

**GUIDE TO THE GENERAL PRINCIPLES AND AGENDAS
FOR THE COOPERATION OF STATES
WITH THE INTERNATIONAL CRIMINAL COURT¹**

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Based on Report CJI/doc.290/08 rev. 1 dated 7 March 2008 and presented by the Rapporteur, the following text is a Guide to the General Principles and Agendas for the Cooperation of States with the International Criminal Court.

I. FOR STATES PARTIES TO THE STATUTE

1. Purpose

- 1.1 The purpose of this instrument is to ensure the existence of internal procedures with a view to full cooperation between the State of _____ and the International Criminal Court in the exercise of the jurisdiction, competence and functions assigned to said permanent institution in the Rome Statute adopted on 17 July 1998 and the complementary norms, including the Elements of the Crimes and the Rules of Procedure and Evidence.
- 1.2 To assign competence to organs of the State of _____ for such purposes.
- 1.3 To establish procedures applicable to cooperation not provided in the Rome Statute and complementary norms.

2. Nature

- 2.1 This instrument is supplementary to the provisions of the Rome Statute and its complementary norms.
- 2.2 The integrity of the procedures already provided in the Rome Statute and its complementary norms should be respected.

3. Scope

- 3.1 This instrument is applicable to the following types of crimes within the competence of the International Criminal Court: the crime of genocide, crimes against humanity, war crimes and the crime of aggression, the latter when a provision defining it is adopted, together with the conditions for its application in accordance with the Rome Statute.
- 3.2 It is also applicable to crimes against the administration of justice, as set forth in article 70 of the Rome Statute.
- 3.3 The types of crime defined in articles 6, 7, 8 and 70 of the Rome Statute comprise the minimum standards to which the respective national legislations must adapt.
- 3.4 Adapting the types of crime should be complemented by including the rules and principles relating, for example, to *ne bis in idem* (art. 20); applicable law (art. 21); restrictive interpretation of crimes (art. 22 (2)); non-retroactivity *ratione personae* (art. 24 (2)); individual criminal responsibility (art. 25); exclusion of jurisdiction over persons under eighteen (art.26); irrelevance of official capacity (art. 27); responsibility of commanders and other superiors (art. 28); non-applicability of

¹ The agendas and principles contained in this instrument are minimal in nature and merely indicate certain topics deemed to be essential and have no pretensions to exhaust or limit the different forms of cooperation and legal assistance with the International Criminal Court and its principles.

statute of limitations (art. 29) and the grounds for excluding criminal responsibility (art. 31), in order to avoid any inconsistency between the criminal norm and its form of application.

- 3.5 Adapting the types of crime to the internal system of law must be in keeping with the obligations springing from the Conventions of Geneva of 1949 and the Additional Protocol I of 1977.

4. Scope of Application

- 4.1 This instrument applies to crimes committed in (places where committed (inside or outside the territory)) or that bear effect on the territory, according to internal law.
- 4.2 (Universal Obligation to Judge) The State of _____ shall exercise its jurisdiction in respect to any person found its territory associated with the crimes indicated in article 5 of the Rome Statute, regardless of their nationality or the place where the crime was committed, when this State does not determine extradition to a third State or surrender to the International Criminal Court.

5. General obligation of cooperation

- 5.1 The organs of the State of _____ that are designated as competent shall attend to the requests for cooperation made by the International Criminal Court, in accordance with the terms and conditions set out in the Rome Statute, its complementary norms and this instrument.
- 5.2 Requests for cooperation shall be attended to expeditiously and in good faith.
- 5.3 Total or partial absence of procedures in the internal system with regard to cooperation with the International Criminal Court may not use this as an excuse to deny the cooperation requested, which shall be attended to by implementing the necessary legal mechanisms so as to ensure the accused person's right to defense.
- 5.4 Quick and effective procedures shall be used, ones that do not constitute unnecessary obstacles to full cooperation or that impose conditions that are incompatible with the Rome Statute.
- 5.5 The consultation processes established in the Rome Statute shall be used by the State of _____ with a view to reaching an understanding, in an attempt either to resolve the questions that motivated the consultation or to find other ways and mechanisms to lend or facilitate assistance.
- 5.6 Upon providing cooperation, the State of _____ shall take into account possible arrangements for the protection of persons, including victims and witnesses.
- 5.7 Consider a system of broad diffusion of information without affecting the limited exceptions previously set forth by law.

6. Request for cooperation of the Court

The State of _____ may request the Court (through the competent organ in accordance with the law and in the modality stipulated by same) for cooperation and assistance when it carries out an investigation or substantiates a decision on conduct that constitutes a crime within the competence of the Court or that constitutes a grave crime according to its internal law.

7. Designation of competent bodies

- 7.1 The State of _____ designates as competent authorities for the effects of setting up cooperation with the International Criminal Court: (in accordance with internal law).
- 7.2 The State of _____ shall communicate with the Court by means of (diplomatic procedures or any other conduct designated by each State according to its legislation).

7.3 The national organs can only review the contents of their requests according to the parameters and limits established in the Rome Statute and this instrument.

8. Remitting a situation to the Prosecutor

8.1 The State of _____ can remit to the Court Prosecutor, through (the competent body according to and with the characteristics established by the law), a situation in which it appears that one or several crimes have been committed that fall within the competence of the Court, and request an investigation, as provided in articles 13 and 14 of the Rome Statute.

8.2 The State of _____ may formulate, through (the competent body according to and with the characteristics established by the law), a petition to the Pre-Trial Chamber to review a decision of the Court Prosecutor not to proceed to the investigation requested, in accordance with articles 53, paragraph 3. a) of the Rome Statute.

