

African Union and the Call for Withdrawal of Member States from the International Criminal Court: Issues and Challenges

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Abstract: Since the International Criminal Court (ICC) came into force in 2002, its intents and mode of operations particularly towards African states has remained questionable and controversial. African leaders have decried that the intents and mode of operations of ICC are biased, witch-hunting, expressly punitive and grossly undermines the sovereignty of African states. Against this backdrop, African Union (AU) during its 2017 annual heads of state summit in Addis- Ababa, Ethiopia passed a resolution calling for mass withdrawal of member states from the ICC with exceptions of Nigeria and Senegal. This resolution has provoked contentious debates among scholars over the veracity and appropriateness of the call for mass withdrawal. Against this backdrop, this study seeks to interrogate the conditions that warranted the quest for mass withdrawal by African Union member states from the ICC, the challenges to the implementation of the resolution by member states and to explore viable options for restoring African states confidence on the ICC operations. The study relied on documentary data for its investigation while trend analytical technique was employed for data analysis. The theoretical framework that anchored the study is the world system analysis espoused by Immanuel Wallerstein. The study asserts that the selective approach and double standard treatments that characterize ICC decisions and operations towards African states is highly alarming, worrisome and unacceptable, hence the call by AU for massive withdrawal of member states. The study recommended that; to avert imminent mass withdrawal of African Union member states, the ICC should swiftly restore a relative degree of confidence in its operations by being impartial. This could be achieved by spreading its operational drag-nets to other dictatorial regimes in Latin America, Asia, Middle East and parts of Europe where cases of gross human rights violations and war crimes are also prevalent. This becomes imperative bearing in mind that the court still remains vital to African states where many countries have weak judicial systems.

Key words: African Union • States Quest • Withdrawal • International Criminal Court (ICC)

INTRODUCTION

The establishment of an international tribunal to judge political leaders accused of international crimes was first proposed by the Commission of Responsibilities during the Paris Peace conference in 1919 following the end of the First World War. The issue was addressed again at the Geneva conference under the auspices of the League of Nations, which resulted in the constitution of a permanent international court to try acts of international terrorism. The convention was signed by 13 states but none of the states ratified it, hence, the convention never came into force. Following the Second World War, the allied powers established two ad hoc tribunals to

prosecute axis power leaders accused of war crimes. The international Military tribunal for the Far East in Tokyo prosecuted Japanese leaders [1].

In 1948, the United Nations general assembly first recognized the need for a permanent court to deal with activities of the kind prosecuted after the Second World War. At the request of the General Assembly, the International Law Commission (ILC) drafted two statutes by the early 1950s but these were shelved during the cold war which made the establishment of an International Criminal Court politically unrealistic. In the early 1990s, the UN Security Council established two ad hoc tribunals. The first was the International Criminal Tribunal for the formal Yugoslavia which was created in 1993 in response

to large scale atrocities committed by arm forces during Yugoslav wars. The second was the International Criminal Tribunal for Rwanda which created in 1994 following the Rwanda Genocide. The creation of these tribunals further highlighted the need for a permanent International Criminal Court [2, 3, 4]. In 1994, the International Law Commission that was earlier tasked by the General Assembly to draft a statute for a permanent court, presented its final draft statute for the International Criminal Court to the General Assembly and recommended that a conference be convened to negotiate a treaty that would serve as the court's Statute. From 1996 to 1998, six sessions of the preparatory committee on the establishment of the ICC were held at the United Nations Headquarter in New York City. In January 1998, the Bureau and Coordinators of the Preparatory committee convened for an inter-session meeting in Zutphen in the Netherlands to technically consolidate and restructure the draft articles into draft.

