

## **I – Compilation on implementing legislation 2009**

On 24 April 2009, the Secretariat conveyed to States note verbale ICC-ASP/8/S/PA/19, which included a questionnaire prepared by the Court regarding the measures undertaken in respect of implementing legislation. States Parties were requested to complete and submit the questionnaire together with the information referred to in Assembly resolution ICC-ASP/5/Res.3 of 1 December 2006, by which the Assembly decided, inter alia, to adopt and implement the Plan of action for achieving universality and full implementation of the Rome Statute, in Assembly resolution ICC-ASP/6/Res.2 of 14 December 2007, and in paragraph 3 of resolution ICC-ASP/7/Res.3 of 21 November 2008, by which the Assembly, inter alia, endorsed the recommendations contained in the Report of the Bureau on the Plan of action (ICC-ASP/7/19) (see annex III).

The Secretariat had as at 9 April 2010 received 12 replies to the questionnaire that was issued in 2009 from the following States:

Barbados, Belgium, Bulgaria, Dominican Republic, Finland, Georgia, Netherlands, New Zealand, Paraguay, Poland, Portugal, and Slovakia.

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## 1. Barbados

[Original: English]

### 1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”).

The Government is currently drafting the ICC legislation The Chief Parliamentary Counsel is preparing a draft bill based on the Commonwealth Secretariat Model Bill.

**If yes  
Part A**

### 2. What legislative efforts, if any, has your Government taken 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?

The obstacles faced were:

- Lack of legislative priority as other legislation was most urgent
- This was a change of government after election in 2008. The new government is committed to implementing the ICC legislation

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

Assistance in a form of a workshop for the Parliamentary Counsel drafting the ICC legislation. The contact for the drafting office is

[sbelle@oag.gov.bb](mailto:sbelle@oag.gov.bb),  
tel. 12464317700

Networking and general discussion with the Drafting Counsel could be useful.

**If yes  
Part A**

N\A

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## 2. Belgium

[Original: French]

1. La Belgique a adopté une législation nationale d'application du Statut de Rome. La mise en œuvre du statut s'est effectuée par le biais de :
  - la **loi du 5 août 2003 relative aux violations graves du droit international humanitaire** (voir Annexe I), publiée au Moniteur belge du 7 août 2003, qui attribue compétence aux juridictions belges pour juger les auteurs présumés de crime de génocide, crimes contre l'humanité et crimes de guerre ;
  - **loi du 29 mars 2004 concernant la coopération avec la Cour pénale internationale et les tribunaux pénaux internationaux** (voir Annexe II), publiée au Moniteur belge du 1<sup>er</sup> avril 2004, qui fixe notamment les principes généraux régissant la coopération judiciaire entre la Belgique et la Cour.
2. La **mise en œuvre du Statut** par la Belgique revêt un **caractère mixte** :
  - Rédaction d'une loi d'application spéciale s'agissant des éléments de coopération entre la Belgique et la Cour pénale internationale ;
  - Intégration dans le Code pénal belge des incriminations de crimes visées par le Statut.
3. Les crimes relevant de la compétence de la Cour pénale internationale (crime de génocide, crimes contre l'humanité et crimes de guerre) ont été intégrés dans la législation belge par la **loi du 5 août 2003 relative aux violations graves du droit international humanitaire** (voir Annexe I), publiée au Moniteur belge du 7 août 2003, rendant les juridictions belges compétentes pour juger les auteurs présumés de ces crimes (compétence personnelle active, compétence personnelle passive et compétence universelle traditionnelle). **La définition des crimes s'inspire notamment du Statut de Rome de la Cour pénale internationale, en allant parfois au-delà du champ d'application des articles 6 à 8 du Statut, lorsque la Belgique y est tenue par une autre source conventionnelle ou coutumière de droit international humanitaire.**
4. Toutes les dispositions du chapitre IX du Statut sont couvertes par la loi du **29 mars 2004 concernant la coopération avec la Cour pénale internationale et les tribunaux pénaux internationaux**, notamment par ses articles 3 et 4.
5. L'article 5 de la **loi du 29 mars 2004 susmentionnée** désigne le **Ministre de la Justice comme autorité centrale** « *pour recevoir les demandes émanant de la Cour et transmettre à la Cour les demandes provenant des autorités judiciaires belges.* » En application de l'article 3 de l'arrêté royal du 17 septembre 2005 relatif à la création du service de droit international humanitaire, c'est ce dernier qui gère les dossiers relevant de la compétence de l'autorité centrale.

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### 3. Bulgaria

[Original: English]

#### Bulgarian response to the implementing legislation questionnaire for States Parties on the ICC Plan of action

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1. *Has your Government adopted any national legislation implementing the Rome Statute („the Statute“)?*

Yes, the Bulgarian Government adopted the relevant legislation measures by which the Rome Statute was implemented in the Bulgarian legislation.

