

IBA concerned by South Africa's plan to withdraw from the International Criminal Court

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The **International Bar Association** (IBA) is greatly concerned that the African National Congress (ANC), South Africa's ruling party, has declared its intention to withdraw the country from the International Criminal Court (ICC) and called for all nations in Africa to walk out of the Court.

Mark Ellis, IBA Executive Director, commented: *'It is baffling as to why South Africa, a country which played such a prominent role in the establishment of the ICC, now intends to walk away from working towards the Court's objectives of ending impunity for atrocity crimes. The IBA urges South Africans to reject the African National Congress' resolution to withdraw from the ICC and to remain, by example, a beacon of hope for victims of egregious crimes everywhere.'* Dr Ellis added: *'Those, whose human rights are violated, need to be assured that the perpetrators will be punished. As Kofi Annan once remarked about the ICC, "[i]n the prospect of an international criminal court lies the promise of universal justice".'*



South Africa played an important role in creating the ICC, established in 2002. It was one of the first countries to ratify the Rome Statute, which set up the Court, and to incorporate it into domestic law. The resolution of the ANC, if adopted, will make South Africa the first nation to leave the fold of the ICC.

The IBA reiterates the importance of continued efforts to address the concerns of all African State Parties to the ICC and, to that end, calls upon national and international stakeholders to engage with the ANC to promote discussion between South Africa and the Court.

Obed Bapela, ANC foreign policy committee member, reportedly said that the resolution to withdraw from the ICC was passed because the ICC has 'lost its direction'. The resolution comes after South Africa was criticised for its handling of Sudanese President Omar al-Bashir's visit to the country earlier this year after the ICC had issued a warrant for his arrest for alleged war crimes and genocide committed in Darfur. Despite the warrant and a High Court ruling ordering the government to arrest him, Mr al-Bashir was allowed to leave the country.

In a recent IBA interview, Fatou Bensouda, Chief Prosecutor of the ICC, stated: *'Indeed, there has never been an African bias, there is no African bias and there never will be an African bias. If you look at the reality on the ground you will see... that it's actually African governments, African countries and African Member States that are coming towards the ICC to request intervention.'*

Ms Bensouda further stated: *'I also want to mention that nobody can deny that these crimes are taking place in situations that have been referred to the Court and there are victims of those crimes. There are victims of these serious atrocity crimes and they are African victims. I do not think it is justified to say that the ICC should not intervene because they are African victims and they do not deserve justice. I think they do. This criticism that all our situations are in Africa is also untrue. We are conducting preliminary examinations outside of Africa, such as in Afghanistan, Colombia, Palestine, Ukraine and Georgia. We are conducting preliminary examinations in all of these situations and if in any of them my jurisdiction is met I will not hesitate to open investigations without fear whatsoever.'*

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Notes to the Editor

1. [Click here](#) to watch the full IBA interview with Fatou Bensouda.
2. [Click here](#) to watch Fatou Bensouda in conversation on Monday 5 October 2015 at the IBA Annual Conference in Vienna, Austria.
3. The IBA's **International Criminal Court and International Criminal Law Programme** (IBA ICC & ICL Programme), based in The Hague, monitors issues related to fairness and equality of arms at the ICC and other Hague-based war crimes tribunals, and encourages the legal community to engage with the work of these courts. As such the IBA Hague Office acts as an interface between the courts and the global legal community.
4. The **International Bar Association** (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. Through its global membership of individual lawyers, law firms, bar associations and law societies it influences the development of international law reform and shapes the future of the legal profession throughout the world.

The IBA's administrative office is in London. Regional offices are located in: São Paulo, Brazil; Seoul, South Korea; and Washington DC, US, while the International Bar Association's **International Criminal Court Programme** (IBA ICC) is managed from an office in The Hague.

The International Bar Association's **Human Rights Institute** (IBAHRI) works to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

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