In June 1998 the General Assembly convened a conference in Rome, with the sole aim of finalizing the treaty to serve as the court's Statute. On 17th July, 1998, the Rome statute of the International Criminal Court was adopted by a vote of 120 to 7, with 21 countries abstaining. Following the ratification, The Rome Statute entered into force on 1st July, 2002 and the International Criminal Court was finally established [5, 6]. In essence and purpose, the International Criminal Court (ICC) is an Intergovernmental Tribunal that sits in The Hague in the Netherlands. The ICC has the jurisdiction to prosecute individuals for the International Crimes such as genocide, crime against humanity and war a crimes. The court is intended to complement existing national judicial systems and it may therefore only exercise its jurisdiction when conditions are met, such as when national courts are unwilling or unable to prosecute criminals or when the United Nations Security Council or individual states refer investigation to the court. The ICC is governed by an Assembly of States Parties, which is made up of the states which are party to the Rome Statute. The Assembly elects officials of the court, approves its budget and adopts amendments to the Rome Statute. The court itself is composed of four principal organs, viz: the Presidency, the Judicial Divisions, the Office of the Prosecutor and the Registry [1, 7, 8]. As of the time of this investigative study, the Prosecutor of the ICC is Fatou Bensouda of Gambia, who had been elected on 12th December, 2011. She has been elected for nine years while the current and first female president of the Court is Silvia Fernandez De

Gumendi who was elected on 11th March, 2015. The essence of this study is to interrogate the debates provoked by the call by AU for comprehensive withdrawal of its member states from the ICC.

Statement of the Problem: The Rome Statute which established (ICC) was put into force in 2002 with the aims of bringing to justice those responsible for international crimes such as genocide, war crimes and crimes against humanity. The statute was ratified by 124 countries and upon this, 34 African states became signatories to its membership. The court is intended to complement existing national judicial systems and it may therefore only exercise its jurisdiction when conditions are met, such as when national courts are unwilling or unable to prosecute criminals or when the United Nations Security Council or individual states refer investigation to the court.

Since the statute came into force in 2002, its intents and operations particularly towards African states has remained questionable, controversial and worrisome to African leaders, scholars and policy analysts. African leaders have complained and observed with dismay that the intents and mode of operations of ICC are unfair, biased, witch-hunting, expressly punitive, inappropriately targeting African leaders and grossly undermines the sovereignty of African states. Against this backdrop, African Union (AU) during its 2017 annual heads of state summit in Addis- Ababa Ethiopia passed a resolution calling for mass withdrawal of its member states from the ICC with the exceptions of Nigeria and Senegal.

This has provoked contentious debates among scholars over the justification and appropriateness of the call for mass withdrawal of member states by AU in view of the volatile nature of African political environment. Against this backdrop, this study seeks to interrogate the underlying conditions that gave impetus for the call for mass withdrawal by African Union member states from the ICC, the challenges that will militate against the successful implementation of the resolution by member states and equally to explore viable options for restoring African states confidence in the ICC. To address this puzzles the study raises the following questions; (1) What are the underlying conditions that gave impetus to the call by AU for the withdrawal of her member states from ICC? (2) Is it justifiable for African Union to call for mass withdrawal of its member states from the Internal Criminal Court? (3) What are the factors that pose challenges to the implementation of the resolution by member states?.

Clarification of Contentious Theoretical Issues:

Who Takes Responsibility for war crime?

The question of who takes responsibility for war crime has over years remained controvertibly unresolved among scholars. O'Brien [9] aptly notes that one of the most fundamental problems encountered, especially around the period of the First World War, was the question of who takes responsibility for a war crime; is it the individual or the state? Definitively, war crimes are regarded as traditional examples of international crime. A war crime is any act for which soldiers or other individuals may be punished by the enemy on capture of the offender. Such acts center around the violations of the laws of war which are meant to guard and regulate the use of force among nations [10]. He further espoused the major kinds of crime covered under war to include (i) violation of the rules governing warfare (ii) hostile armed attacks committed by persons not members of recognized arm forces (iii) espionage, sabotage and war treason and (iv) all marauding acts. The two contending schools are explicated below:

State Responsibility School: The proponents of "State Responsibility" envisage criminal responsibility of state alone or collective responsibility of both the states and individuals. This school of thought regards the state as a unit which is susceptible to certain penalties in the form of indemnities and various measures of security. Such measures include military occupation, destruction of war potential and international control of certain aspects of governmental activity. This is so because the population of such a state may have means of knowing about policies, as well as their results, pursued by their leaders. There is therefore a form of collective guilt [11]. Lending more credence to the state responsibility school of thought, article iii of The Hague Convention of 1907 on war on Land provide that: "belligerent party which violates the provision of the said regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces". It is argued that penal economic demands, compensation in the form of reparations, as well as sanctions can only be effective when applied to states and not individuals. Moreover, both Geneva Protocol of 1924 and the Kellog – Briand Pact of 1928 which declared aggressive war to be an international crime, referred at that time to state responsibility. The central proposition of this school is that anything done for the state is an "Act of State" and so, individual responsibility does not exist. The responsibility must then be that of the state itself since the individual acts on behalf of the state.

