AFRICA DEMANDS A NEW INTERNATIONAL LAW, REAFFIRMS ITS DECADES-LONG CONTRIBUTIONS

REPORT OF THE INAUGURAL KÉBA MBAYE CONFERENCE ON AFRICAN APPROACHES TO INTERNATIONAL LAW,

SENATE HALL, UNIVERSITY OF PRETORIA, 5 AND 6 DECEMBER 2019

INTRODUCTION

The opening words of the 1945 Charter of the United Nations exemplifies international law's vision to order global instability: the determination to save succeeding generations from untold sorrows. Yet, as inequality deepens, armed conflicts intensify, harmonious international life is strained, fringe populists gain popularity and the earth's resources are depleted, the narratives in which that hopeful vision is typically expressed – equality, human rights, development, just and peaceful dispute settlement – have revealed both their limitations and complicity. For Africa, these revelations necessitate an urgent rethinking of international law – one that replaces unjust hegemony, located both in the West but also within our received systems, with a focus on African thought, values and objectives. In pursuit of this project, the Centre for Human Rights, Faculty of Law, University of Pretoria (UP) together with the University of Johannesburg (UJ) and Strathmore University, Kenya, co-organised and hosted the inaugural two-day Kéba Mbaye Conference on African Approaches to International Law at the University of Pretoria, on Wednesday and Thursday, 5 and 6 December 2019.

The Conference followed on from a two-day Roundtable on 'African Approaches to International Law', held at the Centre for Human Rights, University of Pretoria, on 3 and 4 May 2017. The Roundtable was convened under the theme 'African approaches to international law'. During the Roundtable the concept of an "African approach" was problematised, with participants agreeing that this notion should not be racially or culturally based, but spatially, or in terms of one's methodological 'orientation'. One of the participants was Professor Makau wa Mutua, SUNY Distinguished Professor, University at Buffalo Law School, who is well known for his critical scholarship, and for having been instrumental in launching TWAIL, a school of anti-hegemonic thinking on international law. He emphasised the 'African' origins of TWAIL and contended that it has much to offer to African scholars critically engaged with international law.

As African icons go, it is hard to find someone more emblematic than Judge Kéba Mbaye. Through his work between 1964 and 2007 as jurist, revolutionary and activist, scholar, and particularly with his irreproachable integrity, he left a lasting impression on international legal thought and reimagined the African legal academy's interactions with the West.

Judge Mbaye was a Judge (and Vice President) of the International Court of Justice (ICJ),[1] and served with distinction in the fields of constitutional law,[2] human rights law,[3] international dispute settlement at the African and universal levels,[4] sports law,[5] the fight against Apartheid,[6] business and trade integration,[7] and even in peace negotiations.[8] He was also active in civil society, as member of the International Commission of Jurists and, serving as its president; he was Honorary President of the World Federation of United Nations Associations, Honorary Member of the *Institut de droit international*. Judge Mbaye also produced a significant academic corpus.[9]

1 Judge (1981-1990) and Vice President (1987-1991) of the International Court of Justice.

2 President of the Supreme Court of Senegal (1964-1981); President, Constitutional Council of Senegal (1990-93); led redrafting of the electoral code at the dawn of multipartyism (1992-3).

3 Member, later president of the UN Commission for Human Rights (1972-81); Special Committee to Investigate Israeli Practices Affecting Rights of the population of the occupied territories (1975-80); Chair of the Drafting Committee of the African Charter on Human and Peoples' Rights (1979-1981); UN Commission of Experts established pursuant to UNSC Resolution 780, of 6 October 1992, to look into widespread violations of international humanitarian law occurring in the former Yugoslavia, particularly in Bosnia-Herzegovina;

4 the OAU Mali-Upper Volta Mediation Commission; President of the Conciliation and Good Offices Commission of the Convention against Discrimination in Education (1970-79); ILO Committee of Experts on the Application of Conventions and Recommendations (1982-1995).

5 Judge Mbaye's activities in the Olympic Movement include: Member, International Olympic Committee (1973-2002), Vice President, IOC, (1988-92, 1998-2002); IOC Commission on Apartheid and Olympics (1989-92); IOC Commission on Sports and Law (1995-2002); IOC Juridical Commission (1993-2002); President, Court of Arbitration for Sport (1983-2007). He also participated in various ethical deliberations of the IOC, including the Commission of Inquiry in to the Salt Lake City Olympic Games.

