Meli River, on the Guinea Border.

PRESS CLIPPINGS

Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Outreach and Public Affairs Office as at:

Wednesday, 11 March 2009

Press clips are produced Monday through Friday. Any omission, comment or suggestion, please contact Martin Royston-Wright Ext 7217
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Sierra Leonean ex-President Ahmed Tejan Kabbah invited the UN to set it up, with judges drawn from Sierra Leone and other jurisdictions (AC Vol 47 No 8). The funds come from voluntary contributions by governments and run to hundreds of millions of dollars. Recommendations by a separate Truth and Reconciliation Commission may begin to bear fruit, very belatedly, when reparations for 100,000 victims of the war start being handed out this year.

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Some kind of justice has been done but the Special Court has not set a good precedent for international justice.

Samuel Hinga Norman

However, the judges were responsible for selecting the 13 people (nine of whom survived) who were indicted. In a hectic war, fought by men who switched sides as opportunity offered, the idea of holding 13 "most responsible" as itself a rewriting of history. As early as the end of 1992, the RUF was divided into two groups with little communication between them. More than 70,000 fighters were demobilised when the war ended in 2002. Ten of thousands of atrocities were committed. To punish 13 people for all this was a travesty. Human rights movement Amnesty International and other groups wanted hundreds more investigated. Critics also say that some of the most brutal leaders escaped the Court's jurisdiction by a technicality of the law. The RUF leader's case was postponed because the defence had been unable to agree on a date. The RUF leaders were convicted of war crimes and were tried as a witness against themselves.

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Making a Case for Defence Counsel in Juvenile Trials

By Hawa Kamara

The want of defence counsel for children who are in conflict with the law is now a growing problem with attendant effects on the administration of juvenile justice in the country. That is, the majority of juvenile offenders are not represented by legal practitioners when they are arraigned before the court for having been in breach of the law. Such a practice definitely undermines the justice system especially as it relates to the rights of juveniles during trials. This is so because it violates a fundamental provision: the accused's right to a legal representation - as enshrined in both national and international instruments. The reason for this anomaly may be multifaceted. Some parents or guardians are financially handicapped to secure the services of a lawyer. In other cases, the juveniles are "street children" who do not even have persons to guarantee them protection under the law. Most importantly, it can be said that the system is insensible to upholding the rule of law as expected of all civilized nations in the world over.

The importance of having legal representation during trials cannot be overemphasized. The care and juvenile court is sometimes of the opinion that child offenders provide false ages (under 18 years), either in order to benefit from a juvenile trial or to be exempted from trial in cases of a claim of not reaching the minimum age of criminal responsibility. In such situations, the court is in doubt as to whether or not the child has attained the age of majority, or has not past the minimum age of criminal responsibility. It is only a legal practitioner, equipped with the requisite skills that can adequately argue on behalf of that child. An example to underscore this point was vividly demonstrated in court when a lawyer made a successful application for a major involving a boy below 14 to be discharged because according to him, the boy was yet to attain the age of criminal responsibility. Without legal representation, the said boy would have been at the mercy of the court, probably tried and if found guilty, would have been sent to the Approved School to serve his sentence.

The lawyer in a court of law also serves as the juvenile's voice to the court as he/she represents the expressed interest of the offender at any stage of the proceedings. He can object to the prosecution if he thinks a hearing question has been asked and maintains that no serious evidence can be heard. He also serves the purpose of the legal system to prevent the court from misleading the juvenile or the juvenile's family. This is in tandem with Article 40 (2) (b) (ii) of the Conventions on the Rights of the Child which accords children the right to "have legal or other appropriate assistance in the preparation and presentation of his or her defense." On the contrary, the majority of children who appear in court are not represented by legal counsel. The court is hampered in its attempts to explain to the court the significance of the procedural rights of the child and the significance of "the rights of the defendant as they are accorded under the law." In such cases, the court is in doubt as to whether or not the child has attained the age of majority, or has not past the minimum age of criminal responsibility. This is only a legal practitioner, equipped with the requisite skills that can adequately argue on behalf of the child. An example to underscore this point was vividly demonstrated in court when a lawyer made a successful application for a major involving a boy below 14 to be discharged because according to him, the boy was yet to attain the age of criminal responsibility. Without legal representation, the said boy would have been at the mercy of the court, probably tried and if found guilty, would have been sent to the Approved School to serve his sentence.

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Human Rights Commission fund phases out

It appears as if the Human Rights Commission in Sierra Leone will scale down its activities if a proactive move is not made to identify sources of funding to compliment government’s counterpart fund.

In an interactive session over the weekend, the Chairman of the Human Rights Commission of Sierra Leone Edward Sam explained that, his Commission has been striving on the United Nations Peace Building fund since its inception with counterpart funding from the government of Sierra Leone.

