

# REFLECTIONS ON THE AFRICAN UNION ICC RELATIONSHIP

A PUBLICATION OF THE  
AFRICAN NETWORK ON INTERNATIONAL CRIMINAL JUSTICE

JANUARY 2014



PUBLISHED BY ICJ KENYA A MEMBER OF THE ANICJ

 **icj** International  
Commission  
of Jurists  
KENYAN SECTION | Since 1959



# **REFLECTIONS ON THE AFRICAN UNION ICC RELATIONSHIP**

A PUBLICATION OF THE  
AFRICAN NETWORK ON INTERNATIONAL CRIMINAL JUSTICE  
PUBLISHED BY ICJ KENYA  
A MEMBER OF THE ANICJ

## Table of content

1.0	Table of content .....	i
2.0	Reflections on African Union's stance on the International Criminal Court, towards the 22nd Assembly of States Parties.....	1
3.0	Africa's unfinished business: Ensuring justice for victims of serious international crimes .....	3
4.0	The Kenyan ICC cases: issues the AU should take into Account.....	6
5.0	What AU leaders should reflect on before any further actions on ICC .....	10
6.0	Justice pour les victimes .....	13

# REFLECTIONS ON AFRICAN UNION'S STANCE ON THE INTERNATIONAL CRIMINAL COURT, TOWARDS THE 22ND ASSEMBLY OF STATES PARTIES

*By Jemima Kariri, Senior Researcher, International Crime in Africa Programme, Institute for Security Studies.*

As African Heads of States and Governments convene at the 22nd Assembly of the African Union (AU) in January 2014 in Addis Ababa, they will be faced with situations that are a growing threat to peace and human security on the continent. The Central African Republic is gripped in violent clashes between Christians and Muslims that threaten to spiral into a genocide. South Sudan may be on the verge of a full civil war and the conflict is already resulting in the mass displacement of people. In addition, there continue to be reports of crimes against humanity. While the M23 may have been defeated in the Democratic Republic of Congo, its remnants are still active. Justice for victims of crimes committed during this conflict is necessary if future crimes are to be deterred. While these crises continue, the AU remains at odds with the International Criminal Court (ICC) which would otherwise be a natural partner in bringing justice to the victims of international crimes (crimes against humanity, war crimes and genocide).

This dissatisfaction with the ICC was first experienced following the indictment of a sitting Head of State, President Omar Al Bashir of Sudan, in 2009. The indictment of the current President of Kenya, Uhuru Kenyatta and Deputy President, William Ruto for international crimes committed during the 2007/8 post-election violence in that country deepened the resentment of the AU towards the ICC. The AU has passed resolutions calling for non-cooperation with the ICC in the arrest and surrender of heads of states and has also called for the withdrawal of the Kenyan cases from the ICC. Observers have concluded that AU's concern lies mainly in shielding heads of state from liability for international crimes rather than in favour of justice for victims and deterring future crimes.

This is worrisome for supporters of international justice and the victims of such crimes. In the decision adopted at the extraordinary summit held in October 2013, the AU recommended immunity from prosecution for sitting heads of state for such crimes. This is contrary to obligations under Article 27 of the Rome Statute which states that government officials and heads of state are not immune from prosecution for international crimes.

African leaders have, however, been careful not to be misconstrued as promoting impunity. Their counter balance to the ICC includes the expansion of the jurisdiction of the African Court

on Human and Peoples' Rights (African Court) to deal with among others, international crimes committed in Africa. This is portrayed as consistent with the notion of "African solutions for African problems". The project of an extended jurisdiction for the African Court is a noble one but presents challenges of both capacity and affordability among others.

African membership at the ICC stands at 34 out of 122 members, and represents the largest continental representation globally. The most appropriate means for dealing with grievances of African leaders is through bilateral channels in respect of specific cases and through the Assembly of State Parties (ASP) of the ICC in the case of general matters. This yielded benefits relating to amendments to the Rules of Procedure of ICC at the last ASP. In addition, African states should continue to engage the UN Security Council, on matters in its purview such as referral of new situations (such as Syria), and deferrals.

