



Prosecuting International Crimes in Africa: Lessons from Rwanda and Reflections on the Future¹

Hassan B. Jallow*

Abstract

In this article the former Chief Prosecutor of the International Criminal Tribunal for Rwanda reflects on his experiences to respond to the question: what options are available for Africa in dealing with mass atrocity crimes based on the ICTR experience? The article notes the pedigree of Africa in terms of international criminal justice and the contributions this allows it to bring to the broad questions of ensuring justice for mass atrocities and building peace and reconciliation after such incidences.

Résumé

Dans cet article l'ancien Procureur Général du Tribunal Pénal International pour le Rwanda réfléchit sur ses expériences pour répondre à la question: quelle sont les options disponibles pour l'Afrique afin de statuer sur les crimes d'atrocité de masse partant de l'expérience du TPIR? Cet article note le pedigree de l'Afrique en termes de justice pénale internationale et les contributions que cela permet d'amener à la vaste question d'assurer la justice pour des atrocités de masse et la consolidation de la paix et de la réconciliation après de tels incidents.

Introduction

Africa is no stranger to international criminal justice. It has been the scene of some of the most egregious humanitarian tragedies of modern times: Sierra Leone, Rwanda, Sudan, the Congo, Central African Republic, etc. Some of the boldest initiatives in ensuring accountability for mass crimes have taken place in Africa albeit largely driven by the UN and the rest of the international community – the Special Court for Sierra Leone (SCSL) and the International Criminal Tribunal for Rwanda (UNICTR) have been successful pioneers in

* Chief Prosecutor UN-ICTR & UN-MICT, Under Secretary-General of the United Nations. Email: jallowh@un.org

this field. African states today constitute the largest regional group in the membership of the International Criminal Court (ICC) established under the Rome statute. At the same time, the trial dockets of the ICC are currently exclusively African situations.

What lessons are there for Africa from this 'central' position in international criminal justice particularly at a time when that system has shifted from the principle of primacy to one of complementarity under the Rome Statute which vests primary responsibility in states for ensuring accountability for international crimes?

This article contains some of my reflections on the lessons learned from the ICTR in an attempt to contribute to the debate about Africa and the prosecution of international crimes. What options are available for Africa in dealing with mass atrocity crimes based on our experience at the ICTR? Furthermore, my reflections in this article can be properly viewed in the context of the conference topic particularly on justice and reconciliation. Part of the objectives of the ICTR was to bring about reconciliation in Rwanda through justice as there is no peace without justice. Our experience at the ICTR and in Rwanda has exposed us to a range of tools that may be utilized in Africa in order to deal not only with post-conflict situations and mass atrocity crimes on the continent, but also to prevent the occurrence of such crimes in the first place.

In just two decades since the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993, the process of international criminal justice has today become an important element of international relations as well as a potent instrument for justice, peace, accountability and reconciliation in post-conflict situations. The establishment and work of the ICTY, the International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone (SCSL), the Cambodia Extraordinary Jurisdiction (the ECCC), the Special Tribunal for Lebanon (STL) and eventually the International Criminal Court (ICC) of the Rome Statute have been important catalysts for bridging the half century gap in international criminal justice between Nuremberg and the establishment of the ICTY.

Yet today international criminal justice stands at the crossroads between the impending closure of the ICTR and the other ad hoc and hybrid tribunals on the one hand and the emergence of the ICC on the other hand, an emergence which is not without tension and controversy.

It is thus fitting that an august institution such as CODESRIA has convened this eminent group of personalities to consider Africa's role and potential in the future of international criminal justice. Africa is no stranger to international criminal justice. The establishment of the ICTR in 1994 by

the UN Security Council in response to the mass murder of more than a million innocent people – Tutsis and moderate Hutus – in a hundred days as a result of a genocidal joint criminal enterprise between their government, the military, the ruling party and other sections of the establishment and the community was Africa's first experience in this respect.

