

concentrates on the evidence itself, such as the USA has adopted in Daubert, might have been more fruitful.

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- 1 Brazier M, Miola J. Bye bye Bolam. *Med Law Rev* 2000; **8**: 85
- 2 England and Wales Court of Appeal (Criminal Division) Decisions. Regina v Angela Cannings. [2004] EWCA Crim 1. Jan 19, 2004: <http://www.bailii.org/ew/cases/EWCA/Crim/2004/1.html> (accessed June 11, 2004).
- 3 Rozenberg J, Derbyshire D. Courts grow wary of medical experts. *Daily Telegraph* April 21, 2004.
- 4 Gibb F. Turning Point in infant death cases for courts. *Times (Lond)* April 21, 2004.
- 5 Gibb F. Five 'baby killer' mothers get right to appeal. *Times (Lond)* May 6, 2004.

- 6 Dyer C. Inexpert witness. *Guardian* April 6, 2004.
- 7 Frye v United States (1923) 293 F. 1013. [Summarised in: Roberts P, Zuckerman A. *Criminal evidence*. Oxford: Oxford University Press, 2004: 315–16]
- 8 Supreme Court of the United States. William Daubert, et ux, etc, et al v Merrell Dow Pharmaceuticals Inc. 509 U.S. 579 (1993). June 28, 1993: <http://supct.law.cornell.edu/supct/html/92-102.ZO.html> (accessed June 11, 2004).
- 9 Brodsky S. The expert witness. Washington DC: American Psychological Association, 1999: 31–35.
- 10 England and Wales Court of Appeal (Criminal Division) Decisions. R v Norman Edward Gilfoyle. [2001] EWCA Crim 81. Dec 20, 2000: <http://www.bailii.org/ew/cases/EWCA/Crim/2000/81.html> (accessed June 11, 2004).
- 11 Robb (1991) 93 Cr App R 161. [Summarised in: Uglow S. *Evidence: text and materials*. London: Sweet and Maxwell, 1997: 619–20]
- 12 Dennis I. *The law of evidence*, 2nd edn. London: Sweet & Maxwell, 2002: 708–09.

## Genocide: burden of proof and inaction is costing lives in Sudan

Recent reports by humanitarian organisations in Darfur, Sudan, indicate that state and non-state actors are committing systemic genocide on the civilian population in this region.<sup>1,2</sup> The allegation is that thousands of people have been killed and more than a million displaced.<sup>3</sup> Almost all those displaced people are being forced to live in searing heat, without reliable supplies of food and water, and in need of medical attention. WHO has warned that these conditions could precipitate 10 000 deaths in July alone.<sup>4</sup> Additionally, the UN has reported that 575 000 children in the region have severe malnutrition.<sup>5</sup>

Despite all this terrible news, in the absence of firm evidence, the international community and the UN remain ambivalent about whether the atrocities in the region

constitute acts of genocide.<sup>6</sup> The resulting inaction, ironically on the tenth anniversary of the Rwandan genocide, is, as in Rwanda, costing lives. Given the situation in Darfur, the high burden of proof international law requires to prove genocide should be relaxed in such crises.

Although the reports<sup>1,2</sup> by Human Rights Watch and Amnesty International suggest that the Sudanese Government is complicit in perpetrating acts of genocide against ethnic agrarian groups in western Sudan, proving that the Government harbours genocidal intent towards, and is involved in the systemic elimination of, targeted communities will be difficult. The problem boils down to the collection of evidence. Ironically, although the meticulous documentation of the Holocaust ensured its classification as a genocidal era, that high benchmark for the collection of evidence is now frustrating the classification of today's unfolding genocides in places such as Darfur. There are, of course, important differences between post-World War II Europe and present-day Sudan. First, the Sudanese Government is reportedly deliberately frustrating humanitarian work in the Darfur region.<sup>3</sup> As such, the verification of any genocide by international humanitarian agencies has been made extremely difficult. Second, the almost total absence of a free press and local medical community in the region has resulted in the lack of important agents who might be able to document atrocities. Both these professions could have played an invaluable role in reporting cases of systemic ethnic-cleansing by state and non-state actors in the region.

Given the absence of a strong domestic medical pressure in Darfur, there are at least two ways in which the international medical community could become involved in the crisis. If the Sudanese Government permits a fact-finding mission to that region and this leads to reports of genocide being confirmed, health-care workers will be called on to assist in documenting evidence of genocide by autopsies on victims,

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and treating and rehabilitating survivors of atrocities. As such, the medical community ought to lend its weight to calls by some lawyers for circumstantial evidence and “similar-fact” evidence to be admissible to prove instances of genocide.<sup>7</sup> Doing so would mean that if a particular ethnic or racial group is targeted in a particular area, this action, in itself, will suffice to constitute proof of systemic planning by the perpetrator(s), which will oblige the international community to act.

