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New ICC Prosecutor Repeats Old Prosecutor's Mistakes

On 16 January 2012 the new Chief Prosecutor of the International Criminal Court, Fatou Bensouda, the successor of Luis Moreno Ocampo, announced that the Court was formally opening an investigation into alleged crimes committed on the territory of Mali since January 2012.

This decision is the result of the preliminary examination of the situation in Mali that the Prosecutor's office had been conducting since July 2012. The Malian State had referred the situation in Mali since January 2012 to the ICC.

Bensouda stated that "I have determined that some of these deeds of brutality and destruction may constitute war crimes as defined by the Rome Statute" and that "My office will ensure a thorough and impartial investigation and will bring justice to Malian victims by investigating who are the most responsible for these alleged crimes".

ICCwatch director Marc Glendening has pointed out that, in accepting this referral, Fatou Bensouda is repeating an institutional mistake made by her predecessor, Luis Moreno Ocampo.

"The whole issue of State self-referrals, where ICC State Parties refer a situation within their own country was never envisaged in either the preparatory committees or in the Rome Conference which drew up the Statute which established the International Criminal Court.

"It is also the case that in accepting State referrals, the Court inevitably ignores any war crimes committed by state forces and only focuses on alleged rebel excesses. This has comprehensively de-legitimised the Court."

Glendening pointed to that fact that even a key ICC supporter such as Professor William Schabas has said that State referrals are a questionable "invention of the Office of the Prosecutor".ⁱ

Schabas has previously expressed the hope that the Court would grow out of the phase of pursuing and accepting self-referrals.ⁱⁱ Schabas has stated that "[t]he profound flaw in the 'self-referral' model is that it flies in the face of 'positive complementarity'."

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“If Mali wants to ensure that its rebels are prosecuted, the Court should encourage it to do so by itself. Referring the situation to the Court doesn’t do anything to bring the rebels into custody. And if perchance they are captured, why can’t Mali prosecute the cases?”ⁱⁱⁱ

Marc Glendening has concluded that;

“For all the hope in some quarters that Bensouda would usher in a new era for the ICC, it is now clear that the Court is continuing with the skewed and discredited process of accepting self-referrals.”

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For more information concerning ICCwatch’s critique of the International Criminal Court, please refer to www.iccwatch.org

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ⁱ W. Schabas, “The Rise and Fall of Complementarity”, in C. Stahn and M.M. El Zeidy (Editors), *The International Criminal Court and Complementarity: From Theory to Practice*, Cambridge University Press, Cambridge, 2011

ⁱⁱ W. Schabas, “The Rise and Fall of Complementarity”, in C. Stahn and M.M. El Zeidy (Editors), *The International Criminal Court and Complementarity: From Theory to Practice*, Cambridge University Press, Cambridge, 2011.

ⁱⁱⁱ William Schabas, “Mali Referral Poses Challenge for International Criminal Court”, 19 July 2012, available at <<http://humanrightsdoctorate.blogspot.nl/2012/07/mali-referral-poses-challenge-for.html>>.