say that we are still a long way off from catch-up when it comes to the real situation of women and the formal promises of the law, whether as national and international law.¹⁵ Even when the Constitution provides an overarching legal standard against discrimination, statutory laws are replete with normative values and standards that reflect gender-based prejudices and misogynistic conceptions.¹⁶ For example, the

¹⁴ (n 10 above).

¹⁵ Atsenuwa, Beijing+15 (n 11 above).

¹⁶ A Atsenuwa (2010) "National Legislation, Policies and Practices Congruent and Incompatible with the Provisions of CEDAW and the Protocol to the African Charter on Human People's Rights on the Rights of Women in Africa" in Imam, A. M. et al., *Adopting Women's Human Rights Legislation in Nigeria: A Synthesis Analysis and Report* (Abuja: CIDA & OXFAM); A Oyajobi (1991) "Gender Discrimination and Fundamental Human Rights of Women in Nigeria" *Journal of Human Rights Law and Practice* Vol. No 1. 75-96; A Oyajobi (1989) "Better Protection for Women

normative values reflected by various provisions of the Criminal and Penal Codes clearly derive from traditional gender stereotypes and legal paternalism that can only be justified in the context of a patriarchal society. Mr. Vice-Chancellor, Sir, to depict this situation, permit me to present the lines of defence of the Attorney-General for the Federation (AGF) in the case of *Women Empowerment and Legal Aid (WELA) v Attorney-General of the Federation*,¹⁷ which challenged the constitutionality of discriminatory provisions of the Police Regulations made under the Police Act.¹⁸ According to the Counsel to the AGF, Regulation 124, which required a female police officer to seek security clearance of her fiancé before marriage but which did not apply to male police officers was not unfair or discriminatory as it was designed to “protect” women police officers from falling into the hands of criminals. In other words, the purpose of the law was to prevent women police officers from falling into the hands of bad character but male police officers have superior judgment and need no such protection.¹⁹ Mr. Vice Chancellor, Sir, there is overwhelming evidence that men also fall for dubious women who make mincemeat of their so-called masculinity. Thus, I would argue that if there is a risk to public safety through marriage, the risk no less applies to male police officers. If public safety is the overriding consideration, male officers should also seek and receive clearance before marriage. Counsel to the AGF also defended the 3-year ban on pregnancy after employment for women police officers on the ground that it aims to protect their pregnancies from the danger they are exposed to during the

and Children under the Law” in A Kalu & Y Osinbajo (eds.) *Women and Children under the Law* (Lagos: Federal Ministry of Justice Law Review).

¹⁷ (Unreported) Suit No. FHC/IKJ/CS/M128/2010 delivered on 30th April 2010 (on file with the author).

¹⁸ Cap P3, Laws of the Federation, 2010

¹⁹ Oyajobi, “Gender Discrimination” (n 16 above).

rigorous training that is required after employment. Commendably, the Court found both Regulations discriminatory, unconstitutional and in breach of Article 2 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act.²⁰ While this decision is laudable, it is not yet "Uhuru" as neither the Executive nor the Legislature has undertaken steps to effect the necessary statutory amendments.

The Penal Codes applicable in the northern states of Nigeria continue to imbue the husband with legal power to reasonably chastise a disobedient wife as a father can his child (*pater potestas*) and a Master can his apprentice (section 55). Even when the express provisions of the Law of Evidence do not require it, there is judicial insistence on corroborating evidence when a woman makes an allegation of a sexual offence against a man. What this means is that when a woman alleges that she was robbed, defrauded or assaulted, her testimony may be believed without more but when the same woman who may be a Professor of Law alleges that she was raped, the weight of legal authorities leans in favour of the courts requiring independent corroborating evidence in addition to her personal testimony.²¹ Such requirement reflects the insulting persuasion that women cannot be trusted to be truthful when they make allegations of sexual victimisation. The Constitution is not left out when it comes to legal norms taking their cue from traditional gender stereotypes as reflected in its provisions relating to citizenship.²²

²⁰ Cap. A9, Laws of the Federation, 2010.

²¹ Cyajobi, "Better Protection for Women" (n 16 above); Oyajobi, "Gender Discrimination" (n 16 above).

²² A Atsenuwa (2011) *Constitutionalism and Legal Feminism: Stepping Stones or Impediments in the Long Road to Freedom for Nigerian Women* (Lagos: NIALS)

But how is it that despite of the constitutional spirit and the formal guarantees in sections 15 and 42, both of which have been in place for about 35 years, inequality in virtually all spheres of human life remains the reality of women as a group? Numerous factors account for this, many of which have nothing to do with law. However, as Sylvia Tamale and Jane Bennett have observed, while it is true that law and judicial reform are not panacea to all problems of gender inequality, the legal front is a central plank in the feminist struggle against discrimination.²³ In other words, if gender injustice is to be redressed, law as an instrument of social engineering remains a critical tool. But then, it is not “law as is” (by which I mean the existing body of traditional jurisprudence, substantive law, the adjectival and procedural rules and institutions) that can help the project but “law as ought to be”. Legal feminism’s position is: “law as is” is grossly inadequate in both its conception and implementation to deliver on the goal of transformative justice because of historical and persisting male hegemony in its construction.

Mr. Vice Chancellor, Sir, the statement that “law as is” is inherently male, sexist or gendered is rarely disputed these days. However, saying law is inherently male, sexist and gendered, is not the same thing as alleging a grand conspiracy by men against women through history nor is it a statement to justify a declaration of war on men by women. Men, just as women, are daily nurtured in highly gendered societies and the shortcomings of “law as is” emanate from the presumptive errors lying at its jurisprudential underbelly. It is these errors that produce the artificial world of law as a gender-devoid

²³ (2011) Legal Voice: Challenges and Prospects in the Documentation of African Legal Feminism (Editorial) *Feminist Africa* 15 (Special Issue) December 2011.

world in which the individual subject of law is presumed to be without gender.”²⁴ Suffice it to say, legal feminism’s call to interrogate male hegemony in law’s formation and formulations is to enable us to better identify what limits the law in its capacity to deliver on its promise to do justice to all.

Law and justice

Law, in the context of Nigeria, includes modern law,²⁵ customary law and religious law. Colonialism introduced western-type law, also called modern law, which is made up of the received statutes of general application, doctrines of common law and principles of equity.²⁶ Customary law is the body of laws derived from the customs and traditions of the various people-groups in Nigeria. This form of law is widely accepted and continues to regulate the lives of a vast majority of Nigerians in personal spheres such as marriage, custody and maintenance of children, succession as well as proprietary interests. Although the colonialist did not regard customary law as law properly so called; contending that it failed to meet the required standards of rationality that stands out modern law as law; he, nonetheless, permitted its co-existence alongside modern law for reasons of exigency.²⁷ Thus, during colonial times, a rule of custom was enforceable as law in so far as it

²⁴ J Conaghan (2013) *Law and Gender* (Oxford: Oxford University Press) p. 5

²⁵ I use the term “modern” to distinguish this body of laws from those described as customary law and not because I accept the colonial position on the primitive nature of the latter and the superiority of the former. See AV Atsenuwa (2001) *Feminist Jurisprudence: An Introduction* (Lagos: Florence & Lambard) pp. 6-7.

²⁶ The statutes of general application which were received were the statutes in force in England as at January 1, 1900 and which have not since been repealed by a local statute. See generally AO Obilade (1979) *Nigerian Legal System* (London: Sweet & Maxwell).

²⁷ Atsenuwa (above n 25) pp. 6-9.

was not repugnant to natural justice, equity and good conscience and it was not contrary to law or public policy. In other words, a rule of custom was law in so far as it met the colonialist's benchmarks for good law. This benchmarking of customary law against the standards of a socio-cultural system and/or legal system external to it is what has led some scholars, including my humble self, to conclude that much of what is known as customary law cannot be trusted to be the full and authentic rules of custom but the outcome of a sifting process.²⁸ This test known as the *repugnancy test* is preserved in all legal frameworks at the state and federal levels and was recently used by the Supreme Court in *Onyibor Anekwe & Anor v Mrs. Maria Nweke* decided on April 11, 2014 to strike down a custom of the Awka people of Anambra State, which denies a woman inheritance rights in her father or husband's estate on the basis of sex.²⁹

In turn, religious law in Nigeria refers to Islamic law³⁰ and the vast body of jurisprudence that has developed from it. Until recently, Islamic law was treated in legal discourses as part of

²⁸ A Atsenuwa (2009) *Engaging Custom and Customary Law: Towards a New Feminist Legal Agenda in Nigeria* (Lagos: Legal Research and Resource Development Centre), MI Charnock (1982) "Making Customary Law: Men, Women and Courts in Colonial Northern Rhodesia" in MJ Hay & M Wright (eds.) *African Women and the Law: Historical Perspectives* (Boston: Boston University Press), MI Charnock (1989) "Neither Customary Nor Legal: African Customary Law in an Era of Reform" *Int. Jo. of Law and Family* Vol. 3, No. 1, pp. 72-88.

²⁹ (2014) LPELR-22697 (SC)

³⁰ The group, Women Living Under Muslim Laws (WLURL) suggests that the use of the plural term "Muslim laws" is more appropriate in describing what is espoused as Islamic Law from place to place. This position rests on the argument that even though it is true that Islamic law derives from the Quran and the Sunna, Muslim Laws are variants of Islamic Law as informed by sectarian allegiance and cultural interpositions of the different communities of Muslims. Available at: <http://www.wluml.org/node/5408>.

customary law. Today, however, it is regarded as a distinct and different body of law, with some scholars suggesting that it shares more affinity with modern law than customary law, given its features such as written law, well-developed body of jurisprudence and adjectival rules as well as formal institutions.

The idea(s) of what law is and/or what law should be ((its content, its features and its source as well as the ideas of what end law should serve (purpose) are as diverse as the human mind. has capability for imagination and aspiration. For example, the simple question “what is law?” has generated volumes of writings broadly classified into four schools – the natural law school, the positive law school, the historical school and the sociological schools (the realist school). The answer to the question would, therefore, depend on the legal philosophy and/or theory subscribed to by the respondent. This is why it is extremely difficult for lawyers to provide a precise answer to a simple question such as, “What is the law in respect of an issue in dispute?”

Many people are befuddled by the fact that lawyers can be so divergent in their conceptualisation of which or how law should apply in or to a particular set of circumstances with each yet able to provide sufficient legal principles upon which they premise their positions. It is, however, important to emphasise that the seeming mischief is not deliberately designed. Rather, it emanates solely from the fact that individuals (represented by jurists and philosophers of schools) differ markedly in how they understand and seek to design the world in which they live through law. Simply put, the first step to understanding law is to recognise that law is not a neuter. If anything, law is a site of contestation where competing social and political interests in society “fight” for and against dominance.

It is because of this nature of law that legal feminists consider that law, though historically complicit in institutionalising gender injustice, is yet a useful tool to be engaged for institutionalising gender justice. This confidence is premised on the belief that for all of law's character as conservative and its heavy reliance on precedent, law, whether as modern, customary or religious law, is capable of self-correction. Jurisprudence possesses room for contending ideas to coexist. In so far as law may be used to construct new normative values and standards, categories and even identities, it possesses what I have described as "the elements necessary for a *discursive insurrection* against its use to 'hold women in place'."³¹ It is this belief that explains the admonition of Albie Sachs that "while one should always be sceptical of law's pretensions, one should never be cynical about law's possibilities".³²

Justice is the highest aspiration of human beings and has been described as the first virtue of social institutions.³³ However, despite near universal agreement that justice is a positive value and one desirable to be pursued by all, at all costs and always, there are so many contending ideas of justice. Whatever the challenges of abstracting the contents or elements of a universally acceptable idea or definition of justice, it suffices to say that all humans, as individuals and as communities, desire and strive to live in a just world; one in which inequities, in terms of access to resources and opportunities, are reduced to the barest minimum if not completely eliminated; one in which rules of fair play are designed to counterbalance all forms of

³¹ Atsenuwa (above n 28) p. 44

³² A Sachs (2009) *The Strange Alchemy of Life and Law* (Oxford: Oxford University Press) p. 50.

³³ J Rawls (1971) *A Theory of Justice* (Harvard University Press) Stanford Encyclopaedia of Philosophy version. Available at: <http://plato.stanford.edu/entries/rawls/#JusFaiJusWitLibSoc>

abuse of power at all levels of society so that no one is left unprotected against arbitrary exercise of power. In the pursuit of this aspiration, law is regarded as having a prominent role to play.

What does the epithet “transformative” add to the notion of justice? In other words, just what is “transformative justice” and why do we need the idea and the goal it embodies? Transformative justice is the notion or idea of justice that aims at transforming present social arrangements by identifying the injustices inhering in them - latent and patent - and designing tools for rectifying the arrangements to eliminate the injustices. I have borrowed from the emergent idea of transformative justice in criminal justice administration. Transformative justice in criminal justice discourses distinguishes its aspiration from restorative justice by positing that what is needed in doing justice is to move forward post-offending rather than attempt to restore what was there before. It takes the standpoint that often, the so-called pre-crime social harmony that restorative justice seeks to restore is mythical and even where not mythical, the rupture occasioned by crime means that things can never be the same again. Transformative justice with respect to criminal justice further assumes that a central function of the current social system is to enforce structural inequities and the system must be fundamentally transformed before it can be an agent of justice. I argue that, in much the same way, the present legal system serves to enforce cultural and structural inequities and if it is to meet contemporary aspirations for justice, it must be transformed to evolve an alternative and new vision of justice.

