

From war to peace and reconciliation in Darfur

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Abdullahi Osman El-Tom, Dept. of Anthropology, NUIM, Ireland

June 25, 2009 — The Darfur crisis is nearing its end. One way or another, peace will be reached within the near future. However, sustainable peace requires arduous reconciliation that is indivisible from punishment of those responsible for atrocities committed in the conflict. This calls for the investigation and trial of tens of thousands, if not more, individuals implicated in the atrocities. While the ICC and Sudan's National Justice System (NJS) can deal with the higher level crimes, the lower level crimes which are more numerous can only be dealt with within the traditional legal system (the Judia). In comparison to both the International Criminal Court (ICC) and the NJS the Judia is more efficient, but above all conducive for future co-existence and reconciliation. Drawing on the use of the traditional Gacaca system of justice, the author concludes by making suggestions that may improve delivery of the Judia in Darfur post-war trials.

It is now six years since the onset of Darfur atrocities. One does not have to subscribe to clichés of conflict maturity or war fatigue to realise that the Darfur crisis is approaching its end. Ample internal and external dynamics of recent months usher in an air of optimism that the crisis will soon be overcome. On the internal front, numerous processes have progressed to overshadow past obstacles. The divisions and proliferations of Darfur Movements that followed the Abuja Darfur Peace Agreement (DPA, 2005) have finally led to constellation into two or three groups. The Justice and Equality Movement (JEM) seem to have emerged as a clear winner capable of dictating future peace processes. In that last four to five weeks alone, no less than 18 factions of other Movements have flocked to join JEM.

Implementation of the Comprehensive Peace Agreement of the north-south Sudan (2005) has reached a critical phase. It cannot proceed without overcoming the Darfur crisis. At the same time, further stalemates in the Darfur problem risk unravelling the entire CPA with wide national and regional ramifications. Not surprisingly, CPA partners and their international mentors are now frantically working to rescue the situation. At last, the simple fact that the destiny of the Christian south is intertwined with the fate of the Muslims of region of Darfur has begun to sink in among SPLM leaders as well as CPA foreign overseers.

The ICC's indictment of Al-Bashir (March 4th, 2009) has certainly shaken the delicate Darfur peace process but has equally sent shock waves across African and Arab leadership. The indictment signals a historic new era that challenges impunity of sitting dictators against international prosecutions. Much more pertinent here, is the impact of the indictment within the ranks of the ruling National Congress Party (NCP) of Sudan. While the indictment gave the hardliners a cause to rally around the

beleaguered president, dissent has emerged among moderate party members concerned about future prospects of their party. As an ICC spokesperson indicated, May 4th 09, some members of the government of Sudan intimated their desire to hand over Al-Bashir to the ICC (Alwafd 2009). Khartoum's transfer of Darfur file from the notoriously hardliner Nafe Ali Nafe to Ghazi Salah Eldin is, to say the least, encouraging.

Other external factors contributing new vigour to the Darfur peace efforts include changes in US administration and collapse of international demand for oil. Obama's reconciliatory, if not capitulatory approach offers Sudan's government an opportunity to make compromises without loss of face. At the same time, Sudan's oil revenue has declined from over USD300m to less than USD100m a month. This drastic reduction of revenue robbed the Khartoum government of cash needed to finance the Darfur war and maintain power in the country.

DEALING WITH DARFUR WAR CRIMES:

Whether peace in Darfur is imminent or not remains open for debate. What is certain is that the sustainability of peace in Darfur and the guarantee of harmonious post-conflict co-existence require careful handling of Darfur war crimes. Despite ample international attention paid to atrocities committed in Darfur, there is little consensus regarding the number of fatalities, the incidence of rape, the extent of villages burnt and property destroyed or looted. However, and by whatever measures, the atrocities committed involve numbers that far exceed the capacity of formal legal systems to handle. In this regard, we have a great deal to learn from other similar conflicts in the Sudan as well as in other African countries. Thus we have the war of south Sudan, the Rwandan experience, the South African experience and many others.