The ICC has also been criticized for not performing its tasks impartially and thoroughly. It is therefore necessary that strengthen efforts towards ensuring that court processes are well managed in order to rebuild trust and support its pivotal role.

Africa has made tremendous strides in addressing threats to peace and security on the continent. There has been significant progress in Africa, including that the AU's Constitutive Act grants the right to the Assembly to intervene in cases of crimes against humanity war crimes and genocide, the Charter on Democracy, Elections and Governance has been adopted and that the majority of African member states have ratified the Rome Statute.

African leaders need to recommit to ending impunity and actively demonstrate their support for international criminal justice. As they have previously done, African states need to use their considerable power within the ASP to achieve the reforms necessary to achieve justice for victims in Africa and globally.

### **As AU leaders gather for this important summit, it is necessary to:**

1. Consider the plight of victims of grave international crimes when making any decisions related to the ICC;
2. Continue to fully implement Article 4 (h) (a) of the Constitutive Act of the AU, in particular considering the developments in Central Africa and South Sudan and elsewhere;
3. Support international justice and establish the means for dialogue, cooperation and communication with the ICC and contribute to re-shaping the court into the international tribunal that Africa wants;
4. Encourage member states to strengthen national level judiciaries, law enforcement systems and institutions (including witness protection) to respond to international crimes, in order to complement the work of the ICC;
5. Continue to cooperate with civil society organisations, and convene ongoing dialogue on international criminal justice in Africa.

# AFRICA'S UNFINISHED BUSINESS: ENSURING JUSTICE FOR VICTIMS OF SERIOUS INTERNATIONAL CRIMES.

*By Ibrahim Tommy, Executive Director, Center for Accountability and Rule of Law – Sierra Leone*

At an extraordinary emergency meeting of the African Union (AU) on October 11-12, representatives of African governments once again reminded the world of the growing rift in relations between the International Criminal Court (ICC) and African state parties to the Rome Statute. The summit, largely influenced by the Kenya government and its allies, was aimed at persuading the 34 African state parties to the Rome Statute to withdraw en masse. While the campaign for a mass withdrawal from the Rome Statute was not successful, the resolutions at that summit have left many wondering about the future of international justice on the continent. The resolutions included, “to safeguard the constitutional order, stability, and integrity of member states, no charges shall be commenced or continued before any international court or tribunal against any serving AU Head of State or Government or anybody acting or entitled to act in such capacity during their term of office”. The representatives also resolved that “the trials of President Uhuru Kenyatta and Deputy President William Ruto, who are the current serving leaders of the Republic of Kenya, should be suspended until they complete their terms of office”.

The deep-seated mistrust between many African leaders and the ICC seems to be rooted in their belief that the court has been “unfairly targeting” them. Rwanda’s President, Paul Kagame has roundly criticized the court, saying it was not plausible to have an international justice system that “dispensed justice selectively or politically”. Kenya’s Uhuru Kenyatta has repeatedly characterized the Court as a neo-colonial outfit institution designed only to persecute African leaders. African leaders have generally argued for the need to set up an African-based institution mandated to investigate and prosecute violations of international law. This is part of the initial circulated agenda of the 22nd AU summit scheduled to start in January, 2014.

The object of this article is not to discuss the merits or otherwise of the complaints African leaders have with the ICC: nor is it about reviewing the decisions of the UN Security Council or the ICC’s prosecutor. This article discusses the implications of the impasse between the AU and the ICC, evidenced by some of the recent AU resolutions.

