

Response from Chile

Further to the communication of the Secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court of 7 July 2014, requesting States Parties to provide information relevant to the promotion of ratification and full implementation of the Rome Statute, the Department of Legal Affairs of the Ministry of Foreign Affairs of Chile reports the following:

1. In regard to the information sought under paragraph 6, sub-paragraph (h) of the Plan of action, it should be noted that by Law 20.352 of 30 May 2009, our country implemented a constitutional reform authorising the Chilean State to recognise the jurisdiction of the International Criminal Court under the terms provided for in the Rome Statute.

The Constitutional Court of Chile found that a constitutional reform was required in order for our country to ratify the treaty.

2. Accordingly, on 18 July 2009, Law 20.357 defining crimes against humanity and genocide as well as war crimes was published. Above law was intended to align Chilean legislation by defining any conduct constituting a crime under the Rome Statute of the International Criminal Court prior to ratifying the said treaty.

This was mainly due to the fact that it was considered appropriate for Chile to have the necessary rules and regulations in place to comply with the principle of complementarity set out in the Statute.

3. The Agreement on Privileges and Immunities of the International Criminal Court was ratified on 26 September 2011.

4. The amendments to article 8 of the Rome Statute and the amendments concerning the crime of aggression of the Rome Statute, adopted at the Review Conference in Kampala, are currently before the National Congress, undergoing an initial reading in the Chamber of Deputies.

5. Moreover, in order to meet the obligation of States Parties to fully cooperate with the Court in regard to the investigation and prosecution of crimes within its jurisdiction, a roundtable with representatives of the Ministry of Justice and Ministry of Foreign Affairs is preparing a draft law on cooperation with the International Criminal Court which will hopefully soon be presented to the National Congress.

6. Concerning the questionnaire about implementing legislation, appended to the communication of the Secretariat as Annex III, the following is reported:

“1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”), or otherwise enacted legislation pertaining to the Rome Statute?”

Yes. On 18 July 2009, Law 20.357 was published in the Chilean Official Gazette, defining crimes against humanity and genocide as well as war crimes.

POSITIVE RESPONSE

Part B.

“5. In implementing the Statute, did your Government draft stand-alone legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?”

Law 20.357 defining crimes against humanity and genocide as well as war crimes is a stand-alone law. However, it also contains amendments to Law 19.640, the organic constitutional law of the Public Prosecutor’s Office.

“6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes into domestic law?”

Law 20.357 defined crimes against humanity and genocide as well as war crimes by specifically incorporating them into domestic law, without reference to the Rome Statute.

“7. Does the implementing legislation incorporate the following aspects of cooperation with the Court and if yes, how?”

- (a) Arrest and surrender;
- (b) Interim release and release of persons (acquittal, non-confirmation of charges, etc);
- (c) Cooperation with OTP investigations;
- (d) Cooperation with the Court on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes;
- (e) Enforcement of sentences;
- (f) Witness protection;
- (g) Other forms of cooperation (see in particular article 93 of the Rome Statute).”

Law 20.352 amending the constitution and authorising the Chilean State to recognise the jurisdiction of the International Criminal Court stipulates that “cooperation and assistance between competent national authorities and the International Criminal Court and the judicial and administrative procedures which may apply are subject to Chilean law”.

Chile does not currently have any specific law on cooperation with the International Criminal Court. However, it is working on one and has undertaken to present a Draft Law on this subject to the National Congress as soon as possible.

“8. Does the implementing legislation designate a channel of communication with the Court?”

No, however, the draft law on cooperation with the International Criminal Court that is currently under review does envisage the creation of a channel of communication with the Court.
