

### **III – 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. New Zealand

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## New Zealand Response

### Part B

**(i) 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?**

New Zealand drafted and passed special implementing legislation (the International Criminal Court Act 2000 (ICC Act)) before it ratified the Rome Statute.

**(ii) Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?**

The ICC Act creates new offences of genocide, crimes against humanity and war crimes in the same terms as the Rome Statute (sections 9 to 11 of the ICC Act). The Statute itself is attached as a schedule to the Act.

**(iii) Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?**

The ICC Act implements all the obligations that the Statute imposes on States Parties and for which legislative authority is needed in New Zealand – including the modes of cooperation under Part 9 of the Statute.

**(iv) Does the implementing legislation designate a channel of communication with the Court?**

The ICC Act (section 25 (1)) states that requests for assistance must be made through an authorised channel - which is:

- (a) the diplomatic channel to the Ministry of Foreign Affairs and Trade; or
- (b) any other appropriate channel that New Zealand may designate at the time it ratifies the Statute or at any subsequent time in accordance with the Rules of Procedure and Evidence made under article 51 of the Rome Statute.

Upon ratification of the Rome Statute New Zealand advised that it designated the New Zealand Embassy in The Hague as its preferred channel of communication with the International Criminal Court.

In accordance with section 26 of the ICC Act, in urgent cases a request for assistance (including a request for provisional arrest) may be –

- (a) made using any medium capable of delivering a written record;
- (b) transmitted through the International Criminal Police Organisation or any other appropriate organisation, instead of through an authorised channel.

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## 2. Paraguay

[Original: Spanish]

### 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 (“el Estatuto”)?

No, hasta el día de la fecha no existe una Ley de aplicación del estudio del Estatuto de Roma.

#### 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?

Se ha formado una comisión interinstitucional para el estudio y formulación de un proyecto de Ley para la Implementación del Estatuto de Roma de la Corte Penal Internacional con representantes de la Corte Suprema de Justicia, del Ministerio de Relaciones Exteriores, del Ministerio Público y del Ministerio de Justicia y Trabajo. 2

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

Las dificultades encontradas durante la redacción del proyecto de Ley para la Implementación del Estatuto de Roma principalmente radicaron en la adecuación de la terminología penal internacional, especialmente en cuanto a los crímenes de guerra y a la terminología criminal militar. Igualmente, se podría mencionar el no contar con una mayor asistencia técnica en relación a la aplicación del Estatuto de Roma en otros países.

#### 4. Qué tipo de asistencia podría coadyuvar los esfuerzos de su gobierno para la plena aplicación de las disposiciones del Estatuto?

Sería importante contar con una visión de expertos en Derecho Penal Internacional, a los efectos de tener mayor información y poder dar el debido enfoque al Proyecto de Ley para la Implementación del Estatuto. Asimismo, sería importante conocer el mecanismo de selección de los miembros de la Corte Penal, a los efectos de ir estableciendo el perfil del candidato a ocupar dicho cargo, o en su caso, apoyar la candidatura de un jurista extranjero de reconocida experiencia en la materia. 2

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### 3. Poland

[Original: English]

Ad. 1

Yes. On November 23, 2004 entered into force a law concerning co-operation with the International Criminal Court.

Moreover, the draft law on the substantive criminal law has been prepared. Its aim is to complement the already existing regulations of the Criminal Code on crimes against humanity and war crimes.

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Ad. 5

The regulations on co-operation with the ICC constitute a part of the Code of Criminal Procedure (Chapter 66e. *Co-operation with the International Criminal Court*), there is no specific law on co-operation with the ICC.

According to the Polish Constitution, international agreements after having been ratified by the Parliament are regarded as sources of universally binding law. They constitute a part of domestic legal order and may be applied directly. Furthermore, in the case of contradiction between the provisions of international agreement and provisions of domestic law, international law takes precedence over internal law. Hence, including international treaties within the framework of the sources of law in Poland, allows for direct application of the Rome Statute. Therefore, Chapter 66e of the Code of Criminal Procedure does not regulate the issues which are covered by the self-executory provisions of the Rome Statute and thus may be applied directly. The Chapter, in principle, deals with the issues in relation to which the Statute leaves States – Parties a certain degree of freedom as to the way of regulating them, or the regulations that enforce the Statute's provisions, e.g. the appointment of relevant authorities to execute the Court's requests for judicial assistance.

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Ad. 6

The draft on substantive criminal law is aimed at incorporating crimes covered by the Statute into the Criminal Code. It is, however, limited to these crimes which has not been already covered by the Code (mainly crimes against humanity).

Ad. 7 - Yes, it does.

Ad. 8

No, it does not. However, it establishes national authorities to deal with the ICC requests for judicial assistance.

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## 4. Portugal

[Original: English]

Annex IV

Implementing legislation questionnaire for States Parties

1. Yes, it has adopted national legislation implementing the Rome Statute.

Part B

5. The Portuguese Republic, in implementing the Statute, drafted special implementing legislation and incorporated substantive provisions of the Statute into pre-existing law.

6. The substantive crimes were incorporated in the legislation itself.

7. Yes, it does fully incorporate all modes of cooperation under part 9 of the Statute.

8. Taking into account that Article 87 of the Statute the Portuguese Republic did not make any declaration or designation of any other appropriate channel for these purposes, because it assumed that in the absence of any declaration concerning this subject, the diplomatic channel should apply.

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## 5. Slovakia

[Original: Slovak]

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### Odpovede na dotazník o implementácii Rímskeho štatútu v zmluvných štátoch:

1. Áno, slovenské orgány prijali legislatívne opatrenia za účelom implementácie Rímskeho štatútu do národného práva.
5. Podstatné ustanovenia Rímskeho štatútu boli zapracované do predtým existujúcich zákonov.
6. Trestné činy boli implementované ustanoveniami, ktoré odkazujú na konkrétne články Rímskeho štatútu.
7. Do slovenského právneho poriadku neboli implementované všetky formy spolupráce, ktoré sú ustanovené v deviatej časti Rímskeho štatútu.
8. Implementovaná legislatíva neobsahuje úpravu foriem komunikácie s Medzinárodným trestným súdom.

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