We call for transformative justice because empirical evidence is available to show that traditional rules designed for the allocation of access to society’s resources and power between the two genders do not and cannot serve the ends of justice in the present political and economic contexts. For example, a

modern capitalist and increasingly individualistic world in which the dominant organising principle is the autonomous individual, denying women inheritance rights in land, a form of capital, amounts to condemning them to economic impoverishment.

Mr. Vice Chancellor, Sir, permit me to illustrate this thus: A man dies intestate leaving behind valuable landed property including houses in Abuja, Lagos, Port-Harcourt and Enugu. He is survived by 3 daughters and 3 sons. The rule of custom of his community relating to intestate distribution of property prohibits females from inheriting landed property. The landed properties thus devolve on his sons who possess absolute and alienable rights in their respective portions. Such sons immediately move into wealthier status and can leverage the assets acquired for other economic activities. The daughters remain disadvantaged and may need to go cap in hand to their brothers for financial assistance should they need to leverage credit for economic activities. Undoubtedly, any assistance given will be determined by the level of personal altruism of their siblings. Land has always been recognised as an economic asset and traditional inheritance rules with respect to it were designed to serve, mainly, economic ends. Whatever the case for suitability of these laws in the historical context in which they emerged, it is submitted that such exclusionary rules of custom and their rationalisations foster inequity and injustice in the contemporary context.

True, legal guarantees of equality are in place but the yawning gap between the rich and poor, the powerful and the vulnerable, in modern democratic societies is comparable to that known in feudal times. Purportedly modern democratic societies feature no less exclusionary standards and legal norms that keep many citizens – women, people with disability, religious, linguistic and ethnic minorities, people living with HIV (PLWHs) in

unequal status. What, however, makes this time different is that modern society is more restive. What was easily accepted as status quo centuries ago is not tolerated today. The institutions of democracy and human rights have come with more room for challenging the status quo. New ideas have emerged, new aspirations have coalesced and new realities have evolved, opening windows to hitherto unimaginable world of freedom and justice. In this context, the philosophies and ideologies about how communities should be organised are changing. Similarly, the notions of what justice is and what role law should play in entrenching justice are changing.

Mr. Vice-Chancellor Sir, in summary, law and justice are like twins conjoined at the vital organs, which can only be separated at the risk of death to both. For many, the contemplation of law brings to mind the ideals of justice in which is implied aspirations for liberty, equality and equity. In contrast, however, what law's present outworking often brings to many people is injustice, enslavement, inequality and inequities. There is, therefore, a compelling need to interrogate not just the substantive principles and rules of law but the whole body of legal theories and philosophy underlying law. Legal feminism holds that law, including traditional jurisprudence that underlies it, was fashioned from and designed to respond to a male world-view. Law, therefore, is biased and exclusionary and needs to be redeemed from a male-dominated theory and praxis if it is to effectively deliver justice that is transformative for both men and women.

Law's thought on women: reflections in history

There is evidence that in the ancient worlds of Babylon and Egypt, women possessed significant property rights and participated in public life more freely. Under the Hammurabi Code for example, women could trade on their own account, could be judges, elders, witnesses and scribes. In Ancient

Israel, the situation was more mixed. Women had extensive civil rights but in traditional Judaism, gender roles and responsibilities were well entrenched and women were often denigrated. To the West, the story was remarkably different. In Athens, women's status was that of child-bearing slaves and they were denied access to education and kept in seclusion. Aristotle pronounced that "the female, is as it were, is a deformed male."³⁴ In Ancient Greece and Ancient Rome, women were generally believed to be lesser human beings and were classed together with infants and lunatics.³⁵ In some cases, they were placed in even worse status being regarded as no more than "chattels", that is movable property that could pass from hand to hand.³⁶ They had no legal personality. In other words, they were unknown to law and remained throughout their lifetime under the legal guardianship of a male who could be the father, brother, husband or other male relative.³⁷ Not regarded as having full human status and consequentially, legal status, women's value was predicated on their contribution to men's interest. St. Augustine wrote that he could not possibly see what other help woman would be to man if the purpose of generating is eliminated. It is unsurprising then that even when historical law appeared to protect women;

³⁴ As above.

³⁵ JP Gould (1980) "Law, Custom and Myth: The Position of Women in Classical Athens" *Journal of Hellenistic Studies* Vol. 100, 38. Also, C Oputa, "Women and Children as Disempowered Groups" in Kalu and Osinbajo (above n 16) p. 7.

³⁶ *Suberu v Sunmonu* (1957) 2 FSC 31 in which the court held that under Yoruba native law and custom, "a wife could not inherit her husband's property since she herself is, like a chattel to be inherited by a relative of her husband".

³⁷ Gould (above n 35) p 42. W Blackstone in his *Commentaries on the Laws of England* wrote: "...the very being and legal existence of the woman is suspended during the marriage."

it was actually more protective of the interest of her male “owner” or guardian.³⁸

It appears that both Christianity and Islam attempted to ameliorate some of the historical oppression of women. The Bible provides numerous accounts of Jesus having encounters with diverse groups of women in contexts that were seriously frowned upon in Judaism which paved the way for women’s improved status in Christian religion and Christian worlds. For example, Jesus permitted himself to be touched by a haemorrhaging woman (Matt. 9:20-22, Mark 5:25-34 and Luke 8:43-47) and deigned to chat with a Samaritan woman (John 4:4-26) which were prohibited social interactions in Judaism. He not only had women followers, his ministry as well as those of his disciples, was supported by women converts to the faith. True, they were not among the formally appointed twelve disciples but women played a more positive role as nurturers and harbingers of the good news than their male counterpart.³⁹ The Quran and the Hadiths included rules and standards which raised women’s status and conferred them with some rights unknown to the communities in pre-Islamic Arabia e.g. the right to sue for divorce, the right to be maintained in marriage, the right to inheritance. Speaking on this, Muntaka-Coomasie, JCA (as he then was) in *Mohammed v Mohammed*⁴⁰ noted:

Before the advent of Islam, daughters and young sons of deceased person (sic) were not entitled to inheritance. ... In fact, females were themselves the object of inheritance. ... Now, daughter (sic) or female heirs are allowed to partake like their male counterparts in a modified manner, namely,

³⁸ Atsenuwa, “Better Protection for Women and Children” (above n 16).

³⁹ Women were not among those who pre-arranged Jesus Christ’s arrest by negotiating a betrayal, suborned witnesses to perjure during the trial and instigated and unfair trial.

⁴⁰ (2001) 6 NWLR (Pt. 708) 104.

a daughter can have as her share, half of what the son will get as his share...

It was not until the socio-political changes of seismic proportions witnessed from the end of the 18th century that the social world experienced significant shifts in how law is conceptualised and applied to different social groups. Ideas such as the social contract and natural law and natural rights opened spaces for the inclusion of traditionally excluded social groups. Hitherto marginalised classes of men gained access to social status and rights as the myths of divinely ordained order(s) of social classifications and natural superiority of the aristocratic class were burst. However, the majority of the proponents of these new ideas had little space for women in the new social order that they sought to engineer. For example, although John Locke, the celebrated father of the idea of free contractual relations opposed the idea of “eternal, inevitable submission of Eve”, admitted that women were no less rational than men and recognised for them much more rights within marriage than some of his contemporaries, he declined to accept the idea of women as participants in civil society.⁴¹ Rousseau also regarded women as unsuited for civil responsibility in form of social contract given its necessary elements of rationality and autonomy.⁴²

Women such as Mary Wollstonecraft and Olympe de Gouges and some liberal men, however, latched on to the evolving philosophical environment to challenge the historical subjugation of women. In 1791, de Gouges in France published

⁴¹ Uzgalis, William, "John Locke", The Stanford Encyclopaedia of Philosophy (Spring 2014 Edition), EN Zalta (ed.) available at <<http://plato.stanford.edu/archives/spr2014/entries/locke/>>

⁴² C Blum, "Rousseau and Feminist Revision", *Eighteenth-Century Life* Vol. 34, No 3, Fall 2010 pp. 51-54

her *Declaration of the Rights of Woman and the Female Citizen*, which was written as an ironic manifesto on the gender equality which reflected the failure of the newly adopted *French Declaration of the Rights of Man and Citizen* (1789) to deliver on its promise of liberty, equality and fraternity to all. Women who had joined the men as peers on the scaffold during the French Revolution found themselves returned to the kitchen by the first French National Assembly. About the same time, Wollstonecraft in England published her *A Vindication of the Rights of Woman: with Strictures on Political and Moral Subjects* (1792) in which she argued that women are human beings and deserving of the same fundamental rights as men. In 1790, Condorcet published his *For the Admission to the Rights of the Citizenship for Women* in which he called for suffrage for women.

If there was contention about the adequacy of women's natural abilities or the appropriateness and desirability of their inclusion in civil society, it can be expected that women's voices were neither heard nor were their interests taken into consideration as the philosophies underpinning law emerged. But what must be acknowledged is that the philosophers who framed the development of modern law were at least more honest than we are today. They did not pretend about the deliberate exclusion of women's reality from the new world that they sought to construct. What this means then, is that if the historical exclusion of women is proven to be a fact, honesty compels that we welcome the interrogations of law that legal feminism urges as necessary and relevant. In other words, if contemporary law is to be reconceptualised as part of the project of improving its "design" for the end of transformative justice, it can no longer be "business as usual".

The “Gospel” of Legal Feminism

Legal feminism is the body of feminist thought on, as well as political engagement with law. Feminism as an ideology and a political movement rests on the understanding that women as a social group have been wrongfully oppressed by dominant male-defined cultural values and male-hegemonic control of social, political, cultural and familial institutions. It is also describable as the philosophy that drives social and political activism for justice for women. There is some debate about whether we should speak of feminism or feminisms as there are various strands and perspectives fundamentally differing in their theoretical frameworks, strategic approach and distinguishable in their historical difference.⁴³

Mr. Vice-Chancellor, Sir, permit me to clarify the relationship between feminism and gender. Many people think feminism and gender aim at different ends and engage different political tactics. Hence, while they accept or at least, are more tolerant of the latter, they have little appetite for anything garbed explicitly as “feminism”. The tendency to maintain a distance from anything that bears the tag “feminism” is, no doubt, tied to the militancy of the movement at different historical points.⁴⁴ In turn, the appeal of and comfort with “gender” comes from the persuasion that the idea and politics of “gender” unlike feminism aim at equal justice for all, that is justice for both women and men. The feminist cause is regarded as selfish,

⁴³ Atsenuwa (above n 25) 23-24.

⁴⁴ The stigma attached to feminism is traceable to the stigma that attached to the historical social and political actions of suffragettes at the beginning of the 20th century (known as the first wave of feminism) as well as the stigma attached to the second wave of feminism for its audacious challenge to the dominant normativity on sexuality, reproductive roles of women and the family. It is, however, rarely considered that it could be the denial of voice or space for a counter-discourse that left these women with no other method than the militancy or radicalism for which they stood condemned.

narrow-minded and dangerous with potentials for breeding distrust, social conflict and dislocations. But I dare say that contrary to the idea that gender and feminism are separable with the former being less belligerent in its roots and posturing, both feminism and gender are two sides of the same coin. Feminists played a key role in birthing and nurturing the idea, discourse and politics of "gender". As feminists found shortcomings in the explanations that located the differences in the social relationship of men and women in "sex" (rooted in biology), they sought to move the explanations to the social constructions of maleness and femaleness, termed "gender relations. I would say that feminism is the movement while sex and gender analyses are the tools of the political struggle. However, in seeking to transcend women as the sole end-beneficiaries of gender analyses, contemporary feminists are not jettisoning the women's cause; rather, they aim at strengthening the argument for constant interrogations of law by showing how, if left unchecked, biases and prejudices inherent in law can do injustice to men and women alike.

Even gender advocates, who decline to describe themselves as feminists, accept that, more often than not, gender analyses bear out the relative disadvantage and vulnerability of women to injustice when compared to men. In sum, while it is true that gender posits a balance in the quest for understanding the differentials in women and men's lives, this quest is motivated by the reality of a present imbalance in which women are obviously disadvantaged. It can, thus, be said that "feminism" and "gender" meet at the intersection named "woman" and feminism strives for no more and no less than gender justice.⁴⁵

⁴⁵ A major reading in feminist legal theory bears the title: *Feminist Legal Theory: Readings in Law and Gender* demonstrating that gender is no more than a tool of analysis in the politics of feminism. See, KT Bartlett and R

Legal feminism is interested in unpacking the layers in the existing body of knowledge to bring to the top, the subterranean foundations of prejudice and exclusion. The basic message is that law is not neutral. Law, whether as modern law or customary law or even religious law, is historically prejudiced in its making. The historical subordination of women in society and their exclusion from political participation and decision-making means that their voices are not heard, neither are their realities responded to by law. Instead, law speaks from and of male realities just as it speaks to male interests and male aspirations. Mr. Vice Chancellor Sir, permit me to illustrate what I call the subterranean male foundations of law with what I consider the most obvious and but not the least perfidious feature of law's maleness.

Although Justitia or Lady Justice (whose image is shown in Figure 1 below) is well-known as the iconic representation of legal justice from history, when women sought access to legal education and legal practice, there was no room found for them. Chief Justice Ryan of the United States Supreme Court did not agree that there was a breach of the American Constitution when Lavinia Goodell was denied admission to the Bar in 1876. In his view:

Nature has tempered woman as little, for the judicial conflicts of the courtroom as for the physical conflicts of the battlefield. Women are modelled for the gentler and better things ... Our profession has essentially, and habitually to do with all that is selfish and extortionate, knavish and criminal, coarse and brutal, repulsive and obscure in human life. It would be revolting to all female sense of innocence and sanctity of their sex, shocking to man's reverence for womanhood and faith in woman on

which hinge all better affections and humanities of life, that woman should be permitted to mix professionally in all nastiness of the world which finds its way into the courts of justice...⁴⁶

A similar stance was taken by Justice Joseph Bradley in *Bradwell v. Illinois*.⁴⁷ For him:

The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life... [T]he paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.

