



THE SUDD INSTITUTE

RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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WEEKLY REVIEW

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President Kiir and the International Criminal Court at the African Union Summit

The Sudd Institute Team

The question of whether the International Criminal Court (ICC) has been unjust to African leaders, singularly going after them, and probably driven by racism, has been an ongoing debate for about a decade now. These accusations against the ICC have never been based on a claim that the indicted African leaders, from Sudan's Bashir to Chad's Hissène Habrè,¹ Laurent Gbagbo of Ivory Coast, Uganda's Joseph Kony, Liberia's Charles Taylor and many more, are innocent. The allegations that the ICC is racist are mainly based on the claim that the ICC has not been evenhanded across the globe. The suspicion by some African leaders has been premised on why the court has only indicted African leaders ever since it was created, when other world leaders like George W. Bush and Tony Blair, whose orders have allegedly resulted in war crimes in Iraq and Afghanistan, have not been equally indicted.

Beyond what has been up to this point a rhetorical debate, the recent African Union (AU) summit of heads of state in Addis Ababa made more noise about this, claiming that the ICC unfairly targets Africans, while ignoring war crimes suspects in other parts of the world. At the two-day summit, May 24-26, the president of Uganda, Yoweri Kaguta Museveni and the Ethiopian Prime Minister Hailemariam Desalegn, raised a motion to declare the ICC as a racist court, bent on pursuing Africans. Most leaders gathered in the Ethiopian capital supported the motion with excitement, though others showed reservation.² Some even appeared embarrassed to put their names on such an entirely ridiculous assertion.

¹ Note that Habrè was never indicted by the ICC, but the case against him about 40,000 victims of political assassinations and systematic torture, is in a Sènègalese justice system, in a deal struck with the African Union in 2000.

² The Sudd Institute was not able to verify exactly how the motion was debated but only able to confirm that a consensus was reached to register the position of African leaders, that African countries should push to have their courts try their own cases. This whole motion was brought up to show support for Uhuru Kenyata and his Deputy, William Ruto.

The allegation was not only embarrassing, but also shallow and incorrect on many accounts, one that made mockery of the lives of Africans that were shattered at the behest of some of these leaders who applauded the motion to condemn the ICC. The claim by African leaders was not just unfounded but shameful to African citizens, that our leaders would choose this issue, of all the problems that confront the continent, to be the subject worthy of their time and energy.

For us in South Sudan, it was with shock and horror that we watched and listened to our own president, Salva Kiir Mayar, animatedly condoning the motion. His jumping onboard with this was not only disingenuous, but also utterly puzzling; especially for a president whose entire population was for many years victim of the actions of an ICC indicted warlord president of a neighboring Sudan. It was not only South Sudanese who were shocked by President Kiir's unwarranted attack on the ICC. Opinion pieces and editorials in the East African region, from Kampala to Nairobi to Dar es Salaam equally expressed dismay, not necessarily by the erratic politics of the likes of Museveni, as such politics has become unsurprising on the African continent, but more so by the fact that Salva Kiir, a leader of the most unjustly prosecuted peoples on earth, joined in. As a new kid on the block, South Sudan would have done itself a favor by taking time to observe how this politics is played, and in doing so maintain a semblance of moral ground, that it was victim and product of violence carried out by Khartoum's successive regimes and should avoid being seen as condoning impunity the minute it became a free country.

Is it not enough that South Sudan has had to compromise and swallow her pride over the arrest warrant for president Bashir, in order to steer her independence boat to stable waters? Was it necessary to go as far as cheerleading the African leaders who are pushing a concept that has only made African continent a blood bath? As evidence shows, African leaders have been indicted because of their destructive actions, not because the ICC has an ax to grind against Africa. Some of the human rights abuses, crimes against humanity, war crimes and genocide that many African leaders have been accused of are still happening and cannot be masked by the kind of chest beating that happened in Addis Ababa.

Darfur's conflict still rages on, Sudan's 'new south', the Blue Nile and Southern Kordofan, is still in flames, the people of Kenya are still recovering from the 2007 post-election violence, and the people of South Sudan have not even begun a journey of reckoning with Khartoum's violence, the memories of Hutu massacres of the Tutsi are still fresh in the minds of most Africans and millions are still dying of poverty-related calamities in resource rich countries, from Angola to Guinea Bissau, and yet the likes of Bashir will go on crying about the racism of the ICC. Unlike their western counterparts, most African leaders commit these atrocious acts against their own people, yet they use superficial excuses, like racial motivations, as a way to evade responsibility. This is what the marginalized peoples of the Sudan have long experienced in the hands of their own leaders, making President Kiir's blast at the ICC quite a blunder.