The Republic of Bulgaria signed the Statute on 11 February 1999 and ratified it by law, adopted by the 39th National Assembly on 15 March 2002 (*promulgated in State Gazette, No. 31/26.03.2002*). Bulgaria deposited its instrument of ratification of the Rome Statute on 11 April 2002. With the ratification act Bulgaria took place among the first sixty states that contributed to the entering into force of the Rome Statute only four years after its adoption.

#### PART B

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

While implementing the Statute, the Bulgarian Government did not draft special implementing law because some substantive provisions have already existed in the national legislation - in particular in the Penal Code of the Republic of Bulgaria since its adoption in 1968. Such an example is Chapter XIV „Crimes against peace and humanity” which includes substantial provisions defining crimes like genocide and apartheid, crimes against peace, crimes against the laws and customs of waging war (for details s. Annex 1). In view of the abovementioned we can summarize that when implementing the Rome Statute, the Bulgarian authorities have followed the second approach by incorporating the articles or substantive provisions of the Statute into pre-existing law.

Furthermore, as an international treaty the Rome Statute has been ratified according to a procedure established by the Constitution of the Republic of Bulgaria, has been promulgated, and has entered into force for the Republic of Bulgaria. Therefore and according to Article 5, para 4 of the Constitution it became part of the domestic law of the land and takes priority over any conflicting standards of domestic legislation.

In its Decision №7, dated 2 July 1992 under constitutional case № 6 /92 of the Constitutional Court, which has the nature of a subsidiary source of law, for the interpretation of Article 5, para. 2, 3 and 4 of the Bulgarian Constitution, the Constitutional Court of the Republic of Bulgaria decided that: „Any international instruments which have been ratified, promulgated and having come into force with respect to the Republic of Bulgaria, by which certain acts (actions or omissions) have been declared as criminal offences, but not being criminalized under the national law shall be considered part of the domestic legislation of the Republic of Bulgaria only as much as they clarify the sense and content of the existing in the Bulgarian Penal Code definitions of crimes or elements of crimes or if they create an obligation for a legislative amendment”.

6. *Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?*

The relevant Bulgarian criminal legislation does not refer to the Statute with regard to the substantive crimes regulated by it, because as mentioned above Chapter XIV of the Penal Code of the Republic of Bulgaria contains pre-existing provisions for substantive crimes nearly in the same terms as the Statute. Besides, when ratifying the Statute in 2002 the National Assembly adopted amendments and supplements in some of the relevant sections in the Penal Code (Section II „Crimes against the laws and customs of waging war”, Articles 451 and 415a; for details s. Annex 1).

*7. Does the implementing legislation fully incorporate all modes of cooperation under PART 9 of the Statute?*

Fully in line with the provisions of Article 88 of the Statute, the Bulgarian legislation provides for procedures for all of forms of cooperation specified under Part IX of the Statute.

In this respect in 2003 new amendments to the Penal Procedure Code were adopted provided for the successful judicial cooperation with the ICC in pursuance of the obligations that the Statute imposes on State Parties under Part IX of the Statute. These amendments were preserved in the consequently adopted in 2005 new Penal Procedure Code, in force from April 2006. 2

In 2005 the provisions for the extradition were taken out of the PPC and regulated in a special Law on extradition and the European arrest warrant (*promulgated State Gazette, No 46/3.06.2005, effective 4.07.2005, amended, SG No. 86/28.10.2005, effective 29.04.2006, amended and supplemented, SG No. 52/6.06.2008*) which provides for the surrender of persons for the purposes of criminal proceedings at a request of an international court.

In the same year a new amendment of the Constitution has been adopted by the National Assembly which *inter alia* stipulates that „No citizen of the Republic of Bulgaria may be surrendered to another State or to an international court for the purposes of criminal prosecution except where this is provided for in an international treaty which has been ratified, which has been promulgated, and which has entered into force for the Republic of Bulgaria” (Art. 25, para 4).

According to the national legislation the procedure with regard to requests for the arrest and surrender of persons to the ICC under Article 89 of the Statute is regulated in Chapter Three, Section I of Law on Extradition and European Arrest Warrant. In general these provisions are applicable in cases of extradition at the request of other States but Article 22 explicitly ensures that they shall also apply where arrest and surrender is requested by an international court.

Other forms of cooperation in relation to investigations or prosecutions as cited in Article 93 contain in the Penal Procedure Code, which sets forth rendering of legal assistance in criminal matters. The different types of cooperation are broadly formulated in order to allow wide range of procedural measures and actions.

