



## **REPORT\***

### **THE GENDER JUSTICE HAGUE FORUM (I)**

Organized by Africa Legal Aid (AFLA),  
in cooperation with the International Criminal Tribunal for Rwanda (ICTR) and the Women's  
Initiatives for Gender Justice

7-8 July 2008, The Hague, the Netherlands

#### **Introduction**

On 7th and 8th July 2008 Africa Legal Aid (AFLA), in cooperation with the International Criminal Tribunal for Rwanda (ICTR) and the Women's Initiatives for Gender Justice, organised a Gender Justice Forum in The Hague. This was the first event of a year long program convened by AFLA in cooperation with the ICTR on gender justice and the legacy of the ICTR. The Program aims at assessing the merits and challenges of the pioneering work and revolutionary jurisprudence of the ICTR, and devising means on how this work can be carried forward by *inter alia* the International Criminal Court (ICC), relevant UN bodies and national courts in curbing violence against women, empowering women and promoting gender equality (UN Millennium Development Goal No. 3) among others.

The colloquium attracted active participation of ICC officials including H.E. Justice Navanethem Pillay, the Prosecutor of the ICC H.E. Luis Moreno-Ocampo, the Deputy Prosecutor H.E. Fatou Bensouda, other Judges of the ICC, officials of the ICTR, officials of the International Criminal Tribunal for former Yugoslavia (ICTY), judges from African countries, academics, experts and researchers on gender justice, legal practitioners, representatives of Civil Society Organisations, and women's groups from countries in conflict areas including the Democratic Republic of Congo (DRC), Central African Republic (CAR) and Uganda.

The varied expertise and experiences of the participants enriched the quality of deliberations. The discussions were a perfect blend of experiences from the community level activists and victims of gender based violence with experiences and observations of experts in the field of gender justice. Fascinating experiences were shared by officials of the ICTR that actually conducted the investigations and prosecutions of suspects of genocide and the gender based violence that pertained to it. The colloquium was a thorough analysis of issues on gender justice and violence against women, and made several recommendations on the way forward. It was a constructive dialogue worthy of the name. For both days, the colloquium was well attended with over eighty participants on each day.<sup>1</sup>

AFLA is particularly delighted to have cooperated with the ICTR and the Women's Initiatives for Gender Justice in successfully convening the Gender Justice Hague colloquium. Special thanks go to H.E. Adama Dieng, UN Assistant Secretary General and Registrar of the ICTR for his insights and cooperation. During the colloquium a special issue of the AFLA Quarterly on the "Interface between Peace and Justice in Africa" was launched and a video "Speak for Ourselves" produced by the Women's Initiative for Gender Justice (WIGJ) was presented.

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\* The Conveners of the Forum acknowledge with thanks, the various forms of support provided by:  
Open Society Institute (OSI), CORDAID and the Interchurch Organization for Development Co-operation (ICCO) to the success of the Gender Justice Forum (Part 1).

<sup>1</sup> The full text of the presentations will be published in a forthcoming edition of the AFLA Quarterly.

## DAY 1 - Monday 7th July 2008

### Opening Ceremony

At the colloquium's opening ceremony the following speakers addressed the participants: Evelyn Ankumah, Executive Director, Africa Legal Aid, H.E. Adama Dieng, U.N Assistant Secretary General and Registrar - International Criminal Tribunal for Rwanda (ICTR); H.E. Justice Navanathem Pillay, Judge of the International Criminal Court (Judge Pillay has since been appointed as United Nations High Commissioner for Human Rights); and Ms. Brigid Inder, Executive Director, Women's Initiatives for Gender Justice.

#### *Evelyn Ankumah*

After having welcomed all participants, AFLA's Executive Director, Evelyn Ankumah, introduced the theme of the colloquium. She said the initiative for the "Gender Justice Forum" was taken at the conference on the *Interface Between Peace and Justice in Africa*, which was held in Accra, Ghana in 2007 and convened by AFLA in cooperation with the ICC. The objective of the Gender Justice Forum is to reflect on the revolutionary legacy of the ICTR, and its gender justice jurisprudence in particular, and to explore how it can be carried forward by the ICC, UN bodies and national courts, among others. She contended that the ICTR legacy reflects African perspectives on gender justice and is part of African contributions to international criminal justice. For example, the *Akayesu* judgment has been largely followed by the ICTY and been codified in the ICC Statute. Evelyn Ankumah opined that the jurisprudence of the ICTR derives from crimes committed on the African continent and African customary law necessarily has come into play. Although, a U.N. Tribunal, Evelyn Ankumah reminded the audience of the fact that African legal and human rights luminaries have held key positions within the Tribunal and have been instrumental in shaping the work of the Tribunal. She contended that it is important for Africa to take ownership of the legacy of the Tribunal and the prospects and challenges resulting from it. She opined that the Gender Justice Forum should contribute to strengthening accountability for gender based crimes, to advance the achievement of the UN Millennium Development Goals, and to counter the culture of impunity for gender based crimes.

#### *H.E. Adama Dieng*

H.E. Adama Dieng spoke on the contribution of the ICTR to international criminal law in relation to violence against women. He highlighted the significance of the gender justice jurisprudence of the ICTR, as not only expanding the domain of rape as part of complex crimes like genocide, but also refining the definition of that notion to embrace acts which, in domestic jurisdictions, would not necessarily qualify as rape. He further updated participants on the developments at the United Nations on issues of violence against women. He observed that the last decade has witnessed an unprecedented momentum in the fight against serious breaches of international humanitarian law in general, and rape and sexual violence in particular. Significantly, he articulated the peculiarities of the recently unanimously passed UN Security Council Resolution 1820 (2008), which demanded immediate and complete halt to acts of sexual violence against civilians in conflict zones and resulted from ministerial level debates on "Women, Peace and Security."

Having referred to other resolutions and initiatives aimed at fighting violence against women and girls (e.g. the 2005 World Summit, the 2000 Beijing Declaration, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the optional protocol to that convention), Mr. Dieng linked Resolution 1820(2008) to the jurisprudence of the ICTR. He noted that this resolution crystallized the *Akayesu* judgment and that *Akayesu*'s holding on rape and genocide is part of the universal history in the protection of women and girls. Mr. Dieng paid tribute to Judge Navanathem Pillay, Judge of the ICC, and former Judge of the ICTR, who was a member of the bench which rendered the *Akayesu* judgment.

Mr. Dieng expressed the significance and need to make the work of institutions like the ICTR known to people and organisations at the grass root level. He noted with concern that the French speaking countries in Africa do not seem to be as active as English speaking countries in the dissemination of the international legal instruments and jurisprudence in the fight for the end of violence against women. In this connection, Mr. Dieng called upon AFLA to hold the next Gender Justice Forum in Dakar, Senegal as part of his recommendation for a platform to reach out to all French speaking countries.

