



Al-Bashir: Can the quest for international justice deter persecution of Christians?

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World Watch Research

August 6, 2015

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Introduction

The decision by the South African Court to order the arrest of president al-Bashir created uproar in some corners. Some of the South African Press stated that the decision by the Court to order the arrest of a sitting president should compel South Africa to reconsider its continuous membership of the Rome Statute. It is also stated that had al-Bashir been arrested in South Africa it would have created a devastating precedent for other presidents of other countries. The National Executive Committee of the African National Congress (ANC) lambasted the ICC saying “International Criminal Court (ICC) is no longer useful for the purposes for which it was intended....”The Question for us, as a Christian organization is: is there something for us in there?

International justice: background

Ever since the Military Tribunals of Nuremberg and Tokyo, there has been an ongoing debate about the relevance of pursuing accountability to achieve justice and lasting peace. Those who oppose the trial that followed World War II say, it was just a “victor’s justice”. Those who support the trial believe that in some situations resorting to international justice is mandatory to pass the concept of accountability to the coming generations. In this regard, they cite how democracy has been flourishing in Germany and Japan following those military tribunals.

The debate has come back at the beginning of the 21st century, especially following the establishment of the International Criminal Court (ICC). Online debates, motions in parliaments and public hearings have given considerable time and space for issues surrounding peace and justice, especially global justice. In 2012 at the United Nations Security Council peace and justice debate Ambassador Susan Rice, after underlining the importance of international justice, said “strengthening the global system of accountability for the worst atrocities remains an important priority for the United States. (...) [P]reventing mass atrocities and genocide is a core national security interest and core moral responsibility for our nation.”¹ The then US Ambassador to the United Nations concluded, “...we must rededicate ourselves to preventing atrocities from happening and ensuring accountability in their aftermath. We have made progress on both fronts, but much work remains. The United States will not rest until those responsible for perpetrating mass atrocities face justice and those who would commit such crimes know they will never enjoy impunity.”² The most Revered Desmond Tutu was also among the well-known personalities to support the idea of global justice.

The International Criminal Court (ICC)

Debates surrounding the International Criminal Court (ICC) and its usefulness in solving and preventing crises have reached a fever pitch after its indictment of Sudanese president Omar al-Bashir and the late Muammar Gaddafi, and involvement with post-election violence in Kenya. Some argue that the value of the ICC is its work to build lasting peace and thorough democracy through affirmation of the rule of law. Others contend that the involvement of the ICC exacerbates already delicate situations in countries wracked by conflict and massive human rights violations. By extension this would mean had the ICC been there, it would have

¹ <http://usun.state.gov/briefing/statements/199261.htm>

² <http://usun.state.gov/briefing/statements/199261.htm>

been impossible to end Apartheid in South Africa. Transition in Spain, Portugal, Latin America and Eastern Europe would have been an illusion.

The procedural aspect of the ICC - the fact that it works under the principle of universal jurisdiction - has also attracted negative attention. Henry Kissinger famously asserted how, through its universal jurisdiction, the ICC fosters a tyranny of judges.³ Kenneth Roth, on the other hand, believes Kissinger mischaracterized the whole concept of universal jurisdiction under the ICC.⁴

The fact that the ICC has indicted only Africans has created another prong to the argument against it. African scholars have frequently referred to its imperialist and neo-colonialist roots, and even the African Union (AU) has, on different occasions, lambasted the ICC Prosecutor for demonstrating partiality.

The ICC and Sudan

Sudan signed the Rome Statute in 2000; but not yet ratified it. Accordingly, it was through the UN Security Council Resolution (Res 1593/2005) that the situation in Darfur was referred to the ICC Prosecutor, thereby triggering the ICC jurisdiction over the matter. The argument by the government lawyers and the AU was that al-Bashir has state immunity and should not be tried. The AU officially requested, at least, deferral of the arrest warrant. Many states, including member states to the ICC Statute, failed to arrest al- Bashir during his visit.

