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THE AU: ITS STANCE AGAINST THE ICC AND IMPUNITY IN AFRICA

While the African Union (AU) warmly welcomed the election of Gambian born Fatou Bensouda as Prosecutor of the International Criminal Court (ICC) in December 2011, it has not changed its negative stance against the ICC. It is perhaps naïve to think that it would. Yet, one cannot help but to be disappointed.

At the 18th Ordinary Summit of the African Union, held in Addis Ababa, Ethiopia, from 23-30 January, the AU Assembly adopted a decision (Assembly/AU/Dec. 397(XVIII)) addressing three issues.



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Firstly, the Assembly reiterated the need to explore ways and means to ensure that the UN Security Council places on its agenda the AU's request to defer the proceedings initiated against President Al Bashir of The Sudan as well as the

‘Kenyan cases’ in accordance with Article 16 of the Rome Statute. In this connection, the Assembly stressed that by receiving President Al Bashir, the Republic of Malawi, like Djibouti, Chad and Kenya had done before, were implementing various AU Assembly decisions on non-cooperation with the ICC on the arrest and surrender of President Al Bashir.

Secondly, the Assembly reiterated its view that under Article 98(1) of the ICC Statute, the Court may not remove immunity which international law grants to officials of States that are not parties to the Rome Statute. Sudan is not a party to the ICC Statute. The Al Bashir Arrest Warrant is a result of the UN Security Council’s referral of Sudan to the ICC under Article 13 of the ICC Statute. The Assembly has requested the AU Commission to consider seeking an Advisory Opinion from the International Court of Justice (ICJ) regarding the immunities of State officials under international law.

Thirdly, the Assembly expressed its disappointment about the fact that only one (Chile Eboe Osuji) of the two candidates that the AU had endorsed for ICC judicial positions were elected.



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In addition to these decisions, the AU heads of state reiterated “their commitment to fight impunity”. Which commitment one might ask? The election of an African Prosecutor has not brought nearer a solution to the AU’s stance against the ICC, nor would the election of additional African judges.

Regrettably, it appears that the question posed by AFLA in 2010 on the issue of the Al Bashir Arrest Warrant “the World vs. Africa or the African Union vs. the People of Africa” will remain relevant for years to come.

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