#### *H.E. Navanathem Pillay*

The keynote address was delivered by H.E. Navanathem Pillay (ICC, ex-ICTR). Judge Pillay first took the participants through the developments that preceded the *Akayesu* decision. Interestingly, the original indictment of *Akayesu* never entailed counts of rape; it was only on the basis of testimonies of two witnesses that the bench sought to have the indictment amended. Justice Pillay told participants that the research done at that time revealed that there was no single precedent of prosecution of rape as a crime under international law; there was also no commonly accepted definition of rape under international criminal law. She noted that the ICTR judges risked being at the forefront of creating a new principle, but they felt compelled to act on their accurate observation of the historical neglect of prosecution of these crimes.

Judge Pillay explained the significance of *Akayesu* in that it expounded sexual violence beyond the physical invasion of the human body, to include acts of a sexual nature under coercive circumstances. She further observed that *Akayesu* had been applied and developed at the International Criminal Tribunal for Former Yugoslavia (ICTY) and other jurisdictions. She particularly mentioned Brazil, the European Court of Human Rights, and South Africa as principal examples.

Judge Pillay referred to the ICC Statute, which includes a number of sexual crimes including rape, sex slavery, or any other forms of sex related crimes and opined that the comprehensive nature of the Rome Statute on gender-based crimes can be attributed to ICTR jurisprudence. Judge Pillay concluded her keynote address with some observations on the revolutionary nature of some of the procedural rules of the ICC, the ICC's rules on victim participation, fair trial and reparations. She made specific reference to the ICC's policy of restorative justice, including the trust fund and ICC projects in the DRC and Uganda, and opined that these also could be attributed to the work of the ICTR.

### *Brigid Inder*

Ms. Brigid Inder, Executive Director of Women’s Initiatives for Gender Justice, gave an overview of the programme. Ms. Inder first thanked Judge Pillay for coming, and expressed her gratitude to AFLA for initiating the event. She further expressed her anticipation for meaningful deliberations and progress in the field.

### *Floor Discussion*

Evelyn Ankumah opened the floor for questions. Binaifer Nowrojee, Executive Director of the Open Society Initiative for East Africa (OSIEA), wished to know from Judge Pillay whether an amicus brief filed by NGOs in the *Akayesu* proceedings had been considered by the bench. Judge Pillay answered in the negative because the brief has been wrongly filed and thus was not considered on procedural grounds. She noted, however, that any little move counts and that although it never served its intended purpose, the amicus brief brought the matter to the attention of the public.

The next contribution from the floor came from Ms. Rosette Morrison Muzigo, who was a legal officer of the ICTR during the *Akayesu* days and is currently working for the ICC. She informed participants of an official policy at the ICC, which is to end every interview with a question as to whether the witness was aware of any instances of sexual violence. She also informed the audience of the existence of a gender team. Ms. Muzigo called for action on issues that prevent victims of sexual violence from testifying in order to get these crimes in the indictments.

The third contribution came from Bernadette Sayo of the Organization for Compassion and the Developments of Families in Distress (OCODEFAD), Central African Republic. Reflecting on Evelyn Ankumah’s introductory address, she informed the audience that at the national level, these crimes against women are being neglected, and that community leaders, religious leaders, and grass-roots people should be encouraged and incited to join the fight against sexual violence against women.

The fourth contribution came from Prof. Amsatou Sow Sidibe, Director of the Institute of Human Rights and Peace, Faculté des Sciences juridiques, University Cheikh Anta Diop, Senegal. She called upon the gathering to clarify what is understood by justice, and suggested that it is not only the legal part that should be discussed. Judge Fatoumata Diarra of the ICC responded by saying that the colloquium could only address specific aspects of women’s rights and that the focus of that day was on crimes against women.

### **Launch of Africa Legal Aid Quarterly on the “Interface Between Peace and International Justice in Africa”**

The opening ceremony was followed by a coffee break during which a special edition of the AFLA Quarterly on “The Interface Between Peace and International Justice in Africa” was launched by the ICC Prosecutor H.E. Luis Moreno-Ocampo and H.E. Adama Dieng.

In his statement the ICC Prosecutor referred to the evolvment of a global community based on law and shared values and composed of people concerned about international crimes. Mr.

Ocampo further commented upon the issue of reparations and opined that the Bemba case, currently pending before the ICC, provides an opportunity for a compensation system to work since it is the first case in which the defendant has resources. He revealed to the audience a plan by the ICC to open up a unit that will produce dossiers on crimes and give them to national judges. He promised that this will go towards fulfilling the gender complementarity mandate of the ICC; that specifically, the ICC will draw specific rape cases to the attention of national judges. On the pertinent issues before the ICC, Mr. Ocampo informed participants of the work on protection of witnesses and referred to the Darfur situation, where a key component of the crisis is massive rape with a consistent pattern of attacks in the camps. He concluded by saying that the Gender Justice Forum constitutes an unique opportunity to expand information on gender issues and that the AFLA Quarterly on *The Interface between Peace and International Justice in Africa* is an impressive example of expanding and disseminating information on international criminal law and gender justice.

H.E. Adama Dieng delivered a statement on the AFLA Quarterly on the Interface Between Peace and International Justice in Africa. He praised AFLA and its Executive Director for the organization's excellent work. He said the special issue of the Quarterly has been enriched by valuable contributions from members of the international, national civil societies and African Legal scholars and practitioners who are at the forefront of the struggle for ensuring that there is a sustainable interface between peace and international justice in Africa. He added that the special edition of the AFLA Quarterly came at the right time as it offered a basic working tool to any interested reader while serving as a reference publication for other persons, institutions, governments, scholars, practitioners and policy makers, for a way forward in attaining peace through international justice in Africa. Mr. Dieng expressed the view that the publication also sheds light on the pioneering work and contribution of the ICTR to the consolidation of peace in Africa and he called upon organisations in Africa and elsewhere to add their efforts to the work of the ICC prosecutor. Mr. Dieng closed the launch by wishing AFLA further success in its endeavours to contribute to human rights and justice in Africa and that the Quarterly would reveal to all the real link between peace and international justice in Africa.

After the launch of the AFLA Quarterly, Evelyn Ankumah introduced the music video "Speak for Ourselves" that was produced by the Women's Initiatives for Gender Justice. This video entailed moving images and messages from women of Northern Uganda. What could be gathered from the video was the women's desire for justice, and their ambition to be part of the peace building process.

After the video, H.E Luis Moreno-Ocampo was instigated to say something about Uganda. He informed participants that the ICC was taking lessons from Uganda, but he reaffirmed that Kony (the leader of the Lord's Resistance Army) had to face the ICC. He further informed the audience that the rebel group is apparently abducting people from the Central African Republic and the Southern Sudan, in a bid to regroup. The ICC Prosecutor was of the view that the ongoing negotiations could not undermine efforts to rebuild peace by helping the rebels regain power.

