

The role of the ICC in preventing crimes against humanity in Colombia

Par:

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Today's morning session was devoted to the plenary meeting on draft resolution on cooperation and discussion on complementarity. Afterwards, a wide range of side events addressing relevant issues related to the ICC took place. I attended the session entitled "Violence against human rights defenders in Colombia: the role of the ICC in preventing crimes against humanity." The panel was hosted by the *Colombian Lawyers' Collective José Alvear Restrepo (CAJAR)*, the *Colombian Commission of Jurists (CCJ)*, the *Colombian Peace Community of San José de Apartado*, *International Federation of Human Rights (FIDH)*, and the *European Centre for Constitutional and Human Rights (ECCHR)*.

The panel engaged in discussion of the recent communication submitted by ECCHR and CAJAR to the Office of the Prosecutor (OTP) of the ICC, which addressed the issue of impunity for crimes against humanity committed in Colombia against trade unionists who had advocated for their human and labor rights. In this communication, it was alleged that (a) the anti-union violence in Colombia satisfies the legal elements of crimes against humanity under Article 7(1) of the [Rome Statute of the International Criminal Court](#), (b) paramilitary commanders, high government officials and military commanders should be investigated for their individual criminal responsibility for these crimes, and (c) the government of Colombia has been unwilling and unable to genuinely prosecute for human rights violations and violence against trade unionists.^[1] Accordingly, it was submitted that there is a reasonable basis for the ICC to proceed with a formal investigation into the situation of Colombia, and that the OTP should submit a request to the Pre-Trial Chamber to obtain authorisation to open an investigation.^[2]

Expressing grave concerns about the ongoing anti-union violence and insufficient investigation conducted by the Colombian government, the panel highlighted the fact that the OTP has not begun formal investigation since it opened preliminary examinations in the case of Colombia in 2003. The panel engaged in a critical review of the ICC's selectivity of cases and the Court's role in preventing and prosecuting human rights violations as crimes against humanity.^[3]

Following the panel discussion, a representative of the OTP briefly shared his response to the recent communication requesting a formal investigation of anti-union violence as crimes against humanity. After stating that the ICC is mandated to investigate only the crimes included in the *Rome Statute*, the representative cautioned that, in order to begin a formal investigation, alleged crime against trade unionists in Colombia must satisfy the legal elements of crimes against humanity specified in the *Rome Statute*. He then stated that there is a reasonable belief that killing of trade unionists amounts to crimes against humanity committed by *non-state actors*. However, as of now, the OTP has not yet reached a conclusion that there is a State policy to commit crimes against humanity by killing trade unionists. It was concluded that the OTP needs to undergo further preliminary examinations in the case of anti-union violence in Colombia.

The panelists from ECCHR and CAJAR indicated that their recent communication to the ICC intended to challenge the transparency and objectivity in the ICC's case selection strategy.^[4] If the OTP decides to proceed with investigation into the situation of Colombia and manages to obtain authorisation from the Pre-Trial Chamber, the ICC will begin its first investigation against a non-African country.^[5] Furthermore, prosecuting gross human rights violation against unions as crimes against humanity under the *Rome Statute*

can establish important symbiosis between international criminal law and international human rights law regime. As demonstrated in this panel, the situation in Colombia seems to pose important jurisdictional, legal, and political questions for the ICC.

[1] Colombia, Special Newsletter 2012-10-08, ECCHR <http://www.ecchr.de/>

[2] *Ibid.*

[3] *Ibid.*

[4] *Ibid.*

[5] *Ibid.*

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