

*(Translated from Spanish)*

**Plurinational State of Bolivia**

**Ministry of Foreign Affairs**

**Information and comments of the Plurinational State of Bolivia**

**Resolution 64/110 of the United Nations General Assembly on the criminal accountability of United Nations officials and experts on mission**

Resolution 64/110 of the United Nations General Assembly seeks “to ensure that the original intent of the Charter of the United Nations can be achieved, namely that United Nations staff and experts on mission would never be effectively exempt from the consequences of criminal acts committed at their duty station, nor unjustly penalized without due process.” The following relevant information is provided in keeping with that intent.

In general, it must be noted that the Constitution, our domestic legislation and the international treaties and conventions to which Bolivia is a party address and observe the recommendations set out in resolution 64/110, in particular those in the paragraphs on which the country is requested to report.

In this regard, the primacy in domestic law of international treaties and conventions pertaining to the recognition of human rights is duly upheld (Constitution, art. 13 (iv)); it is established that the corpus of constitutional law shall comprise the international treaties and conventions on human rights and the rules of community law ratified by the country and shall be in keeping with the hierarchy of norms, according precedence to the Constitution, followed by international treaties and conventions, laws, the statutes of autonomous entities, constitutive charters and other departmental, municipal and indigenous laws, decrees, regulations and resolutions of the relevant executive bodies (Constitution, art. 410); the right to due process is guaranteed, as is that to a defence and to a system of justice that is pluralistic, swift, timely, free and transparent and administered without delay (Constitution, art. 115 (ii)); it is stipulated that no person may be convicted without having been heard and judged in advance in accordance with due process (Constitution, art. 117); it is specifically noted that under no circumstances may the declaration of a state of emergency cause suspension of the guarantees of rights, or of fundamental rights, the right to due process, the right to information and the rights of persons deprived of their liberty (Constitution, art. 137 ); it is also established that special courts and privileges and emergency tribunals are not included within the scope of ordinary jurisdiction (Constitution, art. 180 (iii)); and, lastly, it is

stipulated that ordinary jurisdiction is underpinned by the procedural principles of cost-free access, openness, transparency, the oral nature of proceedings, promptness, probity, honesty, legality, effectiveness, efficiency, accessibility, immediacy, material truth, due process and equality of the parties before the judge (Constitution, art. 180 (i)).

## **I. Observance of the resolution by the Plurinational State of Bolivia**

**3. *Strongly urges* all States to consider establishing to the extent that they have not yet done so jurisdiction, particularly over crimes of a serious nature, as known in their existing domestic criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, at least where the conduct as defined in the law of the State establishing jurisdiction also constitutes a crime under the laws of the host State;**

It is noted that the penal system rests on a single principle under which society has decided to vest in the State the power to administer punishment on condition that such power is exercised justly, regardless of the difficulty in determining what is just and what is unjust, with the aim of ensuring that this power is used with great restraint, in line with the principle of minimum intervention and on the basis that recourse to criminal law is the ultima ratio. Accordingly, criminal accountability should be understood as rendering persons who violate the duty of proper conduct imposed by criminal law liable to the consequences arising under the law, these consequences being imposed upon such persons when they are found guilty of having committed an offence or having been complicit in its commission. At its plenary meeting on 18 September 2009, the General Assembly decided to take up the issue of the criminal accountability of United Nations officials and experts on mission to ensure the accountability of staff for criminal acts committed in peacekeeping operations.

In that regard, at the domestic level, the current Criminal Code states in its article IV (on territorial scope), that it shall apply:

- (a) To offences committed in Bolivian territory or in localities under its jurisdiction;
- (b) To offences committed abroad, the effects of which have been felt or were intended to be felt in Bolivian territory or in localities under its jurisdiction;
- (c) To offences committed abroad by a Bolivian, provided that the perpetrator is now inside Bolivia and has not been punished in the place where the offence was committed;

(d) To offences committed abroad against State security, offences of fraud and offences against the national economy. This provision extends to foreigners, if they have been extradited or are located within Bolivian territory;

(e) To offences committed on board Bolivian vessels, aircraft or other means of transport in a foreign country, if they have not been prosecuted in that country;

(f) To offences committed abroad by Bolivian civil servants in the performance of their duties;

(g) To offences that the Plurinational State of Bolivia is required by its treaties or conventions to punish, even if they were not committed in its territory.