H.E Adama Dieng finally congratulated Ms. Inder and her team for the excellent video. He noted that it was an important tool to get people to feel what is happening "down there" and the video particularly entailed a strong message to stakeholders.

## **Session II: Accountability for Gender Based Crimes**

The second session was on “Accountability for Gender Based Crimes”. The panel consisted of H.E Fatou Bensouda, Deputy Prosecutor of the ICC (chair); Patricia Viseur-Sellers, visiting Fellow of Kellogg College, Oxford University and former Legal Advisor for Gender and Trial Attorney at the ICTY (presenter); and Madeleine Rees, Head of Women’s Rights and Gender Unit, Office of the UN High Commissioner for Human Rights (OHCHR) (discussant).

### *H.E Fatou Bensouda*

H.E Fatou Bensouda stressed the importance that the Office of the Prosecutor of the ICC places on investigation and prosecution of gender-based crimes. Ms. Bensouda observed that the provisions on sexual and gender-based crimes in the Rome Statute are a historic development under international law. The Statute recognises a spectrum of gender crimes in addition to rape, including forced pregnancy, sexual slavery, and gender-based persecution, but Ms. Bensouda added that it is important to separately identify other sexual and gender crimes in order to recognise the distinct characteristics of the different crimes. Ms. Bensouda informed participants that in order to ensure adequate expertise when dealing with gender crimes in the course of preliminary analysis, investigations and prosecutions, the Office has established a Gender and Child Unit, which directly advises the prosecutor, senior management and all divisions within the Office of the Prosecutor. The unit also works with investigators in a variety of ways in order to minimise the impact of investigative activities on victims.

Ms. Bensouda took participants through the situations and cases referred to the ICC. She noted that as a result of their investigations, charges of sexual or gender based crimes are included in arrest warrants issued in all of the situations. She exemplified that with the situations of Northern Uganda situation (Kony), the Darfur (Harun and Kushayb), the Central African Republic (Bemba) and the DRC (Katanga and Ngudjolo Chui).

### *Patricia Viseur-Sellers*

*Ms. Viseur-Sellers* delivered a presentation entitled “*Gender Accountability or Gender Counts.*” She made a historical assessment of accountability for gender based crimes. She particularly made reference to the pre-1949 era, which she described as the nebulous age of the genocide-like acts, since genocide was not an international crime then. She recollected the events of the destruction of the Herero people of Namibia, which included rape of females, and measures of segregation of the male and female Hereros; the Nazi holocaust that constituted sexual attacks, sterilisation of Jews and Romans, forced abortions, infliction of sexual reproduction experiments upon Jews, and persecutions for reproduction. She concluded that gender accountability within genocide remained more nebulous than genocide killings, even though facts, litigation and a convention confirmed the previous gendered or sexualised genocides.

Ms. Viseur-Sellers acknowledged the revolutionary work of the ICTR. She opined that the ICTR jurisprudence revived the historical facts of sexualised genocides and has made the international community more ready to understand sexualised genocides. Ms. Viseur-Sellers commented on the *Akayesu* proceedings. She particularly highlighted the fact that it took the

testimonies of some witnesses to cause the amendment of the indictment to include the allegations of sexual violence. She observed that the Chamber clearly understood that the amendment resulted from the spontaneous testimonies of sexual violence by the said witnesses, but that it maintained that the investigation and presentation of evidence relating to sexual violence was in the interest of justice. She informed participants that the judges, especially Judge Pillay and Judge Kama, were attacked as a result for purported bias for sexual assault convictions, which Ms. Viseur-Sellers compared to the attacks on Judge Mumba as regards the Furundzija judgment of the ICTY.

Ms. Viseur Sellers further discussed Security Council Resolution 1820 stating *inter alia* that “rape and other forms of sexual violence can constitute a war crime, a crime against humanity or a constitutive act of genocide.” The Resolution, in her view, underscores the responsibility of gender accountability and together with UN Security Council Resolution 1325 on Women, Peace and Security, it would reflect modern standards and achievable norms of elimination of gender based violence as a pre-conditioning of peace, not susceptible to amnesties. Ms. Viseur-Sellers, however, also identified gaps in Resolution 1820, including in particular the difficulty of measuring equal access and equal opportunities of access to justice, the complexity of domestic laws that include religious and traditional laws, the inherent biases within the local law, and the inherent inequality between men and women.

Ms. Viseur-Sellers then commented upon the notion of complementarity and the difficulties in promoting gender accountability at the national level. She observed that even though international crimes might be incorporated into a nation’s domestic criminal code through enabling legislation or local legislative initiatives, responsibility of interpreting international crimes ultimately rests with the national judges and courts, who exercise their profession, amidst a complex array of laws and jurisdictions, that could interweave. She listed those laws to include modern civil or common law systems, recognised religious laws, draw from sources such as the Koran, cannon, Hindu, Buddhist or Jewish, and customary and traditional laws that reign in the land. Upon posing a question as to what true gender complementarity between national law and international standards and norms is, the presenter made a number of recommendations (see further the full text of her presentation that will be published in the AFLA Quarterly in September 2008).

#### *Madeleine Rees*

The presentation of Ms. Viseur-Sellers was discussed by Ms. Madeleine Rees, the Head of Women’s Rights and Gender Unit, Office of the UN High Commissioner for Human Rights (OHCHR). She provoked the audience to think by expressing discontent with the sustainability and credibility of having to rely only on strong individuals that have courage to raise the sexual violence incidents, in order to have them acted upon. Ms. Rees described the *Akayesu* decision as a perfect decision, in particular for the revolutionary drift from proof of consent to sexual assault to coercive circumstances. In relation to consent, Ms. Madeleine identified an ongoing trend of borrowing ideas from different jurisdictions and branches of law to enrich human rights work, and hoped that there would be a reciprocal borrowing back. She stated a radical departure from a position where women were looked at as being in a permanent state of sexual availability to a position where women are to be looked at as being in a permanent state of sexual unavailability unless proven otherwise.

Ms. Rees further lent her expertise to the audience by identifying other alternative non intrusive forms of prosecuting rape. Specifically, she identified a possible prosecution of rape under the Trafficking Protocol. Ms. Rees highlighted the need for the legal fraternity to liberate itself from traditional forms of initiating prosecution. She touched upon Security Council Resolution 1820, which she embraced. Ms. Rees called for the involvement of women in peace processes including negotiations and she concluded by acknowledging progress in the prosecution of rape, and recognition of rape as a crime against humanity.

### *Floor Discussion*

After some comments by Ms. Viseur-Sellers, who cautioned against making rape a crime of strict liability, Participant X (identity concealed on request), a representative of a women's human rights NGO in the Democratic Republic of Congo (DRC), took the floor. She expressed her discontent with the release of Thomas Lubanga and labelled this as a threat to activists. She called upon the ICC to ensure that it takes measures to protect the activists who pursued his prosecution. Commenting on the impending ICC policy, revealed by the ICC prosecutor H.E Luis Ocampo at the colloquium, of preparing dossiers on some cases and handing them over to national courts for action, X expressed concern about the possibility of further victimising the victims on the ground. She testified to the lack of significant change at the grassroots. The women's situation would still be the same; some are still going around freely.

