JUST PEACE: ACHIEVING PEACE, JUSTICE, AND DEVELOPMENT IN POST-CONFLICT AFRICA

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ABOUT THE SERIES

"African solutions to African problems" is a favorite mantra of the African Union, but since the 2002 establishment of the African Peace and Security Architecture, the continent has continued to face political, material, and knowledge-related challenges to building sustainable peace. Peacebuilding in Africa has sometimes been characterized by interventions by international actors who lack the local knowledge and lived experience needed to fully address complex conflict-related issues on the continent. And researchers living and working in Africa need additional resources and platforms to shape global debates on peacebuilding as well as influence regional and international policy and practitioner audiences. The APN Working Papers series seeks to address these knowledge gaps and needs by publishing independent research that provides critical overviews and reflections on the state of the field, stimulates new thinking on overlooked or emerging areas of African peacebuilding, and engages scholarly and policy communities with a vested interest in building peace on the continent.

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The political realities of post-conflict situations present hard choices in the peacebuilding and reconstruction processes. Most post-conflict societies face the dilemma of how to deal with past atrocities, especially genocide, war crimes, and crimes against humanity. Where the perpetrators are the winners of the war or elections, victors' justice has usually been rendered against the vanquished. Yet, even where this is not the case, national judicial systems in most post-conflict societies cannot immediately handle wide-scale prosecutions for atrocities in accordance with international standards of due process, and, in cases where a political compromise has taken place, the question is usually whether to forego justice for the sake of peace. The answer is often to offer amnesty to the perpetrators of atrocities, effectively giving them impunity.

But sustainable peace and reconciliation cannot be built on a foundation of impunity.[1] In some instances, an international criminal process has been instituted to fill the void occasioned by dysfunctional domestic judicial systems in post-conflict settings or the unwillingness of domestic courts to bring perpetrators to trial. This approach has its problems as well, however. The issuing of an arrest warrant by the International Criminal Court (ICC) for Sudan's president Omar al-Bashir, for instance, showed that pursuing

the interests of justice in an ongoing conflict can generate tensions during peacemaking processes.[2] Similarly, the prosecution of an incumbent president, Kenya's Uhuru Kenyatta, has exacerbated the acrimony between the ICC and the African Union (AU), thereby overshadowing the interests of the victims with regard to redress.

Even so, due process forms the cornerstone of any just and sustainable peace, and accountability for atrocities deters their recurrence, as well as ensuring justice for the victims and reconciliation in the peace process.[3] Since peace and justice are not mutually exclusive but complementary, the issue is not to achieve one at the expense of the other, but to aim for the attainment of both.[4] This does not mean rigidly focusing on accountability for a few perpetrators, even though they may be the most responsible; such an approach to justice ignores the plight of the numerous victims in need of reparations. In *Prosecutor v. Thomas Lubanga Dyilo*, for instance, the victims had to wait for the court to deliver a conviction to get redress, even though the ICC's Trust Fund for Victims (TFV) can act without one. The proceedings took a very long time to reach a conviction,[5] which has also been subject to appeal, and the victims are still waiting.

Also forgotten in the process is the need to eradicate the causes that brought about the conflict and mass atrocities in the first place. For peace to be sustainable, it should be based not only on the absence of war (negative peace) but also on the absence of structures that perpetuate inequalities and insecurity, and on the presence of structures that do the opposite (positive peace).[6] In other words, peace and development are inextricably intertwined.[7]

Unfortunately, the debate on transitional justice does not focus on the importance of development in post-conflict settings but rather on resolving the peace or justice debate. If this gap in research and practice is not filled, the factors that fuel conflicts will remain unaddressed in these societies, thereby exacerbating the suffering of victims and endangering the fragile peace. Efforts to achieve and maintain peace and security need to address the root causes of conflict and build peaceful societies by focusing not only on achieving peace and justice but on eradicating disruptions to development as well.[8]

The majority of victims of conflict, especially women and other vulnerable populations, lack access to basic social services and suffer discrimination,

including the denial or violation of a multitude of social and economic rights. The youth, some of whom are victims, while others are perpetrators compelled to become combatants by such forces as ethnic discrimination, social exclusion, religious fundamentalism, and economic circumstances, cannot engage in socioeconomic activities even after disengaging from fighting. Coupled with the slow speed of justice, such deprivation may prompt a relapse into conflict.

In light of all these considerations, this discussion will explore a victim-oriented approach toward resolving the peace and justice dilemma while promoting reconciliation and development in post-conflict settings. The starting point is the assertion that mass atrocities such as genocide, war crimes, and crimes against humanity can brook no impunity, although each conflict is sui generis, and legal concerns must be balanced with political reality in determining the appropriate reaction to past atrocities. Following the analysis is an outline of the steps that should be taken to eradicate the root causes of conflicts leading to mass atrocities in Africa.

JUSTICE AS A PREREQUISITE FOR SUSTAINABLE PEACE

The function of accountability is to reverse the tradition of impunity so often prevalent in societies emerging from conflict and to deter future perpetrators.[9] In post-conflict situations, the truth about past violations and perpetrators ought to be exposed; mass atrocities should be acknowledged; perpetrators of atrocities should be brought to justice; and appropriate reparations should be provided for the victims and their families.[10]

The form accountability may take is a much-debated subject among scholars of transitional justice. The traditional arguments revolve around the apparent clash of peace with justice, and the question of whether justice can prevail without criminal sanctions being imposed, which results in peace without justice.[11] The modern trend is to reject impunity in order to promote long-term reconciliation, peace, democracy, and, most of all, deterrence. Only when the shorter-term costs of prolonging an ongoing conflict clearly outweigh these benefits should suspending the prosecution of clearly prosecutable cases be contemplated. The obvious drawback of allowing for this contingency, however, is that the more criminal prosecution is perceived as "negotiable," the more its role as a deterrent of atrocities is undermined.[12]

Furthermore, resolving the dilemma by pursuing peace and justice in that order could compromise the credibility of promises of amnesty or exile in future peace processes. For instance, prosecuting former Liberian leader Charles Taylor after having given assurances of immunity if he consented to leave office would make it more difficult to get future leaders with records of atrocities to resign. The risk of prosecutions, as held out by realists, is that they may perpetuate a conflict or destabilize the peace process. Hence, a choice is presented between peace and accountability or, in more practical terms, between justice and forgetting. The protections afforded to victims and the responsibility befalling perpetrators and their leaders should not be bound by expectations of political settlements and peace arrangements, however. Effective accountability mechanisms serve to deter perpetrators and prevent future atrocities.[13] Therefore, what is needed is the uniform and consistent enforcement of accountability norms to combat impunity.[14]

Critics claim that in its pursuit of justice, the ICC potentially jeopardizes political settlements that may keep the peace, as has been the case in the Darfur region of Sudan and, recently, in Kenya. For example, despite concerns raised by the AU, the pretrial chamber of the ICC issued an arrest warrant for Sudan's al-Bashir in March 2009, a move the AU then openly condemned. Former chairperson Jean Ping narrated the AU's position that "we support the fight against impunity; we cannot let crime perpetrators go unpunished. But we say that peace and justice should not collide, that the need for justice should not override the need for peace."[15] As the al-Bashir case has shown, this stance makes the court entirely reliant on the cooperation of relevant states to function, which can delay the prosecution of suspects and delay justice:[16]

