

**Kenya: Underestimating Annan Opened the Door for Ocampo And the ICC**

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Africa.org/Daily Nation on the Web

12 March 2011

(...) On the morning of January 26, 2008, a helicopter rose into the sky over Nairobi and headed due west to the parts of the country worst hit by the post-election violence.

It swooped down over Naivasha so the occupants could see for themselves the result of the carnage there before heading to Nakuru and Eldoret.

On board were chief mediator Kofi Annan and a few other members of the team assembled to seek a way out of the impasse. (...)

(...) That afternoon Mr Annan issued a fateful statement. "We saw gross and systematic abuse of human rights . . . it is essential the facts be established and those responsible be held to account," he said. (...)

"If there are people inciting others to violence or sponsoring chaos, they should know that that is not acceptable and that action will be taken against them."

Few paid attention to Mr Annan's warning at the time. The media, civil society and local and international NGOs were understandably preoccupied with the question of how to end the violence and the crisis.

Justice for the victims was the furthest thing from the minds of President Kibaki and ODM leader Raila Odinga, who were preoccupied with the question of which of their competing claims to power would carry the day.

Their closest allies were engaged in a bitter struggle for power, with an eye to the Cabinet positions and trappings of office it promised.

The nation should have paid attention to Kofi Annan. He did not leave the United Nations with a particularly glittering reputation.

He was rightly celebrated for many things he did, including helping push through reforms at the

agency and coordinating responses to crises such as the tsunami.

But the failure of the UN to act to stop the genocide in Rwanda and the hesitation to push for action while the slaughter of the Muslim minority in the Balkans unfolded had put a significant stain on the reputation both of the UN and Mr Annan, when he was head of peacekeeping operations.

The response of the UN to those calamities helps explain what is happening in Kenya today.

With the support of Mr Annan, a coalition of lawyers and human rights groups helped formulate a new international and human rights norm known as the Responsibility to Protect (R2P), which holds that the international community can intervene to stop crimes against humanity in a case where the state is either unable or unwilling to end attacks on its citizens.

In 2005, member states discussed the norm and included it in the report of the world summit while the United Nations Security Council formalised the norm in April 2006.

The R2P doctrine dismisses sovereignty as an excuse to justify non-intervention in a country where state authorities are unable or unwilling to protect their citizens from genocide and related atrocities.

It implicitly endorses a statement Mr Annan made once to an African leaders' summit that the whole world, including Africans, must dismiss the theory that human rights are a plot by the industrialised West.

"I find this thought truly demeaning of the yearning for human dignity that resides in every human heart," he said.

Kenya was one of the first theatres in which this notion was tested. Mr Annan issued an early warning in January 2008 that impunity of the kind seen in the 1990s was no longer acceptable.

He advised, as did many others, that a local tribunal was the best option since the state bore primary responsibility and jurisdiction to try its own citizens. (...)

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