

ONE-PAGER SHEET

**ACTION PLAN FOR ACHIEVING UNIVERSALITY
AND FULL IMPLEMENTATION OF THE ROME
STATUTE - QUESTIONNAIRE ON APPLICABLE
LEGISLATION FOR STATES PARTIES**

BOGOTA, COLOMBIA – 30 SEPTEMBER 2024

PREPARED BY: IWG - CONSULTANCY ON INTERNATIONAL LAW MATTERS

DIRECTORATE OF INTERNATIONAL LEGAL AFFAIRS

**QUESTIONNAIRE ON IMPLEMENTING
LEGISLATION FOR STATES PARTIES**

1. Has your Government adopted any legislation implementing the Rome Statute (the "Statute") or, if not, has it enacted a law relating to the Statute?

Yes, through Law 742 of 2002, the Rome Statute of the International Criminal Court was approved, becoming an integral part of the Colombian legal system in accordance with the constitutional block. Likewise, other regulations have been approved, including the following:

- Law 599 of 24 July 2000 "*Whereby the Criminal Code is issued*" and the crimes included in the Statute are "incorporated into internal regulations", as it provides for a single chapter on crimes against people and property protected by International Humanitarian Law.
- Legislative Act of 27 December 2001 "*Whereby Article 93 of the Constitution is added*", establishing that the Colombian State may recognize the jurisdiction of the International Criminal Court under the terms provided in the Rome Statute adopted on 17 July 1998 by the Conference of Plenipotentiaries of the United Nations and, consequently, ratify this treaty in accordance with the procedure established in the Constitution.
- Law 1719 of 18 June 2014 "*Whereby some sections of Laws 599 of 2000, 906 of 2004 are amended and measures are adopted to guarantee access to justice for victims of sexual violence, particularly sexual violence on the occasion of the armed conflict, and other provisions are enacted.*"¹

After the signing of the Peace Agreement between the National Government and the extinct FARC-EP², the 2017 Legislative Act 01 created the SJP as a transitional judicial body³ which

¹ https://www.suin-juriscol.gov.co/viewDocument.asp?id=1687214#ver_1687218

² Final Agreement for the Termination of the Conflict and the Building of a Stable and Lasting Peace, Point 5.

³ Legislative Act 01 of 2017, transitory section 1: "The Integral System shall be composed of the following mechanisms and

Ministry of Foreign Affairs

is responsible for administering justice in a transitory and preferential manner on conducts committed prior to 1 December 2016.⁴ All this, because of, on the occasion of or in direct or indirect relation to the non-international armed conflict (CANI) of those who were involved, especially concerning conducts considered serious breaches of International Humanitarian Law (IHL) or serious violations of Human Rights (HR).⁵

In addition, the 2017 Legislative Act granted jurisdiction to the SJP to directly apply, among other sources, international criminal law in the framework of the power it has to reclassify the conducts judged by the ordinary criminal justice.⁶ In turn, Section 23 of Law 1957 of 2019 expressly states the law applicable to the SIP and provides that:

*"For the purposes of the SIVJNR, the legal frameworks of reference mainly include International Human Rights Law (IHRL) and International Humanitarian Law (IHL). When adopting their resolutions or sentences, the Sections of the Court for Peace, the Chambers and the Investigation and Indictment Unit will make a legal qualification specific to the System with regard to the conducts subject thereto; this qualification will be based on the rules of the general and special part of the Colombian Criminal Code and/or on the rules of International Human Rights Law (IHRL), International Humanitarian Law (IHL) or **International Criminal Law (ICL)**, always with mandatory application of the favorability principle." (Highlighted beyond the original text).*

These provisions have allowed different Chambers and Sections of the SJP to apply the Rome Statute, either directly or as a reflection of international customs.

For instance, through Order TP-SA 1013 of 2021, the Appeals Section ("AS") reclassified some conducts that were initially classified as murder, as war crimes and crimes against humanity and, consequently, declared the non-applicability of the criminal action, following the guidelines of Article 29 of the RE. In this decision, this Jurisdiction established that murder of a protected person is not only a criminal offense under domestic law, but also an international crime in accordance with the IHL and international custom treaties signed by the country; this is also confirmed by Article 8.2.c.i of the Statute, a provision applied to the analyzed facts, not as a convention, but as an international custom.⁷

On the other hand, among the duties of the Amnesty or Pardon Chamber ("SAI"), whose mission is to materialize the principle of the broadest possible amnesty,⁸ is the granting of de jure amnesties for political crimes and crimes related to them.⁹ In harmony with

measures: the Commission for Truth Clarification, Coexistence and Non-Repetition; the Unit for the Search for Persons Reported Missing in the context and due to the armed conflict; the Special Jurisdiction for Peace- measures of integral reparation for peacebuilding and the guarantees of non-repetition. [...]"

