As to whether that will happen—whether the attrition problem will be self-correcting—there is interesting work being done in this area. A recent white paper produced by Stanford Law School, entitled *Retaining and Advancing Women in Law Firms*, concluded that the problem was not self-correcting: it will not be addressed merely by the passage of time.[14] The same study identified a number of very complex factors that cause the imbalance in gender representation, including in relation to time-based billing structures; time-based billing expectations;[15] the influence of stereotypes and bias, including unconscious bias in the evaluation and mentoring and promotion of women lawyers;[16] mentoring relationships;[17] and reliance on formal and informal networks more broadly.[18]

In terms of positive steps that can be taken to encourage women into work as international counsel and facilitate access to opportunities, there are many. Mentoring can be crucial to success in this field, and ASIL's WILIG mentoring program is an example of one of the many programs available to women in public international law and arbitration. Individuals need to take some responsibility for seeking out and fostering their own relationships with mentors, as well as their own professional networks. In this field, a profile for excellent work is also essential, and there are many opportunities available to women to build profile through publications and speaking engagements.

Valuing Diversity in All Forms in International Courts

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*By Josephine Jarpa Dawuni**

I would like to preface my commentary with two remarks. First, I commend ASIL, the International Courts and Tribunals Interest Group, and other co-sponsors for organizing this important roundtable on valuing women in international law. Second, I thank Nienke Grossman for inviting me to be part of this discussion to bring in the perspective of women from across the continent of Africa. This proves that Grossman's work on gender diversity recognizes intragroup diversity—that women are one, yet also different and bring different ingredients to the making of international law and international adjudication.

I must also mention that my task here is a draconian one, and I begin with an important caveat. The continent of Africa is too big and too rich in history, culture, people, and diversity to be pigeonholed into a few sentences. In my research on the experiences of African women as judges in both domestic and international courts, I seek to ensure that we hear the voice of the African woman while being very cognizant of the fact that there are many voices in their experiences, and we need not overlook these intragroup differences. I constantly endeavor in my research to avoid essentializing the experiences of the women from across a whole continent. Nonetheless, taking into account certain historical patterns, social cleavages, and political and institutional designs, one can make a case for some similarities. Some general patterns may be discernible in how women

[14] Anna Jaffe, Grace Chediak, Erika Douglas & Mackenzie Tudor, Retaining and Advancing Women in National Law Firms, Stanford Law School Women in Law Policy Lab Practicum 1, 4, 6–8 (May 2016), *at* https://law.stanford.edu/publications/retaining-and-advancing-women-in-national-law-firms/. This study was written by students at Stanford Law School.

[15] *Id.* at 16–24.

[16] *Id.* at 11–16.

[17] *Id.* at 31–35.

[18] *Id.* at 354–36.

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get to the courts, how they rise through the ranks, the voices they amplify, and how they negotiate the contested terrain of international law and international courts.

My focus on this panel is to highlight some developments of African women's presence on international courts. I do not necessarily intend to cover all the courts and tribunals. I focus on five courts—the International Court of Justice (ICJ), the International Criminal Court (ICC), the African Court on Human and Peoples' Rights (ACtHPR), the Economic Community of West African States Court (ECOWAS Court) and the East African Court of Justice (EACJ). I draw the following observations from the gender composition of these courts.

First, with regards to the ICC, the Africa Group[1] has had the most women from any one region of the world on the bench of the court. As of this writing, African women have accounted for five out of the fifteen women judges to have served on the court to date, while African men have occupied four seats. This development is remarkable when compared to the Western Europe and Others Group (WEOG), where men have accounted for eleven seats and women only two seats. What accounts for this disparity in the gender composition among regional blocs on the ICC? In providing some explanations, I point to the following variables. These include the impact of matriarchy in African culture, the political will of governments to nominate qualified women candidates and the regional impact of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa[2] (the Maputo Protocol).

Second, African governments and leaders appear to be demonstrating a commitment to the provisions of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (the Court Protocol).[3] The recent developments at the ACtHPR in January 2017—where the Assembly of Heads of State and Government elected two women for the remaining vacancies on the Court—is a manifestation of the enforcement of existing provisions. Article 12 of the Court Protocol directs that in the nomination of judges to the Court, "due consideration shall be given to adequate gender representation in the nomination process."[4] With regards to elections, Article 14 provides that "in the election of the judges, the Assembly shall ensure that there is adequate gender representation."[5]

It has taken eleven years for the ACtHPR to move past two women on the bench at any given session, to now five women on a bench of eleven judges.[6] But this is remarkable when looked at

[1] ICC elections are organized to reflect regional diversity. The African States Group (Africa Group) is one of five groups. The others are: the Asia-Pacific States Group (Asia Group), the Western European and Others Group (WEOG), the Group of Latin American and Caribbean States (GRULAC), and the Eastern European Group (EEG).