In the light of the foregoing, Bolivian criminal law applies the principle based on the place where the act was committed, maintaining that such acts should not be covered by any granting of national or international impunity.

According to the resolution on the criminal accountability of United Nations officials and experts on mission, offences committed by law enforcement officials must not go unpunished and criminal acts committed at their place of work should not be exempted. To this end, the rules and principles set forth in the law must be observed.

**4. *Encourages all States to cooperate with each other and with the United Nations in the exchange of information and in facilitating the conduct of investigations and, as appropriate, prosecution of United Nations officials and experts on mission who are alleged to have committed crimes of a serious nature, in accordance with their domestic laws and applicable United Nations rules and regulations, fully respecting due process rights, as well as to consider strengthening the capacities of their national authorities to investigate and prosecute such crimes;***

Cooperation in the exchange of information to facilitate the conduct of investigations is in keeping with international treaties, conventions or agreements and with the principles of reciprocity, the need to observe due process and respect for all defendants, regardless of whether or not they are United Nations officials or experts on mission.

In this context, attention is drawn to article 138 of Act No. 1970 of 25 March 1999, the Code of Criminal Procedure, which states that as much assistance as possible shall be afforded in response to requests from foreign authorities, provided that such assistance is sought in compliance with the terms of the Constitution, the international conventions and treaties in force and the provisions of the Code.

Requests for cooperation shall be submitted to the Ministry of Foreign Affairs, which shall then bring them to the attention of the competent authority.

**5. *Also encourages all States:***

**(a) To afford each other assistance in connection with criminal investigations or criminal or extradition proceedings in respect of crimes of a serious nature committed by United Nations officials or experts on mission, including assistance in obtaining evidence at their disposal in accordance with their domestic law or any treaties or other arrangements on extradition and mutual legal assistance that may exist between them;**

In addition to the considerations raised in respect of paragraph 4, attention is drawn to article 3 of the current Criminal Code relating to extradition, article 113 on offences committed by foreigners and article 140 regarding the application of treaties and conventions, which provide as follows:

*Article 3 (Extradition).* No person subject to the jurisdiction of Bolivian law may be extradited to another State, unless otherwise provided by an international treaty or agreement on reciprocity.

The validity or invalidity of extradition shall be decided by the Supreme Court.

Where there is an agreement on reciprocity, extradition may not take place if the act in respect of which it is being sought does not constitute an offence under the law of the requesting State or that of the requested State.

*Article 113 (Crimes committed by foreigners).* Foreigners residing in Bolivian territory are covered by the previous articles and shall be liable to the punishments specified in those articles, except where otherwise provided by treaties or by international law relating to diplomatic officials.

*Article 140 (Unlawful surrender of a person).* A public official or authority who surrenders or arranges the surrender to another Government of a national or a foreigner residing in Bolivia, without complying strictly with the applicable treaties, conventions or international practices or without observing the procedures which they establish, shall be liable to imprisonment for periods of between one and two years.

Attention is also drawn to the Code of Criminal Procedure, whose articles 149, 150 and 151 regulate extradition, indicating when it is appropriate and when it is inappropriate, and are applicable to paragraph 5 of the resolution, as follows:

*Article 149 (Extradition).* Extradition shall be governed by the international conventions and treaties in force and, at a subsidiary level, by the provisions of the present Code or by the rules of reciprocity in the absence of other applicable provisions.

*Article 81 (Applicability).* Extradition shall be applicable for offences which, under the laws of both States, are punished with deprivation of liberty for a minimum period of two or more years and, in the case of Bolivian nationals, of more than two years.

The extradition of a person to serve a sentence in the requesting State shall be applicable if at least one year of the sentence remains to be served.

*Article 151 (Inapplicability).* Extradition shall not be applicable if:

1. There is good reason to believe that extradition is being sought in order to prosecute or punish persons on the grounds of their political opinions, race, sex, religion, nationality or ethnic origin, or that they will be subjected to cruel, inhuman or degrading treatment or punishment;
2. An enforceable judgment has been handed down in Bolivia for the offence giving rise to the extradition request;
3. Under the laws of the requested or requesting State, the offence giving rise to the extradition request is time-barred or the person sought has been amnestied or pardoned.