⁴ Legislative Act 01 of 2017, transitory section 5.

⁵ Legislative Act 01 of 2017, transitory section 5.

⁶ Legislative Act 01 of 2017, transitory section 5- "When adopting resolutions or sentences, the SJP shall make a legal qualification specific to the System concerning the conducts subject to the same, qualification that shall be based on the Colombian Criminal Code and/or on the regulations of International Law on Human Rights (IHRL), International Humanitarian Law (IHL) or **International Criminal Law (ICL)** (IPL), always with mandatory application of the principle of favorability." (Emphasis outside the original text).

⁷ SJP, Appeals Section, Auto TP-SA 1013 of 2021, para. 39.

⁸ Article 6 (5) of Protocol II Additional to the Geneva Conventions of 1949; Law 820 of 2016, section 8; and Law 1957 of 2019, section 82.

⁹ Law 1820 of 2016, sections 15 and following.

Ministry of Foreign Affairs

international law, the SAI is banned from granting amnesties for crimes that are international crimes. This ban was expressly enshrined in various rules of the legal framework for peace. Thus, for example, the paragraph of Section 23 of Law 1820 of 2016 provided that:

"[i]n no case shall amnesty or pardon be granted [...] for crimes related to the following conducts":

A). Crimes against humanity, genocide, serious war crimes, hostage taking or other serious deprivation of liberty, torture, out-of-court executions, enforced disappearance, rape and other forms of sexual violence, child abduction, forced displacement, in addition to the recruitment of minors, in accordance with the provisions of the Rome Statute.

In any case, as provided in the 2017 Legislative Act 01, the SAI must take into account, construe and apply, among other sources, the ICL and the Statute, as appropriate, when ruling on a conduct's eligibility for amnesty and referring the case to the Jurisdiction. Although it is not the only source, the SAI may resort to the Rome Statute when deciding on the non-eligibility of a conduct for amnesty.

In short, the SJP, has applied the provisions of the Rome Statute through its Chambers and Sections, either directly or as a reflection of international custom.

For its part, pursuant to Article 250 of the Colombia's Political Constitution, the Attorney General's Office is entrusted with the duty of prosecuting criminal action, and is therefore directly responsible for implementing the provisions contained in the Rome Statute through its various Specialized Directorates, such as (i) the Specialized Directorate against Human Rights Violations, investigating serious violations of International Human Rights Law and crimes committed against persons and property protected by International Humanitarian Law; (ii) the Directorate of Transitional Justice, dealing with crimes linked to and/or that took place in the context of the armed conflict; (iii) the Special Investigation Unit, investigating, *inter alia*, murders and serious violations against human rights defenders for events that happened after the FARC-EP guerrilla group was demobilized; (iv) the Directorate of Support for the Investigation and Analysis against Organized Crime, which is responsible, *inter alia*, for understanding the main patterns and profiles of perpetrators of human rights and international humanitarian law violations.

Specifically, special working groups have been formed within the Transitional Justice Directorate to continue advancing the prosecution of criminal acts attributable to demobilized paramilitary and subversive armed structures. Among these, the group dedicated to achieving the termination of the right of ownership of assets related to demobilized illegal armed structures stands out, a measure understood as a mechanism to make full reparations to victims. Likewise, the aforementioned Directorate has the Group for the Search, Identification and Surrender of Missing Persons-GRUBE on the one hand, and a team of prosecutors, on the other, who investigate and gather documentation on a prioritized basis of all gender-based violence acts, which are attributable to paramilitary groups.

It should be noted that, as instructed by Attorney General of Colombia, the Transitional Justice Directorate will be strengthened for 2024-2028 in order to prioritize the prosecution

of third party conflict financiers with stronger economic power; to implement strategies for the pursuit of assets to collect resources in order to compensate victims, through artificial intelligence tools enabling asset tracing at national and international level; and to achieve greater coordination between the GRUBE and other national institutions that carry out searches of reported missing people.

However, in a cross-cutting approach, the Prosecutor General's Office has prioritized the investigation of criminal conducts having the greatest impact on the armed conflict, such as forced displacement, gender-based violence, forced disappearance, illegal recruitment and massacres, among others.