> There is no doubt that the perpetrators of violence should be held accountable, but when and how are political decisions that cannot belong to the ICC prosecutor. More than the innocence or guilt of the president of Sudan, it is the relationship between law and politics—including the politicization of the ICC—that poses a wider issue, one of greatest concern to African governments and peoples.[17]

In other words, although the ICC seeks to prosecute perpetrators of egregious crimes, it does not operate in a vacuum but in a world where political considerations ought to be made. Thus, while prosecution of al-Bashir is necessary, the issue should not be to achieve peace at the expense of justice,

but to aim for the attainment of both,[18] not simply through the absence of violence (i.e., negative peace), but by the presence of structural conditions for political equality and social and economic justice (i.e., positive peace). As early as 1945, US secretary of state Edward R. Stettinius understood that

> the battle of peace has to be fought on two fronts. The first is the security front where victory spells freedom from fear. The second is the economic and social front where victory means freedom from want. Only victory on both fronts can assure the world of an enduring peace.[19]

To the extent that the tradeoffs to be made between peace and justice pose a dilemma, the choices are better left to the societies in question, not imposed from the outside.[20] Usually, the mediator's dilemma is how to bring about peace without sacrificing justice. In most conflicts, that dilemma has been resolved at the expense of justice.[21] To avoid this dilemma,

> peace negotiators acting in good faith in the pursuit of peace must be immune from the pressures of having to barter away justice for political settlements. That card must not be left to them to play in the course of negotiating political settlements. Impunity for mass atrocities must, therefore, be removed from the "tool box" of political negotiators.[22]

Restorative Justice or Retributive Justice

Retributive justice as sought by the ICC is not the only road to peace, stability, and accountability. Sometimes the restorative justice pursued by truth and reconciliation commissions (TRCs) offers a better solution to fractured societies recovering from atrocities. Reconciliation in these circumstances means a process of expressing remorse for past crimes, seeking forgiveness, and paying reparations to the victims. TRCs are often seen as victim-oriented, whereas most courts, such as the ICC, are seen as perpetrator-oriented. TRCs do not entail prosecution and incarceration. Generally, affected communities prefer them because they are more in accord with local traditions than so-called "Western" concepts of punitive justice.[23] An important feature of the TRC model is that it creates circumstances for assigning individual rather than collective responsibility.[24]

The requirement for truth in the TRCs, however, should not be deemed a substitute for prosecuting heinous offenses such as war crimes, genocide, and crimes against humanity.[25] Although TRCs may operate in conjunction with prosecutions, their different role is to establish a record of what has happened and disseminate this information widely at both the national and international levels.[26] Previously, TRCs were widely perceived as a "next best" response to mass atrocities when an amnesty or de facto impunity foreclosed prosecutions. Like criminal prosecutions, however, TRCs are inspired and driven by the logic of human rights law and practice. Victims are entitled to justice, but they are equally entitled to truth.[27] TRCs should, therefore, be seen as complementary to, rather than in competition with, criminal justice, each playing a distinctly important role. TRCs fill the gaps left by criminal prosecution, which is generally inadequate to deal with the accountability issues that follow periods of mass atrocities.[28]

The Pros and Cons of Accountability for Atrocities

The ICC was established because, among other reasons, "the most serious crimes of concern to the international community as whole must not go unpunished."[29] That its relationship with Africa is acrimonious is an open secret, however. Critics have condemned the "Africanization" of prosecution, arguing that the ICC prosecutor has limited investigations to the continent in response to geopolitical pressures from major powers and avoided confrontation with them, which makes Africans a soft target.[30] The ICC has also been accused of turning a blind eye to crimes in other parts of the world, such as Chechnya, Palestine, Sri Lanka, and Syria.[31]

Another critique relates to the ICC prosecutor's selection of cases, which tends to reaffirm the notion of victors' justice. An example is the situation in Côte d'Ivoire, where the vanquished presidential contender, Laurent Gbagbo, is now in the docket, while the victor in the violent aftermath of the 2010 national poll there, Alassane Ouattarra, remains free, despite his fighters also being involved in atrocities. Similarly, in Uganda, the Democratic Republic of the Congo (DRC), the Central African Republic (CAR), and Libya, the ICC prosecutor has focused on alleged abuses by rebel fighters to the exclusion of those reportedly committed by government troops. Pessimists have also wondered whether prosecuting suspects in The Hague can deter potential perpetrators in Africa. Finally, some who are concerned about the speed and credibility of the ICC indictments in Africa wonder whether the court can rigorously investigate and prosecute perpetrators of crimes

given its shoestring resources, or whether it is just a political tool of the UN Security Council.[32]

It should be noted, however, that out of the eight cases the ICC is currently handling, four were initiated upon the request of countries concerned (the DRC, the CAR, Mali, and Uganda), while two—concerning Darfur and Libya[33]—were referred by the UN Security Council, and two others—involving Côte d'Ivoire and Kenya—arose from the prosecutor's own initiative, termed as proprio motu powers. When the question of addressing post-electoral violence in late 2007 and early 2008 and bringing the perpetrators to justice was brought up in Kenya's Parliament, for example, the legislators rallied behind their suspected colleagues with the slogan, "Don't be vague, let's go to The Hague!" thereby frustrating the setting up of an independent, limited-term tribunal to try the suspects locally.[34]

Furthermore, human rights advocates and victims have commended the investigations and prosecutions by the ICC in Africa as a crucial step against impunity on the continent.[35] Supporters also contend that national legal systems in Africa are particularly weak, which has allowed the ICC to assert its jurisdiction under the principle of complementarity—that is to say, the principle that the international court is complementary to, and not a substitute for, national criminal courts and will only exercise jurisdiction when national courts are unable or unwilling to bring perpetrators to justice. The former UN secretary-general Kofi Annan, who is from Ghana, takes a similar view, noting that "it is the culture of impunity, not African countries, which [is] the target" because the ICC "is a court of last resort."[36] More importantly, the ICC cannot prosecute individuals from nonstate parties to the Rome Statute that established it (with regard to atrocities in those states) without a UN Security Council referral or an accession followed by a self-referral.

