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When Two Elephants Fight the Grass Gets the Wrath: The Impact of the Impasse in the Relations between African Union and International Criminal Court on the Protection of Human Rights in Darfur, the Sudan

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Abstract:

This paper presents the challenges to protecting human rights in Africa by taking The Sudan as a case study. An arrest warrant had been issued by the International Criminal Court (ICC). It was for the former president of Sudan. The topic was gross human rights violations in Darfur (2009). It was decided by the African Union (AU) that the International Criminal Court (ICC) would not get cooperation from their end. A serious gridlock had been resulted in the relationship between the AU and the ICC, which has not eased the human rights violations in the Darfur. This paper discusses the human rights situation in Dafur. It presents how human rights in Darfur are hanging on a balance due to the impasse in African Union-International Criminal Court relations concerning Al Bashir. This paper used doctrinal legal research method and as such relied largely on secondary sources of data.

Keywords: African union, Darfur, human rights, international criminal court, the Sudan

1. Introduction

1.1. Background

The Rome Statute, adopted in 1998 by 120 countries, established the International Criminal Court (ICC). The ICC, which came into being in July 2002, is "a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern," which include "genocide; crimes against humanity; war crimes; and the crime of aggression." These countries that ratified the Rome statute believed that global justice would benefit from and be greatly enhanced by the creation of an "international criminal justice regime empowered to prosecute individuals guilty of gross atrocities and human rights violations." The Rome gave the mandate for the ICC with the mission to investigate, prosecute and try individuals' accused of the crime of genocide, crimes against humanity, and war crimes. There are research findings that claim Africa was involved in and supported the creation of the ICC. For instance, one research article made a bold claim that African states contributed extensively to the preparations leading up to, during and after the diplomatic conference in Rome at which the Rome Statute of the ICC was finalized.

After the statute was adopted on 03 February 1999, Senegal became the first State Party to ratify the Rome Statute. The ICC was not created specifically for the least developed and developing countries in Africa and Asia. From this reasoning it appears logical to claim that ICC was not an institution imposed on African Union (AU), rather is one that received support from, and has been shaped by, AU.

After the ICC started its operations, which was asymmetrically focused on African continent, the views of AU officials and member states towards ICC changed. Since it came into existence in 2002, the ICC has dealt with nine "situations" involving international crimes, all from Africa but of these five have been referred to the Court by African states themselves: namely the Democratic Republic of Congo, Uganda, Central African Republic (two situations) and Mali.

The other cases include the Sudan and Kenya; the heads of state in office are amongst the invitees, in which case the AU asserts that trials against seating heads of states would put countries at risk of instability. Since the Security Council referred the situation in Darfur, Sudan, to the ICC in March 2005, the Prosecutor has issued various arrest warrants arising from his investigations. This thesis focuses on arrest warrant against incumbent Sudanese President Omar Hassan Al Bashir. The Bashir warrant has proven to be highly controversial within legal and political circles in Africa. This is because if ICC prosecutes the head of states in Africa, to which the ICC has a legal mandate, it will however run contrary to AU goal of securing peace and security throughout the continent primarily through negotiations and agreements, this is through the political avenue than through the legal avenue. An immediate decision adopted by the AU

Peace and Security Council. Conflict resolution was the topic. The decision was adopted on UN Security Council regarding the arrest warrant for President Bashir (July, 2008). "Defer the process initiated by the ICC" was the main agenda. This leads to worst relationship between AU and ICC. AU Member States were strictly asked not to impose the warrant. AU has not been successful in asking its member states to withdraw from the Rome Statute, but in October 2013, the AU summit passed a resolution demanding that no head of state be prosecuted. This included the case of the Sudanese president, Omar Al Bashir.

There are contrasting arguments regarding the nature of AU-ICC relations with regards to the Sudan. Two contrasting camps: on the one side, AU-ICC relation is presented as a neocolonial domination. The core argument of the first camp is best captured by Professor Mahmood Mamdani, who argued that the "ICC is rapidly turning into a Western court to try African crimes against humanity." To Professor Mamdani, "the realization that the ICC has tended to focus only on African crimes, and mainly on crimes committed by adversaries of the United States, has introduced a note of sobriety into the African discussion" and fueled concerns about a "politicized justice" and even bigger questions about the interconnections between politics and law. Rebranding of ICC was proposed by Mamdani.

The criticism was marked as 'embroidered assessment' by second camp. The claim of biasness of ICC was strictly got rejected by chief prosecutor, Fatou Bensouda. It was argued that a protest was raised against ICC for indemnity. First argument was being opposed by her as if can create human right violations. Rome Statue had been approved by number of African states as pointed out by Charles Chernor. A total of 123 states have been approved up to 27 October 2017. Thirty-four ratifying states are under Africa which is half of the continent's fifty-three (53) countries. Rome treaty has been signed by thirteen African nations.

The main purpose of the hypothesis testing is to check whether grains of truths are from the both end or not which is hampering the AU-ICC relations. This case study-based research on Darfur, the Sudan, aims to investigate the reasons behind the current gridlock.

1.2. Research Problem

It has been enforced by the AU that prosecuting Al Bashir may not serve in favor of victims. Moreover, it creates destabilization in Sudan. Some African leaders have enjoyed bad human rights record. To date, evidence is lacking to back the claims made by the AU.

Contrary to the seemingly AU's position, others have argued that AU's decision does not prevent human rights violations in Africa. Richard Goldstone, the first Prosecutor for the ICTY/ICTR, has argued that there is in fact no peace process to speak of in Darfur. A claim implied in Richard's statement is that AU's decision did not lead to preventing human rights violations in Darfur. The research problem which this thesis aims to address whether AU's decision has led to prevention of human rights violations in Darfur or not.