Additionally, in order to adequately advance investigations involving human rights violations and infringements, as well as crimes and conducts covered by the Rome Statute, the Prosecutor General's Office has developed prioritization criteria that are summarized in the five pillars dictated by the Attorney General's Office for the period 2022-2026, as follows:

1. Prioritization with a territorial approach;
2. Technology-supported criminal analysis;
3. Strengthening victim assistance;
4. Reward justice ("justicia premial") and improved trial participation of prosecutors;
5. Strategic management indicators

In light of the above, the comprehensive analysis of the investigation aims, *inter alia*, to (i) assess all the information provided in the lawsuit and the evidence collected; to (ii) define determining aspects related to the victim, the perpetrator, the time when facts occurred, the place where the crime was committed, *modus operandi*, among other relevant aspects; (iii) to identify common elements between different cases or criminal news to integrate that assessment; (iv) to incorporate the assessment within the analysis of the information gathered in the urgent acts to establish connections and patterns that may be relevant for the investigation; (v) to apply an objective, reasonable and weighted approach in case association, avoiding massive association under the same criminal news and prioritizing clear and well-founded criteria; and to (vi) perform an initial strategic analysis to associate cases and promote effective investigations, identifying criminal phenomena early and applying an immediate approach to make successful progress in the investigations.

2. In order to implement the Statute, did your Government draft a separate law or did it incorporate the substantive articles or provisions of the Statute into pre-existing legislation?

As answered in the previous question, the Rome Statute was ratified by Colombia through Law 742 of 5 June 2002, after constitutional authorization through 2001 Legislative Act 2, giving full implementation of its content. Likewise, these have been incorporated into the Criminal Code and other regulatory bodies by means of the aforementioned regulations.

On 5 August 2002, Colombia excluded the jurisdiction of the ICC for war crimes for a period of 7 years, starting from the entry into force of the Rome Statute in the country, and based on the application of the interpretative clause provided in Article 124 of such instrument.

Ministry of Foreign Affairs

Subsequently, in its 2012 C-290 judgment, the Constitutional Court specified that not all of the Statute text is part of the constitutionality block strictly speaking, which does not prevent some of its articles from being part of the block of constitutionality. Particularly, in various determinations by the Constitutional Court, the following provisions of the Statute have been taken as parameters to exercise the constitutionality control – the Preamble (C-928 in 2005); Article 6, referring to the crime of genocide (C-488 in 2009); Article 7, related to crimes against humanity (C-1076 in 2002); Article 8, determining war crimes (C-291 in 2007, C-172 in 2004 and C-240 in 2009); Article 20, putting into perspective the principle of *res judicata* (C-004 in 2003 and C-871 in 2003), as well as Articles 19.3, 65.4, 68, 75 and 82.4, concerning the rights of victims (C-936 in 2010).

Consequently, on the basis of the decisions of the Constitutional Court, it is possible to say that this High Court has determined on a case-to-case basis which articles of the Rome Statute are part of the block of constitutionality, and for what effects, strictly speaking. This is important because those identified articles have the same normative hierarchy as the 1991 Political Constitution, as part of the block of constitutionality (sec. 93).

Likewise, as already mentioned, Article 5 of Legislative Act 01 of 2017 empowered the Special Jurisdiction for Peace to make its own legal qualification of the conducts under its jurisdiction based on multiple sources, among which is the International Criminal Law. In this regard, its source system enables the SJP to qualify a conduct by direct application of the Rome Statute (after the entry into force of the Statute in Colombia) or by customary law, concerning those Statute provisions that may be considered as a reflection of the international custom crystallization (for those events that have occurred prior to the entry into force of the Statute in Colombia).

3. Does the applicable legislation include the main crimes by reference to the Statute or by incorporation of such crimes into domestic law?

The Rome Statute has been incorporated into the Colombian legal system through various regulations. Initially, it should be noted that Law 742 of 2002 approved the ICC Rome Statute and, therefore, contains provisions directly referring to the aforementioned instrument.¹⁰ Additionally, there are other laws including other instruments in the working framework of the International Criminal Court, such as Law 1268 of 2008¹¹ and Law 1662 of 2013.¹² In this regard, there are laws in Colombia making direct reference to elements of the International Criminal Court.

Notwithstanding the above, and apart from the referenced regulations, it should be noted that the provisions of the Rome Statute have also been included into the Colombian legal system through other instruments, for example, through Law 599 of 24 July 2000 "*Whereby the Criminal Code is enacted*".

¹⁰ Law 742 of 2002. *Whereby the Rome Statute of the International Criminal Court is approved*, made in Rome, on July seventeen (17), nineteen hundred and ninety eight (1998). 5 June 2002. D.O. No. 44.826 of 7 June 2002.

¹¹ Law 1268 of 2008. *Whereby the "Rules of Procedure and Evidence" and the "Elements of Crimes of the International Criminal Court"*, approved by the Assembly of States Parties of the International Criminal Court, in New York, from September 3 to 10, 2002, are approved. 31 December 2008. D.O. year CXLIV. N. 47219. 31 December 2008. P. 183.

¹² Law 1662 of 2013. *Whereby the "Agreement between the Republic of Colombia and the International Criminal Court on the Enforcement of Sentences Imposed by the International Criminal Court"*, made in Bogotá, D. C., on 17 May 2001, is approved. 16 July 2013. D.O. No. 48.853 of 16 July 2013.

