SEMINAR REPORT1

Carrying Forward the Legacy of the Extraordinary African Chambers in the Habré Trial: An African Solution to an African Problem

Africa Legal Aid (AFLA), in cooperation with the African Union Commission

A Side Event Convened at the 29th Ordinary Session
of the Assembly of Heads of States and
Government of the African Union

Convened by Africa Legal Aid in Cooperation with the African Union Commission

3 July – 4 July 2017
Addis Ababa, Ethiopia
Committee Room 1, Old AU building, Roosevelt Street

Ministry of Foreign Affairs of the Netherlands

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[1] The views expressed in this report are those of the contributors. They do not necessarily reflect the views of AFLA, the AU Commission, or the partners of this seminar.

FEEDBACK AND COMMENTS

J'ai beaucoup appris grâce à vos initiatives louables dans la lutte contre l'impunité. Un grand merci et à bientôt.
Bien cordialement à vous.

Mbacké Fall, Mbacké Fall ancien procureur des Cae, Juge à la Cour suprême du Senegal

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Félicitations pour cette initiative louable et bénéfique pour notre Afrique.
Que Dieu vous prête longue vie et une bonne santé pour poser encore d'autres jalons qui permettront à l'Afrique de changer les comportements et les manières de gérer leurs populations.
Merci encore pour cette belle initiative.

Me Mahamat Hassan Abakar, Chef de La Commission de Vérité Tchadienne

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Nous vous remercions parce que nous avons été honorés à plus d'un titre. Nous nous rendons disponibles pour les prochaines occasions, encore merci.

Clément Abaifouta, Président, Association des Victimes Tchadiennes.

I am grateful that you are doing so much to promote the legacy of the Hissène Habré case!
Best Regards,

Reed Brody, Advocate for Habré's Victims; Commissioner, International Commission of Jurists.

Thanks for the generous hospitality and smooth administration.
I would be delighted to work more with AFLA.
Best wishes,

Judge Sir Howard Morrison, Appeals Division, International Criminal Court (ICC).

I congratulate AFLA for this visionary initiative. Africa must build on the momentum of the laudable contribution to Justice in Africa, highlighted by AFLA in this conference, to move Africa in the direction of independent credible Pan-African Judicial sovereignty. AFLA has demonstrated over the years against all odds that Africa at its best has the capacity to establish credible institutions for the delivery of justice to victims of crimes perpetrated in Africa by Africans and non-Africans. The successful organization of this side event during the AU Summit in Addis Ababa must not only be celebrated but should lead the way for African Professionals, NGOs, Civil Society Organizations and Scholars to take credible and reasonable solutions to African problems to the doorsteps of the AU.

Chief Charles A.Taku, Defence Counsel at the International Criminal Court (ICC).

First of all, thanks for a great meeting and all the work you individually put into it. Your team was great and worked tirelessly to meet our needs. Discussions were very informative. All greatly appreciated!

Renifa Madinga, Researcher, Southern and Eastern African Centre for Women's Law; Former Legal Officer at the International Criminal Tribunal for Rwanda.

Merci et félicitations pour le succès de cette rencontre.

Mama Koité Doumbia, Représentante Afrique au Conseil d'Administration Trust Funds pour les Victimes de la Cour Pénale Internationale ; Présidente de la Plateforme des Femmes leaders du Mali.

Congratulations!!!!
Well done! Africa has its own law luminaries, sufficient to handle any legal proceedings. From now on, any African indicted of any international crime will be tried in Africa.
All the best.

Judge Florence Mumba, Extraordinary Chambers in the Courts of Cambodia, Former Vice President of the International Criminal Tribunal for the Former Yugoslavia.

Thank you for sending me the memories of the AFLA-AU Seminar. To tell you the truth I really got good experience and knowledge from all the presenters. I really want to thank all the presenters and also AFLA, in general and particularly Evelyn, for preparing such a nice seminar and inviting me to attend. THANK YOU ALL AGAIN!!

Ararso Taddese, Lecturer and Associate Dean for Community Service
and University Industrial Linkage, School of Law, Wollega University, Ethiopia.

Thank you all for the successful organization of this highly interesting event and for the support provided! And thank you very much Evelyn for having so clearly mentioned the importance of the archives in your conclusion.

Wishing you all the best!

Vincent Rittener, Attorney at Law; Diplomatic Officer, Section for International Humanitarian Law& International Criminal law, Federal Department of Foreign Affairs of Switzerland.

Sincères remerciements pour m'avoir offert l'opportunité d'assister à vos travaux à Addis Abeba.
Je tiens à vous féliciter pour l'organisation de ce séminaire dont les thèmes évoqués ont suscité une réflexion approfondie sur l'avenir du Droit Pénal International en Afrique.
Les travaux ont été riches en enseignement et les interventions des différents panellistes de haute facture.
Ce fut pour moi un réel plaisir d'y avoir participé et vous assure de ma parfaite disponibilité.
Vous voudrez bien associer à mes remerciements tous les membres de votre dévouée équipe.
Recevez chère Evelyn, l'expression de ma haute et parfaite considération.

Mounir Ballal, Defence Counsel in the Habré Case.

Thank you very much for inviting me to a wonderful event where I met wonderful people with a career that I aspire to have in the future.
I hope we will meet after I finish the one-year LL.M class in Georgetown University. I am sure that the chance is high as I elected many of the courses focusing on international human rights, and international criminal justice.

Thank you once again for your contribution to my thesis, on which I scored excellent.

Muluka Hussen Shifa, Student, Institute for Peace and Security Studies, Addis Ababa, Ethiopia.

Harry and I would like to thank you for everything you did for us during our trip in Addis Ababa. We cannot thank you enough for your hospitality and the support you showed us.
May God bless you and Africa Legal Aid.
It was an absolute pleasure meeting you.

Nomathole Nhlapo, Student, University of Johannesburg.

Merci et félicitations pour avoir organisé cette importante rencontre.
Au plaisir de prendre part à vos futures activités.

Mouhamed Kebe, Managing Partner, Geni&Kebe.

Toutes mes considérations et reconnaissances.
Vous pouvez toujours compter sur ma totale disponibilité.
Mes vives salutations à votre formidable équipe.

Cheick Mohamed Chérif Koné, Procureur Général, Cour Suprême du Mali ; Président, Association Malienne des Procureurs.

Well done on this event. It looks like it was a great success.
I look forward to reading the report when published.
Best wishes,

Allan Ngari, Senior Researcher, Transnational Threats and International Crime Division
Institute for Security Studies, Pretoria.

It was a great honour and pleasure to be part of the event.
Best Regards,

Ottilia Anna Maunganidze, Head of Special Projects, Office of the Executive Director
Institute for Security Studies, Pretoria

Looking forward to reading all about it. The event looks wonderful - congratulations.

Matthew Cannock, Head of International Justice, Amnesty International.

It was a great honour to have been a part of it. Thank you for the invitation. Big congratulations on the success of the event.
I look forward to further events.

Olufemi Elias, Assistant Secretary-General and Registrar, UN Mechanism for International Tribunals.

Congrats on a successful conference. I hope you had a safe trip back to your base. However, let me use this opportunity to say how disappointed I was at Vincent's innuendos and open attack on my person for speaking my mind. I feel pained that the kind of intolerance to opposing views that we see among our political leaders was shamefully demonstrated in what was meant to be a gathering of intellectuals. Strangely, no one stood up for free speech. The AU belongs to all Africans, both those who eulogise it and those like us who sometimes see many inconsistencies and must speak out.

Nsongurua Udombana, Professor of International Law, Babcock University; Chancellor, Ritman University, Nigeria.

Congratulations on a great event!

Carla Ferstman, Director, Redress.

It was indeed a pleasure to have taken part in the AFLA-AU seminar and I have learned a lot. It has also given me new and even stronger dimensions. We would keep on fighting and hopefully we would be victorious.
Because of the seminar, I have been thinking of organizing a similar one here to address some burning issues within The Gambia.
I hope you would be of help.

Fatoumatta Sandeng, Gambian Activist.

Thank you for the opportunity offered and the invitation extended. I truly appreciate it. Thank you to you and your team for the organization of such an event and the wonderful communication.
Thank you again for having me and I look forward to participating in upcoming AFLA events and activities.

Let us keep in touch.

All the best from Addis,

Elshaddai Mesfin Haileyesus, Research Assistant, Policy Dialogues, Support to Research and Training of the African Union in Peace and Security, GIZ/Institute for Peace and Security Studies (IPSS) Addis Ababa University.

Many thanks for the meeting. It was so wonderful to have a bit of a reunion with the Habré crew (even after drafting the amicus brief, I went back for research and interviewed most of them at least once - really good people, all) and also to get my first glimpse of the AU.

I really am so grateful for the learning opportunities you always share with me.
I hope you are finally able to rest a bit, Evelyn. And my sincere thanks to your team.

Warmly,

Kim Thuy Seelinger, JD, Director, Sexual Violence Program, Human Rights Center Lecturer, Berkeley School of Law.

Thank you to you, and the AFLA Team for extending the invitation, and organizing the seminar within the fringes of the 29th AU Summit. I personally found the seminar instructive, addressing some of the most pertinent issues affecting International Criminal Justice and or National Prosecutions. I look forward to reading the report.

Best Regards,

Holo Makwaia, Former Senior Trial Attorney at the ICTR at the International Criminal Tribunal for the Rwanda.

OVERVIEW

DAY 1

July 3, 2017

Opening Session

Chaired by **Professor Mekonnen Haddis**, representing H.E. Kwesi Quartey, Deputy Chairperson of the Commission of the African Union.

Introduction of the Theme of the Seminar by **Evelyn A. Ankumah**, Executive Director, Africa Legal Aid (AFLA): *Carrying Forward the Legacy of the Extraordinary African Chambers in the Habré Trial: An African Solution to an African Problem.*

Keynote Address, by **Professor Robert Dossou**, Former Special Representative of the Chairperson of the African Union Commission for the Establishment of the Extraordinary African Chambers (EAC).

Panel 1, The Hissène Habré Trial: A Victim Centered Approach to Justice

Chaired by **H.E. Judge Sir Howard Morrison**, Appeals Division, International Criminal Court.

Reed Brody, Advocate for Habré's Victims; Commissioner, International Commission of Jurists: *The Campaign to bring Hissène Habré to Justice (a pictorial presentation).*

Mahamat Hassan Abakar, Head of the Chadian Truth Commission: *Truth Seeking and Rehabilitation.*

Floor Discussion.

Panel 2, The Victim in Focus

Chaired by **Keriako Tobiko,** Director of Public Prosecutions, Kenya.