Under the 1948 UN Convention on Prevention and Punishment of the Crimes of Genocide,<sup>8</sup> signatory states are required to deploy an armed force to bring an immediate end to an alleged genocide. Whilst the international community has committed troops to other hot-spots in the world, such as the Democratic Republic of the Congo, Haiti, Iraq, and Afghanistan, it has an equal obligation to assist the people of Sudan, despite the absence of conclusive proof of genocidal intent on the part of the alleged perpetrators. To refrain from doing so on purely technical and semantic grounds is arguably immoral.

Regardless of the attitude or response of the UN or the international community to the unfolding crisis in Sudan, and notwithstanding recent assurances by the Sudanese Government that it will address the crisis,<sup>9</sup> the decision by the African Union to dispatch a peace-keeping force to the region deserves praise.<sup>10</sup> African leaders have no doubt realised they have the primary moral duty to intervene in this conflict. Moreover, instability in Sudan will probably trigger a refugee crisis in neighbouring countries, like Chad, which might destabilise the entire region. An intervention will hopefully discourage perpetrators, who are currently acting with impunity. The African Union force, however, will be only 300 members strong. This force is inadequate for a region of Darfur’s size. The intervention force will still require the unambiguous moral and logistic support of the international community to fulfil their mandate. The international community should, in turn, lend its support to the initiative as instability in Sudan will sow further internal chaos in the

region and possibly make it easier for terrorist groups to take refuge there.

It would be shameful if, a decade from now, the world commemorates not just the twentieth anniversary of the Rwanda genocide but the tenth anniversary of the Darfur genocide. The international community and those in the health and human-rights professions must do all in their power to ensure that such a shamefully sad commemoration never comes to pass.

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- 1 Human Rights Watch. Darfur destroyed: ethnic cleansing by government and militia forces in western Sudan. May, 2004: <http://www.hrw.org/reports/2004/sudan0504/> (accessed July 13, 2004).
- 2 Amnesty International. Sudan Darfur: “Too many people killed for no reason”. <http://web.amnesty.org/library/Index/ENGAFR540082004?open&of=ENG-SDN> (accessed July 1, 2004).
- 3 United Nations. United Nations confirms massive humanitarian crisis in Darfur and insists on improved security and access. <http://www.unsudanig.org/News/Data/Press/2004/pressrelease1may2004.doc> (accessed July 1, 2004).
- 4 WHO. Health aspects of the humanitarian crisis in the Greater Darfur Region of Sudan. June 7, 2004: <http://www.who.int/features/2004/darfur/en/index.html> (accessed July 13, 2004).
- 5 Report of the Executive Board of the United Nations Children’s Fund on the work of its 2004 annual session. [http://www.unicef.org/french/about/04-AS\\_boardreport.pdf](http://www.unicef.org/french/about/04-AS_boardreport.pdf) (accessed July 1, 2004).
- 6 Arief I. Annan to visit Sudan to press government on Darfur. June 17, 2004: <http://www.reuters.com/newsArticle.jhtml?type=worldNews&storyID=5451757> (accessed July 1, 2004).
- 7 Saunders D. Is the brutality in Sudan genocide? June 19, 2004: <http://www.globeandmail.com/servlet/ArticleNews/TPPrint/LAC/20040619/SUDAN19/TPFront> (accessed July 13, 2004).
- 8 United Nations General Assembly. Convention on the prevention and punishment of the crime of genocide. Dec 9, 1948: <http://www.hrweb.org/legal/genocide.html> (accessed July 13, 2004).
- 9 BBC News. Sudan pledges to disarm militias. July 3, 2004: <http://news.bbc.co.uk/2/hi/africa/3862603.stm> (accessed July 1, 2004).

## The future of the cigarette and its market

Does the cigarette have a future? Yes it does; as its persistence in its present form 54 years after its first inculcation as a cause of disease<sup>1</sup> shows. Moreover, the mortality cigarettes cause will continue to increase unless the public-health establishment produces better policy ideas, if Peto’s forecast<sup>2</sup> of 10 million deaths yearly in about the year 2030 is to be reduced. Such ideas will need to be radical, practical, and politically realistic.

One such an idea has been floated recently by Ron Borland.<sup>3</sup> He proposes the establishment of a national (or geographical) tobacco monopoly with the power to control tobacco marketing but not to engage in production, and to have the objective of shrinking the tobacco market<sup>4</sup> rather than enlarging it—which has been the objective of previous tobacco monopolies and the quasi monopolies that make up the trans-national tobacco companies. Such a monopoly would have the power

to specify what products it would purchase wholesale and the terms under which retailers would operate. It could thus set standards for packaging, labelling, tobacco constituents, smoke constituents, and retail practices.

This proposal might sound too simple but would be more easily created legislatively than many of the complex and often inadequate laws that currently cover, or fail to cover, tobacco marketing. The proposed tobacco monopoly would not have the objective of removing nicotine sources, or of bankrupting the manufacturing or retailing industries—it might allow even greater profitability than now to create incentives to meet standards. The need to legislate for legal prohibitions, for example, on advertising, would disappear as the monopoly would not buy brand-named packets that could be advertised. So brand names would disappear, as would the incentive to