6 Ad hoc Working Group of Experts of the Commission on Human Rights responsible for investigating human rights violations in southern Africa (1972-81), convenor of the 1981 international conference that issued the Dakar Declaration on Namibia and Human Rights.

7 Principal drafter of the legal regime of the Organisation for the Harmonisation of Business Law in Africa (OHADA).

8 2003 Linas-Marcoussis Agreements.

9 Among his key publications include: K Mbaye 'Le droit au développement comme

Across these achievements, one theme seems ever present about the man and his work: the promotion of democracy, the rule of law and, especially, human rights in Africa.[10] Judge Mbaye consistently sought to create lasting institutions to safeguard human dignity. In all these, even more than his wit, intelligence, firm Africanist convictions and indefatigable work ethic, it is his incorruptible integrity that drew the trust and admiration of his peers and juniors.

Paying homage to this legacy, the Conference brought together around 80 students, academics and members of civil society to address many of the questions left unanswered by his passing. It is instructive that the range of subdisciplines of international law covered in the conference themselves mirror a part of Judge Mbaye's contributions to the law that governs the global human society. The further aim of the Conference was to continue a process of discussing "African approaches to international (human rights) law", building on the Third World Approaches to International Law (TWAIL) approach, but rethinking and "vernacularising" it. Questions to be considered include: What is unique about Africa's approach to international law? What are the features of this approach? These are also some of the questions asked by Norman Duncan, Professor and Vice-Principal of the University of Pretoria, as he during his official opening of the Conference, framed the issues the panellists sought to investigate.

CONFERENCE THEMES AND DISCUSSIONS

In response to a call for papers, a number of papers were accepted and reworked under the guidance of the Conference organisers. Some eminent scholars were also invited to make presentations. A brief account of the contributions at the Conference is provided below, under the following seven headings (following the Conference programme): (i) conceptual clarifications; (ii) Kéba Mbaye: The man, African approaches and

un droit de l'homme' (1972) 5 *Revue des droits de l'homme* 503; Kéba Mbaye, *Le droit de la famille en Afrique Noire et à Madagascar. Études préparées à la requête de l'Unesco sous la direction de Kéba Mbaye*, Paris, Éditions G.-P. Maisonneuve & Larose, 1968; Kéba Mbaye 'L'intérêt pour agir devant la Cour internationale de justice' *Recueil des Cours de l'Académie de droit international de La Haye*, tome 209 (1988-II), pp. 223-346; Kéba Mbaye, Benoît Saaliu Ngom, *L'arbitrage d'une démocratie en Afrique : La cour suprême du Sénégal*, Éditions Présence Africaine, 1989; Kéba Mbaye, *Les droits de l'homme en Afrique*, Paris, Éditions A. Pédone, 1992; Kéba Mbaye, *Le Comité international olympique et l'Afrique du Sud : analyse et illustration d'une politique sportive humaniste*, Comité international olympique, 1995; Kéba Mbaye, *Propos d'un juge*, Dakar, NEAS, 2007.

10 Rosalyn Higgins describes these as Kéba Mbaye's 'main concern'. Higgins, 'Tribute to the memory of Judge Kéba Mbaye: Public sitting held on Monday 4 June 2007, at 9.50. a.m., at the Peace Palace, President Higgins presiding,' VERBATIM RECORD, CR 2007/15,5.

international human rights law; (iii) defining Africanness in the African human rights system; (iv) African pedagogy and decolonisation; (v) the right to development and climate change; (vi) migration and sport; and (vii) criminal law and geopolitics.

Conceptual clarifications

The introductory panel was co-chaired by: Frans Viljoen, Professor of Law and Director, Centre for Human Rights; Hennie Strydom, Professor of Law and National Research Foundation (NRF) Research Chair in International Law at the University of Johannesburg; and Humphrey Sipalla, Lecturer, Strathmore University.

In his address, Chris Maina Peter, Professor of Law at University of Dar es Salaam, Tanzania, and member of the International Law Commission (ILC), described the many contributions Africa made to contemporary international law, and lamented that African scholars remain uncredited for their influences. In his view, the dangers here are twofold. Not only do western scholars entrench the European perspectives in international law, but also allow this narrative to appropriate and erase the contributions African thinkers. He urged Africans who are actively participating in international law-making to fully seize the opportunities presented by the roles they occupy. He also challenged scholars to reach further and find the African voice in international humanitarian law.