Individuals Responsibility School: This school of thought advocates for individuals responsibility for violation of war crimes. From time immemorial, however, customary international law has established individual responsibility for violation of some of its general norms. Piracy is an example. So are slave trade and counterfeiting of foreign moneys. Individuals responsibility for violation of the laws of war become embellished by the 18th century. Today, areas of individual responsibility can be found in the laws of war. Some writers and specialist organizations have advocated that individuals could be liable for war crimes. They believe that the only effective sanction for crimes against peace is the punishment of the individuals and members of governments directly responsible. The first international document establishing penal responsibility of Heads of State for actions against peace was the Declaration of the Congress of Vienna in 1815. It declared that Napoleon had made himself an enemy of humanity, disturbing the peace of the world [12].

The treaty of Versailles 1918 provided for the trial of the emperor of Germany after the First World War. Such opinions increased in number after the signing of the Kellog – Briand Pact in 1928. It was further expanded in 1945 in the Nuremberg Charter which rejected the concept of state responsibility. The charter provided for the punishment of individuals for acts committed on behalf of the state or in their capacity as members of the government or of the armed forces. In the judgement of the Nuremberg Trials, the court found that "crimes against international law are committed by men not by abstract entities and only by punishing individuals who commit such crimes can the provisions of international law be enforced" [9]. The Nuremberg principle of individual responsibility for war crimes is most important because the charter set a precedent upon which consequent war crime trials were base. There are basically, three categories of crimes which individuals under international law may be accused of. The first is referred to as "crimes against peace" which centers around the planning, preparation, initiation and waging of wars of aggression in violation of treaties, agreements and assurances. "war crimes" form the second category. There are also "crimes against humanity" and these laws are supposed to be punished. This is especially so for signatories of relevant international treaties such as the Draft Treaty of Mutual Assistance, the Geneva Protocol (1924), the Locarno Treaties (1925), the Kellog – Briand Pact and the Geneva Conventions.

Can War Crime Trials be Fair?

Having recognized the numerous acts for which individual may be charged, the next problem is that of how fair the trials of war crimes have been in line with the rules in international law regulating or guiding such trials. The Geneva Convention of August 1949 deals with rules governing the treatment of prisoners of war as well as trials of such prisoners of war. Article 99 of the convention states:

“No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the detaining power or by international law in force at the time the said act was committed”

Article 106 reads:

“Every prisoner of war shall have the right of appeal or petition.....”

The International Convention on Civil and Political Rights on its own states in Article 14 (in part) that: *“all persons shall be equal before the courts and the right to be presumed innocent until proved guilty to law”*.

In article 15 (1) the principle of “Nulla Crimen Sine Lege” is upheld – the idea that there cannot be a crime without a pre – existing law. In 1950, the International Commission formulated principles of international law recognized in the Charter of the Nuremberg Tribunal. One remarkable principle states that: *“any person chargedhas the right to refer trial on the facts and law”* (UN Publication, 1984). One observation features from the above examples is that the international community recognizes the fact that aggressive war is illegal and that its perpetrators should be punished. At the same time, it provides for a fair and just trial of offenders. In theory, therefore, a war crime trial ought to be fair. However, on the contrary, Schnitzer [13] asserted that war crime trials have not proved to be fair over the years. He pointed out that the victorious allies of the second World War decided in the London Agreement and Charter of 1945 to create an International Military Tribunal to try Nazi criminals: but the following should be noted about the trials: (a) there was no neutral judges on the tribunal, (b) the allies did not investigate war crimes attributed to members of their own armed forces (c) the acts set in the indictment were not crimes performed (d) and-authority for the agreement was based upon the right of “debellata”- the right of the victorious to deal with the defeated powers. Similarly, the trials of war criminals in Tokyo were presided over by judges appointed by one country, the United States of America. The treaty of

Versailles had also given the victorious, the right to try the vanquished.

