



INSTITUTE FOR AFRICAN WOMEN IN LAW FLAGSHIP REPORTS

THE TANZANIA WOMEN JUDGES ASSOCIATION AND THE FEMINIZATION OF THE JUDICIARY



Cover Photo courtesy of The Citizen newspaper:
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The images features former Tanzanian president, Jakaya Kikwete, and a group of judges.

EXECUTIVE SUMMARY

Historically, women across the continent of Africa have been important decision-makers from the domestic sphere to the political and in customary judicial systems as chiefs, queen mothers, and heads of royal courts. Within the inherited legal systems of the civil and common law, African women entered judiciaries much later due to colonial policies that limited educational opportunities for women.

Notwithstanding the delayed entry, women have continued to grow as meritorious candidates for judicial positions across the continent. Women's leadership capabilities can also be seen in the increasing number of women rising to top leadership positions as chief justices and heads of constitutional courts (Dawuni and Kang, 2015).

Women judges from Tanzania have made remarkable gains since Judge Eusebia Munuo broke barriers to become the first woman judge (see her profile in the Pioneer Women in Law project of the Institute for African Women in Law).

In this report, we present a synthesis of the state of women judges in Tanzania. Despite the challenges women judges face, they continue to provide important entry points for the law and the promotion of justice for all citizens in Tanzania.

We hope you enjoy reading.

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ABSTRACT

Although historically, women were excluded from positions of power, it was even more so in the judiciary as a result of the relatively less attention paid to the field by scholars, women's groups and national media (Tolchin 1977). Beginning from the 1970s, however, more women began to enter the legal profession, and "trickle up" into top positions in the judiciary, a process referred to by Menkel-Meadow (1986) as the "feminization of the judiciary". While this feminization is not happening uniformly across the world, (Dawuni, 2016a), in Africa, there is an encouraging pattern of an increasing number of women entering the judiciary, occupying the highest positions in the judiciary (Dawuni and Kang 2015), and serving on international courts (Dawuni 2018). The argument of this essay is that although the role of women judges' associations is not often considered as one of the main factors that have contributed to the feminization of the judiciary in Africa, the case of Tanzania suggests that the International Association of Women Judges (IAWJ), through its national chapter in Tanzania—Tanzania Women Judges Association (TAWJA)—continues to play a prominent role in the feminization of the Tanzanian bench. The findings from this study also demonstrate that judicial activity is, beyond legal parameters, influenced by a host of other factors, one of which is judges' association and networks.

Key Terms: African women judges, feminization, judiciary, IAWJ, TAWJA, Tanzania

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1. INTRODUCTION

For a long time, women had either limited or no access at all to judicial positions for several reasons, all of which may easily be generalized under stereotyping and discrimination against women (Menkel-Meadow, 1986). Although historically, women have been systemically barred from other positions of power, part of the reason it was more so in the judiciary appears to be the relatively little attention that is usually given to the field by "scholars, public officials, representatives of women's groups and the national media" (Tolchin 1977, p.1)(1). However, as Menkel-Meadow (1986) notes, there was a "radical change" in many countries in the 1970s: "with the expansion of university education to include women and the simultaneous development of an increased role for the university in training legal professionals" (p. 1), the barrier to women's participation in the legal profession was removed, leading to the "feminization of the judiciary" (Menkel-Meadow, 1986).

Admittedly, this feminization is not happening evenly worldwide (2), yet, there is growing evidence that in Africa, not only are more women joining the judiciary; they are also rising to the highest judicial offices in their countries (positions that were traditionally male-dominated) and serving on international courts (Dawuni and Kang, 2015; Dawuni, 2018). While this does not mean that female African judges no longer encounter challenges, it does suggest, in the words of Chief Justice Mabel Agyemang, that "many African judiciaries are [en route to] achieving a good gender balance" (Agyemang, 2016, p. xv).

The various scholarship produced as a result of this phenomenon has to a large extent grappled with the very tricky issue of "gender and judging" (i.e., whether women—should be expected to—judge differently from men), a topic which is still moot (3), given the equivocality (4) of the conclusions that various scholars have arrived at. Other scholars have also contended with the question of why females are rising to top positions in the judiciary in certain African countries—and not in some (e.g., Dawuni and Kang, 2015).

Many of these discussions, however, do not focus much on the role of women judges' associations in the feminization of the judiciary in Africa. Yet, evidence from countries such as Ghana, Botswana, Kenya, Uganda and Tanzania suggests that female judges' associations in these countries (in collaboration with other women's associations) have, at least, strategically been pressuring executives to increase the number of female judges on the bench.

This study is, therefore, an attempt to expand understanding of the factors that have contributed to the feminization of the judiciary in Africa by focusing exclusively on the role of women judges' associations—in this case, the Tanzania Women Judges Association (TAWJA). The essay is thus structured: the second section focuses on the clarification of the concept, "feminization of the judiciary", along with a discussion of the methodology. Section three reviews the various rationales for increased representation of women on the bench. In Section four, I focus on Tanzania, discussing, first of all, the country's judicial system, before moving to an appraisal of the contribution of the TAWJA to the feminization of the judiciary. In the conclusion, I summarize the highlights and add that while studies on the difference women bring to the bench may be important, attention should be shifted from using this "difference" as a justification for increased women participation in the judiciary to enriching understanding as to whether or not gender affects judging—and in which ways. I also emphasize the point that judicial activity is influenced not only by legal parameters but also by judges' embedment in networks.

