

# Editorial: Law and Society in an Era of Fragility in Africa

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Between 2010 and 2011, the North African Arab world was engulfed in a series of demonstrations in which youths took to the streets to protest against corrupt and repressive government systems with the intention of initiating transformational changes. This came to be known as the Arab Spring. The initial spark that lit the wave of protests started in Tunisia when a humble fruit vendor set himself ablaze after being beaten, humiliated and extorted by police officers (Kirkpatrick 2019). The widespread attention that the Arab Spring garnered cannot be denied. The results and political transformation following these events in Africa is, however, insufficiently studied. Similarly, in the latter part of 2019, almost a decade after the Arab Spring, a young woman, Uyinene Mrewetyana, who was a student at the University of Cape Town, was raped and murdered by a 42-year-old man. The South African public, government and public figures were shocked and angered by the scourge of femicide in the country that this incident represented.<sup>i</sup> This led to thousands of women and girls marching in the streets of Cape Town and Pretoria, demanding a safer protective space, the official statistics having painted a distorted picture of violence against women and girls in the country. The statistics revealed horrifying numbers – more than 33 per cent women and girls are sexually assaulted and more than 40 per cent are beaten by their partners (Davenport 2019). Half of the women in South Africa will be sexually harassed at work, one in 15 murdered by their partner. The numbers may vary based on the research, but they are all equally disturbing. Another common trend is that the statistics are always based on the proportion of women and girls who are beaten, raped, abused or murdered and never on the proportion of men who perpetrated these acts of violence.

Elsewhere on the continent, persons with albinism were being murdered with impunity, thanks to poor and failing protective systems (Nkrumah 2019). This recent wave of targeted violence against and killing of persons with albinism in selected African countries such as Malawi, South Africa and Tanzania is becoming a growing concern (Kajiru 2019). In addition to violence targeting women, girls and other vulnerable

groups, it is significant to highlight that people with disabilities and those living with HIV/AIDS continue to suffer discrimination in accessing public services such as healthcare and education. These vulnerabilities are further aggravated by negative socio-cultural practices and environmental factors such as climate change, which is a threat multiplier. Global environmental change, regarded by many as a wicked problem,<sup>ii</sup> worsens the plight of these individuals who are already vulnerable. This is particularly true of poorer families, women, children, indigenous peoples living in rural areas that are below sea level or in rural communities that have to cope with increasing drought, famine or flooding, in addition to other stressors such as extreme poverty, land degradation, or a large number of HIV/AIDS infections.

This special issue is a collection of papers presented at the Second Biennial Conference on Law and Society in Africa held in Cairo, Egypt from 1 to 3 April 2019 and themed “Africa and the Middle East in an Era of Global Fragility”. The articles therefore explore the intersection between the continent’s unique vulnerability in an era of global fragility in order to identify any gaps and synergies whose identification and exploration would serve to promote sustainable development across Africa. The complexity of existing and emerging problems across the continent is striking, as is the failure of the legal and justice regimes to address them in most countries across the continent. The articles in this special issue of the *Journal of Law, Society and Development* critically examine these issues and offer recommendations for policy reforms and institutional interventions. Each of the articles challenges conventional wisdom and inspires us to reflect on ways in which these existing and emerging issues can and should be re-imagined in order to devise sustainable solutions.

## **In This Issue**

In this issue, Janet Monisola Oluwaleye analyses cases of domestic violence against women in South West Nigeria by appraising the role of family courts in adjudicating such cases. Using both primary and secondary sources of data, she examines incidents of violence against women and the role of family courts in ensuring justice. The article discusses the causes of domestic violence against women, among which are patriarchy, women’s ignorance of their rights, poverty among women, men seeking sexual satisfaction by force, social acceptance of discipline, failure to punish the perpetrators of violence, and the interference of in-laws. The author argues that family courts play prominent roles in protecting the rights of women and, thus, should be strengthened with powers to penalise the perpetrators of violence against women.

Azubike C Onuora-Oguno, Ike Chianaraekpere and Christiana Barau discuss the theories of a deliberative approach to human rights protection and the struggle theory as first propounded by Dembour and later reinforced by Heyns. They argue that efforts to protect women from violence in Nigeria is confronted with challenges such as

difficulties in dismantling the strangleholds of culture and religion in the public perception and in the interpretation of existing law and policy.

Isabela Warioba advances the discussion further by contending that despite decades of campaigns to restrict child marriage through legislation and the adoption of minimum-age laws, the practice is still very common on the continent. Using a socio-legal approach, she argues that the solution to child marriage might lie in a form of translation and enforcement of human rights. She then makes a case for the need for human rights to be translated based on local conditions to address child marriage in Africa.

In their comment and analysis piece, Ntandokayise Ndlovu and Adebola Olaborede examine the recent ruling of *Mudzuru & Another v the Minister of Justice, Legal and Parliamentary Affairs & Others* regarding child marriage and the role of the courts and other legal instruments as mechanisms to curb the vice in Zimbabwe. They further address the question of whether the landmark ruling and legal instruments imposing obligations on Zimbabwe have had an impact on, inter alia, the protection of child rights against harmful practices and, more importantly, in combating the scourge. They argue that although the legal approach plays a very important role in combating the vice, there is no single strategy to combat the recurring practice of child marriage. The authors therefore advocate that any strategy which seeks to address the harmful practice of child marriage must include both legal and non-legal mechanisms.

