

[Republic Of Ecuador

Permanent Mission to the United Nations]

[Ministry of Foreign Affairs, Commerce and Integration]

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The permanent representation of Ecuador presents its compliments to the Secretariat of the Assembly of States Parties to the Rome Statute of the International Criminal Court and has the honour to refer to Note Verbale N ICC-ASP/11/SP/PA/12 of 26 June 2012 requesting information from State Parties to the Rome Statute on ratification and full implementation of the Rome Statute. The information appended hereto was prepared by the Ministry of Justice, Human Rights and Worship of Ecuador.

The Permanent Representation of Ecuador avails itself of this opportunity to renew to the honourable Secretariat of the Assembly of States Parties to the International Criminal Court the assurances of its highest consideration.

18 October 2012

[Stamp] [Signature]

To the honourable Secretariat of the Assembly of States Parties to the International Criminal Court

REPORT ON THE APPLICATION OF THE PLAN OF ACTION FOR ACHIEVING UNIVERSALITY AND FULL IMPLEMENTATION OF THE ROME STATUTE

Background

The Draft Full Organic Criminal Code of 13 October 2011, which has been approved by the Legislative Council [*Consejo de Administración Legislativa*], incorporates the norms provided for in the Rome Statute and includes the following provisions:

“PART III

SPECIFIC OFFENCES

CHAPTER ONE

SERIOUS HUMAN RIGHTS VIOLATIONS AND CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW

PART ONE

Crimes against humanity

Article 77.- Genocide.- A person causing systematic or widespread destruction, in whole or in part, of an ethnic, religious or political group, owing to their belonging to the group, shall be punishable by a custodial sentence of 28 to 31 years and a fine of five to ten thousand basic standardized average worker’s wages, for any of the following acts:

1. Killing.
2. Causing serious bodily or mental harm.
3. Inflicting conditions of life calculated to bring about the group’s physical destruction in whole or in part.

4. Imposing measures intended to prevent reproduction or births within the group.

Information or access to family planning methods, contraceptives and sexual and reproductive health services are not considered to be measures intended to prevent births.

5. Forcibly transferring children or adolescents of the group to another group.

Article 80. - Crimes against humanity. - Crimes against humanity are any of the following acts when committed as part of a widespread or systematic attack directed against a civilian population: homicide, extra-judicial executions, slavery, forced displacement of a population, otherwise than in order to protect their rights, arbitrary or unlawful deprivation of liberty, torture, sexual abuse, forced slavery and prostitution, insemination without consent, forced sterilization or forced disappearance. Such crimes shall be punishable by a custodial sentence of 28 to 31 years, and a fine of five to ten thousand basic standardized average worker's wages.

Article 81. - Extermination. - A person who, in the context of a widespread or systematic attack, inflicts conditions of life affecting survival, including deprivation of food and medicine or other items that are considered essential for survival, calculated to bring about the destruction of a civil population or part thereof, shall be punishable by a custodial sentence of 28 to 31 years, and a fine of five to eight thousand basic standardized average worker's wages.

The total or partial extermination of a population in voluntary isolation shall be punishable by a custodial sentence of 28 to 31 years, and a fine of five to ten thousand basic standardized average worker's wages.

Article 82. - Enslavement. - A person who exercises any or all of the powers attaching to the right of ownership over another person, constituting enslavement, shall be punishable by a custodial sentence of 25 to 28 years, and a fine of five to eight thousand basic standardized average worker's wages.

Article 83. - Forced displacement. - A person who, as part of a widespread or systematic attack, expels, violently or against their will, one or several persons from their residence or habitual workplace, unless the act is intended to protect the rights of the person or group of persons, shall be punishable by a custodial sentence of 28 to 31 years, and a fine of one to three thousand basic standardized average worker's wages.

Article 84.- Forced disappearance.- An agent of the State, or a person acting with the acquiescence of the State, who, as part of a widespread or systematic attack, deprives another person of their liberty, by whatever means, and fails or refuses to provide information or to acknowledge such deprivation of

liberty, or to provide information about the whereabouts or fate of a person, thereby impeding the exercise of legal or constitutional guarantees, shall be punishable by a custodial sentence of 22 to 25 years, and a fine of three to five thousand basic standardized average worker's wages.