However, when North Vietnam announced in 1966, that American pilots were being held for war crimes (wanton destruction of villages and inhumane acts committed against civilian populations), world reaction, especially US reaction was immediate, violent and destructive. Over the same war, Lord Bertrand Russell headed the Stockholm war crime trial comprising of European and Asian intellectuals. Their verdict which found the US and its armed forces guilty of crime of aggression in Vietnam in view of international law did not hold water. The trial was ignored and nothing formal was ever done about it [9, 10]. Three things can be deduced from the above. The first is that war crime trials are usually trials of the victorious over the vanquished. Secondly, there are usually no neutral judges. Lastly, there is the observation that a country may refuse to be put on trial, perhaps because of its power and get away with it.

Theoretical Framework: The study is anchored on the world system theory as espoused by Immanuel Wallerstein [14, 15, 16, 17, 18, 19] cited in Charrette [20]. The world system is a more or less a self contained system with a set of boundaries and a definable life span and the system held together by a variety of forces that are in intrinsic tension. (Ritzer, 1996) cited in Charrette [20]. World system theory maintains that the major dynamics of social and political change lie in limits of nation states in a larger system and that has resulted in development, underdevelopment of nation state and recurring grounds of economic advancement or stagnation, political domination or war. These larger structures are clearly economic, political and cultural and they must be comprehended historically [21].

Wallerstein [15] argues that the modern world system emerged in the 16th century following the expansion of Western Europe’s capitalist economic system by conquest into central and South America and the establishment of far reaching trade links with Eastern Europe and Asia. For Wallerstein, the modern world system is capitalistic. He then introduces three concepts that world system- the core, the semi-periphery and the periphery. The core consists of North America, most of Western Europe, Japan, Australia and New Zealand. The semi-periphery is a residual group that includes a set of regions somewhere between the exploiting and exploited. They include such nations of Western Europe (Ireland, Portugal, Spain, Turkey and Greece), few countries in north Africa (morocco, Tunisia, Libya, Egypt and Algeria),

the middle East (Saudi Arabia, Israel, Syria, Iran, Iraq) and Asia (Hong Kong, Taiwan, Singapore and south Korea) along with most of Latin America (Brazil, Mexico, Argentina etc). The rest of the world, including all Sub-Saharan Africa, most of Central America, Asia, India, Afghanistan, Bolivia along with many of the former Soviet Republic constitute the periphery [15, 21]. The core is technologically and relatively powerful states. The periphery provides raw materials to the core has weak fragile states and bear the brunt of rapacious capitalist exploitation by the rest of the system [20].

The appropriateness of Wallerstein's world system theory to study is that it adequately explains the real reasons behind double standard practices of international institutions and in particular the International Criminal Court (ICC) which forms the basis of this study. Besides, the theory aptly mirrors and reveals the real reasons why the ICC is biased, why it applies selective justice and why the court is conspicuously incapacitated to investigate and put into trial perpetrators of war crimes from the core nations of Europe and North America. The theory also helps to explain why since 2002, the ICC came into force, the 39 individuals indicted by the court were all Africans and 9 out of 10 situations under investigation are in Africa. It also reveals why the ICC is perceived as an imperial stooge. This is further substantiated by the court's inability to indict former British Prime Minister Tony Blair over his role in the Iraqi war. This is why African leaders have questioned why the ICC was unable to investigate and punish perpetrators of war crimes during the South Ossetia conflict involving Russia and Georgia in 2008. The world system further explains the anarchical nature of the international system and why the rich and strong violates international criminal laws with impunity whereas the weak and poor nations are held accountable and punished effectively for committing the same crime. Essentially, the U.S violated article 8 of the Rome Statute when George W. Bush authorized the invasion of Iraq in 2003; Russia violated same article, when Vladimir Putin spearheaded Russia's annexations of Crimea from Ukraine in 2014 with impunity. The world system thus establishes an asymmetrical order in which poor and weak states perpetually remain under the control of the economically and militarily powerful states that defy the provisions of international laws, treaties, statutes and conventions whenever it suits their national interests.

MATERIALS AND METHODS

The study adopted qualitative method in carrying out its investigation. The data employed for the study were

gathered from secondary sources. As such, data used for this study were collected from public libraries as well as private libraries of a number of colleagues and associates within and outside the country. Besides, the study also made use of internet materials wherein relevant articles were carefully retrieved. The study utilized both content analysis and trend analytical techniques for the analysis of data. As such the information employed for analysis in the study were carefully extracted from logical chains of evidence presented in journal papers, conference papers, periodic papers, edited books, documentary materials among others.