In approaching Darfur war crimes, Sudan must learn from mistakes committed at the Naivasha negotiations that led to the current CPA. In Naivasha, the negotiators adopted the dictum of "forgive and march on" and opted for a blanket amnesty for all north-south civil war criminals. Eminent Sudanese lawyer Magdi AlGazouli maintains that the "failure to probe into atrocities committed in GoS-SPLM war encouraged a repeat of the same crimes in Darfur and a blanket amnesty in the Darfur war is simply untenable" (Algazouli 2009). One does not have to subscribe to the Rwandan principle of "maximum accountability for crimes of genocides and crimes against humanity". Suffice is to follow Amnesty International that "peace depends not only on absence of war but also on the existence of both justice and truth, with both justice and truth depending on one another" (Amnesty International 2002b). The ICC has already issued arrest warrants for six individuals, a small number compared to the unofficial list of 55 culprits whom International Human Rights Watch wants investigated (HRW 2005). The government itself has followed suit and claims it has commuted death sentences on 36 soldiers charged for committing atrocities and armed robberies in Darfur. Given the scale of crimes committed in Darfur, the ICC and Sudan's official justice system (NJS) will not have the capacity to deal with all cases within a time frame that is fair and just for victims and culprits alike and it is here that Darfur must learn from the Rwandan experience.

In attempting to make use of the Rwandan experience in Darfur, one must pay close attention to similarities and commonalities between the two cases. To begin with,

there is clear difference of scale whereby the Rwandan case dwarfs the level of crimes committed in Darfur. While the Rwandan case presents a clear case of genocide, the legal definition of Darfur atrocities as genocide is fraught with controversies and is yet to be legally established as such (ICC Ruling of 4th March).

The Rwandan case involved a massacre of close to one million victims out of population of 10 million. In Darfur, confusion still reigns regarding number of casualties with fatalities falling anywhere between 200,000 and 500,000 out of population of 7.5 million. The government of Sudan reduces this estimate even further to no more than 10,000. Needless to say, few outside government circles take this view with any degree of seriousness (For the Rwandan genocide see Gourevitch 1998, Dallaire 2004 and Prunier 1995).

In the Rwandan case, killing and other atrocities were predominantly executed by community members known to their victims. In sharp contrast to that, Darfur war crimes are predominantly perpetuated by the official army, aided by its Janjaweed allies. While many of the Janjaweed are local and hence known to their victims, some are imported from outside Sudan and cannot be easily identified by survivors. Army soldiers implicated in Darfur war crimes are much more difficult to identify as they are imported from outside the region. The government of the Sudan has also used intensive aerial bombardment carried out by pilots who were not in direct contact with their victims.

At a different level, both the Rwandan case and its Darfur counterpart have been driven by the motive of effecting a population reshuffle, involving varying degrees of ethnic cleansing. The Hutu genocidaires of Rwanda, alluding to their so-called Hutu Ten Commandments, declared their Tutsi fellow citizens as “inyenzi (cockroaches) which could only be cured by extermination”. Darfur gangsters declared their victims as slaves, mercenaries and agents of Christian crusaders. Dehumanisation of would be victims has been central to genocides, ethnic cleansing and massacres across the world. In Brazil, street children destined for killing are referred to as vermin. In other countries, those who are destined for annihilation are referred to as Kafirs, infidels, enemies of the nation, nits, garbage, beasts, vagabonds, subhuman etc (see Jones 2006:334) . These terms are used in an effort to reduce the assailants’ guilt, galvanise support, “humanise” killings of people and deprive victims of any chance for sympathy and humane treatment.