It is a fact that international justice is unevenly applied across the globe. Indeed, rich and powerful nations continue to shield their allies or citizens from facing justice. Unfortunate as these imperfections might be, they do not diminish the need the for a functioning accountability

mechanism that seeks to respond to the justice needs of millions of victims of the conflicts in Africa and other parts of the world. This is important as the Court has the jurisdiction to try war crimes. It is regrettable that many egregious human rights violations against Africans, including murder, rape and pillage, happen on the continent still go unpunished. From Sudan to Mali, from the Central African Republic to the Democratic Republic of Congo, serious violations are occurring with impunity on daily basis. In South Sudan, for example, the UN estimates that 10,000 people have been killed since the conflict started in December. The fighting has driven some 400,000 civilians from their homes with most believed to be internally displaced in the country and nearly 80,000 fleeing to neighbouring countries, according to the UN Mission in Sudan. The UN Mission in Sudan estimates that 80,000 have fled to the relative sanctuary of neighbouring the countries, with the rest living precariously as Internally Displaced Persons in South Sudan.

Because of the apparent deterioration in relations between the AU and the ICC, efforts at investigating violations in Mali seem to have slowed, while little or no discussions have started on the serious violations occurring in South Sudan and Central African Republic. As a result of this hostility, African state parties may become increasingly less likely to refer cases to the Court. The more these senseless violations go unpunished, the greater the likelihood that conflict will take place. Impunity breeds illegality, which inevitably leads to a cycle of violence. Whatever the issues Africa or its leaders have against the ICC, they pale in comparison to the need to strengthen a culture of accountability on the continent. At state level, there are serious challenges with institutions of accountability and justice. There are also serious deficiencies in addressing human rights issues even at sub-regional levels.

When victims continue to feel that justice has not been done with respect to the violations suffered, it makes it difficult or impossible for them to come to terms with what has happened to them. It reduces their self-esteem, and undermines their ability to bring closure to the past. The Special Court for Sierra Leone, in spite of all its challenges, was able to deliver justice that has helped many victims to move on, while at the same time consolidating peace and strengthening Sierra Leone's justice mechanism. The people of Kenya, particularly the victims of the post-2007 election violence, deserve justice. Disagreement over who has not been indicted should not derail efforts at bringing to justice those who have legitimate cases to answer before the ICC. People are elected to protect the rights of people – not to use their power to protect the rich and powerful. Bringing the powerful to justice is the essence of the international justice mechanism. Any attempt at contriving to shield them those guilty of serious crimes defeats the basic purpose of international justice. The Addis Ababa resolution to delay trials of African leaders and shield senior government officials from facing justice undercuts Africa's rich contribution to international justice, and represents a clear recipe for institutionalizing impunity for the powerful in the 21st Century. Will these exemptions and protections be carried over into the mandate of the African Court of Justice and Human Rights?

The ICC need not be the only option, but even if its future in Africa is as one institution among several, it must continue to have a role. While it makes sense to expand the scope of the African

Court for Justice and Human Rights (ACJHR) to include criminal prosecution, it cannot be a substitute for the ICC. It is imperative that the AU continue to cooperate with the ICC while it is undertaking a review of the ACJHR's mandate. Implementing an expanded mandate of the ACJHR is likely to pose serious challenges and it may be subject to some of the same pressures as are being applied to the ICC. The chances of an effective implementation can be enhanced by working with the ICC and learning from its experiences.

Any decision to boycott the Court, ignoring the plight of victims in favour of the interests of a few powerful African leaders, suggests that the ICC was conceived in bad faith. It was not. While noting the issues with the ICC, it today represents the only genuine and functional global effort to provide justice for serious violations of international law.

When the AU and the ICC meet in Addis Ababa in January 2014, African leaders will have an opportunity to address the crisis between them. Any delay in resolving the crisis, and any further complications, will only be at the expense of the victims, who are the least able to wait. We can't afford to lay the basis for the next conflict by guaranteeing impunity for those who committed crimes during the last one, or for those who are committing crimes now. It is time to act, even if the right action harms the interests of the rich and powerful.