2. CONCEPTUAL AND METHODOLOGICAL FRAMEWORK

2.1 The Feminization of the Judiciary

The feminization of the judiciary can be looked at from multiple perspectives. The first and simplest is the increased number of women in the profession. This sense of the term is what Dawuni refers to in talking about "the gradual growth in the number of women on the bench" and "allow[ing] more opportunities for women to join the bench" (2016b, pp. 425, 427). When

gender activists push for the attainment of gender parity on the bench, they are advocating for the feminization of the judiciary in this first sense. Those who subscribe to this view see the judiciary as feminized by the mere fact of more women joining the profession. This sense of feminization is obviously very easy to measure.

The second perspective is the question of whether the first sense of the term (i.e., the influx of women into the legal profession) will have an effect on the essence of the profession itself. "Feminization", in this sense, then, is the perceived change or influence that more female judges will have on the judiciary, and not the mere increase in the number of female judges per se. This reasoning is, therefore, based on the assumption that for the long time that the judiciary was male-dominated, the judiciary was shaped not only by law, but also by the nature of these male judges (Wilson, 1990). And that, we might consequently expect some change in the nature of the judiciary with the trooping in of more women. This logic has roots in the "critical mass" theory, which posits that:

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Once the numbers of women within the judiciary reach sufficiently high proportions (30% or more), the need to conform to masculine norms and modes of thinking will abate, allowing women judges to... influence their male colleagues to adopt progressive views

(Albertyn & Bonthuys, 2016, p. 61)

This second conception of feminization, however, is fraught with some complexities (Menkel-Meadow 1986). This is because inherent in the supposition that the influx of women in the judiciary would or could change the nature of the judiciary, lies the unspoken assumption that (all) women possess certain perceived "feminine" qualities (which, according to Lenz and Meyerhoff 1985, include empathy, nurturance, relatedness, and connectedness), which would eventually permeate through legal tasks and functions (Menkel-Meadow, 1986). By so doing, this narrative inadvertently reinforces stereotypes about women. Others have argued that women could, indeed, influence the judicial profession, but in other ways aside from perceived inherent gender qualities.

These other ways include their position as people with family responsibilities for whom adjustments may have to be made (Spangler 1986); their position as previously excluded outsiders (Epstein 1981); and their position as historically oppressed people (Dubois, et al., 1985) who will in their work contest the systems that accounted for the unfair exclusion of women in the profession. Some scholars have even questioned whether to expect a decline in the prestige associated with the legal profession—or whether the status of the legal profession will rise as a result of the changes engendered by women (Menkel-Meadow, 1986).

The third sense in which “feminization” is used is to denote a “feminist” influence of women on the judiciary. In this sense, the feminization of the judiciary “includes particular substantive changes, not only in the practice of the law, but in the law itself” (Menkel-Meadow, 1986, p. 2).

This sense of feminization is a counter to the argument that women will make a difference in the judiciary just by being there. Recognizing that “the changes women make to institutions depend on a number of interrelating factors” (Albertyn & Bonthuys, 2016, p. 61), proponents of this view of feminization argue that it is “naïve” and “essentialist” to think that:

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Once women visibly occupied powerful positions for which they were equipped and qualified, they would demonstrate by their very presence that the previous exclusion of women was indeed illegitimate, and would consequently ensure that women’s perspectives and experiences were brought into the decision-making processes undertaken by those institutions

(Hunter, 2008, p. 7)

It is therefore, in referring to this sense of feminization, that Hunter (2008) is optimistic that although many of the expectations and aspirations about the difference that women judges would make have proved unrealistic, it might reasonably be expected of feminist judges to make a difference in the judiciary. This third sense of feminization appears to have been popularised after years of the influx of women into the judiciary failed to produce the

expected results, triggering questions of why it was assumed that women would transform the judiciary without being (simultaneously or alternatively) transformed by it (Menkel-Meadow, 1986); why it was thought that the women in the judiciary were representative of all women; why it was assumed that they would even “disturb the status-quo”; or why these women in power would want to “risk their newly-acquired status by taking a stand on behalf of other women” (Hunter, 2008, p. 8).

The optimism about feminist judges being able to feminize the judiciary is premised on the fact that unlike in the first two senses where feminization is tied to the mere increase of women in the judiciary or influencing the judiciary because of their being women or from their former position of exclusion, “feminism is a voluntary community based on shared beliefs, of which participation is conscious and considered” (Cotterrell, 2006, pp. .69, 72), meaning that to “identify as a feminist necessarily involves assuming a commitment to other women” (Hunter, 2008, p. 8). Concerning what these feminist judges should do, Hunter explains at least six points which space does not permit discussion here: asking the “woman question” (i.e., examining the gender implications of rules which appear neutral/ objective); including women; challenging gender bias; contextualization, particularity and attention; remedying injustices, improving women’s lives; and supporting other women (Hunter, 2008, p. 10).

Still, it is probably overly optimistic to expect that even feminist judges (especially in the lower rungs) would be able to within a short time radically overhaul the whole judicial system.

In this article, I refer to the contribution of the TAWJA to the feminization of the judiciary in Tanzania both in the first sense of increased numbers of women on the bench and the third sense of bringing a “feminist influence” to the judiciary.

2.2 Methodology

The Tanzania Women Judges Association is the Tanzanian national chapter of the feminist, non-profit, non-governmental organization, International Association of Women Judges (IAWJ). The IAWJ, which was established in 2000, sprang from the National Association of Women Judges (NAWJ) in the USA and is headquartered in Washington, D.C., United States. It has a membership of over 6000 in 100 countries, but chapters in about 50 countries worldwide, 14 of them being African countries. Beside the need to narrow down in order to achieve greater specificity and avoid overly generalizing, Tanzania is chosen as a case study in this paper because of all the chapters of the IAWJ in Africa, the TAWJA is one of the most active. Information on the association is, therefore, more readily accessible than for many of the other countries. The analysis of the TAWJA's contribution to the feminization of the judiciary is gleaned from secondary literature by other scholars and information published on the websites of the TAWJA and the sponsors of its projects.