The aforementioned law provides for crimes contained in the Rome Statute, such as war crimes¹³ or Genocide¹⁴. In addition, it criminalizes various acts set forth in Article 7 of the Rome Statute, such as, for example– forced disappearance, torture, sexual slavery, arbitrary detention, forced displacement, among others. It should be noted that these crimes are not considered crimes against humanity¹⁵, because they are not committed within a context of widespread and systematic attacks against the civilian population.

Therefore, there is evidence of rules existing in the Colombian legal system that refer directly to the Rome Statute, and others that indirectly develop provisions of this instrument, i.e. by including elements of the Statute.

4. Does the applicable legislation include the following cooperation modalities with the Court? If so, in what form?

- a) detention and delivery;
- b) provisional release and release of detainees (acquittal, invalidation of charges, etc.);
- c) cooperation with the Office of the Prosecutor in the framework of its investigations;
- d) cooperation with the Court in identifying, tracing, freezing and confiscating the proceeds, property and assets obtained from the crime;
- e) enforcement of penalties; and
- f) witness protection;
- g) other ways to cooperate (refer in particular to article 93 of the Rome Statute).

Although domestic legislation does not include specific cooperation modalities with the Court, the use of International Legal Cooperation in criminal matters could be considered as feasible through warrants or letters rogatory for States to collaborate with each other in the investigation, prosecution and punishment of crimes falling within the jurisdiction of each State, but whose enforcement, development or result go beyond their own borders.

Regarding the enforcement of sentences, as mentioned above, there is Law 1662 of 2013, which *approves the "Agreement between the Republic of Colombia and the International Criminal Court on the Enforcement of Sentences Imposed by the International Criminal Court"*, made in Bogotá, D. C., on 17 May 2001,¹⁶ which has Constitutional Ruling C-339 of 4 June 2014, and the referred Agreement entered into force in Colombia on 29 November 2021.

5. Does the applicable legislation designate any communication channel with the Court?

Law 742 of 5 June 2002 "*Whereby the Rome Statute of the International Criminal Court, done*

¹³ Parliamentarians for Global Action. Colombia and the Rome Statute. <https://www.pgaction.org/es/ilhr/rome-statute/colombia.html>

¹⁴ Law 599 of 2000. *Whereby the Penal Code is enacted*. 24 July 2000. D.O. year CXXXVI. N. 44097. 24 July 2000. PAG. 1.

¹⁵ Parliamentarians for Global Action. Colombia and the Rome Statute. <https://www.pgaction.org/es/ilhr/rome-statute/colombia.html>

¹⁶ Law 1662 of 2013. *Whereby the "Agreement between the Republic of Colombia and the International Criminal Court on the Enforcement of Sentences Imposed by the International Criminal Court"*, made in Bogotá, D. C., on 17 May 2001, is approved. 16 July 2013. D.O. No. 48.853 of 16 July 2013.

at Rome, on the seventeenth (17th) day of July, nineteen hundred and ninety-eight (1998) is approved" does not provide for a communication channel with the Court.

However, in accordance with the provisions in Article 5.1 of the "Agreement between the Government of the Republic of Colombia and the Office of the Prosecutor of the International Criminal Court within the framework of the 'Policy of Complementarity and Cooperation of the Office of the Prosecutor of the International Criminal Court'", signed in Bogotá on 26 April 2024, the focal point for the ICC is the Ministry of Foreign Affairs through the Directorate of International Legal Affairs.

6. Does the applicable legislation establish a central national authority or designate a national focal point for cooperation with the Court?

Law 742 of 5 June 2002 "Whereby the Rome Statute of the International Criminal Court, done at Rome, on the seventeenth (17th) day of July, nineteen hundred and ninety-eight (1998) is approved" does not provide for a specific authority for the application of the Rome Statute. In such cases, the Ministry of Foreign Affairs could serve as the diplomatic channel for transmitting relevant communications to/from national authorities.

7. Does the applicable legislation provide for the integration of the privileges and immunities of the Court? (See in particular Article 48 of the Rome Statute and the Agreement on the Privileges and Immunities of the International Criminal Court).

The "Agreement on the Privileges and Immunities of the International Criminal Court", signed in New York on 9 September 2002, was approved in Colombia through Law 1180 of 31 December 2007, it has the Constitutional Ruling C-1156/08 of 26 November 2008, and it entered into force in Colombia on 16 May 2009.

8. What obstacles, if any, has your Government faced in its efforts to implement the provisions of the Statute? How did your Government manage to overcome these obstacles?

The Rome Statute of the International Criminal Court is part of the Colombian legal system through Law 742 of 2002. However, article challenges between institutions were evidenced with the entry into force of laws regulating transitional justice processes, such as Law 975 of 2005, known as the Justice and Peace Law, and Law 1957 of 2019 creating the Special Jurisdiction for Peace (SJP).

