

To: The Foreign Affairs Ministers of the Members of the Reference Group on the Special Criminal Court in the Central African Republic (Belgium, Canada, Chad, Denmark, Finland, France, Japan, Luxemburg, Mexico, Morocco, New Zealand, Senegal, Sweden, Switzerland, the Netherlands, the United Kingdom, United States)

To the High Representative of the Common Foreign Security Policy of the European Union, Ms. Federica Mogherini

To the European Union Commissioner on Development, Mr. Neven Mimica

To the Secretary General of the International Organization of the Francophonie, Ms. Michaëlle Jean

To the Chair of the African Union, Dr. Nkosazana Clarice Dlamini-Zuma

To the Minister of Foreign Affairs of South Africa, Ms. Maite Nkoana-Mashabane

Cc :

President of the State of Transition of the Central African Republic, Ms. Catherine Samba-Panza

Minister of Justice of the Central African Republic, Mr. Aristide Sokambi

Acting Special Representative for the Central African Republic and Head of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic, Mr. Parfait Onanga-Anyanga

Head of the Department of Peacekeeping Operations, Under-Secretary-General for Peacekeeping Operations, Mr. Hervé Ladsous

Administrator of the United Nations Development Programme, Ms. Helen Clark

Subject: Next steps to operationalize the Special Criminal Court in the Central African Republic

Your Excellences,

We are writing to encourage you to urgently pledge financial and technical support to transitional government authorities in the Central African Republic to expedite the establishment of the Special Criminal Court.

Addressing impunity is critical to set the conditions for sustainable end to abuses in the Central African Republic and to deliver justice to the victims of grave abuses. Lawmakers in the Central African Republic recognized this when they created the Special Criminal Court earlier this year. The new court will be composed of national and international staff, will complement the work of both the International Criminal Court (ICC) and ordinary national courts, and has jurisdiction beginning in 2003.

As you will know, the interim parliament adopted the law creating the Special Criminal Court in April 2015 and in June 2015 it was promulgated by interim president Catherine Samba-Panza. In April 2015, the United Nations Security Council renewed the mandate of the UN peacekeeping force in CAR, MINUSCA, and tasked it explicitly to support the work of the Special Criminal Court.

Concrete steps should now be taken to make this court a reality.

The need to operationalize the Special Criminal Court is urgent, not only because it will address the impunity for serious crimes which has been a factor in the conflict, but also because there is a critical need to preserve evidence, including the protection of witnesses and victims, and to address the cases of suspects who are currently in provisional detention.

Financial Support

International financial and technical support to the Special Criminal Court is essential for its functioning and success. A UN team of experts was recently deployed to the Central African Republic to assess the needs of the proposed court and submitted its report early July.

We believe there is an urgent need to encourage and assist the Central African authorities, with support from the UN as needed, to produce a public provisional budget which will help steer fundraising efforts. The budget should include provisions to support investigations, victim and witness protection, and defense rights, which are likely to be key to the court's success. Experience has shown that failure to adequately support these particular areas could lead to the court being unable to effectively discharge its duties.

The budget should remain reasonable and realistic, both to ensure its short-term success as well as its long term sustainability as a national institution. We therefore encourage creative ways to finance the court, including through the secondment of personnel from other states and/or international institutions, such as the ICC, and coverage of some of the court's expenses through the MINUSCA budget.

We urge you to press for an international pledging meeting as soon as possible.

Other measures

There are a number of other steps that the Central African government, the UN and other interested states could undertake immediately to help create the Special Criminal Court. If adequately implemented, these steps could assist in adopting a reasonable and adequate budget for the court.

1) Steering committee

Strong leadership is required to ensure a quick and efficient roll-out of the measures needed to get the Special Criminal Court up and running.

It is important to assist the Central African authorities in creating and leading a steering committee to help establish a roadmap for the prompt creation of the court. The roadmap to be adopted by the Steering Committee could include: start-up tasks, such as identifying a suitable building in Bangui, the adoption and publication of adequate job descriptions for the various posts at the court, the organization of a pledging meeting for donors and similar tasks; the actors responsible for them; and deadlines for action.

