

African Mistrust of 'Northern Justice'

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Last July, a number of events laid bare the difficulties that international justice has in progressing; one of the main problems is the expansion of jurisdiction beyond state borders in cases of genocide or massive violations of human rights. In the face of lawsuits and summons by Spanish and French judges, Rwandan President Paul Kagame managed to secure broad support from the African Union (AU) for his proposal that its members neither answer nor accept being tried in other countries or by international courts. At the same time, and in the wake of the International Criminal Court's (ICC) decision to charge the President of Sudan with genocide in Darfur, the African Union, the Arab League and the Organisation of the Islamic Conference closed ranks, accusing the West of interfering in their internal affairs. For the first time ever, African voices clamoured as one against accountability, its methods and its agents.

Fourteen years ago, the genocide in Rwanda caused around 800,000 deaths and a massive exodus of refugees towards neighbouring countries. Rwandans of the Hutu ethnic group (farmers) massacred Tutsis (cattle herders) and also Hutus they considered traitors. Subsequent massacres of Hutus carried out by the Rwandan Patriotic Front (RPF) were likewise recorded. Shortly before this, a peace agreement had been reached between the government and the RPF after two and a half years of war. The peace agreement of 1993 led to the deployment of a small United Nations (UN) observer mission in Uganda and Rwanda (81 observers), under the command of Canadian Lieutenant-General Roméo Dallaire. The slaughter was organised and carried out in front of the helpless Dallaire - in spite of his request to the UN Security Council for a preventive deployment of 5,000 additional troops, only 2,500 were conceded; and, ultimately, a scarce 270 were deployed to the field.

Thousands of people were mobilised to carry out the genocide. UN Security Council members failed to deal with Rwanda for various reasons: the United States had no interest in another failure like the 1991 Somalia intervention and, along with France and the UK, had its eyes fixed firmly on the ongoing war in the Balkans. China and Russia were anti-interventionist on principle, and France had an interest in supporting the Rwandan government. In addition, Africa was not a priority.¹

Since the international community's spectacular failure to defend the victims of genocide, various judicial instruments have been used to prevent the massacre resulting in impunity. In November 1994, the International Criminal Tribunal for Rwanda (ICTR) was created, the aim of which is 'to contribute to the process of national reconciliation in Rwanda and to the maintenance of peace in the region'.² At the same time, a complex structure has been built

¹ See L General Roméo Dallaire, *Shake Hands with the Devil*, Random House, Toronto, 2003. (A French edition exists).

² See 'About the Tribunal' on the official webpage of the International Criminal Tribunal for Rwanda, <http://69.94.11.53/default.htm>

based on the principle of the complementarity of jurisdictions. This amounts to joint efforts at the national and international levels aimed at preventing impunity for as many crimes as possible. Hence, ordinary Rwandan courts, traditional courts (the gacaca), and the ICTR divided up competencies to ensure accountability, the latter receiving staunch criticism owing to both its extortionate costs and the slow progress it has made.³ Nevertheless, it has also received favourable criticism. Considering the large number of people involved in the genocide and the lack of legal structures and penitentiary resources in Rwanda, a solution of any sort would invariably demand much political will and a great deal of juridical creativity.

The ICTR dealt with the cases involving those responsible for crimes against humanity, genocide and violations of article 3 common to the four Geneva Conventions and the Additional Protocol II.⁴ Next, the traditional gacaca tribunals took responsibility for trying cases in the denominated second and third categories, that is, those who committed (or attempted) violent crimes and those who violated property rights. Moreover, the law which regulates these courts extended their jurisdiction period with respect to the ICTR, establishing the gacaca's temporal jurisdiction from 1 October 1990 to 31 December 1994,⁵ whilst the ICTR is limited to cases dealing with crimes committed on Rwandan soil between 1 January 1994 and 31 December 1994.

