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Central African Republic

Analysis of the draft Penal Code and draft Code of Criminal Procedure

This is an analysis of the draft Penal Code and the draft Code of Criminal Procedure of the Central African Republic regarding the implementation of the Rome Statute of the International Criminal Court in accordance with Amnesty International *International Criminal Court: Checklist for Effective Implementing Legislation*, (AI Index: IOR 40/011/2000), 1 August 2000.

Chapitre 1. La complémentarité:

1. Définir les crimes, les principes relatifs à la responsabilité pénale et aux arguments de défense

La législation doit prévoir que les crimes visés dans le Statut de Rome, comme d'autres crimes tombant sous le coup du droit international, sont des crimes au regard du droit national

Article 6 du Statut de Rome: génocide

Genocide is defined in Article 52 of the draft Penal Code. We note that the draft provision corresponding to Article 6 (c) of the Rome Statute does not include the element "physical". In addition, Article 6 (d) of the Rome Statute does not appear to have any corresponding provision in the draft legislation. We recommend the inclusion of the element "physical" in the corresponding draft provision to Article 6 (c) of the Rome Statute, as well as the inclusion of a correspondent provision to Article 6 (d) of the Rome Statute. We also note that the draft definition includes the following acts:

- "l'entente en vue de commettre le génocide"
- "l'incitation directe et publique à commettre le génocide"
- "la complicité de génocide"

Although we welcome these inclusions, which correspond to Article 3 (b), (c) and (e) of the Convention on the Prevention and Punishment of the Crime of Genocide, we note that Article 3 (d) of this Convention ("la tentative de génocide") is not included in the draft definition and we would recommend its inclusion in the final version of the Penal Code.

Article 7 du Statut de Rome: crimes contre l'humanité

Crimes against humanity are defined in Article 53 of the draft Penal Code. The word "Statut" in 1st paragraph should be replaced by "Code".

In draft Article 53 (g) corresponding to Article 7 (1) (g) of the Rome Statute, we note that the word "et" has been included in the phrase "ou toute autre forme de violence sexuelle". The reason for the change is not known. It appears to be a typographical error because the two provisions defining war crimes of sexual violence, Article 54 (b) (XXII) and 54 (e) (V), use the correct wording of Article 8 (2) (b) (xxii) and Article 8 (2) (e) (vi) of the Rome Statute. If this is not a typographical error, Amnesty International would welcome clarification that the intent was to broaden, rather than narrow, the scope of the crimes.

In draft Article 53 (h), corresponding to Article 7 (1) (h) of the Rome Statute, we note that the following elements are missing: "national", "au sens du paragraph 3" (that should be replaced by the correspondent provision in the draft) and "ou" in the phrase "en fonction d'autres critères". These elements should be included in the final version of the Penal Code.

In draft Article 53 (2) (i), corresponding to Article 7 (2) (i) of the Rome Statute, the word "privés" in the phrase "sont privés de liberté" is missing, as well as the word "dans" in the phrase "dans l'intention de les soustraire". These two words should be included in the final version of the Penal Code.

Article 8 du Statut de Rome: crimes de guerre

Article 8 (1) of the Rome Statute, which recommends priorities for the Prosecutor of the International Criminal Court and is not part of the definitions of the crimes, does not appear to have any corresponding provision in the draft Penal Code and we welcome the decision to omit it as it would have led to impunity in national courts for war crimes that did not meet this high threshold.

In Article 54 (iv) of the draft Penal Code, corresponding to Article 8 (2) (a) (iv) of the Rome Statute, the expression "destruction et l'appropriation" in the Rome Statute is substituted in the draft by "destruction ou l'appropriation". To the extent that this change broadens the scope of the crime, Amnesty International welcomes the change in wording.

In Article 54 (b) (vii) of the draft Penal Code, corresponding to Article 8 (2) (b) (vii) of the Rome Statute, it should be included the following wording "ainsi que les signes distinctifs prévus par les Conventions de Genève, et, ce faisant".

Article 54 (b) (ix) of the draft Penal Code, corresponding to Article 8 (2) (b) (ix) of the Rome Statute, should include the element "enseignement".

In Article 54 (b) (xx) of the draft Penal Code, corresponding to Article 8 (2) (b) (xx) of the Rome Statute, the expressions “Statut” and “articles 121 and 123 ci-dessous” should be replaced by “Code” and the corresponding provisions in the draft Penal Code.

In Article 54 (b) (xxi) of the draft Penal Code, corresponding to Article 8 (2) (b) (xxi) of the Rome Statute, the word “humains” should be replaced by “humiliants”.