3. THE RATIONALE FOR MORE FEMALE JUDGES

What arguments have been marshaled to support increased women's representation on the bench? To Feenan (2008), one of the earliest was proposed by Cook. Cook's argument was that women judges would "improve the legal status of women" (1981, p. 217), a hope, which, according to Feenan (2008), did not materialize. Hereafter, scholars such as Carol Gilligan argued that women "bring an ethic of care to issues of justice in contrast to the rights-based approach of men" (Feenan, 2008, p. 492). Lending some support to this argument, Menkel-Meadow, despite acknowledging the problematics in ascribing certain values to a particular gender, explained that the argument that certain character traits are gendered is "persuasive" (Menkel-Meadow, 1985, p. 41).

When in 1990 Bertha Wilson wrote *Will Women Judges Really Make a Difference?*, her premise was that the law can never be viewed as the product

of judicial neutrality or impartiality. Consequently, one could not possibly expect that the influx of women on the bench would make no difference on the judiciary (Wilson, 1990). Wilson went as far as suggesting that women judges might “succeed in infusing the law with an understanding of what it means to be truly human” (1990, p. 522). The counter to this argument has criticized not only its essentialism, but also its failure to acknowledge other social categories (such as race, class, religion) that women may find themselves in (Feenan, 2008). Other counter-arguments have focused on the fact that women may face “constraints of legal professional socialization” (Feenan, 2008, p. 492).

Moreover, the “difference” debate has tended to ignore other crucial aspects of the law and focuses extremely on decisional outcomes, so that “law is reduced to its outcomes” (Feenan, 2008, p. 493). For O’Connor, former Justice of the US Supreme Court, this difference question is not only “dangerous” but “unanswerable” (1991, p. 1557). Beyond the “difference” debate, there is the argument of equality of opportunity. In the words of Baroness Hale,

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All properly qualified and suitable candidates should have a fair crack of the whip and an equal chance of appointment, being considered impartially and solely on their merits and not in some other way or for some other reason

(Hale, 2001, as cited in Feenan, 2008, p. 493)

This argument is often intertwined with other arguments such as “democratic legitimacy” or “strengthening the rule of law” (Feenan, 2008, pp. 493, 496) and is built on the understanding that the judiciary, like every other position of power, should fully reflect the society and not only a particular section of it. By so doing, gender parity on the bench would increase public confidence and trust in the judiciary (Wilson, 1990).

Along these lines comes the argument of diversity, that is, the need for increased representation of minorities, a group in which women usually fall, but which also includes under-represented ethnic groups. As argued by Dawuni (2016a, p. 12), “judicial diversity is important if the judiciary is to be viewed as an unbiased institution capable of advocating for the rights of all citizens.”

4. THE TANZANIA WOMEN JUDGES' ASSOCIATION AND THE FEMINIZATION OF THE JUDICIARY

4.1 Context

Tanzania's legal framework, according to Nyanduga and Kasera (2020) is based on the English common law system, although Tanzania was colonized by both Britain and Germany. From 1919 when the British took over the administration of Tanzania (then Tanganyika) from the Germans, the British brought a body of law in addition to the "ordinances" passed by the colonial legislative council (Yoon, 2016). Pre-existing customary and religious laws, however, were maintained to govern personal and family matters such as marriage, inheritance, succession, and land ownership (Nyanduga and Kasera, 2020). After independence, Tanzania stuck to this arrangement by the British by recognizing these customary and religious laws as sources of law (Nyanduga and Kasera, 2020).

The sources of Tanzanian law include the constitution, statutory law passed by the legislature, case law, received law, customary law, Islamic law, and international law (Shivji et al., 2004). Although Tanzania has two court systems, one for Tanzania mainland and the other for Zanzibar, the highest court for both systems is the Court of Appeal. As such, the Chief Justice is the head of the Court of Appeal and the judiciary. Yoon's study of the representation of women in the judiciary in Tanzania in 2016 represents the first systematic study of its kind, underscoring Tolchin's (1977) point of the less attention that is often given by scholars to the judiciary. Perhaps, unsurprisingly, of all the eight Chief Justices Tanzania has had since its independence in 1961, none of them have been female—even though Tanzania was the first African country to adopt gender quotas to narrow the gender gap in politics (Yoon, 2008).

The Chief Justice, who is appointed by the President, is in turn consulted by the President in the appointment of other Justices of Appeal (Yoon, 2016).

The President also appoints High Court judges after consultation with the Judicial Service Commission (Yoon, 2016). Magistrates of the Resident, District, and Primary Courts are appointed by the Judicial Service Commission (Yoon, 2016). Of the twelve common-law countries in Africa, Tanzania is one of two countries (including Uganda) which have as yet not had a female Chief Justice.

4.2 The Tanzania Women Judges Association and the Feminization of the Judiciary in Tanzania

A general understanding of why female judges' networks exist would help in the appreciation of the TAWJA and other such associations. It appears that the existence of women judges' organizations is based on the premise that female judges are disadvantaged in some ways and can find strength and a voice in solidarity with other female judges (Resnik, 1988). Aside from that, as Hunter (2008) notes, personal attacks resulting from feminist activity are either eliminated or significantly mitigated "when an activity perceived as risky is undertaken by an organization rather than being attributable to any individual" (p. 28). Further, the organization could perform a legitimating role, so that the issues it advocates are seen as not just the views of a minority, but instead as widely shared (Hunter, 2008).