Since then the tragedies of Sierra Leone, Kenya, Uganda, the DRC, Sudan, Libya, Central Africa Republic and Côte d'Ivoire have led to the establishment of the Special Court for Sierra Leone (SCSL) and self-referrals of various situations to the ICC, making Africa the biggest client of that tribunal.

The ICTR Mandate

Some two decades after its establishment, the ICTR stands today on the verge of closure, along with its counterpart ad hoc tribunals such as the ICTY, the ECCC and the Special Tribunal for Lebanon. The SCSL has already wound up its operations. How, if at all, has the ICTR, indeed the entire process, impacted on Rwanda, on Africa, and further afield, on the rest of the world? What are the lessons that can be drawn for Africa and the rest of the world from the operations of this tribunal and the broader process of international legal accountability over the past two decades?

Mindful of its relatively limited mandate of prosecuting not all perpetrators but only those who committed serious violations i.e. those who played a leading role in the Rwandan genocide, the ICTR indicted ninety-three such persons including the former Prime Minister of the interim government, cabinet ministers, senior military officers, government officials, media people, clergy and ordinary civilians selected on the basis of objective criteria developed by the Office of the Prosecutor (OTP). All these people had of course fled Rwanda and were dispersed worldwide. It took the painstaking efforts of the Tracking Team of the OTP with the cooperation of several governments and organizations and extensive transnational operations involving some fifty countries to track, arrest and transfer eighty-three of these fugitives from justice to Arusha for trial. This despite the challenges posed by the evasive strategies of the fugitives, their location in often inaccessible and ungoverned terrain as well as the lack of cooperation, if not the collusion, of some governments and institutions with the fugitives. Today, the ICTR has concluded the trials of all those arrested, with sixty-four convictions for genocide, crimes against humanity and war crimes. Fourteen of the accused have been acquitted. Three of the accused died before trial, two indictments were withdrawn – ten cases were referred to national jurisdictions (Rwanda and France) for trial including six fugitives with three other fugitives reserved for trial before the Residual

Mechanism established by UN Security Council by Resolution 966 in 2012 as the successor of the ICTR and the ICTY. At present, the ICTR is very much focused on completion of the appeals from the concluded trials and on the preparation of its archives and other legacy projects prior to closure in 2015.

Whilst the evaluation of the ICTR, indeed of all the ad hoc tribunals, is work in progress, it is fair to say that the tribunal has made its mark and had an impact on Rwanda, on Africa and on the world at large in the global struggle for justice and accountability. The long reach of the ICTR empowered by the authority of the Security Council acting under Chapter VII of the UN Charter has enabled the tribunal to bring to account leading figures including Prime Minister Jean Kambanda – who pleaded guilty to genocide – persons who might otherwise have escaped justice either because of the reluctance of states until a year ago to extradite to Rwanda or because of lack of jurisdiction by the courts of the state in which some of the fugitives were residing. It is also perhaps safe to assert that the arrest of eighty-three such leading figures removed them from the equation and facilitated the restoration and maintenance of peace and reconciliation in Rwanda.

The numbers may be relatively small given the large number of the thousands of perpetrators involved in the genocide; but what is lacking in numbers may perhaps be made up for by the very senior status of those tried by the tribunal.

These statistics at once also highlight both the strengths and the limitations of international criminal justice. Due to its costs and complexity, it can only try a few compared to the national systems which must bear primary responsibility for the investigation and prosecution of these crimes. On the other hand, there will always be persons whom the national legal systems will be unable or unwilling to prosecute due to their influence, status or authority or because they are physically out of the jurisdiction and so not within the reach of the national courts. But they are not out of reach of the international legal process. Therein lies the strength of international criminal justice: it can bring to account those out of the reach of the national systems. Thus, if the process of accountability for international crimes is to reach those persons of power and influence who can, as the Rwanda experience demonstrated, sit behind closed doors and direct killings in the streets and in the houses, we must retain the international criminal justice process as an option, even whilst acknowledging the primacy responsibility of the national systems in this respect.

