

ICC funding exposes lack of credibility



By: Saifaddin al-Bashir

Prioritising multilateral bodies over the AU challenges the very idea of loyalty to the continent.

Exerting efforts to tarnish the reputation of Africa is routine practice by Western media, think tanks, civil society organisations and NGOs. One would think the continent was on the verge of crisis, civil wars, famines, atrocities and human rights violations.

By contrast, coverage of success stories from Africa are few and far between if not non-existent. Unlike the recognised aggressors since the conquest of the early Western invaders, Africans are living in peace and it's time to recognise that.

They were provoked, pushed and forced to fight; Africans were not the ones who ignited the two world wars. Nor are they currently engaged in the proxy wars all over the world.

While some African media, think tanks and civil society groups continued to depend on Western circles as their most reliable source of information, few chose to go their own way. The debate on Sudanese President Omar al-Bashir's participation in the AU summit in South Africa is an example. For about three months, comments, opinions and forums engaged in the debate, with as many focused on procedural matters while accepting the root causes as indisputable.

It's in the interest of the debate to take place in South Africa given its continental and international reputation. Continuing such an open, in-depth brainstorming will further shake up and expose the credibility of the International Criminal Court (ICC).

The critiques range between legal bases that the Rome Statute is inconsistent with international law, and practising bases that the court acts with discriminatory tactics.

None of those in the debate address the fundamental issues. Defining itself as "an independent international organisation", the court is neither international nor independent. Just look at the proportion of the world population represented in this body compared to those unrepresented.

While branding itself as independent, the funding of the ICC may tell a different story.

Article 116 Part 12 of The Rome Statute of the ICC, on voluntary contributions, reads: "The Court may receive and utilize, as additional funds, contributions from governments, international organizations, individuals, corporations and other entities, in accordance with the relevant criteria adopted by the Assembly of States Parties."

Article 2 of the “Basic Principles on the Independence of the Judiciary”, endorsed by the General Assembly of the UN resolutions 40/32 of November 29, 1985 and 40/146 of December 13, 1985 reads: “The judiciary shall decide matters before them impartially... without any restrictions, improper influences, inducements, pressures, threats or interferences... from any quarter.”

Rushing to accept the right of referral, one wonders whether the UN Security Council realised the difficulties of ensuring “improper influences, inducements, pressures, threats or interferences... from any quarter”, given the funding notion of “whoever can contribute”.

The argument that Africa is the largest regional bloc in the ICC with 34 members could be challenged by the fact that 34 of 54 should still be regarded as “some” of a “whole”. Unlike the “some”, the AU is formed by Africans and includes all African states.

“The vision of the AU is that of an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena,” its vision reads. Reviewing the AU’s objectives might further undermine the case of ICC supporters:

- To achieve greater unity and solidarity between the African countries and the peoples of Africa.
- To defend the sovereignty, territorial integrity and independence of its member states.
- To promote and defend African positions on issues of interest.

AU stances on the ICC could be reviewed in both resolutions of July 2009 and October 2013. Sadly, some appeared to be more loyalist than the king in supporting the ICC, regardless of the dignity and integrity of their own regional body. Claims of “politicising justice” are justifiable since the Rome Statute donates the right of referral to the UN Security Council instead of the International Court of Justice (ICJ). While the security council is a political body, the ICJ is the

sole legal UN instrument. The question is whether the security council is obliged to accept such a donation or recommend the ICJ?

None of those involved in the debate investigated the root causes of Africa's conflicts, but former US secretary of state Henry Kissinger did so. "Africa's legacy of colonial rule endows it with explosive potential, ethnic conflict, serious underdevelopment and dehumanising health problems", he said. "Hence Africa has produced savage civil wars that spread into international conflicts and epidemics," he wrote in *Does America need a foreign policy?*

Sudan is not an exception. During the 1920s, the colonial power legislated what is known as the law of enclosed areas, which identified areas in Sudan under which foreigners and Sudanese are forbidden entry or residence without official permission. This deprived the country of the normal interaction necessary for nation-building.

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