We must therefore readily admit that dealing with Darfur war crimes presents a daunting problem that requires an unconventional response at the post-conflict phase of crisis. The Rwandan case provides a template that can be followed in Darfur in the near future. Like Rwanda, and if the wise option of prosecution is to be pursued, Darfur culprits will far exceed the capacity of Sudan’s official legal system and the International Criminal Court (ICC) put together. The ICC formed for Rwanda came to be known as the International Criminal Tribunal of Rwanda (ICTR). In the case of Rwanda, and with nearly one million killed, it was estimated that the country had between 80,000 to 100,000 killers. That number computes at 8 to 9 victims per killer. Of course other crimes like rape, looting, injuries, burning of properties also entered into the equation. Thus, when the genocide ended, Rwanda had 130,000 prisoners awaiting trials for alleged serious crimes only, but the options were limited.

The ICTR concerned itself with what was come to be referred to as Class One criminals, namely those who were allegedly implicated at the organisational level of the genocide. Altogether, 400 suspected genocidaires were identified, many of whom fled and remained in western countries with little or no chance of repatriation. The dubiously slow pace of ICTR trials provided another problem. Almost one decade of work ending in 2005, produced 81 indictments, 17 convictions and one acquittal. Different sources credit the ICTR with a mere 33 cases after 14 years of investigation, ending in 2008. However, the restricted mandate of the ICC relegates the institution to a limited role in the overall post conflict justice system (Lawson, 2005; Gusongoiyre 2008). According to some critiques, the ICTR was plagued with corruption, nepotism, mismanagement and malfunctioning (See Power 2003:495, Shawn 2006).

As for the Rwandan national legal system, it is certainly more efficient in comparison to the ICTR but equally hopeless in the face of the genocide. From 1996 to 2006, the national courts were able to handle a mere 10,000 trials. With that rate, the national courts would require over 100 years to prosecute all prisoners (see Gusongoiyre 2008). Rwanda has been most unfortunate with regard to near decimation of its legal system during the genocide. It experienced a loss of over 80% of its legal officials and many legal facilities were damaged during the genocide. For example only 244 judges survived the genocide from a total number of 750 (Hansen 2005:2). Darfur fares much better in this regard. There is no summary execution of judges in Darfur and the region can draw on legal officials from outside Darfur if need be. But the Rwandan case is different. The country simply had no choice but search into its traditional system for a solution. Gacaca seemed to be a logical path for the country to follow.

Gacaca, meaning “sitting on grass” or also “lawn-justice” is a quintessential traditional Rwandese institution for conflict resolution. By its very ad hoc nature, a Gacaca court can be formed in any community to mediate and impose penalties on wrong doers. Gacaca depends on moral force to implement its ruling although that is heavily backed by the threat of the much harsher national legal system which often remains open for the plaintiff in case of refusal of the Gacaca ruling. Recognising the vastness of the number of prisoners awaiting trial following the 1994 genocide, the government of Rwanda adapted the Gacaca, with some modification, to serve as an alternative legal system. Gacaca was to deal with the milder but more numerous crimes committed during the genocide. Four categories of crimes were identified with Gacaca restricted to categories 2-4:

Genocide Crime Categories:

Category One	Planning, organisation, instigation, supervision of genocide
Category Two	Physical attacks resulting in death
Category Three	Physical attack not resulting in death
Category Four	Looting, theft, property damage

Gacaca is constituted of four hierarchical levels. Starting from the lowest, Gacaca has cell, sector, district and provincial tribunals. Cell tribunals deal with property offences; sector tribunals with injuries and district tribunals with killing but not its organisation. Provincial tribunals are reserved to act as final appeal courts for Gacaca cases.

The power of Gacaca resides in its capacity for speedy constitution. This is demonstrated by appointment of 266,000 Gacaca judges within the same year of 2001 when the Gacaca Act was issued, 2001 (Amnesty International 2002a). With Gacaca to be disbanded in June 2009, its courts will have completed 1.5 million cases. The remaining prisoners are estimated to be around 5,000 and who are too old to stand trial or sick and implicated in relatively minor offences will be pardoned (see Musoni 2009).

