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Actors of Accountability in Africa: ICC, African Union and Nation-States

by Ole Frahm

ABSTRACT

It has become increasingly clear that the judicial component in post-conflict reconciliation is vital for long-term stability. In Africa, in particular, the International Criminal Court (ICC), the European Union, the African Union, and national processes strive for legitimacy and public acceptance in an environment shaped by growing distrust towards international mingling in African affairs. Hybrid courts as in Senegal that combine national and international law may be part of the solution to bridge this growing antagonism.

*Africa | International Criminal Court (ICC) | Judiciary | International law |
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keywords

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Introduction

For countries that have experienced civil war or other forms of substantial violence of citizens against each other, the question of how to atone for the crimes committed while at the same time enabling a collective future is inevitably part of efforts to create or recreate a national community. Among the key problems that each country has to face are how to balance the needs of justice with stability and whether to seek indigenous national solutions or to rely on an international or, at least, external institution or broker.

Today, there is at least a triumvirate of actors involved in settling the juridico-political aftermath of post-conflict situations in Africa: the International Criminal Court (ICC) based in The Hague, the African Union (AU), and independent national systems of post-conflict justice. Alas, while none of these players appears to have found the silver bullet for justice and reconciliation, they all tend to dislike the notion of cooperating with each other in shaping and developing more successful and sustainable solutions to the eternal dilemma of punishing those responsible for grave war crimes while also maintaining a level of political stability following an often hard-won peace.

This working paper therefore seeks to do three things. One, depict in roundabout fashion the activities and effectiveness of national systems and the ICC in delivering post-conflict justice based on evidence from selected case studies and evaluate the criticism directed at the ICC by African elites. Whereas, for example, the case of Libya illustrates the ICC's complicity with Western interests; Côte d'Ivoire backs up the claim of victors' justice. The Kenyatta trial is evidence of the court's powerlessness and Rwanda's unique solution shows the strengths and weaknesses of national post-conflict justice. The second objective is to assess the AU's own very recent venture into justice and reconciliation by focusing on its performance in trying

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to end impunity in war-torn South Sudan. The third aim is to suggest ways ahead for these organisations and, in particular, for those countries currently and in the future affected by wars on their territories as well as for the European Union (EU).

The EU's relevance as an actor in Africa's post-conflict justice is not only due to its geographic proximity and post-colonial ties. Key member states such as the UK and France have spearheaded peacekeeping interventions (e.g. in Sierra Leone and in Mali). The European Union collectively is the largest donor to the continent and globally the staunchest supporter of international justice mechanisms. It is also not a coincidence that the ICC's headquarters are in the Netherlands. Finally, as part of the EU-Africa Partnership, the EU also directly funds initiatives like the African Peace Facility as well as AU capacity-building programmes.

1. National forms of criminal accountability

There is no *prima facie* reason to turn to international forms of criminal accountability rather than national ones. South Africa's Truth and Reconciliation Commission has become emblematic across the continent and, indeed, the globe as a model of success: in exchange for a wide-ranging amnesty, former perpetrators of crimes during the apartheid regime had to come clear and confess their involvement to a public body.¹ Yet, while being able to voice their grievances was important to many victims, a major problem of the South African process has been that truth-telling has not been accompanied by compensation for past victims.² As a result, many in contemporary South Africa feel that justice has not been served as they continue to suffer from social and economic exclusion.

Other countries such as Sierra Leone have tried a combined approach by employing traditional methods of reconciliation as part of their post-war healing process and a hybrid *ad hoc* tribunal combining national and international jurisdiction. But although the country's Truth and Reconciliation Commission involved traditional authorities, "it largely eschewed local rituals of cursing, cleansing and purification, which may have limited its ability to induce confessions and effect reconciliation."³

Rwanda for its part pursued a unique path in re-inventing a traditional form of conflict resolution in the wake of the 1994 genocide. So-called Gacaca courts were set up all over the country at community level. Suspected participants in the genocide had to appear in front of and answer to a village council composed

¹ Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa. Legitimizing the Post-Apartheid State*, Cambridge and New York, Cambridge University Press, 2001.