However, the normative framework establishes the criteria for determining the competence of the relevant jurisdiction, which is why the Prosecutor's Office continues to exercise its constitutional mandate, as noted in the response to question 1. In addition, the jurisdictions have signed agreements for information exchange and coordination between institutions, as is the case of the Agreement signed between the National Office of the Prosecutor and the SJP in 2022. Through these efforts, the jurisdictions work together to fight impunity in Colombia.

In addition, the Specialized Directorates attached to the Prosecutor's Office against Organized Crime have revealed two difficulties of territorial nature and the material capacity of the

Ministry of Foreign Affairs

Prosecutor's Office, in order to address the crimes occurring at regional level and affecting the effective enjoyment of human rights, namely:

1. Communities' lack of trust in state authorities, for fear of potential reprisals from organized crime groups, which hinders communication and cooperation between victims and judicial authorities.
2. Complexity and massiveness of crimes attributed to former members of organized illegal armed groups who have demobilized.
3. Difficulties in the collection of new evidentiary material and physical evidence since the events occurred.

The Special Jurisdiction for Peace has also identified other important elements:

Chamber for the Definition of Legal Situations (CDLS): The CDLS specified that it is necessary to *"differentiate between the judgment of the legal adequacy of the SJP and the judgment of the effectiveness of the implementation of the provisions of the Rome Statute"*. In connection with the first clause, the judgment of the jurisdiction's own legal adequacy, it concluded that *"the Chamber has faced an open debate or obstacles in the implementation of the provisions of the Statute"* since, with regard to the conducts falling under the jurisdiction of the SJP, *"the broad system of sources allows even considering, through direct implementation, the rules of the Rome Statute"*.

Regarding the second clause, the judgment of effectiveness in the implementation of the provisions of the RE, the CDLS recalled that the *"massiveness of conducts constituting international crimes has been a factual obstacle that was identified from the beginning, but it has been addressed by applying legal instruments and specific action strategies"*, such as the prioritization and selection of those most responsible.

Amnesty and Clemency Chamber (ACC): The ACC pointed out legal and practical problems in the implementation of the RE, exclusively in cases dealt with by the ACC. First, the ACC identified the following as obstacles of legal nature:

War crimes that are not applicable to Colombia's non-international armed conflict: *"The armed conflict in Colombia has historically been non-international. However, Article 8(2) of the Rome Statute contains a list of war crimes, where conduct committed in the context of international armed conflict (IAC) prevails, with a more limited scope concerning the CANIs. This is even more relevant considering that "the Rome Statute contains a shorter list of international crimes applicable to the CANIs, which may collide at certain times with the reality of the war in Colombia. However, there are conducts that were developed in the Rome Statute and in the Elements of Crimes for IACs, which can materially take place within the framework of a CANI". To face this obstacle, the ACC has turned to "sources of ICL other than the RE, such as customary international law"*.

Qualification of war crimes committed before 2009: *"The obstacles in the implementation of the Rome Statute arise not only [sic] from the specificity of its content, but also from the circumstances of its ratification by the Colombian State. The adoption of caveat in Article 124 of the Rome Statute with respect to Colombia creates a seven-year gap in which the war crimes of Article 8(2) are unenforceable. This renders the use of the Rome Statute difficult in*

Ministry of Foreign Affairs

the ACC's legal qualification of war crimes committed during that period." Against this background, the ACC has turned to customary law and, in general terms, has carried out *"an analysis of the plurality of sources that were enshrined to exercise its jurisdictional duty, always respecting the principle of nulla poena sine iure"*.

Second, the ACC accounted for practical obstacles. In particular, it stressed the *"[d]ifficulties in the collection of evidentiary material given the conditions of the Colombian CANI" which affects "the work of proving the configuration of crime elements of the Statute itself"*.

Section for the Absence of Recognition of Truth and Responsibility (SAR): the SAR judges did not identify any obstacle in the Statute implementation in the judicial decisions they have issued. As an example, this Section recalled that the SJP *"as a justice body of the SIVJRN has had no obstacles to deploy the role of transitional justice that corresponds to this jurisdiction"*. In turn, it considered that *"beyond the justified debates that take place in the judicial arena, this office does not see any particular obstacles to the implementation and application of the Statute by the SJP"*.

Review Section (SR): the judges of the SR submitted responses individually and, in some cases, concluded that there are indeed obstacles to the implementation of the Rome Statute in the exercise of the Section's competencies. One of the submitted responses concluded that *"although the process of implementation and application of the Rome Statute in Colombia has had the willingness between State institutions through the different branches of Government, it is also true that the Statute has been gradually and progressively adapted and implemented, on the basis of internal learning, especially for transitional justice scenarios"*.