# THE KENYAN ICC CASES: ISSUES THE AU SHOULD TAKE INTO ACCOUNT

*By George Kegoro, Executive Director The Kenyan Section of the International Commission of Jurists (ICJ Kenya)*

The Kenyan leadership has done a commendable job in building solidarity before the African Union with a view to resisting the trial that the Kenyan President and the Deputy President face before the International Criminal Court. The most recent stage where this solidarity was exercised is the 12th Assembly of States Parties of the Rome Statute, where African states joined forces to articulate the position that no head of state should be put on trial while still in office. While this position was not accepted by the Assembly, the fact that this issue was brought to the agenda of the ASP represents the power of solidarity and the possibilities that are inherent in this.

There are, however, a number of issues that the AU needs to bear in mind in terms of ensuring that there is a balanced approach to the Kenyan cases before the ICC. The purpose of this article is to identify and address six issues in relation to the Kenyan cases before the ICC with a view to responding to them in a manner that will increase objective information on the Kenyan cases.

## **(i) The Kenyan Constitution does not allow head of state immunity.**

One of the reasons why the AU has opposed the continued prosecution of the Kenyan cases before the ICC is because the prosecution of the cases will jeopardize the immunity of the Kenyan head of state that is enshrined in national law in several African constitutions, including that of Kenya.

At the ASP, the request for a deferral of the Kenyan cases was discussed both in terms of international law and also on the basis of Kenyan law. The position of the Kenyan constitution is that the head of state does not enjoy immunity from trial for crimes under international law. The exact provision of the Constitution, at article 143 (4) is as follows:

The immunity of the President under this Article shall not extend to a crime for which the President may be prosecuted under any treaty to which Kenya is party and which prohibits such immunity.

The resolution by the AU that the Kenyan cases should not be tried until Kenyatta and Ruto leave office is in direct contravention of the Kenyan constitution. The Kenyan constitution was

enacted in 2010, after the country was already engaged with the ICC. In choosing to avoid head of state immunity, Kenya made an informed choice, which was based on the recent experiences in the country.

It would be irresponsible if the AU encouraged Kenya to contravene its own constitution.

**(ii) The Kenyan Cases are already on Trial, and the AU resolution has been overtaken by events. The AU must avoid a situation where its own authority is undermined by the disregard of its decisions.**

The resolution to defer the trial of the Kenyan cases was made at the 21st Ordinary Session of the AU in May 2013, and in a follow up extra ordinary summit held in October 2013 the AU further resolved that no head of state or person entitled to act in that capacity, should be put on trial while in office.

Thereafter, and contrary to this resolution, William Ruto appeared before the court and his trial has been going on. The AU resolution has been honoured through breach. This is something the AU should ideally avoid.

The trial of President Kenyatta has not yet commenced. Kenyatta must make a decision on whether to attend his trial or not when the time to do so arises. If, like his deputy, he chooses to attend, this will further undermine the resolutions. If he chooses not to attend, and cites the AU resolutions, there will be a conflict between his decision, and Kenyan law. It will be open to Kenyan institutions to find that the president is in breach of Kenyan law. The AU should not put its members in a position where they justify undermining national laws on the basis of its decisions.

**(iii) Kenyatta and Ruto were not head of state when first charged.**

Kenyatta and Ruto were charged before the ICC before they became head of state or deputy head of state.

In the campaigns that led to their assuming office, the question of their impending trials pre-occupied the country, and was explored during a televised debate between the presidential candidates. Specifically, Kenyatta was asked how he would juggle between attending his trial and the duties of presidency if he was elected to this office.

Referring to himself and his running mate William Ruto, Kenyatta indicated that “it is our intention to follow through [the cases] and ensure that we clear our names.” He added that he considered accountability before the ICC was a necessary step towards ensuring that the kind of problems that Kenya faced in 2007 would not recur. In his own words, “At the same time, we are offering ourselves for leadership in this country, a position that we believe and want to pass

on to Kenyans, an agenda that will first and foremost ensure that the kind of problems of 2007 are put to an end.”