[2] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted July 11, 2003, *at* http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf. The Maputo Protocol spells out social, political, and cultural rights of women in Africa. It was signed in 2003 and came into effect in 2005. It has been heralded as one of the legal instruments to have received the fastest ratifications by states parties. Out of fifty-four African nation-states, fifty-one have signed the Maputo Protocol, and, of those, thirty-six have signed and ratified it. Only three states have not signed the Maputo Protocol African Commission on Human and People's Rights, *Protocol on the African Charter of Human and People's Rights of Women in Africa*, *at* http://www.achpr.org/instruments/women-protocol/ (visited June 29, 2017).

[3] Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, June 9, 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT(III), *at* http://www.achpr.org/instruments/court-establishment/.

[4] *Id.* Art. 12(2).

[5] *Id.* Art. 14(3).

[6] *See* African Court on Human and People's Rights, *Current Judges,* AFRICANCOURT, *at* http://en.african-court.org/index.php/judges/current-judges (visited Jun 29, 2017) (providing current court membership including the five women justices); *see also* Josephine Dawuni, *African Women Judges and Gender Parity on the African Court on Human and Peoples' Rights*, INTLAWGRRLS (Feb. 1, 2017), *at* https://ilg2.org/2017/02/01/african-women-judges-and-gender-parity-on-the-african-court-on-human-and-peoples-rights/ (discussing the evolution of gender parity on the ACtHPR).

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comparatively with regards to the forty-seven years it took the European Court of Justice to appoint the first woman to the bench. More so, it is remarkable that the ACtHPR has achieved a near gender-balanced court, compared to the European Court of Human Rights (ECtHR), which has yet to reach this target. Let me pause and caution against any minimalist arguments that would seek to explain these developments of gender parity on the African Court as owing to Western donor funding.[7] The answer is a resounding no! In an earlier commentary, I argued that these developments are the combined effect of matriarchal systems in African cultures, which honor and respect the roles of women in leadership, the impact of the Maputo Protocol, and advocacy by women's civil society organizations, such as the Solidarity for African Women's Rights (SOAWR).[8]

Third, the impact of setting aspirational targets for achieving gender parity on international courts is vital to sustaining any gains made. As Nienke Grossman's research shows,[9] courts without aspirational or quota targets have fared relatively poorly compared to those with aspirational targets. The ICJ, ECOWAS Court, and the EACJ have no aspirational targets, and we see how that partly explains the gender composition of these courts. Judge Julia Sebutinde of Uganda is the only African woman to have sat on the ICJ, compared to the other fourteen African men appointed.[10] Judge Sebutinde is one of four women to have sat on the bench of the ICJ since its inception in 1946,[11] out of a total of 106 judges.[12] Since its inception, the EACJ has had four women, out of twenty-five judges, reflecting that women's representation has only been 16 percent.[13] The ECOWAS Court, however, presents an interesting paradox in that although it has no aspirational target, it has had five women, out of a total of seventeen judges on the bench, yielding 29 percent women's representation.[14] The paradox of the ECOWAS Court proves that on the one hand, aspirational targets are not a necessary condition for achieving gender parity. However, on the other hand, when viewed in the light of the fact that, currently, there is only one woman out of the total of seven judges on the court,[15] aspirational targets may play a vital role in maintaining gender parity gains. The EACJ's poor record of achieving a gender-balanced bench is also indicative of the need to set and enforce aspirational targets.

[7] I have been asked the question several times at professional conferences and presentations whether the progress made in achieving gender parity at the ACtHPR is the result of foreign donors requesting donor-receiving governments to have gender-balanced institutions.

[8] Josephine J. Dawuni, *Vive la diversité! A Roadmap to Gender Parity on African Regional Courts?*, VÖLKERRECHSBLOG (May 15, 2017), *at* https://voelkerrechtsblog.org/vive-la-diversite/.

[9] *See, e.g.*, Nienke Grossman, *Achieving Sex-Representative International Court Benches*, 110 AJIL 82 (2016); Nienke Grossman, *Sex on the Bench: Do Women Judges Matter to the Legitimacy of International Courts*, 12 CHI. J. INT'L L. 647 (2012).

[10] International Court of Justice, *All Members*, INT'L COURT OF JUSTICE, *at* http://www.icj-cij.org/en/all-members (visited June 29, 2017) (identifying all fifteen African Judges: (1) Prince Bola Adesumbo Ajibola (Nigeria), (2) Abdel Hamid Badawi (Egypt), (3) Mohammed Bedjaoui (Algeria), (4) Mohamed Bennouna (Morocco), (5) Abdullah El-Erian (Egypt), (6) Nabil Elaraby (Egypt), (7) Taslim Olawale Elias (Nigeria), (8) Isaac Forster (Senegal), (9) Louis Ignacio-Pinto (Benin), (10) Abdul G. Koroma (Sierra Leone), (11) Kéba Mbaye (Senegal), (12) Charles D. Onyeama (Nigeria), (13) Raymond Ranjeva (Madagascar), (14) Julia Sebutinde (Uganda), and (15) Abdulqawi Ahmed Yusuf (Somalia)).