Appeals Section (AS): the AS answered the question in the following terms: *"(...) there are no obstacles to the implementation of the Rome Statute"*. In fact, as noted above, by virtue of the implementation of the Rome Statute, the AS has built a solid case-law line on various issues: (i) the non-applicability of criminal action against international crimes; (ii) the legal qualification of conducts based on international criminal law; (iii) the reopening of cases to avoid impunity; and (iv) the definition and scope of the category of those most responsible, among others.

In a nutshell, given the diversity of competencies of each Chamber and Section of the SJP, there is no unanimous approach on the existence of obstacles in the implementation of the RE. In any case, the obstacles identified by some Chambers were framed within the characteristics of the Colombian armed conflict (for example, the massive number of crimes committed and the plurality of actors) and/or the implementation of the Statute to the model of macro-criminal investigation and transitional justice employed by the SJP. In this scenario, the judges emphasized that the way to overcome such obstacles has been based on the interpretation of national sources (in particular, the Appeals Division case-law) and international sources (especially international custom) as a supplementary activity to the implementation of the Rome Statute itself.

9. Has your Government received any assistance in the process of implementing the Statute?

Ministry of Foreign Affairs

On 28 October 2021, the Government of Colombia and the ICC Office of the Prosecutor signed a Cooperation Agreement that embodies the commitment of the Colombian Government, *inter alia*, on:

1. safeguard the structure and legislative framework of the judicial systems dealing with crimes under the jurisdiction of the ICC, in particular the SJP;
2. allocate the necessary economic means for the effective administration of justice;
3. avoid undue interference in the administration of justice;
4. ensure the implementation of protective measures for judicial officers and participants appearing before accountability mechanisms; and
5. promote full cooperation and coordination between state entities, and particularly between the Colombian Attorney General and the SJP.

On the occasion of this agreement, the ICC Prosecutor and the President of the SJP adopted a work plan on 6 June 2023 on the occasion of the closing of the preliminary examination between the Colombian State and the ICC Prosecutor.¹⁷ The plan was drafted in the framework of positive complementarity, seeking the exchange of good practices, lessons learned and knowledge transfer between both institutions for the investigation, prosecution and punishment of the crimes covered by the RE.

Likewise, the work plan establishes links between both institutions, in order to enable a continuous dialogue and exchange, and includes the ICC Prosecutor's support to the technical and investigative capacities of the offices of the Judiciary, the Information Analysis Group (GRAI), the Investigation and Indictment Unit (IIU), and technical support to the Executive Secretariat of the SJP in the field of assistance to victims and witnesses.

In addition, a work plan is currently under construction between the ICC Office of the Prosecutor and the National Government of Colombia.

10. Has your Government initiated or envisaged additional steps to incorporate the Statute into national legislation?

Answer:

¹⁷ In October 2021, the ICC Prosecutor resolved to close the preliminary examination conducted in Colombia since June 2004. Through a decision of 22 July 2022, the ICC Pre-Trial Chamber I confirmed the Prosecutor's decision.

ONE-PAGER SHEET

ACTION PLAN FOR ACHIEVING UNIVERSALITY AND FULL IMPLEMENTATION OF THE ROME STATUTE - QUESTIONNAIRE ON APPLICABLE LEGISLATION FOR STATES PARTIES

BOGOTÁ, COLOMBIA – 24 SEPTEMBER 2024

PREPARED BY: IWG - CONSULTANCY ON INTERNATIONAL LAW MATTERS

DIRECTORATE OF INTERNATIONAL LEGAL AFFAIRS

PLAN OF ACTION TO ACHIEVE UNIVERSALITY AND FULL IMPLEMENTATION OF THE ROME STATUTE

With regard to the information required under the Plan of action for achieving universality and full implementation of the Rome Statute, in particular that referred to in paragraph 6 h), please bear in mind the following:

i) information on obstacles to ratification or full implementation faced by States:

After reviewing the internal file of the Directorate of International Legal Affairs, it was found that the "Rome Statute of the International Criminal Court", adopted in Rome on 17 July 1998, has been in force in the Colombian State since 1 November 2002.

At the time of ratification of the Rome Statute in Colombia, there were some obstacles to its full implementation¹⁸, especially regarding its compatibility with the Political Constitution, and its provisions on limitations for sentences, the principle of *non bis in idem*, *Habeas Corpus* and limitations for life imprisonment, among others. However, this matter was resolved through Legislative Act 02 of 2001. Its first section establishes:

"The Colombian State may recognize the jurisdiction of the International Criminal Court under the terms provided in the Rome Statute (...) The admission of a different treatment in substantive matters by the Roman Statute with respect to the guarantees contained in the Constitution shall have effects exclusively within the scope of the matter regulated therein". This section was included as a final clause in article 93 of the Constitution.

