



Report 3rd Meeting – Gender Issues Concerning Approaches to Female Witnesses

On February 27, 2021, Africa Legal Aid (AFLA), held the 3rd meeting of its Gender Mentoring Training Programme for Judges of International Courts and Tribunals. The topic of the discussion, *Gender Issues Concerning Approaches to Female Witnesses*, was presented by Melinda Reed, Executive Director of Women’s Initiatives for Gender Justice.

The meeting was attended by:

Judge Reine Alapini-Gansou, Judge of the ICC, Former Member of the African Commission on Human and Peoples’ Rights.

Judge Solomy Bossa, Judge of the ICC; Former Judge of UN IRMCT; Former Judge of the ICTR; Former Judge of the African Court on Human and People’s Rights.

Judge Luz Ibáñez Carranza, Judge of the ICC; Former Superior National Prosecutor of Peru.

Judge Fatoumata Dembélé Diarra, Former Judge and First Vice President of the ICC; Former Judge of the ICTY.

Judge Florence Mumba (Chair), Judge of the Supreme Court Chamber of the ECCC; Former Judge and Vice President of the ICTY; Former Judge of the Appeals Chamber of the ICTY and ICTR; Former Judge of the Supreme Court of Zambia.

Judge Janet Nosworthy, Judge of the STL; Former Judge of the ICTY.

Judge Kimberly Prost, Judge of the ICC, Former Judge of the ICTY.

Judge Julia Sebutinde, Judge of the ICJ; Former Judge of the SCSL.

Evelyn A. Ankumah, Coordinator of the Gender Mentoring Training Programme for Judges; Executive Director of AFLA.

Gabrielle Louise McIntyre, Co-Coordinator of the Gender Mentoring Training Programme for Judges; Chairperson of the Truth, Reconciliation and National Unity Commission of the Seychelles; Former Chef de Cabinet and Principle Legal Advisor to the President of IRMCT and four successive Presidents of the ICTY.

Participants adopted the following agenda items for discussion:

Video Statement: Gender Issues Concerning Approaches to Female Witnesses

Melinda Reed

1. Have you observed or treated female counsel differently than male counsel in international criminal proceedings? Should they be treated differently? If yes, why?
2. Do historical narratives concerning the unreliability of female witnesses continue to influence how judges assess the reliability and credibility of the evidence of female witnesses?

3. It was noted during one of the last meetings that opinions voiced by women are often only heard when they are endorsed by men. How does this kind of unconscious (conscious) bias influence consideration of female witnesses by male judges?
4. In many cases international crimes cases concern past events that took place in traumatic circumstances where precise details are not remembered by witnesses. Do judges treat a lack of precise details differently in their assessment of male evidence as opposed to evidence of female witnesses?
5. Victims are meant to be at the core of proceedings at the ICC, STL and ECCC. How can the participation of female victims be enhanced and made more meaningful for those victims?
6. Crimes of sexual violence in situations where women are disproportionately the victims were historically overlooked both because no one wanted to talk about them and no one wanted to hear them. How can international criminal proceedings empower female victims of sexual and gender-based violence?
7. What role can international criminal courts play in removing the stigma from victims of sexual and gender-based violence or in redirecting that stigma to perpetrators?

Video Statement

The key areas highlighted in Melinda Reed's video presentation were: the impact of trauma on victims and their ability to engage in the justice process; how to ensure meaningful participation of victims in the justice process; the need to empower victims of sexual and gender-based violence and to eliminate the stigma surrounding victims of sexual and gender-based crimes. More specifically, her presentation called attention to the following:

It is important to recognise the impact trauma has on victims' ability to give clear and coherent testimonies. Victims that are subjected to traumatic events do not recall those events in a holistic manner. Their memories are fragmented and disordered. In the arena of the courtroom victims feel pressured to provide a coherent recollection of what they experienced which leads them to fill in the gaps in their stories with information they may not actually be able to recall. The pressure upon victims to provide judges with facts they do not recall may impact assessments of their credibility. Being sensitised to the impact trauma has on a victim's ability to recall facts and give evidence would better contextualise judicial assessment of the witnesses.