The ICTR programme of referral of cases to national jurisdictions – under which two cases were sent to France and eight to Rwanda – has also

enabled the tribunal to contribute to the development of the Rwandan legal system – manifested in the abolition of the death penalty, the provision of greater fair trial rights in Rwandan law, improved centres of imprisonment and detention and other capacity building measures for the judiciary and law enforcement, investigative and prosecuting personnel. This has helped restore confidence in a legal system shattered by the genocide. Besides, it has encouraged several foreign jurisdictions in Europe, Canada and the US, following the tribunals' example, to extradite suspects to Rwanda for trial as the legal system is considered to provide fair trial both in law and in practice. In this way, it has helped to bridge some of the gaps in war impunity.

The outreach programme of the ICTR has, despite the geographical distance with Rwanda, made great efforts to keep the Rwandan population well informed about the process in Arusha and provided in the various ICTR information centres around the country a repository of information on the genocide and the ensuing process of legal accountability for the principal perpetrators.

The process of accountability is not only managed or driven by foreigners at the ICTR. Rwandan nationals have been recruited and are discharging responsibilities in the ICTR at various levels including as investigators, trial attorneys, appeals counsel, language and support officials, etc. This conscious partnership with Rwandan nationals not only assisted the tribunal access relevant evidence more easily but also contributed to the capacity building of the Rwandan legal system as some of these officials return to Rwanda to put their experience to the service of their homeland and to some extent bridged the gap between the tribunal and the Rwandan community.

Beyond Rwanda the work of the ICTR has raised greater awareness of international criminal justice in Africa, assisted in capacity building for African institutions in this area leading to *inter alia* the establishment of special war crimes offices in a number of countries. The tribunal also has a large body of Africans amongst its staff that can provide the necessary skills, expertise and experience in national efforts to entrench accountability and combat impunity.

Challenges do of course remain even at the ICTR's moment of closure. Nine top-level fugitives continue to be at large; hundreds of suspected *genocidaires* continue to live outside of Rwanda without being held accountable for their actions. It is necessary that states ensure the arrest of these nine indicted fugitives from justice and their transfer to the Mechanism or Rwanda as appropriate for trial, and that in respect of the other suspects that states live up to their legal responsibility to prosecute or extradite them to Rwanda for trial.

Wider afield globally, if the idea of international criminal justice has become acceptable today and a factor in international relations, it is due largely to the impact of the work of the network of ad hoc and hybrid tribunals of which the ICTR forms a component. Cumulatively, these tribunals have ensured the legal accountability of over 300 senior level perpetrators – heads of state, heads of government, government ministers, senior military officers and officials – who might never have faced the law without the intervention of these international courts; they have developed an extensive jurisprudence which covers both the substantive law as well as practice and procedure; above all they have developed, through their successes as well as their challenges, best practices in the investigation and prosecution of international crimes in the difficult areas of tracking, witness protection and management, state cooperation, management of evidence, trial administration, referrals of cases to national jurisdictions, and investigation and prosecution of sexual crimes which can facilitate the work of both national and other international courts. The ad-hocs have been able to demonstrate that despite numerous challenges, the process of international criminal justice is both necessary and feasible. It may be expensive; it may be time consuming – these factors can in any case be mitigated through appropriate measures. But it is necessary for justice and for peace. The work of the ad hoc special courts has provided the greatest catalyst to the eventual establishment of a permanent court under the Rome Statute.

Potential Lessons from the ICTR

What are the lessons that Africa can draw from the work of the UNICTR and of the other tribunals? What is the legacy of the ICTR for Africa? Whilst the UNICTR is truly a UN institution and not an African one, it is nonetheless closely connected to the continent – it is based and has been functioning in Africa; it is mandated to deal with a tragic situation that occurred in Africa; it has a substantial African presence amongst its staff and its operations have required it to interact with a significant number of African governments and institutions. Its links with Africa are many. There are, I believe, several lessons to draw from the ICTR.