Professor Serges Djoyou Kamga's article examines another critical evolving issue: the non-incorporation of persons with disabilities into HIV/AIDS programming in Malawi. He argues that this is caused by the wrong perception that these people are asexual or are not vulnerable to the illness. He consequently recommends that disability should be mainstreamed into HIV/AIDS programming through the reasonable accommodation and adoption of universal design measures to ensure that persons with disabilities enjoy the right to health on an equal basis with others.

The right to self-determination, especially within national borders, remains very controversial, especially between minority groups and national governments. In making a case for the right to self-determined development, Miriam Zacharia Matinda contends that the right to self-determination – as stated in the UN Declaration on the Rights of Indigenous Peoples – encompasses indigenous communities' rights to determine their development trajectories. She, however, observes that, in contrast, exercising this right might entail perpetuation of gender-based violence and other forms of discrimination and therefore heighten women's fragility and subordination among indigenous communities. She argues that the protection of indigenous women's rights should form the central pillar of the enjoyment of the right to self-determination because the cultural

survival, vitality and continuity of indigenous peoples' distinctiveness principally hinges on respect for the rights of indigenous women.

In their article, Michael Addaney and Chantelle Gloria Moyo highlight the consequences of climate change, which are disproportionately felt by the most vulnerable populations, including women. They therefore examine the intersection between gender equality, women's rights and climate change action, focusing on African Union (AU) law and the legislative and policy responses to climate change from Kenya, South Africa and Zimbabwe. Addaney and Moyo contend that by protecting the rights of vulnerable women and gender equality, the regional climate change regime and the African human-rights system provide a foundation for conceptualising gender-responsive and human-rights-based approaches to action in the realm of climate change.

Despite the advances in human-rights law on the continent, homosexuality is still generally considered as being un-African, unacceptable and criminal in most African states. Focusing on Nigeria, David Nnanna Ikpo observes that the agitation towards sexual minorities is as much an attitudinal problem as it is a legal issue. The author discusses the advocacy being done to address the human rights of sexual minorities in the country, making a persuasive case for indigenising and using narratives and storytelling as a tool with which to complement the ongoing advocacy work. Using the same national case study, Mariam A Abdulaheem-Mustapha argues that the criminal justice system is entrusted with the responsibility of controlling criminal behaviour and punishing the offenders. She notes, however, that many factors come into play in determining whether or not the process runs its full course, considering certain inefficiencies. She uses a qualitative method to examine the effectiveness or otherwise of the newly introduced Alternative Dispute Resolution (ADR) under the Administration of Criminal Justice Act, 2015. Her findings reveal that the current criminal justice system in Nigeria is ineffective and requires reform. She therefore recommends moving away from the existing retributive justice system and incorporating a restorative justice system through ADR.

### **About the International Research Collaboration Network 27 (IRC 27) of the Law and Society Association**

The International Research Collaboration (IRC) 27 of the Law and Society Association (LSA), which is based at Salt Lake City, United States, comprises law and society researchers drawn from across Africa. It has been organising sessions at the flagship Annual International Meeting on Law and Society since 2015 and participating in the Biennial Conference on Law and Society in Africa since 2017. Some of the outcomes of these IRC sessions include an edited volume, *Educational Law, Strategic Policy and Sustainable Development in Africa*, published in 2018 (Palgrave MacMillan), and, in 2019, a special issue, "Navigating Beyond the Crossroads: A Gendered Approach to

realising AU's Agenda 2063", of the *Journal of Comparative Law in Africa* (Juta/UCT Department of Comparative Law).

## **Profiles of the Guest Editorial Team**

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**Dr Azubike Chinwuba Onuora-Oguno** is a Senior Lecturer in the Department of Jurisprudence and International Law, University of Ilorin, Nigeria. He holds LLB (Ilorin), NLS (Nigeria), LLM (Pretoria) and LLD (Pretoria) degrees. Azubike is a solicitor and an advocate of the Nigerian Supreme Court and a Researcher with the Centre for Human Rights, University of Pretoria, South Africa. His passion is for children's rights, with a particular focus on the right to basic education. He has held a Visiting Scholar position at the Osgoode Hall Law School at York University, Toronto, Canada, and was a former clerk in the Office of the Prosecutor at the International Criminal Court (ICC) at The Hague, Netherlands. He has written several works on the subject of education, the girl-child and other areas of law.

**Professor Abdul Wahab Egbewole** is Professor of International Law and former Dean at the Faculty of Law, University of Ilorin, Nigeria. He holds LLB (OAU), NLS (Nigeria), LLM (OAU) and PhD (Ilorin) qualifications. Egbewole is an expert in judicial studies in Nigeria and a member of the American Society of International Law (ASIL), the Law and Society Association (LSA), the Nigerian Bar Association (NBA) and the International Bar Association (IBA). Egbewole's scholarly interests are dedicated to recent developments in international law and he is an astute conference speaker.

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- <sup>i</sup> President Cyril Ramaphosa, “Joint Sitting of Parliament on Gender-based Violence”, 18 September 2019. See <<https://www.gov.za/speeches/address-president-cyril-ramaphosa-joint-sitting-parliament-crisis-violence-south-africa>>.
- <sup>ii</sup> See, generally, Farrall, S, Ahmed, T and French, D. 2012. *Criminology and Legal Consequences of Climate Change*. Oxford: Hart Publishing.