

Establishment of a Specialized Mixed Court for the Prosecution of Serious International Crimes in the Democratic Republic of Congo

Common Position Resulting from the Workshop Held in Goma

April 6-8, 2011

The representatives of Congolese civil society organizations from the 11 provinces of the Democratic Republic of Congo (DRC) and international civil society organizations meeting in Goma from April 6 to 8, 2011, agreed upon the following common position on the establishment of a specialized mixed court for the prosecution of the most serious international crimes committed on Congolese soil since 1990:

Our organizations welcome the Congolese government's initiative to establish a specialized mixed court within the national judicial system, consisting of several chambers located in certain provincial appeals courts, having jurisdiction over grave violations of human rights committed in the DRC. This proposal represents a strong response to the United Nations Mapping Report published in October 2010, and to impunity in the DRC for crimes which are still being committed today.

Our organizations are convinced that the establishment of a specialized mixed court to prosecute these crimes has the potential to help put an end to impunity, to improve victims' access to justice, and to strengthen more generally the national judicial system's capacity and willingness to effectively prosecute the most serious international crimes.

To achieve these objectives, our organizations will be watching closely to ensure that the specialized mixed court as established is truly independent, effective, and credible.

To this end, our organizations insist that, at minimum, a number of improvements must urgently be made to the current version of the government's draft legislation for the creation of this court.

1) The specialized mixed court should have jurisdiction over past and present crimes committed in the DRC:

The government's draft legislation currently specifies that the specialized mixed court will have jurisdiction over the most serious international crimes committed in the DRC between 1990 and 2003.

However, for the court to be a truly effective instrument for justice and deterrence, and fulfill the objective of strengthening national judicial capacity, the specialized mixed court must have jurisdiction over the most serious international crimes committed after 2003 that are not addressed by the International Criminal Court.

The specialized mixed court's temporal jurisdiction must therefore be modified to extend from 1990 until such time as its jurisdiction is transferred to ordinary courts.

2) The specialized court's "mixed" nature (the integration of international staff) should be fully established and effective:

The participation of international staff in all functions of the specialized court is essential, serving important functions such as ensuring the transfer of specific skills related to the prosecution of the most serious international crimes, and contributing to preserving the court's independence from political interference.

To this end, provisions for international presence in the draft legislation must be strengthened to ensure that this presence is robust and effective.

Specifically, our organizations urge that international participation be made mandatory in the draft legislation, and that it be guaranteed in all organs of the specialized court (chambers, registry, office of the prosecutor, and investigative units). A "co-presidency" of these organs by both national and international staff could also be an option. Our organizations suggest that Africans with specific expertise in prosecution of international crimes (for example at the International Criminal Tribunal for Rwanda or the Special Court for Sierra Leone) could be specially invited to participate. The division of responsibility between national and international staff in the office of the prosecutor and the registry should be carefully considered.

Our organizations also emphasize the importance of establishing an appointment process for Congolese and international judges that guarantees that the best candidates will be selected and ensures their total independence. We are concerned that the current version of the draft legislation gives the Minister of Justice the primary role in this process. These provisions should be modified. For national judges, the usual appointment process by the Conseil Supérieur de la Magistrature (laid out in articles 82 and 152 of the Constitution) should be followed. For international judges, the appointment process should be conducted in collaboration with the international community (a mechanism to ensure this involvement should be defined). Clear criteria should be established outlining required qualifications for national and international judges practicing before the court.

3) The interest of victims and witnesses of serious international crimes should be better taken into account in the establishment of the specialized mixed court:

The primary beneficiaries of the specialized mixed court's work will be the victims of atrocities committed in the DRC. However, our organizations note with concern that the draft legislation's provisions directly related to victims' interests are entirely inadequate.

Our organizations expect that the draft legislation will be amended to provide for the creation of a specialized unit responsible for the physical and psychological protection of victims and witnesses who will be involved in the work of the specialized mixed court.

Furthermore, our organizations urge that the draft legislation more clearly specify the role and rights of victims before the specialized mixed court. This would imply recognition of victims' right to become civil parties, acting either collectively or individually, and to receive reparations for the crimes they suffered. Further on this subject, the draft legislation should include the establishment of an independent reparations fund to benefit victims.