Prevention and Protection

To begin with whilst the international community is broadly blamed for standing by, and ‘witnessing’ in the true sense of the word, the genocide in Rwanda in 1994, it is necessary to recognize that the perpetrators were Africans, as were the victims; and that neighbouring African states and African continental institutions also stood by unable or unwilling to take action to halt the genocide. Africa must share the blame with the rest of the

international community for 1994. From this recognition should follow the lesson that Africa must be prepared to manage and resolve its crises and be less dependent on external actors for conflict prevention and resolution. By empowering the AU to intervene amongst its member states to prevent or halt genocide or crimes against humanity, the Constitutive Act of the African Union appears to have absorbed this lesson and thus broken away from the OAU preoccupation with what it regarded as a sacrosanct principle of non-interference in the internal affairs of member states. In addition, since 1994 there have been a number of African-led efforts to resolve conflicts in the continent – in Sudan, in Somalia, in the DRC. Earlier the ECOMOG mission in Sierra Leone provided a good example of what a regional initiative could achieve. The fact however remains that Africa needs to enhance its resolve as well as its capacity to manage conflicts that generate mass atrocities, instead of remaining dependent on the rest of the world for our peace, our justice and our development. The responsibility to protect communities under threat or attack is as much incumbent on Africans and their governments as it is on the rest of the world. We must empower ourselves to effectively discharge that responsibility to our peoples.

Good Governance

Undoubtedly, Africa as a whole has made considerable progress in governance since the early years of independence with greater political pluralism, the demise of single party regimes, fewer military regimes, more constitutional changes of government, and better institutional arrangements for human rights protection nationally and under the Banjul Charter, the African Court of Justice and Human Rights, and other African conventions on democracy and good governance. Nonetheless, challenges still remain. The fault lines that marked Rwanda in the 1990s characterize many African states – religious and ethnic antagonistic divides, poor governance with large scale and systematic violations of human rights, impunity, lack of accountability, disrespect for the rule of law, unproductive and inequitable distribution or allocation of the national wealth, poverty, disease, dictatorship, marginalization of minorities and so on. This is very often the scenario for large-scale internal conflict.

The root cause of all the conflicts that resulted in the mass atrocities of the Rwandan kind in 1994 is bad governance. A major lesson for Africa provided by Rwanda, and the ICTR, is that we must invest in preventive measures to avoid conflict and the ensuing mass crime and that the most effective way to do so is to create in our societies an environment for genuine good governance based on respect for the rule of law, human rights and democratic principles. We need to create effective national accountability and integrity systems that

prevent impunity and promote justice; we need effective independent and impartial judicial processes with facilitation of access to them to ensure that justice is available to all; and we need more democratic, effective and just utilization of our national resources for the public good. Above all we need to approach the challenge of national peace, truth and reconciliation in each state not in an ad hoc manner that responds to crises, but with permanent, standing national institutions geared towards managing some of the fault lines in our communities in order to promote truth, justice and reconciliation in a continuous national dialogue. An environment of good government in its broadest sense is the strongest bulwark against conflict that engenders mass atrocities and international crimes.

Mass atrocity crime is a rare event, if occurring at all, in a society fully and deeply committed to the rule of law, human rights, equity, justice and fairness. Our primary strategy must be to devise and implement effective national preventive policies to guard us against these tragedies which tear apart our communities, sap our strength and lay to waste our human and natural resources. Legal and social justice can contribute significantly to the transformation of our states into communities of peace and of progress.

The work the ad hoc and hybrid tribunals, combined with efforts of some states, pressures from civil society and the establishment of the permanent ICC under the Rome Statute have all combined to usher in a new global era of accountability for egregious violations of human rights. The era of impunity is crumbling. Even those who promote impunity pay lip-service to the need for accountability. Protestations of state sovereignty will not be sufficient to stem the tide of accountability, just as claims of sovereign domestic jurisdiction of states could not stem the tide of universal concern and involvement in human rights within national frontiers.