Souleymane Guengueng, Chadian Torture Survivor; Author of 'Prisonnier d' Hissène Habré'
Reflections from Habré's Prisons/Torture Cells

Ginette Ngarbaye, Coordinator, Chadian Victims' Association
Insights of a Female Survivor

Clément Abaifouta, President, Chadian Victims' Association
After the Trial: The Position of Victims/Survivors

Fatoumatta Sandeng, Daughter of an Assassinated Opposition Activist from the Gambia
Lessons for the Gambia

Floor Discussion

Panel 3, Engaging the Youth in International Justice

Chaired by **H.E. Dr. Olufemi Elias**, Assistant Secretary-General and Registrar, UN Mechanism for International Tribunals

Panel Discussion by:

Ali Ouattara, Francophone Coordinator, Coalition for the International Criminal Court (CICC)

Elshaddai Mesfin Haileyesus, Researcher, Institute for Peace and Security Studies (IPSS) Addis Ababa, Ethiopia

Josh Ounsted, Director, Regional Office in Nairobi, Raoul Wallenberg Institute of Human Rights and Humanitarian Law

Getahun Kassa, Lecturer, Centre for Human Rights, Addis Ababa University

Floor Discussion

Networking Reception, hosted by the Royal Netherlands Embassy, Addis Ababa, Ethiopia
Address by **H.E. Bengt Loosdrecht**, *Netherlands Ambassador to Ethiopia*

DAY 2

July 4, 2017

Panel 4, Incorporating Gender and Defence Perspectives in International Criminal Justice

Chaired by **Ottilia Anna Maunganidze**, Head of Special Projects, Office of the Executive Director, Institute of Security Studies, Pretoria

Holo Makwaia, Former Senior Trial Attorney at the International Criminal Tribunal of Rwanda
Lessons from the ICTY and ICTR

Kim Thuy Seelinger, Director, Sexual Violence Program, Human Rights Centre, Lecturer, Berkeley School of Law
Lessons from the Habré Trial.

Mounir Ballal, Defence Counsel in the Habré Case
Defence Perspectives

Floor Discussion

Panel 5, Emerging Trends on Complementarity

Chaired by **Honorable Cheick Mohamed Chérif Koné**, Prosecutor General, Supreme Court of Mali; President, Malian Association of Prosecutors.

Honorable Mbacké Fall, Former Prosecutor of the Extraordinary African Chambers (EAC), Judge at the Supreme Court of Senegal
The Extraordinary African Chambers of Senegal and the Principle of Complementarity under the ICC Statute

Manuel Ventura, Director, The Peace and Justice Initiative, The Hague
Regional Criminal Courts and Complementarity

Justice Elizabeth Nahamya, Former Judge and Deputy President of the International Crimes Division of the High Court of Uganda; Judge of the Residual Special Court of Sierra Leone
Challenges to Complementarity: Amnesties and Other Examples

Floor Discussion

Panel 6, Can There be Justice Without Reparations?

Chaired by **Pieter de Baan**, Executive Director, ICC Trust Fund for Victims

Renifa Madenga, Researcher, Southern and Eastern African Centre for Women's Law; Former Legal Officer at the International Criminal Tribunal for Rwanda
Identifying Gaps in Gender Justice.

Mama Koite Doumbia, Member of the Board of Directors of the ICC Trust Fund for Victims
The ICC Trust Fund for Victims

Carla Ferstman, Director, Redress
Implementing the EAC's Decision on Reparations for Habré's Victims

Floor Discussion

Panel 7, Africa and International Criminal Justice: Prospects and Pitfalls

Chaired by **Professor Shadrack Gutto**, Emeritus Professor, African Renaissance Studies Centre, University of South Africa; Chair, Governing Council of AFLA.

Judge Demba Kandji [2], Supreme Court of Senegal
Reflections from Senegal

Professor Nsongurua Udombana, Professor of International Law, Babcock University, Ogun State, Nigeria; Pro-Chancellor, Ritman University, Akwa Ibom State, Nigeria
Beyond Hissène Habré's Convictio.

[2] Judge Demba Kandji was the Senegalese magistrate who first indicted Habré for torture, crimes against humanity, and barbaric acts on 3rd February 2000.

Evelyn A. Ankumah, Executive Director, Africa Legal Aid
The Future of International Justice in Africa

Closing by **Professor Vincent Nmehielle**, Former AU Legal Counsel.

SUMMARY OF THE SEMINAR

The theme of the seminar was '*Carrying Forward the Legacy of the Extraordinary African Chambers in the Habré Trial: An African Solution to an African Problem*'. The meeting was held in Addis Ababa, Ethiopia from 3 - 4 July 2017.

The seminar was divided into eight themes, which were intensively discussed over the next two days.

The first three panels, *'The Hissène Habré Trial: A Victim Centered Approach to Justice', 'The Victim in Focus' and 'Engaging the Youth in International Justice'* were held on the 3rd of July. At the end of the three panels, participants were treated to a cocktail dinner, courtesy of the Royal Netherlands Embassy.

The following four panels, *'Incorporating Gender and Defence Perspectives in International Criminal Justice', 'Emerging Trends on Complementarity', 'Can there be Justice Without Reparations? and 'Africa and International Criminal Justice: Prospects and Pitfalls' were held on July 4th*.

The list of speakers included: Professor Mekonnen Haddis, Evelyn A. Ankumah, Professor Robert Dossou, H.E. Judge Sir Howard Morrison, Reed Brody, Mahamat Hassan Abakar, Keriako Tobiko, Souleymane Guengueng, Ginette Ngarbaye, Clément Abaifouta, Fatoumatta Sandeng, Dr. Olufemi Elias, Ali Ouattara, Elshaddai Mesfin Haileyesus, Josh Ounsted, Getahun Kassa, Ottilia Anna Maunganidze, Holo Makwaia, Kim Thuy Seelinger, Mounir Ballal, Honorable Cheick Mohamed Chérif Koné, Honorable Mbacké Fall, Manuel Ventura, Justice Elizabeth Nahamya, Pieter de Baan, Renifa Madenga, Mama Koite Doumbia, Carla Ferstman, Professor Shadrack Gutto, Judge Demba Kandji, Professor Nsongurua Udombana and Professor Vincent Nmehielle.

Hereinafter follows a report on each of the above themes, as discussed by the speakers. This seminar was undoubtedly a resounding success, and AFLA looks forward to hosting the next one.

AFLA extends its gratitude to the African Union Commission, the Ministry of Foreign Affairs of the Netherlands, the Federal Department of Foreign Affairs of Switzerland, the Ministry of Foreign Affairs of France, and the Federal Ministry, Republic of Austria for their cooperation and partnership. AFLA also thanks all the seminar participants for their invaluable input and for making the seminar a successful one.

REPORT ON THE SEMINAR

The trial of former Chadian leader, Hissène Habré was a landmark trial in international criminal justice. It is important to study its legacy since it is the first case of universal jurisdiction to be dealt with on the African Continent and the first case in which a former head of state is prosecuted for international crimes by an African court.

DAY 1

July 3, 2017

Opening Ceremony

The opening session was chaired by **Professor Mekonnen Haddis** on behalf of H.E. Kwesi Quartey, the Deputy Chairperson of the AU Commission who welcomed the participants and introduced the theme of the seminar, remarking on the relevance of the Extraordinary African Chambers (EAC). He emphasised that we must focus on what we can learn from the EAC in order not to repeat the same mistakes. He pointed out that it was of utmost importance that Africa's youth are involved in international justice, as the future is in their hands. They must be trained and taught the proper values and principles that are crucial in international justice. He concluded that Africa will and must achieve Justice.

Next, the floor was given to **Evelyn A. Ankumah** who welcomed participants on behalf of AFLA. She thanked the participants for attending the seminar, despite their full schedules, and gave a special thanks to the African Union Commission for their collaboration.

She noted that the seminar on the legacy of the EAC was an important event for two reasons. The first reason is the successful trial of Hissène Habré and what lessons we can learn from it. How can we ensure justice for victims of the most dramatic and unimaginable atrocities? The second reason is that the seminar, a Side Event of the 29th African Heads of State Summit is jointly organised by a political body- the AU Commission, and a Non-Governmental Organization (NGO)- Africa Legal Aid. She said the collaboration is quite unique for it demonstrates that politics, or public society if you will, and civil society, both recognize the significance of discussing criminal justice in a constructive manner.

She opined that the point of divergence did not so much concern the question whether criminal justice should be pursued, but rather who should pursue it and perhaps where or when. She was of the view that it is preferable that justice is done at home or as close to home as possible. Evelyn Ankumah said 'the closer justice is done to home, the greater its legitimacy, what we call *complementarity'*.

She explained her point by using the metaphor of the African driver and the international driver. She said that in Africa we need a car that will drive us to a destination called criminal justice. To ensure that we actually get there we need a driver, preferably an African driver who knows the bumpy roads ahead. A national court knows the legal political map of the country concerned best. But if the national driver is unable or unwilling to drive to the destination called criminal justice we may have to engage an international driver. We know there is an international driver who obtained its license in Rome some 20 years ago and has

acquired quite some experience. Some however have doubts whether the driver knows its way on Africa's long and winding roads and whether that driver will be able to reach the desired destination. In the Habré case, Africa chose an African driver who did an extraordinary job and drove all concerned to a destination called justice. Evelyn Ankumah concluded that we must carefully study the work of the Extraordinary African Chambers and explore what made it so successful.

The next speaker was **Professor Robert Dossou** who delivered the keynote. He began by commending AFLA and the AU Commission for organizing a well-timed seminar. He remarked thatAFLA has held other seminars on the Habré trial. He praised AFLA's initiatives as he considers that this landmark trial is hardly known in Africa, despite its utmost importance. Professor Dossou expressed the view that the Habré trial should be considered as a memorial for all the people on the African Continent that died and those that have suffered physically and emotionally because of their convictions and beliefs.

While reluctant to mention names, because some dictators still denied their torture methods, he went on to mention names of victims from a number of African countries, some of whom he had had personal relationships with.

He then contended that we should draw lessons from these situations and that the Habré trial can especially teach six valuable lessons. Lessons that we ought to remember and that should motivate us to act, he said, because, as Lacordaire once declared, '*Between the past that holds our souvenirs and the future that holds our hopes, there is the present that holds our duties*'.

The *first lesson* to remember from the Habré trial is the strength of citizens, he said. To him, if Chadian citizens had not risen on their own account, we may not have had the trial and therefore this opportunity today. He remarked that citizens have rights and that those rights could indeed cross borders.

