Does the International Criminal Court respect human rights?

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The International Criminal Court (ICC) prosecutes individuals accused or suspected of the most serious crimes such as genocide or crimes against humanity. Should the ICC respect human rights treaties which were created in order to limit the power of individual nation states? A doctoral thesis (1) by Christophe Deprez, who is a lecturer at the University of Liege, demonstrates this obligation and examines the extent to which the ICC really respects these fundamental rights.

The applicability of human rights to the ICC is confronted by a legal problem: the purpose of international treaties which protect human rights (2) is to limit the power exerted on individuals by nation states and not by international organisations such as the ICC which are not in a position to ratify them. In the first part of his thesis, Christophe Deprez sets himself the task of teasing out legal explanations in order to focus on the ICC's obligation to respect human rights. He identifies three such explanations: customary international law, general principles of law and the Rome Statute (founding text of the ICC).

"These three foundations are all subject to the same flaw of uncertainty", explains Christophe Deprez. "In article 21 (3), the Rome Statute obliges the ICC to interpret and apply the law in a manner that is compatible 'with internationally recognised human rights', yet there is no clear definition of the content of these rights! Customary human rights law emerged progressively from universal conventional instruments, principally the 1948 Universal declaration of human rights, but this source remains fragile and is increasingly disparaged by those in favour of a voluntarist approach to International law".

Faced with these uncertainties, the author of the thesis goes on by focussing on the jurisprudence of the ICC in order to identify the fundamental rights considered as obligatory by the judges of The Hague themselves. He
concentrates his research on the theme of deprivation of liberty and identifies a "hard core" of rights assumed by the ICC: the prohibition of arbitrary detention, the right of an individual to be informed of the reasons for his or her deprivation of liberty, the right to challenge his or her detention, the right to be judged within a reasonable period of time or freed pending judgement, the right to compensation for irregular or unjustified deprivation of liberty. The author demonstrates that the ICC "seems to take it as an internationally recognised fact that the (judge-made) right of the detainee to family visits is evidence of its respect for the individual’s right to private and family life".

**Violations linked to pre-trial detention**

It remains to be seen whether the ICC respects the fundamental human rights it recognises. This is the subject of the second part of Christophe Deprez's thesis. "In summary, the Court's record is sometimes uncertain, sometimes encouraging and sometimes open to criticism. The practice of the ICC is consistent with human rights in some matters such as the right to be informed of the reasons for deprivation of liberty. The most flagrant violations are linked to pre-trial detention. This mechanism is only justified in some very particular cases: if there is a flight risk on the part of the accused before the hearing, a risk of committing offenses or of destruction of proof... Yet generally speaking nation states have difficulty accepting that pre-trial detention should be an exception. The same difficulties can be observed before the ICC. The most striking example is that of the Congolese national Jean-Pierre Bemba: when his judgement was delivered on March 21 2016 (3), he had been provisionally held in custody for slightly less than eight years, which is a huge amount of time for a person who was entitled to be presumed innocent up to that point. Bemba and his legal team had issued many requests for his release, almost on a monthly basis, and had agreed to pay bail, without success".

Well aware of these irregularities, the ICC concluded an agreement with Belgium in 2014 to fix the conditions of provisional release for individuals freed on Belgian territory while awaiting court decisions. Belgium was the first state to accept to receive detainees within this framework (the only one to date), but the agreement has not resulted in any practical application. "It does show, however, that the ICC is aware that respect for human rights is an obligation and that it must attribute the necessary resources to this", says Christophe Deprez.

According to Christophe Deprez, references to the respect for human rights are more pronounced within the statutory framework of the ICC than in the international criminal tribunals set up for the ex-Yugoslavia and Rwanda (4). "The Rome Statute establishes a distinction, for the first time within the context of international criminal justice, between the rights of all individuals concerned by an investigation (article 55) and those of individuals who are actually accused (article 67)", writes the author. The Rome Statute (article 85) also guarantees compensation for an individual who is unjustly detained, which was not guaranteed by previous international criminal tribunals. Mathieu Ngudjolo, acquitted in 2012 after forty years of provisional detention, recently filed a compensation claim based on this provision. He will probably be awarded a sum of money".

**Eurocentric tendency**

Christophe Deprez reveals that judges often rely on human rights jurisprudence in order to frame their own verdicts. They particularly focus on the practice of the European Court of Human Rights as a source of inspiration in human rights matters and under-use the work of the African Commission on Human and People's Rights. This is an astonishing tendency for a Court that, for the most part, has only dealt with cases concerning African nationals. "European pre-eminence can be clearly proven in the context of the ICC. There is a plethora of examples where the judges base their reasoning on various judgements by the Strasbourg Court without
mentioning the slightest equivalent from another regional or universal system of protection”, writes Christophe Deprez.

The ICC has been established to judge the authors of the most serious crimes... Is it really necessary to strive to ensure respect for every human right of the worst criminals? "The purpose of human rights is not to prevent or halt the repression of crimes but to ensure that boundaries are put down to ensure that we do not go beyond just repression", says Christophe Deprez. "They are a limit to the power exercised over individuals. There would be no point in fixing these limits if we could delay them when they are useful, it would be inconsistent to relax human rights requirements in the context of the most serious crimes. Ruthlessly prosecuting people would create a cycle of violence instead of pacifying relations. Social balance requires a certain reserve which is permitted by the respect for human rights. The ICC seems to be receptive to these boundaries. This is something to be happy about, but because there also remains some contentious points, we need to ensure that in future the court adheres to the total respect of the standards it claims to defend

(1)International criminal justice put to the test of human rights: a study of privation of liberty before the International Criminal Court - Deprez, Christophe ULg.

(2)Like the European Convention for Human Rights or the United Nations Covenant on civil and political rights.

(3)The ex-Congolese vice - President Jean-Pierre Bemba was declared guilty of two counts of crimes against humanity (murder, rape and looting) on March 21 2016.
The tribunals for the ex-Yugoslavia and Rwanda are subsidiary organs of the UN Security Council while the ICC is an independent international organisation.