

KEYNOTE PRESENTATION

AT THE PANEL DISCUSSION ENTITLED: CALLING FEMALE LAWYERS CAMPAIGN

IN DAR ESALAAM TANZANIA - 3RD SEPTEMBER 2010

As a one of the 18 judges of the International Criminal Court (ICC), it is with great pleasure that I am exchanging a few ideas with you regarding issues relating to the participation of African women lawyers, generally in the international criminal justice system sphere, and in particular at the International Criminal Court (ICC). I will be looking forward to your ideas and contributions as to how the Court, through its Outreach programme could achieve this. As you might be aware, starting from the 31st May to 11th June 2010, the international community witnessed a very historic moment in the development of international criminal law and in particular, in the maturity of the ICC as an institution, on the occasion of the Review Conference of the Rome Statute establishing the ICC, which takes place in Kampala, Uganda.

I should, from the onset, take this opportunity to commend and thank the International Bar Association (IBA) for its support of the Court, in this campaign to attract eligible female lawyers to apply to be admitted to the ICC List of Counsel and List of Assistants to Counsel. This campaign is a joint project between the IBA and the ICC and it

is not an uninformed decision. It is borne out by facts. Out of the 335 Counsel admitted to practise before the ICC only 61 are currently women.

In particular, the ICC recognises the need to increase the number of female counsel from African countries, including those where the Court has been operating so far. Currently, less than four per cent of all members on the ICC List of Counsel are women from Africa. In addition, it appears that the ratio between male and female lawyers authorised to practice before the Court is not so much different in many European countries. Take the UK: of the 39 British lawyers admitted to the ICC List of Counsel, only four are female. That is little more than ten per cent of the British lawyers on the ICC List of Counsel are currently women.

It is also a fact that in all spheres of life, in decision making processes and in particular in all areas of the law, women are either conspicuously absent or grossly underrepresented. In Botswana for instance, my home country, no woman has ever sat as a judge in the Court of Appeal, the highest Court in the land. We have had only three female judges in the High Court in our history and two of them left the bench. The Law Society of Botswana “boasts” of 61 women and 198 men practitioners. I do not have your statistics, but I believe that the situation is no different here than it is in other parts of the world.

Some of the reasons for this unacceptable state of affairs are lack of commitment by our governments, to come up with properly thought out educational programmes that take into account gender parity from the day children are admitted into primary schools. In our part of the world, girls have traditionally been encouraged to pursue soft courses like nursing, since they are viewed as natural care givers, while boys must follow hard courses like law and the sciences.

We also suffer from the malaise of skewed traditional socialisation norms from our homes, which view girls as inferior and only worthy of bringing riches into their parents' homes or lives, through payment of dowry, when their hand is sought in marriage, among other things. These inevitably translate into our adult lives. The list is endless and I need not detain you with it.

What is clear is that the gender imbalance regarding the ICC List of Counsel is a reflection of similar imbalances in the representation of women in the legal profession at national, sub-regional and regional levels.

I should observe that international criminal law, being a new subject, women will find it particularly difficult to penetrate, as opposed to males, given the inherent disadvantages that they already face and have to overcome. Experience teaches us that practising international criminal law entails long travel and absences from home, and in the African context, into at times very difficult areas and this might tend to dissuade some women lawyers.

In a lot of cases, practitioners have to relocate to The Hague, for instance albeit temporarily, to represent their clients. Having said the above, I am here to encourage women to make sacrifices regarding their families, to find time to develop themselves into the professionals they aspire to be, to find time to either represent victims of the three (four) crimes that are criminalised by the Rome Statute, or to represent defendants in the proceedings before the Court, and to find ways of overcoming the hurdles that are on their way. Let me explain why I think that this is critical.

As many of you are aware, the Court's proceedings apply the highest standards of justice and fairness. This includes the right for both defendants and victims to be assisted by counsel. In fact, this is a core element. And this makes clear why increasing the number of female counsel practicing before the ICC is so important.