Asked whether the cases would affect his capacity to run the country, Kenyatta answered that “many Kenyans are faced with personal challenges and I consider this as a personal challenge”. He said he considered that since personal challenges did not affect the capacity of other people to continue with their day-to-day jobs, they should not prevent him from doing so as well.

On that night, Kenyatta concluded: “I will be able to deal with the issue of clearing my name while at the same time ensuring the business of government is implemented”.

In the debate, Kenyatta sent three clear messages regarding the cases at The Hague. First, that he and his running mate, Ruto, were committed to accountability through the ICC process, because they considered it important to clear their names; second that they considered their engagement with the ICC as a private matter for the two of them, as opposed to a public problem for the Kenyan state; and third, that they would uphold the Kenyan Constitution if elected to office.

At that time, they made it clear that their trial before the ICC was a personal problem that had nothing to do with the Kenyan state. It would be a breach of trust if, having achieved the control of the state, they now turn around and use it to shield themselves from accountability before the ICC.

Kenyatta was clear that clearing his name was important for his personal standing and legitimacy. This surely remains the case, more so because he is now president. It is not just Kenyatta and Ruto that have an interest in clear names. The general population in Kenya, much of which is law-abiding, expects no less from its leaders. More importantly, clearing their names would be a mark of respect for the many victims of the horrendous crimes that occurred in the country, for which there has been little accountability.

#### **(iv) The AU should remember the Victims**

A failure of the trials would have significant problems for the country. It would be disrespectful of the victims of the post-election violence, and would denude the young government of the legitimacy it needs to govern. It would change the nature of domestic politics considerably, as it would trigger the issuance of arrest warrants against Kenyatta and Ruto, which would then cage them in the country, for fear of arrest if they travel abroad. This is what happened to neighbouring President, Omar al Bashir of Sudan whose last foreign trip in 2013, a visit to Abuja, which was designed to be a brave statement of defiance of the ICC, turned into a humiliating escape from Nigeria, when he got wind that local civil society organizations were planning his arrest there. Kenya would not want its president to live a life that necessitates escapes from foreign capitals. A failure to attend trial would turn Kenya rogue, creating the need for a Kenyatta/Ruto

life presidency, since if they defied the ICC, they must then retain power forever so as to remain safe from arrest.

### **(v) The AU posture has effects on economic chances**

At another level, poverty is Africa's greatest problem. The delivery of citizens from its bondage remains the most critical duty of government. It is unlikely that governments, fighting ICC arrest warrants, can deliver their countries from poverty.

The problems of Zimbabwe, where a contentious regime is in power, demonstrate the linkages between political legitimacy and economic stability. In 1980, President Mugabe inherited one of the best-run countries in Africa. Whatever it's other effects, the international problems of Zimbabwe have ruined the country economically. Today, 1.5 million Zimbabweans live in South Africa, as illegal immigrants, dislocated from their country by economic factors.

### **(vi) The AU should talk to citizens, not just governments**

With respect, the AU position on Kenya is largely informed by the sources from the Kenyan government. As a result the AU position is inherently unbalanced. A good example is the incorrect position of the Kenya government as to head of state immunity. The AU believed the representations of the Kenyan government and has proposed a series of interventions that are based on a wrong appreciation of the Kenyan position. If there was a more representative engagement by the AU, including with non-state actors in Kenya, this would be avoided.

# WHAT AU LEADERS SHOULD REFLECT ON BEFORE ANY FURTHER ACTIONS ON ICC

*By Sulemana Braimah, Executive Director, Media Foundation for West Africa*

Half a century ago, the African continent was bursting with legitimate agitations for independence from colonial rule. Generally, the purpose of those independence struggles was the attainment of self-governance. But beneath the passion for self-rule was an avowed hatred for oppression and subjugation of the African people by colonialists.