Article 86.- Persecution.- A person who, as part of a widespread or systematic attack, deprives a group or collectivity of its rights by reason of the identity of the group or collectivity shall be punishable by a custodial sentence of 22 to 25 years, and a fine of five to eight thousand basic standardized average worker's wages.

Article 87. - Apartheid. - The author of acts which violate human rights, perpetrated in the context of an institutionalized regime of systematic domination and oppression of one racial group over any other racial group or groups, and intended to maintain such regime, shall be punishable by a custodial sentence of 25 to 28 years, and a fine of five to eight thousand basic standardized average worker's wages.

Article 88.- Aggression.-A person in a position effectively to exercise control over, or to direct, the political or military action of the State, and who, irrespective of whether or not there has been a declaration of war, orders or actively participates in the planning, preparation, initiation or execution of an act of aggression or armed attack against the territorial integrity or political independence of the Ecuadorian State or another State, otherwise than in the cases provided for in the Charter of the United Nations, shall be punishable by a custodial sentence of 25 to 28 years, and a fine of five to ten thousand basic standardized average worker's wages.

PART FOUR

Offences against persons and property that are protected under international humanitarian law

Article 106.- Persons protected under international humanitarian law.- For purposes of this section, protected persons are persons defined as such by applicable international humanitarian law instruments, and in particular the following :

1. The civilian population.
2. Persons who are not participating in hostilities and civilians under the power of the opposing party.
3. Medical or religious personnel.

4. Journalists on mission or accredited war correspondents.
5. Persons who have laid down their arms.
6. Persons *hors de combat* or who are defenceless in the armed conflict.
7. Persons who, before the commencement of hostilities, were stateless or refugees.
8. Political asylum seekers.
9. United Nations personnel and associated personnel protected under the Convention on the Safety of United Nations and Associated Personnel.
10. Any other person enjoying protected status under Geneva Conventions I, II, III and IV of 1949 and their Additional Protocols.

Article 108. - Homicide of a protected person. - A person who, in the context and course of an armed conflict, kills a protected person, shall be punishable by a custodial sentence of 19 to 25 years.

Article 109.- Mutilations or experiments on protected persons.-A person who, in the context and course of an armed conflict, mutilates or carries out medical or scientific experiments or removes tissues or organs from a protected person, shall be punishable by a custodial sentence of 11 to 15 years.

Article 110. - Torture and cruel, inhumane or degrading treatment of a protected person. - A person who, in the context and course of an armed conflict, either on national territory or on board an airplane or vessel registered in Ecuador, tortures or inflicts cruel, inhumane or degrading treatment on a protected person, shall be punishable by a custodial sentence of 11 to 15 years.

Article 112.- Deprivation of liberty of a protected person.- A person who, in the context and course of an armed conflict, deprives a protected person of their liberty shall be punishable by a custodial sentence of 9 to 11 years. This offence includes :

1. The taking of hostages.
2. Unlawful detention.
3. Deportation or unlawful transfer.
4. Forced displacement.
5. Delayed or late repatriation.

Article 114.- Conscription of children and adolescents.- A person who, in the context and course of an armed conflict, conscripts or enlists children or adolescents in armed forces or armed groups, or uses them to participate in the armed conflict shall be punishable by a custodial sentence of 15 to 19 years.

Article 115.- Hostage taking.- A person who, in the context and course of an armed conflict, deprives another person of their liberty and makes their life, integrity or liberty conditional on satisfaction of that person's demands on a third party, or uses him or her as a means of defence, shall be punishable by a custodial sentence of 10 to 15 years.

Article 116.- Unlawful or arbitrary transfer.- A person who, in the context and course of an armed conflict, transfers the population of the occupying power to occupied territory, or departs or transfers all or part of the population of the occupied territory within or outside this territory, for purposes other than to protect the right of that person or group of persons shall be punishable by a custodial sentence of 10 to 15 years.

Article 117.- Violation of the sexual and reproductive integrity of a protected person.- A person who, in the context and course of an armed conflict, affects or harms the sexual or reproductive integrity of a protected person, shall be punishable by a custodial sentence of 19 to 25 years. This crime includes rape and other acts which, pursuant to the present Code, affect sexual or reproductive integrity.

