



Summary Report of the 9th Meeting - Gender-Sensitive Judging in International Criminal Courts (ICC) *Gender Diversity and the Rome Statute System*

On December 6th, 2022, during the 21st Session of the Assembly of States Parties (ASP) to the International Criminal Court (ICC), Africa Legal Aid (AFLA) convened a Side Event entitled *Gender Diversity and the Rome Statute System*. The meeting was held within the context of AFLA's gender mentoring training programme for judges of international courts and tribunals and was co-sponsored by Australia, Uganda, International Gender Champions Den Haag and Africa Legal Aid.

The event was held with simultaneous interpretation in French and English and was well attended by participants in-person and online. In attendance were judges and other officials of international courts and tribunals, representatives of states parties to the ICC, representatives of inter-governmental and international organisations, gender justice advocates, civil society and legal fraternities from around the world.

The event was chaired by **Evelyn A. Ankumah**, Coordinator of the Gender Mentoring Training Programme for Judges and Executive Director of AFLA. The meeting had presentations from three ICC Judges along with the former President of the International Criminal Court Bar Association (ICCBA), the Advocacy Director for Women's Initiatives for Gender Justice, and the Head of Mission of the Australia Embassy in the Hague.

The presenters were:

Judge Piotr Hofmanski, President of the International Criminal Court

Judge Solomy Balungi Bossa, Appeals Chamber, International Criminal Court; Chairperson, Gender Mentoring Training Programme for Judges

Judge Fatoumata Dembele Diarra, Former Judge and First Vice President of the International Criminal Court

Jennifer Naouri, Immediate Past President, International Criminal Court Bar Association (ICCBA)

Alix Vuillemin, Advocacy Director, Women’s Initiatives for Gender Justice

Julie Heckscher, Head of Mission, Australia Embassy, the Hague

As the Chair of the Event, **Evelyn A. Ankumah** opened the meeting by welcoming all participants and acknowledging the presence of the distinguished panelists. She then thanked the governments of Australia, Uganda and International Gender Champions Den Haag for co-sponsoring the event.

Evelyn Ankumah made the proposition in her opening statement that it is time to reflect on the scope of the definition of gender in the ICC Statute and whether it secures equal treatment for all.

Speaking on *The Importance of Gender Diversity in International Criminal Law* **Judge Hofmanski** noted that in his experience gender equality and gender diversity are inextricably linked with impacts on international criminal law as much as the rest of society. He added that gender equality within the ICC has concrete and meaningful influences on the legitimacy and impact of the ICC. He observed that a gender-inclusive workforce within the ICC would result in improvements to the focus of work, appreciation of all staff, diversity more broadly and the external perception of fairness.

Crucially, gender inclusivity would also positively build upon a victim-centered approach to justice with **Judge Hofmanski** observing that women make up a disproportionate number of the victims in ICC cases. He stressed that the ICC must demonstrate a commitment to the promotion of its own declared values of equality and fairness. He informed participants about the ICC’s Strategy on Gender Equality and Workplace Culture,¹ which **Judge Hofmanski** observed, reflects a positive history in the ICC on gender leadership, notwithstanding room to improve, particularly in the gender diversity of senior positions.

Judge Solomy Balungi Bossa addressed the audience on *International Criminal Justice through a Gender-Sensitive Lens*. She highlighted the constraints in rendering international criminal justice through a gender-sensitive lens in view of Article 7.3 and Article 21 of the Rome Statute. She observed that inclusion of a gender definition in the Rome Statute reflects the influence of power relations within society experienced by women as well as LGBTQIA+ persons. She noted the need for an awareness of the persecution within society that may result in a marginalised person being victimised many times, as relevant to international justice. Rape, sexual slavery, and forced pregnancy were highlighted by Judge Bossa in this regard.

¹ Launched on 8th December 2022.

Judge Bossa further called attention to the need for judges to be able to appraise the experiences of victims and incorporate the discrimination of gender and sexual minorities within their judgment, as supported by the Gender Monitoring Programme for Judges.

Judge Fatoumata Dembele Diarra discussed *Interpreting Crimes to Ensure the Protection of all Gender Identities and Sexual Orientations* noting at the outset that women and LGBTQIA+ individuals are made vulnerable by certain societal factors and such contexts should be understood by the courts. She emphasised that whether it be crimes of genocide, crimes against humanity, or war crimes, all provisions are needed to protect all gender identities and sexual orientations just like any other citizens, but with the added perspective that such victims may be already ostracised from society, lack resources to seek justice, or may be in danger of reprisal for seeking justice.

Speaking on *the Principle of Complementarity and Gender Diversity* **Jennifer Naouri** contended that there is a need for what she called active complementarity, not a theoretical complementarity limited to states transposing the Rome Statute into their national legislation. She noted that while this is the crucial first step, there is a need to go further. In this connection, she pointed to the work AFLA does beyond the theoretical level, through training, mentoring and awareness-raising to translate the provisions guaranteed in the Rome Statute into practical reality.