At the time of the struggle for self-rule, iconic freedom fighters such as Dr. Kwame Nkrumah of Ghana, Jomo Kenyatta of Kenya, Julius Nyerere of Tanzania, Patrice Lumumba of Congo, and the many other revolutionary leaders, had and indeed pursued a dream of proving to the world that the “black man was capable of managing his own affairs.”

Unfortunately, and contrary to the dreams of the founding fathers, the oppression, injustices and the inequalities they fought against persist. Sadly also, the oppression is no longer perpetrated by colonialists, but by Africans against Africans. For the many African victims of oppression, therefore, the fight for independence continues until freedom is attained.

The consequence of the continued oppression and the concomitant struggle for freedom by the oppressed has been the affliction of perpetual humanitarian crises on the continent, as manifested by civil wars, and the many atrocious political, ethnic/tribal conflicts. These have always resulted in the loss of thousands of innocent lives, with many others having to endure severe life-long effects.

It is generally known that the key causes of the incessant humanitarian crises on the continent have included collective, group-based grievances against nepotistic, oppressive and exclusionary leadership that remain prevalent in Africa. The situation is escalated by increasingly wanton disregard for rule of law and denial of justice for the masses.

## **(i) Hopes dashed, conditions worsening**

The wave of democratisation, which started from the 1990s, had been considered by many as a significant milestone that will guarantee the freedom that the African people had always struggled for. The expectation was the type of freedom that is characterised by the respect for human rights, rule of law, access to justice and sanctions for perpetrators of crimes.

Unfortunately, the positive expectations from democratisation have not been met as democracy in many countries has simply been redefined to mean, letting citizens go through a voting process and having leaders maintain the status quo.

So as the struggle for freedom by the African people continues, threats to peace and the potential for conflict-induced humanitarian crimes remain prevalent in Africa. Increasing incidence of transnational organised crime and terrorism, severe human rights violations, drug trafficking, proliferation of small arms and light weapons, and bad governance, have been identified by experts as posing significant threats to continental peace and security than ever before.

In pursuit of a solution, different state and non-state actors continue to implement different interventions aimed at mitigating or preventing violent conflicts, building peace where violent conflicts are ongoing and fostering reconciliation in post-conflict societies. But in the pursuit of peace, reconciliation and development, a critical missing link remains the absence of stronger judicial mechanisms for sanctioning perpetrators of crimes and providing justice for victims.

In all countries in Africa, there are courts that are supposed to be sources of justice for citizens. The reality, however, is that in most countries, these courts lack independence, credibility and the boldness to conduct fair trials, especially on cases involving abuses by government officials and other powerful persons in society.

In many countries, the courts are tools in the hands of governments and subject to government manipulations. Regional courts that have been set up to deal with the challenges posed by the weakness of national courts in the provision of justice have also not been highly successful. Judgments by such African regional judicial mechanisms are often flagrantly disregarded by national governments. Consequently, government-orchestrated and state-sponsored crimes against citizens are often perpetrated with impunity.

The weakness of the justice system in Africa was amplified by former UN Secretary General, Kofi Annan, when he said: "What is important is that African judicial systems are weak. The victims deserve justice and they want justice. The question I cannot ask often enough is: who speaks for the victims? How do they get justice? Who's in their corner?"

## **(ii) ICJ to the Rescue**

In the face of the obvious limitations of African national judicial systems to provide justice for victims of serious crimes, and the dire consequences of such lacuna of justice, the solution lies in International Criminal Justice (ICJ) mechanisms. This is what makes the existence and functioning of ICJ mechanisms such as the International Criminal Court (ICC) and other ad hoc/special courts extremely important. At least, these courts have so far proven to be mechanisms that can fulfill the critical role of giving a voice to victims of crimes and holding perpetrators accountable.