The complexity of this distribution of legal competencies was further increased when other jurisdictions came into consideration, such as the International Court of Justice (ICJ) - which has already ruled in cases related to Rwanda - and the application of the principle of universal jurisdiction, invoked by the courts of third party States. Countries such as Belgium, France, and, recently, Spain have sought by such means to try crimes against humanity that had not been brought to court. This principle is enshrined in numerous international conventions, and, consequently, should have been incorporated by the national legislation of the countries which ratified the aforementioned agreements. States are currently obliged to incorporate this principle into their domestic legal systems; however, this has been carried out in diverse forms, with the rigour of criteria varying according to each state.⁶

War of principles: sovereignty against universal justice

Within this international framework, in February 2008 the Spanish High Court received the lawsuit against 40 RPF soldiers.⁷ This has caused the escalation of existing tension due to similar universal jurisdiction-based cases in France and Belgium. The core of the Rwandan government, Tutsi in its majority and thereby the main victim of the genocide, has now to face Spanish jurisdiction for crimes of its own doing. Since aimed at those considered the victims of the Rwandan genocide, this case leaves no-one indifferent. The accusation is centred on crimes committed by RPF forces between 1990 and 2002.

³ Stephanie Nieuwoudt, 'Slow Progress at Rwanda Tribunal', Global Policy Forum, 2006. <http://globalpolicy.igc.org/intljustice/tribunals/rwanda/2006/0727slow.htm>

⁴ Art. 3 common to the four Geneva Conventions of 12 August 1949 enshrines - in the event of an armed conflict which is not of an international nature - the protection of those persons who are not participating directly in hostilities, members of the armed forces who have laid down their weapons and those put out of action on account of illness, injury, arrest or any other cause, such persons to be treated, in all circumstances, with humanity, without being singled out for inferior treatment based on race, colour, religion or belief; sex, birth, fortune or any other criteria whatsoever. See full text: http://www.unhchr.ch/html/menu3/b/q_genev2.htm

⁵ Organic Law 16/2004, which establishes the organisation, remit and workings of the Gacaca tribunals, <http://www.inkiko-gacaca.gov.rw/pdf/newlaw1.pdf>

⁶ The four Geneva Conventions of 1949 are the most noteworthy of these. For example, in art. 146 of Convention IV: "Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a 'prima facie' case." <http://www.unhchr.ch/html/menu3/b/92.htm>

⁷ Bill of indictment decreed by Judge Fernando Andreu, of the Central Court of Instruction Number 4 of Spain's High Court (Audiencia Nacional). http://www.veritasrwandaforum.org/dossier/resol_auto_esp_06022008.pdf

Amongst other consequences, Rwandan President Paul Kagame has undertaken the quest for a way out which would see those charged go unpunished; like Kagame himself, those accused came to power thanks to their affiliation with the RPF, which entered Rwanda for the first time in October 1990, from Uganda, and is currently the Rwandan political party in office (after the 2003 elections). After the Hutu perpetrated genocide, the Tutsis took power; 18 years later the legal record is clear: in the main, whilst Hutus have slowly been tried (to the sound of harsh criticisms of weak sentences and questionable acquittals), RPF supporters, mostly Tutsi, have gone, until recently, unpunished for the crimes they committed.

Kagame has adopted a multidirectional strategy. First, he did not question the accusations against his 40 soldiers; instead, he accused those intent on trying Tutsi crimes of genocide denial. Second, he has gone to great lengths to ensure that the Rwandan judicial system is in accordance with international requirements and, consequently, able to receive the majority of the genocide cases of which Tutsis are victims when the ICTR mandate expires, and as a result, the cases in question have to be passed on to other national and international jurisdictions. Finally, he has raised the alarm among the African community as a whole, warning of the dangers for the continent if the principle of universal jurisdiction becomes a frequent, regular and - from his point of view - fraudulent Western demand. In effect, there are international arrest warrants currently affecting Djibouti, Senegal, and the Democratic Republic of Congo.