Besides being politically daunting, bringing all perpetrators to justice may be impossible because of a paucity of resources. Justice is expensive, if it is done properly, and few poor countries have the wherewithal to meet its demands. Making ICC prosecution the imperative could mean neglecting other important pieces of post-conflict reconstruction.[37] While various means are available to develop the historic record of abuses, "the most authoritative rendering of truth is possible only through the crucible of a trial that accords due process."[38] Adversarial proceedings in the ICC are designed primarily to determine the guilt of individuals, not to produce a

comprehensive and balanced analysis of a conflict's historical, political, social, or moral context.[39]

While states must meet their obligations under international law, no "one-size-fits-all" response exists to mass atrocities, because the unique historical experience of each society enduring such violations will inevitably shape its citizens' understanding of justice. Even the Rome Statute provides escape clauses, permitting states to disregard the obligation to prosecute when strict enforcement would frustrate greater interests of international peace and justice.[40] Therefore, Kant's prescription that justice must be done at all costs must not be embraced blindly.[41] The fact that each conflict has its own peculiarities does not preclude the uniform application of international law seeking to protect fundamental rights, however.[42] The fact remains that crimes against humanity, war crimes, and genocide should not go unpunished, and their prosecution should be ensured.[43] There can be no impunity for these crimes.[44]

Emphasis on the prosecution of past violations must, however, be accompanied by parallel efforts to build institutions capable of punishing perpetrators and preventing future atrocities in the post-conflict environment.[45] States in most post-conflict societies are reluctant to exercise such jurisdiction because of their dysfunctional judicial systems and because the atrocities were usually committed by or with their complicity. Short of overthrowing the regime, this problem can be remedied by the development of genuinely independent judiciaries and of political cultures that abhor mass atrocities.[46] African states should take a strong stance in favor of accountability and respect for international law by encouraging and facilitating investigation, extradition, and prosecution of perpetrators of mass atrocity crimes. To do this, they need to comply with the principle of universal jurisdiction and the genuine implementation of the Rome Statute on the continent.[47]

To the extent that international criminal law covers violations of human rights and hinges on individual culpability, personal accountability and punishment will serve as the best deterrent.[48] Among other benefits, criminal prosecution may contribute to purging threatened leaders, deterring war criminals, reconciling countries, placing blame on individuals rather than on whole ethnic groups, and establishing the truth about wartime atrocities— all of which would promote peace and security, at least in the long term.

THE ROLE OF THE ICC IN PREVENTING ATROCITIES

To achieve a state of both negative and positive peace, violence and mass atrocities must be deterred and social injustices such as poverty and inequality eliminated. Deterrence underlines the ICC's prosecutorial strategy.[49] According to the fifth paragraph in the preamble of the Rome Statute, the ICC is "determined to put an end to impunity for the perpetrators of [atrocities] and thus to contribute to the prevention of such crimes."[50]

Certainly, the Rome Statute has had a deterrent effect on perpetrators of violence and mass atrocities, if we consider the surrenders to the ICC of Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus, who were wanted for war crimes in connection with the deaths of twelve AU peacekeepers in the Darfur region of Sudan in 2007,[51] and of rebel leader Bahr Idriss Abu Garda, suspected of having committed war crimes in Darfur. Their surrenders to the court have prevented these perpetrators from committing further atrocities, and the prospect of prosecution can deter others, as well. Furthermore, as the ICC prevents and curbs crimes, it promotes respect for international humanitarian law and human rights and contributes to many other desirable objectives, such as freedom, security, justice, and the rule of law and international security and the preservation of peace.

Prosecutions might have contributed to positive developments in a number of African countries:

> • Some have argued that the prosecutions in Kenya helped bring about the peaceful elections that took place there in March 2013.[52]
> • The indictment of Charles Taylor by the Special Court of Sierra Leone (SCSL) greatly weakened his dictatorial grip over his people, and his consequent arrest in 2006 was a crucial factor in bringing peace to Liberia.[53]
> • According to the former chief prosecutor of the ICC, Louis Moreno-Ocampo, after the court issued arrest warrants for the leaders of Uganda's rebel group, the Lord's Resistance Army (LRA), the government of Sudan signed an agreement to arrest them. This was important, Moreno-Ocampo claimed, "because that is what forced the [LRA] to move from Sudan to Congo [and] practically stopped [them from] committing crimes in northern Uganda and South Sudan."[54]

The indictment of its leadership and subsequent loss of its sanctuary in southern Sudan left the LRA with no option but to negotiate with the Ugandan government.
• Moreno-Ocampo also claimed the arrest warrants against Ahmad Harun and Ali Kushayb, who were charged with recruiting and arming a militia and inciting it to commit atrocities against civilian populations in Darfur, helped speed up peace negotiations and the reduction of violence there.

However, a rigid focus on accountability for perpetrators and deterrence of future crimes carries certain risks. Although the Rome Statute provides for reparations for victims, the primary goal of criminal prosecution is to apportion blame and punish the guilty, and the plight of victims may be ignored. Nor are criminal prosecutions generally designed to address or alleviate the underlying sociopolitical problems that lead to mass atrocities, such as "ethnic distrust, corruption, marginalization of ethnic groups and inequitable allocation of a nation's resources."[55] Although al-Bashir, for instance, may be prosecuted on the basis of bearing the most responsibility for atrocities in Sudan, "violence created by underlying social problems and perpetrated by several citizens with varying degrees of culpability cannot be addressed by criminal prosecution designed to address individual misconduct, especially in cases where the causes of deviant conduct reside not at the individual level but at the communal level."[56]

THE DUTY TO PROVIDE REPARATIONS
FOR VICTIMS OF ATROCITIES

Millions of Africans, targeted by their own leaders, have been victims of unimaginable atrocities in several intractable conflicts on the continent. The UN's "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power" defines "victims" as "persons who, individually or collectively, have suffered harm, including physical or mental injury or substantial impairment of their fundamental rights."[57] In the case of the mass atrocities in Africa, victims are groups or individuals who have directly and personally suffered the harm arising from the violations. Another, broader understanding of the word "victim" is anyone who can prove to have suffered harm and has an interest in taking action.

The right to reparation covers all injuries suffered by victims, both material and moral,[58] and it includes measures of restitution, compensation,

rehabilitation, and satisfaction, as provided by international law.[59] Reparations are integral to achieving justice for the victims and also assisting them to rebuild their lives.[60] Underlying this right is the principle that all victims should have access to readily available, prompt, and effective remedies in the form of criminal, civil, administrative, or disciplinary proceedings, including applicable international and regional procedures.[61]

Although egregious crimes have been committed against innocent civilians in the CAR, Côte d'Ivoire, eastern DRC, Libya, Mali, the Darfur region of Sudan, and northern Uganda, among others, no victim has had recourse to redress from the ICC so far. To obtain reparations under the ICC framework, victims require a conviction under Article 75 of the Rome Statute. As noted above with regard to the *Lubanga* case, this may take ages, given the speed at which the wheels of international criminal justice grind at the ICC.[62] The unjustifiable length of cases not only delays justice for the victims; it also weakens the cases' societal impact and increases their financial costs.[63] The plight of millions of victims in Africa and the urgent need for reparations have also been ignored in the current turbulent relationship between the ICC and the AU relating to the perception of selectivity in the prosecutions by the court, which seems to target only Africans, and the concomitant politico-legal quagmire. This unfortunate situation underscores the important role of the ICC's Trust Fund for Victims in funding or setting up innovative projects to meet victims' physical, material, or psychological needs in post-conflict societies to ensure their timely and adequate redress.[64]

Impunity has so far been discussed here as arising from a failure by states to investigate violations and prosecute and punish perpetrators, but it is more than that; it is also a failure to provide victims with effective remedies and reparations and to take steps to prevent any recurrence of such violations.[65] Since the right to reparations cannot be compromised, the default position of those fighting impunity should be to demand justice for the victims in terms of reparations as well as the accountability of perpetrators. In essence, prosecutorial measures should be pursued alongside other, transitional justice mechanisms to make the justice process comprehensive. Full and effective exercise of the right to the truth will also provide a vital safeguard against the recurrence of violations. Apart from criminal prosecutions, post-conflict processes in countries emerging from atrocities should establish parallel mechanisms for victims to act as a "partie civile" to ensure reparations where criminal prosecutions prove problematic and protracted.[66]