In Article 54 (d) of the draft Penal Code, corresponding to Article 8 (2) (d) of the Rome Statute, the expression “alinéa c) du paragraphe 2” should be replaced by the corresponding provision in the draft Penal Code.

In Articles 54 (e) (ii) and (iii) of the draft Penal Code, corresponding to Articles 8 (2) (e) (iii) and (iv) of the Rome Statute, the expression in the Rome Statute “diriger intentionnellement des attaques” is replaced in the draft Penal Code by “lancer des attaques délibérées”. The reasons for the change are unknown. If the scope of this provision is not as broad as the definition of this crime under international humanitarian law, this provision should be amended to reflect the strictest standards of international humanitarian law, including Protocol I to which the Central African Republic acceded on 17 July 1984.

In Article 54 (e) (v) of the draft Penal Code, corresponding to Article 8 (2) (e) (vi) of the Rome Statute, the expression “article 7, paragraphe 2, alinéa f)” should be replaced by the corresponding provision in the draft Penal Code. We also note that the word “forme” is missing and recommend its inclusion in the final version of the Code.

In Article 54 (g) of the draft Penal Code, corresponding to Article 8 (2) (f) of the Rome Statute, the expression “L’alinéa e) du paragraphe 2” should be replaced by corresponding provision in the draft Penal Code.

Amnesty International welcomes the fact that Article 8 (3) of the Rome Statute does not appear to have any corresponding provision in the draft Penal Code. This provision in the Rome Statute was not only not necessary, but it could lead to improperly restrictive interpretation.

Les juridictions nationales doivent se voir reconnaître une compétence universelle dans tous les cas de crimes relevant du droit international

The Preamble of the Rome Statute recognizes the duty of each state “to exercise its criminal jurisdiction over those responsible for international crimes”. This jurisdiction is not simply jurisdiction under existing national law, but jurisdiction to the fullest extent permitted by international law. The draft legislation of the Central African Republic appears to provide for the exercise of universal jurisdiction, but with restrictions that are contrary to international law. According to Article 334 of the draft Code of Criminal Procedure “Tout citoyen centrafricain qui, en dehors du territoire de la République, s’est rendu coupable d’un fait

qualifié crime ou délit par la Loi Centrafricaine peut être poursuivi et jugé par les juridictions centrafricaines si le fait est puni par la législation du pays où il a été commis”, also applicable “à l’auteur du fait qui n’a acquis la qualité de citoyen centrafricain que postérieurement au fait qui lui est imputé”. According to Article 335 of the draft Code of Criminal Procedure, “Quiconque s’est, sur le territoire de la République, rendu complice d’un crime ou d’un délit commis à l’étranger, peut être poursuivi et jugé par les juridictions centrafricaines si le fait est puni à la fois par la Loi étrangère et par la Loi centrafricaine, à la condition que le fait qualifié crime ou délit ait été constaté par une décision définitive de la juridiction étrangère”.

Whatever the merits of the double criminality requirement with respect to ordinary crimes under national law, this requirement has no place when national courts are seeking to exercise jurisdiction over crimes under international law. In addition, Central African courts should be able to exercise their jurisdiction over all those in the territory of the Central African Republic who have committed crimes under international law, regardless of their nationality.

Les principes relatifs à la responsabilité pénale inscrits dans le droit national et s’appliquant aux crimes tombant sous le coup du droit international doivent être en conformité avec le droit international coutumier

Unfortunately it was not possible to prepare on time a detailed analysis of the draft legislation of the Central African Republic regarding all principles of criminal responsibility as set out in Part 3 of the Rome Statute. Below are a few major concerns.

Article 26 du Statut de Rome: incompétence à l’égard des personnes de moins de 18 ans

It appears that, according to Article 9 of the draft Penal Code, Central African Courts have jurisdiction over people aged 16 or more. The legislation of the Central African Republic should ensure that this regime is fully consistent with its obligations under the Convention on the Rights of the Child and other international law and standards concerning the rights of persons under 18 in the criminal and civil justice system.

Article 28 du Statut de Rome : responsabilité des chefs militaires et autres supérieurs hiérarchiques

The draft legislation does not appear to have any provision concerning responsibility of commanders and other superiors. In some respects, the Rome Statute falls short of other international law. For example, principles of superior responsibility with regard to civilians in Article 28 (b) of the Rome Statute are not as strict as required by customary international law, as well as conventional international law, such as Protocol I, which holds civilian superiors to the same standards as military commanders. To ensure that the international system of justice is as effective as possible, Amnesty International recommends that national legislation incorporates principles of criminal responsibility as broad as in customary international law.