Ms Reed also emphasized how crucial it is for those involved in the justice process to be aware of how to interact and approach victims, and what methods can be used to create an environment which encourages victims to participate in the process. She also highlighted the need to adopt a victim-centred approach in the adjudication of crimes of sexual violence. She identified disparities in how conflict-related sexual violence is addressed by international criminal justice practitioners on the one hand, and how it is experienced by victims on the other hand, undermines their participation in the justice process. Although there are laws, policies and international jurisprudence which address sexual violence, they rarely accurately reflect how victims perceive sexual violence. This disparity has created a lack of clarity and understanding of sexual violence crimes, which limits the extent to which victims can

meaningfully participate in the justice process. Failure to accurately identify and categorise acts as acts of sexual violence as experienced by the victims of these crimes, exclude victims because the experiences they have faced are not recognized for what they actually believe they are. As a result, victims are discouraged from participating in the justice process as they believe their voices will not be heard. Meaningful participation of victims requires them to be heard and for the crimes committed against them to be recognised from the victims' perspective. To emphasise the importance of categorisation of crimes from the victim's perspective, Ms Reed drew on a number of examples from situations currently pending before the ICC to underscore how acts, which may be perceived from a judicial perspective as inhumane acts from a victim perspective, are acts of sexual violence. Ms Reed emphasised that the identification of crimes from the perspective of the victim is necessary to avoid re-traumatisation.

Ms Reed underscored that international criminal law and civil society guidelines which avoid assumptions about the nature of crimes and their seriousness, do help to empower victims and can help eliminate stigma for crimes of sexual violence. Guidelines which analyse sexual violence from the victims perspective provide an inclusive and enhanced understanding of the experiences of victims of these crimes. They are informative for judicial practitioners and judges because they are derived directly from the experiences of victims and are culturally sensitive, ensuring that the experiences of victims are not overlooked or trivialized. It is of importance to use these guidelines as they provide important perspectives and updates on the evolving field of accountability for sexual and gender-based violence.

Discussion

Ms Reed's presentation and the agenda items which followed inspired lively and informative debate. Recurring points from the discussion included the need to sensitise international criminal justice practitioners to prevent re-traumatisation of victims; difficulties in administering justice in sexual violence cases; disconnection of the court with the realities of victims on the ground; the urgent need for training of male and female judges in the adjudication of crimes of sexual violence and the role of the court in empowering victims and reducing stigma through the judicial process.

Before addressing the agenda items which followed, the Judges shared their thoughts on the video presentation. The Judges reiterated the importance for international criminal justice practitioners to be properly sensitised on issues relating to sexual and gender-based violence and their approach to female witnesses. They stressed that it is important for judges and other international criminal justice practitioners to be aware of the various factors which influence a witness's testimony so as to avoid re-traumatisation. These include the psychological impact of trauma, cultural implications and the fear of stigmatisation and ostracisation. The Judges observed that it is important to be empathetic to the traumatic experiences faced by witnesses and recognise the strength it requires of them to come before the court and present their testimony. Furthermore, it is equally important for there to be an evidentiary basis to properly establish the crime alleged.

The Judges addressed the challenges which arise in the administration of justice with cases of sexual and gender-based violence. One such challenge is the lack of common understanding and agreement on the categorisation of sexual violence crimes. The Judges noted that often there are disagreements, particularly with male colleagues on the understanding and details of

sexual and gender-based crimes. This makes the administration of justice more difficult. There is a lack of understanding on both the nature of the crimes and the varying cultural and social contexts in which these crimes occur. The Judges were of the opinion that to administer justice it is important that all judges, male and female, have a similar understanding and training in the adjudication of sexual and gender-based crimes.