The primary responsibility for the prosecution of international crimes today rests with the state, with the international process stepping in where the state of primary jurisdiction is unwilling or unable to discharge its responsibility. The option is no longer between impunity and accountability. The option is whether the state will provide this or whether an international process will take over that responsibility. That process can take different forms: ad hoc or hybrid courts mandated to deal with a specific situation (e.g. Cambodia, Lebanon, Rwanda, Yugoslavia, Sierra Leone); ICC jurisdiction for states party to the Rome Statute (e.g. Kenya, Uganda); Security Council referrals to the ICC for states non-party to the Rome Statute, (e.g. Sudan, Libya); the exercise of universal jurisdiction over the situation by a state other than the state of primary jurisdiction (e.g. Senegal in the Hissène Habré case).

African states, like the rest of the international community have the primary responsibility to investigate and prosecute international crimes which are committed within their territorial jurisdiction. Are they well equipped to do so? What can they learn from the legacy of the ICTR and others to empower themselves to discharge such a responsibility?

The experience of the ICTR in referring some of its cases to national jurisdictions for trial, principally Rwanda, has demonstrated that the majority of African jurisdictions are ill-equipped to carry out such prosecutions due to inadequate laws and legal systems, poor capacity and in some instances a lack of political will on the part of the national leadership. All the African states, including Rwanda, which were considered for referral of ICTR cases exhibited some or all of these features that made them unsuitable to receive and prosecute such cases.

It is imperative that we equip ourselves well for the task if we do not wish others to do it for us. We cannot protest at outside interference whilst we refrain from seriously investigating and prosecuting international crimes committed within our national jurisdictions. We must equip ourselves for the discharge of this responsibility. We can do so through a sustained process of law reform and capacity building of our legal system to empower it to rise to the task. The requisite political will is perhaps best encouraged by *inter alia* civil society pressure and the realization by leaders that accountability is inevitable and that it is best done by ourselves, if we are to avoid others doing it for us.

Law Reform

The starting point for law reform should be the domestication of international crimes to ensure that they are fully captured within our domestic laws in order to enable the courts to enforce them. Despite the primacy of such a point, it is surprising that many states – both within and outside of Africa – have yet to do this. ICTR efforts for instance to refer some of our cases to certain European jurisdictions foundered precisely because of this lacuna. Law reform should also include revision of the rules relating to practice, procedure and evidence in order to secure fair trial and due process rights in accordance with internationally accepted standards. Rwanda eventually qualified to receive cases from the ICTR for trial because it worked with the tribunal and carried out the necessary law reform and capacity building measures to convince ICTR judges that its legal system provided adequate guarantees and possibilities for fair trial.

Some significant decisions within the extensive jurisprudence of the ad hoc tribunals, if domesticated by local legislation, will in my view also enhance

national capacity for accountability. The principle of ‘command’ or ‘superior’ responsibility under which superiors are criminally liable for failure to prevent violations by their subordinates or for failure to punish subordinates for such violations has enabled the tribunal to bring to justice several senior military commanders (see *Prosecutor vs. Alfred Musema*, *Prosecutor vs. Idelfonse Muvunyi*, *Prosecutor vs. Theoneste Bagosora et al*, *Prosecutor vs Augustin Ndidilijimana et al*). The concept of Joint Criminal Enterprise (JCE) enabled the ICTR to hold the civilian leadership of the then ruling MRND party in Rwanda criminally liable for acts of rape and sexual violence committed by members of the party’s militia the Interahamwe (*Prosecutor vs. Karemera et al*) as the natural and foreseeable consequence of the activities of the militia created and controlled by the party leadership. Whilst the prosecution of sexual violence at the domestic level remains a very complicated process – given the legal definition and requirements of proof – the ICTR in the case of *Prosecutor vs. Jean Paul Akayesu* broke new ground by determining that rape can constitute genocide, providing a new definition of rape which frees it from the technical complexities of the national definitions and facilitates proof of the elements of the crime by making the scientific analyses and reports so often prevalent in national prosecutions of such crimes unnecessary. Sexual violence continues to be a major feature of ongoing conflicts in the DRC, the Sudan and elsewhere and its prosecution, which needs to be prioritized, can benefit significantly from the precedents set by the *Akayesu* case.

