

# EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



## Statement for the 18th Session of the Assembly of States Parties to the International Criminal Court

**The Hague / Berlin, 3 December 2019**

The European Center for Constitutional and Human Rights (ECCHR) is an independent, non-profit legal and educational organization dedicated to enforcing civil and human rights worldwide. To counter injustice with legal interventions is ECCHR's aim and daily work – already for over ten years.

In pursuing justice, ECCHR has been closely following the ICC as an institution, and has engaged with the Court with regard to different situations and on various levels in the past decade. In particular, ECCHR submitted several Article 15 communications to the Office of the Prosecutor (OTP) both in the Colombia and in the UK/Iraq situation, as well as amicus curiae briefs in other situations, and has constantly kept a constructive and fruitful exchange with the Court on a number of situation and cases.

From this perspective, we welcome the progress made by the Court with regard to a more diverse selection of situations and cases. This is reflected, for example, in the geography or the crimes charged. However, we observe a number of continuing or new challenges for the Court, in particular in the phase of preliminary examinations and related decisions whether to open an investigation.

Over the past 15 years the OTP has indeed overly prolonged and emphasized the phase of the preliminary examination, keeping grave situations – as the one in Colombia - in a protracted limbo but without being able to exercise its full investigatory powers under the Rome Statute. In our view, this policy by the OTP has led to a loss of efficacy

—  
EUROPEAN CENTER FOR  
CONSTITUTIONAL AND  
HUMAN RIGHTS e.V.

—  
ZOSSENER STR. 55-58  
AUFGANG D  
10961 BERLIN, GERMANY

—  
PHONE +49.(030).40 04 85 90  
FAX +49.(030).40 04 85 92  
MAIL INFO@ECCHR.EU  
WEB WWW.ECCHR.EU

—  
AMTSGERICHT  
BERLIN-CHARLOTTENBURG  
VR 26608

—  
VORSTAND:  
DIETER HUMMEL  
LOTTE LEICHT  
TOBIAS SINGELNSTEIN

—  
GENERALSEKRETÄR:  
WOLFGANG KALECK

of the ICC, perceived by the affected local communities as being ineffective and not strong enough to ultimately achieve justice and fight the impunity of those most responsible for the crimes addressed.

At the same time, the recent decision by the Pre-Trial Chamber not to authorize the opening of the investigations into the situation of Afghanistan, which we strongly criticized for its overly restrictive and partly wrong interpretation of the Rome Statute, shows the risks of such a protracted preliminary examination by the OTP. The Court in its entirety appears to apply double standards depending on the nationality of alleged perpetrators.

We also observe another worrying tendency: Already at the phase of the preliminary examination, the OTP anticipates considerations and checks that should more properly pertain to the phase of the investigation. In particular, we noted this with respect to the situation regarding the abuses committed by UK forces in Iraq. There, the OTP has already found a reasonable basis to believe that they allegedly constitute crimes under the jurisdiction of the Court. Nevertheless, for many years we observe an impasse because of the Court's failure to see in a holistic way the dangerous interplay of political and judicial authorities of the responsible State in shielding its military as well as civil personnel. In the meantime, the victims of the abuses are left with no hope and the more time passes the less successful becomes the prospect of an effective investigation.

These examples hinder the ICC to act and perform as a criminal court *stricto sensu*. The OTP as well as the judicial division should interpret the Rome Statute in a way that actually promotes the initiation of a full-fledged criminal investigation as soon as possible whenever the jurisdictional requirements appear to be fulfilled.

ECCHR believes that a functioning ICC, being in its nature a criminal court, requires a comprehensive rethinking of the allocation of its resources, so that the preliminary examination phase is downsized and more investigations can be opened. For a criminal court it is of the utmost importance to be able to promptly commence and conduct investigations with adequate resources and tools, so that the criminal instrument does not become ineffective.

ECCHR is also calling upon the State Parties to the Rome Statute to support the ICC in fulfilling its tasks and to find ways to enable the Court to promptly initiate effective criminal investigations and proceedings, rather than blocking or delaying them, for instance through a lack of cooperation or restricting budget contributions.