

# African Union Declaration Against the ICC Not What It Seems

By David Greenberg | August 6, 2009

Secretary of State Hillary Clinton's 11-day visit to Africa is intended to affirm the Obama administration's commitment to engage the conflict-ridden continent. However, a resolution has recently been issued by the African Union (AU) allowing Sudanese president and wanted war criminal Omar al Bashir to travel in Africa with impunity. This could easily cause Clinton to believe that Africa has no interest in holding human rights abusers responsible for their actions. It's important for her to realize that this resolution isn't what it seems, and that there is still hope for human rights and justice in Africa.

On April 3, 2009, the International Criminal Court (ICC) issued a warrant for the arrest of Omar al Bashir for war crimes and crimes against humanity. Exactly three months later, the African Union declared that "AU Member States shall not cooperate...for the arrest and surrender of President Omar al Bashir of Sudan." The decision is both disturbing and confusing, considering that less than one month before the declaration was made, the 30 AU states that are also members of the ICC recommitted themselves to the Court. Jean Ping, the top official of the AU and former foreign minister of Gabon, claimed that the declaration is in response to the Security Council's decision not to defer Bashir's indictment, as was requested by the AU. Ping stated that "if you don't want to listen to the continent, as usual, we also are going to act unilaterally."

The AU has declared that it arrived at this resolution through consensus among the members of the AU Assembly. However, several reports about the nature of the AU meeting, as well as the behavior of the African members of the ICC, all show that the continent hasn't turned its back on the ICC or Bashir's arrest warrant.

The "consensus" does not exist. The decision was made through the use of manipulative tactics and bullying from the current chairman of the African Union, Muammar Gaddafi, and without a doubt, from Bashir himself.

A press release issued on July 14 by the AU claims the resolution was agreed upon after thorough debate on the matter. That debate was anything but fair. According to the Coalition for the ICC, several African government representatives present at the AU Assembly meeting walked out afterwards, saying that there were unprecedented levels of intimidation and pressure by Gaddafi to go along with the resolution. There were reports that Gaddafi had threatened foreign ministers, censored e-mails, and had faxes blocked so that no one could effectively challenge the resolution. The vice president of Botswana, Mompoti Merafhe, stated that "Gaddafi did not permit much debate on the matter...we did not get an opportunity to put our opinion across." Others were prohibited from making any comment on the declaration at all.

Even if many AU members were disappointed by the Security Council's refusal to defer the indictment, as Ping has claimed, the fact that Gaddafi believed it necessary to use such tactics throws into serious question the prospect that a consensus existed on the matter. Obviously, he would not have resorted to intimidation and disruption of the AU Assembly in order to pass his resolution if he thought it would have passed without his interference.

Along with the rigged debate, Gaddafi also tampered with the procedural rules of AU Assembly meetings. Shortly after being elected chairman of the African Union on February 2, Gaddafi instituted into AU meetings the Islamic practice that "silence is approval." This change to AU Assembly procedure permitted Gaddafi to count those nations that do not oppose his decisions as supporters. A nation must now publicly challenge Gaddafi in order to legally vote against his proposals. This is difficult for one nation to do alone, and far more challenging to rally two-thirds of the AU's 53 members to openly oppose the chairman to override his mandate. When the chairman of the African Union barely allows for any discussion of the matter and silences possible detractors, the task becomes almost impossible.

Most AU members neither openly supported nor objected to the declaration. So far, Botswana has been the only nation to publicly declare its continued cooperation with the arrest warrant. In addition, a recent poll shows that 71% of Nigerians and 77% of Kenyans support the indictment of Bashir. In fact, aside from Sudan the AU declaration was only backed by Senegal, Djibouti, and the Comoros. Of course, with Gaddafi's rule that "silence is approval," the remaining AU nations that chose not to or were unable to pose a challenge to the

resolution were counted as supporters in the supposed consensus. As Human Rights Watch analyst Richard Dicker said of the matter, the AU declaration is "an effort by a handful of countries to foist on others their regressive view that there should be no accountability for mass slaughter of civilians."

Naturally, the AU has denied this. In the July 14 press release, the AU responded to criticism from human rights groups by accusing ICC Prosecutor Ocampo of going after Bashir in order to seek publicity. Jean Ping is quick to point out that of those cases that have been referred to the ICC, so far only four have been selected for prosecution and all have been against Africans. Numerous African leaders have accused the ICC of being nothing more than a tool of Western imperialism, arguing that the Court is merely the newest way for the West to exploit the continent. Rwandan President Paul Kagame has said in reference to the ICC that "Rwanda cannot be part of that colonialism, slavery and imperialism." Gaddafi himself said that the ICC represents "new world terrorism."

However, it's clear that not every African nation feels the same about the Court. When the African members of the ICC recommitted themselves to the Court last June they were undoubtedly aware that the prosecutor has only issued warrants against Africans, yet they still trusted the ICC enough to offer their continued support. What is even more remarkable is that this was done in defiance of Gaddafi, who had demanded that all 30 countries withdraw entirely from the ICC. The African members of the ICC may not have been able to prevent the resolution from passing because of Gaddafi's corrupt tactics, but the fact that they stood together to oppose his demand that they withdraw from the Court

is encouraging and points to the conclusion that Africa is not united against the ICC.

These developments in the struggle for African justice are at once promising and disturbing. On the one hand, the apparent fact that many African leaders still support the mission of the ICC offers hope for the future of the continent. However, if those leaders are not capable of forming a united front against people like Muammar Gaddafi and Omar al Bashir, the fight for human rights in Africa will prove a very long struggle.

So what can the international community do to help? Asking the United States or the European Union to put strong pressure on the AU to reverse its decision could be counterproductive, as it would simply fuel the argument that Western powers still seek to control Africa. Still, it may be useful for the Western nations to declare their intention to honor the Bashir warrant should he ever decide to chance travelling to the United States or Europe. At the same time, non-Western nations should engage in talks with the AU in an attempt to make progress where Western nations cannot. What may be most productive though is for the ICC to begin prosecution of one of the numerous cases it has been looking into in non-African countries, such as Colombia or Georgia, while continuing to fight injustice in Africa. This would cut to the heart of the argument against the ICC, and disprove the claim that the Court is anti-Africa.

It's important for the United States and the world to realize that dictators are not the only voices in Africa. There are still some leaders who want what is best for their country and people. Despite what Gaddafi and Bashir would have the world to believe, Africa demands justice.

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Recommended citation: David Greenberg, "African Union Declaration Against the ICC Not What it Seems," (Washington, DC: Foreign Policy In Focus, August 6, 2009).

Web location: <http://fpif.org/fpif.txt/6333>

Editor: Jen Doak

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