When women were later admitted to the Bar and Bench, they had to “transform” into men. Till today, it is usually said in Nigeria, that there are no females at the bar so that female and male lawyers are referred to as “Gentlemen of the Bar”. Judges including female judges also continue to refer to themselves as “brother judges”.⁴⁸ I submit that the postulate that there are no females at the bar does nothing for elevating female members of the legal community as some are wont to think. In the politics of language, it continues to underscore the fact that the presence of women at the bar and on the bench remains a departure from the original conception. It says further that even if women are now physically present, they are there only in so far as they accept to be and are, in fact, “transformed” into men. In other words, “male” and not human standards remain the measure of membership within the legal community.

⁴⁶ Quoted in J Huff (1991) *Law, Gender and Injustice: A Legal History of US Women* (New York: New York University Press) p. 164.

⁴⁷ 83 U.S. (16 Wall.) 130 (1873)

⁴⁸ In *Anekwe v Nweke* (above n 6), each of the other justices in concurring with Hon. Justice Clara Ogunbiyi, JSC referred to her as “my learned brother”.



Figure 1: Lady Justitia

Mr. Vice-Chancellor Sir, I go as far as to say that I find little or no distinction in the transformation of females into males in the “modern” legal culture at the Bar and on the Bench and the cultural practices of *Oli-Ekpe* referred to in *Mojekwu v Mojekwu*⁴⁹ (later *Mojekwu v Iwuchukwu*)⁵⁰ and *Nrachi* referred

⁴⁹ [1997] 7 *NWLR* (Pt. 512) 283 (CA)

⁵⁰ (2004) 4 *SCNJ* 180

to in *Emeka Muojekwu v Okechukwu Ejikeme*.⁵¹ This historical cultural rite in its many variations, which the courts have roundly condemned, was designed to effect the “transformation” of daughters of fathers who had no biological sons into sons. The rites, in their many variants, were carried out by fathers on the daughters and were designed to ensure that such fathers avoid the severity of the rules of custom that precluded female children from inheriting real property. Transformed into sons, the daughters on whom these rites were performed saved their father’s estate from passing on to other male members of his natal family. It is important to note that the rules did not change - *daughters could not inherit landed property under customary law* but by transforming into sons, if they bear male children, these male children are deemed to be their fathers’ and so their fathers could ensure succession of their estate in their direct line. It is also important to note that having transformed into sons, such daughter could not marry but they could have children and being “men” as it were, the children would belong to them as the rule of customary law states. The correlate of this is that for women at the Bar and on the Bench, while they may be women for every other purpose of life, once they put on their robes, they “transform” into men. In other words, “True, the practice may have changed to allow female forms into the Bar and on to the Bench, but the rule that only males may minister at the this temple of justice has not changed.” What then do we have? “Female forms, but male entities of law.”

Some may consider that this is making a mountain out of a molehill since language counts for nothing in the face of the fact that there are females at the Bar and on the Bench. But I ask: If language counts for nothing, why the strong adherence

⁵¹ [2000] 5 NWLR (Pt 657) 402

to language that is incongruent with daily usage and strongly resistant to change? I submit that this is not an academic issue without practical value. Accepting that there is no female at the bar or on the bench implies continuing with the tradition of unquestioning acceptance that the knowledge, skills and other competencies required at the bar and on the bench are essentially male attributes and any woman who seeks acceptance must rise to the challenge of acquiring them. But the factual presence of women at the Bar and on the Bench proves that none of these attributes and capacities considered is intrinsically male, rather they are human.

In addition, accepting that there can be and that there are, in fact, women at the bar and on the bench may be a first step towards testing the validity of legal feminist claims such as the “female ethic of care” (often denuded as sentimentalism) in contradistinction to the “male ethic of justice”.⁵² I find valuable evidence indicative of growing validation of the claims of “female ethic of care” in how female judges perceive their role in justice delivery. Particularly noteworthy is the growing social activism of female judges globally. The National Association of Women Judges (NAWJ) in the United States of America describes itself as “the nation’s leading voice for women jurists dedicated to preserving judicial independence, ensuring equal justice and access to the courts for women, minorities and other historically disfavored groups...”⁵³ The National Association of Women Judges in Nigeria (NAWJN), which is a country affiliate of the International Association of Women Judges (IAWJ), is currently embarking on a project aimed at reducing the incidence of sexual violence against women and girls and the failure of the legal system to secure justice for victims of such crimes. Aside activities directed at

⁵² Atsenuwa (above n 25).

⁵³ Available at: <http://www.nawj.org/>

creating popular awareness and developing knowledge and skills for individual and group risk reduction, the NAWJN initiative aims to assist the Nigeria Police to enhance its institutional capacity in terms of investigating, prosecuting and assisting victims of offences. The overall objective is improving justice delivery to victims of sexual violence offences. Under the initiative, the NAWJN has developed IEC materials to increase the level of citizen awareness about incidence, vulnerability and risk factors as well as educate about the legal standards of proof required for these offences. It is collaborating with the Police to create a Special Victims Desk at every police station to be managed by a police woman of the rank of a Sergeant or above.⁵⁴

Evolving alternative/additional legal theories

Legal feminists have challenged traditional ideas of legal methods and legal epistemologies as well as doctrinal premises of law such as the ideas of the “autonomous” and “rational” individual of law that underpin legal liberalism, which is the dominant ideology that has shaped modern legal thought. What lawyers call “legal methods” is at the heart of “doing” law. It is so foundational that every first year law student is expected to successfully complete a 2-semester course in Legal Methods.⁵⁵ The course is designed to ensure that students are well-grounded in understanding how law works and reasons. The phrase “legal methods” is used to describe the various methods employed in legal reasoning for arriving at the correct position

⁵⁴ National Association of Women Judges in Nigeria (NAWJN) South West Zone organised the 1st Glow Conference as part of the IAWJ Glow Project with the theme: JUSTICE FOR ALL in Lagos from 12th-14th June 2014. Available at: https://lagosjudiciary.gov.ng/jis_new/Viewnews.aspx

⁵⁵ In the undergraduate law degree programme of Faculty of Law of the University of Lagos, Legal Methods I and Legal Methods II are compulsory courses with the Course Codes JIL 121 and 122 respectively.

of the law e.g. deduction, induction, analogy, the use of hypotheticals, policy etc.⁵⁶ Legal feminists, however, contend that the field of legal methods ought not to be limited to these conventional methods. They urge acknowledging and accepting other methods often suppressed or overlooked, namely: (1) Asking the Woman Question, (2) Feminist practical reasoning and (3) Consciousness-raising.

Asking the Woman Question calls on those who “make” the law (used to include legislative, administrative and judicial lawmaking⁵⁷) to, always, interrogate the law to determine how it may submerge gender perspectives or impact. In other words, there is the need to ask questions such as: What are the gender implications or likely gender impact of a particular rule of law, policy or social practice? For example, what are the gender implications of a rule in Labour Law that prohibits women from night work or work in the underground mines? Does this law reinforce gender stereotype or legal paternalism which denies women individual autonomy? How might these exclusions impact on women’s ability to take optimal advantage of their vocational interest and/or employment opportunities? How might traditional legal concepts such as the “reasonable person of law” in Criminal Law and the Law of Torts disadvantage women? Does a law that provides equal formal rights with respect to leave adequately take into account the experiences and values that are more typical of women than men? For example, women get pregnant and women bear the

⁵⁶ All these methods are employed in daily reasoning by ordinary people although most people are convinced that the way lawyers “reason” is different from the way ordinary people do in everyday life.

⁵⁷ There has always been the debate about whether judges make law. Some argue that law making powers vest exclusively in the legislature but others contend that some form of law making power inheres in the interpretative power of judges. I agree with the latter position.

greater burden of child care but in the world of work that has been framed by male experience and values, employment law tends to reflect irritation at accommodating women's realities of need for time off for child bearing and care. Mr. Vice-Chancellor Sir, I will return to examples of how Applied Legal Feminism has employed the "Women Question" method to achieve legal reforms.

"Asking the Woman Question" does not mean that a decision arrived at must always favours women nor does it mean that always, women should be constituted into one homogenous group. It only requires that a decision-maker ask the question to determine whether gender bias or disadvantage lurks. The added value of this method is that it can be extended to help address the exclusion of other marginalised or vulnerable groups in society. For example, it could be converted to "Asking the Excluded Persons/Groups Question". In this way, law is able to respond to other vulnerabilities by acknowledging other bases of exclusion. Asking the Excluded Persons/Groups Question could have enabled the court in *Festus Odafe & Ors v Attorney General Federation & Ors*⁵⁸ to go beyond the *expressio unius, exclusio alterius* rule in construing the scope of constitutional guarantee against discrimination in section 42 of the Constitution. In that case, the court declined to ask any more questions as may have enabled it to accept that HIV-based discrimination against a prisoner violated the Constitution intendment even in the absence of an express provision recognising HIV-status as a prohibited ground of discrimination. Asking the Excluded Persons/Groups Question could have moved the court to prefer the *ejusdem generis* rule to advance non-discrimination.

⁵⁸ (Unreported) Suit No. FHC/PH/CS/680/2003.

A criticism of this feminist method is that it is overtly political and conflates rules of method with substantive rules of law (that is, the rules of rights and obligations of individuals and entities). It has been said that the perception that this approach is indefensibly political arises “only because it seeks information that is not supposed to exist.”⁵⁹ After all, law and its practitioners pride themselves on their ability to stand apart from the political nature of the content of laws. For them, the politics of law starts and ends in the legislature; hence, once a piece of legislation is churned out, it ceases to be a political statement and certainly by the time it arrives in a court, it is supposed to be a purely legal statement.

Suffice it to say that even if “Asking the Woman Question” method or like questions on behalf of other vulnerable groups in society is yet to be warmly received by the lawyers and the courts, there is evidence of acceptance of the method in legislation and policy making. It is what has led to the development of the standard and techniques of “gender-proofing” (sometimes described as “equality proofing”) of legislation, policy and programming in many jurisdictions. Gender proofing essentially requires anyone proposing or adopting a law or policy to answer two questions. First, “is there an inequality or potential inequality between women and men in a given area, which could be law, policy or programme?” Second, “what can be done about it?” Simply, it is the means by which it is ensured that all laws as well as policies and practices of organisations – governmental and non-governmental have equally beneficial effects on men and women. Equality proofing, however, extends the key considerations beyond gender.

⁵⁹ Bartlett (above n 45) p. 375.

Feminist practical reasoning is another feminist contribution to legal methods and it posits that, fundamentally, women's approach to reasoning is different from men's. This method evolves from a thesis that women are more sensitive to situation and context; and for this reason, tend to resist universal principles and generalisations that they have not experienced. Proponents of feminist practical reasoning "believe that the 'practicalities of everyday life' should not be neglected for the sake of abstract justice." For them, life is nuanced and the nuances must be considered in all practical deliberations aimed at doing justice. To illustrate how law as it is presently framed and worked with fails to take into consideration the nuances of life, one can point to law's extremely individualistic framework and rule-bound system which is only suitable for adjudicating competing rights of self-interested, autonomous, essentially equal individuals capable of making unconstrained choices. This individualistic focus on choice refuses to recognise constraints coming from history, from the operation of power and domination, socialisation, or from class, race and gender. In this approach, the task of law is conceptualised as being mainly to keep the State, whether as the legislature, executive or judiciary, from "irrational distinctions between people, because such distinctions frustrate individual autonomy". To talk openly about the interactions between historical events, political change and legal change is to violate neutral principles such as adherence to merit and precedent. Any cries of anguish about the lessons of history, power and domination are open to the accusation that it speaks in the language of politics and passion and not law.

The position of feminist practical reasoning proponents is aptly captured by Bartlett thus:

The substance of feminist practical reasoning consists of alertness to certain forms of injustice that otherwise go unnoticed and unaddressed. Feminists turn to contextualised methods of reasoning to allow greater

understanding and exposure of that injustice. Reasoning from contexts can change perceptions about the world, which may then further expand contexts within which such reasoning seems appropriate.... The expansion of existing boundaries of relevance based upon changed perceptions of the world is familiar to the process of legal reform. The shift from *Plessy v Ferguson* to *Brown v Board of Education*, for example, rested on the expansion of the "legally relevant"... Much of judicial reform that has been beneficial to women ... has come through expanding the lens of legal relevance to encompass the missing perspectives of women and to accommodate perceptions about the nature and role of women. **Feminist practical reasoning compels continued expansion of such perceptions.**⁶⁰ (Emphasis added; footnotes in original text omitted.)

It is important to emphasise that feminist practical reasoning is not the polar opposite of male rationality or objectivity. Feminists accept that rules are not arbitrary creations but emanate from accumulated past wisdom and are useful to check the individual inclination to be arbitrary. They offer consistency and stability in situations in which bias and passion may distort judgment. Feminists only say that at the ideal level, rules should still have room for new insights and perspectives as are generated by new contexts.

Consciousness-raising, another distinctive feminist contribution to legal methods, has been more impactful on the broader plane of feminist action for social change. As a political movement avowing participation and empowerment, feminism has always endeavoured to mobilise the active participation of its constituency to drive its transformative agenda. Consciousness-raising is an important feminist method in social action which has provided rationalisations and direction for Applied Legal

⁶⁰ As above p. 381.