Beyond the issue of domestication of international criminal jurisprudence, the tribunal’s best practices and lessons learned provide an important lesson and legacy for national courts. ‘The Compendium of Lessons Learnt in the Investigation and Prosecution of International Crimes’, launched jointly by the Prosecutors of the ICTR, the ICTY, the SCSL, the STL and the ECCC, provides some useful guidance to national jurisdictions on some of the best ways of discharging what is now their primary responsibility. The office of the Prosecutor (OTP) of the ICTR has also launched a lessons manual on the investigation and prosecution of sexual and gender based violence in conflict, a best practices document which is planned also for use as a training manual. The OTP ICTR manual on referral of cases to national jurisdictions, based on the ICTR’s experience in this area, will, it is hoped, provide some useful guidance in the empowerment of national jurisdictions to prosecute international crimes and to the effective realization of complementarity, a principle that is vital to the future of international criminal justice.

The Bench of the tribunals comprising judges drawn from all the major legal traditions of the world have had to rise beyond the confines of their own national legal systems, recognize that each system has something worthwhile

to contribute to justice, borrow the best from each tradition and weld these together into a unique and progressive international system of justice. At the ICTR for instance, the adversarial court process of the common law system combines with the evidentiary law of the civil law system. But our national legal systems in Africa continue to be locked in their colonial heritage of common law or civil law. We need to evolve our systems, just as the ICTR and other tribunals have done, to recognize, borrow and synthesize into one whole the best principles of the major legal traditions including our own customary law and thus enhance our national capacity to administer better justice.

Role of Traditional Mechanisms

A unique aspect of the legal accountability process for the 1994 Rwanda genocide has been the significant role played by a traditional African justice mechanism in the management of the cases in Rwanda. Confronted by a case load of hundreds of thousands of perpetrators whom neither the conventional national legal system nor the international tribunal could prosecute, Rwanda had to fall back on its traditions by reviving the Gacaca, a traditional justice and reconciliation mechanism to manage this docket. The work of the Gacaca, concluding 1,958,634 cases during its two decades mandate, clearly underscores the potential role for African traditional justice systems in the post-conflict quest for peace, justice and reconciliation. The Gacaca process, facilitated not only to expedite post-conflict justice, but because of its unique features, contributed significantly to Rwandan society's search for truth, healing, reconciliation and peace. As we seek to enhance the capacity of our national legal systems to discharge their frontline role in the accountability process, we should not lose sight of the unique role and advantages of such traditional institutions and ensure that they remain amongst the range of options available to the community.

The conventional judicial institutions are constantly under great stress and strain, overburdened with enormous workloads, excessively formalistic and technical rules of procedure and evidence, spiralling courts, and so forth to the point that the fundamental right of access to justice is under serious threat particularly for poor and disadvantaged persons and communities. Traditional and alternative dispute resolution procedures and institutions can help circumvent or minimize the cost, technicality and tardiness of conventional justice systems. More significantly however, the traditional mechanisms of justice have, in the context of post-conflict justice, a greater capacity, given their nature and procedures, for truth telling, discussing the causes of conflict, healing and reconciliation.

Capacity Building

The challenge is however not only about having appropriate laws, procedures and judicial attitudes. It is equally about institution building. Investigating and prosecuting international crimes is a specialized and challenging task. But the task can be accomplished. Too often the costs, time involved, and complexity of the system of international criminal justice are put forward as the argument against national systems embarking on this venture. In truth, the tribunals have been expensive and it has taken them considerable time to discharge their mandates. The cost and time have not been unreasonable however given the task and circumstances of their execution. The costs and processes of the tribunals themselves are under constant review and there has been considerable progress in the latter years in cost reduction and expediting trials. In any case, national systems do not have to replicate the structures and procedures of the international tribunals. Some of the structures and costs associated with the latter can be dispensed with in a national legal system. But efficient investigation and prosecution at the national level will nonetheless require well trained and equipped specialized sections in the judiciary, in the national prosecuting authority and in the investigating authority, the police. It will require use of new techniques such as electronic systems for storage and management of the voluminous information and evidence generated from conflict situations, effective witness protection systems to ensure the security of those who are prepared to contribute to the search for the truth; a competent and courageous Bar that is able to realize the right of its clients to an effective defence; and above all, an efficient judiciary that instils public confidence in its independence and impartiality. A few African states have already embarked on this process. Uganda has established a specialized War Crimes Prosecution Service. Kenya is contemplating following suit. But these examples remain few. And the initiatives are invariably *ex post facto*, a response to international conflict situations. It is necessary that these capacity building measures are taken in anticipation of need and are instituted as a normal part of the legal system rather than simply as a response to emergencies. The legal system needs to be prepared in all respects and at all times for the challenge of investigating and prosecuting international crimes as a routine measure.