It is in this spirit that the TAWJA was formed in 2000 as a professional association of women judges and magistrates of all levels in the judiciary in Tanzania. According to information on its official website, while some "Women Registrars, Resident, District and Primary Court Magistrates have joined the association in large numbers", "all the Women Court of Appeal and High Court Justices are TAWJA members" (Tanzania Women Judges Association, 2020). Although the association is open for male judges, they are regarded as "associate members" and have no right to vote (The Constitution of the Tanzania Women Judges Association). Its vision is "equal justice for all without discrimination" (Tanzania Women Judges Association, 2020). As a national chapter of the IAWJ, TAWJA is also dedicated to increasing female representation on the Tanzanian bench. Stated in its constitution is the

following:

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The Association shall recommend and encourage the recruitment of women into the Judiciary notably the appointment of a substantial number of women judges

(The Constitution of the Tanzania Women Judges Association, p. 6)

According to Kileo, the main objectives of TAWJA include:

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Advancing women’s rights to equal justice, promoting women’s access to the courts, advocating for the increase of the number of women judges at all levels, developing judicial leadership, conducting legal research on gender equality and human rights, exchanging information on issues of critical concern to women and uprooting gender bias from the judicial system and the community

(2010, p. 165)

How has the TAWJA contributed to the feminization of the judiciary in Tanzania? This has been done through two broad ways: advocating for increased representation of women on the bench; and second through judicial education (and thus, influencing judicial culture and decisions).

4.2.1 Advocating for Increased Female Representation on the Bench

In the first sense of feminization, the TAWJA has (in partnership with the Tanzania Gender Networking Programme, the Tanzania Media Women Association, and the Tanzania Women Lawyers Association) actively contributed to the appointment of more female judges in Tanzania. The association has done so by creating awareness and commending efforts at increasing female judges on the bench. For example, when President Kikwete came to office in 2005, there were only 10 female judges out of 45 judges of the High Court and Court of Appeal (Kileo, 2010). By August 2008, there were 33 male judges and 23 female judges; as of May 2014, 30 of 78 High Court and Appeal Court judges were women (Kileo, 2010). President Kikwete’s efforts at achieving gender balance on the bench won him a Human Rights Award from the TAWJA and IAWJ at the biennial conference of the International Association of Women Judges held in Arusha, Tanzania in 2014 (All Africa, 2014).

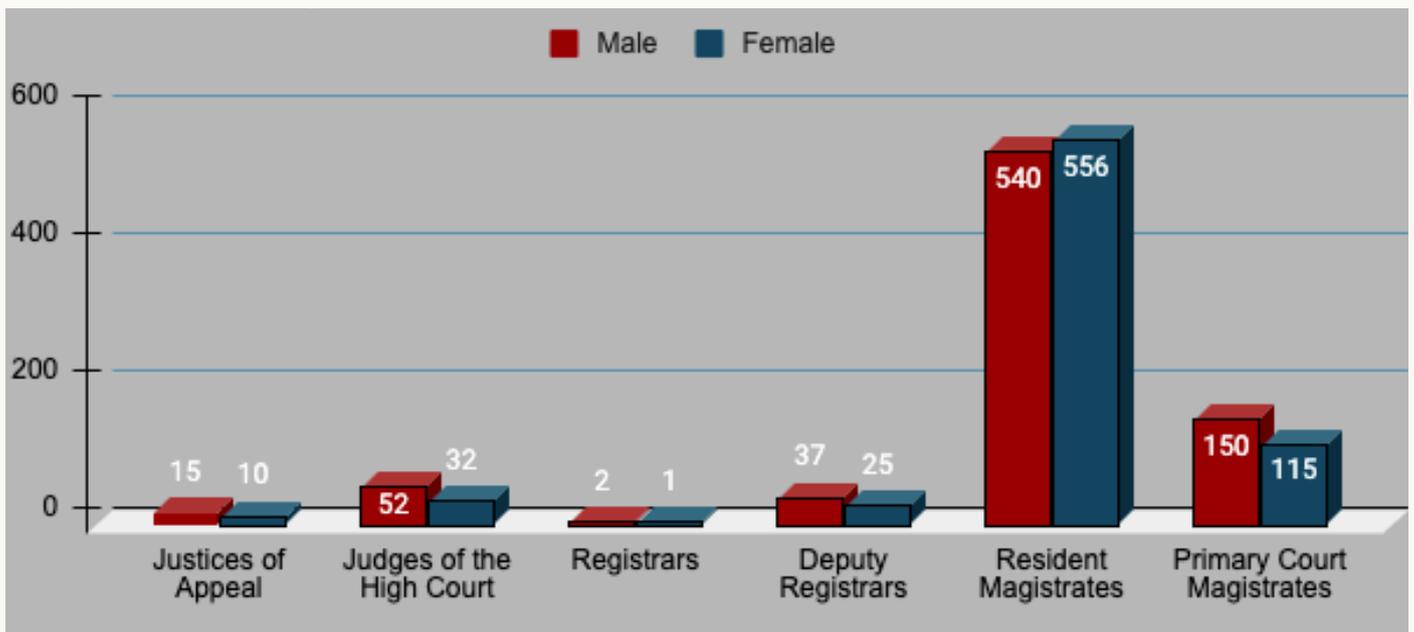
By February of the following year, he had appointed 9 more female judges. Despite the significant increase in the number of females on the bench, the Tanzanian case is not a clear example of gender parity of the bench. Even though the number of females on the bench has been increasing, so has the number of males. For example, as of February 2015, the number of female judges was 31, while the number of male judges was 58 (Yoon, 2016). Statistics for later years are obscure. But in 2019, when President Magufuli appointed 21 judges (i.e., 6 for the Court of Appeal and 15 for the High Court), 7 were male while the remaining 14 were female (The Citizen, 2019). Under the current government, President Samia Suhulu Hassan, a record high of 28 judges (7 for the Court of Appeal and 21 for the High Court) have been appointed—11 female and 17 male (Kapama, 2021).