During the AU Summit held on 1 July 2008, Kagame proposed as an absolute necessity the creation of an international regulatory body with powers to review the 'growing abuse of the principle of universal jurisdiction by individual states' and, in so doing, to avoid an ever increasing interference in the sovereignty and international relations of African states.⁸

Moreover, the Rwandan president used the anti-colonial argument to attack the principle of universal justice, calling on the need for Africa to take a strong stand before Europe, whilst also making reference to the European legacy in Africa: the slave trade, colonialism, and apartheid, as well as the irony inherent in the fact that the former subjugators are now 'intending to turn themselves into policemen of the world'.⁹ In the same vein, he argued that universal justice amounts to one-way traffic, adding that, in the event that an African State were to pursue a European leader, the arrest warrant would never be accepted. Both the president and the Rwandan Justice Minister threatened - as soon as the court order issued by the Spanish judge was made public - to take legal action against a number of French citizens involved in the genocide.¹⁰ The Rwandan government created an Investigation Commission to that end in 2004 and requested it draft a report on the matter. It was chaired by the ex-Minister for Justice Jean de Dieu Mucyo¹¹, and the report published on 5 August 2008.¹² During his presentation, the current Justice Minister Tharcisse Karugarama read out a list of 33 French civil servants (political and military) and reminded those present of the possibility of legal action.

⁸ Sam Ruburika, 'African Union Refuses Arrest Warrants Against Rwandans', Focus Media, Kigali, 7 July 2008 <http://allafrica.com/stories/200807071845.html>⁸ Sam Ruburika, "African Union Refuses Arrest Warrants Against Rwandans", Focus Media, Kigali, 7 de julio de 2008. <http://allafrica.com/stories/200807071845.html>

⁹ Ibid.

¹⁰ See interview with Paul Kagame, 7 April 2007, published by Reuters. <http://www.alertnet.org/thenews/newsdesk/L07654809.htm>

¹¹ Interview with Jean de Dieu Mucyo, President of the Rwandan commission which investigated the role of France in the genocide of 1994, <http://www.tlaxcala.es/pp.asp?reference=1846&lg=es> . See original text at http://www.congotribune.com/article.php?id_art=2046

¹² A summary of the Mucyo Report can be found at: http://www.rwandagateway.org/article.php3?id_article=9739

The African Union, Rwanda, and Sudan

The AU Assembly adopted eight resolutions in the Summit held in Egypt on 1 July 2008 in support of the Rwandan president's speech.¹³ Besides highlighting how the abuse of the principle of international jurisdiction jeopardises law, order and international security, the AU accepted several of Kagame's petitions, affirming the political nature that the execution of the above mentioned principle has acquired, and underlining the violation of sovereignty which goes with it, in particular with regard to Rwanda. The controversy surrounding the concept of sovereignty is thus added to and heightened; this will lead to disputes in the future, given that it stands in opposition to the trends that have developed in the international community in recent decades, whereby states have begun to hand over certain previously sovereign powers to regional organisations. This tendency has been felt in many areas, both economic (European Community, Euro), political (EU, AU, UN) as well as judicial (ICC; ICTR; ICJ).

Going even further, the AU established that arrest warrants issued in European states will not be executed in AU member states and requested that all other countries - especially those within the EU - impose a moratorium on orders of this kind. Finally, it demanded urgent meetings between the EU and the AU and requested that the AU president bring the matter before the UN General Assembly with the aim of weighing up the different positions.¹⁴

Egypt, one of the countries with most weight in the AU, has taken an especially clear-cut position on the issue of sovereignty, for example with respect to Palestine and Sudan, and especially in relation to the recent charges brought against President al Bashir.¹⁵ The Egyptian president, Hosni Mubarak, believes that the steps taken by the ICC will only undermine the drive for peace currently underway in the region; which, furthermore, could come to affect Egyptian national security¹⁶, in reason of the 1,200 kilometres of its borders with Sudan. That explains why around 20 percent of the joint AU-UN mission in Darfur is composed of Egyptian soldiers. It is thus patently clear that the regionalisation of the Darfur conflict is affecting not only Egypt, but several other countries, such as Uganda, the Central African Republic, and Chad especially.