The steering committee should include the key actors involved in the establishment of the court, such as officials from relevant ministries of the Central African government, representatives of MINUSCA and other UN actors, donors and civil society representatives. A proper coordination between the relevant actors, including within the UN, will be particularly crucial. The steering committee should meet regularly to evaluate progress and adopt measures to move forward within a reasonable timeframe.

2) Recruitment of qualified personnel

Serious international crimes are often committed according to a plan or policy and are therefore more complex to investigate and prove than “classic” crimes. The recruitment of qualified, independent and motivated national and international personnel – whether they are recruited through an open process or seconded from UN member states - will be a critical factor for success.

As of now, there is a need to encourage the Central African Republic authorities in designing and adopting a recruitment process for staffing the court, with assistance from the UN. The recruitment process should be efficient, transparent and geared towards finding the best candidates.

We believe it is critical that those recruited for the court include individuals who have criminal law experience, preferably in a civil law context, and specialized expertise in the field of grave international crimes. This should include experience in the following areas: building complex cases involving command responsibility, prosecuting sexual or gender-based violence, protection of victims and witnesses and experience in handling insider witnesses.

Both national and international candidates should also be evaluated on their openness to working in an internationalized environment and their commitment to knowledge transfer.

3) Phased approach and core advance team:

Article 71 of the law creating the Special Criminal Court foresees that the court can be established in phases.

As such, the rapid recruitment of national and international investigators, investigative magistrates and prosecutors should be a matter of priority. Other key staff– such as the president, the registrar and deputy registrar and a point person on victims and witnesses’ protection – should also be hired quickly. We indeed believe that hiring a core team of court officials could help the court to begin to function and will assist in driving the establishment of the Special Criminal Court more efficiently.

We recognize that there are many challenges confronting the Central African Republic, not least the organization of elections, demobilizing combatants and security sector reform, amongst others, all of which require assistance from international donors.

We urge you to keep justice and prosecution of grave human rights violations amongst the critical tasks needed to end the abuses and rebuild the Central African Republic. Justice will help re-establish the population’s confidence in the rule of law and in state institutions. An important aim of the Special Criminal Court should also be to strengthen the capacity of the ordinary justice system to handle grave international crimes. As we see around the world,

respect for the rule of law and human rights are critical components of a democratic society and of durable peace.

Last month, the European Union Foreign Affairs Council recalled that “there can be no reconciliation without justice. The adoption and enactment of the law establishing the Special Criminal Court constitutes an important step in the fight against impunity.”

We hope your government and/or intergovernmental organization will provide financial and technical support to the Special Criminal Court and will push the above mentioned benchmarks for its rapid establishment. We believe this court is the best chance for justice for the thousands of victims who have suffered so much and have already waited too long.

We thank you in advance for your attention to this important matter.

Yours sincerely,

Signatories

Action des Chrétiens pour l'Abolition de la Torture et la Peine de Mort (ACAT / RCA)

Amnesty International

Association des Femmes Juristes de Centrafrique (AFJC)

Avocats sans Frontières

Avocats Sans Frontières Centrafrique (ASF /RCA)

Bureau Information des Droits de l'Homme (BIDH)

CAR National Coalition for the ICC

Civisme et Démocratie (CIDEM)

Commission Episcopale Justice et Paix (CEJP)

Enfants Sans Frontières (ESF)

Fédération Internationale des Ligues des Droits de l'Homme (FIDH)

Femme Action et Développement en Centrafrique (FADEC)

Human Rights Watch

Lead Centrafrique (Lead)

Ligue Centrafricaine des Droits de l'Homme (LCDH)

Mouvement des Droits de l'Homme et Action Humanitaire (MDDH)

Observatoire Centrafricain des Droits de l'Homme (OCDH)

Observatoire Centrafricain pour les Elections et la Démocratie (OCED)

Observatoire pour la Promotion de l'Etat de Droit (OPED)

Parliamentarians for Global Action

Réseau des ONG centrafricaines pour la Défense et la Promotion des Droits de l'Homme (RONGDH)

Réseau national de la Jeunesse pour les Droits de l'Homme (RNJDH)