This research project seeks to understand the implications of the decision of ICC to issue arrest warrant against Al Bashir, a seating head of state, on the one hand, and on the other to examine the reasons behind AU's decision to suspend cooperation with ICC. Furthermore, this research project assesses the direction of change in the serious human rights violations in Darfur since 2009 by drawing on available human rights reports. This research project problematizes the implications of the impasse in AU- ICC relation on the prevention of serious human right violations in Darfur since 2009. Following AU's decision to suspend cooperation with the ICC, the question of whether human rights violations in Darfur increased or decreased need to be investigated.

In summary, the major research problem of this thesis is answering the implications of the impasse in AU-ICC relations on the prevention of serious human rights violation in Darfur. The AU decided to suspend its relation with ICC concerning Darfur in 2009. AU's decision, it was claimed, was to prevent further escalations in human rights violations in Darfur. The knowledge gap which this thesis identifies is whether, as a result of AU's decision violations of human rights in Darfur been prevented or at least decreased.

1.3. Research Objective and Research Questions

The overall objective of this research is to describe the implication of the AU-ICC relations on serious human rights violations in Darfur, the Sudan since 2009. With this in mind, the following research questions have been raised:

- What were the bases for AU's decision to suspend cooperation with the ICC with respect to the issuance of arrest warrant of Al Bashir?
- What has been the trend in serious human right violations in Darfur (the Sudan) since AU decided to suspend cooperation with ICC?
- How does AU's decision relate with the trends in serious human rights violation in Darfur since 2009?

1.4. Research Methods and Instruments of Data Collection

This research adopts doctrinal legal research method. For this desk-based review, several secondary data sources have been identified and reviewed. This includes:

- ICC documents and reports: the Rome Statute, ICC arrest warrants and other related documents such as, the charge issued against AL Bashir;
- AU documents and reports: reports and position papers with regards to the situation in Darfur; AU official reports and documents concerning AU-ICC relations including the decision to suspend cooperation with ICC; AU human rights situations reports on Darfur,
- UN Organizations' reports on human rights situations in Darfur,

- Human Rights Watch (HRW) reports on Darfur, and
- Academic literatures on AU-ICC relations, and on the implications of the impasse in relation on the prevention of serious human rights violation in Darfur.

I have narrowed down the discussion on human rights violations in Darfur since 2009 to Kordofan and Blue Nile states.

2. Formative History of the ICC: AU and ICC Relations

2.1. *The International Criminal Court*

The main purpose behind the establishment of ICC is the 'most serious crimes of international concern' which was created by the ICC via the Rome Statute of 17 July 1998, which was enforced on 1 July 2002. ICC is a permanent institution unlike other international criminal tribunals, which are not. The conflict that took place in Former Yugoslavia led to the creation of International Criminal Tribunal for Former Yugoslavia (ICTY). Similarly, the International Criminal Tribunal for Rwanda (ICTR) was created by the genocide of Rwanda. The ICC aims to investigate issues which other courts can't handle. Jurisdiction over genocide, war crimes, and crimes against humanity are some of the subject matters.

2.2. *African Involvement in the Creation of the ICC*

This sub-section describes the involvement of African states in the creation of ICC. To this end, names of African states who played a role and later ratified the Statue will be listed. The available body of literatures point to the argument that Africa was involved in and supported the creation of the ICC. Significant contribution was noticed by African states at the time of conference in Rome. This was the conference where Rome Statute of the ICC was finalized. On 3 February 1999, Senegal became the first State Party to ratify the Rome Statute. Thirty three African states have ratified the Rome Statute: Benin, Botswana, Burkina Faso, Central African Republic, Chad, Comoros, Congo (Brazzaville), Democratic Republic of the Congo, Djibouti, Gabon, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritius, Namibia, Niger, Nigeria, Senegal, Sierra Leone, South Africa, Tanzania, Uganda Zambia Seychelles, Tunisia, Cape Verde and Côte d'Ivoire.

In the period leading up to the Rome diplomatic conference, various ICC related activities were organized throughout the African continent. Radio talk shows, interviews and seminars were conducted in countries such as Botswana and South Africa. Some 90 African organizations based in, among others, Kenya, South Africa, Nigeria, Uganda, Rwanda and Ethiopia joined the NGO Coalition for an International Criminal Court. They lobbied in their respective countries for the early establishment of an independent and effective international criminal court. Fourteen nations of the Southern African Development Community (SADC) had been very active in ICC-related negotiations at the time that the International Law Commission presented a draft statute for an international criminal court to the General Assembly in 1993. Experts from the group met in Pretoria, South Africa, in September 1997 to discuss their negotiation strategies and to agree on a common position in order to make a meaningful impact on the outcome of negotiations. This meeting provided impetus for a continent-wide consultation process on the creation of the Court. The participants agreed on a set of principles that were later sent to their respective ministers of justice and attorneys-general for endorsement.

On the basis of the principles submitted to them, SADC ministers of justice and attorneys- issued a common statement that became a primary basis for the SADC's negotiations at Rome. These principles also appeared in the Dakar declaration on the ICC and other declarations. At a meeting on 27 February 1998, the council of ministers of the Organization of African Unity (OAU, now the African Union) took note of the Dakar Declaration and called on all OAU member states to support the creation of the ICC. This resolution was later adopted by the OAU summit of heads of state and government in Burkina Faso in June 1998.