So, what does active complementarity actually mean? **Naouri** asked. She said in concrete terms, there are legal practitioners, judges and lawyers - both defence and prosecutors, who have extensive knowledge on how international law is ultimately implemented. However, the victim doesn't have this knowledge and therefore it is important to guide victims sensitively, through the process, while taking cultural differences into account, avoiding stigmas, taking linguistic specificities into account, and creating an environment of trust.

Naouri explained that navigating the legal system with a victim is an art, an art that legal experts have acquired by going out into the field, meeting victims and developing protocols and methodologies. Investigating in a context of armed conflict is never trivial. Investigating crimes involving gender issues is all the more difficult, and the nature of the ICC is something domestic courts can learn from when it comes to sensitivities such as around sexual offences and the presence of a psychologist, the way questions are asked - open-ended questions, avoiding legal terms and adapting to the witness's pace.

Alix Vuillemin considered *Applicability of Gender-related Provisions of the Rome Statute to Gender Diversity* giving the perspective of an NGO advocate with over ten years of experience in monitoring the work of the International Criminal Court. She proposed that the history of the feminist movement's involvement in the formation of the Rome Statute was a positive contribution to the workings today of the ICC and the reason why gender is emphasised. But given that issues still persist in this field, there is a danger that the inclusion of gender in international criminal

justice may reproduce patriarchal norms. She highlighted the existence of internal biases and the negative impact of stereotypes on the effectiveness of the work of international courts in areas such as sexual abuse, which can put men and women into false abuser and victim dichotomies. This, she asserted, should be watched as gender representation in armed combat, societal norms around sexuality, and the inclusion of gender minorities become mainstream elements of gender equality and gender justice. **Vuillemin** observed that persecution under the Rome Statute includes sexual orientation and gender identity, and the ICC Prosecutor's Policy on the Crime of Gender Persecution summarises that the societal construction of gender is what underlines the understanding of gender persecution within the workings of the ICC.

Julie Heckscher presented her *Concluding Remarks on the Protection of Gender Diversity* summarising the points raised by the panelists, noting how they overlap with the work of the complementarity focal points, Australia and Uganda, which also include gender and sexual-based offences. She made note of the sustained theme of intersectionality running throughout not only this event but also other events at the 21st Session of the ASP. She underlined the need for the ICC to practice gender diversity to have a richer and better Court as diversity not only helps those involved with the Court better understand crime, victims, and perpetrators but it has profound impacts on perceptions of fairness. She noted that judges have a special responsibility to be attentive to how gender impacts on abuse and access to justice.

Following the panel discussion, the chair opened the floor for an interactive discussion.

- **Niamh Hayes**, representing the Office of the ICC Prosecutor, commented on the overlap of sexual and gender-based violence, non-sexual forms of gender-based violence, and looked at domestic exemplars of gender equality and gender justice.
- **Suzanne Varrall** from the Australian Institute of Human Rights and the University of New South Wales shared her work on an ICC feminist judgment project that re-imagines ICC decisions from a feminist perspective within legal bounds.
- **Salih Mahmoud Osman**, President of the Darfur Bar Association, a former member of parliament and a human rights lawyer remarked that rape as a weapon of war sees women victimised a second time due to patriarchal laws allowing victims to be accused of adultery.
- **Chief Charles A. Taku**, Lead Counsel before international criminal courts spoke about male victims of gender violence. He called on traditional institutions at community levels and national institutions to seek to lead the dialogue and repair societal norms underpinning these acts to deliver an end to such acts. He said a greater critical lens is required if the ICC is to deliver judgments that will end such violence.
- **Mohamed A. Bangura** of the Residual Special Court for Sierra Leone highlighted achievements made in addressing gender-based crimes, the need for exponential change at domestic levels, the role of activists particularly in places where such activism is most dangerous, and the need for international justice systems to support grassroots reform.

- **Emma Osong** an aerospace systems engineer and founder and director of Women for Permanent Peace and Justice, referring to her native Southern Cameroon asked about the threshold and timeline for intervening in war crimes and the use of sexual violence as a tool of war. She said the focus on Ukraine is overshadowing atrocity crimes being committed elsewhere, such as Cameroon.

The panelists then took time to respond to the questions and comments from the floor.

- **Judge Piotr Hofmanski** responded that while timelines of initiating a case are in the hands of the prosecutors, ultimately the ICC cannot respond to all injustices, and that it is first and foremost a responsibility of states. He observed that while the gravity of crimes places a key role in timelines, sadly criminal justice is slow.
- **Judge Solomy Balungi Bossa** explained the process and considerations behind timelines and limitations but highlighted that there is no statute of limitations on international crimes.
- **Niamh Hayes** explained, from the prosecutor's perspective, the challenges in progressing cases. On the question regarding the plight of Southern Cameroonians, she pointed out that Cameroon is not a state party to the ICC and as such there is a higher threshold.
- **Jennifer Naouri** noted that investigations by criminal courts generally occur after the events, so building evidence should happen earlier noting that specific ICC requirements ought to be met. She recognised the high degree of attention being given to the Ukraine situation.
- **Alix Vuillemin** highlighted the various avenues to justice and accountability and the role of civil society.

Evelyn A. Ankumah expressed gratitude to the distinguished presenters for their invaluable presentations and extended her appreciation to all participants for their presence and contribution. She then adjourned the meeting until the next meeting on this and related topics.