Are Women Agents? Reading 'Gender' in Africa's Rights Frameworks

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Despite the many contributions of African case examples to some understanding of how gender functions in international relations, the frameworks and consequent narratives that underpin its governance in Africa have been largely ignored. This omission is especially acute when we consider that the *meso* level of governance, the regional level, increasingly has an impact on the everyday as much as it does on the global/international. Indeed, as Van der Vleuten et al (2014) suggest, 'gender' is often excluded from the broader discourses about how we understand regional governance in academic and policy contexts.

Existing studies often do not comprehensively speak to broader trends about the emergence of an African gender regime or access to gender justice beyond the state. Within the narrow confines of how gender is often explicated with regards to Africa, existing knowledge often fails to acknowledge the important intersections of gender concerns and pan-Africanism, which embodied in the increasingly regionalisation of the continent. Intellectually and in policy terms this erases *African* agency from the construction of the global normative and legal gender architecture. It is thus essential to heed feminists' calls to investigate difference frames of governance in the quest towards transformative gender regimes (Rai and Waylen, 2008). But perhaps even more importantly to challenged dominant knowledge paradigms that silence those possibilities of positive change.

In this article I present the prevailing frames that governs Africa's 'gender' regime, its evolution and limits through a close reading of key political documents. I show how the predominance of 'human rights' as the frame through which the quest for gender equality is being enacted constrains the ability of new governance structures to realise a more gender equal polity. I argue that the resurgence of pan-Africanism that emphasises this frame needs feminism for a radical transformative agenda on the continent (see also Abbas and Mama, 2015).

Feminism and Pan-Africanism: Enacting a Transformative 'Gender' Agenda?

When trying to understand human rights as a frame, although seemingly obvious, one must ask, who is the human? Human rights discourses and practices can assume a universality and neutrality of the human that is almost immovable (see also Hudson, 2005). This has consequences as this universality can leave limited room to examine the power dynamics between groups of humans and indeed observe intersecting oppressions. Thus, by framing 'gender' within human rights, its governance in Africa often fails to interrogate the quality of equality. The approach taken obfuscates gender as a power relationship, a critical contribution of feminist scholarship and activism. Women's demands and urgent claims even when articulated retain a marginal position. Those that become part of the policy discourses are often only reflective of normative concerns compatible with the existing logic of powerful elites. Gender in this narrative is dichotomous by reinforcing a binary between men and women, thus silencing alternative gender identities. Although human rights frameworks may convey essential legal status, it is not translated to practice inasmuch as what is acceptable as the standard for the 'human' is the heterosexual male norm. Gender equality in this context suggests male-standard women ought to aspire to. Yet, in the resurgence of pan-Africanism, we continue to see the embeddedness of an uncritical human rights frame for gender relations and equality to be enacted.

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Pan-Africanism "can …be understood as an insurrectionary discourse that emerged in direct opposition to European capitalism, manifest in the worst forms of human exploitation, and occupation" (Abbas and Mama, 2015, pp. 3-4). While, pan-Africanism was first institutionalised in the formation of the Organisation for African Unity (OAU), its most recent iterations is in the African Union (AU) created in the early part of the 21st century. Article 4 (l) of the Constitutive Act of the AU (2000) states the promotion of gender equality as one of the key principles of the new incarnation of pan-Africanism.

As the core arbiter of pan-Africanism, the AU's Directorate for Women, Gender and Development is tasked with promoting gender equality. The AU which includes all African states but Morocco, reiterated its commitment to the goals of post-2015 development goals, especially the promotion of gender equality and women's empowerment founded on the idea of building 'African Solidarity'. The idea of gender equality is firmly 'ingrained in the fabric of Africa's new drive towards greater regional integration' (Haastrup, 2013, p. 104). But the promotion of gender equality within the articulated human rights has a longer history. This longer history is linked to other global efforts. For example, African women's groups and civil society groups played a central role in the 1975 First World Conference on Women in Mexico City, helping to shape the message of the conference that women's voices mattered in global governance. Today, the institutional links between the regional and the global remains a partnership between UN Women, the UN's gender equality agency, and the AU.

The inclusion of gender concerns that uses a human rights frame is first articulated in the *African Charter on Human and People's Rights* (1981). It is widely recognised, however, that this Charter placed emphasis on social and cultural rights, thus putting a primacy of so-called African traditions and values, even when gendered. This Charter sets the tone for how human rights frames gender concerns as the dominant lens, giving attention to equality before the law and an end to discrimination against women (Art. 18). It is worth noting that this Charter, though embracing the language of human rights did not address substantive concerns beyond the rhetorical acknowledgement of international legal duties.