Special protection measures can also be rendered to participants in criminal proceedings in particular witnesses and crime victims where their testimony, explanations or depositions 2

provide evidence of significant importance to criminal proceedings for crimes against peace and humanity. The protection is regulated in the Law of Protection of Persons Threatened in Connection with Criminal Proceedings (*promulgated, State Gazette No. 103/23.11.2004, effective 24.05.2005, last amended, SG No. 82/16.10.2009*) and consists of the following measures: 1. Personal physical protection; 2. Property protection; 3. Provisional placement in a safe location; 4. Change in the place of residence, workplace, or educational establishment or placement in another facility for the service of a sentence; 5. Full change of identity (for details s. Annex 2).

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

According to Art. 475, para 2 of the Bulgarian Penal Procedure Code „The request for international legal assistance shall be sent to the Ministry of Justice unless an international treaty to which Bulgaria is a party stipulates another procedure.”

Art. 476, para 1 of the abovementioned law stipulates that „The request for international legal assistance shall be executed under the procedure stipulated in the Bulgarian laws, or under a procedure stipulated in an international treaty to which the Republic of Bulgaria is a party. The request may also be executed under the procedure stipulated in the law of the other state or the statutes of the international court of justice, provided that this has been requested and does not contradict the Bulgarian laws. The other state or the international court of justice shall be informed about the time and place of execution of the request, if this is requested”.

In addition, it should be underlined that the Bulgarian Ministry of Justice will take the necessary measures to ensure that requests for mutual legal assistance from the International Criminal Court will be dealt with as a matter of urgency and will be given priority.

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#### 4. Dominican Republic

[Original: Spanish]

### Cuestionario sobre implementación de medidas legislativas Corte Penal Internacional

#### Anexo IV Cuestionario para los Estados Partes sobre las leyes de aplicación del Estatuto de Roma

1.- *¿Ha adoptado su Gobierno leyes de aplicación del Estatuto de Roma?*

No.

*En caso de que la respuesta sea negativa (Parte A)*

2.- *¿Qué medidas ha tomado su Gobierno a nivel legislativo para la plena aplicación de las disposiciones del Estatuto en la legislación nacional?*

Salvo disposición expresa de un convenio, resulta innecesaria la adopción de leyes adjetivas internas para dar vigencia a los mismos. En tal sentido, el artículo 3 de la Constitución Política de la República Dominicana dispone:

La República Dominicana reconoce y aplica las normas del Derecho Internacional general y americano en la medida en que sus poderes públicos las hayan adoptado, y se pronuncia en favor de la solidaridad económica de los países de América y apoyará toda iniciativa que propenda a la defensa de sus productos básicos y materias primas.

Asimismo, el artículo 1º del Código Procesal Penal, en vigencia desde el 2004, establece que:

**Primacía de la Constitución y los tratados.** Los tribunales, al aplicar la ley, garantizan la vigencia efectiva de la Constitución de la República y de los tratados internacionales y sus interpretaciones por los órganos jurisdiccionales creados por éstos, cuyas normas y principios son de aplicación directa e inmediata en los casos sometidos a su jurisdicción y prevalecen siempre sobre la ley. La inobservancia de una norma de garantía judicial establecida en favor del imputado no puede ser invocada en su perjuicio.

Conforme estas disposiciones legales, una vez se adopta un Convenio, éste forma parte del derecho positivo dominicano, con plena aplicación dentro del ordenamiento legal, y debe ser observado por los tribunales dominicanos.

En el Código Procesal Penal se ha previsto la sanción de algunos crímenes y delitos contenidos en tratados o convenciones. Además, el Poder Ejecutivo sometió al Congreso Nacional un proyecto de ley para la adopción de un nuevo Código Penal, que habrá de contemplar toda otra forma de crímenes y delitos,



incluyendo los que se especifican en Convenciones que han sido adoptadas por el Estado dominicano, en especial las de los Convenios de Ginebra de 1949 y sus Protocolos y el Estatuto de Roma sobre la Corte Penal Internacional, que no se encuentran en la actualidad incluidos en el Código Procesal Penal.

Por la importancia que reviste el mismo, el proyecto de nuevo Código Penal está siendo objeto de discusión y ponderación con la participación de amplios sectores de las sociedades civil y política, así como gremios de profesionales.

**3.- ¿Qué obstáculos, de haberlos, ha encontrado su Gobierno en relación con sus esfuerzos para promover la plena aplicación de las disposiciones del Estatuto?**

Ninguno.

**4.- ¿Qué tipo de asistencia podría coadyuvar los esfuerzos de su Gobierno para la plena aplicación de las disposiciones del Estatuto?**

Capacitación internacional para los funcionarios o autoridades encargadas de aplicación del Estatuto (fiscales, jueces y personal judicial administrativo).

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