The *second lesson* from the Habré trial that he evoked is the importance of Social Media. He advised that technology and the ease of communication have now made the world a global village. Thanks to new means of communication, whenever torture happens, we can simultaneously communicate the information and organize cross border movements to support the victims.

The *third lesson* he mentioned is that when activism reaches a certain threshold, political organs are forced to act and create legal innovations. Professor Dossou observed that the activism in the Hissène Habré case forced the African Union to create the EAC. He however, expressed regret that there seems to be a notion in Africa where African leaders think themselves to be above the law, in stark contrast to the norm *patere legem quam ipse fecisti* - obey the law that you yourself have forged.

He reminisced that when, as the chair of the Commission set out to scout whether the Habré trial could be held in Africa, he presented the Commission’s report to the AU Summit in Banjul, he could see that some states felt uneasy by the report. He worried that they would debate it down. He was lucky, he said, that there was no debate as Senegal endorsed the report. He said if the report had been debated there is no doubt that it would have been defeated.

The *fourth lesson* delivered by the Habré trial is the challenge of obtaining African funding for African legal institutions. Professor Dossou recounted that the Chairperson of the AU gave him a mandate to raise funds for the Habré trial. Thus, he asked several African governments to make a financial contribution to the establishment of the EAC. Even upon several requests to contribute, almost all African states found creative ways not to contribute. He said only the AU, Chad and Senegal made contributions. Those three were the only contributing sources from the African Continent. Most contributors were non-African. Financial contributions were made by the European Union, France, The Netherlands, the United States, Belgium, Germany, and Luxembourg. In addition, Canada, Switzerland, and the International Committee of the Red Cross provided technical support.
He said the behaviour of African governments was quite shameful. Professor Dossou expressed that he almost gave up because of the difficulty to raise funds. However, he did not quit because to him this mission was almost a mission given to him by God, since several of his friends have died because of dictators, but he is still alive.

The *fifth lesson* to be remembered from the EAC is the importance of the training and the creativity of judges and other legal actors. As a legal practitioner for more than half a century, he appreciated that the law is a rich discipline with a lot of principles and exceptions/derogations. He contended that when we fail to confront those principles to a concrete reality, we could fail in allowing the law to achieve the ends it was created to. He therefore commended the judges in the Habré trial for appreciating the concrete necessity of delivering a judgement and for their creative application of the principles of criminal law.

The *sixth and final lesson* that Professor Dossou evoked concerns the implementation of reparation for victims. He said that two kinds of reparations exist, the first one is symbolic/ moral and the second one is financial. On this latter, he expressed concern that the fund created by the AU has not received sufficient funding yet and worried that the same reluctance to fund the EAC might be replicated here.

Professor Dossou is of the view that the battle has been won but the war continues. He closed by citing the not yet ratified Malabo Protocol establishing a criminal jurisdiction on the yet to come into force African Court of Justice and Human Rights as a prime example of a war on ending impunity not over.

Panel 1, The Hissène Habré Trial: A Victim Centred Approach to Justice

The first panel was chaired by **H.E. Judge Sir Howard Morrison** who noted at the outset the importance of "*involving victims in trials in a way that goes beyond sympathy for their affliction"*. He commented on the capacity for patience and dignity that victims of horrible crimes mustered in their quest for justice; qualities that, he opined, made them worthier of justice.

He applauded criminal justice mechanisms that have enabled victims of atrocious crimes to be at the centre of justice. He remarked that the active participation of victims in criminal trials is rather recent compared to the more settled practice where a victims' participation barely went beyond an impact statement whose weight was at a judge's discretion. He also noted the inherent challenge that justice mechanisms must face when coordinating the participation of thousands of victims and ensuring their adequate representation. For this, he lauded the

practice of the ICC for its involvement of victims in a core context, a practice that is being used as a model in other jurisdictions.

Judge Morrison then gave the floor to **Reed Brody** to make his presentation. Reed Brody emphasized that his goal was to show participants that what has been done for the Hissène Habré trial, can also be done in other situations. He declared that "*if we want to promote the legacy of the EAC, we must organize seminars on it like AFLA does and publish books about it"*.

He started his presentation by giving an **overview of the case**, highlighting the role that victims including those present at the Seminar: Clément Abaifouta, Souleymane Guengueng and Ginette Ngarbaye had played in bringing Habré to justice. He emphasized that this case was a story of victims as protagonists and architects. He said one of their main strategies was to put the victims in the centre; to focus on their stories; and to provide training for Victim Associations to advocate for their own cause.

He then explained the background of the case.

Hissène Habré was the President of Chad in the 90s. Habré ruled as a dictator, he tortured and killed thousands of people in a prison called 'la piscine' - the swimming pool, until he was overthrown by his Military Commander and fled to Senegal.

In the wake of his removal, a Truth Commission was set up in Chad to investigate the alleged violations; but not much ensued from the findings of the Commission. Serendipitously however, around this time, the world had just witnessed one of the major turning points for universal jurisdiction. Augusto Pinochet, a former head of state, had recently been arrested in London for the crimes that he had committed in Chile and had been indicted for in Spain. Up until this point, the arrest of a former head of state was entirely unprecedented. Emboldened by this, Chadian activists sought out the assistance of Human Rights Watch, seeking the same for Hissène Habré.

In January 2000, Human Rights Watch assisted victims in Dakar to file a complaint under the Torture Convention leading to the indictment of Mr Habré. However, as Senegal had not domesticated the Convention Against Torture, the proceedings were quickly brought to a halt as the Senegalese Court ruled that it did not have jurisdictional competence to prosecute extraterritorial crimes, which saw to the removal of Judge Demba Kandji, the judge who had issued the decision against Mr Habré, from the case. Brody announced that Judge Kandji was also present at the Seminar.

The case would have fallen apart at this point had it not been for their stumbling upon damning evidence of the torture and extrajudicial killings that had been executed by the Documentation and Security Directorate (DDS), Habré's dreaded political police. From the documents they found, they could see the names of the detainees, the torture methods used and that at least 1208 people had died in the hands of the DDS, some of whom were Senegalese citizens.

Shortly after this, Senegal's President Wade announced that he would be kicking Hissène Habré out of Senegal. Mr. Brody and his team, afraid that Hissène Habré would flee to a country like Saudi-Arabia where he would be out of the reach of justice, knew that they had to double their efforts to ensure his prosecution. Souleymane Guengueng then filed a case

against Senegal at the UN Committee Against Torture (Guengueng v Senegal) who issued an interim request to Senegal to not let Hissène Habré leave the country unless it was by extradition. At the same time, some victims filed a case in Belgium under the Belgium universal jurisdiction law and lobbied their government to waive Habré's immunity so that Belgium could conduct its investigations. The Belgium universal jurisdiction law however fell under backlash when Belgium sought to use it to bring American and Israeli leaders to justice, and was repealed.

Victims' advocacy however did not wane. Guengueng and other victims went on to Belgium and argued that the case should be continued as it already had been started. Furthermore, there were Belgium citizens as plaintiffs in the case. Some Senegalese victims also joined the fight.

Eventually, in 2005, Belgium requested Habré's extradition from Senegal. However, the Senegalese Court ruled that Senegal had no competence to rule on the extradition of a former head of state and referred the issue to the African Union.

The AU established a committee which found that Senegal had the legal obligation to either prosecute or extradite Hissène Habré. The Committee on the Convention Against Torture had also held that Senegal had violated the Convention against Torture and had an obligation to either extradite or prosecute Mr. Habré. Despite this, still nothing happened. But fortunately, the case was kept alive as many organisations began to mobilise in favour of the victims.

Following this failure to act, Belgium took Senegal to the International Court of Justice in Belgium v Senegal where the ICJ ruled that Senegal had to either prosecute or extradite Habré without delay. This decision by the ICJ combined with the election of Macky Sall as Senegal's President in 2012, catalysed the eventual prosecution of Mr Habré. Thanks to President Sall, ***Senegal agreed to amend its national laws to allow for the prosecution to take place, thus leading to the establishment of the Extraordinary African Chambers in Dakar****.*

With a budget of only 8.6 million Euro, the EAC was set up and the trial commenced in July 2013 with the victims filing as civil parties. The investigation of the mass crimes was made doable under that budget thanks to the work that the Truth Commission had already done and the well laid out evidence found in the DDS documents. The case also had a ripple effect back in Chad, where there ensued a major trial of Hissène Habré's accomplices, 21 of whom are now in prison.

Onto the actual trial, Mr Habré refused to recognise the competence of the Court and therefore refused entirely to participate in the proceedings. As he had instructed his lawyers not to appear, the Court had to appoint him lawyers. The trial commenced with testimonies from victims, expert witnesses, doctors of torture victims, document experts who affirmed Habré's handwriting on some of the DDS documents, as well as the results of an investigation conducted by a Belgian judge.

One of the pivotal moments of the trial was when women who had been taken as sex slaves by Habré testified. Mr Brody recalled that one of the women said, 'today I am strong because I am in front of the person who had previously the power, but now it is my turn to talk, my turn to have the power'. Brody said this testimony was cathartic and unveiled the truth on systematic rape. The women's testimonies proved so crucial that it led to the conviction of

Hissène Habré on a count of rape; a count that he had not been charged with. However, it was overturned on appeal on grounds that the trial court could not convict on counts that the accused had not been charged with.

Habré's conviction was confirmed on 7th April 2017 and a 123-million-dollar Trust Fund was set up for victims *with a provision that, in addition to contribution from states, the trust fund for victims could claim against Habré's personal assets.*

Brody proclaimed that never in a trial of mass crimes have the voices of victims been so dominant. He called for the Habré trial to serve as an example on the continent. It shows that victims can be their own advocates and can create the conditions for the trial to happen. He said that "in light of the recent election unseating Yaya Jammeh from Gambia's Presidency, he encouraged Gambians who had suffered under Jammeh's regime to follow the will and tenacity of Chadian victims in demanding for justice. 'Every victim', he closed off by saying, 'can be a Souleymane Guengueng, a Clément Abaifouta or a Ginette Ngarbaye'.

Afterwards, Judge Morrison praised Reed Brody for his presentation and commented on it. In his opinion, the Habré trial shows the importance of regional justice and how much it matters. He then proceeded to introduce Mr Mahamat Hassan Abakar who presented on Truth Seeking and Rehabilitation.