This Charter had gendered [1] consequences, however. For example, on the right to privacy, which has been linked to women's reproductive rights and bodily integrity in other jurisdictions, the Charter's non-recognition suggests a hierarchy of rights. Further, the emphasis on communal rights that makes allowances for national interpretation so-called traditional customs that uphold heterosexual male gender norms undermined the prospects for promised equality. As Ebeku (2004) notes, *the Charter* left women and girls without the appropriate inheritance rights a position seemingly inconsistent with a broad range of human rights concerns but with problematic gender implications. Further, equality under the law still offers no protection for non-heterosexual gender identities at all. Thus we find the first of many blind spots that have gendered repercussions.

Deemed progressive in the legal sense, the inclusion of 'gender equality' using the language of human rights failed to challenge the status quo of patriarchy that invariably subordinates women and leaves unacknowledged the inequalities retained by non-masculinised gender identities. It is unsurprising then that for over 20 years the women's movement and feminist activists have campaigned ceaselessly against this framework. In 1989 following a conference organised by the United Nations Economic Commission for Africa (UNECA), the *Abuja Declaration on Participatory Development: The Role of Women in Africa in the 1990s* was developed. Following this, the *African Platform for Action* (1994) was adopted in 1995. It emphasised women's 'status and skills' (UN, 1994, p. 10 cited in Van der Vleuten et al, 2014, p. 172) but was heavily critiqued by feminists for its 'add women and stir' approach [2].

Are Human Rights Enough?

Feminist understandings of gender explicitly acknowledge the challenges faced by women because of their sex (see Nussbaum, 2002). It thus challenges the tendency of the neutralised human made inevitable by the way in which the human rights frame has been used. Many feminists, however, consider gender to be a social construction and power relationship that can be an engine to producing and reproducing *identities* locked in masculine/feminine hierarchies. Gender is thus not just about women (sex). Without explicitly acknowledging this feminist interpretation of what gender is, the possibilities of transforming prevailing gendered hierarchies within personal and global relationships is curtailed.

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The main feminist response to the criticisms of the ACHPR and subsequent initiatives is the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (2003) or the *Maputo Protocol*. The *Maputo Protocol* denounces the discrimination against women and advocates the elimination of harmful practices against women and girls. To an extent then, the *Maputo Protocol* challenged earlier iterations that assumed a human rights framework in itself was enough to promote and attain gender equality. A key innovation of the *Maputo Protocol* is that it underscores previous neglected issues around bodily autonomy in relation to accepted cultural norms. For example, it explicitly disavows Female Genital Mutilation (FGM); sexual harassment; and gender-based violence. Moreover, this articulation of gender equality for the first time introduced a dimension of *intersectionality* [3], by acknowledging the interactions of oppression for disabled women, and widowed women, often isolated in public discourses and the existing human rights statutes.

The *Maputo Protocol* took on areas usually circumscribed as culturally inalienable. For example, it fixed the minimum age for marriage at 18 and emphasised the importance of property rights for women. The latter was a significant achievement given that in many African customs, the woman/girl's identity and rights on property was tied to that of the male head of the household (Okoye, 2000). It further inscribes abortion as a right (to a certain extent) countering the ACHPR's silence on reproductive rights and individual bodily integrity (see Ngwena, 2010). The protocol epitomises the gains that can be made through feminist interventions within human rights frames. This then represents an important contribution of feminist theorising and activism to re-ordering Africa's gender regime.

However, subsequent policy frameworks while still using the language of rights seemed to neglect the feminist gains made by the *Maputo Protocol*. In the *Solemn Declaration on Gender Equality in Africa* [SDGEA] (2004) the AU emphasises parity as a goal for Africa, exemplified by equal sex representation within the leadership of the AU itself. Further, gender equality is linked explicitly to maternal health and economic development, with new peace and security references to rape in wartime. Gender equality promotion by 2004, further includes children when articulated through the *African Charter on Rights and Welfare of the Child*. To an extent, this pattern reinforces the mainstream fixations on representation, and women and children as victims. Further, the woman as a mother and producer in global capitalism becomes a focus for the AU's gender equality promotion.