4) The specialized mixed court should have primary but not exclusive jurisdiction over grave international crimes:

The need for justice in the DRC is immense. It is therefore important to establish a positive dynamic between the specialized mixed court and ordinary courts, in order to address the greatest possible number of cases.

To this end, our organizations believe that the specialized mixed court should have primary but not exclusive jurisdiction over the crimes it addresses. It should focus on cases involving those responsible at the highest levels. The court's rules should allow for a strategy of allocating litigation between the specialized mixed court and other courts, taking victims' complaints and expectations into consideration. The draft legislation should also provide that cases not taken up by the specialized mixed court would be referred to ordinary courts.

5) The rights of the accused as provided in the draft legislation should be strengthened:

For justice to be truly served, trials must be absolutely fair and equitable. Therefore, the rights of the accused before the specialized mixed court must be scrupulously respected.

With this in mind, and in view of the gravity and complexity of the cases the specialized court will address, our organizations believe the draft legislation should clearly provide that the accused will be represented by a lawyer with the necessary expertise.¹

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These amendments to the government's draft legislation are essential if the proposed specialized mixed court is to be truly independent, effective, credible, and able to meet the high expectations of justice for victims of atrocities in the DRC.

¹ A number of the court's organs, particularly the Registry, should have a defense office to support counsel in their work.

Signed,

1. Action Sociale pour la Paix et le Développement (ASPD), North Kivu
2. Actions pour la Promotion Socio-Economique des Ménages (APROSEM), North Kivu
3. Appui aux Initiatives Paysannes pour le Développement (AIPD), Bandundu
4. Arche d'Alliance, Maniema
5. Assistance Judiciaire aux Indigents (AJI), Kasai occidental
6. Association Africaine de Défense des Droits de l'Homme (ASADHO), Kinshasa/National
7. Avocats Sans Frontières (ASF)
8. Campagne pour les droits de l'homme au Congo, Kinshasa
9. Centre d'Etudes et de Formation Populaire pour les Droits de l'Homme (CEFOP/DH), Kasai oriental
10. Centre de Recherche sur l'Environnement, la Démocratie et les Droits de l'Homme (CREDDHO), North Kivu
11. Centre pour la Paix et les Droits de l'Homme – Peace and Human Rights Center (CPDH-PHRC), North Kivu
12. Child Protection Consulting Group (CPCG), Equateur
13. Coalition Congolaise pour la Justice Transitionnelle (CCJT), South Kivu
14. Convergences, North Kivu
15. Défense et Assistance aux Femmes et Enfants Vulnérables en Afrique (DAFEVA), North Kivu
16. Équipe de Soutien au Développement Intégral Humanitaire et de la Biodiversité (ESDIHB), Equateur
17. Groupe Justice et Libération, Orientale
18. Groupe Lotus, Orientale
19. Human Rights Watch (HRW)
20. Initiation Femme Debout pour la Justice (IFDJ), Bas-Congo
21. Initiative Congolaise pour la Justice et la Paix (ICJP), South Kivu
22. International Federation for Human Rights (FIDH)
23. Justice Plus, Orientale
24. Ligue de la Zone Afrique pour la Défense des Droits des Enfants et Élèves (LIZADEEL), Kasai occidental
25. Ligue des Electeurs, Katanga
26. Ligue pour la Défense et la Vulgarisation des Droits de l'Homme (LDVDH), Bas-Congo
27. Maniema Libertés, Maniema
28. Observatoire Congolais des Droits Humains (OCDH), Kinshasa
29. Observatoire de la Parité, South Kivu
30. Promotion et Appui aux Initiatives Féminines (PAIF), North Kivu
31. Réseau des Femmes Leaders/AWEPA, Kasai oriental
32. Solidarité Féminine pour la Paix et le Développement Intégral (SOFEPADI), North Kivu
33. Synergie des Femmes pour les Victimes des Violences Sexuelles (SFVS), North Kivu
34. Synergie pour l'Assistance Judiciaire aux Victimes de Violations des Droits Humains au Nord-Kivu (SAJ), North Kivu