In her capacity as ICC Deputy Prosecutor, H. E Fatou Bensouda responded to X's queries. She informed participants that Lubanga's release is being appealed against. She expressed the need for the ICC to do outreach programs to explain to lay people the procedures of the ICC. She reminded the audience that the ICC cannot arrest. It only depends on states. She encouraged activists to put pressure on the UN by using Resolution 1820 to oblige State Parties to arrest perpetrators. In illustrating the resistance of some states, Fatou Bensouda used the Sudan example, which expressly stated that it would not cooperate with the ICC in arresting victims. She informed participants that the only recourse under the circumstances is the Security Council, which has already been notified.

The third contributor was Ms. Carina Bapita, also of the Democratic Republic of Congo (RDC). Ms. Bapita was mainly concerned with protection of intermediaries. She maintained that depending on the nature of the decisions of the ICC, activists are often exposed to great risks. She noted that the ICC has no provision for protecting intermediaries. She wondered whether there were any plans to approach the Assembly of State Parties to address these issues. Also, she challenged participants to consider whether there shouldn't be a change in the way the UN works with regard to facilitating the work of the court. She expressed the need to have these issues explained to the ordinary people.

H.E Fatou Bensouda responded by revealing that there is a Relationship Agreement between the ICC and the UN. She also highlighted the positive side of Lubanga's case: that it entails an intrinsic advantage in revealing to the public that prosecutions before the ICC are free and fair. She committed the office of the prosecutor to ensuring that what happened in the Lubanga case should not happen again.

### **Session III - Gender Justice: The work of the International Criminal Tribunal for Rwanda**

The next session dealt more specifically with the work of the ICTR. The panel consisted of: Judge Florence Mumba, Supreme Court of Zambia, former Judge of ICTY (chair); Dr. Kelly Askin, Senior Legal Officer, International Justice, Open Society Justice Initiative (presenter); Alice Leroy, Legal Officer, ICTR (presenter) and Ms. Binaifer Nowrojee, Executive Director, Open Society Initiative for East Africa (OSIEA) (discussant).

*Dr. Kelly Askin*

Dr. Askin commenced by commenting on the *Akayesu* judgment. She noted that this judgment entailed a great promise that the gender crimes committed during the 1994 genocide would be prosecuted, the subsequent jurisprudence reveals some disappointments: of the 32 people convicted by the ICTR so far, only three other cases have explicitly resulted in rape crime convictions. She cited the cases of *Semanza*, *Gacumbitsi* and *Muhimana*. Ms. Askin further elaborated on shortcomings, including the fact that there have been no convictions for rape as a war crime, that in cases in which the accused pleaded guilty to rape charges, the prosecutor agreed to drop the rape charges to secure the guilty pleas on genocide and other crimes against humanity charges and that at the tribunal, there has been more than double the acquittals than convictions for rape. Furthermore, she noted that the tribunal has also failed to address other forms of sexual violence specifically, sexual slavery and forced marriages that were common during the genocide and that the tribunal has not done enough to inform the victims about its progress and has not engaged the people of Rwanda in a dialogue to discuss victims' concerns. Dr. Askin identified occasional humiliation suffered by the victims at the tribunal itself. She referred to the 'Laughing Judges debacle', which happened in the Butare Case. She further referred to the findings of the research by Prof. Doris Buss, Carleton University in Canada, on the question of why there were such overwhelming failures at the tribunal in prosecuting sexual violence. Based on the findings of Buss as well as her own research, Ms. Askin concluded that there were major institutional failures at every level and in every organ of the tribunal. She added that the situation could probably have been different, with more convictions, if the prosecution had prosecuted under joint criminal enterprise-JCE-theory of responsibility, which she maintained that it was successful at the ICTY. Dr. Askin proceeded with giving an articulation of lessons that the ICC can learn from the ICTR in relation to securing successful investigation and prosecution of gender crimes. Among these are the appointment of competent women in all positions and at all levels (investigators, prosecutors, judges etc.), establishment of a clear and comprehensive sex crimes strategy with each situation team and prosecution. Ms. Askin challenged the ICC to learn from both the successes and mistakes of its predecessors in rendering justice to the victims, including the victims of various forms of sexual violence.

*Ms. Alice Leroy*

Ms. Alice Leroy, Legal Officer of the ICTR, spoke on the work of the tribunal. She provided background information on the establishment of the ICTR. She maintained that during the armed conflict in Rwanda in 1994, women were systematically targeted, raped and sexually assaulted as a means to destroy the group to which they belonged; and that these atrocities

were first reflected in various United Nations (UN) and NGO reports. She proceeded to review what she termed as principal aspects of the ICTR contribution in prosecuting sexual violence. These involved *inter alia* the legal framework of the tribunal through which it has addressed the specificity and the difficulty of victims of sexual violence, and has provided a definition for rape and sexual violence in international law. In this regard she highlighted some rules concerning evidence, such as a presumption of truthfulness to the account of rape or sexual assault, the admissibility of hearsay evidence, and the credibility of witnesses who testify as victims of sexual violence on account of consent or previous sexual conduct. On protection measures, Ms. Leroy stated that the Statute and the Rules allow for anonymity and other protective measures before, during and after the testimony of the witnesses to ensure the safety of the victims and that the Witnesses and Victims Support Section provided medical and psychological support.

In addition, Ms. Leroy gave a detailed account of the ICTR jurisprudence on the notion of rape (“physical invasion of a sexual nature, committed on a person under circumstances which are coercive”), sexual violence (“any act of a sexual nature which is committed on a person under circumstances which are coercive”) and the parameters of physical or mental harm (“causing serious bodily or mental harm to members of the group does not necessarily mean that the harm is permanent or irremediable”). Ms. Leroy subsequently discussed other case law of the ICTY, which in cases like *Furundzija* and *Kunarac*, seemed to adopt a slightly amended definition of rape maintaining that the sexual penetration must occur without the consent of the victim. Ms. Leroy informed participants that a Trial Judgement of the ICTR in the *Muhimana* case intended to reconcile the two existing definitions of rape. In addition, Ms. Leroy referred to the decisions in *Gacumbitsi* and *Muvunyi*. In the latter the Tribunal defined rape as “sexual penetration of the vagina, anus or mouth of the victim, by the penis of the perpetrator or some other object under, circumstances where the victim did not agree to the sexual act or was otherwise not a willing participant to it.”