9. Requisition of disqualification of the Prosecutor

9.1 In accordance with article 18, paragraph 2 of the Rome Statute, the State of _____ may inform through (the competent body according to and with the characteristics established by the law), that it is carrying out an investigation among its nationals or other persons under its jurisdiction, into criminal acts that may constitute crimes covered in article 5 of the Rome Statute, and request that the Prosecutor be disqualified to exercise competence in his favor.

9.2 When the Prosecutor is disqualified, the State of _____, at his request, shall provide him as promptly as possible with periodical information on the progress of its investigations and subsequent procedures.

9.3 The State of _____, through (the competent body according to and with the characteristics established by the law), may appeal before the Appeals Court against the decision of the Pre-Trial Chamber to authorize investigation of the Prosecutor, in accordance with articles 18, paragraph 4 and 82; in this case, the State may impugn the admissibility of a matter by virtue of articles 18 paragraphs 7 and 19 of the Rome Statute.

9.4 If the competent Panel of the Court authorizes the Prosecutor to proceed with the investigation or maintains his competence or the admissibility of the cause, (the competent body according to and with the characteristics established by the law) of the State of _____ will disqualify itself in favor of the Court and shall upon request remit its records.

10. Impugnation of the competence of the Court or admissibility of the cause

The State of _____, through (the competent body according to and with the characteristics established by the law), may impugn the admissibility of the cause or else impugn the competence of the Court when it has jurisdiction in the cause either because it is investigating it or filing it or has already done so.

11. Requests for detention and surrender of persons to the International Criminal Court

11.1 The State of _____ establishes the following procedure to comply with a request from the International Criminal Court to detain and surrender a person who may be in its territory: (determination of the competent organ that intervenes and of procedures in accordance with the law).

11.2 The State of _____ will attend to the request, whether it concerns criminal prosecution or execution of a penalty.

11.3 The procedures shall take into account a sufficient system of guarantees for the person who is detained or surrendered.

11.4 In the case of people in transit, the State of _____ shall take all necessary steps to ensure that the person remains detained during transit.

12. Field investigation by agents of the International Criminal Court

The State of _____ shall adopt all necessary mechanisms to facilitate the investigation in the territory of the States by the officers of the Court, according to what is established in the Rome Statute, the Agreement on Privileges and Immunities of the International Criminal Court and the law.

13. Fulfillment of penalty in the area of a Member State of the Rome Statute

13.1 The State of _____ may receive a person condemned by the International Criminal Court to effect execution of the sentence in the penitentiaries under its jurisdiction. It shall consult with the Court regarding the terms and conditions of reclusion in accordance with what is established by the Rome Statute and the law.

13.2 In this case the national system of execution of penalties contained in the criminal codes, code of criminal procedures and codes of criminal execution shall not be applicable. Procedure shall be exclusively as provided in the system set forth by the International Criminal Court.

14. Unprescribability

The judicial actions and the penalties set by the competent authorities for crimes of genocide, crimes against humanity, war crimes and crimes of aggression are unprescribable.

15. Amnesties and pardons

It is prohibited to grant amnesties, pardons, mercy or similar measures to persons responsible for committing crimes of genocide, crimes against humanity, war crimes and crimes of aggression.

16. Responsibility of superiors and hierarchical obedience

16.1 The military, police or civil commander who orders the committing of crimes established in art. 5 of the Rome Statute shall be sued as the author of the punishable act. Likewise the military, police or civil commander who, in full knowledge or with the obligation to have full knowledge of the fact because of his position, fails to exercise appropriate control to avoid the crime being committed.

16.2 The civil or military personnel who commit international crimes in fulfillment of an order given by a civil or military official, according to the conditions and exceptions established in international treaties and the law, shall not be exempt from criminal responsibility.

16.3 The fact that crimes were committed by a subordinate does not exempt his superiors from criminal responsibility if these persons knew or possessed information that might allow them to conclude, in the circumstances of the moment, that this subordinate was committing such crimes or was about to do so and if they did not take the appropriate steps in their power to prevent or repress commission of the crime.

17. System of immunities

The immunities that may be granted to the Officers of the State of _____, in accordance with what is established by the Constitution and the law, shall not be applicable before denunciations of crimes of genocide, crimes against humanity, war crimes and crimes of aggression.

18. Education and training

The State of _____ shall develop, through (the competent organ according to and with the characteristics established by the law), plans for education, diffusion and training for the authorities entrusted with cooperation with the International Criminal Court.

II. FOR STATES THAT ARE NOT PARTIES TO THE STATUTE

The State of _____ may engage in cooperation with the International Criminal Court as dictated by the provisions in the Rome Statute, either in the declaration provided in

article 12, paragraph 3, or else based on a special arrangement, an agreement or in any other appropriate way provided in article 87, paragraph 5. a) of said Statute.

(The State may adapt, with the changes deemed necessary and pertinent, taking into account its condition as non-Party to the Rome Statute, the previous provisions that allow its internal legislation and the international instruments that bind it, especially the part relating to principles and the adjustment of laws to the types of crime contained in the Statute, as provided in item 3 of this Guide).

The State of _____ shall designate an organ (in accordance with the law and the modalities provided therein) to attend to and foster cooperation with the International Criminal Court.

The State of _____ shall undertake a study on the internal legal basis and international instruments that bind it juridically to lend cooperation and assistance to the Court in the areas provided in Part 9 of the Rome Statute.

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