AU decisions, however, have not been limited to the situation in Rwanda. On 14 July 2008, the Prosecutor of the International Criminal Court, Luis Moreno-Ocampo,¹⁷ formally accused the President of Sudan, Omar Hassan Ahmad al Bashir, based on incriminating evidence of crimes against humanity, genocide and war crimes. The prosecutor went on to clearly detail the mass rapes that al Bashir's army carried out as an instrument of war. One day after the prosecutor's announcement, Tanzania's Minister of Foreign Affairs, currently chairing the AU, described the action as 'premature', warning that that step was 'untimely and it [would] have serious negative consequences to the efforts of finding lasting solution and [would] complicate the security on the ground'.¹⁸ The AU requested a one year moratorium from the Court to allow the implementation of the Comprehensive Peace Agreement (CPA) without interference, and for ordinary Sudanese justice to have the chance to work.¹⁹

¹³ See interview with Paul Kagame, published in the Financial Times after the Egypt summit, on 3 July 2008. <http://www.ft.com/cms/s/0/598a759c-4932-11dd-9a5f-000077b07658.html>

¹⁴ Resolutions of the African Union's Assembly on Rwanda, 3 July 2008, http://www.minaffet.gov.rw/news.php?id_article=13

¹⁵ 'Egipto objeta contra la Corte Penal Internacional', Radio Netherland, 11 November 2008 <http://www.informarn.nl/news/international/6047148/Egipto-objeta-contra-la-Corte-Penal-Internacional>

¹⁶ See <http://ipsnews.net/africa/nota.asp?idnews=43465>

¹⁷ ICC press release announcing the Al Bashir accusation, <http://www.icc-cpi.int/press/pressreleases/406.html>

¹⁸ 'AU urges ICC to give peace process a chance', AU Monitor, <http://www.pambazuka.org/aumonitor/comments/1544/>

¹⁹ Peace agreement signed on 9 January 2005 between the Government of Sudan and Sudan People's Liberation Movement (SPLM), southern-country rebel political faction. The agreement brought to an end two decades of armed conflict.

The Court's judges who are currently analysing the evidence submitted by Ocampo are expected to announce their decision on the matter in January 2009. For his part, Sudanese President Al Bashir has denied all accusations, branding them 'lies' and affirming that 'rape doesn't exist in Sudan'.²⁰

Moreno Ocampo's decision led to great controversy. The UN Secretary-General Ban Ki-moon has repeatedly demanded that the Court's essential independence be respected. Meanwhile, in the streets of Khartoum, there were demonstrations of support for the Sudanese president.²¹ Many highly respected voices have pointed to the dangers that these legal proceedings may entail for the implementation and viability of the CPA. Organisations such as International Crisis Group (ICG) have expressed serious doubts as to the timeliness of the accusation, given that it could jeopardise the ongoing fragile peace negotiations and the deployment of international forces.²² Others have defended the legality and intent of the action, such as Human Rights Watch (HRW), while at the same time questioning the functioning of the Prosecutor's Office, the quality of its investigations and the regularity of its procedures.²³ Richard Dicker, part of HRW's international justice programme, indicated the following:

Downgrading justice to achieve other objectives does not work well. It undermines the rule of law and slights the victims of injustice. Moreover, a peace based on impunity is unlikely to be durable. The peace-justice nexus must be examined carefully and objectively because the issue will surface again and again.²⁴

From another perspective, Nairobi's Justice and Peace, an official association which brings together the Episcopal Conferences of eight East African countries (AMECEA), celebrated Ocampo's decision 'as long as the accusations made against the President of Sudan are true'. For the Catholic Bishop of El Obeid, Antonio Menegazzo, however, the accusation has divided the country; in his opinion, 'the people of Darfur are satisfied [...] but in other parts of Sudan [...] the general reaction will be against the indictment, and demonstrations have already begun in Khartoum', as well as in El Obeid.²⁵ The Muslim world, in its majority, has lined up in opposition to the immediate action of the ICC.