During the Rome conference itself, several circumstances resulted in African states having a significant impact on the negotiations; for example, African delegates participating in the Rome conference had two guiding documents: the SADC principles and the Dakar declarations. Both the SADC principles and the Dakar declaration were in line with the principles of the 'like-minded group', the members of which were committed to a court independent from Security Council control, staffed by an independent prosecutor, and with inherent jurisdiction over the core crimes of genocide, crimes against humanity and war crimes. Most of the work of the conference was carried out in working groups and informal working sessions. It is fair to argue that African states played a role either in chairing or coordinating various issues. For instance, the Lesotho delegate was elected one of the vice-chairpersons of the conference and also coordinated the formulation of part 9 of the Rome Statute. Formulation of part 4 of the Rome Statute was being finalized by South Africa, where Zambia was also a member and took a significant part regarding formation of ICC. A special interest has been noticed by Professor TiyaMaluwa, the legal advisor to the Organization of African Unity (OAU) during Rome negotiations. It had members who are enforcing special interest on human rights atrocities such as slavery, colonial wars and other horrific acts of war and violence which continue today despite the continent's post-colonial phase.

On the basis of the formative history of the ICC outlined above, it can be argued that the ICC was not an institution imposed on AU. The creation of the ICC symbolized a struggle to fight impunity, not a neo-colonial exercise; it is one that has received support from, and has been shaped by, African States. After the ICC started its operations, it has been claimed that ICC's operation was asymmetrically focused on African continent, which contributed to changes in the views of AU officials and member states regarding ICC. On 27 May 2013, the AU has accused the International Criminal Court (ICC) of "hunting" Africans because of their race. The AU stated its opposition to the ICC trying Kenya's President Uhuru Kenyatta on charges of crimes against humanity, said former Ethiopia's Prime Minister Hailemariam Desalegn. In September 2013,

Kenyan MPs approved a motion to leave the ICC. It can be argued that this development has had contribution in straining AU-ICC relations.

Despite all these, courts in some African countries continued to collaborate with ICC. For example, in June 2015 South African court issued an interim order stopping Sudanese leader Omar al-Bashir from leaving the country. This came after the ICC called on South Africa to arrest the Sudanese president Omar al-Bashir who was in Johannesburg attending an African Union (AU) summit.

2.3. The African Union-International Criminal Court Relations: Conflicting Views

In literature there are two contrasting arguments regarding the nature of AU-ICC relations. On the one side, AU-ICC relation is presented as neocolonial domination, and on the other side, the critical voices against ICC are presented as either attempt by the powerful for impunity or as legal challenges. In July 2002, a historic milestone of ICC came into view. Now-a-days excluding some of Rome Statute, some African nations are asking about their perceived view of the international criminal law instrument. It is necessary to mention that Rwanda does not come under the membership of the ICC. Professor Mamdani has eloquently captured this sentiment. He argued that the "ICC is rapidly turning into a Western court to try African crimes against humanity." With similar reasoning, Mamdani proposed that the ICC should be rebranded International Criminal Court for Africa or the African International Criminal Court. To Professor Mamdani, "the realization that the ICC has tended to focus only on African crimes, and mainly on crimes committed by adversaries of the United States, has introduced a note of sobriety into the African discussion" and fueled concerns about a "politicized justice" and even bigger questions about the "relationship between law and politics. In its Decision on *Africa's Relationship with the International Criminal Court*, the AU reiterated its "concern on the politicization and *misuse of indictments against African leaders* by the ICC" and suggested that prosecutions *against* heads of state, like President Uhuru Kenyatta and Deputy President William Ruto of Kenya, "could undermine sovereignty, stability, and peace.

Rowland Cole argued that Africa's relationship with the ICC has become more political than legal. He identified the following political challenges in AU-ICC relations. The first challenge is the argument that ICC-style justice crowds out possibilities for reconciliation, such as the Lord's Resistance Army in Uganda, and adding Sudan's Darfur region to the list. Perceived "double-standard" and U.S. exceptionalism are the second challenge. These come under the Articles 13 and 16 of the Rome Statute. Depreciation and the scars of colonialism are the third challenge. This challenge almost remains untouched regarding the international relations between former European and African states. Various arrest warrants have been issued by Security Council in Darfur, Sudan on March 2005 to the ICC. Warrant against Sudanese President Omar Hassan Al Bashir is the latest and significant issue. This has provided high controversies in legal and political aspects in Africa. It has become a debate to check whether an indictment on short-term frame creates hardnosed prosecutorial strategy in the long-term. Primary decision-making strategy for conflict resolution in Africa had been adopted in July 2008 regarding the Prosecutor's application for an arrest warrant. The AU observed that while it endorses criminal accountability for gross human rights violations, given the "delicate nature" of the processes that were underway in the Sudan, the search for justice should be pursued in a way that complements, rather than impedes, efforts to secure a lasting peace in the country. It emphasized that ICC jurisdiction is based on complementarily and that a prosecution in the current climate "may not be in the interest of the victims and justice" because it could lead to greater destabilization in Sudan and the region. The AU sees the ICC as being on a collision course with its own peacemaking efforts. Tanzanian President Jakaya M. Kikwete, speaking for African leaders in 2008, publicly clarified that "[j]ustice has to be done. Justice must be seen to be done. What the AU is simply saying is that what is critical, what is the priority, is peace." The AU has also secured the support of other regional bodies, including the League of Arab States, the Organization of Islamic Conference and the Non-Aligned Movement, ostensibly to rein in the ICC. Likely because of Sudanese backroom lobbying, all those organizations had for their own reasons already, or have since, publicly joined the AU chorus singing down the wisdom of indicting President Bashir at this time.

The situation only got worse when, in 2009, the former Libyan Leader Muammar Gaddafi was named chairperson of the AU. It was during his time in that position that AU States adopted, in Sirte in July 2009, the controversial decision suspending cooperation with the ICC in respect of the arrest and surrender of the Sudanese leader. Basically, all AU Member States were instructed not to enforce the warrant.

