

ICC Prosecution of Mugabe Urged

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Is the groundwork being laid to bring Zimbabwe's president to The Hague?

Zimbabwe's beleaguered non-governmental organisations and charities have appealed to the International Criminal Court, ICC, to prosecute President Robert Mugabe and government officials who they say have been responsible for widespread crimes against humanity over the past six years.

The plea by the National Association of Non-Government Organisations, NANGO, coincides with a call by the London-based International Bar Association for the United Nations Security Council to authorise an ICC investigation into Mugabe's alleged crimes.

But calls for the prosecution of Mugabe, widely seen as the supreme architect of Zimbabweans' unprecedented suffering, have done little to provide hope to the country's impoverished and embittered populace.

"I don't believe anyone can do anything to Mugabe, so talk of him being arrested [for human rights abuses] might just be a waste of time," said Sifundiswa Ndlovu, an unemployed man whose five-room home in a Harare working class suburb was destroyed last year in Mugabe's notorious Operation Murambatsvina [Operation Drive Out the Rubbish]. "That man is arrogant, and I think the international community fears him as well."

Ndlovu, 57, has suffered several times over. First, he survived Mugabe's Operation Gukarahundi, in which more than 25,000 civilians were killed in Matabeleland and buried in mass graves by Mugabe's special army unit, the 5th Brigade. The latter was trained by North Korea following an agreement between Mugabe and the late North Korean dictator Kim Il-Sung. Gukarahundi is a traditional term in the Shona language, which translates as, "The early rain that washes away the chaff before the spring rains."

Ndlovu, who belongs to Zimbabwe's minority Ndebele ethnic group, then moved to Harare in 1989 for greater safety and for a job as a foreman with a construction company. He became unemployed when the construction company folded and he eked out a meagre living selling second-hand goods at a flea market. Then the home he shared with his wife and four children was destroyed in Operation Murambatsvina.

Similar ordeals experienced by millions of Zimbabweans led to the appeals from Zimbabwe's civil society and the International Bar Association for the ICC to open a criminal investigation against Mugabe alongside those it has already begun in northern Uganda, the Democratic Republic of the Congo's Ituri province and Sudan's Darfur region.

Mark Ellis, executive director of the International Bar Association, the global organisation for law workers, said in a recent article for the Paris-based International Herald Tribune, "Mugabe's state machine is simply too powerful and corrupt to be defeated by weakened and demoralised citizens. The escalating humanitarian crisis in Zimbabwe requires an immediate and forceful international response."

"Mugabe must be held accountable for the crimes he has committed. A UN Security Council referral to the International Criminal Court - similar to the [Security Council] referral over the Darfur situation - is the most appropriate and effective response."

NANGO, calling for Mugabe's prosecution in The Hague, pointed out that UN Secretary-General Kofi Annan had sent a special envoy, Anna Tibaijuka, to Zimbabwe to investigate the human costs of Operation Murambatsvina. In her 100-page report, Tibaijuka told Annan that although Mugabe claimed that the operation was designed to target illegal dwellings, "it was carried out in an indiscriminate and unjustified manner, with indifference to human suffering".

Tibaijuka estimated that more than three million people had been directly affected by the mass destruction of the homes of Zimbabwe's poor.

"Immediate measures need to be taken to bring those responsible to account," she advised Annan. "The government of Zimbabwe clearly caused large sections of its population serious suffering that must now be redressed with the assistance of the United Nations and the broader international community."

Zimbabwe's outspoken Roman Catholic Archbishop Pius Ncube and South Africa's Cardinal Wilfred Napier have both branded the Mugabe administration guilty of crimes against humanity, particularly by withholding food aid from large sections of the population, and urged the Security Council to take responsibility for the situation and take action.

George Charamba, Mugabe's press secretary, poured scorn on the calls for ICC action against the Zimbabwean president. Since Zimbabwe was not a signatory to the Rome statute, it was not therefore legally bound by its dictates, said Charamba. He dismissed the International Bar Association as just one of a raft of bodies around the world that are trying to put pressure on Zimbabwe's ruling ZANU PF party in the hope of reviving the troubled opposition Movement for Democratic Change.

