

Compilation on implementing legislation 2010

Part II

At its 10th plenary meeting on 25 March 2010, the Assembly of States Parties adopted resolution ICC-ASP/8/Res.9 where the Assembly decided, inter alia, to request the Secretariat of the Assembly of States Parties (Secretariat) to reissue the questionnaire on the measures undertaken in respect of implementing legislation of the Rome Statute of the International Criminal Court (note verbale ICC-ASP/8/S/PA/19), to make available a compilation of comments submitted by States Parties and to encourage States Parties to provide information to the Secretariat in advance of the Review Conference to be held in Kampala, Uganda, from 31 May to 11 June 2010.

Accordingly, the Secretariat reissued the Plan of action questionnaire on 9 April 2010 (note verbale ICC-ASP/S/PA/07) and requested that States Parties conveyed the information referred to in the questionnaire through the diplomatic channel to the Secretariat, if feasible in digital versions.

States Parties which had already submitted information related to the questionnaire were encouraged to provide updated information on new developments regarding measures undertaken in the implementation process.

The Secretariat noted that information submitted would be made public, unless a specific indication was made of the parts of the submission which were to be considered confidential.

The Secretariat had as at 1 June 2010 received 30 replies to the Plan of Action reissued questionnaire from the following States Parties¹:

Albania, Australia, Austria, Brazil, Canada, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Honduras, Ireland, Japan, Liechtenstein, Luxembourg, Mauritius, Mexico, Norway, Republic of Korea, Serbia, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, United Kingdom, Zambia.

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¹ The Secretariat notes that the replies reflected in the compilation are replies conveyed specifically to the reissued questionnaire in note verbale ICC-ASP/S/PA/07. Replies conveyed to the Secretariat to the first issuance of the questionnaire in the 2009 note verbale ICC-ASP/8/S/PA/19 will be reflected separately.

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1. Australia

[Original: English]

Response to ‘Implementing legislation questionnaire for States Parties’

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

Yes. The Australian Government implemented its obligations under the Statute through the *International Criminal Court Act 2002*. A number of amendments were also made to other pieces of pre-existing legislation.

[Questions 2-4 not applicable]

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 *International Criminal Court Act 2002* was a new piece of legislation especially developed to implement the Statute into Australian law. In particular, this legislation establishes the mechanisms for Australia’s cooperation with the Court. Other key provisions of the Statute, such as the substantive crimes, were added to the Australian *Criminal Code Act 1995* alongside other federal crimes.

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

The crimes within the jurisdiction of the Court have been added to the *Criminal Code Act 1995* as crimes in their own right. This is because under the Australian system, provisions of international treaties must be specifically implemented into national legislation in order to have domestic effect. These crimes reflect the Rome Statute definitions of the crimes and have also been drafted in a manner consistent with the usual requirements for Australian criminal offences.

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

Yes. All modes of cooperation are provided for in the *International Criminal Court Act 2002*.

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

Yes. Section 8 of the *International Criminal Court Act 2002* states that a request for cooperation from the Court is to be made to the Australian Attorney-General through the diplomatic channel, or through the International Criminal Police Organisation or other appropriate regional organisation.

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2. Honduras

[Original: Spanish]

DICTAMEN.

La Sala Penal atendiendo lo dispuesto en el Oficio PCSJ No.251/10, de fecha 28 de abril del 2010, remitido por el señor **Presidente de la Corte Suprema de Justicia**, relacionado con el Oficio Número 463-DGAE-2010, de fecha 23 de abril del 2010, suscrito por el señor Ramón Valladares Reina, Embajador Director General de Asuntos Especiales, en la que remite para conocimiento de la Corte Suprema de Justicia, el contenido de la Nota ICC-ASP/S/PA/07, de fecha 9 abril del 2010, enviada por la Embajada de Honduras de los Países Bajos, mediante la cual la Secretaría de la Asamblea de los Estados Parte (AEP) de la Corte Penal Internacional solicita respuesta al cuestionario adjunto, concerniente a las medidas emprendidas por Honduras en relación al proceso de aplicación de la legislación del Estatuto de Roma.

En relación a lo solicitado, esta **Sala Penal** emite el siguiente dictamen.

En cuanto a la pregunta:

1.- ¿Ha adoptado su gobierno alguna legislación Nacional para la aplicación del Estatuto de Roma ("el Estatuto")?

R/- El Estado de Honduras no ha adoptado leyes de aplicación del Estatuto de Roma, hasta los momentos.

EN CASO NEGATIVO.

2.- ¿Qué esfuerzos en materia de legislación, si lo hubiera, ha realizado su gobierno para incorporar las disposiciones del Estatuto al derecho nacional?

