

The ICC: When Law Becomes Injustice

Posted On 14 Jun 2015

By : Aayesha Soni

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The Pretoria High Court had issued an interim order stating that Sudan's leader Omar al-Bashir is barred from leaving the country. He is accused of committing war crimes, crimes against humanity and genocide during the Darfur conflict, and has been instructed to stay in South Africa until Monday when the court will take a decision on whether to hand over President Bashir to the International Criminal Court (ICC). From the outset, we must be clear that all and any forms of injustice are condemned in the strongest terms. Tyrannical rulers and perpetrators of mass murder must be held accountable for their crimes, however, this rule must be applied to ALL men who fall under the above description, and not a select few.

It is with a deep sense of embarrassment that I ask a question plaguing many an educated mind: Do you think the ICC would ever pursue an Israeli, Western European or North American leader as they do Africans? From what we have witnessed, and no conjectures of hypothetical extrapolations needed, the simple answer is no. I visited the "Current Cases" page on the ICC official website; there are 7 cases currently underway; 7 African leaders currently being tried; 7 men of colour being tried. It is never in the interest of progressiveness to propagate racist ideals when the motives do not exist, and some people may argue that if these are the men guilty of war crimes they are the ones who should be tried. I agree completely, any man who orchestrates gross human rights violations of another man deserves to be held accountable. However, knowledge of current world affairs makes it all too transparent that African leaders are not the only men who need to be hounded by the ICC.

Why is George W Bush not being tried, the man who led a modern day crusade against Iraq and Afghanistan with fabricated motives and is responsible for the complete destruction of those countries? Supported by his cronie in savagery Tony Blair, the Washington DC-based Physicians for Social Responsibility (PRS) released a landmark study this year concluding that the death toll from 10 years of the "War on Terror" since the 9/11 attacks is at least 1.3 million, and could be as high as 2 million. That warrants a war crime worthy of trial. Why is Benjamin Netanyahu not being tried, a man who launches an offensive on the besieged

people of Gaza every 2 years, wreaking havoc and death that doesn't spare children, hospitals and even UN shelters. The UN, Amnesty International, Human Rights Watch, and the Israeli Human Rights Organisation B'Tselem, amongst many others, have conducted extensive fact-finding missions concluding that Israel is guilty of war crimes already. That warrants a trial, surely.

In looking for answers as to why African leaders seem to be the only men pursued by the ICC, I came across a shocking fact: there are international agreements of the Rome Statute referred to by several terms, including Article 98 agreements, bilateral immunity agreements (BIAs), impunity agreements, and bilateral non-surrender agreements. Starting in 2002, the United States began negotiating these agreements with individual countries, and has concluded at least one hundred such signatories. Countries that sign these with the United States agree not to surrender Americans to the jurisdiction of the International Criminal Court. Essentially, no American leader will ever face what President Bashir is purely because the US has been coordinating mass diplomatic arrangements, exclusive alone to them. The hypocrisy of the ICC is exposed, if by nothing else, then by these agreements.

The ICC is a court of no moral authority. As it is currently being run, it's sole purpose is to allow Western powers to police their former African colonies. If we want leaders to be brought to justice, then race, ethnicity, countries of origin and political affluence can have no governing role in who gets tried and who doesn't. By all means, leaders such as President Bashir need to be brought to justice, but then the countless Western leaders guilty of war crimes need to be held liable too. Ramzy Baroud agrees and aptly summed up what is needed now when he said, "It is nice to think that Palestinians can take Israel to the ICC, even if in principle, but the day we see an Israeli war criminal standing behind bars because of Israel's war crimes in Jabaliya, will be the day we see an American military official paying for his crimes in Falluja. It is not 'symbolic victories' we are truly seeking, but a serious paradigm shift."

Written by:

Dr Aayesha Jalaluddin Soni – Vice-chair of Media Review Network (MRN)

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