Data

Current statistics (as illustrated in the table and pie charts following this paragraph) show that with the exception of resident magistrates—consisting of 556 females (i.e., 51%) and 540 males (i.e., 49%)—male judges and magistrates dominate every level of Tanzania’s judiciary. Out of the 25 Justices of Appeal, 15 (representing 60%) are male and 10 (i.e., 40%) are female. Of the 84 High Court Judges, there are 52 males (i.e., 62%) and 32 females (i.e., 38%) respectively. Two of the three registrars are male (i.e., 67%) and 1 (i.e., 33%) is female. The 62 deputy-registrar positions are split between 37 males (60%) and 25 females (40%). There are also 150 (i.e., 57%) male primary court magistrates, as compared to 115 (43%) females.

FIG. 1: Judges and magistrates as of March 2022



Source: Judiciary of Tanzania (2022)

Data

FIG. 2: JUSTICES OF THE APPEAL COURT

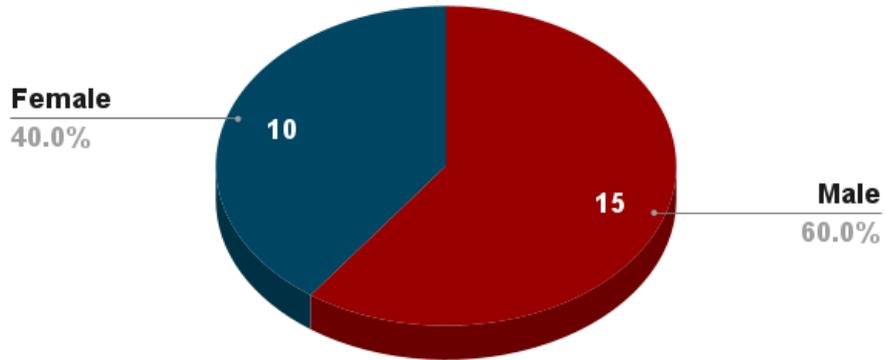


FIG. 3: JUDGES OF THE HIGH COURT

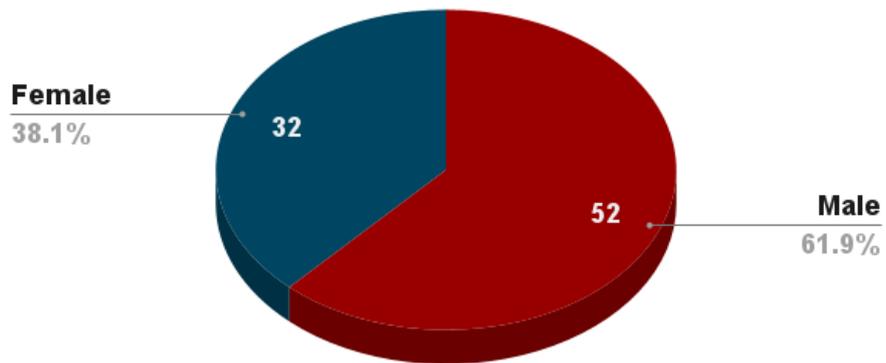
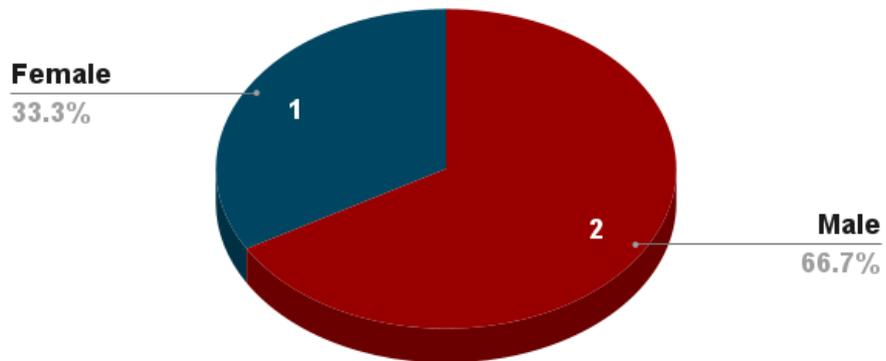


FIG. 4: REGISTRARS



Source: Judiciary of Tanzania (2022)

