



HURINET – Uganda



Uganda Coalition on the ICC

#### **WHAT WAS MISSED: THE PERCEPTION AND DECISIONS OF THE AU SUMMIT**

The African Union summit was held in Kampala in July 2010. In addition to the agenda items of maternal health, infant mortality and development in Africa addressed, was the request made by a number of Civil society Organisations with support of a number of African states parties to the ICC to open up an ICC liaison office at the AU head quarters in Addis Ababa Ethiopia which was rejected 'for now'. This request was a follow up of a thumb's up given by states parties to the International Criminal Court at the Review Conference of the CC in June 2010 in Kampala.

The presentation of the request to open up an ICC liaison office in Addis Ababa was presented at a time there is bad air in Africa especially among her leaders in regard to their perception towards the ICC and her work on the African Continent. The cause for this bad air does not fall far from the arrest warrants issued against President Omar Al Bashir of Sudan on charges of crimes against humanity and war crimes in 2009 and crimes of genocide in 2010 against the people of Darfur in southern Sudan.

Following the issue of these arrest warrants against President Omar Al Bashir have been a number of undermining statements directed towards the ICC and her officers by different African leaders not in support of these warrants. They have persistently called upon the ICC to withdraw the said warrants and further requesting that the UNSC intervene to enable the suspension of the arrest warrant so that the AU can investigate the matter and come up with its own independent findings. This is based on the following arguments:

1. That issuing a warrant against a sitting president infringes on the principle of sovereignty of state;
2. That the ICC has no jurisdiction over the situation in Sudan;
3. That state sovereignty goes way beyond state party to the ICC's obligation to an international organization;
4. That the ICC practices double standards by concentrating on the African continent alone ignoring other places where similar crimes have been committed; and,

5. That the information at hand accusing the Sudanese president Omar Al Bashir of the said crimes is not sufficient and hence does not satisfy the heads of states.

On these grounds the Human Rights Network Uganda and the Uganda Coalition on the International Criminal Court takes the initiative to clarify on the operation of the ICC in relation to the African situation and in particular on the subject of President Omar Al Bashir that:-

### **1. Jurisdiction *ratione temporis*<sup>1</sup>**

The ICC shall have jurisdiction only with respect to crimes of genocide, crimes against humanity and war crimes committed after 1<sup>st</sup> July 2002, after entry into force of the Rome Statute, and for states that have become party to it. Currently there are 111 states that have ratified the statute, thirty (30) of whom are from the African continent.

### **2. Exercise of Jurisdiction<sup>2</sup>**

Situations before the court are triggered by referral to the prosecutor by either a state party to the ICC or by the United Nations Security Council acting under chapter VII of the charter of the United Nations for investigation and, through initiation of an investigation by the prosecutor *proprio motu* in respect to a crime within the Court's jurisdiction. All the African situations before the court were triggered by any of the above.

The Sudan situation before the ICC therefore was subsequent UNSC referral in March 2005, asking the prosecutor of the ICC to investigate the Darfur situation following an international out cry on the atrocities being committed against the people of Darfur. In May 2007, the Pre Trial chamber 1 of the ICC issued arrest warrant for then Sudanese Humanitarian Affairs Minister **Ahmad Mohammad Harun** and the alleged **Janjaweed militia** leader **Ali Mohammad Ali Abd-Al- Rahman** who were identified as key suspects and accused of war crimes and crimes against humanity. In March 2009, the Pre Trial Chamber again issued arrest warrants against **President Omar Hassan Ahmad Al Bashir** for war crimes and crimes against humanity. On 12<sup>th</sup> July 2010, the Pre-trial Chamber 1 issued a second arrest warrant against the same on charges of genocide. The commencement of the trials awaits apprehension and or surrender of the suspects who will be given the chance to defend themselves at trial.

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<sup>1</sup> Article 11, The Rome Statute 2002

<sup>2</sup> Article 13, Ibid

Further, in regard to the argument that the ICC has no jurisdiction over the situation in Sudan; we shall recall that Sudan is a member state to the UN whose relationship with the ICC has been created and defined under the Rome Statute<sup>3</sup> and a subsequent agreement. It is through this relationship and acting under Chapter VII of the UN Charter that resolution 1593 was passed by the UNSC in March 2005 to refer the situation in Darfur, Sudan to the International Criminal Court there by placing the situation in Sudan under the jurisdiction of the ICC.

In reference to the defence of principle of state sovereignty; it is true that Sudan is a sovereign state as recognized by international law. However, the same recognizes the peremptory norm-*jus cogens* as a fundamental principle from which no derogation is permitted. The effect of this is that they cannot be violated by any state "through international treaties or local or special customs or even general customary rules not endowed with the same normative force. It has been generally accepted that crimes under the Rome Statute inter alia are considered to be of this nature.

In light of the above, **HURINET-U** and **The UCICC** would also like to remind African States-governments that while in vehement support for President Omar Al Bashir, consideration should also be geared towards the aspirations and hopes of the people of Darfur and millions of Africans who have suffered decades of violence through abuse of power with impunity.

HURINET and the UCICC therefore call upon and member states to the ICC not to shy away from their obligations to the ICC and cooperate by apprehending the perpetrators and handing them over for trial.

We request that the African Union soon reconsider her decision to halt the opening of an ICC liaison office at Adiss Ababa, Ethiopia and accept request made.

We also further call for more African States to ratify the Rome Statute and cooperate with the ICC because together we can say no to the old era of impunity and say yes to the new age of accountability.

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<sup>3</sup> Article 2&13, supra