International responsibility in matters of law is ordinarily invoked only when no domestic remedy is available, or if domestic remedies have been exhausted or are inadequate.[67] African leaders, at both the national and regional levels, need to prioritize the needs of victims of grave international crimes. States should also provide access to international legal machinery to facilitate efforts to find, attach, and seize the assets of transgressing parties and their leaders.[68] These mechanisms do not just constitute a "second-best approach" when prosecution is impracticable; in many situations, they may be better suited to achieving justice.[69]

ACHIEVING ACCOUNTABILITY AND SUSTAINABLE DEVELOPMENT IN POST-CONFLICT COUNTRIES

As prevention of mass atrocities is more worthwhile than penalizing perpetrators after the fact, more attention should be paid to the factors that trigger the crimes in the first place. The roots of all atrocities that fall under the jurisdiction of the ICC are political rather than judicial in nature, and their solution requires political means more than formal judicial procedures and outcomes. For example, the real problem in the Kenyan and Sudanese cases is not that the cases were taken to the ICC instead of local courts, but, rather, that judicial means were used to address political problems. Judicial proceedings are set up to declare one side guilty and another innocent, which is precisely why the courts are inadequate to settle questions of internal armed conflicts where neither side is wholly innocent nor wholly guilty.[70]

Aside from post-electoral violence and unconstitutional changes of government, common factors that shape the trend and dynamics of conflicts in Africa include struggles over control and exploitation of natural resources, inequalities among members of different groups and regions, ethnic domination as well as ethnic rivalry and manipulation, political exclusion, and uneven progress in economic development, among others.[71] Unless these political, socioeconomic, and cultural issues are addressed by empowering the disadvantaged classes or groups, prosecution cannot provide a lasting solution to the mass atrocities and violence in post-conflict countries. Instead of blindly focusing on ICC prosecution as curative medicine after an injury has occurred, the focus should be on helping post-conflict countries address the urgent political, social and economic problems that spark the conflicts in the first place.[72]

The absence of security impedes economic growth and development through physical and infrastructural destruction by violent conflict and the adoption of short-term survival strategies.[73] According to the UN Peacebuilding Commission,

> Peacebuilding involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict in countries emerging from conflict by strengthening national capacities at all levels, address key causes of conflict and lay the foundations for sustainable peace and development. These measures include, for example, security sector reform, elections and human rights monitoring and institutional capacity development.[74]

As a paradigm, peace and security denote a cooperative state that is absent when violence and conflict pervade a community.[75] Peace and security generically embrace the making of stable environments that enable the constructive and nonviolent resolution of conflicts. An adequate conceptualization of peace and security in Africa entails going beyond state security by linking human security with human development and encouraging the presence of factors that ensure positive peace to flourish. This includes taking measures toward a "just peace" that hinge on eradicating violent conflict and poverty as well as providing access to justice and respect for human rights and human dignity for all. Creation of a just peace focuses strongly on conflict prevention by addressing the root causes of conflicts and holding perpetrators accountable. These processes require a unified platform for multilateral action by stakeholders at all levels of governance and civil society to inculcate a culture of prevention and peace in the communities.[76]

The interconnectedness of peace, justice, and development can hardly be questioned.[77] That conflict or violence disrupts development is obvious.[78] Security is also both a priority of the poor and increasingly linked to better developmental outcomes.[79] The correlations between insecurity and underdevelopment are more obvious than those between peace and development, in that conflict-affected countries invariably experience underdevelopment.[80] Although it is correct to say peace enables development, it is empirically more accurate to argue that insecurity disrupts it.[81] This explains why the UN System Task Team on the Post-2015 Development Agenda has recommended the agenda include "a target on violence, which

can be measured through indicators of battle-related deaths and intentional homicide."[82]

The stronger correlations between insecurity and poverty than between peace and development (and the linkage between security and governance)[83]   suggest efforts to prevent conflict and violence should be focused on a negative peace approach.[84] Eradicating the causes of conflict requires eradicating the "development disruptors" (which impede positive peace), as a prerequisite to creating the political stability conducive to implementing pro-growth policies.[85] According to the Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, to achieve peace, it is imperative to tackle the problems that matter most to people, such as ensuring respect for human rights and dignity; prosecuting corruption; delivering basic social services, safe drinking water, and health services; and providing safety, security, and access to justice without discrimination.[86]

The Group of Seven-Plus (G7+), which includes a group of conflict-affected countries, has proposed a "New Deal on Engagement in Fragile States," that consists of five peacebuilding and statebuilding goals (PSGs) for post-2015 development, meant specifically for fragile and conflict-affected states:

> • "Legitimate politics" seeks to foster inclusive political settlements and conflict resolution.
> • "Security" aims to establish and strengthen people's security.
> • "Justice" aims to address injustices and increase people's access to justice.
> • "Economic foundations" refers to generating employment and improving livelihoods.
> •"Revenues and services" focuses on managing revenue and building capacity for accountable and fair service delivery.[87]

These medium- to long-term processes of rebuilding war-affected communities include rebuilding the political, security, social, and economic dimensions of a society emerging from a conflict. They also include addressing the root causes of the conflict and promoting social and economic justice, as well as putting in place political structures of governance and the rule of law, which will consolidate peacebuilding, reconciliation, and development.[88]   In light of these goals, the following are some of the

most critical steps needed to achieve peace, justice, and development in post-conflict countries in Africa.

Improve Governance of Natural Resources

Mass atrocities of gargantuan proportions have occurred in Angola, the DRC, and Sierra Leone in armed conflicts shaped largely by struggles over the control and exploitation of natural resources. Such conflicts tend to reflect strong economic interests on the part of belligerents and an underlying war economy dominated by overriding private agendas that make the conflicts difficult to resolve.[89] On the one hand, warlords have access to natural resources they would not have in peacetime that allow them to fuel the fighting through illegal dealings in conflict commodities and other valuables they can find in the countries in question. In the eastern DRC, for example, although some militias operate under the pretence of altruistic motivations or political grievances, the scramble for resources and self-enrichment remains the primary motivation of most armed actors.

On the other hand, the authorities benefit from the confusion created by war, which gives some highly placed officials the opportunity also to enrich themselves through corrupt practices. Income inequality is particularly acute in countries endowed with natural resources, with wealth held by increasingly smaller groups to the exclusion of the poor. The government of the DRC, for example, has been unable to collect taxes and build infrastructure to govern and monitor the extraction of the country's vast resources. Kinshasa, the capital, has been unable to develop its economy from timber, diamond, gold, coltan, manganese, and other resources. The net effect of the protracted conflict—the massive loss of human life and dilapidation of infrastructure—is not conducive to development.

The drivers of the armed conflict in the DRC point to the need to engage in discussions about how to use natural resources for the benefit of everyone in all the countries emerging from Africa's endemic conflicts. To prevent mass atrocities, it is important to implement long-term and comprehensive measures that include building effective national legal, judicial, and enforcement structures, as well as subscribing to global governance and regulatory mechanisms, especially in the area of natural resource control.[90] In other words, the affected countries should diversify their economies and channel commodity income into social service programs, which will

undermine support for rebels,[91] and they should ensure the proper use and management of their resources.

