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Catherine Samba-Panza
President of the Republic
Palais de la Renaissance
Bangui
Central African Republic

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**AMNESTY
INTERNATIONAL**



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Dear President,

RE: OPEN LETTER - RECOMMENDATIONS AHEAD OF THE BANGUI FORUM

As preparations are being made for the National Reconciliation Forum in Bangui, Amnesty International would like to emphasize the efforts the transitional authorities have made to fight impunity, encourage dialogue and foster a return to peace. In this connection, the adoption by the National Transitional Council on 23 April last of the law on the establishment of a Special Criminal Court is an important step. The holding of the Bangui Forum needs to ensure that the fight against impunity is strengthened by amending the constitution.

In adopting this law, the government and the CNT have responded to calls for justice from the Central African people who are concerned that those responsible for human rights violations may escape such justice. The Special Criminal Court, which is to be set up by the government and backed up with strong international expertise, will provide Central Africans with a legal framework for prosecuting the serious international crimes committed in the country.

While adoption of the law on the Special Criminal Court marks an important step forward, Amnesty International would like, nevertheless, to reiterate that the country's future constitutional and legal framework must also comply with the international obligations incumbent on the State and reflect the desire expressed by the Central African people for progress to be made in fighting impunity.

Amnesty International is convinced that the fight against impunity in the Central African Republic must include the re-establishment of a legitimate and independent justice system that is capable of holding everyone to account, whatever their position in society. The recent history of the country shows that immunity and amnesties, often granted to the political class and armed groups, have only perpetuated the cycles of violence.

The victims of the different crises the country has faced, who have been unable to obtain justice for the rights they have had violated, have often had to live with the additional trauma of seeing their persecutors attain posts of responsibility within the government, whether by force of arms or by being appointed or elected. No Central African should therefore be deemed to be exempt from any criminal or legal proceedings that may result from the past or present activities of current or future members of the government.

Amnesty International calls on the Central African Republic to equip itself with legal instruments that will enable it to stop repeating the errors of the past and on government members, national transitional advisers, international bodies and organizations, interest groups and citizens attending the Bangui Forum to address the pressing question of constitutional reform. It is important to ensure that the draft constitution does not open the door to the granting of immunity that could be damaging to the consolidation of peace and the securing of justice for the victims of the recent crises.

Amnesty International is therefore suggesting that the delegates to the Bangui Forum and the transitional authorities consider the following recommendations:

1. Make the necessary resources available so that prompt independent investigations can be opened into individuals who are suspected of having committed international crimes in the Central African Republic, and ensure that they receive a fair trial if there is sufficient evidence against them, while suspending immunity for any suspects who are benefiting from it and not allowing anyone who is convicted to be covered by any future amnesty;

2. Set up the Special Criminal Court, ensuring that trials are fair, excluding anyone who is *in absentia* and ensuring that any investigations, arrest warrants, arrests, trials or punishments ordered do not run up against immunity provisions, whoever the person concerned may be;

3. Ensure that immunity provisions do not in any way hinder the work of Central African or international courts investigating serious international crimes by amending the draft constitution approved by the CNT so that it complies with the international legal obligations incumbent on the Central African Republic:

a) By recognizing, in article 82, the primacy of international law over domestic law, especially over the constitution, in accordance with the 1969 Vienna Convention on the Law of Treaties, to which the Central African Republic is a party;

b) By incorporating a clause establishing the “irrelevance of official capacity” as far as international crimes are concerned and indicating that such capacity should not exempt anyone from criminal responsibility, in accordance with article 27 of the Rome Statute of the International Criminal Court to which the Central African Republic is a party;

c) By including, as far as serious international crimes are concerned, an article prohibiting the granting of any amnesties or impunity measures that may hinder the holding of investigations or trials, the determination of guilt or innocence of certain individuals or the granting of full reparation to the victims and their families, and amending articles 54, 101, 107 and 108 of the draft constitution to remove any provisions that grant or allow the granting of immunity to members of parliament, the government or the Constitutional Court, or to the President of the Republic.

d) By clarifying the *nullum crimen sine lege* of article 3 (6) of the draft Constitution so that it is in line with article 15 (2) of the International Covenant on Civil and Political Rights which stipulates that nothing should prejudice the punishment of any person “for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations”.

e) By ensuring the right to conscientious objection is provided in article 16 of the draft Constitution on compulsory military service.

The Bangui Forum must give Central Africans the opportunity to build a country on foundations that ensure that everyone can be held responsible for the acts they commit.

Thanking you for your attention,

Yours sincerely,

Salil Shetty
Secretary-General, Amnesty International

Copies to:

- Abdoulaye Bathily, Chair of the Bangui Forum;
- Alexandre-Ferdinand Nguendet, President of the National Transitional Council;
- Aristide Sokambi, Minister of Justice ;

- Babacar Gaye, Special Representative of the United Nations Secretary General and head of MINUSCA;
- Béatrice Epaye, National Transitional Adviser;
- Ghislain Gresenguet, Public Prosecutor, Bangui ;
- Jeannette Dethoua, Minister of National Reconciliation, Political Dialogue and the Promotion of Civic Culture;
- Marguerite Samba-Maliavo, Minister of Health and Chair of the Bangui Forum Technical Committee;
- Marie Noëlle Koyara, Minister of Defence.