Starting with the part on truth seeking, **Mr. Abakar** said that once the Truth Commission's mandate ended, Mr Abakar and the Commission decided to transform the Commission's Headquarters into a Museum. They put up photos of mass graves, tortured bodies, and lists of people who had been executed, lists of the DDS agents and other government officials that were liable. He deemed that this method really preserved the truth as it allowed people to come in from all over Chad to witness what had really happened. Mr Abakar remembered a woman whose husband had been arrested by the political police and was sent to N'djamena for investigations. She had come to the museum to find out what had happened to her husband as she had spoken to other survivors of the *Piscine* but none of them had seen her husband since they were freed. Mr Abakar told her that it was likely that her husband had been killed. He thought so because he had found that the political police would arrest people and, in guise, tell them that they were sending them to N'djamena for investigations and then march them to their death. Like this woman, many people travelled across Chad to N'djamena to seek the truth.

Mr Abakar went on to give a background of the Truth Commission. He said the Commission was created on the 29th of December 1990 with a mandate to seek the truth on the atrocious crimes that were committed under Habré's rule and to investigate Habré's massive theft of public funds. Initially, the Commission was composed of 12 members comprising magistrates, policemen, members of the judiciary, secretaries, and historians. At the beginning of its work the Commission was not able to achieve a lot. Indeed, some members were not available since they were still working as civil servants beside their role in the Truth Commission. So, while during the first 6 months the Commission did not achieve much, the members received a reinstatement for another term and that's when the work really began.

When the hearings kicked off, initially, there was massive reluctance by Chadians to testify. This was because they were afraid of the repercussions of their testifying against a powerful dictator who still had allies in the country- after all, Hissène Habré had only just been replaced by his own Military Commander.

Moreover, Mr. Abakar recounted that *the main reason not to testify was that people were afraid of testifying against Habré because of his tendency to retaliate against people who turned against him*. Indeed, when Habré was a defence minister, he had tried and failed to overthrow the then government, which forced him to go into exile in Sudan. Following the ousting attempt, he was tried in absentia. However, 2 years later, he came back and killed the judges who had conducted the case against him.

Similarly, people were sceptical of the Truth Commission. They were wary that the Commission was an instrument in the hands of Habré's supporters and feared that it was a tool used to hunt down survivors. The Commission thus had to find creative ways to gain the trust of the public. They did this by enlisting the help of a French Association called Association des Victimes de la Répression en Exil (AVRE) to provide aid for the victims that needed it, which gave the Commission some credibility from their provision of actual and real-time aid that most victims needed. Indeed, when the Truth Commission began its investigations, it found severely ill people that could not afford medical care. Some of the victims could not even walk, they needed to be carried like children. Despite that, the government did not care about them.

The Commission worked for another 14 months before submitting its report. However, during these 14 months, some DDS agents had already been rehabilitated and had therefore refused to appear before the Commission which limited the extent of the Commission's findings. Mr Abakar however commended the President as he was instrumental in facilitating the appearance of about 30 agents before the Commission.

Furthermore, the task of the Commission was quite insurmountable given the time span and geographical scope of the investigation. Indeed, the crimes committed lasted for 8 years and were spread on a territory of over 1 million 280 square kilometres. Along with this, they also lacked an ideal Truth and Reconciliation Commission model to follow. Therefore, they ended up having to rely on their professional competency and the help of Amnesty International to chart a course that the investigations would follow.

Eventually, when the Commission closed, they had heard from about 780 victims, 236 prisoners of war, 30 ex-DDS agents, and 12 high ranking officials of the Habré regime. It is thanks to those hearings that they discovered the mass graves, centres of detention (6 of which were in N'djamena), and places of execution. For example, they found that around 5 or 6 people died every day, and at night, special vehicles would come and pick up some more people for execution. On one occasion, an ex-detainee led them to a site of mass graves, one of which had 30 people in it. On another occasion, a man that had been the only survivor of a massacre that had happened 10 years back led the workers of the Truth Commission to the exact place were the massacre of 149 people had occurred. The workers talked with the people living near the place and learnt that Hissène Habré's officials had not even buried the corpses, leaving them in open air for almost 2 years till the villagers buried them.

Mr Abakar remarked that they were lucky that the DDS did not destroy evidence when they fled. This was one of the most important pieces of evidence as it contained a substantial amount of information from gaolers in detention centres with reports of the violations that had happened on a daily basis. The documents were elaborate, including the names of those detained, those that had died and even the exact dates they had died. In all, if he had to give a minimum, Mr Abakar said that he would estimate that the Habré regime killed at least 40,000 people.

Following their findings, the Truth Commission requested that those that had been found responsible should be tried. But their requests were largely ignored. Mr. Abakar explained that the new regime that had originally ordered the investigation later turned its back on the victims. The new regime claimed in front of the people and the international community that victims and seeking the truth mattered. However, according to Mr Abakar, the new government is not honest and does not care because it uses the same methods that the Habré Regime used. Mr. Abakar said that not even one government official came to congratulate the victims for their victory after the trial. According to him, it is because the government is disturbed by the Habré trial, since it uses the same methods.

However, while the government could have ignored them all they want, they could not drown the international support that the victims were garnering. So eventually, the course of events was that as has been explained by Mr Brody.

Concerning rehabilitation, Mr Abakar stressed that it was extremely important to provide for a plan to rehabilitate the victims after prosecution of perpetrators. This, regrettably, had still not happened for the Chadian victims. He recognised that there was a semblance of psychological victory that victims got from confronting their perpetrators in open court and a sense of ownership of the victory that ensued, but he insisted that that was not enough. There is a need for a government of good faith. It was his opinion that the government had barely done anything to help the victims back in Chad nor was that their priority. To him, the current government only cares about putting its people at the top official positions, it does not care about the victims.

This was in stark contrast with the Chilean Rehabilitation program following the recommendation of the Chilean Truth Commission. This Chilean program granted financial help to the family members of victims, it also made it easy for the victim's children to go to school and it allowed physical and psychological care. Remarkably, unlike the Chilean Commission, the Chadian Truth Commission had actually identified individual culpability yet no action was taken by the government to compensate the victims.
Thus, victims' associations stepped in since the government was inactive. It tried to allow children to go to school and to bring some social relief.

Lastly, Mr Abakar commended the initiative taken by the Moroccan Truth Commission which incorporated within its mandate the indemnification of victims. He maintained that the assets of the perpetrators should have been seized and used to indemnify and rehabilitate victims.

Following Mr. Abakar presentation, **Judge Morirson** stated that it is one thing for a judge to say something and another to put it into act. He recounted that one day he gave a speech in front of teenagers and asked them if someone could tell him what was the role of a judge. A girl of 13 years old replied that it is to allow victory for the truth.

The floor was then given to the participants for questions.

Professor Robert Dossou used that opportunity to share with the participants a legal trick that he used when he drafted the EAC Statute. He included a clause that says that all the reports on the hearings of witnesses and all the investigations reports established in the name of any country were considered acceptable for the trial. Then Professor Dossou reminded the

audience that "*we cannot lead an efficient legal work by only using the law. We must consider the reality, the sociology and the concrete context in which the legal work is being done".* Finally, Professor Dossou said that nowadays there are more people caring about their careers than values. To him, a civil servant must have values and must carry his missions in a way that is respectful of those values even when his superiors act contrary to those values.

Mama Koite also intervened to make a comment. She wondered if it is possible for Africans to want one thing and its contrary, because African people want an African solution to their problems. She says they don't want the involvement of the international community and yet they ask the international community for funds. She said African people must work together and mostly, they should anticipate. She said that their interventions always come too late. The people and citizens must start taking care of the problems. They cannot wait for government assistance because it will never come. She said that African people criticize international interventions but they don't act themselves.

Keriako Tobiko mentioned that despite the publicity of Hissène Habré's trial, still very little is known about it. He put forth that it would then be very difficult to carry forth the lessons without sensitising national jurisdictions about the case and the lessons learnt from it. He proposed trainings to build the capacity of judges, and more importantly, to build the capacity of investigative authorities. He suggested that AFLA and the AU Commission should consider engaging with prosecuting authorities in Africa both in their regional and continental organisations.

Ali Ouattara called on Chadian victims to mobilize themselves to obtain reparations. He also commented that reparation should have been anticipated and not left for the very end. He noted that politicians ought to have been invited to this event as it is important that they heard what was being said here as they are the ones who could turn these opinions and suggestion into concrete legislation.

Justice Elizabeth Nahamya took the floor to ask a question asked whether the cost of prosecuting Hissène Habré had been made cheaper because the bulk of the investigation had already been done by the Truth Commission or because of the different procedures of the civil law system.

Reed Brody agreed that indeed the docket of the Commission's work had taken some financial burden off the Chambers. However, by setting out a lean court structure and pre-defining the budget, the drafters of the EAC Statute, largely thanks to the work of Professor Dossou, set out a budgetary imposed realism on the Court which ensured that the costs of running the trial were kept low.

Lastly, **Professor Shadrack Gutto** ended the floor discussion by commenting on the role of the youth, cautioning that *we should not only think of the youth as the future as that may be disempowering of their capacity in the present. To him, the youth is also the present*. He urged that youth must be regarded as relevant actors in today's affairs and must start getting engaged now.

Professor Gutto also added that the fact that the judges went to investigate the case can surprise Common Law jurists, they could think that this is not a fair trial. Yet, in truth there are checks and balances. He said that there is a need to open our eyes on the so-called opposition of the inquisitorial and adversarial systems. In so many areas of the world the

police can't do credible investigations so it is the duty of independent and impartial judges to do it.

Panel 2, The Victim in Focus

Noting that the presenters of this panel were all victims, the chair of the panel, **Keriako Tobiko** praised them for their strength and resilience. He observed that "*victims are moving increasingly away from being faces behind the crime to taking the front stage of the justice process*". He pointed out that the prominent role of victims in international criminal justice has enabled them to re-tell their story. This has not only served the interest of justice, but has also been psychologically beneficial to the victims who have come out bold to face their perpetrators.

In his presentation, **Souleymane Guengueng** stated that he was speaking on behalf of all Africans who have suffered repression and not just on behalf of Chadian victims. He stressed that we must always remember those who never got justice and must take initiatives to ensure that victims have recourse to justice. *He applauded the international justice practice of trying leaders before international courts, either within or beyond Africa*, and rebutted the argument that trying African leaders outside Africa is racist, on grounds that justice should be prioritised above all else.

He expressed his belief that, outside of the law, we must not accept any restrictions on our god given individual freedoms. Guengueng said he was extremely saddened by the *ultra vires* exercises of power by those in authority for their own personal advancement, in detriment to the society and citizens' wellbeing. Particularly so, when they employed methods such as torture and extrajudicial executions.