The second camp saw the criticisms raised by the first camp as 'exaggerated assessment'. Fatou Bensouda, the chief prosecutor of ICC rejects the claim that ICC is biased against Africa. Jalloh criticized Mamdani's position by pointing to two arguments. First, he raised the number of African states that have ratified the Rome Statute. Jalloh (2012) points to the number of African states that ratified the Rome Statute. As of October 2016, one hundred and twenty-four States have become Parties to the Rome Statute and in the world, Africa has generated the largest support base for the Court at thirty-four ratifying states. The number of states constitutes over half of the continent's fifty-three countries. To contextualize these numbers, Africa is followed by 28 States from Latin American and Caribbean States, 19 from Asia-Pacific States, 18 from Eastern European states and 25 are from Western Europe and other States.

Second, Jalloh (2012) points to the roles African states have played in seeking the involvement of the ICC in their crises. Out of the six situations currently under formal ICC investigation by the Prosecutor, all are in Africa. Of the six, three (Central African Republic (CAR), Uganda, and the Democratic Republic of Congo (DRC)) reflect the continent's wide embrace of the Court. The former three, all of which are contracting parties, broke the ice of impunity by successively giving work to the ICC through so-called "self-referrals" of their respective situations for investigations and prosecutions.' In doing so, those nations put themselves more directly on the line to offer the first test cases to an untested court. This can be contrasted with the Sudan, which was recalcitrant and opposed to the ICC, perhaps because they were imposed on

those states by the UN Security Council acting under its mandate to ensure the maintenance of international peace and security.

3. Basis for the Impasse in the AU-ICC Relations: The Case of Al Bashir

3.1. Background: The Darfur Crisis

The war in Darfur began in February 2003 when the Sudan Liberation Army (SLA) and Justice and Equality Movement (JEM) began fighting the government of Sudan, whom they accused of oppressing Darfur's non-Arab population. Darfur has faced many problems over land rights between Massaleet and Zaghawa communities. Because of the attack by the rebel group against the Sudan Government, the latter responded to the attack by directing armed militia, known as the *Janjaweed* to carry out the "ethnic cleansing" against Darfur's non-Arabs and this resulted in the death of many civilians. "The UN has described Darfur as 'the world's worst humanitarian crisis' and the US Congress described it as 'genocide' However, all this ethnic cleansing by the government, led to the accusation of the president of Sudan, Omar al- Bashir, for war crime, crime against humanity and genocide by the ICC; as of 2010, 2.7 million people have fled their homes since the conflict began in the arid western region, and the UN says about 300,000 have died - mostly from disease. Nevertheless, the number of displaced persons reached 2.8 million as of 2017. In addition, the conflict in Darfur has had a spill-over effect in the neighboring countries of Chad, and Central African Republic where hundreds of thousands of refugees streams over the borders the two countries to escape violence. The main aim of this chapter is to analyze why AU rejects the arrest warrant of President al Bashir and it also analyze the basis why AU decided to suspend its cooperation with ICC since AU contribute a lot to creation of ICC.

3.2. Basis for AU's Rejection of Arrest Warrant against Al Bashir: Peace before Justice

Al Bashir was charged on the basis of individual criminal responsibility for committing war crimes, crimes against humanity and the crime of genocide in the Darfur region of the Sudan. The accusation or issuance of arrest warrant for President Al Bashir raised a debate: politics (peace) versus justice. Some scholars argue that it has nothing to do with politics while others say it is political matter. Among those who say it is justice matter Mohammed Kadry said, "[in] principle, the story of President Al Bashir and the ICC's indictment has nothing to do with "politics" but is mostly an issue related to "justice", which makes a big difference. There is a crime that needs to be punished if the prosecuted is proven guilty. However, people look at what is happening in Darfur as a "national security" issue, i.e. getting rid of opponents even if illegally." There is also supportive argument that says while there are justified concerns over the impact of the global Court in Africa, arguments about neo-colonialism exaggerate the strength of the ICC. Furthermore, these arguments also underestimate the ability of African governments to manipulate international justice to their own ends. However, AU raises a second argument. Jean Ping, the then AU Chairperson, is quoted to have stated as "[t]he AU's position is that we support the fight against impunity; we cannot let crime perpetrators go unpunished. But we say that peace and justice should not collide, that the need for justice should not override the need for peace."

Some Africa's leaders claim that the issuance of the Bashir arrest warrant shows that the ICC is a mechanism of neo-colonialist policy used by the West against free and independent countries. On 27 May 2013, the AU has accused the International Criminal Court (ICC) of "hunting" Africans because of their race. In July 2008, AU's Peace and Security Council issued a communiqué opposing the indictment against Al Bashir. Soon afterwards, Sudanese took to the streets of the capital, Khartoum, to protest against the warrant, which the country's ruling party, the National Congress party, termed a "million-man march" against the arrest warrant.

3.3. Basis for African Union's Resolution to Suspend Cooperation with the ICC

Following the Prosecutor's application for an arrest warrant for President Al Bashir, in July 2008, the AU Peace and Security Council, the primary decision-making organ for conflict resolution in Africa, immediately adopted a decision calling on the UN Security Council to deploy Article 16 of the Rome Statute to "defer the process initiated by the ICC." The AU-ICC relation got worse when the AU States adopted, in Sirte in July 2009, the decision suspending cooperation with the ICC in respect of the arrest and surrender of the Sudanese leader. Basically, all AU Member States were instructed not to enforce the warrant. AU has not been successful in asking its member states to withdraw from the Rome Statute, but in October 2013, the AU summit passed a resolution demanding that no head of state should be prosecuted. This included the case of the Sudanese president, Omar Al Bashir.

Several arguments have been raised as the basis for the AU's decision to suspend cooperation with ICC. The first concern of the AU was that the arrest warrant against the sitting head of state was not issued at a good time; this means the timing is not right. The argument was that securing peace should be the first priority and that with time justice will always reach those who have committed crimes. It is difficult to dismiss the AU's concern that the execution of an arrest warrant without a carefully managed transition could lead to further instability in Sudan and its nine neighboring countries. However, this argument seems that the African leaders are creating excuses to escape the justice or punishment for their wrong acts.