[11] Diane Marie Amman, *Women, Accustomed to the International Court of Justice*, INTLAWGRRLS (June 23, 2017), *at* https://ilg2.org/2017/06/23/women-accustomed-to-the-international-court-of-justice/.

[12] International Court of Justice, *All Members*, INT'L COURT OF JUSTICE, *at* http://www.icj-cij.org/en/all-members (visited June 29, 2017) (listing 106 historical members as of June 29, 2017).

[13] *See* East African Court of Justice, *Composition*, *at* http://eacj.org/?page_id=24 (visited June 29, 2017) (providing a list of current and historic judges on the EACJ).

[14] Community Court of Justice—ECOWAS, *The Past Members of the Community Court of Justice*, *at* http://www.courtecowas.org/site2012/index.php?option=com_content&view=article&id=29&Itemid=32 (visited June 29, 2017) (identifying the past judges of the court from 2001 to 2014).

[15] Community Court of Justice—ECOWAS, *The Judges of the Community Court of Justice, at* http://www.courtecowas.org/site2012/index.php?option=com_content&view=article&id=260&Itemid=6 (visited June 29, 2017) (identifying seven judges, including the sole woman, Hon. Justice Maria Do Ceu Silvia Monteiro).

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While space constraints prevent a detailed analysis, I conclude by highlighting three key points. First, women judges from Africa are contributing to international justice, and there is a need to know who these women are, how they get to these courts, and what we can learn from their trajectories. The solution to this gap will be partially provided by scholarship in a forthcoming volume: *African Women Judges on International Courts: Unveiled Narratives*.[16] Second, the progress made by women judges at the domestic level, with women rising to leadership positions in national judiciaries,[17] must be viewed as a pool for finding qualified candidates for international courts. Third, as regards the question posed to panelists to explore whether there actually is a problem of gender disparity, I posit that the diversity within the domestic national judiciaries in Africa defies a simple generalization. We must be cognizant of the relatively young African judiciaries (since gaining independence from colonial rule in the 1960s and transitioning to democracies in the 1990s). Nonetheless, I argue that while there are some spots of gender imbalance, there are many legal instruments and vibrant women's activism across the continent to curb the tide of male dominance on the benches of domestic and international courts.

I will, however, qualify this argument by stressing that undergirding many African cultures is the spirit of communalism, which informs African feminism and postcolonial feminism. The major premise of communalism is the fact that women and men can live in harmony and women have an equal right to leadership. Therefore, by sticking to meritocratic and bureaucratic judicial appointments in domestic courts, women can and have done well in judiciaries. The ACtHPR allows member states to nominate qualified candidates who are not nationals of their countries. This can be one way in which women's groups across the continent can support each other by grooming, mentoring, and networking to create a continental pool of qualified women candidates. Through the regional chapters of Women Judges Associations, women can push their national governments to draw from the pool of qualified women judges.

Lastly, suggestions on how to move this agenda forward such as profile building, networking, and mentoring and promoting other women have been put forward by other panelists. To this list, I will add that research is needed to know more about these women judges. About their trajectory to international courts, and beyond a few of the famous ones, to gain some understanding of the contributions these women bring to international justice and international law. The latter question is not to engage in the debate on what difference women judges make. Rather, it helps feminist legal scholars to focus needed attention on the fact that beyond the numbers—symbolic representation, women judges are making contributions to international law, while being cognizant of the danger of focusing on their sex or gender alone. Feminist legal scholars cannot for a minute sit back and think that women judges in international courts will get the same credit as men for the development of international law, international justice, and the protection of human rights. Through legal narratives, legal scholars can tell the stories of what women bring to the bench, and it is only through such narratives that legal scholarship can begin to reconstruct a genuinely all-encompassing human (+woman)[18] face to international law, one that recognizes and equally values both women and men.

[16] African Women Judges on International Courts: Unveiled Narratives (Josephine Dawuni & Akua Kuenyehia eds.) (forthcoming).

[17] Josephine Dawuni & Alice Kang, *Her Ladyship Chief Justice: The Rise of Female Leaders in the Judiciary in Africa*, 62 Africa Today 45 (2015), *at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2783949.

[18] The use of the word "woman" preceded by the plus sign is my attempt to deconstruct the word "human," which, when one takes away the two letters "hu," leaves the word "man." Such gendered word constructions do not exist in most African languages. *See also* Josephine Dawuni, *Matri-legal Feminism: An African Feminist Response to International Law*, *in* Future of Feminist Engagement in International Law (Kate Ogg & Sue Rimmer eds.) (forthcoming).

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