The excuse that the ICC targets African leaders doesn't hold water. For instance, Africans themselves requested some of the indictments that have been made so far. Was it not Museveni himself who excitedly requested the ICC support with regards to the pursuit of Joseph Kony of the Lord's Resistance Army in Northern Uganda? Was it the ICC that rigged the elections in 2007 and ordered Uhuru and Ruto to distribute machetes and other weapons that killed their fellow countrymen? Was it the ICC that ordered Kenyan men to rape fellow women citizens? Some of these accusations and indictments may never have their day in court, due to the Court's own inherent weaknesses and the none cooperation of state signatories to the Rome Statute, but the truth, not just some abstract crimes, as experienced by real people, will always be there. Since the 1960s more Africans have suffered and died in the hands of their own leaders than from slavery and colonialism combined.

The death toll of Congo's wars alone surpasses the terror of King Leopold's era, the Arab slave trade on the eastern seaboard of Africa or the massacres by Imperial England in Kenya, Zimbabwe, the Sudan's battle of Omdurman or the Zulu in South Africa. But our leaders choose to focus their collective energies on condemning the only global effort to restore the moral compass in a world wrecked by greed and grievance, instead of using such energies to stabilize the Congo or the Sudans.

The motion in Addis Ababa against the ICC was an opportunity to give a free pass to impunity—a method of governing in Africa and understandable for the Musevenis and the Kenyatas of this world, but what was President Salva Kiir's motivation in supporting it? Was this, perhaps, a continuation of the desperate search for acceptance in the club of African leaders? But even where there is no apparent benefit to South Sudan? Even where it might hurt the country? Isn't South Sudan contradicting itself? One minute we are cheering the ICC to arrest Bashir but condemn it the next minute on such flimsy grounds as suspicion of racism of the court, even as an African, Fatou Bensouda of Gambia, sits at its helm as the prosecutor?

As per the regulations of the Rome Statute, which established the ICC in 2002, the court has two main approaches to any reports of crimes against humanity, war crimes and the crime of genocide. Either the national government of any state signatory to the statute brings the claim to the ICC, which then launches an investigation to verify the claims and proceed accordingly; or activists, often made up of local civil society, victims groups or human rights monitors, local or international, bring pressure to bear on the international community that these crimes were being perpetrated in a given country. Some members of the international community, whether individual countries, a coalition of them or a number of international agencies would seek a global action through the United Nations Security Council against the alleged perpetrators. Depending on the weight of the evidence available, the prevailing international political climate and the strategic position of the country in question, a UNSC resolution may be passed for all kinds of interventions, including a legal action through the ICC. This has surely been the way the court has operated since it was established.

Apart from Sudan's Omer Hassan al-Bashir, whose case was referred by the UNSC, the rest of the ICC indicted Africans were referred by their governments. In fact, four of the ongoing eight court situations were referred to the ICC by African states, including Uganda, the Democratic Republic of the Congo, the Central African Republic, and Mali. How in the world then did these African heads of state come up with this idea about the ICC being "flawed" and "hunting Africans," in the words of Hailemariam Desalegn? Worse still, the regularly complaining African leaders, many of them dictators, come from nations that have voluntarily committed to the Rome Statute. The Rome Statute was instituted in July 1998, with more than a dozen of African countries immediately signing on. The response of the South Sudanese president is very unfortunate on many fronts as it ignores the destruction of lives of the African people some of the continent's leaders have caused. As well, it downplays the principles for which South Sudanese fought, with justice as fundamental.

African states might choose to withdraw from the Rome Statute, as was suggested at the AU summit, but that will neither erase the fact of political violence from the continent nor lighten the weight of conscience from the shoulders of African leaders who have underwritten mass crimes against their own people. The only thing that will make the ICC or any other international instrument irrelevant to Africa is for African leaders to stop killing their own people or stop deliberately failing to protect them.

It seems South Sudan, which is not even a state party to the Rome Statute yet, was in a dilemma in Addis Ababa, a hyena chasing two dogs: to lie low and risk being seen as unsupportive of the position of the older kids on the block, or express solidarity with them at the risk of jumping into uncharted waters too early. President Salva Kiir and his advisors chose the latter. But the best thing the leaders of South Sudan could have done in these circumstances was to simply state that they are still studying the international legal system and politics and how they would work best for the new country before making a decision on such weighty subjects.

About Sudd Institute

The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan. The Sudd Institute's intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan in order to promote a more peaceful, just and prosperous society.