If anyone is still in doubt about the need to support the ICC and other ICJ mechanisms (possibly because of the erroneous and propagandist claim that the court is targeting African leaders), let that person reflect on this quote from Steven Powels:

*"For Africa's victims, justice, even if selective, will always be welcome. Are African perpetrators singled out more than others? Perhaps. But try telling that to their victims. From a man forced to choose which healthy hand to have amputated, to a woman gang raped by 20 men, to a child forced to kill his parents and join a rebel gang, justice, even if selective, will almost always be welcome. It is the victims of the crimes overlooked that have the right to complain, not the defendants in the dock."*

It is, therefore, important that even in the absence of war and crimes, proactive measures are put in place to by government to reduce citizens' disbelief in their (the government's) commitment to providing them with justice. Effective justice mechanisms are what is required for successful peacebuilding and conflict prevention in Africa. This is why African leaders need to support ICJ mechanisms such as the ICC and act in ways that promote the effectiveness of such mechanisms. Support for ICJ mechanisms by African leaders will be the most demonstrable way they can assure the people of Africa of their true commitment justice and genuine abhorrence for impunity.

As Africa Union (AU) leaders take decisions and continue to discuss the feature of AU-ICC relations, they should always reflect on this poignant statement by former UN Secretary General Kofi Annan, and be on the side of justice:

*"Africans want justice, preferably from their own governments if they can and, if not, from the international criminal court. The day when African courts become independent, strong and can handle these cases, I think we will see fewer referrals to the ICC."*

# JUSTICE POUR LES VICTIMES

*Ali Ouattara, Président CICPI – Ivorian Coalition for the International Criminal Court*

L'Afrique est depuis quelques années le théâtre des conflits extrêmement meurtriers dont les victimes, pour la plupart, les populations civiles, sont sans assistance et abandonnées à leur triste sort. La Justice internationale et la CPI s'investissent à donner espoir à ces victimes pour que justice leur soit rendue. C'est ce qui justifie les poursuites que la CPI engage contre les bourreaux, auteurs des violations massives des droits humains, fussent-ils chefs d'Etat.

Le refus d'exécuter les mandats d'arrêt de la CPI à l'encontre de certains dirigeants africains, et la demande de suspension des poursuites contre des présidents en fonction tout au long de leur mandat, a soulevé un véritable tolet et une grande indignation chez les nombreuses victimes des crises sur le continent. C'est un camouflet, un véritable coup de massue porté à la lutte contre l'impunité et surtout au bien être de nos vaillantes et valeureuses populations. La détermination et l'indépendance de la justice internationale à protéger et à défendre les sans voix ; c'est-à-dire les populations, grandes victimes des graves crimes est ainsi mise en mal. Laissant les millions de victimes à leur sort (à l'abandon).

Notons que depuis plusieurs décennies le continent africain est en proie à des conflits qui engendrent beaucoup de violences et de pertes en vie humaines. Il donne une image peu reluisante en matière de stabilité, de paix, de démocratie, de droits humains, de justice indépendante et équitable. Nombreux sont les pays qui ont vécu ou qui continuent de vivre des conflits meurtriers avec leur lots de morts, de déplacés et de désolation. Le paradoxe, et le plus choquant, c'est l'incapacité de l'Union Africaine à mettre fin à ces drames, à les prévenir et surtout à prendre en charges les millions d'innocentes victimes tant sur le plan judiciaire, psychologique que médical. Citons entre autre, hier le Rwanda et le Burundi, aujourd'hui le Soudan, la RDC, la RCA,... C'est cette situation qui a poussé de nombreux états du continent à adhérer au Statut de Rome de la CPI, faisant de l'Afrique la plus représentée dans cette structure universelle de lutte contre l'impunité. Les différentes situations aujourd'hui devant cette juridiction ont pour la plupart été soumise par des états parties eux mêmes ( RDC, RCA, Ouganda , Côte d'Ivoire, Mali) ; Par le Conseil de Sécurité de l'ONU (Lybie , Soudan). Seul le Kenya a fait l'objet d'une saisine du procureur lui-même. L'Afrique est une terre où se vit et se pratique l'impunité à grande échelle avec comme principaux acteurs les dirigeants des états. C'est donc faire un mauvais procès à la CPI, en affirmant qu'elle ne se focalise que sur les leaders africains. C'est aussi mal connaitre le fonctionnement de cette Cour qui est complémentaire des juridictions nationales et qui a pour

objectif principal de lutter contre l'impunité partout dans le monde et surtout de protéger la population mondiale.