While any accused and victim should be able to choose their counsel from a pool of highly qualified lawyers, namely the ICC List of Counsel, they should be able to do so with regard to their own preference for either male or female counsel. This is particularly important as it relates to victims of sensitive crimes such as sexual violence. For the predominantly female victims of these crimes, it is not only essential that their counsel speak the same language and dialect but should also be familiar with their own culture. It is also essential that victims of sexual crimes can speak freely with their counsel about what happened to them. In light of the nature of these

crimes, more often than not associated with feelings of shame, this exchange may be much easier from woman to woman, than from woman to man.

At the same time and on a more positive note, some female lawyers admitted to the ICC List of Counsel have been chosen by male defendants for their outstanding experience and expertise in international criminal law or procedure. These women have been representing defendants both as counsel and assistant to counsel before the ICC, thereby contributing to the Court's highest standards of due process and procedural fairness.

LADIES AND GENTLEMEN

I am aware that some of the challenges I have articulated seem insurmountable, but I want you to come with us on this journey. I would like you to help the IBA and ICC identify ways and means of overcoming those challenges. We need to come up with doable multi-pronged strategies to enhance the participation of women in the ICC and international criminal law generally.

In my other life, I set up the office of the Law Society of Botswana and was its first officer for many years. To this extent, I believe that Bar Associations and Law Societies have a great role to play in nurturing both older and younger lawyers to attain their dreams. I believe that cooperation between Bar Associations and Law Societies

through the respective national mother bodies, respective Female Lawyers Associations could play a critical role in training lawyers and assisting them join the List of Counsel. Sub regional and regional Bar Associations like the East African Law Society and the Southern African Development Community Lawyers Association for instance, could form partnerships with organisations like the IBA and this could be a very beneficial relationship.

I also believe that the campaign by women at national level to pressurise governments to train girls in law and to take it up as a career should be pursued relentlessly.

The ICC has been a recipient of goodwill from NGOs through the Coalition for the ICC, which played a critical role in the adoption of the Rome Statute and continues to be a very trusted partner of the Court. I am aware that all other NGOs have done tremendous work to raise awareness of gender parity, and in particular, fighting for sexual offences to be investigated and where possible prosecuted, and I believe that through their very experience they should identify opportunities for women lawyers in the ICC. This present campaign will also target such monumental organisations as part of the strategy to target women lawyers and to encourage them to participate in the proceedings of the ICC.

Law faculties and departments should also be roped into the campaign by encouraging them specifically to include international criminal law into their curricula.

LADIES AND GENTLEMEN

I am sure you are wondering how the listed counsel could play a part in the processes of the Court.

They could:

- They could be:
- Assistants to Counsel to help with research and other tasks
- Counsel representing defendants
- Counsel representing Victims

The list is not exhaustive.

I appreciate the deliberate policy to be implemented in the course of the “Calling African Female Lawyers” campaign which runs until the end of 2010. That is, to ensure our objective, the Court will give first priority to applications from qualified African female lawyers. This simply means that during the campaign, their applications will be made a priority above those submitted by female lawyers from other parts of the world. Subsequently, priority will be given to male applicants from Africa and other parts of the world. Please note that there are other regions that are also under represented like Latin America, but Africa is unique in the sense that presently all cases and situations emanate from this continent.

I am confident that this policy, along with our information campaign, will enable us to encourage as many female lawyers as possible to apply to the lists. As Judge of the ICC, I am very pleased that the Court has teamed up with the International Bar Association, the global voice of the legal profession, to take on this important project. The ICC and the IBA had a successful international launch of the campaign in The Hague in May this year. There was a special event in Uganda, with a panel discussion, in the context of the Review Conference of the Rome Statute in Kampala earlier on the year. The campaign was also successfully launched in London, the United Kingdom, Kenya and in South Africa recently.

And of course there is today's seminar which is part of a series of special information sessions to be held during the next four months in several African and European countries. It is my hope that through this proactive work, we will manage, not only to make the application process more accessible, but to also raise awareness for the important role that female counsel can and should play in international criminal justice.

On a bit of an unrelated matter I would urge all of you to consider programmes that are offered by the ICC, and these are the visiting professionals and internship programmes. Details are available in the ICC website.

I thank you for your attention.

