

## **Double standards in international criminal law – an end in sight?**

It's late afternoon on a Tuesday and I'm in Berlin giving interviews. The Wall Street Journal, The Independent, Al Jazeera, they all want to know what ECCHR thinks of the decision by the International Criminal Court (ICC) in Hague to [re-open preliminary investigations concerning members of the British military](#). This decision represents a milestone for the victims of torture and abuse as well as for international criminal justice. For us, too, the news marks an important win.

Just the previous week we had visited The Hague, that rainy City of Peace and Justice, to discuss the criminal complaint we submitted against senior British military officers and politicians in connection with systematic torture in Iraq. We were warmly received by the representatives of the ICC prosecution. They are generally very friendly and open to discussion. At conferences or other meetings there's no shortage of pathos and declarations of their intention to bring to justice those who are most liable for grave human rights violations.

Yet the practice of the twelve years of the court's existence presents a somewhat less rosy picture – a reality for which the dedicated staff in The Hague are only partly to blame. The ICC is prevented from acting as a true world criminal court by the refusal of many of the most powerful states on earth to ratify the court's statute, states such as the US, China, Russia and India. States that have not willingly submitted to the court's jurisdiction can only be investigated by Hague prosecutors if the case is referred to the court by the UN Security Council. This has happened twice so far: in situations involving Sudan and Libya, the only two cases on which the Security Council was in agreement and no vetoes were cast.

The prosecutors are inundated with submissions from various parties. Of the roughly 10,000 received to date some are very brief, others more extensive. Many of crimes detailed in these submissions clearly lie outside the court's jurisdiction. The court has also faced criticism from African leaders for only ever launching formal investigations into cases involving African states. The accusation of bias is not entirely convincing given that four of these investigations were instigated by the African states in question and two further African cases were referred by the UN Security Council. Just two of the court's remaining investigations were initiated by the Chief Prosecutor at the time, Luis Moreno Ocampo.

### **Court careful to keep the West onside**

The criticism levelled at the court for getting involved only in African cases is not wholly warranted. Grave crimes *have* been committed in Africa and all of these crimes should be investigated. But it would be more just if the court would pursue crimes committed by all parties to a conflict; this balance is often absent in practice. Serious questions are raised by the prosecutors' failure to open formal investigations into crimes committed in Colombia and Gaza. There are political factors at play here since the court relies on Western states for assistance, including financial support. The court is careful not to destroy relations with these states, and chooses instead to leave itself open to accusations of bias from the African Union.

But to repeat: the judges and prosecutors in The Hague are far from the only ones responsible for the fact that international criminal justice almost only ever targets weak and defeated states. Within national and European criminal justice systems there is a similar reluctance to risk inconvenient political fallout. As a result, many suspected criminals from powerful states remain free to travel throughout the world unimpeded.

While this latest decision from the ICC may not radically change the direction of international criminal justice, it is sure to have a certain influence. We've already seen this happen with other criminal complaints against high-profile Western politicians: CIA agents involved in the rendition of terror suspects as well as former US President George Bush and his Secretary of Defense Rumsfeld now avoid travelling to Europe after ECCHR and other human rights lawyers and groups filed criminal complaints against them in Germany, France, Switzerland and Spain.

We've achieved this much at least. But how many more proceedings might be made possible if the wider public stood up to ensure that human rights would no longer be seen as subordinate to economic interests and claims of political necessity?