The second rationale for suspension of cooperation of AU with ICC was that: the AU questions whether the Rome statute should be binding on the non-state parties this is related to Article 98 of the Statute which talks about the waiver of immunity and to be willing to surrender. At the AU ministerial meeting in November 2009, African State parties agreed that "there is need for clarity as to whether immunities enjoyed by officials of non-state parties under international law have been removed by the Rome statute or not." Article 27(2) of the Rome Statute provides: 'Immunities or special

procedural rules shall not bar the Court from attach to the official capacity of a person, whether under national or international exercising its jurisdiction over such a person'. The article confirms the jurisdiction of the ICC in all situations, permitting it to exercise its authority without having to wait for a waiver of immunity. Article 27(2) is, thus, an express removal of immunity. "But the big question for AU was whether the Rome Statute removed the immunities enjoyed by officials of non-state parties. This question was also one of the bases of AU to suspend the cooperation with ICC. The third basis was that the AU is disappointed with the UN Security Council's "refusal" to acknowledge its request for a deferral under Article 16 of the Statute, which grants power to the Council to defer cases for one year.

4. Human Right Violation in Darfur Since 2009

4.1. Introduction

This chapter has two main points. The first part focuses on the violation of human rights in Darfur since 2009. The second part explains the role (contribution and attribution) of AU decision on the direction of the change of the human rights situation in Darfur since 2009. The main purpose of this chapter is to explain or to discuss the situation of serious human right violations in Darfur, Sudan since AU decided to leave the ICC.

4.2. The Trends in Serious Human Right Violation in Darfur Since 2009

Four years after Sudan's ruling party and the southern rebels signed the 2005 Comprehensive Peace Agreement (CPA) ending twenty-one years of civil war; Sudanese civilians in Darfur are still enduring human rights violation and insecurity. The government of Sudan's force was fighting with rebel movement groups in Darfur and many civilians were suffered from this conflict in Darfur that cause death and displacement.

Military deployments like auxiliary forces such as border guards were kept in Darfur in order to fight the rebel movement groups.

Around 40 thousand civilians were displaced as a result of fight took place between the Sadness government forces and the rebel group called Justice and Equality Movement(JEM) in early 2009 in South Darfur. During this conflict the Government forces were taking indiscriminate forces both through aerial and ground attack against the civilians that they think the civilians have relation with the rebel groups and caused injuries and also in May this aerial bombing continued taking place on civilians. The fight also continued after some rest during winter in September in Northern Darfur and again caused civilians death and injuries. As a result of the displacement some displaced women and girls in village of Darfur were experienced sexual abuses at the hand of government militias, rebel groups and other allied forces that participated in the fight. Many cases were documented by UN Human rights monitors in between April and June 2009, 21 cases involving 54 victims were documented among those 54 victims 13 of them were minors under 18, surprisingly the attackers were described as persons wearing military uniforms. Again in December 2011 and early 2011 attack took place in North and South Darfur on civilians and more than 70,000 were displaced largely from ethnic Zaghawa and Fur communities with perceived links to rebel groups and the fighting followed a break between the government and MinniMinawi, the only major Sudan Liberation Army (SLA) rebel leader to have signed the 2006 Darfur Peace Agreement. During government offensives in Darfur in 2014-2015, the Rapid Support Forces (RSF), which are composed of Sudanese Armed Forces (SAF) and aligned forces, led massive attacks on hundreds of villages, burning and destroying homes, and had been seen in grave abuses like rape and killings. Two counterinsurgency campaigns had been conducted by RSF in Darfur on 2014 and 2015, in which attacks had been carried on villages, burned and looted homes. Sudanese Armed Forces (SAF) supports RSF. Operation Decisive Summer" named campaign took place in South Darfur and North Darfur between late February and early May 2014. Operation Decisive Summer II," took place on between early January 2015 and the onset of the rainy season in June 2015. More than 151 survivors and witnesses of abuses had been interviewed by Human Rights Watch fled Sudan to Chad and South Sudan. Destruction of foods, stores had been taken place. Things even get worst when vases of extrajudicial killings and mass rapes and killings had been raised. Situation like to war crimes had been done with the violation of international humanitarian law by the RSF. States of emergency had been noticed in almost every state in Darfur. 1,626 cases of criminality and banditry, which included 384 killings had been reported between September to December 2015. Conflict and criminal activities have made things worse. 100 cases involving 222 victims of conflict-related sexual violence compared with 80 cases and 105 victims in 2015 had been reported from January to December by United Nations Hybrid Mission in Darfur (UNAMID). 119 girls and one boy, whose ages ranged between eight and 17 years old had become victims as per received cases by UNAMID from all five Darfur states.

An exhaustive aerial and ground offensive ground had been launched by the government on January 14, 2016 against Sudan Liberation Army-Abdul Wahid (SLA/AW). More than 44,700 persons had been displaced according to the UN Office for the Coordination of Humanitarian Affairs (OCHA). With the aim to increase the commission's capacity, a sub-office of the National Human Rights Commission had been set up by the government in February. Attacks had been documented on more than 50 villages by forces comprising Rapid Support Forces (RSF) and Border Guards. The Rapid Support Forces (al-Quwat al-Da'm al-Sari'in Arabic, or RSF) is a Sudanese government force under the command of the National Intelligence and Security Services (NISS). Sexual and gender-based violence; forced displacement; looting and burning entire villages; destroying food stores and other infrastructure had become common attacks done on villages. Alleged use of chemical weapons was not able to monitor by UN because of lacking access to Jebel Marra who is loyal to Abdel Wahid. Prohibition of Chemical Weapons (OPCW) had not been obtainable with adequate confirmed assurances by end of the year.