Recalling his time in detention, he recounted that when the Chadian authorities arrested him, they never disclosed the reason for which he was arrested nor were there charges nor trial. He was told 'it is the end for you, ask your God to save you'.
It was during his interrogation that he learnt that he had been spied on for years and that he was detained on false accusations. He went on to spend two and a half years in prison where he was tortured and abused. He was the 8th prisoner in a cell called 'Martyrs Camp'. He said his legs gave out within a week of being there. He was later sent to a cell called 'The Cell of the Death' where he spent three months. That cell was so crowded that whenever someone wanted to go to the bathroom in the middle of the night, everyone had to get up to make way. Furthermore, this cell was located next to a Chadian company that produced a lot of noise and smoke which affected his breathing.

He recalled that the prison was more like a lab to test their human endurance to hunger and thirst. He recollected that the prison agents would usually come around every so often to ask in Arabic, 'how many dead?', and when they said any number under 10, the agent would respond that it was not enough for him to order for a car to pick up the corpses. The officer would therefore wait until there were about 10 corpses before picking them up to dump them in a mass grave.

Guengueng said those were dark times and he believes God preserved his life because he had a mission for him. During those moments of extreme despair, Guengueng said that he swore to God that should he come out alive, he would fight tooth and nail for justice.

After he got out, he sought out his fellow detainee colleagues to form a victims' association. The association's objective was not to seek revenge but to seek justice and forgiveness. According to him, "*forgiving is the most powerful healing act that anybody could make"*.

It took a long time before the association took off, and some of its members left as they were offered jobs in the new government. Things started to move along when two American researchers were sent by an organization to investigate the existence of Chadian victims. Thanks to the DDS documents that they had found, they were able to show proof that many people had been systematically tortured under Habré's regime. From this point on, the wheels of justice started turning. This led to the trial of Habré in Senegal, and prosecution of his accomplices in Chad.

Guengueng stated that tolerance is important, that we should be tolerant to people who believe in God and to people who do not believe. In the despair of Habré's cell, many people were saved, thanks to God's protection and thanks to their faith.

He concluded by expressing a deeply felt gratitude to God, to whom he owes his survival. He also thanked Human Rights Watch for its pivotal involvement in the case, the AU for setting up a first-of-its-kind Court with the EAC, Jacqueline Moudeina for coordinating a team of lawyers to represent the victims, and the Senegalese government for having agreed to set up an avenue for justice. He said justice uplifts nations. He informed participants about his foundation, the Souleymane Guengueng Foundation, which he said will forever be committed to the defence of oppressed people all over the world.

It was then the turn of **Ginette Ngarbaye** to take the floor and share with the participants the insights of a female survivor. Ngarbaye recounted her experience as a victim of the Habré administration. She was 4 months pregnant and had gone to the city when she was approached by a group of men asking that she take them to her aunt's house. This was a ploy, she soon found out, as she was taken to a place she didn't know.
She was interrogated about an erstwhile acquaintance and was accused of meeting with opponents of Habré's regime at the acquaintance's house. They then started to torture her and abuse her. They did not stop even after she pleaded with them that she was pregnant. She was electrocuted with electric cables and left to lay unconscious for almost a week.

She informed participants about the squalid and depraved nature of the cell where she was held for 2 years and where she had given birth on the floor. She said there were women who were taken to the desert to serve as sexual slaves for the military and she believed they suffered an even worse fate.

Lastly, she decried the government for inaction since the unseating of Habré. She criticised the current government for failing to act on victim compensation even where it has been established that victims lost everything and were without a means of livelihood, and could not afford basic needs like healthcare. This, she says has perpetuated their suffering as victims, post-Habré.

Next, **Clément Abaifouta** shared his thoughts on the position of victims/survivors after the Habré trial. Abaifouta recounted the harrowing circumstances of his detention under the Habré Regime. He had been arrested in 1985 after he had returned from studies in Germany. It seemed his stay abroad might have triggered jealousy leading to his arrest and detention. He

went on to spend 4 years in prison where his assigned task was to bury the corpses of the dead.

He criticised the current government's inaction when it came to prosecuting perpetrators of the Habré regime. He was especially outraged that "*while some perpetrators had been prosecuted and convicted, their sentences had not been implemented"*. He said that it is shocking to see people who learned how to kill and torture walk freely in the country.

He said that he has been advocating for implementation of these sentences, that they asked to meet the Minister of Justice but unfortunately received no answers.
He marvelled that people that committed such heinous crimes could not get as little as a 2-year conviction imposed, as Chad is now a democratic country which has signed international conventions on human rights.

Clement Abaifouta said justice for Habré's victims was certainly not a concern for the current government. Even after Habré had been ousted, he said, he still feels unsafe in Ndjamena, the capital of Chad and feels constantly followed. He echoed Ginette Ngarbaye's sentiments that they still remained victims under the current regime. He said that it is one thing to have a judgement and quite another to see the fruits of it. He said the victims received a good judgement; yet, they are still suffering.

Abaifouta said he will continue to advocate for the implementation of the judgements in Chad and appealed to all participants to continue the fight for justice, and strive to *"develop an antibiotic against the oppression that has taken over the continent"*. He called on participants to unite and push the dictators out of their positions. He said we would lose if we walk out of the seminar and decide not to change anything. He said we must put our energy into fighting for justice otherwise the same things will continue to happen.

The last speaker on the victims' panel was 22-year old **Fatoumatta Sandeng**, the oldest child of Gambian activist, Solo Sandeng who was beaten to death in 2016 due to his activism against the regime of Yahya Jammeh. Ms. Sandeng gave a background of Gambia's dictatorship, her father's activism and subsequent death, and her own activism following her father's death.

Yahya jammeh became President after over throwing the regime of Gambia's first President, Dawda Kairaba Jawara in a coup in 1994. Jammeh promised that Gambia would not be like it used to be and promised economic freedom to Gambians. However, he soon became a brutal dictator. Jammeh's regime was characterised by arbitrary arrests, torture, enforced disappearances, embezzlement of funds, and summary executions. There were attempts to overthrow Jammeh but it never worked.

Her father, Solo Sandeng was a businessman who decided to become an activist, as he thought that people should not keep quiet against the regime, otherwise things would not change. Solo Sandeng was a peaceful activist who organized protests. Fatoumat Sandeng recounted that after the famous 14th April protests in 2016 which called for electoral reform, her father, Solo Sandeng, perceived as the leader of the protests was arrested and tortured to death by Jammeh's agents. Breaking down, she shared how hard it had been for her and her family to hear about the death of her father; her mother had been 8 months pregnant then.

However, she did not cower under the terror. Instead, this proved to be her turning point and she decided to get actively involved in the campaign against Jammeh. She decided to create the Coalition 2016 because it was time for the fear to go away. She said that they felt like everything should come to an end. People had decided that they wanted to end Jammeh's 22 years dictatorship.

Her activism led to her being exiled to Senegal. Even then, she continued to support underground movements against Jammeh. In particular, she channelled funds from her organisation to support a graffiti campaign against Jammeh. The activists' efforts eventually bore fruit when in December 2016 Gambia voted Jammeh out.

The floor was then given to participants for questions and observations.

Firstly, *Mr Mbacké* Fall expressed concern over the issue of immunity in the Malabo Protocol. He remarked that this would mean that those in power, as they are usually the ones to commit international crimes, would remain protected by the immunity provision, thus avoiding justice. Nonetheless, he advised to do our best to preserve evidences of those international crimes while waiting for the question of immunity to be resolved. He insisted that it is important to train people to investigate and to collect all the evidences that will be needed for justice to be done.

Professor Shadrack Gutto lauded Ms Sandeng's bravery, commenting that she was a demonstration of the youth's role as leaders in today's international justice work. He went on to reiterate that "*impunity should not be tolerated on the African continent"* and chided those advocating for withdrawal from the ICC.
He added that people tend to forget that Belgium committed a holocaust in the Congo. And even though Belgium is seen as one of the pioneers of universal jurisdiction, we should not forget that Belgium changed its universal jurisdiction laws after being threatened by the US to remove the Nato headquarters from the Belgian capital when Belgium tried to start universal jurisdiction cases against US and Israeli officials.

Merhatsidk Mekonnen Abayneh commented that we should devise creative ways to ensure that we don't wait for a president to be unseated before s/he could be prosecuted.

There were recurring observations from the floor on the motivation of the victims to carry on in the face of extreme loss and/or at risk of great harm. Ms *Sandeng* responded by saying that her motivation came from her not wishing to see someone dear taken from someone else. *Souleymane Guengueng* said that his motivation came from his faith. As for *Clément Abaifouta*, he answered that his motivation grew little by little and that seeing so many atrocities gave him the courage to fight.

To another question about how Habré's victims were able to come out of prison, Clément replied that Hissène Habré used to conclude deals. Part of those deals included a clause saying that he would free people coming from the same village or the same family of the person he is concluding a deal with.

To the question of where is Jammeh, Fatoumatta Sandeng replied that some evidences lead them to believe that he is hiding in Equatorial Guinea.

Panel 3, Engaging the Youth in International Justice

During this panel, a video was presented and a discussion among the panellists and the participants followed.

Olufemi Elias, who was the chair of this panel, shared the several ways in which the United Nations Mechanism for International Criminal Tribunals engaged the youth. Among their youth engagement activities, they regularly organise visits of institutions with students coming from all over the world, they host exhibitions, they organise essay competitions, they invite students to use the resources at their premises and regularly disseminate materials on international criminal law and international humanitarian law. He then opened the floor and encouraged the panellists to speak about ways to concretely engage the youth.

Next, **Ali Ouattara** presented on the role of the Coalition for the ICC (CICC). He stated that the scope of the work of the CICC included raising awareness of international criminal justice among the youth. He reiterated Professor Gutto's remark that the youth were indeed important actors in international justice today and suggested that strategies be adopted to mobilize the African youth to support international justice.

The CICC works to strengthen support for the Rome Statute. Their youth component activities include conducting training for the youth to create a culture of peace, as they do in Côte d'Ivoire where he is based, organising student visits to international courts, organising international law competitions in collaboration with education ministries on youth-related topics such as child soldiers. The CICC also has a theatre band and a blog on global justice. It published the Rome Statute under the simplified form of a comic in order to make it accessible and understandable to the youth. The CICC also hold conferences every three months gathering experts who engage with the Ivorian Society. Lastly, Ali Ouattara suggested that international justice should be taught in schools as a core subject like, say, mathematics.

In her presentation, **Elshaddair Mesfin Haileyesus** contended that engaging and investing in the youth is a necessity. The aim of her organization is to work with facts and figures to create a discussion forum. She shared her research findings on age demographics and leadership in Africa. She said the median age in Africa is 19. 60% of the youth were under 25 years of age. In contrast, the average age of an African Head of State is 66.