² James L. Gibson, "Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa", in *American Journal of Political Science*, Vol. 46, No. 3 (July 2002), p. 540-556.

³ Joe A.D. Alie, "Reconciliation and traditional justice: tradition-based practices of the Kpaa Mende in Sierra Leone", in Luc Huyse and Mark Salter (eds.), *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, Stockholm, International IDEA, 2008, p. 145, http://www.idea.int/publications/traditional_justice.

of respected elders, but without professional judges or lawyers. This system was successful in alleviating the backlog of cases, in creating popular ownership of the process and in some areas enabled restorative justice and a first step on the long road to healing,⁴ but it also opened the doors to arbitrary arrests, lack of fairness and accusations of victors' justice carried out by the Tutsi-led government against the Hutu.⁵

Finally, in countries like Mozambique, the two parties to the civil war, FRELIMO and RENAMO, opted for a culture of denial, which in turn led to the emergence of grassroots practices to fill the void and to cope with the memories of violence and injustice.⁶

2. The International Criminal Court and Africa

Yet another route, however, is to refer cases to the International Criminal Court in The Hague. The ICC is part of the United Nation's international justice system, where it exists alongside special ad hoc tribunals. However, whereas the UN Security Council can refer any threat to international peace and security to the ICC, the court's jurisdiction only extends to the (currently 123) parties to the Rome Statute.⁷ For African countries, referring a case to the ICC has the advantage of preventing revenge justice, minimising the threat of a renewed escalation of violence surrounding the trial and offloading some of the costs to the international community. But delegating accountability to a collective judicial intervention also comes with costs of its own.

Since its inception in 2002, one might be forgiven for mistaking the "international" in International Criminal Court for "African." All cases currently pending in The Hague concern individuals from Africa, who are charged with crimes against humanity committed in eight African countries (Uganda, Democratic Republic of Congo, Sudan, Central African Republic, Kenya, Libya, Côte d'Ivoire, and Mali) against African peoples. There has been a steady stream of criticism emanating from African intellectuals and especially from among the ranks of African politicians where the ICC is deeply unpopular. The ICC has been branded as neocolonial,

⁴ Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda. Justice without Lawyers*, Cambridge and New York, Cambridge University Press, 2010, p. 342-43.

⁵ Jeremy Sarkin, "The Tension between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due Process and the Role of the Gacaca Courts in Dealing with the Genocide", in *Journal of African Law*, Vol. 45, No. 2 (October 2001), p. 143-172.

⁶ Victor Igreja and Beatrice Dias-Lambranca, "Restorative justice and the role of the magamba spirits in post-civil war Gorongosa, central Mozambique", in Luc Huyse and Mark Salter (eds.), *Traditional Justice and Reconciliation after Violent Conflict. Learning from African Experiences*, Stockholm, International IDEA, 2008, p. 61-83, http://www.idea.int/publications/traditional_justice.

⁷ Jakob Pichon, *Internationaler Strafgerichtshof und Sicherheitsrat der Vereinten Nationen*, Heidelberg and Berlin, Springer, 2011.

Eurocentric, colour-blind, paternalistic and racist and the three letters have been taken to stand for International *Colonial* Court.⁸

This disdain has been driven principally by the ICC's decision to go after sitting presidents and members of government, which prompted Benin's president Boni Yayi to argue that "this court is chasing Africa."⁹ Whereas opinions were divided on the prosecution of Sudan's president Omer el-Bashir for directing genocidal violence in Darfur, the case against Kenya's president Uhuru Kenyatta for inciting ethnic violence after losing parliamentary elections in 2007 has, in fact, boosted Kenyatta's standing at home and on the continent.¹⁰ What is more, the indictment has galvanised the continent's usually dissonant political class so that in 2013 the African Union decided not to extradite any serving head of state to The Hague.¹¹