In parallel, China, Iran, Egypt, Russia, and the Arab League have also declared themselves to be against the decision of the prosecutor; however, in these cases other political and economic reasons underpin the decisions: first of all, Sudan is a big oil producer; and, secondly, neither Russia nor China wants to set any kind of precedent for intervention on the grounds of Human Rights abuses.

For his part, Sudan's Foreign Ministry's spokesman, Ali al-Sadig, on learning of the prosecutor's accusations, stated the following: 'We consider the indictment of either the president or any other normal citizen of Sudan the same - we don't recognise whatever comes out from the ICC, to us it is non-existent'.²⁶ Sudan has signed but not ratified the ICC Statute; yet, this would not

²⁰ NBC News interview with Omar Al-Bashir, 20 May 2007, <http://www.msnbc.msn.com/id/17691868/>

²¹ 'Críticas a la medida de Moreno Ocampo', La Nación, http://www.lanacion.com.ar/nota.asp?nota_id=1030556

²² The deployment of international forces and the viability of a political peace process were analysed in the FRIDE seminar organised on 9 April 2008. The conference report can be found at <http://www.fride.org/publicacion/416/la-respuesta-internacional-a-la-crisis-de-darfur>

²³ There are several articles published on this: Nick Grono, of the ICG, 'Justice in Sudan Not Same as Peace', in the Boston Globe, 16 July 2008, <http://www.crisisgroup.org/home/index.cfm?id=5576&t=1>; Sara Darehshori, of HRW, 'Sudan, Justice and Peace', in New Statesman Online, 16 July 2008, <http://hrw.org/english/docs/2008/07/16/sudan19369.htm>; or Param-Preet Singh, HRW, 'ICC Comes Under Sharp Criticism From U.S.-Based Human Rights Watch', in *allafrica.com*, 12 July 2008, <http://allafrica.com/stories/200807140047.html>

²⁴ Richard Dicker, 'When Peace Talks Undermine Justice', International Herald Tribune, 5 July 2008.

²⁵ See the complete article at *allafrica.com*, <http://allafrica.com/stories/200807150832.html>

²⁶ 'AU Urges ICC to Suspend Bashir Warrant', The Daily Monitor, <http://allafrica.com/stories/200807160188.html>

be sufficient to prevent the ICC from intervening, given that it was the Security Council of the United Nations - an organisation of which Sudan is indeed a member - which argued that there was a threat to peace and international security, and called on the prosecutor, through resolution 1593 (2005), to investigate it; in addition, promoting in its fifth resolution the combination of judicial investigations with other transitional justice measures.²⁷

The International Criminal Court and the future

A decade since its creation, and the International Criminal Court faces a very delicate moment, especially due to the serious failure of the Prosecutor's Office when Chamber I decreed the release of Thomas Lubanga, last July. Lubanga, former leader of the rebel movement Union of Congolese Patriots (UPC, in its French acronym), was accused of enlisting and recruiting children for their active participation in the conflict in the Democratic Republic of Congo between September 2002 and August 2003.²⁸ The Chamber understood that the necessary prerequisites for a fair trial had been contravened; specifically, the fact that the Prosecutor's Office had concealed evidence relevant to the trial from the defence, the evidence having been obtained under terms of confidentiality. The prosecutor subsequently appealed this decision and the Appeals Chamber provisionally suspended the ruling whilst it evaluated the content of the appeal. It is the biggest setback the Court has faced since its origins, brought about by the negligence of the Prosecutor's Office; in an apparent *fuite en avant*, the prosecutor tried to lessen the fallout from his blunder by initiating a new case 12 days after the decision of Chamber I, in this case against the Sudanese President al Bashir.

Although Lubanga was not released, proceedings were suspended until last November, point at which the judges felt that the confidentiality problems had 'disappeared'²⁹ and promised a future in-depth explanation, as well as resumption of the trial on 26 January 2009.

