

3.0. OBSTACLES TO RATIFICATION OR FULL IMPLEMENTATION

- 3.1. Botswana signed and ratified the Rome Statute in 2000. As Botswana has a dualist legal system, international agreements and conventions only acquire the force of law when they are domesticated and incorporated into national legislation.
- 3.2. Our President, His Excellency Lieutenant Seretse Khama Ian Khama, has re-iterated Botswana's firm commitment towards the domestication and implementation of the Rome Statute. This was demonstrated by the issuance, on 27th April, 2010, of a Cabinet Directive to the Ministry of Defence, Justice and Security, under whose portfolio the proposed legislation falls, to enact legislation giving effect to Botswana's obligations under the Rome Statute.
- 3.3. During the preliminary consultations within Government and with various stakeholders on this issue, the following potential obstacles to domestication or full implementation of the Statute were identified –

3.3.1. Lack of infrastructure

During consultations, it became apparent that there were enormous financial implications concerning the process of domestication and implementation of the Rome Statute. The Government of Botswana is mindful of the fact that domestication would require that it put in place measures that would require it to satisfy its obligations under the principle of complementarity. As a result, the process of domestication and implementation of the Rome Statute may ultimately prove to be an expensive process as, for example, the Government would need to finance the building of detention centres to house prisoners who have allegedly committed crimes under the Rome Statute, and also to house witnesses who would need protection in accordance with the provisions of the Rome Statute. This will cause a relatively heavy burden on State resources;

3.3.2. Lack of Expertise/Manpower

The Rome Statute sets out crimes of an extraordinary nature which are not normally provided for in the national criminal legislation of State Parties. In

Botswana, there is a distinct lack of expertise regarding the crimes contained in the Rome Statute. As a result, personnel such as security forces, judicial officers and legal practitioners will need to undertake extensive training on these crimes as well as on the procedural issues contained under the Rome Statute. These capacity building measures will also entail financial implications for Botswana.

4.0. NATIONAL/REGIONAL STRATEGIES/PLANS OF ACTION TO PROMOTE RATIFICATION OR FULL IMPLEMENTATION

- 4.1. Botswana has demonstrated her commitment to domestication and implementation of the Rome Statute through her participation in various Assembly of State Parties meetings, both at the regional and international level.
- 4.2. After the issuance of the Cabinet Directive above, the Ministry of Defence, Justice and Security developed a Work Plan in order to ensure that the requisite action could be systematically and timeously taken towards domestication and full implementation of the Rome Statute.

5.0. TECHNICAL AND OTHER ASSISTANCE NEEDS AND DELIVERY PROGRAMMES

- 5.1. Botswana has already taken steps to seek external assistance in order to help it achieve domestication and full implementation of the Rome Statute. To this end, assistance has been sought from the Institute for Security Studies (ISS), based in South Africa. The ISS has committed itself towards providing Botswana with technical assistance and training, and has partnered itself with South African Justice officials in order to effectively do so.

6.0. PLANNED EVENTS AND ACTIVITIES

- 6.1. In accordance with the Work Plan developed by the Ministry of Defence, Justice and Security, together with input from the ISS, a number of activities have been identified, which will lead towards domestication and full implementation of the Rome Statute. These include –

- 6.1.1. The training of legislative drafters, who will be drafting the proposed legislation;
- 6.1.2. The convening of expert working groups to assist in contributing towards the drafting of the proposed legislation;
- 6.1.3. The holding of awareness workshops and publicity campaigns, in partnership with civil society organizations and NGOs, in order to sensitize stakeholders and the public;
- 6.1.4. The provision of specialized training for security forces, judicial officers and legal practitioners.

7.0. EXAMPLES OF IMPLEMENTING LEGISLATION

- 7.1. In the drafting of the proposed implementing legislation, the Government of Botswana will benchmark against various existing pieces of legislation, such as those found in Uganda, Kenya and South Africa, and will also have regard to existing model laws, such as the Commonwealth Domestication Model Law.

8.0. BILATERAL COOPERATION AGREEMENTS BETWEEN THE COURT AND STATE PARTIES

- 8.1. The Government of Botswana has, for the time-being, no existing cooperation agreements between it and any State Party or the Court.

9.0. SOLUTIONS TO CONSTITUTIONAL ISSUES ARISING FROM RATIFICATION

- 9.1. The Government of Botswana is currently conducting research on the Constitutional issues which could potentially arise through domestication and implementation of the Rome Statute. It is, however, expected that, for example, the issue of protection of the President in respect of legal proceedings (which currently exists under section 41 of our Constitution) would need to be taken into consideration as it may be a Constitutional issue which could arise.

9.2. It is anticipated that, in addition to the above, a number of consequential amendments will be needed to other wide-ranging pieces of legislation in Botswana, as a result of domestication and implementation of the Rome Statute. Examples of such pieces of legislation include our Penal Code, Criminal Procedure and Evidence Act and Extradition Act.

10.0. NATIONAL CONTACT POINTS FOR MATTERS RELATED TO PROMOTION OF RATIFICATION AND FULL IMPLEMENTATION

10.1. Currently, Botswana does not have a national contact point for matters relating to the domestication and implantation of the Rome Statute, however, an ICC Desk Officer is in place under the Department of Multilateral Affairs in the Ministry of Foreign Affairs and International Cooperation.

Thank you.