

# Fatou Bensouda, the woman who hunts tyrants

As chief prosecutor of the international criminal court in the Hague, the Gambian lawyer aims to do what other courts can't: mete out justice to war criminals and genocidal despots

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She can't quite explain it, but for the best part of five decades, since she was a very young schoolgirl growing up in the Gambia, Fatou Bensouda says she has felt powerfully driven by a sense of right and wrong. "The issue of justice and accountability seems to be ... in my DNA." She wiggles her fingertips as if they tingle. "I just feel I have this [sense] - and I'm sure many people do, huh? - but there must be justice. There must be fairness. As soon as I was able to know and analyse certain injustices in society around me, I wanted to do something about it."

As a high school student, Bensouda used to sneak into the nearby courts in her school uniform, until chased out by the court officials. She watched women, in particular, "and I did not seem to feel that they were receiving the protective embrace of the law. For me that is one of the things that informed my decision to say, 'This is what I want to do.'"

That young schoolgirl, one of more than a dozen siblings born to a polygamous Muslim family in the smallest country in mainland Africa, is now the chief prosecutor of the international criminal court in the Hague. The institution was established with the intention of ending impunity for war criminals and genocidal tyrants across the world who might otherwise have considered themselves above the law; Bensouda, as such, might be described as the person from whom they have most to fear. From that small schoolgirl, to this: "It's been a journey," she says with a smile.

Bensouda is now 55, and has been the ICC's most senior prosecutor since 2012, a decade after the court was established, when she was elected to replace the post's inaugural holder, Luis Moreno Ocampo. She became, at a stroke, one of the most powerful African (or Muslim) women in the world.

But to understand what Bensouda can do, it is important first to clarify what she has not done. It was not, for instance, the international criminal court that put the former Serbian president Slobodan Milosevic and more than 100 others on trial for crimes in the former Yugoslavia, and earlier this year convicted Radovan Karadzic of war crimes and genocide.

That was the international criminal tribunal for the former Yugoslavia (ICTY), an ad hoc body established in 1991 that to date has seen more than 80 of that conflict's bloodiest criminals convicted and sentenced. A similar international tribunal for Rwanda (ICTR),

set up three years later, convicted 61 people of war crimes, genocide and crimes against humanity.

The ICC, by contrast, has had a much bumpier beginning. Though the court has issued nine summonses and 29 arrest warrants, including for the Ugandan warlord Joseph Kony and, before his death, Muammar Gaddafi of Libya, in the 14 years since its existence it has convicted only two people, both Congolese rebel leaders found guilty of war crimes.

More than 120 countries have ratified the court's founding statute, but equally important is the list of those that have not - including around half of the nations in Africa, almost all the Middle East and most of central and far-east Asia. Most critically, three of the five permanent members of the UN security council, which have the power to veto the court's investigations, are not party to it: the US, Russia and China.

And so, though the Palestinian Authority joined the court last year and the prosecutor is currently examining alleged crimes committed in the occupied territories, few expect any potential ICC action against Israel to get past a US veto. When 65 nations called in 2014 for the Syrian conflict to be referred to the court, meanwhile - a context for which one might think a criminal court to challenge war crimes and genocide was invented - it was vetoed by China and Russia.

Partly in consequence, the court has focused to date predominantly on African conflicts, irritating and increasingly enraging the continent's leaders, who accuse the court of first world bias. In February, the African Union backed a proposal by the Kenyan president Uhuru Kenyatta "to develop a road map for the withdrawal of African nations" from the court. Kenyatta, it should be noted, is not a disinterested party, having been the subject of a failed attempt by the ICC to prosecute him for crimes against humanity.

However powerful her commitment to justice, in other words, that all amounts to a to-do list of bewildering legal complexity and political sensitivity. Or as Bensouda puts it with no little understatement: "The challenges are there."

Just because a job is perplexingly difficult doesn't mean you should give up, however. It is a grey afternoon in the Hague, but in marked contrast to the austere surroundings of the court's new, heavily fortified home close to the Dutch coast, Bensouda is wearing a long, brightly coloured African-print dress with a modest frill at its hem. Having lived in the Hague with her husband, a Gambian businessman, and two children for more than a decade (she was previously head of the legal advisory unit at the Rwanda tribunal), she is used to northern European weather, though she admits she still feels the chill.

Her decisions as chief prosecutor are first and foremost driven by the law, she stresses, and by the complex tangle of lines defining where her jurisdiction begins and ends. But her own position as a woman from west Africa has also informed the character of Bensouda's ICC. As well as prioritising efficiency measures (wrangling for enough resources from member states is another constant headache), Bensouda has made it an explicit strategic goal of the court to challenge rape and exploitation of women and children in war.

"I have sent very loud and clear messages that we will do whatever is in our power and

in our mandate to address sexual violence in conflict. Because as you know, in these conflicts, unfortunately the most vulnerable groups are women and children. Whether they are taken as sexual slaves, or forced labour, or the children are recruited to fight wars that they shouldn't be fighting - this happens."