R/- El artículo 16 de de la Constitución de la República de Honduras, establece en su segundo párrafo "*Los Tratados internacionales celebrados por Honduras con otros Estados, una vez que entran en vigor, forman parte del derecho interno*".- Con esta disposición Constitucional, queda establecido que con la ratificación y aprobación del Estatuto por parte del Estado de Honduras, el mismo ya forma parte de la legislación nacional vigente.

3.- ¿A que obstáculos, si los hubiera, se ha enfrentado su Gobierno en sus esfuerzos por aplicar las disposiciones del Estatuto?

R/- Hasta los momentos, el Gobierno no ha enfrentado obstáculos de ninguna naturaleza para aplicar el Estatuto.

4.- ¿Qué tipo de asistencia respaldaría los esfuerzos de su gobierno para aplicar el Estatuto?

R/- Sería importante la asistencia en la capacitación y preparación técnico jurídica, de los operadores de justicia, para que puedan conocer a fondo el procedimiento que se debe seguir en los casos de comisión de los delitos puestos al conocimiento de la Corte Penal Internacional; asimismo, apoyó para la difusión y socialización de dicho Estatuto para los distintos sectores sociales organizados a lo interno del país, especialmente los involucrados con la temática de los derechos humanos.

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3. Luxembourg

[Original: French]

L'Ambassade du Grand-Duché de Luxembourg présente ses compliments au Secrétariat de l'Assemblée des États Parties et a l'honneur de se référer à la note verbale ICC-ASP/S/PA/07 du 9 avril 2010 et au questionnaire joint sur les mesures entreprises au sujet des législations d'application du Statut de Rome.

L'Ambassade du Luxembourg à l'honneur de porter à l'attention du Secrétariat que le Luxembourg a approuvé par loi du 14 août 2000 le Statut de Rome de la Cour pénale internationale, fait à Rome le 17 juillet 1998.

Le projet de loi portant adaptation du droit interne aux dispositions du Statut de Rome est en voie de finalisation et devrait être déposé à la Chambre des Députés dans les prochaines semaines. L'élaboration de ce projet de loi s'est avérée un travail complexe alors que l'adaptation du droit luxembourgeois nécessite à la fois une modification du Code pénal et du Code d'instruction criminelle ainsi que la création de procédures nouvelles spécifiques à la procédure devant la Cour pénale internationale.

Espérant ainsi avoir répondu aux interrogations du Secrétariat de l'Assemblée des Parties, l'Ambassade du Grand-Duché de Luxembourg saisit cette occasion pour lui renouveler les assurances de sa très haute considération.

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4. Mauritius

[Original: English]

Implementing legislation questionnaire for the Republic of Mauritius

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

No

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

A draft International Criminal Court Bill is in the process of finalisation.

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

Legal training and non-legal technical expertise and assistance to the police force, relevant government departments, prosecuting authorities and members of the Judiciary as regards their respective involvement (in particular, cooperation requests and judicial assistance, arrest and surrender request, investigation and collection of evidence, protection of witnesses and victims as well as their participation in proceedings, prosecution of international crimes, and enforcement of sentences)

Dissemination of information to government and non government organisations as well as to the public generally so as to enable them to cooperate fully and without delay with the authorities

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5. Republic of Korea

[Original: English]

Answers of the Republic of Korea to the Implementing Legislation Questionnaire for States Parties

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

- Yes. The Korean Government has adopted the 「Act on the Punishment of Crimes within the Jurisdiction of the International Criminal Court」 in December 2007 as an implementing legislation for the Rome 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?*

- The aforementioned legislation was drafted as special implementing legislation.

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

- The aforementioned implementing legislation incorporates substantive crimes in the legislation itself.

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

- Yes. The aforementioned implementing legislation incorporates through reference to the pre-existing national legislations on extradition and mutual legal assistance. The pre-existing legislations contain provisions that cover all modes of cooperation as specified under Part 9 of the Statute.

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

- By reference to the pre-existing national legislations on extradition and mutual legal assistance, the communication with the Court is to be made through the Ministry of Foreign Affairs and Trade. The actual execution of requests by the Court would be handled by the Ministry of Justice, and in urgent cases of mutual legal assistance, the Ministry of Justice may directly communicate with the Court. /The End /

『Act on the Punishment, etc. of Crimes within the Jurisdiction of the
International Criminal Court』

Part I General provisions

Article 1 (Purpose)

The purpose of this Act is to guarantee the respect for the dignity and value of humanity and the enforcement of international justice by providing for offences under the law of Korea corresponding to offences within the jurisdiction of that Court and by providing for procedures effecting the cooperation between the Republic of Korea and the International Criminal Court.