Feminism. Feminists recognise that women have been implicated in perpetuating gender injustice. It is women who are traditional circumcisers and it is women such as the Umuadas in Igboland who are responsible for ensuring the enforcement of widowhood rites including harmful ones. Feminists argue that the reason for this is often, women internalise the norms of oppressions. As cultural gatekeepers, they are responsible for the transmission of norms and validation of gender-oppressive norms and traditions. This task of gate-keeping is then celebrated and presented as a valuable social role with social power conferred on the gatekeepers.

Consciousness-raising has been deployed in campaigns to re-orient the response of women to their disempowered status. It seeks to equip women with deepened knowledge and understanding to overcome the challenges inherent in a gender-biased legal system. It contends that women who oppose feminist challenge to existing social order (inclusive of the legal, political and economic orders) are victims themselves who, through socialisation, have come to internalise the values, standards and rationalisations that sustain the *status quo* of gender-based discrimination. It underpins the advocacy campaigns targeted at gatekeepers of certain cultural norms and practices such as Umuadas in Igboland (harmful widowhood rites), religious leaders in northern Nigeria (early marriage and girl-child education) and traditional circumcisers and religious leaders (female genital mutilation). It is also the method of reasoning that provides the rationalisations for convening peoples' tribunals for justice where the victims of VAW or sexual violence share their experiences publicly as method of raising popular awareness and conscientising the public. It justifies conceptualising popular legal education as a form of legal service and posits that popular legal education must go beyond rehashing the contents of law. Such teaching must

encompass the questions of “how”, “why” and “wherefore” of law.

Making the case for taking feminists legal methods serious, Bartlett has argued that methodological issues matter because methods shape one’s view of the possibilities for legal practice and reform. Also, method organises the apprehension of truth; it determines what counts as evidence and defines what is taken as verification.⁶¹

Feminist epistemologies

Feminist epistemologies question the traditionally accepted ways of knowing in legal inquiry and seek to expand the scope of “how we know” in law. Feminist epistemologies are generally classed into two types: feminist empiricism and standpoint feminism. Feminist empiricism argues for taking women’s lived realities as the starting point of legal research and critiques the approach of taking postulates arising from armchair philosophing and/or the texts of laws they produce as the starting point of the study of law. My experience as a law student was that it was sufficient to accept philosophical rationalisations that underlie law as given and to be educated in legal precepts without more. Hence, the critiques of law as I was exposed and capable of undertaking in the first few years of my career as a legal academic were simply exegesis of internal texts and language of the law. However, when law is conceived as a tool for social re-engineering, then law in context should be the primal concern of the study of law and the only way to elicit reliable knowledge is by favouring empirical approach to enquiry. The recognition that there is growing disconnection between law’s promise and popular expectations in terms of transformative justice has increased the

⁶¹ (n 46 above) p. 370

demand for evidence-based information. For example, over the years, the major direction of support provided by international development partners in Nigeria for justice sector reforms has focused on improving the quality of justice delivery to poor and vulnerable groups. The aim is to bridge the gap between law's promise and law's delivery on its promises.

Mr. Vice Chancellor, Sir, I am most pleased to note that those days are long over and today, empirical legal studies are no less regarded as legal researches even as multidisciplinary approaches have become well-received in legal scholarship. If I may use myself as an example, I have not only embraced but striven to foster appreciation for and develop skills within the legal community, especially among my students, for applying empirical methods in legal research.⁶² From 1993-1995, I was Lead Consultant for a participatory action-research (PAR) project which aimed at improving access to legal services for women and the poor in Nigeria. The research, which commenced with a Needs Assessment study of women's legal services needs in the Mushin area of Lagos, culminated in the introduction of the paralegals' scheme and establishment of the Daleko Market Legal Aid Clinic alongside many other legal aid clinics across the country as a means of improving legal

⁶² Examples of empirical researches I have carried out include A Atsenuwa (2008) *Lessons Learnt Study (an Evaluation Study) of Citizens' Legal Assistance Programmes in Four States (Lagos, Ekiti, Enugu and Jigawa)* commissioned by the Security and Justice Programme of DFID/UK, AV Atsenuwa and C Nwanna (2005) *Report of Study on Human Rights of People Living with HIV/AIDS and People Affected by HIV/AIDS in Nigeria* (research commissioned by UNIFEM 2004-2005), AV Atsenuwa *et al* (2005) *Report of a Study to Baseline Perception on Access to Justice by Vulnerable and Poor in 4 states of Nigeria undertaken by LRRDC & supported by Access to Justice, DFID/UK* (2005), A Atsenuwa *et al* (1993) *Access to Legal Services for Women: Report of a Needs Assessment Study* (on file).

services delivery to women and poor people.⁶³ The research also identified legal education as a major plank of legal services delivery for the poor and vulnerable members of the society including women. Mr. Vice-Chancellor, Sir, our model of legal services delivery which places emphasis on popular empowerment through legal education is one that has been followed by various governmental legal aid initiatives such as the Lagos State Office of the Public Defender.

Standpoint feminism simply holds that there is value in learning from the diverse experiences of members of society hinged on where they find themselves. Standpoint feminism challenges the ideas of “objectivity” and “essentialism” that shape modern law. It contends that insights from the different standpoints of women and men should be accepted as useful in verifying whether or not law is just in not differentiating women and men when dealing with them as human beings. It calls for more openness to the different perspectives exuded by women from different standpoints in life and society. Following on anti-essentialism, standpoint feminism contends that legal epistemology must acknowledge that how 18th century male Europeans perceived their world and framed their aspirations has been the dominant influence in framing modern law. Similarly, the rules of custom coalescing into customary law were shaped by how African traditional societies perceived their world and framed their aspirations. Standpoint feminism aims at enabling validation of different standpoints and also enables an appreciation of how needs of different groups of women may differ along the lines of race, religion, age, marital status, etc. Thus, standpoint feminists would say that although

⁶³ Atsenuwa, “Access to Legal Services for Women” (as above). The Paralegals Training Manual and Guide as well as Paralegals’ Scheme pioneered under the project remain models for paralegal services schemes in Nigeria.

women are women and share much in common as women, they also share less in common as they are disaggregated into married, widowed, single mother, working woman, young or aged, etc. I note that standpoint feminism has particular appeal among African feminists who believe that Western feminists' domination of the feminist discourse and movement lends to its being an agent of oppression in the same way as colonialism was.

Reconciling the divergence in legal feminism(s)

Mr. Vice Chancellor, Sir, let me emphasise that all I have said up till this point do not suggest or assert that the body of ideas, theories or politics known as "legal feminism" has no shortcomings or imperfections. The major shortcoming of legal feminism as a discourse is the multiplicity of theoretical and ideological perspectives put to sail together in one ship, often leading to the question; "If so divergent, which feminism should be accepted and adopted? Or as the ordinary person may put the question: Just what do women want?"

True, feminists are as divergent as can be; bearing labels such as liberal feminists, radical feminist, Marxist feminists, cultural feminists, post-modern feminists, anti-essentialist feminists and post-colonial feminists etc. Mr. Vice Chancellor, Sir, permit me to say that what may be perceived as the troubling diversities in the various strands of legal feminism is characteristic of the whole of law. As earlier noted, it is just the way of law. The body of jurisprudence and legal theory is replete with philosophies and theories that conflict with one another. Yet, over centuries of this conflict, none loses validity and legitimacy as validity rests not on the fact that the theory is not challenged but on its logical consistency and legitimacy on a reasonable degree of acceptance by proponents and adherents. These competing philosophies are differently drawn upon and applied as the contexts of cases and justice aspirations are

defined, and the individual persuasions of lawyers and judges who are the key actors play out.⁶⁴ If anything, the useful lesson is that the persuasions speak to the diverse explanations for how women's exclusion has been rationalised and institutionalised and also the diverse ways in which it is thought that this injustice can be remedied.

What unites all strands of legal feminism is the belief that law, whether as a body of jurisprudence and legal theories or principles or rules of law, cannot and should not be presumed, without more, as inherently capable of serving the ends of justice to women, first as human beings and second as citizens. In this view, law is both a culprit and a victim. As a culprit, it is the complicit tool in perpetuating exclusion and oppression. This is an extreme perspective which, if taken to its logical conclusion, can lead to paralysis of action at best and anarchy at worst as it urges a complete dismantling of all that we presently know as law, jurisprudence, substantive law and adjectival law. It is this extreme position that leaves many people bewildered about the practical relevance of legal feminism.⁶⁵ The middle range position is that law itself is a victim to be pitied and needing liberation. Legal feminism of this school of thought holds that law has been hijacked and dominated by male realities so that it is inhibited in its capacity to deliver on its promises of equality. However, it contends that the nature of law is that it has sufficient resilience to withstand the tensions and it can accommodate what I have described as a "discursive insurrection".⁶⁶

⁶⁴ *Mojekwu v Iwuchukwu* (above n 50) and *Onyibor Anekwe & Anor. v Mrs. Maria Nweke* (above n 6) confirm that the Supreme Court revises itself.

⁶⁵ Atsenuwa (n 25 above) pp.158-159.

⁶⁶ Atsenuwa (n 28 above) p. 44.

Legal Feminism and Legal Developments

The impact of legal feminism on legal developments over the last fifty years is palpable in all spheres of life. Taking various forms, the influence of legal feminism is found in the measured successes of reconstructing jurisprudence by offering alternative ideas of legal methods, legal epistemologies, and legal pedagogies as well as the consequent effect of these new ideas for the development of alternative principles and rules of substantive and adjectival law. An array of new values and standards, legal principles and concepts have emerged, which are reshaping how laws are formulated at the level of legislation-making and evolved through judicial interpretations. It is doubtful that anyone can validly claim today that legal feminism is peripheral and inconsequential in contemporary legal discourse and practice.

(Re)shaping legal principles

The first and sole aspiration of legal feminism is to forge a more just society. As legal feminism attuned itself to employing alternative methods of reasoning and enquiry, it was able to frame the relevant research questions in alternative ways, which has helped it to produce remarkable results in terms of the development of new legal principles and concepts, which are more responsive to contemporary developmental challenges and needs as well as the aspiration for transformative justice. Mr. Vice Chancellor, Sir, I shall now consider a few of these legal developments.

From “sameness equality” to “equality in difference”

As stated already, women’s historical struggle against subordination and exclusion made no bones about the fact that its aspiration was equality for women and men but the ideal of justice in this contemplation was getting for women all and only the legal rights and opportunities that had accrued to men. This direction of feminism is what has been described as liberal

legal feminism and has been the predominant feminist influence on legal developments from the beginning of the 19th century. It enabled women's movements to make far-reaching gains in terms of equal rights for women. Through it, women secured formal guarantees of the right to equality and non-discrimination and other legal rights such as the right to citizenship, right to equal pay for equal work, right to education, right to participate in politics including the right to vote. But despite these formal guarantees of equality between women and men, women have continued to lag far behind men in virtually all spheres of life.⁶⁷ Official governmental policies and programme interventions acknowledge the need to adopt a more strategic approach to promoting gender justice and women's empowerment.⁶⁸

Liberal legal feminism has always faced serious ideological opposition for its unquestioning acceptance of the male as the measure of human.⁶⁹ It is challenged for proceeding on an inadequate understanding of the nature of social relations between men and women which provided the substratum for building legal discrimination against women. In its continuing uncritical aspiration for formal equality for women and men, it unwittingly supports the acceptance of the male as the measure of human. Cultural feminists (also known as relational feminists), in contrast, contend that women are essentially different from men. Gender justice, thus, at the level of human psychology entails validating women's difference as authentic

⁶⁷ Atsenuwa (above n 11).

⁶⁸ National Gender Policy (2006) and the Strategic Results Framework (Implementation Plan) of the National Gender Policy (2008-2013).

⁶⁹ A Atsenuwa (1999) 'Human Rights Protection of Vulnerable and Marginalised Groups' in AO Obilade & C Nwankwo (eds.) *Text for Human Rights Teaching in Schools* (Lagos: Constitutional Rights Project); Atsenuwa (n 25 above) p. 109.

and valid and validating men's difference as similarly authentic. Carol Gilligan's groundbreaking work on the different paths of women and men's self-definition and moral development and her findings that female children exhibited predominantly "the ethics of care" and male children "the ethics of justice" stimulated much feminist legal theorising in favour of giving equal value and weight to women's moral voices in defining law as a normative system and structuring its institutions.⁷⁰ The goal is to legitimise women's different ethos, methods, values and aspirations and even experiences through formal legal recognition and inclusion.

Cultural feminists also posit that the differences between men and women justify accruing rights that are responsive to women's reality to the end of moving forward with equality and justice for women. From this premise, they argue that validating the equality of the two sexes and/or genders necessarily means that we accept that there is an alternative way of conceptualising gender justice. It is this perspective that birthed the campaign tagged "*women's rights are human rights*". The campaign identifies women or gender-specific claims of rights as valid and seeks the legitimization of these as human rights. The campaign does not call for jettisoning the previous campaign of *human rights are women's rights* led by liberal feminists but regards both as two sides of one coin.

