

*OPINION AND ANALYSIS*

**Reflections on the 25<sup>th</sup> African Union Summit  
in Johannesburg, South Africa**

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THE 25<sup>th</sup> African Union (AU) Summit held in Johannesburg, South Africa was bogged down in the impasse between the AU and the International Criminal Court (ICC) following the presence of Omar al-Bashir of Sudan, indicted for war crimes, crimes against humanity and genocide and against whom arrest warrants were issued twice in 2009 and 2010. The AU closed ranks against the ICC after a Johannesburg based civil society organisation petitioned the court to order South Africa to arrest and hand over al-Bashir to The Hague as part of its obligations to the ICC as a State Party to the Rome Statute. The summit themed, “Year of Women Empowerment and Development towards Africa’s Agenda 2063” appeared as if it focused only on international criminal justice. Despite resolutions adopted, the al-Bashir debacle dwarfed them and even derailed the summit. Why did the al-Bashir saga overshadow the summit?

With Botswana the only country to dissent when the AU passed a resolution (2013) that purported to accord Africa’s sitting heads of state and government immunity against prosecution at the ICC, it appears that African rulers identify with the Sudanese president’s predicament, with many not adhering to the rule of law, unleashing state sponsored brutality against defenceless citizenry for cynical power ends and in the process committing egregious human rights violations that, if investigated, could easily meet the Rome Statute threshold. International criminal justice system is controversial and even flawed, but it is a necessary recourse for victims of mass atrocities especially in Africa where national judiciaries are wobbly owing to executive interference.

As part of Agenda 2063, the AU’s development blue print, the body aspires to silence guns by 2020 that in effect means, eradication of conflicts across the continent. A noble goal but will be a mirage unless the African rulers address the root causes of conflicts on the continent particularly structural violence such as poverty, inequalities, exclusive politics, politicisation of identity, disregard for the rule of law and impunity. For the ICC to keep their focus off Africa, rulers need to check their excesses. It is a conundrum if the fate of African Peer Review Mechanism (APRM), which has run into the doldrums, is anything to go by. Self-regulation and accountability are anathema within AU

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circles and its affiliates. The Southern Africa Development Community (SADC) tribunal was defanged after it ruled against Robert Mugabe, casting aspersions on the intentions of those clamouring for an 'African ICC'. The summit showed that the AU, like its predecessor, the Organisation of African Unity (OAU) is more preoccupied with self-preservation, that is, issues affecting African rulers take precedence over the plight of the populace.

In his address, the AU Chairman, Robert Mugabe, paradoxically criticised fellow African rulers who refuse to bow out of power after serving the constitutionally permitted two terms stating that third term bids risk plunging Africa into a vicious cycle of violence and is thus a threat to peace and stability. It was interpreted as aimed at the Burundi president, Pierre Nkurunziza, who is hell bent on running for an unconstitutional third term at the cost of the country's fragile stability. Schizophrenically, Mugabe then went on to question the relevance of term limits in Africa on the basis that Europe does not have such a limit as yet and European countries are regarded as democracies. He needs to be reminded that owing to strong institutions, it is far easier for Europeans to remove errant leaders from power. The US did not have term limits until Franklin D. Roosevelt broke the two-term tradition set by George Washington and died serving his fourth term, a historical antecedent that lends credence to the need for term limits in Africa rather than basing leadership on the precariousness of idiosyncrasies. Mugabe is devoid of moral authority to criticise fellow African rulers for he has been in power since 1980, exploited state apparatus to subvert democracy, the rule of law, implicated in gross human rights violations and contributed to the collapse of Zimbabwe. He has repeatedly breached the AU's charters, specifically the one on Elections, Democracy and Governance without sanction. He personifies the AU's mixed and conflicting messages, harming its quest for a progressive Africa and portraying the body as flippant, insouciant, and caught in a time warp.

The AU cannot pursue the so-called African Agenda unless it is self-funding for it is axiomatic that without funding itself, it cannot own its agenda. The AU can only be as effective as the sum of its parts and as it stands, most African rulers are yet to institutionalise the rule of law, and make accountability, transparency and probity integral to governance. It beggars comprehension for AU rulers to rail against the imperialist bogeymen, decry external meddling in Africa's internal affairs on the one hand, and have its programmes and operations funded by the so called imperialists on the other. The issue of funding has been around since the inception of the AU in 2002. The irony is that African rulers dutifully pay their dues to the UN in order to have three or so minutes in the limelight during the annual UN General Assembly in New York, but most of them are in arrears with regard to their financial obligations to the AU. If African rulers treat African issues as subsidiary, who will accord them the seriousness they deserve?