Article 2 (Definitions)

The Terms used in this Act are defined as follows:

1. “Crimes of genocide, etc.” refers to any of one the crimes as defined in Articles 8 to 14 of this Act;
2. The “ICC” means the International Criminal Court established by the Statute of the International Criminal Court (hereinafter referred to as the “ICC Statute”), done at the Rome Diplomatic Conference on 17th July 1998 and entered into force on 1st of July 2002;
3. “Geneva Conventions” refers collectively to the “Geneva Convention of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field” (The First Geneva Convention), “Geneva Convention of 12 August 1949 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea” (The Second Geneva Convention), “Geneva Convention of 12 August 1949 for relative to the Treatment of Prisoners of War” (The Third Geneva Convention), “Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War” (The Fourth Geneva Convention);
4. “Foreigner” means a person who is not a registered national of the Republic of Korea;

C. in an international armed conflict and in an armed conflict not of an international character: members of armed forces and combatants of the adverse party, both of whom have laid down their arms or have no other means of defence.

Article 3 (Scope of application)

(1) This Act applies to acts committed in the territories of the Republic of Korea by a national of the Republic of Korea or a foreigner.

(2) This Act applies to acts committed outside the territories of the Republic of Korea by a national.

(3) This Act applies to acts committed on board vessels or aircrafts of the Republic of Korea located outside the territories of the Republic of Korea by a foreigner.

(4) This Act applies to acts committed against the Republic of Korea or its nationals outside the territories of the Republic of Korea by a foreigner.

(5) This Act applies to foreigners who are present in the territories of the Republic of Korea after having committed the crimes of genocide, etc. outside the territories of the Republic of Korea.

Article 4 (Acting upon orders)

Whoever commits crimes of genocide, etc. in execution of an order by the Government or a superior without realizing that the order is unlawful shall not be punished so far as there is a justifiable cause in not realizing the unlawfulness of the order.

Article 5 (Responsibility of military commanders and other superiors)

A military commander (the term “commander” hereinafter includes any person effectively acting as a commander) or a superior of a group or an organization (the term “superior” hereinafter includes any person effectively acting as a superior) who omits to prevent a subordinate under his or her effective command and control from committing the crimes of genocide, etc. shall be punished in the same way as a perpetrator of the offence committed by that subordinate.

Article 6 (Non-applicability of statute of limitations)

Notwithstanding the Code of Criminal Procedure Articles 249 to 253, the Military Court Act Articles 291 to 295, and the Criminal Code Articles 77 to 80, the crimes of genocide, etc. shall not be subject to any statute of limitations.

Article 7 (Ne bis in idem)

No person who has already been convicted or acquitted by the ICC shall be tried under this Act.

Part II Crimes within the jurisdiction of the ICC

Article 8 (Genocide)

(1) Whoever, with the intent of destroying as such, in whole or in part, a national, racial, ethnical or religious group (within this Article, hereinafter referred to as “group”) as such, kills members of the group shall be punished by death or life imprisonment, or imprisonment for not less than seven years.

(2) Whoever commits any of the following acts with the same intent as stated in Paragraph (1) of this Article shall be punished by life imprisonment or imprisonment for not less than five years.

1. Causing serious bodily or mental harm to members of the group;
2. Deliberately inflicting on the group severe conditions of life calculated to bring about its physical destruction;
3. Imposing measures intended to prevent births within the group;
4. Forcibly transferring children of the group to another group.

(3) Where the perpetrator causes the death of a person through an offence specified in Paragraph (2), the punishment shall be the same as specified in Paragraph (1).

(4) Whoever incites others to commit any of the crimes under Paragraph (1) or (2) shall be punished by imprisonment for not less than five years.

(5) Whoever attempts to commit any of the crimes under Paragraph (1) or (2) shall be also punished.

Article 9 (Crimes against humanity)

(1) Whoever, as part of a widespread or systematic attack directed against any civilian population pursuant to or in furtherance of a State or organizational policy to commit such attack, kills a person shall be punished by death or life imprisonment, or imprisonment for not less than seven years.

(2) Whoever, as part of a widespread or systematic attack directed against any civilian population pursuant to or in furtherance of a State or organizational policy to commit such attack, commits any one of the following acts shall be punished by life imprisonment or imprisonment for not less than five years.