Data

FIG. 5: DEPUTY REGISTRARS

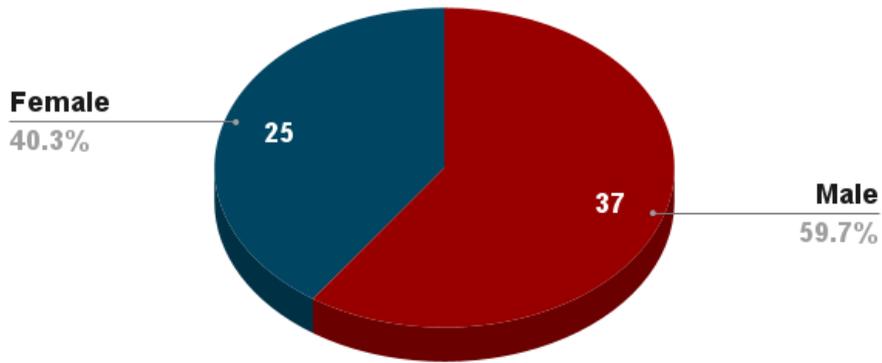


FIG. 6: RESIDENT MAGISTRATES

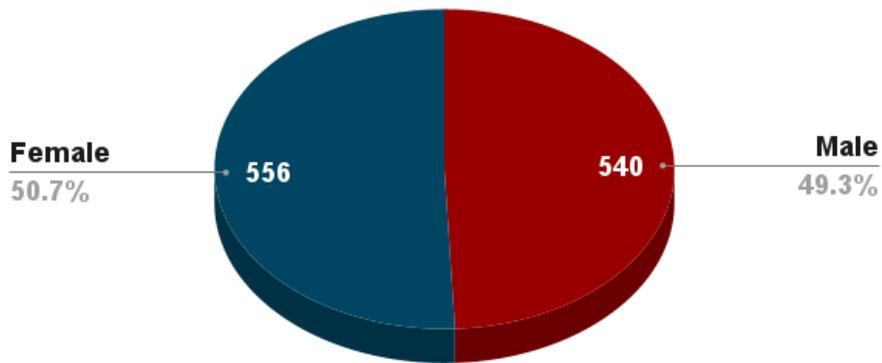
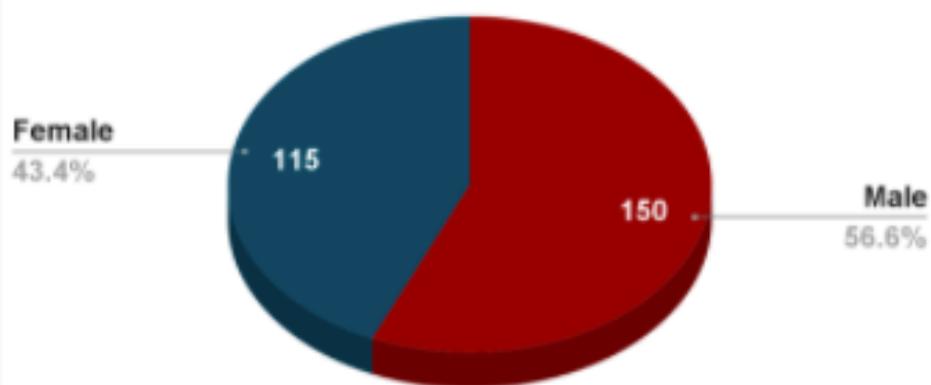


FIG. 7: PRIMARY COURT MAGISTRATES



Source: Judiciary of Tanzania (2022)

4.2.2 Bringing a “Feminist Influence” to Judging

Many of the out-of-court activities female judges in Tanzania engage in, through their membership in TAWJA, could be seen as attempts to influence the judiciary in a feminist manner. This has been done mainly through judicial education, which seems to have had a ripple effect on judicial culture (Yoon, 2016).

Yoon explains that TAWJA’s judicial education usually focuses on issues that affect women the most, inclusive of which are “marriage, divorce, property rights, child custody, domestic violence and inheritance” (2016, p. 102). In partnership with the IAWJ, the TAWJA has used judicial education to enhance women’s understanding of the court system and train judicial officers on women’s legal rights. The various projects that the TAWJA has undertaken have been targeted at creating awareness among women on gender-sensitive laws and the court system to enhance women’s access to the courts; they have also provided training to judges and magistrates to promote gender-sensitive court proceedings and judgments, based on international and regional human rights laws (UN Women, 2013; Yoon, 2016).

Key among the judicial education projects of the TAWJA (9) are the Jurisprudence of Equality Program (JEP) from 2001–2003, the Jurisprudence on the Ground from 2008–2010, and the Sextortion (10) project from 2009–2011. Under the JEP, TAWJA began its legal education with seminars and workshops in 2001 and sent six Tanzanian women judges to IAWJ’s Training of Trainers Workshop in Entebbe, Uganda (Kileo, 2010, p. 166). In total, 230 judicial officers and law enforcers (both male and female) from various parts of Tanzania were trained in domestic, regional and international human rights laws (Yoon, 2016).

According to Yoon (2016),

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The goal of the JEP training was to equip judges and magistrates with knowledge and skills needed in resolving cases involving discrimination and/ or violence against women in accordance with the principles enshrined in domestic, international, and regional human rights treaties

(p. 103)

This training is crucial because,

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Although gender-based violence (e.g., spousal battery, rape, female genital mutilation, sexual harassment at work, trafficking of women, etc.) is epidemic in Tanzania, it is causally dismissed by the police, judicial authorities, and the community at large

(Yoon, 2016, p. 103)

The project officially ended in 2003, but two more seminars, sponsored by the Judiciary of Tanzania, were conducted between 2005 and 2007 (Tanzania Women Judges Association, 2020b). Between 2007 and 2009, the TAWJA also implemented the Jurisprudence on the Ground (JOG) Project, which was “essentially an extension of JEP, but under a different name” since it had a different sponsorship, namely the United Nations Democracy Fund (Tanzania Women Judges Association, 2020c). The JOG was implemented in partnership with the Society for Women against AIDS in Tanzania (SWAA-T) and was targeted especially at helping women in various ways, particularly in demystifying the court process in cases of abuse (Tanzania Women Judges Association, 2020c).

Between 2009 to 2011, the Royal Government of the Netherlands funded the Millennium Development Goal 3 Project, for which the IAWJ coined the name “Stopping Sexual Exploitation by Authority” (Sextortion). This project was undertaken in Tanzania by the TAWJA, but also in the Philippines and Bosnia-Herzegovina by other institutions. In this case, the targets were judicial officers and law students, most of whom were primary court magistrate trainees; the objective of the program was to improve the capacity to deal with gender-based violence cases (Tanzania Women Judges Association, 2020d).