Despite its limitations, the achievements of Gacaca courts have been impressive. A pertinent question here is how can Darfur replicate its success while at the same time avoid its limitations? (For a critique of Gacaca see Amnesty International 2002a, Amnesty International 2002b and Haile 2008). Like Rwanda, Darfur has traditional systems of conflict settlement which can be activated in its post-conflict work. In the following paragraphs, I will draw on the experience of the Berti, my own ethnic group, and use it as a convenient model for Darfur. The reader must allow for minor variations among other ethnic groups (For the Berti see, Holy 1974, Holy 1991 and El-Tom 2008).

DARFUR LEGAL SYSTEM OF TRADITIONAL ADMINISTRATION:

Across the Sudan, local administration operates a sophisticated judicial system premised on traditional wisdom but equally informed by modern state legal ethos. Courts of local administration are structured around their administrative role. The village sheikh constitutes the lowest level of local administration presiding over 10 to 40 households. The village sheikh has no court but is mandated to settle minor disputes. In addition to that, the village sheikh combines assisting traditional courts run by his superiors in the local administration and government legal courts.

Above the village sheikhs is the Omda (Mayor) who presides over up to 100 sheikhs. Depending on size of the territory under his administration, the Omda may or may not have a court. Like the village sheikh, the Omda settles minor disputes among sheikhs as well as individuals. The absence of a court also means the absence of a mandate to impose prison sentences. Minor fines and compensation may be imposed during arbitration although implementation of the ruling depends on the disposition of the conflicting parties.

Above the Omda is the Shartay who presides over three to six Omdas. The Shartay has a court and mandate to impose jail sentences to be served in government prisons. He receives a salary from the government and maintains court records for future examination by the government if needed. Above the Shartay is the Nazir or king in some areas. Both the Nazir and king run courts that are endorsed and supervised by the government.

Despite its history and experience, the traditional administration is unlikely to be suitable for post-crisis trials in Darfur. To begin with, this system is ethnic based and always headed by a chief of the dominant ethnic group in the area. Although the court might include juries drawn from ethnic minorities in the area, the chief belongs to the dominant ethnic group. This makes tuning such a court to run trials of Darfur war criminals a risky affair. Moreover, many of these chiefs have also been politicised and above all implicated in one way or another in the Darfur dispute. Removing them in

favour of other judges might create a dilemma regarding other functions for which they have been appointed in the first place. For these reasons, it would be unwise to solicit their involvement in post-crisis trials.

COLLECTIVE COMPENSATION (DIYA):

Diya is a traditional system of collective compensation employed across Sudan and other African countries. In Darfur, it is restricted, but with some flexibility, to unintentional homicide, injuries and damage to property. For compensation to qualify for Diya assistance, it must be too large for a single household to muster. In effect, this is a collective responsibility for individual offences. Nonetheless, and like many other traditional systems of conflict resolution, Diya constitutes a process for collective action and periodic consolidation of group solidarity.

A network of permanent officers is elected to administer Diya. They form hierarchical lines of personnel chosen on hereditary basis with the sole role of operating the Diya. Ethnic groups are divided into lineages (Khashim biout) and sub-lineages (warrayat) with a person in charge of the collection of contribution for each division or sub-division.

The Berti whose system I describe below is a good example which is common in Darfur but not without some variations. At the apex of the structure of Diya sits the Farsha who covers a large territory for the group. Below the Farsha is the Duwana who is responsible for the mobilisation and collection of contributions of several lineages. Up to 50 lineages could come under a Duwana consisting of more than 10,000 households. Each lineage is under a Dimlig who is appointed for the same purpose. The Farsha, Duwana and Dimlig have deputies spread across all areas where they have relatives including the capital Khartoum. Diya representatives may seek assistance from the local administration to execute their work as the latter recognises and fully supports the Diya system as a legitimate course of conflict settlement.

Payment of Diya is worked out by dividing the amount of imposed compensation over the number of contributing households. Due to the spread of population, the collection of money is an arduous and inefficient task requiring several years to complete. Payment is relatively small due to large number of contributors. For example, homicide triggers a levy as low as LS100 (EU0.30) per household with only married people eligible for contribution. Payment of Diya is seen as an honourable deed, symbolic of belonging to the group with few who are prepared to endure the shame of not meeting the obligation.