James Gathii, Professor of Law at Loyola University, USA, discussed the radical origins of the right to development. In juxtaposing images of the West's perception of Africa (a land of tall giraffes, acacia trees, orange sunsets, and the promise of exotic adventures), he called for a vision of Africa that is 'an innovator and generator of international norms'. To this end, Gathii recalled the Senegalese origins of advocacy for the recognition of the right to development, resuscitating the earlier and less well-known affirmations of Senegalese Foreign Minister Doudou Thiam, who preceded Judge Mbaye's articulation of this right that was so central to African discourses on a new international law in the 1970s. He recalled the contributions of Thiam and Mbaye's contemporaries, not least of which was Taslim Olawale Elias, former President of the International Court of Justice. In his view, focus needs to shift towards an international

legal theory that 'places Africa at the centre, without being insular or inward looking'.

Kéba Mbaye: The man, African approaches and international human rights law

The discussion then moved to Kéba Mbaye himself, in a session chaired by Annelize Nienaber, Professor of Law, University of Pretoria.

'Can benign institutions create justice?' Humphrey Sipalla asked in his presentation on 'Kéba Mbaye: Portraits of a man: not too many faces, one mask'. In seeking to understand African hopes for a just global order, for African approaches to international law, Sipalla proposed a look into the life and works of the Africans so involved. What can the contemporary generation learn from the successes enjoyed and betrayals suffered by the Kéba Mbaye generation's interaction with international law? How can we assess his failures and successes within systemic forces? How can the post-colony speak international law, when international law was the very tool used to silence them in the first place? Sipalla urged that in order to understand our present, the value of our forebearers' successes and failures remain instructive. Moreover, adopting an approach that is cognisant of individual limits within systemic environments may allow for a sober and frank revisiting of the life and work of forebearers such as Kéba Mbaye.

Maxwell Mayiya, PhD candidate, Osgoode Hall Law School, used his presentation to reflect on what he called the 'distinct African fingerprint' in international human rights law. He also identified tension between Western and African understandings of human rights. In the Western view, the state is the 'norm-giver' – the sole addressee and protector of human rights obligations and duties. The African approach, however, rebuts this state-centric view and considers individuals and their community as central right holders.

Serges Kamga, Professor at the Thabo Mbeki African Leadership Institute, University of South Africa, presented a paper co-written with Tom Zwart, Professor of Law at Utrecht University, that focused on justice systems in international criminal law. In his presentation, Kamga contrasted restorative indigenous justices systems with formal systems such as the International Criminal Court and the International Criminal Tribunal for Rwanda. Using the examples of *Gacaca* tribunals used in post-genocide Rwanda and the *Judiyya* model of arbitration employed in Darfur, he illustrated how small-scale, grassroots judicial bodies compliment and even outperform formal systems in redressing crimes against humanity. The development of these models, he argued, would result in a 'bottom-

up' distribution of justice, responsive to the needs of the communities they serve.

Christopher Gevers, who lectures at University of Kwazulu-Natal, presented an interdisciplinary study on Pan-African internationalism and international law. He challenged the audience to reimagine the future of African internationalism presenting a radically different image of Africa. He drew parallels between literary works of classical pan-Africanists from within the continent and without. This cross-disciplinary view reveals an African state in the Nkrumahnian sense. An African approach to international law that is not hindered by the problems of fragmented states, one with a clearer African position. This allows us to imagine a future of international law that is not necessarily bound by the status quo today.

Defining Africanness in the African human rights system

Christopher Mbazira, Professor in Law and Head of the Law School, Makerere University, Uganda, chaired a panel addressing questions of belonging, Africanness and the regional human rights architecture. Dr Japhet Biegon, Africa Regional Advocacy Coordinator, Amnesty International, focused on the issue of LGBTQ+ rights, and the controversial difficulties in identifying who is, and is not an 'African'. The definition of an African is not 'frozen in time', he observed as he criticised the recent decision by the African Union's political organs to insist on the revocation of the observer status of the Coalition of African Lesbians. He critiqued the threshold contained in article 5(1) of the Protocol to the African Court on Human and Peoples' Rights, which, in part, limits access to the African Court to 'African Intergovernmental Organisations'. While the restriction may seem reasonable in theory, its application exposes an uncomfortable proposition: that many local grassroots organisations in Africa fail to meet the criteria necessary to petition the Court, because they choose to act in the local situations and thus lack trans-border activity. By definition, then, the more local the African is, the less African they are to the African human rights system. This exposes the paradoxical reality that the more institutions seek to define identity, the less capable they get at identifying their very own.