The Kimberley Process Certification Scheme (known as the Kimberley Process) is an example of a policy initiative that aims to ensure natural resources are better managed to benefit the majority of citizens of countries emerging from conflict. The Kimberley Process was introduced to stem the flow of "conflict diamonds," also known as "blood diamonds," by requiring participants to certify that shipments of rough diamonds are "conflict-free."[92] As suggested above, however, diamonds are not the only natural resource that fuels armed conflicts leading to mass atrocities; revenue from other valuable minerals—such as coltan, gold, tantalum, and tungsten, as well as such nonmineral products as cocaine, cocoa, and timber—has sparked and sustained them. As a continent entangled in internecine strife, Africa needs to take the lead to implement the Kimberly Process religiously and institute other policy initiatives to ensure insurgents do not benefit from natural resource wealth. The international community and development partners should help conflict-affected countries by incorporating best practices and guiding principles for extractive industries into national standards and promoting good governance by such means as the Extractive Industries Transparency Initiative (EITI).[93] The Report of the High-Level Panel has called for "a transparency revolution, so citizens can see exactly where and how taxes, aid and revenues from extractive industries are spent."[94]

Eradicate Poverty, Inequality, and Ethnic Rivalry

The atrocities referred to in Article 5 of the Rome Statute of the ICC involve human rights abuses—particularly genocide and crimes against humanity—that are motivated by discrimination. Research has also shown that conflict is inversely correlated with per capita incomes, with low-income countries more at risk of violence.[95] As the Geneva Declaration has noted, "Higher poverty levels tend to go hand in hand with higher levels of violence."[96] Poverty breeds distrust in leaders and institutions, whom the people suspect of allowing the country's meager resources to be misappropriated and diverted for the private gain of the political elite rather than the public good.[97] Several theories have explored the relationship between poverty and conflict. According to one, for example, rebels might more easily recruit people to their cause in poorer areas because their opportunity cost of conflict is relatively low—that is, the people have little to lose by engaging in conflict and perhaps something to gain.[98] This "opportunity cost" theory,

however, may not apply where the conflict is ethnically based or separatist.[99] Conflicts in Africa also derive from inequalities among members of different groups and regions, ethnic domination as well as ethnic rivalry, and manipulation and uneven progress in economic development.[100]

If we presume low income and high poverty are the main causes of conflict, then it follows that conflict prevention should focus on direct policy interventions to reduce poverty and human misery.[101] Fragile and conflict-affected states often fail to provide basic social services, which usually reduce their legitimacy and exacerbate their fragility and poverty. Weak institutions and a lack of political will further lessen the states' ability to provide social services and overcome fragility. Aside from applying security-based solutions, governments should undercut the support for the insurgency through economic solutions, expanding welfare programs and reducing poverty in the conflict-affected areas. This approach is particularly applicable where poverty is a direct cause of conflict,[102] in which case economic policies should be geared not just to maximize growth, which requires time, but also to address the distributional or political factors that lead to conflicts. Policy choices should also be deliberately structured to reduce real or perceived inequities by creating opportunities for jobs and economic independence.[103] According to the High-Level Panel, "Truly inclusive, broad-based growth, which benefits the very poorest, is essential to end extreme poverty."[104]

The development agendas of post-conflict countries should, therefore, deliberately set out to ensure equality and nondiscrimination in access to social services, with a specific focus on the most excluded and vulnerable groups.[105] They should also take into account, however, that income inequality is not the only cleavage in societies that increases the risk of conflict leading to mass atrocities. Gender inequality and discrimination against ethnic or religious minorities and marginalized groups also lead to genocide, war crimes, and crimes against humanity, and the international community and development partners should ensure gender equality and the inclusion of marginalized groups are integral to all the activities they conduct and the programs they fund. Moreover, civil society organizations (CSOs) and international partners should monitor governments of countries emerging from conflicts to ensure the integration of minorities and disadvantaged groups and their proper political representation and participation.[106]

Promote Political Inclusion, Equity, and Good Governance

Mass atrocities tend to flourish in the absence of good and democratic governance, which also tends to undermine development efforts. Lack of governance usually results in political crises, which usually lead to economic crises. In these cases, conflicts are just violent responses to the lack of freedom, transparency, and inefficiency, the politics of exclusion and corruption, and the misuse of public resources for private interests.[107] The centralization and concentration of economic and political power often result in the gagging (and even the suppression) of democracy, usually resulting, in turn, in a lack of governance structures in many countries. Lack of governance structures promotes conflicts, while good governance cannot thrive amid conflicts, and the implementation of development programs becomes impossible.[108] Institutional and governance gaps have led to underdevelopment and inadequate delivery of basic social services, which has adversely affected people's health as well as the environment and has slowed down progress in bridging inequality. According to the AU Policy on Post-Conflict Reconstruction and Development (PCRD), "a fair and equitable distribution of power and wealth is key to the prevention of escalation of unresolved or new grievances."[109]

Freedom from fear, conflict, and violence and respect for human rights and human dignity are the cornerstones for peaceful and prosperous societies and sustainable development. To avoid public mistrust, mechanisms are needed in conflict-affected countries to ensure their governments are honest, accountable, and responsive to the needs of the citizens. This view is supported by the High-Level Panel, which noted that "peace and good governance are core elements of wellbeing, not optional extras."[110] Responsive and legitimate institutions should provide for the fundamentals of good governance and functioning state–society relations by encouraging the rule of law, property rights, freedom of speech and the media, open political choice, access to justice, and accountable government and public institutions.[111] This requires investing in democratic institutions while empowering CSOs, which support democracy at the local level and promote civic education.[112] Policies should be implemented to prevent political exclusion and ensure political inclusion by providing targets for the appointment of public officials, not on the basis of patronage or affiliations, but rather on merit, proven skills, and professional prowess.

Reform the Security Sector

Security sector reform (SSR) is also vital to ensure national defense and police forces in countries emerging from conflicts reorient their activities toward building sustainable peace.[113] Libya's military during the Muammar el-Qaddafi regime, for example, was not representative of the country's regional makeup, since recruitment largely focused on westerners to the exclusion of the long-neglected east. In addition, the absence of a clear chain of command allowed the military to be used as a political tool against opponents.[114] Reform of the security sector and the constitution, involving "a serious rebranding of the military and police that removes the blemishes of the Gaddafi era," is urgently needed there, particularly so that "the new army [won't] become the palace guard of another dictator."[115]

In short, it is important for countries emerging from conflict to reform the security sector, which involves creating professional armed forces and establishing credible law enforcement agencies and correctional services, as well as an independent judiciary. The international community should support post-conflict countries in such reform to ensure accountability and the capacity of the armed forces, police, correctional services, and judiciary to uphold the rule of law and the security of the population.