This was reviewed by the Constitutional Court in judgment C-578 of 30 July 2002, in which the Court reviewed the constitutionality of Law 742 of 5 June 2002, whereby the Statute was approved, and stated that the "different treatments" to those provided for in the Magna Carta

¹⁸ DAZA GONZÁLEZ, Alfonso. Organized Crime: Crimes. Plan Nacional de Formación y Capacitación de la Rama Judicial. Bogotá, Superior Council of the Judiciary. 2007, p. 49. In: <https://escuelajudicial.ramajudicial.gov.co/sites/default/files/biblioteca/m14-2.pdf>

that were provided for in the Statute could only be effective under the terms set forth in the Legislative Act.

Similarly, due to the internal armed conflict and the possibility of negotiating with the armed groups their way out from the conflict, Colombia decided to make a reservation to Article 124 of the Statute in order to exclude the hearing of so-called war crimes from the jurisdiction of the International Criminal Court for seven years from the entry into force of the treaty, a period of time which, in any case, has already expired.

However, there seems to be a consensus that the reservation does not preclude the possibility that members of illegal armed groups, even if they negotiate with the Colombian State their way out of the conflict, could be prosecuted in a subsidiary manner by the International Criminal Court, if they are indicted of acts against humanity, such as forced disappearance and torture, among others.

Now, as a State Party to the Statute, Colombia seeks to implement and comply with all its obligations in a comprehensive manner. To this end, the ratification of all the international instruments currently making up the Rome Statute is deemed necessary.

In this regard, the State is working on the internal processes for the ratification of the amendments to this Treaty, analyzing the route to submit the amendments to the Rome Statute before the Congress of the Colombian Republic and the Constitutional Court.

Thus, the independent submission of the amendment that followed the instructions of article 5.2 of the Rome Statute is under consideration, in order to provide a definition and procedure for the Court's jurisdiction over the crime of aggression.

For its part, the amendment modifying Article 8 on war crimes would be presented separately, along with those relating to the use of biological weapons, blinding laser weapons, undetectable fragments, and starvation as a war crime in armed conflicts of a non-international nature.

ii) national or regional strategies or action plans to promote ratification and/or full implementation;

Answer

The Colombian State is recognized as being in compliance with its international obligations and respectful of international law. Thus, the different responsibilities assigned to the State were incorporated by it, as it will be explained below, through the Rome Statute into its domestic legal system. Likewise, different activities have been developed to allow this.

For instance, it is worth noting that in order to guarantee the Colombian State's obligation to investigate and punish crimes against human rights committed in the context of the Colombian armed conflict, the Attorney General's Office prioritized the investigation of criminal conduct that had the greatest impact on the armed conflict, gender-based violence among them, whereby a special working group was created within the Transitional Justice

Ministry of Foreign Affairs

Directorate to prioritize the investigation and documentation of all acts of gender-based violence attributable to paramilitary and subversive armed structures.

Additionally, the Special Task Force for the Investigation and Prosecution of Sexual Violence in the Framework of the Armed Conflict was created in December 2023, taking responsibility for promoting the development of structural, analytical and strategic investigations, taking into account, among other factors, the gender perspective, a territorial approach and the context in which the events and the impact on the victims take place.

Other relevant examples of strategies implemented at the national level for the full implementation of the Statute were included in the answers to the detailed questionnaire.

iii) technical and other assistance needs and programs to provide such assistance;

Given the implementation difficulties described above, it would be particularly desirable for the Court to provide technical assistance aimed at training Colombian judicial operators in the implementation of the Statute, and the harmonization of its provisions with domestic reality and regulations.

One opportunity could be sending experts, funded by the Court, to train the trainers of the Rodrigo Lara Bonilla Judicial School, or by inviting judges of the national High Courts to attend workshops on the topic. The same could be done with officials of the Attorney General's Office and the Special Jurisdiction for Peace.

Technical assistance from the International Criminal Court could be beneficial to a strengthened implementation of the provisions of the Rome Statute in Colombia, both at the legal and operational levels. In particular, the following areas of assistance are proposed:

- Training and skills development– specialized training and education for officials in charge of investigating and prosecuting international crimes, specifically on the Rome Statute, judicial proceedings, evidence collection and international regulations.
- Victim and witness protection– strengthened security and protection of victims and witnesses of those collaborating in judicial proceedings, in order to ensure their active involvement in investigations and to avoid reprisals.
- Fostering transitional justice– jointly develop reparation programs.
- Access to technological resources contributing to the use of new technologies in favor of investigations on human rights violations and international humanitarian law.
- Exchange of best practices with other States in the implementation of the Rome Statute and cooperation with the International Criminal Court.

