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*Translated from Spanish*

Permanent Mission of Panama to the United Nations

MPP NY-527-11

The Permanent Mission of Panama to the United Nations presents its compliments to the Secretary-General of the United Nations and, in reference to note LA/COD/50 of 1 March 2011 requesting information on the implementation of resolution 65/20 entitled “Criminal accountability of United Nations officials and experts on mission”, has the honour to transmit herewith the reply of the Government of Panama.

“It is necessary to clarify several important concepts discussed in the Sixth Committee (A/65/464), including the concept of criminal accountability, which is the legal consequence of a breach of law by an individual engaging in unlawful actions that affect physical property or the physical integrity of persons. Criminal accountability is imposed by the State, and should take the form of penalties that do not simply punish the perpetrator but also seek to rehabilitate, through the implementation of a State criminal policy.

Legally speaking, criminal accountability arises from the harmful actions of persons breaching a duty of conduct imposed by their category, including the “Special” category, which is the applicable classification in the case of crimes committed by officials who take advantage of their status to break the law.

This makes it necessary to define what we mean by “United Nations officials”, a concept that includes both United Nations staff and United Nations volunteers treated as equivalent under agreements on the status of United Nations staff.

The “experts on mission” category includes United Nations military observers as well as police officers and civilians recognized as having the same status. It may also include military liaison officers, military advisers, weapons monitors, members of formed police units, United Nations police officers and seconded corrections officers.

By engaging in criminal activities, officials and experts harm not only their own reputations but also those of the Organization and their countries of origin, thereby compromising the entire international community and undermining its credibility and trust in the eyes of all States, whether or not they are members of the United Nations.

Important though it is, the topic of the criminal accountability of United Nations officials and experts on mission has been reopened only recently, and its jurisdictional complexity has meant that progress remains modest. It is difficult to establish conventions on general judicial procedure that do not give some nations the impression of relinquishing part of their sovereignty to the United Nations.

A number of States have taken important steps to tailor their laws appropriately by establishing criminal jurisdiction for crimes of a serious nature in this area and by providing for cooperation and information-sharing to help to bring their perpetrators to trial. Clearly, however, greater efforts are needed to ensure collectively that such crimes cannot be committed with impunity.

The Political Constitution of Panama protects a number of the human rights enshrined in the Universal Declaration.

In addition, Act 15 of 28 October 1977 approved Panama's ratification of the American Convention on Human Rights (Pact of San José), adopted at the Conference of the Organization of American States (OAS) in San José, Costa Rica on 22 November 1969. This regional convention reaffirms fundamental rights by spelling out the obligations of States and protected rights, as well as the obligations of persons and the mechanisms for protecting human rights.

Furthermore, Act 31 of 28 May 1998 establishes protection for victims of crime that guarantees their right to legal recourse. Accordingly, rather than bringing a private action, the victim reports the criminal offence to the State judicial authority and becomes a party to the legal proceedings seeking the criminal accountability of the defendant and the award of the appropriate damages.

Panamanian law criminalizes trafficking in persons in the specific terms of the United Nations Convention against Transnational Organized Crime. In particular, Chapter IV "Sex Trafficking, Sex Tourism and Pornography with Minors" was added by Act 16 of 31 March 2004 in order to protect minors from any form of sexual exploitation, as well as to establish standards for prevention and punishment.

Judicial investigation of sex trafficking crimes is undertaken at the initiative of the authorities themselves or when reported by an affected party. The consequent absence of a need for a private action to be brought makes it feasible to investigate such cases.

Panama is a party to the Palermo Convention (see Act 23 of 7 July 2011), which provides for the protection of victims, witnesses and third parties involved in legal proceedings. Act 48 of 30 August 2004 incorporated this international treaty into domestic law (added to the Judicial Code article 2121-A on the protection of witness identity).

Furthermore, Title X of Panama's consolidated Criminal Code ("Crimes against the Government") penalizes, *inter alia*, misconduct by public servants. Article 350 of Title X merits particular mention:

"Where any of the acts described in articles 345, 346 and 347 of this Code target a public servant of another State or an official of an international public body for the purpose of

causing said public servant or official to take, fail to take or delay any action, in violation of his duties, or to carry out any action specific to his capacity or employment or as a consequence of actions already taken, the penalty shall be five to eight years' imprisonment."

In addition, article 354 provides as follows:

"Anyone who, for his own gain or that of a third party, uses his influence or claimed influence to solicit, receive, accept or make a promise of money, property or any other financial or legal advantage in order to obtain benefit in a pending or potential trial from a public servant or a foreign public servant in an international organization shall be subject to a penalty of four to six years' imprisonment.

The penalty shall be five to eight years' imprisonment if the person exercising or claiming to exercise influence is the hierarchical superior of a person who is or will be trying the case in question.

Title XIV ("Crimes against the Juridical Personality of the State"), Article 432 of the Criminal Code, is also of particular interest. It reads as follows:

Anyone who, in time of war, fails to perform part or all of his defence- or security-related obligations in a contract with the State shall be subject a penalty of five to ten years' imprisonment.

Title XV ("Crimes against Humanity") sets out rules for penalizing infringements of human rights and defines the acts that constitute crimes against humanity and violations of international agreements binding on the Panamanian State.

Lastly, Book III, Chapter V, of the Judicial Code establishes the procedural rules governing extradition. In particular, article 2505 provides as follows:

Exceptionally, for reasons of public order and social interest, extradition or the simple and conditional surrender of an alien to the requesting State may be granted by the Executive Branch despite the fact that criminal proceedings are in progress or a sentence is being served in Panama, subject to the undertaking that, once the judicial proceedings for which he was sought have been completed, or once he has been exonerated or has been found guilty and served his sentence, he shall be returned to Panama to serve the sentence against him, if any, or to continue the criminal proceedings, if they are pending completion. In any event, the criminal proceedings being conducted in the Republic of Panama shall continue in the absence of the surrendered or expatriated defendant, who shall be given every guarantee of legal representation.

In conclusion, Panama is making tremendous efforts to protect the interests of its citizens while according due respect to the rights of non-citizens. It complies with the standards of due process set by its Political Constitution and the international conventions.”

The Permanent Mission of the Republic of Panama takes this opportunity to convey to the Secretary-General the renewed assurances of its highest consideration.

New York, 29 June 2011