Much like the criticism itself, reactions from (mostly Western) defenders of the court's role tend to be of the knee-jerk variety: African states signed up voluntarily to the Rome Statute. With very few exceptions, cases have been referred to the ICC by African countries themselves rather being sought out from the ICC's team of prosecutors. And Africa just so happens to be the site of many contemporary violent conflicts¹² as, for example, the incidence of violent or irregular transfers of power remain high. Crucially, African states frequently lack the capacity and funds to carry out large-scale trials on their own. And in spite of the Third Wave of Democratisation that touched the continent in the 1990s (though slowing down in the 2000s),¹³ a majority of African countries are still far from counting as liberal democracies with independent judiciaries.¹⁴

Yet, such a line of defense short-changes critics of the ICC's approach by deflecting the focus away from the organisation's actual shortcomings. Alas, the ICC's bad reputation on the continent is not entirely based on the self-preservation instincts of African governments' current crop of leaders. For all the showmanship and public bravado about ending impunity in the world, the era of former chief prosecutor

⁸ Mwangi S. Kimenyi, "Can the International Criminal Court Play Fair in Africa?", in *Brookings Africa in Focus* blog, 17 October 2013, <http://brook.gs/1FimKmj>.

⁹ Laurens Nijzink, "Benin", in Andreas Mehler, Henning Melber and Klaas van Walraven (eds.), *Africa Yearbook Vol. 5*, Leiden, Brill, 2009, p. 61.

¹⁰ Susanne D. Mueller, "Kenya and the International Criminal Court (ICC): politics, the election and the law", in *Journal of Eastern African Studies*, Vol. 8, No. 1 (2014), p. 25-42, <http://dx.doi.org/10.1080/17531055.2013.874142>.

¹¹ Arnold Wehmhörner, "Impunity for the powerful: the African Union (AU) and the International Criminal Court (ICC)", in *FEPS Studies*, October 2013, <http://www.feps-europe.eu/en/publications/details/56>.

¹² Scott Straus, "Wars do end! Changing patterns of political violence in sub-Saharan Africa", in *African Affairs*, Vol. 111, No. 443 (April 2012), p. 179-201, <http://dx.doi.org/10.1093/afraf/ads015>.

¹³ Richard Joseph, "Progress and Retreat in Africa: Challenges of a 'Frontier' Region", in *Journal of Democracy*, Vol. 19, No. 2 (April 2008), p. 94-108, <http://www.journalofdemocracy.org/node/373>.

¹⁴ Hazel McFerson, "Developments in African Governance since the Cold War: Beyond Cassandra and Pollyanna", in *African Studies Review*, Vol. 53, No. 2 (September 2010), p. 49-76; see also Mathurin C. Hounnikpo, *L'illusion démocratique en Afrique*, Paris, L'Harmattan, 2004.

Moreno Ocampo left a bitter aftertaste. In spite of sufficient institutional safeguards for the independence of the prosecutor's office, case selection is, indeed, and inevitably so, a political choice. Given the court's initially limited resources and the large number of conflicts worldwide that might qualify to fall under the ICC's jurisdiction, only a small select subset of crimes may be investigated at any given moment.

In fact, the court has already begun to make amends to answer the claim of "Africa bias." In addition to the eight African countries, the ICC is carrying out preliminary examinations of international crimes in Iraq, Honduras, Palestine and Ukraine – none of which lies in Africa. Also, in the years preceding the court's formal establishment, special tribunals were set up all over the world, including East Asia (Cambodia and Timor Leste), the Middle East (Lebanon) and Europe where perpetrators of atrocities during the Balkan Wars of the early 1990s were tried, most notoriously former Yugoslav president Milosevic. With a new leadership under Fatou Bensouda who is from The Gambia, the standard trope of likening the ICC to a neo-colonial institution designed and run by the Europeans to continue their *mission civilisatrice* in a different guise will no longer be as easy to pull off. Provided, of course, that people are aware of these changes.