Although the Diya is theoretically restricted to unintentional offences, it is often extended to cater for crimes of collective aims that are deliberately committed. Crimes committed to advance the cause of a group constitute a breach of national legal codes but there are always some ways around that. In ethnic disputes where intentional killings are committed, the government itself ignores national justice codes and resorts to Diya to settle conflicts. The sophisticated outreach of the Diya institution, coupled with sanctioned flexibility, make it a perfect candidate for use in post-Darfur conflict.

TRADITIONAL COUNCILS OF MEDIATION (THE JUDIA):

When thinking of Gacaca, nothing comes to mind in Darfur other than its traditional mediation council locally referred to as the Judia. It is a grass-root system of arbitration that focuses on reconciliation and resurrection of social relationships in the community. Unlike other judicial systems like governments and Shartay courts, the Judia is distinguished by impermanency of its membership, informality and accessibility to all in the community.

The Judia session can be initiated by a plaintiff, a defendant or their concerned neighbours and relatives. The meeting is open to all including passing guests and is not restricted to any defined number of mediators. In general, a Judia session attracts a minimum of five jurors who join and depart at will to carry out other activities. The disputants have the right to veto participation of potential mediators but only prior to commencement of the Judia.

The Judia has no overt power to enforce its ruling. Its power over disputants is moral. A disputant who defies the ruling of the Judia is castigated as a consensus breaker (Kassar Khawatir) who is anti-social, uncooperative and a threat to community harmony. The opposite of that is “Jabbar Khatir” (consensus builder), reflecting civility and ideal citizenship in the community. In a social environment where survival requires cooperation, the label of “consensus breaker” is hard to sustain. Furthermore, the ruling of the Judia is often endorsed by the much harsher Shartay court should the case go further. What is important here is the consensual nature of Judia ruling. In effect, it is community attempt to combine individual interests with community ideals.

The Judia is free and no penalties imposed other than compensation for loss or damage incurred in the conflict. An oath on the Koran may be employed to prevent further offences between the disputants.

THE JUDIA VERSUS THE SHARTAY COURT:

As I mentioned before, the Shartay runs a court that is endorsed by the state. The Shartay court deals with intermediary conflicts and is subordinate to government courts. The Judia then occupies the lower level of jurisprudence and is confined to lower level of crimes that may not require intervention by the Shartay court. In contrast to the Judia, the Shartay court mimics its superior government courts. It is informed by a modern ethos, literate and with permanent members. It is also punitive and dependent on external tools like bailiffs, police and prisons to enforce its verdicts. Its sessions are formally planned and held in modern buildings, ie. mud rooms.

The Judia contrasts sharply with the above. It is grass root-based, spontaneous, with an open jury and focussed on reconciliation. Its meetings are convened in any suitable place, like a shade of a tree, and relies on the good will of the parties involved to enforce its rulings (see Figure 1 and 2).

Figure 1 - Judia and the Shartay Court

Judia	Shartay Court
Tree	Mud Room
Oral/Traditional-based	Literate/Modern-based

Figure 1 - Judia and the Shartay Court

Judia	Shartay Court
Spontaneous	Formally arranged
Open jury	Restricted jury
Restitutive	Punitive
Moral enforcement	External enforcement
Ruling consensual	Ruling imposed by judge

Figure 2 - Traditional System of Conflict Resolution

/	Domain	Mandate/Powers	Election/Appointment
Judia	Neighbourhood conflicts	Restitution and Reconciliation	Spontaneous
Sheikh	Single village or residential quarter	Small fines, communal work; Tax	Locally elected
Omda	Over several sheikhs, up to 100	Small fines; Tax	Elected; Appointed
Shartay	Several Omdas	Up to 2 years jail sentence. Extension of official legal system; Tax	Elected; Appointed
Farsha	An area or sub-tribe; Duwanas	Collection of compensation fund only	Elected

