

**Josephine Jarpa Dawuni, Esq., Ph.D**



**Dr. Josephine Jarpa Dawuni is an assistant Professor of Political Science at Howard University, Washington D.C. She holds an LL.B from the University of Ghana, and is a qualified Barrister-at-Law before the Ghana Superior Courts of Judicature. She holds a Doctorate in Political Science from Georgia State University. Her primary areas of research include judicial politics, gender and the law, international human rights, women’s civil society organizing and democratization. She is the editor (with Judge Akua Kuenyehia) of *“International Courts and the African Woman Judge: Unveiled Narratives”* (Routledge, 2018) and *Gender and the Judiciary in Africa: From Obscurity to Parity?* (Routledge, 2016) (with Gretchen Bauer).**

1. In view of the International Criminal Court elections on December 20<sup>th</sup> 2017 – where women took five of the six seats available-, do you consider that international courts are developing a standard in order to create an all-inclusive bench?

The Rome Statute has no doubt set a standard for achieving gender balance on international courts. Generally, one can argue that Article 36 (8)(a)(iii) can be credited for the gender parity achievements we have seen so far on the ICC bench. Nonetheless, we must also be cognizant of the Minimum Voting Requirements (MVR) which, while it has contributed to achieving gender parity, could also work to lower the number of women elected, depending on what minimum voting requirements have to be met at each election. For instance in the 2014 election of new judges, the MVR was critical in the electoral outcomes which saw the election of six male judges despite the presence of women nominees.

2. From your experience, which are the best international tribunals practices that other tribunals should follow in order to achieve a gender balance?

Despite the growing number of international tribunals and courts, the phenomenon is still developing if one takes into account that most of these tribunals were set up in the 1990s. Institutions take time to grow and as they develop and respond to systemic and structural changes, the anticipation is that they will learn from new developments in the field.

First, the Rome Statute has set a good standard or best practice for achieving gender parity. [Grossman’s](#) study on international courts has shown that aspirational targets are important starting points for attempts to achieve gender parity. Yet, there is other evidence to suggest that aspirational targets or quotas are not enough to change the gender outcomes on international courts.

A second best practice comes from the African Court on Human and Peoples' Rights (ACtHPR). Despite the initial hiccups to fulfill the aspirational targets set in the Courts' Protocol aimed at achieving gender parity, the court changed that picture with the 2017 elections. The electoral outcome culminated in a 45% representation of women on the Courts' bench, making it one of the most gender balanced to date. The game changer was the push by civil society actors and the Legal Affairs department of the ACtHPR to ensure that qualified women were nominated by national governments. The intentionality with which qualified women were sought and nominated, challenges the limited pool argument.

A third best practice comes from the European Court of Human Rights where the Parliamentary Assembly of the Council of Europe adopted a resolution in 2004 requiring that states should have at least one female candidate in their list of three candidates. That resolution appears to have helped with the current gender composition of the court. This soft "quota" provision could be adopted by other courts.

3. Do you think there is a will from States to achieve gender parity in international tribunals? How?

I cannot speak to the general political will of the comity of States in the international system. One has to take into account the multitude of internal and external factors and calculations that go into the decision-making process of States to nominate qualified women candidates. Prima facie, one would want to believe that nation-states who have signed and ratified CEDAW and other equality enhancing international instruments will take into consideration and implement equal opportunity measures for women's leadership. We must not lose sight of the fact that the type of government (conservative or liberal), the networks within the nomination bodies (do women have access to strong networks?), the role of domestic civil society engagement to the nomination process in ensuring transparency and accountability all contribute at different levels to the outcome of who a government decides to nominate as a candidate. In sum, it can only be hoped that both internal and external pressures will contribute to holding governments accountable to their political commitments to ensuring gender equality.

4. African Union Member States pledge to promote gender parity in the African Court of Human and Peoples' Rights. Do you think they have achieved this? If they do, what good practices can they share with other regions?

The 2017 elections to fill two seats on the ACtHPR was the first game changer for the Court. As pointed out above, the 2017 election is an example and a best practice for how governments can fulfill their legal and political obligations. In the case of the African Court, I must point out that other factors played a role, namely the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol, 2005) which is a widely acclaimed important legal document for achieving gender parity at multiple levels. Additionally, the African Union set Agenda 2063 as a collective goal of achieving a sustainable Africa and embedded in this Agenda is Aspiration #6 which addresses issues relating to women as equal partners in development. While I am not saying that these legal documents and declarations are in, and of themselves the main factors, it is worth mentioning that African traditional systems are replete with examples that do accord spaces for women's leadership. These spaces derive from traditional and cultural norms of women's leadership which has not often been accorded the appropriate analytical emphasis in the scholarship on women in leadership in Africa. Despite the fact that women's access to decision-making institutions and other rights are still largely constrained in various countries across the continent. The push for gender equality in African institutions is grounded

in these traditional spaces and governments must recognize, articulate and enforce these cultural values in the legal documents and instruments. While there are a plethora of documents granting women access to institutional leadership in the “Western world”, African nations have taken the lead in drafting a “women specific” law in the form of the Maputo Protocol which has set a standard, and this, combined with women’s civil society organizing, some progress is being made. The examples from the continent of Africa are lessons and best practices other regions can learn from. It all goes back to the question of what are the traditional, cultural and social understandings of women’s leadership in these societies and how can legal instruments enhance and enforce those norms and values?

5. Do you think that other sub-regional courts in the African continent will follow the African Union Court gender practices? And why haven’t they done it yet?