Even though the chairman was optimistic that more funding would be available to them based on proven results over the years, he expressed pessimism that should they fail to secure funding from their donor partners, government budget allocation to them might not be adequate to implement all their lined up action plans.

On their areas of interventions, Mr. Sam explained that they investigate or inquire into any allegation of human rights violations, promote respect for human rights through public awareness and education programmes, establish a documentary center, publish guidelines, manual and other materials explaining the human rights obligations of public officials and others.

The commission also advise and support government in the preparation of reports under international human rights instruments or treaties, visit prisons and other places of detention to inspect and report on conditions, monitor and document violations of human rights in Sierra Leone and to publish an annual report.

He confirmed that they have developed a road map or strategic plan with some 8 goals which include the promotion and protection of civil and political rights and to also influence government to enhance the economic social rights of its people.
The U.S. must reengage with the International Criminal Court

The U.S. risks being left without any influence on major international legal issues.
By David Kaye

The arrest warrant issued last week for Sudan President Omar Hassan Ahmed Bashir has thrown into stark relief a question the Obama administration and Congress need to address:

What are we going to do about the International Criminal Court?

The desire for a permanent criminal court to try individuals accused of crimes against humanity, war crimes and genocide has been around since the Nuremberg trials. Its creation, stalled during the Cold War, picked up momentum again in the 1990s, when the United States led the creation of war crimes tribunals for Yugoslavia and Rwanda. By 1995, the United States under President Clinton had assumed a leadership role in planning for an International Criminal Court.

In 1998, most of the world's nations gathered in Rome for final negotiations on an ICC treaty. The Clinton administration -- knowing that it could only get Congress to ratify such an agreement with strict protections for national security interests -- pushed hard to immunize American officials from prosecution and to give the U.N. Security Council a significant role in determining situations the ICC should pursue.

In the end, although more than 90% of the court statute was acceptable, the U.S. was unable to secure the concessions it wanted, and it voted against the ICC's founding document, the Rome Statute. Although he was disappointed in the outcome, Clinton nonetheless authorized signing the document shortly before he left office, an act that allowed the U.S. to remain engaged with the court but did not require it to join.

The incoming Bush administration saw things differently. Soon after taking office, the new president ordered the Rome Statute "unsigned," and his administration embarked on an effort to undermine the ICC, encouraging other nations to promise not to hand over Americans to its jurisdiction under any circumstance.

Led by Jesse Helms, the late Republican senator from North Carolina, Congress imposed sanctions against governments that joined the court, even cutting off military assistance to some. Congress prohibited U.S. cooperation with the court and authorized the president to use any necessary means to rescue Americans who might be held by the court. Europeans, sensing the hostility, dubbed the law "The Hague Invasion Act."

The ICC started operation during the summer of 2002, after the 60th government joined. Today, 108 countries are members, including most of Western Europe, Latin America and Africa, as well as Canada, Mexico, Australia and Japan. But the U.S. hostility was slow to thaw. It wasn't until 2005, after Colin Powell defined the Darfur atrocities as genocide, that the first signs of a more pragmatic approach emerged. The United States went along with the U.N. Security Council's referral of Darfur to the ICC for investigation and possible prosecution. Under Condoleezza Rice, the United States quietly adopted a posture of wary realism, rhetorically supporting the Darfur investigation without engaging the ICC in a serious or official way.
The time has now come for the U.S. to become more engaged.

Consider the warrant for Bashir. The warrant may well have been the right move. But it could cause damage to the peace process in Sudan and retaliation against millions of displaced persons and refugees in Darfur, where the U.S. has deep moral and political stakes. The ICC undoubtedly would have benefited from U.S. input last year, when the prosecutor was considering the warrant, and from the kind of information and analysis the United States routinely has provided to other international tribunals.

Closer engagement also would allow the U.S. to help shape policy and legal developments in ways that meet its concerns. Today, we have little ability to influence the court's thinking. As a consequence, many basic principles of international law are being developed without U.S. input.

Not all the action is in the courtroom either. Parties to the ICC are considering whether and how to amend the Rome Statute to include the crime of aggression -- the unlawful use of military force. Our ability to shape the court's approach to this crime is limited unless we take prompt steps to play an active role.

Bringing Congress along on the idea of increased engagement could prove difficult, and joining probably remains unlikely. Despite polls showing public support for international justice, the court is still seen as a political liability in this country. Both Democrats and Republicans in Congress have expressed concern about the court's potential ability to interfere with American sovereignty on military and political issues.

