

## **II – 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. Finland

[Original: English]

## Implementing legislation questionnaire for States Parties (2009)

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

Yes, a parliamentary Act on the implementation of the provisions of a legislative nature of the Rome Statute of the International Criminal Court and on the application of the Statute (No. 1284/2000 of the Statute Book of Finland) as well as an Act on the amendment of the Criminal Code (No. 1285/2000 of the Statute Book of Finland) were passed in December 2000 when Finland ratified the Statute. Subsequently, the criminalizations in Chapter 11 of the Criminal Code were amended in April 2008 (No. 212/2008 of the Statute Book of Finland).

### IF NOT 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?

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

### IF YES 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?

Both methods were used in connection with the ratification of the Statute in 2000. The Act on the implementation of the provisions of a legislative nature of the Rome Statute of the International Criminal Court and on the application of the Statute stipulates that the provisions of the Statute, insofar as they are of a legislative nature, shall be in force as applicable law in accordance with the commitments of Finland. In addition, the Act contains a few specific provisions on the application of the Statute. For an unofficial English translation of Act No. 1284/2000 please refer to <http://www.finlex.fi/fi/laki/kaannokset/2000/en20001284.pdf>.

Also, an Act on the amendment of the Criminal Code was passed in 2000. For later amendments of the Criminal Code that relate to the Statute, please see response to question no. 6.

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

The substantive crimes have been incorporated in the Finnish Criminal Code. When the Statute was ratified by Finland in December 2000 no major amendments were introduced in the Finnish Criminal Code. It was acknowledged, however, that for the national courts to be fully able to exercise jurisdiction over crimes within the Court's jurisdiction it was necessary to amend the Criminal Code. The amendments with regard to the criminalizations of genocide, crimes against humanity and war crimes in Chapter 11 of the Criminal Code as well as the new provisions implementing Articles 28 and 33 of the Statute were adopted on 11 April 2008 and entered into force on 1 May 2008. An unofficial English translation of Chapter 11 of the Criminal Code is annexed to this response. For an unofficial English translation of the Criminal Code please refer to <http://www.finlex.fi/fi/laki/kaannokset/1889/en18890039.pdf>. A consolidated translation of the Criminal Code will be available at <http://www.finlex.fi> in the near future. ?

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

Yes. The Finnish Act on International Legal Assistance in Criminal Matters (No. 4/1994 of the Statute Book of Finland) forms the basis for cooperation between Finland and the International Criminal Court. However, Act No. 1284/2000 clarifies certain obligations of Finland based on Part 9 of the Statute. Also, for the purpose of full implementation of the provisions of the Statute, more extensive legal assistance is provided for in Act No. 1284/2000 than would have been possible otherwise under existing domestic law.

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

Yes. Section 2 of the Act on the implementation of the provisions of a legislative nature of the Rome Statute of the International Criminal Court and on the application of the Statute provides that the Ministry of Justice shall have the authority to receive requests for cooperation made by the International Criminal Court, concerning the investigation and prosecution of crimes within the jurisdiction of the Court, including requests for the arrest and surrender of persons and for the enforcement of orders of the Court, and shall execute the requests either itself or with the help of other competent authorities. Replies to the International Criminal Court shall be delivered through the Ministry of Justice even in cases where the Ministry of Justice has not itself executed the request, unless otherwise provided in the request for cooperation. Notwithstanding these provisions, the International Criminal Court may also contact competent Finnish authorities directly or through the diplomatic channels, or through the International Criminal Police Organization or any other appropriate regional organization.

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## 2. Georgia

[Original: English]

### Annex IV Implementing legislation questionnaire for State Parties

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

Yes

#### Part B

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

For achieving full implementation of the Rome Statute in Georgian national legislation the Parliament of Georgia adopted implementing legislation and also incorporated substantive provisions of the Statute in the pre-existing law. In August 14, 2003 the Parliament of Georgia adopted the “Law of Georgia on the Cooperation of Georgia with the International Criminal Court”. The law established procedural framework of cooperation of Georgia with the ICC. Furthermore, relevant enactments had been made to the Criminal Procedure Code of Georgia. [?]

As regards the substantive provisions of the Rome Statute, it is to be noted, that crimes envisaged under the Rome Statute had been incorporated in part 14 (“Crimes against mankind”) of the Criminal Code of Georgia: crime of genocide (article 407), crimes against humanity (article 408), deliberate violation of the norms of the international humanitarian law during the armed conflict (article 411), violation of the norms of international humanitarian law during interstate or internal armed conflicts by creating danger for health or by severe physical injury (article 412) and violations of other norms of international humanitarian law (article 413). The articles: 407, 408 and 412 were reformulated by amendment #2937 to the Criminal Code of Georgia (28.04.2006) to bring national legislation in compliance with the Statute.

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

The crime of genocide and the crimes against humanity had been incorporated in the Criminal Code of Georgia without the references to the Rome Statute. On the other hand, the definition of above-referred crimes is similar to the definitions stipulated by articles 7 and 8 of the Statute. Namely, the article 407 of the Criminal Code of Georgia Genocide is defined as: [?]

“any of the following acts committed with the intent to destroy, in whole or in part national, ethnic, racial, religious or any other group, as such: killing the members of the group, causing grave injury to health, deliberately inflicting on the group grave conditions of life, imposing measures intended to prevent births within the group or forcibly transferring children of one ethnical group to another one”.