*Improve Region Building through Regional
Political and Economic Integration*

The weak institutions and policy failures that characterize African economies can be traced to the institutional vacuum inherited at the time of independence and the subsequent undermining of institutions, as well as the social and political instability and conflicts of recent years. Conflicts have also been attributed to the historical imbalances created by the colonial system. Boundaries drawn arbitrarily in Berlin in 1883 cut through nations, which, on the one hand, joined people with very little in common and no will to live together and, on the other, separated those who ought to have been together.[116] Newly independent African states inherited an international system with established rules and norms, in which they would depend on the former colonial powers for financial resources, equipment, and technology. The need to satisfy the demands of various constituencies at home while facing an international system not particularly favorable to

their situation created tensions and, eventually, conflicts in Africa, to which the legacy of division from colonial times contributed.[117]

Since many internal conflicts in Africa have cross-border dimensions, the international community and development partners should ensure that regional integration and cross-border cooperation between countries are integral to any strategy to reduce conflict and end mass atrocities. Logically, for example, any reconstruction project for the DRC would best be undertaken as part of an overall strategy for development of the Great Lakes states of the DRC, Burundi, Rwanda, Tanzania, and Uganda. The AU and Africa's regional economic communities (RECs) should pursue further region building and regional integration in pursuit of practical economic and security goals, and they should further institutional development and promote the movement of goods and other legitimate commercial activity across borders.[118] More importantly, African states should promote intra-African trade and the development of infrastructure to enhance the continent's capacity to negotiate and engage with international trade and investment partners.[119]

Address Global Factors Fueling Conflicts
(Small Arms, Illicit Trade, and Organized Crime)

The uncontrolled spread of small arms and light weapons (SALWs), due to their accessibility and ease of use, plays a significant role in the mass atrocities committed in armed conflicts on the African continent. Weapons are either sold to warring factions or bartered to warlords in exchange for natural resources. In the war in Sudan, for example, the flood of cheap AK-47 rifles into Darfur has spawned slogans like "The Kalash brings cash" and "Without a Kalash you're trash."[120]

Since, according to Oxfam, approximately 95 percent of arms and ammunition come from outside Africa,[121] the AU and the UN should address the spread of SALWs by ensuring the ratification and implementation of treaties that regulate and control their spread to and within the continent.[122]

Evidence indicates that conflict in Africa is also being fueled by the illicit trafficking of ivory. It funds, for example, up to 40 percent of the cost of the al-Shabaab militant group of 5,000, which has terrorized countries like Somalia and Ethiopia in the Horn of Africa, along with Kenya and Uganda.[123] To address this, the AU, the UN, and the international community should impose smart sanctions that can compel governments, especially those

affected by conflicts, to take steps to mitigate the harmful effects of the illicit trade in ivory and precious minerals and other external stressors, such as organized crime.[124] Sanctions on their own are unlikely to prevent the outbreak of armed conflicts, however; they need to be integrated into a wider strategy of conflict management and resolution. To curtail conflicts fuelled by illicit trade, donors and development partners also must lend and support responsibly. As the UN Conference on Trade and Development (UNCTAD) Principles on Promoting Responsible Sovereign Lending and Borrowing succinctly posit, "All lenders have a duty to comply with [UN] sanctions imposed against a governmental regime."[125] The rationale is that, since the UN sanctions are imposed to maintain or restore international peace and security, the international community should ensure financial lenders do not participate in transactions that violate, evade, or hamper such sanctions or embargoes in fragile states.[126]

Transnational organized crime and illicit capital flows also fuel conflicts and prevent stabilization. These illegal activities are particularly detrimental to development, as they withdraw valuable resources generated within countries. Current fraud and money-laundering legislation does not make it an offense to take advantage of the exigent circumstances created by armed conflicts, let alone provide extraterritorial jurisdiction for such conduct. The numerous wars and concomitant atrocities in Africa point to the need for a continental instrument that may be enacted as law by individual countries to suffocate the insurgents and force them out of the business of waging war for profit. A post-conflict strategy should ensure that countries emerging from conflicts build financial management and taxation systems and address the corruption that underlies and enables illicit capital flows. As multinational corporations are known to have a role in initiating and exacerbating conflicts in developing countries, post-conflict strategies should recognize they also have a responsibility to suffocate insurgents by preventing conflict resources from making their way to their businesses.

Support Reintegration of Ex-combatants and
Promotion of Economic Activities

Youth unemployment is a serious issue in many countries in Africa, and it raises the prospect of a lost generation if opportunities are not created for the continent's young population. High unemployment rates, especially among youth, increase income inequality and are drivers of conflict and fragility. Disenchanted youth are susceptible to recruitment by religious

extremists, terrorist groups, or illicit transnational crime networks.[127] For rebel groups, the economic motivations for continuing the conflict take priority over a country's need for generalized security and the normalization of affairs. The DRC presents a textbook example of a society faced with the challenge of demilitarization after years of internecine armed conflict. Many such countries are left with an urgent need to demobilize, disarm, and reintegrate militias, who are often politicized and loyal to their warlords, and to provide their young populations with something to do instead of fight.

The 2011 World Development Report highlighted the importance of security, justice, and jobs as key priorities for conflict-affected states.[128] A development agenda that aims to be conflict-sensitive and results in sustainable peacebuilding and stabilization has to address the reintegration of ex-combatants into their societies and dissuade them from reengaging in fighting. Three issues are crucial in this regard: the psychological needs of ex-combatants, their economic needs, and the need for training to reintegrate them into the labor market. Clearly, then, an effective post-conflict strategy must focus on disarmament, demobilization, and reintegration (DDR) programs, with a view to ensuring the access of demobilized fighters to rehabilitation programs that enable them to acquire new skills and facilitate their transition back into society.[129] The priority should be on educational programs responsive to the needs of local labor markets, on private sector development (which creates jobs), and on the integration of businesses into regional and global markets.

Aside from unemployment among ex-fighters, major impediments to development and stabilization in conflict-affected states include dysfunctional institutions, food insecurity, and insecure incomes among rural populations. Agricultural productivity is generally accepted to be the single most powerful tool for lifting the majority of Africans out of poverty, malnutrition, and food insecurity, as well as for promoting economic growth and the creation of job opportunities.[130] Strengthening of the agricultural sector in Africa can lead to a better economic climate, and improved livelihoods for the population can lead to overall income growth in rural areas, where the bulk of the victims of conflict and ex-combatants live.[131] Not only can including agricultural investment programs in DDR programs and development strategies divert focus from the conflict commodities, such as diamonds in the DRC; it can also address extreme poverty and hunger and the creation of job opportunities, and thus foster greater development in post-conflict societies in Africa.

Apart from the rich human capital of ex-combatants these programs can tap, women in post-conflict societies also have a pivotal role to play in agriculture. In most African countries, agricultural interventions have ignored the centrality of women farmers, as well as the youth and their potential as food producers. As a result, the contributions of women and the youth to agricultural production have been vastly undervalued and their needs summarily overlooked. To otherwise occupy the youth who are at the heart of contemporary conflicts, it is crucial to provide incentives to make agriculture attractive, as well as education and training programs in modern agricultural enterprises. Besides supporting smallholders, an effective strategy should help governments in post-conflict societies build capacities and implement policies that can, among other things, ensure the land rights of farmers and protect them from volatile food prices—for example, through social safety nets or access to new markets.[132]

Provide Community-Based Solutions that Address the Needs of the Marginalized and Grassroots

Peace, justice, and development can effectively be achieved if the efforts are locally driven, because the affected communities know the most about their own needs. For example, questions regarding tradeoffs to be made between peace and justice are best answered by the affected communities, rather than having decisions imposed from the outside. The international community, including the ICC, should help post-conflict countries build domestic initiatives that can prosecute perpetrators of atrocities locally, since that is where both the victims and the evidence are.[133]

Externally driven post-conflict reconstruction processes cannot be sustained if they do not involve, or take into consideration, the interests of the people they are targeting.[134] Post-conflict strategies should not only be implemented at the state and national levels but also at the local level, so they may take into account the various causes of conflict and the unique backgrounds of fragile environments in specific communities. Generally, grassroots populations tend to be the worst affected by the war and mass atrocities. Women and children are often faced with tremendous social upheaval. An effective reconstruction strategy should promote the participation, and address the needs, of marginalized and vulnerable groups, particularly targeting the elderly, persons with disabilities, internally displaced persons (IDPs) and refugees, youth (especially child soldiers), women and girls, including victims of sexual violence, and people afflicted by HIV/AIDS.[135]

The ICC's Trust Fund for Victims should also consult with victims and their communities for the implementation of appropriate collective reparations measures.