Magnus Killander, Professor of Law, Centre for Human Rights, University of Pretoria, traced the development of human rights in the African diaspora. He walked the audience through conflicting understandings of 'traditional values' and the tension between values expressed in elite contexts (treaties, declarations, charters) and those that develop organically, from African communities themselves.

'For the mere reason of their womanhood, girls in Africa are killed, violated and denied access to basic protections,' Dr Mariam Kamunyu observed in her presentation on women's rights in the African context. Africa, she explained, suffered from a 'disconnect' – its women enjoy elaborate legal protections through key instruments like the Maputo Protocol, and yet in reality, are still subject to pervasive violations of their human rights. To address this, Kamunyu called for an 'advanced vernacularisation of human rights' that is cognisant of the lived experience of the African woman as well as the intersectional identities arising from the dynamism of the African continent.

The day's proceedings closed with the launch of the journal *Agenda: Empowering women for gender equity* (available on Taylor & Francis) and hosting of the Agenda Feminist Media's dialogue on 'The Gender Discourse of Sustainable Development Goals and other instruments for gender equality: Advancing feminist agenda in Africa?' Matsie Mookie, lecturer at the University of South Africa, addressed the audience on abortion, its criminalisation and how misplaced prejudices force women to resort to unsafe procedures. Christiane Struckmann turned focus to the United Nations Sustainable Development Goals (SDGs) and their lukewarm ability to effect meaningful change in the developing world. Framed in a feminist post-colonial critique, her presentation argued that the SDGs reinforce the top-down structure of international development, with the rich North dictating a set of abstract objectives to the Global South.

African pedagogy and decolonisation

Day 2's first panel saw the conference focus on the question of knowledge production and strategic approaches towards decolonisation in university spaces. Dr Emma Charlene Lubaale, Lecturer, University of Venda, kicked off the day's proceedings with a discussion on the reform of tertiary education, placing particular emphasis on the debate around decoloniality that emerged during Fees Must Fall – the series of student protests that recently rocked tertiary education in South Africa. She contrasted radical (fundamentalist) approaches that argue for a complete overthrow of hegemony and reconstruction of a new order, against those that seek more fluid transition based on the affirmation that knowledge is universal (neutralists). She called for an approach to decolonisation that was mindful of context, and avoided erasure. This brand of deconstruction, she argued, would not seek to eliminate European contributions, but expose them for their ineffectiveness in certain African contexts.

In the succeeding interactive session, Maina Peter recalled the Africanisation of the curriculum and faculty that happened in the University of Dar, Faculty of Law, at the end of the 1960s and recommended reading *Limits of legal radicalism: Reflections on teaching law at the University of Dar es Salaam* Issa G. Shivji (ed) 1986. Mbazira noted that Makerere University had not faced a similar 'Fees must fall' moment, but that clear discussion had arisen in challenge to neo-liberal university finance systems and their perceived ill-effects on academic freedom and scholarship. In Nigeria, public financing of further education has long been poor so the tenor of discourse is different from 'Fees must fall'. Away from law, in Kenya, opposition by Kichamu Akivaga, Ngugi wa Thiong'o and others in the 1970s saw the separation of the study of literature from the English department at the University of Nairobi, which allowed a near complete removal of 'orthodox' Western texts and spurred the rich literary production and study that was seen in the 1970s and 1980s in East Africa. Professor Raman reminded that ultimately, the personal is political, and even as systemic changes are debated in society, the teacher can begin to make conscious choices, not only in choice of 'orthodox' texts to recommend to students but also in the teaching methods, that can highlight the value and contributions of South scholars as well.