Les arguments de défense reconnus par la législation nationale en cas de crimes tombant sous le coup du droit international doivent être conformes au droit international coutumier

Article 33 du Statut de Rome: ordre hiérarchique et ordre de la loi

We welcome the provision in Article 59 of the draft Penal Code stating that “L’auteur ou le complice d’un crime visé par le présent chapitre [génocide, crimes contre l’humanité et crimes de guerre] ne peut être exonéré de sa responsabilité du seul fait qu’elle a accompli un acte prescrit ou autorisé par des dispositions législatives ou réglementaires ou un acte commandé par l’autorité légitime. Toutefois, la juridiction tient compte de cette circonstance lorsqu’elle détermine la peine et en fixe le quantum”.

II. Supprimer tout obstacle susceptible d’empêcher l’engagement de poursuites

Il ne saurait y avoir de loi sur la prescription

Article 29 du Statut de Rome: imprescriptibilité

We welcome the following provisions in the draft legislation:

Article 7, Paragraph 3 – Code of Criminal Procedure

“Les crimes de génocide, les crimes de guerre et les crimes contre l’humanité sont imprescriptibles.”

Article 10, Paragraph 3 – Code of Criminal Procedure

“Toutefois, l’imprescriptibilité des crimes de guerre, de génocide et des crimes contre l’humanité s’applique tant à l’action publique qu’à l’action civile pouvant résulter de tels crimes.”

Article 60 – Penal Code

“L’action publique relative aux crimes prévus par le présent titre, ainsi que l’action civile et les peines prononcées sont imprescriptibles.”

A aucun Etat ne doit être reconnu le droit de prendre des mesures d’amnistie ou de grâce, ou d’autres mesures semblables visant à assurer l’impunité

There does not appear to be any provision in the draft Penal Code or the draft Code of Criminal Procedure prohibiting amnesties, pardons or similar measures of impunity for crimes under the Rome Statute. The legislation of the Central African Republic should make clear that amnesties, pardons or similar measures of impunity do not apply to crimes under international law.

Il convient de supprimer toute immunité susceptible d'empêcher que des agents de l'Etat ne soient poursuivis pour des crimes tombant sous le coup du droit international

Article 27 of the Rome Statute prohibiting a person of being exempted from criminal responsibility under the Rome Statute or reduction of penalty on the grounds of official capacity does not appear to have any corresponding provision in the draft Penal Code or the draft Code of Criminal Procedure. The legislation of the Central African Republic should expressly state that any existing immunity under national law for crimes under international law based on the official capacity of the perpetrator should be eliminated.

III. Veiller à ce que les procès soient équitables et la peine de mort proscrite

Les procès doivent se dérouler de façon équitable

Article 55 du Statut de Rome: droits des personnes dans le cadre d'une enquête

Article 55 (1) (a), (b), (c) and (d) of the Rome Statute does not appear to have any corresponding provisions in the draft Code of Criminal Procedure. Article 55 (2) (a) and (b) of the Rome Statute appears to be partially implemented in the 1st Paragraph of Article 72 of the draft Code of Criminal Procedure and Article 55 (2) (c) appears to be partially implemented in the 3rd Paragraph of Article 72 of the draft Code of Criminal Procedure. Article 55 (1) (a), (b), (c), (d), (2) (a) and (b) of the Rome Statute should be fully implemented in the national legislation of the Central African Republic.

With regard to Article 55 (2) (d) of the Rome Statute, we note Article 73 of the draft Code of Criminal Procedure stating that “Nonobstant les dispositions de l'article précédent, le Juge d'Instruction peut procéder à un interrogatoire immediate et à toute confrontation si l'urgence résulte soit de l'état d'un témoin en danger de mort, soit de l'existence d'indices sur le point de disparaître”. A procedure providing for expedited questioning of persons in urgent cases may well be necessary, but such a procedure must not violate the rights of the person being questioned, including the rights recognized in Article 55 (2) (d) of the Rome Statute.

Articles 63 à 68 du Statut de Rome: droits de l'accusé

Unfortunately it was not possible to prepare on time a detailed analysis of the draft legislation of the Central African Republic regarding all rights of the accused as recognized in Articles

63 to 68 of the Rome Statute, Articles 9, 14 and 15 of the International Covenant on Civil and Political Rights and other international law and standards guaranteeing the right to a fair trial.

According to Articles 160 and 219 of the draft Code of Criminal Procedure, it appears that trials may take place without the presence of the accused. Article 63 of the Rome Statute, expressly states that the accused shall be present during the trial. Amnesty International would welcome clarification if those provisions of the draft Code of Criminal Procedure apply to crimes under international law. If this is the case, they should be modified according to international law fair trial standards, as reflected in the constitutive instruments of all existing international and internationalized courts, which exclude trials *in absentia*.