In addition, according to article 408 of the Criminal Code of Georgia crime against humanity is defined as:

“any of the following acts committed as a part of a widespread or systematic attack directed against any civilian population or persons, as such: murder, extermination, grave injury to health, deportation, illegal deprivation of liberty, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, persecution against any identifiable group [?]

on political, racial, national, ethnic, cultural, religious or other grounds, apartheid or other inhuman acts, which cause serious physical or mental harm to a person”.

With respect to the article 9 of the Statute (“War Crimes”) relevant provisions of the Criminal Code of Georgia refer to the violations of international humanitarian law namely: article 411 (“Deliberate violation of the norms of the international humanitarian law during the armed conflict”), article 412 (“Violation of the norms of international humanitarian law during interstate or internal armed conflicts by creating danger for health or by severe physical injury”) and article 413 (“Violations of other norms of international humanitarian law”) of the Criminal Code.

Particular attention shall be paid to paragraph “d” of article 413 which declares punishable war crimes, envisaged by the international treaties of Georgia and which are not punishable under articles 411 and 412 of the Criminal Code of Georgia.

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

The Law of Georgia on the Cooperation of Georgia with the International Criminal Court (hereinafter the Law) fully implemented all modes of cooperation envisaged by Part 9 of the Rome Statute. Namely, Chapter IV of the Law (“Request of the International Criminal Law”) among other issues refers to the form and content of the ICC request, immunity related issues, simultaneous requests submitted by the ICC and State Party, compensation of damage and etc. Chapter V of the Law establishes procedure for the transfer of accused person to the ICC.

Chapter VI “Other Forms of Cooperation” article 32 of the Law includes carrying out such procedural measures as: identification and interrogation of persons, obtaining of evidence, service of documents, conducting search and withdrawal, protection of witnesses, establishment of location of places and objects, conducting exhumation and etc.

In addition, paragraph “m” of article 32 of the Law the cooperation with the ICC envisages “any other kind of assistance which is not prohibited by the Georgian Legislation and which contributes to investigation and prosecution of crimes within the jurisdiction of International Criminal Court”.

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

The Ministry of Justice of Georgia is the authorized state body for cooperation of Georgia with the International Criminal Court according to article 3 of the Law of Georgia on the Cooperation of Georgia with the International Criminal Court. For the fulfillment of this function, the Ministry of Justice of Georgia is authorized to:

- a) receive the request of the International Criminal Court for cooperation;
- b) decide on admissibility of cooperation with International Criminal Court, to work out the procedures of cooperation; in case of necessity, to decide on appeal against the jurisdiction of the International Criminal Court;
- c) decide on taking necessary measures for cooperation; at the same time, to determine which state body is directly authorized for the execution of the request;
- d) inform the International Criminal Court about the results of the execution of the request;
- e) consult the International Criminal Court about the issues brought in request in cases determined by the statute;

- f) in case of necessity to take measures for appointing the defender in treasury manner and/or for otherwise rendering legal assistance, in accordance with the manner established by Legislation;
- g) decide on transfer of a person to the International Criminal Court;
- h) transfer the request of International Criminal Court for conducting of criminal proceedings to corresponding authorized state body in accordance with the subparagraph "b" of the 4<sup>th</sup> Part of Article 70 of the Statute; ☐
- i) decide upon the request of International Criminal Court for the enforcement of sentence in Georgia, concerning deprivation of liberty, also, decide about receiving of sentenced persons or/and enforcement of pecuniary penalty or reimbursement of other expenses, imposed by the International Criminal Court;
- j) determine the form of execution of request and the terms necessary for its fulfillment for the reason of undertaking urgent measures indicated in request;
- k) transfer on behalf of Georgia the evidences and information collected by the relative State Bodies to International Criminal Court, if the indicated fact makes it possible for the International Criminal Court to start the criminal prosecution;
- l) request the International Criminal Court to reimburse expenses for the execution of requests of mentioned Court in cases envisaged by the Statute;
- m) carry out other authorizations granted by the Statute and the Law. ☐

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### 3. Netherlands

[Original: English]

#### Promotion of the ratification and full implementation of the Rome Statute

#### The Netherlands

#### Annexe II - Implementing legislation questionnaire for States Parties

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

Yes

#### IF YES

#### 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? ?

The Netherlands has special implementing legislation: the Internationaal Crimes Act ('Wet internationale misdrijven') and the International Criminal Court Implementation Act ('Uitvoeringswet van het Statuut van het Internationaal Strafhof met betrekking tot de samenwerking met en bijstand aan het ISH en de tenuitvoerlegging van zijn vonnissen').

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

The implementing legislation ('The International Crimes Act') incorporates the crimes in itself.

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

Yes, this is implemented through the 'International Criminal Court Implementation Act'. ?

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

The Implementation Act creates a centralized system, with the Minister of Justice as the central authority (Article 3). The Minister of Justice responds to a request himself or sends it to the Public Prosecutor in the Hague (centralised in a single prosecutors's office). The Public Prosecutor can, in implementing the request, request help from colleagues elsewhere. If, during the handling, an opinion of a judge is needed, this falls exclusively within the confines of the district court in The Hague (a single centralised court). ?

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