The "*women's rights are human rights*" campaign seeks to transcend the idea that human rights are limited to what only women and men share. The idea of women's rights as human

⁷⁰ C Gilligan (1982) *In a different Voice: Psychological Theory and Women's Development* (Cambridge: Harvard University Press). Also, R West (1988) "Jurisprudence and Gender" 55 *Univ. of Chicago L Rev.* 1; P Cain, "Feminist Jurisprudence: Grounding the Theories [1990]" in Bartlett and Kennedy (n 45 above) pp. 261-280.

rights entails two different yet inter-related ideas. The first is the idea that there is such a body of claims/interests/rights which are distinctively relevant to women and women alone but this fact does not make them less of human rights. The thrust of this argument is women are human and the fact that women's experiences stand apart from men's does not make them less human experiences. A set of rights aimed at protecting women's vulnerabilities are no less human rights simply because they respond to women-only vulnerabilities. These ideas are derived from insights gained about women's lives from empirical studies which took women's lives as the starting point. For example, pregnancy, childbirth and childcare affect women's lives in markedly different ways that men do not and cannot experience and where the legal framework is blind or shall I say deaf to the accounts of those for whom this is the "lived reality", it can only work injustice. Thus, any labour law framework that responds to the workforce as though it were solely male and employs male reality to shape its values and standards will be biased and unresponsive to the female workforce. From this perspective, legal feminism considers that there is no reason to be apologetic in demanding that labour law is made responsive to gender justice. It demands that labour law stretches its regulatory oversight to the more common type of women's work that women engage in and the sphere in which this work takes place. This has led to the elaboration and adoption of the International Labour Organisation (ILO) Convention on the Rights of Domestic Workers (CDW) in 2011, which expands the definition of the workplace to include the household (art. 1) and extends a broad spectrum of labour-related rights to domestic workers.⁷¹ Also,

⁷¹AV Atsenuwa (2012) Legal and Institutional Framework for the protection of the Rights of Female Migrant and Domestic Workers. Technical Report prepared for the United Nations African Institute for Economic Development and Planning (UN-IDEP).

much more than demanding 12 or 16 weeks of maternity leave, the new paradigm for labour-related gender justice demands a new legal framework to effectively prevent gender-based discriminatory practices in the workplace such as denial of employment to pregnant women or young women of child-bearing age and sexual harassment. Such legal framework would move beyond neutral statements of gender equality which, in practice, indirectly compel women to adhere to traditional workplace standards informed by male realities alone. Article 13 of the African Women's Protocol obliges states to adopt such legal framework.

Happily, such legal framework is gradually evolving in Nigeria through legislation and case law. Section 262 of Criminal Law of Lagos State, 2011 which criminalises sexual harassment is the first law of its type in Nigeria. Mr. Vice Chancellor, Sir, permit me to note that my humble self chaired the Lagos Criminal Code Reform Committee that developed the Draft Criminal Law in 2010, which draft was subsequently presented as the Executive Bill that culminated in the law. The first Nigerian case on workplace sexual harassment, *Ejieke Maduka v Microsoft Nigeria Limited and 3 Ors*⁷² was decided in December 2013. The Court noted that the case, the first in the country's history on sexual harassment in the workplace, was made possible only by the Third Alteration to the Constitution, 2010 which expressly gave jurisdiction to the court in matters "relating to or connected with any dispute arising from discrimination or sexual harassment in the workplace" and which also empowers the court to recourse to international treaties and international jurisprudence. Relying on the provisions of CEDAW and CEDAW General Recommendation

⁷² (Unreported) Suit No: NICN/LA/492/2012 delivered on December 19, 2013 (on file with author).

No. 19 (1992) on sexual harassment, Justice Obaseki-Osaghae held that sexual harassment constitutes discrimination within the contemplation of the Nigerian Constitution, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. Finding for the applicant, she held:

... the 3rd respondent sexually harassed the applicant because she is a woman; if not for her sex, her participation in sexual activities would not have been solicited. Her fundamental right against discrimination has been violated.

The logic and justice aspiration on which rests the *women's rights are human rights* campaign can be used to address gender-based discrimination against men. Illustrations of how gender stereotype and gender-based discrimination harms men abound. Gender stereotypes about masculinity and family breadwinning as well as cultural belief in men's marginal role in child-care have been used to deny men the opportunity of effectively participating in family life, especially in child-care and child-nurturing. Where the breadwinning role is assigned to men, it is used to construct their identity and social value. They are compelled to spend long hours outside the home to ensure that they appear as "responsible" and a man who does not fall in line with this expectation is stigmatised as lazy and irresponsible. Beyond working to deny men their right to participate in the care and upbringing of their child, this gender stereotype has far reaching negative consequences for the burden women bear in respect to child-nurturing. As men spend virtually all their waking moments outside the home, the burden of responsibility for child care and nurturing is heavier on women. Little wonder, that it is as if all that is required for children to grow up into socially conforming adults rests with women solely. Any manifestation of social deviance is deemed to speak to the failure of individual women (mothers) and women as a social group in society to discharge their responsibility. This explains why blame is usually heaped on women for crime in society. Yet, there is sufficient knowledge

from criminological researches that paternal deprivation or absence of paternal involvement in child nurture correlates with deviance in much the same way as maternal deprivation.

There is evidence linking the declining mental and reproductive health status of men to the pressures they face as a result of the deeply gendered notions of work and responsibility for family producing family income. Men, therefore, need to be extricated from the binds of gender stereotype. Thus, I submit that arguing that *women's rights are human rights* means it can, and should, be argued that *men's rights are human rights*.

From formal equality to substantive equality

As stated already, modern law's greatest appeal is its promise of equality. All modern constitutional frameworks affirm a right to equality premised on full citizenship. The guarantees of national frameworks are complemented by an elaborate array of international frameworks affirming equality of all human beings and prohibiting all forms of discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. For long, it was thought that these formal affirmations and guarantees of law were sufficient guarantees and proof of legal equality. A distinctive legal feminist contribution to the jurisprudence of equality is the use of empirical data to demonstrate that formal equality guarantees in legal texts are insufficient guarantees or proof of equality in fact.

One leg of the substantive equality thesis posits that in the face of evidence that formal guarantees of equal rights for women and men have done little to improve the level of gender equality, it is necessary to adopt supplemental measures if the goal of equality is to be realised. These supplemental measures may include law-related strategic interventions. For example, culture-based gender stereotypes, which stigmatise women who

“go into politics” and historical male dominance of politics, constitute barriers to women’s political participation while giving men a gender-based leverage. Substantive equality advocacy, thus, makes the case for the adoption of strategic law-related interventions such as affirmative action to foster the realisation of the goal of increased level of women’s participation in decision-making. The validity of the substantive equality position is established by the evidence that countries that have recorded substantial improvements in the level of female participation in politics are those that have adopted affirmative action.⁷³

The other leg of the substantive equality thesis makes the case for contextualising equality so that gender needs and interests are recognised as critical in interpreting equality between the two genders. I would sum this thesis thus: “Human beings are one species but within that one species are two types – male and female. One is different from the other but one is not inferior to the other. One should not be made the measure of the other.” Thus, there is nothing wrong in recognising gender-specific rights or providing gender-specific legal protection for one class of people. It is from this perspective that we find the justificatory basis for Art. 4(1) of CEDAW which provides that the adoption of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination.

In this view, maternity rights are no less human rights because women alone enjoy them.⁷⁴ This position, however, does not undermine the case for recognising paternity rights in response to the needs and interests of fathers. It is against this backdrop that CEDAW and the African Women’s Protocol not only

⁷³ INEC & UN Women (above n 12).

⁷⁴ Art. 4 (2) CEDAW.

affirm the human right of all women to non-discrimination (which is a formal guarantee of equality) but impose legal obligations on states to take positive measures to eliminate discrimination.⁷⁵ In this context, the legal obligation of states to respect the right to life of all their citizens would necessarily include a positive obligation to take steps to address the contexts of vulnerable groups e.g. take strategic steps to reduce maternal mortality, infant mortality and even HIV-related deaths.⁷⁶ It is important to note that neither CEDAW nor the African Women's Protocol support the use of special measures to enthrone reverse discrimination. For example, Article 4(1) of CEDAW provides that the special measures urged upon states: "shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved."

Breaking the Public/Private Divide

One of the fundamental tenets of modern law is the separation of society into the private and public sphere. Under the social contract, the sovereign (the State) does not have limitless power. The power of the state to intervene in or regulate the private sphere is circumscribed by the fundamental right of the individual to privacy. With the male alone enjoying citizenship status and in the context of patriarchy, the combined effect of the right to privacy and *pater potestas* doctrine was that the State was reluctant to lift the veil to view into the events taking place in the home. Thus, for centuries, law, which strictly

⁷⁵ Art. 5 of the African Women's Protocol obliges States Parties to modify the social and cultural patterns of conduct, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the ideas of superiority and inferiority of either of the sexes or on stereotyped roles for men and women.

⁷⁶ *Minister of Health v. Treatment Action Campaign* 2002 (5) SA 721

prohibited and redressed violence by means of the Law of Torts and Criminal Law acted like the ostrich and buried its head in the sands when it came to violence in the home. Where law did not expressly excuse the use of violence against women (as when it recognised the defence of reasonable chastisement), official and unofficial policies of law enforcement agencies reflected reluctance to extend law's protection to victims of violence in the home. In other words, women who were maimed and killed got no justice from law. It did not matter that those who harmed them were those that were supposed to be most protective of them and were those who, in fact, exploited the familial relationship to do violence and it did not matter that the assailants had betrayed the assumed responsibility of protection inhering in the *pater potestas* doctrine.

By the middle of the 20th century, empirical studies paced by feminists documented the pernicious nature of gender-based domestic violence. Domestic violence was established as one of the leading causes of death and injury to women. The overwhelming evidence of the gendered nature of domestic violence in its global manifestations made clear that domestic violence could not rightly be treated as isolated acts of individuals but rather the outcome of the imbalance in power relations within the family.⁷⁷ Studies revealed the high level of cultural tolerance for domestic violence captured in various norms of social relations within the family. Drawing attention to the systemic nature of domestic violence and the complicity

⁷⁷ Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003). Available at: <http://www1.umn.edu/humanrts/gencomm/gener19.htm>

of law (whether tacit, through ignoring or express, through availing of legal excuses), feminists challenged the principle of private/public divide which provided the basis for law's policy of non-interference.

Today, there exists an array of international and national legal instruments creating state obligations and enforceable legal rights, all of which reflect that the wall of divide between the public and private sphere is finally down when it comes to violence in the home. Although Nigeria is yet to ratify and/or domesticate some of the relevant gender-specific treaties, namely: CEDAW, the UN Declaration on the Elimination of Violence Against Women (1998)⁷⁸ and the African Women's Protocol, various federal and state statutes now prohibit and respond to domestic violence as a legal wrong. Examples are the Child Rights Act (2003) and Child Rights Laws of the various states, Protection against Domestic Violence Law of Lagos State (2007), Girl-Child Marriages and Female Circumcision (Prohibition) Law of Cross Rivers State (2000) Violence Against Women and Maltreatment of Widows Law of Cross River State (2005) and Female Person's Inheritance of Property Law of Cross River State (2007).

Revisiting the basis of specific gender-biased legal principles

Rape is the quintessential sex/gender specific crime always used to depict women's unfair advantage in law. Liberal feminists, committed to the equalisation of legal status of men and women, considered such legal provisions suspect and were not slow in admitting the injustice that could arise from such legal position. As can be expected, they paced the advocacy for de-gendering rape as a criminal offence. This led to a wave of legislative reforms of the law of rape in many countries in the

⁷⁸ UN A/RES/48/104 adopted on 20 December 1993.

early 1980s. Radical feminists were, however, more cautious. They argued that the offence of rape as known could not be divorced from its history. Historically, rape was an offence committed against the husband or father of a woman. It was their proprietary interest in the woman raped that was “devalued” by the act of rape. For this group of feminists, rape in its incidence and pattern clearly spoke to the nature of gender relations in human societies. The incidence and pattern of rape also belied the idea that rape could ever be a gender-neutral crime. The question was asked: Why is “rape of women by men” so high in incidence and widespread in its dimensions if rape were merely sexual violence and not gender-based violence? Why do men who rape consider that the women they rape should be raped?” In other words, why do they consider that they were justified or at least excused to rape as they did? It soon became clear that each instance of rape had more to do about perceptions held of women and what men could permissibly do with women than it did with the criminal tendency of the individual rapist or the behaviour of the victim. In other words, the incidentals of gendered social relations included rape.

Mr. Vice Chancellor, Sir, I submit that with every rape, it is not just the individual victim that is raped but women as a social group. Every rape not only sends the message to women that they are unsafe (addressing the public safety element of crime) but every rape is an attempt by the rapist to shade in the boundaries of traditional male-female social relationship. It is the demonstration of the gendered nature of rape and the way rape is used to shade in the boundaries of female-male relationship that paved the way for its recognition as an international crime in the Rome Statute of the International Criminal Court, 1998.

Throughout human history, the gender-based vulnerability of women in war has been recognised. It is known that in times of violent upheavals, women are at greater risk of abductions and sexual abuse. In ancient times, when women were regarded as no more than chattels, they were generally considered as part of the spoils of war that rampaging armies could take and/or use as they pleased having proven their superior power in war or conflict. However, there were also times when rape and abductions were used as weapons of warfare or adopted as a part of the war strategy. Recent instances of deliberate use of rape as both a weapon and a strategy of war are the systemic rape of Muslim Serbian women by Bosnian forces and the systemic rape of Tutsi women by Hutu men during the Rwandan crisis. Rape in both instances was strategically deployed for ethnic annihilation. Women of the ethnic groups to be annihilated were systematically targeted for rape and impregnated so that they would bear children who are not of pure ethnic strains and where ethnic identity is deduced from that of the father, the children would be attributed to the conquering ethnic group and rejected by their mothers' ethnic communities.