Les procédures doivent exclure tout recours à la peine capitale

Article 77 of the Rome Statute provides that the maximum penalty which the Court may impose for genocide, crimes against humanity and war crimes is life imprisonment.

We note that the draft legislation includes the following articles:

Article 56 – Penal Code

“Les crimes de génocide, les crimes de guerre et les crimes contre l’humanité sont punis de la peine de mort.”

Article 55 – Penal Code

“La participation à un groupement formé ou à une entente établie en vue de la préparation caractérisée par un ou plusieurs faits matériels de l’un des actes définis par les articles 52, 53, et 54 ci-dessous est punie de la peine de mort.”

Article 260, Paragraph 2 – Code of Criminal Procedure

“Sous réserve des dispositions du Statut et de la présente section, l’exécution et l’application de la peine de mort sont régis par les dispositions du présent Code.”

It would be inappropriate for national courts to impose a more severe penalty for a crime under international law than the one chosen by the international community. The United Nations Security Council excluded this penalty for such crimes from the Statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda. In addition, the death penalty violates the right to life recognized in Article 3 of the Universal Declaration of Human Rights and is the ultimate cruel, inhuman and degrading punishment, contrary to the prohibition in Article 5 of the above Declaration. The legislation of the Central African

Republic should eliminate the death penalty. At the end of 2005, 122 countries were abolitionist, either in law or practice.

Chapitre 2. La coopération:

I. Obligation générale de coopérer

Les juridictions et les autorités nationales doivent coopérer pleinement avec la Cour en se conformant à ses ordres et requêtes

Amnesty International welcomes the inclusion of a special section on the cooperation with the Court in the draft Code of Criminal Procedure (Book 3, Title 1). However, Amnesty International notes that important dispositions of the Rome Statute on cooperation do not seem to have corresponding provisions, while others do not seem to be entirely clear. The following section identifies some of the organization's concerns.

Article 86 du Statut de Rome: obligation générale de coopérer

Article 234 of the draft Code of Criminal Procedure expressly states that “la République Centrafricaine participe à la répression des infractions et coopère avec [la Cour Pénale Internationale] dans les conditions fixées par le present titre”. Article 468 of the draft Code of Criminal Procedure states that “Toutes les questions qui n’ont pas été réglées par le présent Code mais qui ont été prévues par d’autres Conventions et Traités dûment ratifiés par la République Centrafricaine seront applicables conformément aux dispositions y relatives”.

Amnesty International would welcome clarification whether these provisions fully implement all cooperation requirements as set out in Part 9 of the Rome Statute. Although Article 468 may fill gaps in Book 3, Title 1, of the Code, in many countries, including Senegal, national courts have required specific provisions in national law to implement treaties concerning criminal law and criminal procedure law on cooperation with the ICC. To avoid any ambiguity, Amnesty International recommends that the legislation of the Central African Republic expressly incorporates all cooperation requirements as set out in Part 9 of the Rome Statute. In addition, the expression “signé le 30 Octobre 2001” in Article 234 of draft Code of Criminal Procedure should be replaced by “ratifié le 3 Octobre 2001”.

In addition, we would welcome clarification if there would be any potential conflict of jurisdiction between the various Cours d’Appel in the Central African Republic regarding requests of cooperation from the Court.

Article 87 (3) et (4) du Statut de Rome: confidentialité de documents et protection des victimes et des témoins

Article 87 (3) of the Rome Statute, on confidentiality of documents, and Article 87 (4) on protection of victims and witnesses, do not appear to have any corresponding provision in the draft Code of Criminal Procedure. These provisions should be expressly included in the enacted version of the Code of Criminal Procedure.

Articles 94 et 95 du Statut de Rome: sursis à exécution d'une demande

We note that Articles 94 and 95 of the Rome Statute do not appear to have any corresponding provision in the draft Code of Criminal Procedure. These provisions should be expressly included in the enacted legislation of the Central African Republic.