Babatunde Fagbayibo, Professor of Law, University of South Africa, made a presentation on music as a critique of internationalism in Africa as well as using music as a tool to decolonise the teaching of international law, using the life and works of Nigerian Afrobeat pioneer Fela Kuti, and particularly 'Teacher don't teach me nonsense', 'International thief thief', and 'Beasts of no nation'. In Fagbayibo's view, Fela's infectious beats and stinging lyrics constitute an important part of the expression of African perceptions of the skewed global legal and political order and could therefore be used to expose African students to a broader, more critical understanding of the global system. He wondered, however, whether Fela Kuti, a committed non-conformist, would approve of being pigeon-holed into existing academic categories of international law critique such as TWAIL. Nonetheless, Fela's work, particularly his tours in Nigerian universities where his talks and music inspired students to read critical works such as *Black Man of the Nile and his family* and *How Europe underdeveloped Africa,* should challenge us to open up legal education and scholarship to interdisciplinary methods. In the subsequent discussion, Fela Kuti's misogynistic lyrics in other works were criticised. Can Fela be seen as a model when some of his works can be viewed as advancing views contrary to accepted norms of gender equality? Fela Kuti, in particular, was a complex figure, whose actions and works can be confusing. However, within the parameters of critique of international

systems, his works may be instructive, while some of his other works, like 'Lady', are rightfully critiqued.

Lizzy Muthoni, law student, Strathmore University, addressed the image of the 'man in limbo' – the African positioned in historically white institutions. African approaches to international law, whether critical or contributionist, have so far been based on a politics of recognition. One that seeks to have the African be seen and accepted by what has been traditionally a Eurocentric international law. Such a trajectory is doomed to fail. Instead, African approaches should consider international law as a tool that can advance an African agenda yet be wary of its assimilationist nature; a tool that would recognise the continent's needs and not its need for recognition. Still very Eurocentric, these spaces are hostile to difference and require the African bodies that enter them to denounce their identity and assimilate into whiteness.

Right to development and climate change

Mwaura Kiarie, Professor of Law and Dean of the School of Law, University of Nairobi, chaired a panel on the right to development and climate change. Christopher Mbazira, Dean of the School of Law at Makerere University, presented a paper by Dr Busingye Kabumba of Makerere School of Law, cautioning that while scholars may push for an African approach to international law, they must be mindful of international law's potential for 'universality'. In his presentation, Parthiban Babu, PhD candidate, South Asian University, walked the audience through the development of counter-understanding of international law through the dissenting opinions of ICJ judges from the Third World. Through these dissents, he argued, Third World scholarship demonstrates its ability to amend international law, adapting it to the new, more egalitarian international order. A central part of such efforts is to challenge homogenisation of knowledge, which obscures the diversity of the participants in international law. He noted that the UN Charter starts with 'We the people' but ends with the representatives of the people. As such, a more useful vision would be that of a move from *ius gentium* to *ius entre gentium.*

Dr Basil Ugochukwu of the Centre for International Governance Innovation, Ontario, argued that Africa's interaction in international environmental law has been a case of the 'tail trying to wag the dog', thus his paper title, 'T(w)ail wags the dog' that is climate change governance. He noted that environmental governance in particular highlights the tug of war between equality and equity. Early African scholars, Ugochukwu recalled of Prof Gathii's work, were faced with stark choices vis-à-vis the

then established order, that is, either reject or accept it. Similar parallels can be drawn of African states, which sets the stage for the Nyerere doctrine of state succession, that affirmed nascent African state agency to seek a middle ground and accept or reject obligations based on their particular interests. In environmental governance, this is seen in the consistent tradition of official African standard setting, from the African Convention on the Conservation of Nature and Natural Resources first adopted in 1968, hard law that precedes the 1972 Stockholm Declaration. The 1981 African Charter on Human and Peoples' Rights is also first to legislate the right to a healthy environment, and the Malabo Protocol is also first to create an international criminal offence for trafficking of hazardous waste, for both individuals and corporations.

Migration and sport

Dr Nkatha Murungi, Assistant Director, Centre for Human Rights, chaired a panel that focused on migration and sport. Mumbi Gichuhi, intern at the United Nations High Commissioner for Refugees, and Sandra Bucha, intern at the Kenya National Commission on Human Rights, discussed the African approach to statelessness. Showing how the construction of belonging and its legal expression in citizenship law flows from the political upheavals of Africa from precolonial times, through coloniality and into post-coloniality, they reiterated that 'Colonialism introduced the native question, and the postcolonial state has done little to eradicate it'. The native question was transformed into the indigeneity question; a conception that premises citizenship and belonging on indigeneity within the post-colonial state. However, considering the migration of peoples throughout the continent as a result of wars, displacement and economic migration, 'yesterday's immigrants have become today's indigenous'. Consequently, the indigeneity model of citizenship (*droit du sang*) produces stateless persons.