The presence of Hollywood star, Angelina Jolie, at the AU summit caused a stir. She was invited to give prominence to the cause of African women, a move that was reminiscent of Bob Geldof and Bono, Irish Rock Stars that have over the years taken the lead in giving prominence to humanitarian and other issues affecting Africans. They are memorably remembered for using music to canvass worldwide assistance towards famine in Ethiopia between 1983-1985. The use of celebrities in raising awareness concerning social ills and environmental conservation is noble and normative. However, the fact that it takes international celebrities to draw the world's attention to the plight of Africans is indicative of paucity, if not, downright lack of leadership on the continent, a deficiency that AU was expected to remedy. The rhetorical question that I pose is: Why is it that African rulers cannot champion their people's interests with as much gusto as they do when it comes to the question of international criminal justice, and have to invite or leave it to international celebrities

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to do it? It is time African rulers unambiguously demonstrated that the concerns and lives of the populace count. They cannot outsource this responsibility and cannot sustain the propensity to apportion blame for their failures.

On the sidelines of the AU summit were protests by civil society groups from various countries such as Egypt, Zimbabwe, and Lesotho. These groups protested against the absence of ordinary people's voice at the summit as well as human rights abuses in a number of African countries. In effect, they were lamenting the persistence of the top down approach to leadership so preponderant in Africa. It is as if African rulers can tell what is in the best interest of the people without consulting them, the very accusation they direct at the West. Here, the twin aspects of liberal democracy of direct and representative democracy are yet to find resonance in most African polities. Moreover, these civil society organisations protested against the presence of al-Bashir at the summit that they interpreted as the AU condoning impunity and criminal behaviour. It is noteworthy that the AU Constitutive Act outlaws impunity.

The protesters expose the fallacy that the ICC is unpopular among Africans and puncture the notion that the ICC is a Trojan horse of imperialists aimed at keeping African rulers on a leash. I wish to state that the Sudanese president is yet to have his day in court and is presumed innocent until proven guilty. What, however, these groups were saying is that it is almost sacrilegious to have al-Bashir, an individual indicted for the most egregious of crimes imaginable that disproportionately affected women and children in Darfur, grace the AU summit dedicated to the cause of women and children. The very idea of being implicated in such heinous crimes is reason to keep him at bay until the law takes its full course, was the unequivocal message from the protesters.

When all said and done, the AU Summit deliberated on critical issues affecting Africa given that it spanned a number of days (7-15) June 2015. The body has made efforts in trying to distinguish itself from the OAU. Certainly the AU is not the OAU that sanctioned impunity and had no compunction having Uganda's Idi Amin as its Chairman and face while he brutalised, murdered and fed his opponents to the crocodiles in the Nile. However, the AU antagonism against the ICC eerily shows that the mentality pervasive in the OAU, in which tin pot dictators and self-styled 'life presidents' felt they had a right to terrorise people with impunity, is not entirely absent. In this light, South Africa, Nigeria and other countries desirous of a stable Africa must inculcate normative leadership in the AU in spite of the AU not being a supranational entity with a compliance mechanism, one of its enduring flaws.

Africa represents the biggest bloc in the Assembly of States Parties (ASP), countries that have ratified the Rome Statute, and whatever concerns they have pertaining to the ICC, must be raised in that forum. The challenge is that AU cannot have a unanimous position on the ICC controversy because some of its member states have not ratified the Rome Statute. In fact, as a matter of principle, the ICC matter ought not to be discussed in the AU summit. South Africa should resist hawks that want it to pull out of the Rome Statute. The ICC is not perfect but that is no reason for a wholesale demonization of it. It is trite that impunity, left unchecked, begets violence and Pretoria cannot afford to advocate peace and security in Africa and counterintuitively be the bellwether that leads Africa into lawlessness, and instability through disregard for the rule of law and hand-tying international norms.

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