At the same time, the ICC should start to conceive of itself less as a mere court, an instrument of law, but as a political institution that has to justify and publicly explain not only its verdicts but its very existence over and over again. In this respect, not surprisingly given the juridical training and focus of its judges, the ICC has fallen far short of responding in appropriate form and timely fashion to accusations levied against it. Hence, in addition to a rethink of case selection, the ICC certainly needs a new public relations strategy that meets criticism head on.¹⁵ Furthermore, it ought to devote more energy and resources to reaching out not just to audiences in the Global North, but to the respective national publics in Africa for whom the ICC purports to be working. As Teddy Harrison pointed out some years back, "[w]hen the prosecutor acts to bolster support for his fledgling institution, he acts politically. This can be helpful; when the prosecutor engages with the media to act as an ambassador for the court, he may be acting entirely within his mandate."¹⁶

¹⁵ In fairness, the ICC has been aware of this need for a while as evidenced by its new outreach strategy from 2010. ICC-Assembly of States Parties, *Report of the Court on the public information strategy 2011-2013* (ICC-ASP/9/29), 22 November 2010, http://www.icc-cpi.int/iccdocs/asp_docs/ASP9/ICC-ASP-9-29-ENG.pdf.

¹⁶ Teddy Harrison, "What does it mean for the Prosecutor to be a Political Actor?", in Oxford Transitional Justice Research, *Debating International Justice in Africa. OTJR Collected Essays 2008-2010*, Oxford, The Foundation for Law, Justice and Society, 2010, p. 55.

3. The ICC as a political actor in ongoing crises

The claim that victors' justice is meted out in the name of fighting crimes against humanity is harder to dispel. Oftentimes, it can be expedient for local elites to opt for "legal outsourcing" and call on the ICC to take over proceedings because it rids them both of a contentious domestic issue and of political opponents. Côte d'Ivoire is a case in point.¹⁷ The court was only able to press the case against former president Laurent Gbagbo because he lost the civil war that broke out after the 2010 elections against Alassane Ouattara and was arrested before being able to escape the country. Extraditing Gbagbo, who retains many followers, was thus a very convenient solution. Merely going after the people at the top may, however, not win over hearts and minds if apart from a few high-profile figures the vast majority of perpetrators of crimes against humanity continue to live in splendid impunity.¹⁸ Meanwhile, none of the crimes perpetrated by Ouattara's *Forces Nouvelles* militia are being investigated.¹⁹

The court's political role is even more apparent in the timing of the indictments sought for Muammar Qaddafi and his son Saif, which both occurred in 2011 at the height of the Western coalition's war against the Libyan regime. In this case more than in any other, the impression that the ICC is acting in cohort with Western interests is hard to push aside. In contrast to trials that take place long after the crimes in question took place, "[i]n these cases, judges are becoming political players and certainly not historians."²⁰ But Libya is also indicative of the ICC's lack of political clout when faced with domestic resistance. The transitional government in Tripoli initially agreed to cooperate with the ICC in trying representatives of the Qaddafi regime yet eventually refused to hand over the remaining members of the clan. Lacking the power to enforce agreements, this left the ICC to plead and harangue until it eventually referred the case back to the UN Security Council in late 2014.²¹

The extent to which national politics truly undermines the work of the ICC was recently illustrated when the aforementioned case against Uhuru Kenyatta collapsed. ICC chief prosecutor Bensouda complained of obstruction, withheld documents and harassment of witnesses in Kenya including "an unprecedented

¹⁷ A similar case has been made for the DRC, arguing that Joseph Kabila's prime motivation for liaising with the ICC was to send rival militia leaders off to the Netherlands. Thijs B. Bouwknecht, "How did the DRC become the ICC's Pandora's Box?", in *African Arguments*, 5 March 2014, <http://africanarguments.org/?p=13759>.

¹⁸ Param-Preet Singh, *Turning Rhetoric into Reality. Accountability for Serious International Crimes in Côte d'Ivoire*, Human Rights Watch, April 2013, <http://www.hrw.org/reports/2013/04/03/turning-rhetoric-reality-0>.

