



EDITORIAL

Dear Readers,

In March, the Kenyan people elected Uhuru Kenyatta as their new President, although he is currently facing charges of crimes against humanity at the International Criminal Court in The Hague. He is accused of having been partly responsible for the violence following the presidential elections in 2007, when people from different ethnic backgrounds fought one another in the streets. The unrest claimed over 1,000 lives, and up to 600,000 people were driven from their homes. In Kenya, politics are conducted along ethnic dividing lines; this was true in 2007 and still applies today. The only presidential candidate, who did not want to address one particular ethnic group but all Kenyans, Martha Karua, only attracted one per cent of the votes. But Kenyatta's election victory is not only due to the fact that he was able to win support from his own people, the Kikuyu. It is also an indication of the fact that many Africans are either not even aware of the International Criminal Court or are questioning its legitimacy.

If Kenyatta is found guilty in The Hague, the warrant for his arrest is as unlikely to be executed as that against Omar al Bashir. The Sudanese President, who is also facing charges at the International Criminal Court, has been travelling unimpeded around Africa for years. Heads of state, who condone his activities, criticise the Court as an instrument that is being operated in a colonial spirit, implementing politically opportune decisions of Western states. In their view, this is also illustrated by the court case against Laurent Gbagbo, the former President of Côte d'Ivoire, who used military force against Alassane Ouattara after Ouattara defeated him in the 2010 elections. He is now on trial at The Hague. His political friends are calling it "winner's justice". They are asking why no criminal prosecutions are being sought in relation to the plundering and rapes perpetrated by Ouattara's troops. Whatever the verdict will be in the Gbagbo case in The Hague, it is doubtful whether

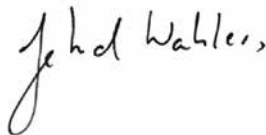
it will contribute to reconciliation and to efforts to come to terms with the past in Côte d'Ivoire in the foreseeable future. This illustrates that the court cases conducted in the Netherlands may fail to have the intended impact, at least in the short and medium terms. They may proceed perfectly in terms of legal process and yet meet with rejection. They may even make the rapprochement between victims and perpetrators, the discussion of issues between groups of the population and the development of a joint view of history more difficult for some time.

This can be seen clearly from the International Criminal Tribunal for the former Yugoslavia. For the first time, four authors of the *International Reports* are reporting on the same subject from the perspective of their respective countries, and anyone reading their conclusions will arrive at a mixed verdict. On the one hand, the trials against members of the military and of the government from the period of the Yugoslav wars are providing an important service by collecting facts that are indispensable for allowing people to reappraise the past as objectively as possible. On the other hand, they actually make this work most difficult, at least in the short term. It has been mostly Serbs who have been found guilty in The Hague while members from other ethnic groups were acquitted. As a result, numerous Serbs, including members of the government, are rejecting the verdicts as purely political. It is they, too, who are talking of "winners' justice". The Croats and Bosnians, on the other hand, are using the acquittals as an opportunity to point out that they had merely defended themselves. But serious breaches of the Geneva Convention, genocide and crimes against humanity can be perpetrated in a defensive war as well.

When societies have experienced periods of great injustice and devastating violence, coming to terms with the past as well as those responsible being convicted in a court of law are very important. Both must go hand in hand in order for perpetrators and victims to be able to live in peace with one another. In Germany, the Nuremberg Trials and the subsequent court proceedings laid the foundations for the society's efforts to address the crimes perpetrated during the Nazi period. Even though it took some time – Germany would have made less intensive efforts to deal with its own

guilt if these trials had not taken place. On the basis of this experience, the Konrad-Adenauer-Stiftung has been calling attention to the importance of addressing the past for decades in its international cooperation work. Such efforts must always include the legal proceedings, and the International Criminal Court established on the initiative of the United Nations is the appropriate institution for this.

In order to avoid being seen as a political actor dominated by Western interests, the Court should complement its legal proceedings with more intensive informative activities in the affected countries. But international donors should only support the setting up of a criminal court under the auspices of the African Union if they are convinced of the honourable intentions of the initiators. Otherwise, one would arrive at a situation such as that existing in the Human Rights Council of the United Nations, which is dominated by countries that question the universality of human rights. The international community should also work towards all states submitting to the jurisdiction of the Court in The Hague. To this day, the USA, China and Russia, amongst others, have still not signed the Statute of Rome, which has been very detrimental to the acceptance of the Court. Whether they will sign in the foreseeable future is more than doubtful. Efforts must be made to encourage acceptance of the verdicts of the International Criminal Court in the perpetrators' countries as well. That is the only way to provide a proper basis for people to come to terms with the past and for reconciliation.



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