Article 119.- Crimes against active participants in an armed conflict. – A person who, in the context and course of an armed conflict, carries out any of the following acts against an active participant, shall be punishable by a custodial sentence of 9 to 11 years:

1. Compelling that person to serve in any way in the armed forces of the adversary.
2. Denying that person the right to a fair trial.
3. Unjustifiably preventing or postponing that person's liberation or repatriation.

Article 120. Use of prohibited methods in conducting an armed conflict.- A person who, in the context and course of an armed conflict, uses methods to conduct war or armed conflict that are prohibited by international humanitarian law, and in particular the following, shall be punishable by a custodial sentence of 11 to 15 years :

1. Starving the civilian population, including by obstructing supplies.
2. Inducing an enemy combatant or a member of the opposing party who is participating in the armed conflict to commit treason.

3. Using the presence of a protected person as a shield to protect certain points, areas or military forces from hostile operations, or to create an obstacle to the actions of the enemy against specific military objectives.

4. Giving an order to show no mercy.

5. Any attack against the civilian population.

6. Any attack against civilian property.

7. Any indiscriminate attack having the potential to kill or injure civilians, harm protected property, or to cause serious or disproportionate harm to the environment.

If such practices cause the death of a combatant or member of the opposing party participating in an armed conflict, the penalty shall be 20 to 25 years.

Article 121.- Abolition and suspension of the rights of a protected person.- A person who, in the context and course of an armed conflict, declares the rights, constitutional guarantees or judicial actions of protected persons to be abolished or suspended shall be punishable by a custodial sentence of 7 to 9 years.

Article 122.- Obstruction of health care and humanitarian work. A person who, in the context or course of an armed conflict, obstructs or impedes access by medical, healthcare or aid personnel to the civilian population, in order that they may perform medical or humanitarian work which may or needs to be carried out in accordance with the norms of international humanitarian law, shall be punishable by a custodial sentence of 9 to 11 years.

Article 127.- Use of prohibited weapons.- A person who, in the context and course of an armed conflict, manufactures, holds, stockpiles, uses or distributes weapons prohibited under international humanitarian law, and in particular the following, shall be punishable by a custodial sentence of 11 to 15 years:

1. Poison or poisoned weapons.

2. Asphyxiating or toxic gases, or other substances that produce a similar effect.

5. Bullets that expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or contains incisions.

12. Other weapons which are of such a nature that they cause unnecessary injury or suffering, or which produce indiscriminate effects.

Article 129.- Attack against protected property.- A person who, in the context and course of an armed conflict, directs or participates in an attack against the following protected property, shall be punishable by a custodial sentence of 11 to 15 years:

1. Civilian objectives which do not constitute a military objective.
2. Property that is intended to guarantee the existence and integrity of civilians, such as areas and locations intended to separate them from military objectives, and property intended for their survival or care.
3. Property that is part of a peace keeping or humanitarian assistance mission.
4. Property intended for the welfare of persons and groups of persons requiring priority attention, and peoples, communities and nationalities among the civilian population, as well as property intended for religious worship, the arts, science or charitable work.
5. Property that forms part of the historical, cultural or environmental heritage.
6. Other protected property under international humanitarian law.

Article 130.- Destruction or appropriation of the opposing party's property. –A person who, in the context and course of an armed conflict, destroys, seizes or confiscates the property of the opposing party, in the absence of any imperative military necessity, shall be punishable by a custodial sentence of 3 to 5 years.

Article 131.- Improper use of protective or distinctive insignia or national symbols.- A person who, in the context and course of an armed conflict, simulates the status of a protected person, or improperly uses emblems, flags, banners or other insignia of protection provided for in applicable international instruments, such as those listed below, shall be punishable by a custodial sentence of 6 months to 1 year:

1. A white flag.
2. The national flag, military insignia or uniforms of the enemy.
3. The insignia of uniforms of the United Nations or other internationally recognized humanitarian bodies.
4. Distinctive emblems of the 1949 Geneva Conventions.
5. Distinctive emblems, names or insignia of the Red Cross and Red Crescent, in accordance with the Geneva Conventions of 1949 and their Additional Protocols.”