In the face of these disconcerting proportions, she maintained that "*the youth were indeed an important part of the conversation in leadership and justice today"*. She cautioned that if the status quo were to continue, we would be handing over a continent rife with impunity to our youth. She put forth that to avoid this, "*we ought to raise an informed and engaged youth group that is equipped with the right information on international criminal justice"*.

She emphasised the importance of setting a good leadership example for the youth, citing that 1 in 4 youth are likely to join a terrorist network just out of frustration. So, she advised that we must equip the youth in the right way, making sure they do not lose faith in the system or feel side lined. To do so, we must set up platforms where their voices can be heard.

In his presentation, **Josh Ounsted** put forth that to engage the youth in international justice, we must also look at improving the efficiency of justice mechanisms, the capacity of actors

therein, and the way in which interventions are made. He remarked at the double standards of justice between international tribunals and the practise of domestic criminal courts.

Speaking specifically on Ethiopia, **Getahun Kassa** opined that the problem was that the youth was not adequately taught about Ethiopia's past, especially as it related to its vast violations of human rights in the 1980s during the Red Terror regime. As he recognised the special role of spreading the awareness of that historical past so that a repeat of it would be abated, he thought that the Centre for Human Rights at the University of Addis Ababa should improve on its engagement with the youth, more so as they were in a special place to raise awareness through teaching. He also agreed that an expansion of the curriculum with respect to international justice would contribute to a well-informed youth.

The chair then opened the floor for discussion

Professor Robert Dossou intervened to give three take away to the young people present at the seminar. Firstly, they are the ones who need to decide first what they want. They should not wait for politician to come and decide. Secondly, African problems must be solved by Africans. Thirdly, a 'step by step strategy' should be used when wanting to create a change. Indeed, it is better to start little and then increase gradually.

Professor Udombana wondered why we were focusing on empowering the youth and not on good governance, which he thought was most effective. He gave the example of Nigeria where financial restraints were imposed on those wishing to contest elections. He held that this was a provision that is inherently discriminatory as it preliminarily eliminates the less-affluent candidates, thereby facilitating governance by the rich, and those who likely became rich through corrupt means.

Lastly, **Professor Gutto** made three comments. First, he said that he would like to see an increase in training on documentation of human rights violations. Second, in order to enable a true African solution, we should have African sources of funds for our cases. He advised that African billionaires establish funds and donate. Third, while he believes there should be no hierarchy, it would make sense if we first strengthen our domestic courts before moving to the regional and finally the international courts.

DAY 2

July 4th

Panel 4, Incorporating Gender and Defence Perspectives in International Criminal Justice

Ottilia Anna Maunganidze who chaired this panel, opened by talking about equality of arms and gender balanced justice. She noted at the outset that it was a forgone conclusion a defendant would be convicted by a tribunal bearing its name as in the *Extraordinary African Chambers for the Prosecution of Hissène Habré.* She then gave the floor to Holo Makwaia.

Holo Makwaia spoke about the jurisprudence of the ICTR, sharing lessons we could learn from it. She commended the ad hoc tribunals of the Former Yugoslavia and Rwanda for having been at the forefront in including rape and gender-based-violence in international criminal justice jurisprudence.

'A lot was achieved at the ICTY', she asserted, and for the most part, it was a successful tribunal because it integrated a gender perspective in its investigation and prosecution stages. She said a crucial turn in international criminal law happened at the ICTR when they accepted an amendment of charges against Akayesu to include rape. This became a pioneering jurisprudence on the prosecution of rape as an international crime and, more so, included command responsibility therein.

Holo Makwaia added that along with the jurisprudence, another lesson to take from ad hoc tribunals was the importance of a gender-balanced team. She asked participants to debunk the myth that because gender-based-crimes victims are usually female, they would automatically want female lawyers. Excluding men in the investigation and prosecution stages of these crimes would eventually be doing victims of gender-based-crimes a disservice. She lauded the practice of the ICTR on insisting on gender-balanced teams at all stages of the trial.

She concluded by stressing the need to use legal tools available to advance cases. She gave an example of legal provisions for witness protection at the ICTR which she emphasised made an enormous contribution in the prosecution of sexual crimes as the assurance of anonymity encouraged victims to testify. The ICTR also employed methods such as camera-only testimonies and use of video link for victims who could not travel to Arusha or did not want to. This method, she added, also served to preserve evidence given the long nature of the trial and given that sometimes their witnesses passed on before the conclusion of trials.

Going back to the issue of witness protection, she lauded the women in the Habré trial who were raped and used as sex slaves for having lifted the veil by given their testimonies in open court. She applauded their willingness to take charge of their narrative. Holo Makwaia pointed out that the 4 women who had been raped in Akayesu had also lifted their veils 20 years after the trial. She said showing the testimonies of these victims who are willing to come forward without any veil, allowed to educate people about rape.

Another lesson that she mentioned concerns witness management and the protection of rape victims. She then mused on the role of mystery in justice and wondered whether it defeated the purpose of justice. Even so, she acknowledged the social stigma that crimes like rape carried and emphasised on the centrality of protection of the victim’s privacy.

Kim Thuy Seelinger's presentation followed. She spoke about the prosecution of gender-based crimes in the Habré trial and the lessons to be learned from them. She remarked that Habré had indeed not been charged with sexual violence at all, even though there had been multiple evidence of sexual violence and sexual slavery by Hissène Habré and his agents in the findings of the Truth Commission and the Court.

The prosecution did not include sexual violence in itself in the charges but bits of sexual violence offences were found in the general category of torture and crimes against humanity. Concerns increased during the trial when numerous victims came forward and described in detail the sexual violence they had been subjected to. They testified on their lived realities of rape and sexual violence, and for some, on their transfer to the dessert to serve as sex slaves

for the military. Witness testimonies, especially Khadidja Hassan Zidane, also brought into the limelight the culpability of Hissène Habré himself for rape.

The combination of evidence including expert reports, and doctor's testimonies buttressed the enormity of sexual violations. Sex had been used in different ways, as a mode of transaction (albeit survival), sex as torture, and sex as a means of slavery. There had also been conceptions and deliveries in detention due to sexual violence. But even in the face of clear evidence of sexual violence, the prosecution could not modify the charges during the trial to integrate sexual violence. It was at this point that Seelinger's Human Rights Centre at the Berkeley University School of Law got involved. They wrote an *amicus brief* on how to amend charges and prosecute Habré for rape and sexual violence. She was not sure what exactly happened with the brief, as she did not hear back from the Court on it. However, it was picked up and published by the Guardian newspaper. If the judges had not seen it when she sent it to the Court, they must have seen it in the Guardian newspaper, and perhaps influenced their decision, because when the judgement was handed down, Hissène Habré had personally been convicted for rape as a physical perpetrator.

This decision was however appealed. In April 2017, the appeal chamber ultimately upheld the rest of the judgement but acquitted Hissène Habré on the conviction of direct rape on grounds that it had not been in the original indictment. However, Hissene Habré's life imprisonment was left untouched.

Ms. Seelinger commended the effort of the trial chamber in at least recognising the culpability of Habré in the rape of Ms. Zidane and other women, but lamented that an important instance had been lost where a former president had been convicted for physical rape.

Kim Thuy Seelinger concluded by commenting on the *delicate nature of prosecuting sexual crimes especially since it involves asking victims to recount a painful memory*. She asserted that while we must not push the victim to disclose unless they feel comfortable to, sometimes the window of opportunity for their disclosure closes. She contemplated whether this should affect the balance between the rights of the accused versus the rights of the victim to give her testimony whenever she felt most comfortable. In Zidane's case it was not until the very last minute that she decided to testify against Habré for rape. Seelinger wondered whether this incredible courage on her part was eventually lost as it came too late. She suggested then that our systems should be guided by the practice of the ICTR and ICTY on the prosecution of gender and sexual based violence, and more so, that lawyers must explain to victims how the system works so the victims know at which point the window of opportunity to disclose information closes.

Mounir Ballal took the floor to present on Defence perspectives. At the outset Ballal noted that he would be speaking on behalf of all the appointed defence counsels for Hissène Habré. He asserted that as a civilised society we must uphold the principles of fair and impartial trial no matter the nature of crimes committed. As Habré's defence counsel, he went on to point out the several ways he thought the trial fell short of upholding the principles of fair trial for Habré.

He said when they were appointed as counsels for Habre, they had only 45 days to read through 25,000 pages of submissions and prepare their defence. This was in contrast to the prosecution who had had years of work done for them, both by the Truth Commission and other international judicial mechanisms that had heard the case in some capacity. As the time

limit imposed was due to budgetary restrictions, he put forth that "*financial constraints had also affected the full execution of the rights of the accused"*. Accordingly, he felt that such a stringent time limit was a blatant violation of the principle of procedural fairness, a principle that should be respected in every trial, more so in a trial where there are allegations of massive international crimes. He emphasized the centrality of procedural fairness in international law, pointing out that the Rules of Evidence and Procedure was a central work in the ICC's body of regulations.

Citing references from the ICC Rules of Evidence and Procedure, he mentioned that unlike the Statute of the EAC, the ICC rules of Evidence and Procedure mentioned the rights of the accused all the time. On the contrary, the EAC Statute contained only 37 articles, barely mentioning the rights of the accused. The Statute also said that Senegalese criminal laws are to be applied for the questions that are not solved by the Statute. He reckoned that the drafters did not anticipate that there would arise procedural shortcomings in the actual trial and that those procedural questions would be then solved by Senegalese criminal law and not international law. To him, the rules of procedure and evidence, as well as the rights of the defence were not the preoccupation of the drafters of the Statute.

Ballal said after the Court appointed him and his team to be Habré's defence counsels, the trial began and, as stipulated in the EAC Statute, the pre-trial chamber was dissolved. This however meant that the defence was never involved in pre-trial investigations of the case. He countered the argument that it was inherently the defence's fault as Habré's former counsel had ignored notification of proceedings making it necessary for the trial to continue ex parte. To this, he reiterated the importance of the rights of the accused and stated that the pre-trial chamber ought to have taken all reasonable steps to ensure the accused was represented in whatever capacity. Indeed it is recognized practice for an international tribunal to sometimes appoint *amicus* to file on behalf of an uncooperative defendant. This made the *Habré trial, to the best of his knowledge, the first case to go on trial based solely on the evidence of the prosecution*. This, he said was appalling.

Mounir Ballal expressed the view that the defence was not inhuman and they could indeed see the undeniable evidence of Habré's atrocities. Even then, what makes us different from perpetrators of heinous crimes is that we are guided by the rule of law, which directs us to extend a presumption of innocence and subsequently a fair trial no matter who the accused is nor the nature of the crimes.

