Fatou Bensouda: Critics 'don't understand the ICC'

April 11, 2017

By Abu-Bakarr Jalloh, Mohammed Khelef

Deutsche Welle

<https://www.dw.com/en/fatou-bensouda-critics-dont-understand-the-icc/a-38372198>

Has the International Criminal Court (ICC) been biased against Africa in its investigations of war crimes and crimes against humanities? DW's Abu-Bakarr Jalloh and Mohammed Khelef spoke exclusively to the Chief Prosecutor of the ICC, Fatou Bensouda,  at the Mo Ibrahim's Governance Weekend in Marrakesh, Morocco, in a live interview on Facebook. Viewers also also had an opportunity to ask questions.

DW: A lot of people are praising the ICC but at the same criticizing it for its main focus on Africa, what can you say about it?

Fatou Bensouda: I am glad that they are praising the ICC because I think the ICC is doing phenomenal work. The ICC was set up as an independent permanent criminal court to try very serious crimes; war crimes, crimes against humanities and genocide. This is important especially when it comes to accountability and justice for the victims. Hundreds of thousands of people suffer from these crimes across the continent, elsewhere of course, but since we are talking about Africa, hundreds of thousands of people suffer from these atrocity crimes. But you find that in most cases nobody is giving them justice and ICC is doing that. I also wanted to talk about the important role that Africa has played in establishing the ICC. It is really because of a final push that was made by African states that the ICC came to be established and the treaty was signed in 1998. The court was established in 2002, only within four years and that is a record for any international treaty. The Rome statute has now 124 state parties. Out of that 34 African states are part of the ICC.

Which makes it the biggest bloc?

It is the biggest bloc in any one continent. Africa has really played a role in establishing the ICC, in becoming the biggest bloc of states in any one continent to be part of the ICC and in making the ICC start to work, because the ICC has been getting referrals from Africa. Today, we have seven African countries that have referred cases to the ICC asking for ICC to come to Africa.

And by countries you mean governments.

Governments, this is what I mean. Uganda, the Democratic Republic of Congo, the Central African Republic on two occasions, Mali, Cote d'Ivoire, and the most recent one was Gabon. Gabon has requested the ICC to come and look into the post electoral violence that took place. So, opposed to what people are saying that ICC is going to Africa, it is really Africa that is coming to the ICC.

And is there any truth about the anti-Africanism of the ICC?

There is no truth in any kind of [anti-Africanism against Africa by the ICC](https://www.dw.com/en/will-au-members-really-withdraw-from-the-icc/a-37374040). I have talked about the establishment and the cases are coming from Africa but I would also like to tell you about the personnel of the ICC. I am the chief prosecutor of the ICC and the last time I checked, I am African.

Some Africans say they are proud of you despite the criticisms about the institution that you work for. They are proud to have an African occupy such a position. But they've also been saying it has to do with colonialism in that states like Britain, as a colonial master, was engaged in the Iraq war and Tony Blair has been criticized a lot. But people say Tony Blair was not really investigated by the ICC.

First, let me correct some things, all the states that have gone to join the ICC did so as independent sovereign states, not because they are colonist of any particular state. This is one of the few treaties where you find that independent African states are joining the treaty. They are signing and ratifying the treaty, they are not inheriting it. Again if you look at the ICC staff, several of them are from Africa including the judges. This is very important because the judges are the ones who take the important decisions. I am a prosecutor, I gather my evidence and I take it to the judges, independent judges who have also been elected by the Assembly of State Parties of the ICC. If they do not agree with my evidence, they would throw it out. There have been occasions when we as prosecutors have taken matters to the judges and they don't agree with it.

Like with the case of Kenya?

Now [the case of Kenya is a different one](https://www.dw.com/en/kenyatta-icc-is-not-fulfilling-its-mandate/a-19174689). I wouldn't say the judges didn't agree because you have seen what has happened with the case of Kenya. The level of witness interference was unprecedented. The lack of cooperation was something else. The cases, even though were solid at the beginning, became derailed.

Would you say there was political intervention?

There is one of the cases; let's say in the Ruto case, for instance [William Ruto, Deputy President of Kenya who was also on trial before the ICC]. The judges of the ICC said that because of the high level of politicization and the high level of witness interference and tampering and the lack of cooperation, they were not going to grant the defense a no case to answer. Instead they declared it a mistrial.

But the [majority of African governments want to withdraw from the ICC](https://www.dw.com/en/will-au-members-really-withdraw-from-the-icc/a-37374040). What is your office doing about this?

If you fast forward a little bit, I think there is a different opinion. The talk about mass withdrawal, I think the narrative was not quite sincere. It wasn't quite accurate in the sense that there are countries that said they wanted to withdraw from the ICC and there was [a movement of pushing other states to join them.](https://www.dw.com/en/to-stay-or-to-go-south-africa-and-the-icc/a-37853901) But what we have seen at the last Assembly of State Parties, for the first time we have the overwhelming majority of African states coming forward to renew their commitments to the ICC. This is very significant here because what was happening is you have those who criticized the court, who want to derail the court, who want to derail the proceedings have the loudest of voices and there are supporters there who are quiet, they don't say much. But for the first time, even those who were quiet were now voicing support for the ICC.

Facebook Live Viewer's question:

Rashid Abdallah from Tanzania: Why are former US President George Bush and former British Prime Minister Tony Blaire not in front of the ICC?

The unfortunate thing which I really regret is the fact that people don't understand the jurisdiction of the ICC. It is not so simple. The ICC was established to have jurisdiction over war crimes, crimes against humanity and genocide when it happens on the territory of a state party. That means those who have signed and ratified the treaty.

America is not one of them, by the way. But the ICC can also have jurisdiction over the nationals of state party when they commit these crimes wherever that might be whether it is a state party territory or not. They ask about crimes in Iraq, that I should charge Mr. Bush, remember neither Iraq nor the US is a state party to the Rome statute. So the ICC cannot charge [these states].

The obligations under this treaty only arise when you have ratified because there are several states that have signed the statute but that does not give us jurisdiction. When you have ratified the Rome statute, you become a state party and your nationals too are subjected to those crimes, if the crime happens on your territory.

So you are positive you will be definitely looking into these crimes?

I am already. We have already issued arrest warrants for the former president, Mr. Gaddafi, against Mr. [Mohammed] El Senussi and against Saif al-Islam Gaddafi and our work continues. We emphasize a lot about our cases in Africa without necessarily talking about the fact that for a long time now the ICC is also looking at situation outside of Africa. For instance, I opened investigations last year in Georgia. This is outside of Africa. I am also doing preliminary investigations in Afghanistan, in Columbia, in Palestine, in Iraq over the UK defense forces, and in Ukraine.