In addition, post-reconstruction policies must involve the victims and those who are particularly marginalized. They must be given meaningful opportunities to participate in the policy formulation and planning processes, since their livelihoods are at stake. Measures that are defined unilaterally by outsiders and solutions that are imposed on communities often fail due to lack of participation by beneficiaries and understanding of local contexts. Policies should respond to local needs, not to external interests.

In short, local narratives have to shape responses to peace, justice, and development, and agendas need to be based on homegrown approaches. Plans for post-conflict reconstruction missions must outline an exit strategy and a timetable for transferring the implementation of programs directly to the local communities so they can become self-reliant and self-sufficient in the shortest time possible.[136]

Strengthen Institutional Cooperation

The conventional rhetoric that African leaders are determined to end impunity is not supported by state practice, and African states have traditionally been strong supporters of the ICC. The apparent resistance by some to the implementation of the Rome Statute is a cause for concern, however. More worrisome still is the refusal of the AU, expressed at the Fifteenth Summit of African Heads of State and Government, to cooperate with the ICC.[137]

At the same time, criminal prosecution has limits, as it is only a response to mass atrocities. It cannot necessarily address their underlying causes, as political solutions are beyond its scope.[138] Unless the political, socioeconomic, and cultural issues are addressed by empowering the disadvantaged classes or groups of people, the ICC will not be able to provide a lasting solution to the mass atrocities on the continent:

> Building an effective strategy to reestablish social order in post-conflict African societies requires an understanding of the idiosyncratic environmental factors that animate violence, as well as recognition that criminal prosecutions cannot address the social pathologies that have disfigured Africa. It

is these pathologies that will define and shape Africa's future,
not the legacy of criminal prosecutions.[139]

While helpful, the ICC alone may not be the best tool to deter or end the commission of mass atrocities on the continent. Instead of focusing on criminal prosecution as curative medicine after the victims have already suffered, the international community should help Africa address the urgent political, social, and economic problems that spark the conflicts that lead to the crimes that impel the ICC to hunt for perpetrators in the first place.[140] According to Annan, "There can be no long term security without development and there can be no development without security and no society can long remain prosperous without respect for human rights and the rule of law."[141]

These concerns underscore the need to devise effective strategies that would enhance the protection of human rights and humanitarian law and the prevention of mass atrocities in Africa. The apparent challenge for the AU is to develop a political-normative framework that promotes a culture of prevention and a climate of compliance with international obligations while providing stable political relations and managing socioeconomic transformation in African states.[142] This is where New Partnership for Africa's Development (NEPAD) comes in, particularly the African Peer Review Mechanism (APRM), which is designed to promote structural conflict prevention through good governance, protection of human rights, and sound economic management, which are conditions for sustainable development.[143]

The problem is that membership in NEPAD is not mandatory, which makes the APRM porous with respect to nonmember states. Rather than risk being "named and shamed," deviant states do not submit themselves to peer-evaluation but, rather, steer clear of the APRM.[144] The integration of NEPAD into the AU structure can encourage more AU states to sign on to the APRM, thereby strengthening governance-related standards. In contrast, all AU states are members of the Conference on Security, Stability, Development, and Cooperation in Africa (CSSDCA), which is one of the special policy development programs of the AU alongside NEPAD. Although it is still docile, the CSSDCA has a comparative advantage serving as a conduit through which the AU can collectively achieve its human security agenda.

While non-APRM members cannot be held accountable through other general mechanisms, they can be deprived of foreign aid, which is

conditional on their meeting all NEPAD requirements, key among which are good governance and peer review. Yet this sanction is not by itself a panacea for atrocities. Neither NEPAD nor CSSDCA covers nonstate actors, who are equally responsible for most of the atrocities. To address this, NEPAD, the CSSDCA, and the APRM should be considered integral parts of the African Peace and Security Architecture (APSA), since development, security, and human rights are intertwined in a symbiotic relationship, encompassed in the concept of human security.[145] The widely held view is that mass atrocities are facilitated by a "culture of impunity." If potential perpetrators calculate that they can get away with their crimes, they resort to deadly conflict in pursuit of their political or economic goals. This underscores the importance of institutional collaboration and cooperation between the ICC and the APSA to focus on the entire spectrum of preventive strategies to ensure a genuine respect for human rights and humanitarian law obligations and focus more on dealing with the causes of conflict rather than its symptoms.

Specifically, the AU should focus more on improving human security and promoting rule of law, good governance, and economic development in member states. These factors are crucial to the prevention of mass atrocities. Apart from the deterrence value of ICC prosecution, the Court's Trust Fund for Victims also offers key advantages for promoting lasting peace, reconciliation, and well-being in war-torn societies. Although the ICC, the AU, NEPAD, and Africa's RECs have different responsibilities and memberships, their common goal is to promote peace and stability as well as human dignity. Greater collaboration and coordination between these bodies within their overlapping mandates can foster peace and stability, accountability, and development on the continent.[146] As the head of the secretariat of the AU, the chairperson of the AU Commission should coordinate the cross-institutional cooperation of the APSA—which includes the RECs and should include NEPAD—with the other stakeholders, such as the ICC, to build and promote sustainable peace, justice, and development on the continent.

CONCLUSION

Prosecuting the perpetrators of atrocities in African states is seen as necessary to deter future atrocities and vigilante justice, promote reconciliation, and inculcate a culture of compliance with the law.[147] Prosecutions also facilitate the eventual establishment of a political culture that regards the commission of atrocities as unacceptable.[148] "The connection between

international prosecution and the actual deterrence of future atrocities is at best a plausible but largely untested assumption," however, as "there is no empirical evidence of effective deterrence."[149] The fact that the ICC prosecutor has secured only one conviction since the court's establishment in 2002 makes questionable whether the symbolic prosecution of a handful of the most visible perpetrators is really worth the wait. The unjustifiable length of cases delays justice for the victims, weakens the societal impact of the cases, and increases their financial costs.[150] Since reparations are a key component of justice for victims, prosecutorial measures should be pursued alongside other transitional justice mechanisms to make the justice process comprehensive and safeguard against the recurrence of violations.[151]

From a victims' perspective, it can be argued that justice delivered where the evidence is, and where the witnesses and victims reside, has a cathartic effect, promoting healing and post-conflict reconciliation more effectively than justice delivered in the remote confines of The Hague.[152] The distance of the trial from their location denies victims the opportunity to see first-hand the justice being done in their names and also limits the number of witnesses who could be called before the court, which compromises the quality of evidence.[153] The presence of these critical issues adds credibility to calls for strengthening judicial systems in post-conflict countries to deliver more tangible benefits to victims and societies.[154]

Criminal prosecutions are also not designed to address the underlying sociopolitical problems that lead to mass atrocities, such as "ethnic distrust, corruption, marginalization of ethnic groups and inequitable allocation of a nation's resources."[155] Although al-Bashir and Kenyatta may be prosecuted on the basis of command or superior responsibility, violence sparked by underlying social problems and perpetrated by communities "with varying degrees of culpability cannot be addressed by criminal prosecution designed to address individual misconduct, especially in cases where the causes of deviant conduct reside not at the individual level but at the communal level."[156] Unless the political, socioeconomic, and cultural issues are addressed, the ICC will not be able to provide a lasting solution to the mass atrocities on the continent.

