

## **Saving international justice in Africa**

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AT the conclusion of its Summit in Sirte, Libya, on July 1, 2009, the Assembly of Heads of State and Governments of the African Union (AU) decided that "AU Member States shall not cooperate ... in the arrest and surrender of President Omar El Bashir of The Sudan." In a press release issued two weeks later, on July 14, the organisation explained that this decision "bears testimony to the glaring reality that the situation in Darfur is too serious and complex an issue to be resolved without recourse to an harmonised approach to justice and peace, neither of which should be pursued at the expense of the other."

This AU resolution responds to the decision of the judges of the International Criminal Court (ICC) in March 2009 to issue a warrant for the arrest of Sudan's President, El Bashir, in connection with alleged war crimes and crimes against humanity in Darfur, Western Sudan. The AU's decision has rightly been criticised on legal and policy grounds. The AU Summit is not the place to decide issues about the ICC because 23 of the 53 members of the AU have not yet accepted the ICC and this decision is capable of giving the unintended impression that the AU tolerates impunity for mass atrocities in Africa. What it does, however, is provide an opportunity to acknowledge and confront the many challenges currently facing international justice in Africa.

The greatest fears about the role that international justice is playing in Africa arise not from crimes behind us but in connection with a mass atrocity that some informed people foresee and all must work to prevent - a disintegration of Sudan into a regional killing field.

I was born a refugee into the Nigerian civil war in which an estimated two million were killed in 30 months. Most people in our continent are, like me, children of war, want, and deprivation caused mostly by bad government. Like the rest of the world, our needs are basic. We desire a world in which our people, families and ourselves can harness our abilities in dignity, peace and justice under government that is for us not against us.

In most of our countries, these basic expectations of citizenship are illusory. This is why most of us supported the establishment of the International Criminal Court (ICC). For us, justice for mass atrocities is intimately personal. We believed the Court would help to end high level impunity for mass atrocities, enabling us to attain the best we are capable of. Yet a little over five years since the Court received its first case from Uganda in 2003, the initial optimism from Africa that greeted it has been replaced by hardened skepticism from traditional opponents and, most worryingly, by fear among victims and host communities uncertain whether the Court can help them.

The establishment of the ICC represented a major breakthrough in international diplomacy: the creation of a mutually respectful consensus around the compelling idea of bringing to account those who bear the greatest responsibility for the worst crimes known to humanity. But today mutual recrimination has replaced respectful dialogue, debates on the ICC often degenerate into epithets and supportive diplomacy is absent. Criticism of the Court, no matter

how constructive, risks being denounced as endorsing impunity; support for it, no matter how reasonable, is easily branded imperialism or its agent.

Undoubtedly, the ICC has implacable enemies driven by desire for unaccountable power but there are also reasonable fears about how the court's work could affect a precarious regional situation.

In authorising the arrest of Sudan's President El Bashir, ICC judges agreed that he had a case to answer for his alleged role in war crimes and crimes against humanity committed in Darfur. But the execution of the warrant without an adequately managed transition could create a power vacuum in Khartoum, unleashing destabilising tremors beyond Sudan's borders.

Consequently, all nine countries that share a border with Sudan are on a war footing. Without a government for two decades, nearby Somalia is already a major destabilising factor in the region. Uganda's murderous Lord's Resistance Army, long supported by Khartoum and whose leaders are also wanted by the ICC, is re-grouping in vast ungoverned border territory between Sudan, Uganda and DRC. The 2005 'comprehensive' peace agreement (CPA) that ended Sudan's half century-long north-south war risks breakdown, while the Darfur crisis in western Sudan remains active.

These uncertainties drive an undisguised arms race in the region. If the CPA collapses, many fear a transnational atrocity site like none this region has known.

I recognise most of those who harbour these fears. They are neither pillaging presidents nor ravaging rebels. Like the child refugee I was a few decades ago, they are victims driven by neither Dollar nor Dinar; widowed refugees from their homesteads, unsure whether the next meal will come or whether they will be alive at the next dawn.

Victims now seem to be the people paying the highest cost for international justice. They suffer threats of death, exile, and other forms of persecution for their commitment to justice with little protection, assistance or acknowledgement from governments or international institutions. I have heard claims that those who express uncertainties about the work of the ICC in Africa may have been purchased by powerful enemies of justice. This makes victims seem expendable and discredits their well-founded fears as dubious. They are neither.

Most victims need reassurance that when the neighbourhood mass murderer arrives their only defence is not the promise of a warrant from a distant tribunal on thin resources. They are right in asking that the promise of justice should be accompanied by credible protection from reprisals. The ICC's friends must address this.

While the misbegotten duel between supposed imperialists and alleged impunity apologists persists, the deadly business of mass atrocities continues unchecked, its victims in Africa fret, and the credibility of the ICC suffers.

To overcome these difficulties, four things are needed. First, the ICC's resources must be improved to focus more on winning back the trust of victims through better outreach and effective protection. Thus, better co-ordination is needed between African governments, the ICC, the UN at its highest levels, governments and philanthropies. Next, the African Union

must translate its rhetoric against impunity into a programme of action, showing that African lives matter and it will not issue a free pass to those - big or small - that violate Africans.

Third, principled multilateral diplomacy is needed to reassure both governments and victims that the Great Lakes countries will not be allowed to become a level killing field. In particular, the five permanent members of the Security Council should use their strategic heft to engage intensively with this looming crisis. Finally, we must re-establish mutual respect among people in the advocacy communities who sometimes disagree as to means but mostly agree as to ends.

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