The International Criminal Tribunal for Rwanda (ICTR) did not only establish rape and other crimes of sexual violence in armed conflict situations as crimes against humanity, it succinctly established the possible genocidal nature rape in armed conflict in *Prosecutor v Jean Paul Akayesu*.⁷⁹ This, I dare say, was made possible by the fact that one of the judges

⁷⁹ ICTR-96-4-T delivered on September 2, 1998. Available at <<http://www.unictt.org/Portals/0/Case/English/Akayesu/judgement/akay001.pdf>> See also B Van Schaak (2008) "Engendering the Genocide: The Akayesu Case before the International Criminal Tribunal for Rwanda". *Santa Clara Law Digital Commons* Available at: <http://digitalcommons.law.scu.edu/facpubs/629>

in the Akayesu case, Justice Navanethem Pillay, is a woman. The role played by Justice Pillay validates legal feminism's position that when admitted into the legal community as women, women add value to the justice process. Had Justice Pillay not been on the Panel, it is unlikely that any legal attention would have been paid to the sexual violence that was widely perpetrated in the course of the Rwandan crisis even though accounts of such had appeared in the media and other reports prior to the establishment of the tribunal. The transcripts of the trial proceedings show that a witness had informed the Prosecutor of the rape of her 6 year old daughter by three men but that report did not enter the formal records and it probably would never have done had Justice Pillay, taking advantage of the inquisitorial mode of trial adopted by the Tribunal, not drawn the Prosecutor's attention to the evidence.

In the background too were human rights and feminist activists who banded to ensure that justice was done to women who had been massively subjected to sexual violence during the Rwandan crisis. Feminist activists formed the Coalition for Women's Rights in Conflict Situation which submitted an *amicus curiae* brief on behalf of over 40 NGOs and 7 Law Clinics.⁸⁰ Although the Prosecutor did not accept that he was influenced by the brief, he did amend the indictment against Akayesu to include rape and sexual violence. Admitting the earlier omission, he stated, "maybe sometimes we are not sensitive as we should have on the issue."⁸¹ Whether the submission of the Coalition was a motivation or merely an influencing factor, what cannot be ignored is that but for the fact that women found their voice within legal spaces, Jean Paul Akayesu would not have been brought to justice for his role in the widespread sexual violence that was perpetrated

⁸⁰ Van Schaak (as above).

⁸¹ Van Schaak (as above).

during the genocide. Although no other conviction for rape was recorded by the ICTR to the disappointment of many; the Akayesu jurisprudence has provided much drive to the changing legal landscape as evidenced by the more recent rape convictions of armed rebels in conflicts engulfing the Democratic Republic of Congo. Simply put, I submit that neither international criminal law nor municipal criminal law in relation to rape would be where they are, today, if there had not been legal feminism.

Legitimising and de-legitimising customary law

Interrogating customary law has been central to African legal feminism. This is understandable given that legal pluralism, which is the fall-out of its colonial experience, is the feature of all national legal systems on the Continent. The rising influence of international human rights law has introduced an additional dimension to the plurality of the legal system. Most African states have written Constitutions which iterates constitutional supremacy over all laws. For example, section 1(3) of the Nigerian Constitution (1999) affirms that all the laws derive their validity from the Constitution and any law that is inconsistent with the Constitution is void to the extent of its inconsistency. Where the Constitution recognises and validates customary law, such recognition and validation is usually done with the qualification that the State shall protect, preserve and promote only the cultures which enhance human dignity or as in the case of the Nigerian Constitution, only cultures that are consistent with the Fundamental Objectives stated in Chapter II. The question of the “margin of appreciation” (a concept I borrow from international human rights), however, is what often obfuscates things.⁸²

⁸² The Constitution of the Republic of The Gambia, 1997 offers a good example of such obfuscation (Section 32).

Similarly, as I have noted earlier, other legal frameworks aside the constitutional legal framework legitimise customary law for the purpose of enforceability only in so far as it is not repugnant to natural justice, equity and good conscience or not contrary to law and public policy. At the ideal level, this is the right way to go in that it is the customary law system that majority of citizens accept as legitimate and by which they regulate some of the most significant aspects of their life e.g. marriage and divorce and ancillary matters, succession, access to property, local governance (chieftaincy), dispute settlement, etc. However, practical challenges arise when the normative values and standards of customary laws collide against constitutional values and standards. It would have been thought that in the light of the express provisions indicating the constitutional value and aspiration of gender equality and non-discrimination (sections 15 and 17), all customary rules that discriminate against women would be construed as violating section 21. But things have not always been straightforward.

Customary law apologists (with no negative connotation given to the term) believe that customary law was denigrated by the colonialist for political reasons and that, to the extent that the identity of a people is tied to their customs and traditions, it is important to work to return customary law to its pride of place post-colonisation. Human rights proponents, in turn, contend that the values and standards of equality and non-discrimination espoused in the Constitutional or international human rights frameworks must always override. In this view, there is little or no room for romanticising the indigenous nature and authenticity of customary law. In the context of constitutionalism therefore, to the extent that all laws derive their legitimacy from the Constitution, customary laws are valid and legitimate only in so far as they are in tandem with the former's aspirations.

The case of *Mojekwu v Mojekwu* (later *Mojekwu v Iwuchukwu*) offers an excellent example of how human rights proponents and customary law romantics may pull in different directions in the determination of the question whether a rule of custom is constitutional or fails the repugnancy test.⁸³ In that case, the Court of Appeal had no difficulty in concluding that a rule of custom which denied female inheritance to landed property was unconstitutional. In addition, it was unrestrained in condemning the cultural rite of *Oli Ekpe* (designed to circumvent the hardship of the rule of inheritance), which when carried out on a girl meant that she could never marry although she could bear children who will be ascribed to her father. Commenting on the rule of custom, Justice Niki Tobi, JCA (as he then was) asked:

Is such a custom consistent with equity and fair play in an egalitarian society such as ours where the civilized sociology does not discriminate against women? Day after day, month after month and year after year, we hear of and read about customs which discriminate against the women folk in this country. They are regarded as inferior to the men folk. Why should it be so? All human beings – male and female – are born into a free world, and are expected to participate freely, without any inhibition on grounds of sex; and that is constitutional. Any form of societal discrimination on grounds of sex, apart from being unconstitutional, is antithesis (sic) to a society built on the tenets of democracy which we have freely chosen as a people. We need not travel all the way to Beijing to know that some of our customs, including the Nnewi ‘oli-ekpe’ custom relied upon by the appellant, are not consistent with our civilised world in which we all live today, ‘including the appellant. In my humble view, it is the monopoly of God to determine the sex of a baby and not the parents.

⁸³ A Atsenuwa (2013) “Can two walk together, except they be agreed?” Interrogating the co-existence of Customary and Human Rights Law in Nigeria”, Faculty Seminar Paper delivered as part of the Faculty of Law, University of Lagos Seminar Series on February, 2013.

Although the scientific world disagrees with this divine truth, I believe that God, the creator of human being, is also the final authority of who should be male and female. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the Almighty God Himself. Let nobody do such a thing. On my part, I have no difficulty in holding that the 'oli-ekpe' custom of Nnewi, is repugnant to natural justice, equity and good conscience.

On appeal to the Supreme Court, Uwaifo, JSC found for the appellant on the ground that the Court of Appeal had no business venturing into the question of repugnancy of the custom, that issue not having been placed before the court through the pleadings of parties. His Lordship, however, expressed doubts as to whether a rule which barred female inheritance should be considered repugnant on grounds of custom. In what can be described as a subtle chastisement of Tobi JCA, he said:

... the learned Justice of Appeal was no doubt concerned about the perceived discrimination directed against women by the said Nnewi 'oli-ekpe' custom and that is quite understandable. But the language used made the pronouncement so general and far-reaching that it seems to cavil at, and is capable of causing strong feelings against, all customs which fail to recognise a role for women. For instance, the custom and tradition of some communities which do not permit women to be natural rulers or family heads. The import is that those communities stand to be condemned without a hearing for such fundamental custom and tradition they practise by the system by which they run their native communities. It would appear, for these reasons, that the underlying crusade in that pronouncement went too far to stir up a real hornet's nest even if it had been made upon an issue joined by the parties, or properly raised and argued. I find myself unable to allow that pronouncement to stand in the

circumstances, and accordingly I disapprove of it as unwarranted...⁸⁴

Striking the same tone of judicial reluctance to find a rule of custom that denied women inheritance rights unconstitutional across the African Continent are the decisions of the Kenyan High Court in *Bernado Ephrahim v. Holaria Pastory and Gervazi Kaizilege*⁸⁵ and the Zimbabwean Supreme Court in *Magaya v Magaya*.⁸⁶ Mr. Vice Chancellor Sir, I am, however, pleased to note a swing of the pendulum in favour of prioritising constitutional and human rights values and standards over African cultural values where there is a conflict. The elaborate jurisprudence developed by the Ghanaian Supreme Court in *Gladys Mensah v Stephen Mensah*,⁸⁷ the South African Court in *Bhe and 3 Ors. v Magistrate Khayelitsha & 3 Ors.*⁸⁸ and the ECOWAS Community Court of Justice (CCJ) in *Hadijatou Mani Karaou v Niger* strengthen the hope of a new vision of gender justice against discriminatory practices rooted in custom and customary law in Africa.⁸⁹ Considering the fact that the panel of 5 judges in the *Mensah* case included three females, Mr. Vice Chancellor Sir, I cannot but underscore the point that creating the space for women's

⁸⁴ *Mojekwu v Iwuchukwu* (n 50 above).

⁸⁵ (Unreported) Civil Appeal No. 70 of 1989, High Court at Mwanza

⁸⁶ The Supreme Court of Zimbabwe held that despite constitutional protections against discrimination, the fact that the case arose under customary meant that its discriminatory elements are exempted from the Court's scrutiny. In its view, the Zimbabwean Constitution permits this type of discrimination against women as it is acceptable within "the nature of African Society".

⁸⁷ Civil Appeal No. J4/20/2011 delivered on 22nd February 2012. Available at: <http://www.judiciary.gov.zm/images/articles/2.6.4.pdf>

⁸⁸ CCT 49/03. Available at: <http://www.judiciary.gov.zm/images/articles/2.6.2.pdf>

⁸⁹ Judgment No. ECW/CCJ/JUD/O6/08. Also *IHRL* 3115 (ECOWAS 2008)

voice to be heard through the bar and the bench is strategic for advancing gender justice.

The specific context of Nigeria

Mr. Vice Chancellor, permit me in summing up the review of legal developments attributable to legal feminism to ask pointedly if, and how, legal feminism has really impacted legal development contemporary Nigeria. I would certainly answer that question in the affirmative. There is evidence that modern law, introduced by the colonialist, was particularly appealing at the onset because it offered to those who had been disadvantaged by the normative order better prospects of justice with its promise of equality for all. Many who were marginalised under the traditional socio-political arrangements latched on to the promise of equal access to justice as well as the promise of equality of all before the law to fight for the justice and equality that had hitherto eluded them. African women, in particular, made ready use of the white man's laws and courts to secure for themselves more rights than the customary law framework was willing to grant them. Mba found that women exhibited little or no inhibitions in making use of the courts to challenge customary norms particularly in matrimonial causes.⁹⁰ It is on record that in at least one instance, men protested in writing to the District Officer against the favourable disposition of the courts manned by British officials towards divorce actions brought by women.⁹¹

In more contemporary times, the impact of legal feminism has been felt in the areas of legislative and judicial reforms as I have shown in the discussions up till this point. But the best

⁹⁰ NE Mba (1997) *Nigerian Women Mobilised: Women's Political Activity in Southern Nigeria, 1900-1965* (Nigerian Edition) (Lagos: IAS Univ of California & Crucible Press).

⁹¹ As above.

laws do not enforce themselves; they are enforced through the courts. The first step in the enforcement of any law is the interpretation of the law. If laws are interpreted in the light of existing gender stereotype, then there is little prospect of escaping entrenched gender prejudices. The line of decided cases suggests that even though the repugnancy test and the test of constitutionality existed as plumb line against which customary law was always to be measured, the courts treated the customary law system as almost autonomous. Arguably, dislocating gender-discriminatory customary law has been difficult because of entrenched gender-based prejudices and the fact that modern law itself was no less patriarchal in roots and inclination and so, was gender-biased. Hence, the two law systems often reinforced themselves in women's oppression. Even when courts mouthed the neutrality of modern law and constitutions affirmed the equality of both sexes/genders, there was both gender bias and gender insensitivity as can be expected from a male-dominated institution. The ideas of justice espoused by the courts were insensitive to the nuances of gender injustice embedded in the legal framework. This, though, is hardly surprising. How could male judges be gender sensitive when legal education to which they had been exposed projected law as neutral and unbiased so that interrogating differential impact was deemed unnecessary? And when it was finally acknowledged that differential legal treatment existed, this was rationalised as not discriminatory on the grounds of legal paternalism or auto-normativity of customary law.

Although there are a number of cases in which the courts made progressive decisions relying on the repugnancy test, in many others they took many steps backwards. Igbo customary law which precludes women from inheritance has particularly tasked the courts in Nigeria. The early judicial decisions indicate that the courts did not consider this custom discriminatory although they were willing to enforce its

ameliorative elements. In *Nezianya v Okagbue*,⁹² the Supreme Court affirmed that a widow who married under Onitsha customary law system cannot succeed to the estate of her husband except in so far as that customary law system permits. In *Nzekwu & Ors. v Nzekwu & Ors.*,⁹³ the Supreme Court reiterated the same position even though it acknowledged that customary law does not intend that a widow should be stripped of all material protection simply because her husband is dead.

In *Amadi v Nwosu*,⁹⁴ the Supreme Court held that in a marriage contracted under a customary law that does not recognise the right of women to own real property (land), a woman must prove her monetary contribution to family property before she can invoke other laws to claim joint ownership of the property. The decision in *Amadi v Nwosu* is reminiscent of that in the case of *Nwanya v Nwanya*⁹⁵ even though in the latter case, parties were married under the statute. Denying the claims of a wife who sought to be treated as a joint owner of matrimonial property upon dissolution of marriage, Olatawura, JCA (as he then was) held that the claimant had the onus of adducing evidence to prove her interest and that his court was not "Father Christmas." She had contended that she contributed directly and indirectly to the acquisition and development of the property and so should be treated as having a legal interest as a joint owner. It is notable that the decision in *Nwanya v Nwanya* remains the law in Nigeria even though the jurisdiction from which we inherited the principle has since jettisoned it in the interest of fairness.