Article 97 du Statut de Rome: consultations avec la Cour

Article 97 of the Rome Statute, states that states parties consult with the Court when they identify problems that may impend or prevent the execution of a request from the Court. According to Paragraph 8 of Article 235 of the draft Code of Criminal Procedure "Le Procureur de la République de Bangui transmet aux autorités compétentes, en vertu de l'article 87 du Statut, toute difficulté relative à l'exécution de ces mesures, afin que soient menées les consultations prévues aux articles 93, paragraphe 3, et 97 du Statut". However, it is not clear if this provision refers to all requests of cooperation from the Court, or just to Article 93 (1) (k) of the Rome Statute. The enacted version of the Code should clearly state that the Central African Republic shall consult with the Court, whenever it receives a request for cooperation from the Court in relation to which it identifies problems which may impend or prevent the execution of the request. In addition, the Central African Republic should identify now any legal difficulties in existing legislation that might prevent full cooperation without delay and eliminate any such obstacles.

II. Statut de la Cour dans le droit national

La Cour doit être autorisée à siéger sur le territoire de l'Etat

Article 3 (3) du Statut de Rome

States must incorporate provisions in their law to facilitate the Court to sit in their territories. The draft Code of Criminal Procedure does not appear to include such provisions. The legislation of the Central African Republic should incorporate provisions authorizing the Court to sit in its territory.

La personnalité juridique de la Cour doit être reconnue

Article 4 du Statut de Rome

Each state party must ensure that the Court has the necessary legal capacity under national law so that the Court can exercise its functions and powers effectively on the territory of the state. The draft Code of Criminal Procedure does not appear to include such provisions. The legislation of the Central African Republic should incorporate provisions recognizing the legal personality of the Court.

Les privilèges et immunités de la Cour, ainsi que les personnels, avocats, experts, témoins ou autres personnes dont la présence est requise au siège de la Cour, doivent être pleinement respectés

In addition to Article 48 of the Rome Statute, the Agreement on Privileges and Immunities of the Court (APIC), adopted by the Assembly of States Parties in September 2002, further defines the scope of the Court's privileges and immunities. The draft Code of Criminal Procedure does not appear to include provisions on such privileges and immunities. In addition, the Central African Republic has not ratified APIC yet. The Central African Republic should ratify APIC as soon as possible and its national legislation should incorporate such provisions on privileges and immunities.

III. Nomination des candidats aux fonctions de juges ou de Procureur

Les Etats doivent veiller à ce que la nomination des candidats aux fonctions de juges ou de procureur se fasse dans le cadre d'une procédure publique et de la plus large consultation possible

The draft legislation of the Central African Republic does not appear to have provisions on the processes of nominating candidates to be judges or Prosecutor of the Court. Article 36 (4) (a) of the Rome Statute provides that any state party may nominate candidates to be judges of the Court and Article 36 (3) (a) describes the necessary qualifications of judges. Article 42 (3) spells out the qualifications of the Prosecutor and Article 42 (4) describes the manner of electing the Prosecutor, but it does not explain how states should select nominees. In making such nominations and selecting judges, states should do so only after consultation in an open process with civil society, law faculties, bar associations and other non-governmental organizations concerned with criminal justice and human rights, including women's rights. For further recommendations concerning nominations of judges, please consult Amnesty International document: Cour Pénale Internationale: Principes à suivre pour la présentation des candidats aux postes de juges (AI Index: IOR 40/026/2005), available on <http://web.amnesty.org/library/index/fraIOR400262005?open&of=fra-385> .

IV. Faciliter les enquêtes menées par la Cour en fournissant l'aide nécessaire

Lorsque le Procureur sursoit à enquêter, les Etats doivent répondre à toute demande d'information sans retard injustifié

Article 18 (5) of the Rome Statute, providing that states parties shall respond without undue delay to requests for information from the Prosecutor of the Court when an investigation has been deferred, does not appear to have any corresponding provision in the draft Code of Criminal Procedure. The enacted version of this Code should include such provision.

Les Etats devront faire droit aux mesures prises par le Procureur ou aux mandats délivrés par la Cour avant toute contestation de la compétence de la Cour ou de la recevabilité d'une affaire au titre de l'article 19, ainsi qu'aux dispositions prises par le Procureur en vue de préserver des éléments de preuve ou d'empêcher la fuite d'une personne accusée, conformément aux articles 18 (6) et 19 (8)

Articles 18 (6) and 19 (8) of the Rome Statute, providing that some investigative steps may continue pending the outcome of an admissibility challenge or a challenge to jurisdiction, do not appear to have corresponding provisions in the draft Code of Criminal Procedure. The enacted version of the Code should include such provisions.

Les Etats doivent donner la possibilité au Bureau du Procureur et à la défense d'enquêter sur leur territoire sans rencontrer d'obstacles

According to Article 54 (2) of the Rome Statute, the Prosecutor of the Court may conduct investigations on the territory of a state party. The draft Code of Criminal Procedure of the Central African Republic does not appear to have any provision facilitating the Office of the Prosecutor to conduct investigations in Central African Republic territory. The enacted version of the Code should include such provision.