After having highlighted successful and failed prosecutions of the ICTR, Ms. Leroy drove her analysis home by stating the reasons for the unsuccessful prosecutions. These include, in her view, inconsistency of evidence led by the prosecution with the allegations in the indictment and unpredictability of the Tribunal. Ms. Leroy concluded her presentation with the assertion that despite the limited number of convictions for rape at the ICTR, sexual crimes are no longer treated as secondary crimes but are recognised as a serious violation of international humanitarian and criminal law as such. She added that even where no conviction has been entered regarding specific allegations of sexual violence, it is equally important to note that most trial chambers at the ICTR have accepted the testimonies of the victims who have come to testify as a true reflection of the facts and of the ordeal that they have endured. In that sense, the ICTR has offered an important forum for victims of rape to tell their story and to receive public acknowledgement and condemnation of their victimization. The debate on the definition of rape may continue but fact and conclusion is that the ICTR is the first international court to have recognized that acts of sexual violence can constitute genocide.

*Ms. Binaifer Nowrojee*

Ms. Nowrojee opined that while the international community has failed Rwandan women, the ICTR has done great work on international justice, by broadening the discourse on rape from

the narrow mechanical definition of penetration, to physical invasion of a sexual nature (invasions without penetration or physical contact). She expressed satisfaction that sexual violence is now in documents that nobody would have imagined and maintained that with the move from consent to coercive circumstances, there is incredible progress in terms of international jurisprudence.

Ms. Nowrojee made reference to the Nairobi Declaration, in which the NGO movement discussed restoration for rape victims. She expressed the view that the ICC has the opportunity what the ICTR never did. Speaking from the angle of the patterns revealed by her research, Ms. Nowrojee reiterated the need to engage more expert witnesses, in which case there would not be the need to call so many witnesses. She further pointed to the ICC's concentration on Africa for the choice of its suspects as "if there are no companies and western states involved in these crimes." She reminded participants of the impression this might create for the ICC and might incite Africa to pull out of international (criminal) justice. On the other hand, she warned African heads of states against manipulating international justice. She exemplified this with Ugandan President Museveni who first requested the ICC to investigate the situation of Northern Uganda, and thereafter used the indictment for what she considered his own domestic means.

#### *Floor discussion*

Judge Mumba welcomed contributions from the rest of the participants. The first contribution came from Ms. Valeur-Sellers. She was particularly concerned about the language in the room. Referring to the tendency to divide participants on geographical differences with references like 'us' and 'they', she advised that the colloquium adopts the unifying word – 'the international community'.

Mr. Roland Amoussouga, Spokesperson of the ICTR, felt obliged to say something about the "laughing Judges". He asserted that the whole matter was just exaggerated by a journalist. Mr. Amoussouga's assertion was met with counter arguments from Ms. Askin and Ms. Nowrojee, who testified to the existence of a video that reveals what happened. Judge Florence Mumba, as chair took effective control of the situation and closed that interaction since all that was to be said had been said.

H.E Adama Dieng wondered whether Africa, under the auspices of the African Union (AU), could consider withdrawing from the international justice system. He maintained that all he knew about was a meeting by the AU on the intended indictment of President Kagame of Rwanda for genocide, and the actions of the Belgium government in that respect. He called for the carrying forward of national justice systems in all the international community efforts. Ms. Askin added her voice to that of Mr. Dieng by emphasising the need to have domestic courts function. She maintained that with thousands of perpetrators, there has to be priority of who can be prosecuted at the international level.

**DAY 2 - Tuesday 8th July 2008****Session I: “Gender Justice in a Socio-Economic context”**

The panel for this session consisted of: Judge Dunstan Mlambo, Judge of the Supreme Court of Appeal, South Africa, Chairperson, South Africa Legal Aid Board and Member of the Governing Council of AFLA (chair), Prof. Christine Chinkin, London School of Economics and Political Science (LSE) (presenter) and Prof. Amsatou Sow Sidibe, Director, Institute of Human Rights and Peace, Faculte des Sciences Juridiques, University Cheikh Anta Diop, Senegal (presenter), and Gaby Ore Aguilar, International Human Rights Law and Gender Consultant, coordinator, “Gender Justice, Reparation and Armed Conflict” Project, Madrid, Spain (discussant).

*Prof. Chinkin*

The main argument made by Prof. Chinkin was that alongside the development of appropriate substantive international criminal law and legal procedures for pre-trial and trial, effective delivery of economic, social and cultural rights should also be explored as an important element of gender justice in the aftermath of conflict and the commission of international crimes. Failure to deliver economic, social and cultural rights through national legal frameworks in accordance with international standards undermines the sought-after stability and human security following societal trauma (including food, health, gender and physical security), which in turn lessens the ability or willingness of victims and witnesses to participate in the formal processes of criminal justice. Referring to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005), the Beijing + 5 Outcome Document and Security Council resolutions 1325 and 1820, she made a case for holistic support aimed at promoting access to justice for women who have suffered abuse by ensuring them “equal access to appropriate and adequate food and nutrition, clean water, safe sanitation, shelter, education, social and health services, including reproductive health care and maternity care.” Access to economic and social rights is a prerequisite for effective legal protection and personal rehabilitation. In her view, this constitutes a reiteration of the principle of interdependence of all human rights.

Ms. Chinkin supported her argument by referring to a number of legal developments, including the increasing importance attached to economic and social rights in relation to civil and political rights and the crucial role that Africa (e.g. the African Commission on Human and Peoples’ Rights (*Ogoni* people case – Pretoria Declaration), the South African Constitutional Court (*Grootboom* case)) have played in promoting economic and social rights and their enforcement. In her conclusion, Prof. Chinkin reiterated the core argument that delivery of economic and social rights is an international obligation which is especially important when addressing widespread violations of international criminal law and must be respected by those who assume positions of authority (both national and international) to facilitate the exercise of agency by survivors of sexual violence in procedures for transitional justice and in personal and social reconstruction. She added that relief from the immediate demands for food, shelter and health needs creates space for survivors to speak for themselves

and to take charge of their own concerns and for survivor groups to come together in joint action.

*Prof. Sidibe*

Prof. Sidibe focal point concerned the impact of economic, social, and cultural rights in the judicial sphere, especially at the domestic level. She posed the question of what the impact of the social economic context is on the realisation of gender justice and wondered as to whether there are effective remedies for human rights violations suffered by women. She challenged the international community to take stock of the fact that gender justice is put to a strict test and noted that the legal and judicial environment are positive in theory but not in practice. On access to justice, she noted that in Africa, there is limited access of women to justice despite progress made. In enlisting the constraints to gender justice, Prof. Sidibe cited ignorance of rights, lack of political will to promote them, complexity of procedures and decisions rendered, the expense of seeking justice, and judicial pluralism. She called for a review and elimination of negative laws. Prof. Sidibe concluded with recommendations, including the need of training judges on women and gender rights, raising awareness on women's rights, educating women, fighting poverty, making sure that their rights are mainstreamed in the law, giving women's rights defenders the right to appear before court in cases of flagrant violations of women's rights, and enabling women to get into decision making bodies.