FROM GACACA OF RWANDA TO THE JUDIA OF DARFUR:

Like pre-genocide Gacaca, the Judia is a quintessential institution and a repository of a traditional system evolved for tackling day to day conflicts during peaceful times. As in the post-genocide Rwanda, the Darfur crisis introduced new nuances and fresh realities that transcend the traditional competence of the Judia. Hence, there is a need for some modifications in Judia with the aim of its transformation into an institution capable of contributing to justice and reconciliation in post war Darfur. Fortunately, we do not have to reinvent the wheel. Gacaca provides an impeccable template whereby a basically similar institution has been called upon to play a role analogous to what is demanded of the Judia. In tuning the Judia to suit the new context of post-war Darfur, caution must be made to avoid pitfalls of the Gacaca. The new Judia will undoubtedly be a hybrid defying purists of traditional customs and disappointing those who aspire for unadulterated modern judicial system.

Manoeuvring through the riddle of the number of those involved Darfur atrocities is not an easy task. Even if we are able to gauge a reasonable margin of error, the number of those implicated in the atrocities will still be confounded with peculiarities and differences of execution of Darfur crimes. At the moment (June 2009), Gacaca has already delivered over 1.5 million cases. Roughly speaking, and assuming that many of Darfur offenders cannot be identified, the Judia will still probably have to deal with a fourth to fifth of that number (200,000 to 375,000). This number is further reduced by removing those involved in homicide/ fatal injuries as I will propose later. The challenge is formidable but not insurmountable.

In the Gacaca case, 266,000 judges were appointed to sit in 10,000 courts. While this number may seem vast, the courts had to deal with a colossal amount of work with an adverse effect on performance, enthusiasm and availability for economic activities. The Judia must avoid this pitfall. If the number of Gacaca courts is used as a template, Darfur will require 2,000 to 2,500 courts. The problem of excessive work experienced in Gacaca can be eliminated by doubling the number of Judia courts to 4,000 to 5,000. This will also speed up the work, fast-track the reduction of the number of detainees and lead to a more efficient reconciliation and reconstruction of communities.

The poor training of judges that accompanied the work of the Gacaca courts must not be repeated in Darfur. As reported, Gacaca judges received an average of 36 hours of training each (Haile 2008:20, Hansen 2005:2, Amnesty International 2002b:6). Moreover, judges sitting on Gacaca Appeal Tribunals did not receive better or longer training than other trainees. This deficiency must be overcome in Darfur. The quality of training must not be sacrificed for expediency.

Amnesty International was justified in raising the issue of the failure of Gacaca to adhere to the principle of a fair trial in its proceeding (Amnesty International, 2002a). Like many traditional legal systems, Gacaca lacked what is akin to the modern principle of “presumption of innocence”. This principle must be enshrined into the revamped Judia if it is to deliver justice that is worthy of pursuit.

The Judia also lacked a space for lawyers, a pitfall experienced in Gacaca. While it may not be feasible to include lawyers in the Judia, this shortcoming can be addressed by boosting the role of counter witnesses. Defendants should be allowed to commission relatives who are more articulate and with a better command of the intricacies of local jurisprudence to represent them in courts. It is perhaps unrealistic and albeit unnecessary to replicate Rwanda’s employment of “judicial defenders” in trials. Judicial defenders are pseudo-lawyers with six months of training. Nonetheless, some form of training for “traditional judicial defenders” with the aim of improving their sense of justice should be considered (Amnesty International 2002b).