Les autorités nationales doivent fournir à la Cour une assistance pouvant revêtir de nombreuses formes, ainsi qu'il est précisé ci-après

According to Article 96 (3) of the Rome Statute, states shall consult with the Court, regarding any requirements under its national law that may apply regarding the execution of a request. According to the same provision, the concerned state shall advise the Court of the specific requirements of its national law. The draft Code of Criminal Procedure does not appear to include any corresponding provision to Article 96 (3) of the Rome Statute. The enacted version of the Code should include such provision, which provides for notification to the Court as soon as possible so that the Central African Republic and the Court can identify any potential problems with such requirements and resolve them before any requests for assistance are issued.

Article 93 (1) of the Rome Statute provides a broad range of cooperative measures that states shall comply, if so requested by the Court. These measures include the following aspects:

- A. Assistance relative aux documents, dossiers, informations et preuves matérielles
- Il convient de localiser et de fournir les documents, dossiers, informations et preuves matérielles dont la transmission est demandée ou ordonnée par la Cour
 - Il convient de préserver ces éléments de preuve contre la perte, la falsification ou la destruction
 - Il convient de veiller à la signification de tout document demandé par la Cour
- B. Assistance relative aux victimes et aux témoins
- Il convient d'aider la Cour à localiser les témoins
 - Il convient de fournir aux victimes et aux témoins toute protection nécessaire
 - Il convient de respecter pleinement les droits des personnes interrogées dans le cadre des enquêtes menées sur des crimes relevant de la compétence de la Cour
 - Il convient d'aider la Cour en obligeant les témoins à témoigner, sous réserve des dispositions légales existantes, à l'endroit où siège la Cour ou sur le territoire de l'état
- C. Aide relative aux perquisitions et aux saisies
- Il convient de faciliter les perquisitions et la saisie des éléments de preuve par la Cour, y compris l'exhumation de cadavres, ainsi que la préservation des éléments de preuve
 - Il convient d'aider à la localisation, au gel, à la saisie et à la confiscation des avoirs des personnes accusées
 - Il convient de fournir toute autre forme d'assistance requise ou ordonnée par la Cour

The draft Code of Criminal Procedure does not include specific provisions regarding the above measures of cooperation with the Court and it is not clear if the general provisions of cooperation stated in Article 235 of the draft Code of Criminal Procedure apply to all dispositions of Article 93 of the Rome Statute. To avoid any misunderstandings, obstacles or delays, the enacted version of the Code should expressly state that the Central African Republic cooperates with the Court regarding all measures included in Article 93 of the Rome Statute.

V. Arrestation et remise des personnes accusées

The draft Code of Criminal Procedure contains in Article 246 to Article 257 provisions regarding the arrest and surrender of persons to the Court. However, some aspects do not seem to have been properly implemented, as outlined in the following sections.

Les Etats parties doivent veiller à ce que rien ne fasse obstacle à l'arrestation et la remise d'une personne

Some relevant dispositions in the Rome Statute, regarding this aspect of cooperation, do not appear to have any corresponding provision in the draft Code of Criminal Procedure, namely:

- Article 89 (2): consultation with the Court if the person sought for surrender brings a challenge before a national court on the basis of the principle of *non bis in idem*
- Article 89 (4): consultation with the Court if the person sought is being proceeded against or is serving a sentence in the requested state for a crime different from that for which surrender to the Court is being sought

According to second Paragraph of Article 250 of the draft Code of Criminal Procedure “Toute autre question soumise à la Chambre d’Accusation est renvoyée à la Cour Pénale Internationale qui lui donne les suites utiles”. However, it is not clear if it fully implements those provisions of the Rome Statute. Article 89 (2) and (4) of the Rome Statute should be expressly implemented in the national legislation of the Central African Republic.

Les juridictions et les autorités nationales se doivent d'arrêter les personnes accusées aussitôt que possible après que la Cour en a formulé la requête

Article 92 du Statut de Rome: arrestation provisoire en cas d'urgence

Second Paragraph of Article 246 of the draft Code of Criminal Procedure states that “En cas d’urgence, [les demandes d’arrestation] peuvent aussi être adressées directement et par tout moyen au Procureur de la République territorialement compétent. Elles sont ensuite transmises dans les formes prévues à l’alinéa précédent”. It is not clear if this provision fully implements Article 92 of the Rome Statute. Amnesty International recommends that Article 92 of the Rome Statute be clearly implemented in the Central African legislation.