*Gaby Ore Aguilar*

Gaby Ore Aguilar, the discussant of the panel, highlighted the key aspects of the presentations. She informed participants on the centrality of economic, social and cultural rights in positioning women to address violations against them; the importance of accountability of non state actors, especially those that profit from conflict; and the developments in the law of reparations. Ms Aguilar noted that states should be advised not to label their efforts to fulfil their obligations to promote economic, social and cultural rights as reparations; there should be a distinction between the obligations of states to provide services on one hand and reparations on the other hand. She maintained that this area needs to be developed; it is a very technical task that calls for strong systems of reparations both in post conflict situations and other forms of violence. Ms. Aguilar concluded her address by recommending that transitional processes should aim at integrating measures to ensure full participation of women.

*Floor Discussion*

Judge Dunstan Mlambo opened the discussion for contributions from the audience. Judge Fatoumata Diarra of the ICC and Vice President of the Association of African Women Lawyers, observed that women are subjected to violence in police stations and in prisons. She called for a policy to have women guarded by other women every where in the world.

The next contribution was from Participant X (DRC). She added her voice to the obstacles, which women face in seeking justice. She highlighted the cost of obtaining and executing judgments, corrupt and dysfunctional judicial system particularly in the DRC, stringent

requirements in procedural rules, and lack of commitment from legal actors. She sought for advice on how the women can prosecute multinational companies and claim reparation from them.

Judge Dunstan Mlambo closed the discussions by adding his voice for training of judges to keep them alive to the developments in international tribunal, if they are to effectively incorporate them in the domestic systems. He highlighted the secluded nature of lives led by judges that is quiet limiting in this respect.

## **Session II: African Perspectives on Gender Justice**

The panel for this session consisted of: Dr. Edward Kwakwa, Legal Counsel, World Intellectual Property Organisation (WIPO), also member of AFLA's governing Council (chair), Evelyn Ankumah, Executive Director of AFLA (presenter), and Ms. Agneta Johansson, Deputy Director, International Legal Assistance Consortium (ILAC) (discussant).

### *Evelyn Ankumah*

Evelyn Ankumah started by reaffirming that the African perspective abhors violations and violence against women, promotes accountability for Gender based crimes, and seeks to reduce and eliminate the impunity of perpetrators for gender crimes. She highlighted the dominance of African perspectives in all deliberations of the forum. She justified this trend on the premise of all crimes being discussed originating from Africa, have been committed by Africans and against Africans. Specifically, Ms. Ankumah expressed the view that the progressive jurisprudence of the ICTR on gender justice *per se* constitutes African Perspectives to Gender Justice, and it is part of Africa's contribution to international criminal law. She noted that the ICTR's HIV drugs-to-victims initiative is a reflection of Africa's holistic approach to justice. She further enumerated African specific treaties and instruments addressing the issue of gender justice as including the African Charter on Human and Peoples' Rights specifically Article 18, the Protocol to the African Charter on the Rights of Women, the *Cairo-Arusha Principles on Universal Jurisdiction in Respect of Gross Human Rights Offences: An African Perspective*, that were prepared and adopted under the auspices of Africa Legal Aid.

AFLA's Executive Director encouraged advocates of gender justice to utilise the new African Court on Human and People's Rights and highlighted the broad advisory mandate of the Court as entailing great potential to enable the court render advisory opinions, which could serve as guiding principles on thematic issues relating to gender equality and violations of the rights of women. Ms. Ankumah also responded to Prof. Sidibe's question on the definition of justice. She quoted a definition offered at the AFLA convened conference on *The Interface Between Peace and international Criminal Justice in Africa* by Nsonguro Undumbana that Justice is giving everyone their due, and made reference to a comment made by Justice Sophia Akuffo (Judge of the new African Court on Human and People's Rights Justice and the Supreme Court of Ghana) at the same conference that delivering justice is a happy medium that we should be looking for, and particularly we should not lose sight of the position of the victim.

Evelyn Ankumah called for Africa and its people to be seen as participants, not targets of international justice. She maintained that the fact that currently all the cases being dealt with by the ICC originate from Africa amidst many international crimes being committed in other parts of the world is not a good sign. She illustrated the origins of the temptation to conclude that there is a selective tendency in international prosecutions with the example of Belgium, which had far reaching universal jurisdiction laws that were used to prosecute and convict Africans, but were later abolished when Belgium attempted to use them against government officials from influential and powerful states. She warned of the danger of the ICC being used by the UN Security Council and African rulers for political reasons. At that point Ms. Ankumah elaborated what she means by Africa taking ownership of the legacy of the ICTR, and the development of the ICC. That it is the effort to integrate African perspectives in the development of the ICC. She maintained that Africa's contribution should not be limited to the disproportionately high number of cases originating from the African continent.

In her concluding remarks, Evelyn Ankumah highlighted the need to expand the list of gender crimes to include those that are of real and practical significance to Africa including economic crimes. She also called for the need to establish liability of multinational corporations and their officials for their roles in supplying weapons in conflict situations hence fuelling gender crimes.

*Ms. Agneta Johansson*

Ms. Agneta Johansson shared her thoughts inspired by two conferences in Liberia and South Africa, organised by the "*Partners for Gender Justice*", an informal network of national stakeholders, states, NGOs, part of the UN family, international organisations and academics that her organisation had been involved in. First, she noted that the concept of gender justice is quite broad but the Partners for Gender Justice has narrowed its focus down to "women's participation in and access to the justice sector". She emphasised the importance of looking at women as victims and women as actors as a way of expressing women's participation in and access to the justice sector. She noted that particular for Africa, the predominant picture is that of women as victims, evident in all major conflicts.

Ms. Johanson highlighted the new generation of African leaders including Liberia's first elected woman president, Rwanda's 49% women participation in parliament, several female judicial officers, and government positions' holders. She was particularly impressed by the Liberian women involvement in the peace process, leading the Mano River Women Peace Network. She called for further local, regional and international support of women in these positions by empowering them with tools and technical training necessary for them to perform their duties effectively so that they can make a qualitative difference. She further observed that women in power also act as mentors and pave the way forward for future leaders and for gender equality. Ms. Johanson called for a consolidated effort at the regional level, and the forging of a common vision for gender justice in Africa with common terms and harmonious legislation that address these issues. She called for more effective utilisation of existing mechanisms in Africa. In addition, she maintained that the role of the United Nations was singled out as critical to advance gender justice, especially in post conflict and transitional situations, to encourage, promote, and support women's participation in the judicial sector. In her conclusion, Agneta Johansson called for the support and strengthening of the justice systems in African countries in order to achieve gender justice. She maintained that the

content of women's rights should not be compromised and should be uniform throughout the world.

### *Floor Discussion*

Dr. Kwakwa opened the floor for contributions. The first floor contributor was Lisa Gormley of Amnesty International. She emphasised the need for attitudinal change upon expressing the negating impact of attitudes by curtailing women from approaching the international justice systems. She further added that it is important to encourage men to share the women's struggle.