Interstate and Regional Cooperation

Investigating and prosecuting international crimes at the national level can, even with the requisite political will, be a very challenging task particularly for developing jurisdictions with serious capacity issues. The challenge can nonetheless be mitigated considerably through a system of burden-sharing between states, particularly neighbouring ones. Mutual legal assistance

agreements to facilitate investigations through cross-border access to evidence and witnesses, management of trials, protection and relocation of witnesses, cross-country imprisonment of convicts, expansion of the jurisdiction of regional courts such as the African Court of Justice and of Human and Peoples' Rights, the EAC Court of Justice, the ECOWAS Court of Justice, the African Court of Justice and Human Rights with a penal jurisdiction over such crimes committed within the community can also considerably reduce the cost and challenges associated with such prosecutions. The principle of universal jurisdiction, although much derided as a tool for the administration of 'justice' by powerful states in the North against weak states in the South, provides African states with the opportunity to prosecute crimes committed in other African states where such a state's primary jurisdiction is unable or unwilling to discharge its responsibility. An AU International Crimes Treaty which obliges and vests jurisdiction in all member states to prosecute such crimes committed in other African states, and the domestication of such a treaty, can ensure no that havens exist for such perpetrators and contribute to combating impunity by burden-sharing. Such burden-sharing mechanisms can empower African states to effectively discharge their responsibility to protect their fellow Africans. They can also provide effective means of ensuring that the impunity gap which arises from the weakness of the national system in terms of will and capacity, and the limitation of the international system in terms of the few members it can prosecute, is effectively bridged by other African national or regional jurisdictions stepping into the struggle.

Conclusion

The international criminal justice system is now, I believe, a lasting feature of the international arena. I do not believe there is any going back to the days when the process of accountability for such international crimes rested solely with the nation state. The system of course has its limitations: major players in international relations such as the US, Russia, China and India remain outside its ambit; there are perceptions about the target selectivity of the system; there are limitations on the workload it can manage. Nonetheless it remains a necessary process for justice and accountability and for national and international peace. With the imminent closure of the ad hocs, the ICC and the Rome Statute today remains the focal point for international criminal justice. The Rome Statute and its implementation could undoubtedly benefit from some improvement. We must strive to make that system truly universal encompassing all the major states; we must strive to ensure that the law reaches all situations of mass atrocity and that the principle of complementarity is given concrete effect if the system is to work well.

Africa has committed itself to this international process of accountability – it is an important region in the ICC structure both in terms of membership of the Rome Statute as well as being the source of most of the caseload of the ICC; its confidence in the system has been demonstrated in the number of self-referrals to the court originating from Africa despite the tensions between the continent and the Court. Indeed only African states have self-referred cases to the ICC, a manifestation not only of their confidence but also their good faith in the implementation of their treaty obligations. Africa must remain firmly committed to the Rome Statute even whilst seeking improvements in that Statute system. That commitment and engagement supported by measures to improve good governance and measures to empower African states to discharge their primary responsibility of prosecuting international crimes can ensure that what is currently referred to as Africa's moment of economic advancement will also be a moment of accountability and not of impunity, a moment of justice and not injustice, for the African peoples. Africa must empower itself to prevent mass atrocities against its peoples. It must also empower itself to ensure, through its own mechanisms, legal accountability for such crimes.

Note

1. Keynote Address at the CODESRIA Conference on International Justice, Reconciliation and Peace in Africa, Dakar, Senegal, 10–12 July 2014.