After all these attacks against civilians of Darfur, the government or other International organs like UN or even the AU did nothing to prevent the Serious Human Right Violations because of various reasons such as lack of access to those villages. But, those victims (actually right bearers) in Darfur have the right to live in their home land and not to be attacked by government rebels or other outsider military forces according to international laws and regional laws. Sudanese Government or International or Regional organs had a responsibility to stop such attacks and they had a responsibility to prevent such grave human right violations against Sudanese civilians and also to bring the wrong doers before the law in order to punish them. Here I personally criticize AU strongly for not preventing or at least decreasing the attacks against such civilians since one of the reasons they stated to withdraw from ICC is opposing the issuance of arrest warrant against Sudan president because, if the president is arrested the peace and security in the war-torn region will deteriorate and the civilians will be in danger. AU should have taken all necessary actions to stop the human right violations against civilians and prevent the violations.

As I mentioned under chapter three of this thesis among the reasons AU decided to withdraw from ICC, one of the reasons is that the decision of ICC issuing arrest warrant to Omar AL Bashir was against the aim of AU that targeted to stablish peace and security in the region. However, AU did not establish peace and security in Darfur or prevent serious human rights violations that has been took place is (in) the area. The attack was continuously taking place, serious human rights violations were also not stopped even after AU decided to suspend its cooperation with ICC. So, for me, since AU failed to ensure security of civilians, deciding to withdraw from the organ (ICC) that is supposed to punish criminals is not sound. The wrong doers must be punished according to international law by the organ that has power, such as the ICC.

4.3. The Role of AU's Resolution of 2009 in the Serious Human Rights Violations Since 2009

In July 2009, in Sirte, Au adopted a decision suspending cooperation with the ICC in respect of the arrest and surrender of Al Bashir. Since international actors were not able to provide swift and strong response to the atrocities in Darfur, the African Union stepped in and attempted to mediate the conflict between Janjaweed and government forces on one side, and JEM and SLA on the other.

With a ceasefire commission, (CFC); peacekeeping mission, African Union Mission in Sudan (AMIS); Darfur peace agreement, (DPA), the African States has tried to stabilize the Darfur region of Sudan. The African Union through AMIS has done much to provide security in Darfur, particularly in areas where it had troop presence and then AMIS has come a long way since it was established. For these efforts, the AU needs to be commended for stepping into Darfur when international community commitment was not forthcoming. It is to the credit of the AU that it has managed to pull together a mission that has provided a semblance of order and stability with little and belated international assistance. However, with a continued deteriorating security situation since early 2006, the incapability of AMIS to curtail the crisis in Darfur has become clearly visible. Nothing shows AMIS inability to manage the situation than the fact that its troops and personnel have become a prominent target of attacks from parties to the conflict, such attacks while altering the security dynamics also erodes the credibility of AMIS among Darfurians facing increasing insecurity.

In line with the decision adopted by the Peace and Security Council (PSC) at its 142nd meeting held on 21 July 2008, calling for the formation of an AU High Level Panel on Darfur (AUPD), with several eminent African personalities appointed as members of the AUPD. The PSC decision was subsequently endorsed by the 12th Ordinary Session of the Assembly of the Union held from 1 to 3 February 2009.

The AUPD, which is chaired by former President Thabo Mbeki of South Africa, was mandated to examine the situation in Darfur in depth and summited recommendations on the best effective and comprehensive way to address the issues of accountability and combating impunity, on the one hand and peace and reconciliation, on the other. In this context, the AUPD convened its inaugural meeting in Addis Ababa on 18 and 19 March 2009 and this Inaugural meeting was followed by wide consultations both the Sudanese and international stakeholders. The panel began its work in March 2009 and completed its assignment in September 2009. The panel's report is the outcome of four missions to Sudan undertaken by the Panel, amounting to forty days spent in the country, during which time it met with more than 2,700 representative individuals in Darfur and about 400 in Khartoum and visited Juba and additionally the Panel also visited the countries of the region and had discussions with legislature of the international community as a whole. Report of the African Union High Level Panel on Darfur (AUPD) has been sanctioned by the African Union Security Council on 207th meeting held on 29 October 2009. AU High-Level Implementation Panel for Sudan (AUHIP), comprised of former Presidents Thabo Mbeki, Pierre Buyoya and Abdulsalami Abubakar, to assist in the implementation of all aspects of the AUPD Recommendations, as well as in the implementation of the Comprehensive Peace Agreement (CPA) and other related processes, as part of the democratic transformation of the Sudan. The African Union's High-Level Implementation Panel for Sudan and South Sudan continued to mediate peace talks for Southern Kordofan, Blue Nile, and Darfur with little success.

Initially, the AU provided the needed rapid response when Western and international commitment was not forthcoming, however, the organization lacked the capacity, resources and ultimately the political will to hold the parties accountable to their commitments as contained in the various agreements they have endorsed. More glaringly the AU mission lacks the capability to improve significantly the security situation in Darfur worsening security situation throughout the region.

The apparent failure of the African Union mission to curtail the crisis in Darfur, epitomized by the worsening security situation has necessitated the call for the United Nations to take-over the AU mission, the logic behind the call was that the UN given its experience and resource base will be able to succeed where the African Union has failed. Informed by the prevailing political and security situation in Darfur, the United Nations Security Council in July 2007 implemented a

Union-United Nations Hybrid Mission in Darfur, UNAMID to protect resources, capacity, and equipment. This also ensures the safe delivery of humanitarian assistance and protection of civilians in Darfur. Resemblance of security has been implemented by the UNAMID mission to enforce security and militating. Discussion about UNAMID is important to show failure of the AU's own effort and the calling for help of UNAMID.