⁹² (1963) 1 *All NLR* 352

⁹³ (1989) 2 *NWLR* (Pt. 104) 373

⁹⁴ [1992] 5 *NWLR* (Pt.241) 273

⁹⁵ [1987] 3 *NWLR* (Pt. 62) 697

Oyajobi, commenting on the ostrich-like approach of the court in *Nwanya v Nwanya*, has noted that insisting on strict proof of legal interest will work great injustice against women for it is unlikely that while a cordial relationship exists, a wife will anticipate a future dispute so that she takes the necessary steps to secure her interest by demanding and collecting receipts for all advances or payments she makes to her husband with respect to matrimonial property.⁹⁶ I would add to this comment the question: "Which threatens the harmony of marriages and homes more - recognising an equitable interest of wives in matrimonial property upon dissolution of marriage or requiring women to protect themselves legally by insisting on obtaining receipts for contribution made to family expenses or insisting on being included in the legal title documents before any contribution or support is given to the acquisition of family property?" I believe the latter. Yet, this is what the courts are indirectly pushing women to do to secure their proprietary interests in the event of dissolution of marriage. Were it ever true (and I doubt that it ever was) that in the past, husbands acquired property absolutely exclusive of any support, assistance or encouragement of their wives so that they made no contributions to the acquisition of such property, I doubt that this is true today. Suffice it to say that the approach of the courts can only foster marital disharmony.

Happily, there is, yet again, evidence of a paradigm shift in recent decisions of the Supreme Court. In *Ukeje v Ukeje* and *Anekwe v Nweke*, the court radically departed from the stance it took in *Mojekwu v Mojekwu*. In *Ukeje v Ukeje*, it reaffirmed the decisions of the lower courts that the Igbo native law and custom which disentitles a female from inheriting her late father's estate is void as it conflicts with sections (39(1) (a) and

⁹⁶ Oyajobi, "Women and Children under the Law" (n 16 above) p. 32

(b) of the 1979 Constitution which is identical to section 42 of the 1999 Constitution. Hon. Justice Clara Ogunbiyi in *Anekwe v Nweke* was scathing in her condemnation of such customs and the lawyers who present them before the courts. In her words:⁹⁷

... I hasten to add at this point that the custom and practices of the Awka people upon which the appellants have relied... is hereby outrightly condemned in very strong terms. In other words, a custom of this nature in the 21st century societal setting will only tend to depict the absence of the realities of human civilisation. It is punitive, uncivilised and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the rights of the womenfolk in the given society. One would expect that the days of such obvious differential discrimination are over. Any culture that disinherits a daughter from her father's estate or a wife from her husband's property by reason of God instituted gender differential should be punitively and decisively dealt with. The punishment should serve as a deterrent measure and ought to be meted out against the perpetrators of the culture and custom. For a widow to be thrown out of her matrimonial home where she had lived all her life with her late husband's brothers on the ground that she has no male child is indeed barbaric, worrying and flesh skinning. It is indeed much more disturbing especially where Counsel representing such perpetrating clients, though learned appear comfortable in identifying, endorsing and also approving of such a demeaning custom...

Mr. Vice Chancellor, Sir, permit me to note that nothing I have said should be construed as a call for wholly discarding customary law. I have always made the case for engaging custom and customary law towards developing a new feminist legal agenda in Nigeria. I have argued alongside other legal scholars that for all its faults, customary law still has some "emancipatory potentials" that can be harnessed for gender

⁹⁷ (n 5 above) pp. 36 – 37.

justice.⁹⁸ I agree that to the extent that a vast majority of women still accept the legitimacy of customary law, it cannot be ignored or dispensed with by fiat and any feminist politics that fails to constructively engage with it risks being irrelevant and susceptible to the charge of “elitism”.

Cultural relativist criticism of legal feminism is that it is western-inspired, western-dominated and the attitude is to regard any feminist critique of custom specifically and culture generally as another manifestation of neo-colonialism. In response, I say that such claims denigrate African women by denying the authenticity of their voice when it is heard. These claims deny African feminists of intellectual capacity to rethink their world and evolve new aspirations. There is much in the history of Africa that shows that pre-colonialism, African women were not docile in the face of injustice attributable to the gendered construction of their societies. I find illuminating the attempts by women to reverse the injustice of the stigma of barrenness by the Igbo customs of “woman to woman” marriage⁹⁹ and redress the injustice of domestic violence by “sitting on the man”¹⁰⁰, a cultural practice akin to picketing of the home of an abusive husband by women as a group.

Narratives of the misconstruction of customary law as it passed through the mould of English Law’s values, standards and concepts abound. In addition, there is the thesis that beyond the

⁹⁸ Atsenuwa (n 28 above).

⁹⁹ CO Akpamgbo (1977) “A ‘Woman to Woman’ Marriage and the Repugnancy Clause: A Case of Putting New Wine into Old Bottles” 14 *African Legal Studies* 87-95. Available at: <http://www.jlp.bham.ac.uk/volumes/14/akpamgbo-art.pdf>

¹⁰⁰ J Van Allen (1972) “Sitting on a Man: Colonialism and the Lost Political Institutions of Igbo Women” *Canadian Journal of African Studies* Vol. 6 No. 2 (Special issue: The Roles of African Women: Past, Present and Future) 165-181.

precincts of formal law and its concerns with fossilised customary law, there is a continuity of indigenous systems and it would be useful to begin to develop the tools to dig out the “living customary law” of the people.¹⁰¹

All these arguments lead to one conclusion – that there is space within custom for a more open and discursive engagement towards the reconstruction of customary law. It is for legal academia broadly speaking and legal feminists, specifically speaking, to jumpstart this reengagement. I am pleased to note that in line with a recommendation I made in of a Faculty Seminar presentation in March 2013, our Faculty resolved to, and did commence for the teaching of Customary Law as a separate course in the 2013/2014 academic session. The course had been in the approved curriculum for years but it had never been mounted. I am aware that the Nigerian Institute of Advanced Legal Studies (NIALS) is currently embarking on a Restatement of Customary Law Project. Hopefully, all these will advance research towards developing customary law systems that are truer to the values of custom as dynamic, people-driven and contextual justice-needs oriented.

Modest contributions

Mr. Vice-Chancellor, Sir, having presented the gospel of legal feminism and assessed some of its contributions to legal development, permit me to track some of my modest contributions to this proselytising cause over the last 26 years.

- *Legitimising legal feminism and mainstreaming legal feminism into the LL.B. degree programme curriculum*

The researches published by my humble self under the titles, “Better Protection for Women and Children under the Law”

¹⁰¹ Atsenuwa (n 28 above) pp. 28- 46.

and “Gender Discrimination and Fundamental Human Rights of Women in Nigeria” are some of the earliest Nigerian researches which identify and comprehensively document the nature and scope of gender-based discrimination in Nigerian law. They remain reference points for academic and social action researches aimed at addressing the problem of gender-based discrimination in Nigeria.

The book “*Feminist Jurisprudence: An Introduction*” also authored by my humble self in 2001 is the first text by a Nigerian author on the subject. I was motivated by concern that after more than a decade of formal recognition of the discourse of feminist jurisprudence in other jurisdictions, law students in Nigerian universities were still being taught and graduated in law without any exposure to the ideas espoused by legal feminism. By this time, there was hardly an international textbook on Jurisprudence which did not devote at least a chapter to feminist jurisprudence, yet the topic had not found its way into the Nigerian curriculum. I considered this a great disservice to our students and country. Students come to us expecting to be taught and exposed to the full spectrum of legal discourse as would enable them to develop the intellectual capacity to evolve and practice law to meet the country’s developmental challenges.

As a result of the book, I received an invitation from the late Professor Amaechi Uchegbu, renowned lecturer in Jurisprudence and Legal Theory to take some classes on feminist jurisprudence to introduce law students at the undergraduate and postgraduate levels to the perspectives of legal feminists and their contributions to the development of jurisprudence. Rather than dissuade a MILD student who wanted to write her research project on feminist jurisprudence, he sought my approval to supervise the project even though I was not a teacher designated to teach on the programme. These

lectures and seminars ignited much student interest in undertaking research projects and paved the way for the introduction of a new Course: Gender and the Law. It is, however, unfortunate that our near rigid stance on departmentalisation does not allow teaching across departments so that the step forward was soon officially reversed. It is, however, heartening to note that today, feminist jurisprudence has found incremental space in the course, Jurisprudence and Legal Theory taught in our Faculty and one of the course teachers is on her way to obtaining a Ph.D. in Legal Feminism

Mr. Vice-Chancellor Sir, I believe I can say, albeit modestly, that curriculum improvement to law courses such as Family Law, Labour Law, Constitutional Law, Criminal Law, Criminology and Jurisprudence taught at the undergraduate and postgraduate levels Faculty have been influenced by my proselytism for legal feminism over the years. Human Rights Law which I co-teach at the undergraduate level devotes much attention to women's rights discourse. In Criminal Law, students at both the undergraduate and postgraduate levels are directed to feminist critiques of inherent "maleness" of the jurisprudence that underpins the norms reflected in gender-specific offences, sexual offences generally speaking and defences available to married persons and the element of the test of the reasonable person (read: man) in the defences of provocation and self-defence. In Criminology, our curriculum devotes sufficient attention to the study of gender issues in crime and the criminal justice system. I am also aware that in Constitutional Law, gender equality is given significant attention under the topics of citizenship and human rights.

- *Introduction of new courses:*

In 2005, Professor Chioma Agomo and my humble self introduced the 2-semester course, Gender and the Law. This course has now been taught for an unbroken 9 years and it has

consistently attracted large number of students each semester. Other members of the faculty have since joined us and it is noteworthy that the course has evoked significant research interest in many members of the faculty, some of whom have proceeded to focus their Ph.D. studies on areas within legal feminism.

I have alluded to my contribution towards the mounting of Customary Law in the Faculty of Law in 2013. I continue to research in the field of customary law as it overlaps with my other fields of interest, namely: Human Rights Law and Gender and the Law.

- *Improving individual and institutional capacity to teach and research in legal feminism*

I have been privileged to provide leadership to different teams of researchers engaged in feminist research and social action. For example, from 2002-2010, I was Project Team Leader for collaborative action-based research project undertaken by LRRDC and the Women's Aid Collective (WACOL) with funding support from the MacArthur Foundation. The project aimed at integrating Reproductive Rights including maternal rights into the formal legal education curriculum. The project, had amongst other things, the general objective of fostering the development of individual and institutional capacity of the legal community within Nigeria to use law to promote and protect reproductive health and rights. The project developed model curricula and built a Resource Centre, as well as facilitated international exchanges to promote and support the teaching of Reproductive Health Law in Nigerian universities. Over an 8-year period, the project convened 2 international conferences and trained 16 lecturers in the law faculties of 6 Nigerian universities (UI, UNILAG, DELSU, ABU, UNIJOS, UNIMAID) and the Nigerian Law School. It is noteworthy that at least 4 lecturers - Dr. Nkoli Aniekwu (UNIBEN), Dr.

Balarabe Haruna (BUK), Mrs. Asikia Ige (UNILAG) and Mrs. Folake Olaleye (UI) - who participated in the project have gone on to undertake/obtain post-graduate degrees (LL.M. and Ph.D.) with specialisation in gender and the law and/or reproductive health and/or legal feminism. Mr. Vice-Chancellor Sir, permit me note that the Ph.D. thesis of Nkoli Aniekwu on "Domesticating Cairo and Beijing: Prospects and Opportunities for Legal Obligations to Reproductive Rights in Nigeria" co-supervised by Professor E.N.U. Uzodike and myself received the National Universities Commission (NUC) award for the best Ph.D. thesis in law in 2010/11.

Mainstreaming of legal feminist discourse into legal practice

Mr. Vice-Chancellor, Sir, I believe I can affirm without equivocation that legal feminism is not only being mainstreamed into academic legal discourse in Nigeria but it is effectively reshaping how law is conceptualised and practised. The relentless push to place legal feminism legitimately on the agenda has brought about the shifts presently being witnessed in the direction of legislative reform and how Nigerian courts are responding to gender-based discrimination. I continue to contribute to capacity building within the legal community towards improving gender justice. The Reproductive Health Law project I mentioned earlier availed me the opportunity of providing training to Nigerian judges through the Jurisprudence of Equality Programme of the National Judicial Institute (NJI) between 2008 and 2011.

Legal Activism – Town and Gown Meet

Mr. Vice-Chancellor, Sir, indeed, the days are gone when universities prided themselves on being ivory towers with little connection with the real world around them. Today, the relevance of universities as social institutions is premised on their ability to contribute to social development through the knowledge and skills that their research and teaching produce.

In the last 26 years of my teaching career, I have consistently combined academic teaching and research with social activism. As a member of the feminist movement and the human rights community in Nigeria, I have been involved in various social action researches and other forms of social interventions to advance women's rights in Nigeria and beyond. Through the platform of LRRDC, I have been involved in Applied Legal Feminism. I have been involved in the development and implementation of numerous informal legal education programmes for women's empowerment. For example, the Fostering Rights Awareness Series Project of LRRDC developed and distributed simplified educational pamphlets to provide legal education and enhance legal awareness among marginalised social groups especially women. The project was premised on the understanding that promoting women's empowerment requires that women have legal knowledge to enable them use favourable laws to their advantage and challenge unfavourable one. Titles produced include Rape, Marriage in Nigeria, Maintenance of Children, Child Custody under the Law and Convention on the Elimination of All Forms of Discrimination Against Women. More than 10,000 pamphlets were produced in English, Yoruba, Hausa and Igbo and distributed freely throughout the country and beyond.

