

The Plurinational State of Bolivia  
Embassy in The Hague – The Netherlands

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The Embassy of the Plurinational State of Bolivia in The Netherlands presents its compliments to the Secretariat of the Assembly of States Parties to the International Criminal Court and has the honour to refer to note ICC/ASP/12/S/008 recalling the decision of the Assembly in its resolution ICC-ASP/5/Res.3 of 1 December 2006 on the adoption and implementation of the Plan of action for achieving universality and full implementation of the Rome Statute.

In this regard, the Embassy has the honour to transmit the information provided by the Bolivian Ministry of Foreign Affairs pursuant to paragraph 6 (h) of the Plan of action and to annex II thereto.

The Embassy of the Plurinational State of Bolivia in the Netherlands avails itself of this opportunity to renew to the Secretariat of the Assembly of States Parties the assurances of its highest consideration.

The Hague, 27 September 2013

## PLAN OF ACTION FOR ACHIEVING UNIVERSALITY AND FULL IMPLEMENTATION OF THE ROME STATUTE

### I) BACKGROUND

The Rome Statute of the International Criminal Court was adopted on 17 June 1998 under the auspices of the United Nations at the Diplomatic Conference of Plenipotentiaries on the establishment of the International Criminal Court (sometimes called International Criminal Tribunal), and was ratified by Bolivia by law N° 2398 of 24 May 2002; pursuant to the Constitution, it enters into force in domestic law from the date of its publication.

The purpose of the International Criminal Court (ICC), which was founded by the Rome Statute, is to complement domestic criminal justice systems, ensuring that the Court only intervenes in cases in which domestic courts and tribunals are unwilling or unable to initiate or carry out their own proceedings, in accordance with the conditions set out in detail in article 17, which provides that the Court will not encroach on an individual State's jurisdiction over crimes covered by the Statute.

Pursuant to Assembly resolution ICC-ASP/5/Res.3 of 1 December 2006, the Assembly of States Parties to the International Criminal Court decided, *inter alia*, to adopt and to implement the Plan of action for achieving universality and full implementation of the Rome Statute, as well as further resolutions, whereby the Assembly adopted the recommendations contained in each of the reports of the Bureau on the plan of action and requested the Bureau to continue to follow up on their implementation and inform it thereof during its next sessions.

In its note verbale ICC-ASP/12/S/008 dated 13 February 2013, the Secretariat of the Assembly of States Parties requested States Parties to provide the information set out in particular in paragraph 6 (h) of above plan as well as in annexes I and II entitled “plan of action of the Assembly of States Parties for achieving universality and full implementation of the Rome Statute of the International Criminal Court” and “Recommendations of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court”.

### II) INFORMATION ON AREAS IN WHICH PROGRESS HAS BEEN MADE

#### 1) Information on obstacles to ratification or full implementation facing States

As mentioned in the reports on activities undertaken in 2011 and 2012, the following obstacles to full implementation of the Rome Statute were encountered:

#### a) Absence of domestic legislation implementing the Statute of the International Criminal Court

Bolivia does not currently have specific legislation implementing the provisions of the Rome Statute. However, in 2006 the Ombudsman's Office [*Defensoria del Pueblo*] presented a "Draft Law for the implementation of the Rome Statute of the International Criminal Court" to the Commission on Human Rights, the Constitution, Justice and Judicial Policy of the Plurinational Legislative Assembly. This Draft Law is currently in the provisional archives of the Secretary General of the Chamber of Deputies.

b) Bilateral immunity agreements

During the government of Gonzalo Sánchez de Lozada, a Bilateral Immunity Agreement was signed with the United States, whereby the Parties undertook not to surrender each other's nationals to the International Criminal Court. However, the Plurinational State of Bolivia did not ratify it.

Article 59 (4) of the Rome Statute provides that "In reaching a decision on any such application, the competent authority in the custodial State shall consider whether, given the gravity of the alleged crimes, there are urgent and exceptional circumstances to justify interim release and whether necessary safeguards exist to ensure that the custodial State can fulfill its duty to surrender the person to the Court (...)." This provision provides for the surrender to the International Criminal Court of the authors of crimes within the jurisdiction of the Rome Statute. This contradiction constitutes an obstacle to the full implementation of the Rome Statute, as article 257 (1) of the Constitution currently in force provides that [TRANSLATION] "International treaties that are ratified form part of the domestic legal order and have the force of law".

c) Maximum penalty

Article 118.11 of the Bolivian Constitution, which stipulates that [TRANSLATION] "*the maximum criminal penalty is a custodial sentence of 30 years, without right of pardon*" and article 77 (1) (b) of the Rome Statute, which provides for "*a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person*" contradict each other in that they set out different terms for custodial sentences.

d) Immunity of senior government officials

Article 184.4 of the Political Constitution of the State gives "the Supreme Court of Justice power to bring to trial, 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.” Moreover, domestic law provides for a specific procedure for the trial of senior government officials, in accordance with Law N° 044 of 8 October 2010. In this regard, article 27 (1) of 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.” Such provisions contradict domestic law and constitute legal barriers to the full implementation of above law.

The Bolivian State, through the competent institutions, is reviewing these obstacles with a view to finding mechanisms to eliminate the above mentioned obstacles.