Unlike AMIS its predecessor, UNAMID civilian's protection responsibilities, which represents the core of the mission mandate is not only broad (military patrol and civilian community policing) but it is also more proactive. Given the mission force strength, the logistic and financial resources within it reach and the robust of the mission's civilian protection mandate it is no surprise that UNAMID has been more proactive and successful in enhancing the safe provision of humanitarian assistance and in facilitating secured humanitarian access throughout Darfur. Towards the realization of its mission's mandate and operation task UNAMID force conducts around 160 patrols on a daily basis. This represents an affirmation of the mission's attempt to increase its robustness, often in the face of numerous bureaucratic and/or armed obstructions and also UNAMID has and continued to strive to do everything in its power to protect civilians in Darfur, facilitate humanitarian aid operation to all areas, regardless of who controls them, and to help provide an environment in which peace can take root.

The United Nations through its active support for the African Union-United Nations Mission in Darfur continue to encourage political negotiation and the peace process in Darfur. UNAMID continue to work at intensifying diplomatic and political efforts aimed at bringing groups' that are non-signatory to the Darfur Peace Agreement (DPA) of 2006 into the peace process. As part of its contribution in pushing the political process in Darfur, UNAMID actively collaborate with stakeholders involved in the organization of the All Darfur Stakeholders' Conference held in Doha, Qatar, between 27 and 31 May 2011.

UNAMID was involved in the enhancement of the signature of the settlement between the Government of Sudan and the Liberation and Justice Movement on the adoption of the Doha Document for Peace in Darfur, DDPD and continue to reiterate the importance of political settlement on the basis of the DPA and DDPD. UNAMID failed to fully utilize and maximize its force strength, logistic capabilities and resources at its disposal to protect civilians in Darfur as would have been expected. The position of the United Nations Security Council in its most recent resolution on Darfur aptly underscores this failure and the Council in resolution 2003 of 29 July 2011 stated that UNAMID need to make full use of its mandate and capabilities, giving priority in decisions about the use of available capacity and resources. First, the protection of civilians across Darfur, including through proactive deployment and patrols in areas at high risk of conflict, securing IDP camps and adjacent areas, and in implementing a mission-wide early warning strategy and capacity; and secondly ensuring safe, timely and unhindered humanitarian access, and the safety and security of humanitarian personnel and humanitarian activities, so as to facilitate the unimpeded delivery of humanitarian assistance throughout Darfur. Although UNAMID's mandate includes reporting on human rights abuses, the mission has failed to release any detailed documentation about abuses against civilians during either of the RSF-led counterinsurgency campaigns. Sudan has routinely denied UNAMID access to conflict-affected areas so they can effectuate their mandate to protect civilians and monitor human rights. It has denied visas to incoming staff, and closed the human rights section's liaison office in Khartoum; al-Bashir has ordered the mission to adopt an exit strategy.

Besides this, other issues have contributed to undermine the security of Darfurian, UNAMID's personnel and stalled the realization of durable peace in Darfur. One such challenge is the problem of fractionalization and the apparent lack of cooperation among the rebel movements. The splintering of the rebel movements that followed in the wake of the signing of the 2006 Darfur Peace Agreement in Abuja has make the realization of a lasting peace in Darfur to become elusive. Contrary to expectation, the DPA ended any semblance of unity within or between the SLM/A and the JEM when major factions refused to sign the agreement citing major shortcomings the most critical been the lack of ownership by parties to the peace process. Since then, the once strong rebel movement has fragmented into several factions, this splintering is not in the spirit of the peace efforts and has largely worked to undermine the enforcement of ceasefire and peace agreement.

The fractionalization of rebel movements on its part have reinforce mistrust among parties to the conflict in Darfur, resulting in constant breaches of the ceasefire agreement and increasing attacks between parties and against civilians. An indication of the continued precarious security situation was the attack suffers by UNAMID military patrol on Sunday 6 November 2011 in which a peacekeeper was killed and two other seriously injured moreover, the attack comes less than one month after three UNAMID peacekeepers were killed in an ambush in North Darfur and is the latest in a series of hostile actions directed at UNAMID personnel, as well as humanitarian aid workers.

Showing the depth of its worry the United Nations Security Council in its resolution 2003 of July 2011 notes thus: The Council express deep concern at the deteriorating security situation in some parts of Darfur, including ceasefire violations, attacks by rebel groups, aerial bombardment by the Government of Sudan, inter-tribal fighting, attacks on humanitarian personnel and peacekeepers, which have restricted humanitarian access to conflict areas where vulnerable civilian populations reside, as contained in the Secretary General report and also the Council calls on all parties to cease hostilities, including all acts of violence committed against civilians, and urgently facilitate unhindered humanitarian access.

Worried by the security situation, the Council reminded parties to the conflict that there can be no military solution to the conflict in Darfur, and that an inclusive political settlement is essential to re-establishing peace. The Council also expressed its concern at the return to hostilities between the Government of Sudan and the Sudan Liberation Army, MinniMinawi faction (SLA/MM), and the ongoing hostilities between the Government of Sudan and the Sudan Liberation Army, Abdul Wahid faction (SLA/AW), and the Justice and Equality Movement (JEM).

The Council view was an affirmation of the fact that the security situation in Darfur remains tenuous as parties to the conflict in Darfur continue to conduct deadly attacks against each other positions as well as target civilians, humanitarian aid workers and UNAMID personnel. As much as UNAMID has striven to give effect to the actualization of its mission's mandate and operational tasks the security situation in Darfur remains in a state of flux and the peace process in limbo. Rather than been view essentially as failure on the part of UNAMID, the situation in Darfur is largely an indication of the complexity of peacekeeping and the challenge of negotiating sustainable peace in the context of an intractable conflict. Meanwhile, parallel negotiations between the government and other opposition movements continued primarily under auspices of the African Union High-level Implementation Panel.