Still, engagement with the court is possible, even without joining. The Obama administration's first job, working with Congress, is to reverse the hostility of the last eight years. Among other things, we should sign back on to the Rome Statute -- a step that merely indicates that the U.S. affirms the ICC’s objectives. We should then initiate a process to provide the court with information to advance its investigations. Finally, we should consider measures domestically and at the Security Council to squeeze those who harbor alleged perpetrators of war crimes, crimes against humanity and genocide.

Getting back in the game will advance American interests while contributing to international justice. In addition to Darfur, the ICC is pursuing cases referred to it by Uganda, the Democratic Republic of Congo and the Central African Republic, places where U.S. engagement can make a difference. American support for other tribunals in the Balkans, Sierra Leone, Lebanon, Cambodia and elsewhere has likewise proved essential.

Rebooting ICC policy serves U.S. interests. It also is an important step toward resetting America's place in the world. It's time to reengage.

David Kaye, a State Department lawyer in the Clinton and Bush administrations, directs the UCLA Law School's Human Rights Program and its Sanela Diana Jenkins International Justice Clinic.
The New Vision (Uganda)
Tuesday, 10 March 2009

Omar Bashir’s indictment is a writing on the wall

Opiyo Oloya

IN the parlance of tough street gangs, Omar Hassan Ahmad Al Bashir, president of Sudan, is going down. Once you strip him of all vestiges and trappings of office, it becomes simply, “Omar is going down.”

By issuing an arrest warrant for the Sudanese leader last week, the International Criminal Court (ICC) made good on its indictment of July 14, 2008.

According to the world court, Al Bashir is “suspected of being criminally responsible, as an indirect (co-)perpetrator, for intentionally directing attacks against an important part of the civilian population of Darfur, Sudan, murdering, exterminating, raping, torturing and forcibly transferring large numbers of civilians, and pillaging their property”.

Again, in street lingo, Al Bashir is one bad dude. But, this being the first warrant of arrest ever issued for a sitting head of state by the ICC, the genii is finally out of the bottle. From here on end, there will be no respite for bad leaders who use their powers to wantonly victimise their citizens. No rationalisation—I was just trying to put down a nasty insurgency—is going to cut it at all.

Indeed, as records will show, leaders indicted for war crimes tend to fall at some point. In May 1999, Yugoslav President Slobodan Milosevic became the first head of state to be indicted by the International Criminal Tribunal in The Hague. He was formally transferred to The Hague in June 2001, and nine months later, he sat in front of a judge to face justice. Even as Milosevic was in the dock, another dictator, former Liberian president Charles Taylor was indicted on June 4, 2003 by the UN-backed Special Court for Sierra Leone for “crimes against humanity” and “serious violations of international human rights laws”.

By issuing the arrest warrant for Bashir, the ICC is flexing its muscles and telegraphing its jurisdiction over the conduct of sitting heads of state. In effect, the ICC is saying, “We are willing to take on anyone, head of state or not, who is suspected of perpetrating crimes against humanity.”

Naturally, critics of the ICC, especially in Africa and the Muslim world have condemned the Bashir arrest warrant as a charade aimed only at poor Third World countries while ignoring the human slaughter by superpowers like America in Iraq and Russia in Chechnya. Some have also pointed to the hypocritical treatment of Israeli leaders in the face of the killings in Gaza. Though he has been in a coma since January 2006, many feel that former Israeli Prime Minister Ariel Sharon should be put on trial in absentia for the massacres of as many as 3,500 women and children in the Lebanese camps of Shatila and Habra between September 16 and 18, 1982.

An Israeli court headed by Judge Yitzhak Kahan found Sharon, who was Israeli Defence minister at the time of the massacre, responsible for what transpired in the two nights for allowing Christian Phalanges militias into the Palestinian camps.

Still others suggest that former US president George Bush also must be brought to trial for trumping up the case against a non-existent weapon of mass destruction (WMD) as a pretext for invading Iraq. Sudan’s
state minister of information and communications summed it all up when he referred to the ICC as a “whiteman’s tribunal” and the arrest warrant “an insult”.

But make no mistake about the impact of the issuance of the arrest warrant for Bashir. At the very minimum it tells the world that Bashir is a tainted man, one in whose company any self-respecting leader must never be caught dead.

He is a wanted alleged criminal with blood on his hand. He cannot be seen, heard or even accepted among leaders of free nations. Indeed, with time, the chorus of support for the Sudanese leader heard in many African capitals last week will quietly die away, replaced by polite avoidance.

Yes, Bashir can go to Al-Fashir, the capital of North Darfur, brandishing a sword as he did on Sunday, invoking African liberation against neo-colonialism and such. But what he will no longer enjoy is the camaraderie of the other African heads of state.

They may still pay him lip service, even encourage him to fight to clear his name, but self-preservation will dictate prudence for many leaders.