Conclusion:

The Draft Full Organic Criminal Code incorporates the provisions of the Rome Statute, defining the crimes of genocide, crimes against humanity, aggression and war crimes.

With its publication in the Official Gazette, Supplement 153, of 25 November 2005, the government of Ecuador, in the interests of peace and worldwide security, undertook to incorporate the Rome Statute into national legislation by means of codification. It is important to recognize the legislative effort in favour of human rights represented by the publication in October 2008 of the Political Constitution of Ecuador, which recognizes the imprescriptibility of the criminal offences set out in the Statute; and even more so the preparation of the Draft Full Organic Criminal Code, which recognizes both universal jurisdiction and imprescriptibility.

All of the efforts directed towards the recognition and exercise of human rights have been of a preventive nature, that is to say, to promote a broad and coherent awareness of the kinds of offences committed in the past, which are the basis of the legislation that now seeks to repress such conduct. This is being achieved through the various types of events promoted by the ministry responsible, namely the Ministry of Justice, Human Rights and Worship, which was tasked overall with creating and preparing the Draft Full Organic Criminal Code; this Code has been passed to the executive for submission to, and approval by, the judiciary.

In conclusion, the Government of Ecuador has fulfilled its commitment by integrating into its internal legislation the provisions of the Rome Statute, in order to achieve universality and full implementation of the Statute, thus assuring the International Criminal Court that Ecuador will continue to promote the unique concept of protecting life and making it part of our common heritage.

**INFORMATION ON THE PROMOTION OF RATIFICATION AND FULL
IMPLEMENTATION OF THE ROME STATUTE**

- a) Information on obstacles to ratification or full implementation facing States;
- b) National or regional strategies or plans of action to promote ratification and/or full implementation;
- c) Technical and other assistance needs and delivery programmes;
- d) Planned events and activities;
- e) Examples of Rome Statute implementing legislation;
- f) Bilateral cooperation agreements between the Court and States Parties;
- g) Solutions to constitutional issues arising from ratification;
- h) National contact points for matters related to the promotion of ratification and full implementation.

One of the priorities of the Government of Ecuador is to protect and promote human rights. One of the most important steps forward in this regard was made when the Constitution of the Republic of Ecuador was adopted in 2008. The reforms to the Criminal Code afford protection to persons and assets legally protected in an armed conflict, while the Draft Full Organic Criminal Code directly defines the crimes provided for in the Rome Statute.

The principal offences set out in the Statute, namely genocide, crimes against humanity, war crimes and the crime of aggression, have been defined along with their respective penalties, with the exception of the crime of aggression, which has not yet been fully defined.

In order to enable the Statute to be fully implemented in Ecuadorian law, it would be very helpful to have similar examples of implementation and full promotion in other legislations.

One of the difficulties faced by the government of Ecuador has been in respecting the limits on the legislative time available to it, as it has considered it of utmost importance to continue with the related task of drafting and amending laws within the same category.

On the initiative of civil society and of the government of Ecuador, a “National Plan for Human Rights” has been prepared, promoting specific measures and activities contained in the Human Rights Operating Plans prepared by the sectors concerned. In this respect the government of Ecuador is also taking another step forward by following a preventive policy aimed at recognizing human rights, and avoiding their violation.

Similarly, normative models of Ecuadorian law incorporate the most important provisions of the Statute, recognizing the imprescriptibility of crimes such as genocide, crimes against humanity and aggression, as well precluding any remission of sentences of individuals having committed those offences, in accordance with the “Code on the Execution of Sentences and Social Rehabilitation” and similar texts.

The ratification of a number of agreements between the Ecuadorian State and the International Criminal Court has made cooperation possible; noteworthy is the “Agreement on Privileges and Immunities of the International Criminal Court”, as well as the “Convention on Rights of Children in Armed Conflicts” (Official Gazette No. 274, 19 May 2006).

QUESTIONS IN ANNEX III

QUESTIONNAIRE ON IMPLEMENTING LEGISLATION FOR STATES PARTIES

1. Has your government adopted any national legislation implementing the Rome Statute (“the Statute”), or otherwise enacted legislation pertaining to the Rome Statute?

