

November 10, 2010

To the EU High Representative for Foreign Affairs and Security Policy Catherine Ashton
To the 27 EU Foreign Ministers
To the United States Secretary of State Hillary Clinton
To the AU Commission Chairperson H.E. Jean Ping
To the 15 members of the AU Peace and Security Council

Your Excellencies,

Following the official publication on October 1st, 2010 of the United Nations “Report on the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo” (Mapping report), we are writing to urge you to take action to bring about justice for victims of grave international crimes committed in Congo. Specifically we call on you to (i) support the Congolese government’s call for a conference in Kinshasa to discuss the judicial and non-judicial options proposed in the mapping report, and (ii) to respond positively in principle to the Congolese government’s proposal to create a “mixed specialized chamber.”

We believe that the UN mapping report is a powerful reminder of the gravity of the crimes committed in Congo and of the shocking effect of impunity. Years of violence have left a legacy of horrific abuses against civilians perpetrated by national and international actors. Unfortunately, these abuses continue, as evidenced by the recent mass rape of over 300 civilians in Walikale, eastern Congo, at the beginning of August 2010. Justice is urgently needed to help end the cycle of violence and the culture of impunity which underpins it. This is not only a moral duty towards the victims and an obligation under international law, but it is also crucial to bringing sustainable peace to eastern Congo and the Great Lakes region.

The Congolese government, in its response to the Mapping report¹ on October 1 and 2, 2010, welcomed the report. It stressed the crucial importance of providing justice to the

¹ Ileka Atoki, Congolese Ambassador to the United Nations, “Justice for the Victims of Congo,” *The Huffington Post*, October 1, 2010, http://www.huffingtonpost.com/amb-ileka-atoki/post_976_b_746003.html (accessed November 10, 2010). “Press statement by His Excellency the Minister for Justice and Human Rights,” Democratic Republic of Congo Department of Justice press release, October 2, 2010, <http://www.justice.gov.cd/> (accessed November 10, 2010).

victims. It clearly indicated its willingness to take action. Recognizing some of the current limitations of its own justice system in addressing grave international crimes, the Congolese government said it had taken the decision, after consideration of the various justice options put forward in the report, to propose the establishment of “specialized chambers” embedded in national courts and which would have a “mixed” character, meaning that the “door is open to international magistrates.”² The government proposed that these chambers have jurisdiction over war crimes, crimes against humanity and genocide committed prior to the entry into force of the Rome Statute of the International Criminal Court (ICC) on July 1, 2002.

The Congolese government’s public support for a “mixed specialized chamber” is a significant step forward in establishing a mechanism that can begin the process of bringing justice. However, the Congolese government cannot do this alone. The crimes committed are complex, many occurred in a context of international conflict, and the perpetrators include Congolese and non-Congolese nationals.

The Congolese government will require political, financial as well as judicial support and expertise to help establish and run a mixed chamber. This has been the case in other countries as well, such as Bosnia and Herzegovina. We believe that since many serious human rights violations continue in Congo, the temporal mandate of such a mixed chamber should be open-ended to permit jurisdiction over ongoing crimes. For these recent crimes, the mixed chamber would act in a complementary manner with the International Criminal Court (ICC), which is conducting investigations in the DRC for crimes under its jurisdiction committed after July 1, 2002. We have already raised the issue of the chamber’s temporal jurisdiction with the Congolese government and urge you to do so as well.

We believe the mixed chamber should focus on the perpetrators most responsible for grave international crimes not prosecuted by the ICC but who are also beyond the reach of the Congolese justice system. The mixed chamber should also cooperate as appropriate with local courts to encourage further prosecutions of soldiers and low level perpetrators involved in such crimes. This will help to ensure the chamber becomes a robust arm of the Congolese judicial system until ongoing reforms enable it to take strong action against perpetrators of grave international crimes.³

In this regard, we urge you to take action on two key issues:

² “The official position of the government is now decided: Congolese courts have the responsibility to prosecute international crimes, through the establishment of specialized chambers within Congolese courts, with the possibility of *ad litem* judges sitting on their benches, that is to say that we are opening the doors to international magistrates,” unofficial translation by Human Rights Watch, “Press statement by His Excellency the Minister for Justice and Human Rights,” Democratic Republic of Congo Department of Justice press release, October 2, 2010, <http://www.justice.gov.cd/> (accessed November 10, 2010), p. 5.

³ Human Rights Watch, *Tackling Impunity in Congo: Meaningful Follow-up to the UN Mapping Report*, October 1, 2010, <http://www.hrw.org/en/news/2010/09/22/dr-congo-meaningful-follow-un-mapping-report>.

- (i) To support the Congolese government's call for a conference in Kinshasa to discuss the judicial and non-judicial options proposed in the mapping report. We believe this is an important follow-up step for the report as well as a means to decide the way forward. We hope you will be able to assist in funding such a conference, to participate in the discussions, and to send appropriate technical expertise to assist the Congolese government in its deliberations on the options.
- (ii) To respond positively, in principle, to the Congolese government's proposal to create a "mixed specialized chamber." We also urge that further technical discussions on how to establish such a chamber commence including a special session on the mixed chamber at the conference mentioned above.

The international community has rightly expressed outrage at the shocking atrocities endured by Congolese civilians, including the widespread sexual violence against women and girls. But that outrage must be followed up by concrete action to end such crimes. The Congolese government has expressed its willingness to act, and we urge you to support them and to play your part in bringing justice to the victims.

Yours sincerely,



Richard Dicker
Director, International Justice Program
Human Rights Watch



Dismas Kitenge
Vice President
FIDH

CC:
UN Secretary General Ban Ki-moon
UN High Commissioner for Human Rights Navanethem Pillay