¹⁹ "Ivory Coast and the ICC: Will justice ever be even-handed?", in *The Economist Baobab* blog, 25 May 2014, <http://econ.st/OWvHsw>.

²⁰ Daniele Archibugi, "When are International Criminal Tribunals Effective?", in *openDemocracy*, 2 August 2011, <https://www.opendemocracy.net/node/60694>.

²¹ "ICC Refers Libya to Security Council for Not Surrendering Gadhafi's Son", in *Voice of America*, 10 December 2014, <http://www.voanews.com/content/icc-refers-libya-to-un-security-council-for-not-surrendering-gadhafi-son/2553859.html>.

campaign on social media to expose the identity of protected witnesses.”²² What this example goes to show is that the ICC is bound to become entangled in local politics.

4. The African Union in South Sudan

The same interdependence with national politics holds true with added force for the newest player in the field of criminal accountability in Africa. There are, in fact, convincing reasons why a continental approach to post-conflict justice might complement and enhance the ICC’s work. In addition to circumventing the claim of neo-colonial interference, more institutions mean more judges and more judges in turn mean that more cases can be tried. As Leila Sadat pointed out, the entire ICC has as many judges (eighteen) as the Special Tribunal for Rwanda.²³ Regional courts could strengthen the fight against impunity simply by increasing the number of prosecutors to seek out grave violators of human rights.

Having derided the ICC as biased, the African Union has, therefore, itself begun to get involved with post-conflict judicial processes. While there are plans to set up an alternative African Court of Justice to render the ICC obsolete, the current African Court on Human and Peoples’ Rights (ACHPR) based in Arusha, Tanzania, has ruled in preciously few cases.²⁴ In spite of its mandate to monitor the maintenance of human rights standards and uphold the African Charter on Human and Peoples’ Rights the court “has no jurisdiction to deal with crimes such as genocide, crimes against humanity, war crimes, etc.”²⁵ And judging by the AU’s performance in the ongoing civil war in South Sudan, the organisation still has a ways to go to live up to its claim that the AU, unlike its predecessor the Organization of African Unity, does not look the other way while citizens of sovereign nation-states are being slaughtered.

Soon after fighting broke out in the South Sudanese capital Juba in mid-December 2013, which then spread across the country in a series of violent battles that explicitly targeted civilians based on ethnicity, the AU set up its own (and first) Commission of Inquiry to document and collate abuses by rebels and government

²² Owen Bowcott, “ICC drops murder and rape charges against Kenyan president”, in *The Guardian*, 5 December 2014, <http://gu.com/p/44vc5/stw>.

²³ Leila Nadya Sadat, “The Legacy of the International Criminal Tribunal for Rwanda”, in *Whitney R. Harris World Law Institute Occasional Papers*, 3 July 2012, p. 14, <http://law.wustl.edu/harris/documents/ICTRLecture-LegacyAd%20HocTribunals9.12.12.pdf>.

²⁴ Among other things, a shortage of funding has persistently hampered the court and the African Commission for Human Rights’ ability to live up to their mandate. Michelo Hansungule, “African courts and the African Commission on Human and Peoples’ Rights”, in Anton Bösl and Joseph Diescho (eds.), *Human Rights in Africa. Legal Perspectives on their Protection and Promotion*, Windhoek, Konrad-Adenauer-Stiftung Namibia, 2009, p. 233-271, <http://www.kas.de/namibia/en/publications/16347>.

