

Belgrade, Berlin, Geneva, Johannesburg, Lima, London, Mexico City, New York, Ottawa, Paris, San Francisco, 25 January 2017.

Professor Sean Murphy
Special Rapporteur of the International Law Commission on crimes against humanity
2000 H Street, NW
Washington, District of Columbia 20052
United States of America

Dear Professor Murphy,

As we expressed in a letter to you last February our organizations are following with great interest your work on the draft articles for a Convention on crimes against humanity. From the outset, we wish to express we very much appreciate that a provision on the obligation to prosecute or extradite (*aut dedere aut judicare*), under the so-called 'triple alternative formula', has been proposed by you in your Second Report (A/CN.4/690) and, fortunately, has been provisionally adopted as Draft Article 9 by the International Law Commission (ILC) last May.

Since we understand that you will soon be presenting your Third Report and a set of new draft articles we call on you to consider the following two recommendations.

First, we are of the view that you should incorporate a provision on the duty of states parties to the Convention to provide for procedures permitting any victims to obtain reparation for crimes against humanity committed abroad. Similar obligations are provided for in Article 14(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (as interpreted in General Comment No.3 of the Committee against Torture) and Article 24(4) of the International Convention for the Protection of All Persons from Enforced Disappearance. It also finds support in the 2015 resolution 'Universal Civil Jurisdiction with regard to Reparation for International Crimes' of the *Institut de Droit International*. These standards recognize that access to an effective remedy and reparation should not be geographically limited or restricted to crimes against humanity committed in any territory under the jurisdiction of the concerned state.

Second, we encourage you to consider proposing a provision stating that no reservations shall be made to the Convention on crimes against humanity. This follows from the example of the Rome Statute of the International Criminal Court, which prohibits reservations in article 120. A central rationale for the prohibition of reservations in the Rome Statute is also applicable in respect of the Convention on crimes against humanity, namely that in respect of an instrument addressing the most serious crimes under international law, any reservation would necessarily serve to undermine the object and purpose of the Convention. There are of course also a number of other human rights and criminal law treaties which prohibit reservations, including the Optional Protocol to the Convention against Torture, the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment, the Supplementary Convention on the Abolition of

Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

We would welcome the opportunity to discuss these and other related matters on the drafting process of the new Convention further with you.

Yours sincerely,

Signatory organizations

- Amnesty International (Tawanda Mutasah, Senior Director for International Law and Policy);
- Asociación Pro Derechos Humanos (Francisco Soberón, Director Fundador);
- Canadian Centre for International Justice (CCIJ) (Matt Eisenbrandt, Legal Director);
- Center for Justice and Accountability (CJA) (Dixon Osburn, Executive Director);
- Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH) (José Antonio Guevara Bermúdez, Director Ejecutivo);
- European Center for Constitutional and Human Rights (ECCHR) (Wolfgang Kaleck, Secretary General);
- Fédération internationale des ligues des droits de l'Homme (FIDH) (Antoine Bernard, Directeur général);
- Fédération internationale de l'Action des chrétiens pour l'abolition de la torture (FIACAT) (Marie Salphati, Representative to the UN);
- Human Rights Watch (HRW) (Clive Baldwin, Senior Legal Advisor);
- Humanitarian Law Center (Fond za humanitarno pravo) (Milica Kostic, Legal Program Director);
- International Commission of Jurists (ICJ) (Ian Seiderman, Legal and Policy Director);
- Parliamentarians for Global Action (PGA) (David Donat Cattin, Secretary-General);
- Redress (Carla Ferstman, Director);
- Southern Africa Litigation Centre (SALC) (Suzgo Lungu, Programme Lawyer);
- Trial International (Philip Grant, Director).