Have these projects had a direct impact on the bench? Evidence from judges who participated in some of the seminars suggests so. One of the most telling is the story of Devotha Christopher, a District Court magistrate in Arusha. She presided over a case between a couple: Maria and her husband, Peter. After their marriage, they went on to have two children and built two houses. Later, Peter took his wife and children to live in another new house he claimed to have built but which was apparently not his. Maria and her children were, therefore, later evicted. Unknown to her, the marriage certificate and the wedding was never legalized in the first place, allowing Peter to argue in a Primary Court that he had never married her. The court sided with Peter, since there was no legal evidence. However, Maria appealed the case. How Devotha, the then District Court magistrate in Arusha, handled the issue is an example of what Hunter (2008) might call "asking the woman question."

Going beyond the legal documentation, Devotha sought and found evidence that the marriage event had indeed taken place, even if there was no legal ratification. Consequently, the decision of the former court was overturned, with Maria gaining her rightful legal share of their matrimonial property (UN Women, 2013). Acknowledging her excitement about how she tackled this case, Devotha explained that "TAWJA's work... changes the way we think. To ensure that the law is fair and just, we find precedents. And sometimes, we make them" (UN Women, 2013). A male magistrate in Arusha stated that as a result of the training, he got to know "why it is so difficult to find witnesses" when it comes to violence against women, and he now asks the prosecutor to hide the names of witnesses (UN Women, 2013). It is worthy to point out that today, Tanzania's Court of Appeal (unlike before) recognizes evidence of a "victim of rape and sexual offences as the best evidence", even if such evidence has no other support (Masabo, 2021, p. 244).

In other instances, such as the Mohamed v. Makamo case in 2001, the High Court judge, who had had training with the TAWJA overturned the District Court decision that had awarded the wife 5% of the marital property and the husband 95% upon their divorce and instead split the property equally between the former couple (Yoon, 2016). In the Ndossi v. Ndossi case in 2002, the High Court judge in Dar es Salaam awarded the widow the right to

administer her husband's estate despite the fact that the Primary Court decision had granted a brother of the deceased the right to administer the estate and although traditionally, most administrators of the estate of the deceased in Tanzania are men (Yoon, 2016). Another telling case is that of **Rebeca Gyumi v. The Attorney General** in 2016, which led to the annulment of sections of Tanzania's Law of Marriage Act, specifically the parts that sanctioned (girl)child marriages (Masabo, 2021). In the case of **Abilahi v. R.** (involving rape of a primary school student by her headteacher), the Court of Appeal established that despite the desirability that such cases be reported in a timely manner, delayed reporting was not sufficient reason to discredit the prosecutrix (Masabo, 2021).

These instances (among a host of other similar rulings) suggest a revolution in court rulings on key gender-sensitive issues such as matrimony, inheritance, sexual offenses, and child marriages, all of which are too often detrimental to women. Admittedly, more than just training from the TAWJA might have shaped each of the above-mentioned rulings. Yet, this gender sensitivity in court rulings -- especially as Masabo points out, these changes have occurred "after the introduction of gender training programs" (Masabo, 2021, p.244), and suggests that the TAWJA's training is bearing some fruit.

According to the IAWJ,

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Judges and magistrates who participated in the training seminars are issuing cases that reflect their training on issues ranging from economic discrimination, property rights, custody, inheritance to sexual assault and other forms of violence against women

(IAWJ, as cited in Yoon, 2016, pp. 102-103)

In all of these cases, the judges were using the constitution, as always, but bringing what might be seen as a "feminist perspective." The admittance of these judges that their rulings were influenced by the training offered by the TAWJA challenges the legalist school of thought that judicial activity is shaped only by legal parameters. Judges indeed work with the law, but cannot avoid being human. Consequently, from the time judges hear a case

until they pass judgement, they are influenceable (even if they do not always acknowledge or recognize it) by too many extralegal factors: their personal interests (Helmke, 2002; Posner, 2008), hunches (Hutcheson 1929), discretion (Posner, 2008), (subconscious) ideologies (Cardozo 1921), their audience (Baum, 2008) and even networks (Dressel et. al., 2018)—whether familial or professional.

Aside TAWJA's judicial education and its ripple effect on the bench, female judges in Tanzania have, through their positions in the TAWJA been involved in mentoring and recruiting other women judges, defending the rights of women, scrutinizing appointment processes and decisions, and "creating a forum for women judges to discuss their peculiar challenges" (Dawuni, 2016a, p. 13). The results in Tanzania make scholars such as Bauer optimistic that:

“

National chapters of the International Association of Women Judges [could] play important advocacy and educational roles and could contribute to studies of women's access to the judiciary in Africa

(Bauer, 2016, p. 167)

The work of the TAWJA, therefore, gives evidence of asking the "woman question" (by making judges sensitive to the implications of seemingly gender-neutral laws); challenging gender bias; improving women's lives, and supporting other women, in line with Hunter's conceptualization of feminization of the judiciary.

4.2.3 Challenges

In its pursuit of feminization of the judiciary, the TAWJA faces a number of challenges. First of all, it appears that despite all its work, it has not yet garnered massive public support, even among members of the judiciary. According to Bauer and Ellett (2016), this is because of "the weak participation by women magistrates, who view the organization with some suspicion because it is not an official government body" (p. 44). This in turn stymies the greater impact the TAWJA might have had in pushing for more female judges

on the bench. As Yoon (2016) explains, although women judges are having a significant impact outside the courtroom, the TAWJA's effort to increase women in the judiciary has been largely "unnoticeable" (p. 102).

