



AFRICA DUMPS THE INTERNATIONAL CRIMINAL COURT

Ahead of the 25th Summit of the African Union taking place in South Africa, the country's government promised immunity to all attending officials. Despite an order by the High Court to the government to prevent Sudanese President Omar al-Bashir, who is wanted by the International Criminal Court (ICC) for war crimes and genocide, from leaving the country, he was allowed to leave after the meeting.

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The 25th Summit of the African Union was held on the 13th and 14th June 2015 in Sandton, South Africa. The summit was also attended by Sudanese President Omar al-Bashir who is wanted by the International Criminal Court (ICC) for war crimes and genocide. The South African Litigation Centre served an urgent application to the High Court to compel the South African government to arrest Bashir. The court then ordered the government to prevent Bashir from leaving the country until a final decision is made. South Africa is a signatory to the Rome Statute under which the ICC was established and is bound to arrest Bashir if he sets foot in the country. In defiance of its laws the South African government promised immunity to all attending officials of the summit and ignored the arrest order of the High Court. Finally, Bashir was allowed to leave the country after the meeting.

President Jacob Zuma and his cabinet were unimpressed by the outcry about the blatant violation of international and national law because they are in line with the majority of African states who believe that the ICC is a “European Court for Africa”¹. The court is allegedly targeting African leaders and is ignoring atrocities committed by Western countries. In fact, it is difficult for African countries to accept that they voluntarily submitted themselves to the jurisdiction of the ICC while countries like the United States or Israel who have not ratified the Rome Statute cannot be prosecuted by the ICC for war crimes for example in Palestine or Iraq. Also China and Russia are not signatories to the Rome Statute. After the summit the National Executive Committee of the ANC decided that South Africa should withdraw from the ICC and called on the entire continent to follow suit.

The call for withdrawal from the ICC goes hand in hand with the call to establish an African Court in order that African problems are solved by Africans themselves. The world wouldn't mind if that is going to happen if the most outspoken of such calls “Africa to the Africans” would not come from Zimbabwean President Robert Mugabe. He has a very bad human rights record; he rigged elections and ran the economy of his country into bankruptcy. He was elected Chairperson of the AU by his African peers despite this record and presided over the Sandton meeting. Previous experiences with such African institutions are not very encouraging. The regional organisation SADC established an international Tribunal in order to protect and to promote human rights, democracy and the rule of law in southern Africa. When white farmers called on the Tribunal and when then the Tribunal ruled that the Zimbabwean government had violated the rights of farmers in the way their farms were sized, SADC factually disbanded the Tribunal in 2012 by blocking individual access by aggrieved citizens.

It is claimed that the ICC cannot be an independent court because sixty to seventy percent of its funding comes from European countries like the UK, France, Germany, Italy and Spain who are all “former colonisers”.² This line of thought is particularly unconvincing in view of the fact that the AU is still struggling to be financially self-sufficient more than half a century after it was formed. Only one third of its approved budget of around US\$ 300 million for 2014 was raised from member states. The main donors are ‘again’ the ‘former colonisers’ the UK, Germany and Spain as well as Canada, Sweden, the Netherlands, the United States, China and Turkey. South Africa is the largest contributor to the AU with around US\$ 33 million followed by Angola, Nigeria and Algeria. Mrs. Dlamini-Zuma the former Minister of Foreign Affairs of South Africa and now the AU Commission Chairperson is

¹ David Hoile, Director of the Africa Research Centre quoted in *AU thumbs nose at ‘dysfunctional’ international court* in Mail and Guardian, www.mg.co.za/article/2015-06-15

² David Hoile, 2015

concerned about the dependency on Western funding for the independence of the organisation but has not been able to raise the financial commitments of AU's member states.

South Africans were not really surprised about their government under the leadership of President Zuma to ignore constitution and law in the case of Bashir. The first man of the country displays more and more autocratic tendencies and reduces accountability to mere rhetoric. He is not answering questions of the opposition in parliament substantively, for example in connection with the money he has to pay back for the upgrading of his private home under the pretext of security measures. Or he does not release since months a commission report about the Marikana Massacre in 2012 when 36 miners were killed by the police because "the President has to apply his mind to it first" (statement of the Presidency). The National Prosecution Authority has become toothless with frequent changes at the top of the agency and by dismissing with a golden handshake whoever threatens to investigate Zuma or his cronies.

The Bashir case is in line with the deteriorating state of legality and accountability in South Africa. And the case is also significant of a further step of South Africa away from the West towards its BRICS partners, especially Russia and China. The ANC's thinking seems to be that "we don't really need the West, we have friends in China and Russia".³ China's direct foreign investment in Africa has reduced the importance of Western economies and the country has become a well-liked partner because of its aid policy, one without strings attached like for example demands for good governance. South Africa and Russia have developed a close relationship over probably commissioning Russia with the building of nuclear power stations; and President Zuma attended the celebrations in Moscow on the occasion of the 75th anniversary of the defeat of Nazi-Germany. Neither Russia nor China as non-supporters of the ICC would consider the actions of the South African government in the Bashir case as negative or would be fussy about the disregard for constitution and parliament.

South Africa is moving fast away from Mandela's model democracy and his once world-wide acclaimed foreign policy in support of developing Africa into a continent of democracy, peace, stability and shared development.

³ Daniel Silke: *Al-Bashir cements SA's shift away from the West* in www.politicsweb.co.za 17. June 2015