Having the support of the Court or the Office of the Prosecutor is also considered relevant with regard to the form and procedure for national approval and ratification of different amendments to the Statute, as well as their entry into force.

iv) the planned events and activities;

Answer:

v) examples of applicable legislation for the Rome Statute;

- Law 599 of 24 July 2000 "*Whereby the Penal Code is issued*" and the crimes covered by the Statute are incorporated into domestic legislation.
- Legislative Act of 27 December 2001 "*Whereby Article 93 of the Constitution is added*", establishing that the Colombian State may recognize the jurisdiction of the International Criminal Court under the terms provided in the Rome Statute adopted on 17 July 1998 by the Conference of Plenipotentiaries of the United Nations and, consequently, ratify this treaty in accordance with the procedure established in the Constitution.
- Law 742 of 5 June 2002 "*Whereby the Rome Statute of the International Criminal Court, done at Rome, on the seventeenth (17th) day of July, nineteen hundred and ninety-eight (1998)*" is approved and incorporated into the domestic legal system.
- Law 1719 of 18 June 2014 "*Whereby some sections of Laws 599 of 2000, 906 of 2004 are amended and measures are adopted to guarantee access to justice for victims of sexual violence, especially sexual violence on the occasion of the armed conflict, and other provisions are enacted.*"¹⁹

vi) bilateral cooperation agreements between the Court and States Parties;

- "*Agreement between the Government of the Republic of Colombia and the Office of the Prosecutor of the International Criminal Court within the framework of the "Complementarity and Cooperation Policy of the Office of the Prosecutor of the International Criminal Court"* signed in Bogotá on 26 April 2024. This instrument has the legal nature of a Simplified Procedure Agreement.

The purpose of this Agreement is to strengthen cooperation, dialogue, exchange of experiences and capacity building between the judicial system and control bodies in Colombia, and the Office of the Prosecutor (OTP), with a view to facilitating the implementation of the 2021 Cooperation Agreement, the 2023 Joint Work Plan, and the OTP-SJP Joint Work Plan in line with the "*Complementarity and Cooperation Policy of the Office of the Prosecutor of the International Criminal Court*".

- "*Agreement between the Republic of Colombia and the International Criminal Court on the enforcement of sentences imposed by the International Criminal Court*", signed on 17 May 2001. This instrument entered into force on 29 November 2021.

This Agreement regulates matters relating to the enforcement of sentences imposed by the Court in prisons provided by Colombia or arising in connection with such enforcement.

vii) solutions to the constitutional problems arising from ratification; and

In Constitutional Court judgement C-578 of 30 July 2002, Judge Manuel José Cepeda Espinosa pointed out that²⁰ "*(...) Indeed, even though the principles of respect for human dignity and*

¹⁹ https://www.suin-juriscol.gov.co/viewDocument.asp?id=1687214#ver_1687218

²⁰ Constitutional Court. Decision C-578/02

the guarantee of the effective enjoyment of rights, as well as the right to justice access, included in the 1991 Constitution, are compatible with the purposes promoted by the creation of the International Criminal Court and, in addition, the procedural provisions of the Rome Statute are mostly based on existing international law standards on criminal procedure included in international treaties to which Colombia is a party, or in resolutions of the General Assembly of the United Nations, the derived constituent power considered that some of the provisions of the Statute could be alien to the national legal tradition and to certain constitutional principles. In particular, it was interested in the rules establishing the possibility of imposing life imprisonment as a penalty, the non-applicability of actions arising from the commission of punishable acts under the Statute, as well as the immutability of domestic judicial decisions. For this reason, it agreed to establish an addition to Article 93 of the Political Charter, to facilitate the process of ratification of the Treaty of Rome, solely and exclusively for the purposes of the implementation of the Statute of the International Criminal Court...".

[...]

This constitutional reform -which came into force on 27 December 2001- contains four essential decisions of the derived constituent. The first two are of a jurisdictional nature. The first consists of an authorization to the "Colombian State" to "recognize the jurisdiction of the International Criminal Court", and to do so exactly in the "terms provided in the Rome Statute". The second is an authorization to the State to "ratify this treaty in accordance with the procedure established in this Constitution". The other two are of a material nature. The first allows "the admission of a different treatment in substantial matters by the Rome Statute with respect to the guarantees contained in the Constitution". The second limits the scope of such different treatment, by stating that it "shall impact" exclusively within the scope of the "regulated matter" under the Rome Statute.

[...]

The Court also emphasizes that the aforementioned legislative act does not repeal or replace the Constitution, but is incorporated into it, under the technique of adding a constitutional article, Article 93 of the Carta. This addition begins by stating that '*the Colombian State may*' recognize the jurisdiction of the International Criminal Court since the final purpose of the legislative act was not to directly incorporate the treaty into the Constitution nor to make its ratification imperative.

viii) national focal points for issues related to the ratification promotion and full implementation.

Sergio Andrés Díaz Rodríguez
Sergio.Diaz@cancilleria.gov.co
Coordinator
Internal Treaty Working Group
Directorate of International Legal Affairs