Et pourtant, cette protection des populations, la volonté de lutter contre l'impunité est formulée dans l'article 4 de l'acte constitutif de l'UA.

L'Afrique est donc en phase dans sa vision avec la justice internationale et la CPI. Elle doit rendre concrète cette disposition qui a suscité beaucoup d'espoir. L'objectif de l'UA qui est le bien être des africains et le développement du continent ne peut être atteint sans la justice. Nul ne doit donc être au dessus de la loi, quelque soit son rang. Les dirigeants africains ne doivent pas être au dessus de la loi. Ils ne doivent pas avoir un permis de tuer impunément. Les décisions actuelle de l'UA relative à la justice internationale et à la CPI constituent une prime donner aux chefs d'états pour violer les Droits Humains. Ils doivent répondre de leur acte. Ils doivent rendre compte.

C'est donc à juste titre que le prix Nobel de la paix sud africain Desmond Tutu dénonce avec virulence la décision des dirigeants africains en affirmant qu'elle est suicidaire pour les victimes. Pour lui, les chefs d'état veulent tuer la CPI. Ils veulent porter un coup fatal sur ce qui fonde la raison d'être de la Cour Pénale Internationale ; notamment son indépendance et sa détermination à protéger les graves crimes internationaux, survenues dans de nombreux foyers de tension, allumés ça et là à travers le continent. Quant à l'ancien secrétaire générale des Nations Unies par ailleurs président du groupe des « Elders » monsieur Koffi Annan, il se désolé en affirmant que c'est une honte pour l'Afrique. A ceux qui continuent de croire que l'Afrique est particulièrement dans le viseur de la Cour Pénale Internationale, il leur rappelle que la justice internationale s'en prend plutôt à la culture de l'impunité, de même qu'à leur auteur, et non pas à l'Afrique. L'Union Africaine doit mettre au cœur de ses débats l'intérêt des millions de victimes et des populations pour lesquelles les chefs d'Etat sont censés travailler.

Aujourd'hui au pouvoir et refusant la justice, demain, ils peuvent être à leur tour des victimes. Tout le monde est une potentielle victime sur notre continent eu égard à l'instabilité chronique et endémique de nos Etats. Evitons donc d'encourager l'impunité à travers des décisions qui ne défendent que l'intérêt d'une minorité non représentative du peuple africain. L'impunité d'aujourd'hui est le crime de demain. L'impunité est un encouragement à la récidive ; à la vengeance. Seule la justice, quelle soit locale, régionale ou internationale peut apporter une paix durable et un développement de nos pays. L'Afrique doit donc coopérer avec la justice internationale et la CPI. Au final l'UA doit éviter de prendre des décisions qui pourraient conduire le continent dans des cycles de violences et de violations massives et récurrentes des Droits Humains ; exposant ses populations. C'est la stabilité, le développement et la crédibilité de nos Etats qui se jouent.

Ouvrons donc, toutes et tous, dirigeants africains, population, société civile et organisations à faire de notre continent une référence mondiale dans le domaine du droit et de la justice. Faisons en sorte que nul ne soit au dessus de la loi.



THE KENYAN SECTION OF INTERNATIONAL COMMISSION OF JURIST  
Vihiga Road, off Othaya Road, Kileleshwa, P. O. Box 59743 - 00200 Nairobi Kenya

Tel: +254 20 3875908/1, Fax: +254 20 3875982,

Mobile: +254 720 491549, +254 733 491 549,

Email: [info@icj-kenya.org](mailto:info@icj-kenya.org),

Website: [www.icj-kenya.org](http://www.icj-kenya.org)

**Supported by Trust Africa**