Les juridictions et les autorités nationales doivent respecter pleinement les droits des personnes arrêtées sur requête ou sur ordre de la Cour

Article 59 du Statut de Rome: procédure d'arrestation dans l'Etat de détention

According to first Paragraph of Article 253 of the draft Code of Criminal Procedure “Les dispositions des articles 59 du Statut sont également applicables si la personne réclamée est poursuivie ou condamnée en République Centrafricaine pour d’autres chefs que ceux visés par la demande de la Cour Pénale Internationale”. However, it does not appear that there is any provision in the draft Code of Criminal Procedure expressly implementing Article 59 of the Rome Statute for persons being sought for crimes under this Statute. We ask for

clarification if this provision of the Rome Statute is fully implemented in the draft legislation and, if not, recommend its express implementation.

Les juridictions et les autorités nationales doivent dans le plus court délai remettre à la Cour les personnes arrêtées

Article 59 (7) du Statut de Rome: la personne arrêtée doit être livrée à la Cour aussitôt que possible

States must ensure that once the person has been ordered to be surrendered, or consents to surrender, the person is delivered to the Court as soon as possible, consistent with the rights of the person concerned.

According to first Paragraph of Article 248 of draft Code of Criminal Procedure, “Le transfèrement [à la Maison d’Arrêt] doit avoir lieu dans un délai maximum de cinq jours à compter de sa présentation au Procureur de la République, faute de quoi la personne réclamée est immédiatement libérée sur décision du Président de la Chambre d’Accusation de la Cour d’Appel de Bangui, à moins que le transfèrement ait été retardée par des circonstances insurmontables”. In addition, according to second Paragraph of Article 252 of draft Code of Criminal Procedure “La personne réclamée est remise dans un délai d’un mois à compter du jour où cette décision est devenue définitive, faute de quoi elle est immédiatement libérée sur décision du Président de la Chambre d’Accusation, à moins que sa remise ait été retardée par des circonstances insurmontables”. The Prosecutor of the Court should be informed before any release of the person sought to be surrendered to the Court and permitted to make oral and written arguments concerning release. In addition, there are several provisions in the draft Code of Criminal Procedure that may delay the surrender of the person to the Court, namely 1st Paragraph of Article 249 and 3rd Paragraph of Article 250 of the draft Code of Criminal Procedure. These provisions should be modified in order to be able to surrender the person to the Court as soon as possible, consistent with the rights of the person concerned.

Les Etats doivent en priorité faire droit aux demandes de remise de la Cour dans le cas où d’autres Etats auraient formulé la même demande

Article 90 du Statut de Rome: obligations des Etats quand ils reçoivent des demandes concurrentes

The draft Code of Criminal Procedure does not appear to have any provision stating that priority should be given to requests for surrender by the Court over competing requests by other states. The legislation of the Central African Republic should include such a provision.

Les Etats doivent autoriser le transfèrement des personnes accusées à travers leur territoire vers le lieu où siège la Cour

Article 89 (3) du Statut de Rome

Amnesty International welcomes the provision in Article 254 of the draft Code of Criminal Procedure stating that “Le transit sur le territoire centrafricain est autorisé conformément à l’article 89 du Statut par les Autorités compétentes en vertu de l’article 87 du Statut”.

Les Etats ne doivent pas rejurer, pour le même comportement, des personnes déjà acquittées ou condamnées par la Cour

Article 20 (2) du Statut de Rome

The draft legislation of the Central African Republic does not appear to have any provision corresponding to Article 20 (2) of the Rome Statute, stating that no person shall be tried by another court for a crime referred to in Article 5 for which that person has already been convicted or acquitted by the Court”. The legislation of the Central African Republic should include the principle of *non bis in idem* for crimes under international law.

VI. Veiller à ce que les victimes fassent l’objet de réparations effectives

Les juridictions et les autorités nationales doivent appliquer les jugements et décisions de la Cour relatifs aux réparations en faveur des victimes, et elles doivent prévoir dans leur droit national que toutes les victimes de crimes relevant du droit international feront l’objet de réparations conformément aux normes internationales en vigueur, notamment aux principes généraux définis par la Cour en matière de réparations