1. The intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
2. Enslavement;
3. Deportation or forcible transfer of a person lawfully present in an area to another State or location in violation of international law;
4. Imprisonment or other severe deprivation of physical liberty in violation of international law;
5. Torture of a person in the custody or under the control of the perpetrator by inflicting upon that person severe physical or mental pain or suffering;
6. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violation of comparable gravity;
7. Persecution against any identifiable group or collectivity by depriving such group or collectivity of fundamental human rights or by substantially restricting the same, on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are recognized as impermissible under international law;

8. Enforced disappearance of a person, by any of the following acts with the authorization, support or acquiescence of, a State or a political organization, with the intent of removing him or her from the protection of the law for a prolonged period of time.

A. Arresting, detaining, abducting (within this Subparagraph hereinafter referred to as “arrest, etc.”) that person, followed by a refusal to give information on that person’s arrest, etc., identity, fate, and whereabouts or by giving false information thereon;

B. Refusing to give information or giving false information referred to in Subparagraph A in violation of a legal duty.

9. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to physical or mental health.

(3) Whoever commits any of the crimes under Paragraph (1) or (2) with the intent of maintaining an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups shall be punished pursuant to Paragraph (1) or (2).

(4) Where the perpetrator causes the death of a person through an offence pursuant to Paragraph (2) or through an offence pursuant to Paragraph (3) (of committing crimes under Paragraph (2)), the punishment shall be the same as specified in Paragraph (1).

(5) Whoever attempts to commit any of the crimes under Paragraphs (1) or (2) shall be also punished.

Article 10 (War crimes against persons)

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character (excluding situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature, hereinafter the same) kills a person who is to be protected under international humanitarian law shall be punished by death or life imprisonment, or imprisonment for not less than seven years.

(2) Whoever in connection with an international armed conflict or with an armed conflict not of an international character commits any of the following acts shall be punished by life imprisonment or imprisonment for not less than five years.

1. Taking hostage a person who is to be protected under international humanitarian law;

2. Causing a person substantial physical or mental harm or suffering, especially by torturing or mutilating that person;

3. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization against a person who is to be protected under international humanitarian law;

(3) Whoever in connection with an international armed conflict or with an armed conflict not of an international character commits any of the following acts shall be punished by imprisonment for not less than three years.

1. Deportation or forcible transfer of a person, who is to be protected under international humanitarian law, to another State or location in violation of international law;

2. Imposition on or execution of a sentence in respect of a person who is to be protected under international humanitarian law without that person having been sentenced in a fair and regular trial;

3. Subjecting a person who is to be protected under international humanitarian law to the risk of death or of serious injury to health by carrying out medical or scientific experiments on such a person, being a person who has not previously given his or her voluntary and express consent, or where the experiments concerned are neither justified by medical reasons nor carried out in his or her interest;

4. Wounding a member of the adverse armed forces or a combatant of the adverse party after the latter has surrendered unconditionally or is otherwise placed *hors de combat*;

5. Conscripting children under the age of fifteen years into the armed forces or in armed groups, or enlisting them in the armed forces or in armed groups, or using them to participate actively in hostilities;

(4) Whoever in connection with an international armed conflict or with an armed conflict not of an international character treats a person who is to be protected under international humanitarian law in a gravely humiliating or degrading manner shall be punished by imprisonment for not less than one year.

(5) Whoever in connection with an international armed conflict commits any of the following acts shall be punished by imprisonment for not less than three years.

1. Unlawfully confining or continuing to confine a person who is to be protected under international humanitarian law to a certain location;

2. Transferring, as a member of an Occupying Power, parts of its own civilian population into the occupied territory;

3. Compelling a person, who is to be protected under international humanitarian law to serve in the forces of a hostile Power;

4. Compelling a national of the adverse party to take part in the operations of war directed against his or her own country;

(6) Where the perpetrator causes the death of a person through an offence pursuant to Paragraphs (2), (3), or (5), the punishment shall be death, life imprisonment, or imprisonment for not less than seven years.

(7) Whoever attempts to commit any of the crimes under Paragraphs (1) to (5) shall be also punished.

Article 11 (War crimes against property and other rights)

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character pillages or, unless this is imperatively demanded by the necessities of the armed conflict, otherwise extensively destroys, appropriates or seizes property of the adverse party in violation of international law shall be punished by life imprisonment or imprisonment for not less than three years.

(2) Whoever in connection with an international armed conflict and contrary to international law declares the rights and actions of all, or of a substantial proportion of, the nationals of the hostile party abolished, suspended or inadmissible in a court of law shall be punished by imprisonment for not less than three years.

(3) Whoever attempts to commit any of the crimes under Paragraphs (1) to (2) shall be also punished.

Article 12 (War crimes against humanitarian operations and emblems)

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character commits any of the following acts shall be punished by imprisonment for not less than three years.

1. Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under international law of armed conflict;

2. Intentionally directing attacks against personnel, buildings, material, medical units, transport of medical units, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law.

(2) Whoever in connection with an international armed conflict or with an armed conflict not of an international character makes improper use of the distinctive emblems of the Geneva Conventions, of the flag of truce, or of the flag or military insignia or uniform of the enemy or of the United Nations, resulting in a person's death or serious personal injury shall be punished to following distinctions.

1. Where the perpetrator causes the death of a person, the punishment shall be death, life imprisonment, or imprisonment for not less than seven years;

2. Where the perpetrator causes serious personal injury to a person, the punishment shall be life imprisonment or imprisonment for not less than 5 years.

(3) Whoever attempts to commit any of the crimes under Paragraphs (1) to (2) shall be also punished.

Article 13 (War crimes of using prohibited methods of warfare)

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character commits any of the following acts shall be punished by life imprisonment or imprisonment for not less than three years.

1. Directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

2. Directing attacks against civilian objects, namely buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, or against undefended towns, villages, dwellings or buildings, or against works and installations containing dangerous forces such as a dam.

3. Launching an attack with the knowledge that such attack would cause death or injury to civilians or damage to civilian objects clearly excessive in relation to the concrete and direct overall military advantage anticipated;

4. Using a person who is to be protected under international humanitarian law as a shield to restrain a hostile party from undertaking operations of war against certain targets;

5. Using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival or by impeding supplies of such objects in violation of international humanitarian law,

6. Threatening or ordering, as a commander, that no quarter will be given;

7. Treacherously killing or wounding in violation of international law individuals belonging to the hostile nation or army.

(2) Where the perpetrator causes the death of a person through an offence pursuant to Subparagraphs 1 to 6 under Paragraph (1), the perpetrator shall be punished pursuant to following distinctions.

1. Where the perpetrator causes the death of a person, the punishment shall be death, life imprisonment, or imprisonment for not less than seven years;

2. Where the perpetrator causes serious personal injury to a person, the punishment shall be life imprisonment or imprisonment for not less than 5 years.

(3) Whoever in connection with an international armed conflict or with an armed conflict not of an international character launches an attack in the knowledge that such attack will cause widespread, long-term and severe damage to the natural environment which would be clearly excessive to the concrete and direct overall military advantage anticipated shall be punished by imprisonment for not less than three years.

(4) Whoever attempts to commit any of the crimes under Paragraphs (1) to (3) shall be also punished.

Article 14 (War crimes of employing prohibited means of warfare)

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character employs any of the followings shall be punished by life imprisonment or imprisonment for not less than five years.

1. Poison or poisoned weapons;

2. Biological or chemical weapons;

3. Bullets which expand or flatten easily in the human body.

(2) Where the employment under Paragraph (1) results in death or serious injury to a person, or harm to property, the perpetrator shall be punished by death, life imprisonment, or by imprisonment for not less than 7 years.

(3) Whoever attempts to commit any of the crimes under Paragraphs (1) shall be also punished.

Article 15 (Violation of the duty of supervision)

(1) A military commander or a superior of a group or an organization who fails to take all necessary measures to prevent or repress a subordinate under his or her effective

command and control from committing the crimes of genocide, etc. shall be punished by imprisonment up to seven years.

(2) Where a military commander or a superior of a group or organization negligently fails to take all necessary measures, the punishment shall be imprisonment up to 5 years.

(3) A military commander or a civilian superior who fails to draw attention of the authority responsible for the investigation or prosecution to the commission of the crimes of genocide, etc. by his or her subordinate shall be punished by imprisonment up to five years.

Article 16 (Offences against the administration of justice)

(1) Whoever commits any of the following acts in connection with investigation, prosecution, or trial conducted by the ICC shall be punished by imprisonment for up to five years or fine of up to 15 million Won (Korean currency) or both.

1. Presents false evidence;
2. Obstructing or interfering with the attendance or testimony of a witness, or collection or submission of evidence by assault or intimidation;
3. Giving or promising to give money or other financial benefits to a witness with the intent to obstruct or interfere with the attendance or testimony of that witness, or collection of evidence from that witness, or submission of evidence by that witness;
4. Receiving, asking or agreeing to receive money or other financial benefits by the witness under Subparagraph 3.

(2) Paragraph (1) also applies to domestic proceedings initiated at the request or demand from the ICC.

(3) Whoever commits any of the offences under the Criminal Code Articles 152, 154, or 155 Paragraph (1) to (3) in connection with the investigation, prosecution, or trial conducted by the ICC shall be punished as prescribed in the applicable provision. Where this Paragraph applies, the Criminal Code Article 155 Paragraph (4) shall not apply.