While in practice women have more legal protection than ever before, even the vigorous use of the language of rights, has led to a narrative of women who lack agency and are thus subordinated in practice. Across the continent, on the one hand elites use the language of rights to suggest that gender equality is essential for Africa's progress; yet, the emancipatory potential of human rights as applied to women are being retrenched as these same elites seek to maintain their privilege.

Uganda, an important regional actor often lauded by international development partners for its willingness to adopt human rights norms provides an interesting but not unique example. While Uganda has signed and ratified all regional and global human rights frameworks and its president made statements at the AU about gender equality's implications for peace and security on the continent (Anyoli, 2014), women's voices and needs continue to be marginalised. An illustrative example of this is move to ban 'mini' skirts that gained global attention despite vigorous counter campaigns by women's groups. Led by a government ministry, the proposed ban was framed as part of the effort to ban pornography (Anti-Pornography Act, 2014) and to protect women from sexual assaults, thus guarding their rights to be safe from gender based violence. Proposed by the minister of ethics and integrity, Simon Lokodo, there is the claim that women's bodies 'provoked' men sexually. The resulting consequence has been a convoluted narrative of human rights through protection and retrenchment of societal transformation towards gender equality.

Despite the use of 'gender' within a human rights framework as the basis for Africa's equality regime, substantive progress towards transformative change is elusive. Gender is articulated, as a synonym for women is problematic and even more so without addressing the social construction and power dynamics that feminists insist is essential for social transformation. The construction of 'gender' at the *meso* level is thus limiting.

Concluding Reflections

The official frames of Africa's gender regime can be read as leading to the policing of women's bodies despite a

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vigorous defence of protection through human rights statues. This understanding of gender, while allowed within a resurgent pan-Africanism that values human rights as a regional good, is limited in its possibilities of societal transformation as regards gender equality. It thus provides a *problematique* for many strands of feminism. One persistent inconsistency in this regime is that the overt emphasis on women's rights as human rights does not in itself interrogate the power dynamics within African societies and their institutions, which perpetuate sex-based gender hierarchies. 'Gender' equality, in the reading of the texts that underpin Africa's current gender regime appears to be something that is done *for* or *to* women, despite the acknowledgement that women are already engaged in public life. It does not engage men or the systems that perpetuate inequalities. As the *Gender Policy* (p.8) states: "the desired effect and impact of this Policy is to offer opportunities for empowerment of women, guarantee their protection against violence and rape, as well as ensure their participation in public and economic life."

The result of this conflation of 'gender' with women that is emptied of feminist ambitions is a narrative of women who lack agency, who are victims and who should be objects of interventions (Ahikire, 2008). 'Human Rights' as a frame has helped to perpetuate this narrative. Moreover, this narrative also suggests that elites, mostly men, determine the standard of 'opportunities' and set out the 'rules' about protection and participation. The feminist ambitions of gender justice, which aspire to redress the social relations between men and women in addition to interrogating assumptions about femininities and masculinities, are mostly unacknowledged. In this understanding of gender then and as Eveline and Bacci (2005, p. 498) note, 'men and masculinity [are] treated as [the] unremarkable standard' (see Eveline 1994). While acknowledging issues around the feminisation of poverty for example, there is no interrogation of the system within which poverty prevails. Herein lies the fundamental problem – the use of human rights language within a context that does not engage with the feminist interventions initially gained in the Maputo Protocol.

Feminism is relevant, when engaged, to help see the continued subordinated positionality of women as economic objects, and the erasure of other gender identities in the human rights supported pan-African discourse on gender equality/justice. Human rights as is used here, have been unable to dislodge patriarchy thus allowing African elites not only to ignore broader aims of gender justice, but also create conditions that are unfavourable for gender equality. To drive the project of gender equality and attain justice for women in Africa, a pan-Africanism informed by feminism is essential.

Notes

[1] I mean here that the Charter is underpinned by a hierarchical relationship between the norms about femininity and masculinity where the masculine is privileged over the feminine (see Johanna Kantola (2010) *Gender and the European Union*. Basingstoke: Palgrave Macmillan, p.3).

[2] The 'add women and stir approach' refers to the tendency to insert women/girls in specific policy domains while ignoring the systems of power that continue to disadvantage them.

[3] Intersectionality was coined by Prof. Kimberle Crenshaw to describe the multiple ways in which powers structures work to perpetuate the oppression of societies' minorities, especially black women in America (see . Kimberle Crenshaw (1991) *Stanford Law Review* 43 (6) pp. 1241-1299.

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