While welcoming the draft Protocol to the African Charter on Human and Peoples' Rights on the Right to Nationality and the Eradication of Statelessness in Africa, they critiqued some of its provisions for reiterating the primacy of municipal law, the very bases of law that create statelessness. In an attempt to be emancipatory, the Protocol is still blind to the colonial legacy. Considering that statelessness as an injustice that flows from the operation of the law, they called for an approach to statelessness that boldly takes cognisance of the African reality and thus unshackles itself from the state-centric approach to nationality that excludes rather than includes. In interactive dialogue, the difficulty of protecting stateless persons 'in a place where they don't belong' was emphasised. While there is no straightforward answer on how exactly stateless people can be protected

in countries where they are not recognised as part of the citizenry, the general framework of human rights provides a good starting point.

Sarah Ochwada, founding partner of Kikao Law and Lecturer at Strathmore University, addressed some of the practical challenges that necessitate an African approach to sports law. Sarah addressed the often-ignored contribution of Kéba Mbaye in the founding of the Court of Arbitration for Sports. She advanced a critique of the paradox between the institutions founded by Africans and the resulting functioning of such institutions. She echoed Sipalla's concern of the capacity of African contributions within benign institutions to betray the African. After highlighting the low awareness of the African origins of sports arbitration and particularly the Court of Arbitration for Sport, she questioned whether the law and practice of sports arbitration has provided a just avenue for redress for African athletes who, more often than not, come from backgrounds that are poorly equipped to deal with the increasing procedural, financial, logistical and technical complexity of legal procedures launched against them. Such discriminatory procedures often result in tragic consequences on the lives of disadvantaged African athletes.

Criminal law and geopolitics

Atangcho Akonumbo, Professor of Law, Université Catholique d'Afrique Centrale, Cameroon, chaired the conference's closing panel. Dr James Nyawo, Department of Diplomacy and International Relations, Kenyatta University addressed the topic 'Africa and the development of international criminal law: a search for African approaches to international law'. Rashmi Raman, Professor at Jindal Global University Law School, delivered the final presentation, exploring how the post-colony can renegotiate its position with the Western world through international law. Professor Rashmi argued for a 'vanguard' approach to the practice of Third World internationalism. By advancing novel arguments in international jurisprudence, we can push pre-existing doctrines forward away from their Eurocentric roots. Secondly, in the teaching of international law, Rashmi argued for the deliberate resolve by Third World academics to teach international law using praxis that centre Third World perspectives. She further insisted on the usefulness of south-south collaboration in both the practice and teaching of international law. During the subsequent discussion, the question "how do we position our scholarship and advocacy in international law?" was posed. Professor Rashmi proposed that this question should be individualised as there is no one right answer. However, even at an individual level, it would help to consider what we need as opposed to who we are (the desire to have our needs met should supersede our desire to have our identity recognised).

CLOSING SESSION: WAY FORWARD

In the final panel, Gathii, Maina Peter, Viljoen and Sipalla took stock of key highlights from the Conference. 'We should not end at theory,' Maina Peter called on the Conference participants, calling on them to use their new insights to improve the overall quality of the discipline. In a sense, such improvement fits in well with Mbaye's legacy, marked by his use of a unique, experimental mode of jurisprudence to unsettle traditional approaches to international law. Mbaye's contribution to the liberation of African thought earned him an enduring – although often overlooked – position in the history of the continent. Gathii proffered a programmatic proposal to advance the study of African approaches to international law. He called on the organisers to form workshops/working groups to allow research to focus and produce original work. He also called for the collection of a bibliography of African approaches to international law.