(4) Whoever commits any of the offences under the Criminal Code Articles 136, 137, or 144 in connection with the investigation, prosecution, or trial conducted by the ICC shall be punished as prescribed in the applicable provision. Employees of the ICC shall be deemed to be government officials as prescribed in the applicable provision.

(5) Whoever commits the offence under the Criminal Code Article 133 in connection with the investigation, prosecution, or trial conducted by the ICC shall be punished as

prescribed in that provision. Employees of the ICC shall be deemed to be government officials as prescribed in that provision.

(6) The term “Employees of the ICC” as used in this Article means persons discharging functions of the ICC pursuant to the ICC Statute including the judges, the Prosecutor, the Deputy Prosecutor, the Registrar, and the Deputy Registrar.

Article 17 (Non-applicability of certain provisions barring prosecution)

The prosecution of the crimes of genocide, etc. pursuant to this Act shall not be barred by absence of a formal accusation or by the explicit objection to prosecution by the victim.

Article 18 (Reference to the Elements of Crimes)

Where necessary in the application Articles 8 to 14 of this Act, the Elements of Crimes adopted by the Assembly of States Parties on 9th September 2002 pursuant to the ICC Statute Article 9 may be referenced.

Part III Cooperation with the ICC

Article 19 (Applicability of the 『Act on Extradition』)

(1) The provisions of the 『Act on Extradition』 shall apply *mutatis mutandis* to the surrender of persons. Where there is conflict between the applicable provisions of the 『Act on Extradition』 and the ICC Statute, the latter shall prevail.

(2) When applying the 『Act on Extradition』 pursuant to Paragraph (1), the terms “Requesting State” and “Extradition Treaty” as used in the 『Act on Extradition』 shall be read as the “ICC” and the “ICC Statute” respectively.

Article 20 (Applicability of the 『Act on the Mutual Legal Assistance in Criminal Matters』)

(1) The provisions of the 『Act on the Mutual Legal Assistance in Criminal Matters』 shall apply *mutatis mutandis* to the international cooperation executed pursuant to the request from the ICC or request to the ICC in connection with the investigation, prosecution, or trial conducted by the ICC. Where there is conflict

between the applicable provisions of the 『Act on the Mutual Legal Assistance in Criminal Matters』 and the ICC Statute, the latter shall prevail.

(2) When applying the 『Act on the Mutual Legal Assistance in Criminal Matters』 pursuant to Paragraph (1), the terms “Foreign State” and “Mutual Legal Assistance Treaty” as used in the 『Act on the Mutual Legal Assistance in Criminal Matters』 shall be read as the “ICC” and the “ICC Statute” respectively.

Annex

Article 1 (Entry into force)

This Act shall enter into force on the day of its promulgation.

Article 2 (Amendment to other Acts)

(1) The 『Act on Protection of Persons Giving Information on Certain Crimes』 shall be amended as follows:

The following Subparagraph D shall be inserted under Paragraph 1 of Article 2.

D. Offences as proscribed under the 『Act on the Punishment, etc. of Crimes within the Jurisdiction of the International Criminal Court』 Articles 8 to 16.

(2) The 『Act on Regulation and Punishment of Concealing Criminal Proceeds』 shall be amended as follows:

Words “offences as proscribed under the 『Act on the Punishment, etc. of Crimes within the Jurisdiction of the International Criminal Court』 Articles 8 to 16” shall be inserted after the words “offences proscribed under the 『Act on the Enhancement of Punishment, etc. for Certain Economic Crimes』 Articles 4”.

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6. Slovenia

[Original: English]



REPUBLIC OF SLOVENIA
MINISTRY OF FOREIGN AFFAIRS

REPLY BY THE REPUBLIC OF SLOVENIA

The Republic of Slovenia ratified the Rome Statute on 22 November 2001. After depositing the Act of ratification with the Secretary General of the UN on 31 December 2001, it has become the 48th State party to the Statute and fifth state from the Group of Eastern European States to ratify the treaty.

On question 1:

The Republic of Slovenia adopted relevant national legislation implementing the Rome Statute.

On question 5:

Slovenia has adopted special implementing legislation in combination with incorporation of the articles of the Rome Statute into pre-existing law. It has also amended the constitutional provision regarding extradition (Article 47 of the Constitution).

The majority of the provisions of substantive criminal law set out in the Rome Statute of International Criminal Court had already been part of Slovenian Criminal Code. The Code was amended once after the entry into force of the Rome Statute (Official Journal of RS, No. 40/2004). On 20 May 2008 the Republic of Slovenia adopted a new Criminal Code, which is published in the Official Journal no. 55/2008).

