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*Concept note for BREAK-OUT SESSION 1:
Promoting Universality of the Rome Statute and the adoption of
National Implementing Legislation – 5 April 2017*

The purpose of this break-out session is to discuss **ratification** and **national implementation of the Rome Statute**, in particular to exchange experiences in the region, to seek ways to overcome obstacles and to increase awareness of possibilities for international cooperation.

Representatives of the Court as well as external organisations specialising in provision of assistance for ratification and national implementation will provide introductory presentations during the session and will be available to answer questions.

Representatives of States Parties will be invited to share experiences from their national process of ratification or accession to the Rome Statute, as well as national implementation where applicable. The session would benefit from an overview regarding the solutions adopted nationally as well as highlighting any difficulties that were encountered – whether constitutional, practical, political or other – and how these were solved.

It is hoped that representatives of Non-States Parties may give an update on the current status of any national efforts toward joining the Rome Statute in their countries, and in particular highlight obstacles that may exist. Discussion on the compatibility of national legislation with the Rome Statute will also be welcomed.

Participants will also be invited to provide views on possibilities to promote universal ratification of the Rome Statute as well as national implementation through technical assistance or other means, either in bilateral or multilateral settings.

UNIVERSALITY

The Asia-Pacific Group of States is the most underrepresented regional group among States Parties to the Rome Statute of the International Criminal Court, with only little over a third of the region's States being parties to the Statute.¹ Accordingly, it is of particular importance to discuss the promotion of the universality of the Rome Statute, as well as the challenges to ratification among Asian States.

Joining the Rome Statute is a sovereign decision for each State to take and demonstrates strong commitment to international law, peace and security. It is a concrete contribution to the fight against impunity for the most serious international crimes and an expression of solidarity with the

¹ The Asia-Pacific States Parties are: Afghanistan, Bangladesh, Cambodia, Cook Islands, Cyprus, Fiji, Japan, Jordan, Maldives, Marshall Islands, Mongolia, Nauru, State of Palestine, Philippines, Republic of Korea, Samoa, Tajikistan, Timor-Leste and Vanuatu. In all other regional groups, the majority of States are parties to the Rome Statute.



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victims of such crimes everywhere. Ratification of the Rome Statute strengthens the legal protection against genocide, crimes against humanity and war crimes, as anyone contemplating the commission of such crimes on the territory of a State Party would be potentially risking prosecution by the Court. Finally, becoming party to the Rome Statute allows a State to participate fully in the decisions taken by the Assembly of States Parties and to nominate candidates for the highest officials of the Court.

In many countries, various misconceptions about the ICC have slowed down the process of joining the Rome Statute. For instance, it has proven important to clarify that joining the Rome Statute has no retroactive effect and does not provide the Court with any powers to investigate or prosecute crimes that may have occurred before a State became party to the Statute. Furthermore, it is useful to underline that as a criminal court, the ICC only prosecutes individuals and does not deal with the responsibility of states as human rights courts do. Finally, under the principle of complementarity, States retain the primary right and responsibility to investigate and prosecute Rome Statute crimes – the ICC does not compete with or purport to replace national courts.

NATIONAL IMPLEMENTATION

The break-out session will also provide an opportunity to share experiences regarding the **national implementation of the Rome Statute**, and to discuss challenges and possible solutions, particularly to facilitate the process in countries that have not yet passed implementing legislation or which may wish to consider complementing or revising their existing implementing legislation.

Adequate **implementing legislation** at the national level is an important factor in facilitating effective and full cooperation with the Court. Article 88 of the Rome Statute stipulates that States Parties shall ensure the availability of the necessary national procedures for cooperation under Part 9 of the Statute. This provision thus requires States Parties to review their national law and procedures and where necessary introduce through legislation, treaty implementation, or administrative practice, procedures in their domestic regimes to meet the cooperation obligations. Unavailability of domestic procedures for cooperation with the International Criminal Court is thus not sufficient to justify a State's refusal to execute a cooperation request from the Court.

Another aspect of the national implementation of the Rome Statute is to **incorporate the crimes contained in the Statute** in the national criminal code to allow for the effective investigation and prosecution of such crimes by the national jurisdiction in accordance with the principle of complementarity enshrined in the Rome Statute.

Among the Asian States Parties to the Rome Statute, only a small minority have passed national implementing legislation either on cooperation with the Court or to enable domestic prosecution of the crimes enumerated in the Statute. National implementation therefore remains an important task and topic for consideration in order to strengthen the system of international criminal justice.



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AGREEMENT ON PRIVILEGES AND IMMUNITIES

Finally, the Court also strongly urges all States Parties to become parties to the **Agreement on Privileges and Immunities of the International Criminal Court (“APIC”)** in order to facilitate the efficient functioning of the Court and to increase legal clarity regarding the privileges and immunities of the Court in their national setting. The APIC is foreseen in article 48 of the Rome Statute but it is a separate treaty requiring accession or ratification by each State. States are also encouraged to implement the provisions relating to the Court’s privileges and immunities in their national legislation, and to take active steps to ensure that the relevant national authorities are aware of the Court’s privileges and immunities and their practical implications. As of 1 March 2017, 76 States have become party to the APIC, including one State not party to the Rome Statute (Ukraine). Accordingly, 48 States Parties to the Rome Statute are yet to become party to APIC.

Suggested preparations for participants ahead of break-out session 1:

FOR STATES PARTIES IN PARTICULAR

- Prepare to share experiences and challenges regarding your country’s **ratification/accession** to the Rome Statute. What were the main sources of motivation for your country to join the ICC? Were any difficulties encountered in the process, how were they solved? How is your country’s participation in the ICC viewed in the context of foreign policy or among the public?
- Prepare to participate in discussion on ways to **promote universality of the Rome Statute**. Is your country actively promoting universal ratification of the Rome Statute, for instance through multilateral organisations? Is your country available to exchange experiences with / or provide technical assistance to States interested to join the Rome Statute?
- Prepare to discuss your country’s national experience in **implementing the cooperation regime** defined by the Rome Statute. Has your country passed dedicated legislation for the implementation of the Rome Statute? Are procedures for cooperation defined elsewhere? Is there draft legislation pending for implementation of the Rome Statute? Are there difficulties associated with the process?
- Prepare to discuss national experiences concerning the **Agreement on Privileges and Immunities of the Court (APIC)**. Is your country party to APIC? If not, has it actively considered joining APIC?

FOR NON-STATES PARTIES IN PARTICULAR

- Prepare to discuss the **current status of discussions**, if any, in your national setting considering possible ratification of the Rome Statute. Are there active efforts toward joining the ICC? Are there specific obstacles, and if so, are they constitutional, practical, political or other in nature? Is there any need for or interest in technical assistance?

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- Has your country participated as an observer in the meetings of the Assembly of States Parties in order to follow the development of the Court?

FOR ALL PARTICIPANTS

- Prepare to discuss national experiences and challenges in **implementing the crimes** defined in the Rome Statute. Are genocide, crimes against humanity and war crimes criminalised under the penal legislation of your country? Are there differences between the definitions in your national legislation and the Rome Statute?

- Prepare to discuss what kind of role **regional and other inter-governmental organisations**, as well as **non-governmental organisations**, can play in promoting or assisting ratification and national implementation of the Rome Statute.