Article 75 du Statut de Rome: réparation en faveur des victimes

Article 259 of the draft Code of Criminal Procedure refers the “transfer du produit des amendes et des biens confisqués ou du produit de leur vente à la Cour ou au fonds en faveur des victimes”. According to same provision, “Ces biens ou sommets peuvent également être attribués aux victimes, si la Cour en a décidé et a prononcé à leur désignation. Toute contestation relative à l’affectation du produit des amendes, des biens ou du produit de leur vente est renvoyée à la Cour Pénale Internationale qui lui donne les suites utiles.” However, it does not appear to be any provision implementing Article 75 of the Rome Statute. Amnesty International recommends that the Central African Republic implement Article 75 (5) of the Rome Statute by requiring its courts to give effect to decisions of the International Criminal Court pursuant to Article 75 as if Article 109, concerning the enforcement of fines and forfeiture measures were applicable. This step might be taking by amending Article 258 of the draft Code of Criminal Procedure. It also urges the Central African Republic to ensure that the provisions of national law guarantee the right of victims and their families to reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and effective judicial procedures to obtain such reparations. Amnesty International

also urges the Central African Republic to contribute to the Trust Fund for Victims specified by Article 79 of the Rome Statute, and establish a similar fund at national level.

VII. Juges les atteintes à l'administration de la justice

La législation doit prévoir des sanctions en cas d'atteintes à l'administration de la justice de la Cour

Article 70 du Statut de Rome: atteintes à l'administration de la justice

The draft Code of Criminal Procedure does not appear to include any provision corresponding to Article 70 of the Rome Statute on offences against the administration of justice by the Court. Amnesty International recommends that the Central African Republic amend existing legislation concerning offences against their criminal justice system to give its courts jurisdiction over each of the offences identified in Article 70 (1) of the Rome Statute, regardless where such offences were committed, and to provide full cooperation without delay with investigations and prosecutions of such offences by the International Criminal Court in the same manner as it is required to cooperate with investigations and prosecutions of crimes in the International Criminal Court.

VIII. Exécution des peines

La législation doit prévoir l'exécution de peines d'amende et de mesures de confiscation

Article 109 du Statut de Rome: exécution des peines d'amende et des mesures de confiscation

Amnesty International welcomes Article 258 of draft Code of Criminal Procedure providing for the enforcement of Court's fines and forfeiture measures.

La législation doit prévoir l'exécution des peines prononcées par la Cour, dans le respect des conditions exposées ci-après

- a. Les conditions de détention doivent pleinement satisfaire aux exigences inscrites dans le Statut et dans d'autres normes internationales
- b. La législation doit prévoir la libération des personnes condamnées à l'expiration de leur peine ou sur ordre de la Cour
- c. La législation doit prévoir le transfèrement des personnes à l'expiration de leur peine

d. La législation doit limiter les poursuites et les peines relatives à d'autres infractions

e. La législation doit contenir des dispositions relatives à la question des évasions

Articles 260, 261 and 262 of draft Code of Criminal Procedure refer to the enforcement of Court's sentences of imprisonment. Article 262 of the draft Code of Criminal Procedure states that "Si la personne condamnée dépose une demande de liberté provisoire, de semi-liberté, de réduction de peine, de fractionnement ou de suspension de peine, de placement ou de libération conditionnelle, sa requête est adressée au Procureur Général près de la Cour d'Appel dans le ressort de laquelle elle est incarcérée qui la transmet au Ministère de la Justice. Celui-ci communique la requête à la Cour Pénale Internationale dans les meilleurs délais, avec tous les documents pertinents. La Cour Pénale Internationale décide si la personne condamnée peut ou non bénéficier de la mesure considérée".

However, all requirements set forth above do not appear to have corresponding provisions in the draft Code of Criminal Procedure. We recommend that the legislation of the Central African Republic fully implements those requirements, according to Articles 106, 107, 108 and 111 of the Rome Statute.

IX. Education du public et formation des agents de l'Etat

Les Etats parties doivent définir et mettre en oeuvre des programmes efficaces d'éducation du public et de formation des agents de l'Etat, en application du Statut

The draft legislation does not seem to provide for training on Court issues. Amnesty International recommends that states parties develop and implement programmes to train judges, prosecutors, defence lawyers, police, army and court officials and foreign affairs officials concerning their respective obligations under the Rome Statute, and to proceed with the updating of military codes, as many states have already done.

Conclusion

This paper aims to provide a useful tool for those involved in the implementation process of the Rome Statute in the legislation of the Central African Republic by identifying particular areas of the draft Penal Code and the draft Code of Criminal Procedure that need to be amended regarding an effective implementation. Unfortunately it was not possible to prepare on due time for this workshop a French version. However, we will make a French version

available shortly. We have made the greatest efforts when preparing the comments in this paper. Nevertheless, we are not experts in Central African law, and would, therefore, like the questions which we have raised to be clarified for us. This paper is being brought before you for consideration in order to assist the common task to ensure that the legislation of the Central African Republic incorporates all the obligations undertaken under the Rome Statute and customary and conventional international law.