In time, Bashir will become the sick man of Africa, neither condemned by his peers nor welcome into their august circle, always avoided like the man with the don’t-touch-me disease. On the larger African front, the arrest warrant in the name of Bashir will make many heads of government scrutinise their own human rights records and policies.

The question each leader must ask is: “Is there anything in my past or present that could become the focus of ICC investigation and possible future indictment?”

While the ICC will not send a police posse to arrest indicted war criminals, it does have plenty of patience to wait the suspects out. In the case of Milosevic and Taylor, changes of political fortunes ensured that the long arm of international justice finally caught up with them.

That could be the case with Bashir. More importantly, the issuance of the arrest warrant has effectively pre-empted any effective lobbying that the African Union and Arab League may wish to carry out on behalf of Bashir.

The new premise is that the leader of Sudan must plead his innocence in front of a world court.

The unsaid part of this proposition is that Bashir cannot walk about as a free man without looking over his shoulders. He is a marked man. And he is going down, going down.

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CC's dubious Darfur justice

Kimberley Layton March 11, 2009

The background noise over Darfur appears to have finally reached its crescendo with the International Criminal Court issuing an arrest warrant for Sudanese President Omar al-Bashir.

Bashir has been waltzing around Sudan with impunity since 1989, promising the international community that the country 'will act as a responsible government' while overseeing the deaths of at least 300,000 people (Khartoum claims that the number is 10,000), and the displacement of approximately 2.7 million.

His actions have won him the dubious honour of becoming the first ever serving head of state indicted by the ICC. Though the panel of three judges claimed there was insufficient evidence to charge Bashir with genocide, he stands accused of two counts of war crimes and five of crimes against humanity in Darfur.

In retaliation to this affront, Bashir has expelled ten foreign aid agencies who, according to him, have undertaken 'activities that act in contradiction to all regulation and laws'.

Organisations including Oxfam, Save the Children, Care and Médecins Sans Frontières, in conjunction with the UN, currently run the world's largest humanitarian operation in Darfur providing humanitarian assistance to more than 1.5 million people. Their expulsion from the region leaves those people with nowhere to turn.

Established in 2002, the ICC has hauled before its tribunal such shady superstars as former Serb President Slobodan Milosevic (who escaped sentencing by dying mid-trial) and Bosnian Serb leader Radovan Karadzic, who remains in custody there.

Charles Taylor, the former Liberian President, has been extradited to face trial in front of a Special Court created by the UN for the violence in Sierra Leone. Jean Kambanda, the former Rwandan prime minister, was convicted of genocide by the International Criminal Tribunal in another landmark case.

Recently, 'Duch', a top Khmer Rouge leader, was tried in front of a Cambodian UN-established court. A similar set-up may soon find itself faced with the prosecution of top echelon Syrian officials over the assassination of the former Lebanese Prime Minister Rafik Hariri.

Not since Nuremburg or the Tokyo trials held at the conclusion of the Second World War have courts been given jurisdiction over individual citizens as opposed to just over states. Since the end of the Cold
War there have been considerable, though largely unremarked upon, advancements made in the international legal system.

As such, this latest act of the ICC ought to initiate an international patting of backs. Or should it? The African Union has called an emergency meeting in the Ethiopian capital Addis Ababa over the arrest warrant, only a day after warning it would hurt the fragile peace process. China, which has significant economic investments in Sudan (read: oil), and Russia, both armed with UN Security Council vetoes, have indicated they will halt any UN action.

The rebels have declared it impossible to negotiate with an indicted leader. Then there is the grave question of the people of Darfur who are now left stranded due to the untimely exit of the aid agencies. What of them? Given that this is Africa, and that they are absent from our television screens at present, more will die. Thus what seems like the beginning of the end of the tragedy of Darfur risks becoming simply the end of the beginning.

Supporters of the ICC claim to stand for ethics, for what is 'right', and for justice, yet the complexities of the situation ought to give us all pause.

The decision to pursue Bashir is ultimately a political choice that involves difficult trade-offs. The ICC can only deliver justice in its most legalistic form; it is forced by its very nature to neglect the wider and more nuanced meaning of the word.

Prosecuting Bashir will not deliver justice to the people of Darfur. Absent the humanitarian aid that they depend on to survive they will be delivered into an even worse situation.

Yet turning a blind eye to Bashir's atrocities is perhaps just as irresponsible. Sudanese Humanitarian Affairs Minister Ahmed Haroun, himself wanted for war crimes, remarked that 'it is up to the international community to weigh up the damage made by [ICC prosecutor Luis Moreno-Ocampo's] application and the arrest warrant'.

The international community might have finally turned off the music in an attempt to stop Bashir's brutal waltz, but at what cost? The stakes could not be higher.

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Kimberley Layton is Canberra-based freelance writer and a recent honours graduate in International Relations from the Australian National University.