The criticisms and doubts surrounding the ICC's procedures play into the hands of President Kagame, as do existing reservations within the international community regarding the use of universal justice due to the threat it poses to the principle of sovereignty. The principle of universal justice - which both Rwanda and Sudan ratified in the Geneva Conventions - is both the basis for extra-territorial cases and the ICC itself. For this reason, several states support the Rwandan President, who is quite aware of the ICC's weakness. He is equally conscious that his name was absent from the list of 40 RPF soldiers indicted by Spanish judge Fernando Andreu, exclusively because of the immunity he enjoys as Prime Minister. Such immunity would be inexistent in the ICC.

The ICC is supposed to work as a deterrent and it is doing so to positive effect in the case of Kagame. The Rwandan president knows that his immunity vis-à-vis third-party states' courts could vanish - he has close examples of this. One of the main criticisms that the Rwandan justice process suffered was precisely its one-sidedness, drawn among two different planes in this case: it did not replicate Kagame's complaint - that of European justice upon Africa - instead, it referred to the justice exacted by the Tutsis upon the Hutus. On the other hand, while the fact is true that in his court order Fernando Andreu should have laid further stress on the genocide suffered by the Tutsis in 1994,³⁰ it does not justify the accusation genocide denial. Rwandan Minister of Justice Tharcisse Karagurama even went as far as stating that there was a

²⁷ Resolution 1593 (2005) of the UN Security Council, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/292/76/PDF/N0529276.pdf?OpenElement>

²⁸ For a synthesis of the case, see <http://www.icc-cpi.int/cases/RDC/c0106.html>

²⁹ ICC press release on the same topic, 18 November 2008, http://www.icc-cpi.int/pressrelease_details&id=445&l=en.html

³⁰ Whilst he could have gone into greater depth on the background, page 150 of Judge Andreu's Court Order makes a direct reference to the 'the tremendous extermination suffered by Rwandans of Tutsi ethnicity, just as criminally deplorable as the facts here prosecuted', http://www.veritasrwandaforum.org/dossier/resol_auto_esp_06022008.pdf

‘conspiracy’ between the French judge and his Spanish counterpart.

The Rwandan question has yet another link to the crisis in Sudan. Kagame has lamented the fact that owing to Western political decisions, the contract of General Karenzi Karake, Deputy Force Commander of the mixed AU-UN peacekeeping force in Darfur (UNAMID), has not been renewed. Jordi Palou-Loverdos, the lawyer who filed the indictment with the Spanish High Court, made it public that Karake has been prosecuted by Judge Andreu, along with another four Rwandan soldiers who at that time were involved in different peace missions.³¹

The idea of a double genocide in Rwanda has arisen in some analyses. While it is possible that in the future both sides shall be ultimately found responsible for genocide and crimes against humanity, it is important not to overlook the number of criminals charged on each side, and, most importantly, the number of deaths in each of the two genocides, as well as the overall dimension of the Rwandan conflict. The principal genocide was suffered by the Tutsis - noting that acknowledgement of this statement does not imply neglecting the many Hutu victims.

Consequently, it is very important that the Rwandan government continues to investigate the facts, including inquiries into French involvement in the Tutsi genocide, so that truth may be established in Rwanda. In order to fight impunity in an efficient and exemplary manner, all those involved in either genocide must be tried within the law and serve the ensuing sentences for their crimes. Considering the African continent’s history and the existing inequalities in trying those from North or South, the international community must support all efforts aimed at clearing up the facts, with all the more reason in cases where Europeans are involved.