The second contribution was from Professor Sidibe who called for a paragraph from the participants of the colloquium, defining gender justice.

This was followed by Ms. Nowjoreer, who informed participants of the Open Society Initiative for East Africa's programs of among others bringing the education on international criminal law home and empowering legal scholars to begin getting engaged more closely; sponsor speakers to conduct continuing legal education courses in law schools; establish a Centre for Research on international justice in Africa to be based in Arusha and instigate discussions around international justice for Africa. At that point, she also raised the issue of the ICTR archives, which are intended to be housed at The Hague. She expressed her support to the idea of the archives being accessible to Africans, and are therefore better kept at Arusha. This view was supported by H.E. Adama Dieng.

Ms. Carine Bapita highlighted the difficulties in accessing the ICC. She mainly identified the complexity of procedures and resource constraints as major hindrances.

Another contribution came from Ulrik Splicid of the Danish Institute for Human Rights. He notified participants that the Institute was running a project on access to justice in Africa. One of the integral components is community mediation. In addition, the Danish Institute is working on enhancing the capacity of village mediators to be able to dispense justice, in a bid to reach out and link traditional justice sectors to formal ones.

Judge Mlambo stressed the significance of amicus briefs, in helping judges understand issues further. This, in his view, is a direct way of instigating attitudinal change.

Ms. Katy Glasgow of the Institute for War and Peace Reporting informed participants that they were working on a training manual for journalists on how to report issues on crimes. She called for suggestions to incorporate.

### **Session III: The Future of Gender Justice: The Work of the ICC and other Bodies**

The panellist for this session were: Judge Florence Mumba, Supreme Court of Zambia, Former Judge, ICTY (chair), Ms. Brigid Inder, Executive Director, Women's Initiatives for Gender Justice (presenter), Gloria Atiba Davis, Head of Gender and Children's Unit, ICC, (presenter) and Prof. Shadrack B.O. Gutto, Director, Centre for African Renaissance Studies (CARS), University of South Africa (UNISA) (discussant).

*Ms. Brigid Inder*

Ms. Inder noted that the jurisprudence of the ICTR has brought forward many issues and its work has been historic and groundbreaking. *Akayesu* reflects the experience of women victims/survivors of gender-based crimes and most accurately captures the power dynamics, meaning and purpose of rape in armed conflict. *Akayesu*, Ms. Inder concluded, gave criminal law another understanding of rape and sexualized violence. Ms. Inder also highlighted the significance of the ICTR in appointing nationals from African states to lead and administer the process of justice and accountability. She compared this with the International Criminal Court (ICC), and observed that neither of the organs of the ICC nor its related bodies is led by an African, despite Africa being the region with the largest number of State Parties to the Rome Statute. However, on analysing the gender composition of staff of both bodies, Ms. Brigid Inder accorded a better ranking to the ICC as having 30% of its organs being led by women, compared with none at the ICTR, 44% of the ICC judges being women, compared to 28% at the ICTR. Ms. Inder further highlighted the significance of the staff profile of the court as being for purposes of equality and representation, and building a competent institution capable of delivering gender inclusive justice.

Ms. Inder noted that despite the millions of women ‘victims’ of gender-based crimes in war, there have only been around forty cases with decisions convicting perpetrators of these crimes, and almost all of this jurisprudence was produced in the last fifteen years by the ad hoc tribunals and Special Court for Sierra Leone and the Special unit of East Timor. She further opined that there has been a tendency to regard sexual crimes as ‘women’s issues’ or ‘women’s crimes’ and hence being taken less seriously and criticized the tendency to regard sexual violence as a ‘women’s crime’. Ms. Inder added that to prosecute gender-based crimes effectively, there needs to be an understanding of the underlying, pre-existing conditions of gender inequality which provide the context for violence against women, including during armed conflict. Effective prosecution of gender based crimes is only possible when an analysis of gender discrimination and violence against women is applied.

Ms. Inder informed the audience of her organisation’s work in this field. Specifically, she informed participants that since 2006 the Women’s Initiatives for Gender Justice has conducted four documentation missions in the Democratic Republic of Congo (DRC), which one contributor referred to as ‘the capital of sexual violence.’ In these missions, the organisation interviewed victims and survivors of gender-based crimes in collaboration with local women’s rights and human rights partners.

Ms. Inder expressed disappointment with the performance of the International Criminal Court (ICC). She maintained that the Rome Statute (the statute that establishes the ICC) contains the most advanced articulation of gender based crimes in the history of international criminal law; but the practice of the Court does not yet match the potential given by the statute. According to Ms. Inder, the ICC prosecutions appear to be narrow and cautious. She suggested various strategies which may assist the Office of the Prosecutor to the ICC to meet the future challenges in this area, including the appointment of a gender legal advisor and the development of more effective legal strategies and better case planning. After having commented on the role of other bodies in promoting gender justice and making a case for increasing the number of women acting as mediators in peace talks, Ms. Inder concluded by emphasizing the immediate steps to be taken by the International Criminal Court. These include greater institutional competence and courage regarding the investigation and prosecution of gender based crimes.

*Gloria Atiba Davis*

Ms. Davis opined that the ICTR, the ICTY and the Special Court for Sierra Leone (SCSL) have advanced the jurisprudence on gender justice through their revolutionary case law. The ICTY and ICTR have secured convictions for gender crimes against high, mid, and low-level perpetrators, including military officials and civilians, businessmen, soldiers, and government officials. Just like the preceding speakers, Ms. Atiba made reference to *Akayesu* as the most ground breaking decision. In addition, she referred to the *Celebici case*, in which it was confirmed that males, in addition to females, can be raped, and the *Furundžija case*, which signalled that the rape of a single victim is worthy of prosecution as a war crime and that persons can be held criminally responsible for sex crimes as individuals and as superiors. She concluded that the revolutionary case law of the ICTY and ICTR resulted in greater global awareness of sexual and gender crimes and the need to actually prosecute those crimes alongside other crimes and not only as a by-product. She emphasized the specific needs of victims and witnesses of gender crimes during the investigation and prosecution phases. She cited the phenomenon of “bush wives”, which has become common in conflicts and illustrated it with the Northern Uganda case as well as the notion of “forced marriage”. The latter has been brought in the category of “sexual violence,” and has been prosecuted as a crime against humanity under international law. Ms. Davis called upon the entire international justice system to pursue the high-level perpetrators of these crimes and maintained that the United Nations and other international peace negotiators should insist on measures to address the phenomenon, including reintegration assistance and psychosocial counselling. She illustrated development to this end by the indictment against Charles Taylor.

