

**PERMANENT MISSION OF THE PLURINATIONAL STATE OF BOLIVIA TO THE
UNITED NATIONS**

MBNU/ONU/145/12

The Permanent Mission of the Plurinational State of Bolivia to the United Nations presents its compliments to the Secretariat of the Assembly of States Parties to the International Criminal Court and, with reference to Note Verbale ICC-ASP/11/SP/PA/12, has the honour to submit herewith the present Status Report, prepared by the Ministry of Foreign Affairs, on ratification and full implementation of the Rome Statute in the Plurinational State of Bolivia.

The Permanent Mission of the Plurinational State of Bolivia to the United Nations avails itself of this opportunity to renew to the Secretariat of the Assembly of States Parties to the International Criminal Court the assurances of its highest consideration.

[Stamp, Signature]

New York, 9 November 2012

To the **Secretariat of the Assembly of States Parties
to the International Criminal Court**
The Hague

STATUS REPORT

RATIFICATION AND FULL IMPLEMENTATION OF THE ROME STATUTE IN THE PLURINATIONAL STATE OF BOLIVIA

On behalf of the Plurinational State of Bolivia, the Ministry of Foreign Affairs, pursuant to the authority conferred upon it by Law N° 1444 of 15 February 1993¹, wishes to convey information on ratification and full implementation of the Rome Statute on Bolivian territory.

1.-BACKGROUND

Pursuant to Note ICC-ASP/11/SP/PA/12 of 26 June 2012 from the Secretariat of the Assembly of States Parties to the International Criminal Court concerning resolution ICC-ASP/5/Res.3 of 1 December 2006 on implementation of the “Plan of action for achieving universality and full implementation of the Rome Statute”; to the resultant mandate of the Secretariat to “*support States in their efforts to promote universality and full implementation of the Rome Statute*”; and to the duty of States Parties to provide to the Secretariat relevant information on those matters, the Plurinational State of Bolivia is required to submit the information listed in paragraph 6(h) and Annex II B of the Plan of Action, as well as in the questionnaire in Annex III.

2.-INFORMATION REQUESTED BY THE SECRETARIAT OF THE ASSEMBLY FROM STATES PARTIES TO THE INTERNATIONAL CRIMINAL COURT

The information listed in paragraph 6(h) of the Plan of Action for achieving universality and full implementation of the Rome Statute is given in the order in which it is requested.

Sub-paragraph (h)

(i) The Republic of Bolivia, now the Plurinational State of Bolivia, ratified the Rome Statute of the International Criminal Court by Law N° 2398 of 24 May 2002.

Currently, under article 257 of the Political Constitution of the Plurinational State of Bolivia (2009), international treaties that have been ratified form part of the domestic legal order, ranking equally with laws, and thus occupying the same place in the legal hierarchy for purposes of implementation. Moreover, under article 256 of the Constitution international human rights treaties and instruments that have been signed and ratified, or to which the State has acceded, and which provide for more favourable rights than those contained in the Constitution, shall take precedence over the latter.

Furthermore, the “Agreement on Privileges and Immunities of the International Criminal Court” was ratified by Law N° 3106 of 2 August 2005.

¹ Law N°1444 of 15 February 1993, article 9.8, “The Ministry of Foreign Affairs has the following powers and duties (...) to attend to and protect (...) the interests of the State (...) abroad”.

(ii) Pursuant to the international commitments undertaken by it as a result of ratification, the Bolivian State recognizes the importance of State planning in relation to action on the protection and exercise of human rights. Accordingly, Supreme Decree N° 29851 of 10 December 2008 promulgated the “National Plan of Action for Human Rights - Bolivia: Dignity and Well-Being 2009-2013”, the objective of which is to “*Adopt a policy of prevention, vigilance and penalties against torture, cruel, inhumane, degrading, humiliating treatment or sanctions, or any other type of injury to physical, psychological, mental or sexual integrity perpetrated by private individuals or public officials, thereby inter alia extending the regime of legal protection of the right to personal integrity to cover crimes under international law*”. It likewise established a National Human Rights Council, whose mandate is to “*direct, supervise, update and/or amend the National Plan.*”

The Plan includes elements relating to the implementation of the Rome Statute in Bolivian law, establishing as an objective “*support for the adoption of the Draft Law for the Implementation of the Rome Statute currently before the Congress of the Republic [now the legislative organ of the Plurinational State of Bolivia]*”. It is noteworthy, moreover, that public funds have been allocated to carry out this initiative.

The Plan also covers the provision of information and training at different levels on the implementation of the Rome Statute.

Furthermore, the element of the Plan relating to the adoption of the Draft Law for the Implementation of the Rome Statute places particular emphasis on the forced disappearance of persons as a crime against humanity, a project that is currently before the Chamber of Deputies of the Plurinational Legislative Assembly under reference N°10/2006-2007, having been proposed by the Ombudsman’s Office [*Defensoria del Pueblo*].