Many experts raised concerns about the law, if not totally defective, standard of evidence employed in Gacaca and with the result that many defendants were convicted on basis of hearsay and circumstantial proofs. Care must be given to this issue in the training of Judia judges. Judia appeal tribunals in particular must be empowered and perhaps augmented with modern judges to attenuate this tendency in the Judia. Alternatively, a supreme appeal tribunal can be created within a reorganised national justice system to act as a final stop for contested Judia verdicts. Variations in standards of the law of evidence are not peculiar to traditional legal systems. As the trials of O. J. Simpson have shown, modern courts are also inconsistent in their application of the law of evidence. Simpson was pronounced “not guilty” in criminal court but later convicted in a civil court. Simpson’s case is said to have inspired relatives of the 29 victims of Omagh, Northern Ireland, bombing by the Real IRA in 1998. Having failed in secure conviction in a criminal court in 2001, the plaintiffs renewed their case under a civil court leading to a successful conclusion on June 8th, 2009. Four of five defendants were found responsible for Omagh atrocities. The civil court prosecution, highlights the marked differences where “in a civil case, the burden of proof is on the balance of probabilities rather than the higher burden of a criminal

case of beyond reasonable doubt” (Coulter and Keenan 2009, Coutler 2009a, Coulter 2009b).

Improving the justice potential of the Judia presupposes some degree of modernisation, bringing the institution closer to international justice system. In so doing, efforts must be exerted not turn the Judia into a retributive system akin to modern courts. The value of the Judia lies in its drive for restitution and reconciliation. Pushing the Judia too much into the realms of the modern courts with their emphasis on punishment is imprudent and counterproductive (Shema 2009). The challenge then is how to improve the justice delivery of Judia while maintaining at least some of its traditional ethos.

Despite the scale of atrocities in Darfur, it is anticipated that the Judia will face less work in comparison to Gacaca. Hence, overseers of the Judia can afford to limit its deliberations to relatively minor offences. All crimes leading to fatalities can be removed from Judia jurisdiction and be transferred to the national justice system. Cases of rape too should be taken out of the Judia. The gravity of war rape is demonstrated by its historic classification as war crime in the ICTR. As such, the Judia will then be mandated to deal with damage to property including theft and looting, non-fatal injuries, terrorising and intimidations of civilians.

There is no doubt that the Darfur crisis represents a conflict between the centre and a periphery. Nonetheless, the crisis manifested itself in the region pitting one broad coalition of groups against another. This division is bound to resonate in the constitution of the Judia tribunals. More often than not, an administrative territory which constitutes a base for a Judia court may coincide with a single dominant ethnic group. Judia courts must be prevented from acting as mechanisms for forwarding the narrow interests of a dominant ethnic group to the detriment of others. Hence, modalities guaranteeing a fair ethnic mix of Judia courts must be envisaged prior to the constitution of these courts. This will increase fairness and pre-empt possibility of the Judia falling into what Hansen refers to as “victor’s justice” Hansen 2005:4).

Blatant interference by the post-genocide Rwandan government is widely reported. The government intervened in the mandate of Gacaca, its deliberation process, in the availability and release of detainees to be tried and intimidation of its judges (Hansen 2005, Amnesty International 2002b:6-7). This scenario is likely to be attempted by post-war government in Darfur. Insulation of the Judia from negative government interference must be ensured and clearly embedded in Judia rules.

As I have alluded to before, the Judia has evolved to deal with conflicts of peace time. The war in Darfur creates a new context that presents the Judia with new challenges. One of those is the challenge of having to do with unconventional clients including minors, rape victims and sufferers of post-war trauma. Judia judges must be trained to isolate these cases and accommodate them in its deliberations. But mere sensitivity of judges to these cases alone is not sufficient. A mechanism whereby the Judia can make use of trained personnel in the areas of post-war trauma, rape problems and minors must be provided.

CONCLUDING REMARKS:

The use of the Judia in post-war Darfur is dictated by necessity. The Judia constitutes the best avenue for generating ownership of justice, achieving reconciliation and avoiding the undesirable dilemma of keeping detainees, many of whom are innocent in jail for prolonged periods. Supporters of the South African rival model “Truth and Reconciliation” may be content with the fact that the main principles of that model are already enshrined in the Judia: establishment of truth, bringing contenders in a face to face dialogue, airing of grievances, forgiveness, moral punishment of wrongdoers and above all social rehabilitation (Emmanuel 2007, Graybill 2004).