However, Charamba was making a common error about the powers of the fledgling ICC, which has powers to investigate a case beyond the countries which have signed up to it.

Although it is true that Zimbabwe, like the United States, has not signed the Rome statute, it is a fact that the UN Security Council can refer a case to the ICC, as they did with the government-backed militias in the Darfur area of Sudan, which could lead to an investigation and to Mugabe's arrest if he sets foot in any country which has signed the treaty. "Exercising its wide discretionary powers, the Security Council could specifically name Mugabe as an ongoing threat to the peace of the [southern African] region and authorise an ICC investigation, even though Zimbabwe has refused to accept the court's jurisdiction," said Ellis.

The groundwork for a possible indictment of Mugabe at The Hague is perhaps at last being laid following a scathing report by a commission of the African Union, grouping all Africa's states except Morocco, which strongly condemns Zimbabwe's president for abusing his people's human rights "with impunity".

The African Commission for Human and People's Rights, ACHPR, at its latest meeting in the Gambia, said the AU is not doing enough to force Mugabe to address "a very desperate situation in Zimbabwe". The commission, whose chairman is former Mali President Alpha Oumar Konare, will present its report at the AU summit in Khartoum on January 23 and 24.

The AU and its predecessor, the Organisation of African Unity, have long been accused of ring-fencing Mugabe from domestic and international criticism.

Following the breaking of silence by an important commission of the AU, Zimbabwean analysts and human

rights activists see a glimmer of hope that concrete international action might be taken against Mugabe.

"This will place a lot of pressure on Zimbabwe," said Arnold Tsunga, director of Zimbabwe Lawyers for Human Rights. "This is the first time such a significant body, so close to African heads of state, observes and condemns such defiance of human rights compliance. It gives the African Union heads of state an opportunity to show they have the ability, and are committed to deal with, such issues."

"For the first time, we might now be seeing the ICC finally moving on Mugabe," a University of Zimbabwe political scientist told IWPR. "It's crucial that Africa has spoken out against what's going on in Zimbabwe."

But Lovemore Madhuku, chairman of the National Constitutional Assembly, Zimbabwe's largest civic group, said it was useless to expect that the resolution would spur AU leaders into changing their docile approach to Mugabe.

"As has happened in the past, the latest ACHPR report might not even get a mention at the AU summit," said Madhuku. "It is futile to expect anything serious from these African leaders." He said they would be eager to avoid offending Mugabe and would probably play down the commission report as the work of technical people, which does not reflect the AU's political sentiment

"How can you expect a club of leaders, which include the likes of Omar Bongo and Yoweri Museveni [the long-serving presidents of Gabon and Uganda, both accused of human rights abuses], to censure Mugabe when they are changing their constitutions to do exactly what Mugabe is doing, if not worse?" asked Madhuku.

Mugabe's human rights record has been under the international spotlight since 2000 when he began seizing white-owned commercial farms in a violent exercise that left dozens of people dead. He also unleashed violence on opposition groups by government-trained youth militias and liberation war veterans in the prelude to 2000 parliamentary and 2002 presidential elections, widely condemned as having been heavily rigged. Mugabe's government has banned four newspapers since 2003, including the Daily News, the country's only independent daily.

Western governments have been outspoken against Mugabe's excesses, but until the ACHPR spoke out against Mugabe African states had maintained silence out of a sense of "brotherhood" with Zimbabwe's leader.

In a possible omen of things to come for Zimbabwe, the ACHPR expressed solidarity with the ICC on its investigations in northern Uganda, Darfur and Ituri.

Of course, no one knows if an ICC investigation for crimes against humanity would bring an end to Mugabe's regime. But Ellis said, "We have to try, because the Zimbabwean government's systematic human rights abuses have reached staggering proportions.

"A referral to the ICC would also send an unmistakable message to the beleaguered citizens of Zimbabwe that Mugabe will ultimately be held accountable for his crimes. There is no statute of limitations for those, like Mugabe, who commit atrocities against their own citizens. It is time to bring him to justice."

Tino Zhakata is the pseudonym of an IWPR contributor in Zimbabwe.

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