The disconnection between the facts presented in court and the reality of the experiences of victims on the ground was also highlighted. The Judges suggested that alongside the training to sensitise judges on sexual-based crimes, it is important for judges to have experience and understanding of the communities where the crimes took place and where the victims continue to live. Judges should make the effort to visit the scene of the crime when appropriate.

In acknowledging the lack of sensitisation of judges on the adjudication of sexual violence crimes, the Judges called upon Africa Legal Aid (AFLA) to develop as soon as possible a comprehensive training programme to build capacity on gender-based violence and sexual violence and related issues. The training programme should be created for all judges and other principals of other organs of court as well as practitioners of international criminal justice to expose and sensitise them to issues regarding sexual and gender-based crimes. Participants also noted the importance of including both male and female participants in the programme and ensuring that the training is also conducted in countries where the crimes have occurred.¹

The Judges disclosed that they had sometimes observed a lack of respect on the part of some male counsels towards female counsels and suggested that judges can remind counsels to maintain decorum and show respect to their fellow colleagues. Additionally, the Judges candidly shared that they feel a sense of pride when they come into contact with female counsels as they are aware of the hurdles they had to overcome to reach such advanced positions. They further noted that judges have a duty to treat all counsels equally, with respect, understanding, and the dignity befitting of counsels. Indeed, all counsels who appear before international courts do so on the basis of merit.

Judging the reliability and credibility of female witnesses and the various factors which call their reliability into question was also addressed. The point was made that there are issues that arise when dealing with victims of sexual-based violence that are not provided for in the rules of procedure and evidence. For example, the unwillingness of victims to recount full evidence due to stigma, shame or fear. Judges need to show sensitivity when witnesses are reluctant to share but have disclosed enough to credibly establish what has happened to them. The Judges noted that it is important for judges to treat victims of sexual violence with respect and dignity and to prioritise their health by preventing re-traumatisation. They further observed that there is a careful balance that needs to be drawn, where all the elements of the crime are attested to, whilst also being sensitive to the plight of victims.

On the issue of enhancing participation of female victims in proceedings of international courts and tribunals, it was discussed that an important tool is maintaining control over proceedings. The Judges recalled instances where they had observed female and male counsels cross-examine victims in an insensitive and disrespectful manner. They stressed that it is important

¹ Africa Legal Aid (AFLA) has developed a comprehensive training programme on *Gender-Sensitive Judging in International Criminal Courts with a Focus on the ICC*.

for judges to be firm with counsels and prevent them from asking unnecessary and rude questions to victims, as judges have an obligation to protect witnesses. It was also discussed that training of practitioners of international criminal justice would improve meaningful participation of victims as such sensitisation and capacity would ensure that victims are protected from being demeaned in the justice process.

The importance of including all relevant charges regarding sexual and gender-based violence was highlighted as being empowering for victims. Historically, sexual violence crimes have been overlooked in indictments. This has given little hope to victims. Therefore, it is necessary for the prosecution to be properly trained in handling sexual and gender-based crimes to ensure that they are included in the early stages of the indictment. In order to empower victims and increase their participation, there needs to be outreach in the communities of the victims, to address the fear and stigma they experience.

Lastly, on the role that international courts and tribunals can play in removing stigma from victims of sexual and gender-based crimes, the Judges shared that stigma is a difficult issue to deal with as a judge. It was highlighted that victims do not face stigma at the level of the court but rather in their own communities. Therefore, the suggestion made was to consider how reparation orders at the ICC can be used to address issues around stigma and improve the situation of victims. In concluding, the Judges stressed that outreach programmes led by the Registrar need to be strengthened to address issues of stigmatisation faced by victims in their communities.

At the close of the meeting, the Judges reiterated the need to enhance the administration of justice for sexual and gender-based crimes. They expressed how much they look forward to the subsequent meetings where they will welcome the newly elected female judges of the International Criminal Court.