Factors that Warranted the Call by AU for Mass Withdrawal of Member states from International Criminal Court:

"Elsewhere in the world, many things happen, many flagrant violations of human rights but nobody cares" [22].

The above assertion captures the height of political frustration and loss of confidence in the operations of the International Criminal Court (ICC) by African states and leaders. The expression of desire and quest for mass withdrawal by AU member states from the Rome statute which established the ICC is not a novel. However, this became a formal expression on Tuesday 31st January, 2017 when African leaders during African Union Summit in Addis -Ababa adopted a strategy calling for a collective withdrawal of African Union member states from the ICC though few countries such as Nigeria, Senegal, Cape Verde and Tanzania expressed reservations about the withdrawal owing to the fact that the decision is not binding.

Scholars, authors and columnists like Joseph [23], Muchayi [24], Jacey [25], Ngari [26] and Onyanya - Omara [27] have all advanced the following as salient issues, grievances and criticisms leveled against the ICC by AU member states, hence their call for mass withdrawal from the court:

Allegation of Selective Justice and Institutional Bias:

The allegation of selective justice and institutional bias against the International Criminal Court by African States is not a new one but this has gained much ground in recent times. This sentiment has been expressed deeply by African leaders due to disproportionate focus of the court in Africa, while it claims to have global mandate. African leaders have decried a development in which nine (9) of ten (10) situations being currently investigated by

Table 1: Summary of ICC Investigations and Indictments (8th July, 2005- 8th March, 2017)

S/N	Country	Number of Indictes	Names of Individual	Persons Yet to Appear Before The Court.
1	Democratic republic of Congo	9	Thomas Lubanga Dyilo, Bosco Ntaganda, Germain Katanga, Matheiu Ngudjolo Chui, Callixte Mbaru-Shimana, Sylvestre Muta-Cumura.	Sylvester Mudacumura.
2	Uganda	5	Joseph Kony, Okot Odhiambo, Raska Lukwiya, Vincent Otti, Dominic Ongwen	Joseph Kony, Vincent Otti.
3	Central African republic	5	Jen Pierre Bemba, Aime Kilolo Musamba, Fidele Babala Wandu, Jean Jacques Mangenda, Kabongo, Narcissi Arido	-
4	Darfur, Sudan	7	Ahmed Haroun, Ali Kuehayb, Omar Al-Bashir, Bahr Idriss Aba Garda, Abdallah Benda, Saleh Jerboa, Abdel Raheem, Muhamed Hussein.	Ahmed Haroun, Ali Kuehayb, Omar al-Bashir, Muhammed Hussein.
5	Kenya	9	William Ruto, Joshua Sang, Henry Kosgey, Francis Muthuara, Uhuru Kenyatta, Muhammed Hussein, Ali Walter Barasa, Paul Grichem, Phillip Kipkoech Betta.	Walter Barasa, Paul Grichem, Philip Kipkoech Betta.
6	Libya	3	Muammar Gaddafi, Saif-alslem Gaddafi, Abdallah Senussi	Saif al-Islam Gaddafi.
7	Ivory coast	3	Luarent Gbagbo, Charles Ble Gonde, Simone Gbagbo	Simone Gbagbo.
8	Mali	1	Ahmed Al-Faqi-Al- Mahdi	-
9	Central African republic(II)	0	-	-
10	Georgia	0	-	-
Total		39		

Source: [https:// en. M. wikipedia.org/wiki/international-criminal-court](https://en.m.wikipedia.org/wiki/international-criminal-court)
ICC website: ICC-CPI.int. Accessed 08-03-2016.

the office of the prosecutor are in Africa, namely: Mali, Cote D'ivoire, Central African Republic, Libya, Kenya, Sudan, Uganda, Democratic Republic of Congo and Burundi. Georgia is the only country outside Africa facing such an investigation. On October 2016, Burundi, the Gambia and South Africa announced their intention to leave the ICC citing the fact that all 39 people indicted by the Court over its history have been African and that the court has made no effort to investigate war crimes tied to the 2003 invasion of Iraq. The Gambia particularly accused the Court of persecution and humiliation of people of color, especially Africans [23, 27]. The persecution of the Kenyan Deputy President William Ruto and President Uhuru Kenyatta led to the Kenyan parliament passing a motion calling for Kenya's withdrawal from the ICC and the country called on the other 33 African states party to the ICC to withdraw their signatories from the Rome Statute. Rwanda's Ambassador to the African union, Joseph Nsengimana, argued that "it is not only the case of Kenya. We have seen international justice become more and more a political matter." Ugandan President, Yoweri Museveni accused the ICC of "misunderstanding complex African issues." Ethiopian Prime Minister, Hailemariam Desalegn told the United Nations General

