

ANNEX III

Implementing legislation questionnaire for States Parties

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

Yes.

IF NOT Part A

2. What legislative or other efforts, if any, has your Government taken or initiated to implement the provisions of the Statute into national law?

3. What obstacles, if any, has your Government faced in its efforts to implement the provisions of the Statute? Has your Government managed to overcome such obstacles, and if so, how?

4. What form of assistance would benefit or has benefitted your Government’s efforts to implement the Statute?

IF YES Part B

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

The implementation of the Statute was split in two parts:

(1) legislation concerning legal assistance and other forms of cooperation that the Netherlands, as a state party and as the host country, is required to give to the Court (Implementation Act International Criminal Court); and

(2) legislation ensuring that the crimes contained in the Statute were also criminalized in NL (International Crimes Act).

Both Acts constitute separate, stand-alone legislation, but there are connections and links with pre-existing law.

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

The International Crimes Act incorporates the substantive crimes of the Statute by incorporating these crimes into domestic law.

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

(a) Arrest and surrender;

Yes. A special procedure concerning arrest and surrender is provided for in the Implementation Act International Criminal Court.

(b) Interim release and release of persons (acquittal, non-confirmation of charges, etc);

No. These issues are addressed in the Headquarters Agreement.

(c) Cooperation with OTP investigations;

Yes. Provisions concerning cooperation are provided for in the Implementation Act International Criminal Court.

(d) Cooperation with the Court on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes;

Yes. Provisions concerning these issues are provided for in the Implementation Act International Criminal Court.

(e) Enforcement of sentences;

Yes. Provisions concerning enforcement of sentences are provided for in the Implementation Act International Criminal Court.

(f) Witness protection;

Mostly in the Headquarters Agreement. There are several provisions on the status of witnesses in the Implementation Act International Criminal Court.

(g) Other forms of cooperation (see in particular article 93 of the Rome Statute).

Yes, provided for in the Implementation Act International Criminal Court.

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

No, this is provided for in the Headquarters agreement (this is the Protocol and Host Country Department of the Ministry of Foreign Affairs).

9. Does the implementing legislation create a central national authority or designate a national focal point for cooperation with the Court?

Yes, provided for in the Implementation Act International Criminal Court (this is the Minister of Security and Justice).

10. Does the implementing legislation provide for the privileges and immunities of the Court? (See in particular article 48 of the Rome Statute and the Agreement on the Privileges and Immunities of the International Criminal Court)

No. The privileges and immunities of the Court in the Netherlands are regulated in the Headquarters Agreement.

11. What obstacles, if any, did your Government face in its efforts to implement the provisions of the Statute? How did your Government manage to overcome such obstacles?

During the parliamentary debates on the implementation most of the political focus was on constitutional questions (such as non-Netherlands criminal adjudication within Dutch borders; non-Netherlands detention within Dutch borders; exclusion of access to a Dutch judge; and constitutional immunities versus article 27 of the ICC Statute).

The approach by the Dutch Parliament to these constitutional questions was to follow a constructive interpretation and to find practical solutions rather than to follow a dogmatic reasoning and call for amendments.

12. Did your Government benefit from any form of assistance in the process of implementing the Statute?

No.

13. Has your government initiated or considered additional steps for the implementation of the Statute in national legislation?

The Netherlands has ratified the Kampala amendments. Consequently, the International Crimes Act is amended accordingly.