However, things started changing. Some states are showing a willingness to arrest al-Bashir. In December 2011, a Kenyan High Court judge ruled that as a member state, Kenya has an obligation to arrest al-Bashir once “he steps his foot on the Kenya soil.”⁵

In July 2012, the AU had to cancel its scheduled Summit in Lilongwe Malawi because the president of Malawi made it clear by stating, “As a member state, Malawi will not host a leader who is indicted by the ICC.”⁶

In 2015, South Africa was preparing itself to host the AU Summit- a Summit that usually gathers virtually all heads of states (government) of the continent. Thus, the president of Sudan was invited. And he showed up. However, the situation in South Africa changed. Activists challenged the South African government before the High Court in Pretoria to comply with the arrest warrant issued by the ICC. The South African High Court first ordered South Africa has a compelling duty “to prevent president Omar al-Bashir from leaving the country until an order is made in this Court.”⁷ However, the government of South Africa decided to let him leave the country. Following that, the Court said failure to arrest al-Bashir was a violation of the constitution of South Africa.⁸ The bottom line is that even though not successful in arresting Mr. al-Bashir and even if the AU rejects the ICC arrest warrant against al-Bashir, the incidents show that even in Africa, in some states al-Bashir can face serious problems.

³ <https://www.globalpolicy.org/component/content/article/163/28174.html>

⁴ <https://www.foreignaffairs.com/articles/2001-09-01/case-universal-jurisdiction>

⁵ <https://www.ictj.org/news/kenya-court-issues-arrest-warrant-sudan%E2%80%99s-bashir>

⁶ <http://www.bbc.com/news/world-africa-18364947>

⁷ <http://www.theguardian.com/world/2015/jun/14/sudan-president-omar-al-bashir-south-africa-icc>

⁸ <http://www.news24.com/SouthAfrica/News/LIVE-Court-to-hear-Al-Bashir-arrest-application-20150615>

The president received a hero's welcome in Khartoum. The country's Foreign Minister said that the attempt to arrest the president was an attack on Sudanese sovereignty.

Can Christians who face persecution in the country benefit from the quest for international justice?

To begin with, as Revered Dr. Martin Luther King said, "Injustice anywhere is a threat to justice everywhere." As a Christian organization justice is one of the values we cherish. When we analyze persecution, we lean on the notion of justice to seek remedies for our brothers/sisters who suffer in the hands of others. Thus, whether al-Bashir is indicted for the crimes he committed in Darfur, we should support the attempts to bring al-Bashir to justice. Secondly, even though not recognized by the international community, the Khartoum regimes have continuously committed crimes against humanity against Christians, crimes that are systematic and widespread in nature. A continuous bombing of civilians in Nuba Mountains since 1980s has resulted in decimating Christian populations - genocide by attrition. Furthermore, as the civil war in South Sudan has merged with the war between Sudan and SPLA-N, in Unity State, in particular, giving al-Bashir another reason to target Christians, the quest for international justice might help deter the behavior of the government of Sudan.

At an individual level, the international community is well aware of the fact that the regime in Khartoum has been targeting Christians. For example, in 2013/14 it was after relentless pressure from the international community that Miriam Ibrahim was released after being sentenced to death for apostasy. Currently, just to mention few, two pastors from South Sudan are facing trial for being a Christian. Thus, it can be argued that the pressure from the international community to bring al-Bashir to justice might have a deterrence effect when it comes to the treatment of Christians.

To sum up, the gross violation of human rights in Sudan has become more vivid than ever. The indictment of al-Bashir by the ICC for crimes against humanity and genocide is a testament to that. Persecution of Christians, which goes to the extent of ethnic cleansing and genocide, increased as *Dictatorial paranoia* and *Islamic extremism* work hand in hand as persecution engines – a symbiotic relationship⁹ - to eliminate the Christian community from the country. Following the independence of South Sudan, massive deportation of Christians and indiscriminate attacks on Nuba Christians are also indications of the fact that Christians are facing chronic challenges at the hands of the radical Islamic government of the National Congress Party. Hence, the onus is on the international community as well as any organization, to work with those who support the idea of bringing the perpetrators of atrocity crimes to justice.

Of course taking a side on the issue of the ICC might pit individuals and organizations who push for international justice against many African governments. At the same time, it is also crystal clear that, as a civil society, they will not be invited to the State House for dinner with the

⁹ The symbiotic relationship between *Dictatorial paranoia* and *Islamic extremism* is not that of commensalism where one gets benefit and the other gets neither benefit nor harm. It is rather a mutualism where both radical Muslims are using the regime to expand their ideology of eliminating Christians from the country, and the government uses radical Muslims to maintain its powerbase.

African elites. After all, the space for civil society in many African countries is shrinking on a daily basis.