



Much Ado About the Extraordinary AU Summit on the ICC

From 11- 12 October 2013, at the African Union (AU) Headquarters in Addis Ababa, Ethiopia, the AU will convene an Extraordinary Summit on Implementation of International Jurisdiction, Justice and the International Criminal Court (ICC). This is a follow-up to the AU's Summit in May where it criticized the ICC for "witch-hunting African leaders".

Indeed the AU has been consistent in its critical stance against the ICC since 2009, when the world court issued a warrant of arrest against Sudanese President Omar Al Bashir. At the 2009 Summit held in Sirte Libya that year, the Assembly of Heads of State issued a Joint Declaration stating that AU member states will ignore the ICC arrest warrant and will not take any measures to transfer Bashir to The Hague. Accordingly when Bashir subsequently visited Kenya, Malawi, Chad, Ethiopia, and Nigeria he was not arrested. The AU has repeatedly reaffirmed its stance against the ICC.

The lobbying of some African leaders has been relentless since the indictment of Kenyan State officials, two of who were subsequently sworn in as President and Deputy President. The trial of Deputy President William Ruto and radio host Joshua Arap Sang opened in September. The sitting Deputy President of Kenya is to be credited for having submitted to justice before the ICC, as he is required to under the Statute, insisting he will prove his innocence. Deputy President Ruto receives the necessary diplomatic courtesies in The Netherlands until he arrives at the ICC entrance from whence he is a mere suspect of international crimes. President Uhuru Kenyatta is expected to appear for his trial in November. It is the stuff of which soap operas are made. But the ICC is real, a threat to some African leaders who have more to fear from the ICC than their counterparts in other regions given that after 10 years of its existence all cases before the Court are African situations. Is Africa a participant or target of international criminal justice?

Other African suspects have not been so fortunate to enjoy their freedom pending the proceedings against them: former Ivorian President Laurent Gbagbo and former Vice President of the DRC Jean Pierre Bemba. It should be recalled that Cote d'Ivoire requested the ICC to investigate atrocities in the country. Shortly after his political rival, Alassane Ouattara was sworn in as President, Gbagbo was quickly sent off to the ICC before Cote d'Ivoire became a party to the Statute. Since then Cote d'Ivoire has failed to cooperate with the ICC on

other suspects. Observers opine that Bemba too might have won elections in the DRC had he not been detained pending the proceedings against him.

ICC stakeholders fear that the Extraordinary Summit will result in an en masse Africa walk out from the ICC, a threat to the future of the Court given that with 34 ratifications, Africa is the largest regional block. There are various efforts from civil societies, the Assembly of State Parties to the ICC (ASP), the United Nations, to discourage a possible Africa withdrawal.

Some conclusions can be drawn about what an African walk out would mean for the future of the ICC. Nothing dramatic will happen. The dramatic thing would be the en masse withdrawal itself. For one thing, the ICC will continue to have jurisdiction over all the pending situations because the Court has already been seized. As well, under the ICC Statute there is a transition period for a withdrawal to take effect. Furthermore, walk out or not, the UN Security Council can refer situations of massive crimes to the ICC like it did with the Darfur situation in Sudan, and with Libya - States that never accepted to be bound by the ICC Statute - but has failed to do with Syria.

There is legitimate concern that Africa appears to be a target of the world's first permanent criminal court. Withdrawing from the ICC though is not the solution, because this imbalance is not the doing of the ICC. The Court's judicial processes have been fair, impartial and transparent. The ICC Prosecutor is an African female of merit. She deserves support of the international community, and indeed support from the African continent.

Why would African leaders wish to withdraw en masse from the ICC? Such an action would send a loud signal to the people of Africa and the rest of the world that African leaders want a license for impunity. But above all, these leaders need to be mindful of the plight of victims of atrocities in Africa, for whom the ICC has become a Court of first and only resort.

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