In addition, another similar draft, reference N°920/2008, is currently before the Plurinational Legislative Assembly of Bolivia, having been re-submitted during the 2009 session under reference N°778/2009.

(iii) In order to promote information on the Rome Statute and on the functions, powers and procedures of the International Criminal Court, the Bolivian State is ready to coordinate training mechanisms aimed at achieving results within a short period of time, and to this end would be grateful to receive updated information on the organic structure of the Court.

(iv) Regarding implementation of the Rome Statute in Bolivian law, three approaches are envisaged:

1. A single norm as proposed in the above Draft Law, namely incorporation of the substantive and ancillary provisions of the Statute into the relevant Code.

2. Individual amendment of all the relevant laws.

3. A hybrid mechanism, whereby the relevant laws would be amended by a single statute, but centralized for purposes of implementation of the Statute.

(v) The Bolivian State has incorporated into its domestic legislation mechanisms for support and coordination with the institutions of the State which deal specifically with the Rome Statute:

-Law N°260 of 12 July 2012, the Organic Law of the Office of the Public Prosecutor, stipulates that one of the latter's functions is to provide the international judicial, administrative or investigative cooperation envisaged in current international laws, treaties and conventions.

-Likewise, article 138 of the Criminal Code (as amended by Law N°1768 of 18 March 1997), defines the crime of Genocide in the following terms: "*Any person who, with the intention to destroy, in whole or in part, a national, ethnical or religious group, kills or causes harm to members of the group, inflicts upon it inhumane conditions of survival, imposes upon it measures intended to prevent its reproduction, or forcibly transfers children of the group to adults or to other groups shall be punishable by a prison sentence of ten to twenty years (...)*"

(vi) According to the Historical Archive of Treaties and Institutional Memory for External Relations of the Plurinational State of Bolivia, there is no documentary record of any bilateral international instrument on international cooperation concluded between the Plurinational State of Bolivia and the International Criminal Court.

(vii) The Plurinational State of Bolivia would inform the Secretariat of the Assembly of States Parties of the International Criminal Court of certain issues and obstacles in domestic law in relation to the full implementation of the Rome Statute:

- Maximum Criminal Penalty

Article 118.11 of the Political Constitution of the State provides that "*the maximum criminal penalty is a custodial sentence of 30 years, without right of pardon*"; however, article 77(b) of the Rome Statute provides for "*A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person*". This difference by comparison with domestic law constitutes a legal obstacle to full implementation of the Rome Statute.

- Immunity of senior government officials

Article 184.4 of the Political Constitution of the State gives the Supreme Court of Justice power *"to try, in plenary session and as court of sole instance, the State President or Vice-President for crimes committed in the exercise of their mandate. The trial shall be held upon prior authorization of the Plurinational Legislative Assembly by a decision of at least two thirds of members present, upon a properly founded request from the State Prosecutor, who shall file charges if he or she considers that the investigation provides grounds for an indictment. The proceedings will be oral, public, continuous and uninterrupted. The procedure will be set out in law."*

In this regard, article 27 the Rome Statute establishes the irrelevance of official capacity: *"1.This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.*

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person."

Domestic law provides for the trial of senior government officials, while Law N°044 of 8 October 2010 further lays down the detailed procedure for their trial.

- Background on bilateral immunity agreements

In June 2003, during the Government of Gonzalo Sanchez de Lozada, a bilateral immunity agreement was signed with the United States, the purpose of which was to preclude any surrender of United States citizens to the International Criminal Court, but the legislature failed to ratify it.

(viii) Under Supreme Decree N°29894 of 7 February 2009, the competent authorities in this area are the Ministry of Foreign Affairs and the Ministry of Justice.

2.2 Questionnaire in Annex III:

Question 1: No legislation for the implementation of the Rome Statute has yet been adopted. However, as stated earlier, the Plurinational State of Bolivia, which is still in process of construction, has prepared draft legislation, currently under review by the Legislative Assembly.

Question 2: Progress on implementation of the above legislation is described in point (ii) of this report.

Question 3: Obstacles to implementation of the Rome Statute have been described in point (vii).

Question 4: An answer to this question is given in point (iii).

CONCLUSION

On the initiative of the Plurinational State of Bolivia, significant progress has undoubtedly been achieved on the implementation of the Rome Statute, the starting-point being its ratification by Law N°2398 of 24 May 2002, which incorporates that instrument into domestic law, thus enabling the preparation of mechanisms for the appropriate amendment of specific legal provisions and the harmonization with the Political Constitution of the State of any issues and/or contradictions noted in its terms.

Furthermore, the Plurinational State of Bolivia expresses its willingness to continue working on the implementation of the Rome Statute in order to fulfil its international commitments.