²⁵ See the ACHPR website: <http://www.african-court.org/en/index.php/frequently-asked-questions#criminal>.

troops and prepare the ground for a future process of justice and reconciliation. Headed by Nigeria's ex-president Obasanjo and including the president of the ACHPR the Commission convened in April 2014 and was due to report its findings in January this year. In the event, the AU blocked its publication – allegedly to avoid irritations during ongoing peace negotiations – only to see the report leaked to the public in March 2015. The leaked report, which duly exposes many of the atrocities and culprits, is not only guilty of shoddy investigative techniques and highly unrealistic conflict resolution proposals,²⁶ it also commits the cardinal sin of giving the full names of all the witnesses the commission has interviewed; a potentially life-threatening mistake in the current political climate in South Sudan.²⁷

Thabo Mbeki, former president of South Africa and lead AU mediator between Sudan and South Sudan, and well-known Ugandan academic Mahmood Mamdani may, indeed, have a point that the Nuremberg model of criminal justice espoused by the ICC is not necessarily conducive to peaceful postwar coexistence in ethnicised conflicts like in South Sudan.²⁸ But the AU's wavering indecision (of which Mamdani, as a member of the Commission of Inquiry, is a part) is not a viable alternative either.

5. The state of accountability in Africa and Europe's role – conclusions and solutions

As is to be expected from an issue as complex and loaded as post-conflict justice, the picture that emerges from Africa is murky. The AU's criticism of the ICC is overblown, yet its case selection and public relations clearly need to be rethought. National solutions can work up to a point, though they tend to lack in transparency, inclusiveness, compensation or retribution. Meanwhile the AU's own role in fighting impunity is still in its infancy. In one not immediately obvious way, however, the debate over the ICC's Africa bias hints at a deeper problem of contemporary international relations and collective supranational forms of jurisdiction.

China and India's emergence as resource-poor economic super-powers with a growing stake in the continent (and which, like the United States, are opposed to the ICC) means that the West's clout and negotiating power, for instance by making aid conditional on compliance with human rights standards, is on the wane.²⁹

²⁶ For example, the leaked report recommends that neither President Salva Kiir nor rebel leader Riek Machar should be part of a government of national unity.

²⁷ Jok Madut Jok, "The African Union and the Botched Responsibility to Act on Behalf of South Sudan's Victims of Conflict", in *Sudd Institute Weekly Review*, 17 March 2015, <http://www.suddinstitute.org/assets/Publications/ResponseAUCISSJok.pdf>.

²⁸ Thabo Mbeki and Mahmood Mamdani, "Courts Can't End Civil Wars", in *The New York Times*, 5 February 2014, <http://nyti.ms/1cUAYtI>.

²⁹ Mark Duffield, "Autour d'un livre. Development, Security and Unending War: Governing the World of Peoples. La réponse de Mark Duffield", in *Politique africaine*, No. 125 (March 2012), p. 228-232, <http://www.davidchandler.org/wp-content/uploads/2014/10/Politique-Africaine.pdf>.

This matters not little considering that according to a certain reading of events, the European Union in 2005 used carrots and sticks to pressure African countries to sign up to the ICC by linking the issue to the passing of the revised Cotonou Agreement on EU-Africa trade.³⁰ Hence, it should definitely be a worrisome sign for proponents of international accountability such as the European Union if submitting to the ICC's jurisdiction is perceived as a sign of state weakness only to be borne by the most downtrodden and externally dependent of countries like Liberia, Sierra Leone, Congo, South Sudan or the Central African Republic.

The Rwandan government's reinvention of the Gacaca village courts is an excellent example of how imperfect local solutions might be preferable for national rulers as they have more control over outcomes.³¹ Other strong countries like Nigeria or Ethiopia may likewise decide that relinquishing part of their sovereignty in exchange for development aid and preferential trade agreements is simply not worth it. Thus, the fact that in 2012 former Liberian president Charles Taylor was sentenced to 50 years in prison by the Special Court for Sierra Leone in The Hague can, in equal measure, be seen as a victory for humanity and – for some political leaders in Africa and elsewhere – as a wake-up call to discontinue cooperation with the ICC in order to avoid a similar fate. Critically, Taylor was indicted by the ICC right as he was conducting peace negotiations, highlighting once again the potential clash between the goals of peace and justice.

