

AMNESTY INTERNATIONAL

Public Statement

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Democratic Republic of Congo: Parliament must reform and enact International Criminal Court bill

Amnesty International today called on the Parliament of the Democratic Republic of Congo to schedule discussion of the draft legislation to implement the Rome Statute of the International Criminal Court (Rome Statute) as soon as possible at the next parliamentary session. In letters to several deputies to the National Assembly, the organisation also made recommendations with regard to changes that should be made to the draft legislation to enable the DRC to meet its obligation to cooperate fully with the new International Criminal Court (ICC).

Amnesty International welcomed some provisions in the legislation, including the elimination of official immunities for the perpetrators of genocide, war crimes and crimes against humanity; rejection of the possibility of amnesties for these crimes; the fact that some crimes are broader in the draft legislation than in the Rome Statute (such as the crime of genocide); the implementation of international law standards with regard to the definition of child soldiers (those under 18 years of age); the increased protection for victims of crimes; and the provision of privileges and immunities for the staff of the ICC as they carry out their work in the DRC.

However, Amnesty International expressed concern about a number of provisions in the draft legislation. The organization is particularly concerned that the draft provides for the death penalty for genocide or crimes against humanity, since this is inconsistent with international standards. Amnesty International recommended that the death penalty should be replaced with a punishment of imprisonment to reflect the grave nature of the crimes. The organization is also concerned that the draft legislation does not include all war crimes under the Geneva Conventions and their Additional Protocols, and that the legislation maintains a distinction between war crimes committed in international and non-international armed conflict. Amnesty International considers that this distinction is indefensible, apart from a limited number of crimes that can only be committed in international armed conflicts.

In addition, Amnesty International is concerned that some of the language in the draft legislation is ambiguous and may be interpreted in a way that falls short of the definitions set out in the Rome Statute. Amnesty International is particularly concerned that the definition of the principle of *ne bis in idem* is not fully consistent with the definition in the Rome Statute. The organization is also disappointed that the draft legislation continues to permit the defence of superior orders coming from a military or civilian supervisor: this article was included in the Rome Statute at the insistence of the United States and a small number of other countries, despite the fact that this defence is prohibited in all other international courts.

Amnesty International also urges the DRC to revise the legislation to ensure that it guarantees fully all pre-trial rights, which the present draft fails to do. The organization is also concerned that the draft introduces a distinction in the severity of penalties for different war crimes: all war crimes should be capable of being punished by the maximum sentence, subject to appropriate mitigating factors. Finally, Amnesty International urges the DRC to enact the broadest jurisdiction possible under international law to investigate

and prosecute the crimes of genocide, crimes against humanity and war crimes. By doing so, Congolese police and prosecutors will be able to act before a person suspected of such crimes enters Congolese territory and will be able to work effectively with other states in the shared responsibility to investigate and prosecute such crimes wherever they are committed.

In addition to these concerns, Amnesty International also recommends that the DRC:

- ratifies and implements the Agreement on Privileges and Immunities of the International Criminal Court;
- declines to ratify or implement the executive impunity agreement with the United States of America;
- develops and implements a long-term national action plan to end impunity for all crimes under international law committed in the DRC, no matter how long ago and no matter what the official status of those who committed them; and
- provides the fullest possible assistance to the ICC in the protection of victims, witnesses and ICC investigators, in sharing and safeguarding evidence, and in arresting and surrendering persons indicted by the ICC without delay.

Background

The Rome Statute of the International Criminal Court, adopted on 17 July 1998, provides that the ICC will have initial jurisdiction over genocide, crimes against humanity and war crimes. The Statute entered into force on 1 July 2002.

States that have ratified the Rome Statute accept the primary responsibility to investigate and prosecute people accused of genocide, crimes against humanity and war crimes in their national courts. The ICC will only step in when national courts are unable or unwilling to do so. To fulfil this responsibility, all states that have ratified the Rome Statute must enact legislation implementing the crimes under the Statute into national law. In addition, the implementing legislation must provide for full cooperation between the state party and the ICC.

The ICC is currently conducting three full investigations into crimes committed in the Democratic Republic of Congo, Sudan and Uganda. The DRC was the second country to refer a situation to the ICC for investigation, which it did 19 April 2004, and was the first country in which the Prosecutor of the ICC announced an investigation, which opened on 23 June 2004. In November 2005, the Prosecutor announced that investigations in the DRC were at “an advanced stage”.

The current draft legislation (*Loi modifiant et complétant certaines dispositions du code pénale, du code d'organisation et de la compétence judiciaires, du code pénal militaire et du code judiciaire militaire, en application du statut de la cour pénale internationale*) is the third version of implementing legislation that the DRC has published. Amnesty International welcomes the transparency and consultation with civil society with which the government has drafted this legislation. Amnesty International's comments on the previous two drafts (*République Démocratique du Congo: Commentaires et recommandations du projet de loi de juillet 2003 portant mise en oeuvre du Statut de Rome de la Cour pénale internationale*, AI Index: AFR 62/008/2004, 28 May 2004 and *République Démocratique du Congo: Commentaires et analyse du projet de loi de la RDC portant mise en œuvre du Statut de Rome de la Cour pénale internationale*, AI Index: AFR 62/031/2003, 29 September 2003) are available at: <http://web.amnesty.org/pages/icc-implementation-fra>.