Assembly at the general debate of the sixty- eight session of the United Nations General assembly that "the manner in which the ICC has been operating has left a very bad impression in Africa. It is totally unacceptable" [24, 25]. It is deducible from all ramifications that several African Union member states are still adamant that they will withdraw from the ICC if nothing changes as the final decision to leave the ICC is up to each individual country.

Tool of Western Imperialism: The ICC has been accused of being a tool Western imperialism, only punishing leaders from small, weak states while ignoring crimes committed by richer more powerful states. The International Criminal Court's inability to try heads of states and leaders of any of the P5 countries or even launch preliminary investigations against them for acts of impunity has bolstered the notion of substantial unfairness and geopolitical prejudice in the debate surrounding individual accountability [23].

Though Fatou Bensouda, the current Chief Prosecutor of the ICC is a native of the Gambia, but the country's efforts to employ the ICC to try and punish the European Union for the deaths of thousands of African migrants trying to reach its shores have completely

proved abortive. The non – persecution of Tony Blair for his role in the Iraq war was specifically pointed out as an illustration of institutional prejudice and manifestation of Western imperialism on the part of the Hague – based tribunal [26] the outgoing Vice chairperson of the AU commission, Erastus Mwencha Avers – “what African countries really want is a level playing field. What happens at the ICC should apply throughout the world and African leaders have said we ready to sit down and see how we can reform it” [28].

- Similarly, critics of the international criminal court (ICC) have questioned the court’s mandate vis-à-vis the conduct of the western powers and Russia in defiance of international criminal laws. For instance, article 8 of the Rome statute defines an act of aggression as “the use of armed force by the state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations.” The article also contains a list of several acts of aggression which are identical to those in the United Nations Assembly Resolution 3314 of 1974 and include the following acts when committed by one state against another state.
- Invasion or attack by armed forces against territory
- Military occupation of territory
- Annexation of territory
- Bombardment against territory
- Use of any weapons against territory
- Blockade of ports or coasts
- Attack on the land, sea, or air forces or marine and air fleets
- The use of armed forces which are within the territory of another state by agreement, but in contravention of the conditions of the agreement
- Allowing territory to be used by another state to perpetrate an act of aggression against a third state.
- Sending armed bands, group, irregulars or mercenaries to carry out acts on armed forces.

A cursory look at the provision of the above article of the Rome Statute shows that the United States and Britain under administrations of George W. Bush and Tony Blair respectively violated the article when the due invade Iraq in 2003 under false allegation that Iraq stockpiled weapons of mass destruction. Russia under the leadership of Vladimir Putin violated Federation. The aforementioned violations were carried out with impunity,

a development that seriously questioned the global mandate of the ICC and bolstered the debate surrounding individual accountability.

Erosion of States Sovereignty: The prosecution of President Uhuru Kenyatta and Vice President William Ruto of Kenya generated huge controversy in African and several African leaders expressed deep dissatisfaction with the attitude of the ICC particularly towards AU members States. President Keyatta proclaimed that “African refuse to be carried along in a vehicle that has stayed off course to the detriment of their sovereignty, security and dignity” (Global Justice Weekly, 2016). According to Joseph (2016) South Africa justified its decision to quit the Rome statute due to the apparent conflict with its obligations to the African union to grant immunity to serving heads of states. It must be noted that South Africa hosted the AU summit in June, 2015 which saw the participation if ICC indictee and Sudanese President Omar Al-Bashir. South Africa’s refusal to arrest and hand over President Omar Al-Bashir to the ICC generated mixed reactions prompting the government of Jacob Zuma to announce its decision to withdraw from the court.

The Sudanese leader visited Kenya, China, Egypt, Ethiopia, Qatar and several other countries despite the outstanding ICC arrest warrant but was not arrested. He said that the charges against him are exaggerated and that the ICC was part of a “western plot” against him. Ivory Coast’s government also opted not to transfer first Lady Simone Gbagbo to the ICC but instead try her at home [28].