There is also the challenge of finances. The TAWJA, as the foregoing discussions show, have no steady flow of funds for legal education in Tanzania; all of its projects have been externally funded, making the progress of projects heavily dependent on availability of external funds, which is not always readily available. The results of these projects, however positive, have been ephemeral.

There are also complaints that women in Tanzania still lack access to justice, due to the lack of knowledge of their legal rights and court procedures; that legal and paralegal services that would help women are also in short supply; and that many women do not seek justice because of "intimidation at the police level, extortion at the court level, and sextortion of women and children at many levels" (United Nations Development Programme in Tanzania, 2014, as cited in Yoon, 2016, p. 102). However, it cannot be expected that in such a short time of its existence, the TAWJA can solve all the problems that have long been rooted in the society.

Yoon (2016) also explains that there is little systematic recording of the gender-sensitive decisions of judges influenced by their training in the TAWJA. The stories featured in this essay represent the few that have been collated, despite efforts by the sponsors (i.e., the IAWJ and United Nations Democracy Fund) to collect these pieces of information.

5. CONCLUSION: DO WOMEN JUDGES NEED TO MAKE A DIFFERENCE?

This essay has demonstrated that despite the emphasis on gender equality and the significant successes that have been chalked in other fields, it appears the judiciary is still lagging behind, a case in point being Tanzania's bench. It has also shown how the IAWJ and especially the TAWJA have been working to create equal opportunities for women to join the bench. But just as women's being on the bench alone cannot bring much change without concomitant factors, the work of the TAWJA alone cannot bring gender parity on the bench.

Scholars, national media, and other women's groups ought to give attention to gender representation on the bench. This work has also demonstrated that judicial activity can be shaped by judges' embedment in networks, and not only by legal parameters as some argue. This suggests that especially in non-Western settings, judicial politics can be studied using a relational approach (Dressel, Sanchez-Urribarri, & Stroh, 2018).

As already discussed, the range of rationales proposed for the increased representation of women in the judiciary is a result of the under-representation of women in the judiciary (Feenan, 2008). These arguments revolve around representativeness, diversity, equality of opportunity, and difference. Part of the "difference" argument is that female judges are less susceptible to corruption and are more perceptive to details in ways that men are not.

In my opinion, however, the question of whether or not female judges make a difference is groundless if it is seen as a requirement for women to gain entrance into the judiciary. I agree very much with Hale's (2001) argument that every competent person should have a fair chance to be on the bench, not for anything else but their competence. After all, whether or not male judges make a difference was never (and has never been) a requirement for men to enter the judiciary. Yet, many scholars, in arguing why women's representation on the bench matters, feel it necessary to prove the difference women could bring to the bench. Thus, rather than debunking the argument of male superiority/ female inferiority, they entrap themselves by using that as the very starting point of their argument.

This is not to say that the "difference" debate is totally unjustifiable. Students of political science and gender studies would definitely benefit from understanding if and how gender shapes judging. After all, such studies are revealing interesting points about how, for example, "the presence of women judges [is] gradually socializing fellow men judges on the gendered nature of the law and the need to put on a gendered lens" in the interpretation and application of law (Dawuni, 2016a, p. 13). It is also speculated that "even if equal representation is achieved on the bench, women may still be treated as outsiders within the judiciary" (Feenan, 2008, p. 495). But this buttresses my argument: more than just increasing the number of women on the bench, the systems that put gender on the agenda ought to be targeted and firmly resisted.

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ENDNOTES

1. In the case of Africa, for example, scholars' examination of the rise of women in cabinets, legislatures and presidencies had already begun by 2001; yet, it was only until 2015 that attention began to be given to the rise of women in the judiciary (Dawuni and Kang, 2015).
2. For example, it was only in 2020 that Kuwait appointed the first female judges. In Iran, Shereen Ebadi became the first female judge in 1970, but female judges were prohibited from judicial practice following the Iranian revolution in 1979. It is also the case that the feminization of the judiciary takes place only at the lower rungs of the courts in some countries (Dawuni, 2016a; Gómez-Bahillo, Elboj-Saso, and Marcén-Muñío, 2016). The story is different in France, where there is even talk of the "excessive feminization of the judiciary" (Boigeol, 1996).
3. See the new volume on Gender, Judging and the Courts in Africa: Selected Studies, (Dawuni, 2022).
4. While some argue that women indeed do judge differently (e.g., Miller & Maier, 2008), others contend that they do not (e.g., Westergen, 2004). There are still others who argue that women may deliberately "make a difference" because they feel expected to do so (e.g., Junqueira, 2003).
6. In Hunter's conceptualization of feminization of the judiciary, "feminist judging" (whether by a male or female) is not necessarily equal to being a feminist judge. Hunter's conceptualization also does not allow for male feminist judges, as she takes "being gendered female to be a crucial element of feminism" (2008, p. 8).
7. Apart from Tanzania: Ivory Coast, Botswana, Cameroon, Ghana, Uganda, Malawi, Morocco, Tunisia, Nigeria, South Africa, Kenya, Zambia, and Zimbabwe.
8. That is, not only through the lens of gender but religion, sexual orientation, disability, race, and ethnicity (Dawuni, 2016a, p. 12).
9. These programs were initiated by the IAWJ (with the sponsorship of United Nations Women Organization, now UN WOMEN) and implemented in various national chapters, Tanzania inclusive, and were thus, not uniquely Tanzanian.
10. IAWJ coined the term "sextortion", which means "sexual exploitation by authority"



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