On 25 October 2002, Slovenia adopted the Act on Cooperation of the Republic of Slovenia with the International Criminal Court in order to facilitate and enhance the cooperation with the ICC ("Act on Cooperation"; Official Gazette of RS, No. 96/2002). On 17 June 2004, Slovenia ratified the Agreement on the Privileges and Immunities of the International Criminal Court (Official Gazette of RS, No. 71/2004).

As previously mentioned Slovenia amended its constitutional provision on extradition. The original text of Article 47 of the Constitution dealing with extradition of Slovenian citizens and aliens read as follows:

"No citizen of Slovenia may be extradited to a foreign country. The extradition of aliens shall only be permitted in cases covered by treaties that are binding on Slovenia."

Article 47 of the Constitution was amended by the Constitutional Act Amending Chapter I and Articles 47 and 68 of the Constitution of the Republic of Slovenia, which was adopted on

Paragraph 1 of Article 3a referred to in Article 47 of the Constitution, which was added to the Constitution together with the revision of Article 47, reads as follows:

"Pursuant to a treaty ratified by the National Assembly by a two-thirds majority vote of all deputies, Slovenia may transfer the exercise of part of its sovereign rights to international organizations which are based on respect for human rights and fundamental freedoms, democracy and the principles of the rule of law and may enter into a defensive alliance with states which are based on respect for these values."

In the amended Article 47 of the Constitution, the provision on extradition of aliens was omitted with the reasoning that the question of extradition of aliens is not a subject of constitutional regulation. The Constitution therefore does not preclude or restrict the extradition of aliens; the Statute and the Act on Cooperation therefore directly serve as a legal basis for their surrender to the ICC.

Slovenian citizens may be surrendered to the ICC on the basis of the Statute. By ratifying the Statute, Slovenia has transferred the exercise of part of its sovereign right to the ICC. Article 3a, which has been added to the Constitution primarily for the purpose of the accession to the EU and NATO, extends also to organizations such as the ICC.

On question 6:

The criminal offences over which the ICC has complementary jurisdiction and which are set out in Article 5 of the Rome Statute have been fully incorporated in the Criminal Code. They are included in Chapter Fourteen (of the Specific Part of the Code) in its Articles:

- Article 100 – Genocide
- Article 101 – Crimes against Humanity
- Article 102 – War crimes
- Article 103 – Aggression

Genocide

Article 100 defining the crime and sentence for the commission of the crime of genocide follows the definition in the Rome statute. It reads as follows:

*Genocide
Article 100*

(1) *Whoever with the intention of destroying in whole or in part a national, ethnic, racial or religious group or gives the order:*

- *to kill members of the group*
- *to cause serious bodily or mental harm to members of the group*
- *to intentionally inflict on the group conditions of life calculated to bring about its physical destruction in whole or in part*
- *to impose measures intended to prevent births within the group*
- *to forcibly transfer children of the group to another group*

shall be sentenced to imprisonment of not less than fifteen years.

(2) *The same punishment shall be imposed on whoever commits any of the act under the previous paragraph against any group because of the reasons referred to in point 8 of Article 101.¹*

Crimes against Humanity

Article 101 which defines the crimes against humanity follows the structure and substance of Article 7 of the Rome Statute. The only difference is that the definitions of the individual crimes are described together with the crime itself. The Article also defines the sentence for the commission of the crime which is not less than fifteen years of imprisonment.

War crimes

The provision of Article 102 on War Crimes follows the structure and substance of Article 8 of the Statute. The chapeau of Article 102 states that “*Whoever orders or commits war crimes, especially if they are committed as part of and integral plan or policy, or as part of an extensive implementation of such crimes [...]*” Paragraph 1 includes grave breaches of the Geneva Conventions in the same manner as they are included in point (a) of paragraph 2 of Article 8 of the Statute. The rest of Article 8 follows in the same manner, i.e. points (namely paragraph 2, 3 and 4 correspond to points (b), (c) and (e) of Article 8 of the Statute. The sentence for the commission of these crimes is not less than fifteen years of imprisonment. Point (d) of paragraph 2, point (f) of paragraph 2 and paragraph 3 of Article 8 of the Rome Statute are omitted.

Aggression

Notwithstanding the provision of paragraph 2 of Article 5 of the Rome Statute, Criminal Code of the Republic of Slovenia defines the crime of aggression, which is included into Chapter Fourteen under the heading of “Criminal Offences Against Humanity” and reads as follows:

“Aggression

Article 103

¹ Point 8 of Article 101 corresponds to point h) of paragraph 1 of Article 7 of the Rome Statute)

Any person who commits the act of Aggression, defined in accordance with international law, shall be sentenced to imprisonment of not less than fifteen years.”