- 2) National or regional strategies or plans of action to promote ratification and/or full implementation

As mentioned above, on 28 March 2006 the Ombudsman’s Office submitted a “Draft Law for the implementation of the Rome Statute of the International Criminal Court” to the Commission on Human Rights, the Constitution, Justice and Judicial Policy of the Plurinational Legislative Assembly on the need to adopt domestic legislation and procedural implementation measures to comply with the investigations and criminal trials of the International Criminal Court.

Accordingly, reports CC-CCLSE N° 0/72012 of 31 August 2012 of the Technical Secretary of the Commission on the Constitution, Legislation and S.E. of the Chamber of deputies, SG-UATLSI-RRPG N° 019/2012 of 9 August 2012 drafted by the analyst of the legislative body and SG-UATLSI-BEA N° 18/2013-2014 of 11 September 2013 prepared by Bertha Escobar A., a professional I of the U.A.T.L.S.I., emphasize that the Draft Law for the implementation of the Rome Statute of the International Criminal Court N° 778/2009-2010 is with the provisional archives of the Secretary General of the Chamber of Deputies. Also, on 13 and 14 May 2010, the Commission on the Constitution, Legislation, the Electoral System, International Policy and the Protection of Migrants of the Plurinational Legislative Assembly published a report and observations on the Draft Law. Accordingly, the State, through its institutions, is continuing to work on a draft containing amendments and adjustments to above Draft Law.

Moreover, the organization “Peace and Justice Initiative” (PJI), together with the International Criminal Court, has provided technical assistance for the implementation of the Rome Statute in the Plurinational State. PJI has

prepared a handbook with specific guidelines that has been submitted to the Ministry of Justice. A working group was created within the Ministry, comprising representatives of the Ministry of justice, of the Supreme Court of Justice and of the Office of the Prosecutor; it is responsible for drafting the new *Criminal Code* and *Code of Criminal Procedure* partly incorporating the provisions of the Rome Statute of the International Criminal Court on the principle of cooperation with the International Criminal Court and on the crimes and principles established by the Rome Statute and their subsequent implementation.

Moreover, with regard to the implementation of the Rome Statute, the institutions concerned are planning the following initiatives:

- Proposing draft laws with a view to fully harmonizing the Rome Statute of the International Criminal Court with Bolivian law;
- Organizing coordination meetings to plan the work needed for the full implementation of the Rome Statute;
- Denouncing the bilateral immunity agreement with the United States, which was not ratified by the Bolivian State, as it constitutes an obstacle to the full implementation of the Rome Statute.

### 3) Technical and other assistance needs and delivery programs

The Bolivian State would like the International Criminal Court to envisage the possibility of providing the following technical assistance:

- Experience and good practices in other States in regard to the implementation of the Rome Statute of the International Criminal Court;
- Definition and scope of the crimes characterized in the Rome Statute;
- Applicable procedures to identify the crimes set out in the Rome Statute.

The above would give Bolivian judicial authorities (judges, prosecutors and others) more in-depth information about the Rome Statute of the International Criminal Court, by establishing relevant procedures to try the crimes set out in this international instrument.

### 4) Planned events and activities

In 2006 the Ombudsman's Office submitted a "Draft Law for the implementation of the Rome Statute of the International Criminal Court" to the Commission on Human Rights, the Constitution, Justice and Judicial Policy of the Plurinational Legislative Assembly on the need to adopt domestic legislation and procedural implementation measures to comply with the investigations and criminal trials of the International Criminal Court. This Draft Law is currently with the provisional archives of the Secretary General of the Chamber of Deputies.

The Ministry of Justice, together with the Supreme Court of Justice and the Office of the Prosecutor, are preparing a new *Criminal Code* and *Code of*

*Criminal Procedure* which will incorporate the principle of cooperation with the International Criminal Court and will cover the crimes and principles established in the Rome Statute and their subsequent implementation with a view to harmonization.

During the ninth and tenth sessions of the Assembly of States Parties to the International Criminal Court (2011 and 2012), the Plurinational State of Bolivia stated its intention to ratify the amendments on the crime of aggression, submitted on 11 June 2010 at the Review Conference of the Rome Statute which was held from 31 May to 11 June 2010 in Kampala (Uganda), during which the amendments to the Rome Statute of the International Criminal Court on the crime of aggression were adopted by consensus (resolution RC/Res.6), including a definition of the crime of aggression and provisions setting out the way in which the court will exercise its jurisdiction over this crime.

The Vice-Minister for Justice and Fundamental Rights of the Ministry of Justice, in report MJ-VJDF-ADF N° 945/2013 of 13 March 2013, emphasized the importance of ratifying the Kampala amendments.

Moreover, The Ministry of Foreign Affairs asked the Office of the Prosecutor to make a statement on the ratification of the amendments on the crime of aggression.

These initiatives show the commitment of the Bolivian State to ratify the amendments on the crime of aggression.

- 5) National contact points for matters related to promotion of ratification and full implementation

The Ministry of Foreign Affairs, which is the appointed interlocutor of diplomatic representations, special missions, consulates and international organizations.

The Ministry of Justice, which is responsible for promoting mechanisms that will enable the implementation of the Plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court and which participated in the twelfth session of the Assembly of States Parties to the International Criminal Court.

### III) CONCLUSION

The Bolivian State is continuing to actively work on comprehensive Rome Statute implementing legislation and on amending legal provisions in order to align domestic legislation with the provisions of this international instrument.

In this context, the Bolivian State would kindly request that the information provided and progress set out in this report be viewed positively.