Next Steps and Future Directions

1. *Revisiting the direction and content of Legal Education*
Mr. Vice-Chancellor Sir, I humbly submit that if legal education, as indeed any other university-based learning field, is to be valuable, it must remain true to the purpose and idea of university education. While I agree that universities must prove their relevance in society by providing education that equips their graduates with practical skills to meet immediate needs of the job market, I believe that universities must equip their graduates with effective intellectual capacity to recreate their worlds. New worlds and new realities are not created by

teaching people and equipping them with skills that merely enable them to carry on their jobs mechanistically. New worlds and new realities are created when individuals are infused with a capacity to generate ideas. New ideas, whether in science or the humanities, recreate the world.

Speaking to the context of legal education, I submit that law faculties in Nigeria must evolve robust faculties. They must also design and teach the curriculum in ways that graduates are well-imbued with understanding of the theoretical bases of the principles and rules they apply as well as critical reasoning and analytical skills to reshape these as may be required by the needs of development from time to time. In other words, we must privilege “doing theory”. If we fail to do this, legal developments will become stunted as there will be a dearth of lawyers and judges who are able to think outside the box.

The time is ripe to initiate a research project to evaluate university-based legal education and identify gaps to be filled and the future direction.

2. *Mainstreaming legal feminism*

Mr. Vice Chancellor Sir, I have often pondered, why it has been difficult to mainstream legal feminism? Why are the ideas of legal feminism often denuded as inauthentic and inferior law? Why, are the frontiers and the boundaries of law presented as immutable and impregnable? I am often advised about the impracticalities of legal feminism. I have also been told that Women’s Law is soft (read: inferior) law. If legal ideas are human conceptualisations, providing sound legal education demands that students are given exposure to the totality of ideas within law. Mainstreaming legal feminism will entail:

a) Revisiting the curriculum of courses such as Legal Methods and Jurisprudence to specifically include legal feminist ideas in the contents. This is particularly important to

ground students' understanding of feminist critiques as they will encounter in other legal fields.

b) Expanding legal curriculum through the introduction of Human Rights Law and Gender and the Law into the curricula in all law faculties. Commendably, our Faculty of Law is not behind in this regard. I am aware that a number of law faculties in the country teach Human Rights Law but not all do. Fewer teach the Gender and the Law (howsoever called). A starting step will be undertaking research to baseline the teaching of these two courses in Nigerian universities. Mr. Vice Chancellor Sir, may I note that I am currently engaged in a research in this direction.

3. *Constitutional and legislative reforms*

There is an urgent need for constitutional reform to enhance gender justice in Nigeria. The terse provisions of section 42 are inadequate if we truly aim at gender justice. Constitutional developments from other jurisdictions such as the Kenya Constitution, 2010 and the Ghanaian Constitution, 1998 offer useful lessons on how to constitutionalise gender justice. Given the ongoing parallel processes of the National Assembly's Constitution Review exercise and the National Conference, I do not say much on this as it is hoped that all that have been said in the past will be utilised and significant proposals will be churned out.

Our Constitution aims at a coherent legal framework. It is unacceptable that there should continue to be in place statutes and regulations that are discriminatory and in violation of the Constitution. The AGF and the AGs of all the 36 states should undertake comprehensive law review exercises to ensure that laws that have been struck down by the courts are removed from the statute books. It cannot be allowed that the law continues to send conflicting messages as to what is the law.

4. *Training for the Bar and the Judiciary*

As teachers of substantive law, we daily lament the underdeveloped state of substantive law in many areas of law. Decisions of court are replete with statements such as “it is trite law...” - a statement used to rationalise why no further enquiry or engagement with established ideas or principles is needed. When I am told theoretical discourses such as feminist jurisprudence have little or no practical value for “legal practice”, I always ask, “Are the courts in other jurisdictions then needlessly tedious or is law just fossilised in Nigeria? I know that the fault is not wholly that of the courts. With our adversarial legal process, courts are dependent on the quality of submissions of counsel appearing before them. In this regard, it is imperative to underscore the need for law faculties to improve the quality of legal education being provided to ensure that law graduates produced are not merely legal technicians. True, lawyers must develop qualitative arguments to develop the law but judges too must be responsive to such dynamism. I recommend that the judiciary consider addressing the theme of Jurisprudence of Equality and Gender Justice during their next All Nigeria Judges Conference. The NJI needs to scale up its trainings on *Jurisprudence of Equality*. I call on law faculties such as ours to develop appropriate training courses including on-line courses and enjoin the NJI to collaborate with them towards meeting the training needs of the bench.

5. *Promoting empirical research in legal studies*

The theoretical perspectives of legal feminism have been articulated, the case for their contextual relevance made, the future direction then is a focus on Applied Feminism which will be devoted to action-based research and implementation of programme interventions to test theoretical perspectives. The global trend in legal studies today is in the direction of Applied Legal Studies as legal research slowly but gradually inches away from the dominance of doctrinal research. Providers of

university-based legal education are being called to turn their classrooms and law clinics into laboratories in which theory and practice meet. It is my dream that a research unit for Applied Feminism will take off in no distant time under the rubric of the Centre for Human Rights in the Faculty of Law.

6. *Adoption of a Gender Policy for University of Lagos*
Charity, they say, begins at home. Mr. Vice-Chancellor, Sir, it is urgent and imperative that the University of Lagos signals its commitment to gender justice by adopting a Gender Policy. Some universities such as the University of Jos have already done this. We need to integrate the values and standards of gender justice into all aspects of our university system.

Conclusion

Mr. Vice-Chancellor, Sir, I have argued that the value of legal feminism is that it challenges us to probe ideas inhering in traditional jurisprudence and which we have always accepted as truths not so much because it wants to create social disruption but because it seeks that we work towards evolving a more inclusive jurisprudence, one that is more responsive to the yearnings for social justice. It is submitted that the present situation in which a notion of "legal justice" prides itself on not being empathetic or sympathetic is, in fact, what is unnatural. The task, therefore, is to reconstruct our jurisprudence and redeem our idea of justice from its present unnatural state. It is what legal feminism has attempted to do this thus far and we can pursue doing this further by legitimising and validating the discourse and its approaches.

I make bold to say that neither feminism nor legal feminism is a foreign concept or political movement. It insults the intellect of African feminists to suggest that they are incapable of visioning an alternative reality. Indeed, it is a disservice to the ingenuity of Africans to forge futures for themselves to suggest that every

thought or vision they have that aligns with one shared or articulated by others in the West is proof of “the capture” of their minds by foreign ideas or ideology.

It is said that “law is the last hope of the common man”. The *proselytism of legal feminism* has only one goal – to evolve transformative justice that law may also become the last hope of the common woman also. If the reality of gender injustice was too remote for many to appreciate, I dare say that the recent abduction of 200 young girls in Chibok for sexual slavery brings it home.

Mr. Vice Chancellor, Sir, “This is more than a moment in history; this is an act of survival.” On this note, I rest my case.

ACKNOWLEDGEMENTS

I start my vote of gratitude this day with an appreciation of the Lord God Almighty without whose grace, I would never have breathed life and without whose continuing grace, I could not have made it to this podium to deliver this lecture. Of my God, I testify now as always, He is good and He is faithful. To Him and Him alone be all the glory by Christ Jesus, now and forever. AMEN.

Today, I remember my mentor - late Professor Jadesola Olayinka Akande, CON. I wish I had the privilege of asking her to rise today to take a bow but it is not to be. I only hope I have done justice to her mentorship over the years. I thank my former colleagues at LASU where I started my career - Mr. Dipo Solanke, Professor Bolaji Owasanoye and Mr. Seye Kosoko. These three were instrumental in my employment as a law lecturer. I note also the contributions of other colleagues who eased my settling into academics especially Mr. Olumide Erinle and Professor I. O. Smith, SAN. It was with Professor Smith (then Mr. Smith), who is my current Dean, that I cut my teeth as a law teacher. He was the lead teacher in the courses I was first assigned at LASU.

My special thanks go to Emeritus Professor Adedokun Adeyemi who pulled me out of LASU. Indeed, he is a Master that I have been privileged to learn under. I greatly appreciate my senior colleagues in the Faculty of Law who have been more like brothers and sisters to me - Professors Taiwo Osipitan, SAN, Yemi Osinbajo, SAN, Chioma Agomo, Oyelowo Oyewo, Peter Fogam, Kehinde Mowoe and Akin Ibidapo-Obe. I thank all my friends and "aburos" - Professor Ige Bolodeoku, Dr. Joke Oyewunmi, Dr. Oludayo Amokaye, Dr. Wale Olawoyin, Dr. Ego Chinwuba, Mr. Akeem Bello, Dr. Gbenga Akingbehin, Dr. Iyabo Ogunniran Mrs. Asikia Ige, Dr. Kemi Adekile, and of course, Dr. Yemi Banire (who though is

no longer a member of the Faculty remains one at heart). Indeed, I thank all my colleagues, present and past, academic and non-academic staff for making it a pleasant place.

I do not minimise the support I have received from other members of the university community too numerous to mention but I must single out the late Professor Adetokunbo Sofoluwe, former Vice-Chancellor, for the singular role he played in making my appointment to full Professor of Law a reality. Without that appointment, I would not be standing here today. I acknowledge also the encouragement and support of senior colleagues who have been there for me - Emeriti Professors Akintunde Obilade, IO Agbede, Lekan Oyebande and Adalemo as well as Professors Aderanti Adepoju, Abiola Ojo (deceased) Akanki, Akin Oyebode, Sarah Oloko and Akere. I appreciate the faithful friendship of Professors Ben Oghojafor and Grace Otinwa and, of course, former Sub-Deans who constitute the renowned "Critical Group" namely: Professors Akinboye, Ogundipe, Olusakin, Fajana, Sadiq, Abaelu and Jerry Obiefuna). The kindness of Pastor CC Amuzie and Mrs. Funmi Bisuga is here placed in record.

I acknowledge with gratitude the role of Professor Epiphany Azinge in my appointment as Research Professor of Law at the NIALS, an appointment which came two years before my appointment as Professor of Law in the University of Lagos.

It would be most unfair if I did not appreciate my students - past and present - the willing and unwilling subjects of my proselytising. I could not have had a successful academic career without them. I acknowledge that they have sharpened me through our in and out of class academic interactions as well as the many enlivening episodes of their student-type antics.

Outside academia, I have enjoyed tremendous support from members of the legal community; notable amongst these are members of Bench, some of whom are here to honour me today. M'Lords, M'Ladies and Your Honours, I acknowledge you respectfully. My colleagues at the Bar especially those of the Lagos State Ministry of Justice stand out for the many opportunities of afforded me and which enabled me to live a blended life of academic research and social action for change.

My colleagues within the Nigerian and international human rights community especially the team at LRRDC have provided me with numerous opportunities that have contributed in no small measure to my career attainments. I particularly acknowledge my friend and sister, Mrs. Olatokunbo Ige who introduced to me to the world of social activism through the platform of LRRDC, an NGO she founded.

Through my Pastors, Deacons, sisters and brothers from New Heritage Baptist Church and New Estate Baptist Church, I have come to know the truth of the lyrics of the song "Blest be the tie that binds our hearts in Christian love; the fellowship of kindred minds is like to that above." I will forever be grateful for your prayerful support, counsel and encouragement.

The Bible speaks of a friend who sticks closer than a brother. I have been blessed in my lifetime with friends who epitomise this. "Dear friends" (you know yourselves), you have contributed greatly to get me standing here. Only the Lord God Almighty will repay you for your kindness.

I have only been able to have a successful public life because I have always known peace, love and support in my private life. I am grateful to all members of my marital family for giving me peace and showing me love since I joined the family. However, I must specially recognise the help I have received from my

sister-in-law, Christie Atsenuwa who has back-stopped me over the years and Omawumi Irolobe, “our eldest daughter”, whom I am ever thankful to God for bringing you into my family.

My parents, Mr. Moses and Mrs. Florence Oyajobi are unparalleled. They gave me a great and secure childhood. Both nurtured me with the fundamental values of liberalism, egalitarianism and democracy. I was privileged to grow up in a home where participatory democracy and respect for fundamental freedoms were valued and practised. My mother may not be familiar with all the theories of feminism but she is the first feminist I encountered. This Inaugural Lecture is the outcome of their commitment to gender equality and education.

My siblings, Dupe, Funke and Kayode are my leaders and cheerleaders. I am grateful I came after them. They always set the pace for me and gave me no chance to slack. I greatly thank my brothers-in-law, Boni and Ebum as well as my nieces and nephews – Uchenna, Tolulope, Morenike, Ayokunnu, Nneka, Chika, Kasope and Nnamdi who daily richly bless my life.

Finally, I come to my immediate family. It is often said that you save the best for the last. I have. My husband, Dickson and our two wonderful children, Modokpeyeoritse and Oritseejemite, are the wind behind my sail. My husband has consistently kept his word to love me warts and all. He has made sacrifices even at great cost for me to be able to stand at this podium today. Modokpe and Ejemite are my one and only “D” and my one and only “S”. I could never appreciate them enough for bearing with me and with my ever-busy life-style, my legal mind, my feminist inclinations, my passion for human rights and democratic ideals and what all that means.

To everyone, I say again, “Thank you and God bless you abundantly.”



University of Lagos Press