The African Union-United Nations Mission in Darfur continues to encourage political negotiation and the peace process in Darfur. UNAMID continue to work at intensifying diplomatic and political efforts aimed at bringing groups' that are non-signatory to the Darfur Peace Agreement of 2006 into the peace process. As part of its contribution in pushing the political process in Darfur, UNAMID actively collaborated with stakeholders involved in the organization of the All Darfur Stakeholders' Conference held in Doha, Qatar, between 27 and 31 May 2011. UNAMID was involved in the abatement of the signature of the agreement between the Government of Sudan. Peace talks have been taken from 19 to 23 November 2015 regarding the AU High-Level Implementation Panel.

The discussion ended unsuccessfully as the government repeats the Doha Document for Peace in Darfur (DDPD). It serves the basis for the negotiations with rejection from SLA-MM and the JEM. Parallel talks also have been carried out by a rebel group Sudan People's Liberation Movement-North (SPLM-N).

It is clear that among the several reasons why AU decided to withdraw from ICC, one of the reasons is that ICC issuing arrest warrant against Omar AL Bashir was against the aim of AU to establish peace and security in the region. However, AU did not establish peace and security in Darfur or prevent serious human rights violations. The attacks on civilians and serious human rights violations were not stopped even after AU decided to suspend its cooperation with ICC. So, it is the conclusion of this thesis that AU decision did NOT reduce human rights violations in Darfur.

5. Conclusion

The Rome Statute gave the mandate for the ICC with the mission *to investigate, prosecute and try individuals accused of the crime of genocide, crimes against humanity, war crimes and, since the 2010 revision (subject to ratification after 2017) the crime of aggression.*

The available body of literature points to the argument that Africa was involved in and supported the creation of the ICC. An extensive body of research shows that African states contributed extensively to the preparations leading up to, during and after the diplomatic conference in Rome at which the Rome Statute of the ICC was finalized.

After the ICC started its operations, which was asymmetrically focused on African continent, the views of AU officials and member states towards ICC changed. The ICC instituted many cases against African state leaders. The case of warrants against Sudanese President Omar Hassan Al Bashir is being treated as the most important. From February 2003, the war in Darfur began. In this time Sudan Liberation Army (SLA) and Justice and Equality Movement (JEM) began fighting against the government of Sudan regarding the oppressing Darfur's non-Arab population issue. Because of the attack by the rebel group against the Sudan government, the latter responded to the attack by directing armed militia, known as the Janjaweed to carry out the "ethnic cleansing" against Darfur's non-Arabs and this resulted in the death of hundreds of thousands of civilian

Following the crisis, the United Nations Security Council (SC) gave the ICC jurisdiction over the situation in Darfur in 2005. Subsequently the then ICC prosecutor applied to obtain an arrest warrant against the Sudanese president, Al Bashir in July 2008. On March 4, 2009 the ICC Pre-Trial Chamber ordered the arrest warrant for a sitting president, Al Bashir, president of the Sudan. The warrants of the arrest for Omar Al Bashir lists ten counts on the basis of his individual criminal responsibility under article 25(3)(a) of the Rome Statute. The accusation or issuance of arrest warrant for President Al Bashir raised a debate, politics (peace) versus justice.

Following the Prosecutor's application for an arrest warrant for President Bashir, in July 2008, the AU Peace and Security Council, the primary decision-making organ for conflict resolution in Africa, immediately adopted a decision calling on the UN Security Council to deploy Article 16 of the Rome Statute to defer the process initiated by the ICC, which, was not done. This contributed to an impasse in AU-ICC relations.

After the arrest warrant that was issued to the president Omar Al Bashir, the AU-ICC relation got worse when the decision suspending cooperation had been adopted by the AU States in Sirte in July 2009. Finally, enforcement of the warrant has not been agreed by all AU Member States. To express concern the AU's decision has been suspended with ICC. The first concern of the AU was that the arrest warrant against the sitting head of state was not issued on good time; this means the timing is not good. The second rationale for suspension of cooperation of AU with ICC was that: the AU questions whether the Rome statute should be binding on the non-state parties. The third basis was that the AU is disappointed with the UN Security Council's "refusal" to acknowledge its request for a deferral under Article 16 of the Statute, which grants power to the Council to defer cases for one year.

Despite AU's decision and the rationale for such decision, the conflict in Darfur, continued to involve government-backed militia forces and rebel movements that have caused civilian deaths, injuries, and displacement. To take as an example in early 2009 fighting between government forces and Justice and Equality Movement (JEM) rebels in Muhajeri, South Darfur, displace more than 40,000 civilians. And also, in December 2010 and early 2011 a surge in government-led attacks on populated areas in North and South Darfur killed and injured scores of civilians, destroyed property, and displaced more than 70,000 people, largely from ethnic Zaghawa and Fur communities with perceived links to rebel

groups and the fighting followed a break between the government and MinniMinawi, the only major Sudan Liberation Army (SLA) rebel leader to have signed the 2006 Darfur Peace Agreement.

Parallel talks between the Sudanese government and the Sudan People's Liberation Movement-North (SPLM-N), a rebel group based in South Kordofan and Blue Nile states, also ended without success. AU and the United Nation tried to control the crises in Darfur, and the serious human rights violations that followed, through many ways but they were unsuccessful. For instance, Initially the AU provided the needed rapid response when Western and international commitment through African Union Mission in Sudan (AMIS) was not forthcoming, however, the organization lacked the capacity, resources and ultimately the political will to hold the parties accountable to their commitments as contained in the various agreements they have endorsed. More glaringly the AU mission lacks the capability to improve significantly the security situation in Darfur worsening security situation throughout the region.

In conclusion, the human right violation in Darfur continued even after 2009. AU has tried to end or at least decrease the human right violation in Darfur through different mechanisms. However, their efforts were not a full success, and as a result the trend of human right violation in Darfur has shown an increase and the security situation in the study area is still in danger especially for civilians.

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