In addition to this initial shortcoming, Mr Ballal said that during the trial, the defence's reach was curtailed because Habré refused to acknowledge them as his counsels. This put them in a tough position where they had to defend someone who scoffed at their efforts and refused to cooperate with them. He said Habré never once talked to the defence counsel- not even to respond to their morning greetings. The only time Habre addressed them was when they were appointed, and even then, he only gave them a chiding remark by saying "What are you doing here you gang of mercenaries? You should not be here".

Mounir Ballal also evoked another example to show how the principle of fairness in the trial was violated. The reading of the judgement did not allow the use of the right to appeal within 15 days in its full extent. There was also a breach of the principle of fairness because the entire judgement should have been immediately made public and available at the registrar. However, it was only available two months after.

Moreover, Mr Ballal said that the defence counsel was frustrated because they would prepare their pleas and inquiries carefully but these would always be rejected. The few times they could give a document to the Court, the Court would either not answer them or it would cast aside the document. He said the Court only answered to one document.

He also added that the EAC was almost entirely composed of Senegalese judges. (The President of the trial Chamber was from Burkina Faso). He said the choice was made for budgetary reasons. In his view, this impugned on the EAC's credibility as an international justice mechanism.

On the conviction of Habré on the count of rape, Mr Ballal applauded the Appeals Chamber for upholding the rule of law and casting aside the conviction on grounds of procedural unfairness.

In conclusion, he reiterated that *a "balance of the rights of the parties must be considered by the drafters of future statutes of temporary courts"*. As such, the EAC Statute should be revised to include a comprehensive provision on the rights of the accused. If we are truly determined to end impunity, he said, we must also demonstrate the capacity to stick by the principles of fair trial no matter what.

Following Mr Ballal presentation, the floor was given to participants for comments and questions.

Mr Abayneh addressed his question to Mr Ballal, asking whether, with only 45 days and 25,000 pages of documents to go through, he felt he was able to mount a fair defence for Habré. Mr Ballal responded that given the imposed time limitation, he did his best and believes that they managed to fulfil their duty as appointed counsel. However, he maintained that time limitations should not be imposed on ad hoc tribunals.

Mama Koite asked Mounir Ballal why he accepted to represent Habré. She then addressed a comment to Ms Makwaia stressing the importance of protecting victims of rape by using veil during their testimonies. She stressed that to derogate from that standard would be doing the victims more harm than good. Mr Ballal responded to Ms Koite's question saying that according to Senegalese law, a lawyer can only refuse an appointment if he has a compelling reason; otherwise he would face a disciplinary sanction. To him and his colleagues, there was no valid reason to refuse to be appointed, thus if they refused, they would have faced disciplinary sanction. He remarked that Habré was not his client but someone accused that he was obliged to represent.

Mahamat Hassan contributed by saying that rape in the Chadian society is taboo. That is why to him, the testimony of Kadidja Hassan Zidane is a landmark one. She is a mother and grandmother and she courageously spoke about that taboo topic.

Ottilia Anna Maunganidze asked Mounir Ballal whether there could ever be enough time to mount the best defence. She also asked whether obtaining certain testimonies from victims could go beyond the law. She expressed that in giving victims a voice, we must allow them to not just be interrogated, but to be seen and listened to.

Next, noting the absence of the speaker assigned to speak on the Malabo Protocol, *Dr. Japhet Biegon* of Amnesty International shared that the Malabo Protocol was a very progressive tool

in its provision on gender-based justice. It followed the direction of the *Akayesu* case in this regard. As well, it not only covered international crimes but also multinational crimes and provided a framework for gender justice in its structure.

Panel 5, Emerging Trends on Complementarity

This panel was chaired by **Cheick Mohamed Cherif Koné** who emphasised that a "*Head of State is not above the law and if he were to break the law he should be held liable for it"*. He lauded Senegal for setting an example by agreeing to prosecute Habré. He also lauded AFLA for setting up a forum where we can take advantage of the progresses made by the EAC. He opened the floor by quipping that justice is not delivered just for victims but for the benefit of everyone and assured that recommendations from this forum would go a long way in ensuring accountability on the continent.

Mbacké Fall was first to present. He informed participants that in truth, The EAC is not an ad hoc jurisdiction because it is integrated in the Senegalese judicial system. He said the EAC was a mechanism of complementarity. He noted that numerous international Conventions imposed a duty on member states to prosecute [international] crimes committed within their territories. The establishment of the EAC was therefore a complimentary structure as it came in to assist Chad to prosecute Habré.

Mr. Fall further noted that the EAC was guided by the principle of *aut dedere aut judicare* where states have a legal obligation under international law to prosecute persons who commit serious international crimes where no other state has requested extradition. This principle as set out in the Convention Against Torture guided the formation of the EAC and applies in two instances: where the crime was committed on the territory of the prosecuting state, or where it was committed on another territory but the accused is in the territory of the pertinent state. Hissène Habré's prosecution by the EAC in Senegal fell under the latter scenario.

He also remarked that there is a possibility to ask for help in order to fulfil the *aut dedere aut judicare* obligation. But then he wondered, in that case, who should be paying?
Mr Fall concluded by saying that in any case, the financial question should not be an excuse to remain inactive and escape the *aut dedere aut judicare* obligation.

On the question of the rights of the accused, Mr Fall insisted that these had been observed. He contended that when Mr Habré chose not to engage with the trial process, the EAC respected his right to remain silent. He insisted that Habré was guaranteed an impartial and independent bench and accorded a fair trial with all the ensuing characteristics: presumption of innocence, due process, independent judges from the African Continent, the onus of proof was on the prosecution, he had the right to present witnesses, and he had the right to request that his witnesses be protected during and after trial. Mr Fall therefore believed that his choosing to not cooperate was simply a tactic.

The next speaker was **Manuel Ventura**. Mr Ventura presented on regional criminal courts and complementarity. He noted that the Rome Statute only provided for a complementarity structure between itself and domestic courts and remained silent on regional mechanisms.

Ventura said that perhaps we could argue that the EAC established within the courts of Senegal is a regional court rather than a national court in Senegal. He said it is more of a

continental/African regional court. Indeed, the EAC prosecuted crimes 'in the name of Africa' and according to him the simple fact that it is called Extraordinary African Chambers supports this point.

He then proceeded to analyse the complementarity structure between regional courts and the ICC. He considered the yet to be established African Court of Justice and Human Rights as the ultimate regional court from its *ratione materiae*. He however wondered what the practice would be where both this court and the ICC found that they had both *ratione materiae* and *ratione personae* jurisdiction over the same conduct. The issue that arises, he said, comes from the wording of Art. 17(1)(a)[3] and paragraph 10[4] of the preamble of the Rome Statute on admissibility. These provisions were not clear on how a reginal court fits in the complementarity structure. For example, would a state be considered unwilling and unable where a regional court is investigating the same conduct and the same individual?

He however noted that the expansion of this complementarity can be achieved by the interpretation of article 10[5] of the Rome Statute in accordance with the principle of *pacta sunt servanda*.

On the complementarity between national and regional courts, he started by explaining the origin of the mandate of regional courts. He rationalised that this was a result of states giving a small mandate of their jurisdiction to a regional entity, thereby mandating regional organisations to act for states in a collective and organised manner. So, where a regional entity prosecutes an individual, it should be seen as the prosecution of said individual via the mandate of the responsible state. This would then be reasonable and consistent with the object and purpose of the complementarity of the ICC as it would establish that regional and national courts are on the same level.

However, in conclusion, he wondered what criteria would then be used to determine whether a regional court was unwilling or unable- as was the standard of complementarity set in the Rome Statute.

Lastly, **Justice Elizabeth Nahamya** spoke on the challenges to complementarity. She started by introducing the Amnesty act passed in Uganda in 2002 and spoke of its imposed barriers to holding those responsible for international crimes in Uganda. The Amnesty Act was intended to be operational for 6 months and provided unconditional amnesty for whoever renounced the rebellion led by the LRA in Uganda. Legal challenges arose from this act on grounds that it was unconstitutional, discriminatory, and limiting of the powers of the Director of Public Prosecutions (DPP).

She shared the landmark trial of Thomas Kwoyelo, a former mid-level commander of the LRA, who was captured in the DRC by the Uganda People's Defence Forces (UPDF) in 2008, whose decision clarified the place of the Act vis-à- vis the pursuit of accountability. While in custody, Mr Kwoyelo had made a declaration denouncing the rebellion and sought

[3] Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where: (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

[4] Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions.

[5] Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

amnesty. In 2010, the Amnesty Commission forwarded his application for amnesty to the Ugandan DPP for consideration but the DPP instead charged Kwoyelo under the Fourth Geneva Conventions Act thus initiating his trial before the International Crimes division (ICD) of the High Court.

When he appealed this decision on grounds of discrimination as other senior rebellion leaders had been granted amnesty, the Supreme Court of Uganda clarified that the amnesty act only covered crimes that were committed in furtherance of the rebellion and not for *crimes committed against innocent civilians therefore referring his case back to the ICD. The* Supreme Court held that it was immaterial that other persons with similar circumstances had been granted amnesty because each case must be decided on its own merits.

On the issue of unconstitutionality, the Supreme Court upheld the independence of the DPP stressing that it was his duty to decide whether to proceed with the prosecution of an individual who applied for amnesty.

Justice Nahamya applauded this decision as it upheld individual accountability for crimes against humanity. Even then, she questioned the apparent inconsistencies in the application of the Act.

She concluded by sharing that the ICD was a model complementarity structure which had fashioned itself following international best practices from both common and civil law systems. It provided for a Pre-trial Chamber, had provision on witness protection, provided for reparations for victims, and provided for victim participation in their own standing. By providing for victim representation, the ICD also ensured that victims would always get reparations when there is a conviction, if the DPP withdrew a case it would have led to no award of reparations.

The floor was then given to participants for comments.

Mr Mbacké Fall commented on the legal case of *Belgium v Senegal* saying that even though both countries signed the Convention Against Torture, Senegal did not include universal competence in its domestic law back then.

Then *Mr Ouattara* asked what should be done while waiting for criminal chamber of the African Court to enter into force. He also wondered about the financial implications of complementarity.

Panel 6, Can There be Justice Without Reparations?

Pieter De Baan, the chair of this panel, introduced **Renifa Madenga** to present on 'identifying gaps in gender justice'.