Therefore, building an effective strategy to reestablish social order in conflict-affected countries "requires an understanding of the idiosyncratic environmental factors that animate violence, as well as recognition that criminal prosecutions cannot address the social pathologies that have

disfigured Africa."[157] More attention should be paid to addressing the social pathologies that lead to atrocities instead of maintaining a rigid focus on criminal prosecutions.[158] Instead of focusing on criminal prosecution as curative medicine after the victims have already suffered, the international community should support Africa in addressing the urgent political, social, and economic problems that spark conflicts.[159]

The ICC should be complemented by preventative and post-conflict peacebuilding measures to prevent violent conflict from arising, to manage conflict situations where they do arise, and to address the root causes of conflict.[160] Peacebuilding involves complex, multidimensional, and interrelated engagements that collectively and cumulatively aim to bring about security, political stability, socioeconomic development, and reconciliation, that address both the consequences and the causes of conflict, and that lay the foundation for sustainable peace and development.[161] Sustainable peace requires inculcating a "culture of prevention" and a "culture of peace" in communities, including a functioning state that focuses on human security and human development.[162]

To achieve its goals of sustainable peace and development, the AU has adopted a comprehensive strategy for post-conflict reconstruction.[163] As part of it, conflict-affected countries must draw on the resources of society as a whole and the international community to address the causes of instability, which include ethnicity, poverty, corruption, and the large-scale looting of wealth by foreign interests. However, there cannot be a one-size-fits-all solution, as each conflict situation is context specific.[164] Essentially, the African Policy Framework provides an overall strategy within which individual country programs can develop their own context-specific plans and progress.[165]

To achieve peace, justice, and sustainable development in countries emerging from conflicts, the ICC should coordinate and cooperate with the AU Commission, NEPAD, and the UN Peacebuilding Commission when engaging post-conflict societies. In designing post-conflict activities and policies, it is imperative to consult the grassroots, targeting the marginalized and those who are in greatest need.[166] Since the causes of armed conflicts are complex, conflict prevention is likely to succeed if they are addressed by providing the victims—particularly women and the youth, including child soldiers, as well as ex-combatants—with socioeconomic activities that will address poverty and inequality.[167] An effective post-conflict strategy should

seek to improve governance of natural resources; eradicate poverty, inequality, and ethnic rivalry; enhance political inclusion, equity, and good governance; reform the security sector; improve regional political and economic integration; address global factors fueling conflicts, such as the spread of small arms, organized crime, and illicit trade; support the reintegration of ex-combatants and promote economic activities to support them, including women and the youth; and support community-based solutions to address the needs of the marginalized and grassroots populations.

NOTES

This paper is dedicated to my colleague and friend professor Michelo Hansungule, for his passionate plea for sustainable peace, justice, and development on the continent.

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4. Centre for Conflict Resolution (CCR) reports, *United Nations Mediation Experience in Africa*, Cape Town, October 2006, 8.

5. Prosecutor v. Thomas Lubanga Dyilo, case no. ICC-01/04-01/06. Lubanga was the leader of the Union of Congolese Patriots (UCP) in the Democratic Republic of Congo (DRC). His trial began in January 2009, yet it was not until July 2012 that he was convicted of forcibly enlisting children to participate in armed hostilities.

6. See J. Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Civilization* (Oslo, Norway: PRIO, 1996).

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13. M. C. Bassiouni, "Searching for Peace and Achieving Justice: The Need for Accountability," *Law and Contemporary Problems* 59, no. 9 (1996): 18.

14. Ibid.

15. See Radio Netherlands Worldwide (RNW), "Addis Ababa Office Opening Still on Hold," February 4, 2011, www.rnw.nl/international-justice/print/292628, accessed September 9, 2013.

16. L. N. Sadat, *The International Criminal Court and the Transformation of International Law: Justice for the New Millennium* (Ardsley, NY: Transnational Publishers, 2002), 250; see Evans, *Responsibility to Protect*, 116n29.

17. M. Mamdani, "Darfur, ICC, and the New Humanitarian Order," *Pambazuka News*, issue 396, September 17, 2008, http://www.pambazuka.org/en/category/comment/50568%20, accessed August 1, 2013.

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20. S. R. Ratner and J. S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*, 2nd ed. (Oxford: Oxford University Press, 2001), 343; see also Putnam, "Human Rights and Sustainable Peace," 251.

21. Bassiouni, "Searching for Peace and Achieving Justice."

22. Ibid.

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25. Principle 14 of the Africa Legal Aid, The Cairo-Arusha Principles on Universal Jurisdiction in Respect of Gross Human Rights Offences: An African Perspective, 2002.

26. Bassiouni, "Searching for Peace and Achieving Justice," 20.

27. W. A. Schabas and R. Thakur, "Concluding Remarks: The Questions that Still Remain," in Hughes et al., *Atrocities and International Accountability*, 282.

28. Ibid., 282–83.

29. International Criminal Court, Rome Statute, http://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/official%20journal/Pages/rome%20statute.aspx, accessed August 18, 2013.

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31. D. Bosco, "Why Is the International Criminal Court Picking Only on Africa?" *Washington Post*, March 29, 2013, http://articles.washingtonpost.com/2013-03-29/opinions/38117212_1_international-criminal-court-african-union-central-african-republic, accessed September 9. 2013.

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33. Coalition for the International Criminal Court, "Africa and the International Criminal Court," http://www.iccnow.org/documents/Africa_and_the_ICC.pdf, accessed August 18, 2013.

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Despite the dichotomous extremes between notions of peace versus justice, transitional justice and post-conflict peacebuilding approaches comprise a wide range of nuanced approaches encompassing elements of both peace and justice (Evans, 2008). Although both postponement of justice, as exemplified by Argentina and Chile, and lustration as seen in post-World War II Germany, Japan, or 1990s Bosnia, represent subtleties of this approach, proponents of truth and reconciliation commissions (TRCs) assert a middle way in bridging the gap between retribution and reconciliation. Peace and conflict studies is a social science field that identifies and analyzes violent and nonviolent behaviours as well as the structural mechanisms attending conflicts (including social conflicts), with a view towards understanding those processes which lead to a more desirable human condition. A variation on this, peace studies (irenology), is an interdisciplinary effort aiming at the prevention, de-escalation, and solution of conflicts by peaceful means, thereby seeking "victory" for all