Viljoen and Sipalla, as Conference organisers, welcomed Gathii's proposals. In addition, they regretted that while the call for papers was distributed in French, and efforts were made to reach out to French-speaking participants, the first conference overwhelmingly English-speaking. A key point of action is to ensure equal participation from the other three linguistic (and politico-legal) traditions of Africa. They proposed the formation of working groups around the key areas of work of Judge Mbaye: domestic/constitutional law and rule of law; public international law; sports law; international institutional law/regional integration; pedagogy of international law; human rights law. A list serve will be created to maintain contact among conference participants and the to-be-established working groups. Particular focus will be placed on integrating francophone and the other linguistic traditions of Africa, beginning with Université Abomey Calavi in Benin and l'Université Gaston Berger in Saint Louis, Senegal, as well as reaching out to the Kéba Mbaye Foundation in Dakar. The conference papers will be published in either a peer-reviewed collection or a special issue of the *African Human Rights Law Journal*.

CROSS-CUTTING THEMES FROM THE CONFERENCE

During the Conference, cross-cutting and recurrent themes impressed themselves on the discussions. These could be seen across the various panels and their paper presentations, as well as in the interactive sessions that followed.

Africa has led in standard setting, despite what the orthodox texts would portray. Several presentations recalled trailblazing African standard setting in international law as their starting points, while noting the unfortunate poor awareness and lack of recognition on the 'orthodox' texts, which perpetuates the myth of Africa as receiver rather than as an origin and active creator of contemporary international law.

Merits and demerits of homogenising Africa, and even, the West. While official common African positions, OAU/AU standard setting and similarly situated actions can validly be ascribed to 'Africa', it is important to note that not all actions by Africans can be so easily attributed. Indeed, not all Western action as well, is Eurocentric and dismissive of the South. Homogenising Africa, a colonial enterprise, has led, in the post colony, to policies that create statelessness and exclude the local African from the regional human rights system. Seeing commonalities in internal African diversity; valuing reciprocal equity; appraising the structural inequalities imbedded in affirmations of global sovereign equality are among the polemics that arise.

Revisiting the forebearers: complexity of figures; dearth of women. Kéba Mbaye's generation of trailblazers was revisited by several paper presentations, dealing with international law and literature, music, sports, decolonising pedagogy, climate change governance and the radical origins of the right to development. These characters were complex, in their interaction with the socio-political milieu of their birth, their affirmations of the community vis-à-vis individual in African conceptions of human rights, in their often-fundamentalist views on decolonisation. And instructively, female figures of that generation are hard to come by. Being critical of our forebearers is neither unpatriotic or disrespectful, nor should their complexity discount their contributions. Being conscious of the complexity of human interaction and open to critical appreciation is central to a sober appraisal of the origins, state and future of African approaches to international law.

Tradition as modernity; modernity as oppositional to 'African'. As had been affirmed by Gathii,[11] as late entrants to international law, accept, reject were stark choices presented to Africa and its scholars and states. Claiming space, accommodating, situating tradition in the Eurocentric, articulating a new grammar are among the modes of negotiation applied. These continue today, as seen particularly in boundary delimitation, sports, and international criminal justice. The old tug of war is similarly

11 J Gathii 'A critical appraisal of the international legal tradition of Taslim Olawale Elias' (2008) 21 *Leiden Journal of International Law* 317.

laid at the feet of today's scholars. The challenge of articulating the value of tradition as/or modern (read valid for us today) is even sharper on questions of gender and sex, the communitarian ethic, and politicised values. How the incomplete task of decolonisation of knowledge systems progresses hinges on this articulation.

Value of interdisciplinary study. Any study of African approaches to international law would be incomplete, as shown in a range of papers presented and interactions thereof, if conducted solely within the parameters of international law. Beyond the obvious historical and political science contributions, the arts (music and literature), media studies, linguistics, sociology, and economics, will remain relevant, if not necessary. It bears recalling that, in many African societies, law retains greater affinity to its received epistemes, while other areas of knowledge have been Africanising since the late 1950s.

Distance-context-betrayal. The centres of international law remain removed from the African space and conscious. African participation is therefore often seen as a form of exile, if not a space to escape the painful realities of home. Proceeding from the complexities of homogenisation, varied contexts of theme, space, polity and culture produce varied understandings and histories of African approaches. The capacity of African individuals to influence and fundamentally change the central spaces of international law remain tenuous. Their participation can sometimes be understood to only reaffirm the underlying tendency of these institutions to treat Africans unequally.

Strategic participation. The plea for African strategic participation in advancing an African approach to international law was variously reiterated. This includes the teaching of international law, personal agency of conscious scholars and practitioners, participation in international bodies, the need for the development of African positions on critical issues such as climate change, and African participation in international courts.