

# No turn around on SA's decision to leave the ICC

Justice Minister Michael Masutha dashed any hopes that SA was having a rethink on its decision to cut ties with the International Criminal Court (ICC) with his comments before a high-powered international audience at a symposium on international justice, organised by the Wayamo Foundation and the Africa Group for Justice and Accountability, this week. He pointed out the Brics summit in Johannesburg last month "almost collapsed" because a group of SA lawyers threatened legal action against some heads of state attending the gathering.



Sudanese President Omar al-Bashir. Photo: ICC

He also claimed SA's obligations under the Rome Statute as a member of the ICC stood in the way of government's international relations and diplomatic work. A [News24 report](#) says he was reacting to scathing criticism by judges and the deputy prosecutor of the ICC, James Stewart, over SA's decision to leave the court.

Masutha said India threatened to withdraw from the recent Brics summit in Johannesburg should SA's NPA decide to arrest and prosecute Prime Minister Narendra Modi after the South African Kashmiri Action Group and the Muslim Lawyers' Association asked the body to investigate "war crimes" during Modi's governance of Jammu and Kashmir.

## The al-Bashir matter

This followed the debacle three years ago around Sudanese President Omar al-Bashir's attendance of the African Union summit in Johannesburg. With reference to previous points raised during the discussion that international justice also promoted peace, Masutha said: "It's not just about our quest to promote peace in Africa and elsewhere, but it's also about the reality that we are part of a global community and part of a global society, who are concerned with advancing development international objectives that promote our own domestic interest, such as Brics." He said if legal obligations obstructed these commitments, it would not be helping the people of SA.

On the al-Bashir matter, he said the Sudanese president had just been re-elected. “Were you actually really realistically expecting us to effectively effect a change of government in the Sudan by going against the will of the people in Sudan by arresting him,” according to the News24 report.

He added that this hasn't ever been done by any of the world's superpowers. “I'm just worried that there's an element of hypocrisy here. It's time we reflected on the position of other, more senior nations in the world, and what their attitude is.”

Former UN High Commissioner for Human Rights Navi Pillay said SA's decision to withdraw from the ICC “was taken lightly if you look at the context, that it has taken 50 years to get to where we are ... and seemingly one individual is being protected here”. She also said the al-Bashir case was not unique, as former US President George Bush has had to cancel a trip to Switzerland (in 2011) after human rights groups said they would call for his arrest for the alleged mistreatment of suspected militants at the Guantanamo Bay prison. The report notes the ANC resolved at its conference in December that SA should withdraw from the ICC, and a parliamentary process in this regard is under way.

## **A blow to investment**

[SA's decision to withdraw from the ICC could undermine President Cyril Ramaphosa's \\$100bn foreign investment drive](#), said Richard Calland, associate professor on constitutional law at UCT,

He said investors he interacted with wanted to see SA being a “responsible member of the international community”, which would contribute to attracting investment. He urged government to “reflect on the unintended consequences” of the withdrawal. Calland said a lot has changed since 2015 when SA's position on withdrawal was cemented by the al-Bashir debacle. “International law and order is under vicious attack and the forces of nationalism and populism are growing around the world,” Calland said with reference to indications that President Donald Trump wanted to withdraw from the World Trade Organisation. “Multilateralism, and the idea of multilateralism, is at the heart of the ANC and close to the heart of the government since 1994, and it seems to me this is the moment to step up and defend multilateralism,” he said, adding it was best if SA remained a member of the ICC and made its voice heard from within.

**Source:** [LegalBrief](#)

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