

# Darfur: Pursuit of justice or vengeance?



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**T**he third error is to assume a single author of violent deaths and rape.

In his eagerness to make the prosecution's case, Moreno-Ocampo not only obscured the origins of the violence in Darfur, he also went on to portray life in the internally displaced persons camps in Darfur as a contemporary version of life in Nazi concentration camps in Europe, with al-Bashir cast in the role of the Führer. At the press conference announcing the case against the president of Sudan, the prosecutor said: "Al-Bashir organised the destitution, insecurity and harassment of the survivors. He did not need bullets. He used other weapons: rape, hunger and fear. As efficient, but silent."

To be sure, there were ongoing incidents of rape in Darfur, as there are indeed in most conflict situations where armed young men confront unarmed young women. This much was recognised by the US special envoy to Sudan, Andrew S. Natsios, in his testimony before the Senate Foreign Relations Committee on April 11, 2007: "The government has lost control of large parts of the province now. And some of the rapes, by the way, that are going on are by rebels raping women in their own tribes. We know in one of the refugee camps, it's now controlled by the rebels, formally. There have been terrible atrocities committed by the rebels against the people

in the camps."

Rebels, like government soldiers and the paramilitary Janjaweed, have authored both rape and the killing of civilians. Take figures newly released by the United Nations-African Union Mission in Darfur (Unamid) in Khartoum. Unamid calculates the total number of conflict-related civilian deaths in the year 2008 at 1520. Of these, 600 are said to be the result of conflicts over grazing lands among Arab tribes. When it comes to the remaining 920, Unamid says that more civilians were killed by rebel movements than by government-organised counterinsurgency forces.

The fourth erroneous assumption is that the situation has not changed in Darfur since the onset of the counterinsurgency in 2003. In Moreno-Ocampo's own words: "In April 2008, the United Nations estimated the total number of deaths since 2003 at 300,000." This estimate came from John Holmes, UN under-secretary general for humanitarian affairs. This is how Holmes put it in the first place: "A study in 2006 suggested that 200,000 had lost their lives from the combined effect of the conflict. That figure must be much higher now, perhaps half as much again." There are two qualifications here, and Moreno-Ocampo glossed over both. The first was that these mortality figures were said to be the result of "a combined effect", referring

to direct violence and drought. The second qualification was explained by *Reuters*:

"United Nations cautioned reporters that the number was not a scientific estimate but a 'reasonable extrapolation.'" The assumption underlying the extrapolation -- that the level of mortality has not changed in Darfur from 2003 on -- was contradicted by the UN's own technical staff in Sudan. As Julie Flint explained in the *New York Times* of July 6, 2007 and the *Independent* (London) of July 31, 2007, UN sources spoke of a sharp drop in mortality rates in Darfur from early 2005, so much so that these sources report mortality estimates had dipped to as low as below 200 per month.

That the ICC has politicised the issue of justice is no reason to sidestep the question of accountability. The kernel of truth in the prosecutor's application concerns 2003-04, when Darfur was the site of mass deaths. This was mass murder, but not genocide. Its authors were several, not just the government of Sudan. There is no doubt that the perpetrators of violence should be held accountable, but when and how is a political decision 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 that poses an issue of greater concern to Africa.

The debate has hitherto focused on the

need to have the same rules for all war criminals. Only then can the rules claim to be just, so that justice may act as deterrence. If, however, justice masquerades as selective punishment, only to those who dare transgress American power, critics have pointed out that the exercise will be a deterrent to potential war criminals but only to those who dare challenge American power.

I have suggested that the more important question is that of the larger political consequences of a fundamentalist pursuit of criminal justice by those determined to enforce criminal justice regardless of its political context or consequence. If the ICC were to have the political will courage to try war criminals in the US on Terror, we can say with confidence the American political system is strong enough to contain its political fallout. It is little chance of "red states" going to against "blue states". But can one say any confidence that the price of single-mindedly pursuing criminal justice in Sudan will not be a renewed civil war? a fundamentalist pursuit should be vengeance, not justice. This is why we to subordinate criminal accountability larger pursuit, that for political reform.

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