In order to comply with Resolution ICC-ASP/5/Res.3 of the Assembly of States Parties of 1 December 2006, the Ecuadorian State has attempted to incorporate all of the mandatory norms of the Rome Statute into its own legislation, focusing its efforts on the proper characterization of genocide, crimes against humanity, war crimes and aggression. The Draft Full Organic Criminal Code incorporates the various legal definitions stipulated in the Rome Statute, and was submitted to the National Assembly by the Ministry of Justice, Human Rights and Worship on 13 October 2011.

IF NOT

Part A

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

The adoption and subsequent publication of the Constitution of the Republic of Ecuador in Official Gazette 449 of 20 October 2008 made the promotion and full implementation of the Rome Statute possible; it included a provision in article 80 that “*actions/proceedings and penalties for crimes of genocide, crimes against humanity, war crimes, forced disappearance of persons or crimes of aggression against a State shall not be subject to any statute of limitations. No amnesty shall be given for any of these crimes*”. In presenting and promoting the Draft Full Organic Criminal Code, Ecuador is proposing to define the crimes provided for under article 5 of the Rome Statute, as well as making them imprescriptible, and characterizing them as punishable by the penalties applicable to genocide, aggression, crimes against humanity and war crimes.

3. What obstacles, if any, has your government faced in its efforts to implement the provisions of the Statute?

Social demands and needs have obliged the government to uphold and comply with the time limits established for the enactment of the legislation required by the Ecuadorian people. This has effectively been one of the biggest obstacles that the government has had to overcome: attempting to comply faithfully with the time limits governing the work of the legislature. Given that the Draft Full Organic Criminal Code was submitted on 13 October 2011, according to the legislative time limits provided for in articles 59 and 61 of the Organic Law on the Legislature, the draft submitted by the government should already have been promulgated in the Official Gazette.

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

In order to enable the government to incorporate the provisions of the Rome Statute into Ecuadorian law correctly, essential assistance is required in the form of information as to how other legislations have managed to implement and ratify the provisions of the Statute. In other words, it is imperative that Ecuadorian law should recognize correctly those serious crimes that constitute a threat to peace, security and the well-being of humanity.

IF YES

Part B

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

Law No. 0, published in Official Gazette, Supplement 196 of 19 May 2010, incorporates into the current Criminal Code the provisions of the Statute on offences against protected persons and property and persons and provides for the preparation and adoption of the Draft Full Organic Criminal Code. Together, the current Criminal Code and the Draft incorporate the essential provisions of the Statute.

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes into domestic law?

The crimes provided for in the Rome Statute are directly incorporated into Ecuadorian law, for example through the current Criminal Code, into which a provision for the imprescriptibility of such crimes has

been introduced, as well as into the Draft Full Organic Criminal Code, which provides definitions of genocide, aggression, crimes against humanity and war crimes, together with their respective penalties, characterizing them as offences against humanity in the First Part of Chapter One, Serious Human Rights Violations and Crimes Against International Humanitarian Law.

7. Does the implementing legislation incorporate the following aspects of cooperation with the Court and if yes, how?

(a) Arrest and surrender;

(b) Interim release;

(c) Cooperation with OTP investigations;

(d) Cooperation with the Court on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes;

(e) Enforcement of sentences;

(f) Other forms of cooperation (see in particular article 93 of the Rome Statute).

The Draft Full Organic Criminal Code covers the various forms of cooperation for the conduct of judicial proceedings and investigations in respect of the crimes provided for in the Statute. Assistance is understood to include, *inter alia*, the detention and surrender of defendants and accused, taking statements, disclosure of documents including banking documents, site inspections, submission of evidence, identification and analysis of substances subject to control and confiscation, and seizure of assets.

The crimes themselves could be investigated and tried in Ecuador, as long as they have not been tried in another State or by other international criminal courts or tribunals, in accordance with international treaties signed and ratified by Ecuador, which thus accepts universal jurisdiction.

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

In regard to appropriate communication between Ecuador and the International Criminal Court, the Draft Full Organic Criminal Code authorizes the Public Prosecutor's Office to provide the necessary information and evidence and to communicate with the foreign judicial authority directly. In the event of a request made through diplomatic channels, the Ministry of Foreign Affairs will be empowered to coordinate communication with the entity in question.