No matter how you upgrade the Judia, it will not match the fairness of “good working” modern courts. It is perhaps neither logical nor desirable to adopt different processes and expect the same result. Limitation of Judia can however be compensated for by what the Judia delivers for peace and reconciliation. I hasten to add here that we have little choice in this regard. Replication of the modern justice system under the mantle of the Judia serves no purpose. Among other problems that it may create, it transforms the Judia into another punitive system and with little or no contribution to community restitution. Finally, one should not assume that alternative justice systems, either the national justice system or the international justice system are perfect. Both of these systems have demonstrated their limitations across the globe but that is ground for not using them (see Jones 2006).

References:

Algazouli, Magdi 2009 Failure to probe into GoS-SPLM war crimes. Proceeding of Darfur Conference. Alkhatim Adlan Centre. Sudanjem.com (May 7th, 09).

Alwafd 2009 ICC legal advisor on the indictment of Al-Bashir. Alwafd Daily News Paper, May 4th. Cairo, Egypt. Sudanjem.com, May 5th 2009.

Amnesty International 2002a. Rwanda: Gacaca- gambling with justice. Press Release No: 103. AI Index: AFR 47/003/2002

Amnesty International 2002b Rwanda: A question of justice. AI Index: AFR 47/007/2002.

Coulter, Carol 2009a Evidence led to “irresistible inference” of liability. The Irish Times. June 9th, 2009. Page 5.

Coulter, Carol 2009b. Timeline: Difficulty in securing criminal convictions led families to take civil action against allege bomber. The Irish Times. June 9th, 2009. Page 5.

Coulter, Carol. and Keenan, Dan 2009 Call for Omagh inquiry as families win civil case. The Irish Times. June 9th, 2009. Page 1.

Dalairé Roméo 2004 Shake hands with the devil. Vintage Candana.

Graybill, Lyn. S. 2004 Ten years after, Rwanda tries reconciliation. Current History.

El-Tom, Abdullahi 2008 Growing up in Darfur, Sudan. Sudanese Studies Centre. Cairo and Khartoum.

Emmanuel, Kisiangani 2007 Between principle and pragmatism in transitional justice: South Africa's TRC and peace building. Institute for Security Studies. Paper No 156. Pretoria, South Africa.

Gusongoirye, David. 2008 Gacaca Courts: Giving Rwandans more than justice. International Justice. Netherlands.

Haile, Dadimos 2008 Rwanda's experiment in people's courts (Gacaca) and the tragedy of unexamined humanitarianism: A normative ethical perspective. Discussion Paper, Institute of Development and Policy Management. University of Antwerp.

Hansen, Toran 2005 The Gacaca tribunals in post-genocide Rwanda. Centre for Restorative Justice & Peacemaking. University of Minnesota.

Holy, Ladislav 1974 Neighbours and kinsmen: The Berti tribe of Darfur. Hurst.

Holy, Ladislav 1991 Religion and customs in a Muslim society: The Berti of Sudan. Cambridge.

Human Rights Watch 2005 Entrenching impunity: Government responsibility for international crimes in Darfur. Volume 17, No. 17(A).

Jones, Adam 2006 Genocide: A comprehensive introduction. Routledge.

Lawson, Roxanne 2005 With Gacaca, Rwanda combines traditional and modern justice systems. Africa Peacebuilding Program. American Friends Service Committee.

Musoni, Edward 2009. Rwanda: Gacaca Courts to close in June. The New York Times. March 12th, 2009.

Power, Samantha 2003 "A problem from hell": America and the age of genocide. Harper Perennial.

Prunier, Gérard 1995 The Rwandan crisis: History of genocide. London: Hurst.

Shawn, Eric 2006 The U.N. Exposed: How the United Nations sabotage American Security. Sentinel.

Shema, Rutagengwa Claude 2009 Gacaca Jurisdictions in Rwanda: Hope and hopeless. Great Lakes Peace Initiative (GLPI). Athorme.com.

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