It is against this back drop that African leaders have repeatedly advocated that serving heads of states should wield immunity from prosecution and trial. This was particularly stressed during the 2015 all summit in South Africa.

Challenges to the Implementation of the Resolution of African Union on Call for Member States Withdrawal from the ICC: African Union member states have been dogged by profound challenges in their bid for mass withdrawal from the ICC, these include;

The decision is not binding: The Reuter news agency [29] reported that the strategy for mass withdrawal from the ICC is more of a recommendation than an actual unanimous decision. It further noted that country representation from Nigeria, Senegal, cape Verde and Tanzania are expressly opposed to the withdrawal; noting that the court is up to each individual country.

AU Itself Is Not a Party to the Rome Statute: Ngari [26] aptly points out a legal loophole in the call for mass withdrawal by AU member states from the ICC. Thus, he noted that the African union itself is not a party to the Rome statute and therefore the idea of mass withdrawal cannot be totally effective because individual countries are the signatories to the statute and not the African Union as a body. The decision to leave therefore remains optional.

Opposition from Human Rights Groups: The African union member states quest for withdrawal has been met with stiff opposition and condemnation by renowned human rights groups and nongovernmental organizations. On 23rd September, 2016, a group of African non-governmental organizations and international groups with presence in Africa in a statement released in advance of a meeting of the AU with the United Nations Security Council, called for the African union to end consideration of a call for a mass withdrawal [30].

Similarly, the human rights implication of the withdrawal was stressed by the Kenya section of international commission of Jurists. The body observes that AU efforts to undermine the only permanent criminal court for victims of atrocities are fundamentally at odds with the AU's rejection of impunity. It further underscored that AU's commitment to justice cannot be reconciled with protecting Africa and other leaders for mass atrocities before the ICC and in essence, article 4 of the constitutive act of the AU expressly rejects and condemns impunity.

CONCLUSION

Conclusively, International Criminal Court was established to pursue a global mandate aimed at prosecuting and bringing to justice those responsible for war crimes, such as war crime, crimes against humanity and genocide. African union member states expected the court to be impartial, competent and fearless in the discharge of its statutory mandate, but on the contrary it was discovered that the total of 39 individuals indicted by the ICC were African and that 9 out of the 10 situations presently under investigation are in Africa. A development whereby no arrest nor indictment has been made on any European, American or Asian leaders or member of their armed forces despite evidences of war crimes perpetuated by them has become worrisome, hence the frustration and subsequent call for mass withdrawal by AU member states.

Recommendation: Sequel to the above the study recommended the following:

- The International Criminal Court and its established authorities must forestall further allegations of selective justice and reassure African Union member states by embarking on intensive investigation and prosecution of cases of war crimes elsewhere particularly those of former British Prime Minister Tony Blair over the Iraqi war and Russia and Georgia over war crimes in the South Ossetia conflict. This must be done to convince the global community that the court is not only said to be impartial but seem to be impartial.
- Leaving the ICC with no credible mechanism for justice for mass crimes in sight would be an error of colossal proportion. It is far better for AU member states and other signatory states to remain in the court and advocate assiduously for reforms rather than bolting out and leaving millions unprotected by the deterrent stature of the court which can step in when national institutions fail.
- International human rights activists and other strategic humanitarian non-governmental organizations such as the International Commission of Jurists, the lawyers committee of human rights watch, parliamentarians for global action and no peace without justice must step up in their efforts to put the ICC on its toes through lobbying and other pressures at both expert and political levels to ensure justice for the whole of humanity.
- It is pertinent to address the recurrent issue of weak checks and balances on the authority of the ICC prosecutor and judges as well as insufficient protection against politicized prosecution. This was particularly pointed by the U.S state department and the human rights Watch which stressed that the ICC prosecution team did not take account of the roles played by the government in the conflict in Uganda, Rwanda and Congo and that this led to flawed investigation.
- The ICC should put into consideration the 2015 AU summit resolution which called for immunity of serving heads of state. Hence, indictments, arrest and prosecution of serving heads of state can be suspended pending such individuals exit from office.
- Instead of placing the entire political fate and judicial powers of decision on issues affecting Africa on the ICC, African countries should instead strengthen their own justice systems by first strengthening and

ratifying the establishment of African court of justice and second by strengthening judicial system at the domestic level.

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