

The Democratic Republic of Congo Must Adopt the Rome Statute Implementation Law

Years have lapsed since the Democratic Republic of Congo (DRC) ratified the Rome Statute of the International Criminal Court (ICC) in March 2002, but the DRC government has yet to meet its legal obligation to incorporate the statute into national law. Adopting such legislation is essential to ensure complementarity between domestic Congolese courts and the ICC and to strengthen the country's legal system so it can end the ongoing cycle of impunity for the most egregious international crimes.

Two of the DRC's parliamentarians have presented a draft bill to incorporate the Rome Statute into law. Civil society and international legal experts have studied this bill and have suggested amendments that would ensure the Congolese legislation's conformity with the Rome Statute. The DRC parliament should review this law and adopt it without delay.

FULFILLING THE DRC'S OBLIGATIONS UNDER THE ROME STATUTE

Two Congolese members of parliament introduced a draft bill before the National Assembly, Congo's lower house, in March 2008. This is the second Rome Statute implementation bill introduced before parliament. The first was submitted in 2005 during the time of the DRC's political transition. After the 2006 elections, the transitional parliament was dissolved and pending bills expired at that time. This required that a new Rome Statute implementation bill be presented for consideration by Congo's elected parliament.

The new Rome Statute implementation bill submitted in March 2008 followed appropriate legislative procedures. The Congolese executive branch did not comment on this legislation, indicating its tacit acceptance that parliament consider the merits of the bill. It remains pending before Congolese parliament.

Rome Statute: The international treaty creating the International Criminal Court (ICC). This defines crimes within the court's jurisdiction, rules of procedure, and cooperation with States Party. The ICC is an independent institution in The Hague. Currently, 111 countries have ratified the statute.

Complementarity: The ICC's basic principle states that the court has jurisdiction only if a state is "unwilling or unable" to investigate or prosecute serious international crimes governed by the statute.

DRC and the ICC: The DRC is a State Party to the statute and has invited the ICC to investigate and prosecute any crime within its jurisdiction that is alleged to have occurred on DRC territory since July 1, 2002. But the DRC must fulfill its obligations by adopting legislation that would enforce the Rome Statute and other effective tools for the Congolese judicial system to better combat impunity for serious international crimes at the national level.

Legal experts, in collaboration with Congolese civil society, the International Center for Transitional Justice (ICTJ), Avocats Sans Frontières, and the Konrad Adenauer Foundation, convened in 2008 and issued a memorandum of suggested amendments to the draft bill to maximize conformity with the Rome Statute.

The DRC must debate, adopt, and promulgate this proposed law without delay to fulfill its obligations as a State Party to the statute. In doing so, the DRC will acquire an additional tool to combat impunity for crimes committed since July 1, 2002. Passing the bill also paves the way to much-needed discussions concerning appropriate mechanisms to address mass atrocity crimes committed between 1996 and June 2002.

Adopting this law ensures that:

- Congolese criminal law and procedure respect international human rights standards under international treaty law and contained in the Rome Statute;
- All relevant provisions of the statute and its supporting texts are reflected in a unified legislative text, in order to facilitate the work of Congolese judges;

- The Congolese civil court system has exclusive jurisdiction over serious international crimes, consistent with international law. Under the 2002 Military Criminal Code currently in force, military tribunals have exclusive jurisdiction over these crimes. This deprives civil courts of oversight of international crimes, even though the civil court system is responsible for guaranteeing the rights and liberties of Congolese citizens. While the draft bill would transfer exclusive jurisdiction over these crimes to civil courts, it would leave open the possibility for judicial actors from the military court system (such as judges or investigators) to participate in international crimes investigations and trials alongside their counterparts from the civil court system.

HIGHLIGHTS OF THE DRAFT ROME STATUTE IMPLEMENTATION BILL

The proposed draft Rome Statute implementation bill would modify provisions of five Congolese laws.

Notable proposed amendments to these texts include the following:

- **Criminal Code:** explicitly including genocide, war crimes, and crimes against humanity as defined in the statute; setting the age of legal majority at 18; equal punishment for principal perpetrators and accomplices; provisions ensuring the independence of judges; and life imprisonment as the maximum sentence for such crimes;
- **Criminal Procedure Code:** provisions enhancing protection of defendants' and victims' rights; procedures to facilitate cooperation between Congolese courts and the ICC; strengthened due process standards and fair trial provisions;
- **Code on Judicial Organization and Jurisdiction:** conferring jurisdiction over international crimes to the appeals courts of the civil court system; designating a panel of five judges for international crimes trials, with the possibility of creating mixed panels of judges from the Congolese civil and military justice systems; conferring appellate jurisdiction in the Congolese Supreme Court;
- **Military Criminal Code:** removing genocide, war crimes, and crimes against humanity from the jurisdiction of military courts;
- **Code of Military Criminal Procedure:** removing the military court system's jurisdiction over international crimes.

After the DRC ratified the Rome Statute in 2002, the Military Criminal Code was amended to include serious international crimes under its jurisdiction, even though those amendments did not elaborate or incorporate the Rome Statute's definition of crimes. According to Congolese law, international treaties that the DRC has ratified are superior to Congolese laws and can be directly applied by Congolese courts. Since 2002, several military courts in the DRC have directly invoked the Rome Statute in their trials and judgments. While these cases demonstrate positive first steps toward combating impunity, adopting the Rome Statute implementing legislation would guarantee:

- Consistency between Congolese law and international criminal law reflected in the statute, particularly definitions of genocide, war crimes, and crimes against humanity;
- Proper application of the statute's provisions to ensure fair trials, victim participation, and witness protection.

TIMELINE OF DRC'S INVOLVMENT WITH THE ICC

July 17, 1998: The United Nations adopts the ICC Statute in Rome.

March 30, 2002: The DRC ratifies the statute.

April 11, 2002: The DRC deposits its Rome Statute ratification instruments simultaneously with 10 other countries, thus allowing the statute to go into effect.

July 1, 2002: The Rome Statute goes into effect.

April 19, 2004: DRC President Joseph Kabila refers the situation of the DRC to the ICC, allowing the prosecutor to open investigations and prosecute any international crimes within the ICC's jurisdiction that are alleged to have occurred on DRC territory after July 1, 2002.

October 5, 2005: The first draft Rome Statute implementation bill is submitted to the National Assembly, the lower house of Parliament. However, legislators did not consider the bill when the country went through a political transition. The bill

expired after the 2006 elections instituted a newly-elected parliament, necessitating that a new bill be introduced for parliament's consideration.

March 2008: Members of Parliament Nyabirungu mwene Songa and Crispin Mutumbe Mbuya present a new draft Rome Statute implementation bill to the National Assembly, which remains pending before Congolese parliament.

April 2010