

The African Union Takes a Bold Step on Accountability in South Sudan

The African Union (AU) has sometimes been criticised for not doing enough to address impunity on the continent and for failing to act in accordance with articles 3 (h) and 4 (o) of the African Union's Constitutive Act, which expressly condemn and reject impunity. In recent times, some parts of Africa have witnessed violence on a scale that has shocked its people, drawn international condemnation and, in some cases, resulted in a call for intervention by the international community. The most recent outbreaks of such violence have been witnessed in the Central African Republic and in South Sudan, but they have also been seen in recent years in Cote d'Ivoire, the Democratic Republic of Congo, Kenya, Libya and Mali.

On 30 December 2013, the African Union Peace and Security Council took an unprecedented step. For the first time in the history of the regional organisation or its predecessor, the Organization of African Unity, the Peace and Security Council adopted a resolution to establish a Commission of Inquiry, which will investigate human rights violations and other abuses committed during the armed conflict in South Sudan, the Union's newest member. There is no doubt that the establishment of this Commission represents a major shift in policy. The Chairperson of the African Union Commission, Dr. Nkosazana Dlamini-Zuma, stated as much herself at the promulgation of the Commission of Inquiry. All such commissions of inquiry have previously been established by the United Nations and African leaders have been keen for the African Union to take the lead, instead. In addition, the establishment of this Commission has come at the right time, taking place as it does against a backdrop of criticism of the International Criminal Court by some African leaders, who say that it focuses too much on African cases. The international community has welcomed the establishment of the Commission and thrown its weight behind it.

The work of the Commission, which was established in accordance with international standards, will be closely scrutinized. It has a challenging mandate - which includes investigation of human rights violations and abuses by all parties to the conflict and the identification of those most responsible, who will be held to account. The Commission will also make recommendations on ways to foster reconciliation and healing among all South Sudanese communities.

The violence in South Sudan, which started as a power struggle within the ruling party, the Sudan Peoples' Liberation Movement (SPLM), between President Salva Kiir and his former deputy Riek Machar, quickly degenerated into factional fighting within the national army, the Sudan Peoples' Liberation Army (SPLA). The conflict has ethnic undertones, pitting the two main ethnic groups against each other, President Salva Kiir's Dinka and Riek Machar's Nuer. Both factions are alleged to have committed atrocities, including acts of ethnic cleansing through forced, massive displacement of civilian populations, and targeted killings. Bor, Bentiu, Malakal, Rumbek and Juba have experienced the worst violence. South Sudanese, who lived as refugees and endured decades of a brutal civil war between the south and the north, now find

themselves back in the same situation. Thousands have fled to neighbouring countries or are displaced internally. The humanitarian situation is dire.

The Commission of Inquiry will thus be carrying out its work in the context of a grim, ongoing human rights crisis. Through its work, the Commission must, ultimately, help to bring the different parts of this fractured young nation together. Establishing the truth about what has happened and bringing those who have committed atrocities to justice will be a critical step towards achieving that goal. The rejection of impunity cannot be simply a catch phrase; justice must be seen to be done. This will not be an easy task.

The establishment of this Commission rides on the back of major developments in the fight for accountability in Africa. In 2013, exiled former Chadian President Hissene Habre was arraigned before the Extraordinary African Chambers, a hybrid court established within the Senegalese legal system for crimes against humanity allegedly committed during his reign. This achievement followed years of efforts by multiple actors, among them the African Union. The African Union first recommended his trial by Senegal in 2006, following the recommendation of a Committee of Experts the same year.

Habre's case demonstrates that the African Union can be innovative and effective in dealing with criminal accountability. It has to be. There is no regional court with a mandate to try criminal cases - the African Court for Human and Peoples Rights cannot do so, as the Court was set up to decide on States' compliance with the African Charter on Human and Peoples' Rights. Few national courts currently have the jurisdiction or capacity to try such cases, including South Sudan's courts. To overcome the challenges that may arise from the recommendations of the commission, the South Sudanese, the African Union and their partners must be creative and be committed to seeking accountability.

There should be no tension between the equally important objectives of justice and accountability on the one hand and peace and stability on the other; they are mutually reinforcing. A peaceful and unified South Sudan would have the confidence to confront this dark moment in its history and ensure justice for victims of human rights violations, whoever they are.

The African Union prides itself, rightly, on being the only regional organization that has codified the right to intervene in a Member State if war crimes, genocide or crimes against humanity are being committed. This was a significant transformation, from a policy of non-interference to one of non-indifference.

Mwalimu Julius Nyerere used to say to African citizens that "we have to be our brother's and sisters' keepers". This is the moment to grab the bull by the horns and show that the African Union is serious about ending impunity, particularly for atrocity crimes, whether they take place in South Sudan or elsewhere on the continent. Those who have committed atrocities should be put on notice. We know they will be closely monitoring the work of this first African Union Commission of Inquiry. If there is no justice, you can be sure that atrocities will continue and it

will be back to business as usual. We cannot afford to let the “African Renaissance” be tarnished by the acts of some criminals. The Commission of Inquiry has to do well and do it right; the whole world will be watching.

Adama Dieng

Under Secretary-General/United Nations Special Adviser on the Prevention of Genocide

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