Her own background has shaped her view, "of course". "I believe that looking at these crimes through the lens of a woman is unique to women ... And as an African, I know the different cultures, I know the diversity of the continent." As a result, she says, she stresses the importance of training her investigators - who must gather evidence of atrocities from traumatised victims, often in situations of ongoing terrible conflict.

A few days after we meet, Bensouda emails to express her regret that she hadn't mentioned the situation in her home country of the Gambia, where there have been violent crackdowns on civilians protesting at the regime of president Yahya Jammeh. Bensouda was formerly the country's attorney general and minister of justice under Jammeh until he fired her in 2000. She has asked her team to assess the situation, she writes.

As for the accusations of anti-African bias, Bensouda insists they are easily rebutted. Of the 10 conflicts currently being investigated by the ICC, nine are in African countries (the last is in Georgia), but in six instances, she says, the court got involved at the request of the countries themselves. In two other cases, those of Libya and Darfur in Sudan, the ICC got involved at the request of the UN security council, leaving only one - in Kenya - undertaken at the discretion of her predecessor as chief prosecutor.

"So I wouldn't say that I regret that we are working in Africa, because of the fact that the victims also are African victims. If certain people are looking to shield the alleged perpetrators of those crimes, of course they will say we are targeting [African nations]. But ... the victims deserve justice, the victims are Africans, and in the absence of the ICC nobody else is giving them justice."

They are far from the ICC's only controversial cases, however. The ICC is also conducting "preliminary examinations" into eight further conflicts, including in Afghanistan, Colombia and Burundi. Only one major western nation is under examination - the UK, over allegations that British soldiers committed war crimes, including murder and torture, while occupying Iraq.

The court has been fiercely criticised by some in Britain for examining the allegations despite a five-year public inquiry (which concluded the most serious allegations against British troops were "deliberate lies") as well as an ongoing judicial investigation into Iraq fatalities and a government review headed by a former senior police officer. Why is the ICC intervening now?

First of all, says Bensouda, the court is not yet investigating, but is examining a dossier of information - "a lot of information, actually" - submitted by British lawyers for alleged Iraqi victims in 2014. The court must first determine whether the crimes were committed, whether they fall into ICC jurisdiction (as systematic war crimes rather than individual outrages, for instance), and whether they have been properly investigated in Britain, before deciding whether to investigate further.

The big question for many may be how high up the command chain such an investigation might go. It is likely, I tell Bensouda, that the context in which her court is mentioned most frequently in conversation in the UK is by those who would wish to see Tony Blair prosecuted for what they regard as an illegal invasion of Iraq in 2003. The Chilcot inquiry into Britain's role in the Iraq war is finally due to report in July - depending on what evidence it uncovers, might that be a possibility?

"I want to make it clear that when we look into any situation, beginning with the preliminary examinations and going forward, nobody is targeted. Nobody. We do not say, 'We are going out to investigate, in this case, Tony Blair.' Or any other person." Rather, she says, if a case passes the criteria to become a formal investigation, they consider all its circumstances.

"How did the crimes start, how were [they] committed? ... But we also look at who bears the greatest responsibility for those crimes. Who, in our assessment, is the person without whom the crime would not have been committed?... We cannot say now that if we were to start investigations, we are going to charge Mr X or Mr Y. It's not responsible to even say that."

On the question or otherwise of the war's legality, however, she is able to be more clear. The ICC signatories are soon likely to add the "crime of aggression" (meaning an unjustified or illegal war) to the three other crimes in their jurisdiction - genocide, war crimes and crimes against humanity. Bensouda hopes it may deter other illegitimate conflicts in future - but it will not be retrospective.

We are running out of time, and Bensouda must prepare for an executive committee meeting with her senior staff, then head to a reception for Cameroon's national day, before returning to the office early in the evening for more paperwork. In a few days she will be heading to New York to the UN security council for her biannual briefing on the situation in Libya. "It's back to back, every day."

The job does take its toll, she says, not least in the horrifying details of the allegations that she deals with, day after day. How does she cope? "What I have put at the forefront, always, are the victims of these atrocity crimes. I have been placed in a position where I can at least do something. You have that at the back of your mind that there *must* be justice, there *must* be accountability for these crimes. I mean ... that drives me. That drives me."

She tells me a story of when she was accompanying investigators on the Rwanda tribunal in visiting a woman who had never previously been interviewed. "This is a woman who was held as a sex slave almost throughout the conflict. She was crying, so I said: 'I am so sorry, it's just that we have to ask these questions ...' She said, 'No, no no. I am not crying because you are asking these questions. I am crying because somebody is listening. Finally someone is listening to me.'

"We perhaps take it for granted, but these victims deserve to talk about their experiences. They deserve to see that those who have made them suffer are held accountable. I cannot see it any other way."

This article was corrected on 6 June 2016. An editing error meant it was stated that 39

individuals had been charged by the ICC. In fact, it has issued nine summonses and 29 arrest warrants.

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