

# Al-Bashir: South Africa's moment of glory and shame

Sudan President Omar al-Bashir's decision to leave South Africa speedily to avoid arrest on an International Criminal Court (ICC) indictment while attending the 25th African Union summit was a dramatic diplomatic development.

By [David E Kiwuwa](#) 19 Jun 2015



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The warrant, issued in March 2009, was for various [crimes](#) against humanity including pillage, murder, extermination, torture and rape against thousands of civilians in Darfur.

It was never likely that al-Bashir would have been arrested. As usual, international gatherings of regional or world leaders such as the African Union summit come with some sort of diplomatic courtesies, including immunity from arrest.

## Significance of the court case

But the very fact that proceedings were commenced is instructive. It is the [first time](#) a court of law in a state that is a signatory to the [Rome Statute](#), which established the ICC, has come close to pronouncing itself on the indictment and answering the key question whether a sitting head of state could be detained and handed over to the ICC.

Prior to the events in South Africa, al-Bashir had travelled to several [countries](#) that are also signatories to the Rome Statute without much incident.

The Arab league rejected his indictment while the African Union initially asked for a year's [deferral](#). The continental body subsequently called for outright rejection of the ICC's jurisdiction - even though 33 of Africa's 54 states are signatories.

## South Africa's lost opportunity

The attempt to have al-Bashir arrested is indicative of the vibrancy of South African civil society activism when it comes to [transnational norms](#) of human rights and democracy. The case was brought by the NGO [Southern African Litigation Centre](#)

However, that al-Bashir left [South Africa](#) with the complicity of his hosts before the court order was acted on is also telling.

It points to the problematic tension between the South African government's adherence to the rule of law on one hand and the dictates of regional and strategic posturing on the other.

Since the advent of inclusive democracy in 1994, South Africa has been held up internationally as a good example, a view which has brought the country a great many benefits - some mostly symbolic. These include invitations to become a member of the [G20](#), the developing country grouping [BRICS Forum](#) and elevated status in the International Monetary Fund, the World Bank and UN structures.

## South Africa's exceptionalism

That noted, South Africa cannot sustain its international standing on the 1994 dividend alone. It needs to be seen to speak on behalf of and have the backing of the continent. But to rally Africa behind it, South Africa has to make Africa feel it has shared its exceptionalism that came as part of the 1994 dividend.

As such, and cognisant of its own position in the region, South Africa clearly chose not to be seen to sell out an African leader given the rising chorus of criticisms against the ICC. Equally, it acted in its own national interest.

But a number of events point to the inconsistent way in which South Africa deals with its [human rights commitments](#), international obligations, pan-Africanism and continental leadership. These include:

- The recent deadly xenophobic [riots](#) that saw African foreigners murdered, their property pillaged and being hounded out of neighbourhoods with contradictory [responses](#) from the government.
- Denying the [Dalai Lama](#) a visa to visit the country in order to appease China.

In the al-Bashir case, the failure to [abide](#) by its court's decision to stop him from leaving the country reflects South Africa's weak and inconsistent constitutionalism. It also shows South Africa is not above subjecting judicial proceedings to political and diplomatic bargaining. As such, the country missed an opportunity to distinguish itself as a moral authority in Africa.

For al-Bashir, the attempt to have him arrested is a rude reminder that he is not entirely off the hook. He will be forced to further curtail his movements. This will be a constant reminder of his pariah status in the world.

It might also serve as a warning that the quest for international justice is alive and kicking.

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