Ms. Davis referred to the revolutionary nature of provisions of the Rome Statute. She particularly acknowledged the raising of the profile of gender based crimes in international criminal law. She further elaborated on the role of the ICC’s Gender and Children’s Unit, which she heads. This Unit directly advises the Prosecutor, senior management and all Divisions within the Office of the Prosecutor on gender and children’s issues, develop and ensure compliance with standards designed to minimise the impact of investigative activities on victims (including interviewing techniques and appropriate treatment of victims), assist investigators by interviewing particularly vulnerable witnesses under which investigators undergo specialized training to build their knowledge and skills in conducting these sensitive interviews, and provide support and assistance for the victims themselves. She also informed participants of the creation of a Victim and Witness Unit within the Registry to provide protective measures and security arrangements, counseling and other appropriate assistance for witnesses and victims.

Having highlighted developments in UN bodies, including Security Council Resolutions 1325, 1612, 1674 and 1820, Ms. Davis identified a number of ways that organizations can collaborate with the ICC and develop a “mutually beneficial relationship” with a view to encouraging accountability for the commission of gender crimes and ultimately preventing their occurrence. She cited information sharing, and developing a constructive dialogue with the ICC by meeting regularly and sharing expertise and experiences in relation to gender crimes. In her conclusion, Ms. Atiba suggested ways to reduce and eventually end impunity of sexual violence crimes through legal measures, including protection of victims of sexual violence and ensuring them access to justice, the development of the capacity of national

judicial institutions, develop protection systems also for witnesses and NGOs working on international justice, excluding sexual violence crimes from amnesty provisions, systematic monitoring and analysis of sexual violence and putting in place appropriate and enforcing military disciplinary measures.

### *Shadrack Gutto*

Mr. Koffi Afande of the ICTR delivered Prof. Shadrack Gutto's paper on "*Gender Based Crimes and Gross Human Rights Violations and International Criminal Justice System: Influences of Precedent and Comparative Law*". In his paper, Prof. Gutto maintained that as legal institutions, international courts of law, tribunals and hybrid special courts are creatures of binding agreements among states parties and that their jurisdiction, the very reason for their existence, is specifically defined in the founding instruments. He observed that such jurisdiction, without exception, spells out "the sources of law" or "applicable law" for the specific court, which are mainly international treaty law or customary international law. He emphasised the fact that decisions of international criminal tribunals or courts are based mainly on interpreting treaty-based laws and applying these to the specific set of facts of cases they are adjudicating. He noted in this regard that, even though the doctrine of precedent may not be directly applicable to international tribunals as in domestic courts, past authoritative decisions of the same court or courts with comparable jurisdiction may be referred to for guidance. In other words, *comparative jurisprudence* is a major resource to international criminal courts and tribunals. It is upon this premise that Prof. Gutto concluded that it is therefore the expectation that indictments, prosecution and judicial determinations before the ICC will pay due regard to the rich jurisprudence on gender-based crimes from the ICTR and the ICTY and develop the law to higher levels. He precisely termed his expectation to be a creative borrowing and application from the existing jurisprudence. He also added that based on the doctrine of complementarity, there should also be mutual influence of jurisprudence on gender-based crimes between decisions in the ICC and decisions of national courts. He deemed this to be another level of comparative law.

### *Floor Discussion*

The first contribution was from Participant X, who expressed disappointment that the international community had failed to learn. She emphasised the need to listen to victims before making the law and noted that due to many limitations courts can therefore deliver only limited justice.

The second contribution came from Ms. Rosette Muzigo. She testified to the reality of difficulties in getting even expert witnesses to give evidence for fear of their safety. She cited this as a constraint to converting human rights reports into indictments.

Ms. Davis responded to Ms. Muzigo's concerns with the affirmation that there are guidelines on protection of witnesses and intermediaries. The ICC gives prominence to the security of witnesses; activities to that effect are coordinated through the Victims and Witness' Unit. She informed participants that investigators carry out an individual protection assessment before every interview.

Mr. Roland Amoussouga called upon countries with sophisticated technology, to make them available to be used to keep record of scenes of sexual violence, to avoid the interrogatory procedures used to obtain evidence from witnesses.

Ms. Jane Adong Anywar acknowledged the merits of the Rome statute, but wondered whether it can be used retrospectively at the domestic level in Uganda to operate in the case of the Lords Resistance Army. She observed that even if compensation is to be awarded in the case of war victims in Uganda, it is to be given to the clan of victims, not individuals. She also expressed the difficulty in the practicability of the ICC witness protection measures. She noted that with the ties in communities in Northern Uganda, witness' movements can easily be traced. That it would be known to everybody if a witness left the village to The Hague to testify.

Ms. Davis responded to Ms. Jane Adong's query by reaffirming that Uganda is a party to the ICC and is therefore obliged to cooperate with the ICC by executing the warrants of arrest. The ICC statute does not stipulate that compensation has to be paid to the clan. She also added that ICC investigators have a protocol to follow to ensure that witnesses are protected. She revealed that witnesses have already been involved and the strategy has worked.

Mr. Roland Amoussouga noted that the ICC may have to bring the trials down to the people instead of centralising them in The Netherlands. He offered the availability of the ICTR to give expert advice on how to proceed.

#### **Session IV: Final Plenary and Concluding Session**

The panel for the final plenary session consisted of: Judge Fatoumah Diarra (chair), Ms. Pam Spees, Attorney at Law, Federal and State Court, Louisiana State, USA, Member, Advisory Council of the Women's Initiatives for foe Gender Justice and Mr. Roland Amoussouga, Senior Legal Advisor, Chief, External Relations and Strategic Planning Section, and Spokesperson, ICTR. The purpose of the final plenary was to make a recap of the deliberations and map the way forward.

Ms. Spees assumed her duty of giving a recap by first inevitably starting with highlighting the role of the ICTR, which dominated the discussions. She made reference to issues of consent, which were demystified in the landmark decision of Akayesu. She drew the attention of the participants to the emphasis made in the contributions on giving women more empowered roles in transitional processes. Ms. Spees also took stock of the concerns of the audience that justice involves too many concerns, with too much at stake. She reiterated Prof. Chinkin's observation that economic, social and cultural rights are an integral component of gender justice. She appreciated Ms. Patricia Sella's advice that the actors have to bring the victims along in implementing any strategies in order to be effective. She highlighted the importance of mainstreaming gender in the UN system and addressing historical inadequacies in that line.

Mr. Roland Amoussouga took over from Ms. Spees, mainly to map the way forward. He appreciated the solidarity expressed by AFLA, which he considered the only NGO in Africa that has expressed a strong commitment to international justice work. He acknowledged the vulnerability of international tribunals, which, being created by states, can easily be used as diplomatic or political tools. He also noted that it may be very difficult for the ICC to operate independent of the state parties. Mr. Amoussouga expressed support for the proposal of

having women in negotiations because women do better in such initiatives. He gave an example of the ICTR, which had gender balanced staff and maintained that, that could have contributed to its splendid performance. He concluded by urging international civil society to support the work of the ICTR.

Judge Fatoumata Diarra then closed the colloquium with special thanks to the contributors and all participants. She called upon everyone to act upon the concerns shared. She commended AFLA and the ICTR for a job well done.