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Centre for Human Rights
Faculty of Law

PRESS STATEMENT

CENTRE FOR HUMAN RIGHTS EXPRESSES GRAVE DISAPPOINTMENT ABOUT WITHDRAWAL FROM ICC

21 October 2016

The Centre for Human Rights expresses its grave disappointment at the news of the entry of an [instrument of withdrawal](#) from the Statute of the International Criminal Court by the South African Minister of International Cooperation and Development.

It should be recalled that South Africa ratified the ICC Statute through a parliamentary process. It is our firm view that it is contrary to the spirit of our democratic Constitution for such a consultative, inclusive and democratically-based decision to be undone through a unilateral act by a single government department, acting for the executive. The South African Constitutional Court has emphasised that ours is a participatory democracy, not a democracy where the electorate cedes authority to the executive to govern without its continued involvement. Whenever it is possible, participation and inclusion should be chosen above executive fiat.

Section 231 of the Constitution requires that Parliament approves international agreements before they become binding on us. It flows, logically, that withdrawal from such agreement should follow the same route.

It is also sad to note that South Africa is following the precedent set by Burundi, a few days ago. Currently under a government with very contested democratic credentials, Burundi is hardly a state from which South Africa should draw inspiration. Differently from Burundi, South Africa followed its ratification with a statute domesticating the ICC Statute, through the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002, adopted by Parliament in 2002. Also, Burundi's withdrawal seems to be inspired by the recent announcement by the ICC Prosecutor that the events in Burundi, giving rise to killing of protestors, will be investigated.

There must be question marks about the timing of this withdrawal. Is our withdrawal intended as a sign of solidarity with the dubious quest to evade accountability by the political leadership in Burundi? Or is it a desperate attempt by the beleaguered faction of the ruling party to deflect attention from pressing national concerns?

Against this background, the Centre is exploring options, together with partners, to challenge this withdrawal through a legal route, for example an order to retract the withdrawal until Parliament has had the opportunity to consider the matter.

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This withdrawal comes on the eve of the [South African Constitutional Court's hearing in the Bashir case](#). Is it possible that the withdrawal was intended to absolve South Africa from any obligations under the Statute, including in respect of President Bashir? Article 127 of the ICC Statute allows for a state party to the Statute to withdraw by way of a "written notice". However, this withdrawal only takes effect one year after notice had been given. In the intervening year-long period, a withdrawing state retains all its obligations under the Statute. A withdrawal now would not affect any of South Africa's existing obligations under the Statute.

The Centre, through its Director, has in the recent past elaborated [on the reasons why South Africa should not withdraw from the ICC Statute](#). These reasons remain valid today.

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