* * *

Regarding the sentence of imprisonment for all four crimes, the life imprisonment is possible as stated in Article 46 which reads as follows:

Article 46

“ Sentence of Imprisonment

Article 46

(1) A prison sentence may be imposed for a term not shorter than fifteen days and not longer than thirty years.

(2) A sentence of life imprisonment may be imposed for criminal offences of genocide, crimes against humanity, war crimes and aggression, and under conditions under point 1 of paragraph 2 of Article 53 of this Penal Code for two or more criminal offences, under paragraphs 5 of Article 108, Article 116, Article 352, paragraph 2 of Article 360, paragraph 4 of Article 371, and paragraph 3 of Article 373.

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Relevant to the crimes is also the provision of Article 105 regarding association and incitement to Genocide, Crimes against Humanity or Aggression. Article 105 reads as follows:

“Association and Incitement to Genocide, Crimes against Humanity or Aggression

Article 105

- (1) Whoever establishes a criminal organization to commit criminal offences under Articles 100 to 103 of this Penal Code shall be sentenced to imprisonment between one and ten years.*
- (2) Any person who becomes a member of the organization referred to in the previous paragraph shall be sentenced to imprisonment between six months and five years.*
- (3) The perpetrator of the criminal offence under paragraphs 1 or 2 of this Article who prevents the committing of criminal offences specified in paragraph 1 or declared the offence in due time, shall be sentenced to imprisonment of up to three years or the sentence may be remitted.”*

On Question 7:

On 25 October 2002, Slovenia adopted the *Act on Cooperation of the Republic of Slovenia with the International Criminal Court* in order to facilitate and enhance the cooperation with the ICC (“Act on Cooperation”; (Official Gazette of RS, No. 96/2002). It sets obligations, conditions and means of cooperation with the ICC. Article 3 of the Act states that Slovenia shall, in accordance with the provisions of the Statute, cooperate fully and without any reservations with the ICC in its investigation and prosecution of crimes within the jurisdiction of the Court. Article 88 of the Statute is comprised in various articles of the Act, which set out the rules for domestic procedures from the receipt of the Court’s request by Slovenia until the surrender of a person. Article 9 of the Act regulates the question of admissibility and challenges to it. Chapter VI of the Act regulates the questions of arrest and surrender of the accused, where Articles 10 to 12 cover the issue of arrest and Article 13 of surrender. For the issues of designated defense attorney and of proposals, legal means and declarations by the accused, the law regulating the criminal procedure is applied. Article 16 of the Act states that when deciding on arrest, the domestic competent authorities do not decide on substantive regularity of act and procedures, they are always in obligation to fulfill the request by the Court when the following conditions are met:

- that the request by the Court is complete in the sense of the provisions of the Statute
- that the identity of a person concerned has been established
- that the case is within the jurisdiction of the Court.

Article 17 of the Act regulates the transit of an accused from the third country through the territory of the Republic of Slovenia for their surrender to the Court; Article 18 of the Act regulates the obligation for the domestic courts and other relevant national organs to carry out all the requested investigations. Paragraph 2 of the same Article provides for the possibility of the Prosecutor of the ICC to carry out the investigation directly in the territory of Slovenia (in accordance with Article 99 of the Statute). Article 20 provides for the exception from general obligation to cooperate (rejection of cooperation and delay of the fulfillment of the request), while Chapter IX sets out a general rule on privileges and immunities of the judges, prosecutor, his deputies, registrar, his deputy and the Prosecutor’s Office and Registrar’s personnel when on duty in accordance with the Agreement on the Privileges and Immunities of the International Criminal Court.

On question 8:

Article 3 of the Law on Ratification of the Rome Statute of the International Criminal Court (Official Journal of Slovenia no. 101/2001) stipulates that pursuant to Article 87, paragraph 1 (a) of the Rome Statute the Republic of Slovenia designates the Ministry of Justice as channel to which the requests for cooperation made by the Court shall be addressed (see also: Depository notification C.N.490.2006.TREATIES-2 of 27 June 2006).

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7. Zambia

[Original: English]

The Permanent Mission of the Republic of Zambia to the United Nations presents its compliments to the Secretariat of the Assembly of the States Parties to the Rome Statute of the International Criminal Court (ICC) and has the honour to advise that Zambia will, in due course, enact national legislation with a view to domesticate the Rome Statute. A copy of the letter of information from the Acting Permanent Secretary, Ministry of Justice dated 14 May, 2010, is attached hereto, for your records.

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