**(b) In accordance with their domestic law, to explore ways and means of facilitating the possible use of information and material obtained from the United Nations for purposes of criminal proceedings initiated in their territory for the**

**prosecution of crimes of a serious nature committed by United Nations officials and experts on mission, bearing in mind due process considerations;**

In this connection, reference is made to Act No. 1970, which in its article 13 on the legality of evidence provides that evidence shall be valid only if it has been obtained lawfully and introduced into the proceedings in accordance with the provisions of the Constitution and the Code of Criminal Procedure. Evidence obtained by torture, ill treatment, force, threats, deceit or violation of the fundamental rights of the person, or obtained using information originating from unlawful procedures or means shall have no probative value.

**(c) In accordance with their domestic law, to provide effective protection for victims of, witnesses to, and others who provide information in relation to, crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission and to facilitate access by victims to victim assistance programmes, without prejudice to the rights of the alleged offender, including those relating to due process;**

With regard to this paragraph, reference is made to the Organization Act of the Public Prosecutor's Office, Act No. 2175 of 13 February 2001, which in its article 15 states that the Public Prosecutor's Office shall protect persons who are at risk of harm for having collaborated with the judicial authorities and that this protection shall be provided, in particular, in the case of criminal offences associated with organized crime, the abuse of power or the violation of human rights. To that end, the Office shall be furnished with a standing programme to protect witnesses, victims and its own officials.

Furthermore, in accordance with article 76 of Act No. 1970, the category of victim is understood to include: persons directly harmed by the offence; spouses or partners, blood relatives up to the fourth degree of consanguinity or second degree of kinship, adoptive children or parents and testamentary heirs, where the offence results in the death of the victim; bodies corporate affected by the offence; and legally constituted foundations and associations, where the crime affects collective or widespread interests, provided that the purpose of the foundation or association has a direct bearing on those interests. In addition, article 77 provides that, even where victims have not been involved in the proceedings, they shall be informed by the authority responsible for the criminal prosecution of their rights and by the judge or court of the outcome of the proceedings, subject to any liability for non-compliance.

Similarly, article 74 of the Code of Criminal Procedure states that, in investigating offences, the national police shall be responsible for identifying and apprehending alleged perpetrators,

identifying and assisting victims, collecting and securing evidence and serving all orders as instructed by the public prosecutor in charge of the investigation; they shall also keep the competent bodies informed about the proceedings. They shall also assist victims and protect witnesses.

**(d) In accordance with their national law, to explore ways and means of responding adequately to requests by host States for support and assistance in order to enhance their capacity to conduct effective investigations in respect of crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission;**

Where paragraph 5 (d) is concerned, the Plurinational State of Bolivia stands ready to respond in an appropriate manner to requests by host States with a view to enhancing their capacity to conduct effective investigations relating to serious offences, in implementation of the treaties, conventions and international agreements to which Bolivia is a party, in respect of all defendants who have committed offences.

**14. Takes note with appreciation of the information provided by Governments in response to its resolutions 62/63 and 63/119, and urges Governments to continue taking the measures necessary for the implementation of those resolutions, including their provisions addressing the establishment of jurisdiction, particularly over crimes of a serious nature, as known in their existing domestic criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, as well as cooperation among States;**

It should be noted in this regard that the Government of Bolivia has been party to the Convention on the Privileges and Immunities of the United Nations since 23 December 1949. In addition, due account is also taken of Article 104 of the Charter of the United Nations, which provides that the United Nations shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes, and, as provided by articles VI and VII of the Convention, such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization, in the interests of the United Nations and not for the personal benefit of the individuals themselves.

Moreover, the agreement between the High Commissioner for Human Rights and the Bolivian Government dated 13 February 2007, ratified by Act No. 3713 of 13 July 2007, stipulates in its article X, paragraphs 2 (a) and (b), as follows:

Staff members of the Office

(a) Shall enjoy immunity from prosecution for their oral or written statements and all acts performed in the exercise of their official duties. Such immunity shall continue to be applicable after termination of their employment with the Office;

(b) Shall be immune from inspection and seizure of their official baggage.

It must be borne in mind, however, that offences are regulated and incur the punishment without exception of those who perpetrate them, as stipulated in article 1 (6) of the Criminal Code, the provisions of which remain applicable to those staff members who commit offences. Lastly, and recalling that resolution 64/110 was prompted by reports on the issue of sexual exploitation and abuse by United Nations officials and experts in peacekeeping operations, these officials and experts are not entitled to different and possibly favourable treatment but, on the contrary, in view of the responsibility vested in them in the mission which they are performing, this should be an aggravating factor where punishment is concerned, and this consideration should be kept in mind.

---