Renifa Madenga emphasized the importance of a gender perspective towards the delivery of justice with particular emphasis on reparations. She suggested that survivors should constantly be consulted and empowered to participate in the justice system. They also need relevant information regarding how the justice system works in order for them to participate in the justice process from an informed position, a position which will enable them to engage

as subjects, not objects, of the process. Ms. Madenga shared some of her work experience, highlighting the importance of appropriately and sensitively empathizing with survivors during the different stages of the justice system, taking into consideration the voices, silences and lived reality of each survivor. She said her research rebutted the assumption that survivors are adequately informed or consulted as they interact with the international criminal justice system. Survivors indicated that the different actors in the justice system failed to explain what was in store for them in a justice system whose provision did not include reparations. Most of them found the process to be an academic exercise analyzing the pain and suffering without addressing their immediate and long term needs, including compensation for the excruciating pain and their meaningless suffering during the genocide.
Madenga recommended a 'deconstruction' of the justice system and approaching it from a practical perspective that recognizes some of the following factors: Survivors, victims and witnesses should not be regarded as a homogenous group with an all size fit solution. For example, she submitted that in issues regarding provisions for their protection, '*we should always ensure that our legal strategies and our policies emanate from the needs, concerns and aspirations of the survivors*'.

Additionally, Madenga underscored the importance of moving beyond the rhetoric and abstract 'sermons' about 'Best Practice Manuals' to concrete implementation of policies relevant to engendering the international justice system. She observed that, as Africa in particular and the world in general are still celebrating some of the 'breakthroughs' made in the Habre case, there is a need to incorporate and implement a gender sensitive regime reflecting an understanding of the needs of survivors of conflict related sexual violence. She pointed out that the disconcerting absence of reparations in the International Criminal Tribunal for Rwanda (ICTR) left survivors of conflict the Rwanda genocide devastated. The majority of the survivor witnesses she interviewed, particularly those who contracted HIV during the genocide, have lost some faith in the ability of the international justice system to propel tangible and practical change in their lives. Voices of survivor witnesses on gender sensitive reparations, their experience, and their lived reality, reveal an important point of reference to the missing link between reality and rhetoric within transitional justice interventions.

Mama Koite Doumbia presented on the ICC Trust Fund for Victims. She said during the adoption of the Rome Statute it was decided that victims should be taken care of since there can't be justice without reparation. The trust Fund was then created. Unlike the Court, the Trust Fund has no budget, its funding comes from donations.

She then proceeded to describe the two mandates of the fund. Firstly, the fund must grant reparation after the Court so decides. Secondly, the fund must assist victims. This assistance goes beyond the trial. Concerning the duty of assistance, the Trust Fund must take actions to provide psychological, physical, and material relief to victims. She informed participants that the Fund works with partners. They have partners in the Democratic Republic of Congo, in Uganda and they are considering the start of a program in Ivory Coast. She also underlined the fact that the fund targets the most vulnerable groups and does not provide support to every victim. There are specific requirements to meet to benefit from the Fund's help.

Lastly, **Ms Ferstman** spoke about the decision on reparations to Habré's victims.
She started by acknowledging the insurmountable task of putting a price on something that was so personal. As the EAC was time strapped, it did not have the time to map out another trial to establish reparations. So, some presumptions had to be made and a system of

categorisation had to be used to establish reparations. She lauded the decision of the Court not to award collective reparations but instead to open to the victims the chance to individually apply for reparations. She also recognised that the most vulnerable victims were usually the ones not in the frontlines.

The chair then opened the floor for discussion.

Mr. Abakar commented on victims' difficulty to get psychological relief on the African Continent.

Mr. Abaifouta noted that it is important to be sure that the victims are satisfied by the kind of reparation that is granted. He emphasized the importance of involving the victims in the reparation process. He also mentioned that some of Habré's victims tried to find relief by finding a place of commemoration and prayer but some officials have taken those places and built their house on it. He also warned about fake victims that give false testimonies in order to receive funds.

Finally, *Ms Holo* asked how we can ensure that imposters are deterred in reparations. She also asked whether there would be a fairer representation of justice if there were more female justices on the bench.

Panel 7, Africa and International Criminal Justice: Prospects and Pitfalls

The last panel of the seminar was chaired by **Professor Shadrack Gutto** who started by introducing **Judge Demba Kandji**, the former magistrate who indicted first indicted Habré in 2000 to share his reflections on international justice with Senegalese lenses.

Judge Kandji started by chiding those Africans that were advocating for withdrawal from the ICC, stating that this was unwarranted. He added that "*while we should continue to criticise the ICC for its shortcomings, such as the deficit of communication and management at the ICC, we should recognise that it is a progress in the fight against impunity"*.

Even then, he supported the notion of giving an African identity to crimes. He therefore supported prosecutions of international crimes at the national and regional levels and called for the strengthening of national and regional courts. He said the ICC is too far and pointed out that whenever someone is suspected and transferred to the ICC he is taken away from his community.

Citing budgetary cuts for the judiciary in Senegal, he acknowledged that our national and regional systems have flaws and we must lead in their reform. 'If we want to build an efficient system', he said, 'we ought to train our personnel and support our judiciaries so that they can deliver justice with the tenacity like that at the international level'.

Professor Udombana presented on 'Beyond Habré's conviction'. He opined that as extraordinary and noble as the EAC was, it cannot be the solution for Africa. This is because they are so many leaders like Hissène Habré in Africa, that we cannot keep setting up a single mechanism to prosecute each one of them each time. Given that many countries have already domesticated relevant conventions (such as the Geneva conventions) and adopted universal jurisdiction provisions in their domestic laws, *"we should better resort to using universal jurisdiction than setting up an ad hoc tribunal every time"*. All we need then is the political

will to do it. Without political will to end impunity, creating legal instruments or ratifying several treaties is useless, he said.

He also reiterated Mr Kandji's appeal to strengthen both the regional and domestic courts in Africa. He pointed out that the Malabo Protocol contains the most intensive and extensive international criminal norms and yet it still lay ineffective. Even if it were sufficiently ratified, it is still dependent on the coming into effect of the African Court of Justice and Human Rights. He added that there is some hypocrisy on the part of the AU, as it adopts progressive Protocols with no intentions of ratifying them.

He concluded by urging participants to reflect on why Africans only want an 'African solution to an African problem' when it comes to impunity, but not when it comes to business or others matters.

Evelyn Ankumah then shared her views on the future of international justice in Africa. She said while the ICC is significant, it was never meant to prosecute every Tom, Dick, and Harry. She emphasized that *the future of international criminal justice in Africa lies in Africa itself*. She said she would not necessarily advocate for the setting up of ad hoc tribunals. She nonetheless is of the view that the Extraordinary African Chambers did an extraordinary job. She said the EAC's archives should be meticulously managed and made accessible.

Then, participants took the floor to share their views.

Ms. Sandeng commended the ECOWAS for coming together to champion Gambia's case against Yaya Jammeh she also shared the view that justice systems in Africa must be strengthened. In this connection, she said during the events in the Gambia in 2016, the called on the Prosecutor of the ICC, a Gambian to do something, but she refused.

Mounir Ballal, in his personal capacity, expressed his apologies if during the trial, his defence hurt anyone. He wanted them to know that that he was obliged to do his appointed duty as defence counsel.

Keriako Tobiko addressed his question to Evelyn Ankumah, quoting her statement that the ICC was never meant to try every Tom, Dick, and Harry. He asked whether her support was for the African Court, and if so, what she thought about the future of the ICC, should it be retained? More specifically he asked her to share her prescription for Africa.
Evelyn Ankumah responded that her prescription for Africa is that justice should be done at home or as close to home as possible. Therefore, national courts should be strengthened. She also favours an effective regional court but has issues with the immunity provision in the Malabo Protocol. When it comes to the ICC, Evelyn Ankumah says she is a long-standing supporter of the mandate and work of the ICC, but it is a Court of last resort.

Ms Seelinger asked whether the EAC, as it comes to a close, could morph into a court solely of universal jurisdiction. She also asked whether a balance between civil and common law practice could be the future of international justice in Africa. To the latter, Mr Kandji responded that we should think outside the box and not limit ourselves to common and civil law practices.

Mr Abayneh commented that as every unit is as strong as its individual links, for the African Court to be strong, the national courts must first be strengthened.

Lastly, *Mr Kandji* shared some ideas. He suggested that the AU should create a common fund for the training of judges and advised that when a country does not want to try a leader who committed international crimes, we should first seek to try that leader in a neighbour African country before considering the ICC.

After the participants gave their final comments, the chair invited Professor ***Vincent Nmehiell****e to give the closing remarks.*

Prof. Nmehielle thanked AFLA for giving him the opportunity to make the closing remarks. While he recognised that the topic of this seminar was an important one, he advised that we must recognise the importance of diplomacy at this level of advocacy and above all recognise the need to maintain a working relation with the African Union should we wish to effect change.

He addressed the criticism of the immunity clause of the Malabo Protocol urging participants to interpret it in accordance with international law and the practical reality of our time. He gave examples of former heads of states who were only prosecuted after their terms ended or were unseated- Hissène Habré being a prime example. He encouraged that we concentrate our efforts instead in democratically unseating heads of states who we wished to see answer for crimes. It was now possible for Gambians to bring Yahya Jammeh to justice, he said.

The reason for sequencing justice like this for heads of states, he said, came from the practical challenges of bringing someone in charge of a state's apparatus to justice. It would be very likely to fail as we have seen in recent practice. Giving Al Bashir as an example, he pointed out that the Sudanese leader has been travelling frequently. Yet, there is still no country willing to arrest and transfer him to the ICC. Professor Nmehielle emphasised the power of post-presidency prosecution and asked participants not take this for a perpetuation of impunity.

On the argument that the immunity clause would be motivation for sitting heads of state to hold on to office, he pointed out that Jammeh thought he'd 'rule for a billion years' and yet Gambians managed to elect him out. He said all it took was for civil society to be creative. Once a head of state suspected of atrocity crimes is out office, then prosecuting authorities are unencumbered to charge them. He observed that for sequencing justice like this, the EAC was the perfect example.

He concluded by saying that we do not have to bank solely on the ICC to prosecute mass atrocities- opining that the ICC has dealt with cases that it was not necessarily created to deal with. He said there was the need to build the capacity of domestic systems so that they can function well enough to deal with these crimes.

At the end of Professor Nmehielle's closing remarks, the chair, Professor Shadrack Gutto thanked the AU Commission for its support and cooperation. He further thanked the Ministry of Foreign Affairs of the Netherlands, the Federal Ministry of Foreign Affairs of Switzerland, the Federal Ministry of Foreign Affairs of Austria, and the Ministry of Foreign Affairs of France for their financial contribution and partnership. Finally, he thanked the presenters for their brilliant presentations, and all participants for the lively discussions that contributed to making the seminar a resounding success.