In line with previous statements, Kagame showed his support for the Sudanese president, accusing the ICC of being a ‘fraudulent institution’.³² By taking sides, the African Union has adopted a position that puts its 30 member countries which previously ratified the Geneva Conventions and the Rome Statutes of 1998 in an uncomfortable situation. Similarly, the AU will have to consider alternative paths if Europe demands that African countries respect the treaties, despite the risk of a deterioration in European Union (EU) relations with the continent. In November, the Ethiopian Foreign Minister, Seyoum Mesfin, and the EU envoy for Sudan, Torven Brylle, discussed the solution to the Darfur conflict and deployment of the peacekeeping force. Both Ethiopia and the EU are important actors in terms of future solutions. Ethiopia provides 3,000 soldiers and professional civilian support, and the EU is one of the main providers of funds for peacebuilding, along with the US. In addition, French President Sarkozy has already threatened to isolate al Bashir unless he takes measures conducive to peace in Darfur.³³

As for the ICC, whilst over the last 10 years it has made great efforts to achieve the maximum possible number of ratifications of the Rome Statute, a significant revision of the procedures that the prosecutor’s office follows is necessary, aimed at avoiding procedural errors - such as were made in the Lubanga case - and achieving compliance with the rules of fair trial. Its organisation and functioning must be bolstered, correcting the flaws shown to exist. At the same time, it is important that its geographical scope be widened and actions indeed undertaken in other continents. Some of the countries where the Court is beginning to focus its attentions are

³¹ In an interview for La Vanguardia newspaper given on 26 May 2008, Lawyer Jordi Palou-Loverdos of the International Forum for Truth and Justice in Africa of the Great Lakes region said: ‘One of them is deputy commander of peacekeeping forces in the genocide in Sudan, a key place in the geo-strategic fight between the United States and China’, <http://www.lavanguardia.es/free/edicionimpresa/res/20080526/53468393086.html>

³² Kagame tells why he is against ICC charging Bashir’, Sunday Nation, 3 August 2008, <http://www.nation.co.ke/News/africa/-/1066/446426/-/14anpctz/-/index.html>

³³ See ‘Ethiopian FM, EU envoy discuss Darfur peace process’, Sudan Tribune, 22 November 2008. <http://www.sudantribune.com/spip.php?article29344>

Colombia, Afghanistan, and, more recently, Georgia. Afganistán y, recientemente, Georgia.

It would be fitting to reinforce the independence of the prosecutor's office, so that this body can act without any outside pressures, as soon as it has sufficient evidence of genocide or crimes against humanity. The solution to the debate between Justice and Peace lies in the harmonious and parallel functioning of both areas.³⁴ The Security Council, the General Assembly and the Secretary-General of the United Nations play the principal role in guaranteeing the Court's independence. In the same way, and in line with international treaties and national legal systems, whenever an abuse of the principle of universal jurisdiction exists for political reasons, the case must be brought to light, demonstrated and proved before the corresponding chambers. Otherwise, a failure to comply with bilateral or multilateral agreements will not be justifiable.

In the case of Sudan, once the prosecutor has made the accusation public - and the judges' decision is pending - the international community must get to work. Organisations that have personnel on the field must strengthen their positions and protect them, a task in which national governments shall play an essential role. In this light, it is a significant fact that China has sent to Sudan more than 300 engineers, the work of whom will logistically allow for a greater deployment of Blue Berets in the region. The Blue Berets now number 8,000 thanks to this support; what is more, after a meeting between UN, AU, and the Sudanese government in the middle of November, it was agreed that by the end of this year as many as 60 percent of the 26,000 soldiers agreed upon will have been deployed. By March, it is hoped that this figure will have risen to 80 percent.

AU, UN, and EU must work together for peace in Sudan and for the personal safety of the entire civilian population and humanitarian aid personnel. Nevertheless, most of the responsibility at the moment lies with the Sudanese government itself, called upon to work towards the cessation of violence, to fully collaborate with international justice and do all it can to avoid provoking an escalation of hostilities in Darfur, aware that any attack on civilians or humanitarian aid workers constitutes a war crime which, in the event of transgression being proved, it will be accountable for. In this regard, al Bashir made a call for a ceasefire on 12 November 2008, which was automatically rejected by the rebels of the Justice and Equality Movement, who vowed not to cease fighting until they perceive Government taking concrete measures towards an equitable distribution of power and wealth in the region.³⁵

In the interest of gaining legitimacy and building confidence amongst the population with regard to the measures taken in Sudan, it is important that they be undertaken jointly, in all spheres, by the international community, authorities, and national organisations. Thus, political and judicial decisions will demand consensus in like manner.