In an earlier [article](#), we argued that there is strong evidence to suggest that regional diffusion was a strong variable in explaining the appointment of women chief justices and presidents of constitutional courts across the African continent. The 2017 developments in the African Court’s gender equitable outcome is a strong supra-national best practice that other courts at the sub-regional levels can and should learn from. The East African Court of Justice (EACJ) has done poorly in achieving a modicum of gender parity. The Economic Community of West African States Court of Justice (ECOWAS Court) on the other hand, had an overall good record of women judges (at 29% of the total number of judges since the court’s founding) but that progress has regressed with only one woman currently on the bench of the court. With more awareness on the need for gender parity through research conducted by the Institute for African Women in Law, and advocacy through programs like the GQUAL Campaign and the work of regional women’s civil society organizations such as the Solidarity for African Women’s Rights (SOAWR), the achievements of the African Court can be replicated in other courts. The progress made at the African Court is under a year, so now is the time to engage in sustained awareness raising so other courts can learn.

6. As the Executive Director of the Institute for African Women in Law (IAWL), why do you consider it important to have an equal representation of women and men in tribunals and international bodies?

Because it is the human thing to do! I draw this inspiration from natural rights which gives each individual inalienable rights for their being. If a person has the right qualifications to be appointed a judge, they should be given that right—it should not matter if that person is a woman or man. What is good for the goose, is good for the gander.

7. How do you think a more gender-balanced tribunal will impact or affect the pronouncement of judgments? How can gender parity contribute to it?

The question of whether or not women judges make a difference in the decisions that come before the courts has been debated. While evidence from research is inconclusive, scholars such as Sally Kenney have argued that we should stop asking the question whether women judges make a difference. In my co-edited book on [International Courts and the African Woman Judge: Unveiled Narratives](#) (Routledge, 2018), Judge Julia Sebutinde of the International Court of Justice (ICJ) makes a very powerful statement when she notes:

*“In a world where one half of the population is female and the other half male, I would like for people to say one day that the World Court is comprised of fifty*

percent men and fifty percent women. That would be gender parity. It serves no purpose for people to ask, what difference or contribution have those three women judges made since they joined the Court. That would be asking the wrong question. For over seventy years there have been predominantly male judges serving on the International Court of Justice, yet nobody ever asks those kinds of questions when it comes to men. Why should the female judges serving on the Court have to justify or validate their presence or role on the Court? As long as we meet the statutory qualifications and are duly elected, we have as much right to sit on that Bench and to participate in the settlement of State disputes, without having to validate or justify our presence there with “value addition,” period.”<sup>1</sup>

8. As a co-editor of the volume *“International Courts and the African Woman Judge: Unveiled Narratives”*, what can you tell us about the patterns and history behind the growing number of African women judges in international courts?

There are a multiple factors that help explain this trend. First, governments at the domestic level are fulfilling their legal and political duties of giving heed to the treaties and protocols on equality opportunities for women in decision-making. These instruments include the Maputo Protocol, CEDAW and the Rome Statute. Second, as more women have risen to the top in domestic judiciaries, the pool of women has increased. Third, women judges have become aware of these courts and those with the qualifications and interest in serving away from home are positioning themselves for nomination. Fourth, governments are also making political calculations, knowing that if they nominate a strong female candidate, her chances of getting elected may be higher than a male candidate. Fifth, the presence of women judges on these courts is also sending a strong symbolic message to other women judges that if they aspire and so desire, they too can get to these international courts.

9. What is your opinion about campaigns like “GQUAL”?

The GQUAL Campaign is an excellent initiative! The fact that the campaign is data driven is remarkable in showing that this is a matter that merits urgent attention. By building a strong coalition and networks with researchers, policy makers, governments and other organizations such as the Institute for African Women in Law, the GQUAL Campaign is positioning itself as a global campaign that seeks to address diversity in all its forms and manifestations.

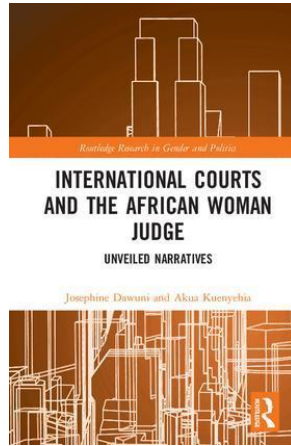
10. Finally, what message would you like to send to women who are fighting towards more equality in international courts?

I will like to remind them of their inner strength. I will also refer them to listen to the stories of those who have gone before them, who came from different challenges, yet overcame them and made it to the international courts. These stories and narratives are found in the book *“International Courts and the African Woman Judge: Unveiled Narratives.”* Even though these narratives are those of the African woman judge, this is the first time a book addresses the professional and personal journey to get to the international court. I am sure every woman judge will find many things she can relate to. The stories and narratives of the African woman judge are the stories and narratives of every woman judge. Let us keep the fight, knowing that if these women have set the pace, we have a duty to build on it!

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<sup>1</sup> Grossman, Nienke. (2018). Julia Sebutinde: An Unbreakable Cloth. In Dawuni, Josephine and Kuenyehia, Akua (eds.), *International Courts and the African Woman Judge: Unveiled Narratives*. New York: Routledge, p48.

Join us at Josephine's new book lunch!  
For more information: <https://www.iss.nl/en/events/book-launch-and-panel-discussion-2018-05-07>



Start Date: Monday, 7 May 2018, 18:00 - End Date: Monday, 7 May 2018, 20:00