If the European Union wants to see the ICC succeed – as it should – then it will have to do more to bolster its appeal not only by increased funding but also by diplomatically stiffening its spine. To be clear, this does not mean that Brussels should bankroll a media campaign in favour of the ICC. What can be done, however, is to regularly and publicly emphasise the value of international law and the member states' willingness to allow a curtailment of their own sovereignty for the benefit of all of mankind. Moreover, the ICC should not be seen as the be-all and end-all, but rather as one important piece of the puzzle of transitional justice and reconciliation.³² Thus, the EU could probably most impact the overall situation of accountability in Africa by strengthening the capacity of national judicial bodies to prosecute wrongdoers – with cash, know-how and diplomacy.

³⁰ Laura Davis, *EU Foreign Policy, Transitional Justice and Mediation. Principle, Policy and Practice*, London and New York, Routledge, 2014, p. 61.

³¹ The different level of autonomy and capacity between Sierra Leone and Rwanda also manifest themselves in the fact that due to security concerns, eight men convicted by Sierra Leone's Special Tribunal are serving their terms in a high security prison in Rwanda expressly built for those sentenced by the Gacaca courts. Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda*, cit, p. 99.

³² Payam Akhavan, "The Universal Repression of Crimes Against Humanity before National Jurisdictions: The Need for a Treaty-Based Obligation to Prosecute", in Leila Nadya Sadat (ed.), *Forging a Convention for Crimes against Humanity*, Cambridge and New York, Cambridge University Press, 2011, p. 28-42.

To get more leeway in this endeavour and to tackle the issue of Chinese presence on the continent head-on, it would be worth trying to get the Chinese leadership to become itself engaged in post-conflict justice and reconciliation processes in Africa. China's tentative steps in conflict mediation in South Sudan where it has sent blue helmet soldiers for the first time³³ (to safeguard its investments in the oil industry) are a sign that the Chinese century of non-interference in other country's internal affairs may be coming to a close. Bridging the gulf in European and Chinese conceptions of international justice may in the long run also impact on the ICC's standing in Africa.

In addition, inclusion of civil society may be a catchphrase that does not catch on anymore but is nonetheless needed if processes of criminal justice are ever going to pave the way to processes of reconciliation. The value of taking civil society engagement seriously is amply demonstrated by a proposal by two South Sudanese activist scholars, which warrants wider attention. Instead of counting on the ICC, AU or a national body for criminal accountability, David Deng and Elizabeth Deng call for a revival of hybrid courts composed of national and international staff on the model of East Timor, Kosovo, Sierra Leone and Cambodia.³⁴ The greater local visibility and ownership that hybrid courts offer may, in certain cases, enable a better sense of closure for affected populations while the international component, at the same time, ensures the neutrality, credibility and funding security of legal proceedings. The Extraordinary African Chambers in the Senegalese Courts specifically set up in 2013 to try the former Chadian dictator Hissene Habré in Dakar might just become the new paradigm in post-conflict justice on the continent.³⁵

Finally, the rhetorical trenches between the ICC and its largely European backers, on the one side, and the African Union, on the other, should be filled up. There is no need to act as competitors in this field and both sides should tone down their rhetoric. For starters, it might be a helpful gesture if European politicians acknowledged the ICC's slanted case selection while they uphold in the same breath the principle that nobody is above the law regardless where he or she is from: Africa, Europe or the rest of the planet.

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³³ Chen Mengwei, "Last military group heads to S. Sudan", in *China Daily*, 8 April 2015, http://www.chinadaily.com.cn/china/2015-04/08/content_20024062.htm.

³⁴ David K. Deng and Elizabeth Deng, "Toward an Integrated Response to Justice and Reconciliation in South Sudan", in *The New Sudan Vision*, 14 January 2014, <http://www.newsudanvision.com/sudan/2779>.

³⁵ Sarah Williams, "The Extraordinary African Chambers in the Senegalese Courts. An African Solution to an African Problem?", in *Journal of International Criminal Justice*, Vol. 11, No. 5 (December 2013), p. 1139-60.

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