Drawing parallels with the accountability process experienced in the former Yugoslavia, the population deposited trust in their own institutions once they had been reformed with international judges, rather than in the 'foreign' International Criminal Tribunal for the former Yugoslavia (ICTY). The international community has an obligation to promote the national judicial

³⁴ Mo Bleeker of the Swiss Federal Department of Foreign Affairs has a different opinion, defending the need for a prior peace agreement before beginning the implementation of transitional justice measures, '[...] And as soon as the agreements have been signed, the difficult job of implementation begins with the due efforts to ensure that there will be no repetition of the past wrongdoing. Everything becomes urgent: reconstruction, economic development, measures of transitional justice, reform of the structures which made the violations possible, eliminating the root causes of the conflict, and so on.' Mo Bleeker, 'Challenges to the implementation of transitional justice', *Dealing with the past and transitional justice: creating conditions for peace, Human Rights and the Rule of Law*, Conference Paper 1/2006, published by the Swiss Federal Department of Foreign Affairs, 2006, p.158. http://www.swisspeace.ch/typo3/fileadmin/user_upload/pdf/Conference_Paper/PA4ConferencePaper01-2006.pdf

³⁵ See http://www.iol.co.za/index.php?click_id=68&set_id=1&art_id=vn20081113053020714C819014

tier which, in light of previous experiences, will be the only body capable of carrying out a long-term accountability process. External technical support in the short and medium terms will prove fundamental for the reconstruction of an effective legal system that complies with international standards. At the same time, while this reconstruction is being carried out, the international community has the duty to substantiate, both politically and economically, all attempts aimed at achieving peace, without undermining the instruments required to prevent impunity. The actions of the ICC, consequently, must not run in opposition to the implementation of the Peace Agreement in Sudan, provided that both include the entire population: both authorities and rebels being brought to justice, and the inclusion of all affected parties in peace negotiations in conditions of equality. This uniformity will lead to a growing credibility amongst the population of political and judicial efforts in favour of a comprehensive, rather than partial, reconciliation of a post-conflict society.

For this reason, it is significant that Ocampo also opened a case against the rebel leaders,³⁶ as recently announced, making it the third Sudan-related case the ICC prosecutor has opened.

However, in the AU Peace and Security Council meeting of 24 November 2008 neither the ICC nor any national European justice system was mentioned. Its sole focus was the CPA, evaluating its progress and emphasising the need to accelerate the process. In reference to the international community, the importance of economic aid was stressed and a call made for the cancellation of Sudan's foreign debt, with the aim of supporting the implementation of the Peace Agreement.

South and North must work together in the fight against impunity. The need to carry out parallel development processes also includes a system of accountability whose ends, in the middle and long term, are reconciliation and the fostering of a tolerant, widespread co-existence. UN figures for those directly affected by the war in Sudan point to approximately 300,000 people killed and 2.5 million others uprooted. In Rwanda, estimates vary between 800,000 and one million deaths, and up to 2.5 million people displaced. Both the families and the indirect victims of these two conflicts will take time to recover from the horror of war - never will they forget it. In order to mitigate such consequences, the international community and national authorities have a joint moral obligation promptly to provide the victims with all the necessary resources, establish the truth, and attempt, as far as possible, to restore both materially and morally the rights that have been infringed.

³⁶ Three rebel commanders stand accused of war crimes against AU peacekeeping forces. On 10 December 2008, the pre-trial Chamber has requested additional information to the Prosecutor's Office, to be submitted no later than 26 January 2009, with the objective of analysing the Prosecution's application for a warrant of arrest. ICC Press Release: <http://www.icc-cpi.int/press/pressreleases/455.html>

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